

Vera Effigies Viri clariſs EDOARDI COKE
Equitis aurati nuper Capitalis Iuſticiarij
ad Placita coram Rege tenenda aſsignati

R. White fecit

THE

SECOND PART

OF THE

INSTITUTES

OF THE

LAWS

OF

ENGLAND:

CONTAINING

The Expoſition of many ancient, and other STATUTES, Whereof you may ſee the particulars in a *Table* following.

The Sixth Edition.

Luc. 10. 26.

Juriſperito dixit, In lege quid ſcriptum eſt? Quomodo legis?

Auguſt. *Quod non lego, non credo.*

Juriſprudentia eſt juvenibus regimen, ſenibus ſolamen, pauperibus divitiæ, & divitibus ſecuritas.

Authore EDW. COKE *Milite*, J.C.

Hæc ego grandævus poſui tibi, candide Lector.

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A

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Deo

Deo, Patriæ, Tibi.

A Proeme to the ſecond Part of the Inſtitutes.

IN the firſt Part of the *Inſtitutes*, following *Littleton* our Guide, we have treated of ſuch parts of the Common Laws, Statutes, and Cuſtoms, as he in his three Books hath left unto us. We are in this ſecond Part of the *Inſtitutes* to ſpeak of *Magna Charta*, and many ancient and other Statutes, as in the Table precedent do appear.

It is called *Magna Charta*, not that it is great in quantity, for there be many voluminous Charters commonly paſſed, ſpecially in theſe later times, longer then this is; nor comparatively in reſpect that it is greater then *Charta de Foreſta*, but in reſpect of the great importance, and weightineſs of the matter, as hereafter ſhall appear: And likewiſe for the ſame cauſe *Charta de Foreſta*, is called, *Magna Charta de Foreſta*, and both of them are called *Magnæ Chartæ libertatum Angliæ*.

Marlb. cap. 5. Inſpex. 25 E. 1. 12 H. 3. *Sententia lata ſuper Chartas.* Bract. lib. 3. f. 291 & lib. 5. f. 414. Mirror cap. Sect. Regiſtr. 8 E. 3. Rot. Pick. Rot. 43. Atons Caſe Rot. Pat. 20. Marcii 1 E. 3. de perambulatione for' in Com. Eſſex. Rot. Parl. 22 E. 3. nu. 36.

King *Alexander* was called *Alexander Magnus*, not in reſpect of the largeneſs of his body, for he was a little man, but in reſpect of the greatneſs of his heroical ſpirit, of whom it might be truly ſaid,

Mens tamen in parvo corpore magna fuit;

So as of this Great Charter it may be truly ſaid, that it is *Magnum in parvo*.

And it is alſo called *Charta libertatum Regni*; and upon great reaſon it is ſo called of the effect, *Quia liberos facit:* Sometime for the ſame cauſe, *Communis libertas*, and *le Chartre des franchiſes*.

The Ends. *Sapiens incipit a fine.*

There be four ends of this Great Charter, mentioned in the Preface, *viz.* 1. The honour of Almighty God, &c. 2. The ſafety of the Kings Soul. 3. The advancement of Holy Church; and 4. The amendment of the Realm: four moſt excellent ends, whereof more ſhall be ſaid hereafter.

By what Authority, and when.

By Charter bearing date the 11 day of *February*, in the 9 year of King *H.* 3. and ſecondly, by that Charter eſtabliſhed by Authority of Parliament then ſitting, and ſo entred into the Parliament Roll; the Witneſſes to the ſaid Charter were 31 Lords Spiritual, *viz. Stephen Langton* Archbiſhop of *Canterbury*, *E.* Biſhop of *London*, *J.* B. of *Bath*, *P.* of *Wincheſter*, *H.* of *Lincoln*, *Robert* of *Saliſbury*, *W.* of *Rocheſter*, *W.* of *Worceſter*, *J.* of *Ely*, *H.* of *Hereford*, *R.* of *Chiceſter*, *William* of *Exeter*;

ter, Biſhops. The Abbot of St. *Edes*, the Abbot of S. *Albans*, the Abbot of *Battaile*, the Abbot of S. *Auguſtines* in *Canterbury*, the Abbot of *Eveſham*, the Abbot of *Weſtminſter*, the Abbot of *Burghe S. Peter*, the Abbot of *Reading*, the Abbot of *Abindon*, the Abbot of *Malmesbury*, the Abbot of *Winchcombe*, the Abbot of *Hyde*, the Abbot of *Certeſey*, the Abbot of *Shernborn*, the Abbot of *Cerne*, the Abbot of *Abbotebury*, the Abbot of *Middleton*, the Abbot of *Selby*, the Abbot of *Cirenceſter*; And 33 of the Nobility, *viz.* *Hubert de Burgo*, Chief Juſtice of *England*, and 32 Earls and Barons, *viz.* *Randall* Earl of *Cheſter* and *Lincoln*, *William* Earl of *Salisbury*, *William* Earl of *Warren*, *Gilbert* of *Clare* Earl of *Glouceſter* and *Hertford*, *William de Ferrars* Earl of *Derby*, *William Mandevile* Earl of *Eſſex*, *H. de Bigod* Earl of *Norffolk*, *William* Earl of *Albemarle*, *H.* Earl of *Hereford*, *John* Conſtable of *Cheſter*, *Robert de Ros*, *R. Fitzwalter*, *Rob. de Vipount*, *William de Bruer*, *R. de Mountfichet*, *P. Fitzherbert*, *William de Aubeine*, *Robert Greſly*, *Reginald de Brehus*, *John de Movenne*, *J. Fitz-Alen*, *Hugh de Mortimer*, *Walter de Beauchamp*, *William de S. John*, *Peter de Malolacu*, *Brian de Liſle*, *T. de Multon*, *Richard de Argentein*, *Jeffrey de Nevill*, *William Maudint*, *John de Baalim*, and others.

The great providence and policy for preſervation of it.

There were many of the great Charters, and *Charta de Foreſta*, put under the Great Seal, and ſent to Archbiſhops, Biſhops, and other men of the Clergy, to be ſafely kept, whereof one of them remain at this day at *Lambeth*, with the Archbiſhop of *Canterbury*.

Alſo the ſame was entred of Record in a Parliament Roll.

25 E. 1. cap. 1.

And after King *E.* 1. by Act of Parliament did ordain that both the ſaid Charters ſhould be ſent under the Great Seal, as well to the Juſtices of the Foreſt, as to others, and to all Sheriffs, and to all other the Kings Officers, and to all the Cities through the Realm, and that the ſame Charters ſhould be ſent to all the Cathedral Churches, and that they ſhould be read and publiſhed in every County four times in the year in full County, *viz.* the next County day after the feaſt of S. *Michael*, and the next County day after *Chriſtmas*, and the next County day after *Eaſter*, and the next County day after the Feaſt of S. *John*.

25 E. 1. cap. 3. 28 E. 1. c. 2. & 17.

The quality.

It was for the moſt part declaratory of the principal grounds of the fundamental Laws of *England*, and for the reſidue it is additional to ſupply ſome defects of the Common Law; and it was no new declaration: for King *John* in the 17 year of his raign had granted the like, which alſo was called *Magna Charta*, as appeareth by a Record before this Great Charter made by King *H.* 3.

Mat. Par. fol. 246, 247, 248.

Paſch. 5 H. 3. tit. Mordaunc' f. 53.

Home ne ſuer' Mordanc' apud Weſtmonaſterium des terres in auter Countie, car ceo ſer enconſt' Leſtatut de Magna Charta ſinon que illa aſſiſa ſemel interminata fuit coram Juſtic'.

Stat. 25 E. 1. Confirm. Chart.

Alſo by the ſaid Act of 25 *E.* 1. (called *Confirm' Chartar'*) it is adjudged in Parliament that the Great Charter, and the Charter of the Foreſt ſhould be taken as the Common Law.

How, and upon what grounds it hath been impugned.

Soon after the making of this Great Charter, the young King by evil Counſel fell into great miſlike with it, which *Hubert de Burgo ſummus Juſticiarius Angliæ* perceiving (who in former times had been a great lover, and well deſerving Patriot of his Country, and learned in the

the Laws (for *Rot. clauſ.* 11 *H.*3. *membr.* 44. I find that he, and many others were Juſtices *Itinerant* in 5 *H.*3. and I have ſeen a fine levied before him, and ſix other Judges, between *Stephen de Wamceſle*, and the Abbot of *Hales*) yet meaning to make this a ſtep to his ambition (which ever rideth without reins) perſwaded and humored the King that he might avoid the Charter of his Father King *John* by dureſs, and his own great Charter, and *Charta de Foreſta* alſo, for that he was within age when he granted the ſame, whereupon the King in the 11 year of his raign, being then of full age, got one of the great Charters, and of the Foreſt into his hands, and by the counſel principally of this *Hubert* his Chief Juſtice, at a Councel holden at *Oxford*, unjuſtly cancelled both the ſaid Charters, (notwithſtanding the ſaid *Hubert de Burgo* was the primier Witneſs of all the temporal Lords to both the ſaid Charters) whereupon he became in high favour with the King, inſomuch as he was ſoon after (*viz.* the 10 of *December*, in the 13 year of that King, created to the higheſt dignity that in thoſe times any Subject had) to be an Earl, *viz.* of *Kent*. But ſoon after (for flatterers and humoriſts have no ſure foundation) he fell into the Kings heavy indignation, and after many fearful and miſerable troubles, he was juſtly, and according to Law ſentenced by his Peers in open Parliament, and juſtly degraded of that dignity which he unjuſtly had obtained by his counſel for cancelling of *Magna Charta*, and *Chareſta de Foreſta*. And the King by his Charter granted, *Quod nos firmiter & integre tenebimus judicium de Huberto de Burgo per Barones dictum*; he was buried in the Frier Predicants where *Whitehall* is now built, ſo as no Monument remains of him at this day.

Rot. clauſ. 11 H.5. memb. 44. 5 H.3.

Rot. clauſ. 17 H.3 m. 1. & 2. Rot. Pat. 17 H.3. m.1. a tergo & 12.

In this advice *Hubert de Burgo* either diſſembled his opinion, or groſly erred (as ever ambitious flattery bedazles the eye, even of them that be learned) firſt, for that a King cannot avoid his Charter, albeit he make it when he is within age, for in reſpect of his royal and politick capacity as King, the Law adjudgeth him of full age. Secondly, it being done by Authority of Parliament, and enrolled of Record, it was ſtrange that any man ſhould think that the King could avoid them in reſpect he was within age. Thirdly, it was to no end to cancel one where there were ſo many, or to have cancelled all, when they were of Record in the Parliamen Roll, or to have cancelled Roll and all when they were, for the moſt part, but declaratories of the ancient Common Laws of *England*, to the obſervation, and keeping whereof, the King was bound and ſworn. What ſucceſs thoſe potent and opulent Subjects, *Hugh Spencer* the Father, and Son had, for giving raſh and evil counſel to King *E.* 2. *enconter la forme de la grand Chartre*, I had rather you ſhould read then I ſhould declare.

Exilium Hugonis la Spencer patris & filii.

After the making of *Magna Charta* and *Charta de Foreſta*, divers learned men in the Laws, that I may uſe the words of the Record, kept Schools of the Law in the City of *London*, and taught ſuch as reſorted to them, the Laws of the Realm taking their foundation of *Magna Charta*, and *Charta de Foreſta*, which as you have heard, the King by ill advice ſought to impeach.

Rot. clauſ. Anno 19 H.3. m.22.

The King in the 19 year of his reign, by his Writ, commanded the Mayor

19 H.3. ubi ſupra.

Mayor and Sheriffs of *London*, *Quod per totam Civitatem London clamari faciant & firmiter prohiberi, ne aliquis ſcholas tenens de legibus in eadem Civitate de cætero ibidem leges doceat, & ſi aliquis ibidem fuerit hujuſmodi ſcholas tenens, ipſum ſine dilatione ceſſare fac'; Teſte Rege, &c. 11 die Decembris, Anno Regni ſui decimo nono.* But this Writ took no better effect then it deſerved, for evil counſel being removed from the King, he in the next year, *viz.* in the 20 year of his raign compleat, and in the one and twentieth year current, did by his Charter under his great Seal confirm both *Magna Charta*, and *Charta de Foreſta*, he being then 29 years old. And after in the 52 year of his reign eſtabliſhed and confirmed both the ſame by Act of Parliament, with the clauſe, *Quod contravenientes per Dominum Regem, cum convicti fuerint, graviter puniantur.* Hereby ſhall ſome opinions and reſolutions in our Books be the better underſtood, which ſpeak of alienations without licenſe before or after 20 *H.* 3. which year was named for that the King then confirmed the ſaid great Charter, and in like manner did King *E.* 1. by Act of Parliament in the 25 year of his raign: and the ſaid two Charters have been confirmed, eſtabliſhed, and commanded to be put in execution by 32 ſeveral Acts of Parliament in all.

Marlb. cap. 5. 15 E. 4. 13. 20 Aſſ. p. 17. 14 H. 4. 2, & 3. Bro. Alien. ſans licenſe 10.

Of what high eſtimation it hath been.

This appeareth partly by that which hath been ſaid, for that it hath ſo often been confirmed by the wiſe providence of ſo many Acts of Parliament.

And albeit judgments in the Kings Courts are of high regard in Law, and *Judicia* are accounted as *Juris dicta*, yet it is provided by Act of Parliament, that if any judgment be given contrary to any of the points of the great Charter, or *Charta de Foreſta*, by the Juſtices, or by any other of the Kings Miniſters, &c. it ſhall be undone, and holden for nought.

Confirm. Chart. 25 E. 1. c. 1, & 2. Vet. Mag. Chart. 2 part, fol. 35. 25 E. 1. ubi ſupra.

And that both the ſaid Charters ſhall be ſent under the great Seal to all Cathedral Churches throughout the Realm there to remain, and ſhall be read to the people twice every year.

42 E. 3. cap. 1. 25 E. 1. ubi ſupra.

The higheſt and moſt binding Laws are the Statutes which are eſtabliſhed by Parliament, and by Authority of that higheſt Court it is enacted (only to ſhew their tender care of *Magna Charta*, and *Charta de Foreſta*) *That if any Statute be made contrary to the great Charter, or the Charter of the Foreſt, that ſhall be holden for none:* By which words all former Statutes made againſt either of thoſe Charters are now repealed; And the Nobles and great Officers were to be ſworn to the obſervation of *Magna Charta*, and *Charta de Foreſta.*

Magna fuit quondam Magnæ reverentia Chartæ.

We in this ſecond Part of the *Inſtitutes*, treating of the ancient and other Statutes have been inforced almoſt of neceſſity to cite our ancient Authors, *Bracton*, *Britton*, the *Mirror*, *Fleta*, and many Records, never before publiſhed in print, to the end the prudent Reader may diſcern what the Common Law was before the making of every of thoſe Statutes, which we handle in this work, and thereby know whether the Statute be introductory of a new Law, or declaratory of the old; which will conduce much to the true underſtanding of the Text it ſelf. We have alſo ſometime in this and other Parts of the *Inſtitutes*, cited the

the *Grand Cuſtumier de Normandy*, where it agreeth with the Laws of *England*, and ſometime where they diſagree, *ex diametro*, being a Book compounded as well of the Laws of *England*, which King *Edward* the Confeſſor gave them, as he that Commenteth upon that Book teſtifieth (as elſwhere we have noted) as of divers Cuſtoms of the Dutchy of *Normandy*, which Book was compoſed in the raign of King *Hen.*3. *viz.* about 40 years after the Coronation of K. *Richard* the firſt, 3 *Septemb. Anno* 1. of his raign, *An. Dom.* 1189. about 138 years after the Conqueſt. See that Book *c.*22. *f.*29.*a.* and the Comment upon the ſame, & *c.*112. In which *Cuſtumier* a great number of the Courts of Juſtice, of the original Writs, and of many other of the titles of the Laws of *England*, are not ſo much as named or mentioned. And ſeeing we have in theſe, and other parts of our *Inſtitutes*, cited the Laws and Statutes of divers Kings before the Conqueſt, and in the Conquerors time, we have thought good for the eaſe of the Reader, to ſet down the times wherein thoſe Kings lived, and deceaſed. *Inas* began to raign *An. Dom.* 689. and deceaſed 726. *Aluredus*, *alias Alfredus*, *alias Elfredus*, began to raign *An. Dom.* 872. and deceaſed 901. Of this *Alured* it is thus written, *Aluredus acerrimi ingenii princeps per Grimbaldum & Johannem doctiſſimos Monachos tantum inſtructus eſt, ut in brevi librorum omnium notitiam haberet, totumque novum & vetus Teſtamentum in eulogium Anglicæ gentis tranſmutaret (cujus tranſlationis pars nobis feliciter accidit.)* This learned King in advancement of Divine and humane knowledge, by the perſwaſion of thoſe two Monks founded the famous Univerſity of *Cambridge*. *Edwardus*, ſon of the ſaid *Alured*, began to raign *An. Dom.* 901. and deceaſed 924. [a] *Ethelſtanus*, *alias*, *Adelſtane* eldeſt Son of the ſaid *Edward* began to raign *An. Dom.* 924. and deceaſed 940. [b] *Edmundus* began to raign *An. Dom.* 940. and deceaſed 946. [c] *Edgarus* began to raign *An. Dom.* 959. and deceaſed 975. [d] *Ethelredus* began to raign *An. Dom.* 979. and deceaſed 1016. [e] *Canutus* began to raign *An. Dom.* 1016. and deceaſed 1035. [f] *Edwardus* began to raign *An. Dom.* 1042. and deceaſed 1066. [g] *Willielmus Baſtardus* began to raign *An. Dom.* 1066. and deceaſed 1087.

In Hiſtoria Elienſi fol.38. lib.2.

Cl. Calus D. m. Cant.

a *Fortis, ſapiens, & fortunatus: Danos expulit & Angliam in Monarchiam reduxit.*
b *Martyr apud Hoxon olim Hegilſdon.*
c *Pacificus, Rex excellentiſſimus.*
d Named in Domeſday. Glouc. Eccleſia de Eveſham. Adelredus.
e In Domeſday he is ever written *Cnut' Rex.*
f He is ever called in Domeſday, *Epiſcopus S. Edw. Ceſtr. Rex Edwardus dedit Regi Griffino terram quæ jacebat trans aquam quæ Dee vocatur.*
g He is in Domeſday written Willielmus Rex, *vel* Willielmus, vel W. Rex.

Some fragments of the Statutes in the raigns of the aboveſaid Kings do yet remain, but not only many of the Statutes, and Acts of Parliamen, but alſo the Books and Treatiſes of the Common Laws both in theſe and other Kings times, and ſpecially in the times of the ancient *Brittons* (an ineſtimable loſs) are not to be found.

It is to be obſerved that in *Domeſday*, *Haroldus*, who uſurped the Crown of *England*, after the deceaſe of King *Edward* the Confeſſor, is never named *per nomen Regis*, *ſed per nomen Comitis Haroldi*, *ſeu Heraldi*; And therefore we have omitted him.

In citing of the aboveſaid Laws originally written in the Saxon tongue, we have referred you to M. *Lambard*, who accurately and faithfully tranſlated the ſame into Latin, one page containing the Saxon, and the next the Latin, and is in print (for our manner is not to cite any thing, but ſo to refer the Reader, as he may eaſily find it;) *Sed ut unicuique ſuus tribuatur honos*, all thoſe Statutes in the raigns of all the aboveſaid Kings were of ancient time plainly and truly tranſlated into Latin,

Latin, (whereof we have a very ancient, if not the firſt Manuſcript) which no doubt did not a little abbreviate M. *Lambard*'s pains.

Upon the Text of the Civil Law, there be ſo many gloſſes and interpretations, and again upon thoſe ſo many Commentaries, and all theſe written by Doctors of equal degree and authority, and therein ſo many diverſities of opinions, as they do rather increaſe then reſolve doubts and incertainties, and the profeſſors of that noble Science ſay, That it is like a Sea full of waves. The difference then between thoſe gloſſes and Commentaries, and this which we publiſh, is, that their gloſſes and Commentaries are written by Doctors, which be Advocates, and ſo in a manner private interpretations: And our Expoſitions or Commentaries upon *Magna Charta*, and other Statutes, are the reſolutions of Judges in Courts of Juſtice in judicial courſes of proceeding, either related and reported in our Books, or extant in judicial Records, or in both, and therefore being collected together, ſhall (as we conceive) produce certainty, the Mother and Nurſe of repoſe and quietneſs, and are not like to the waves of the Sea, but *Statio bene fida peritis:* for *Judicia ſunt tanquam Juris dicta.*

Regula.

Finis Proœmii.

But now let us peruſe the Text.

MAGNA

Magna Charta,

EDITA *Anno nono* H. 3.

HENRICUS Dei Gratia Rex Angliæ, Dominus Hiberniæ, Dux Normaniæ, & Aquitaniæ, & Comes Andegaviæ, Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Præpoſitis, Miniſtris, & omnibus Ballivis, & fidelibus ſuis, præſentem Chartam inſpecturis, ſalutem. Sciatis quod nos intuitu Dei, & pro ſalute animæ noſtræ, &c. & ad exaltationem ſanctæ Eccleſiæ, & emendationem regni noſtri, ſpontanea & bona voluntate noſtra, dedimus & conceſſimus Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & omnibus liberis de Regno noſtro, has libertates ſubſcript', tenend' in regno noſtro Angliæ inperpetuum.

¶ Henricus Dei gratia Rex Angliæ, &c.] Concerning the Stiles of the Kings of England, both before and after this King, and how often they altered the ſame, ſee in the firſt part of the Inſtitutes, Sectione prima. The firſt part of the Inſtitutes, Sect. 1.

¶ Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, &c.] This or the like particular direction, this King and his Progenitors before him uſed; and ſo did E. 1. E. 2. & E. 3. King R. 2. in his Letters Patents uſed a more general and compendious direction, viz. Omnibus ad quos præſentes literæ pervenerint, &c. which direction is uſed to this day, ſaving in Charters of Creation of Dignities, the directions to this day are Archiepiſcopis, Epiſcopis, Ducibus, Marchionibus, &c. and hiis teſtibus in the end. Note not only the Preamble of this Charter, and of the Forreſt, but the bodies of the Charters themſelves are contained in the Charter of King *John*, An. 17. of his reign. *Mat. Par. pag.* 246. *Quæ ex parte maxima leges antiquas & regni conſuetudines continebant. pag.* 244.

¶ Nos intuitu Dei, pro ſalute animæ noſtræ, ad exaltationem ſanctæ Eccleſiæ, & emendationem Regni noſtri.] Here be four notable cauſes of the making of this great Charter rehearſed. 1. The honour of God. 2. For the health of the Kings Soul. 3. For the exaltation of holy Church; and Fourthly, for the amendment of the Kingdom.

Theſe be thoſe excellent Laws contained in this great Charter, and digeſted into 38 Chapters, which tend to the honour of God, the ſafety of the Kings Conſcience, the advancement of the Church, and amendment of the Kingdom, granted and allowed to all the Subjects of the Realm.

¶ Spontanea, & bona voluntate noſtra.] Theſe words were added, for that King John, as hath been ſaid, made the like Charter in effect, and ſought to avoid the ſame, pretending it was made by dureſſe.

This great Charter is divided into 38 Chapters.

CAP. I.

IMprimis, Conceſſimus Deo, & hac præſenti Charta noſtra confirmavimus pro nobis & hæredibus noſtris inperpetuum, quod Eccleſia Anglicana libera ſit, & habeat omnia jura ſua integra, & libertates ſuas illæſas. Conceſſimus etiam, & dedimus omnibus liberis hominibus regni noſtri, pro nobis & hæredibus noſtris inperpetuum, has libertates ſubſcriptas; Tenend' & habend' eis & hæredibus ſuis, de nobis & hæredibus noſtris inperpetuum.

Inter leges ſeu Inſtitutiones Regis H. 1. cap. 1.

Sanctam Dei, inprimis, Eccleſiam liberam facio, ita quod nec vendam, nec ad firmam ponam, nec mortuo Archiepiſcopo ſive Epiſcopo, vel Abbate aliquid accipiam de dominio Eccleſiæ, ſeu de hominibus ejus, donec ſucceſſor in eam ingrediatur, & omnes malas conſuetudines, quibus regnum Angliæ injuſte opprimebatur, inde aufero.

¶ Conceſſimus Deo.] We have granted to God: when any thing is granted for God, it is deemed in Law to be granted to God, and whatſoever is granted to his Church for his honour, and the maintenance of his Religion and Service, is granted for and to God; Quod datum eſt Eccleſiæ, datum eſt Deo.

See the firſt part of the Inſtitutes, Sect. 1.

And this and the like were the forms of ancient Acts and Grants, and thoſe ancient Acts and Grants muſt be conſtrued and taken as the Law was holden at that time when they were made.

Here in this Charter, both in the title and in divers parts of the body of the Charter, the King ſpeaketh in the plural number. conceſſimus; The firſt King that I read of before him, that in his grants wrote in the plural number, was King John, Father of our King H. 3. other Kings before him wrote in the ſingular number, they uſed Ego, and King John, and all the Kings after him, Nos.

¶ Pro nobis & hæredibns noſtris inperpetuum.] Theſe words were added to avoid all ſcruples, that this great Parliamentary Charter might live and take effect in all ſucceſſions of ages for ever. More of this word (heirs) hereafter in this Chapter: When Pro nobis, hæredibus & ſucceſſoribus noſtris came in, ſhall be ſhewed in his fit place.

¶ Quod Eccleſia Anglicana, &c.] This at the making of this great Charter, extended not to Ireland, nor to any of the Kings forrain Dominions; but by the Law of Poynings, made by the Authority of Parliament in Ireland, in Anno 11 H. 7. all the Laws and Statutes of this Realm of England before that time had or made do extend to Ireland, ſo as now Magna Charta doth extend into Ireland.

¶ Quod Eccleſia Anglicana libera ſit.] That is, that all Eccleſiaſtical perſons within the Realm, their poſſeſſions and goods ſhall be fréd from all unjuſt exactions and oppreſſions, but notwithſtanding ſhould yield all lawful duties either to the King or to any of his Subjects, ſo as libera here, is taken for liberata, for as hath bæn ſaid, this Charter is declaratory of the ancient Law and Liberty of England, and therefore no new frædom is hereby granted, (to be diſcharged of lawful tenures, ſervices, rents and aids) but a reſtitution of ſuch as lawfully they had before, and to frę them of that which had bæn uſurped and incroached upon them by any power whatſoever; And purpoſely and materially, the Char-

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ter ſaith Eccleſia, becauſe Eccleſia non moritur, but moriuntur Eccleſiaſtici, and this extends to all Eccleſiaſtical perſons of what order or quality ſoever.

¶ Et habeat omnia jura ſua integra.] That is, that all Eccleſiaſtical perſons ſhall enjoy all their lawful juriſdictions, and other their rights wholly without any diminution or ſubtraction whatſoever; and jura ſua prove plainly, that no new rights were given unto them; but ſuch as they had before, hereby are confirmed; and great were ſometimes their rights, for they had the third part of the poſſeſſions of the Realm, as it is affirmed in a Parliament Roll. Rot. Parliam. 4 R.2. Num.13.

¶ Et libertates ſuas illæſas.] Libertates are here taken in two ſenſes. 1. For the Laws of England, ſo called, becauſe liberos faciunt, as hath been ſaid. 2. They are here taken for priviledges held by Parliament, Charter or preſcription more then ordinary; and in this ſenſe it is taken in the Writ De libertatibus allocandis, and in another Writ De libertatibus exigendis in itinere, but it is but libertates ſuas, ſuch as of right they had before; Jura Eccleſiæ publicis æquiparantur. Regiſt. fol.19. & 262. F.N.B. fol. 229. *Regula.*

Every Archbiſhoprick and Biſhoprick in England are of the Kings foundation, and holden of the King per Baroniam, and many Abbots and Priors of Monaſteries were alſo of the Kings foundation, and did hold of him per Baroniam, and in this right the Archbiſhop and Biſhops, and ſuch of the Abbots and Priors as held per Baroniam, and called by Writ to Parliament, were Lords of Parliament; and this is a right of great honor that the Church, viz. the Archbiſhop and Biſhops now have. Eccleſia eſt infra ætatem, & in cuſtodia Domini Regis, qui tenetur jura & hæreditates ſuas manutenere & defendere; And in other Records it is ſaid, Eccleſia quæ ſemper eſt infra ætatem fungitur ſemper vice minoris, nec eſt juri conſonum quod infra ætatem exiſtentes, per negligentiam cuſtodum ſuorum exhæredationem patiantur ſeu ab actione repellantur. Glanv. l.7. c 1. Bract. l.3. f.226. l. 5. fol. 427. Trin. 22 E.1. in Com. Banc. Rot. Fleta lib.2.

They are diſcharged of purveyance for their own proper goods. See hereafter c.21.

And this was the ancient Common Law, and ſo declared by divers Acts of Parliament, and there is a Writ in the Regiſter for their diſcharge in that behalf: And this is not reſtrained by the ſaid Act of 27 H.8. for thereby it is provided that the Purveyor ſhall obſerve the Statutes for them provided, ſo as where the Purveyor is prohibited to purvey by any Statute, the ſaid Act of 27 H.8. ſetteth him not at liberty. 14 E.3.c.12.Stat.2 18 E.3. c.4. 1 R.2. c.3. 8 E.3. fol. 26. Regiſt.289. Vid. 27 H.8. c.24. Vid. *poſtea.* c.21.

And true it is, that Eccleſiaſtical perſons have more and greater liberties then other of the Kings Subjects, wherein, to ſet down all, would take up a whole Volume of it ſelf, and to ſet down no example, agreeth not with the Office of an Expoſitor; therefore ſome few examples ſhall be expreſſed, and the ſtudious Reader left to obſerve the reſt as he ſhall read them in our Books, and other Authorities of Law.

If a man holdeth Lands or Tenements, by reaſon whereof he ought (upon election, &c.) to ſerve in a temporal office, if this man be made an Eccleſiaſtical perſon within holy Orders, he ought not to be elected to any ſuch office, and if he be, he may have the Kings Writ for his diſcharge, and the words of the Writ are obſervable, Rex, &c. Cum ſecundum legem & conſuetudinem Regni noſtri Angliæ Clerici infra ſacros ordines conſtituti ad tale officium eligi non debeant, nec hactenus conſueverunt, &c. and the reaſon thereof is expreſſed in the Writ, Quia juri non eſt conſonum, quod hii qui ſalubri ſtatu animarum, &c. (in tali loco, &c.) deſerviunt, alibi extra (eundem locum) ſecularibus negotiis compellantur. Regiſt. 58. F.N.B. 175.

By this Writ it appeareth that this was the ancient common Law, and cuſtom of England, and had a ſure foundation, Nemo militans Deo, implicet ſe negotiis ſecularibus, ut ei placeat cui ſe probavit. Eccleſiaſtical perſons have this priviledge that they ought not in perſon to ſerve in war. Also Eccleſiaſtical perſons ought to be quit and diſcharged of Tolls and Cuſtoms, Avirage, Pontage, Paviage, and the like, for their Eccleſiaſtical goods, and if they be moleſted therefore, they have a writ for their diſcharge, by which writ it appeareth 2 Timot. c.2. Litt.fol.20. Regiſt. fol. F.N.B.227.

that this was the ancient Common Law of England. Rex, &c. cum perſonæ Eccleſiaſticæ ſecundum conſuetudinem hactenus in Regno noſtro uſitatam, & approbatam; ac ad telonium, paviagium & muragium, &c. de bonis ſuis Eccleſiaſticis alicubi in eodem Regno præſtand' nullatenus teneantur, &c.

F.N.B.29. Regiſt. 289.

If any Eccleſiaſtical perſon be in fear or doubt that his goods or Chattels, or Beaſts, or the goods of his farmor, &c. ſhould be taken by the miniſters of the King, for the buſineſs of the King, he may purchaſe a protection cum clauſula nolumus.

See the expoſition of the Statute of Artic. Cler. cap. 9.

Diſtreſſes ſhall not be taken by Sheriffs or other of the Kings miniſters in the inheritance of the Church wherewith it was anciently endowed, but otherwiſe it is of late purchaſe.

If any Eccleſiaſtical perſon knowledge a Statute Merchant or Statute Staple or a Recognizance in the nature of a Statute Staple, his body ſhall not be taken by force of any proceſs thereupon, and for more ſurety thereof the Writ thereupon to take the body of the conuſor is ſi laicus ſit.

Regiſt. 300 F.N.B. 266. a. 16 E. 3. proces 165. Regiſt. Judic. 22.

If a perſon be bound in a Recognizance in the Chancery or in any other Court, &c. and he pay not the ſum at the day, by the Common Law, if the perſon had nothing but Eccleſiaſtical goods, the Recognizee could not have had a levari fac' to the Sheriff to levy the ſame of theſe goods, but the Writ ought to be directed to the Biſhop of the Dioceſs to levy the ſame of his Eccleſiaſtical goods.

* 18 E. 2. Proc. 205. 9 E. 3. 30. 24 E. 3. 44. 25 E. 3. 44. 29 E. 3. 44. 32 E. 3. Proces 58. 34 E. 3. *Scire fac.* 153. 45 E. 3. 6. 47 E. 3. 14. 21 H. 6. 16. Regiſt. Judic. 62. *Artic. Cler. c. 9.*

* In an action brought againſt a perſon (wherein a Capias lieth) for example, an account, the Sheriff returns quod clericus eſt beneficiatus, nullum habens laicum feodum, in which he may be ſummoned, in this caſe the plaintiff cannot have a Capias to the Sheriff to take the body of the perſon, but he ſhall have a Writ to the Biſhop to cauſe the perſon to come and appear. But if he had returned quod clericus eſt nullum habens laicum feodum, then is a Capias to be granted to the Sheriff, for that it appeared not by the return that he had a benefice, ſo as he might be warned by the Biſhop his Dioceſan, and no man can be exempt from juſtice. See more of this matter Artic. Cleri. cap. 9.

Marlebr. cap. 10. Briton. fol. 19. B. Fleta lib. 2. cap. 45. Rot. brevi. anno 2 R. 2. part. 2. m. 8.

Secundum legem & conſuetudinē Regni Angliæ clerici in decenna, &c. poni non debeant, vel ea occaſione diſtringi vel inquietari non conſueverunt: and Eccleſiaſtical perſons are not bound to appear at Tournes or views of Frankpledge.

But hereof this little taſte ſhall in this place ſuffice, with this, that as the overflowing of waters do many times make the river to loſe his proper chanel, ſo in times paſt Eccleſiaſtical perſons ſeeking to extend their liberties beyond their true bounds, either loſt or enjoyed not that which of right belonged to them.

Litt. Sect. 189.

¶ Conceſſimus etiam & dedimus omnibus liberis hominibus Regni noſtri, &c.] Theſe words (omnibus liberis hominibus Regni) do include all perſons Eccleſiaſtical and Temporal incorporate politick or natural, nay they extend alſo to villeins, for they are accounted free againſt all men ſaving againſt the Lords.

See the Statute of 34 E. 1. de tallagio non conc. cap. 4. which is more general.

¶ Has libertates ſubſcriptas.] Here it is to be obſerved that the aforeſaid clauſe that concerned the Church only, is in favour of the Church general without any reſtraint, but this clauſe that concerns all the Kings ſubjects hath a reſtraint by reaſon of this word (ſubſcriptas) which reſtraineth libertates to the 38 Chapters of this great Charter.

* Mich. 17 E. 1. in Com. Banc. Rot. 221. leic.

* Note that Courts of Juſtice are alſo called *libertates*, becauſe in them the Laws of the Realm *quæ liberos faciunt*, are adminiſtred.

See the firſt part of the Inſtitut. Sect. 1.

¶ Hæredibus.] At this time Hæredes were taken for Succeſſores, and Succeſſores for Hæredes.

¶ De nobis.] In this place theſe words are not inſerted to make a legal tenure of the King, but to intimate that all liberties at the firſt were derived from the Crown.

CAP.

CAP. II.

SI quis Comitum, vel Baronum noſtrorum, ſive aliorum tenentium de nobis in capite per ſervitium Militare, mortuus fuerit, & cum deceſſerit, hæres ejus plenæ ætatis fuerit, & relevium nobis debeat, habeat hæreditament' ſuum per antiquum relevium, ſcilicet, hæres vel hæredes Comitis, de com' integro, per centum libras, hæres vel hæredes Baronis, de Baronia integra, per centum marcas, hæres vel hæredes Militis, de feodo militis integro, per centum ſolidos ad plus. Et qui minus habuerit, minus det, ſecundum antiquam conſuetudinem feodorum.

¶ Si quis Comitum vel Baronum.] At this time there was never a Duke, Marquels, or Viſcount in England, for if there had bæn, they had (no doubt) bæn named in this Chapter: the firſt Duke that was created ſince the Conqueſt, was Edward the Black Prince, in 11 E. 3. Robert de Vere Earl of Oxford, was in the 8 year of Richard the ſecond, created Marquels of Dublin in Ireland, and he was the firſt Marquels that any of our Kings created. Rot. Parl. anno 11 E. 3. l. 5. fo. 1. in caſu principis. Rot. Pat. 8 R. 2.

The firſt Viſcount that I find of Record, and that ſat in Parliament by that name, was John Beaumont, who in the 18 year of H. 6. was created Viſcount Beaumont. Rot. Pat 18 H. 6. 12. Febr.

¶ Comites.] Dicuntur Comites, *viz.* quia in Comitatu ſive à ſocietate nomen ſumpſerunt, qui etiam dici poſſunt Conſules à conſulendo: Reges enim tales ſibi aſſociant ad conſulendum & regendum populum Dei, ordinantes eos in magno honore, & poteſtate, & nomine, quando accingunt eos gladiis, ringis gladiorum, &c. gladius autem ſignificat defenſionem Regni & Patriæ. Bract. lib. 1. fo. 5. b. Fleta lib. 1. cap. 5. Eriton 68. b.

¶ Barones.] Sunt & alii potentes ſub Rege qui dicuntur Barones, hoc eſt, robur belli: And where ſome have thought that Baro is no Latin word, we find it in Tullies Epiſtles, Apud Patronem, Et alios Barones te in maxima gratia poſui. Galfridus Cornwall tenet manerium de Burford de Rege, per ſervitium Baroniæ, But it is to be underſtood, that if the King give Land to one and his heirs, Tenend' de Rege per ſervitium Baroniæ, he is no Lord of Parliament until he be called by Writ to the Parliament. Theſe which are Earls and Barons have offices and duties annexed to their dignities of great truſt and confidence, for two purpoſes. 1. Ad conſulendum tempore pacis. 2. Ad defendendum Regem & Patriam tempore belli. And prudent Antiquity hath given unto them two enſigns to reſemble, and to put them in mind of their duties; for firſt they have an honourable and long robe of ſcarlet reſembling Counſel, in reſpect whereof they are accounted in Law, De magno concilio Regis. 2. They are girt with a ſword that they ſhould ever be ready to defend their King and Country: And it is to be obſerved that in ancient Records the Barony (under one word) included all the Nobility of England, becauſe regularly all Noblemen were Barons, though they had a higher dignity, and therefore of the Charter of King E. 1. in the Expoſition of this Chapter hereafter mentioned, the concluſion is Teſtibus Archiepiſcopis, Epiſcopis, Baronibus, &c. So placed, in reſpect that Barones included the whole Nobility: and the great Councel of the Nobility, when there were beſides Earls and Barons, Dukes and Marqueſſes, were all comprehended under the name De la Councel de Baronage. Bract. *ubi ſupra.* Ad Artic. Ep. 5. Inquiſ. 40 E. 3. Inter record. in Turri 27 Aug. 5. H 4. the Earl of Northumb. Caſe, &c. Glanv. l. 9. c. 4. 5 H. 4. *ubi ſup.*

¶ Sive

¶ Sive aliorum tenentium in capite.] It is worthy of obſervation, with what great judgment this Statute concerning relief is penned; For by the Act of Parliament called, The Aſſiſe of Clarendon, Anno 10 H.2. Anno Domini 1164. it is thus enacted; Archiepiſcopi, Epiſcopi, & univerſæ perſonæ Regni, qui de Rege tenent in capite, habeant poſſeſſiones ſuas de Rege, ſicut Baroniã, & inde reſpondeant Juſticiariis & miniſtris Regis, & ſicut cæteri Barones debent intereſſe Curiæ Regis cum Baronibus, &c. Therefore this Chapter beginneth, Si quis Comitũ, vel Baronum; So as (as to relief of an Earl or Baron) it is not material that he hath Baroniam, unleſs he be Noble, that is, Earl or Baron, and others being not Noble, but holding in Capite, ſhall pay relief according to the Knights fées whith he hath. See hereafter Cap. 31. who ſhall be ſaid to hold in Capite.

¶ Per ſervitium militare.] For this ſée the firſt part of the Inſtitutes, Sect. 103. 112, 154, 157, 126, 127. whereunto you may add this Record following.

Hil. 8 E.1. in Banc. Rot. 86. Midd. Which Record is cited in the firſt part of the Inſtit. *Sect.* 157. *in marg.*

Per Aſſiſam Johannes de Moyſe, *qui eſt infra ætatem, implacitat* Tho. de Weylaund & Marg. *ux. ejus pro uno Meſſuag. ii. molendinis. iv. acris prati, & xlii s. red. in* Eaſtſmithfield *ext'* Algate. *Ipſi voc. ad war.* Rad. de Berner., *qui war. & dic. quod nihil clamat niſi cuſtod. eo quod* Johannes *pater dicti* Johannis *tenuit de eo prædicta ten. per homag. & ſervic. vi d. & inveniendi quendam hominem pro eo in turri* London. *cum arcubus & ſagittis per quadraginta dies tempore guerræ.* Johannes *dic. quod tenet ten. prædict. per homagium & ſervitium quorundam calcariorum vel vi d. pro omni ſervic'. Et ſic ommittendo multa ex utraque parte manifeſte patebit per verd. Jur. & per Jud. Cur. quid in hac aſſ. terminatum fuit. Jur. dic. quod prædicta ten. tenent. de prædicto* Radulpho *per homagium & ſervic. unius paris calcariorum deauratorum vel ſex. den. * & inven. quend. hominem pro ipſo* Radulpho *in turri* Lond. *cum arcub. & ſagit. per xl dies tempore guerræ in boreal. Angulo turris prædictæ pro omni ſervic'. * Et quia compertum eſt, &c. quod* Radulphus *cognoſcit in reſponc. quod prædict. heres tenere debet eadem ten. per prædict. homag. & ſervic. prædict. calcar. vel ſex denar. & per ſerjantiam inveniendi unum hominem pro eo in præd. turri per xl dies, & manifeſte liquet quod hujuſmodi minores ſerjantiæ quæ debent fieri pro Dominis ſuis de quibus tenent tenementa ſua per alios quam ſeipſos nullam inde dabunt cuſtodiam eiſdem Dominis, nec dare debent licet iidem Domini infra ætatem hæredum per negligentiam propinquorum parentum hujuſmodi cuſtodias occupaverint, & iſte* Radulphus *non poteſt dedicere quod unquam aliquam habuit ſeiſinam de prædict. Cuſtod' niſi per occupationem ſuam & negligentiam parentum prædicti hæredis anteceſſoris ſui dum infra ætatem fuit, & non alio jure. Conſiderat. eſt quod prædict.* Johannes *rec. inde ſeiſ'. &c. & damn. Cx l. iv s. vii d. &c. Valor terr' per annum xx l. x d.*

Veredictum:

* Trin. 17 E.1. in Banc. Rot. 29. Salop. Walt. de Hoptons Caſe. Acc.

* The Judgment.

See 11 H.4.72. & 24 E.3.32.

See the firſt part of the Inſtitutes, Sect. 155. & 157. and note the diverſity betwéen ſuch a tenure of the King, for in that caſe it ſhould be a tenure by Grand-ſerjanty, and that Grand-ſerjanty, for the greateſt part is to be done within the Realm, and Knights ſervice out of the Realm, as Littleton there ſaith.

¶ Plenæ ætatis.] See the firſt part of the Inſtitutes, Sect. 104.

¶ Anti-

¶ Antiquum relevium ſcilicet, &c.] Concerning the word Relevium, vide 1. Part Inſtitut. Sect. 103. It appeareth that the relief here ſet down, is the ancient relief, and was certain at the Common Law; But there had bẽn of long time an heavy incroachment of an incertain relief at will and pleaſure, which under a fair term was called rationabile Relevium, and this Act had juſt cauſe to ſay, Per antiquum relevium, for in the raign of H. 2. Grandfather to H. 3. the King exacted an incertain relief, for ſo Glanvill ſaith, who wrote in his time, De Baroniis vero nihil certum Statutum eſt, quia juxta voluntatem & miſericordiam Domini Regis ſolent Baroniæ Capitales de releviis ſuis Domino Regi ſatisfacere. And Glanvill under the name of Baronies doth include Earldoms alſo, ſo the relief of all the Nobility was taken as incertain at that time, and therefore how neceſſary it was that the ancient relief ſhould be reſtored is evident.

Glanv. l. 9. c. 4. Ockham cap. *Quod non abſolvitur. Cuſtummer de Norm. Cap.* 34. and the Comment thereupon.

¶ Scilicet hæres vel hæredes.] Of this word (heir) ſee the firſt part of the Inſtitutes, Sect. 1. whereunto you may add that which was there omitted, concerning the Antiquity of deſcents, which the Germans had agreeable with the ancient Laws of the Britons, continued in England to this day, out of that faithful and learned Hiſtorian, who of the ancient Germans ſaith; Hæredes ſucceſſoreſque ſui cuique liberi, & nullum Teſtamentum: ſi liberi non ſunt, proximus gradus in poſſeſſione, fratres, patrui, avunculi, &c. Wherein we obſerve three things. 1. That for default of children and brethren, the Uncle, &c. and not the Father, or any in the right line aſcendent ſhould inherit, but the collateral only. 2. That by the Common Law no Teſtament or laſt Will could be made of Land. 3. That of ancient time Succeſſores were Synonyma with hæredes. But in this ancient Statute it is pertinently ſaid, hæres, and not ſucceſſor, for every Biſhop of England hath a Barony, and ſo had many Abbots and Priors (in reſpect whereof they were Lords of Parliament) and yet they paid no relief, becauſe their ſucceſſors came to it by ſucceſſion, and not as heir by inheritance; And this Act ſaith, Habeat hæreditatem ſuam. And they are ſeiſed in Jure Epiſcopatus Monaſterii, &c. de Comitatu integro & de Baronia integra. The Barons in Domeſday are accounted amongſt the Tenants in Chief. Vide Glanv. lib. 9. cap. 6. Magna Charta cap. 31. —

Tacitus de moribus Germanorum.

It is to be underſtood that of ancient time (as it evidently appeareth by this Chapter, and by our Books) every Earldom and Barony were holden of the King in Capite, which proveth that both the Dignities of the Earl and the Baron, and the Earldom and Barony were derived from the Crown. *a* And it is to be known that the fourth part of the yearly value of an Earldom, a Barony, and the living of a Knight, was the ancient relief that this Chapter ſpeaketh of. And for that of ancient time, *b* a Knights living was eſtéemed at 20 l. per ann. (which in thoſe days was ſufficient to maintain the dignity of a Knight) his ancient *c* relief was 5 l. which is the fourth part of his living by one year.

Bract. lib. 2. f. 76. a. 84. 16 E. 3. eſchaunge 2. 20 E. 3 Aſſiſe. 122. & tit. Avowr. 126. 22 E. 3. 18. 18. Aſſ. Pl. ult. 24 E. 3. 66. nontenure 16. 46 E. 3. forfeit 18. 10 H. 7. 19. a.

The yearly value of a Barony was to conſiſt of 13 Knights fées, and a quarter, which by juſt account amounted to 400 Marks by the year, therefore his relief was as is here ſet down 100 Marks.

a See the 1 part of the Inſtit. §. 95. Cambden Brit. 122. Acc.

Sée an ancient Manuſcript intituled, De modo tenendi Parliamentum, &c. tempore Regis Edwardi filii Regis Etheldredi, qui quidẽ modus fuit per diſcretiores Regni coram Willielmo Duce Normannorum & Conqueſtore & Rege Angliæ ipſo conqueſtore hoc tempore præcipiente recitat & per ipſum approbat, &c. Of the Authority and Antiquity whereof you may read in the fourth part of the Inſtitutes Cap. of the Court of Parliament, Et hic infra.

b 1 E. 2. cap. 1. 7 H. 6. 15. M. 2. Jac. lib. 11. Metcalfs Caſe. fol. 33, 34.

Now every Earldom conſiſted of the value of an entire Barony and an half, which amouted to 20 Knights fées amounting to 400 l. per annum, and therefore his ancient relief here called Antiquũ relevium, being the fourth part of the yearly value of his Earldom was 100 l. In that excellent Charter which King H. 1. made on the day of his Coronation, Communi Concilio & aſſenſu Baronum Regni Angliæ, amongſt other things it is thus contained, Omnes malas conſuetudines, quibus Regnum Angliæ opprimebatur, inde aufero, quas malas conſuetudi-

nes

nes exinde ſuppono. Si quis Baronum meorum, Comitum, ſive aliorum, qui de me tenet, mortuus fuerit, hæres ſuus non redimet terram ſuam, ſicut faciebat tempore fratris mei, ſed legitima & juſta relevatione relevabit eam, ſicut homines Baronum meorum legitima & juſta relevatione relevabunt terras ſuas à Dominis ſuis, &c. Legem * Regis Edw. vobis reddo cum illis emendationibus, quibus Pater meus emendavit conſilio Baronum ſuorum.

* *i.* Edw. filii Etheldredi.

By this Charter it appeareth, 1. That there was a lawful and juſt relief, to be paid by the Earl, and Baron, which implieth a proportionable relief according to the value of the living, by reaſon of this word (Juſta) which cannot be intended of an uncertain relief, but of the juſt relief, upon the Computation of ſo many Knights Fées contained in the Modus, whereunto this Charter hath relation. 2. It appeareth that there was an unjuſt relief, in the time of William Rufus his Brother, which upon ſearch we have found in an ancient Manuſcript in the Library of Archbiſhop Parker, which we have ſeen, and will tranſcribe, in that Language that we find it.

De releefe al cunte que al Roy afert 8. *chivals enfrenees, & enſebees, &* 4, *Hauberts &* 4. *Hawmes &* 4. *eſcues, &* 4. *launces, &* 4. *eſpees, les aultres, &* 4. *chaceurs &* 4. *paleſrees a freins & a cheveſtre.*

De reliefe a barun 4. *chivals les* 2. *enfrenes & enſeeles &* 2. *hauberts &* 2. *hawmes &* 2. *eſcus, &* 2. *eſpees &* 2. *launces, & les autres* 2. *chivals un chaceur & un palſrey. a freins & a cheveſtres.*

De reliefe a vavaſſur a ſon liege ſenior doit eſtre quite per le chival ſon pier tiel come il avoit jour de ſon mort, & per ſon hawme, & per ſon eſcu & per ſon haubert, & per ſon lance, & ſil fuit diſaparoile, que il nouſt chival ne arme juſte quite per C. ſol.

Le relief al villain le meliour avoir que il averad 2. *Chivals,* 2. *Boefs,* 2. *Vaches durrad a ſon ſeignior, & puis ſont touts les villains in frankpledge.*

Inter leges Canuti cap. 97.

In K. *Canutus* time, *Relevatio Comitis fuit* 8. *equi,* 4. *ſellati,* 4. *inſellati, & galeæ* 4. *& lorice,* 4. *cum* 8. *lanceis, & totidem ſcutis, & gladii,* 4. *&* * *CC. mancæ auri.*

* CC. mare.

Poſtea * *thani Regis, qui ei proximus ſit,* 4. *equi,* 2. *ſellati,* 2. *non ſellati.* 2. *gladii.* 4. *lancee, & totidem ſcuta, & galea cum lorica ſua, &* 50. *mancæ auri.*

* *i.* Baronis.

Et mediocris thani equus cum apparatu ſuo & arma ſua & halſtang in Weſt-ſexa, &c.

Laſtly, This Chapter of Magna Carta is but a reſtitution and declaration of the ancient Common Law, and that antiquum relevium of the Earl, and Baron was certain, ſo now joyning both together, this certain relief here ſet down is legitimum, juſtum & antiquum relevium, mentioned in the Modus, &c.

It is ſaid that there be ancient precedents in the Exchequer, that he that held by a Dukedom, which being valued at two Earls livings, ſhould pay according to the proportional and juſt fourth part of his living by year, 200 l. And a Marquels that held by a Marqueldom, who ſhould have two Baronies, ſhould pay for his relief 200 marks. What the value of the living of a Viſcount ſhould be, I have not heard, but certain it is he ſhould pay the fourth part of the yearly value of his Viſcounteldom.

But all this is to be intended, where the King granteth a Dukedom, Marqueldom, Earldom, Viſcounteldom, or Barony to hold, as here it is ſpoken, de nobis in Capite per ſervitium militare, viz. De Comitatu integro & de Baronia integra, & qui minus habuerit, minus det ſecundum antiquam conſuetudinē feodorum.

But

But in ſome caſes the heir of an Earl, or a Baron, may pay the relief expreſſed in this Statute, albeit he hath not ſo many Knights Fées, as is abovelaid: for if upon the creation of the Earl the King did grant any Mannors, Lands, or Annuity per Comitatum, & nomine Comitis, or ſub nomine & honore Comitis, or the like, he ſhould pay C li. for relief, and ſo of the Baron, mutatis mutandis, for a ſpecial reſervation may derogate from the Common Law. Com. Mich. 14 E. 3. Rot. 8. ex parte rem. Theſ. Com. Hil. 25 E. 3. Rot. 4. ex parte rem. Theſ. Com. Hil. 7 H. 4. Rot. 2. Rot. Cart. 36 E. 3. nu. 8. the Earl of Cambridges caſe.

But otherwiſe it is if the Mannors, Lands, or Annuity be granted unto the Earl, ut idem Comes ſtatum & honorem Comitis melius manutenere & ſupportare poſſit, or, ad ſuſtinendum nomen & onus, or the like; For then the Earl holdeth not per Comitatum, or, nomine Comitis.

But now the ancient manner of creation is altered, for now, when the King creates a Duke, a Marques, an Earl, a Viſcount or Baron, he ſeldom creates a Dukedom, Marquiſdom, Earldom, &c. ad ſuſtinendum nomen & onus, viz. to grant him Mannors, Lands, Tenements, &c. to hold of him in chief, for commonly upon creations the King grants to them created an annuity; And therefore at this day Noblemen do pay ſuch reliefs, as other men uſe to do, in reſpect of their tenures, for as the heir of a Knight ſhall not pay relief, unleſs he have a Knights Fée, &c. ſo the heir of an Earl, or Baron, ſhall not pay relief by this great Charter, unleſs he hath an Earldom, or Barony, as is aforeſaid. 6 H. 8. Dier 2. 17 E. 2. prer. regis cap. 3.

¶ Ad centum ſolidos ad plus.] And this was the ancient relief for a Knights Fée, and ſo it was holden in the reign of H. 2. for Glanvil ſaith, dicitur autem rationabile relevium alicujus juxta conſuetudinem regni de feodo unius militis p centum ſolidos, ſo as the Fée of a Knight at that time was certain, viz. the fourth part of his living per annum, and ſo ought, as appeareth, the relief of the Nobility to have bèen in certainty, though they were not permitted to have it ſo, which ſavoured of the power of a Conqueror to kèep the Nobility under, or to make himſelf the more amiable to them. Glanv. lib. 9. cap. 4. lib. 9. fol. 124. Anthony Lowes caſe. Stat. 1 E. 2. de militibus. 1 part of the Inſtitut. Sect. 103. 112, 113. 154. 157. *Vide* Bracton *ubi ſupra.* Britton cap. 69. Fleta l. 3. c. 17. * 11 H. 4. 72. b. 1 part of the Inſtitut. Sect. 154. 157. Lit. Sect. 156.

¶ Secundum antiquam conſuetudinem feodorum.] This is obſervable, that theſe certain and proportionable rates are according to the ancient cuſtom of reliefs.

* A Knight holds Land by Grand Serjeanty, he is not within this Statute, and therefore ſhall not pay the relief of a Knight declared by this Act, but the heir being of full age at the deceaſe of his Anceſtor, ſhall pay the value of his Lands for one year which is his Primer ſeiſin.

But here it is demanded, ſeeing Littleton ſaith, that tenure by Cornage, if it be of any other Lord then the King, is Knights ſervice, what relief the Heir of ſuch a Tenant ſhall pay, or whether he ſhall pay any relief at all. Littleton in the ſame place ſaith, that tenure by Cornage draweth unto it ward, and marriage, and ſpeaketh nothing of relief, and by this act relief is to be payed according to the quantity of the Knights fée, viz. De feodo militis integro per centum ſolidos & qui minus habuerit, minus: but a tenure by Cornage hath no ſuch quantities, nec ſuſcipit majus & minus, and therefore tenure by Cornage, though it be Knights ſervice, is not within this Statute; Hereof you may read a Record to this effect. Mich. 18 E. 1. in Banco Rot. 84. Weſtmer. *& eodem anno.* Rot. 158. Cumberland. Jo. Swinborns caſe *acc. cornagium.*

Inter Johannem Craiſtoke querentem verſus Idoneam de Leybourne quæ diſtrinxit ipſum per averia pro relevio dando, pro terris in Dunſton, Brampton yanene which, Eſeclyve, & Boulton, *quæ valent* C li. per ann. *quæ tenet de ea per homagium & Cornagium. Et ipſe dicit quod talis eſt conſuetudo patriæ de Weſtm. quod hæredes poſt mortem anteceſſorum ſuorum debent relevare terras ſuas dominis de quibus, &c. ſcilicet ſolvendo pro relevio quantum terræ valent per annum, quæ de ipſis dominis tenentur, niſi de minori ipſis dominis poſſunt ſatisfacere, unde ipſa advocat captionem pro relevio ſecundum prædictam conſuetudinem, &c.*

Johannes negat talem eſſe conſuetudinem, ſed concedit, quod tenet tene-

menta prædicta per Cornag' xxv s. vi d. & dicit quod anteceſſores ſui prius duplicarunt anteceſſor. ipſius Idoneæ ſolvendo Lis. Ipſa dicit quod cum Johannes cogn', quod ipſe tenet prædicta ten' de ipſa per cornagium, ad quod hujuſmodi releviummere eſt acceſſor', ratione conſuet' prædictæ. Et dic' quod idem Johannes exigit tale relevium verſus tenentes ſuos in eadem patria a tempore quo non, &c. Et de conſuet' uterq; pon' ſe ſuper patriam. Ideo ven' Jur' in Cra. S. Johannis Baptiſtæ, &c. Inſuper Idonea dic' quod duplex eſt tenura in Com. Weſtmerl. ſcilicet, una per Albam firmam, & alia per Cornagium. Et quod tenentes per Albam firmam poſt mortem anteceſſorum ſuorum debent duplicare firmam ſuam tantum. Et tenentes per Cornagium poſt mortem anteceſſ. ſuorum tenentur reddere valorem terrarum ſuarum unius anni. Et Johannes e contra dic' quod conſuetudo patriæ eſt quod hæredes non ſolvant niſi duplicando Cornagium, &c.

Alba firma Cornagium.

Bract. l. 2. fo. 84. vide Glanv. l. 7. cap. 9. Flet. li. 3. cap. 17. Brit. fo. 177, 178, &c.

Bracton li. 2. fo. 84. cap. 36. nu. 2. Et imprimis de feodo militari quale ſit rationabile relevium antiquum de feodo militari diſtinguitur in Carta libertatum, ca. 2. &c. And in the ſame Chapter, nu. 7. ſaith thus, De ſerjantiis vero nihil certum exprimitur, quid vel quantum dare debeant hæredes, ideo juxta voluntatem Dominorum Dominis ſatisfaciant pro relevio, dum tamen ipſi Domini rationem & menſuram non excedant.

Lit. Sect. 111.

Certain it is, that he that holdeth by Caſtle-guard ſhall pay no Eſcuage, for Eſcuage muſt be rated according to the quantity of the Knights fees, as for a whole Knights fee, or half a Knights fee, &c. and of that nature is not Caſtle-guard.

Lit. Sect. 97. Lit. Sect. 111.

Littleton treating of Caſtle-guard, ſaith, that in all cales where a man holdeth by Knights ſervice, ſuch ſervice draweth to it Ward and Marriage, and ſpeaks not there of relief.

CAP. III.

SI autem hæres alicujus talium fuerit infra ætatem, Dominus ejus non habeat cuſtodiam ejus, nec terræ ſuæ, antequam homagium ceperit; & poſtquam talis hæres fuerit in cuſtodia, cum ad ætatem pervenerit (ſcilicet xxj annorum) habeat hæreditatem ſuam ſine relevio, & ſine fine, ita tamen quod ſi ipſe (dum infra ætatem fuerit) fiat Miles, nihilominus terra remaneat in cuſtodia Dominorum ſuorum, uſque ad terminum prædictum.

35 H. 6. 52.

¶ Hæres.] This Statute is only to be intended of an heir male, whereof hæres is derived: and who ſhall be hæres, &c. See the firſt part of the Inſtitutes, lib. 1. ſect. 1, 2, 3. Cuſtumier de Norm. 99. and the Expoſitions upon the ſame.

See the Cuſtumier de Norm. cap. 29. and the Comment upon the ſame. Et cap. 32. & le Latine Com. fol. 48. b.

¶ Antequam homagium ceperit.] For homage ſee the firſt part of the Inſtitutes, Sect. 85. and it is to be obſerved that in England and France it is called Homage, Homagium, and in Italy Vaſſalagium.

Some have thought that theſe words are to be underſtood that the heir within age ſhall not be in Ward until the Lord hath taken the homage of ſome of the anceſtors of the Ward, ſo as the anceſtor of the heir may die in the homage of the Lord: for in a Writ of Ward brought by the Lord, it is a good plea to ſay that the anceſtor died not in his homage, and the Statute ſaith not Antequam homagiũ

ſuum

ſuum ceperit, but homagium generally; and, ſay they, if the Lord ſhould receive homage of the heir, he ſhould not be in ward at all.

But this is not the right intendment of theſe words, but the Statute meant that the homage ſhould be taken of the heir himſelf; and that for the benefit of the heir, and ſo doth it appear by *a* our old Books that wrote ſome after this Statute, and contemporanea expoſitio eſt fortiſſima in lege, and ſo do the words themſelves of this Law import, and the reaſon thereof is notable, which was, that before the Lord ſhould have benefit of Wardſhip, he ſhould be bound to two things; *b* 1. To warrant the Land to the heir, and to that end the heir might have a Writ, De homagio capiendo; 2. To acquit him from ſervice and other duties to be done and paid to all other Lords, both which the Lord was bound to do (*c* as the Law was then holden) if the Lord accepted homage de droit of his Tenant, (in ſuch ſort as the Lord is, if he receiveth homage auncеſtrel at this day) but otherwiſe it is of homage in fait; *d* Homagium eſt juris vinculum, quo quis aſtringitur ad warrantizandum, defendendum, & acquietandum tenentem ſuum in ſeſina verſus omnes per certum ſervitium in donatione nominatum & expreſſum; & etiam vice verſa, quo tenens aſtringitur ad fidem Domino ſuo ſervand' & ſervitium debitum faciend'. *e* We have an ancient Manuſcript of a caſe adjudged in a Writ of Cuſtoms and Services betwæn Alexander of Poulton, and Robert de Norton, that homage is of an higer nature to divers purpoſes then eſcuage. 1. *f* For that homage bindeth to warranty, which eſcuage doth not. 2. Homage is ſo ſolemn as that it cannot be done again as long as the Tenant that made it liveth, but eſcuage may be given every other year. *g* And Littleton ſaith that homage is the moſt honourable ſervice, and humble ſervice of reverence, and yet it is true that eſcuage taking it for ſervice, draweth to it homage.

h But at the Common Law, if a man holding Land by Knights ſervice, had made a gift in frank-marriage, and the donee had died, his heir within age, the heir ſhould be in Ward before any homage received, Quia dominus non poteſt capere homagium uſque ad tertium hæredem, and this Statute is to be intended where homage was to be received by Law, yet did the Tenant in judgment of Law die in the homage of the Lord, or otherwiſe he could not be in Ward, a caſe worthy of great conſideration.

i But after when it was reſolved for Law, and ſo held to this day, that homage of it ſelf doth not bind the Lord to any warranty or acquital, unleſs it were homage auncеſtrel, which either is worn out, and very rare in England at this day; then according to the old rule, Ceſſante ratione legis ceſſat ipſa lex; The heir cannot bind the Lord to receive homage in this caſe, but if the tenure be by homage auncеſtrel, there the Lord ſhall not have the cuſtody of body or land before he receiveth homage of the heir, for that homage bindeth him to warranty and acquital, and conſequently within the reaſon of this Law.

k Here is to be noted that one within age may do homage, but he cannot do fealty becauſe that is to be done upon oath, Hoc obſervato, qd' ſi minor homagiũ fecerit, nullum tamen juramentum fidelitatis, antequam ad ætatem pervenerit, præſtabit. See more concerning this matter, 1. part. Inſtitut. lib. 2. cap. Homage & Fealty.

16 E. 3. Relief 6 & 10.

a Brac. l. 2. fo. 41. 71, 81, 89. 252. Brit fol. 171. Fleta li. 1. ca. 9. Mirror ca. 9. §. 2. Glanv. lib. 9. c. 1. & 6. 13 E. 1. gard. 136. 31 E. 1. gard. 155.

b Tr. 4 E. 2. f. 65. b. *in libro meo.* William St. Quintins caſe. Homage auncеſtrel only bindeth to warranty, but homage *in fait* bindeth to acquital.

See the firſt part of the Inſtitutes ſect. 143. fol. 101. Verb. & ad receive homage.

c Tr. 9 E. 2. *ubi ſupra.*

d Bract. f. 78. Brit. & Fleta *ubi ſupra.* 47 E. 3. gar. 99. Temp. E. 1. gar. 90.

e M. S. in temp. E. 1.

f See the firſt part of the Inſtitutes ſect. 149.

g Lit. ſect. 85. ſect. 99.

h 13 H. 3. gar. 42.

i 35 H. 6. gard. 72. 14 H. 7. 11. Lit. ſect.

k Brac. l. 2. fo. 79. See the firſt part of the Inſtitutes. Lit. lib. 2. cap. homage & fealty.

¶ Fiat miles.] We made a Knight; And his tenure of ſervice is called Servitium militare, Knights ſervice, *l* and therefore if the King create the heir within age, a Duke, a Marqueſſe, an Earl, a Viſcount or a Baron, yet he ſhall remain in Ward for his body, but if the heir of a Duke, or of any other of the Nobility be made a Knight, he ſhall be out of Ward for his body. If the heir in Ward be created a Knight of the Garter, a Knight of the Bath, a Knight Banneret, or a Knight Batchelor, he ſhall be out of Ward for his body for that he is a Knight, and ſomewhat more, and the Statute ſpeaketh generally Unleſs a Knight, and therefore within the words and meaning of this Law, and the Soveraign of Chivalry hath adjudged him able to do Knights ſervice.

And this word Fiat, be made, proveth that Knighthood ought to be by creation or making, and cannot be by deſent.

l Lib. 6. fo. 73. Sir Drue Druries caſe. 15 E. 4. 10. Pl. Com. Ratcliffes caſe. See hereafter *verbo remaneat.*

a See Sir Drue Druries caſe. *ubi ſupra.*

a But albeit the heir be made a Knight within age, yet is he not freed of the value of his marriage, for that was veſted before in the King, or other Lord, and the King being Soveraign of Chivalry hath adjudged him of full age, that is, able to do Knights ſervice, to this intent, to free his body from cuſtody, but neither to bar the King or other Lord of the value of the marriage, no more then if he had attained to his full age of 21 years.

Lib.8.fol.171. Sir Henry Conſtables caſe. 15E.4.10.Pl.Com. 267. 2 E.6.tit.gard.Br. Sir Anth. Browns caſe. Sir Drue Druries caſe. *ubi ſupra.* Pl. Com.Ratcliffs caſe

¶ Remaneat in Cuſtodia Dominorum ſuorum.] This word (remaneat) implieth that this Statute is to be underſtood only, where the heir after he be in Ward is made Knight within age, for when the heir apparent is made Knight within age in the life of the anceſtor, and the anceſtor dieth, his heir within age, he ſhall be out of Ward both for body and Land, becauſe the Soveraign of Chivalry hath adjudged him of full age, and able to do Knights ſervice in the life of his anceſtor, ſo as in that caſe no title of Wardſhip did ever accrue, and there can be no remanere or reſidue, but of that thing that had his eſſence or being.

CAP. IV.

CUſtos terræ hujuſmodi hæredis, qui infra ætatem fuerit, non capiat de terra hæredis, niſi rationabiles exitus, & rationabiles conſuetudines, & rationabilia ſervitia, & hoc ſine deſtructione, & vaſto hominum & rerum. Et ſi nos commiſerimus cuſtodiam alicujus talis terræ Vic', vel alicui alii, qui de exitibus terræ illius nobis debeat reſpondere, & ille de cuſtodia illa, deſtructionem, vel vaſtum fecerit: Nos ab eo capiemus emend', & terra committatur duobus legal' & diſcretis hominibus de feodo illo, qui de exitibus terræ illius nobis reſpondeant, vel illi cui nos illam aſſignaverimus. Et ſi dederimus, vel vendiderimus cuſtod' alicujus talis terræ, & ille inde deſtructionem fecerit, vel vaſtum, amittat illam cuſtod', & tradatur duobus diſcret' & legal' hominibus de feodo illo, qui ſimiliter nobis reſpondeant, ſicut prædict' eſt. [Vide Gloc. cap.5. W.1. ca.21.]

¶ Cuſtos.] A Keeper, ſome derive the word à cura & ſto, quia cuſtos eſt is cui cura rei ſtat cuſtodiend'; and thereupon ſometime he is called Curator, in French he is called a Gardien, ſo as his name cuſtos doth put him in mind of his office and duty, that is, not only to keep and preſerve the Lands and Tenements of the Ward committed to his cuſtody in ſafety, but alſo to educate and bring up his Ward vertuouſly, and to advance him in marriage without diſparagement. Vide 1 part Inſtitut. Sect.103. of the cauſe and end of Wardſhip; and ſee the 4 part of the Inſtitut. cap. Court of Wards and Liveries.

Bract.lib.7. fol.87. W.2.ca.39. Flet. li.6.ca.61. 5 E.3.6. 24 E.3.28,29.

¶ Rationabiles exitus.] Exitus is derived ab exeundo, and ſignifieth the rents and profits iſſuing out or coming of the Lands or Tenements of the Ward, which muſt be taken by the Gardien in reaſonable manner, and therefore to exitus, rationabiles is added, for that nothing that is unreaſonable is allowed by Law.

Bract.li.2.fo.87.

¶ Rationabiles conſuetudines.] That is, things due by cuſtom or preſcription, and appendant or appurtenant to the Lands or Tenements in Ward, as advowſons, commons, waif, ſtray, wreck, and the like; alſo the reaſonable

nable cuſtoms, fines, &c. of Tenants in Villenage, or by Copy of Court-Roll where fines be incertain: for though the cuſtoms, duties, fines, or the like be incertain, yet if that which is exacted or demanded be unreaſonable, it is againſt the Common Law. For this word (conſuetud) and the divers ſignifications thereof, ſee hereafter cap.30.

¶ Et rationabilia ſervitia.] This alſo, as appears by Glanvill that wrote in the Reign of H.2. was the Common Law of England, that incertain ſervices and aids ought to be reaſonable; for, ſaith he, the Lord may rationabilia auxilia de hominibus ſuis inde exigere, ita tamen moderate ſecundum quantitatem feodorum ſuorum & ſecundum facultates, ne minus gravari inde videantur, vel ſuum contenementum amittere; and that which he ſpeaketh there of aids, is to be applied to all incertain ſervices, cuſtoms, fines, or duties. Glanv. lib. 9. c.8. W.1. cap.31. 25 E.3. cap. 11. *Contenementum.*

But it may be demanded, How and by whom ſhall the ſaid reaſonableneſs in the caſes aforeſaid be tried? This you may read in the firſt part of the Inſtitutes, Sect.69.

¶ Et hoc ſine deſtructione & vaſto hominum & rerum.] For theſe words, Deſtruction and Waſte, ſee the firſt part of the Inſtitutes, Sect. 67. and the Statute of Gloc. cap.5. Marleb. cap. 17. mirror. cap.5. § 2. l.4. fol.57.

¶ Et ſi nos commiſerimus, &c.] For this word commiſerimus, vide the firſt part of the Inſtitutes, Sect. 58. & 531. Here the Committee of the King is taken for him to whom the King committeth the cuſtody of the Land to one or more; by this word commiſimus, reſerving a Rent, Quamdiu quis alius plus dare voluerit, and there the King remain Gardein.

¶ Nos ab eo capiemus emenda.] And this may be upon an office found, or by Writ directed to the Sheriff to this effect, Quia datum eſt nobis intelligi, &c. Regiſt. fol.72,73. Brac. lib.2. fol.47. lib.4 fol. 317. 20 H.3. Waſte 138. 40 Aſſiſ. Pl. 22. li. intrat. Raſt. 616.

¶ Et ſi dederimus vel vendiderimus alicui cuſtodiam, &c.] In this caſe the King granteth, or ſelleth the very cuſtody it ſelf, ſo as the grantee or vendee becometh Guardian in fact: and that this diſtinction between the Committee and Grantee was by the Common Law, hear what Glanvill ſaith, Si vero Dominus Rex aliquam cuſtodiam alicui commiſerit, tunc diſtinguitur utrum ei cuſtodiam pleno jure commiſerit ita quod nullum inde reddere computum oportet ad Scaccarium, aut aliter: ſi vero plene ei cuſtodiam commiſerit, tunc poterit, &c. negotia ſicut ſua recte diſponere. King H. 7. granted a Ward to the Dutches of Buckingham, quamdiu in manibus ſuis fore contigerit; And afterwards the King made a ſpecial Livery, as by Law he might, to the heir within age, and it was adjudged, as Juſtice Frowick reported, that the Duches was without remedy; but otherwiſe it had been if the grant were durante minore ætate hæredis, or, durante minore ætate & quamdiu in manibus noſtris, &c. Glanv. lib.7. c.10.

But here it may be materially demanded, What if the Committee or Grantee doth waſte, and the King during the minority taketh no amends, what remedy hath the heir after his full age? The anſwer is, That he ſhall have an action of Waſte, and that by order of the Common Law: and then it is further doubted and demanded, What ſhall the heir then recover, for the Wardſhip cannot be loſt, ſeeing the heir is of full age, neither by this Statute nor by the Statute of Gloc. To this the anſwer is very obſervable that ſeeing that the Wardſhip cannot be loſt, and the Waſte, being to the heirs diſheriſon, ought not to remain unpuniſhed, that the heir ſhall recover treble damage, for that penalty is annexed to the action of Waſte; and therefore if an action of Waſte were given againſt Tenant in tail apres poſſibility, generally the plaintif ſhall recover treble damages, becauſe they are annexed to this ſuit. But if the King do take amends, then the heir at full age ſhall have no action of Waſte. 7 E.3.12,13. 3 E.2. Waſte 3. Regiſtr. 72. 12 H.4.3. F. N. B. 59.e.& 60. c. Vide *notabile recordum.* M. 32 E.1. Coram Rege. Rot. 76. Dublin. See hereafter in the Expoſition upon the Statute of Gloc. cap.5.

¶ Amittat

Bracton l.4. f.285. 316,317. Gloc. c. 5. Dier 28 H 8. fol.25. Britt. f.33.34. * W.1.c.21. Gloc. c.5. Artic. ſup. cart. cap.18. 14 E.3. cap.13. 36 E.3. cap.13.

¶ Amittat Cuſtodiam.] This is underſtood of the land, and not of the body, for the words be tradatur duobus, &c. qui de exitibus terræ nobis inde reſpondeant.

*Nota, ſince this Statute of Magna Charta divers other Statutes againſt waſtes and deſtructions in the lands of Wards have been made.

At the making of this Statute, the King had not any prerogative in the Cuſtody of the lands of Idiots during the life of the Idiot, for if he had had, this Act would have provided againſt Waſt, &c. committed by the Commitee, or aſſignee of the King to be done in their poſſeſſions, alwell as in the poſſeſſions of wards, but at this time the gardianſhip of Idiots, &c. was to the Lords and others according to the Courſe of the Common Law. And Idiots from their nativity were accounted always within age, and therefore the Cuſtody of them was perpetual ſo long as they lived, for that their impotency was perpetual. And the Lord of whom the Land was holden, had not a tenant that was able to do him ſervice. And therefore within the reaſon of a Cuſtody of a minor or of an heir within age in Caſe of Wardſhip. And this appeareth by Fleta, Solent tutores Idiotarum & ſtultorum cum corporibus eorum perpetuo, quod licitum fuit & proviſum, eo quod ſe ipſos regere non noverint, * nam ſemper judicabantur infra ætatem: vel quia verumque plures per hujuſmodi cuſtodiam exhæredationes compatiebantur, proviſum fuit, & communiter conceſſum quod Rex corporum & hæreditatum hujuſmodi idiotarum & ſtultorum ſub perpetuis cuſtodiam obtineret, dum tamen à nativitate fuerint idiotæ & ſtulti; ſecus autem ſi tardæ à quocunque Domino tenuerint, & ipſos maritaret, & ex omni exhæredatione ſalvaret, hoc cum adjecto quod Dominis feodorum & aliis quorum interfuerit ut ſervitiis, redditibus & cuſtodiis uſque ad legitimam ætatem ſecundum conditionem feodorum, releviis & hujuſmodi nihil juris deperiret.

Fleta.lib.1.cap.10. § Solent. * Nota, the cauſe of alteration by Act of Parliament. Mirror c.1. c.9. § *En auter maner acc.* Britton. c.66.fol.167.b.acc.

But then it is demanded, when was this prerogative given to the King? Certain it is, that the King had it before the Statute of 17 E.2. de prærogativa Regis, for it appeareth in our Books, that the King had this prerogative, Anno 3 E.2. And before that, it is manifeſt that the King had it before Britton wrote in the Reign of E.1. as you may read in his book.

17 E.2. cap 9. 3 E.3. tit. gar.5. Britton cap.66. fol.167. b.

And it is as clear, that when Bracton wrote (who wrote about the end of the Reign of H.3.) that the King had not then this prerogative.

Brac.l.5. 421. a. Stanf. prerog. c.9. fol.33.34.

And therefore it followeth, that this prerogative was given to the King E.1. before that Britton wrote, by ſome Act of Parliament, which is not now extant. And it appeareth by the Mirror of Juſtices agreeing with Fleta, that this prerogative was granted by Common aſſent, Vide lib.4. Beverleys Caſe fol126.

CAP. V.

CUſtos autem quamdiu cuſtodiam terræ hujuſmodi habuerit, ſuſtentet domos, parcos, vivaria, ſtagna, molendina, &c. ad terram illam pertinentia, de exitibus terræ ejuſdem, & reddat hæredi cum ad plenam ætatem pervenerit, terram ſuam tot' inſtauratam de carucis, & omnibus aliis rebus, ad minus, ſicut illam recepit. Hæc omnia obſerventur de cuſtodiis Archiepiſcopatuum, Epiſcopatuum, Abbatiarum, Prioratuum, Eccleſiarum, & dignitatum vacantium, quæ ad nos pertinent, except' quod cuſtod' hujuſmodi vendi non debent.

* Glanv. l.7. c.9. Fleta li.1. c. 11. 10 H.7. 6. & 30. See the firſt part of the Inſtitutes, Sect.67. See prer. Regis, c.14. W.1. ca.21. Fleta l.1.c.11. 14 E. 3. cap.4,5. *vide* cap.33.

That this was the Common Law appeareth by *Glanvill, who ſaith, Reſtituere autem tenentur cuſtodes hæreditates ipſis hæredibus inſtauratas & debitis acquietatas juxta exigentiam temporis cuſtodiæ & quantitatis hæreditatis.

¶ Hæc

¶ Hæc omnia obſervantur de cuſtodiis Archiepiſcoporum, &c.] The Cuſtody of the temporalties of every Archbiſhop, and Biſhop within the Realm, and of ſuch Abbies, and Priories, as were of the Kings foundation, after the ſame became void, belonged to the King during the vacation thereof by his prerogative: for as the ſpiritualties belonged during that time to the Dean and Chapter, de communi jure, or to ſome other Eccleſiaſtical perſon by preſcription, or compoſition, ſo the temporalties came to the King as founder, and this doth belong to the King, being patronus & protector Eccleſiæ, in ſo high a prerogative incident to this Crown, as no ſubject can claim the temporalties of an Archbiſhop, or Biſhop, when they fall by grant or preſcription. Adjudged 21 E.1.

But as, In omni re naſcitur res quæ ipſam rem exterminat, unleſs it be timely prevented (as the worm in the wood, or the mothe in the cloth, and the like) ſo oftentimes no profeſſion receives a greater blow, than by one of their own coat: For Ranulph an Eccleſiaſtical perſon, and King Will. Rufus his Chaplain, a man ſubacto ingenio, and profunda nequitia, was a factor for the King in making merchandize of Church livings, in as much, as when any Archbiſhoprick, Biſhoprick, or Monaſtery became void; firſt, he perſwaded the King to keep them void a long time, and converted the profits thereof ſometime by letting, and ſometime by ſale of the ſame, whereby the temporalties were exceedingly waſted and deſtroyed. Secondly, after a long time no man was preferred to them per traditionem annuli & baculi, by livery of ſeiſin, freely, as the old faſhion was, but by bargain and ſale from the King, to him that would give moſt, by means whereof the Church was ſtuffed with unworthy, and inſufficient men, and many men of lively wits, and towardlineſs in learning deſpairing of preſentment turned their ſtudies to other profeſſions. This Ranulph, for ſerving the Kings turns, was advanced, firſt, to be the Kings Chancellor, and after to be Biſhop of Dureſme, who after his advancement to ſo high dignities, made them ſervants to his ſacrilegious and ſimonaical deſigns. King Henry the firſt ſeeing this miſchief, and foreſeeing the great inconvenience that would follow thereupon, was contented for his own time to bind his own hands, to the end the Church now naked and bare might receive ſome comfort, and have means to provide things neceſſary for their profeſſion, and calling. He thereupon at his Coronation made a Charter to this effect, Quia regnum oppreſſum erat injuſtis exactionibus, ego in reſpectu Dei & amore quem erga vos omnes habeo, ſanctam Dei Eccleſiam imprimis liberam fac' ita quod nec vendam, nec ad firmam ponam, nec mortuo Archiepiſcopo, ſive Epiſcopo vel Abbate, aliquid accipiam de Domino Eccleſiæ vel hominibus ejus, donec ſucceſſor eam ingrediatur, & omnes malas conſuetudines, quibus regnum Angliæ opprimebatur, inde aufero. He committed the ſaid Ranulph then Biſhop of Durham to priſon for his intolerable mildeeds, and injuries to the Church, where he lived without love, and died without pity, ſaving of thoſe, that thought it pity, he lived ſo long. *Regula.* See this charter at large in Mat. Paris. See *lib. rubeum in principio.*

¶ Vendi non debent: Fleta, ubi ſupra, ſaith, vendi non debent nec legari; yet the King may commit the temporalties of them during the vacation, as by the Statute of 14 Ed. 3. appeareth. Flet. *ubi ſupra.* 14 E.3. cap.4.5. F.N.B. 59. b.

CAP. VI.

HÆredes autem maritentur abſque diſparagatione.

This is an ancient maxim of the Common Law: ſee more hereof in the firſt part of the Inſtitutes, Sect.107,108,109.

CAP.

CAP. VII.

VIdua poſt mortem mariti ſui ſtatim & ſine difficultate aliqua, habeat Maritagium ſuum & hæreditatem ſuam: nec aliquid det pro dote ſua, nec pro maritagio ſuo, vel pro hæreditate ſua habenda, quam hæreditatem maritus ſuus, & ipſa tenuerunt ſimul, die obitus ipſius mariti ſui: & maneat in capitali meſſuagio mariti ſui, per quadraginta dies poſt obitum mariti ſui, infra quos dies aſſignetur ei dos ſua, niſi prius ei aſſignata fuerit, vel niſi domus illa ſit caſtrum: & ſi de caſtro receſſerit, ſtatim domus ei competens provideatur, in qua poſſit honeſte morari, quouſque dos ſua ei aſſignetur, ſecundum quod prædictum eſt: & habeat rationabile eſtoverium ſuum interim de communi. Aſſignetur autem ei, pro dote ſua, tertia pars totius terræ mariti ſui, quæ fuit ſua in vita ſua, niſi de minori fuerit dotata ad oſtium Eccleſiæ. Nulla vidua diſtringatur ad ſe maritandam dummodo voluerit vivere ſine marito: Ita tamen quod ſecuritatem faciat, quod ſe non maritabit ſine aſſenſu noſtro, ſi de nobis tenuerit, vel ſine aſſenſu Domini ſui, ſi de alio tenuerit. [*Prærogativa Regis cap.*4.

Bract. li.2. fol.88. Fleta, l.5. cap. 23. 35 H.6.52. Matth. Par.407.

It appeareth by Bracton of ancient time, that a woman being Heir, ſine Dominorum diſpoſitione & aſſenſu, hæreditatem habens, maritari non poteſt, nec etiam in vita anteceſſorum de jure ſine aſſenſu Domini capitalis, quod ſi olim feciſſent, hæreditatem amitterent ſine ſpe recuperandi, niſi ſolum per gratiam; hodie tamen aliam pœnam incurrunt, ſicut inferius dicetur, & hoc ideo ne cogatur Dominus homagium capere de capitali inimico, vel de alio minime idoneo.

Mirror, c.1. §. 3. See the 1. part of the Inſtitutes § 36

Alſo it appeareth by the ſame Author, quod ſi mulier dotem habens pro voluntate ſua alicui nuberet, præter aſſenſum Warranti ſui de dote, olim ex tali cauſa dotem amitteret nunc tamen non amittet.

Item cum ſemel legitime maritatæ fuerint, & poſtea viduæ, iterum non cuſtodientur ſub cuſtodia Dominorum, licet teneantur aſſenſum eorum requirere maritandi ſe, &c. And herewith agreeth Glanvill, who wrote before this Statute.

Glanv.l.7. cap.12. Fleta l.3. cap. 23.

Hereby you may ſee what had been uſed of ancient time in theſe caſes: But at this day widows are preſently after the deceaſe of their husbands without any difficulty to have their marriage (that is, to marry where they will without any Licence, or aſſent of their Lords) and their inheritance, without any thing to be given to them; but in this branch the King is not included, as hereafter in the end of this Chapter ſhall appear.

¶ Et maneat in Capitali Meſſuagio mariti ſui per quadraginta dies poſt obitum mariti ſui.] And this is called her Quarentine, and if

Bract. lib.2. c. 40. Britton, c.103. Fleta, lib.5. c. 23.

the Widow be withholden from her Quarentine, ſhe ſhall have her Writ, De quarentena habenda to the Sheriff, which reciting this Statute, is in nature of a Commiſſion to him, Quod vocatis coram vobis partibus prædictis, & auditis inde earum rationibus, eidem B.C. Viduæ plenam & celerem juſtitiam inde fieri faciatis juxta tenorẽ cartæ prædictæ, ne pro defectu juſtitiæ querela ad nos perveniat iterata. By force of which Writ, the Sheriff may make proceſs againſt the defendant, returnable within two or three days, &c. and may, and ought (if no juſt cauſe be ſhewed againſt it) ſpeedily to put her in poſſeſſion; and the reaſon why ſuch ſpeed is made, is for that her Quarentine is but for forty days.

Regiſter, 175. F.N.B. 161.

¶ Vidua,

¶ Vidua, &c. maneat, &c.] Therefore if ſhe marry within the forty days, ſhe loſeth her Quarentine, for then her Widdowhood is paſt, and ſhe hath provided for her ſelf, and the Quarentine is appropriated to her Widdows eſtate. 1 Mar. Br.Dower 101.

¶ Infra quos dies aſſignetur ei dos.] Here it appeareth how ſpeedily Dower ought to be aſſigned, to the end the Widdow might not be without livelihood. Britton ca.103.

¶ Poſt obitum mariti ſui.] The day wherein the husband dieth ſhall be accounted the firſt day, ſo as ſhe ſhall have but thirty nine after. Dier 7 E.6. fo.76. 4 & 5 Phil.& Mar. fol.161.

¶ Niſi domus illa ſit caſtrum.] This is intended of a Caſtle, that is warlike, and maintained for the neceſſary defence of the Realm, and not for a Caſtle in name maintained for habitation of the owner, but hereof ſee more in the firſt part of the Inſtitutes, Sect.36. & 242. De ædibus kernelatis. Kernellare, or cernellare, by ſome is derived from the French word kerner, or cerner, to fortifie, inviron, or incloſe round about: And by others, from karnean, or carnean, a battlement of a wall; or from karnele, or carnele, imbatteled, or having imbattlements; and the truth is, it beareth all theſe ſignifications in the Laws of England, and the uſe of it in Caſtles and Forts was to defend himſelf by the higher place, and to offend the aſſailants at the lower. Bract.li.2. fol.46. Britton ca.103. Fleta lib.5.ca.23. 30 E.3 Dower 81. 30 E.1.vouch.298. 8 H.3. Dower 196. 8 H.3. Dower 194. 17 H.3. ibid.192. Rot.Pat. part 1. nu.17. Eſcheat 4. E.1. m.88.

Brittons words be, Si le chief mees ſoit chief del Countee, ou del Barony, ou Caſtle, &c. So as it appeareth by him that ſhe is not to have her Quarentine of that, which is Caput Comitatus, ſeu Baroniæ, and with him agreeth Fleta, but Bracton only ſpeaketh de Caſtro. The ancient Law of England had great regard of honour and order. Britton ubi ſupra. Ubi ſupra.

¶ Statim domus ei competens provideatur, in qua poſſit honeſte morari.] But this muſt be of a houſe whereof ſhe is Dowable, for ſhe muſt have her Quarentine of that, whereof ſhe may be endowed. Britton ubi ſupra.

¶ Et habeat rationabile eſtoverium interim de communi.]

Britton ſaith, Que eux eient des iſſues del intier de les terres lour covenable ſuſtenance, &c. Britton ubi ſupra.

Fleta ſaith, Ubi inveniantur ei neceſſaria honeſte de hæreditate communi, donec rationabilis dos fuerit ei aſſignata. Fleta ubi ſupra.

So as eſtoverium here is taken for ſuſtenance: There is an opinion in our Books, that the Widdow cannot kill any of the Oxen of the husbands, whiles ſhe remain in the houſe; But the Regiſter ſaith, Quod interim habeant rationabilia eſtoveria de bonis eorundem maritorum, which ſeemeth to be an expoſition of this Branch. 19 H.6.14.b. Regiſtr.175.

In the Statute intituled, De catallis felonum, it is ſaid, Cum ibidem captus coram Juſticiariis noſtris fuerit convictus de felonia, tunc reſid' catallorum ultra eſtoverium ſecundum Regni conſuetudinem nobis remaneant; where eſtoverium ſignifieth ſuſtenance, or aliment, or nouriſhment. This word eſtoverium cometh of the French verb eſtover, id eſt, alere, to ſuſtain or nouriſh, and this agreeth with the ſaid old Books, and in this ſenſe it is taken in the Statute of Gloc. Trover eſtovers in viver & veſture, that is, things that concern the nouriſhment, or maintenance of man in victu & veſtitu, wherein is contained meat, drink, garments, and habitation. Alimentorum appellatione venit victus, veſtitus & habitatio. Vet.Mag.Chart. 2 part fol.66. Bract.li.3.fo.137. Gloc.ca.4.

When eſtovers are reſtrained to woods, it ſignifieth houſebote, hedgebote, and ploughbote.

¶ Aſſignetur autem ei pro dote ſua tertia pars totius terræ maritj ſui, &c. See for this in the firſt part of the Inſtitutes, Sect.37.

Prer. Regis cap. 4. Stamford Prer.17. F.N.B.265.c. Britton fol.28.a. & 29.b.

¶ Nulla vidua diſtringatur ad ſe maritandam, &c. This is to be underſtood of Widdows Tenants in Dower of Lands holden of the King by Knights ſervice in chief, and thereupon ſhe is called the Kings Widdow, and if the Kings Widdow marry without licence, ſhe ſhall pay a fine of the value of her Dower by one year.

Rot.Pat. 4 E.1. m.31. Bract. ubi ſupra. Fleta lib. 1. ca.12.

And the reaſon of this Law is yielded wherefore they ſhould not marry without the Lings Licence, Ne forte capitalibus inimicis Domini Regis maritentur.

And old Readers have yielded this reaſon, leſt they ſhould marry unto ſtrangers, and ſo the treaſure of the Realm might be carried out, and others ſay that

35 H.6.52. Forteſ.

the reaſon is for that upon the aſſignment of her Dower ſhe is ſworn in the Chancery, Que el ne marier ſans licence, & pur ceo ſi el fait enconᵗ ſon ſerement el ferra fine.

Others ſay that it is a contempt to marry without the Kings Licence, and againſt this Statute, and therefore for this contempt ſhe ſhall make a fine.

35 H.6.52. 15 E.4.13.

If the Kings Tenant in Capite dye ſeiſed, his heir female of full age, if ſhe marry without the Kings Licence, ſhe ſhall pay no fine, for ſhe is no Widdow, and the words be nulla vidua diſtringatur, &c.

Rot.Parl. anno 6 H.6.nu.41.

If the Quèen being the Widdow of a King be endowed, and marry without the Kings Licence, becauſe ſhe is endowed of the ſeiſin of the King himſelf, ſhe is out of this Statute: But at the Parliament holden in anno 6 H.6. it is enacted by the King, the Lords Temporal, and the Commons, that no man ſhould contract with, or marry himſelf to any Quèen of England, without the ſpecial licence or aſſent of the King, on pain to loſe all his goods and lands; to which Act the Biſhops, and other Lords Spiritual gave their conſent, 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.

See the firſt part of the Inſtitutes. Sect.174.

¶ Si de alio tenuerit.] This is to be underſtood, where ſuch a licence of marriage in caſe of a common perſon, was due by cuſtom, præſcription, or ſpecial tenure, the words being ſi de alio tenuerit; and this Expoſition is approved by conſtant and continual uſe and experience, Et optimus interpres legum conſuetudo.

CAP. VIII.

Pl.Com.457. in Sir Tho.Wrothes caſe Pl. Com. in the Lord Berklies Caſe, &c.

NOs vero, vel Ballivi noſtri, non ſeiſiemus terram aliquam, vel redditum pro debito aliquo, quamdiu catalla debitoris præſentia ſufficiunt ad debitum reddendum, & ipſe dedit' paratus ſit inde ſatisfacere. Nec pleg' ipſius debitoris diſtringantur, quamdiu ipſe capitalis debitor ſufficiat ad ſolutionem ipſius debiti. Et ſi capitalis debitor defecerit in ſolutione debiti, non habens unde ſolvat, aut reddere noluerit cum poſſit, plegii de debito reſpondeant, & ſi voluerint, habeant terras & reddit. debitoris, quouſque ſit eis ſatisfact' de debit', quod antea pro eo ſolverint, niſi capitalis debitor monſtraverit, ſe eſſe quietum verſus eoſdem plegios.

¶ Nos

¶ Nos vero.] These words being spoken in the politick capacity do extend to the successors, for in judgment of Law the King in his politick capacity dieth not.

¶ Vel ballivi nostri.] In this place the Sheriff and his Underbailiffs are intended and meant, and to this day the Sheriff useth this in his Returns, Infra ballivam meam, for Infra comitatum, &c. See the first part of the Institutes, And hereafter cap 28.

¶ Non seisiemus terram aliquam, vel redditum pro debito aliquo, quamdiu catalla debitoris præsentia sufficiunt ad debitum reddendum.] By order of the Common Law, the King for his debt had execution of the body, lands, and goods of the debtor: This is an act of grace, and restraineth the power that the King before had. See Artic. super Cart.cap.12.li.3. fo.12.b. Sir William Herberts case. 5 Eliz. Dier 224. Walter de Chirtons case. 24 E. 3. Pl.Com.32. *Debet semper principalis excuti antequam perveniatur ad fidei jussores.* An Act of grace, see W.2. ca.10. & 29. 18 E 1. Stat. de quo Warranto optime. Art. super Cart.ca.12. & 14. Custumier de Norm.cap.60. Vide 43 El.c.13.

¶ Redditum.] For the several kind of rents, see the first part of the Institutes; Lit.lib.2. cap.12. whereunto you may add, 1. Redditus assisus, or redditus assisæ: Vulgarly rents of Assise are the certain rents of the Freeholders, and ancient Copiholders, because they be assised, and certain, and doth distinguish the same from redditus mobiles, Farm rents for life, years, or at will, which are variable and incertain. 2. Redditus albi, White rents, blanch Farms, or rents, vulgarly and commonly called quitrents; they are called white rents, because they were paid in silver, to distinguish them from work-days, rent cummin, rent corn, &c. And again these are called, 3. Redditus nigri, black maile, that is, black rents, to distinguish them from white rents; see Rot. clausi. 12 H. 3. m 12. Rex concessit hominibus de Andevor maneria de M.F.A, &c. Reddendo per annum ad Scaccar Regis Lxxx li. blanc, de Antiqua firma. 4. Redditus resoluti be rents issuing out of the Mannors, &c. to other Lords, &c. Feodi firma, fee Farm, for this kind of rent, vide infra Gloc. cap.8.

After the Statute of 33 H.8. cap.39. was made for levying of the Kings debts the usual process to the Sheriff at this day is, Quod diligenter per sacramentum proborum & legalium hominum de balliva tua, &c. inquiras quæ & cujusmodi bona & catalla, & cujus precii idem (debitor) habuit in dicta balliva tua, &c. Et ea omnia capias in manus nostras, ad valentiam debiti prædict', & inde fieri fac' debitum prædict', &c. Et si forte bona & catalla prædict' (debitoris) ad solutionem debiti prædict' non sufficerent, tunc non omittas propter aliquam libertatem, quin eam ingrediaris, & per sacramentum præfat proborum, & legalium hominum diligenter inquiras, quas terras, & quæ tenementa, & cujus annui valoris, idem (debitor) habuit, seu seisitus fuit in dicta balliva tua, &c. Et ea omnia & singula in quorumcunque manibus jam existunt, extendi fac', & in manus nostras capias, &c. Et capias prædict' debitorem, ita quod habeas corpus prædict' (debitoris) ad satisfac' nobis de debito prædict'.

Whereby it appeareth, that if the Goods and Chattels of the Kings Debtor be sufficient, and so can be made to appear to the Sheriff, whereupon he may levy the Kings debt, then ought not the Sheriff to extend the Lands, and Tenements of the Debtor, or of his heir, or of any Purchaser, or terre-Tenant. To conclude this point with the Authority of old and Ancient Ockham. See cap.18. Glanv. li.10.ca.3. Britton ca.28. Fleta lib.2. ca.62.F.N.B 137.f. Pl.Com.440. Pepys Case. li.3.fo.13. Sir William Herberts case. li.7.fo.17,18. 22. 50 ass p.5. 21 E.4.21. Ockham, ca. quod vicecomes à fundis ejus, &c.

Terræ & tenementa debitoris regis, ad quascunq; manus quocunq; titulo devenerunt, post debitum Regis inceptum Regi tenentur, si non aliunde satisfacere possit.

¶ Nec plegii ipsius debitoris.] As pledges or sureties to keep the peace, pledges for a fine to the King upon a contempt, &c. are within this branch, but otherwise it is of mainperners, and this appeareth by Glanvile to be the Common Law before the making of this Act. Custumier de Nor. ca.60.fo.73.&c.76. Glanvil li.10.ca.3.

And the Author of the Mirror saith, ceux sont pleges queux plevisher aut chose que corps de home, car ceux ne sont proprement pleges, mes sont mainperners pur ceo que ils supposont plevishables sont liver a ceux per baille Corps pur Corps.

¶ Et ſi capitalis debitor defecerit in ſolutione, &c. aut reddere noluerit cum poſſit.] Some have thought that this branch hath taken away the next precedent concerning pledges, but both do ſtand well together, for reddere noluerit cum poſſit muſt be underſtood, when the principal is able, and yet his ability cannot be made to appear, being in money, treaſure, or the like, or in debts owing to him, which he conceals, and will not reddere, ſo as de non apparentibus, & non exiſtentibns eadem eſt Lex, and in that caſe plegii de debito reſpondeant, and yet the former branch concerning pledges doth ſtand, where the pledges can make it appear to the Sheriff, that he may levy the Kings debt: ſée the Statute of Articuli ſuper cartas cap. 11.

[a] Brieton cap. 28. Fleta lib. 2. c. 56. F.N.B. 137. Reg. 158. 43 E. 3. 11. a. 44 E. 3. 21. 48 E. 3. 28. 32 E. 3. monſtrãs des faits. 179. 1 E. 46. Dier 22 Eliz. 170.

¶ Et ſi voluerint, habeant terras, & redditus debitoris, &c.] [a] Upon theſe words ſome have ſaid that the Writ de plegiis acquietandis is grounded, and ſéeing no mention is made in this Statute of any déed, the pledges ſhall have that Writ without any deed. And if the pledges have any deed, covenant, or other aſſurance for their indemnitie, then may they take their remedy at the Common Law; [b] but it appeareth by Glanvile that this was the Common Law, for he ſaith, Soluto vero eo quod debetur ab ipſis plegiis, recuperare inde poterint ad principalem debitorem, ſi poſtea habuerit unde eis ſatisfacere poſſit per principale placitum, and ſet down the [c] Writ de plegiis acquietandis.

[b] Glanvil lib. 10. cap. 4, 5.

[c] Regiſt. 158. Mat. Paris. 247. a. Wendov. Walſ. 40.

Note here is a Chapter omitted, viz. nullum ſcutagium, vel auxilium ponam in regno noſtro niſi p commune concilium regni noſtri, which clauſe was in the Charter, anno 17 Regis Johannis, and was omitted in the exemplification of this great Charter, by Ed. 1. vide Cap. 30.

Vide poſtea Stat. de Tallagio concedendo. 34 E. 1.

CAP. IX.

CIvitas London' habeat omnes libertates ſuas antiquas, & conſuetudines ſuas. Præterea volumus, & concedimus, quod omnes aliæ civitates burg̃, & villæ, & Barones de quinque portubus, & omnes alii portus, habeant omnes libertates, & liberas conſuetudines ſuas. Articuli ſuper Chartas cap. 7.

[d] Mirror ca. 5. §. 2. Fleta lib. 2. cap. 48. Pl. Com. fol. 400. 5 H. 7. 10, 19. 8 H. 7. 4. 11 H. 7. 21. 28. Aſſiſ. 24. 45 E. 3. 26. See Acts of Parliament. Art. ſuper chartas c. 7. W. 3. cap. 9. 7 R. 2. nient imprimee. 9 H. 4. cap. 1. 2 H. 6. cap. 1. &c. See the firſt of the Inſtit. Sect. 7. 31. 8 H. 7. 4. b.

[d] This Chapter is excellently interpreted by an ancient Author, who ſaith, In pointe que demaunde, que le Citie de Londres eit ſes auncient franchiſes, & ſes frank Cuſtomes eſt interpretable in ceſt maner, que les Citizens eient lour fraunchiſes, dont ils ſont inherit per loyal title, de dones, & confirmements des royes, & les queux ilz ne ont forfeits per nul abuſion, & que ilz eient lour franchiſes & cuſtomes, que ſont ſufferable per droit, & nient repugnant al Ley: Et le intepretation que eſt dit de Londres ſoit intendu de les cinque ports, & des autres lieus; And this interpretation agreeth with divers of our later Bwks.

It is a maxim in Law, that a man cannot claim any thing by cuſtom or preſcription againſt a Statute, unleſs the cuſtom, or preſcription be ſaved by another Statute; For example, They of London claim by cuſtom, to give lands without licence to Mortmain, becauſe this cuſtom is ſaved, and preſerved, not only by this Chapter of Magna Charta, but by divers other Statutes, & ſic de cæteris. See more in particular concerning London, in the fourth part of the Inſtitutes, Cap. of the Courts of the City of London.

CAP.

CAP. X.

NUllus diſtringatur ad faciendum majus ſervitium de feodo Militis, nec de alio libero tenemento, quam inde debetur. Cuſtumier de Norm. cap. 114. fol. 132. b.

That this was the ancient Law of England. appeareth by Glanvill, and alſo that the Writ of Ne injuſte vexes was not grounded upon this Act, appeareth alſo by him, for he ſaith, Et alia quædam placita, veluti, ſi quis conqueretur ſe Curiæ de Domino ſuo, quod conſuetudines, & indebita ſervitia, vel plus ſervitii exigit ab eo, quam inde facere debeat: And ſetteth down the form of the Writ of Ne injuſtes vexes; Rex N. ſalutem. Prohibeo tibi ne injuſte vexes, vel vexari permittas H. de libero tenemento ſuo, quod tenet de te in tali villa, nec inde ab eo exigas, aut exigi permittas conſuetudines vel ſervitia, quæ tibi inde facere non debet, &c. Glanv. l. 12. c. 9, 10 Reg. fol. 4. & 59. b. Bracton fol. 329. Fleta l. 5. cap. 38. lib. 2. c. 60. Brit. c. 27. fol. 60. b.

And another ancient Author which wrote of the ancient Laws long before this Statute, maketh mention of the Writ of Ne injuſte vexes. Mirror c. 2. § 19. & cap. 5. § 1.

Hereby it appeareth how they are deceived, that hold that this Writ is grounded upon this Act, and how neceſſary the reading of ancient Authors is, to give the ancient Common Law his right, as hereby it appeareth. F.N.B. 10. e. Pl. Com. 243. b.

The words of the Statute be, nullus diſtringatur, therefore if the Lord incroach more Rent of the ſame nature, by the voluntary payment of the Tenant, he ſhall not avoid this incroachment in an avowry, but in an Aſſile, ceſſavit, or ne injuſte vexes, the Tenant ſhall avoid the incroachment: This rule holdeth not in caſe of a ſucceſſor, or of the iſſue in tail, for they ſhall avoid it in avowry, but if the ſervice incroached be of another nature, the Tenant ſhall avoid that ſeiſin in an avowry, for majus ſervitium implieth a greater exaction of the ſame nature: if the incroachment of the ſame nature be gotten by cohertion of diſtreſs, there the Tenant ſhall avoid that ſeiſin in an avowry, for nullus diſtringatur ad faciendum majus ſervitium. But if an incroachment be made upon a Tenant in tail, or Tenant for life, or any other, who cannot maintain a Writ of ne injuſte vexes, nor a contra formam collationis, nor other remedy, he ſhall have an action upon this Statute; for this Statute intendeth to relieve thoſe, which had no remedy by the Common Law. Pl. Com. 94. 243. 10 H. 7. 11. b. 30 H. 6. 5. b. 22 Aſſ. 68. 28 Aſſ. 33. 12 E. 4. 7. b. 8 E. 4. 28. b. 4 E. 2 Avow. 202. 18 E. 2. ibid. 217. 20 E. 3. ibid. 131. 5 E. 4. 2. 16 E. 4. 11. 20 E. 4. 11. 12 H. 4. 23. F.N.B. 10. h. See the firſt part of the Inſt. Sect.

CAP. XI.

COmmunia placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco. Articuli ſuper chartas, cap. 7. Mirror cap. 5. § 2.

Before this Statute, Common Pleas might have been holden in the Kings Bench, and all original Writs returnable into the ſame Bench: And becauſe the Court was holden Coram Rege, and followed the Kings Court, and removable at the Kings will, the Returns were Ubicunque fuerimus, &c. whereupon many diſcontinuances enſued, and great trouble of Jurors, charges of parties, and delay of Juſtice, for theſe cauſes this Statute was made.

¶ Communia placita.] Here it is to be underſtood, a diviſion of Pleas, for Placita are divided in Placita Coronæ, and Communia Placita: Placita Coronæ are otherwiſe, and aptly called criminalia, or mortalia, and placita communia are aptly called civilia: Placita Coronæ are divided into high Treaſon, miſpriſion of Treaſon, petit Treaſon, Felony, &c. and to their acceſſories, ſo called, becauſe they are contra coronam & dignitatem; and of theſe the Court of Common Pleas cannot Mirror ca. 1. § 4. Stamf. Pl. cor. f. 1. Vide cap. 17.

cannot hold plea; of theſe you may read at large in the third part of the Inſtitutes. Common or civil pleas are divided into real, perſonal and mixt.

Vide cap. 17. They are not called Placita Coronæ, as ſome have ſaid, becauſe the King jure Coronæ ſhall have the ſuite, and Common Pleas, becauſe they be held by common perſons. For a plea of the Crown may be holden betwéen common perſons, as an appeal of murder, robbery, rape, felony, mayhem, &c. and the King may be party to a Common Plea, as to a Quare impedit, and the like.

Now as out of the old fields muſt come the new corn, ſo our old books do excellently expound, and expreſs this matter, as the Law is holden at this day,

Glanv. li. 1. c. 1. therefore Glanvill ſaith, Placitorum aliud eſt criminale, aliud civile; where Placitum criminale, is Placitum Coronæ; and Placitum civile, placitum commune, named in this Statute.

Bract. l. 3. f. 101. b. Fleta, li. 2. cap. 58. And Bracton that lived when this Statute was made, ſaith, Sciendum quod omnium actionum ſive placitorum, (ut inde utatur æquivoce) hæc eſt prima diviſio, quod quædam ſunt in rem, quædam in perſonam, & quædam mixtæ; Item earum quæ ſunt in perſonam, alia criminalia, & alia civilia, ſecundum quod deſcendunt ex maleficiis vel contractibus; Item criminalium, alia major, alia minor, alia maxima, ſecundum criminum quantitatem.

Fleta, li. 1. cap. 15. Fleta ſaith, Perſonalium injuriarum quædam ſunt criminales, & quædam civiles; criminalium quædam ſententialiter mortem inducunt, quædam vero minime.

Britton fol. 3. &c. Britton calleth them pleas de la Corone, and Common Pleas, and the Court taketh his name of the Common Pleas.

To treat of the juriſdiction of this Court, doth belong to another part of the Inſtitutes, but a word or two of the Antiquity of the Court of Common Pleas, which is the lock and key of the Common Law.

Glanv. lib. 11. c. 1. & lib. 2. cap. 6. Glanvill ſaith, Placita in ſuperioribus, &c. ſicut & alia quælibet placita civilia, &c. ſolet autem id fieri coram Juſticiariis Domini Regis in Banco reſidentibus, &c. And in another place, Coram Juſtic' in Banco ſedentibus.

Bract. l. 3. f. 105. b. & 108. b. Bracton in divers places calls the Juſtices of the Court of Common Pleas, as Glanvill did, Juſticiarii in Banco reſidentes, ſo called for that the Returns in the Kings Bench, are Coram Rege ubicunque fuerimus in Anglia, as hath béen ſaid, becauſe in ancient time it was, as hath béen ſaid, removable, and followed the Kings Court.

Artic. ſuper Cart. cap. 5. Fleta lib. 2. cap. 2. F.N.B. 69. m. And therefore all Writs returnable, Coram Juſticiariis noſtris apud Weſtm. are returnable before the Judges of the Common Pleas, and all Writs returnable, Coram nobis ubicunque tunc fuerimus in Anglia, are returnable into the Kings Bench.

Britton. Britton ſpeaking of the Court of Common Pleas, ſaith, Ouſter ceo voilloms que Juſtices demurgent continualment à Weſtm. ou ailours, ou nous voudrous ordinaire à pleader Common pleas, &c.

Fleta li. c. 28. & 54 Fleta ſaith, Habet & (Rex) curiam ſuam & juſticiarios ſuos reſidentes, qui recordum habent in hiis, quæ coram eis fuer' placitata, & qui poteſtatem habent de omnibus placitis, & actionibus realibus, perſonalibus, & mixtis, &c.

& c. 13. 7 E. 4. 53. D. & St. 12. b. It is manifeſt that this Court began not after the making of this Act, as ſome have thought, for in the next Chapter, and divers others of this very great Charter mention is made De Juſticiariis noſtris de Banco, which all men know to be the Juſtices of the Court of Common Pleas, commonly called the Common Bench, or the Bench, and Doct. and Stud. ſaith, that it is a Court created by Cuſtom.

26 Aſſ. p. 24. The Abbot of B. claimed conuſance of plea in Writs of Aſſiſe, &c. in the times of King Etheldred, and Edward the Confeſſor, and before that time, time out of mind, and pleaded a Charter of confirmation of King H. 1. to his predeceſſor, and a grant, &c. ſo that the Juſtices of the one Bench, or of the other ſhould not intermeddle.

It appeareth by our Books that the Court of Common Pleas was in the Reign of H. 1. 4 E.3.49. 39 E.3.21.

That there was a Court of Common Pleas in anno 1 H.3. which was before this Act; Martinus de Pateſhull, was by Letters Patents conſtituted chief Juſtice of the Court of Common Pleas in the firſt year of H.3. Rot. pat. 1 H.3.

It is reſolved by all the Judges in the Exchequer Chamber, that all the Courts, viz. the Kings Bench, the Common Place, the Exchequer, and the Chancery, are the Kings Courts, and have been time out of memory, Iſſint que home ne poet ſcaver que eſt plus auncient. 9 E.453.

¶ Non ſequantur curiam noſtram.] Divers ſpecial caſes are out of this Statute. 21 H.3. brief. 883. Tr. 26 E.1. Coram Rege Northamptō.

1. The King may ſue any action for any Common Plea in the Kings Bench, for this general act doth not extend to the King. Tr. 18 E.1. Coram Rege Rot. 62.

2. * If any man be in cuſtodia Mareſchalli of the Kings Bench, any other may have an action of Debt, Covenant, or the like perſonal action by Bill in the Kings Bench, becauſe he that is in cuſtodia Mareſchalli ought to have the priviledge of that Court, and this Act taketh not away the priviledge of any Court, becauſe if he ſhould be ſued in any other Court, he ſhould not in reſpect of his priviledge anſwer there, and ſo it is of any officers, or miniſters of that Court: The like Law is of the Court of Chancery, and Exchequer. 31 E 3. prer. 28. 17 E.3.50. * 31 H.6. f.10,11. Artic. ſup. cart. c.4. Pl. Com. 208.b. 30 Aſſ. p.20. ſimil.

3. Any action that is Quare vi & armis, where the King is to have a fine, may be purchaſed out of the Chancery, returnable into the Kings Bench, as ejectione firmæ trīs, vi & armis, forcible entry, and the like.

4. And a replevin may be removed into the Kings Bench, becauſe the King is to have a fine, and ſo it is in an Aſſiſe brought in the County where the Kings Bench is. 9 H.7.10. 19 E.3. Aſſiſe 84. 1 H.7. 12. Reg. F.N.B. 177

5. Albeit originally the Kings Bench be reſtrained by this Act to hold plea of any real action, &c. yet by a mean they may. As if a Writ in a real action be by judgment abated in the Court of Common Pleas, if this judgment in a Writ of Error be reverſed in the Kings Bench, and the Writ adjudged good, they ſhall proceed upon that Writ in the Kings Bench, as the Judges of the Court of Common Pleas ſhould have done, which they do in the default of others, for neceſſity, leſt any party that hath right ſhould be without remedy, or that there ſhould be a failer of Juſtice, and therefore Statutes are always ſo to be expounded, that there ſhould be no failer of Juſtice, but rather then that ſhould fall out, that caſe (by conſtruction) ſhould be excepted out of the Statute, whether the Statute be in the negative, or affirmative. 14 H.7.14. 16 E.3. bre. 661. Stat. de Mirton, cap.10.

6. In a rediſſeiſin, or the like.

¶ Curia noſtra.] Are words collective, and not only extend to the Kings Bench, but into the Court of Exchequer. Vide Artic. ſuper Cart. cap.4.

When judgment is given before the Sheriff, and the Tenant hath no goods, &c. in that County, he may have a Certiorare to remove the Record into the Kings Bench, and there have execution, for that is not Placitum. See more hereof in the fourth part of the Inſtitutes, Cap. Of the Court of Exchequer. F.N.B. 190. 224. 246.

CAP.

CAP. XII.

REcognitiones de nova diſſeiſina, & de morte anteceſſoris, non capiantur niſi in ſuis comitat', & hoc modo; Nos vero ſi extra Regnum fuerimus, capital' Juſticiar' noſtri mittent Juſticiar' noſtros per unumquemque comitatum, ſemel in ann', qui cum Militibus eorund' com', capiant in com' illis aſſiſ. prædict'. Et ea quæ in adventu ſuo in illo comitat' per Juſtic' noſtr' prædict' ad dictas aſſiſas capiend' miſſos, terminari non poſſunt, per eoſdem terminent' alibi in itinere ſuo. Et ea quæ per eoſdem propter difficultatem aliquorum articulorum terminari non poſſunt, referant' ad Juſticiar' noſtros de banco, & ibi terminentur.

Before the making of this Statute, the Writs of Aſſiſe of Novel diſſeiſin, and Mordanc' were returnable, either coram Rege, or into the Court of Common Pleas, and to be taken there, and this appeareth by Glanvill, Coram me, vel coram Juſticiariis meis. But ſince this Statute, theſe Writs are returnable, Coram Juſticiariis noſtris ad aſſiſas, cum in partes illas venerint; by force of theſe words, Mittent Juſticiarios noſtros per unumquemque comitat' noſtrum ſemel in anno, qui cum militibus eorundem comitatuum capiant in comitat' illis aſſiſas prædict'.

Glanv. l. 13. c. 3. & 33. F.N.B. 177. f. Regiſtrum.

¶ Niſi in ſuis Comitatibus.] This tended greatly to the eaſe of the Jurors, and for ſaving of charges of the parties, and of time, ſo as they might follow their vocations, and proper buſineſs, and the rather, for that the Aſſiſe of Novel diſſeiſin, was frequens & feſtinum remedium in thoſe days, and ſo was the aſſiſe of Mordanc' alſo: It is a great benefit to the ſubject to have juſtice adminiſtred unto him at home in his own Country.

Mirror c. 5. § 2. See W. 2. cap. 30.

For an aſſiſe of Novel diſſeiſin, and aſſiſe of Mordanc' ſee the firſt part of the Inſtitutes.

See the firſt part of the Inſtitutes, Sect. 234.

And where Bracton ſaith, Succurritur ei, (i diſſeiſito) per recognitionem aſſiſæ novæ diſſeiſinæ multis vigiliis excogitatam, & inventam recuperandæ poſſeſſionis gratia, quam diſſeiſitus injuſte amiſit, & ſine judicio, ut per ſummariam cognitionem abſque magna juris ſolemnitate quaſi per compendium, negotium terminetur. See the Cuſtumier de Normand', (compoſed, as hath been ſaid, in 14 H. 3.) Sect. 91. & 93. of the Aſſiſe of Novel diſſeiſin, which being invented and framed in England, as Bracton and others have teſtified, muſt of neceſſity be tranſported into Normandy.

Bract. l. 4. fol. 164.

See the Preface of the 2. part of the Inſtitutes.

But where we yield to Bracton, that the Aſſiſe of Novel diſſeiſin was ſo invented, ſo he muſt yield to us, that it was a very ancient invention, for Glanvill maketh mention thereof, and of the Aſſiſe of Mordaunc', as hath been ſaid, and by the Mirror alſo the antiquity of Aſſiſe De novel diſſeiſin doth appear, who ſaith, that this Writ of Aſſiſe of Novel diſſeiſin, was ordained in the time of Ranulph de Glanvill.

Glanv. l. 13. c. 3. & 33. Cuſtumier de Norm. ubi ſupra. Mir. ca. 2. § 15. 26 Aſſ. p. 24.

But the caſe of 26 Aſſiſe before touched, doth prove that the Writs of Aſſiſe are of far greater antiquity, for there it appeareth that in an Aſſiſe of Novel diſſeiſin, claimed to have Conuſans of Plea, and Writs of Aſſiſe, and other original Writs out of the Kings Courts by preſcription time out of mind of man, in the times of S. Edmond, and S. Edward the Confeſſor, Kings of this Realm, before the Conqueſt, and ſhewed divers allowances thereof: but true it is, as the ancient Authors affirm, that a new form of Writs of Aſſiſe, for the more ſpeedy

recovery

recovery of poſſeſſion, which were called Feſtina remedia was invented in England ſince the Conqueſt, and were called Brevia de aſſiſa novæ diſſeiſinæ; which Writs ſo altered continue ſo until this day, and according to the alteration is cited in the Cuſtumier, cap 93.fol.107.b.

If an Aſſiſe be taken in proprio comitatu, and the tenant plead, and after the Aſſiſe is diſcontinued by the non venu of the Juſtices, this Act extends to the Aſſiſe, but not to a reattachment thereupon, for that the Aſſiſe was firſt arraigned and examined in the proper County, neither doth this Act extend to a Writ of attaint, brought upon the verdict of the recognitors of the Aſſiſe: And herewith agræth Britton, who ſaith, Et tout conteine la grand Chre des franchiſes, que aſcuns aſſiſes ſoient priſes in Counties, pur ceo ne intent nul que certifications, & attaints auter foitz eſtre pledes, &c. 24 E.3.23. 2 E.3.23.1. 1 E.4.1. 6 E.3.55,56. Britton cap.97. fol.240. F.N.B. 181.

And Bracton ſaith, Et ſi ad hoc ſe habeat communis libertas, quod aſſiſæ extra comitatum capi non debeant, non ſequitur quod propter hoc remaneant juratæ in com capiendæ; aliud enim habet privilegium aſſiſa, & aliud jurata. Bracton lib.4. fol. 291.

An Aſſiſe is brought in the Kings Bench, then being in the County of Suff. (as it may be, as hath bæn ſaid) of lands lying in that County, the tenant plead in bar, the plaintiff reply and pray the Aſſiſe, the Kings Bench is removed to Weſtm. and there the pl' prayed the Aſſiſe, this Statute is, that the Aſſiſe ſhall not be taken but in the County, and now the Kings Bench is in another County, and the original cannot go out of this place, for when a Record is once in this Court, here it muſt remain, wherefore by the advice of all the Judges, the Aſſiſe was awarded at large, quia nihil dicit, and a Niſi prius granted in the County of Suff. that there might the Aſſiſe be taken. A caſe worthy of obſervation, how by this expoſition both the parties ſute was preſerved, and the purvien of this Statute obſerved. 6 E.3.55,56. 19 E.3.aſſ.84.

Yet in ſome caſe notwithſtanding this negative Statute, the Aſſiſe ſhould not have bæn taken in his proper County. And therefore if a man be diſſeiſed of a Commote or Lordſhip Marcher in Wales, holden of the King in Capite, as for example of Gowre, the Writ of Aſſiſe ſhould have bæn directed to the Sheriff of Gloc. within the Realm of England, and albeit the land of Gowre was out of the power of the Sheriff of Gloc. being out of his County, within the dominion of Wales, and this Statute ſaith that the Aſſiſe ſhall not be taken but in his proper County, yet was the Aſſiſe taken in the County of Gloc. and Judgment thereupon given and affirmed in a Writ of Error: and the reaſon is notable, for the Lord Marcher though he had jura Regalia, yet could he not do Juſtice in his own caſe, and if he ſhould not have remedy in this caſe by the Kings Writ out of the Chancery in England, he ſhould have right and no remedy by Law given for the wrong done unto him, which the Law will not ſuffer, and therefore this caſe of neceſſity is by conſtruction excepted out of the Statute. And it was well ſaid in an old book, Quamvis prohibetur quod communia placita non ſequantur curiam noſtram, non ſequitur propter hoc, quin aliqua placita ſingularia ſequantur Dominum Regem, and the like in this negative Statute. 18 E.2. Aſſiſe 382 13 E.3. Juriſd. 23. Rot. Parliam. de anno 18 E.1. inter petitiones. 28 E.3.cap.2. 20 H.3.tit. brev. 881.

Hereby it appeareth (that I may obſerve it once for all) that the beſt Expoſitors of this and all other Statutes, are our books and uſe or experience.

More ſhall be ſaid hereof in the Expoſition of the Statute of W.2.

¶ De morte anteceſſoris.] See the firſt part of the Inſtitutes, Sect.234. Cuſtumier de Norm.cap.98.fol.115.

¶ Nos vero ſi extra Regnum fuerimus, Capitales Juſticiarii noſtri.] This Capitalis Juſticiarius (when the King is extra Regnum, out of the Realm) is well deſcribed by Ockham, Rege extra Regnum agente, bria dirigebantur ſub nomine præſidentis Juſtitiarii & teſtimonio ejuſdem. This is he that is conſtituted by Letters Patents when the King is out of the Kingdom, to be cuſtos ſive gardianus Regni, kæper of the Kingdom, and locum tenens Regis, and for his time is Prorex, ſuch as was Edward Duke of Cornewall 13 E. 3. Lionel Duke of Rot. Parliament 13 E.3. nu.11. 5 H.5.nu.1. 3 E.4.nu.14. 21 E.3. fol.37.

Clarence 21 E. 3. And the teſte to all original Writs were teſte Lionello filio noſtro chariſſimo cuſtode Angliæ &c. John Duke of Bedford 5 H. 5. Richard Duke of Warwick 3 E.4. and many others, before whom as keepers of the Kingdom, Parliaments have been holden, and as hath been ſaid, the teſte of original Writs are under the name of the Keeper, which no officer can do, when the King is within the Realm. In 8 H.5. a great queſtion aroſe whether if the Kings Lieutenant, or Keeper of his Kingdom under his teſte, doth ſummon a Parliament, the King being beyond Sea, and in the mean time the King return into England, whether the Parliament ſo ſummoned might proceed: it was doubted that in præſentia majoris ceſſaret poteſtas minoris, and therefore it was enacted that the Parliament ſhould proceed, and not be diſſolved by the Kings return. Now that this Statute is to be intended of ſuch a Lieutenant or Keeper of the Kingdom, it is proved by this Act it ſelf, Capitales Juſtitiarii noſtri mittent Juſtitiarios noſtros, that is, they ſhall name and ſend Juſtices by authority under the great Seal under their own teſte, which none can do but the King himſelf if he be preſent, or his Lieutenant, or the keeper or guardian of his Kingdom, if he be, as this Act ſpeaketh, extra Regnum: and this Expoſition is made ex verbis & viſceribus Actus. But then it is demanded, whether this locum tenens Regis, ſeu cuſtos Regni, was called capitalis Juſtitiarius before the making of this Act, and this very name you ſhall read in Glanvile, who ſaith, Præterea ſciendum, quod ſecundum conſuetudines Regni, nemo tenetur reſpondere in Curia Domini ſui de aliquo libero tenemento ſuo ſine præcepto domini Regis, vel ejus Capitalis Juſtitiarii, where Capitalis Juſtitiarius is taken for Cuſtos Regni.

8 H.5.cap.1.

Glanvil lib.12. cap.25. Rot.Pat. an.1. E.1. Hereof you may read more in the 4 part of the Inſtitut. cap. of the Court of Kings Bench. Glanvil.lib.2.c.6. Hovend.fol.413.

It is to be obſerved, that before the Reign of King Ed. 1. the Kings Chief Juſtice was ſometime called ſummus Juſtitiarius, ſometime præſidens Juſtitiarius, and ſometimes Capitalis Juſtitiarius. In anno primo E.1. his Chief Juſtice was called Capitalis Juſtitiarius ad placita coram Rege tenenda, and ſo ever ſince; and this Chief Juſtice is created by Writ, and all the reſt of the Juſtices of either Bench, by Letters Patents.

In Glanviles time, and before, the Kings Juſtices were called Juſticiæ, the returns of Writs being coram Juſticiis meis, ſo as the Kings Juſtices were anciently called Juſticiæ, for that they ought not to be only Juſti in the concrete, but ipſa Juſticia in the abſtract. Since that time, as by this great Charter in many places it appeareth, they are called Juſticiarii à Juſticia. The honourable manner of the creation of theſe Juſtices you may read in Forteſcue.

Forteſcue cap. 51.

¶ Alibi in Itinere ſuo.] This is taken largely and beneficially, for they may not only make adjournment before the ſame Juſtices in their Circuit, but alſo to Weſtm. or to Serjeants-Inn, or any other place out of their Circuit, by the Equity of this Statute, and according as it had been always uſed: For conſtant allowance in many caſes doth make Law.

12 H.4.20. 29 Aſſ. 1. 27 Aſſ. 5.60. 4 E.3.41.

a The Statute ſpeaking only of an adjournment in Aſſiſe of novel diſſeiſin, &c. and yet a Certificate of an Aſſiſe is within this Statute.

a 12 H. 4.9.

b Sed rerum progreſſus oſtendunt multa, quæ initio prævideri non poſſunt.

b Regula.

c Time found out, that becauſe the Juſtices of Aſſiſe came not but once in the year, and that any adjournment could not have been made by this Act, unleſs the Jurors had given a verdict, for this Act ſaith, propter difficultatem aliquorum articulorum, and not upon demurrer, doubtful plea, Eſtoppel, &c. * or for preſervation of the Kings Peace, and no proviſion was made by this Act, if the ten̄ in the Aſſiſe of Mordaunc. had made a forrain voucher, or plead a forrain plea: all theſe are holpen by the Statute of W. 2. cap. 30. as ſhall appear when we come thereunto.

c 48 E.3.7. 47 Aſſ. 1. 39 E.3.6. 32 Aſſ.9. 21 E.3.3. 42 E.3.11. * 7 H.6.9. 3 E.3.16. 8 Aſſ.15 15 E.3. aſſ.96. 17 E.3.28. 14 E.3.aſſ.110. 20 E 3.aſſ.123. 22 E.3.5. 29 aſſ.7. 34 aſſ.3. 43 aſſ.1. 3 H.4.18. 22 H.6.19.

CAP.

CAP. XIII.

Aſſiſæ de ultima præſentatione ſemper capiantur coram Juſticiariis de banco, & ibi terminentur.

It appeareth by Glanvil, that before this Statute the Writ of Darrein preſentment was returnable coram me vel Juſtic. meis. And the reaſon of this Act was for expedition, for doubt of the laps.

By the Statute of W.2. it is provided, that Juſtices of Niſi prius may give Judgment in an Aſſiſe of Darrein preſentment, and Quare Impedit.

Glanvil.lib.13. cap.16.18,19. Bracton lib.4. fol. 238. &c. Britton cap.90. fol.222. Fleta lib.5.c.11. Regiſt.fol.30. F.N.B.fol.30. W.2.cap.30. 5 Mar.Dier 135. 9 Eliz. Dier 260.

CAP. XIV.

Liber homo non amercietur pro parvo delicto, niſi ſecundum modum illius delicti, & pro magno delicto ſecundum magnitudinem delicti, ſalvo ſibi contenemento ſuo: & Mercator eodem modo, ſalva merchandiſa ſua, & villanus alterius quam noſter, eodem modo amercietur: ſalvo wainagio ſuo, ſi inciderit in miſericordiam noſtram. Et nulla prædictarum miſericordiarum ponatur, niſi per ſacramentum proborum & legalium hominum de vicineto. Comites & Barones non amercientur, niſi per pares ſuos, & non niſi ſecundum modum delicti. Nulla Eccleſiaſtica perſona amercietur ſecundum quantitatem beneficii ſui Eccleſiaſtici, ſed ſecundum laicum tenementum ſuum, & ſecundum quantitatem delicti.

¶ Liber homo.] A free man hath here a ſpecial underſtanding, and is taken for him, qui tenet libere, for a free-holder, as it is taken in the venire fac. where duodecim liberos, &c. homines are taken for freeholders, and this appeareth by this Act which ſaith, ſalvo contenemento ſuo, whereof more ſhall be ſaid in this Chapter. The words of this Act being liber homo, it extendeth as well to ſole Corporations, as Biſhops, &c. as to lay men, but not to Corporations aggregate of many, as Mayor and Commonalty, and the like, for they cannot be comprehended under theſe words liber homo, &c. Vide W.1.cap.6.

¶ Amercietur.] This Act extends to Amerciaments, and not to Fines impoſed by any Court of Juſtice: what Amerciaments be, and whereof this word Amerciament cometh, ſee the 8 book of my Reports, ſee alſo there, that this Statute is in ſome caſes of Amerciaments, to be intended of private men, and not of Amerciaments of Officers, or Miniſters of Juſtice, ſo as liber homo is not intended of Officers, or Miniſters of Juſtice. And how, and in what caſes the afferement ſhall be, you ſhall alſo read there, together alſo with the ancient Authors, and many other Authorities of Law, concerning theſe matters. W.1.cap.18. 11 H 4.5. Lib.8.fol.39,40. Greyſlies caſe. Glanv. li.9. ca.11. Fleta li.2.c.60. 10 E.2. action ſur le Statut 84. Regiſt.85.184.187.

It appeareth by Glanvile that this Act was made in affirmance of the common Law, as hereafter ſhall appear, but yet the Writ de moderata miſericordia,

is grounded upon this Statute, for it reciteth the Statute and giveth remedy to the party that is excessively amerced.

¶ Salvo contenemento suo.] First for the word, you shall read it in Glanvile, Est autem misericordia Domini Regis, qua quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne quid de suo honorabili contenemento amittet.

Glanvil. ubi sup.

And Bracton. Salvo contenemento suo.

Bracton lib. 3. fol. 116.

Fleta, continentia.

Fleta lib. 1. c. 43.

2. For the signification, Contenement signifieth his countenance, which he hath, together with, and by reason of his free-hold, and therefore is called contenement, or continence, and in this sense doth the Statute of 1 E. 3. and old Nat. Brev. use it, where countenance is used for contenement: the Armor of a Soldier is his countenance, the books of a Scholler his countenance, and the like.

W. 1. cap. 6.

1 E. 3. cap. 4. Stat. 2.

Vet. N. B. fol. 11.

¶ Et Mercator eodem modo salva merchandisa sua.] For Trade and Traffique is the livelihood of a Merchant, and the life of the Commonwealth, wherein the King and every subject hath interest, for the Merchant is the good Bailiffe of the Realm to export and vent the native commodities of the Realm, and to import and bring in the necessary commodities for the defence and benefit of the Realm.

¶ Et villanus alterius quam noster eodem modo amercietur salvo wainagio suo.] Here Villanus is taken for one that is a bond-man, nativus de sanguine or servus.

See the first part of the Institutes, Sect. 172. 189.

A Villein is free to sue, and to be sued, by and against all men, saving his Lord.

¶ Salvo wainagio suo.] Wainagium, is the contenement or countenance of the Villein, and cometh of the Saxon word Wagna, which signifieth a Cart or Waine, wherewith he was to do Villein service, as to carry the dung of the Lord out of the scite of the Manor unto the Lords land, and casting it upon the same, and the like, and it was great reason to save his wainage, for otherwise the miserable creature was to carry it on his back; it is said here Wainagio suo, but yet the Lord may take it at his pleasure.

See the first part of the Institutes, Sect. 172.

But hereby it appeareth, that albeit the Law of England is a Law of mercy, yet is it a Law which is now turned into a shadow, for where by the wisdom of the Law, these amerciaments were instituted to deter both demandants and plaintiffs from unjust suits, and tenants and defendants from unjust defences, which was the cause in ancient times of fewer suits, but now we have but a shadow of it. Habemus quidem senatus-consultum, sed in tabulis reconditum, & tanquam gladium in vagina repositum.

Cicero.

¶ Comites & Barones non amercientur nisi per pares, &c.] Although this Statute be in the negative, yet long usage hath prevailed against it, for the amerciament of the Nobility is reduced to a certainty, *viz.* a Duke 10 l. an Earl 5 l. a Bishop who hath a Barony 5 l. &c. in the Mirror it is said that the amerciament of an Earl was an C l. and of a Baron an C marks.

Mirror cap. 1. Sect. 3.

38 E. 3. 31.

4 H. 6. 7. 9 H. 6. 2.

19 E 4. 9.

21 E. 4. 77. b.

It is said that a Bishop shall be amerced for an escape 100 l. A Gaoler shall be amerced for a negligent escape of a Felon attaint 100 l. and of a Felon indicted only 5 l.

Mirror cap. 4. de amerciam.

3 E 3. Coron. 370

Stanf. pl. cor. fol. 35. b.

If a Noble man and a common person join in an Action, and become nonsute, they shall be severally amerced: viz. the Noble man at C s. and the Common person according to the Statute, therefore when a Nobleman is plaintiff, it is policy rather to discontinue the Action, then to be non-suit.

Mirror ubi sup.

Britton fol. 17. b. & 34. b.

¶ Per Pares.] By his Peers, that is, by his equals.

The

The general diviſion of perſons by the Law of England, is either one that is noble, and in reſpect of his nobility of the Lords houſe of Parliament, or one of the Commons of the Realm, and in reſpect thereof, of the houſe of Commons in Parliament: and as there be divers degrées of Nobility, as Dukes, Marqueſſes, Earls, Viſcounts and Barons, and yet all of them are comprehended within this word, Pares, ſo of the Commons of the Realm, there be Knights, Eſquires, Gentlemen, Citizens, Yeomen and Burgeſſes of ſeveral degrées, and yet all of them of the Commons of the Realm, and as every of the Nobles is one a Péer to another, though he be of a ſeveral degrée, ſo is it of the Commons; and as it hath bèn ſaid of Men, ſo doth it hold of Noble Women, either by birth, or by mariage, but ſée hereof Cap. 29. Britton c. 2. f. 36.

Bracton ſaith, Comites vero vel Barones, non ſunt amerciandi, niſi per Pares ſuos, & ſecundum modum delicti, & hoc per Barones de Scaccario, vel coram ipſo Rege. Nulla Eccleſiaſtica perſona amercietur ſecundum quantitatem beneficii ſui Eccleſiaſtici, ſed ſecundum Laicum tenent ſuum. Bract. l. 3. f. 116. b. Brit. fol. 2. b. Fleta l. 1. c. 43. & l. 2. c. 60. Vide lib. nigr. Scaccarii parte 1. c. 4. Of Ancient time the Barons of the Eſchequer were Barons and Peers of the Realm. See the firſt part of the Inſtitutes, Sect. 133.

¶ Eccleſiaſtica perſona.] For Eccleſiaſtical perſons, and their diverſities, and degrées, ſée the firſt part of the Inſtitutes, ubi ſup.

¶ Beneficium.] Benefice. Beneficium is a large word, and is taken for any Eccleſiaſtical promotion or Spiritual living whatſoever.

Here appeareth a priviledge of the Church, that if an Eccleſiaſtical perſon be amercied (though amerciaments belong to the King) yet he ſhall not be amercied in reſpect of his Eccleſiaſtical promotion, or benefice, but in reſpect of his lay fée, and according to the quantity of his fault, which is to be aſſered: and Bracton ſetteth down the oath of the aſſerers of amerciaments, & ad hoc fideliter faciend' affidabunt amerciatores, quod neminem gravabunt per odium, nec alicui deferent propter amorem, & quod celabunt ea quæ audierunt. Bract. l. 3. f. 116. Fleta l. 1. cap. 43.

CAP. XV.

NUlla villa, nec liber homo diſtringatur facere pontes, aut riparias, niſi qui ab antiquo, & de jure facere conſueverunt tempore Henrici Regis avi noſtri.

Here it is to be obſerved, that in the Reign of King John, and of his elder brother King Richard, which were troubleſome and irregular times, divers oppreſſions, exactions and injuries, were incroached upon the Subject in theſe Kings names, for making of Bulwarks, Forteſſes, Bridges and Banks, contrary to Law and right.

But the Reign of King H. 2. is commended for three things, firſt, that his Priby Counſel were wiſe, and expert in the Laws of the Realm. Secondly, that he was a great defender, and maintainer of the rights of his Crown, and of the Laws of his Realm. Thirdly, that he had learned and upright Judges, who executed Juſtice according to his Laws. Therefore for his great and never dying honour, this and many other Acts made in the Reign of H. 3. do refer to his Reign, that matters ſhould be put in ure, as they were of right accuſtomed in his time, ſo as this Chapter is a declaration of the Common Law, and ſo in the Reigns of H. 4. and H. 5. the Parliaments refer to the Reign of King E. 1. who was a Prince of great fortitude, wiſdom and juſtice. See cap. 35. 37. See chart. de Foreſta cap. 1 & 3 Rot. Parliam. n. 82 13 R. 2. c. 5. 4 H. 4. cap. 2. 3 H. 5. c. 8.

And divers Statutes refer to King Edw. 3. who was a noble, wiſe, and warlike King, in whoſe Reign, the Laws did principally flouriſh. 27 H. 6. cap. 2.

¶ Riparia,

¶ Riparia.] Is here taken for Ripa, which is extrema & eminentior terræ ora, quam fluvius utrinqe alluit.

4 H. 8. c. 1. 2 & 3 Phil. & Mar. 3. Phil. 1.

But the making of bulwarks, fortreſſes, and other things of like kind, were not prohibited by this Act, becauſe they could not be erected, but either by the King himſelf, or by Act of Parliament.

CAP. XVI.

NUllæ ripariæ defendantur de cætero, niſi illæ quæ fuerunt in defenſo tempore Henrici Regis avi noſtri, & per eadem loca, & eoſdem terminos, ſicut eſſe conſueverunt tempore ſuo.

That is, that no owner of the Banks of Rivers ſhall ſo appropriate, or keep the Rivers ſeveral to him, to defend or bar others, either to have paſſage, or fiſh there, otherwiſe, then they were uſed in the Raign of King H. 2.

Mirror cap. 5. § 2.

This Statute, ſaith the Mirror, is out of uſe, Car pluſors rivers ſont ore appropries & engarnies, & miſe in defence, que ſoilount eſtre commons a piſher & uſer en temps le Roy Henry 2.

CAP. XVII.

NUllus Vicecomes, Conſtabularius, Coronator, vel alii balivi noſtri teneant placita Coronæ noſtræ.

One of the miſchiefs before this Statute was, That none of them here named, could command the Biſhop of the Dioceſs to give the delinquent his Clergy, where he ought to have it, for as Bracton ſaith, Nullus alius, præter Regem, poſſit Epiſcopo demandare, &c. And therewith agreeth our other old, and later Books, that the Biſhop is not to attend upon any inferior Court, nor that any inferior Court can write unto, or command the Biſhop, but the King, (that is) the Kings great Courts of Record, and ſuch, as ſince that time have authority by Act of Parliament.

Bract. l. 3. fol. 106. Brit. c. 104. f. 248. Fleta l. 5. cap. 24. 8 E. 3. 59. 40 E. 3. 2 14 H. 4. 27. 15 E. 3. conuſans 41. 14 H. 7. 26. 21 H 7. 34, 35. *Regula.* Paſch. 30 E. 1. Coram Rege Kanc. The Mayor and Barons of the five Ports compl. in Parliament.

Another cauſe was, that the life of man, which of all things in this world, is the moſt precious, ought to be tried before Judges of learning, and experience in the Laws of the Realm: For ignorantia Judicis eſt ſæpenumero calamitas innocentis. Et cum ex quo Magna Charta de libertatibus Angliæ alias conceſſa, (quam quidem chartam Dominus Rex in Parliamento ſuo apud Weſtm. an. Regni ſui 28. ad requiſitionem omnium Prælatorum, Comitum, Baronum, & communitatis totius Regni, de novo conceſſit, renovavit, & confirmavit) placita coronæ ipſi Domino Regi ſpecialiter reſervantur, per quod nullus de Regno hujuſmodi placita tenere poteſt, ſeu habere, ſine ſpeciali conceſſione, poſt confirmationem chartæ prædictæ factæ. In the ſame year, and term, Coram Rege, a complaint by the Abbot of Feverſham, both caſes adjudged in the Kings Bench, whereunto they were referred by the Parliament. See Michael 17 Edw. 1. in Banco Rotulo. 33. Southampton.

The Chapter of Magna Charta here intended, and in both the ſaid Records expreſſed,

expreſſed, is this 17 Chap. of Magna Carta now in hand. By theſe Records two things are to be obſerved. 1. That this is a general Law, by reaſon of theſe words, Vel alii balivi noſtri, under which words are comprehended all Judges or Juſtices of any Courts of Juſtice. 2. Albeit it be provided by the ninth Chapter of Magna Charta, Quod Barones de quinque portubus, & omnes alii portus habeant omnes libertates, & liberas conſuetudines ſuas; That theſe general words muſt be underſtood of ſuch liberties and cuſtoms only, as are not afterwards in the ſame Charter by expreſs words taken away, and reſumed to the Crown. And therefore if the Mayor and Barons of the Cinque Ports had power before this Act to hold pleas of the Crown, yet by this Act of the ſeventeenth Chapter, they are abrogated, and reſumed: a notable and a leading judgment. Both theſe Records being within two years after the confirmation of King E. 1. of Magna Charta, are worthy to be read and obſerved.

See Paſch. 33 E. 1. Coram Rege. The Prior of Tinemouths caſe. Northumberl.

¶ Vicecomes.] See for his name, office, and antiquity in the firſt part of the Inſtitutes, Sect. 234. 1. part Inſtitutes Sect. 234. 248.

¶ Conſtabularius.] Is here taken for Caſtellanus, à Caſtellein, or Conſtable of a Caſtle, for ſo doth the Mirror interpret it. And Caſtellanus eſt qui cuſtodit caſtellum, aut eſt Dominus caſtelli; And ſo doth Bracton; Debet, &c. oſtendere caſtellano, ſicut conſtabulario turris, &c. And therewith agreeth Fleta, Item nullæ priſæ capiantur de aliquo per aliquem conſtabularium, caſtellanum, præterquam de villa, in qua ſitum eſt caſtrum.

Mirror cap. 5. § 2. Bracton lib. 5. f. 363. l. 2. f. 69. Vide cap. 19. Fleta lib. 2. cap. 43.

And the Statute of W. 1. agreeth herewith, Des priſes, des conſtables, ou caſtelleins, faits des autres, &c. W. 1. cap. 7. & 31.

And Caſtellani were men in thoſe days of account, and authority, and for pleas of the Crown, &c. had the like authority within their precincts, as the Sheriff had within his Bailiwick before this Act, and they commonly ſealed (which I have often ſeen in many, and have cauſe to know, that ſome of the ancient family of de Sperham in Norff. did) with their portrature on horſeback.

Now for the number of Caſtles, in ancient time within this Realm, Certum eſt Regis Henrici ſecundi temporibus Caſtella 1115. in Anglia extitiſſe.

And it is to be obſerved, That regularly every Caſtle containeth a Mannor: ſo as every Conſtable of a Caſtle, is Conſtable of a Mannor, and by the name of the Caſtle the Mannor ſhall paſs, and by the name of the Mannor the Caſtle ſhall paſs. See the firſt part of the Inſtitutes, f. 5. Verbo Holme.

For this word, Conſtabularius, his office, and antiquity, ſee the firſt part of the Inſtitutes, Sect. 379. Lamb. leg. Ed. c. 26 Bract. l. 3. fol. 154 Brit. cap. 15. f. 90 Fleta, l. 1. cap. 47

And albeit the franchiſes of Infangthiefe, and Outfangthiefe, to be heard and determined within Court Barons belonging to Mannors, were within the ſaid miſchief, yet we find, but not without great inconvenience, that the ſame had ſome continuance after this Act. But either by this Act, or per deſuetudinem, for inconvenience, theſe franchiſes within Mannors are antiquated and gone. Hovend. parte poſterior. f. 345. Mat. Par. Anno 1259. 44 H. 3. Pl. Parl. 18 E. 1. Rot. 11. 2 R. 3. 10.

¶ Coronator.] His name is derived à Corona, ſo called, becauſe he is an Officer of the Crown, and hath Conuſance of ſome pleas, which are called Placita coronæ.

For his antiquity, ſee the Mirror, who (treating of Articles eſtabliſhed by the ancient Kings, Alfred, &c.) ſaith, Auxi ordains fuer Coronours in cheſcun County, & Viſcounts a garder le peace, quant les Countees ſoy demiſterent del gard, & Bayliffes in lieu de centeners, (that is) Coroners in every County, and Sheriffs were ordained to keep the peace, when the Earls diſmiſt themſelves of the cuſtody of the Counties, and Bailiffs in place of Hundreders. Mirror cap. 1. § 3.

For his dignity and authority, Britton ſaith in the perſon of the King, Pur ceo que nous volons, que Coroners ſont in cheſcun County principals gardens de noſtre Brit. cap. 3. fol. 3. Stam. Pl. Cor. 48. c.

noſtre peace, a porter Record des pleas de noſtre Corone, & de lour views, & abjurations, & de utlagaries, volons que ilz ſont eſlieus ſolonque ceo, que eſt contein in nous Statutes de lour election, &c.

Rot. brevium. 5 E.3. nu. 38. Regiſtr. 177. W. 1. cap. 10. * Regiſtr. 177.

And a Common Merchant being choſen a Coroner, was removed, for that he was Communis Mercator.

* By the ancient Law, he ought to be a Knight, honeſt, loyal, and ſage, Et qui melius ſciat, & poſſit officio illi intendere. For this was the policy of prudent antiquity, that Officers did ever give a grace to the place, and not the place only to grace the Officer.

Vide poſtea c. 35. Glanv. l. 1. c.2. & l.14 c.8.W.2.c.13. 22 E.4. fol.22.

But what authority had the Sheriff in pleas of the Crown before this Statute? This appeareth by Glanvill, that the Sheriff in the Tourn, (for that is to be intended) held plea of theft, for he ſaith; Excipitur crimen furti, quod ad Vicecomitem pertinet, & in Comitatibus placitatur; But he may enquire of all felonies by the Common Law, except the death of man.

Mirror cap.1. § Coroners & c.5. § 2. Bracton lib.3. f.121. Brit. c.1. fol. 3. Fleta lib.1. cap.18.25. 22 Aſſ.97, 98, &c. 3 H.7. c.3. Stanf. Pl.co.64.116,117.

And what authority had the Coroner? The ſame authority he now hath, in caſe when any man come to violent, or untimely death, ſuper viſum corporis, &c. Abjurations, and out-lawrie, &c. appeals of deaths by bill, &c. This authority of the Coroner, viz. the Coroner ſolely to take an indictment, ſuper viſum corporis; and to take an appeal, and to enter the appeal, and the Count remaineth to this day. But he can proceed no further, either upon the indictment, or appeal, but to deliver them over to the Juſtices. And this is ſaved to them by the Statute of W. 1. cap. 10. And this appeareth by all our old Books, Book caſes, and continual experience.

19 H.6. fol.47. W.2.c.13. 1 E.3. Stat. 2. cap.17. 1 E.4. 3. 1 R.3. cap.4.

And for the further authority of the Coroner in caſe of high Treaſon, ſee the Book of 19 H.6. fol.47. and conſider well thereof.

But the authority of the Sheriff to hear and determine theft, or other felonies by the Common Law, (except the death of man) in the Tourn, is wholly taken away by this Statute, howbeit his power to take indictments of felonies, and other miſ-deeds within his juriſdiction, is not taken away by this Act.

CAP. XVIII.

SI quis tenens de nobis laicum feodum moritur, & Vic', vel Balivus noſter oſtendat literas noſtras patentes de ſummonitione [noſtra] de debito, quod defunctus nobis debuit: liceat Vic', vel balivo noſtro attachiar', & imbreviare omnia bona & catalla defuncti inventa in laico feodo ad valentiam ipſius debiti, per viſum & teſtimonium legalium hominum, ita tamen quod nihil inde amoveatur, donec perſolvat nobis debit', quod clarum fuerit, & reſiduum relinquatur executoribus ad faciendum teſtamentum defunct'. Et ſi nihil nobis debeatur ab ipſo, omnia catalla cedant defunct': Salvis uxori ejus, & liberis pueris ſuis, rationabilibus partibus ſuis.

Ockham Regiſt. 281.b. 17 E.3.73. 27 E.3.88. 29 E.3. 13. 41 E.3. 15. 41 E.3.execut.38. 4 E.4.16. F. N. B. 28.b. 33 H.8. c.39. See before cap.8.

By this Chapter three things are to be obſerved; Firſt, That the King by his prerogative ſhall be preferred in ſatisfaction of his debt by the Executors, before any other: Secondly, That if the Executors have ſufficient to pay the Kings debt, the heir that is to bear the countenance, and ſit in the ſeat of his anceſter, or any purchaſer of his lands ſhall not be charged. Thirdly, If nothing be owing to the King, or any other, all the Chattels ſhall go to the uſe of the

the dead, that is, to his Executors or Adminiſtrators, ſaving to his Wife and Children their reaſonable parts, which is conſilium, and not præceptum; and the nature of a ſaving regularly is, to ſave a former right, and not to give or create a new, and therefore, where ſuch a Cuſtom is, that the Wife and Children ſhall have the Writ de rationabili parte bonorum, this Statute ſaveth it. And this Writ doth not lye without a particular Cuſtom, for that the Writ in the Regiſter is grounded upon a Cuſtom, which (as hath bæn ſaid) is ſaved by this Act.

Mirror cap. 5. § 2. Glanv. lib. 12. c. 2. Bracton l. 2. fol. 6. b. Fleta l. 2. ca. Regiſt. 142. 34 E. 1. detinue 60. 1 E. 2. ib. 56. 17 E. 2. ib. 58. 30 E. 3. 2. 26. 31 E. 3. rn'der 6. 39 E. 3. 6. 10. 17 E. 3. 17. 40 E. 3. 38. 3 E. 3. det. 156. 1 E. 4. 6. 7 E. 4. 21. 13 H 4. Sever. 30. 31 H. 8. Rationab. parte Bro. 6. Bract. l. 2. fol. 61.

*But that it was never the Common Law (though there be great variety in books) hear what Bracton ſaith, who wrote ſon after this Act, Neq; uxorem, neq; liberos amplius capere de bonis defuncti patris vel viri mobilibus, quam fuerit eis ſpecialiter relictum, niſi hoc ſit de ſpeciali gratia teſtatoris, utpote ſi bene meriti in ejus vita fuerint, &c. vix enim inveniretur aliquis civis, qui in vita magnum quæſtum faceret, ſi in morte ſua cogeretur invitus bona ſua relinquere pueris indoctis, vel luxurioſis, & uxoribus male meritis: & ideo neceſſarium eſt valde, quod illis in hac parte libera facultas tribuatur. Per hoc enim tollet maleficium, animabit ad virtutem, & tam uxoribus, quam liberis bene faciendi dabit occaſionem, quod quidem non fieret, ſi ſe ſcirent indubitanter certam partem obtinere etiam ſine teſtatoris voluntate.

But the Adminiſtrators of a man, that die inteſtate, or executor of any, that make no diſpoſition of his whole perſonal eſtate, goods, debts, and chattels, the Adminiſtrators or Executors after the debts paid and Will perfourmed, ought not to take any thing to his or their own uſe, but ought, though there be no particular Cuſtom, to divide them, according to this Statute: and the ſaid ancient and latter authorities (than which there can be no better direction) may guide them therein: and this right doth this Statute of Magna Charta ſave by theſe words, ſalvis uxori, & liberis ſuis, rationabilibus partibus ſuis. So as though the Statute doth give no Action, yet their parts are ſaved hereby, which by Glanvile, and other ancient Authors appear to belong to them; and the Executor or Adminiſtrator ſhall be allowed of this diſtribution, according to this Statute, upon his account before the Ordinary.

Note the reaſon hereof maketh against perpetuities

CAP. XIX.

NUllus Conſtabularius, vel ejus Ballivus capiat blada, vel alia catalla alicujus, qui non ſit de villa, ubi caſtrum ſuum ſitum eſt, niſi ſtatim reddat denarios, aut reſpectum inde habere poſſit de voluntate venditoris: Si autem de villa illa fuerit, infra quadraginta dies precium redd'.

Here alſo it appeareth, that in this Chapter Conſtabularius is taken for Caſtellanus: and this taking by Caſtalleins, though the Caſtle was kept for the defence of the Realm, was an unjuſt oppreſſion of the Subject, and this expreſly appeareth by the Mirror, Ceo que eſt defendu a Conſtables, a prender le autre, defend droit a touts gents de cy que nul difference parenter priſe dautrui maugre ſoen, & robbery, lequel cel priſe ſoit de chivalls, de vitaille, de marchandiſe, de cariage, de oſtiels, ou des autres manners de biens. And this appeareth alſo by Fleta, l. 2. ca. 43. Quia multa gravamina multis inferuntur per diverſas diſtrictiones, quæ quidem ſub colore priſarum advocantur, &c. inhibetur in Magna Charta de libertatibus, &c. no purveyance ſhall be taken, but only for the houſes of the King and Quéen, and for no other perſon: ſo as the grievance before this, and other like Acts, is wholly taken away.

See W. 1. cap. 7. & 31.

Mirror cap. 5. § 2.

36 E. 3. cap. 2. 23 H. 6. cap. 2.

CAP. XX.

NUllus Conſtabularius diſtringat aliquem Militem ad dandum denarios pro cuſtodia caſtri, ſi ipſe eam facere voluerit, in propria perſona ſua, vel per alium probum hominem faciat, ſi ipſe eam facere non poſſit, propter rationabilem cauſam. Et ſi nos abduceri-mus, vel miſerimus eum in exercitum, ſit quietus de cuſtodia caſtri, ſecundum quantitatem temporis, quo per nos fuerit in exercitu, de feod' pro quo fecit ſervitium in exercitu.

Here Conſtabularius is taken in the former ſenſe: ſée the firſt part of the Inſtitutes Sect.96.

Fleta lib.2. ca.43. See the 1 part of the Inſtit.96.

Sée this Act in Fleta: And note, this Act (conſiſting upon two branches) is declaratory of the Common Law, for firſt, that he that held by Caſtle gard, that is, to kéep a tower, or a gate, or ſuch like of a Caſtle in time of War might do it, either by himſelf, or by any other ſufficient perſon for him, and in his place. And ſome hold by ſuch ſervice, as cannot do it in perſon, as Mayor and Comminalty, Dean and Chapter, Biſhops, Abbots, &c. Infants being purchaſers, women, and the like, and therefore they might make a deputy by order of the Common Law. If two joyn-tenants hold by ſuch ſervice, if one of them perform, it is ſufficient.

For the ſecond, if ſuch a Tenant be by the King led, or ſent to his hoſt, in time of War, the Tenant is excuſed and quit of his ſervice for kéeping of the Caſtle, either by himſelf, or by another during the time, that he ſo ſerve the King in his hoſt, for that when the King commandeth his ſervice in his hoſt, he diſpenceth with his ſervice by reaſon of his tenure, for that one man cannot ſerve in perſon in two places, and when he ſerves the King in perſon in one place, he is not bound to find a deputy in the other, for he is not bound to make a deputy, but at his pleaſure, and this is alſo declaratory of the ancient Common Law. Sée the firſt part of the Inſtitutes 111.121.

CAP. XXI.

W.1. c.1. verb. & que nul face &c. Artic. ſuper cart. cap.2. Regiſt.fol.98. Bracton lib.3.fol. 177. Britton fol. 33.36.38. Fleta lib.1.c.20. ſee cap.Itineris.

NUllus Vicecomes, vel Ballivus noſter, vel aliquis alius, capiat equos, vel carectas alicujus pro cariagio faciendo, niſi reddat liberationem antiquitus Statutam, ſcilicet pro una carecta ad duos equos decem denarios per diem, & pro carecta ad tres equos quatuordecim denarios per diem. Nulla carecta dominica alicujus perſonæ Eccleſiaſticæ, vel militis, vel alicujus Domini, per ballivos noſtros capiatur, nec nos, nec ballivi noſtri, nec alii, capiemus boſcum alienum ad caſtra, vel ad alia agenda noſtra, niſi per voluntatem illius, cujus boſcus ille fuerit.

This

This Chapter conſiſteth of three branches, the firſt ſetteth down the ancient hire or allowance for the carriage for the King; the ſecond ſetteth down, who are exempted from that carriage; the third, concerning purveyance of wood.

For the firſt, the carriage muſt be taken for the King and Quéen only, and for no other, implied in theſe words, Nullus Vicecomes vel ballivus noſter, and this is explained by divers other Statutes, and by our Books. W.1. cap.1. & 32. 36 E.3. cap.2. 38 H.6. cap.2. Fleta lib.2.ca.1. & 24. 32 E.3. Barre 259. 7 H.3.tit.Waſte.

The hire or allowance is certainly expreſſed, as anciently due, Reddat liberationem antiquitus Statutam; So as this alſo is declaratory of the ancient Law, and the hire or allowance ought to be paid in hand, for the Statute ſaith, Nullus capiat, &c. niſi reddat, &c.

And this liberatio antiquitus Statuta, is, (as it appeareth by this Act) per diem, by the day.

Aver-penny, and averagium, are words common in ancient Charters, and ſignifie to be free from the Kings carriages, cum averiis, and this is meant where it is ſaid, Aver-penny, hoc eſt, quietum eſſe de diverſis denariis pro * averagiis Domini Regis. Raſtall * i. carragiis cum averiis.

For the ſecond branch: No demean, or proper Cart for the neceſſary uſe of any Eccleſiaſtical perſon, or of any Knight, or of any Lord, for or about the demean Lands of any of them, ought to be taken for the Kings carriage, but they are exempted by the ancient Law of England from any ſuch carriage. W.1.cap.1. 14 E.3.cap.1. 1 R.2. cap.3. 10 E.2.Vet. Mag. Chart.part 2.fo.46.

This Statute extendeth not to any perſon Eccleſiaſtical, of what eſtate, order, or degree ſoever: and this was an ancient priviledge belonging to holy Church. Fleta lib.3. cap.5.

Alſo it extendeth to all degrées and orders of the leſſer and greater Nobility, or Dignity, as of Knighthood, Dukes, Marqueſſes, Earls, Viſcounts, and Barons, for albeit there were no Dukes, Marqueſſes, or Viſcounts within England at the making of the Statute, yet this Statute doth extend to them, for they are all Domini, Lords of Parliament, and of the Barony of England; and this alſo was an ancient priviledge belonging to theſe orders and dignities: And all this concerning the Eccleſiaſtical and Temporal State was (amongſt other things for the advancement and maintenance of that great peace-maker, and love-holder, hoſpitality) one of the ancient ornaments and commendations of the Kingdom of England.

The third branch is, That neither the King, nor any of his Baylies or Miniſters, ſhall take the wood of any other, for the Kings Caſtles, or other neceſſaries to be done, but by the licence of him whoſe wood it is. And all Statutes made againſt this branch (amongſt others) before the Parliament of 42 E. 3. are repealed: And this branch, amongſt others hath (as hath been ſaid) been confirmed, and commanded to be put in execution at 32 Seſſions of Parliament. And ſo it was reſolved by all the Judges of England, and Barons of the Exchequer, Mich. 2 Jac. Reg. upon mature deliberation; and that the Kings Purveyor could take no Timber, growing upon the inheritance of the Subject, becauſe it was parcel of the inheritance, no more than the inheritance it ſelf. Whereof the King and Counſel being informed, the King by his Proclamation, by advice of his Councel, under the great Seal, 23 Aprilis, anno 4. declared the Law to be in theſe words: Firſt, when we were informed, that ſome inferiour Miniſters had preſumed to go ſo far beyond their Commiſſion, as they have adventured, not only to take Timber Trees growing, which being parcel of Our Subjects inheritance, was never intended by Us to be taken without the good will, and full conſent of the owners, but have accuſtomed alſo to take greater quantities of proviſions for Our houſe and Stable, than ever came, or were needful to Our uſe, &c. As by the ſaid Proclamation bearing date 23 Aprilis, anno 4 Jac. Reg. appeareth. And divers Purveyors were according to the ſaid reſolution of the Judges puniſhed in the Star-chamber, for purveying of Timber growing, without the conſent of the Owners. W.1. cap.1. & 32. See 25 E.3. cap.6. 35 H.8.cap.17. 5 Eliz. cap.8. 7 H.3.tit.Wa.141. 11 H.4.28.Pl.Com. 322. 42 E.3.cap.1: Mic. 2 Ja. reſolved 11 H.4.fo.28. No purveyance of gravel, becauſe it is part of the inheritance. See 47 E.3. fo.18. Iſſue taken upon the ſale of timber for reparation of Calais.

Boſcus is an ancient word uſed in the Law of England, for all manner of wood, and the Italian uſeth the word boſco in the ſame ſenſe, and the French, boys, accordingly. Boſcus is divided into two ſorts, viz. high-wood, haut-boys, or timber, and Coppice-wood (ſo called, becauſe it is uſually cut) or underwood. Highwood is properly called Saltus, Quia arbores ibi exiliunt in altum. It is called in Fleta. maeremium.

Fleta ubi ſupra.

Pl. Com. 236. The Common Law hath ſo admeaſured the Prerogative of the King, as he cannot take, nor prejudice the inheritance of any, and (as hath been ſaid) a man hath an inheritance in his woods.

Marlebr. cap. 5. And ſee the Statute of Marlebridge, Anno 52 H. 3. Magna Charta in ſingulis teneatur, tam in illis, quæ ad regem pertinent, quam ad alios, and 31 other Statutes. So as all pretence of Prerogative againſt Magna Charta is taken away.

34 E. 1. Vet. Magna Charta. fol. 37. 2 Part. See hereafter the Expoſition of the Statute De tallagio. Anno 34 E. 1. & de priſis, Anno 18 E. 2. vet. Magna Charta, fol. 125. 1 part.

CAP. XXII.

NOs non tenebimus terras illorum, qui convicti fuerint de felonia, niſi per unum annum, & unum diem, & tunc reddantur terræ illæ Dominis feodorum.

Glanv. li. 7. ca. 17. fol. 59. This appeareth by Glanvill, to be due to the King by his ancient Prerogative, for he ſaith, Sin autem de alio, quam de Rege tenuerit is, qui utlagatus eſt, vel de felonia convict. tunc quoque omnes res ſuæ mobiles Regis erunt, terra quoq; per unum annum remanebit in manu Domini Regis, elapſo autem anno, terra eadem ad rectum Dominum, ſcilicet ad ipſum, de cujus feod' eſt, revertetur, veruntamen cum domorum ſubverſione, & arborum extirpatione.

This Chapter of Magna Charta doth expreſs that which doth belong to the King, viz. the year and the day, and omit the Waſte, as not belonging to him, and this is notably explained by our ancient Books with an uniform conſent:

Bracton lib. 3. fol. 129. & 137. Bracton treating of the year, and the day in this caſe due to the King, ſaith, Sed quæ ſit cauſa, quare terra remanebit in manibus Domini Regis? Videtur quod talis eſt, quia revera, cum quis convictus fuerit de aliqua felonia, in poteſtate Domini Regis erit, proſternendi ædificia, extirpandi gardiana, & arandi prata, & quoniam hujuſmodi verterentur in grave damnum dominorum, pro communi utilitate proviſum fuit, quod hujuſmodi ædificia, gardiana & prata remanerent, & quod Dominus Rex propter hoc haberet commoditatem totius terræ illius per unum annum, & unum diem, & ſic omnia cum integritate reverterentur in manus Dominorum capitalium, nunc autem petitur utrumque, s. finis pro termino, & ſimiliter pro vaſto, & non video rationem quare, &c.

Nota: Proviſum fuit.

Britton cap. 5. fol. 14. And Britton treating of this very matter, ſaith, Lour biens mobles ſont les nous, & lour heires diſherit & voilons aver lour tenements de qui que unques ſont tenus, le an & le jour, iſſint que lour heritages, demourgent un an & un jour in noſtre maine, ſi que nous ne faiſons eſtre perie les tenements, ne gaſter les boys, ne arer les prees, ſicome lenſoloit faire in remembrance des felons attaints, &c.

Fleta li. 1. cap. 28. Fleta ſaith, Si autem utlagati, vel alii convicti terram liberam habuerint, illa ſtatim capienda eſt in manus Regis, & per unum annum, & unum diem tenend', ad capitales Dominos poſt illum terminum reverſura, & hoc habetur ex Statuto Magnæ Chartæ, quod tale eſt, nos non tenebimus terras illorum, qui convicti fuerint de felonia, niſi per unũ annũ, & unum diẽ, & tunc reddantur terræ illæ Dominis feodorũ, cauſa

cauſa vero talis termini Regis, quia in ſignum feloniæ olim proviſum fuit, quod ædificia talium proſternentur in terram, extirpentur gardina, ararentur prata, truncarentur boſci, & quoniam hujuſmodi verterentur in grave damnum dominorum feodorum, pro communi utilitate proviſum fuit, quod hujuſmodi dura, & gravia ceſſarent, & quod Rex propterea per annum & diem totius terræ commoditatem perciperet, ſecus autem, ſi terra non eſſet eſchaeta Dominorum, poſt quem terminum Dominis proprietariis integre abſque vaſto vel deſtructione reverterentur. Nota. Nota.

The Mirror ſpeaking of this Chapter ſaith, Le point des terres aux felons tener p un an eſt deſuſie, car p la ou le Roy ne duiſt aver q̄ le gaſt de droit, ou lan in noſme de fine, pur ſalver le fief de leſtripment, preignont les Miniſters le Roy ambideux. Upon all which it appeareth, that the King originally was to have no benefit in this caſe, upon the attainder of felony, where the fræ-land was holden of a Subject, but only in deteſtation of the crime, Ut pæna ad paucos, metus ad omnes perveniat, to proſtrate the houſes, to extirpe the gardens, to eradicate his woods, and to plow up the medows of the felon, for ſaving whereof, & pro bono publico, the Lords, of whom the Lands were holden, were contented to yield the lands to the King for a year and a day, and therefore not only the Waſte was juſtly omitted out of this Chapter of Magna Charta, but thereby it is enacted, that after the year and day, the land ſhall be rendred to the Lord of the fee, after which no Waſte can be done. Mirror cap. 5. § 2.

And where the treatiſe of Prerogativa Regis, made in 17 E. 2. ſaith, Et poſtquam Dominus Rex habuerit annum, diem, & vaſtum, tunc reddatur tenementum illud capitali Domino feodi illius, Niſi prius faciat finem pro anno, die & vaſto. Which is ſo to be expounded, that foraſmuch, as it appeareth in the ſaid old books, that the Officers and Miniſters, did demand both for the Waſte, and for the year, and day, that came in lieu thereof, therefore this Treatiſe named both, not that both were due, but that a reaſonable fine might be paid for all that, which the King might lawfully claim. But if this act of 17 E.2. be againſt this branch of Magna Charta, then is it repealed by the ſaid Act of 42 E.3. cap.1. Vide Stamford. Pl. Cor. 190, 191. Vide 3 E.3. coron. 327.

Hereby it alſo appeareth, how neceſſary the reading of ancient Authors is for underſtanding of ancient Statutes. And out of theſe old Books, you may obſerve, that when any thing is given to the King in lieu, or ſatisfaction of an ancient right of his Crown, when once he is in poſſeſſion of the new recompence, and the ſame in charge, his Officers and Miniſters will many times demand the old alſo, which may turn to great prejudice, if it be not duly, and diſcretly prevented. 3 E.3. ibid. 58. 3 E.3. ibid. 310. Paſc. 31 E.1. Cor. Rege Norff. Wil. de Ormesby.

¶ Non tenebimus terras.] If there be Lord, Meſne, and Tenant, and the Meſne is attainted of felony, the Lord Paramount ſhall have the Meſnalty preſently. For this prerogative belonging to the King extends only to the land, which might be waſted, in lieu whereof the year and day was granted.

And this is to be underſtood when a Tenant in fee-ſimple is attainted, for when Tenant in tail, or Tenant for life is attainted, there the King ſhall have the profits of the Lands, during the life of Tenant in tail, or of the Tenant for life.

¶ Convicti fuerint.] Here Convicti in a large ſenſe is taken for Attincti, for the nature, and true ſenſe of both theſe words, ſee the firſt part of the Inſtitutes, and likewiſe for this word felony there. See the firſt part of the Inſtitutes. Sect. 745.

¶ De felonia.] Muſt be underſtood of all manner of Felonies puniſhed by death, and not of petit larceny, which notwithſtanding is felony.

CAP.

CAP. XXIII.

25 E. 3. c. 4. 1 H. 4. c. 12. 12 E. 4. c. 7.

OMnes Kidelli deponantur de cætero penitus per Thameſiam & Medewein per totam Angliam niſi per coſteram maris.

Rot. cart. 18 Feb. Anno 11 H. 3.

Rex, &c. Noveritis nos pro communi utilitate Civitatis noſtræ Lond' & totius Regni noſtri conceſſiſſe, & firmiter præcepiſſe, ut omnes Kidelli qui ſunt in Tamiſia, vel Medeweia, ubicunque fuerint in Tamiſia, vel in Medeweia, amoveant', & non de cætero Kidelli alicubi ponant' in Tamiſia, vel in Medeweya, ſuper forisfactur' decem libr' ſterlingorum, quietum etiam clamavimus omne id, quod cuſtodes Turr' noſtræ London' annuatim percipere ſolebant de prædictis Kidellis: Quare volumus & firmiter præcipimus, ne aliquis cuſtos præfat' turr' aliquo tempore poſt hoc, aliquid exigat ab aliquo, nec aliquam demandam, aut gravamen, ſive moleſtiam alicui inferat occaſione prædictorum Kidellorum, ſatis enim nobis conſtat, & per fideles noſtros ſufficienter nobis datum eſt intelligi, quod maximum detrimentum, & incommodum prædictæ Civitati London', nec non & toto Regno noſtro occaſione prædictorum Kidellorum perveniebat; quod ut firmum, & ſtabile perſeveret imperpetuum, præſentis paginæ inſcriptione & ſigilli noſtri appoſitione communimus, ſicut carta Domini Regis Johannis Patris noſtri quam Barones noſtri Lond' inde habent rationabilit' teſtat'.

Lib. 10. f. 138. in the caſe of Cheſt. Mill. Keylw. 15 H. 7. 15. Cap. Itineris. nu. 5. Tr. 5 E. 2. Coram Rege Rot. 18. Glanv. li. 9. c. 11.

¶ Kidelli.] Kidels is a proper word for open wears whereby fiſh are caught.

It was ſpecially given in charge by the Juſtices in Eir, that all Juries ſhould enquire, De hiis qui piſcantur cum Kidellis & Skarkellis.

And it appeareth by Glanvill, that this pourpreſture was forbidden by the Common Law, for he ſaith, Dicitur autem purpreſtura, vel porpreſtura proprie, quando aliquid ſuper Dominum Regem injuſte occupatur, ut in dominicis Regis, vel in viis publicis obſtructis, vel in aquis publicis tranſverſis à recto curſu, vel quando aliquis in Civitate ſuper Regiam plateam aliquid ædificando occupaverit, & generaliter, quoties aliquid ſit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis, and every publick River or ſtream, is alta Regia via, the Kings high-way.

Pourpreſture cometh of the French word pourpriſe, which ſignifieth a cloſe, or incloſure, that is, when one encroacheth, or makes that ſeveral to himſelf, which ought to be common to many.

CAP.

CAP. XXIV.

BReve quod dicitur Præcipe in capite, de cætero non fiat alicui de aliquo libero tenemento, unde liber homo perdat curiam ſuam.

Mirror cap. 5. § 2. Bract. lib. 5. f. 328. & 414. b. Regiſt 4 3 E. 3. 23. 6 E. 3. 15 38 E. 3. 13. 39 E. 3. 26. F.N.B. 5. e.

This is for reformation of an abuſe, and wrong offered to the Lord, of whom the land was holden, and yet upon this Statute, the tenant cannot plead, that the lands are not holden of the King in chief, for two cauſes, firſt for that this Act was made for the benefit of the Lord, of whom this land is holden, and he cannot plead it, becauſe he is an eſtrang', and if one claiming to be Lord ſhould be admitted, another might come in and pretend the like, and ſo infinite. Secondly, This Act extends to the Chancery, for the words be Breve &c. non fiat, ſo in that Court the Writ is made: and therefore when the Writ is granted in the Chancery, and returned into the Court of Common Pleas, that which is by this Act prohibited in the Chancery, extendeth not to the Court of Common Pleas; and therefore they cannot admit of ſuch a plea: now the tenant, leaſt he be concluded, muſt take the tenure by proteſtation, and the King, though he be not party to the Record, yet ſhall he take advantage of the Eſtoppel, for he is ever preſent in Court.

20 E. 3. eſtoppel. 187. 22 E. 3. 17. 40 E. 3. 30.

And ſince this Statute, no man ought to have this Writ out of the Chancery upon a ſuggeſtion, but oath muſt be made, before the granting thereof, that the land is holden of the King in Capite.

See Mich. 4 E. 1. de banco Rot. 114. Norff. Barth. de Redhams caſe, pro terris in Curia comitis Warren apud Caſtleacre, notabile recordum ſuper hoc Statutum. Per breve præcipitur Juſticiariis, quod inquirant, ſi terræ tenentur de Rege in Capite. See the Writ in the Regiſter, 4. b. by which Writ power is given to the Juſtices, that if it may appear to them, that the land is not holden in Capite, then that the plea be holden in the Lords Court, according to this Statute. And for that the demandant Peter Grellye, confeſſed that the lands were not holden of the King in Capite, but of Edmond brother of the King, thereupon the entry was, Ideo Petrus perquirat ſibi per breve de recto patent in Curia ipſius Edi verſus R. ſi voluerit. Mich. 14 E. 1. Rot. 48. Som. acc. Regiſt. fo. 4. b. & 6. a.

Mich. 7 E. 1. in banco Rot. 65. Lanc' acc' Peter Grellyes caſe.

And the Lord, of whom the land is holden, ſhall upon this Statute, have his Writ of diſceit againſt the Demandant, which hath recovered by default, and recover his damages, but the Record of the judgment ſhall ſtand in force; and concerning the concluſion of the tenure, the Lord ſhall have remedy againſt the King by petition of right. But if the recovery be given upon trial againſt the tenant, then the tenant hath concluded himſelf for the tenure, becauſe his proteſtation cannot avail him, when his plea is found againſt him: But the Lord may have in that caſe, his action againſt the tenant, and his petition of right to the King, to be reſtored to his Seigniory, and by that means the tenant himſelf may be relieved.

8 E. 4. 6. 6 E. 3. 15 Vet. N.B. 13. a. F.N.B. 98. n.

See the firſt part of the Inſtitutes, Sect. 192. 17 E. 3. 31. 36, 37. 59. 32 E. 3. Avowry 113. 46 E. 3. petition 9.

¶ Breve.] Dicitur ideo breve, quia rem de qua agitur, & intentionem petentis paucis verbis breviter enarrat, ſicut facit regula Juris, quæ rem, quæ eſt, breviter enarrat.

Bract. lib. 3. f. 112. cap. 12. nu. 2. & l. 5. f. 413. c. 17. n. 2.

Breve quidem cum ſit formatum ad ſimilitudinem regulæ juris, quia breviter & paucis verbis intentionem proferentis exponit & explanat, ſicut regula juris rem quæ eſt breviter enarrat.

And Fleta defines a Writ, totidem verbis, as Bracton hath done.

Fleta, lib. 2. c. 12. § dicuntur etiam brevia.

There is a great diverſity between a Writ, and an Action, (although by ſome

ſome they are often confounded) which will beſt appear by their ſeveral definitions.

Actio nihil aliud eſt, quam jus proſequendi in judicio quod alicui debetur.

Bracton, l. 3. f. 98. b cap. 1. Fleta lib. 1. cap. 16. § actio & § 3. Actors.

And with Bracton agreeth Fleta.

Actio nihil aliud eſt, quam jus proſequendi in judicio quod alicui debetur, & quod naſcitur ex maleficio, vel quod provenit ex delicto, vel injuria.

Mirror cap. 2. § 1. neſt.

And the Mirror ſaith, Action neſt auẽ choſe que loiall' demand de ſon droit. Actors ſont queux ſuont lour droit per pleint, &c.

So as the firſt diverſity betwẽn an Action, and a Writ is, that an Action is the right of a ſuite, and the Writ is grounded thereupon, and the mean to bring the demandant or pl' to his right.

The ſecond diverſity, a Writ grounded upon right of Action is ever in foro contentioſo, but ſo are not all Writs, for that Writs are much more large, than Actions are, as ſhall appear by the diviſion of Writs.

Bracton l. 3. f. 101. c. 3. nu. 1. Fleta lib. 1. c. 16.

Of Writs grounded upon rights of Action, ſome be criminal, and ſome be civil or common.

Of Criminal, ſome be in perſonam, to have judgment of death, as Writs of appeal, of death, robbery, rape, &c. and ſome to have judgment of damage to the party, fine to the King, and impriſonment, as Writs of Appeal of Mayhem, &c.

Glanv. lib. 1. c. 1. Bracton ubi ſup. Fleta ubi ſup. Mirror ubi ſup. Plowd. Com. 73. &c. Regiſt. 187.

Of Writs Civil or Common, ſome be real, ſome perſonal, and ſome mixt. And of theſe, ſome be original, and all they go out of the Chancery, and ſome judicial, and they iſſue out of the Court, where the plea depended. Some Conditional, as Writs of Error, rediſſin, &c. ſome without Condition, ſome retornable, and ſome not retornable. And all theſe are warranted, either by the Common Law, or grounded upon ſome Act of Parliament. Which are ſo well known, as this little touch ſhall ſuffice.

Bract. l. 5. 413. b. Fleta, lib. 2. c. 12.

Of Original Writs, ſome be brevia formata, and ſome ex curſu, ſome magiſtralia & ſæpius variantur.

a Dier 23. Fitz. 377. a. *b* F.N.B. 28. 29.

Regularly the Kings Writs are, ex debito Juſtitiæ, to be granted to the ſubject, which cannot be denied, and ſome be ex gratia, as *a* ſpecial liveries, and *b* Writs of Protections for the ſafegard of the Subject, being in the Kings war out of the Realm.

c Regiſt. 227. *d* Ibid. 267. *e* Regiſt. 133. b. Fitz. N.B. 185. Regiſt. 206. F.N.B. ib.

In nature of Commiſſions; as Writs of Error, of Oier and Terminer, of election of Knights and Burgeſſes of the Parliament, of election of a Coroner, or of diſcharging of him, of election of Verderers, *c* De ventre inſpiciendo. *d* De viis & venellis mundandis, Regiſt. 267. Of the ſurety of the good behavior, or of the peace. *e* De odio & atia. Aſſociation, of de admittendo in ſocium, of Si non omnes, and the like. Writs of Juſticies.

Of Writs of Præcipe, ſome be, quod reddat, as Writs of right, &c. debt, &c. Some be quod permittat, as Writs De quod permittat. Some be quod faciat, as De conſuetudinibus & ſervitiis. De domo reparanda. And of Writs of Præcipe, ſome contain ſeveral precepts, and ſome joynt, and ſome are ſole.

Writs Mandatory, and extrajudicial, whereof ſome be affirmative, and ſome negative. Affirmative, as calling of men to the upper houſe of Parliament to be Pæers of the Realm. De Comitat commiſſis. Regiſt. 295. Of Conge de eſlier, licence to chooſe a Biſhop. Regiſt. 294. b. De regio aſſenſu. Regiſt. ibid. To call one to be Chief Juſtice of England. To call apprentices of Law to be Serjants. De brevibus & Rot. deliberandis. Regiſt. 295. De reſtitutione ſpiritualium Regiſt. 294. b. Negative, as De non ponendis in aſſiſis, & juratis. De ſecuritate invenienda, quod ſe non divertat ad partes exteras ſine licentia. De non reſidentia clerici Regis. De clerico infra ſacros ordines conſtituto non eligendo in officium. Ne fines capias pro non pulchre placitando.

Regiſt. 295. F.N.B. 170. Regiſt. 294. F.N.B. 165 a. F. N.B. 85. a. Regiſt. 58. b. Artic. ſup. cart. c. 6. Regiſt. 187. b. ibid. 179. a. F.N.B. 240. d.

Of Writs, ſome are for furtherance of Juſtice, and for ouſting of delays, and to proceed. As the Writ De procedendo ad judicium, that the Juſtices ſhall not ſurceaſe to do common right, for no commandment under the great Seal,

petit

petit Seal, or meſſage from the King. * Or *a* if the Judges of themſelves delay judgment, there lyeth alſo a procedendo ad judicium. Again, there is a procedendo in loquela, & ad judicium, after Aid of the King. A Writ de executione judicii.

b Some for advancement of Juſtice not to proceed.

c Regularly Writs are directed to the Sheriffs, or Coroners, but in ſpecial caſes to the party, or others. To the party, as Writs of prohibitions, Ne exeat regnum. To others, as to Judges Temporal, Eccleſiaſtical and Civil. To Serjeants at Armes. To the *d* party that hath the cuſtody of an idiot. To the *e* Mayor and Bayliffes, &c. ad movendum eos ab officio, quouſq; inquiſitio foret de eorum geſtu. *f* Liberate theſaurario, & camerariis, theſaurario & baronibus.

Note of Writs of right (whereof the præcipe in Capite is one) ſome be cloſe, and ſome be patent.

Writs of right returnable into the Court of Common pleas be patent, and Writs directed into ancient Demeſne, are cloſe; and the reaſon wherefore in other Courts of the Lords, the Writs ſhall be patent, is, becauſe there is a clauſe in thoſe Writs, & niſi feceris, Vicecomes N. hoc faciat, ne amplius clamorem audiamus pro defectu recti: which clauſe is not in the other Writs, and neceſſary it is that ſuch Writs ſhould be patent, that the Sheriff might take notice thereof.

a F.N.B.153.b. 2 E.3.ca.8. 5 E.3. ca.9. 14 E.3.ca.14. Regiſt.fol.186. F.N.B.153.

Regiſt.18. F.N.B. 20.

b Regiſt.124.125. revocat brevis de audiendo, &c.

All Writs of ſuperſedeas.

c Pl.com.fol.73. &c. See 12 H.4.24. in debt not cited in that caſe.

Regiſt.114,115. Writs of Audita querela, &c. prohibitions ad jura regal.

d Regiſt.267.a.

e Ib.126.b.

f Ib.192.b. 193. a.b.

CAP. XXV.

UNa menſura vini per totum Regnum noſtrum, & una menſura ceruiſiæ, & una menſura bladi, ſcilicet, quarterium Lond', & una latitudo pannorum tinctorum, ruſſatorum, & haubergettarum, ſcilicet duæ ulnæ infra liſtas. De Ponderibus vero ſic ſicut de Menſuris.

This Act concerning Meaſures and Weights, that there ſhould be one meaſure and one weight through England, is grounded upon the Law of God. Non habebis in ſacculo diverſa pondera, majus, & minus, non erit in domo tua modius major & minor, pondus habebis juſtum & verum, & modius æqualis erit tibi, ut multo vivas tempore ſuper terram, &c. And this hath often by authority of Parliament been enacted, but never could be effected, ſo forcible is cuſtom concerning multitudes, when it hath gotten an head, therefore good Laws are timely to be executed, and not in the beginning to be neglected.

Stat.de 31 E.1. 14 E.3.cap.12. 27 E.3.cap.10. See the Cuſtum. de Norm.cap.16. Deut.25.v.13,14.

For Weights and Meaſures, there are good Laws made before the Conqueſt: In dimenſione, & pondere nihil eſto iniquum, ab iniquitate vero deinceps quiſque temperet: Per commune concilium regni ſtatuimus, quod habeant per univerſum Regnum menſuras fideliſſimas, & ſignatas, & pondera fideliſſima, & ſignata, ſicut boni prædeceſſores ſtatuerunt.

Int' leges Canut. cap.9. Int' leges Will. Regis conq.

¶ Una latitudo pannorum, &c.] True it is, that broad clothes were made, though in ſmall number, at the time, and long before this Statute, but in the beginning of the reign of Edward 3. the ſame came to ſo great perfection, as in the 11 year of his reign all men were prohibited to bring in privily, or apertly by himſelf, or any other, any clothes made in any other places, &c. And this is the worthieſt and richeſt commodity of this Kingdom, for divide our native commodities exported into ten parts, and that which comes from the Sheeps back, is nine parts in value of the ten, and ſetteth great numbers of people on work. For the breadth and length of Clothes, ſee many Statutes made after this Act.

Mirror f.cap.5. § 2. Vet.Mag.Cart. cap.1tin.f.151. 11 E.3.cap.3.

CAP. XXVI.

NIhil de cætero detur pro brevi inquiſitionis ab eo, qui inquiſitionem petit de vita, vel de membris, ſed gratis concedatur, & non negetur.

¶ Brevi inquiſitionis.] That is the Writ de odio & atia, anciently called Breve de bono & malo, and here, of life and member, which the Common Law gave to a man that was impriſoned, though it were for the moſt odious cauſe, for the death of a man, for the which, without the Kings Writ he could not be bailed, yet the Law favouring the liberty and freedom of a man from impriſonment, and that he ſhould not be detained in priſon until the Juſtices in Eire ſhould come, at what time he was to be tried, he might ſue out this Writ of Inquiſition directed to the Sheriff, quod aſſumptis tecum cuſtodibus placitorum Coronæ in pleno comitatu per ſacramentum proborum, & legalium hominum de &c. inquiras (inde appellatur Breve inquiſitionis) utrum A. captus, & detentus in priſona, &c. pro morte W. unde rettatus (1. accuſatus exiſtit) rettatus ſit odio, & atia &c. niſi indictatus vel appellatus fuerit, coram Juſticiariis noſtris ultimo itinerantibus in partibus illis, & pro hoc captus, & impriſonatus, For by the Common Law, in omnibus autem placitis de felonia, ſolet accuſatus per plegios dimitti, præterquam de placito de homicidio, ubi ad terrorem aliter ſtatutum eſt. In this Writ, four things are to be obſerved.

Mirror cap. 5. §. 2. Regiſt. fol. 133. Glanv. lib. 14. c. 3. Bract. l. 3. f. 121. Fleta lib. 1. c. 23. 25. W. 1. cap. 11. Gloc. c. 9. W. 2. cap. 29. Hill. 32 E. 1. coram Rege Rot. 71. & 79. 5 H. 7. 5.

Glanv. lib. 14. c. 1.

First, though the offence whereof he was accuſed, were ſuch, as he was not bailable by Law, yet the Law did ſo highly hate the long impriſonment of any man, though accuſed of an odious and hainous crime, that it gave him this Writ for his relief.

Secondly, If he were indicted, or appealed thereof before the Juſtices in Eyre, he could not have this Writ, becauſe this Writ was grounded upon a ſurmiſe, which could not be received againſt a matter of Record.

Thirdly, Upon this Writ, though it were found, that he was accuſed de odio & atia, and that he was not guilty, or that he did this Act ſe defendendo, vel per infortunium, yet the Sheriff by this Writ had no authority to bail him, but then the party was to ſue a Writ de ponendo in ballium, directed to the Sheriff, whereby he was commanded, quod ſi prædictus A. invenerit tibi 12. probos, & legales homines de comitatu tuo, &c. qui eum manucapiant habere coram Juſticiariis noſtris ad primam aſſiſam, &c. Standum, &c. tunc ipſum A. &c. prædictis duodecim tradas in ballium.

Hill. 32 E. 1. ubi ſup.

Laſtly, that there was a mean by the Common Law before indictment or appeal, to protect the innocent againſt falſe acculation, and to deliver him out of priſon.

Odium, ſignifieth hatred, and atia or acia in this Writ ſignifieth malice, becauſe that malice is acida, that is, eager, ſharp and cruel.

Regiſt. f. 133, 134. Mirror c. 5. §. 2.

And this branch, for further benefit, and in favour of the priſoner, doth enact, that he ſhall have it gratis, without fee, and without delay, or denial, of which the Mirror ſaith thus, Le defence que ſe fait del briefe de odio, & atia, que le Roy ne ſon Chancelor ne preignont pur le briefe granter ſe doit extend a touts briefs remedials, & le dit briefe ne doit ſolement extender a felonies de homicide, mes a touts felonies, & ne ſolement in Appeles, mes en inditement.

28 E. 3. cap. 9. Stamf. Pl. Cor. 77. F. N. B. 92. 42 E. 3. ca. 1.

But this Writ was taken away by a later Statute, viz. in 28 E. 3. becauſe as ſome pretended, it became unneceſſary, for that Juſtices of Aſſiſe, Juſtices of Oyer and Terminer, and Juſtices of Gaol delivery came at the leaſt into every County twice every year; but within 12 years after this Statute, it was it enacted, as often hath been ſaid, that all Statutes made againſt Magna Charta (as the

ſaid

ſaid Act of 28 E. 3. was) ſhould be void, whereby the Writs of Odio & atia, & Deponendo in balium are revived, and ſo in like caſes upon all the branches of Magna Charta. And therefore the Juſtices of Aſſiſe, Juſtices of Oyer & Terminer, and of Gaol delivery have not ſuffered the Priſoner to be long detained, but at their next coming have given the Priſoner full and ſpeedy Juſtice, by due trial, without detaining him long in Priſon: May, they have bèn ſo far from allowance of his detaining in Priſon without due trial, that it was reſolved in the caſe of the Abbot of S. Albon by the whole Court, that where the King had granted to the Abbot of S. Albon to have a Gaol, and to have a Gaol delivery, and divers perſons were committed to that Gaol for Felony, and becauſe the Abbot would not be at coſt to make deliverance, he detained them in priſon long time without making lawful deliverance, that the Abbot had for that cauſe forfeited his Franchiſe, and that the ſame might be ſeiſed into the Kings hand.

See the Statute of Gloc. cap. 9.

8 H. 4. 18.
20 E. 4. 6.
Bro. tit. forfeiture.

For his committing to priſon is only to this end, that he may be forth coming, to be duly tried, according to the Law and Cuſtom of the Realm. The Abbot of Crowland had a Gaol, wherein divers men were impriſoned, and becauſe he detained ſome that were acquitted of Felony after their fées paid, the King ſeiſed the Gaol for ever.

20 E 4. 6.

And it is provided by the Statute of 5 H. 4. that none be impriſoned by any Juſtice of Peace, but in the Common Gaol, to the end they might have their trial at the next Gool delivery, or Seſſions of the peace. Vide cap. 29.

5 H. 4. cap. 10.
Lib. 9. fol. 119. Seignior Zanchars Caſe.

And ſome ſay, that this Statute extendeth to all other Judges and Juſtices for two reaſons. 1. They ſay, that this Act is but declaratory of the Common Law. 2. Ubi lex eſt ſpecialis, & ratio ejus generalis, generaliter accipienda eſt.

See the Statute of Gloc. cap. 9.

Breve Regis De bono & malo is ſo called of the words, De bono & malo, contained in the Writ. This Writ lay when A.B. was committed to priſon for the death of a man, the King did write to the Juſtices of Gaol delivery; Quod ſi A.B. captus, & detentus in gaola prædicta pro morte C.D. de bono & malo ſuper patriam inde ponere voluerit, & ea occaſione (& non per aliquod ſpeciale mandatum noſtrum) detentus ſit in eadem, tunc eandem gaolam de prædicto A. B. ſecundum legem, & conſuetudinem Angliæ, deliberetis. So as without queſtion the Writ De bono & malo, is not the Writ De odio & atia, as ſome have imagined.

Hil. 32 E. 1. Coram Rege Eborum. Roger le Wildes Caſe.
See the form of this Writ at large in this Record.

Note, in thoſe days the Juſtices of Gaol delivery would not proceed in caſe of the death of a man, without the Kings Writ: For in the ſame Record it appeareth, that R.W. Indictatus de morte W.E. non tulit breve Regis de bono, & malo, ideo retornatur gaolæ, & ſic de aliis.

CAP. XXVII.

SI aliqui teneant de nobis per feodi firmam, vel per Socagium, vel Burgagium, & de alio teneant terram per ſervitium militare, nos non habebimus cuſtodiam hæredis, nec terræ ſuæ, quæ eſt de feodo alterius, occaſione illius feodi firmæ, vel Socagii, vel Burgagii. Nec habebimus cuſtodiam illius feodi firmæ, vel Socagii, vel Burgagii, niſi ipſa feodi firma nobis debeat ſervitium Militare. Nos non habebimus cuſtodiam hæred', vel alicujus terræ, quam tenet de aliquo alio per ſervitium militare, occaſione alicujus parvæ Serjantiæ, quam tenet de nobis per ſervitium, reddend' nobis cultellos, ſagittas, vel hujuſmodi.

See the Statute of Glouc. cap. 4. F.N.B. 110. 45 E. 3. 15.

¶ Per feodi firmam.] **Fée farm properly taken is, when the Lord upon the creation of the Tenancy reſerve to himſelf, and his heirs, either the rent, for the which it was before letten to Farm, or at leaſt a fourth part of that Farm rent.**

Brit. fol. 164. b. Bract. li. 2. fo. 35. Fleta lib. 1. ca. 10. Mirror ca. 2. §. 17.

But Britton ſaith, Fee farmes ſont terres tenus in fee, a rendre pur eux per ann̄ le veray value, ou plus, ou meins, **and is called a fée Farm, becauſe a Farm rent is reſerved upon a grant in fée. And regularly, as it appeareth by this Act, Lands granted in fee Farm are holden in ſocage, unleſs an expreſs tenure by Knights ſervice be reſerved, as it appeareth hereafter in this Chapter.**

See the firſt part of the Inſtitutes. Sect. 117. * Rot. clauſ. 12 H. 3. m. 12.

¶ Vel per ſocagium.] * Tenere per firmam Albam eſt tenere libere in ſocagio. Vide in libro nigro Scaccarii, capite De officio clericorum de firma blanca. **It is commonly called blanch Farm.** Lucubrat̄ Oekham, firma blanca, & vide ibi antiquum verbum [dealbari.]

Litt. Sect. 162.

¶ Burgagium.] **See the** Cuſtumier de Normandy cap. 32. **and the Commentaries upon the ſame.**

Ibid. Sect. 103.

¶ Per ſervitium militare.] **See** le Cuſtumier de Norman. cap. 33. De gard de Orphelines, fol. 49. **and the Comment upon the ſame.**

Glanv. li. 7. ca. 9.

This Act, as well concerning tenures in Fee Farm, Socage and Burgage, as by little Serjanty, is declaratory of the Common Law, and conſtantly in uſe to this day, and needeth no further explanation.

CAP. XXVIII.

NUllus ballivus de cætero ponat aliquem ad legem manifeſtam, nec ad juramentum ſimplici loquela ſua, ſine teſtibus fidelibus ad hoc inductis.

Mirror cap. 5. §. 2. Fleta li. 2. cap. 56. W. 2. ca. 35. des hauts homes.

The Mirror **treating of this Chapter ſaith,** Le point que defend, que nul Bayliffe met frank home a ſerement ſans ſute preſent, eſt interpretable en ceſt manner, Que nul Juſtice, nul Miniſter le Roy, ne auter ſeneſchal, ne bailif ne eit power a mitter frank home a ſerement faire, ſans le Commaundement le Roy, ne puit reſceive aſcuns teſtmoignes, que teſtmoignent le monſtrance eſtre veray.

Fleta ubi ſupra. Vide Vet. Magna Charta part 2. in Stat. Hibern. 68. b. See the firſt part of the Inſtitutes. Sect. 248.

By this it appeareth, that under this word ballivus, **in this Act is comprehended every Juſtice, Miniſter of the King, Steward and Bayliffe.**

¶ Simplici

¶ Simplici loquela ſua.] For as Bracton ſaith, Vox ſimplex nec probationem facit, nec præſumptionem inducit; Item non per ſectam, quæ fieri poteſt per domeſticos, & familiares, ſecta enim probationem non facit, ſed levem inducit præſumptionem, & vincitur per probationem in contrarium, & per defenſionem per legem. Bract. l. 5. f. 400. b.

It appeareth by Glanvill, that the defendant ought to make his Law, 12 manu. And ſo it appeareth by a judgment in the ſame year, and term, that this great Charter was made, for there, in debt the defendant waged his Law, Ideo conſideratum eſt per Curiam, quod defendens ſe duodecima manu venit cum lege. Glanv. li. 1. c. 9. Mich. 9 H. 3. tit. Ley 78.

Every wager of Law doth countervail a Jury, for the defendant ſhall make his Law, de duodecima manu, viz. an eleven, and himſelf. And it ſhould ſeem, that this making of Law was very antient, for one writing of the antient Law of England ſaith, Hujus purgationis non omnis evanuit vetuſtate memoria, nam per hæc tempora de pecunia poſtulatus, debitum nonnunquam duodecima, quod aiunt, manu diſſolvit. 33 H. 6. 8.

How much, and for what cauſe the Law reſpecteth the number of 12 ſee the firſt part of the Inſtitutes. See the firſt part of the Inſtitutes, Sect. 234.

The party himſelf, when he maketh his Law, ſhall be ſworn de fidelitate, that is, directly or abſolutely, and the others de credulitate, that is, that they believe, that he ſaith true.

To make his Law, is as much as to ſay, as to take his oath, &c. and it is ſo called, becauſe the Law giveth him that mean by his own oath, to free himſelf.

And the reaſon, wherefore in an action of Debt upon a ſimple contract, the Defendant may wage his Law, is, for that the Defendant may ſatisfie the party in ſecret, or before witneſs, and all the witneſſes may die, ſo the Law doth allow him to wage his Law for his diſcharge: and this, for ought I could ever read, is peculiar to the Law of England, and no miſchief inſueth hereupon, for the Plaintiff may take a Bill or Bond for his money, or if it be a ſimple contract, he may bring his action upon his caſe upon his agreement or promiſe, which every contract executory implieth, and then the Defendant cannot wage his Law.

CAP. XXIX.

NUllus liber homo capiatur, vel impriſonetur, aut diſſeiſietur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlagetur, aut exuletur, aut aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terræ. Nulli vendemus, nulli negabimus, aut differemus juſtitiam, vel rectum. See the Statute anno 34 E. 1. de tallagio, &c. an excellent Law.

¶ Nullus liber, &c.] This extends to Villeins, ſaving againſt their Lord, for they are free againſt all men, ſaving againſt their Lord. See the firſt part of the Inſtitutes, Sect. 189. 20 H. 6 cap. 9. Stamf. Pl. Cor. 152 b. 25 E. 3. 43. b. l. 6. fol. 52. The Counteſs of Rutlands caſe. 11 H 4. 15. 3 H. 6. 58. 48 E. 3. 30. 35 H. 6. 46.

¶ Nullus liber homo.] Albeit homo doth extend to both ſexes, men and women, yet by Act of Parliament it is enacted, and declared, that this Chapter ſhould extend to Ducheſſes, Counteſſes, and Baroneſſes, but Marchioneſſes, and Vicounteſſes are omitted, but notwithſtanding they are alſo comprehended within this Chapter.

Upon

Upon this Chapter, as out of a root, many fruitful branches of the Law of England have ſprung.

And therefore firſt the genuine ſenſe hereof is to be ſeen, and after how the ſame hath been declared, and interpreted. For the firſt, for more perſpicuity, it is neceſſary to divide this Chapter into ſeveral branches, according to the true conſtruction and reference of the words.

This Chapter containeth nine ſeveral branches.

See W.1. cap.15. 1. That no man be taken or impriſoned, but per legem terræ, that is, by the Common Law, Statute Law, or Cuſtom of England, for theſe words, Per legem terræ, being towards the end of this Chapter, do refer to all the precedent matters in this Chapter, and this hath the firſt place, becauſe the liberty of a mans perſon is more precious to him, than all the reſt that follow, and therefore it is great reaſon, that he ſhould by Law be relieved therein, if he be wronged, as hereafter ſhall be ſhewed.

2. No man ſhall be diſſeiſed, that is, put out of ſeiſin, or diſpoſſeſſed of his free-hold (that is) lands, or livelihood, or of his liberties, or free-cuſtoms, that is, of ſuch franchiſes, and freedoms, and free-cuſtoms, as belong to him by his free birth-right, unleſs it be by the lawful judgment, that is, verdict of his equals (that is, of men of his own condition) or by the Law of the Land (that is, to ſpeak it once for all) by the due courſe, and proceſs of Law.

3. No man ſhall be out-lawed, made an exlex, put out of the Law, that is, deprived of the benefit of the Law, unleſs he be out-lawed according to the Law of the Land.

4. No man ſhall be exiled, or baniſhed out of his Country, that is, Nemo perdet patriam, no man ſhall loſe his Country, unleſs he be exiled according to the Law of the Land.

5. No man ſhall be in any ſort deſtroyed (Deſtruere, i. quod prius ſtructum, & factum fuit, penitus evertere & diruere) unleſs it be by the verdict of his equals, or according to the Law of the Land.

6. No man ſhall be condemned at the Kings ſuite, either before the King in his Bench, where the Pleas are Coram Rege, (and ſo are the words, Nec ſuper eum ibimus, to be underſtood) nor before any other Commiſſioner, or Judge whatſoever, and ſo are the words, Nec ſuper eum mittemus, to be underſtood, but by the judgment of his Peers, that is, equals, or according to the Law of the Land.

7. We ſhall ſell to no man Juſtice or Right.

8. We ſhall deny to no man Juſtice or Right.

9. We ſhall defer to no man Juſtice or Right.

The genuine ſenſe being diſtinctly underſtood, we ſhall proceed in order to unfold how the ſame hath been declared, and interpreted. 1. By authority of Parliament. 2. By our books. 3. By precedent.

* See W.1. cap.15 *a* 5 E.3.c.9. 25 E. 3.c.4. 37 E.3.c.8. 38 E.3.c.9. 42 E.3 c.3. 17 R.2. cap.6. Rot.Parl. 43 E.3. Sir Jo. a Lees caſe. nu. 21,22,23, &c. lib.10. fol. 74. in caſe del Marſhalſea.

¶ Nullus liber homo capiatur, aut impriſonetur.] Attached and arreſted are comprehended herein.

1. No man ſhall be taken, (that is) reſtrained of liberty, by petition, or ſuggeſtion to the King, or to his Councel, * unleſs it be by indictment, or preſentment of good and lawful men, where ſuch deeds be done. This branch, and divers other parts of this Act have been notably explained by divers *a* Acts of Parliament, &c. quoted in the margent.

b See 43 Aſſ. p.21 where this branch of Magna Charta, and other Statutes are cited, *nota bene*, the uſurpation to an advowſon is within this Act. 5 E.3.c.9. 25 E.3. cap.4.

2. No man ſhall be diſſeiſed, &c.

b Hereby is intended, that lands, tenements, goods and chattels ſhall not be ſeiſed into the Kings hands, contrary to this great Charter, and the Law of the Land; Nor any man ſhall be diſſeiſed of his lands or tenements, or diſpoſſeſſed of his goods or chattels, contrary to the Law of the Land.

c 43 E.3.32. *c* A cuſtom was alledged in the Town of C. that if the Tenant ceaſe by two years, that the Lord ſhould enter into the freehold of the Tenant, and hold the ſame until he were ſatisfied of the arrerages, and it was adjudged a cuſtom againſt

againſt the Law of the Land, to enter into a mans freehold in that caſe without action or anſwer.

King H. 6. granted to the Corporation of Diers within London, power to ſearch, &c. and if they found any cloth died with Logwood, that the cloth ſhould be forfeit: and it was adjudged, that this Charter concerning the forfeiture, was againſt the Law of the Land, and this Statute: For no forfeiture can grow by Letters Patents. Lib. 8. Tr. 41 El. fol. 125. Caſe de Londres.

No man ought to be put from his livelihood without anſwer.

3. No man outlawed, that is, barred to have the benefit of the Law. Vide for the word, the firſt part of the Inſtitutes. 2 & 3 Ph. & Mar. Dier 114, 115.

Note to this word utlagetur, theſe words, Niſi per legem terræ, do refer.

¶ De libertatibus.] This word, libertates, liberties, hath three ſignifications:

1. Firſt, As it hath been ſaid, it ſignifieth the Laws of the Realm, in which reſpect this Charter is called, Charta libertatum.

2. It ſignifieth the freedoms that the Subjects of England have; For example, the Company of the Merchant Tailors of England, having power by their Charter to make Ordinances, made an Ordinance, that every brother of the ſame Society ſhould put the one half of his clothes to be dreſſed by ſome Clothworker free of the ſame Company, upon pain to forfeit x s. &c. and it was adjudged that this Ordinance was againſt Law, becauſe it was againſt the Liberty of the Subject, for every Subject hath freedom to put his clothes to be dreſſed by whom he will, & ſic de ſimilibus: And ſo it is, if ſuch or the like grant had been made by his Letters Patents. Tr. 41 Eliz. Corã Rege Rot. 92. in trn's int. Davenant & Hurdes.

3. Liberties ſignifieth the franchiſes, and priviledges, which the Subjects have of the gift of the King, as the goods, and Chattels of felons, outlaws, and the like, or which the Subject claims by preſcription, as wreck, waif, ſtray, and the like.

So likewiſe, and for the ſame reaſon, if a grant be made to any man, to have the ſole making of Cards, or the ſole dealing with any other trade, that grant is againſt the liberty, and freedom of the Subject, that before did, or lawfully might have uſed that trade, and conſequently againſt this great Charter. Tr. 44 Eliz. Corã Rege, lib. 11. fol. 84, 85, &c. Edw. Darcies caſe.

Generally all monopolies are againſt this great Charter, becauſe they are againſt the liberty and freedom of the Subject, and againſt the Law of the Land.

¶ Liberis conſuetudinibus.] Of Cuſtoms of the Realm, ſome be general, and ſome particular. Of theſe read in the firſt part of the Inſtitutes. And liberis is added, for that the Cuſtoms of England bring a freedom with them.

4. No man exiled.

By the Law of the Land no man can be exiled, or baniſhed out of his native Country, but either by authority of Parliament, or in caſe of abjuration for felony by the Common Law: and ſo when our books, or any Record ſpeak of exile or baniſhment, other then in caſe of abjuration, it is to be intended to be done by authority of Parliament: * as Belknap and other Judges, &c. baniſhed into Ireland. Rot. Parl. 19 E. 1. Rot. 12. Boilands caſe. 31 E. 1. Cui in vita 31. 18 E. 3. 54. Matravers caſe. Parliam. 15 E. 2. Exilium Hugonis. * Rot. Parl. 13 R. 2. nu. 28. Stam. Pl. Cor. 116, 117. 35 E. 1. cap. 1.

This is a beneficial Law, and is conſtrued benignly, and therefore the King cannot ſend any Subject of England againſt his will to ſerve him out of this Realm, for that ſhould be an exile, and he ſhould perdere patriam: no, he cannot be ſent againſt his will into Ireland, to ſerve the King as his Deputy there, becauſe it is out of the Realm of England: for if the King might ſend him out of this Realm to any place, then under pretence of ſervice, as Ambaſſador, or the like, he might ſend him into the furtheſt part of the world, which being an exile, is prohibited by this Act. And albeit it was accorded in the Upper-houſe of Parliament, Anno 6 E. 3. nu. 6. that ſuch learned men in the Law, as ſhould

be

be ſent, as Juſtices, or otherwiſe, to ſerve in Ireland, ſhould have no excuſe, yet that being no Act of Parliament, it did not bind the Subject. And this notably appeareth by a Record, in 44 E. 3. Sir Richard Pembrughs Caſe, who was Warden of the Cinque Ports, and had divers offices, annuities, and lands granted to him for life, or in fee by the King under the great Seal, Pro ſervitio impenſo, & impendendo. The King commanded Sir Richard to ſerve him in Ireland, as his Deputy there, which he abſolutely refuſed, whereupon the King by advice of his Councel, ſeiſed all things granted to him, pro ſervitio impendendo, (in reſpect of that clauſe) but he was not upon that reſolution committed to Priſon, as by that Record it appeareth: And the reaſon was becauſe his refuſal was lawful, and if the refuſal was lawful to ſerve in Ireland parcel of the Kings Dominions, à fortiori, a refuſal is lawful to ſerve in any forrein Country. And it ſeemeth to me, that the ſaid ſeiſure was unlawful, for pro ſervitio impenſo & impendendo, muſt be intended lawful ſervice within the Realm.

Rot. clauſ. Anno 44 E. 3. Sir Rich. Pembrughs Caſe.

5. No man deſtroyed, &c.

That is, fore-judged of life, or limb, diſherited, or put to torture, or death.

5 E. 3. c. 9. 28 E. 3 c. 3. Forteſcue cap. 22.

Mirror cap. 2. § 3. The Mirror writing of the ancient Laws of England, ſaith, Soloient les Roys faire droit a touts, per eux, ou per lour Chiefe Juſtices; & ore les faits les Royes per lour Juſtices Comiſſaries errants aſſignes a touts pleas: En aid de tiels eires ſont Tornes de Viſcounts neceſſaries, & views de frankpl. & quant que bones gents a tiels inqueſts inditerent de peche mortel, ſoloient les Royes deſtruere ſans reſpons, &c. Accord eſt, que nul appelee, ne enditee ſoit deſtroy ſans reſpons.

Paſc. 39 E. 3. Coram Rege, John of Gaunts caſe. Rot. Parl. 4 E. 3. nu. 13. Countee de Arund. caſe. Rot. Parl. 42 E. 3. nu. 23. Sir Jo. of Lees caſe.

Thomas Earl of Lancaſter was deſtroyed, that is, adjudged to die, as a Traitor, and put to death in 14 E. 2. and a Record thereof made: And Henry Earl of Lancaſter his brother, and heir was reſtored for two principal errors in the proceeding againſt the ſaid Thomas Earl, 1. Quod non fuit araniatus, & ad reſponſionem poſitus tempore pacis, eo quod cancellaria, & aliæ Curiæ Regis fuer' apertæ, in quibus lex fiebat unicuique, prout fieri conſuevit. 2. Quod contra cartam de libertatibus, cum dictus Thomas fuit unus parium, & magnatum Regni, in qua continetur, and reciteth this Chapter of Magna Charta, and ſpecially, quod Dominus Rex non ſuper eum ibit, nec mittet, niſi per legale judicium parium ſuorum, tamen per recordum prædictum, tempore pacis abſq; aranamento, ſeu reſponſione, ſeu legali judicio parium ſuorum, contra legem, & contra tenorem Magnæ Chartæ.) he was put to death: More examples of this kind might be ſhewed.

Lib. 10. fol. 74. In the caſe of the Marſhalſea. *Regula.* Every oppreſſion againſt Law, by colour of any uſurped authority, is a kind of deſtruction, for, Quando aliquid prohibetur, prohibetur & omne, per quod devenitur ad illud: And it is the worſt oppreſſion, that is done by colour of Juſtice.

It is to be noted, that to this Verb deſtruatur, are added aliquo modo, and to no other Verb in this Chapter, and therefore all things, by any manner of means tending to deſtruction, are prohibited: As if a man be accuſed or indicted of treaſon, or felony, his lands, or goods cannot be granted to any, no not ſo much as by promiſe, nor any of his lands, or goods ſeiſed into the Kings hands, before attainder: For when a Subject obtaineth a promiſe of the forfeiture, many times undue means and more violent proſecution is uſed for private lucre, tending to deſtruction, than the quiet and juſt proceeding of Law would permit, and the party ought to live of his own until attainder.

Rot. Parl. 15 E. 3. nu. 6. &c.

11 E. 3. breve. 173 6 R. 2. proces. Pl. ultimo. 20 E. 4. 6. 20 Eliz. Dier 360. Lib. 9. fol. 117. Seignior Zanchars caſe.

¶ Per judicium parium ſuorum. By judgment of his Peers. Only a Lord of Parliament of England ſhall be tried by his Peers being Lords of Parliament: and neither Noblemen of any other Country, nor others that are called Lords, and are no Lords of Parliament, are accounted Pares, Peers within this Statute. Who ſhall be ſaid Pares, Peers, or Equals, ſee before Cap. 14. § per Pares.

Here note, as is before ſaid, that this is to be underſtood of the Kings ſute for

for the words be, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum. Therefore, for example, if a Noble man be indicted for murder, he ſhall be tried by his Peers, but if an Appeal be brought againſt him, which is the ſuit of the party, there he ſhall not be tried by his Peers, but by an ordinary Jury of twelve men: and that for two reaſons. Firſt, for that the Appeal cannot be brought before the Lord high Steward of England, who is the only Judge of Noble men, in caſe of Treaſon or Felony. Secondly, this Statute extendeth only to the Kings ſuit. 1 H.4. 1. 13 H.8. 1. 10 E.4. 6.

And it extendeth to the Kings ſuit in caſe of treaſon or felony, or of miſpriſion of treaſon or felony, or being acceſſary to felony before, or after, and not to any other inferior offence. Alſo it extendeth to the trial it ſelf, whereby he is to be convicted: but a Nobleman is to be indicted of treaſon or felony, or of miſpriſion, or being acceſſary to in caſe of felony, by an inqueſt under the degree of Nobility: the number of the Noblemen that are to be triers are, 12. or more.

And a Peer of the Realm may be indicted of treaſon or felony, before Commiſſioners of Oier & Terminer, or in the Kings Bench, if the treaſon or felony be committed in the County where the Kings Bench ſit: he alſo may be indicted of murder, or manſlaughter, before the Coroner, &c. But if he be indicted in the Kings Bench, or the Indictment removed thither, the Nobleman may plead his pardon there before the Judges of the Kings bench, and they have power to allow it, but he cannot confeſs the indictment, or plead not guilty before the Judges of the Kings Bench, but before the Lord Steward; and the reaſon of this diverſity, that the trial or judgment muſt be before or by the Lord Steward, but the allowance of the pardon may be by the Kings Bench, is becauſe that is not within this Statute. 19 H.7. Edm. de la Pole Earl of Suff. caſe. Hil. 13. Jacob. the Lord Norrice caſe coram Rege.

If a Nobleman be indicted, and cannot be found, proces of Outlawry ſhall be awarded againſt him per legem terræ, and he ſhall be Outlawed per judicium Coronatorum, but he ſhall be tried per judicium parium ſuorum, when he appears and pleads to iſſue. Stamf. pl. cor. 130.

¶ Per legale judicium.] By this word legale, amongſt others, three things are implied. 1. That this manner of trial was by Law, before this Statute. 2. That their verdict muſt be legally given, wherein principally it is to be obſerved. 1. That the Lords ought to hear no evidence but in the preſence and hearing of the priſoner. 2. After the Lords be gone together to conſider of the evidence, they cannot ſend to the high Steward to aſk the Judges any queſtion of Law, but in the hearing of the priſoner, that he may hear whether the caſe be rightly put, for de facto jus oritur; neither can the Lords, when they are gone together, ſend for the Judges to know any opinion in Law, but the high Steward ought to demand it in Court in the hearing of the priſoner. 3. When all the evidence is given by the Kings learned Councel, the high Steward cannot collect the evidence againſt the priſoner, or in any ſort confer with the Lords touching their evidence, in the abſence of the priſoner, but he ought to be called to it; and all this is implied in this word legale. And therefore it ſhall be neceſſary for all ſuch priſoners, after evidence given againſt him, and before he depart from the Bar, to require Juſtice of the Lord Steward, and of the other Lords, that no queſtion be demanded by the Lords, or ſpeech or conference had by any with the Lords, but in open Court in his preſence and hearing, or elſe he ſhall not take any advantage thereof after verdict and judgment given: but the handling thereof at large, and of other things concerning this matter, belongs to another Treatiſe, as before I have ſhewed, only this may ſuffice for the Expoſition of this Statute. See the 3. part of the Inſtitutes, cap. Treaſon. Paſch. 26 H.8. in the caſe of the L. Dacres of the North, reſolved by all the Judges of England as Juſtice Spelman reports. See the 3 part of the Inſtitutes cap. Treaſon.

And it is here called Judicium parium, and not veredictum, becauſe the Noble men returned, and charged, are not ſworn, but give their judgment upon their Honour and Ligeance to the King, for ſo are all the Entries of Record, ſeparately beginning at the puiſne Lord, and ſo aſcending upward.

Rot. Parliam. 4 E.3. nu.6. And though of ancient time the Lords and Péers of the Realm uſed in Parliament to give judgment, in caſe of Treaſon and Felony, againſt thoſe that were no Lords of Parliament, yet at the ſuit of the Lords it was enacted, that albeit the Lords and Péers of the Realm, as Judges of the Parliament, in the preſence of the King, had taken upon them to give Judgment, in caſe of Treaſon and Felony, of ſuch as were no Péers of the Realm, that hereafter no Péers ſhall be driven to give Judgment on any others, than on their Péers according to the Law.

Anno 8 Will. conq. This trial by Péers was very ancient, for I read, that William the Conqueror, in the beginning of his reign, created William Fitzosberne (who was Earl of Bretevil in Normandy) Earl of Hereford in England, his Son Roger ſucceeded him, and was Earl of Hereford, who under colour of his Siſters marriage at Exninge near Newmarket in Cambridgeſhire, whereat many of the Nobility, and others were aſſembled, conſpired with them to receive the Danes into England, and to depoſe William the Conqueror, (who then was in Normandy) from his Kingdom of England: and to bring the ſame to effect, he with others roſe. This Treaſon was revealed by one of the Conſpirators, viz. Walter Earl of Huntingdon an Engliſh man, Son of that great Syward Earl of Northumberland: for which Treaſon this Roger Earl of Hereford was apprehended by Urſe Tiptoft then Sheriff of Worceſterſhire, and after was tried by his Péers, and found guilty of the Treaſon per judicium Parium ſuorum, but he lived in priſon all the days of his life. You have heard in the Expoſition of the 14 Chapter, who are to be ſaid Péers, ſomewhat is neceſſary to be added thereunto. It is provided by the Statute of 20 H.6. That Dutcheſſes, Counteſſes and Baroneſſes, ſhall be tried by ſuch Péers as a Nobleman, being a Péer of the Realm ought to be; which Act was made in declaration and affirmance of the Common Law: for Marqueſſes and Vicounteſſes not named in the Act ſhall be alſo tried by their Péers, and the Quéen being the Kings conſort, or dowager, ſhall alſo be tried, in caſe of Treaſon, per Pares, as Quéen Anne, the Wife of King Henry the eight was Termino Paſch. anno 28 H.8. in the Tower of London before the Duke of Norff. then high Steward.

Anno 8 W.1.

20 H.6. cap.9.

Paſch. 28 H.8. Spelmans report.

If a Woman that is Noble by birth, doth marry under the degree of Nobility, yet ſhe ſhall be tried by her Peers, but if ſhe be noble by marriage, and marry under the degree of Nobility ſhe loſeth her Dignity, for as by marriage it was gained, ſo by marriage it is loſt, and ſhe ſhall not be tried by her Peers.

22 H 6.47. 11 H.6.51. If a Dutchels by marriage do marry a Baron, ſhe loſeth not her Dignity, for all degrees of Nobility, as hath been ſaid, are Pares. If a Queen Dowager marry any of the Nobility, or under that degree, yet loſeth ſhe not her Dignity, as Katherine Queen Dowager of England, married Owen ap Meredith ap Theodore Eſquire, and yet ſhe by the name of Katherine Queen of England, maintained an Action of Detinue, againſt the Biſhop of Carlile.

Rot. Parliam. 26 E.1.Rot.1. And the Queen of Navarra marrying with Edmund the brother of E. 1. ſued for her Dower by the name of Queen of Navarra and recovered.

¶ Niſi per Legem terræ.] But by the Law of the Land. For the true ſenſe and expoſition of theſe words, ſee the Statute of 37 E.3. cap.8. where the words, by the Law of the Land, are rendred, without due proces of Law, for

25 E.3.cap.4. there it is ſaid, though it be contained in the great Charter, that no man be taken, impriſoned, or put out of his freehold without proces of the Law, that is, by indictment or preſentment of good and lawful men, where ſuch deeds be done in due manner, or by Writ original of the Common Law.

28 E.3.cap.3. Without being brought in to anſwer but by due Proces of the Common law.

37 E.3.cap.8. 42 E 3.cap.3. No man be put to anſwer without preſentment before Juſtices, or thing of record, or by due proces, or by writ original, according to the old Law of the Land.

Wherein it is to be obſerved, that this Chapter is but declaratory of the old Law of England. Rot. Parliament 43 E.3. nu. 22,23. the caſe of Sir John a Lee, the Steward of the Kings houſe.

Per

¶ Per legem terræ.] i. Per legem Angliæ, and hereupon all Commiſſions are grounded, wherein is this clauſe, facturi quod ad juſtitiam pertinet ſecundum legem, & conſuetudinem Angliæ, &c. And it is not ſaid, legem & conſuetudinem Regis Angliæ, leſt it might be thought to bind the King only, nor populi Angliæ, leſt it might be thought to bind them only, but that the Law might extend to all, it is ſaid per legem terræ, i. Angliæ.

And aptly it is ſaid in this Act, per legem terræ, that is, by the Law of England: For into thoſe places where the Law of England runneth not, other Laws are allowed in many caſes, and not prohibited by this Act. For example: If any injury, robbery, felony, or other offence be done upon the high Sea, Lex terræ extendeth not to it, therefore the Admiral hath conuſance thereof, and may proceed according to the marine Law by impriſonment of the body, and other proceedings, as have been allowed by the Laws of the Realm. 19 H.6.7.

And ſo if two Engliſh men do go into a forrain Kingdom, and fight there, and the one murder the other, lex terræ extendeth not hereunto, but this offence ſhall be heard and determined before the Conſtable and Marſhal, and ſuch proceedings ſhall be there by attaching of the body, and otherwiſe, as the Law and Cuſtom of that Court have been allowed by the Laws of the Realm. 13 H.4.5.

Againſt this ancient and fundamental Law, and in the face thereof I find an Act of Parliament made, that as well Juſtices of Aſſile, as Juſtices of Peace (without any finding or preſentment by the verdict of twelve men) upon a bare information for the King before them made, ſhould have full power and authority by their diſcretions, to hear and determine all offences and contempts committed, or done by any perſon or perſons againſt the form, ordinance and effect of any Statute made, and not repealed, &c. By colour of which Act, ſhaking this fundamental Law, it is not credible what horrible oppreſſions and exactions, to the undoing of infinite numbers of people were committed by Sir Richard Empſon Knight, and Edm. Dudley being Juſtices of Peace, throughout England; and upon this unjuſt and injurious Act (as commonly in like caſes it falleth out) a new office was erected, and they made Maſters of the Kings forfeitures. 11 H.7.cap.3.

But at the Parliament holden in the firſt year of H. 8. this Act of 11 H. 7. is recited and made void, and repealed, and the reaſon thereof is yielded, for that by force of the ſaid Act it was manifeſtly known, that many ſiniſter and crafty, feigned and forged informations had been purſued againſt divers of the Kings Subjects, to their great damage, and wrongful vexation: And the ill ſucceſs hereof, and the fearful end of theſe two oppreſſors, ſhould deter others from committing the like, and ſhould admoniſh Parliaments, that inſtead of this ordinary and precious trial Per legem terræ, they bring not in abſolute and partial trials by diſcretion. 1 H.8.cap.6.

If one be ſuſpected for any crime, be it Treaſon, Felony, &c. And the party is to be examined upon certain interrogatories; he may hear the interrogatories, and take a reaſonable time to anſwer the ſame with deliberation (as there the time of deliberation was ten hours,) and the examinate, if he will, may put his anſwer in writing, and keep a Copy thereof: and ſo it was reſolved in Parliament by the Lords Spiritual and Temporal in the caſe of Juſtice Richill. See the Record at large. Rot.Parl. 1 H.4. memb.2.nu.1.

And the Lord Carew being examined for being privy to the Plot, for the eſcape of Sir Walter Rawleigh attainted of Treaſon, deſired to have a copy of his examination, and had it, as Per legem terræ he ought. Anno 16. Jacobi Regis.

Now here it is to be known, in what caſes a man by the Law of the Land, may be taken, arreſted, attached or impriſoned in caſe of Treaſon or Felony, before preſentment, indictment, &c. Wherein it is to be underſtood, that Proces of Law is twofold, viz. By the Kings Writ, or by due proceeding and warrant, either in deed, or in Law without Writ.

As firſt, where there is any witneſs againſt the offender, he may be taken and arreſted by lawful warrant, and committed to priſon.

7 E.4.20. 8 E.4.3. 9 E.4.27. 11 E.4 2. 2 H.7.15.b.4. 4 H.7.18. 5 H.7.5.a. 26 H.8,9. 27 H.8.23.

When Treaſon and Felony is committed, and the common fame and voice is, that A. is guilty, it is lawful for any man that ſuſpects him, to apprehend him.

a Bracton fo.143.

a This Fame Bracton deſcribeth well, Fama quæ ſuſpicionem inducit, oriri debet apud bonos, & graves, non quidem malevolos, & maledicos, ſed providas & fide dignas perſonas, non ſemel, ſed ſæpius, quia clamor minuit, & defamatio manifeſtat.

b 29 E 3.9. 39 E.3.39. 26 E.3.71. W.1.cap.9.

b So it is of Hue and Cry, and that is by the Statute of Wincheſter, which is but an affirmance of the Common Law: Likewiſe if A. be ſuſpected, and he fleeth, or hideth himſelf, it is a good cauſe to arreſt him.

c 11 H.4.4.b. 20 E.4.6.b. 14 H.8.16. 27 H.8.23.

c If Treaſon or Felony be done, and one hath juſt cauſe of ſuſpition, this is a good cauſe and warrant in Law for him to arreſt any man, but he muſt ſhew in certainty the cauſe of his ſuſpition: and whether the ſuſpition be juſt or lawful, ſhall be determined by the Juſtices in an Action of falſe impriſonment brought by the party grieved, or upon a Habeas corpus, &c.

29 E.3.39.

A Felony is done, and one is purſued upon Hue and Cry, that is not of ill fame, ſuſpicious, unknown, nor indicted; he may be by warrant in Law attached and impriſoned by the Law of the Land.

4 H.7.2. 5 H.7.5.

A Watchman may arreſt a night-walker by a warrant in Law.

10 H.7.20.

If a man woundeth another dangerouſly, any man may arreſt him by a warrant in Law, until it may be known whether the party wounded ſhall die thereof, or no.

26 E.3.71.a.

If a man keep the company of a notorious thief, whereby he is ſuſpected, &c. it is a good cauſe, and a Warrant in Law to arreſt him.

38 H.8. faux impriſonment. Br.6.

If an affray be made to the breach of the Kings peace, any man may by a Warrant in Law reſtrain any of the offenders, to the end the Kings peace may be kept, but after the affray ended, they cannot be arreſted without an expreſs Warrant.

See now the Statutes of 1 & 2 Phil. & Mar. cap.13. & 2 & 3 Phil. & Mar. cap.10.

Now ſeeing that no man can be taken, arreſted, attached, or impriſoned but by due proces of Law, and according to the Law of the Land, theſe concluſions hereupon do follow.

First, that a commitment by lawful warrant, either in deed or in Law, is accounted in Law due proces or proceeding of Law, and by the Law of the Land, as well as by proces by force of the Kings Writ.

2. That he or they which do commit them, have lawful authority.

3. That his Warrant or Mittimus be lawful, and that muſt be in writing under his hand and ſeal.

4. The cauſe muſt be contained in the Warrant, as for Treaſon, Felony, &c. or for ſuſpition of Treaſon or Felony, &c. otherwiſe if the Mittimus contain no cauſe at all, if the Priſoner eſcape, it is no offence at all, whereas if the Mittimus contained the cauſe, the eſcape were Treaſon or Felony, though he were not guilty of the offence; and therefore for the Kings benefit, and that the Priſoner may be the more ſafely kept, the Mittimus ought to contain the cauſe.

13 H.7. Kelway 34.b. See more before hereof in the Expoſition upon the Statute of 1 E.2. De frangentibus priſonam. Out of the Kings Bench, though there be not any priviledge, &c.

5. The Warrant or Mittimus containing a lawful cauſe, ought to have a lawful concluſion, viz. and him ſafely to keep until he be delivered by Law, &c. and not until the party committing doth further order. And this doth evidently appear by the Writs of Habeas corpus, both in the Kings Bench and Common Pleas, Exchequer and Chancery.

Rex Vicecom̃ London̄ ſalutem. Præcipimus vobis, quod corpus A.B. in cuſtodia veſtra detent̄, ut dicitur, una cum cauſa detentionis ſuæ, quocunq; nomine præd. A.B. cenſeatur in eiſdem, habeatis coram nobis apud Weſtm' die Jovis prox' poſt Octabis S. Martini, ad ſubjiciend', & recipiend̄ ea, quæ curia noſtra de eo adtunc, & ibidem ordinar̄ contigerit in hac parte, & hoc nullatenus omittatis, periculo incumbente, & habeatis ibi hoc breve. Teſte Edw. Coke 20 Nov. anno Regni noſtri 10.

This is the uſual form of the Writ of Habeas corpus in the Kings Bench, vide

Vide Mich. 5 E. 4. Rot. 143. Coram Rege, Kesars Case, under the Teste of Sir John Markham.

Rex Vicecom̃ London̄ salutem. Præcipimus vobis quod habeatis coram Justiciariis nostris, apud Westm̃ die Jovis prox' post quinq; septimam. Paschæ, corpus A.B. quocunque nomine censeatur, in prisona vestra, sub custodia vestra detent̄, ut dicitur, una cum die, & causa captionis & detentionis ejusdem, ut iidem Justiciar̄ nostri, visa causa illa, ulterius fieri fac', quod de jure, & secundum legem, & consuetudinem Regni nostri Angliæ foret faciend̄, & habeatis ibi hoc breve, Teste, &c.

In the Common Pleas, for any man priviledged in that Court, and the like in the Eschequer.

The like Writ is to be granted out of the Chancery, either in the time of the Term, (as in the Kings Bench) or in the Vacation; for the Court of Chancery is officina justiciæ, and is ever open, and never adjourned, so as the Subject being wrongfully imprisoned, may have justice for the liberty of his person as well in the Vacation time, as in the Term.

Out of the Chancery generally, though there be not any priviledge &c. 4 E. 4.

By these Writs it manifestly appeareth, that no man ought to be imprisoned, but for some certain cause: and these words, Ad subjiciend̄, & recipiend̄, &c. prove that cause must be shewed: for otherwise how can the Court take order therein according to Law?

And this doth agree with that which is said in the holy History, Sine ratione mihi videtur, mittere vinctum in carcerem, & causas ejus non significare. But since we wrote these things, and passed over too many other Acts of Parliament; see now the Petition of Right, Anno Tertio Caroli Regis, resolved in full Parliament by the King, the Lords Spiritual, and Temporal, and the Commons, which hath made an end of this question, if any were.

Act. Apost. cap. 25 ver. ult.

Imprisonment doth not only extend to false imprisonment, and unjust, but for detaining of the Prisoner longer than he ought, where he was at the first lawfully imprisoned.

If the Kings Writ come to the Sheriff, to deliver the Prisoner, if he detain him, this detaining is an imprisonment against the Law of the Land: If a man be in Prison, a warrant cannot be made to the Gaoler to deliver the Prisoner to the custody of any person unknown to the Gaoler, for two causes; First, For that thereby the Kings Writ of Habeas corpus, or delivery, might be prevented. 2. The Mittimus ought to be, as hath been said, till he be delivered by Law.

Hil. 32 E. 1. Coram Rege Rot. 71 & 79 So it was holden Pasch. 34 Eliz. by all the Justices. 8 H. 4. 18. 20 E. 4, 6

If the Sheriff, or Gaoler detain a Prisoner in the Gaol after his acquital, unless it be for his fees, this is false imprisonment.

In many cases a man may be by the Law of the Land taken and imprisoned by force of the Kings Writ upon a suggestion made.

Against those that attempt to subvert, and enervate the Kings Laws, there lieth a Writ to the Sheriff in nature of a commission, Ad capiendum impugnatores juris Regis, & ad ducendum eos ad Gaolam de Newgate; which you may read in the Register at large. Ubi supra. And this is lex terræ, by Procels of Law, to take a man without answer, or summons in this case: and the reason is, Merito beneficium legis amittit, qui legem ipsam subvertere intendit.

Regist. 64 Rot. Pat. 21 E. 3. part 1. impugnatores jurium Regis.

If a Souldier after wages received, or prest money taken, doth absent himself, or depart from the Kings service; upon the certificate thereof of the Captain into the Chancery, there lieth a Writ to the Kings serjeants at Armes, if the party be vagrant, and hideth himself, Ad capiendum conductos proficiscend̄ in obsequium nostrum, &c. qui ad dictum obsequium nostrum venire non curaverint. And this is lex terræ, by Procels of Law, pro defensione Regis, & Regni, or for the same cause, a Writ may be directed to the Sheriff, De arrestando ipsum, qui pecuniam recepit ad proficiscendum in obsequium Regis, & non est profectus.

Regist. 24 & 191.

If a man had entred into Religion, and was professed, and after he departed from his house, and became vagrant in the Country against the rules of his Religion, upon the Certificate of the Abbot, or Prior thereof into the Chancery, a Writ should be directed to the Sheriff, De apostata capiendo, whereby he was commanded in these words; Præcipimus tibi quod præfatum, &c. Sine dilatione arrestes,

Regist. f. 267. F.N.B. 233, 234. 20 E. 3 Cor. 233. 6 E. 3. 1; 22 E. 3 2.

arreſtes, & præfat Abbat, &c. liberes ſecundum regulam ordinis ſui caſtigand; And this was Lex terræ, by Proceſs of Law, in honorem religionis.

Regiſt. 59,60.F.N.B.54. 15 R.2.c.2. If any lay men with force and ſtrong hand, do enter upon, or kéep the poſſeſſion either of the Church, or of any of the houſes, or glebe, &c. belonging thereunto, the Incumbent upon certificate thereof of the Biſhop, or without certificate upon his own ſurmiſe may have a Writ to the Sheriff, De vi laica amovenda, by which the Sheriff is commanded in theſe words; Præcipimus tibi quod omnem vim laicam ſeu armatam, quæ ſe tenet in dicta Eccleſia, ſeu domibus eidem annexis, ad pacem noſtram in Com̃ tuo perturband, ſine dilatione amoveas, & ſi quos in hac parte reſiſtentes inveneris, eos per corpora ſua attachias, & in priſona noſtra ſalvo cuſtodias, &c. and this is lex terræ, by Proceſs of Law, pro pace Eccleſiæ.

Vide Regiſt. 284. 289, 290. for the arreſting of Purveyors, which make purveyance of the men of the Church.

Regiſt. 89. F.N.B. 85. 31 H.8 Dier 43. 1 Mar. 92. 1 Eliz 165. Alſo a Writ of Ne exeas Regnum may be awarded to the Sheriff, or Juſtices of Peace, or to both, that a man of the Church ſhall not depart the Realm; the effect whereof is; Quia datum eſt nobis intelligere, quod A. B. clericus verſus partes exteras, ad quamplurima nobis, & quamplurima de populo noſtro præjudicialia, & damnoſa, ibidem proſequend, tranſire proponit, &c. tibi præcipimus, quod prædict' A. B. coram te corporaliter venire facias, & ipſum ad ſufficientes manucáptores, inveniend, &c. Et ſi hoc coram te facere recuſaverit, tunc ipſum A. B. proximæ gaolæ committas ſalvo cuſtodiend, quouſque hoc gratis facere voluerit. And there is another Writ in the Regiſter directed to the party, either of the Clergy or Laity. And this is lex terræ, by Proceſs of Law, Pro bono publico Regis & Regni; Whereof you may read more at large in the third part of the Inſtitutes, Cap. Fugitives.

Regiſt.267.F.N.B. 234.Bract.l.5.f.421 Brit.f.39.88. Fleta l.6. c.39. Hil.7 H.5 coram Rege Rot.7 Rot. clauſ. 22 E.3. in dorſ. 20 parte, m.14. Upon a ſurmiſe that a man is a Leper, one that hath morbum elephanticum, ſo called, becauſe he hath a skin like to an Elephant, there may be a Writ directed to the Sheriff, Quia accepimus quod J. de N. leproſus exiſtit, & inter homines Comitatus tui communiter converſatur, &c. ad grave damnum homin' præd, & propter contagionem morbi præd periculum manifeſtum, &c. tibi præcipimus quod aſſumptis tecum aliquibus diſcretis & legalibus hominibus de Comitat præd non ſuſpect', &c. ad ipſum J. accedas, &c. & examines, &c. & ſi ipſum leproſum inveneris, ut prædict' eſt, tunc ipſum honeſtiori modo, quo poteris à communione hominum prædict' amoveri, & ſe ad locum ſolitarium ad habitand ibidem, prout moris eſt, transferre facias indilate, &c. And this is lex terræ, by Proceſs of Law, for ſaving of the people from contagion and infection.

Lib.10. f.74.in the caſe of the Marſhalſea. Rot. Parl. 42 E.3. nu. 23. Sir John a Lees Caſe. But if any man by colour of any authority, where he hath not any in that particular caſe, arreſt or impriſon any man, or cauſe him to be arreſted, or impriſoned, this is againſt this Act, and it is moſt hateful, when it is done by countenance of Juſtice.

Lib. 5. fol. 64. Clarks caſe. King Edw.6. did incorporate the Town of S. Albons, and granted to them to make ordinances, &c. they made an ordinance upon pain of impriſonment, and it was adjudged to be againſt this Statute of Magna Charta; So it is, if ſuch an ordinance had béen contained in the patent it ſelf.

All Commiſſions that are conſonant to this Act, are, as hath béen ſaid, Secundum legem, & conſuetudinem Angliæ.

42 Aſſ. pl.5. Rot. Parl. 17 R.2.n.37. A Commiſſion was made under the great Seal to take J. N. (a notorious felon) and to ſeiſe his lands, and goods: This was reſolved to be againſt the Law of the Land, unleſs he had béen endicted, or appealed by the party, or by other due Proceſs of Law.

Rot. Parl. 2 H.4. nu.60. It is enacted, if any man be arreſted, or impriſoned againſt the form of this great Charter, that he be brought to his anſwer, and have right.

No man to be arreſted, or impriſoned contrary to the form of the great Charter.

See more of the ſeveral Laws allowed within this Land, in the firſt part of the Inſtitutes, Sect.3.

The Philoſophical Poet doth notably deſcribe the damnable, and damned proceédings of the Judge of Hell.

Gnoſius

Gnoſius hic Radamanthus habet duriſſima regna, Caſtigatque, auditque dolos, ſubigitque fateri. Virgil.

And in another place,

—— leges fixit precio atque refixit.

Firſt he puniſheth, and then he heareth: and laſtly, compelleth to confeſs, and make and mar Laws at his pleaſure; like as the Centurion in the holy hiſtory did to S. Paul: For the text ſaith, Centurio apprehendi Paulum juſſit, & ſe catenis ligari & tunc interrogabat, quis fuiſſet, & quid feciſſet: but good Judges and Juſtices abhor theſe courſes. Act. Apoſt. c. 22. v. 24. 27.

Now it may be demanded, if a man be taken, or committed to priſon contra legem terræ, againſt the Law of the land, what remedy hath the party grieved? To this it is anſwered, Firſt, that every Act of Parliament made againſt any injury, miſchief, or grievance doth either expreſſly, or impliedly give a remedy to the party wronged, or grieved: as in many of the Chapters of this great Charter appeareth; and therefore he may have an action grounded upon this great Charter. As taking one example for many, and that in a powerful, and a late time. Paſch. 2 H. 8. coram Rege Rot. 538. againſt the Prior of S. Oſwin in Northumberland. And it is provided, and declared by the Statute of 36 E. 3. that if any man feeleth himſelf grieved, contrary to any article in any Statute, he ſhall have preſent remedy in Chancery (that is, by original Writ) by force of the ſaid Articles and Statutes. 36 E. 3. cap. 9.

2. He may cauſe him to be indicted upon this Statute at the Kings ſuite, whereof you may ſee a Precedent, Paſch. 3 H. 8. Rot. 71. coram Rege. Rob. Sheffields caſe.

3. *a* He may have an habeas corpus out of the Kings Bench or Chancery, though there be no priviledge, &c. or in the Court of Common Pleas, or Exchequer, for any officer or priviledged perſon there; upon which Writ the goaler muſt return, by whom he was committed, and the cauſe of his impriſonment, and if it appearth that his impriſonment be juſt and lawful, he ſhall be remanded to the former Gaoler, but if it ſhall appear to the Court, that he was impriſoned againſt the Law of the land, they ought by force of this Statute to deliver him: if it be doubtful and under conſideration, he may be bailed.

a See the reſolution of all the Judges of England in the anſwer to the articles of the Clergy hereafter at large in the expoſition of the Statute of artic. Cler. to the 21 and 22 artic. of the Writ of *Habeas corpus*. See more in the expoſition upon the Stat. of W. 1. cap. 15.

In 5 E. 4. coram Rege Rot. 143. John Keaſars caſe, a notable Record and too long here to be recited.

10 Eliz. Rot. Leas caſe.

In 1 & 2 Eliz. Dier 175. Scrogs caſe.

In 18 Eliz. Dier 175. Roland Hynds caſe in margine.

4. He may have an Action of falſe impriſonment 10 H. 7. fol. 17. but it is entred in the Court of Common Pleas, Mich. 11 H. 7. Rot. 327. Hilarie Warners caſe, and it appeareth by the Record, that Judgment was given for the plaintif: a Record worthy of obſervation.

b Regiſt. 77. F. N. B. 66. Bract. l. 3. f. 185.

5. *b* He may have a Writ de homine replegiando.

Vide Marlebridge Cap. 8.

c Regiſt. 83. 268. F. N. B. 249. 258. Bract. l. 3. f. 154.

6. *c* He might by the Common Law have had a Writ De odio & atia, as you may ſee before. Cap. 26. but that was taken away by Statute, but now is revived again by the Statute of 42 E. 3. cap. 1. as there it alſo appeareth. It is ſaid in *d* W. 2. Sed ne hujuſmodi appellati, vel indictati diu detineantur in priſona, habeat breve De odio & atia, ſicut in Magna Charta, & aliis Statutis dict' eſt: and by the ſaid Act of 42 E. 3. all Statutes made againſt Magna Charta, are repealed.

d W. 2. c. 29. Gloc. cap. 9.

e Mirror, c. 1. § 5. c. 2. § 13. c. 5. § 1, 2 Fleta, l. 2. c. 12. Ocham cap. quid ſponte offerentibus F. N. B. 96. Rot. Parliam. { 8 E. 3. n. 7. 38 E. 3. n. 23. 45 E. 3. n. 19. 51 E. 3. n. 58. 5 H. 4. n. 32. } 20 R. 2. fines 134. 34 H. 6. 38. 2 E. 3. c. 10. 1 E. 4. cap. 1. 26 H. 8. cap. 3. 27 H. 8. cap. 11.

¶ Nulli vendemus, &c.] *e* This is ſpoken in the perſon of the King, who in judgment of Law, in all his Courts of Juſtice is preſent, and repeating theſe words, Nulli vendemus, &c.

And therefore, every Subject of this Realm, for injury done to him in bonis, terris, vel perſona, by any other Subject, be he Eccleſiaſtical, or Temporal, Free,

Free or Bond, Man or Woman, Old or Young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the Law, and have justice, and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay.

Hereby it appeareth, that Justice must have three qualities, it must be Libera, quia nihil iniquius venali Justitia; Plena, quia Justitia non debet claudicare; & Celeris, quia dilatio est quædam negatio; and then its both Justice and Right.

2 E.3.c.8. 14 E.3. c.14. 20 E.3.1,2. 11 R.2. cap.11. Rot.Parl. 2 R.2. nu.51. Rot. Parl. 2 H.4. nu. 64. Regist. 186. 1 E.3.f.25. 2 E.3.3 14 E.3.tit.Jour.24 18 E.3.47. 39 E.3. 7. L. 5 E.4.132. Pasch. 3 H.4. Coram Rege. Rot.16. Warwik. Rot. Parl. 5 H.4. nu.33. 22 ass. pl.9. 9 H.6. 50. b. Fortesc. c.51.F.N. B. 237.240. 11 H. 4.76. 31 E.3.quare Imp.161. Mich.11 H.7. Rot. 124. in com.banc. Pasch. 7 H.8. Rot.66. in com. banc. Mich. 13 & 14 El. In com. banc. Hitchcocks case. 11 H.4.57. 39 H.6. 38.

¶ Nulli negabimus, aut differemus, &c.] These words have been excellently expounded by latter Acts of Parliament, that by no means common right, or Common Law should be disturbed or delayed, no, though it be commanded under the Great Seal, or Privy Seal, order, writ, letters, message, or commandment whatsoever, either from the King, or any other, and that the Justices shall proceed, as if no such writs, letters, order, message, or other commandment were come to them. Judicium redditum per defaltam affirmatur, non obstante breve Regis de prorogatione judicii.

That the Common Laws of the Realm should by no means be delayed, for the Law is the surest sanctuary, that a man can take, and the strongest fortress to protect the weakest of all; lex est tutissima cassis, and sub clypeo legis nemo decipitur: but the King may stay his own suite, as a capias pro fine, for the King may respit his fine and the like.

All Protections that are not legal, which appear not in the Register, nor warranted by our books, are expresly against this branch, nulli differemus: As a Protection under the Great Seal granted to any man, directed to the Sheriffs, &c. and commanding them, that they shall not arrest him, during a certain time at any other mans suit, which hath words in it, per prærogativam nostram, quam nolumus esse arguendam; yet such Protections have been argued by the Judges, according to their oath and duty, and adjudged to be void: As Mic. 11 H.7. Rot. 124. a Protection granted to Holmes a Vintner of London, his factors, servants and deputies, &c. resolved to be against Law. Pasch. 7 H. 8. Rot. 66. such a Protection disallowed, and the Sheriff amerced for not executing the Writ. Mich. 13 & 14 Eliz. in Hitchcocks case, and many other of latter time: and there is a notable * Record of ancient time in 22 E. 1. John de Mersh alls case, non pertinet ad vicecomitem de protectione Regis judicare, imo ad Curiam.

* Pasch. 22 E.1. Rot.39. Corā Rege Essex. W.1. c.1. 1 E.3. c.14. 2 E.3. c.8. 7 H.4. cap.14. 1 H.4.c.1. 2 H.4. c.1. 4 H.4. c.1. 7 H.4. cap.1. See the first part of the Institut. Sect.234.

¶ Justitiam vel rectum.] We shall not sell, deny, or delay Justice and right. Justitiam vel rectum, neither the end, which is Justice, nor the mean, whereby we may attain to the end, and that is the Law.

Rectum, right, is taken here for Law, in the same sense that jus, often is so called. 1. Because it is the right line, whereby Justice distributive is guided and directed, and therefore all the Commissions of Oier and Terminer, of goal delivery, of the peace, &c. have this clause, Facturi quod ad justitiam pertinet, secundum legem, and consuetudinem Angliæ, that is, to do Justice and Right, according to the rule of the Law and custom of England; and that which is called common right in 2 E.3. is called Common Law, in 14 E.3. &c. and in this sense it is taken, where it is said, ita qd stet recto in Curia, i. legi in Curia. 2. The Law is called rectum, because it discovereth, that which is tort, croked, or wrong, for as right signifieth Law, so tort, croked or wrong, signifieth injury, and injuria est contra jus, against right: recta linea est index sui, & obliqui, hereby the croked cord of that, which is called discretion, appeareth to be unlawful, unless you take it, as it ought to be, Discretio est discernere per legem, quid sit justum. 3. It is called Right, because it is the best birth-right the Subject hath, for thereby his goods, lands, wife, children, his body, life, honor, and estimation are protected from injury and wrong: major hæreditas venit unicuique nostrum à jure, & legibus, quam à parentibus.

Injuria est in, seu contra jus.

Cicero.

4. Lastly, rectum is sometime taken for the right it self, that a man hath by Law

Law to Land: As when we ſay there lieth Breve de recto, in ſo much that ſome old Readers have ſuppoſed, that rectum in this Chapter ſhould be underſtood of a Writ of right, for which at this day no fine in the hamper is paid. As the Goldſiner will not out of the duſt, threds, or ſhreds of Gold, let paſs the leaſt crum, in reſpect of the excellency of the metal: ſo ought not the Reader to let paſs any ſyllable of this Law, in reſpect of the excellency of the matter.

CAP. XXX.

OMnes Mercatores, niſi publice antea prohibiti fuerint, habeant ſalvum & ſecurum conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram, quam per aquam, ad emendum, vel vendendum, ſine omnibus malis tolnetis per antiquas & rectas conſuetudines, præterquam in tempore guerræ. Et ſi ſint de terra contra nos guerrina, & tales inveniantur in terra noſtra in principio guerræ, attachientur ſine dampno corporum ſuorum, vel rerum, donec ſciatur a nobis, vel a capitali Juſtitiario noſtro, quomodo Mercatores terræ noſtræ tractantur, qui tunc inveniantur in terra illa contra nos guerrina. Et ſi noſtri ſalvi ſint ibi, alii ſalvi ſint in terra noſtra.

¶ Omnes Mercatores.] This Chapter concerneth Merchant ſtrangers.

First, it is to be conſidered what the ancient Laws before this Statute were concerning this matter.

By the ancient Kings (amongſt whom King Alfred was one) defendu fuit que nul merchant Alien ne hantaſt Angleterre forſque aux 4 foires, ne que nul demurraſt in la terre ouſter 40 jours. Mercatorum navigia, vel inimicorum quidem, quæcunq; ex alto (nullis jactata tempeſtatibus) in portum aliquem invehentur, tranquilla pace fruuntor; quinetiam ſi maris acta fluctibus ad domicilium aliquod illuſtre, ac pacis beneficio donatum navis appulerit inimica, atq; iſtuc nautæ confugerint, ipſi & res illorum omnes auguſta pace potiuntor. Mirror, c. 1. § 3. Int. leges Ethel. cap. 2.

2. It is to be ſeen what this Statute hath provided.

1. That before this Statute Merchant ſtrangers might be publickly prohibited, Publice prohibeantur. And this prohibition is intendable of Merchant ſtrangers in amity, for this Act provideth afterward for Merchant ſtrangers enemies; and therefore the prohibition intended by this Act, muſt be by the common or publick Councel of the Realm, that is, by Act of Parliament, for that it concerneth the whole Realm, and is implied by this word (publice.)

2. That all Merchant ſtrangers in amity (except ſuch as be ſo publickly prohibited) ſhall have ſafe and ſure conduct in 7 things. 1. To depart out of England. 2. To come into England. 3. To tarry here. 4. To go in and through England, as well by Land as by Water. 5. To buy and to ſell. 6. Without any manner of evil Tolles. 7. By the old and rightful cuſtoms.

Now touching Merchant ſtrangers, whoſe Soveraign is in War with the King of England.

There is an exception and proviſion for ſuch as be found in the Realm at the beginning of the War, they ſhall be attached with a priviledge and limitation, viz. without harm of body or goods, with this limitation, Until it be known to us, or our Chief Juſtice, (that is our Gardian, or keeper of the Realm in our abſence) how our Merchants there in the Land in War with us ſhall be intreated, and if our Merchants be well intreated there, theirs ſhall be likewiſe with us, and this is jus belli. Et in republica maxime conſervanda ſunt jura belli.

Regiſt. 129. de areſt. fact. ſuper bonis mercator. alienig. Rot. Parliam. Mich. 18 E. 1. coram Rege fol. 7. repriſel. Tr. 33 E. 1. coram Rege Rot. 127. 27 E. 3. Stat. 2. cap. 17. law of marke. Rot. Parl. 11 H. 4. nu. 66. 4 H. 5. c. 7. 14 H. 6. c. 7. 18 H. 6. c. 9. Mat. Par. 966.

But for ſuch Merchant ſtrangers as come into the Realm after the War begin, they may be dealt withall as open enemies; and yet of ancient time theſe men had priviledge granted them in time of War. Clericus, Agricola, & Mercator, tempore belli. Ut oretq; colat, commutat, pace fruuntur.

a 2 E. 3. c. 5. 9 E. 3. c. 1. 14 E. 3. c. 2. 25 E. 3. cap. 2. 11 R. 2. c. 7. 14 R. 2. cap. 9. 16 R. 2. cap. 1.

a The end of this Chapter was for advancement of trade and traffique; the means for the well uſing and intreating of Merchant ſtrangers in all the particulars aforeſaid, is a matter of great moment, as appeareth by many other Acts of Parliament, for as they be uſed here, ſo our Merchants ſhall be dealt withall in other Countries.

b Lib. 8. fol. 46. John Webbs caſe. See the expoſition of W. 1. c. 31. 46 E. 3. barre 215. 39 E. 3. 13. b. F. N. B. 227. d. Weſt. 1. c. 30. W. 2. cap. 25.

¶ Mala tolneta.] *b* Evil Tolles.

This word tolnetum, and telonium, and theolonium are all one, and do ſignifie in a general ſenſe, any manner of Cuſtom, Subſidy, Proteſtation, Impoſition, or ſum of mony demanded for exporting, or importing of any wares, or merchandizes, to be taken of the buyer. In both theſe ſenſes it is here taken of ſeveral kind of Tolles: More ſhall be ſaid hereof in the Expoſition of the Statutes of W. 1. and W. 2. In the mean time ſee John Webbes caſe lib. 8. fol. 46.

c See Rot. Parlia. 17 E. 3. nu. 27, 28. and 21 E. 3. nu. 29. Maletot taken in good part. See the expoſition of W. 1. cap. 31.

c They are called mala tolneta, when the thing demanded for wares or merchandizes, do ſo burden the commodity, as the merchant cannot have a convenient gain by trading therewith, and thereby the trade it ſelf is loſt or hindered. And in divers Statutes maletout, for maletot, or maletout is a French word, and ſignifieth an unjuſt exaction.

Now this Act after it hath dealt privatively, ſine omnibus malis tolnetis, it goeth on for more ſurety affirmatively.

¶ Per antiquas & rectas conſuetudines.] That is, by ancient and right duties due by ancient and lawful cuſtom, which hath been the ancient policy of the Realm to encourage merchant ſtrangers, they have a ſpeedy recovery for their debts and other duties, &c. Per legem Mercator; which is a part of the Common Law.

Glanvil. lib. 9. c. 7. lib. 12. cap. 9, 10. Regiſt. 4. 159. F. N. B. 10. 151. cap. Itineris. cap. Eſcheatre. See before c. 4. Cap. Itineris.

This word conſuetudo hath in Law divers ſignifications. 1. For the Common Law, as conſuetudo Angliæ. 2. For Statute Law, as contra conſuetudinem communi concilio regni edit. 3. For particular cuſtoms, as Gavelkind, Borough Engliſh, and the like. 4. For rents ſervices, &c. due to the Lord, as conſuetudines & ſervitia. 5. For cuſtoms, tributes, or impoſitions, as de novis conſuetudinibus levatis in regno, ſive in terra, ſive in aqua. 6. Subſidies or Cuſtoms granted by common conſent, that is, by authority of Parliament, pro bono publico, and theſe be antiquæ, & rectæ conſuetudines intended by this Act, this agreeth with that, which hath been ſaid before in the end of the Expoſition upon the eighth Chapter.

Hereby it appeareth that the King cannot ſet any new impoſt upon the Merchant, and therefore this Act provideth not only affirmatively, viz. per antiquas, & rectas conſuetudines, but privatively alſo, ſine omnibus malis tolnetis, within which words new impoſitions are included, and are here called mala tolneta, as oppoſite to ancient and rightful Cuſtoms or Subſidies granted by authority of Parliament.

See the Statute of Carlile. 35 E. 1. for this word Impoſition, and from whom it came. Dier 31 H. 8. 43. 1 Mar. 92. 1 Eliz. Dier 165.

And where ſome have ſuppoſed that there was a cuſtom due to the King by the Common Law, as well of the Stranger, as of the Engliſh, called Antiqua cuſtuma, viz. for wools, woolfells, and leather, that is to ſay, for every ſack of wool containing 26 ſtone, and every ſtone 14 pound, vj s. viij d. and for a laſt

of

of leather xiij s. iv d. Certain it is, that thoſe cuſtoms had their beginning by common conſent by Act of Parliament, for King E. 1. by his Letters Patents reciteth, Cum Prælati, Magnates, & tota communitas quandam novam conſuetudinem nobis & hæredibus noſtris de lanis, pellibus, & coriis, viz. de ſacco lanæ dimid' Marc', de 300 pellibus dimid' Marc', & de laſto corii xiij s. iv d. &c. Here in four things are to be obſerved. 1. That theſe cuſtoms had their creation by authority of Parliament, and were not by the Common Law, appearing by theſe words, Quandam novam conſuetudinem, ſo as it was new, and not old. 2. That this new cuſtom was granted to King Edw. 1. proved by this word nobis. 3. That it was granted at the Parliamennt holden 3 E. 1. commonly called W. 1. (though the Record thereof cannot be found) for the ſaid Patent bears date 10 Nov. Anno 3 E. 1. which was near the ending of that year, and the Parliament was holden in Clauſo Paſch. before. 4. That here conſuetudo ſignifieth a cuſtom, or Subſidy granted by common conſent by Parliament, and in that ſenſe it is here taken, and likewiſe in the Statute of 51 H. 3. Statutum de Scaccario, for in 48 H. 3. Proclamation was made, Contra ſuggerentes, &c. Regem velle exigere tallagia inconſueta, & introducere extraneos.

Rot. Pat. 3 E. 1. m. 1 Rot. ſinium. 3 E. 1. m. 24. Mich. 26 E. 1. Int' retorn. brevium. Ex parte Remem. Theſaur. in Scac.

Rot. Pat. anno 48 H. 3. à tergo.

And herewith agreeth the Act of Parliament commonly called confirmationes cartarum, (which is but an explanation of this branch of Magna Charta) wherein it is enacted, that for no occaſion any aid, taſks, or takings ſhall be taken by the King, or his heirs, but by the common aſſent of the Realm, ſaving the ancient aids and takings due and accuſtomed.

Anno 25 E. 1. See more in the Expoſition of that Statute.

And whereas the moſt of the whole Comminalty of the Realm find themſelves hardly grieved of the maletout (or ill toll) of wools, that is to ſay, of every ſack of wool 40 s. and prayed the ſaid King to releaſe the ſame, thereupon the ſaid King did releaſe the ſame, and granted further for him and his heirs, that no ſuch thing ſhould be taken without their common aſſent, and their good will: and in that Act there is a ſaving, Sauvea nous, & nous heires la cuſtume de laynes, pealx, & quivres avant grante per la Comminaltie avandit; So as this Act of Parliament proveth that the ſaid cuſtom of vj s. viij d. for wool, and xiij s. iv d. for leather was granted by Parliament.

Rot Parl. 13 H. 4. nu. 18. A new Office granted with a fee in charge of the Subject, is againſt this Act of 25 E. 1. and of 34 E. 1. hereafter following.

By the Statute De tallagio non concedendo, (which is but an explanation of this branch of the Statute of Magna Charta) it is provided: Nullum tallagium vel auxilium per nos vel hæredes noſtros in Regno noſtro ponatur, ſeu levetur ſine voluntate & aſſenſu Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, militum, burgenſium, & aliorum liberorum Comit de Regno noſtro; So as E. 1. in concluſion added the effect of the clauſe concerning this matter, which in his exemplification he had omitted out of Magna Charta.

Anno 34 E. 1. See more in the expoſition of this Statute.

See Cap. itineris de novis conſuetudinibus levatis in regno, ſive in terra, ſive in aqua, &c. where conſuetudines are taken for cuſtoms.

Cap. itineris.

Upon grant to Merchant Strangers of divers privileges, liberties and immunities they granted to the King and his heirs, De quolibet ſacco lanæ 40 d. de incremento ultra cuſtumam antiquam dimid' Marc', quæ prius fuerit perſoluta & ſic pro laſto coriorum dimid' Marc', & de treſcentis pellibus lanatis 40 d. ultra certum illud, quod & antiqua cuſtuma fuerit prius datum. Note here the Cuſtom which was granted 3 E. 1. is here called antiqua Cuſtuma, and this new Cuſtom is called nova Cuſtuma, and ſometime the one is called magna Cuſtuma, and the other parva Cuſtuma.

Rot. Chartarum. 31 E. 1. nu. 44. Charta Mercatoria

2. Here it appeareth that Merchants Strangers paid the former Cuſtom.

Moreover by that Charter, poundage of three pence upon the pound was granted to the King, and his heirs by the Merchant Strangers, Et de quolibet vini nomine Cuſtumæ duos ſolidos, &c. And this at this day is called Butlerage, and is paid only by Merchant Strangers; but prilage is paid by the Engliſh only, except the Citizens of London, and this is an ancient duty: for I find it accounted for in the Reign of H. 3. by the Kings Butler, and is called

Rot. Pat. Anno 40 H. 3.

called Certa priſa, which at the firſt was granted in lieu and ſatisfaction of purveyance for wines. And laſtly, by that Charter it is granted, Quod nulla exactio, priſa, vel præſtatio, aut aliquod aliud onus ſuper perſonas Mercatorum alienorum prædict', ſeu bona eorundem aliquatenus imponatur contra formam expreſſam ſuperius conceſſam: So as no impoſition can be ſet without aſſent of Parliament upon any ſtranger.

Fleta lib.2.ca.21.

Rot. ordinationum Anno 5 E.2. in Scaccario.

It was ordered and reſolved by divers Prelates, Earls and Barons, by force of the Kings Commiſſion, that no new cuſtoms could be levied, nor ancient increaſed, without authority of Parliament, for that ſhould be againſt the great Charter. Anno 6 E.3. Rot.Parliament, nu.4. that no tallage ſhall be aſſeſſed but in ſuch manner as it hath bæn in time of his anceſtors, and as it ought to be, and diſannul all others.

11 E.3.cap.1. Rot.Parl. 13 E.3. nu.12.licence, &c. & 14 E.3.nu.3. licence.

In Anno 11 E.3. it was made Felony to carry Wool out of the Realm, the end whereof was, that our Wool ſhould be draped into cloth. But the King wanting, made this uſe of this Act: In the 12 and 13 years of his reign he made diſpenſations of that Statute in conſideration of money paid: but that Statute lived not long. In 13 E.3. a great impoſition was ſet upon Wools, and it is called a great wrong, Cum populus Regni noſtri variis oneribus, tallagiis & impoſitionibus hactenus prægravetur, quod dolentes referimus, and there doth excuſe himſelf.

Rot. alinance. 12 E.3.memb.22. in dorſ.

Note here is the word impoſitiones firſt uſed, impoſed by any King, in any Record that I have obſerved, and do remember.

14 E.3.cap.21.

Anno 14 E.3.cap.21. A Subſidy granted to the King of Wool, Woolfells, and Leather, &c. by Parliament, for a certain time in reſpect of the Wars, for which the King granteth, that after that time, he nor his heirs would take more then the old cuſtom.

Rot. Parliam. 17 E.3.nu.28. 25 E.3.nu.22. 36 E.3.nu.26.

After this time ended, the King entred into a new device to get money, viz. that by agreement and conſent of the Merchants, the King was to have 40 s. of a ſack of Wool, &c. but hereof the Commons (that in troth were to bear the burden, for the Merchant will not be the loſer) complained in Parliament, for that the grant of the Merchants did not bind the Commons, and that the Cuſtom might be taken according to the old order, which in the end was granted, and that no grant ſhould be made but by Parliament.

Rot.Parliam. 21 E.3.nu.16.

No charge ſhall be levied of the people, if it were not granted in Parliament.

Rot. Parliam. 21 E.3. Dier 1 El. 165.

In 21 E.3. by authority of Parliament, a Cuſtom was granted of cloth, for that the Wool was for the moſt part converted into cloth, which you may ſee in Orig. Scaccar. 24 E.3. Rot.13.

Int' origin. Scac. 24 E.3. Rot.13. 27 E.3.cap.4.

By the Statute of 27 E.3.cap.4. in print, a Subſidy of every cloth to take of the ſeller (over the Cuſtoms thereof due, that is, ſuch as then endured for a time, and were granted by Parliament) that is to ſay, of every cloth of aſſile, wherein there is no grain 4 d. &c.

And here it is worthy of obſervation, that there were two cauſes of the making of this Statute. 1. For that for cloth no cuſtom was due other then by the Act of 21 E.3. 2. For that Wool being converted to a manufacture, and made into cloth, the ancient cuſtom of Dimid. mark for a ſack of Wool was not by Law payable, becauſe the Wool was turned into another kind, albeit the cloth was made of the Wool; And this doth notably appear by the Records of the Exchequer, one of them in the ſame year that the Act of 27 E. 3. was made.

Int. original. de Scaccar. anno 24 E.3. Rot.4. Vide ſimile ibid. 24 E.3. Rot. 13. See the firſt part of the Inſtitutes, fol.49.b.

Ac jam magna pars lanæ dicti Regni noſtri eodem regno pannificetur, de qua cuſtuma aliqua nobis non eſt ſoluta; And there it appeareth that that was the cauſe of giving to the King a Subſidy for cloth by the ſaid Act of Parliament, of 27 E. 3. And yet if in any caſe the King by his prerogative might have ſet any impoſition, he might have ſet in that caſe, becauſe, as it appeareth by the Record, by making of cloth he loſt the cuſtom of Wool.

Rot.

Rot. Parliam. 45 E. 3. No impoſition or charge, &c. ſhall be ſet without aſſent of Parliament. Rot. Parl. 45 E. 3. nu. 42.

50 E. 3. Richard Lions, a Merchant of London puniſhed for procuring new impoſitions, and ſo was the Lord Latimer, the Kings Chamberlain. And in the ſame Parliament, nu. 163. upon complaint that new impoſitions were ſet, the King in Parliament aſſented that the ancient cuſtom ſhould be holden, and no new impoſition ſet. Rot. Parl. 50 E. 3. nu. 17, 18. Nu. 163. & vide ibidem 191.

In the raign of E. 3. the black Prince of Wales having Aquitaine granted to him, did lay an impoſition of fuage or focage, à foco, upon the Subjects of that Dukedom, viz. a ſhilling for every fire called harth-ſilver, which was of ſo great diſcontentment, and odious to them, as it made them to revolt. Rot. Pat. an. 25 E. 3. Created Duke of Aquitaine.

And no King ſince this time impoſed by pretext of any prerogative, any charge upon Marchandiſes imported into, or exported out of this Realm, until Queen Maries time. See the Statute of 11 R. 2. c. 9. & Rot. Parliament. 8 H. 6. num. 29. Rot. Parl. 8 H. 6. nu. 29. & Rot. Par. 28 H. 6. nu. 35.

And in 3 H. 5. the Subſidy of Tunnage and Poundage was granted to King H. 5. during his life, in reſpect of the recovery of his right in France, (which was the firſt grant for life of that kind) yet therein was a proviſo, that the King ſhould not make a grant thereof to any perſon, nor that it ſhould be any precedent for the like to be done to other Kings afterwards; but yet all the Kings after him have had it for life, ſo forcible is once a precedent fixed in the Crown, add what proviſo you will. Rot. Parl. 3 H. 5. nu. 50. Stat. 2. See in the fourth part of the Inſtitutes, Cap. of the high Court of Parliament. More of the Subſidy of Tunnage.

And this grant by Parliament of the Subſidy of Tunnage and Poundage to the King is an argument, that the King taking it of the gift of the Subject, had no power to impoſe it himſelf.

The Lords and Commons cannot be charged with any thing for the defence of the Realm, for the ſafeguard of the Sea, &c. unleſs it be by their will in Parliament, that is, in the grant of a Subſidy, whereunto the King aſſented. Rot. Parl. 13 H. 4 nu. 10.

Non poteſt Rex ſubditum renitentem onerare impoſitionibus. Forteſc. c. 9. & 18

King Philip and Queen Mary, granted by Letters Patents to the Mayor, Bailiffs, and Burgeſſes of Southampton, and their Succeſſors, that no Wines called Malmeſeyes to be imported into this Realm by any Denizen, or Alien, ſhould be diſcharged or landed at any other place within this Realm, but only at the ſaid Town and Port of Southampton, with a prohibition, that none ſhould do to the contrary upon pain to pay treble Cuſtom to the King and Queen, &c. And for that Anthony Donate, Thomas Frederico, and other Merchant Strangers bought divers Buts of Malmeſey, &c. and landed them at Goore, and in Kent, Gilbert Gerard the Attourney General, informed in the Exchequer, againſt the ſaid Merchant Strangers for the ſaid treble cuſtom, &c. Upon which information, as to the ſaid treble Cuſtom, the ſaid Anthony Donat demurred in Law, &c. And this caſe was argued in the Exchequer Chamber by Counſel learned on both ſides, and upon conference had two points were reſolved by all the Judges. 1. That the grant made in reſtraint of landing the ſaid Wines was a reſtraint of the Liberty of the Subject, againſt the Laws and Statutes of the Realm. 2. That the aſſeſſment of treble cuſtom was meerly void, and againſt the Law. As it appeareth by the report of the Lord Dier under his hand (which I have in my cuſtody.) But after by Act of Parliament, in An. 5 El. the ſaid Charter is eſtabliſhed as to Merchant Strangers only, but not againſt Subjects. Int' communia de Termino S. Trin. anno 1 El. Rot. 73. Mag. Chart. c. 30 9 E. 3. c. 1. 14 E. 3 25 E. 3. c. 2. 27 & 28 E. 3. of the Staple. 2 R. 2. c. 1.

And where impoſts, or impoſitions, be generally named in divers Acts of Parliament, the ſame are to be intended of lawful impoſitions, as of Tunnage and Poundage, or other Subſidies impoſed by Parliament, but none of thoſe Acts or any other do give the King power at his pleaſure to impoſe. See the firſt part of the Inſtitutes, Sect. 97. 23 H. 6. c. 18. 14 H. 8. c. 4. 13 El. c. 4. 1 Jac. c. 13. 3 Jac. c. 6. Int' decreta in camera Scac. Mich. 3 & 4 Eliz. Mich. 32 & 33 Eliz. Mic. 39 & 40 Eliz.

It is then demanded, by what Law Cuſtom is paid for Kerſeyes, whites, plain, ſtraits, and other new draperies, made of wool; for it appeareth by Acts of

of Parliament, and common experience, that all theſe pay Cuſtom to the King. To this it is anſwered, That a proportionable Subſidy, or Cuſtom is paid for them within the equity of the ſaid Statute of 27 E. 3. c. 4. and likewiſe a proportionable Alnage is alſo due for them by that Act.

Hil. & Paſch. anno 2 Jacobi Regis, great queſtions were moved, Whether Friſadoes, Bayes, Northern Cottons, Northern Dozens, Cloth-raſh, Durances, Perpetuanoes, Tuft-mocadoes, Sackcloth, Fuſtians, Worſteds, Stuffes made of Worſtead yarn, &c. were within the ſaid Act 27 E. 3. as concerning the Subſidy, and Alnage: and if they were not, whether the King by his prerogative might not impoſe a reaſonable Subſidy, or Cuſtom upon them proportionably to the cloth mentioned in the Statute of 27 E. 3. And this being queſtioned before the Lords of the Councel, they wrote to the Judges to be certified what the Law was in theſe caſes, who upon mature deliberation, the 24 of June 1605. reſolved, and ſo certified the Lords by their Letters under all their hands, That all Friſadoes, Bayes, Northern Dozens, Northern Cottons, Cloth-raſh, and other new Drapery made wholly of wool, of what new name ſoever made, as new Drapery for the uſe of mans body, are to yield Subſidy, and Alnage according to the Statute of 27 E. 3. and within the office of the ancient Alnager, as may appear by ſeveral Decrées in that behalf in the Exchequer, in the time of the late Quéen: but as touching fuſtians, canvas, and ſuch like made méerly of other ſtuff then wool, or being but mixed with wool, it was reſolved by all the Judges, that no charge could be impoſed for the ſearch or meaſuring thereof, but that all ſuch Letters Patents ſo made are void, as may appear by a Record of 11 H. 4. wherein the reaſon of the judgment is particularly recited, which the Judges thought good in their Letters to ſet down as followeth.

Note this.

King H. 4. granted the meaſuring of woollen cloth, and canvas, that ſhould be brought to London, to be ſold by any Stranger, or Denizen (except he were frée of London) taking an ob. of every whole piece of cloth ſo meaſured of the ſeller, and one other ob. of the buyer, and ſo after that rate for a greater or leſſer quantity, and one penny for the meaſuring of an C. ells of canvas of the ſeller, and ſo much more of the buyer; and though it were averred that two other had enjoyed the ſame office before with the like fées, viz. one Shearing by the ſame Kings grant, and one Clithew before by the grant of R. 2. (and the truth was, Robert Pooley, in 5 E. 3. and John Mareis, in 25 E. 3. had likewiſe enjoyed the ſame) yet amongſt other reaſons of the ſaid judgment, it was ſet down, and adjudged that the former poſſeſſion was by extortion, cohertion, and without right, and that the ſaid Letters Patents were in onerationem, oppreſſionem, & depauperationem ſubditorum Domini Regis, &c. & non in emendationem ejuſdem populi; and therefore the ſaid Letters Patents were void. And as touching the narrow new ſtuff made in Norwich, and other places of Worſted yarn, it was reſolved that it was not grantable, nor fit to be granted, for there was never any Alnage of Norwich Worſteds, and for theſe ſtuffs, if after they be made, and tucked 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 plights, &c. as by the ſaid Letters it more at large appeareth. Theſe Letters were openly read at the Councel Table, and well approved by the whole Councel, and the Lords commanded the ſame to be kept in the Councel Cheſt to be a direction for them to anſwer ſuitors in theſe caſes.

13 E. 3. ex parte Remem. Theſaur. Rot. Parl. 25 E. 3. Enacted according to this reſolution. 30 E. 3. Compot. Forinſeco. in Scaccar. compot. J. Mareis.

But three judgments in the Exchequer have been cited for proof, that the King hath power to ſet impoſitions upon Merchandizes exported, and imported.

1. A judgment given in the Exchequer in an information againſt Germane Cioll for 40 s. ſet by Quéen Mary upon every Tun of Wine, of the growth of France, to be brought into the Realm. But the caſe there was this, the Attourney general informed, that where King Philip, and Quéen Mary by their Proclamation, 30 Martii, in the 4 and 5 years of their raign, did will and ſtraitly command, that no Wines of the growth of France, ſhould be brought into this Realm,

Paſch. 1 Eliz. in Scacc. ex parte Remem. Regis.

Realm, without ſpecial licence of the ſaid King and Quæn under pain of forfeiture of ſuch Wine to the King and Quæn, Cumq, etiam dict' nuper Rex & Regina de adviſamento Concilii ſui ad tunc ordinaver' & decreverunt, quod quælibet perſona, quæ in hoc Regnum Angliæ induceret hujuſmodi vina contra formam proclamationis prædict', ſolveret pro quolibet dolio hujuſmodi vini 40 s. vocat impoſt. &c. and that German Ciol, againſt the form and effect of the ſaid Proclamation, had brought into the Realm 338 tuns of Wines of the growth of France, and had not paid 40 s. for each and every tun: the Defendant pleaded a licence from the ſaid King and Quæn, dated the 9 of Decemb. anno 1 & 2. to bring into the Realm 1500 tuns of wine, of the growth of France, in ſtrangers bottoms, with a non obſtante of any Law, Statute, or Proclamation made or to be made to the contrary, whereupon the demurrer was joyned.

In this Record theſe things are to be obſerved, Firſt, That a Proclamation prohibiting importation of wines upon pain of forfeiture, was againſt Law: for it appeareth not, that any war was betwæn the Realms. 2. The Proclamation was made of purpoſe to ſet an impoſition, for the 40 s. is impoſed upon them only, and upon ſuch as ſhould bring in wines againſt the ſaid Proclamation, ſo as the Proclamation was the ground of this information. 3. The King and Quæn by advice of their Councel, did order, and decræ, &c. and ſheweth not how, or by what means this order and decræ was made: the pleading of ſuch a former licence ſo inſufficiently ſheweth, that it was by agræment and conſent.

2. The executors of Cuſtomer Smith, were charged in a ſpecial information for receiving an impoſition of 3 s. 4 d. ſet by Quæn Elizabeth, under her privy ſignet, upon every hundred weight of Allom made within the Dominions of the Pope, and judgment in the Exchequer was given againſt them: the reaſon of this judgment was, for that Cuſtomer Smith received the ſame as due to the Quæn, and the iſſue was joyned, quod prædicti executores non tenebantur ad computum, &c. and the validity of the impoſition was never queſtioned. Mich. 38 & 39 Eliz. in Scaccario Rot. 319.

3. A judgment was given in the Exchequer, for an impoſition ſet upon Currants, but the common opinion was, that that judgment was againſt Law, and divers expreſs Acts of Parliament; and ſo by that which hath bæn ſaid, it doth manifeſtly appear. In mem. Scaccar. int. com. Paſch. 4 Jacob. Rot. 32. in inform. verſ. John Bate de London. mercat. Pl. Com. 236. in the B. Barkleys caſe. Forteſc. ſect.

To conclude this point, with two of the maximes of the Common Law. 1. Le Common Ley ad tielment admeaſure les prerogatives le Roy, que ilz ne tolleront, ne prejudiceront le inheritance daſcun, the Common Law hath ſo admeaſured the prerogatives of the King, that they ſhould not take away, nor prejudice the inheritance of any: and the beſt inheritance that the Subject hath, is the Law of the Realm. 2. Nihil tam proprium eſt imperii, quam legibus vivere.

Upon this Chapter, as by the ſaid particulars may appear, this concluſion is neceſſarily gathered, that all Monopolies concerning trade and taffick, are againſt the liberty and frædom, declared and granted by this great Charter, and againſt divers other Acts of Parliament, which are good commentaries upon this Chapter. 2 E. 3. c. 9. 9 E. 3. c. 1. 25 E. 3. c. 2. 2 R. 2. c. 1. 11 R. 2. cap. 7. 6 R. 2. cap. 1 12 H. 7. cap. 6.

Le point del conge del demurrer des merchants aliens eſt iſſint interpretable, que ceo ne ſoit in prejudice des villes, ne des merchants Dangleterre, & il ſoient ſerements al Roy & plevyes ſilz demurront pluis que 40 jours. Mirror c. 5. § 5. 4 E. 4. c. 15. 5 H. 4. c. 9. 27 H. 6. c. 3. 17 E. 4. c. 1. 3 H. 7. cap. 8.

For the well intreating and ordering of Merchant ſtrangers and denizens, and for * due imployment of their mony upon the native commodities of this Realm, many Statutes have bæn made ſince this great Charter, and have bæn excellently expounded in the Reign of Quæn Elizabeth, but that matter belongs not to this place.

* See hereafter the expoſition upon the Statutes of imployments.

CAP.

CAP. XXXI.

SI quis tenuerit de aliqua Eſcaeta, ſicut de honore Wallingford, Notting. Bolon. & de aliis Eſcaetis quæ ſunt in manu noſtra, & ſint Baroniæ, & obierit hæres ejus, non det aliud relevium, nec faciet nobis aliud ſervitium, quam faceret Baroni, ſi Baronia eſſet in manu Baronis, & nos eodem modo eam tenebimus, quo Baro eam tenuit. Nec nos occaſione talis Baroniæ, vel Eſcaetæ habebimus aliquam Eſcaetam, vel cuſtodiam aliquorum noſtrorum hominum, niſi de nobis alibi tenuerit in capite ille, qui tenuit Baroniam, vel Eſcaetam illam.

By this Chapter it is declared, and enacted, that if any man hold of any eſcheate, as of any honour, or of other eſcheats, which are Baronies, and were in the Kings hands; Firſt, If he die, his heir being of full age, his heir ſhall give no other relief to the King than he did to the Baron. 2. Nor do none other ſervice to the King, than he ſhould have done to the Baron. 3. That the King ſhall hold the honour or Barony as the Baron held it, that is, of ſuch eſtate, and in ſuch manner and form, as the Baron held it. 4. The King ſhall not have by occaſion of any Barony, or eſcheate, any eſcheate but of lands holden of ſuch Barony. 5. Nor any wardſhip of any other lands then are holden by Knights ſervice of ſuch Barony, unleſs he, which held of the Barony, held alſo of the King by Knights ſervice in capite.

All this is meerly declaratory of the Common Law, and here it appeareth that he that holdeth of the King, muſt hold of the perſon of the King, and not of any honour, Barony, Mannor or Seigniory: and it appeareth farther in our books, that he that holdeth of the King in chief, muſt not only hold of the perſon of the King, but the tenure muſt be created by the King, or ſome one of the progenitors, or predeceſſors Kings of this Realm, to defend his perſon and Crown, otherwiſe he ſhall have no prerogative by reaſon of it, for no prerogative can be annexed to a tenure created by a Subject. Note here is not named the honour of Lanc' which was an ancient honour ever ſince the conqueſt, which E.3. raiſed to a Count Palatine, as in the fourth part of the Inſtitutes, cap. Duch. of Lancaſtre appeareth. See 28 H.6.11. per touts les juſtices. 1 E. 6. Bro. trav. 53. Stamford Prerog. 29. b.

See the firſt part of the Inſtitutes, Sect. 103. 47 E. 3. 21. F.N.B. 5.

47 E.3.21. Riparaves caſe.

¶ De aliis eſcheatis.] Some queſtion hath been made of theſe words, for ſome have ſaid that theſe words are to be underſtood of common eſcheats, as where the Lord dieth without heir, or where he is attainted of felony: But where the Lord is attainted of high Treaſon, there the King hath the land by forfeiture of whomſoever the land is held, and not in reſpect of any eſcheate by reaſon of any Seigniory: and therefore where Will. Riparave a Norman, held lands in fee of the King, as of the honour of Peverell, and Riparave forfeited his ſaid land for Treaſon, and the King ſeiſed it as his eſcheat of Normandy, in this caſe the land ſo forfeited was no part of the honour, as it ſhould have been, if it had come to the King, as a common eſcheate, for it cometh to the King by reaſon of his Perſon, and Crown, and therefore if he grant it over, &c. the Patentee ſhall hold it of the King in chief, and not of the honour. And all this is to be agreed, but yet the tenants that held before of the honour by Knights ſervice,

ſervice, cannot hold of the King in chief. 1. For that they hold not of the perſon of the King, but of the Honour. 2. Becauſe the tenure was not created by the King, or any of his Progenitors, as hath been ſaid.

And ſo doth Bracton, who wrote ſoon after the Statute, expound this great Charter to extend to forfeiture of Baronies for Treaſon, as of the Normans. Bracton l.2. fo.87. b. 30 H.8. tenures. Br.44. 29 H. 8. livery. 28. Br.36 H 8. Dier 58.

And yet to make an end of all ambiguities and queſtions, the Statute of 1 E.6. was made, which is, as the words be, a plain declaration and reſolution of the Common Law. Likewiſe the Statute of 1 E.3. which provideth, that where the Land that is holden of the King, as of an honour, is alienedwithout licence, no man ſhall be thereby grieved, is alſo a declaration of the Common Law. 1 E.6.cap.4. 1 E.3.cap.13. See the 1 part of the Inſtitutes, ſect.1.

By this Chapter it appeareth, that a ſubject may have an honour.

CAP. XXXII.

NUllus liber homo det de cætero amplius alicui, vel vendat [alicui] de terra ſua; quam ut de reſiduo terræ ſuæ poſſit ſufficienter fieri domino feodi ſervitium ei debitum, quod pertinet ad feodum illud. Tr. 1 E.1. coram Rege Not. & Derb. a declaration made of this Act. Bract. l.1. Britton fol.88. Fleta l.3. cap.3. mirror c.5. §.2. Cuſtumier de Norm.cap.126.

1. Firſt it is to be ſeen what the Common Law was before this Statute.

2. What is wrought by this Statute, where the Lands are holden of the King.

3. What this Statute hath provided in caſe where Lands are holden of a Subject. 10 H.7.11.

Before this Statute, in caſe where the tenure was of a common perſon, the tenant might have made a feoffment of a parcel of his tenancy to hold of him, for the ſeigniory remained intire as it was, and the Lord might diſtrein in the tenancy paravaile for his rent and ſervice; but at the Common Law he could not have given a part of his tenancy to be holden of the Lord, for the tenant by this Act could not divide the ſeigniory of the Lord which was intire, for at the beginning the Lord reſerved his ſeigniory out of the whole tenancy, and might diſtrein in every part thereof for his ſeigniory, but if the tenant might have made a feoffment of part to hold of the Lord, then had he ſecluded the Lord of his liberty to diſtrein for the whole ſeigniory in every part thereof. *a* 29 Aſſ.p.19. 20 Aſſ.p.17. 26 Aſſ.p.37. 20 E.3. avowry. Rot.Parl. 29 E.3. nu.18. *b* Rot.Par. 18 E.1. *c* 34 E.3.c.15. See the Stat. of W.3. de quia emptores terr. an. 18 E. 1. F.N.B.143. b. & 235.c.

At the Common Law the tenant might have made a feoffment of the whole tenancy to be holden of the Lord, for that was no prejudice at all to the Lord.

a But in the Kings caſe it was doubted, whether his tenant might have given part of the tenancy to hold of himſelf, becauſe the Land, and the profit that might come to the King thereby, was removed farther off from him, and the meſnalty was ever of leſs value than the land, and for that cauſe the tenancy was called paravail: *b* and in 18 E.1. the King anſwered to a petition in Parliament, Rex non vult aliquem medium, &c. and this queſtion remained after this Statute about the ſpace of 133 years, viz. till the *c* Statute of 34 E.3. was made, whereby it is provided, that alienations of Lands made by tenants, which held of H.3. or of other Kings before him, to hold of themſelves, that the alienations ſhould ſtand in force, ſaving to the King his prerogative of the time of his great Grandfather, his Father, and his own, whereby it appeareth that this prerogative to have a fine for alienation, *d* began in the reign of H.3. which was by this Act, and therefore he beginneth with H.3. his great Grandfather. 13 Eliz. Dier 299.b. *d* Rot.Pat.an.21 H.3.nu.4.H.3. confirmed this Chart. made 9 H.3. *e* 20 Aſſ.p.17. 26 Aſſ.p.37. 14 H.4.2,3. 15 E.4.13. Stamf.prer. cap.6. fo.27,28. 9E.3.36.

e To the ſecond point by this Act, where lands are holden of the King, as King, in Capite, be it by Knights ſervice, or in ſocage in Capite, and alienedwithout Hil. 13 E.3. coram Rege Norff. in Turri.

licence, there groweth, as hath been ſaid, to the King a fine: For by the Common Law it was againſt the nature and purity of a fee ſimple, for the tenant to be reſtrained from alienation.

But ſome did hold, that upon this Act the Land ſo alienedwithout licence was forfeit to the King, by reaſon of theſe words, nullus liber homo det, &c. and others did hold the contrary, that upon theſe words the land was not forfeited, but that it ſhould be ſeiſed in the name of a diſtreſs, and a fine to be paid for the treſpaſs, which I take to be the better opinion; and the reaſon why our books ſpeak, that no fine was due before 20 H. 3. is, for that about that year H. 3. being of full age (as hath been ſaid) did eſtabliſh and confirm this great Charter, but in truth it was in 21 H. 3. as by the Charter it ſelf appeareth.

1 E. 3. c. 12. See the Statute of quia emptores terrarū. ubi ſup. Hil. 2 E. 3. coram Rege wiltes. Prerog. Regis c. 6. F.N.B. 175. 14 E. 3. Quare Imp. 54. Br. Alienation ſans licence 34. Hil. 43 Eliz. l. 2. fol. 80, 81. Seign. Cromwels caſe.

But this queſtion depended about the ſpace of 100 years, &c. And was not determined until the Statute made in 1 E. 3. whereby it is enacted, that the King ſhall not hold them as forfeit in ſuch caſe, but that of lands ſo alienedthere ſhall be from thenceforth a reaſonable fine taken in the Chancery by due proces, which Act was but an Expoſition of this Chapter of Magna Charta as to Lands holden of the King in Capite, alienedwithout licence, and extendeth to lands holden of the King by grand Serjantie alienedwithout licence.

To the 3. the great doubt upon this Act was, that in as much as this Act was a prohibition general, and impoſed no pain or penalty, what pain the tenant, or his feoffee ſhould incur, if he did the contrary; and by the common opinion this Act was thus interpreted: that when a tenant of a common perſon did alien parcel contrary to this Act, the feoffor himſelf during his life ſhould not avoid it, quia nemo contra factum ſuum proprium venire poteſt, but that his heir after his deceaſe might avoid it by the intendment of this Act, to the end that men ſhould not purchaſe ſuch parcel, for fear of loſing the ſame after the death of the feoffor: but if the heir apparent had joined with his anceſtor in the feoffment, or after had confirmed it, and thereby had given his aſſent thereunto, he or his heirs ſhould never have avoided it, whether he ſurvived his Father or no; and if the heir entred upon this Statute, the alienee of part might plead that the ſervice, whereby the land was holden, might be ſufficiently done of the reſidue, and thereupon iſſue might be taken. And I have ſeen divers ſuch Precedents between this Act of Magna Charta, and 18 E. 1.

18 E. 1. de quia emptores terrarum.

Then came the Statute of 18 E. 1. which enacteth, quod de cætero liceat unicuiq; libero homini terras ſuas, ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere, ita tamen quod feoffatus teneat terram illam, ſeu tenementum illud de capitali Domino per eadem ſervitia, & conſuetudines, per quæ feoffator ſuus illa prius de eo tenuit, & ſi partem aliquam earundem terrarum, ſeu tenementorum alicui vendiderit, feoffatus ille partem illam immediate teneat de Domino.

Many excellent things are enacted by this Statute, and all the doubts upon this Chapter of Magna Charta were cleared, both Statutes having both one end, (that is to ſay) for the upholding and preſervation of the tenures, whereby the lands were holden; this Act of 18 E. 1. being enacted ad inſtantiam magnatum Regni.

1. Firſt this Statute of 18 E. 1. doth begin with a de cætero liceat, which proveth that before it was not lawful to alien part, unleſs ſufficient were left, and this approveth the aforeſaid common opinion, that in that caſe, the heir might enter, otherwiſe this Chapter of Magna Charta had been in vain, and this de cætero liceat had not needed.

2. That by this Statute of 18 E. 1. the prohibition and penalty by this Chapter of Magna Charta, to avoid the ſtate of the feoffee is taken away; de cætero liceat, &c.

3. The point aforeſaid of the Common Law, that the tenant could not alien parcel to hold of the Lord, is by this Act of 18 E. 1. altered.

4. Another point of the Common Law is by this Act altered, that where by the Common Law he hath alienedparcel to hold of himſelf, this is taken away, and the alienee ſhall hold of the Lord pro particula.

5. Where

5. Where the Tenant had liberty and election by the Common Law to make a feoffment of the whole, to hold either of himself, or of the Lord, now this liberty and election is taken away, for by this Act the Land must be immediately holden of the Lord.

6. That the King is bound by this Act, and this appeareth by the Register, that the King cannot charge the feoffée of part with the entire Rent, but there lieth a Writ De onerando pro rata portione; But the King may grant Lands to hold of himself, for he is not restrained by this Act, for hereby no man is restrained, but he which holds over of some Lord, and the King holdeth of none. Regist. 268. F.N.B. 234.

But then here riseth a question; If by this Chapter of Magna Charta, a fine for alienation accrued to the King upon an alienation of the Kings Tenant in Capite, and now this restraint (as hath been said) being taken away; how can that prerogative stand when the foundation, whereupon it is built faileth?

But hereunto it is answered. 1. The restraint of Magna Charta, secundum quid, as to the avoidance of the state of the feoffée by the heir, is taken away, as hath been said, but not simpliciter, for in respect of the King, the fine for alienation remains due, and herewith agreeth constant and continual usage. 2. The Statute of 1 E. 3. enacteth, Que desormes de tielz terres & tenements alien soit reasonable fine prise in le Chancery, and though it saith (desormes) from henceforth, that was not, that any fine was due before, but, as hath been said, to take away the question of the forfeiture. 17 E. 2. ca. 7. 1 E. 3. ubi supra.

After this Act out of the Office of the Remembrancer of the Exchequer, Writs of Quo titulo ingressus est, to help the King to his reasonable fine, issued out of the Exchequer, to know how the feoffée came to the whole, or part of the Land, and of what estate, whereupon the feoffée was driven to plead to his great charge and trouble, and therefore upon conference had with the Kings Officers, and the Judges, it was ordained, that seeing the Kings Tenant could not alien without licence, for if he did, he should pay a fine, that for a licence to be obtained, the King should have the third part of the value of the Land, which was holden reasonable, and the feoffée should pay the same because his Land was otherwise to be charged, and he rid of the trouble and charge by the Writ of Quo titulo ingressus est; and if the alienation was without licence, then a reasonable fine by the Statute, was to be paid by the alienée, which they resolved to be one years value, which ever since constantly and continually hath been observed and paid.

This fine was to be paid by the alienée, as hath been said, or by those that claimed by or under him, and if the fine be not paid, the Land shall be seised into the Kings hands; and the intent of a Parliament is always intended just, and reasonable; and therefore if a disseisor of Lands in Capite make an alienation without licence, and the disseisée enter, the Land shall not be seised for the fine, for the disseisée is in by a title before the alienation, and so in other like cases. If he in the reversion levy a fine of Lands holden in Capite without licence, the lessée for life shall not be charged with the fine, because that estate was before the alienation, but yet in a Quid juris clamat, the lessée shall not be compelled to attorn, because the Court will not suffer a prejudice to the King in like manner, as if the reversion had been alienied in Mortmain without the Kings licence. 45 E. 3. ca. 6. 17 E. 3. 6.

I have been the longer in explaining this Chapter, because it seemed so obscure to some Readers in former times, that they passed it over without any explanation.

CAP. XXXIII.

OMnes Patroni Abbatiarum, qui habent Chartas Regum Angliæ de advocatione, vel antiquam tenuram, vel poſſeſſionem, habeant earum cuſtodiam cum [vacaverint] ſicut habere debent, ſicut ſuperius declaratum eſt, *Cap.*5.

Mirror ca.5. §.2. F.N.B.34. 44 E.3.24. 38 Aſſ.22. 50 Aſſ.p.6.

This Statute is intended where the Patron, or Founder of Abbeys, or Priories by ſpecial reſervation, tenure or cuſtom, ought to have the cuſtody of the Temporalties of the ſame, during the vacation, as many Patrons and Founders in times paſt had. But if the King be Founder, he ought to have the Temporalties during the Vacation of common Right by his Prerogative.

44 E.3.24.

If the King and a common perſon join in a foundation, the King is the Founder, becauſe it is an entire thing.

If a common perſon found an Abbey or Priory, with poſſeſſions of ſmall value, and the King after endow it with great poſſeſſions, yet the common perſon is Founder. If a common perſon found a Chauntery, and after the King tranſlate it, and make it a Monaſtery, and endow it with poſſeſſions, yet the common perſon is in Law the Founder, becauſe he gave the firſt living; ſo if the tranſlation be from regular to ſecular, vel e contra.

CAP. XXXIV.

NUllus capiatur, aut impriſonetur propter appellum fœminæ de morte alterius quam viri ſui.

See the firſt part of the Inſtitutes. Sect.500. Glanv.lib.14.c.3. 15 E.2.Coro.385. 17 E.4.1. 20 H.6. 43. Stamf. Pl. Cor.58,59. Bract.li.4. fol.148. Brit.fo.55.Flet.l.1. ca.33. See the firſt part of the Inſtitutes, Sect.24. * Fleta ubi ſupra. Mirror ca.5. §.2. & ca.2. §.7. 50 E.3.14. 28 E.3.91. 3 E.3. Coron.357. 20 H.6.46.

For this word, Appeal, ſee the firſt part of the Inſtitutes. At the Common Law before this Statute, a woman, as well as a man might have had an appeal of death of any of her anceſtors, and therefore the ſon of a woman ſhall at this day have an appeal, if he be heir at the death of the anceſtor, for the ſon is not diſabled, but the mother only, for the Statute ſaith, Propter appellum fœminæ. Vide more of this in the firſt part of the Inſtitutes.

Fleta ſaith, Fœmina autem de morte viri ſui inter brachia ſua interfecti, & non aliter poterit appellare, And therewith agreeth the Mirror, Britton, and Bracton.

By inter brachia in theſe ancient Authors, is underſtood the wife, which the dead had lawfully in poſſeſſion at his death, for ſhe muſt be his wife both of right and in poſſeſſion, for in an appeal, Unques accouple in loial Matrimony, is a good plea.

A woman at this day may have an appeal of robbery, &c. for ſhe is not reſtrained thereof.

This Writ of appeal of the death of her husband, is annexed to her Widowhood, as her Quarentine is.

If the wife of the dead marry again, her appeal is gone, albeit the ſecond husband die within the year; for ſhe muſt before any appeal brought, continue fœmina viri ſui, upon whoſe death ſhe brings the Appeal.

So

So if ſhe bring the appeal during her Widow-hood, and take husband, the appeal ſhall abate, and is gone for ever. 11 H. 4. 46.

So likewiſe, if in her appeal ſhe hath judgment of death againſt the Defendant, if after ſhe take husband, ſhe can never have execution of death againſt him.

Albeit the husband be attainted of high Treaſon, or felony, yet if he be ſlain, his wife ſhall have an appeal, for notwithſtanding the attainder he was vir ſuus, but the heir cannot have an appeal, for the blood is corrupted betwéen them. 35 H. 6. 63.

¶ Appellum fœminæ.] An hermophrodite, if the male ſex be predominant, ſhall have an appeal of death as heir, but if the female ſex doth excéd the other, no appeal doth lie for her as heir.

CAP. XXXV.

NUllus Comitatus de cætero teneatur niſi de menſe in menſem, & ubi major terminus eſſe ſolebat, major ſit. Vide 2 Edw. cap. 25. Nec aliquis Vicecomes, vel balivus ſuus faciat Turnum ſuum per hundredum, niſi bis in anno, & non niſi in loco debito & conſueto, viz. ſemel poſt Paſch', & iterum poſt feſtum S. Michaelis, & Viſus francipleg' tunc fiat ad illum Terminum Sancti Michaelis ſine occaſione. Ita ſcilicet quod quilibet habeat libertates ſuas quas habuit, vel habere conſuevit tempore Regis Henrici avi noſtri, vel quas poſtea perquiſivit. Fiat autem viſus de frankpleg' ſic: videlicet, quod pax noſtra teneatur, & quod Tithinga teneatur integra ſicut eſſe conſuevit, & quod Vicecomes non quærat occaſiones, & contentus ſit de eo, quod Vicecomes habere conſuevit de viſu ſuo faciendo, tempore Hen. Reg. avi noſtri. Vide Marlb. cap. 10.

¶ Comitatus.] Quod modo vocatur Comitatus, olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabatur Conſulatus; & qui modo vocantur Vicecomites, tunc temporis Vice-conſules vocabantur; ille vero dicebatur Vice-conſul, qui Conſule abſente ipſius vices ſupplebat in Juris foro. Inter leges R. Ed. Lamb. 129. a. b. Idem verbo Conventus.

Curia Comitatus, in Saxon, Scýpegemote, i. Comitatus conventus 12 H. 7. 18.

Ejus duo ſunt genera, quorum alterum hodie le Countie Court, alterum le Tourne del Viſcount, olim Folkmote, vulgo nuncupatur; So as many times Turn Vicecomitis is expreſſed under the name of Curia Comitatus, becauſe it extended through the whole County: and therefore in the red Book of the Exchequer, amongſt the Laws of King H. 1. c. 8. De generalibus placitis Comitatuum, it is thus contained, viz. Lamb. 135. Britton cap. 27. Flet. l. 2. c. 36, 37. In libro rubro, in Scaccario, cap. 8.

Sicut antiqua fuerat inſtitutione formatum, ſalutari Regis imperio vera eſt recordatione firmatum, generalia * Comitatuum placita certis locis, & vicibus, & definito tempore per ſingulas anni provincias convenire debere, nec ullis ultra fatigationibus agitari, niſi propria Regis neceſſitas, vel commune Regni commodum ſæpius adjiciant. Interſint autem Epiſcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, Præfecti, Præpoſiti, Barones, Vavaſſores, Tingrevii, & cæteri * i. Turnorum placita.

teri terrarum Domini diligenter intendentes, ne malorum impunitas, aut graviorum pravitas, vel judicum ſubverſio ſolita miſeros laceratione confiniant: Agantur itaque primo, debita veræ Chriſtianitatis jura, ſecundo, Regis placita poſtremo, cauſæ ſingulorum, &c. debet enim Shcryſmote, (i. the Sheriffs Tourn) bis; Hundreda, & Wapentachia, (i. the County Courts) duodecies in anno congregari.

Regis placita. i. The Pleas of the Crown holden in the Sheriffs Tourn alſo.

And truly did H. 1. ſay, Sicut antiqua fuerat inſtitutione formatum: For theſe Courts of the Tourn, and of the County, and of the Leet or view of frankpledge mentioned hereafter in this Chapter were very ancient: for of the Tourn you ſhall read amongſt the Laws of King Edw. Statutum eſt quod ibi (ſcilicet apud le folkmote) debent populi omnes, &c. convenire, & ſe fide & ſacramento non fracto ibi in unum & ſimul confederare, &c. ad defendendum Regnum, &c. una cum Domino ſuo Rege, & terras ſuas, & honores illius omni fidelitate cum eo ſervare, & quod illi, ut Domino ſuo Regi intra & extra Regnum univerſum Britanniæ fideles eſſe velint, &c. Hanc legem invenit Arthurus (qui quondam fuit inclytiſſimus Rex Britonum) & ita conſolidavit & confederavit Regnum Britanniæ univerſum ſemper in unum, hujus legis authoritate expulit Arthurus prædictus Saracenos, & inimicos à Regno, lex enim iſta diu ſopita fuit, donec Edgarus Rex Anglorum, qui fuit avus Edwardi Regis, illam excitavit, & erexit in lucem & per totum Regnum firmiter obſervari præcepit: & hujus legis authoritate Rex Etheldred ſubito uno & eodem die per univerſum Regnum Danos occidit.

Lamb. fol. 135. The oath of Allegeance in the Tourn or Leet.

By the Laws of King Edward, before the Conqueſt the firſt, which ſucceeded King Alured, it is thus enacted:

Præpoſitus quiſque, i. Vicecomes, Saxonice Gereſa, Anglice Sheriffe, ad quartam circiter ſeptimanam frequentem populi concionem celebrato, cuique jus dicito æquabile, liteſque ſingulas cum dies condicti adveniant dirimito.

Inter leges Edw. Regis ante conq. 1. cap. 11. fol. 51.

Hereby it appeareth that Common Pleas between party and party were holden in the County Court every month, which agreeth with Magna Charta, and other Statutes and continual uſage to this day.

And amongſt the Laws of King Edgar it is thus concerning the Sheriffs Tourn provided.

Inter leges Edgari Regis, c. 5. f. 89.

Celeberrimus ex omni Satrapia bis quotannis conventûs agitor, cui quidem illius Diœceſis Epiſcopus, & Senator interſunto, quorum alter jura Divina, alter humana populum edoceto; which alſo agreeth with Magna Charta, and other Statutes and continual uſage.

By that which hath been ſaid, it appeareth that the Law made by King H. 1. was (after the great heat of the Conqueſt was paſt) but a reſtitution of the ancient Law of England: And forasmuch as the Biſhop with the Sheriff did go in Circuit twice every year, by every hundred within the County (which alſo appeareth by this Chapter of Magna Charta in theſe words, Turnum ſuum per hundreda, &c. it was called Tour, or Tourn, which ſignifieth a circuit, or perambulation.

Britton cap. 29. Fleta lib. 2. cap. 45 Marlebr. cap. 10. 31 H. 6. Leet 11. F. N. B. 169. a.

Now let us peruſe the ſeveral branches of this Chapter.

¶ Nullus Comitatus de cætero teneatur niſi de menſe in menſem, & ubi major terminus eſſe ſolebat, major ſit.] This (as hath been ſaid) is an affirmance of the Common Law and Cuſtom of the Realm.

¶ Comitatus.] Here Comitatus is taken in the common ſenſe for the County Court.

That the Realm was divided into Counties, long before the raign of King Alured, viz. in the time of the ancient Britons. See the firſt part of the Inſtitutes, Sect. 248.

¶ Et

¶ Et ubi major terminus, &c.] This is altered by the Statute of 2 E.6. whereby it is provided that no County Court shall be longer deferred, but one month from Court to Court, and so the said Court shall be kept every month, and none otherwise. 2 E.6. cap. 25.

By which Act every County of England, concerning the time of the keeping of the County Court is governed by one and the same Law.

And there is to be accounted 28 days to the legal month in this case, and not according to the month of the Kalender.

¶ Nec aliquis Vicecomes, vel balivus suus faciat Turnum suum per Hundredum, nisi bis in anno, & non nisi in loco debito & consueto, viz. semel post Pasch. & iterum post festum S. Michaelis.] Where this branch saith, Semel post Pasch. &c. The Statute of 31 E.3. explaineth it, viz. one time within the month after Easter, and another time within the month after S. Michael, and if they hold them in any other manner, then they should lose their Tourn for that time, which is as much to say, as the Court so holden for that time, shall be utterly void, and the Sheriff shall lose the profits thereof. 31 E.3. cap.15. 38 H.6. fol.7: 6 H.7.2. Stamf. pl. Cor.84

¶ Nisi in loco consueto.] This remaineth to this day. 42 E.3. 4. & 5. Dier 4 & 5 Phil. & Mar.151.

¶ Per hundreda.] How hundreds, and the Courts of the Hundreds first came, see hereafter in this Chapter.

¶ Et Visus franciplegii tunc fiat ad illum Terminum Sancti Michaelis, &c.] It hath appeared before, that of ancient time the Sheriff had two great Courts, viz. the Tourn, and the County Court: Afterwards for the ease of the people, and specially of the Husbandman, that each of them might the better follow their business in their several degrees, this Court here spoken of, viz. view of frankpledge, or Lèet was by the King divided, and derived from the Tourn, and granted to the Lords to have the view of the Tenants, and Resiants within their Mannors, &c. So as the Tenants, and Resiants should have the same Justice, that they had before in the Tourn, done unto them at their own doors without any charge or loss of time, and for that cause came the duty in many Lèets to the Lord De certo Lete, towards the charge of obtaining the grant of the said Lèet. 11 H.4.89. 13 H.4. 9. lib.11. fo. 45. Godfreyes case.

So likewise, and for the same reason were Hundreds, and Hundred Courts, divided and derived from the County Courts, and this the King might do, for the Tourn and Lèet both are the Kings Courts of Record: And as the King may grant a man to have power Tenere placita within a certain precinct, &c. before certain Judges, and in a manner exempt it from the jurisdiction of his higher Courts of Justice, so might he do in case of the Tourn, and Hundred Courts: so as the Courts and Judges may be changed, but the Laws and Customs, whereby the Courts proceed, cannot be altered. And as the County Court, and Hundred Court are of one Jurisdiction, so the Tourn, and Lèet be also of one and the same jurisdiction; for Derivativa potestas est ejusdem jurisdictionis cum primitiva. *Regula.*

The stile of the Tourn is Curia franc' plegii Domini Regis tent apud L. corã Vicecomite in Turno suo tali die, &c. And therefore in some Books it is called the Lèet of the Tourn. And therefore where the Sheriff stiled his Court, Turn Vicecom tent tali die apud L. &c. it was resolved that it was insufficient for that this word Tourn is but the perambulation of the Sheriff, but by the right stile of the Tourn, it appeareth that the Tourn and Lèet have but one stile, and the same jurisdiction. 31 H.6. Leet 11. 8 H.7.11. 6 H.7.2. 8 H. 7.11. Mirror ca.1.§.16

Eut

18 H.6. abbr. by F. Leet. 1.

But for want of the knowledge of antiquity it was obiter, in 18 H.6. denied that the Tourn, and the Lèt were of one jurisdiction, and two instances are there put, viz. that the Lèt hath conusance of bread and ale, that is, of the assise of bread and ale, and the Tourn hath not conusance thereof; and the other is, that in the Lèt they have authority de presenter ceux queux ne sont lies, abridged by Fitz. a presenter, ceux, que ne sont mises in le decennarie.

To the first it is clear, That the breach of the assise of bread and ale is presentable in the Tourn, as a common nusance, and therewith agrèeth constant and continual experience, and reason proveth, that the derivative cannot have conusance of that which the primitive had not, unless it be given by some Act of Parliament; and herewith agrèeth the stile of the Tourn, and the authority of later Books.

4 E.4.31. 22 E.4. 22. 12 H.7.18. 28 H 8. Dier 13.b.

As to the second, it is ill reported in the Book it self; but if it be intended as Fitzh. abridgeth it, then it is clear that in the Tourn they that be not put into the decennary may be inquired of, for, as hath bèen often said, the stile of the Tourn is, Curia visus frank pleg'; and the derivative cannot of common right have more then the primitive.

Pasch. 5 Jac. lib. f.78. Bulleins case.

But both of the Tourn and the Lèt, this may be truly said,

Cicero. *Tempora mutantur, & nos mutamur in illis;*

Quodque vera institutio istius Curiæ evanuit, & velut umbra ejusdem adhuc remanet: habemus quidem Senatus consultum, sed in tabulis repositum, & tanquam gladium in vagina reconditum.

But now let us return to our Magna Charta.

Mirror c. 1. § 17. & ca. 5. § 2. 6 H.7.2. & 3.

¶ Et visus de franc' plegio tunc fiat ad illum Terminum Sancti Michaelis, &c.] It is to be observed that the precedent branch is, That Vicecomes non faciat Turnum per Hundredum nisi bis in anno, as hath bèen said, viz. Semel post Pasch' & iterum post festum Sancti Michaelis; This clause extendeth to the enquiry of felonies, common nusances and other misdèeds, the view of frankpledges, and to all things inquirable in the Tourn. Now by this clause it is provided that the Article of the Tourn concerning the view of frankpledge, being here understood in a particular sense, shall be dealt withal by the Sheriff in his Tourn but once in the year, viz. at the Tourn holden after Easter, and so it hath bèen formerly expounded; and therefore it was well resolved in 24 H.8. that this clause of the Statute of Magna Charta, is to be understood of the Lèt of the Tourn, and not of other Lèts, and so without question is the Law holden at this day, That he that claims a Lèt by Charter, must hold it at the same days which are contained in the Charter, and he that claims it by prescription may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath bèen so, so that it hath bèen kept at uncertain times, or else it ought to be kept at such certain days and times, as by prescription hath bèen certainly used; and the next words to this clause be, Ita scilicet quod quilibet habeat libertates suas, quas habuit, &c. do explain the meaning of this Chapter, that it extendeth not to the Lèts of the Subjects, but they should have their liberties, as before they had; and this also appeareth by the conclusion of this Chapter, Et quod Vicecomes, &c. contentus sit de eo quod Vicecomes habere consuevit de Visu suo faciendo; So as it must be Visus suus, the Sheriffs View, which of necessity must be parcel of the Tourn; and it is said in the Mirror, that this view of frankpledge (parcel of the Tourn) should be made once every year.

30 H.6. Leet 11. 24 H.8.Br.Leet 23 22 H.6.14. 8 H.7.4 12 H.7.15. 38 H.6. 7. Dier 7 El. 233, 234.

¶ Fiat autem Visus de franc' pleg' sic, &c.] Here it appeareth that the view of frankpledge should have two ends. 1. Quod pax nostra teneatur. 2. Quod Tithinga teneatur integra.

For

For the firſt, that the Kings peace might be kept; the right inſtitution of the view of Franke pledge, and whereon the name came is to be conſidered, which is as followeth.

Franci plegii. i. Liberi fide juſſores, frée ſureties or pledges; and here it is ſaid fiat viſus de Francis plegiis, ita ſcilicet quod pax noſtra teneatur, that is, let the view of pledges or ſureties for Frée-men be made, ſo that our peace may be holden: Now the inſtitution hereof, for the keping of the Kings peace, was, that every Freéman, at his age of 12 years, ſhould in the Léet (if he were in any) or in the Tourne, (if he were not in any Léet) take the oath of allegiance to the King, and that pledges or ſureties ſhould be found in manner hereafter expreſſed for his truth to the King, and to all his people, or elſe to be kept in priſon: This Franke pledge conſiſted moſt commonly of ten houſholds, which the Saxons called Theothung, in the North parts they call them Tenmentale, in other places of England Tithing, here in this chapter Trithinga. i. Decemvirale collegium, whereof the maſters of nine families (who were bound) were of the Saxons called Freoborgh, which in ſome places is to this day called free Barrowe. i. Frée ſurety, or Franke pledge, and the Maſter of the tenth houſhold was by the Saxon called by divers names, viz. Theothungmon, to this day in the Weſt called Tythingman, and Tihenheofod and Freoborher. i. Capitalis plegius, chief pledge: and theſe ten maſters of families were bound one for anothers family, that each man of their ſeveral families ſhould ſtand to the Law, or if he were not forth coming, that they ſhould anſwer for the injury or offence by him committed, De eo autem qui fugam ceperit, diligenter inquirend' ſi fuerit in franco plegio, & decenna, tunc erit decenna in miſericordia coram Juſtitiariis noſtris, quia non habent ipſum malefactorem ad rectum.

Bract.lib.3.f.124. Int.leges Canuti fol.108,119. Int. leges Edw. regis fol. 132. cap. de friborgis. Bract.ubi ſup. Lamb.verbo centuria & decuria. Bract. fol.19.b. Brit. ubi ſup. Bract.l.3. f.124.

Hereby it appeareth, that the precinct of this frank pledge was called decenna, becauſe it conſiſted moſt commonly, as hath béen ſaid, of ten houſholds, and every man of theſe ſeveral houſholds, for whom the pledge or ſurety was taken, were called decennarii, becauſe every particular perſon in the Kingdom was of one decenna or other, which names are continued as ſhadows of antiquity to this day. Ordeine fuit ancientment, que nul ne demurraſt en le realme, ſil ne fuit en dizein & plevy de frank homes, appent aux viſc' de viewer un fois per an' franke pledges & les plevys, &c.

Brit.cap.12. Fleta lib.1.cap. 27.acc. Mirror cap.1.§.17.

By the due execution of this Law, ſuch peace (whereof this Chapter ſpeaketh) was univerſally holden within this Realm, as no injuries, homicides, robberies, theſts, riots, tumults, or other offences were committed; ſo as a man with a white wand might ſafely have ridden before the Conqueſt, with much mony about him, without any weapon throughout England, and one ſaith truly, conjectura eſt, eaq; non levis, haud ita multis ſtatuiſſe priſca tempora ſceleribus, quippe quibus rapinæ, furto, cædi, plurimiſq; aliis ſceleribus mulctæ imponebantur pecuniariæ, cum hiis hac noſtra tempeſtate nos omnibus merito capitis pœnam irrogamus, &c.

Lamb. verb. Æſtimatio capitis.

¶ Et quod trithinga teneatur integra.] Trithinga or Tithinga is expounded for Theothinga, which ſignifieth the Frankpledge of ten houſholds, as hath béen ſaid, and it is notably expounded by Fleta, which there you may read at large, the ſenſe herof is, quod Trithinga, ſive Theothinga. i. Decemvirale collegium teneatur integrum. i. that no man be not within ſome decenna or other, ſo as he may be brought forth to ſtand to right if he ſhall offend: Olim Trythinga ſignificabat tria vel quatuor hundreda, quod autem in Trithinga definiri non poterat, ferebatur in ſcyram.

Fleta lib.2.c.54. § de Trithingis. Lamb. Int. leges Sanct.Edw. nu.34. Merton c.10.

What perſons ſhall come to the Tourne and Léet, &c. and who be exempted, ſée the Statute of Marlebridge, and the ancient Authors.

Marlebridge 10. Mirror c.1.§.16. Bract.lib.3. fol. 124. Brit.19.b. Fleta lib.1.c.29. lib.2.cap.45.

¶ Tempore Regis Henrici avi.] Twice repeated in this Chapter: vid. before Cap.15,16.

Sée the Expoſition of this Statute Rot.Clauſ. anno 18 H.3. nu.10.

¶ Et quod Vicecomes non quærat occaſiones, & contentus ſit de eo quod Vicecomes habere conſuevit de viſu ſuo faciend', tempore Henrici Regis avi noſtri.] By the Common Law, to avoid all extortion and grievance of the Subject, no Sheriff, Coroner, Gaoler, or other of the Kings Miniſters ought to take any reward for doing of his office, but only of the King; and this appeareth by our books, and is ſo declared and enacted by Act of *Parliament in the 3 E.1. And a penalty added to the prohibition of the Common Law by that Act: And Forteſcue cap. 24. ſaith, Vicecomes jurabit ſuper ſancta Dei Evangelia, inter articulos alios, quod non aliquid recipiet colore, aut cauſa officii ſui, ab aliquo alio, quam a Rege.

Mirror c.2.§.5. Britton fol.3.b. 6.a. 18.b. 37.b. Fleta lib.1.c.18. §. Item ſi officium & lib.2. c.39. 27 Aſſ. p.14. 42 E.3.5. 23 H.6. cap.10.17. 1 H.8.c.7. 33 H.8. c.22. 21 H.7.fo.17. * W.1.cap.26.

But after that this rule of the Common Law was altered, and that the Sheriff, Coroner, Gaoler, and other the Kings Miniſters, might in ſome caſe take of the ſubject, it is not credible what extortions and oppreſſions have thereupon enſued. So dangerous a thing it is to ſhake or alter any of the rules or fundamental points of the Common Law, which in truth are the main pillars and ſupporters of the fabrick of the Common-wealth, as elſewhere I have noted more at large, and yet not ſo largely as the weight of the matter deſerveth.

See the Preface to the 4. part of my reports.

¶ Contentus ſit de eo quod Vicecomes habere conſuevit, &c.] These words are not to be intended of any reward, &c. (for the Sheriff by Law, as hath bèn ſaid, could take no reward for doing of his office) but of the profits of the Court of the Tourn, and ſuch only as were accuſtomed in the reign of H.2. So they muſt be very ancient, for the which the Sheriff ſhould (by an ancient Law) pay a certain ſum de proficuis comitatus, and ſhould be charged in the Exchequer for this certain ſum.

42 E.3.5. 38 H.6. 7. 6 H.7.2,3.

And it is to be obſerved, that if any man be grieved contrary to the purview of this Act, he may, as hath bèn ſaid, for his relief therein, have an action upon this Statute, albeit no action be expreſly given, which in this, and many other like caſes upon the branches of Magna Charta, is worthy of obſervation.

Regiſt.16.174, 175. F.N.B.161.d. Marleb.cap.10.

CAP. XXXVI.

NEc liceat de cætero alicui, dare terram ſuam alicui domui Religioſæ, ita quod illam reſumat de eadem domo tenend'. Nec liceat alicui domui Religioſæ terram alicujus ſic accipere, quod tradat illam illi, a quo eam accepit tenend'. Si quis autem de cætero terram ſuam alicui domui Religioſæ ſic dederit, & ſuper hoc convincatur, donum ſuum penitus caſſetur, & terra illa domino illius feodi incurratur. Vide Statutum de Religioſis, An. 3 E.1.

Mirror c.5.§.2. Glanv.l.6.c.7.

This Chapter is excellently abridged, according to the effect thereof, and notably expounded by a Parliament holden by King Edw. 1. Son of H.3. the words whereof are theſe. Of late (viz. anno 9 H.3. cap.36.) it was provided that religious men ſhould not enter into the fées of any without licence, and will of the chief Lords, of whom ſuch fées bèn holden immediately: whereby it appeareth, that by this Chapter of Magna Charta, a gift of lands to any religious houſe was prohibited, notwithſtanding the Religious houſe gave not the ſame back again to hold of the ſame houſe, &c. but kept the Lands ſo given unto themſelves in their own hands: and in that caſe, that the Land ſhould incur to the Lord of the fee, conſider well the words; and the interpretation is worthy of obſervation for the interpretation of other Statutes in like caſes.

3 E.4.12. See the 1 part of the Inſtitutes Sect. 133.157. Stat.de 7 E.1. de religioſis. 23 H. 3. Aſſ.436. Britton fol.32.b. Fleta lib.3.cap.5.

For

For the word Mortmain, see the first part of the Institutes.

First part of the Institutes. Cap. Frankalmoigne.

There were two causes of making of this Statute: one that the services that were due out of such fees, and which in the beginning were created for the defence of the Realm, were unduly withdrawn. 2. The chief Lords did lose their Escheats, Wardships, Reliefs, and the like; for which causes divers provident Lords at the Creation of the Seigniory had a clause in the deed of feoffment, Quod licitum sit donatori rem datam dare, vel vendere cui voluerit, exceptis viris religiosis, & Judæis. Vide Bracton, libro 1. fol.13. Many of these deeds I have seen.

Bract.li.1. fol.13.

But the Ecclesiastical persons (who in this were to be commended, that they had ever the best learned men in the Law that they could get, of their Counsel) found many ways to creep out of this Statute, viz. religious men; as Abbots, Priors, and other Ecclesiastical persons regular, to purchase Lands holden of themselves, or take leases for long term for years, and many other devices they had to escape out of this Statute: and Bishops, Parsons, and other Ecclesiastical persons secular took themselves to be out of this Statute.

Fleta lib.3. cap.5.

The said Statute of 7 E.1. intended to provide against these devices, in these words, Quod nullus religiosus, aut alius quicunque (i. other whatsoever of like quality of being, a body politique or corporate, Ecclesiastical, or Lay, sole, or aggregate of many) terras aut tenementa aliqua emere, vel vendere sub colore donationis aut termini; And to prevent all other inventions and evasions added these general words, Aut ratione alterius tituli cujuscunq; terras aut tenementa ab aliquo recipere aut alio quovis modo * arte vel ingenio sibi appropriare præsumat, sub forisfactura eorundem.

15 R.2. cap.5.
29 Ass.p.17.
Br. 29 H.8. Mortmain 39.

* These words are notably explained 15 R.2. ca.5. 19 H.6.56. 41 E.3.16. 41 E.3.21. 29 H.8.Br.Mortmain 39. 17 E.3.59. 21 E.3.46. Rot. Parliam. 5 R.2. nu.92. Quant le terre est per covin convey al Roy.

A man would have thought that this should have prevented all new devices, but they found also an evasion out of this Statute, for this Statute of 7 E. 1. extended but to gifts, alienations, and other conveyances made between them and others, Arte vel ingenio, &c. and therefore they gave over them; And they pretending a title to the land (that they meant to get) brought a Præcipe quod reddat, against the Tenant of the Land, and he by consent and collusion should make default, and thereupon they should recover the Land, and enter by Judgment of Law, Et sic fieret fraus Statuto.

W.2.cap.32.

When this new invention was provided for, and taken away by the Statute of W. 2. yet found they out an evasion out of all these Statutes, for now they would neither get any Land by purchase, gift, lease or recovery, but they caused the Lands to be conveyed by feoffment, or in other manner to divers persons, and their heirs, to the use of them and their successors, by reason whereof they took the profits; but this was enacted by the Statute of 15 R.2. to be mortmain within the forfeiture of the said Statute of 7 E.1.

Fleta lib.3.cap.5. 45 E.3.19. 15 R.2.cap.5. 8 H.4.16.

But the foundation of all these Statutes, was this Chapter of Magna Charta.

CAP. XXXVII.

Fleta lib.2.ca.60. SCutagium de cætero capiatur ſicut capi conſuevit tempore Henrici Regis avi noſtri.

¶ Scutagium.] Vide for this the firſt part of the Inſtitutes, lib.2. Cap. Eſcuage, Sect.95.

¶ Tempore Henrici Regis avi noſtri.] Here is another reference to the Reign of King Henry the ſecond. See for this before, Cap.15.&c.

CAP. XXXVIII.

SAlvæ ſint Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Templariis, Hoſpitalariis, Comitibus, Baronibus, & omnibus aliis, tam Eccleſiaſticis perſonis, quam ſecularibus, omnes libertates & liberæ conſuetudines, quas prius habuerunt. Omnes autem iſtas conſuetudines & libertates prædictas, quas conceſſimus in Regno noſtro tenend' (quantum ad nos pertinent) erga nos & hæred' noſtros obſervemus, & omnes de Regno noſtro, tam Clerici quam Laici obſervent (quantum ad ſe pertinent) erga ſuos. Pro hac autem donatione & conceſſione libertatum iſtarum, & aliarum libertatum contentarum in Charta noſtra de libertatibus Foreſtæ, Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, Milites, liberi Tenentes, & omnes de Regno noſtro dederunt nobis quinto-decimam partem omnium mobilium ſuorum. Vide Stat.7. Anno 25 E.3. Conceſſimus etiam eiſdem pro nobis & hæredibus noſtris, quod nec nos, nec hæredes noſtri, aliquid perquiremus, per quod libertates in hac Charta contentæ infringantur vel infirmentur. Et ſi ab aliquo contra hoc aliquid perquiſit' fuerit, nihil valeat, & pro nullo habeatur. Hiis teſtibus Bonefacio Cantuar' Archiep', E. Londinenſi Epiſcopo, & aliis. Datum apud Weſtm' decimo die Februarii, Anno Regni noſtri nono.

This Chapter doth conſiſt of ſix parts.

First it is enacted, That all the Liberties and Free Cuſtoms, which any Archbiſhop, Biſhop, Abbot, Prior, Templar, Hoſpitaller, Earl Baron, or any perſon either Eccleſiaſtical or Secular, have had, be ſafe, that is, whole without prejudice unto them, for the words be, Salvæ ſint omnibus Archiepiſcopis, &c. omnes libertates, &c. all the liberties, &c. be ſafe to all Archbiſhops, &c. ſo as this is no ſaving to them, but in effect, an Act that they ſhould enjoy them: for regularly a ſaving in an Act of Parliament enlargeth not, nor extendeth to any new thing,

thing, but preſerveth a right or intereſt, that is former to things contained in the Act, which by the words of the Act might have been given away. But this clauſe doth enlarge, and extendeth to all other liberties, and free cuſtoms, which any Subject Eccleſiaſtical, or Temporal ought to have; and therefore the Engliſh Tranſlation, both in this and many other places of this great Charter, is very vicious. But it is principally to be obſerved, that here is not any ſaving at all for the King, his heirs, or Succeſſors, to the end that the King, his heirs, and Succeſſors, againſt all pretences of evaſions, ſhould be bound by all the branches of both theſe Charters.

The ſecond is, that all the Cuſtoms, and Liberties, which the King had granted to be holden within his Realm, for him and his heirs, the King himſelf and his heirs, as much as appertained to him or them, ſhould obſerve and keep.

The third is, that all the men of this Realm, as well of the Clergy as of the Laity, the ſaid Cuſtoms and Liberties for themſelves and their heirs, as much as to them appertained, ſhould obſerve and keep.

This is the chief felicity of a Kingdom, when good Laws are reciprocally of Prince and people (as is here undertaken) duly obſerved.

The fourth is, that for this gift and grant by the King, of the Liberties contained in this great Charter, and of others contained in the Kings Charter of Liberties of the Foreſt, the Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, Knights, Free-holders, and other the Kings Subjects, Citizens and Burgeſſes, (aſſembled in Parliament) gave unto the King one fifteenth; which proveth, that as the fifteenth was granted by Parliament, ſo was this great Charter alſo granted by authority of the ſame; But ſince this time the manner of the fifteenth is altered; for now the fifteenth, which is alſo called the Task, is not originally ſet upon the polles, as at this time it was, but now the fifteenth is certainly rated upon every Town. And this was by vertue of the Kings Commiſſions into every County of England in 8 E. 3. tarations were made of all the Cities, Boroughs, and Towns in England, and recorded in the Exchequer, and that rate was at that time the fifteenth part of the value of every Town, and therefore retaineth the name of the fifteenth ſtill.

Hil. 3 Jacobi, l. 8. The Princes Caſe.

Rot. pat. 6 E. 3. 2 part. nu. 26.

And after the fifteenth is granted by Parliament, then the inhabitants rate themſelves for payment thereof, and if one Town be joyned with another in the rate of the total, and ſubdivided on each a certain rate in that Commiſſion, and the one is rated too low, and the other too high, there lieth a Writ called, Ad æqualiter taxand' to be taken out of the Exchequer to rate the Towns equally. The Subſidy is uncertain, becauſe it is ſet upon the perſon, in reſpect of his lands or goods, which commonly do ebb and flow.

The fifth is, that the King did grant for him, and his heirs, that neither he, nor his heirs, ſhall ſeek out any thing, whereby the liberties in this Charter contained may be broken or weakned: And if by any man againſt this Charter any thing ſhould be ſought out, it ſhould be of no value, and holden for nought. And all theſe do evidently appear in this Chapter.

The firſt and laſt is Hiis teſtibus.

It is true, that of ancient time nothing paſſed from the King of Franchiſes, Liberties, Priviledges, Mannors, Lands, Tenements, and Hereditaments of any eſtate of inheritance, but it was by the advice of his Councel expreſſed under Hiis teſtibus, as it was then, and continues to this day in the creation of any to any degree of Nobility, for thereto Hiis teſtibus is ſtill uſed.

This concluſion of the Kings grants with Hiis teſtibus was uſed by King H. 3. and his Progenitors Kings of this Realm before him, and by his ſon E. 1. and by E. 2. and E. 3, after him: Afterwards, in the beginning of the reign of R. 2. I find the clauſe of Hiis teſtibus was left out, and in ſtead thereof came in Teſte me ipſo in this manner, In cujus rei teſtimonium has literas noſtras fieri fecimus patentes: Teſte me ipſo, which ſince by all his Succeſſors Kings, and Queens of this Realm (except in Creations) hath been uſed.

Thoſe

Thoſe that had Hiis teſtibus, were called Chartæ, as this Charter is called Magna Charta, and ſo is Charta de Foreſta, &c. and thoſe other that be Teſte me ipſo, are called Letters Patents, being ſo named in the clauſe of In cujus rei teſtimonium has literas noſtras fieri fecimus patentes.

See the firſt part of the Inſtitutes, Sect. 1.

And this was the ancient form alſo of the Deeds of Subjects, concluding with Hiis teſtibus, which continued until, and in the reign of H. 8. but now is wholly omitted, and now the witneſſes are ſubſcribed under the Deed, or endorſed thereupon.

Now upon this occaſion to treat how theſe clauſes, Datum per manum noſtram, per manum Cancellarii noſtri, per ipſum Cuſtodem, & Concilium, &c. entred in, and went out: when theſe clauſes, De gratia ſpeciali, and Ex certa ſcientia, & mero motu began, (which continue to this day) and the cauſe and reaſon of the inſerting of the ſame; and when and wherefore theſe clauſes were ſubſcribed under the Letters Patents, Per ipſum Regem, Per breve de privato ſigillo, Authoritate Parliamenti, &c. came in, (which ſtill do continue) would ask a ſeveral Treatiſe of it ſelf, and not pertinent to our purpoſe for the underſtanding of this Charter of Magna Charta, and therefore purpoſely I ſpeak not of them.

Here be Witneſſes to this great Charter, a great number of Reverend, and Honorable perſonages, in all 63. of which there were of the Clergy 31. whereof there were 12 Biſhops, and 19 Abbots, and Hugh de Burgo Chief Juſtice, and 31 Earls and Barons, as hath been ſaid before.

Beſides, it was eſtabliſhed by Authority of Parliament, which was holden at Weſtminſter, in form of a Charter, as many others have been, for which, as hath been ſaid likewiſe, by Parliament the Lords and Commons gave a fifteenth. Of Acts of Parliament in form of a Charter, you may read at large in the Princes Caſe, and therefore need not to be recited.

Hil. 3 Jac. in Cancellaria. The Princes Caſe. Lib. 8. fol. 19.

STATU-

Statutum de Merton

EDITUM *Anno* 20 *H.* 3.

Bracton l. 2. c. 96. ſaith it was in an. 18 H. 3.

IT is called the Statute of Merton becauſe the Parliament was holden at the Monaſtery of the Canons regular of Merton, ſeven miles diſtant from the City of London, which Monaſtery was founded by Giſlebert a noble Norman, that came in with the Conqueror. And this is that Monaſtery of Merton, the Prior whereof had a great caſe in Law, which long depended betwẽn him and the Prior of Bingham. 18 E. 4. 22. 19 E. 4. 2, 7. 20 E. 4. 16. 21 E. 4. 60.

PRoviſum eſt in Curia Domini Regis apud Merton, die Mercurii, in craſtino Sancti Vincentii, anno Regni Regis Henrici filii Regis Johannis viceſimo, coram W. Cantuarienſi Archiepiſcopo, & Coepiſcopis ſuffraganeis ſuis, & coram majore parte Comitum & Baronum Angliæ ibidem exiſtentium, pro coronatione ipſius Domini Regis & Elianoræ Reginæ, pro qua omnes vocati fuerunt, cum tractatum eſſet de communi utilitate Regni ſuper articulis ſubſcriptis, ita proviſum fuit & conceſſum, tam a prædict' Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, quam ab ipſo Rege, & aliis.

¶ Coram Cant. Archiepiſcopo, & Coepiſcopis ſuffraganeis ſuis.] Suffraganeus, properly is a vicegerent of a Biſhop, inſtituted to aid and aſſiſt him in his ſpiritual office, and is ſo called à ſuffragiis: Of theſe you may read in the Statutes of 26 H. 8. 1 & 2 Phil. & Mariæ. 1 Eliz. And where ſome copies have Coram Cantuar. Archiepiſcopo, & Coepiſcopis & ſuffraganeis; this latter conjunction (&) is more then ought to be; for ſuffraganeis ſuis muſt refer to Coepiſcopis, that is, that the Biſhops ſhould aid and aſſiſt the Archbiſhop with their ſuffrages: for other Suffragans, which were Vicegerents of Biſhops, never had Voice in Parliament, becauſe they held not per Baroniam, as all Biſhops do, and many Abbots and Priors, as hath bẽn ſaid, did, in reſpect whereof they were Lords of Parliament. 26 H. 8. c. 14. 1 & 2 Ph. & Mar. cap. 8. 1 Eliz. c. 1. See the firſt part of the Inſtitutes, Cap. Frankalmoigne.

¶ Pro Coronatione ipſius Domini Regis.] The King was formerly Crowned at Glouceſter on the 18 of October, in the beginning of the firſt year of his reign, then being about nine years old: And here it appeareth that in the twentieth year of his reign, he was Crowned again, then being about 29 years old, twice Crowned, as King Henry the ſecond, and King John before him had bẽn, and as King R. 2. after him was.

¶ Et Elianoræ Reginæ.] This Elianor was daughter, and one of the heirs of Raymond Berengary Earl of Province, ſhe was ſiſter to the Earl of Province, and to Boniface, Archbiſhop of Canterbury, and ſhe was Crowned at Weſtminſter.

She survived the King, and of a Crowned Queen became a professed Nun in Ambresbury, and died a Nun there, in the nineteenth year of her Widowhood.

The Statutes enacted at this Parliament are divided into eleven Chapters.

CAP. I.

DE Viduis primo, quæ post mortem virorum suorum expelluntur de dotibus suis, & dotes suas, vel quarentenam suam habere non possunt sine placito, videlicet, quod quicunque deforciaverit eis dotes suas, vel quarentenam suam, de tenementis quibus viri sui obierunt seisiti, & ipsæ viduæ postea per placitum recuperaverint, si ipsi deforc' de injusto deforciamento convicti fuerint, reddant eisdem viduis damna sua, scilicet valorum totius dotis eis contingentis, a tempore mortis virorum suorum, usque ad diem quo ipsæ viduæ per judicium Curiæ seisinam suam inde recuperaverint. Et nihilominus ipsi deforciatores sint in misericordia Domini Regis.

First part of the Institutes, Sect. 36. Hil. 9 E. 2. f. 62. b. in libro meo, un fem. &c.

This Chapter is explained in the first part of the Institutes, in all the points thereof, which you may see there at large; whereunto you may add (upon this word recuperaverint) a case in 9 E. 2. that in a Writ of Dower, the Tenant plead that the Husband is alive, &c. and the trial awarded by proofs, and a day therefore given, &c. at which day the Demandant came with her proofs, and the Tenant made default, the Demandant had judgment to recover, but if the Demandant had not had her proofs there, then she should have had but a Petit Cape.

CAP. II.

ITem omnes Viduæ de cætero possint legare blada sua de terra sua, tam de dotibus suis, quam de aliis terris, & tenementis suis: salvis consuetudinibus, & servitiis dominorum de feodo, quæ de dotibus, & aliis tenementis suis debentur.

Before the making of this Statute, it was a question, Whether Tenant in Dower might devise the corn, which she had sowen, or whether he in the reversion should have them. Some held that she could not devise them; or if she devised them not, that her Executors should not have them, but he in the reversion, for that her estate was freely created by Act in Law; and as she, when her dower was assigned to her, should have the land sowen, or unsowen, for her dower, so at the time of her death, he in the reversion should have the land sowen, or unsowen.

ſowen. And of this opinion is Bracton, who ſaith, Antiquitus ſolet obſervari, quod ſicut uxor dotem ſuam recipit poſt mortem viri ſui cultam, ſive incultam, ita poſt mortem uxoris ſolet reſtitui hæredi culta ſeu inculta, quia de bladis & fructibus à tenemento non ſeparatis non habuit uxor teſtamenti factionem, ſed nova ſuperveniente gratia, & proviſione, ſicut patet de proviſione apud Merton. Bracton lib. 2. fol. 96.

And true it is, that if the Husband ſow the ground and die, the property of the Corn is in the Executors, but ſubject to this condition, that if the heir aſſign unto her the Land ſowen for her Dower, ſhe ſhall have the Corn, for ſhe ſhall be in de optima poſſeſſione viri, above the title of the Executor. 15 El. Dier 316.

And Fleta ſaith, vidua per ſtatutum de Merton poterit diſponere de rebus ſuis, & fructibus in dote ſua exiſtentibus, ſive ſeparati ſint a ſolo, ſive non, quod quidem olim facere non potuit. Fleta lib. 2. c. 50.

And they that held this opinion, relied much upon theſe words, de cætero, which imply, as they ſay, a new Law. Now others held the contrary, and that, for advancement of Tillage, and incouragement thereunto, which is ſo profitable for the Common wealth, and by reaſon of the incertainty of her eſtate for life, they held opinion, that the Executors or Adminiſtrators of the Wife ſhould have, or ſhe her ſelf by her Will might diſpoſe them, as well as any other Tenant for life might do, and they vouch Authority before this Statute in 4 H. 3. where it is ſaid, Note that Tenant in Dower may deviſe her Corn growing upon the Land at the time of her death. Now to clear this doubt, was this Statute made, and de cætero may as well be applied to the clearing of a doubt from thenceforth, as for making of a new Law, and ſo of neceſſity it muſt be taken in this Chapter for ſuch Lands and Tenements, as the Widow hath of inheritance, &c. quam de aliis terris & tenementis ſuis. 4 H. 3. deviſe 26. 19 E. 3. bar. 249. 12 H. 7. 25. Paſch. 38 El. lib. 5. fo. 85.

¶ Omnes viduæ, &c.] Qui omne dicit, nihil excludit. Regula.
Generale dictum generaliter eſt intelligendum. Regula.

And therefore where there are five kind of Dowers, viz. Dower at the Common Law: Dower by the Cuſtom: Dower ad Oſtium Eccleſiæ: Dower ex aſſenſu patris: and Dower de la pluis beale: this Chapter doth extend to them all. But if the Wife be by Cuſtom endowed durante viduitate ſua, and ſhe ſow the ground with Corn, and after take husband, he in the Reverſion ſhall have the Corn, becauſe though her eſtate was incertain, yet ſhe hath determined it by her own act. 1 part of the Inſtitutes, Sect. 51. Cuſtumier de Norm. cap. 102. Hil. 44 El. lib. 5. fol. 116. Olands caſe.

¶ Legare.] This word is appropriated to a laſt Will, and ſignifieth to bequeath Goods, Chattels, and in ſome caſes Lands and Tenements. Legatum à Lege dicitur, quia lege tenetur ille, cui intereſt perimplere.

¶ Blada ſignifieth Corn or Grain while it groweth: It properly ſignifieth Corn or Grain while it is in herba, dum ſeges in herba: but it is taken for all manner of Corn or Grain, or things annual coming by the induſtry of man, as Hemp, Flax, &c. Bracton l. 4. 235. Kelw. 125.

And of this word Blada, an Ingroſſer of Corn or Grain is called Bladier, but this word Blada extendeth not by this Act to Graſſe, or to any thing that groweth ſuapte natura, albeit it groweth by ſowing of hay-ſeed, or the like.

¶ Quam de aliis terris & tenementis ſuis.] This is manifeſtly in affirmance of the Common Law, and extendeth to the Lands, which ſhe hath in Frank-marriage, or of any other eſtate of inheritance, the Corn or Grain growing thereupon ſhe may lawfully diſpoſe.

¶ Salvis, &c.] Here is a ſaving to the Lords, of whom the Lands in power, or other lands bẽn holden, ſuch cuſtoms and ſervices, as are due unto them, ſo as they ſhall not be barred, or prejudiced by this Act for or concerning ſuch Cuſtoms and ſervices as they had before, but they ſhall be ſaved to them, as if this Statute had not bẽn made: for that is the nature of a ſaving, as hath bẽn ſaid, to ſãve a former right, and to create no new, and by this ſaving the Lord may diſtrein the Corn after it be reaped and put into a cart, for his rents and ſervices, but the Corn in Sheafes cannot be diſtreined.

7 H. 7. 10 Ke lw. 125.

See the firſt part of the Inſtitutes Sect. 68.

CAP. III.

SI quis fuerit diſſeiſitus de libero tenemento ſuo, & coram Juſtic' itinerantibus ſeiſinam ſuam recuperaverit per Aſſiſam novæ diſſeiſinæ, vel per recognitionem eorum qui fecerint diſſeiſinam: & ipſe diſſeiſitus per vic' ſeiſinam ſuam habuerit, ſi iidem diſſeiſitores poſtea, poſt iter Juſtic', vel infra de eodem tenement' iterum eundem conquerentem diſſeiſiverint, & inde convicti fuerint, ſtatim capiantur, & in priſona domini Regis detineantur, quouſque per dominum regem per redemptionem, vel aliquo alio modo deliberentur. *Vide Marlb. cap.* 8. Et hæc eſt forma qualiter tales convicti puniri debeant, videlicet, Cum conquerentes ad Curiam veniant, habeant breve domini Regis Vic̃ directum, in quo contineatur eorum narratio de diſſeiſina facta ſuper diſſeiſinam. Et ideo mandetur Vic. quod aſſumptis ſecum cuſtodibus placitorum coronæ domini Regis, & aliis legalibus Militibus in propria perſona ſua accedat ad tenementum illud, vel ad paſturam illam de quibus facta fuerit querela, & coram eis per primos juratores, & per alios vicinos, & legales homines *de vicineto illo*, diligentem inde faciat inquiſitionem. Et ſi ipſum iterum invenerint diſſeiſitum (ſicut prædictum eſt) tunc faciat ſecundum proviſionem prædictam, ſin autem, tunc ſit conquerens in miſericordia domini regis, & alius quietus recedat. Nec debet Vic̃ (ſine ſpeciali præcepto Domini regis) hujuſmodi loquelam proſequi. Eodem modo fiat de illis, qui ſeiſinam recuperaverint per Aſſiſam mortis anteceſſoris, & ſimiliter de omnibus terris & tenementis recuperatis per Jurat' in curia domini regis, ſi poſtea diſſeiſiti fuerint a prioribus deforciatoribus, verſus quos recuperaverint per jurat' quoquomodo. *Vide W.*2.*cap.*26.

See the Statute of Marlebridge c. 8. W.2.cap.26. See the 1 part of the Inſtitutes 233.

¶ De libero tenemento ſuo, &c.] That is, of Land, Rent, Common, or ſuch like, whereof if a man be diſſeiſed he may have an Aſſiſe de novel diſſeiſin.

By this Chapter the Writs of Rediſſeiſin and poſt diſſeiſin, are given for the cauſes hereafter expreſſed, which lay not at the Common Law, and both theſe Writs are Vicounteis, and not returnable, but the Sheriff ſhall hold the plea and give the judgment.

¶ Et

¶ Et coram Juſtic' itinerantibus ſeiſinam ſuam recuperaverit.] Here Juſtices in Eyre are named, but for example, and becauſe Aſſiſes were taken moſt commonly before them, for though the Aſſiſe be taken in the Kings Bench, or Court of Common Pleas, or before Juſtices of Aſſiſe, yet is it within this Statute: for though the words be ſpecial, yet the reaſon of the Law is general; Et quando lex eſt ſpecialis, ratio autem generalis, generaliter lex eſt intelligenda. 23 Aſſ.p.7. 30 Aſſ.Pl.35. Bract. li.4. fo.236, 237. *Regula.*

¶ Per aſſiſam novæ diſſeiſinæ.] This branch extends not to an Aſſiſe of Mordauncester, or Darrein preſentment, or of Utrum; But if a man recover in a Writ of Reditſeiſin, upon that recovery he ſhall have a Reditſeiſin, and the like, as often as he is reditſeiſed. F.N.B.189.d. 23 Aſſ. tit. rediſſeiſin 3. 30 aſſ.35.

Upon a plaint in the nature of a freſh force, according to the cuſtom of a City, or Borough, and a recovery thereupon had, a Reditſeiſin doth not lie, for no Reditſeiſin doth lie, but where the firſt Plea began by Writ. 14 E.3. rediſſeiſin 8. 14 E.2. ibid.9.

¶ Per aſſiſam novæ diſſeiſinæ, vel per recognitionem.] That is to ſay, by the Aſſiſe, i. the verdict of the Recognitors of the Aſſiſe, or by confeſſion of the diſſeiſor, &c. and yet a Reditſeiſin doth lie upon a recovery in an Aſſiſe, upon the pleading of a Record, and failer of it, or upon a demurrer, or by default, or the like; and ſo it is explained by a later Statute. See the firſt part of the Inſtitutes. Sect.234. W.2. ca.26. Fleta lib.4.ca. 29.

¶ Per Vicecomitem ſeiſinam ſuam habuerit.] And ſo it is, if the Plaintiff in the Aſſiſe doth enter and execute the recovery by Entry. See the firſt part of the Inſtitutes. ubi ſupra. F.N.B. 188.

¶ Iidem diſſeiſitores poſtea, &c. de eodem tenemento iterum eundem conquerentem diſſeiſiverunt.] For the expoſition hereof ſee the firſt part of the Inſtitutes, Sect.233: Bract.li.2.fo.294, 295.

¶ Et inde convicti fuerint.] For in the Writ of Reditſeiſin the Tenant may plead to the Writ as joyntenancy, or the like; or in bar, as a releaſe, or the like; or give it in evidence. 33 E.3. rediſſ.7. 40 Aſſ.23.

¶ Statim capiantur & in priſona Regis detineantur quouſque per dominum Regem, per redemptionem, vel alio modo deliberentur.] And Bracton hereupon ſaith this, Talis quidem qui ita convictus fuerit, dupliciter delinquit contra Regem, quia facit diſſeiſinam, & roberiam contra pacem ſuam, & etiam auſu temerario irrita ea quæ in Cur' Domini Regis rite acta ſunt: & propter duplex delictum merito ſuſtinere debet pœnam duplicatam. Mirror ca.5. §. 2. Regiſt.206. Marleb.ca.8. W.2.c.26. Bract. lib.4. fol. 236.b. Fleta li.4. ca.29.

And Britton ſpeaking of a Reditſeiſin, Pur ceo que il defuy de recover' per judgment choſe, que il ad conquiſe per ſa proper force in deſpiſant la Ley. Brit.fol.246.

And this reaſon holdeth in other caſes, as after a judgment in an admeaſurement of paſture, if there be a ſurcharge by the party who was admeaſured, a Writ De ſecunda ſuperoneratione doth lie, and the like. Weſt.2. c.8. 7 E.4.23. F.N.B. 126.

And it is to be noted, that whereſoever a man did recover the ſeiſin or poſſeſſion of the Land, and the Tenant or Defendant did after diſſeiſe or eject him, this was a contempt at the Common Law, becauſe it is done againſt the judgment of the Court, and in deſpite of the Law, for the which the Court may commit him, for intereſt reipublicæ, ut judicia rata ſint: Et ea quæ in curia noſtra rite acta ſunt debitæ executioni demandari debent. *Regula.* *Regula.*

23 Aſſ. p. 7. F.N.B. 189.

¶ Aſſumptis ſecum Cuſtodibus placitorum.] This is ſpoken in the plural number, therefore where there are two or more Coroners, he ought to take at leaſt two, but where there is but one, if he take him, it is ſufficient within the meaning of this Statute: though regularly the plural number is not ſatisfied with one.

¶ Per primos juratores & alios.] This muſt be underſtood where there were juratores in the Aſſiſe; for if there were none, then it muſt be tried only per alios: As if the diſſeiſor plead a Record, and fail of it, or if he plead a bar, and confeſs an immediate ouſter, upon which the Plaintiff doth demur, and judgment is given for the Plaintiff, and after the Plaintiff is redisſeiſed, the Plaintiff ſhall have a Redisſeiſin, and it ſhall be tried only per alios, becauſe there were no Jurors at all in the former Aſſiſe; for the Statute, (albeit it be penal) ſhall not be ſo literally expounded, that if it cannot be tried per primos Juratores, that it ſhall not be tried at all, for verba intelligi debent cum effectu. But where there were any Jurors, it ſhall be tried by them and others, and where there were none, then by others alone; but if there were Jurors in the Aſſiſe, and they all die, and after he which recovered is redisſeiſed, there (by the act of God) the Redisſeiſin faileth. And ſo it is, if all the Jurors be dead ſaving one, becauſe the words of the Statute be, per primos juratores, & alios: and ſo note a diverſity where there were never any Juratores at all, for there the Statute could by no poſſibility have wrought, but upon others only, but where there were once Juratores, and the party neglecteth his time, and by the Act of God they fail, there the Redisſeiſin fails, becauſe it cannot be tried per primos Juratores, (which ſometimes were in eſſe) & alios, as the Statute ſpeaketh.

Regula:

8 H. 5. 1. F.N.B. 189. h.

Poſt diſſeiſin.

¶ Eodem modo fiat de illis, qui ſeiſinam recuperaverunt per aſſiſam mortis anteceſſoris, & ſimiliter de omnibus terris & tenementis recuperatis per Juratam, &c.] Here is the poſt diſſeiſin given, where the recovery in a Mordaunc', or in any other real action is by verdict, and in this caſe the Recoveror ſhall have a poſt diſſeiſin againſt the former Tenant being defor ceour, that diſſeiſed him after the recovery; But if the recovery be by reddition or default, &c. he ſhall have a poſt diſſeiſin upon the Statute of W. 2. cap. 26. Nota, here eodem modo are words of great operation, for they imply, that there muſt be idem conquerens de eodem tenemento, & idem tenens, againſt whom the recovery was had after the ſame manner, as is before ſaid in caſe of a Redisſeiſin.

Marlebr. ca. 8. W. 2. ca. 26. F.N.B. 190. Regiſt. 206. b.

CAP.

CAP. IV.

ITem quia multi Magnates Angliæ, qui feoffaverunt Milites & alios libere tenentes ſuos de parvis tenementis in magnis maneriis ſuis, queſti fuerunt, quod commodum ſuum facere non potuerunt de reſiduo maneriorum ſuorum, ſicut de vaſtis, boſcis, & paſturis *Communibus*, cum ipſi feoffati habeant ſufficientem paſturam, quantum pertinet ad tenementa ſua; *ita* proviſum eſt, & conceſſum, quod quicunque hujuſmodi feoffati aſſiſam novæ diſſeiſinæ deferant de communia paſturæ ſuæ, & coram Juſtic' recognit' fuerit quod tantam paſturam habeant, quantum ſufficit ad tenementa ſua, & quod habeant liberum ingreſſum, & egreſſum, de *liberis* tenementis ſuis, uſque ad paſturam ſuam: tunc inde ſint contenti, & illi de quibus conqueſti fuerint recedant quieti, de hoc quod commodum ſuum de terris, vaſtis, boſcis, & paſturis fecerint. Si autem dixerint, quod ſufficientem paſturam non habeant, vel ſufficientem ingreſſum, *vel* egreſſum, quantum pertinet ad tenementa ſua: tunc inquiratur veritas per aſſiſam. Et ſi per aſſiſam recognitum fuerit, quod per eoſdem deforciatores, in aliqua fuerit impeditus eorum ingreſſus, vel egreſſus, vel quod non habeant ſufficientem paſturam, & ſufficientem ingreſſum, & egreſſum, ſicut prædictum eſt: tunc recuperent ſeiſinam ſuam, per viſum Juratorum, ita quod per diſcretionem & ſacramentum eorum habeant conquerentes ſufficientem paſturam, & ſufficientem ingreſſum & egreſſum in forma prædict', & diſſeiſitores ſint in miſericordia Domini Regis, & dampna reddant, ſicut reddi ſolent ante proviſionem iſtam. Si autem recognitum fuerit per aſſiſam, quod querentes ſufficientem habeant paſturam, cum libero & ſufficienti ingreſſu & egreſſu, ſicut prædict' eſt: tunc licite *& libere* faciant *dom'* commodum ſuum de reſiduo, & recedant de ill' aſſiſa quieti. Weſt. 2. cap. 48.

Mirror c. 5. § 2. Bract. l. 4. fol. 222 Britton cap. 58. Fleta l. 4. c. 20.

¶ Quod commodum ſuum facere non potuerunt.] Hereby it appeareth that the Lord could not approve by the order of the Common Law, becauſe the common iſſued out of the whole Waſte, and of every part thereof, and yet ſee Tr. 6 H. 3. where the Lord approved two acres, and left ſufficient, the Tenant brought an Aſſiſe, and the ſpecial matter being found, the Plaintif retraxit ſe.

Tr. 6 H. 3. tit. common 26.

¶ Libere tenentes.] The purview of this Statute extends only for the Lord to make an approvement againſt his Tenant, and not againſt any ſtranger, nor where the Lord had common appendant in the Tenancy, as he may have; but the Statute of W. 2. provideth, De cætero quod Statutum de Merton, proviſum inter Dominos & tenentes ſuos locum habeat de cætero inter Dominos vaſtorum boſcorum, & paſturarum, & vicinos, &c.

W. 2. c. 46. Bract. l. 4. f. 228. Fleta l. 4. c. 20. 18 Aſſ. p. 4 18 E. 3. 43. 19 E. 3. tit. Aſſ. 18 Aſſ. p. 4 F. N. B. 179 e. W. 2. c. 46. 18 Aſſ. p. 4. 18 E. 3. 43. and above cited.

¶ De reſiduo maneriorum.] By this recital a point of the ancient Common Law appeareth, that when a Lord of a Manor (wherein was great

great Waſte grounds) did enfeoff others of ſome parcels of arable land, the feoffées ad manutenend' ſervitium ſocæ, ſhould have common in the ſaid Waſts of the Lord for two cauſes. 1. As incident to the feoffment, for the feoffée could not plough and manure his ground without beaſts, and they could not be ſuſtained without paſture, and by conſequence the Tenant ſhould have common in the Waſts of the Lord for his beaſts, which do plough and manure his Tenancy, as appendant to his Tenancy, and this was the beginning of common appendant. The ſecond reaſon was for maintenance and advancement of Agriculture and Tillage, which was much favoured in Law; like as when a man gives the land to a Parſon and his Succeſſors, whereupon a Church is built for the ſervice of God, to hold of him in Frankalmoigne, the Land is holden, and by conſequent, and operation of Law, the Advowſon, which the Law doth give to the Founder, that is, the Giver of the Land, is alſo holden, for that the advowſon doth in a manner adhere to the Church, and as the Tenant had made a feoffment before the Statute of Quia emptores terrarum, to hold of himſelf by fealty, and xij d. this Meſnalty by operation of Law had been holden of the Lord Paramount.

Temps E.1. common 24. 17 E.2. ibid.23. 18 E.3.30 20 E.3. Admeaſurement 8. Mich. 26 & 27 Eliz.lib.4.fol.37. Tirringhams caſe. Pl.Com.498.b.

¶ Tantam paſturam habeant, quantum ſufficit ad tenementa ſua, & quod habeant liberum ingreſſum.] The Lord may approve againſt a Tenant that hath * common of paſture appendant, but if the Lord grant common of paſture within his Waſts, there is no approvement by this Act againſt a common in groſſe, for the words of the Statute be, Quantum pertinet ad tenementa ſua, &c.

* See the firſt part of the Inſtitutes. Sect.184. W.2.cap.46. 31 E.1. Common 26. 32 E.1. ibid. 29. 3 E.2. ibid.21. 10 E.3.56. 34 Aſſ.11. 22 Aſſ. p.65. 7 H.4.33. 11 H.4.26.a. F.N.B.125. See Bracton li.4. fol.228.

And ſo was the Law taken and adjudged ſoon after the making of this Act, and latter authorities agree with the ſame; and albeit the common appendant be without a certain number, as to have ſufficient paſture for beaſts, quantum pertinet ad tenementa ſua, which may be reduced to a certainty. for, Id certum eſt quod certum reddi poteſt, and therefore this Act doth extend to it. And the Writ of Admeaſurement of paſture doth lie only for and againſt ſuch Commoners as have common appendant, for the words of the Writ be, Et ad ipſos pertinet habendum ſecundum liberum tenementum ſuum, &c. ſo as common appendant, be it certain or incertain, is within this Statute; and ſo is common appurtenant certain or incertain, for pertinet extendeth as well to common appurtenant as appendant.

Bracton ubi ſupra.

Bracton treating of this Chapter, ſaith, Imprimis videndum eſt qualiter conſtitutio illa ſit intelligenda, ne male intellecta trahat utentes ad abuſum: and then expoundeth the ſame in this manner: 1. Si ſit alienus (& non proprie tenens) non ei imponit legem conſtitutio.

2. Si fuer liberi tenentes proprii, tunc refert qualiter fuer feoffati, &c. utrum feoffati fuer' large ſcilicet per totum, & ubiq;, & in omnibus locis, & ad omnimoda averia, & ſine numero, &c. So as by his opinion this Statute extendeth not to a common in groſſe, nor to a common ſans number; tales, ſaith he, non ligat conſtitutio memorata, quia feoffamentum, (i. conceſſionem communiæ) non tollit, licet tollat abuſum.

3. Si autem communia fuer' ſtricta cum numero averiorum certo, &c. (which he intendeth of common appendant) licet uſus ſe largius & latius habuerit quam neceſſe eſſet, tales ligat conſtitutio quod coarctentur ad certum locum, & infra certum locum, dum tamen locus inde ſufficiens ſit & competens cum libero ingreſſu, & egreſſu, & competenti, quod non ſit gravis nec difficilis: Competens autem debet eſſe locus ita quod non longius diſtet, ſed propinquius aſſignetur, &c. cum diſtantia inducit incommoditatem.

4. Item eodem modo ſi ita feoffatus fuerit quis, ſine expreſſione numeri vel generis, ſed ita, cum paſtura quantum pertinet ad tantum tenementum in eadem villa, talem ligat conſtitutio ſicut prius cum expreſſione; quia cum conſtet de quantitate tenementi, de facili perpendi poterit de numero averiorum, & etiam de genere ſecundum conſuetudinem locorum.

5. Item

5. Item tempus ſpectandum erit cum omnis nova conſtitutio, futuris formam imponere debeat & non præteritis. Tr. 18 E.1. in Banco Rot.50. Cantabr.

*Walterus Bonde implacitat Aliciam de Bordeley, & vi. alios pro eo quod cum averiis ſuis blada ſua ad Madingle creſcentia noctanter depaſti ſunt, &c. Alic' & Nicholaus Ruſſell dic' quod placea ubi tranſgreſſio ſupponitur fieri vocatur Leylonfurlonge, quæ quidem placea ſemper fuit pratum uſque ad prædictum annum quod prædictus Walterus prædictum pratum aravit, & ſeminavit, & in quo prato ipſa Alicia habet communiam ſuam poſt fena levatv: Et quia prædictus Walterus, ad auferendum ei communiam ſuam in prædicto prato, ſeminavit, ſicut prædictum eſt, dicunt quod quando fena in pratis adjacentibus levata fuerunt, ipſi cum averiis ſuis communiam ſuam in prædicta placea depaſti fuerunt, ſicut eis bene licuit. Et inde ponunt ſe ſuper patriam. Walterus dic' quod in electione ſua eſt ad dimittend' prædictam placeam jacere pratum, & illud falcare, vel placeam illam arare, & ſeminare pro voluntate ſua. Et de hoc ponit ſe ſuper patriam, &c. *Jur' dic' quod prædicta placea a tempore quo non extat memoria fuit pratum falcabile, uſq; ad prædictum annum quod prædictus Walterus illud aravit: dicunt etiam quod prædictus Walterus eſt parvus tenens ejuſdem villæ, &* non licet alicui tali parvo tenenti ſine licentia ipſius Aliceæ prata aliqua in eadem villa arare, & quod prædicta Alicia in eiſdem pratis poſt fena aſportata communicare debet: * dic' etiam quod quando fena en pratis adjacentibus levata fuerint, ipſi cum averiis ſuis communiam ſuam in prædicta placea depaſti fuerint, ſicut bene licitum eſt eis: Ideo conſideratʼ eſt quod * prædictus Walterus nihil capiat per breve ſuum, ſet ſit in miſericordia. Et affer' per Jur' ad dimid. Marc.**

Note this caſe for common, &c.

* Verdict.

* Note this cuſtom.

* Note this, for feeding of Corn, Vide 21 E.4.41.

* Judgment.

Vide Paſch. 15 E.1. in Banco Rot.6. Buck. Lib.5. fol.78. common of paſture, ſub modo, or with limitation.

Throughout all this Statute, Paſtura & communia paſturæ, is named ſo as this Statute of Approvements doth not extend to common of piſchary, of turbary, of eſtovers, or the like.

¶ Quod commodum ſuum de terris vaſtis, &c. fecerint.] Now it is to be ſæn how this approvement muſt be. And it muſt be divided by ſome incloſure or defence, as it may be made ſeveral, for it is lawful to the Tenant to put on his cattle into the reſidue of the Common, and if they ſtray into that part whereof the approvement is made, in default of incloſure, he is no treſpaſſer.

And if the Lord make a feoffment of certain acres, the feoffee may incloſe, becauſe the feoffment is an approvement in his nature. 31 E. 1. Common 27. 16 E.2. garr. de Charters 31. 10 E.3.15.

¶ Tunc inde ſint contenti, & illi de quibus conqueſti fuer' recedant quieti de hoc quod commodum ſuum de terris vaſtis, &c. fecerint.] By the approvement of part according to this Statute, that part by this Act is diſcharged of the common, in ſo much as if the Tenant which hath the Common purchaſe that part, his Common is not extinguiſhed in the reſidue. Dier Mich. 16 & 17 Eliz.339.

If the Lord, &c. do make an approvement, he may improve eſt-ſoons as oft as he will, ſo he leave ſufficient Common, and ſo it was done in 18 E.3. 18 Aſſ.p.4. 18 E.3.30.43.

If the Tenant at the time of the approvement have ſufficient Common left unto him in the reſidue, with a competent way thereunto, according to this Act, and after the reſidue becometh not ſufficient, yet the approvement remaineth good, 8 Aſſ.18. 16 E.3. Common 9.

good, for the words of this Act be, Tantam paſturam habeant, quantum ſufficit ad tenementa ſua.

10 E. 3. 15. ¶ Coram Juſtitiariis recognitum fuit, &c.] And yet it may be tried in an Action of Treſpaſs: for many times he ſhall fail to have an Aſſiſe.

8 E. 3 38. 16 E. 3. Common 9. 22 Aſſ. 42. 15 H. 7. 10. Bract. li. 4. fo. 222. a & 227. Or if the Lord doth incloſe any part, and leave not ſufficient Common in the reſidue, the Commoner may break down the whole incloſure, becauſe it ſtandeth upon the ground which is his Common.

Bracton reciteth a Writ deviſed upon this Statute by that ſage of the Law William de Ralegh, one of the Kings Juſtices, in caſe where the Lord was diſturbed to incloſe, or when he had incloſed according to this Statute, and his incloſure broken down, which you may read there at large.

¶ Et per Aſſiſam recognitum fuit.] If by the Aſſiſe it ſhall be found, that the Plaintiff had not ſufficient ingreſſe and egreſſe, or not ſufficient paſture, then the Plaintiff ſhall recover ſeiſin by the view of the Jurors; ſo that by the diſcretion and oath of them, the Plaintiff ſhall have ſufficient paſture, and ſufficient ingreſſe and egreſſe aſſigned to him, and that the diſſeiſors ſhall be amerced, and yield damages.

7 E. 3. fol. 67. Upon this branch of the Statute, we have a notable caſe in our Books, viz. A Commoner brought an Aſſiſe of Common of Paſture belonging to his freehold, the Tenant ſaid, that he was Lord, &c. and approved part of his Waſte, and left the Plaintiff ſufficient Common, &c. The Plaintiff denied that he left ſufficient Common, and thereupon iſſue was taken, and Sir William Herle Chief Juſtice of the Court of Common Pleas took the Aſſiſe, and the Aſſiſe found, that the Plaintiff had not ſufficient Common; whereupon the Court did award that the Plaintiff ſhould recover his Common, &c. and the Recognitors of the Aſſiſe were going from the Bar; and albeit the iſſue was found againſt the Tenant, yet for his advantage the Recognitors of the Aſſiſe ought to come back again, and to ordain by their diſcretion and oath ſufficient Common to the Plaintiff, ſo that the Defendant might approve of the remnant by this Statute of Merton, as Trewood affirmed: whereupon Sir William Herle peruſed this Statute (for no man can carry the words of a poſitive Law by Parliament in his head) and found the Statute as Trewood had ſaid, and therefore was in purpoſe to have cauſed the Jurors to come again (the Record yet being in his breaſt) to appoint ſufficient Common to the Plaintiff according to the Statute, but it was prevented, for that the parties agreed.

CAP. V.

SImiliter proviſum eſt, & a Domino Rege conceſſum, quod de cætero non current uſuræ contra aliquem infra ætatem exiſtent' a tempore mortis anteceſſoris ſui, cujus hæres ipſe eſt uſque ad legitimam ætatem ſuam, ita tamen quod propter hoc non remaneat ſolutio debiti principalis ſimul cum uſuris ante mortem anteceſſoris ſui, cujus hæres ipſe eſt inde provenientibus.

This

This Statute hath been diverſly expounded.

1. That this Statute extended to the uſurious Jews that were then in England: for at that time and before the Conqueſt alſo, it was not lawful for Chriſtians to take any uſury, as it appeareth by the Laws of Saint Edward, &c. and Glanvile and other ancient Authors and Records. And by this Act it is manifeſt that the uſury intended by the Statute was not unlawful, for the uſury due before the death of the anceſtor is enacted to be paid, and after the full age of the heir alſo, and no uſury was then permitted but by the Jews only.

Inter leges Sancti Edw. Lamb. Si quis de uſura convictus. Glanvil. lib. 5. cap. 16. Ockham ca. qualiter non abſolvitur. Ca. Itineris de Chriſtrimis uſuariis. 15 E. 3. ca. 5. Rot. Parl. 50 E. 3. nu. 58. 6 R. 2. nu. 57. 14 R. 2. nu. &c.

a But King Edward the firſt (that mirror of Princes) by authority of Parliament made this Law, which is worthy to be written in Letters of Gold: Foraſmuch as the King had ſeen that many of the evils and diſheriſons of the good men of his Realm had come to paſs by the Uſuries which the Jews had made in times paſt, and many other miſchiefs had riſen thereupon, albeit that the ſaid King and his Anceſtors have had great profit of the Jews: nevertheleſs in honour of God, and for common weal of the people; it is ordained and eſtabliſhed, that no Jew from thenceforth ſhould take any Uſury, &c. But yet provideth for the time paſt in ſuch manner, as by the Act appeareth.

a Sta. de Judaiſmo ſee hereafter the expoſition of it.

And true it is, that great was the profit (as in that Act is recited) that the Crown had by the Jews, b for between the 50 year of H. 3. and the 2 year of E. 1. the Crown was anſwered de exitibus Judaiſmi, four hundred and twenty thouſand pounds, and then the ounce of ſilver was five groats.

b Rot. Pat. 3 E. 1. m. 14. 17. 26.

Others expound theſe words non currant uſuræ contra aliquem infra ætatem exiſtentem in this manner, that the rent ſhall not be doubled during the nonage of the heir (which in a large ſenſe is called uſury, for dicitur uſura quia datur pro uſu æris) As if the King give Land to another reſerving a rent payable at a Feaſt certain, and for default of payment, that he ſhall double the rent for every default, and after the grantee dieth his heir within age, he ſhall not double the rent to the King.

Pl. com. 126. b. 35 H. 6. 61.

If a man by obligation bind himſelf and his heirs to pay 100 l. at ſuch a Feaſt, and if he pay it not at that Feaſt, that then he and his heirs ſhall pay 10 l. for every quarter it ſhall be behind, the obligor dieth and leaveth aſſets in fee ſimple his heir within age, he ſhall have his age, and ſhall not pay this 10 l. incurred during his minority after his full age; and this agreeth with the words of the Statute, Non remaneat ſolutio debiti principalis, and in this caſe there is a principale debitum, but debitum ſignifieth not only debt for the which an Action of debt doth lie, but here in this ancient Act of Parliament it ſignifieth generally any duty to be yielded or paid; for debitum is derived of the verb debeo, id enim eſt, quod vel lege naturæ, vel obligatione civili debetur, as rents and the like.

11 H. 7. 22. Mich. 26 & 27 El. lib. 3. fol. 13.

So if A. knowledge a recognizance to B. of 20 l. to be paid at a certain feaſt, and A. doth grant, that if the 20 l. be not paid at the day, then he ſhall pay 10 s. a Week for every Week it ſhall be behind, and before the Feaſt A. dieth ſeiſed of fee ſimple lands, his heir within age; In a Scire facias upon the recognizance the heir ſhall have his age, as in the next caſe before, by the Common Law, and after his full age he ſhall be freed of the 10 s. a Week by this Statute.

11 E. 3. age 4. 15 E. 3. ibidem. 95. 29 aſſ. 37. 29 E. 3. 50. 42 aſſ. 4.

CAP. VI.

Bracton lib.2.fo. 91. Fleta lib.1. ca. 12. 3 E.3.3. 8 E. 3.52. 21 E.3.52. 21 E.3.19. 29 aſſ. 35. 29 E.3.37.

DE hæredibus per parentes, vel per alios, contra pacem vi abductis, vel detentis, ſeu maritatis, ita proviſum eſt, quod quicunque laicus inde convictus fuerit, quod puerum aliquem ſic detinuerit, abduxerit, ſeu maritaverit, reddat perdenti valorem maritagii: & pro delicto corpus ejus capiatur, ut impriſonetur donec pdenti emendaverit delictū ſi puer maritetur: & præterea donec dño Regi ſatisfecerit pro tranſgreſſione ſua. Et hoc de hærede infra quatuordecim annos exiſten'. De hærede autem cum ſit quatuordecim annorum, vel ultra, uſque ad plenam ætatem, ſi ſe maritaverit ſine licentia domini ſui, ut ei auferat maritagium ſuum, & dominus ejus offerat ei rationabile maritagium, ubi non diſparagetur, dominus ſuus tunc teneat terram ejus ultra terminum ætatis ſuæ, ſcilicet xxj annorum, per tantum tempus quod inde poſſit percipere duplicem valorem maritagii, ſecundum æſtimationem legalium hominum, vel ſecundum quod ei pro eodem maritagio prius fuerit oblatum, ſine fraude & malitia, & ſecundum quod probari poterit in curia domini Regis.

Tr. 9 El. lib. 9 fo. 72. Doctor Huſſeys caſe. 7 E.3.58. 40 E.3. 6. 31 aſſ. 26. F.N. B. 141.

Before the making of this Statute the Law gave the Lord two ſeveral remedies, if his Ward were taken away, detained, or married, viz. 1. An Action of treſpaſs, wherein he ſhould recover damages only. 2. Or a Writ of right of Ward, wherein he ſhould recover the cuſtody of body and lands, but if the Ward were married, then was he driven to his Action of treſpaſs, Quare ſe intruſit maritagio non ſatisfact. **The Lord had alſo his Writ, but that lieth againſt the heir, when he entreth into the Land before or after his full age: alſo the Lord may have his Writ** de valore maritagii **at the Common Law, but that lay alſo againſt the heir himſelf after his full age when he intruded not.**

8 E.3.52.

The Writ of Raviſhment de gard **is framed by the Statute of** W. 2. cap. 35. **whereof more ſhall be ſaid hereafter in his proper place.**

Regiſt. 161.

This Statute giveth, that in the Writ of right of Ward the Plaintiff ſhould recover, Valorem maritagii, & pro delicto corpus ejus capiatur, ut impriſonetur donec perdenti emendaverit delictum, ſi puer maritetur; & præterea donec domino Regi ſatisfecerit pro tranſgreſſione ſua.

Mirror ca. 5. § 3.

¶ Si laicus inde convictus fuer'.] **The** Mirror **ſaith that this point is reprovable, inſomuch as the Statute extends not to Clerks,** car eſt nient pluis droit que clerke peche ſans payne, que lay home.

35 H.6.53. See the firſt part of the Inſtitutes, §.104. Cuſtumier de Norm. cap. 33. & les comentaries ſuperinde.

¶ Et hoc de hærede infra 14 annos exiſten'.] **Upon theſe, and the words ſubſequent this Statute doth not extend to the heir female, for the age of conſent to marriage of a male is 14. and of a woman 12. and after 14. (at the making of this Statute) the female was to be out of Ward.**

But note albeit the marriage within the age of conſent be voidable, yet the gardein ſhall recover the value, and albeit the heir at the age of conſent diſagree, ſo as the gardein ſhall have the marriage again, yet there is no remedy for the raviſher.

7 H.6.12. 21 E.3.19,20. 27 H.6. gard 18. 1 part of the Inſtitutes §. 103.

Now what alterations the Statute of W.1. cap. 22. **and** W.2. cap. 35. **have made, do at large appear in** Doctor Huſſeys caſe **aboveſaid, and in the firſt part of the** Inſtitutes.

¶ Si ſe maritaverit ſine licentia domini, &c. Et dominus ejus offerat.] **Here the Statute provideth remedy when the heir male after the age of 14**

years

years (when he may, as is aforesaid, consent to marriage) after tender made marrieth himself without the licence of his Lord, and giveth a Writ of forfeiture of marriage, so called, because the Lord shall thereby recover the double value of the marriage; as if the marriage were worth one hundred pounds, he shall recover two hundred pounds. But this forfeiture of marriage is not due by this Statute, but where the gardein after 14. and before 21. had tendered a covenable marriage to him, and he refused her, and of himself married (as it were in despite of him) another within age; and so is this Statute to be construed, that the ward married himself without licence, &c. after the Lord had tendered unto him a covenable marriage; for if the ward first marry himself, after the age of 14. a tender of marriage to him that is so married is void, and the Statute must be intended of a lawful tender. And this Statute that only giveth the forfeiture of marriage not extending to an heir female, there is no forfeiture of marriage of an heir female.

18 E.3.18. 14 E.3 Action sur lestatute 16. F.N.B. 241 g.Regist.

1 part of the Institutes § 103. Bro. forfeiture de marriage 12. 4 Jacobi lib.6.fo. 70,71. Seignior Darcies case 19. E.3. Judgment 123. W.1. c.22. No forfeiture of marriage of an heir female.

But if a Ward be taken away and married infra annos nubiles, at the age of ten years, there, for that he may disagree, the Lord may tender to him after his age of fourteen, which if he refuse, and after disagree, and marry elsewhere within age, the gardein shall have the forfeiture.

¶ Ubi non disparagetur.] Vide Magna Charta cap. 6. and see the next Chapter following.

¶ Dominus suus tunc teneat terram, &c.] The Lord shall have election either to waive the Land, and to take his action of forfeiture of marriage, (for perhaps the Land may be of small value, and the marriage of great value) or to enter into the Land, and take the profits, till of the same he be satisfied thereby of the double value, for the words of the Statute be, per tantum tempus quod inde possit percipere duplicem valorem, so as the taking of the profits in that case shall go in satisfaction of the double value; but if the heir ouste the gardein before he be fully satisfied of the forfeiture, the gardein shall recover the whole forfeiture against him, because the heir shall not take advantage of his own wrong, and the double value is casual.

18 E.3.182. E.2. action sur lestatute 23. 16 E.3. ibidem 14.

43 E.3.20. 13 H.7. 7. 40 E.3.6. 4 Jac.li.6. fo.70. Dier 9 El.260.b.

The King shall have the forfeiture of the marriage, albeit he be not particularly named, but then the King must pursue the Statute, and make a tender, for in case of the forfeiture there must be a tender, but not for the single value.

The grantee of the body only either by the King or a common person shall not retain the Land, but he may have upon a tender and marriage elsewhere within age a forfeiture of marriage.

If the Gardein entreth into the Land for the double value, he cannot have a Writ of forfeiture of marriage, although he waive the possession of the Land.

Temps E. 1. action sur lestat. 36.

¶ Quod inde possit percipere, &c.] If the Gardein entreth into the Land, and after suffer others to take the profits, yet he shall hold it no longer, then he might have levied the double value, and his negligence shall be his own damage.

Mich. 41 & 42 El. li.4.82. Sir Andrew Corbets case. 15 E.4.5. 7 H.6.12. 11 H.6.8. 15 H.7.14.

Although the Statute saith, Dominus teneat terram, yet if he die, his executors or Administrators shall hold the land, or have a writ of forfeiture of marriage, for this Act had vested an interest therein in the Lord, which after his death goeth to his Executors or Administrators, as it doth to the Successors of an Abbot.

See the first part of the Institutes, § 110.

But if the heir in Ward die either within age, or of full age before the value or the forfeiture (as the case require) be yielded or paid, there the Lord hath no remedy by action for this incertain personal duty against his heirs, Executors or Administrators, no more then an action of debt lieth against Executors upon an escape made by the gardien upon the Statute of W.2. and yet Thirning Chief Justice held opinion, that if I give lands in tayl to hold of me by Knights service, and the Donée devia son issue deins age, & jeo tender a luy mariage, & il ceo refuse, & luy marie sans ma volunt, uncore esteant deins age, & puis moruſt,

27 H.8.3. 28 ass.7. 11 H.4.82. Dier 14 El.306. 41 ass. p.15. 7 H.4.6. 18 E.3. 18. Dier ubi supra.

in ceſt caſe jeo retiendra la terre pur la forfeiture del double value accordant al ſtatute de Merton, & le procheine heire in tayle navera remedy, whereby it appeareth that by his opinion the gardein after the death of the heir might hold the Land by this Statute for the double value.

Wherein it is to be obſerved, that the Lord or donor ſhall have nothing but the Land holden of him, and which moved from him, until he be ſatisfied with the profits of that land of the double value by the words and meaning of this Statute, the words whereof be, teneat terram per tantum tempus quod inde poſſit percipere duplicem valorem. But otherwiſe it is of the ſingle value, for there the profits taken by the Lord go not in ſatisfaction of the value, as ſhall be ſaid in the next Chapter.

14 El. Dier 306. And the grantée of the body only is without remedy, if the heir dieth.

And albeit the Statute ſaith teneat terram, yet it extendeth to the holding of the meſnalty by the Lord Paramount, and in many caſes the meſne ſhall be ſuppoſed to hold the Land.

¶ Secundum æſtimationem legalium hominum.] That is, by a Jury of twelve men in an action to be brought: concerning the forfeiture or value of the marriage conſideration muſt not only be had of that land that is holden, but of all other lands, leaſes, goods and Chattels, and other perſonal eſtate which may advance the eſtimation of the Ward, and yet the value of the marriage ought to be ſo moderate, as the heir may well undergo the ſame.

¶ Vel ſecundum quod ei pro eodem Maritagio prius fuerit oblatum ſine fraude, &c.] And herein the Gardein hath the election either to have ſo much as an indifferent Jury will give him, or ſo much as for the marriage have bona fide been offered unto him.

CAP. VII.

DE dominis qui maritaverint illos quos habent in cuſtod' villanis, vel aliis, ſicut burgenſ. ubi diſparagent': ſi talis hæres fuerit infra 14 annos, & talis ætatis quod conſentire non poſſit matrimonio: tunc ſi parentes conquerantur de illo domino, dominus ille amittat cuſtodiam uſque ad ætatem hæredis, & omne commodum quod inde perceptum fuerit, convertatur in commodum ipſius hæredis, qui infra ætatem eſt, ſecundum diſpoſitionem & proviſionem parent' ſuorum, propter dedecus ei factum. Si autem fuerit 14 annorum & ultra, quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pœna. Siquis hæres, cujuſcunque fuerit ætatis, pro domino ſuo ſe noluerit maritare, non compellatur hoc facere, ſed cum ad ætatem pervenerit, det domino ſuo, & ſatisfaciat ei de tanto, quantum inde percipere poſſet ab aliquo pro maritagio ſuo, antequam terram ſuam recipiat, & hoc ſive ſe voluerit maritare, ſive non: quia maritagium ejus, qui infra ætatem eſt, de mero jure pertinet ad dominum feodi.

See the firſt part of the Inſtitutes, ſect. 107, 108. ¶ Sicut burgenſibus.] Hereof ſée the firſt part of the Inſtitutes: and albeit the Statute of 5 R. 2. ca. 4. doth rank divers degrées that are to come to Parliament, as Dukes, Earls, Barons, Banerets, Knights of Shires, Citizens

zens and Burgeſſes; yet this Act of Merton doth extend alſo to Citizens, because all Cities were firſt Burroughs, and with the Saxon and German Burgh ſignifieth a City. Magna Charta cap.6. W.1.c.22. 1 part Inſt. ſect. 107

This Statute concerning diſparagement doth not extend to heirs females, but only to heirs males, therefore the forfeiture given by this Statute only extends to the caſe of the heir male, but by other Statutes the diſparagement of the heir female is forbidden.

¶ Det Domino, & ſatisfaciat ei de tanto quantum inde percipere poſſit de aliquo pro maritagio ſuo antequam terram ſuam recipiat.] Note the ſeveral pennings of this clauſe concerning the ſingle value, and the clauſe in the Chapter next before concerning the double value, and for the ſingle value the Gardein ſhall hold the land until the heir ſatisfie him of the value, ſo as in this caſe, the taking of the profits ſhall not be accounted as parcel of the value, but as a penalty to cauſe the heir to pay it the ſooner. 43 E.3.20. 31 Aſſ. 26. 27 H.8.4. Mich. 41 & 42 El. lib 4. fol. 82. Sir Andrew Corbets Caſe. See the firſt part of the Inſtitutes. ſect. 110.

* But note, that neither in the Writ De valore maritagii, nor for forfeiture of marriage, the Lord ſhall not recover the land, but damages, for this act giveth no action for the land. Mich 4 E. 1. In Banco Rot. 118. Lincoln, a notable caſe for holding the land for the forfeit of the marriage. * Keylw. 133,134.

And the words of this branch are to be obſerved, Cum (hæres) ad ætatem pervenerit, det domino ſuo, whereby it appeareth that the payment of the ſingle value is perſonally appropriated to the heir, and therefore if he dieth, it is loſt, but the clauſe concerning the double value is otherwiſe penned, as hath been obſerved.

¶ De mero jure pertinet ad dominum feodi] See for the Expoſition of this branch, and where a tender is requiſite, and concerning the differences betwéen the caſe of the heir male, and of the heir female, the Lord Darcies Caſe, and Palmers Caſe, and the firſt part of the Inſtitutes, ſect. 107. Hereunto may be added a caſe, where the Lord cannot at any time ſeiſe the Ward, or tender a marriage to him, and yet he ſhall have the Wardſhip. Edward Hampden holding lands of the Queen by Knights ſervice in Capite had iſſue a daughter, who poſt annos nubiles, (viz. at twelve years) contracted Matrimony with William Ditton, and after married with John Croke, and then the Father died ſeiſed in fee of the land in Capite, his daughter being of the age of thirteen years, and after the daughter had paſſed the age of fixteen years, her marriage with Croke was diſſolved by divorce, Cauſa præcontractus: and it was reſolved by both the Chief Juſtices upon hearing of Councel learned on both ſides, that in this caſe (or the Lord in the like caſe) ſhall have the Wardſhip of the daughter, albeit never any ſeiſure could be made of her, nor tender of marriage to her, becauſe the marriage was never lawful, and was after diſſolved by divorce, as it had never been, and ſhe ſhall take no advantage of her own wrong, to bar the Queen or other Lord of that which by Law is due to them, notwithſtanding the opinion of Laicon, 35 H.6.40.b. that if one hold land of another by Knights ſervice, and the Tenant hath iſſue a daughter, which entreth into Religion, and is profeſſed, and after the Tenant dieth, his daughter being in Religion, and within fourteen years, and when ſhe is of the age of fourteen ſhe is deraigned, that ſhe ſhall not be in Ward. Nota, he ſheweth not for what cauſe ſhe was deraigned: But by the divorce, cauſa præcontractus, there is a nullity of the marriage, ab initio, and the children betwéen them are meer baſtards. Hil.4. Jac. lib.6. fol.70,71. Paſch.3.Jac.li.5. fol.126,127. Caſus in Cur. Wardorum. Tr. 29 Eliz. 35 H.6.40.b.

CAP.

CAP. VIII.

DE narratione diſcenſus in brevi de Recto ab anteceſſore a tempore H. Regis ſenioris anno & die, Proviſum eſt, quod de cætero non fiat mentio de tam longinquo tempore, ſed a tempore H. Regis avi noſtri, & locum habeat iſta proviſio ad Pentecoſten, Anno Regni Domini Regis nunc 21. & non antea: & brevia prius impetrata procedant. Brevia mortis anteceſſoris, 'de Nativis, & de Ingreſſu, non excedant ultimum redit' Domini Regis Johannis de Hibern' in Angliam, & locum habeat iſta proviſio, &c. ut ſupra. Brevia novæ diſſeiſinæ non excedant primam transfretationem Domini Regis qui nunc eſt in Vaſcon', & locum habeat iſta proviſio a tempore prædict', & brevia prius impetrata procedant. Vide Weſt.1. cap.38. & 32 H:8. cap.2.

Glanv.li.13.c.33. Cuſtumler de Norm.cap.22. 110,111,125.

¶ De narratione diſcenſus in breve de Recto.] It appeareth by Glanvil, that in the raign of H. 2. the limitation in an Aſſiſe of Novel diſſeiſin, was poſt ultimam transfretationem Regis in Normaniam, which was in the year of his raign.

Idem eodem lib. cap.32.

But of this limitation he ſaith, Infra tempus a Domino Rege de conſilio procerum ad hoc conſtitutum, quod quandoque majus, quandoque minus cenſetur, &c.

Eodem libro. c. 3.

The limitation in the Aſſiſe of Mordaunc', was poſt primam coronationem H.2. which was 20 Octob. 1154.

The limitation in a Writ of Right before this Statute of Merton, was à tempore Regis H. 1. and now by this Statute of Merton, à tempore Regis H. 2. Note H.1. began his raign the firſt of Auguſt 1100. and H. 2. began his raign 1154. ſo as this Statute of Merton did abridge the limitation in a Writ of Right 54 years, whereof Bracton ſpeaketh thus, Quia breve de recto ſicut alia brevia infra certum tempus limitatur, non enim excedit tempus regis Henrici avi Domini Regis (1 H.2.) & eſt ratio, quia ultra tempus illud (quod inter initium Regni H.2. & Statutum de Merton, anno 20 H.3. eſt circiter nonaginta annos) non poterit quis aliquid probare, licet jus habeat in re: cum nullus aliquid probare poſſit ultra tempus illud, ex quo loqui non poterit de viſu ſuo proprio, vel de viſu patris ſui, qui ei injunxit quod teſtis eſſet ſi inde audiret loqui; Et unde ſi quis loqueretur de tempore Henrici Regis ſenis, (1 H.1. quod fuit circiter 125 annos) amittere poſſit propter defectum probationis.

Bract.li.4.fo.373.

Fleta lib.4.c.5.

¶ Brevia mortis anteceſſoris, de nativis, & de ingreſſu non excedant ultimum reditum Domini Regis Johannis de Hibernia in Angliam.] King John went firſt into Ireland in the ſecond year of his raign, and returned in the third year: In the 12 year of his raign he went into Ireland again, and returned the ſame year into England, and this was ultimus reditus, that this Act ſpeaketh of, ſo as betwéen the twelfth year of King John, and 20 H. 3. were about twenty five years.

¶ Brevia novæ diſſeiſinæ non excedant primam transfretationem Domini Regis qui nunc eſt, viz. H.3. in Vaſconiam.]

King H. 3. firſt paſſage into Gaſconie, was in the fifth year of his raign, ſo as there excéeded not the fiftéen years betwéen that transfretation and this Statute.

It

It appeareth by Bracton that before this Statute of Merton, the limitation in a Writ of Aſſiſe, was Poſt ultimum reditum Domini Regis de Britannia in Angliam. Bract.l.2. fol.175.

But theſe times of limitations were altered in the reign of King Edw.1. W.1.c.38. W.2. c.2. & 46.

And then the limitation in a Writ of Right was from the time of King R.1. betwæn the beginning of R. 1. and 3 E.1. there had paſſed about eighty eight years. Tr. 7 E.1. in Banco Rot.71.Hunt. Mich. 7 E.1. ibid. Rot.50. Cantab.

And that the Writ of Aſſiſe of Novel diſſeiſin, and the Writ of Purparty, which is called the Nuper obiit, ſhould have the term of the firſt tranſfretation of H.3. into Gaſcony, which as hath bæn ſaid, was in Anno 5 H.3.

And the Writs of Mordaunc', de Coſinage, de Aiel, de Entre, & bre de Nieſtie eyent le terme de Coronement meſme le Henry, 1 H. 3. which betwæn that and this Statute of W.1. was about 58 years: Note (as hath bæn ſaid) this King was twice Crowned, firſt the 28 day of October, in the firſt year of his reign, and the ſecond time on Whitſonday, in the fourth year of his reign: but this Statute of W.1. ſpeaking indefinitely, is to be underſtood of the firſt Coronation, for quod prius eſt tempore potius eſt jure; And by the Statute of W.2. cap.2. in an avowry the like limitation for ſeiſin ſhall be accounted, as in the Aſſiſe, which, as is aforeſaid, is poſt primam tranſfretationem Regis Henrici 3. in Gaſconiam. *Regula.*

But albeit theſe times of limitations were reaſonable, when theſe Statutes were made, yet in proces of time (there being ſet times appointed in former Kings reigns) the times of neceſſity grew to large, whereupon many ſuits, troubles and inconveniencies did ariſe, and therefore the makers of the Statute of 32 H.8. took another and more direct courſe, which might indure for ever, and that was to impoſe diligence and vigilancy in him that was to bring his Action, ſo that by one conſtant Law certain limitations might ſerve both for the time preſent, and for all times to come, viz. That the Demandant ſhould alledge ſeiſin in a Writ of Right not above ſixty years next before the Teſte of his Writ. In Mordaunc' coſinage, aiel, entry ſur diſſeiſin, or other poſſeſſory Action upon the ſeiſin or poſſeſſion of any of his Anceſtors or Predeceſſors, of a ſeiſin within fifty years: In any Action upon his or their own poſſeſſion within thirty years, In an Avowry or conuſance for any rent, ſute, or ſervice, within 40 years; In a Formedon in Reverſion or Remainder, or Scire facias upon fines within fifty years; And yet this Statute prefixing a certain time extended not to divers caſes, which were within the ancient Statutes, as to accidental ſervices, as hereafter ſhall appear. See the firſt part of the Inſtitutes. ſect.170. 32 H.8. cap.2. 1 Mar.cap.5.

¶ Brevia prius impetrata procedant, &c.] For the rule is, Omnis nova conſtitutio futuris formam imponere debet, & non præteritis. See a caſe upon this branch in 7 E.1. Tho. de Redberwes Caſe: Bract.l.4.fo.228. Tr.7 E.1. Rot.71. in Banco. Hunt.

And albeit Bracton ſaith, that omnes actiones in mundo infra certa tempora limitationem habent; And in another place he ſaith, Omnis querela & actio injuriarum limitata eſt infra certa tempora; Yet ſome actions were not limited by any Statute, as by divers Authorities quoted in the margent appeareth. Bract.l.2. fo.228. 1 part Inſt.ſect.170 Lib.4. fol.10,11. lib.7. fol. 40. lib.8. fol.65.& 126. lib.9. fol.36. li.11. fol.68. 17 E.3.11.

But ſomewhat more is neceſſary to be added to the former Reports, and Book Caſes before quoted in the margent, for the ſaid Act of 32 H. 8. extends only concerning avowries to rent, ſute, or ſervice, ſo as relief is not within the purview of the Law, for it is no ſervice but a duty, by reaſon of the tenure and ſervice: and albeit homage, fealty, and eſcuage, and other accidental ſervices (being ſervices) are within the Letter of the Law, yet they and all other accidental ſervices, as heriot ſervice, or to cover the Lords Hall, and the like, for that they may not happen within the times limited by that Act, are by conſtruction out of the meaning of this Statute of 32 H.8. as it appeareth by the caſes quoted before: but albeit relief be not within this Statute, yet in avowry for relief, the avowant muſt alledge a ſeiſin of the ſervices within the ancient Statute, 20 E.4 14. Fleta lib.2. ca.28. 7 E.6. Br. avowry 96. gard 69. Bract.li.2. fo.52. & lib.4. fol.314. 13 H.4. fol.6. Edw. Latimers Caſe adjudged.

tute, viz. Poſt primam transfrerat Regis Henrici in Gaſconiam, and the ſeiſin of the ſervices is traverſable.

And ſo it is of homage and fealty, and eſcuage; albeit they be out of the Statute of 32 H.8. yet are they within the ancient Statute.

7 E.6. tit.gard. Br.69. Avowr.96. 31 E.3. gard. fol.118.

And it is to be noted, that where the tenure is by homage, fealty, and eſcuage incertain, and by ſuit of Court, or rent, or any other annual ſervice, the ſeiſin of the ſute or rent, or any other annual ſervice is a good ſeiſin of the homage, fealty, or eſcuage, or other accidental ſervices, as Wardſhip, heriot ſervice, or the like: and hereby (if you ſhall heedfully peruſe over the Reports and Book caſes before quoted) you ſhall underſtand the ſame the better.

1 Mar.cap.5. 17 E.3.fol.11.a. in Quare imped.

By this Act it is declared, that the ſaid Act of 32 H. 8. ſhall not extend to Writs of Right, of Advowſon, Quare impedit, Aſſiſe of Darrein preſentment, or Jure Patronatus, nor to any Writ of Right of Ward, Writ of Raviſhment of Ward, for the body or land holden by Knights ſervice, but that theſe Actions may be maintained, as they might have been before the making of the ſaid Act of 32 H.8.

And ſeeing perſonal Actions are at this day more frequent then they have been in times paſt, it were to be wiſhed for eſtabliſhment of quiet, and avoiding of old ſuits, that Bractons rules by ſome new proviſion extended to them alſo, and that they were limited within ſome certain time.

Since we wrote this Commentary, there is a good Statute made concerning certain perſonal Actions, in Anno 21 Jacobi Regis, ca.16. and therein a limitation ſet down in the Formedon in Diſcender, Formedon in Remainder, and Formedon in Reverter.

CAP. IX.

See the firſt part of the Inſtitutes. ſect.399,400. & 188.

AD breve Regis de Baſtardia, utrum aliquis natus ante matrimonium habere poterit hæreditat', ſicut ille qui natus eſt poſt matrimonium, Reſponderunt omnes Epiſcopi, quod nolunt nec poſſunt ad iſtud breve reſpondere, quia hoc eſſet contra communem formam Eccleſiæ. Et rogaverunt omnes Epiſcopi Magnates, ut conſentirent, quod nati ante matrimonium eſſent legitimi, ſicut illi qui nati ſunt poſt matrimonium, quantum ad ſucceſſionem hæreditariam, quia Eccleſia tales habet pro legitimis. Et omnes Comites & Barones una voce reſponderunt, quod nolunt Leges Angliæ mutare, quæ hucuſque uſitatæ ſunt & approbatæ.

Vide Decret. Gregorii 9. fol. 260.col.1.

¶ Contra communem formam Eccleſiæ, &c.] For the better underſtanding of this branch, it is to be known, that in the time of Pope Alexander the third, (who lived Anno Domini 1160. which was Anno 6 H.2.) This conſtitution was made, that children born before ſolemnization of Matrimony, where Matrimony followed, ſhould be as legitimate to inherit unto their Anceſtors, as thoſe that were born after Matrimony, and thereupon the Statute ſaith, Eccleſia tales habet pro legitimis.

Glanv.li.7. c.15.

Of this Canon or Conſtitution Glanvil writeth thus, Orta eſt quæſtio, ſi quis antequam pater matrem ſuam deſponſaverat fuerit genitus vel natus, utrum talis filius ſit legitimus hæres, cum poſtea matrem ſuam deſponſaverat: Et quidem licet ſecundum Canones & leges Romanas talis filius ſit legitimus hæres, tamen ſecundum jus & conſuetudinem Regni nullo modo tanquam hæres in hæreditate ſuſtinetur, vel hæreditatem de jure Regni petere poteſt.

And

And herewith do agrée not only other ancient Authors, but the constant opinion of the Judges in all succession of ages ever since, of the ancient Law of England. Hereupon these two conclusions do follow: Bract. li.5. fo. 416, 417. Fleta lib.6. c.38. Forteſcue c.39. 11 Aſſ.p.20.

1. That any forrain Canon or Constitution made by Authority of the Pope, being (as Glanvil saith) Contra jus & consuetudinem Regni, bindeth not until it be allowed by Act of Parliament, which the Bishops here prayed it might have bèen; for no Law or Custom of England can be taken away, abrogated or annulled, but by Authority of Parliament.

2. That although the Bishops were Spiritual Persons, and in those days had a great dependency on the Pope, yet in case of general bastardy, when the King wrote to them to certifie who was lawful heir to any Lands, or other inheritance, they ought to certifie according to the Law and Custom of England, and not according to the Roman Canons and Constitutions, which were contrary to the Law and Custom of England, wherein the Bishops sought at this Parliament to be relieved. 4 E.1. Stat. de Bigamis c.9. simile.

See the first part of the Institutes, sect.399. & 400. and add thereunto: Glanv. ubi supra.

*Assisa venit, &c. Si Nicholaus de Lewkenor Pat' Thom' de Lewkenor fuit seisitus, &c. de manerio de Southmyms quod Rogerus de Lewkenor tenet, qui dicit quod ipse est frater ipsius Thomæ antenatus de eodem Patre, & eadem Matre, & est seisitus de prædictis tenementis, & clamat per eundem discensum, & petit Judicium. Thom' dic' quod Rogerus non potest clamare per eundem discensum, quia dicit quod idem Rogerus natus fuit extra Sponsalia, &c. Et quia idem Tho. non potest didicere, quin idem Rogerus sit frater ipsius Tho. antenatus de eodem Patre, & eadem Matre, & post mortem prædicti Nicholai Patris, &c. intravit in eisdem tenementis ut filius ejus & hæres, *Consideratum est quod prædictus Rogerus ind' sine die. Et Tho. nich. cap. per Assisam, set sit in misericordia, &c.* Paſch. 18 E. 1. in Banco Rot.80. Mid. in Aſſ. de Mordaunc'. Vide Mich. 15 E.1. in Banc. Rot.129. Hertf. Tr. 15 E.1. ibid.Rot.60. Not. * Judgment.

Note by this judgment that the bastard eigne to this intent is accounted heir, and of the blood with the Mulier puisne, as the Mulier puisne cannot have an Assise of Mordaunc' against him.

We remember not that we have read in any Book of the legitimation or adoption of an heir, but only in Bracton lib.2. cap.29. fol.63.b. and that to no little purpose; but the surest adoption of an heir is by learned advice, to make good assurance of the Land, &c.

¶ Et omnes Comites & Barones, una voce responderunt quod nolunt leges Angliæ mutare quæ hucsuque usitatæ sunt & approbatæ.] See the first part of the Institutes. sect.400.

The Nobility of England, have ever had the Laws of England in great estimation and reverence, as their best birth-right, and so have the Kings of England as their principal royalty and right belonging to their Crown and dignity: This made K.H.1. that noble King sirnamed Beauclerk, to write to Pope Pascal, Notum habeat sanctitas vestra, quod me vivente (auxiliante Deo) dignitates & usus regni nostri Angliæ non imminuentur, & si ego (quod absit) in tanta me dejectione ponerem, optimates mei & totus Angliæ populus id nullo modo pateretur. Chart. Hen.1.

And it is worthy the observation, how dangerous it is (as elsewhere hath bèen often noted) to change an ancient Maxim of the Common Law.

Some have written, that William the Conqueror being born out of matrimony, Robert his reputed Father did after marry Arlot his mother, and that thereby he had right by the Civil and Canon Law, but that is contra legem Angliæ, as here it appeareth. And during this Parliament in the 20 year of H. 3. it may be collected by the 23. and 24. Epistles of Robert Grostead then Bishop of Lincoln directed to William Rawleigh (Priest) then one of the Kings Justices, that this matter to bring the nati ante matrimonium to be made legitimate was vehemently laboured by the Clergy: And in the 26 Epistle to the Bishop of Canterbury, he findeth fault with the Arch-bishop, for that the King and his Councel had resolved that the Law and Custom of the Realm in this point William Malmſ. lib.3. circa initiū. Ingulphus lib.6. cap.19. See the Custumier de Nor. ca.27. fo. 42. & 44.

should continue still: Whereby it appeareth, that not only the Nobles, but the King himself was against it.

Rot.Par. 28 E.1. apud Lincoln.

And in the Letters, which all the Nobility of England by assent of the whole Comminalty assembled in Parliament at Lincoln wrote to Pope Boniface, it is thus contained, Ad observationem & defensionem libertatum, consuetudinum, & legum paternarum ex debito præstiti sacramenti astringimur, quæ manutenebimus toto posse, totisque viribus cum Dei auxilio defendemus, nec etiam permittimus aut aliquatenus permittemus, sicut nec possumus nec debemus præmissa tam insolita, indebita, præjudicialia, & alias inaudita dominum nostrum regem, etiam si vellet, facere, seu quomodolibet attemptare: (and there the inconveniences are set down) præcipue cum præmissa cederent manifeste in exheredationem Juris coronæ Regis Angliæ & regiæ dignitatis, ac subversionem status ejusdem Regni notoriam, nec non in præjudicium libertatum, consuetudinum, & legum paternarum. Sealed by the several seals of Arms of 104 Earls and Barons, and in the name of all the Comminalty of England. And to that effect King E.1. wrote also to the Pope.

Jus coronæ.

¶ Leges Angliæ.] Here our Common Laws are aptly and properly called the Laws of England, because they are appropriated to this Kingdom of England as most apt and fit for the government thereof, and have no dependancy upon any forrain Law whatsoever, no not upon the Civil or Canon Law other then in cases allowed by the Laws of England, as partly hath been touched before: and therefore the Poet spake truly hereof, Et penitus toto divisos orbe Britannos: so as the Law of England is, proprium quarto modo, to the Kingdom of England; therefore forrain precedents are not to be objected against us, because we are not subject to forrain Laws.

And it is a note worthy of observation, that where at the holding of this Parliament in anno 20 H.3. and before, and sometime after, many of the Judges and Justices of this Realm were of the Clergy, as Bishops, Deans and Priests, and all the great Officers of the Realm, as Lord Chancellor, Treasurer, Privy seal, President, &c. were for the most part of the Clergy; yet even in those times the Judges of the Realm, both of the Clergy and Laity, did constantly maintain the Laws of England, so as no incroachment was made upon them, or breach unto them by any forrain power, as partly hath been shewed in Caudries case: and many more Judgments and Authorities in Law might be produced for the manifestation thereof: See the first part of the Institutes, many of the Clergy Judges and Justices of the Realm of ancient time.

Lib.5.fo.1.&c. Caudries case. 1 part of the Institutes §.534.

¶ Et rogarunt omnes Episcopi magnates ut consentirent, &c.] Here was the motion and request, But Bracton saith, Rogarunt Regem & magnates: Et omnes Comites & Barones una voce responderunt, Nolumus leges Angliæ mutare, &c. for so it is in ancient Manuscripts.

Bracton lib.5. fo. 416,417.

This is the first of this kind that we remember, that hath been printed, for it is to be understood that by the Parliamentary order all motions and petitions made (as this was) though they were denied, and never proceeded to the establishment of a Statute, yet the same were entred into the Parliament Roll together with the answers thereunto: but this is the first of this kind (as hath been said) that hath been printed.

See the last Cha. of Merton the like.

And yet in our books this is called a Statute, for Sir Galfred le Scrope Chief Justice saith, before the Statute of Merton, the party pleaded not general bastardy, but that he was born out of espousals; and the Bishop ought to certifie whether he were born before espousals or not, and according to that Certificate to proceed to Judgment according to the Law of the Land: And the Prelates answered that they could not to this Writ answer, and therefore ever since special bastardy, (viz. that the defendant, &c. was born before espousals) have been tried in the Kings Courts, and general bastardy in Court Christian; and herewith agreeth our old books and the constant opinion of the Judges ever since.

12 ass.p.20.

Bract.li.5. fo.416. Fleta li.6. cap.38. 47 E.3.14. 21 E.3.49. 28 ass.46. 46 E.3.3.

Now for that this point was resolved in Parliament, it is here in a large sense called a Statute.

CAP.

CAP. X.

PRoviſum eſt inſuper, quod quilibet liber homo, qui ſectam debet ad comitatum, trithingum, hundredum, & wapentagium; vel ad Curiam domini ſui, libere poſſit facere Attornatum ſuum, ad ſectas illas pro eo faciendas.

¶ Sectam debet.] Nota, There be two kinds of ſuits, viz. ſuit real, that is, in reſpect of his reſiance to a Lèt or Tourne: and ſuit ſervice, that is, by reaſon of a tenure of his Land of the County, Hundred, Wapentake, or Manor whereunto a Court Baron is incident: before this Act every one that held by ſuit ſervice ought to appear in perſon, becauſe the ſuiters were Judges in thoſe Courts, otherwiſe he ſhould be amerced, which was miſchievous, for it might be, that he had lands within divers of thoſe Seigniories, and that the Courts might be kept in one day, and he could be but in one place at one time: But this Statute extends not to ſuit real, becauſe he cannot be within two Lèts, &c. 41 E.3. Avowry 77. Vid.Glo.c.8. W.2.cap.10.

¶ Trithingum or Trithinge.] Here it ſignifieth a Court which conſiſteth on three or four Hundreds, and doth not here ſignifie a Lèt or view of frankpledge. Lamb. int. leges Ed.regis, nu.34. Magna Cart.c.35. Temps E.1. Attorn.106. Regiſt.172.

¶ Wapentagium.] That, which in ſome Countries is called a Hundred Court, in ſome Countries is called a Wapentake. * Quod Angli vocant Hundredum ſupradicti Comitatus vocant Wapentagium. Now the reaſon of the name was this: When any on a certain day and place tok upon him the government of the Hundred, the frée ſuiters met him with launces, and he deſcending from his horſe, all roſe up to him, and he holding his launce upright, all the reſt, in ſign of obedience, with their launces touched his launce or weapon: for the Saxon word wapen, is weapon, and tac, is tactus, or touching: and thereof this Aſſembly was called Wapentake, or touching of weapon. 23 E.3 cap.4. F.N.B. 156. * Lam. verbo centuria int. leges Ed. regis, nu.33. Bract.lib.3.

Now albeit he that holdeth by ſuit ſervice may make an Attorney, yet that Attorney cannot ſit as Judge, as the frée ſuiter himſelf might do, for he cannot depute another in his judicial place; and the words of the Statute be, Libere poſſit facere attornatum ad ſectas illas pro eo faciendas. Mirror,ca.5. §.3.

¶ Liber homo.] This doth extend to Frée-holders in ancient demeſne, but not to Coby-holders. Temps E.1. Attorny 106.

¶ Facere Attornatum.] He muſt make a Letter of Attorny under his ſeal, which the Steward ought to allow; and if he do not, the ſuiter may have a Writ out of the Chancery for allowance of him: or if he doubted, that he ſhould not be allowed, he might have a Writ before-hand to receive him as Attorney: and ſuch a Writ ſhall ſerve during the life of the tenant, &c. for the words of another Writ be, Et quia virtus Brevium noſtrorum de hujuſmodi Attornato faciendo terminum non capit, nec terminus limitatur durantibus perſonis, &c. F.N.B.156.E.W.1. cap.33. F.N.B. 157.

What ſuch an Attorney may do, and who cannot be Attorney, ſée the Statute of W.1. W.1.cap.33. Cuſtumier de Norm.cap.65.

¶ Ad ſectas illas pro eo faciendas.] So as by force of this Act he may do ſuch ſuit, as the Frée-holder ought to do.

See the Regiſter 19. this Act extendeth to Juſtices in Eire.

CAP. XI.

DE malefactoribus in parcis, & vivariis nondum eſt diſcuſſum, quia magnates petierunt propriam priſonam de illis, quos caperent in parcis, & vivariis ſuis. Quod quidem dominus Rex contradixit, & ideo differtur.

¶ Vivarium] Is a word of a large extent, and ex vi termini ſignifieth a place in Land or Water, where living things be kept. Moſt commonly in Law it ſignifieth Parks, Warrens, and Piſcharies or Fiſhings; here it is taken for Warrens and Fiſhings, for that Parks were named before.

¶ Propriam priſonam.] This Petition of the Lords in Parliament ſtood upon three branches: 1. That they might impriſon ſuch as they ſhould take in their Parks or Vivaries, which ſeemed to be againſt the 29 Chapter of Magna Charta. 2. That they ſhould have propriam priſonam, a priſon of their own, which no ſubject can have; for all Priſons or Gaoles are the Kings Priſons or Gaoles, but a ſubject may have the cuſtody or keeping of them. 3. That they ſhould not be impriſoned in the Common Gaol. All which Dominus Rex contradixit.

See the like before, cap. 9.

Statutum

Statutum de Marlebridge,

Editum 52 H. 3. *Anno gratiæ* 1267.

¶ MArlebridge] Now called Marleborough, a Town in Wiltſhire, the greateſt fame whereof is the holding of this Parliament there. Henricus vero, &c. Concilium convocavit Marlebrigium, quod eſt pagus celebris comitatus Wilceriæ, qui in eo conventu primum lèges ab ſe latas, & præſertim Magnæ Chartæ de concilii ſententia approbandas, deinde alias condendas curavit, quæ ad ſtatum & commodum Regni maximè conducerent. Polyd. Virg. p. 314. 10.

This Town in our Books is called a City, and the Fréemen thereof Citizens. 39 E. 3. fol. 15.

¶ 52 H. 3.] This King raigned longeſt of any King ſince the Conqueſt, or before, that we remember; for he raigned 56 years. But the great and famous Quéen Elizabeth was of greater years then any of her progenitors, for ſhe attained near to 70 years. So King H. 3. raigned longeſt, and Quéen Eliz. lived longeſt. She raigned the years of the Emperor Auguſtus, and lived the years of King David.

ANno Gratiæ M. CC. LXVII. Regni autem Domini Henrici filii Regis Johannis quinquageſimo ſecundo, in octabis S. Martini, providente ipſo Domino Rege, ad Regni ſui Angliæ meliorationem, & exhibitionem juſtitiæ (prout Regalis officii expoſcit utilitas) pleniorem, convocatis diſcretioribus ejuſdem Regni, tam majoribus quam minoribus: Proviſum eſt & ſtatutum, ac concordatum & ordinatum, ut cum Regnum Angliæ multis tribulationibus & diſſentionum incommodis nuper *eſſet* depreſſum, reformatione legum & jurium (quibus pax & tranquillitas incolarum conſervetur) indigeat, ad quod remedium ſalubre per ipſum Regem & ſuos fideles oportuit adhiberi: proviſiones, ordinationes, & ſtatuta ſubſcripta, ab omnibus Regni ipſius incolis, tam majoribus quam minoribus, firmiter & inviolabiliter temporibus perpetuis ſtatuerit obſervari.

This general Preamble to all the Statutes of Marlebridge doth conſiſt on four parts.

1. The end wherefore theſe Statutes were made, for ſapiens incipit à fine, and that is twofold; 1. Ad meliorationem Regni Angliæ. 2. Ad exhibitionem juſtitiæ (prout regalis officii expoſcit utilitas) pleniorem.

2. Of what members this Parliament conſiſted, Convocatis diſcretioribus ejuſdem Regni, tam majoribus, quam minoribus.

3. What was the cauſe of calling this Parliament, Cum regni Angliæ multis tribulationibus & diſſentionum incommodis nuper eſſet depreſſum. The many

many fearful and dangerous troubles and diſſentions betwæn the King and his Barons, which I had rather you ſhould read in Hiſtory, then I ſhould relate, grew originally out of this root, that the King ſometimes allowed, and ſometimes diſallowed Magna Charta, and Charta de Foreſta.

4. What ſhould be the remedy that peace and tranquillity might enſue. Ut cum regnum &c. reformatione legum & jurium quibus pax & tranquillitas incolarum conſervetur indigeat, ad quod remedium ſalubre per ipſum regem & ſuos fideles proviſiones, ordinationes, & ſtatuta ſubſcripta, ab omnibus Regni ſuis incolis tam majoribus quam minoribus firmiter & inviolabiliter temporibus perpetuis ſtatuerit obſervari.

This remedy that ſhould for ever in all future times be inviolably obſerved, conſiſteth upon two parts.

1. For eſtabliſhing of Magna Charta, and Charta de Foreſta, whereof more ſhall be ſaid when we come to the firſt Chapter. In the mean time, this is to be obſerved, that after this Parliament neither Magna Charta, nor Charta de Foreſta, was ever attempted to be impugned or queſtioned; whereupon peace and tranquillity, whereof this Preamble ſpeaketh, have ever ſince enſued.

2. For enacting of new Laws, or declaring of old, with addition of great puniſhment.

CAP. I.

CUm autem tempore turbationis nuper in Regno Angliæ ſubortæ, & deinceps multi magnates & alii juſtitiam indignati fuerint recipere, per Dominum Regem,& curiam ſuam, prout debuerunt, & conſueverunt temporibus prædeceſſorum ipſius Domini Regis, & etiam tempore ſuo: ſed de vicinis ſuis, & aliis per ſeipſos graves ultiones fecerint, & diſtrictiones, quouſque redemptiones reciperent ad voluntatem ſuam. Et præterea quidam eorum, ſe per miniſtros Domini Regis juſticiari non permittant, nec ſuſtineant quod per ipſos liberentur diſtrictiones, quas authoritate propria fecerint ad voluntatem ſuam. Proviſum eſt, concordatum & conceſſum, quod tam majores, quam minores, juſtitiam habeant & recipiant in curia Domini Regis. Et nullus de cætero ultiones, aut diſtrictiones faciat per voluntatem ſuam, abſque conſideratione curiæ Domini Regis, ſi forte dampnum vel injuria ſibi fiat, unde emendas habere voluerit de *aliquo* vicino ſuo, ſive majore ſive minore. Super articulo autem ſupradicto proviſum eſt & conceſſum, quod ſi quis de cætero ultiones hujuſmodi capiat per voluntatem ſuam *propriam* abſque conſideratione curiæ Domini Regis (ut prædictum eſt) & inde convincatur, puniatur per redemptionem, & hoc ſecundum quantitatem delicti. Et ſimiliter ſi vicinus ſuper vicinum ſuum faciat diſtrictionem ſine conſideratione Curiæ Domini Regis, per quod dampnum habet, puniatur eodem modo, & hoc ſecundum quantitatem delicti. Et nihilominus

ominus fiant emendæ plene & ſufficienter eis, qui dampna ſuſtinuerunt per hujuſmodi diſtrictionem.

This firſt Chapter conſiſteth of a Preamble, and the body of the Act.

The Preamble ſhews the miſchiefs, which were four.

1. That in the time of the late troubles, great men and others refuſed to be juſtified by the King and his Court, as they ought, for here it is ſaid, Multi magnates & alii indignati fuerint recipere juſtitiam per Dominum Regem, & curiam ſuam.

2. Sed graves ultiones fecerint, That they (refuſing the courſe of the Kings Laws) took upon them to be their own Judges in their own cauſes, and to take ſuch revenges as they thought fit, until they had ranſoms at their pleaſures. Aliquis non debet eſſe judex in ſua propria cauſa.

3. That ſome of them would not be juſtified by the Kings Officers. *Regula.*

4. Nor would ſuffer them to make delivery of ſuch diſtreſſes, as they had taken of their own authority at their pleaſure. Here you may ſee the defects of a diſordered and troubled State.

The body of the Act conſiſteth of divers branches.

Firſt, A remedy in general for all the ſaid miſchiefs.

¶ Proviſum eſt, concordatum, & conceſſum, quod tam majores quam minores, juſtitiam habeant & recipiant in curia Domini Regis.] This is the golden metwande, that the Law hath appointed to meaſure the cauſes of all and ſingular perſons, high and low, to have and receive Juſtice in the Kings Courts; for the King hath diſtributed his judicial power to ſeveral Courts of Juſtice, and Courts of Juſtice ought to determine all Cauſes, and that all private revenges be avoided. 8 H.4.19. Gaſc. 24 H.8. cap.12. 25 H.8. cap.21.

Upon this general Law, four concluſions do follow.

1. That all men, high and low, muſt be juſtified, that is, have and receive Juſtice in the Kings Courts of Juſtice.

2. That no private revenge be taken, nor any man by his own arm or power revenge himſelf: And this article is grounded upon the Law of God, Vindicta eſt mih', & ego retribuam, ſaith Almighty God. All revenge muſt come from God, or from his Lieutenant the King, in ſome of his Courts of Juſtice. See cap. Itineris, Artic. ult.

3. That all the Subjects of the Realm ought to be juſtified, that is, ſubmit themſelves to the Kings Officers of Juſtice according to Law.

4. That they ought to ſuffer replevies to be made according to the Law, to the end that men may poſſeſs their horſes, beaſts, and other cattle and goods in peace, whereof they have ſo great and continual uſe. See hereafter Cap. 4.

¶ In curia Domini Regis.] Theſe words are of great importance, for all Cauſes ought to be heard, ordered, and determined before the Judges of the Kings Courts openly in the Kings Courts, whither all perſons may reſort; and in no chambers, or other private places: for the Judges are not Judges of chambers, but of Courts, and therefore in open Court, where the parties Councel and Attorneys attend, ought orders, rules, awards, and Judgments to be made and given, and not in chambers or other private places, where a man may loſe his cauſe, or receive great prejudice, or delay in his abſence for want of defence. Nay, that Judge that ordereth or ruleth a Cauſe in his chamber, though his order or rule be juſt, yet offendeth he the Law, (as here it appeareth) becauſe he doth it not in Court. And the opinion is good, and agreeable to this Law, Qui aliquid ſtatuerit parte inaudita altera, æquum licet ſtatuerit, Seneca.

ſtatuerit, haud æquus fuerit: Neither are Cauſes to be heard upon petitions, or ſuggeſtions and references, but in curia Domini Regis.

¶ Et nullus de cætero ultiones aut diſtrictiones faciat per voluntatem ſuam abſque conſideratione curiæ Domini Regis.] The firſt clauſe was affirmative: This clauſe, for the more ſurety, is in the negative.

¶ Diſtrictiones faciat per voluntatem ſuam.] That is, taking diſtreſſes not according to the Law, as for ſervices, rents, or for damage feſaunt, or for other lawful cauſe, but for revenge without cauſe, of his own head and will, that is, to be his own judge and carver; to ſatisfie himſelf without any lawful mean or courſe of Law, and ſo it is to be underſtood through this whole Chapter: For this Chapter is to be underſtood de ultionibus, of revenges, which are of two natures, 1. Perſonal, as by combat, impriſonment, and the like: 2. By diſtreſſes, that is, revengeful taking of goods. Concerning takings in nature of diſtreſſes, proviſion is made in the next three Chapters.

3. Part Inſtitut. Sect. 194. Here cap. 4.

¶ Puniatur per redemptionem.] For this word (redemptio) and the ſignification thereof, ſee the firſt part of the Inſtitutes, Sect. 194.

CAP. II.

NUllus inſuper major vel minor diſtringat aliquem ad veniendum ad curiam ſuam, qui non ſit de feodo ſuo, aut ſuper ipſum non habeat juriſdictionem per hundredum, *wapentagium*, vel balivam, *quæ ſua ſit* nec diſtrictiones faciat extra feodum ſuum, ſeu locum ubi balivam habeat, vel juriſdictionem. Et qui contra hoc ſtatutum fecerit, puniatur eodem modo, & hoc ſecundum delicti quantitatem, & etiam qualitatem.

Fleta l. 2. cap. 40. W. 1. cap. 16. Here cap. 15. Artic. cler. c. 6. Artic. ſuper cart. cap. 12.

¶ Nullus inſuper major, &c.] This Chapter concerning Diſtreſſes enacteth three things; 1. That no man ſhall diſtrein any to come to his Court but ſuch as be within his fee: This is intended of ſuit ſervice in reſpect of a Seigniory, and not of ſuit real in reſpect of reſiance. 2. Or that he hath juriſdiction by Hundred, Wapentake, or Bailiwick. 3. That he ſhall not take diſtreſſes out of his fee or place where he hath a Bailiwick or juriſdiction.

41 E. 3. 26. 47 E. 3. 7. Regiſt. 97. 4 E. 3. 1 19 E. 3. Barre 281 19 E. 2. breve 842 11 R. 2. Avow. 87. 18 E. 2. Action ſur leſtat. 85. F. N. B. 89. 90.

This Chapter is a Declaration of the Common Law, ſaving for the penalty hereby inflicted; and therefore if A. diſtrein B. and in a replevy A. avow as Lord for rent or ſervice. B. plead hors de ſon fee, and it is found for B. A. ſhall not in this Replevy be puniſhed by ranſom, &c. according to this Act, but he muſt have an Action upon this Statute, Et ſic de ſimilibus.

¶ Infra balivam.] Here Baliva is well expounded by the Statute it ſelf, for it ſignifieth here juriſdiction, and therefore it is here ſaid, Infra balivam ſeu Juriſdictionem.

CAP.

CAP. III.

SI quis autem major vel minor permittere noluerit liberari per ministros domini Regis, ſecundum legem & conſuetudinem Regni, diſtrictiones quas fecerit: aut etiam ſuſtinere noluerit ſummonitiones, attachiamenta, executiones judiciorum curiæ domini Regis fieri *ſecundum legem & conſuetudinem Regni ut prædict' eſt*, puniatur modo prædicto, tanquam ſe juſticiari non permittens, & hoc ſecundum delicti quantitatem. Et ſi quis major vel minor diſtrictiones faciat ſuper tenentem ſuum pro ſervitiis & conſuetudinibus, quæ ſibi deberi dicat, vel pro re altera, unde ad dominum feodi pertineat diſtrictiones facere, & poſtea convincat, quod tenens ea ſibi non debeat: non ideo puniatur dominus per redemptionem, ut in ſupradictis caſibus, ſi permittat diſtrictiones deliberari ſecund' legem & conſuetudin' regni, ſed amercietur, velut hactenus conſuetum eſt, & tenens dampna ſua recuperet verſus eum. W.1. cap.17.

This Chapter conſiſteth on three branches:

1. That all of what eſtate ſoever, ſhall ſuffer ſuch Diſtreſſes as have been taken to be delivered by the Kings Officers after the Law and Cuſtom of the Realm. But if any will not ſuffer them to be delivered, it is no good return for the Sheriff to ſay, that he was reſiſted, for he may take poſſe Comitatus. Regiſt.97.

2. That all ſhall ſuffer ſummons, attachments, or executions of judgments in the Kings Court, &c.

3. If the Lord diſtrein his Tenant for cuſtoms, ſervices, or any other duty, which the Lord alledged to be behind, if it be found that it is not behind, Non puniatur Dominus per redemptionem, &c. But at the Common Law an action of Treſpaſs Vi & armis in that caſe did lie. 44 E.3.20. li.4. fol.11. Bevils Caſe. li.9. fo.76. Combes Caſe.

This branch is intrpreted that the Lord ſhall pay no fine, and therefore ſince this Act by a conſequent no Action of Treſpaſs, Quare vi & armis lieth againſt the Lord in this caſe, for then he ſhould pay a fine.

The former Chapters inflict puniſhment, where the diſtreſs is unlawful, or that he that diſtrained had no ſeigniory or juriſdiction at all, or diſtrained out of his fée or juriſdiction, &c. But in this laſt branch, he which diſtrained had a lawful ſeigniory, and diſtrained within his fée and ſeigniory, and ſo this caſe differeth from the other, (although in truth nothing was behind.) But this is to be intended where the Lord himſelf doth diſtrain; for if his Baylie take a Diſtreſſe, where nothing is behind, there an Action of Treſpaſs, Quare vi & armis lieth againſt him, becauſe the Baylie is not Dominus; and ſo it is againſt a Guardian in ſocage. And if the Lord himſelf doth cut any wood, or break the houſe, or fæd of the ground of his Tenant, or the like, which he doth not in reſpect of his Seigniory, there an Action of Treſpaſs, Quare vi & armis lieth againſt him, for he doth not theſe things as Dominus. 41 E.3.26. 44 E.3.13. 28 E.3.97. 8 E.4. 15. 10 E.4.7. 20 E.4.3. 21 E.4.3. 2 H.4 4. 11 H.4. 78. 1 H.6.6. 9 H.7.14. Combes caſe. ubi ſupra. 9 H.6.20. 44 E.3. 13. 19 R.2. Herlot 5.

And (Dominus) in this Act is extended to the Leſſor upon a leaſe for life, or for years made, for the Leſſée for years ſhall do fealty alſo; but if the Leſſor put out the Leſſée for years, or diſſeiſe the Tenant for life, or do any Act, not as Dominus, the Leſſée ſhall have an Action of Treſpaſs againſt him, Vi & armis. 48 E.3.5,6. 28 E 3.97. 38 E.3.33. 5 H.7.10.

CAP. IV.

W.1.cap.19. NUllus de cætero faciat ducere diſtrictiones quas fecerit extra Comitatum in quo captæ fuerint. Et ſi vicinus hoc fecerit ſuper vicinum ſuum. & per voluntatem ſuam, & ſine judicio, puniatur per redemptionem ut ſupra, veluti de re *facta* contra pacem. Veruntamen ſi Dominus hoc ſuper tenentem ſuum facere præſumpſerit, caſtigetur per gravem miſericordiam. Diſtrictiones inſuper ſint rationabiles, & non nimis graves. Et qui diſtrictiones fecerint irrationabiles, & indebitas, graviter amercientur propter exceſſum diſtrictionum ipſarum. *Vide Statut. Anno* 1. *&* 2. *Phil. & Mar. Cap.* 13.

This Chapter emptieth it ſelf into five parts, viz.

1. That none ſhall drive any Diſtreſſe out of the County, where he hath taken it.

22 E.4.11. 2. If one neighbour do ſo to another, (as for damage feſant, or rent charge) of his own authority, he ſhall make ranſome, that is, a fine, as of a thing done againſt the peace.

3. If the Lord preſume to do it againſt his Tenant, he ſhall be puniſhed by a great amerciament.

6 H.3. Avow.242. Temps E.1. ibid. 192. 30 Aſſ.38. 29 E.3.13. 1 H.6.9. 22 E.4. Barre 120. F.N.B. 89. Pl. Com 9.b. At the Common Law a man might have driven the Diſtreſſe to what County he would, which was miſchievous for two cauſes: 1. Becauſe the Tenant was bound to give the beaſts being impounded in an open pound ſuſtenance, and being carried into another County, by common intendment he could have no knowledge where they were. Another cauſe, he could not know where to have a Replevy, but the party was before this Statute driven to his Action upon his caſe; And albeit this Statute be in the negative, yet if the Tenancy be in one County, and the Mannor in another County, the Lord may drive the Diſtreſs which he taketh in the Tenancy to his Mannor in the other County, for that the Tenant is out of both the ſaid miſchiefs; for the Tenant by doing of ſuit and ſervice to the Mannor, by common intendment may know what is done there, and therefore may give his beaſts ſuſtenance; and to know where to have his Replevy, the Bayliff of the Mannor uſually drives the attle diſtrained to the pound of the Mannor: And this Act extends as well to goods as to beaſts: Note hereby a caſe out of the miſchief is out of the meaning of the Law, though it be within the Letter.

Regiſtr.97. 1 part Inſt.ſect.96. 29 E.3.23. 42 E.3.26. 11 H.4.2. 8 H.4.16 29 E.3.23. 4. That Diſtreſſes be reaſonable, and not too great; Vide the firſt part of the Inſtitutes, what ſhall be ſaid reaſonable, and by whom it ſhall be tried in this and in all other caſes: ſome ſay that for homage, or fealty, for the expences of the Knights of the Parliament an exceſſive diſtreſs cannot be taken; but this Statute is general, and extendeth unto all.

5. He that takes unreaſonable and undue Diſtreſſes, ſhall be grievouſly amerced for the exceſs of thoſe Diſtreſſes.

Stat. 51 H.3. W.1. c.16. 28 E.1.c.12. 1 & 2 Phil. & Mar.c.12. It is worthy of obſervation, how provident the Makers of theſe and other Statutes be, that mens beaſts, cattel, or other goods be not unjuſtly or exceſſively diſtrained; and if they be, that deliverance be ſpeedily made of them by Replevy, otherwiſe the husbandry of the Realm, and mens other Trades might be overthrown or hindred: and this agreeth with the reaſon of the Common Law.

And

And therefore if the Lord or his Bayliff come to diſtrain the beaſts or goods of his Tenant for his rent behind, before the Diſtreſs the Tenant (that he may keep and uſe his beaſts or other goods) may upon the Land tender the arrerages, and if after that a Diſtreſs be taken, it is wrongful; And if the Lord have diſtrained, if the Tenant before the impounding of them tender the arrerages, the Lord ought to deliver the Diſtreſs, and if he doth not, the detainer is unlawful; Even ſo it is in caſe of a Diſtreſs for damage feaſant, the tender of amends before the Diſtreſs, maketh the Diſtreſs unlawful, and after the Diſtreſs, and before the impounding, the detainer unlawful. But if a man bring an Action of Treſpaſs for taking away his beaſts or other goods, there tender of ſuch ſufficient amends before the Action brought is no bar, becauſe he that tendred the amends is not the owner of the goods; as in the other caſes, but a Treſpaſſer, whom the Law favoureth not: And further, if the Avowant hath retourned irreplegiable, yet if the owner of the beaſts or goods tender to him all that is due upon the Judgment in the Avowry (whereby the certainty doth appear) he may have an Action of Detinue for the detainer afterward, or upon ſatisfaction made in Court, have a Writ for their delivery.

7 E.3.8.b. 20 Aſſ. 38. 13 H.4.17. 14 H.4.4. Lib.8.fol.147. le 6. Carpenters Caſe. li. 5.fo.76. Pilkingtons caſe.

21 H.7.30.a. But this is now holpen by the Statute of 21 Jac. Cap. 13 H.4.4.a. 33 H.6. 27.a. 45 E.3.9.

¶ Diſtrictiones ſunt inſuper rationabiles & non minus graves, &c. propter exceſſum, &c.] Quicquid in exceſſu actum eſt, lege prohibetur.

51 H.3. diſtr. de Scaccar. acc.

For example, if the Lord diſtrain two or three Oxen for xij d. or the like ſmall ſum, and the owner bring a Replevy of the Oxen, and the Lord avow the taking of them for twelve pence, &c. of his own ſhewing he ſhall make fine, &c. or the party may have his Action upon the Statute.

Regiſt.97. 22 E.4. 26. 11 H.4.2. 8 H.4.16. F.N.B.89.

If the Lord diſtrain an Oxe, or Horſe for a penny, if there were no other Diſtreſs upon the Land holden, the Diſtreſs is not exceſſive, but if there were a Sheep or Swine, &c. then the taking of the Oxe or Horſe is exceſſive, becauſe he might have taken a beaſt of leſs value.

CAP. V.

MAgna Charta in ſingulis ſuis articulis teneatur, tam in his quæ ad Regem pertinent, quam quæ ad alios, & hoc coram Juſticiariis itinerantibus in ſuis itineribus, & Vicecomes in comitatibus ſuis, cum opus fuerit demandetur, & brevia verſus eos qui contravenerint gratis concedantur coram Rege, vel coram Juſticiariis de Banco, vel coram Juſticiariis itinerantibus, cum in partes illas venerint. Similiter Charta de Foreſta in ſingulis ſuis articulis teneatur,& contravenientes per dominum Regem, cum convicti fuerint graviter puniantur modo ſupradicto.

This, as hath bẽn ſaid, was one of the principal cauſes of the ſummons of this Parliament, and after this enſued great and conſtant peace and tranquility.

Magna Charta c.32,38. And where ſome have thought, that Magna Charta had not the ſtrength of a Parliament before this Act, how they miſtake it, you may read before in Magna Charta, Cap.32. and 38.

¶ Magna Charta.] By this time this Charter had got the name of Magna Charta, and by that name only is here confirmed.

¶ Tam in hiis quæ ad regem pertinent quam ad alios.] Theſe be ſhort and effectual words, and to avoid all ſcruples, the King is expreſſly named, and it hath not words of confirmation, but words of eſtabliſhment, Quod Magna Charta in ſingulis ſuis articulis teneatur, which is the ſureſt way.

Cap. Itineris. Vet.Mag.Cart. 150.b. ¶ Coram Juſticiariis itinerantibus.] Vide Cap. itineris, the Articles of Magna Charta eſpecially given in charge, and enquired of, &c. by Juſtices in Eyre, and by this Act they had their authority therein.

Mag.Cart.c.29. ¶ Brevia gratis concedantur.] Writs againſt the breakers of Magna Charta ſhall be freely granted, to encourage ſuch as would purſue againſt them.

¶ Coram Rege.] That is, in the Kings Bench.

¶ Coram Juſticiariis de Banco.] That is, in the Court of Common Pleas.

¶ Similiter Charta de Foreſta, in ſingulis ſuis articulis teneatur,&c.] This was another of the principal cauſes of the ſummons of this Parliament, as hath bẽn ſaid.

CAP. VI.

DE his autem qui primogenitos, & hæredes ſuos infra ætatem exiſtentes feoffare ſolent de hæreditate, ſua, ut per hoc amitterent Domini feodorum cuſtodias ſuas, Proviſum eſt, concordatum, & conceſſum, quod occaſione hujuſmodi *falſi* feoffamenti, nullus capitalis Dominus amittat cuſtodiam ſuam. De his inſuper qui de terris ſuis, quas tradere voluerint ad terminum annorum, ut per hoc Domini feodorum amittant cuſtodias ſuas, falſa fingunt feoffamenta continentia, quod eis ſatisfactum eſt de ſumma ſervitii in illis contenti uſque ad terminum aliquem: ita quod ſi ad dictum terminum ſolvere tenentur hujuſmodi feoffati ſummam aliquam ad valorem terrarum illarum, vel in multo excedentem, ut ſic poſt terminum illum terra eorum revertatur ad ipſos vel ad hæredes ſuos, eo quod nemo eam pro tanto tenere curaret: Proviſum eſt, concordatum, & conceſſum, ut per hujuſmodi fraudem nullus capitalis Dominus amittat cuſtodiam ſuam: Veruntamen non licebit eis hujuſmodi feoffatos ſine judicio diſſeiſire: ſed breve habeant de hujuſmodi cuſtodia ſibi reddenda, & per teſtes in chartis de hujuſmodi feoffamento contentos, una cum aliis liberis & legalibus hominibus de patria, & per quantitatem & valorem tenement', & per quantitatem ſummæ, quæ inde reddi debeant poſt terminum *prædictum* attingatur, utrum hujuſmodi feoffamenta bona fide facta ſint, an in fraudem, ad auferendum capitalibus Dominis feodorum cuſtodiam ſuam. Si vero capitales Domini per judicium curiæ in hujuſmodi caſibus recuperaverint cuſtodiam ſuam, ſalva ſit nihilominus hujuſmodi feoffatis actio ſua, quo ad terminum, ſeu ad feodum recuperandum, quam inde habuerint cum hæredes ad legitimam ætatem pervenerint. Et ſi aliqui capitales Domini feoffatos aliquos malitioſe implacitaverint, fingentes caſum iſtum, maxime ubi feoffamenta legitime & bona fide facta fuerint, tunc adjudicentur feoffatis dampna ſua, & miſæ ſuæ, quas fecerint occaſione prædict' placiti, & ipſi actores per miſericordiam graviter puniantur.

Robert Walrand penned and preferred this Act, and by aid and common aſſent of the great Lords of the Realm, obtained to paſs it for a Statute. This Robert Walrand was learned in the Laws of the Realm, and ſon after this Statute, died: His ſon and heir conveyed his lands holden by Knights ſervice to his ſon and heir apparent, being within the age of 21 years, rather truſting his land in his ſon within age, then in himſelf, and died, his ſon being ſtill within age; and this Statute which Robert Walrand the grandfather had penned and preferred, took firſt effect in the heir of his heir, as Britton reporteth. Brit.c.36. f.95.b.

The miſchief before this firſt branch of this Statute was, that ſuch a feoffment as well in the Kings caſe, as in the caſe of a common perſon, did take away the wardſhip of the heir, as it appeareth by the Preamble, and our Books, becauſe by the Common Law the heir could not be in ward, unleſs he were in by deſcent, and tenant by Knights ſervice to prevent the Lord of the wardſhip, would enfeoffe him or her to whom the land ſhould deſcend by the Common 9 H. 4. 6. 32 H. 6.15. b. Lib.6. fo.76. Sir Geo: Curſons caſe. 17 E.3. relief 3.

33 H. 6. 16. Pl. com. 82.

mon Law. And upon this Statute colluſion of this kind was divided into two branches; The firſt was called colluſion apparent, upon this firſt branch, qui primogenitos feoffare ſolent; the ſecond was called colluſion averrable, that is to be proved upon iſſue thereupon to be taken upon the ſecond branch, De hiis inſuper qui de terris ſuis, &c.

Rot. clauſ. an. 2 E. 1. m. 14. Pl. com. ubi ſup. Hil. 16 E. 1. in Banco. Rot. 51. Norf. Johannes de Brampton.

¶ Qui primogenitos & hæredes.] Albeit the heir be not primogenitus, but an heir female, or male lineal or collateral, yet every of them is within the ſame miſchief; and therefore the ancient Sages of the Law, (that I may ſay it once for all) did ever apply the remedy to the miſchief; and therefore here this (&) a conjunctive, was by conſtruction taken for a disjunctive, viz. qui primogenitos vel hæredes, &c.

If tenant by Knights ſervice of land of the nature of Borough-engliſh infeoffe his youngeſt ſon, he is within this Statute; for hæres dicitur ab hæreditate, & ſic de ſimilibus.

9 H. 4. 6. See the Stat. of 34 H. 8. c. 15. verſus finem. 13 Eliz. cap. 5. 17 E. 3. 63. relief 3

¶ Infra ætatem exiſtentes.] This branch extends not to give remedy for reliefs which is due when the tenant dieth, his heir of full age; but by divers Statutes of later time proviſion is made for relief. And thus much concerning the perſon to be infeoffed within this firſt branch.

31 E. 3. tit. colluſion 29. 7 E. 3. tit. rel. 11. 4 E. 3. 22. *a* 1 Part Inſtit. 1. Sect. 1. for this word *feoffare*. 33 H. 6. 14. 27 H. 8. 10. *b* 31 E. 1. collu. 29. 33 H. 6. 14. *c* 33 H. 6. ubi ſup.

¶ Feoffare ſolent de hæreditate ſua.] 1. *a* This word feoffare implieth a fee-ſimple, and therefore if the anceſter had made a leaſe for life, or a gift in tail to his heir apparent with a remainder or without a remainder over of the eſtate in tail, it was out of this Statute.

2. *b* This Act ſpeaketh of a feoffment made ſolely to the heir; and therefore if a feoffment had been made to the heir and an eſtranger, though the fee-ſimple were limited to the heirs of the heir, yet it was out of this Act.

3. *c* And this is to be underſtood of an immediate gift to the heir apparent; for if a leaſe for life be made, the remainder to the heir apparent in fee, this is no colluſion.

4. Though it was not a feoffment, but inured by way of grant; As if the meſne had granted his meſnalty to his heir, or if the tenant or meſne had levied a fine, or ſuffered a recovery by conſent, or had made a leaſe and releaſe, or confirmation, or the like, ſuch conveyances had been in equal miſchief, and therefore within the remedy.

27 H. 8. 8. b.

5. This Act extended not to a feoffment to the uſe of his heir, or to the uſe of himſelf and his heirs; for at the Common Law the Lord ſhould not have the wardſhip but of the heir of his tenant, that died in his homage, and therefore the Statute of 4 H. 7. cap. 17. was made to remedy this miſchief.

33 H. 6. 16. Lib. fol. Ham. Stranges Caſe, and Porriges Caſe. 13 H. 7. 7. 27 H. 8. 9.

6. If the eldeſt ſon within age purchaſe of his father the lands holden by Knights ſervice for valuable conſideration, bona fide, by feoffment or other conveyance, this is within the letter, but not within the meaning of this Statute, no more then if he had ſold the land to any other.

7. If ceſtuy que uſe after the Statute of 4 H. 7. cap. 17. and before the Statute of 27 H. 8. c. 10. of uſes, had enfeoffed his eldeſt ſon, this was taken within the equity of this ancient Act.

33 H. 6. 16.

8. When ſhall this feoffment be upon this Act deemed to be by colluſion? The anſwer is, after the deceaſe of the anceſter, for then the title of wardſhip accrues, and not in his life time.

33 E. 3. gar. 12. 31 E. 1. ibid. 155. 32 E. 3. ibid. 33. 33 H. 6. 16. Tr. 7 Jac. li. 8. fol. 164. Mights caſe.

9. If the Lord accept homage of the heir apparent (after the feoffment made to him by his anceſter) in the life of the anceſter, he ſhall not have the wardſhip, becauſe he allowed him to be his tenant.

10. But at this day, albeit the father infeoffe his eldeſt ſon, or any of his children, though it be found to be made upon colluſion, to defeat the King or other Lord of wardſhip, yet the King or other Lord ſhall not have but a third part by the Statutes of 32 & 34 H. 8. of Wills. So note this Statute altered in part. And much of the manner of the feoffment.

¶ De

¶ De hiis inſuper qui de terris ſuis, &c.] This is the ſecond branch of this Act concerning colluſion averrable, when feoffments are made to ſtrangers, whereof here is an example ſet down in this Act.

¶ Qui tradere voluerint ad terminum annorum.] This is to be underſtood of a feoffment in fee reſerving no rent, for that they ſuppoſe they are ſatisfied for a certain term, which ſhould end when the heir ſhould come to full age, and then it was conditioned that the feoffee ſhould pay more then the land was worth, and thereupon the heir entred, for that none would give ſo great a price. Britton 95. b. 32 E.3. gard.33. 4 E.2. gard.119.

¶ Per hujuſmodi fraudem nullus capitalis Dominus amittat cuſtodiam.] By ſuch fraud, that is, ſuch in miſchief, or ſuch in inconvenience, and therefore all other fraudulent feoffments tending to the ſame end are within this Statute, whatſoever colourable pretext they have, and ſo is this word [ſuch] oftentimes taken in other Statutes. It is the opinion of Hulls Juſtice, and of Gaſcoine chief Juſtice of England, that by the words and purview of this Statute, it holdeth only betwæn Lord and tenant: and therefore if a man hold land by Knights ſervice in capite of the King, and other land of a ſubject by Knights ſervice, and maketh a feoffment by colluſion of the land holden of the ſubject, and dieth, his heir within age, the King ſhall not take advantage of this Statute for he is not Dominus of this land; But in this caſe the King is relieved by the Statute of 34 H.8. c.5. verſus finem ejuſd. Actus. 47 E.3. 19. 32 E.3. gard.33. 8 R.2. colluſ. 47. 9 H. 4.6.

¶ Veruntamen non liceat hujuſmodi feoffatos ſine judicio diſſeiſire.] Hujuſmodi feoffatos, ſuch feoffées. And yet the feoffées of the feoffées upon the ſame colluſion are to be taken within this Statute; but if the feoffées in the life of the anceſter make a feoffment in fee bona fide, and then the tenant dieth, his heir within age, the Lord ſhall not have any action upon this Statute, for that the colluſion continued not until the death of the tenant; But if the tenant had died, his heir within age, and then the feoffées had infeoffed others bona fide, yet the Lord ſhall recover the wardſhip, becauſe the Lord by the death of his tenant was once intitled to his action; but yet in ſome caſe the Lord ſhall enter upon the feoffée. 33 H. 6.16. 31 E.3. gard.29.

If the tenant infeoffe a ſtranger upon colluſion, and that ſtranger infeoffe the heir in the life of the tenant, and then the tenant dieth, the Lord may enter upon the heir, becauſe no Writ of right of ward lieth againſt the heir; and therefore the Lord ſhall enter upon the heir, being feoffée: for otherwiſe he ſhould be without remedy, the words of the Writ of ward being Præcipe A. quod reddat B. cuſtodiam terræ & hæredis C. quæ ad ipſum B. pertinet, &c. ſo as this Writ is ever brought againſt a ſtranger. 33 H.6.16. F.N.B.139.

If the tenant infeoffe the villein of the Lord upon colluſion, and dieth the heir within age, the Lord ſhall enter upon this feoffée; for if the Lord ſhould be driven to his action againſt the villein, it ſhould amount to an enfranchiſement; and Statutes muſt be ſo conſtrued, as no collateral prejudice grow thereby.

Alſo the heir of the feoffée is within this Statute; and if the feoffée dieth, his heir within age, the Lord ſhall have his Writ of ward againſt the heir, who ſhall not have his age, but the Lord ſhall recover againſt him by this Act. 18 E. 3. covenant 7.

The Statute ſaith, feoffatos, and yet conuſées of fines, and all other conveyances are within this Statute. 7 H.4.15. 12 H. 4. 16.

And here it appeareth, that the ancient Law did ever favour him that came by title, and put him that right had to his action. 1. Part Inſtit. Sect. 472.

If the father had made a feoffment for the maintenance and livelihood of his wife, preferment of his daughters, or of his younger ſons, or for the payment of his debts, and after had infeoffed his heir apparent, this was holden no colluſion, for every man by the Law of God and nature, ought to provide for his wife 33 H.6.14. Dier 10 El.260. 3 El. 193. 20 El.361. 19 El.276. 5 Mar. 158. Lib.6. fol.76.

Sir Geo: Curſons caſe.

wife and children, and he is worſe then an infidel that doth not provide for his family: and by the Law of God and of Nations debts ought to be paid: Nemini quicquam debeatis, niſi quod invicem diligatis.

* See Sir Geo: Curſons caſe, *ubi ſupra.*

* Now by the ſaid Statutes of 32 & 34 H. 8. where the tenant by Knights ſervice doth infeoffe others to any of theſe three intents, viz. for the livelihood of his wife, preferment of his children, or payment of his debts, the heir ſhall be in ward for his body, and for the third part of his lands ſo conveyed, whereby the Common Law was changed in that behalf.

27 H. 8. 10.
4 H. 7. c. 10.

Of lands holden by Knights ſervice deviſable by cuſtom, no colluſion could have been averred upon a deviſe by Will; the ſame Law, if ceſtuy que uſe had deviſed the uſe by Will; but now that is altered by the Statute of 34 H.8. c.5.

39 E.3. 33,34.

¶ Breve habeat de hujuſmodi cuſtodia reddenda.] This Writ is a Writ of right of ward, and when the Lord hath recovered the wardſhip againſt the feoffée, the freehold and inheritance is left in the feoffée, and not reſtored to the heir, and therefore if the gardein commit waſte, the ſame is diſpuniſhable, for the feoffée cannot have an action of waſte againſt the gardein in this caſe. And the Lord upon this Statute could not ſeiſe the body of the heir, or have a raviſhment of ward, before he had recovered the land in a Writ of right of ward, for therein ought the colluſion be firſt tried, becauſe unleſs that were found according to this Statute, there is no cauſe of wardſhip by this Act.

4 E.2. gard.119.
32 E.3. ibid. 33.
12 H.4. 13. b.
4 H. 7. 10.
F.N.B. 143. k.
34 H.8. c.5. verſus finem. 13 El. c.5.

12 E. 2. c. 2.
1. Part Inſtit. Sect. 1.

¶ Et per teſtes in cartis.] Note, the Deed is not here denyed, and yet Proces to be awarded againſt the witneſſes. For this ſée the firſt part of the Inſtitutes. Vide poſtea cap.14.

¶ Adjudicentur feoffatis damna ſua & miſæ ſuæ.] This is the firſt Statute that gave the defendant damages and coſts if it were found for him, and the Lord to be grievouſly amerced, and many other Statutes have followed this example: And where this Statute ſaith (malitiosè) implacitaverint, if the matter be fained, and without juſt ground, the Law implieth malice in this caſe.

¶ Fingentes caſum iſtum maxime ubi feoffamenta legitima & bona facta fuer'.] There is no greater injuſtice, then when under colour of juſtice injury is done.

Regula.

Multi litigant in foro, non ut aliquid lucrent, ſed ut vexent alios. Therefore juſtly did this Act, which gave an action in a new caſe, give damages and coſts to the defendant, if he were maliciouſly vexed thereby without good cauſe.

CAP.

CAP. VII.

IN placito vero communi de cuſtodiis, ſi ad magnam diſtrictionem non venerint deforciatores, tunc bis vel ter iteretur breve prædictum ad terminos quibus fieri poterit, infra medietatem anni ſequentis, ita quod ſingulis vicibus legat' breve in pleno comitatu *niſi al' ubi* prius inventus fuerit deforciator. Et ibi publice denuncietur, ut veniat ad diem ſibi præfixum. Quod ſi ipſe extunc ſe ſubtraxerit, ita quod infra medietatem anni prædict' reſponſurus non venerit, nec Vicecomes eum invenire poſſit, per quod corpus ſuum habere non poſſit coram Juſticiariis, ad reſpondendum ſecundum legem & conſuetudinem Regni, tunc, (tanquam rebellis, & ſe juſticiari non permittens) amittat ſeiſinam hujuſmodi cuſtodiæ, ſalva ſibi alias actione ſua, ſi forte jus habeat ad eandem. In caſibus autem ubi cuſtodiæ pertinent ad cuſtodes hæredum infra ætatem exiſtentium verſus cuſtodes ill' *petatur cuſtodia, quæ accidit hæredibus illis* tanquam pertinens ad eorum hæreditates: & non amittant hujuſmodi hæredes infra ætatem exiſtentes, hæreditatem ſuam per negligentiam, vel rebellionem ſuorum cuſtodum, ſicut in caſu prædicto, ſed currat lex communis eodem modo quo prius currere conſuevit.

In placito communi de cuſtodiis.] In the Common Plea of Ward, that is, in a Writ of Right of Ward, or in an Ejectment de gard. 30 E.3.10. 24 E.3. 33. 2 H.4.1.

In the Chapter going before, remedy was given to the Lord for Wardſhip, where there was none due to him by the Common Law: In this Chapter more ſpeedy remedy is given to the Lord, as well when the Lord hath right by the Common Law, as by the next precedent Chapter.

Before the making of this Statute, the Proces in the Writ of Ward was Summons, Attachment, and Diſtreſs infinite, and the Sheriff would many times return ſmall iſſues, and ſo the Lord was greatly delayed, and if the heir came to full age, hanging the Writ, the Writ abated, which was miſchievous. 9 E.4.50. 18 E.3 Scire fac.10.

Now this Statute provideth, that if the Deforceours come not at the grand diſtreſſe, that after the return thereof a Diſtreſſe with Proclamation ſhall be made in the County by ſix moneths, and if he appear not, Judgment ſhall be given againſt him, ſaving to him his right at another time, ſi inde loqui voluerit: Weſtminſt. 2. Cap. 35. preſcribeth but three moneths. 9 E.3.15. 3 H.4. 45. 16 E.3. Proclam.4. 30 E.3.10. 14 E.3. Procl.8. 16 E.3.gard 131. 2 H.4.1.

In a reſummons of Gard upon the Statute of W. 2. a Proclamation ſhall be awarded upon this Statute, for it is in equal miſchief, but in a Raviſhment of Gard, no Proclamation ſhall be awarded, for that Action is formed, and given by the Statute of W.2. cap.35. which was but Treſpaſs at the Common Law. 30 E.3.10. 22 E.3.8. 14 E.3. Proclam.7.

¶ Amittet ſeiſinam hujuſmodi cuſtodiæ.] If the Defendant in a Writ of Ward make default at the return of the Diſtreſs with a Proclamation, Judgment ſhall be given for the Plaintiff againſt the deforceour to recover 7 E.3.22. 5 E.3. Damages 115. 13 E.3. Judgment 138. 24 E.3. Damages 5.

recover the Ward and damages, and have a Writ to enquire of the damages; And yet this Act saith, that he shall lose the seisin of custody, and speaketh not of damages, but in this Action the Plaintiff should recover damages at the Common Law.

24 E.3.33. 4 E.3.26.

In a Writ of Ward against two, at the grand distress one of them appeared, and the other made default, the Plaintiff prayed a Distress with a Proclamation, and it was denied, for the body is not severable, and therefore the Plaintiff cannot have Judgment to recover the moity of the body, otherwise it is of the Land, for that is severable.

17 E.3.70. 14 H.4.37. 19 E.3. Proclam. 5. & 10.

¶ Non venerint deforciatores.] If in a Writ of Ward the Defendant vouch, no Proclamation shall be awarded against the Vouchée for two causes. 1. The Statute extendeth only to the suit of the Plaintiff, and this is the suit of the Defendant against the Vouchée. 2. The Statute provideth that Proclamation shall be awarded against the deforceors, and the Vouchée is not deforceor.

29 E.3.38. 13 E.3. Proclam.9. 33 E.3. ibid.19.

¶ Quod corpus suum habere non possit.] This is to be understood, that there is no default in the Sheriff in returning of good issues, so as by that means he might have his body to appear, for the Sheriff cannot arrest him.

¶ Nec Vicecomes eum invenire non poterit.] This must be understood of the Sheriff in that County, where the original is brought, for no other Sheriff in another County upon a Testatum, &c. shall make Proclamation, but there Process lieth, as it was at the Common Law.

17 E.3.70,71.

¶ Coram Justiciariis.] This is before the Justices of the Court of Common Pleas, and that Court being particularly named, this Act extended not to Justices in Eyre, as it is said in our Books.

3 E.3. Procl.17.

¶ In casibus ubi custodiæ pertinent ad custodes.] If one demand a Ward against me, which I claim by cause of Ward, he shall not have Process upon this Statute, lest by negligence or collusion of the Gardien, the heir within age may be prejudiced, but therein the Process shall be at the Common Law.

CAP. VIII.

ILli autem qui pro iterata diſſeiſina capti fuerint & detenti, non deliberentur ſine ſpeciali præcepto Domini Regis, & hoc per finem cum Domino Rege inde faciend' pro hujuſmodi tranſgreſſione ſua. Et ſi compertum fuerit quod Vicecomes aliter eos deliberaverit, propter hoc graviter amercietur, & nihilominus illi qui per Vicecomitem ſine præcepto Domini Regis, ſic deliberantur, pro ſua tranſgreſſione graviter puniantur. Merton Cap.3. Weſtminſt.2. Cap.26.

The Statute of Merton cap.3. as hath bẽn ſaid, gave the Rediſſeiſin, and Poſt diſſeiſin, the words of which Statute being, In priſona Domini Regis detineantur, quouſque per Dominum Regem, vel aliquo alio modo deliberentur. Upon theſe words, Vel aliquo alio modo deliberentur; they were delivered by the Common Writ De homine replegiando, for the liberty of a Frẽman is ſo much favoured in Law, as there ever is a benigne interpretation made for the benefit thereof. Now this Statute doth enact, that they ſhall not be delivered ſine ſpeciali præcepto Domini Regis, that is, by the Kings Writ reciting the ſpecial matter, and for a fine with the King therefore to be made. And he that is attainted in a Rediſſeiſin, and in priſon, this fine that this Act ſpeaketh of, as ſome have ſaid, ought to be aſſeſſed in the Chancery, to which end he muſt have a Certiorari to remove the Record thither, and out of the Chancery to have his Writ to diſcharge him, for Sine ſpeciali præcepto Domini Regis, is intendable by Writ (ſay they) in the Chancery.

Merton cap.3. Regiſt.206. Mirror ca.5. § 3. Bracton lib.3. fo.154. F.N.B.66. Dier 36 H.8.60,61.

18 H.8.1.

18 H.8. ubi ſupra

And therefore if one be attainted in a Rediſſeiſin, and is at large, the party may have a Certiorari to remove the Record into the Court of Common Pleas, and by Capias out of that Court he may be taken, and ſome do hold, that this Court cannot aſſeſs the fine, nor make the ſpecial Writ.

But certain it is, if a man be attainted before the Sheriff in a Rediſſeiſin, and taken in execution, becauſe he cannot be delivered by this Act without a ſpecial Commandment of the King, he may ſue a Certiorari to remove the Record before the King in his Bench, in which Court after he hath made fine, he is thereupon to have a Writ for his delivery, reciting the ſpecial matter, which is the ſpecial Commandment that this Act ſpeaketh of, which appeareth in the Regiſter, and F.N.B.

Regiſt.F.N.B. 190.f. & 242. b.

¶ Pro iterata diſſeiſina.] This doth extend as well to the Poſt diſſeiſin, as Rediſſeiſin.

¶ Et ſi compertum fuerit, &c.] That is, by way of indictment and conviction of the Sheriff, and ſo it is of the party that procureth himſelf to be delivered in that manner alſo: But no Action can be grounded upon this Act.

CAP. IX.

Regiſt. 176. F.N.B. 159. 45 E. 3. 23.

DE ſectis vero faciendis ad curiam Magnatum, vel ad curiam aliorum dominorum ipſarum curiarum, de cætero ſic obſervandum eſt, quod nullus qui per Chartam feoffatus eſt, diſtringatur de cætero ad hujuſmodi ſectam faciendam ad curiam Domini ſui, niſi per formam *feoffamenti ſui* ſpecialiter teneatur ad ſectam illam faciendam. His autem exceptis quorum anteceſſores, vel ipſimet, hujuſmodi ſectam facere conſueverunt ante primam tranſfretationem prædicti Domini Regis Henrici in Britanniam, a tempore cujus transfretationis elapſi ſunt xxxix. anni & medietas unius anni *ad tempus* quo hujuſmodi conſtitutiones fuerunt Statutæ. Similiter nullus feoffatus a tempore conqueſtus *ſine Charta* vel aliquo alio antiquo feoffamento diſtringatur ad hujuſmodi ſectam faciendam; niſi ipſemet, vel anteceſſores ſui eam facere conſueverunt ante primam transfretationem prædictam: Qui autem per Chartam pro certo ſervitio, veluti pro libero ſervitio tot ſolidorum annuatim pro omni ſervitio ſolvend' feoffati ſunt, ad hujuſmodi ſectam, vel ad aliud, contra formam feoffamenti ſui, de cætero non teneantur. Et ſi hæreditas aliqua, de qua tantum unica ſecta debeatur, ad plures hæredes participes ejuſdem hæreditatis devolvatur, ille vero qui habet enitiam partem hæreditatis illius, unicam faciet ſectam pro ſe & participibus ſuis, & alii participes ſui pro portione ſua, contribuant ad ſectam illam faciendam. Et ſi plures feoffati fuerint de hæreditate aliqua, de qua tamen unica ſecta debeatur, dominus illius feodi unicam ſectam inde habeat, nec poſſit de prædicta hæreditate niſi unicam ſectam exigere, ſicut prius inde fieri conſuevit. Et ſi feoffati warrantum, vel medium non habeant, qui *inde* eos acquietare debeat, tunc omnes illi feoffati, contribuant *pro portione ſua* ad ſectam illam pro eis faciendam. Si autem contingat, quod Domini curiarum tenentes ſuos contra hanc conſtitutionem, pro hujuſmodi ſecta diſtringant, tunc ad querimoniam tenentium illorum attachientur eorum Domini, quod ad curiam Regis veniant ad brevem diem, inde reſponſuri, & unicum inde habeant eſſonium ſi fuerint in Regno, & incontinenter deliberentur conquerenti averia ſua, ſive aliæ diſtrictiones, hac occaſione factæ, & deliberatæ, remaneant, donec placitum inde inter eos terminetur. Et ſi Domini curiarum, qui hujuſmodi diſtrictiones fecerint, ad diem, ad quem attachiati fuerint, non venerint, vel diem per eſſonium ſibi datum non obſervaverint, tunc mandetur Vicecomiti, quod eos ad alium diem venire faciat, ad quem diem ſi non venerint, tunc mandetur Vicecomiti, quod diſtringat eos per omnia catalla, quæ habent in balliva ſua, ita quod Vicecomes reſpondeat Domino Regi de exitibus dicti hæredis, & quod habeat corpora eorum ad certum diem ſibi præfigendum

dum coram Juſtitiariis. Ita quod ſi ad diem illum non venerint, eat pars conquerens inde ſine die, & averia ſua, ſive aliæ diſtrictiones hac occaſione factæ, deliberata remaneant, donec ipſi Domini ſectam illam recuperaverint per conſiderationem curiæ Regis, & ceſſent interim hujuſmodi diſtrictiones, ſalvo Dominis curiarum jure ſuo de ſectis illis recuperandis in forma juris, cum inde loqui voluerint.

Et cum Domini curiarum inde venerint reſponſuri conquerentibus de hujuſmodi diſtrictionibus, & ſuper hoc convincantur, tunc per conſiderationem curiæ Domini Regis recuperent verſus ipſos conquerentes dampna ſua quæ ſuſtinuerunt occaſione diſtrictionis prædictæ. Simili autem modo ſi tenentes, poſt hanc conſtitutionem, ſubtrahunt Dominis [feodorum] ſectas quas facere [debeant] & quas ante tempus prædictum transfretationis, & hactenus facere conſueverunt, tunc per eandem juſtitiam, & celeritatem quo ad dies præfigend', & diſtrictiones adjudicand', conſequantur Domini curiarum juſtitiam de ſectis illis perquirendis, una cum dampnis ſuis quemadmodum tenentes dampna ſua recuperarent. Et hoc ſcilicet de dampnis recuperandis, intelligatur de ſubtractionibus ſibi factis, & non de ſubtractionibus factis prædeceſſoribus ſuis. Veruntamen Domini curiarum verſus tenentes ſuos ſeiſinam de hujuſmodi ſectis recuperare non poterunt per defaltam, ſicut prius fieri conſuevit. De ſectis autem quæ ante tempus ſupradictum ſubtractæ fuerunt, currat Lex communis, ſicut prius currere conſuevit.

This Chapter hath nine branches. The firſt is,

¶ De ſectis.] This is underſtood of ſuit ſervice to Courts Barons, Hundreds, and the like, and not to ſuit real in reſpect of reſiance, nor to ſuit to the mill, for the words be, de ſectis fac' ad curiam, &c. Regiſt. 176. F.N.B. 159. 45 E. 3. 23.

¶ Nullus qui per cartam feoffatus eſt, diſtringatur de cætero ad hujuſmodi ſectam faciendam ad curiam Domini ſui niſi per formam feoffamenti ſui ſpecialiter teneatur ad ſectam illam faciendam.] There is another clauſe in this Chapter concerning this matter, Qui autem per cartam pro certo ſervitio, veluti pro libero ſervitio tot ſolidor annuatim pro omni ſervitio ſolvend' feoffati ſunt ad hujuſmodi ſectam, vel ad aliud, contra formam feoffamenti ſui, de cætero non teneantur. Mag. Cart. c. 10.

At the Common Law, before the making of this Statute, if the Lord had made a feoffment by deed, and reſerved certain ſervices, as for example, fealty, and 2 s. rent, or by 2 s. rent generally, which had implied fealty; in this caſe if the Lord had diſtreined for homage, or ſuit, or any other rent or ſervice, then was reſerved in the deed, not only the tenant and his heirs, but his aſſignes alſo, or any other tenant of the land might have rebutted the Lord, his heirs, or aſſigns, by the deed, and this doth hold betwæn party and party, privy and privy, privy and eſtranger, and eſtranger and eſtranger. 3 E. 2. acc' ſur le ſtat. 23. 24. 4 E. 3. avow. 202. 6 E. 2. avow. 210. 3 E. 3. 27, 28. 22 E. 3. 18. b. 19 E. 3. avow. 122. 28 aſſ. 33. 32 E. 3. avow. 114. 14 H. 4. 5. 30 H. 6. 7. 10 H. 7. 11. Dier 25 H. 8. 51. F.N.B. 163. d.

* But this Act giveth the tenant or his heirs a more ſpeedy remedy, for hereby is given to the tenant againſt the Lord and his heirs a Writ of contra formam feoffamenti, wherein ſix things are worthy of obſervation. * Fleta l. 3. c. 14. F.N.B. 162, 163.

1. When

1. When any Act doth prohibit any wrong or vexation, though no action be particularly named in the Act, yet the party grieved shall have an action grounded upon this Statute, which in this case is a prohibition to the Lord or his Bailiffs, and reciteth this Act, the form whereof you may read in the Register, and F. N. B.

Regist. F.N.B.163 b.

16 H.3. avow,243

Now where it may be objected, that in Mich. 16 H.3. reported by F. tit. avowry, 243. that upon a confirmation a Writ of contra formam feoffamenti doth lie, and by that book it should seem, that a Writ of contra formam feoffamenti did lie at the Common Law before this Statute, which was made in 51 H.3. To this it is answered, that the said case is misprinted, for where it is Mich. 16 H.3. it should be 56 H. 3. when the Case was so resolved, and in which Term, viz. the 16 day of Novemb. Hen. 3. died, so as that opinion was after our Statute: and that the Writ was given by this Statute, the Writ (as hath been said) doth recite it. And where in this clause the Statute saith (distringatur) all this Chapter is to be understood of suit service, because for suit real no distress can be taken, but for the amerciament in default thereof.

Regist. F. N. B. 163. b.

8 H.4 16. 12 H.7. 15.

46 H.3. avow.243. 11 E.3. ibid.100. 30 E.3. 13. 27 E.3. 92. 4 E.3. avow. 201. 15 E. 3. confir.8. F.N.B.163.g

2. Where the Statute saith, contra formam feoffamenti, yet if the Lord confirm the estate of the Tenant to hold by certain services, upon this confirmation he shall have a contra formam feoffamenti, for that it is within one and the same reason.

P. 10 E. 3. per Parning. F. N. B. 163. f.

3. Pro certo servitio. Upon these words if one give land in frankalmoigne, or in frank-mariage, he cannot have a Writ of contra formam feoffamenti, because there is no certain service contained in the feoffment or gift, and therefore out of this Act, but he may rebut.

4. If the Lord distrein either for suit, or for any other service, or rent not contained in the deed, the tenant shall have this Writ of contra formam feoffamenti, for the words of this Act be, ad hujusmodi sectam, vel ad aliud, &c.

14 H.4.5. 22 H.6. 50. 30 H. 6. 7. 10 H.7.11. F.N.B. 163.e. Lib. 4. fol. 121. Bustards case. Ibid. f.11. Bevils case. Li.9. f.34. Bucknals case.

5. The Statute saith, contra formam feoffamenti; hereupon exposition hath been made, that this Writ lyeth only between privies, viz. by the tenant and his heirs, against the Lord and his heirs, for they be included in privity of the feoffment, but so are not the assigns on either side.

* If the feoffment be without deed, the feoffee is driven to his Writ of Ne injuste vexes.

* Mag.Car.c.10. 2. *Branch.*

¶ Hiis autem exceptis quorum antecessores vel ipsi hujusmodi sectam facere consueverunt ante primam transfretationem prædicti Domini Regis Henrici in Britanniam, &c.] The Law doth ever favour possession as an argument of right, and doth incline rather to long possession without shewing any deed, then to an ancient deed without possession; and therefore this Act doth except long possession: but in respect of the great troubles that did arise in this Realm after the cancellation, which H. 3. made of the Charters of Magna Charta, and Charta de Foresta in the 11 year of his raign, this Act doth give relief against any seisin since his first going over into Britain, which was in the fourtenth year of his Raign, but the seisin before that time, when the times were regular and peaceable, this Act doth except.

Li.4. fol.11. Bevils case. Lib.9. f.34. Bucknals case.

How, and in what manner seisins by incroachments shall be avoided, you may read in Bevills Case, in Bucknalls Case, ubi supra, and in the first part of the Institutes, Sect.

¶ Similiter

¶ Similiter nullus feoffatus a tempore conqueſtus ſine carta vel aliquo alio antiquo feoffamento diſtringatur ad hujuſmodi ſectam faciend', niſi ipſemet ſeu anteceſſores ſui eam facere conſueverunt ante primam transfretationem prædictam.] Here he beginneth with feoffments without déed; in the next branch with feoffments by déed, wherein is to be obſerved the great antiquity of feoffments by déed or without déed of ancient time before the Conqueſt. 3. *Byanch.* Flet. l. 2. cap. 60.

Secondly, The reaſon in thoſe troubleſom times, ſince the firſt going over of the King (as hath béen ſaid) is not allowed of, but a ſeiſin is required before that time, when times were regular and peaceable.

¶ Qui autem per cartam pro certo ſervitio, &c.] This branch is repeated before, and coupled with the firſt, being both to one effect. 4. *Branch.*

¶ Et ſi hæreditas aliqua, &c.] For parceners, ſée the firſt part of the Inſtitutes, Sect. 241. & le Cuſtumier de Norm. cap. 30. fol. 46. tenure per parage, i. per coparcenarie, & cap. 36. fol. 55. 5. *Branch.*

¶ Ille qui habet enitiam partem.] This is to be underſtood after partition, for before that the eldeſt hath not enitiam partem, and therefore before partition this Act extends not to it, and before partition there can be no contribution, as hereafter ſhall be ſaid, but in the Kings caſe all the coparceners ſhall do ſuit as well after partition as before, and ſo ſhall their ſeveral feoffées, for this Act extendeth not to the King, for the words be, ad curiam magnatum, &c. 24 E. 3. 34. 73. 14 H. 3. Stat. de Hibernia. Vet. Mag. Char. fol. 110. F.N.B. 159.

If the eldeſt after partition will not do the ſuit, in the caſe of a common perſon the Lord may diſtrein the other parceners, as well as the eldeſt for the ſuit, and the other parceners may have upon this Act a Writ againſt the eldeſt to compel her to do the ſuit, and if the eldeſt doth the ſuit, and the reſidue refuſe to contribute to her charge, ſhe ſhall have upon this Act a Writ De contributione facienda to compel them to contribute. Regiſt. 174. F. N. B. 160.

F.N.B. 159.

¶ Qui habet enitiam.] And yet this Act extendeth to the feoffée of him that hath enitiam partem, and ſo it is of the tenant by the curteſie.

Note, a woman may be a frée ſuiter to the Courts of the Lord, but though it be generally ſaid, that the frée ſuiters be Judges in theſe Courts, it is intended of men, and not of women.

¶ Et ſi plures feoffati fuerint de hæreditate aliqua de qua unica ſecta debeatur, Dominus unicam ſectam habeat.] This is to be underſtood, either when the tenant holdeth by ſuit, and enfeoffeth others ſeverally, one of one part, and another of another part, &c. in certain; there the Lord ſhall have but one ſuit, and he that doth the ſuit ſhall have a Writ De contributione facienda againſt the others: or where the tenant that holdeth by one ſuit infeoffeth many jointly, they ſhall make but one ſuit; as they ſhall deliver but one hawk, or other intire ſervice; and if one of them doth the ſuit, he ſhall not have a Writ De contributione facienda by this Act, for when the poſſeſſion is individed, and intire, there can be no contribution; but if one of the joynt feoffées make a feoffment in fée, the feoffée ſhall do a ſeveral-ſuit, and the reſt of the joynt feoffées ſhall do but one. And if one of the ſeveral feoffées doth the ſuit, if the other feoffées be diſtrained for the ſuit, they ſhall have a Writ againſt the Lord to diſcharge them of the ſuit, wherein it is to be noted, (as before hath béen obſerved) what actions are grounded upon this and other the like Statutes, though no mention be made of them in the Acts, all which appear in the Regiſter. 6. *Branch.* F. N. B. 159. Regiſt. 174, 176, 177. Lib. 6. fol. 1. Bruertons caſe. F.N.B. 162. d. Bruertons caſe ubi ſup. Regiſt. 174, 176, 177.

If

40 E. 3. 5. 34 aſſ. 15. 24 E. 3. 73. Bruertons caſe *ubi ſupra.*

If parcel of the land holden by ſuit come to the hands of the Lord, all the ſuit is gone, for he neither can receive, nor make contribution.

7. *Branch.* For warranty and acquital, ſee the 1. Part of the Inſtit. Sect. 142.

¶ Et ſi feoffati illi Warrantum, vel medium non habeant.] That is to ſay, if they have neither one to warrant by ſpecial grant, nor any meſne by tenure which ought to aquit them, tunc omnes illi feoffati pro portione ſua contribuant &c. This clauſe is to be underſtood of ſeveral tenants, as hath bẽn ſaid before: And no proviſion is made by this Act concerning contribution, where the parties are provided for by grant or tenure.

8. *Branch.*

¶ Si autem contingat quod Domini, &c.] Here is a remedy given to the tenant againſt the Lord, if he diſtrain contrary to this Statute.

7 E. 4. 14. 9 H. 7. 12 H. 7. 15.

¶ Donec Domini ſectam ſuam recuperaverint, &c.] Nota, the ſuit that is paſt cannot be recovered, but damages for the ſame.

9. *Branch.*

¶ Simili autem modo ſi tenentes poſt hanc conſtitutionem ſubtrahant, &c.] Here is remedy given to the Lord againſt his tenant that ſhall withdraw his ſuit,

¶ Currat Lex communis.] See before, Cap. 7.

CAP. X.

DE Tournis Vicec' proviſum eſt quod neceſſe non habeant ibi venire Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, nec aliqui viri religioſi, ſeu mulieres, niſi eorum præſentia ob aliquam cauſam ſpecialiter exigatur, ſed teneatur Tournus, ſicut temporibus prædeceſſorum Domini Regis teneri conſuevit. Et qui in [diverſis] hund' habeant tenementa, non habeant neceſſe ad hujuſmodi Tournos venire, niſi in balivis ubi fuerint converſantes. Et teneantur Tourni ſecundum formam Magnæ Chartæ, & ſicut temporibus Regum Richardi & Johannis teneri conſueverunt. Vide Mag. Char. cap. 35.

Mirror, c. 1. §. 16. F.N.B. 160. c. Mag. Cart. c. 35. & hic ca. 18. 24.

¶ De Tournis Vicecomitis proviſum eſt quod neceſſe non habeant ibi venire Archiepiſcopi, Epiſcopi, Abbates, Priores, Comites, Barones, nec aliqui viri religioſi, ſeu Mulieres, niſi eorum præſentia ob aliquam cauſam ſpecialiter exigatur.]

This is the firſt branch of this Chapter.

8 H. 4. 15. 12 H. 7. 15.

Before the making of this Statute, the Sheriff in his Tourn, and the Lords of Léets did uſe to amerce Archbiſhops, Biſhops, Priors, Earls, Barons, religious men and women, if they came not to the Tourns, or to the Léets of others, becauſe for ſuit real no diſtreſs can be taken, but for the amerciaments for default of ſuit, which this Act doth remedy; for now, ſeeing it is hereby provided that the perſons above named ſhall not nẽd

to

to come to Tournes, &c. therefore for their not coming they cannot be amerced.

First, hear what the Mirror saith of this matter: Abusion est de suffer ascun deins le Realme ouster 40 jours, que il soit del age de xij ans, insuis Anglois ou Alien, sil ne soit jure al Roy per serement del fealty & plevise, & in decenne; Abusion est que Clerks & fems sont exempt de faire al Roy le dit serement, de sicome le Roy prent lour homage, & lour fealty pur terre. Mirror cap. 5. § 1.

Now this oath is well expressed in Britton, Voillons nous que trestouts ceux de xij. ans, desouth nous facent le serement que ilz serr' foiall & loiall, & que ilz ne serr' felons ne aux felonies assentants. Brit. ca. 12. fo. 19. Lib. 7. fo. Calvins case.

And it is worthy of observation, that by the Common Law, Parsons of Churches, that had Curam animarum, the better to perform their function, were not compellable to come to Tournes, or Leets; and if they were distrained to come thither, they might have a Writ, Cum secundum consuetudinem Regni nostri personæ Ecclesiasticæ ratione terrarum & tenementorum suorum Ecclesiis suis annexorum ad veniend' ad visum franc' pleg' in Cur' nostra, vel aliorum quorumcunque, &c. Whereby it appeareth that this Writ is grounded upon the Common Law, being the general custom of the Realm; But other Clerks (that be no Parsons of Churches with Cure) under which name all Ecclesiastical Parsons regular and secular are contained, if they be distrained to come to Tourne or Leet, they shall have a Writ reciting this Statute to be discharged thereof. Which Writ beginneth, Cum de communi consilio provisum sit quod viri religiosi non habeant necesse venire ad Tournum Vicecom', &c: Regist. 175, 176. F.N.B. 160. Regist. ubi supra.

So likewise women shall have the like Writ, Cum de communi consilio, &c. Provisum sit quod mulieres non habeant necesse venire ad Tournum, &c. Regist. ubi supra. F.N.B. 161. 3 H. 5. tit. utlagar. Statham.

And it is a rule of Law, that whensoever a Writ doth recite a Statute, there the Statute doth introduce a new Law.

Now albeit the abovesaid persons be exempted from their personal coming to the Tourn and Leet, and many other persons never took the said oath of Allegiance, yet are all Subjects of what quality, profession, or sex soever, as firmly bounden to their Allegiance, as if they had taken the oath, because it is written by the finger of the Law in every one of their hearts, and the taking of the corporal oath, is but an outward declaration of the same.

In the Chapter next before, provision was made for doing of suit service, now in this Chapter a Law is made concerning suit real, by reason of reliancy.

¶ De Tournis Vicecom'.] This Tourne of the Sheriff is Curia Vicecom' Franci plegii (as it hath been said) and therefore this Act extendeth to all Leets and Views of Frankpledge, of all other Lords and persons. Mag. Chart. c. 35. F.N.B. 159, 160, 161. Regist. 175, 176.

¶ Necesse non habeant.] That is, they are not compellable to come, but left to their own liberty, Nisi eorum præsentia ob aliquam causam specialiter exigatur, as to be a witness, or the like.

¶ Nec aliqui viri religiosi.] Religiosi in the proper sense are taken for those that be regulars; but Ecclesiastical persons, that be seculars, are also within this Act, and that doth notably appear by a Writ in the Register, Cum personæ Ecclesiasticæ non habeant necesse venire ad Tournum Vicecom', vel ad visum franci plegii, &c. juxta formam provisionis de communi consilio Regni nostri in consimili casu pro viris religiosis factæ, &c. Whereby it appeareth, that Ecclesiastical persons secular, are in consimili casu with them that be Religiosi, and consequently within this Act. See the first part of the Institutes. sect. 133. In consimili casu.

Mag. Chart. c. 35. ¶ Sed teneatur Tournus ſicut in Temporibus predeceſſorum Domini Regis teneri conſueverunt, & teneantur Tourni ſecundum formam Magnæ Chartæ, & ſicut temporibus Regis Richardi & Johannis teneri conſueverunt.] In this 52 year of H. 3. ſo long it was by effluxion of time ſince the reign of H. 2. mentioned in Magna Charta, that this Act had juſt cauſe to have reference to the times of R. 1. and King John.

¶ Et qui in diverſis Hundredis habeant tenementa, non habeant neceſſe ad hujuſmodi Tournos venire niſi in ballivis ubi fuerint converſantes.] Here Hundredum is taken Pro viſu franci plegii: ſo as the ſenſe is, that he which hath Tenements in the Tourn, and in ſome other view of frankpledge of ſome other Lord, or in divers views of frankpledge, he ſhall not need to come to any other but where he is converſant, and Hundreds here are named, becauſe Sheriffs (as hath been ſaid) kept their Tournes in every Hundred.

F.N.B. 160. Mag. Chart. c. 35.

¶ Ad hujuſmodi Tournos.] Here Tournus is taken not only for the Kings view of frankpledge, but for the views of frankpledge of other Lords.

¶ In ballivis.] Here Balliva is taken for the Tourn or Leet where he is converſant.

33 H. 6. fol. 9. 19 H. 6. fol. 1. a. If a man hath a houſe within two Leets, he ſhall be taken to be converſant where his bed is, for in that part of the houſe he is moſt converſant, and here converſant ſhall be taken for moſt converſant.

Mag. Chart. c. 35. & hic cap. 9. Regiſt. 174, 175. F.N.B. 160, 161. d. 36 E. 3. cap. If a man hath a houſe and family in two Hundreds, ſo as he is in Law converſant or commorant in both Hundreds, yet he ſhall do his ſuit to the Tourn or Leet where his perſon is commorant.

Laſtly, if any man be grieved in any thing contrary to the purview of this Statute, he ſhall have an Action grounded upon this Statute (as often in other caſes hath been obſerved) for his remedy and relief therein, which actions appear in the Regiſter.

CAP. XI.

W. 1. ca. 8. 1 E. 3. cap. 8. Stat. 2. Britton fol. 32. Fleta li 2. ca. 60. PRoviſum eſt etiam, quod nec in Itinere Juſtic', nec in Comitat', in Hundred', nec in Curia Baron' de cætero capientur fines ab aliquibus pro pulchre placitand', neque [pro eo] quod non occaſionentur. Et ſciendum eſt, quod per iſtam conſtitutionem non tolluntur fines certi, ſeu præſtationes arrentatæ a tempore quo Dominus Rex primum transfretavit in Britanniam uſque nunc.

Before the making of this Statute, Juſtices in Eyre, the Suitors in the Courts of the County, Hundred, and Court Baron did uſe to ſet fines at their pleaſure upon the Defendant or Plaintiff, Tenant or Demandant, and not upon the Councel learned for vicious pleading; and the reaſon thereof was, for that it was in delay of Juſtice, and ſo a contempt to the

the Court, and then he had leave to amend it, and to make it perfect, which is called Beaupleder. This Act conſiſteth upon two branches: By the firſt all fines incertain for vicious pleading, and for amendment thereof, are wholly taken away.

By the ſecond, fines certain for vicious pleading, and amendment thereof aſſeſſed ſince the firſt going of H. 3. into Britain, which was in the 14 year of his raign, are not taken away by this Statute.

¶ Pro pulchre placitando.] In truth it was, as hath been ſaid, as well in reſpect of the vicious pleading, as of the fair pleading by way of amendment.

This extended to pleadings, and not unto Counts and pleints, neither doth it extend to the Kings higher Courts of Juſtice, but to theſe four here named, for in the higher Courts there were fair and good pleadings; whereof the Engliſh Poet (ſpeaking of the Serjeant at Law) ſaith,

Thereto he could indite and make a thing,
There was no wight could pinch at his writing. Chaucer.

¶ Neque pro eo quod non occaſionentur.] That is, that for that cauſe they ſhould not be occaſioned or troubled.

If any man be grieved contrary to the purview of this Statute, he may have an Action in nature of a prohibition upon this Statute. Regiſt. 179. F.N.B. 270. 13 E. 1. Attachment 8.

¶ Non tolluntur fines certi.] And the reaſon of this was, for that fines certain grew by conſent, and therefore this Act took them not away, for Omnis conſenſus tollit errorem, and I have ſeen and do know in divers Court Barons, &c. fines certain for Beaupleder paid to this day.

CAP. XII.

IN placito vero dotis, quod dicitur unde nihil habet, dentur de cætero quatuor dies per annum ad minus, & plures ſi commode fieri poterit, ita quod habeat quinque vel ſex dies ad minus per annum. In aſſiſis [autem] ultimæ præſentationis, & in placito Quare impedit de Eccleſiis vacantibus, dentur dies de quinden' in quinden', vel de tribus ſeptimanis in tres ſeptimanas, prout locus fuerit propinquus, vel remotus. Et in placito Quare impedit, ſi ad primum diem ad quem ſummonitus fuerit, non venerit, nec eſſonium miſerit impeditor, tunc attachietur ad alium diem, quo die ſi non venerit, nec eſſonium miſerit, diſtringatur per magnam diſtrictionem ſuperius datam. Et ſi tunc non venerit, per ejus defaltam ſcribatur Epiſcopo illius loci quod reclamatio impeditoris illa vice conquerenti non obſiſtat, ſalvo impeditori alias jure ſuo, cum inde loqui voluerit. Eadem lex de attachiamentis faciendis in omnibus brevibus ubi attachiamenta jacent

Vide 51 H. 3. Dies Communes in Banco, in placito dotis.

jacent de cætero (quoad diſtrictiones faciendas) firmiter obſervetur: ita tamen quod ſecundum attachiamentum fiat per meliores plegios, & poſtmodum ultima diſtrictio. [Vide Artic' ſuper Chartas cap. 15.

The miſchief before this Act was, That in a Writ of Dower, Unde nihil habet, there were days of common return, as in other real actions, which was miſchievous to the woman, in reſpect of the long delay, ſhe claiming but an eſtate for her life, which miſchief this Statute, as by the letter thereof appeareth, doth remedy.

And this Statute in favour of Dower is alſo extended againſt the Vouchée, for this Act ſaith, In placito dotis, and the Vouchée is in Placito dotis.

32 H.8. cap. 21. ¶ Unde nihil habet.] This Act extends not to a Writ of Right of Dower, but the Statute of 32 *H.* 8. extends to it, neither doth this Act extend to a Writ of Dower ad oſtium Eccleſiæ, or ex aſſenſu Patris, unleſs it be Unde nihil habet, but the ſaid Act of 32 H. 8. extends to every Writ of Dower.

26 E.3.75. 17 E.3.21. 18 E.3. jour 19. ¶ In Aſſiſis ultimæ præſentat' & in placito Quare impedit.] This Act extendeth not to a Writ of Quare non admiſit, nor to an Incumbravit, but only to the Aſſiſe of Darrein preſentment, and Quare impedit, and the reaſon thereof is, for fear of the laps.

11 H.6.23. ¶ Dentur dies de quindena in quinden'.] By aſſent of parties a longer day may be given then is preſcribed by this Act, but that aſſent muſt be entred of Record.

44 E.3.5. 39 H.6.40. Artic. ſuper Chartas. cap. 15. And it is to be obſerved, That by the Common Law great delays be diſallowed in four kinds of Actions, viz. in all Writs of Dower, Quare impedit, Aſſiſe of Darrein preſentment, and Aſſiſe of Novel diſſeiſin, and therefore no protection ſhall be allowed, or eſſoine de ſervitio Regis ſhall be caſt in any of them.

Bract. l. 4. fo. 246, 247. Fleta lib. 5. c. 16. Brit. 233. 11 H.6.4. ¶ In placito Quare impedit ſi ad primum diem ad quem ſummonitus fuerit non venerit, &c.] At the Common Law in a Quare impedit, the Proceſs was ſummons, attachment, and diſtreſs infinite, which was miſchievous in reſpect of the laps, now it is provided that if he appear not at the grand diſtreſs, Judgment ſhall be given for the Plaintiff, and a Writ to the Biſhop awarded.

14 E.3. Default 17. 11 H.6.4,5. 21 H.6.56. Lib. 5. fol. 41. * *Regula.* ¶ Summonitus fuerit.] Put the caſe, that upon the ſummons, the Defendant is returned nihil, and at the attachment and diſtreſs, nihil alſo, this caſe is out of the Letter of the Statute, for the Defendant was never ſummoned, but it is ſaid, * That when there be two miſchiefs at the Common Law, and the leſſer is provided for by expreſs words, the greater ſhall be included within the ſame remedy; This caſe when nihil is returned, is the greater miſchief, for he by his default ſhall loſe nothing, but in the caſe provided, the Defendant by his default ſhall loſe iſſues, and the Law intends that he will rather appear then loſe iſſues.

7 E.3.4. A Quare impedit is brought againſt two, upon the diſtreſs one doth appear, and the other makes default; in 7 E.3. it was reſolved that the Plaintiff ſhould not preſently have a Writ to the Biſhop againſt him that makes default, for

for that it might be, that the other that appears ſhall have againſt the Plaintif a Writ to the Biſhop; and it was there ſaid, that it was not reaſonable, that upon one original the Plaintif ſhould have one Writ to the Biſhop for him, and another againſt him; but this notwithſtanding the Plaintif by this Act ought to have againſt him that makes default a Writ to the Biſhop; and it is not againſt reaſon, if the other Defendant can bar the Plaintif, for him to have a Writ to the Biſhop againſt the Plaintif by the Common Law, and ſo be the later Books, and common experience at this day. 14 H.7.19.b. F. N. B. 39. b. 13 E.3. brē al Eveſque 21. 8 H.4.2. 10 H.6.4.

¶ Tunc attachietur ad alium diem, quo die ſi non venerit nec eſſonium miſerit.] Eſſonium, or Exonium is derived of the French verb Eſſonier, or Exonier, which ſignifieth to excuſe, ſo as an Eſſoine in legal underſtanding is an excuſe of a default by reaſon of ſome impediment, or diſturbance, and is as well for the Plaintif as the Defendant, and is all one with that which the Civilians call Excuſatio. * Of Eſſoins, there have bēn (as we read in our Books) five kinds, viz. 1. De ſervitio Regis. 2. In terram ſanctam. 3. Ultra mare. 4. De malo Lecti, in our old Books called Eſſonium de reſiantiſa. 5. Et de malo veniendi, and this laſt is the common Eſſoine, which is intended in this Act. Vide hic c. 2. & 13 Glanv. lib. 1. c. 10, 11, &c. Bract l. 5. fol. 334, 335, &c. Brit. cap. 122, 123, &c. Fleta lib. 6. c. 7, 8, &c. Mirror c. 2. § 20. De Eſſoines, & cap. 5. § 1. * 27 H.6.1. 26 H.6 Eſſoine 107. 10 H.4.6. 8 H. 3. Eſſoine 195.

In a Quare impedit, or Darrein preſentment, an Eſſoine de ſervice le Roy, ad terram ſanctam, or ulta mare lyeth not for doubt of the laps, but a common Eſſoine lyeth, and of Eſſoines the Mirror ſaid well, Abuſion eſt que faux cauſes de Eſſoines ſont reſceivable de cy que droit ne allowe fauxime in nul caſe, & abuſion eſt dallower Eſſoine in perſonel Action; For the ſame Author treating De Articles per viels Roys ordein, ſaith, Ordein fueront Eſſoines in mixt Actions, & realls, & ne in perſonels; And I find not in Glanvill any Eſſoines, but in real and mixt Actions, but before the making of this Act, Eſſoines were allowed in perſonal Actions. W. 2. cap. 17. Mirror ubi ſupra. Mirror ubi ſupra.

Non jacet Eſſonium, quia ſummonitio teſtificata non eſt, vel pars non attachiatur, eo quod Vicecomes mandavit quod non eſt inventus. Vide 12 E.2. Stat. de Eſſonio calumniando. 34 H.6.28

¶ Per ejus defaltam ſcribatur Epiſcopo quod reclamatio impeditoris illa vice conquerenti non obſiſtat.] Upon theſe words of this Act the Plaintif ſhall have a Writ to the Biſhop without making of any title. 2 H.4.1.b. 22 H.6. 45. 33 H.6.1.a. F.N.B. 38. n.

The Statute ſaith only, Scribatur Epiſcopo, and yet the Plaintif ſhall have both a Writ to the Biſhop, and beſides a Writ to enquire of damages; if the Biſhop be out of the Realm, a Writ to the Biſhop may be awarded to his Vicar general, for he is in place of the Biſhop. 2 H.4.1. 24 E.3.37 38 E.3.12.

If the Defendant appear at the grand diſtreſs, and take a day by prece partium, and after make default, no Writ ſhall be awarded to the Biſhop, for this caſe in reſpect of his appearance is out of the Statute, but a new diſtreſs ſhall be awarded. 13 E.3. brē al Eveſque 19.

¶ Conquerenti.] The King ſhall take the benefit of this Statute. 24 E. 3.

¶ Eadem lex de attachiamentis, &c.] This is the laſt clauſe of this Chapter, and is to be underſtood according to the letter, and needeth not any expoſition.

CAP.

CAP. XIII.

Dier 5 El. 224. 15 Eliz. 324.

ET ſciendum eſt [quod] poſtquam aliquis poſuerit ſe in inquiſitionem aliquam, quæ emerſerit, vel emergere poterit in hujuſmodi brevibus, non habebit niſi unicum eſſonium, vel unicam defaltam, ita quod ſi ad diem ſibi datum per eſſonium ſuum non venerit, aut ſecundo die defaltam fecerit, tunc inquiſitio illa per ejus defaltam capiatur, ſecundnm inquiſitionem illam ad judicium procedatur. Si vero inquiſitio illa capta fuerit in comitatu coram Vicecom' vel Coronatore, ad Juſticiarios Domini Regis ad certum diem eſt remittend'. Et ſi pars rea non venerit ad diem illum, tunc propter defaltam ipſius aſſignetur & alius dies, ſecundum diſcretionem Juſticiariorum, & mandetur Vicecomiti, quod ad diem illum faciat eum venire ad audiendum judicium (ſi velit) ſecundum inquiſitionem illam. Ad quem diem ſi non venerit, propter defaltam ſuam procedatur ad judicium. Eodem modo fiat, ſi non veniat ad diem ſibi datum per eſſonium ſuum.

2 R.2. Eſſo. 159. **The miſchief before this Statute was for the great delay that might come to the plaintif in any perſonal action.**

¶ Inquiſitionem aliquam.] That is, when iſſue is joyned, and the defendant ponit ſe ſuper patriam, & prædict' querens ſimiliter.

This Statute extendeth not to a demurrer in Law.

21 E.4.74.78. **In an action of debt** un cuſtome de London fuit alledge & denie per le pl': **This iſſue ſhall not be tried by Inqueſt, but by the certificate of the Mayor by the mouth of the Recorder,** Proces iſſuiſt al Maior a certifier a quel jour le def. pria deſtre eſſoine, **and was eſſoined by the opinion of the whole Court, for this trial was not** per patriam.

19 E. 3. eſſoine 21 19 H.6. 51. ¶ Niſi unicum eſſonium.] Here eſſonium is taken for a common eſſoine, and extendeth not to the eſſoine de ſervitio Regis, &c.

25 E.3.8. This is to be underſtood where an eſſoine doth lie, for this Act reſtraineth delaies, and giveth not any, where none was before. And therefore after iſſue in a Scire fac', the defendant ſhall not be eſſoined, becauſe no eſſoine lyeth in that caſe, & ſic de ſimilibus.

2 E.4.19. But if there be divers tenants in a præcipe, or divers defendants in a perſonal action, albeit in Law they be but one tenant, or one defendant, yet each of them ſhall have one eſſoine; and ſo hath this Act been expounded.

20 E.3. Eſſo. 30. 22 E. 3. 4. 7. 2 R.2. eſſoine 159 14 H. 6. 1. Dier 5 Eliz. 224. 15 Eliz. 324. ¶ Vel unicam defaltam, &c.] Upon conſideration of theſe words, and of theſe words ſubſequent, tunc inquiſitio illa per defaltam capiatur, two concluſions are collected. 1. That this Act extendeth to the defendant, and not to the plaintif, becauſe the defendant maketh default, and on the plaintifs ſide it is called a Non-ſuit: alſo the enqueſt is awarded by the default of the defendant. And laſtly, the miſchief was for the delay of the plaintif by the defendant, and therefore the delay which the plaintif maketh himſelf is out of the miſchief, and remains at the Common Law.

The

The ſecond concluſion is, that this Act is to be underſtood in an action perſonal, for that no enqueſt in any action real can be taken by default. 14 H. 6. 19. 9 H. 5. 12, 13. Dier. ubi ſup.

¶ Si vero inquiſitio capta fuerit in comitatu, &c.] The meaning of this clauſe is, that if after iſſue joyned in a baſe Court, the defendant hath had his eſſoine, yet if the plea be removed before the Kings Juſtices, he ſhall have another eſſoine before the Juſtices, for the proceeding in the baſe Court is not of record above.

CAP. XIV.

DE chartis vero exemptionis, & libertatis, ne ponantur impetrantes in aſſiſis, juratis, vel recognitionibns aliquibus: Proviſum eſt, quod ſi adeo neceſſarium ſit eorum juramentum, quod ſine eis juſtitia exhiberi non poterit (veluti in magnis aſſiſis, & in perambulationibus, & in chartis vel ſcriptis conventionum, uti fuerunt teſtes nominati, aut in attinctis, vel aliis conſimilibus) jurar' cogantur, ſalva ſibi alias libertate, & exemptione ſua prædicta. W. 2. cap. 28. 29 H. 6. c. 3.

¶ De chartis vero exemptionis & libertatis, &c.] Hereby it appeareth that this Act is in affirmance of the Common Law, for every Charter of any Franchiſe or liberty whatſoever, by reaſon whereof there ſhould be a failer of Juſtice, is void and of none effect in Law, as in the caſe of conuſans, and this caſe of exemption, 34 H. 6. 25. per Moyle. 21 E. 4. 47. b.

In this Act there be four examples ſet down, viz. the grand Aſſiſe in the Writ of Right, in the Writ of Rationabilibus diviſis, here called in perambulationibus, in Deeds where witneſſes be named, and in Attaints. 39 E. 3. 15. 12 E. 4. 17. 5 H. 6 42. Broke exempt. 6.

¶ Rationabilibus diviſis.]

*Magna aſſiſa inter Priorem de Tynemuwe petentem, & Simonem de Ruceſtre tenentem, de eo quod idem Simon permittet rationabiles diviſas fieri inter terras ipſius Prioris in Weiham, & terras ipſius Simonis in Ruceſtre, ſicut eſſe debet & ſolet. Et unde idem Simon qui tenens eſt poſuit ſe in magnam aſſiſam illam, & petit recogn' fieri, utrum ipſe majus jus habet in quindecim acris terræ, & quindecim acris moræ, cum pertin' in Ruceſtre * per metas & diviſas ſubſcriptas, ſcil. incipiendo apud altam viam quæ extendit ſe ultra Swalnſpotleche, & ſic deſcendendo per Swalnſpotleche verſus Auſtrum uſq; Ryſdenburne, ubi Swalnſpotleche & Ryſdenburne conjungunt, & ſic aſcendendo in Ryſdenburne verſus Boream uſque Aldewylumway, & ſic adhuc per Ryſdenburne verſus Boream uſque le Redeford, ubi alta via tranſit verſus novum Caſtrum ſuper Tynam ſicut illas tenet, An prædictus Prior per metas diviſas ſubſcriptas, viz. incipiendo apud Redeford, & ſic per altam viam verſus Occidentem uſque Munleſhened, & ſic verſus Occidentem per altam viam uſq; Swalnſpotleche, & ſic de Swalnſpotleche verſus Auſtrum uſque Ryſdenburne, & ſic de Ryſdenburne verſus Boream aſcendendo uſque*

Paſch. 18 E. 1. rot. 65. in Banc. Northumb. de rationabilibus diviſis.

Magna Aſſiſa utrum ipſe majus jus, &c.

* Per metas & diviſas.

Vide Mich. 3 E. 1 in Banc. rot. 26. Sur' Int' Priorem de Berm. & Priorem de Hidawint. Paſch. 6 E. 1. in Banc. rot. 57. Salop. Int. Epiſc. Hereford. & Petr. Corbet perambulatio.

Vide Paſc. 8 E. 1. in Banc. rot. 58.

uſque Redeford prædict' ſicut illas exigit: ven' recogn' in forma prædict' per Willielmum de Haulton, Robertum de Inſula, Nicholaum de Punchardon, Johannem de Oggeill, Johannem de Eſlington, Richardum de Horſelé, Hugonem Gobion, Walterum de Egloytheneham, David de Coupland, Franconem Tyeys, Henricum de Dytheend, & Robertum du Maner, & modò veniunt prædict' Simon & Prior per Attorn' ſuos:

Veredictum.

Et prædicti milites ſuper ſacramentum ſuum dicunt, quod prædictus Simon majus jus habet in prædictis tenementis per prædictas diviſas per quas illa tenet, quam prædictus Prior per diviſas per quas illa exigit.

Judicium.

Ideo conſideratum eſt, quod prædictus Simon eat inde ſine die, & teneat prædictum tenementum ſibi & hæredibus ſuis per prædictas diviſas, ſcil. incipiendo apud Swalneſpotleche ubi alta via extendit ſe ultra Swalneſpotleche, & ſic deſcendendo per Swalneſpotleche verſus Auſtrum uſque Ryſdenburne ubi Swalneſpotleche & Ryſdenburne conjungunt, & ſic aſcendendo per Ryſdenburne verſus Boream uſque Aldewylumwey, & ſic adhuc per Ryſdenburne verſus Boream uſque le Redeford ubi alta via tranſit verſus novum Caſtrum ſuper Tynam, quiete de prædicto Priore & ſucceſſoribus ſuis, & Eccleſia ſua de Tynemuwe imperpetuum, & Prior in miſericordia, &c.

Finale.

Paſch. 18 E. 1. in Banco. rot. 72. Northumb. Mich. 18 E. 1. in Banc. rot. 76. Northumb.

Magna aſſiſa inter Priorem de Tynemuwe petentem, & Richardum Turpin tenentem de eo, quod idem Richardus permittet rationabiles diviſas fieri inter terras ipſius Prioris in Wylum, & terras ipſius Richardus in Hoghton, ſicut eſſe debent & ſolent, & unde idem Richardus, qui tenens eſt poſuit ſe in magnam aſſiſam illam, & petit recogn' fieri, utrum ipſe majus jus habet in medietate decem acrarum moræ, viginti acrarum terræ, & ſexaginta acrarum boſci, cum pertin' in Hoghton, per metas & diviſas ſubſcriptas, videl. incipiendo ex parte Boreali de le Thwertonerdike, & ſic verſus Boream uſque ad curſum aquæ quæ currit inter le Strother de Hoghton, & le Strother de Ruceſtre, & ſic ſicut curſus illius aquæ ſe extendit verſus Occidentem uſque Redeford, & ſic deſcendendo verſus Auſtrum uſque le Holleford, & ſic del Holleford deſcendendo verſus Auſtrum uſque Ryſdenburne, uſque ad terram arabilem de Wylum, & ſic per foſſatum ejuſdem terræ uſque lel Longhing quod venit de boſco de Wylum, & ſic deſcendendo verſus Auſtrum ſicut Sygpethway ſe extendit inter boſcum de Hoghton, & boſcum de Wylum, & uſque Wylum Halugh, & ſic per foſſatum quod ſe extendit verſus Orientem inter Wylum Halugh & boſcum de Hoghton uſq; Alberyſtrother in parte Occidentali, & ſic per partem Occidentalem de Alberyſtrother verſus Auſtrum uſque les Pullys per partem Occidentalem, & ſic de les Pullys verſus Occidentem per quoddam foſſatum uſque quoddam Run quod ſe extendit uſque aquam de Tyne ſalva communia paſturæ eidem Priori & ſucceſſoribus ſuis in prædicta mora de Hoghton uſque le Thwertonerdike per partem Occidentalem, & ſic per partem Occidentalem de le Br-hill, & de Hyndeſchawe, & ſic verſus Auſtrum deſcendendo per le Greneleghe, & ſic uſque Sygpethway ſicut ea tenet, an prædictus Prior per metas & diviſas ſubſcriptas, videlicet incipiendo in parte Boreali in Wylummore deſcendendo verſus Auſtrum per le Thwertonerdike uſque Thornrawe, & ſic de Thornrawe uſque Martinpol verſus Auſtrum, & ſic de Mortinpol uſque Aldchewey & ſic deſcendendo

per

per le Haldeheyway verſus Auſtrum ultra Ravenesburne, & ſic de Ravenesburne verſus Auſtrum & iterum ultra Ravenesburne, & ſic de Ravenesburne verſus Auſtrum uſq; Standandeſtan, & ſic de Standandeſtan verſus auſtrum uſq; le Fiſherewey uſq; aquam de Tyne ſicut illam exigit. Venit recogn' in forma prædicta per Willielmum de Hauleton Robertum de Inſula, Nichol' de Punchardon, Johannem de Oggill, Johannem de Eſlington, Robertum de Glantingdon, Richardum de Horſlee, Hugonem Gobyon, Walterum de Egleyntham, David de Coupeland, Francione Tyeis, & Henric' de Dycheend. Et modo veniunt prædict' Richardus, & Prior per Attornatos ſuos, & præd' Milites ſuper ſacramentum ſuum dicunt quod præd' Richardus majus jus habet tenendi medietat' prædictorum ten' per eaſdem metas & diviſus, per quas idem Richardus ſuperius clam', quam prædictus Prior. Ideo conſiderat' eſt quod prædictus Richardus eat inde ſine die, & teneat medietat' prædictorum ten' cum pertinen' per prædictas metas & diviſas, per quas illam clam' ſibi & hæred' ſuis quiete de prædicto Priore & ſucceſſoribus ſuis, & Eccleſia ſua de Tynemuwe imperpetuum. Et Prior in miſericordia.

Veredictum.

Judicium finale.

Vide Mich. 18 E. 1. in Banco Rot. 76. Northumb. a notable Record. For this Writ De rationabilibus diviſis, and the Writ De perambulatione fac', vide Regiſt. 157. b. Glanvill lib. 9. cap. 14. Bracton lib. 4. fol. 207. a. 211. b. De perambulatione fac'. lib. 5. 372. a. & 444. De rationabilibus diviſis. Fleta lib. 4. cap. 15. lib. 5. cap. 9. 39. 31 E. 1. Droit 70. 5 E. 3. fol. 12. 28 E. 3. fol. 43. 14 E. 3. tit. Aid 23. 29 E. 3. 45. 45 E. 3. 4. 3 E. 4. 10. F. N. B. 128. m. &c. 133. d. &c. Vet. 73, 74. Coke lib. intr. 565, 566. lib. intrat. Raſt. 541. 495.

Upon all theſe Records and Books, the learning of theſe two Writs ſtandeth thus:

1. This Writ of Rationabilibus diviſis is a Writ of Right in his nature, wherein Battail, and the grand Aſſiſe lieth, and judgement final ſhall be given: In this Writ the view and Voucher is to be granted, and eſplées are to be laid, and this Writ Eſt breve adverſarium.

2. The Writ De perambulatione facienda, is no Writ of Right in his nature, and is Breve amicabile, and had by conſent of parties.

3. The perambulation may be made as well by commiſſion to certain perſons as by Writ; but the proceeding, De rationabilibus diviſis, is by Writ only.

4. This is common to them both for a diviſion to be made betwéen ſeveral Towns or Hamlets.

5. If it be for a diviſion betwéen two Counties, for the better directions of Sheriffs, Coroners, and other the Kings Officers, and Miniſters, it muſt be done by the Kings Commiſſion under the great Seal, but the diviſion hereby made ſhall not eſtop or conclude the parties intereſted in the land.

Upon the verdict in any of the four examples before mentioned, no Writ of attaint doth lie; then followeth theſe words, Et in aliis caſibus conſimilibus: Theſe by the Letter of this Statute, muſt be ſuch, as thereupon no attaint doth lie; as in the Partitione fac', and other inqueſts of office, as hath béen ſaid: But all Charters tending to the failer of Juſtice, are void by the Common Law, without any aid of this Act: As if there be not ſufficient Hundreders, beſides thoſe that have Charters of exemption, for trial of an iſſue in an Action, wherein an attaint doth lie, there Charters ſhall be diſallowed, becauſe ſine eis juſtitia exhiberi non poteſt, and ſo in all other like caſes: So if the King grant an exemption to all the Freeholders in one County, and to all the Citizens in a City, this void.

¶ In Chartis, &c. ubi teſtes fuerint nominati.] Hereby it appeareth, that by the Common Law, the Witneſſes named in the Déed ſhould joyn

with the Enqueſt, or elſe the Charter of Exemption De aſſiſis juratis & recognitionibus aliquibus, ſhould not have freed them. Vide the firſt part of the Inſtitutes, and ſee before Cap. 6.

1 Part of the Inſtitutes, Sect. 1.

¶ In attinctis.] Hereby appeareth that the Writ of Attaint, which by our old Books and ancient Records is called Breve de convictione, was given by the Common Law, and the form of the Writ is ſet down in our ancient Authors at the ſuit of the party grieved: and it appeareth by the Regiſter that no Writ of Attaint reciteth any Statute, and the Judgment in the Writ of Attaint is fearful and penal, and given by no Statute, and this is proved by this Act, which nameth Attaints, and is before any Act of Parliament in print made concerning Attaints.

And it ſeemeth by our old Books and ancient Records, that by the Common Law, it lay as well in plea real as perſonal. Vide Regiſt. 122. Mirror cap. 3. De Attaints. & cap. 2. § 4. De Loiers. Glanv. l. 2. c. 19. Bracton l. 4. fol. 289. Fleta l. 5 c. 21. 34. Britton c. 97. fol. 237. 6 H. 3. tit. Attaint 72. & 73. 15 H. 3. ib. 74. Temps E. 1. ibid. 70. 12 E. 1. ib. 71. 30 Aſſ. 24. 28 E. 3. 91. 44 E. 3. 2. b. Temps R. 2. Conuſans 88. 3 H. 4. 15. Forteſcue c. 26. F. N. B. 107. k. W. 1. cap. 38. 47. 1 E. 3. cap. 6. 5 E. 3. cap. 6, 7. 28 E. 3. cap 8. 34 E. 3. cap. 7. 23 H. 8. cap. 3. See the firſt part of the Inſtitutes. Sect. 514. Verb. en Attaint.

But ſome ſay the Writ could not be obtained without difficulty (becauſe he had other remedy to try it in an Action of higher nature) and therefore the Statutes were made. See the Stat. of W. 1. c. 38. and the expoſition thereupon, and a judgment given Mich. 5 E. 1. Of an Attaint hear what the Mirror ſaith, En temps le Roy Henry le primer eſtoit ordein & communement aſſentu que Jurors in Enqueſts, &c. in Attaints, & tiels autres ne prendront rien de loiers, &c. See the other ancient Authors and books above cited; by them it appeareth how neceſſary the reading of Ancient Authors and Records be for the knowledge of the Common Law, and how the Statutes concerning Attaints are but in affirmance of the Common Law, for the Plaintif may have upon them the penal and ſevere judgment given by the Common Law. Vide 40. Aſſ. 23.

See W. 1. cap. 38. 40 Aſſ. 23. F. N. B. 165, 166. A et D. 39 E. 3. 15 40 E. 3. 30. 18 H. 8. 5.

If a man have a Charter of exemption, and ſheweth it to the Sheriff, yet notwithſtanding he may retourn him, for the Sheriff is not to judge of his Charter, nor to allow, or diſallow thereof; but if he will have the effect of his Charter, he muſt ſue out a Writ of allowance of his Charter, and deliver the Writ to the Sheriff, and ſhew his Charter to him, and then if the Sheriff retourn him, he may have his Action upon his caſe againſt the Sheriff, and ſo muſt our old and other Books be intended.

18 H. 8. 5.

After the Sheriff hath retourned him, if a full Jury do appear, then he may ſhew forth his Charter, and if the Plaintiff confeſs it, he ſhall be diſcharged, but if the Plaintiff ſaith that he is not the ſame perſon, it ſhall be preſently tried, and ſo in the like caſe; but he cannot plead his Charter for his diſcharge before a full Jury do appear, for if any anſwer be made thereunto the Jury muſt try it.

41 E. 3. exemption 4. 42 Aſſ. 25. 25 H. 6. exemption 5.

Such general Charters of exemption in Aſſiſis, Juratis, & Recognitionibus, as in this Act are mentioned, ſhall not be allowed where the King is either ſole party, or where the ſuit is Tam pro Domino Rege quam pro ſeipſo, without theſe or the like words, Licet tangat nos.

18 E. 3. 20. 3 H. 6. 14. 36 H. 6. 32.

¶ Salva ſemper alias libertate & exemptione prædict'.] And ſo it is in caſe of conuſance, and of a Protection, the party may waive the benefit of it in one Action, and yet take the advantage of it in another: And ſo if a Non omittas be awarded within a franchiſe that hath retourn of Writs, yet he ſhall in other ſuits enjoy it.

CAP.

CAP. XV.

NUlli de cætero liceat ex quacunque cauſa diſtrictiones facere extra feodum ſuum, nec in via regia, aut in communi ſtrata niſi Domino Regi & miniſtris ſuis ſpecialem authoritatem ad hoc habentibus.

Fleta lib. 2. c. 41. W. 1. c. 16. Artic. Cleri cap. 9. Artic. ſuper Cart. ca. 12. 51 H. 3. Diſt. de Scaccar.

The miſchief before this Statute was, that whereas the King by his prerogative might diſtrein for his rent in any other lands of his Tenant, being in his own actual poſſeſſion, though they were out of his fée, and ſeigniory, divers Lords took upon them alſo to diſtreiu out of their fée, which was wrong and oppreſſion: And whereas all the Kings Subjects ought to have frée paſſage in via regia, & communi ſtrata, as well to Fairs and Markets, as about their other affairs, the Lords uſed to diſtrein in the high-ways, both which miſchiefs this Statute doth remedy,

13 E. 4. 6.

¶ Non liceat.] This is divided into three branches: The firſt branch is, Non liceat ex quacunque cauſa diſtrictiones facere extra feodum.

1. This is to be underſtood of diſtreſſes, by reaſon of a ſeigniory, and not for diſtreſſes for rent charges, &c. or by reaſon of a Lét.

34 E. 1. Avowry 232. 41 E. 3. 26. 2 H. 4. 24.

2. This branch is but in affirmance of the Common Law, for regularly no Subject can diſtrein out of his fée and ſeigniory, and therefore if the Lord do diſtrein out of his fée, the Tenant may either have an Action of Treſpaſs at the Common Law, or an Action upon this Statute, but in ſome ſpecial caſe the Lord by the Common Law may diſtrein out of his fée and ſeigniory, as if the Lord come to diſtrein, and the Tenant, or any other ſéeing the Lord come to diſtrein them, drive them to a place out of the fée of the Lord, yet in this caſe the Lord may diſtrein them out of his fée, becauſe the Lord had a view of them within his own fée, by reaſon whereof the Lord ſhall be adjudged in a kind of poſſeſſion of them; but if the beaſts go out of the Tenancy of themſelves without enchaſement before the Lord can diſtrein them, there the Lord cannot diſtrein them, though he had the view of them within his fée, and ſeigniory.

2 E. 2. Avow. 182. 44 E. 3. 20, 21. 6 R. 2. Reſcous. 11 33 H. 6. 51. 2 E. 4. 6. 9 E. 4. 35. 16 E. 4. 10.

The ſecond branch is,

¶ Nec in via regia, aut in communi ſtrata.] See what ſhall be ſaid regia via, and what communis ſtrata, in the firſt part of the Inſtitutes, Sect. 69.

First part of the Inſtitutes, Sect. 69. F. N. B. 173, 174.

This Law had the foundation of the ancient Law of England before the Conqueſt, Alia, s. immunitas, quam habent quatuor chemini, (i. viæ Regiæ) Watlingſtreet, Foſſe, Hilkenildſtreet, & Erminſtreet, quorum duo in longitudinem, alii duo in latitudinem deſcendunt.

Inter leges Edw. Regis, Lamb. fol. 129. Fleta lib. 2. cap 42. Artic. Cler. cap. 42.

In this branch, non liceat ſhall be taken not ſimpliciter, to make it utterly unlawful, as to take advantage thereof in bar to an Avowry, but ſecundum quid, that is to this purpoſe, that if the Lord diſtrein in the high ſtréet, or in the Common way, the Tenant may have an Action againſt the Lord upon this Statute: and the reaſon hereof is, that whenſoever any thing is prohibited by a Statute, the party grieved ſhall have his Action upon the Statute, and the offender ſhall be for his contempt fined and impriſoned; and ſo it is declared by Act of Parliament, as hath béen often obſerved. Now if the Tenant ſhould plead it in bar of the Avowry, the King ſhould loſe his fine; for in that nature of ſuit he cannot be fined, and therefore the Tenant is to take his remedy by Action upon the Statute, wherein the King ſhall have his fine, &c.

Regiſt. fol. 97. 19 E. 2. bré. 842. 21 E. 3. 11. 30 E. 3 20. 41 E. 3. 6. 43 E. 3. 30. 11 R. 2 Avowry 87. 36 E. 3. c. 9. 19 H. 6. 4. 35 H. 6. 6 9 E. 4. 26. F. N. B. 90. 173. Lib. 8. f. 60 Bechers caſe. 11 R. 2. Avow. 87

¶ Diſtrictiones facere.] A Heriot Cuſtom the Lord may ſeiſe in the high-way, for that is no diſtreſs but a ſeiſure, but he cannot diſtrein for a Heriot ſervice there.

If the Lord come to diſtrein, and ſée the beaſts within his fée, and before he can diſtrein them, the Tenant enchaſe them into the high-way, the Lord may, as hath been ſaid, diſtrein them there, for the cauſe above expreſſed.

17 E. 3. 1. The Writ upon this Statute ſhall be contra pacem, and not Vi & armis.

The third branch:

44 Aſſ. 32. 5 E. 3. 6 13 E. 4. 6. ¶ Niſi Domino Regi & miniſtris ſuis, &c.] Here is an exception of the Kings prerogative (which by this Act appears to be ancient) as well to diſtrein for his rent, or ſervice out of his fée, and ſeignior, as in the high-way, or common ſtréet. But where it is ſaid that the King may diſtrein out of his fée, that is, in the other lands of his Tenant; it muſt be underſtood in ſuch other lands as his Tenant hath in his own actual poſſeſſion, and manured with his own beaſts, and not in the poſſeſſion of his leſſée for life, years, or at will, for their beaſts are not ſubject to ſuch diſtreſs.

Artic. ſuper Cart. cap. 12. There was a Statute made in a Parliament holden at Weſtminſter in 51 H. 3. the year next before this Parliament holden at Marlebridge, concerning diſtreſſes, conſiſting on two branches.

1. Que nul home de Religion ne auter ſoit diſtreine per ſes beaſts, queux gainont ſon terre, ne per ſes barbits pur la det le Roy, ne pur la det de auter home, ne pur auter encheſon per les Bailiffes le Roy, ne per autres, tanque come ils trove auters chateux ſufficient dont ilz poient lever le det, ou que ſuffiſt ſa demaund, (forſpris emparkement des beaſts queux homes trove feaſants damage ſolonque le Ley, uſage, & le manner de la terre.)

Artic. ſuper Cart. c. 12. 27. l. Aſſ. 52. 28 Aſſ. p. 50. 29 E. 3. 23. 8 H. 4. 16. 11 H. 4. 2. Lib. 11. fol. 44. Godfreyes caſe. 2. Et que diſtreſſes ſoient reaſonable a la mountaince de la det, ou de la demaunde ſolonq; bone value, & per eſtimation ne pas outragious des vicines & nemi per eſtrangers. Of both theſe ſhall be ſpoken together, becauſe divers of the authorities extend to both.

Beaſts queux gainont ſon terre & ſes berbits.

Flores Hiſtor. Polyd. Virg. 22. b. Regiſt. Lucubr. Ockham. This Law had his foundation of the ancient Law before the Conqueſt, Dunvallo Mulmutius prohibited that the beaſts of the plough ſhould be diſtreined, &c. and gave priviledges to Temples and Ploughs: And Ockam that wrote before this Statute of the Kings Debts, ſaith, Bobus tamen arantibus, per quos agricultura ſolet exerceri, quantum poterint parcant, ne ipſa deficiente debito amplius in futurum egere cogatur, quod ſi nec ſic quidem ſumma quæ requiritur exurgit, nec arantibus parcendum eſt.

Bract. l. 4. fol. 217 Fleta, li. 2. cap. 42. Bracton treateth of both theſe branches notably, and he divideth animalia into laborioſa & otioſa, and ſaith, Fit diſtrictio injurioſa ordine non obſervat', ſi fiat diſtrictio per oves, & ſunt quæ ad minus damnum diſtringantur animalia otioſa; Item ordine non obſervat' ſi fiat diſtrictio per boves, ut culturam auferant vel impediant, cum ſint aliæ res & animalia otioſa quæ ſufficiant ad diſtrictionem; Item ſi ſubſit cauſa & obſervetur ordo, adhuc poteſt eſſe injurioſa, ſi fuerit nimia, & diſtrictio modum excedat in qualibet ſpecie.

Lib. 2. cap. 42. And Fleta ſaith, Quod pro communi utilitate Communitatis Regni inhibitum fuer' ne quis diſtringeret alium per oves ſuas vel per averia ſua carucarum, quamdiu alia ſufficiens diſtrictio inveniri poſſit.

Diſtrictiones ſint rationabiles & non nimis graves. See before Chapter 4.

Brit. fol. 35. & 133. b. And Britton ſaith, Ou ſi aſcun Viſcount eit pur malice fait prendre plus des avers pur noſtre det, ou pur autre, que a la vailance de le det, ou ſil eit priſt beaſts des carues, ou motons, ou berbis, ou veſſel, ou mounture, ou robes, ou deins meſon

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la ou auter diſtres poet trover ſufficientment & hors de meaſon. And in another place he ſaith, Si aſcun diſtreine auter per que gainage eſt diſturbe, &c. 29 aſſ. pl. 49.

And this agreeth with the Civil Law, Executio fieri non poteſt in boves, aratra, aliave inſtrumenta ruſticorum quatenus alia bona habent. Lege Executores & Auten.

The Statute of W. 2. which giveth the Elegit, doth abſolutely except the beaſts of the plough in theſe words, Exceptis bobus & aſris carucæ. W. 2. cap. 18. Fleta, l. 2. c. 5.

This Statute doth not extend only to diſtreſſes betwæn Lord and tenant, but alſo to all other diſtreſſes whatſoever, as well at the Kings ſuit, as at the ſuit of the Subject, ſo there be other goods ſufficient; alſo to all manner of executions, as well at the ſuit of the King, as of the ſubject, with the like caution as is afore ſaid. Regiſt. 97 temps E. 1. avowry 230. 18 E. 2. acc. ſur ſtat. 35. 4 E. 3. 1 29 E. 3. 16, 17. P. 17 H. 6. Rot. 93. in com. baneo. F. N. B. 174. b. 14 El. Dy. 312.

And an action upon this Statute doth lie, as well after deliverance, as before, for the cauſe of the diſtreining may be lawful, and yet notwithſtanding if he take the beaſts of the plough where he might find others, the diſtreſs is wrongful. And albeit the tenant after ſuch a diſtres taken pay the rent, and thereby affirm the cauſe of diſtres lawful, notwithſtanding this doth not purge the offence againſt this Statute.

And the Statute is to be conſtrued, that at the time of the diſtres, &c. there muſt be other cattel ſufficient, and it is not material what was before or after. 29 E. 3. 17. 4 H. 7. 8. b.

The Writ upon this Statute alſo ſhall be Contra pacem, & non vi & armis. 17 E. 3. 1.

Now where the Statute ſpeaks of the beaſts of the plough, and not of the plough it ſelf: by the Common Law always uſed the plough or any thing belonging to it was not diſtreinable, ſo long as any other diſtres might be taken.

This Statute of 51 H. 3. being of record and in print, I thought to touch ſpecially ſo much thereof as concern diſtreſſes, whereof our Statute of Marlebridge hath treated both in the fourth, and this fifteenth Chapter. See Art. ſuper cart. cap. 12.

And it appeareth by the Mirror, that many other beaſts and living things, and other goods were not diſtreinable by the Common Law, if there were other goods ſufficient. As for moſt goods, a covenable diſtres is not of armor, or veſſel, or apparel, or jewels, ſo long as there are other ſufficient or covenable; nor of ſhæp, ſaddle horſe, beaſts of the plough, poultry, fiſh, or ſalvagne, ut ſupra. Mirr. c. 2. §. 16. Vee de Name.

CAP. XVI.

SI hæres aliquis poſt mortem anteceſſoris ſui infra ætatem extiterit, & Dominus ſuus cuſtodiam terrarum, & tenementorum ſuorum habuerit, ſi Dominus ille dicto hæredi, cum ad legitimam ætatem pervenerit, terram ſuam ſine placito reddere noluerit, hæres ille terram ſuam per aſſiſam mortis anteceſſoris recuperabit, una cum dampnis ſuis, quæ ſuſtinuerit propter detentionem illam a tempore quo fuit legitimæ ætatis. Et ſi hæres aliquis tempore mortis anteceſſoris ſui plenæ ætatis fuerit, & ille hæres apparens, & pro hærede cognitus & inventus ſit in hæreditate illa, capitalis Dominus eum non ejiciat, nec aliquid ſibi capiat, vel amoveat, ſed tamen inde ſimplicem ſeiſinam habeat pro recognitione Dominii ſui ut pro Domino cognoſcatur. Et ſi capitalis Dominus hujuſmodi hæredem extra ſeiſinam malitioſe teneat, propter quod breve mortis anteceſſoris, vel conſanguinitatis

operteat

oporteat ipſum impetrare, tunc dampna ſua recuperet ſicut in aſſiſa novæ diſſeiſinæ. De hæredibus autem, qui de Domino Rege tenent in capite, ſi obſervandum eſt, ut Dominus Rex primam inde habeat ſeiſinam, ſicut prius inde habere conſuevit. Nec hæres nec aliquis alius in hæreditatem illam ſe intrudat, priuſquam illam de manibus Domini Regis recipiat, prout hujuſmodi hæreditas de manibus ipſius & anteceſſorum ſuorum recipi conſueverit temporibus elapſis. Et hoc intelligatur de terris & feodis, quæ ratione ſervitii militaris, vel ſerjantiæ, ſive juris patronatus in manibus Domini Regis eſſe conſueverunt. *Vide Prærogativa cap. 3. Et Glanvil. lib. 7. cap. 9. fol. 4.*

¶ Si hæres aliquis poſt mortem anteceſſoris, &c.] This Act is but a declaration of the Common Law, for in this caſe when a gardein in chivalry holdeth over, he is an abator, which is manifeſtly proved by this Act, whereby it is declared that the Aſſiſe de mord' doth lie againſt him. Alſo it is reſolved in our books, wherein this diverſity is to be obſerved, that where a man cometh to a particular eſtate by the act of the party, there if he hold over, he is a tenant at ſufferance; but where he cometh to the particular eſtate by act in Law, as the gardein in our caſe doth, there he is no tenant at ſufferance, but an abator. Vide 1. part of the Inſtit. Sect. 461.

Abridg. aſſ. 120, b. F.N.B. 196. f. Glanvil. l. 7. c. 9. Bract. l. 4. fol. 252, 253. Brit. fol. 178. b Fleta, lib. 5. cap. 1 10 E. 4. 9, 10. per Curiam. 8 E. 3. 63. 10 E. 3. 41. 11 E. 3. aſſ. 87. 12 E. 3. aſſ. 86. 12 aſſ. p. 21. 13 E. 3. tit. Aſſiſe 92. 28 aſſ. p. 11. 34 aſſ. p. 10. 39 E. 3. 28. 2 E. 4. 38. 18 E. 4. 25. Temps H. 8. Br. tit. ten' à volunt. 15. * 46 E. 3. fol. 20.

And yet for the benefit of the heir to ſome purpoſe, the poſſeſſion of the gardein is the actual ſeiſin of the heir, for if the gardein be ouſted, and he diſſeiſed, he ſhall have an Aſſiſe, as it is holden in 2 E. 4. 5. b.

* If a woman bring a Writ of Dower againſt a gardein, and recover without title, the heir ſhall have an Aſſiſe of Mord' at his full age at the Common Law, notwithſtanding the poſſeſſion of the gardein.

¶ Et ſi hæres aliquis tempore mortis anteceſſoris plenæ ætatis fuerit.] This is the ſecond clauſe of this Chapter, and is alſo a reherſal of the Common Law.

Glanvil, Bracton, Britton, Fleta } ubi ſupra.

¶ Simplicem ſeiſinam habeat pro recognitione Dominii ſui, ut pro Domino cognoſcatur.] This is underſtood of the payment of relief, whereby he putteth the Lord in ſeiſin, and doth acknowledge him for his Lord, ſo as of ancient time, and in ancient books, relief is called ſimplex ſeiſina.

¶ Et ſi capitalis Dominus hujuſmodi hæredis.] This is the third clauſe, and is evident.

¶ De hæreditatibus autem quæ de Domino Rege tenentur in cap. &c.] This is the fourth clauſe of this Chapter, and is alſo a rehearſal of the Common Law, in which clauſe are theſe words, Sicut prius inde habere conſuevit, and theſe words, prout hujuſmodi hæreditas de manibus ipſius & anteceſſorum ſuorum recipi conſueverit.

¶ Ut Dominus Rex primam inde habeat ſeiſinam, ſicut prius habere conſuevit.] Note, in the former clauſe concerning the tenure of ſubjects, the Lords ſhould have ſimplicem ſeiſinam, i. relevium: But in this clauſe where the tenure is of the King in capite, and his tenant dieth his heir of full age, he ſaith not that he ſhall have ſimplicem ſeiſinam, but primam liberam ſeiſinam, whereof you may read at large in Stamford Prerog. 11. b.

¶ Priuſ-

¶ Priuſquam illam de manibus Domini Regis recipiat.] That is, before he ſueth his livery out of the Kings hands, albeit he be of full age at the death of his anceſtor, whereof you may read at large in Stamford, ubi ſupra.

¶ Et hoc intelligatur de terris & feodis quæ ratione ſervitii militaris, &c.] i. Servitii militaris in capite, *ſerjantiæ*. i. magnæ ſerjantiæ; *ſive juris patronatus*. i. fundationis Epiſcopatuum, Monaſteriorum, &c. Prerog. Regis, c. 3

CAP. XVII.

PRoviſum eſt inſuper, quod ſi terra quæ tenetur in Socagio, ſit in cuſtodia parent' hæred', eo quod hæres infra ætatem extiterit, cuſtod' illi vaſtum facere non poſſunt, nec venditionem nec aliquam deſtructionem de hæreditate illa, ſed ſalvo eam cuſtodiant ad opus dicti hæredis, ita quod cum ad legitimam ætatem pervenerit, ſibi reſpondeant de exit' dictæ hæreditatis, per legalem computationem, ſalvis ipſis cuſtodibus rationabilibus miſis ſuis. Nec etiam poſſunt dicti cuſtodes maritagium dicti hæredis dare vel vendere, niſi ad commodum dicti hæredis: ſed parentes dicti hæredis propinquiores, qui hujuſmodi cuſtodiam habuerint, a toto tempore illo a quo brevia non conceduntur implacitandi, hujuſmodi cuſtodias habeant ad commodum hæredum, ut prædictum eſt, ſine vaſto, vel exilio, vel deſtructione facienda.

¶ Vaſtum facere non poſſunt.] The heir within age ſhall have an action of Waſt againſt the gardein in ſocage, but he ſhall not be puniſhed for waſte made by ſtrangers. 2 E. 2. Waſt. 1. 16 E. 3. Waſt. 100 28 H. 6. Waſt. 9. F. N. B. 59. g.

¶ Cum ad legitimam ætatem pervenerit, ſibi reſpondeat.] This ſecond clauſe is a declaration of the Common Law: The lawful age of the heir of a tenant in ſocage is the age of 14 years, and at that age he ſhall have an action of Account againſt his gardein; all which you may read at large in the firſt part of the Inſtitutes, Sect. 104. See alſo there the ſeveral ages of men and women. Vide Mag. Ch. c. 4 & Glouc. c. 5. See the 1. Part of the Inſt. §. 124.

¶ Nec etiam poſſunt dicti cuſtodes maritagium dicti hæredis dare. &c.] This is the third clauſe of this Act in affirmance alſo of the Common Law. Vide the firſt part of the Inſtitutes for this clauſe, Sect. 124.

CAP.

CAP. XVIII.

Glanv. l.9.c.10. Fleta l.1. cap.43.

NUllus Eſcaetor, vel Inquiſitor, aut Juſticiar' ad aſſiſas aliquas ſpecialiter capiendas aſſignatus, vel ad querelas aliquas audiendum & terminandum, de cætero habeant poteſtatem aliquam amerciandi pro defalta communis ſummonitionis, niſi capitales Juſticiarii, vel Juſtic' itinerantes in itineribus ſuis.

¶ Inquiſitor.] Enquiror, that is to ſay, Sheriff, Coroner ſuper viſum corporis, or the like, that have power to enquire in certain caſes.

The miſchief before this Statute was, that the Eſcheator, Sheriff, Coroner, ſpecial Juſtices of Aſſiſe, and Juſtices of Oier and Terminer, in ſpecial caſes (whom Britton calls ſimple Enquirors) would upon the common ſummons amerce ſuch as made default. Now this Statute takes away their power to amerce, Nullus, &c. habeant poteſtatem amerciandi pro defalta.

Britton, fol.4.

Vide hic, c. 24. Brit. fol.4. Glanv. l.9. c.11. 10 E.3. fol.9. 2 H.4.24. 8 H.4.16 11 H.4.8.

But this extendeth not to Sheriffs in their Tourns, nor to Stewards in Leets, notwithſtanding that they be Inquirors, for that they deal with common nuſances, or matters concerning the publick, and not in private cauſes, and therefore are not reſtrained by this Statute.

¶ Niſi capitales Juſticiarii, vel Juſticiarii itinerantes.] That is, Juſtices of general Aſſiſes, whoſe authority increaſing by divers Acts of Parliament, and coming twice every year where the Juſtices in Eir came but from ſeven years to ſeven years, the authority of Juſtices in Eir by little and little vaniſhed.

So as if any amerciament is to be made for default upon common ſummons, upon due certificate made thereof to the Juſtices of Aſſiſe (here called Capitales Juſticiarii, in reſpect that ſpecial Juſtices of Aſſiſe were named before) they may amerce upon ſuch defaults, but the Eſcheator dealing virtute officii, did after this Statute certifie the defaults into the Exchequer, and there was the amerciament impoſed, which is worthy of obſervation.

Britt. fol.1. cap.4. Fleta li.1. cap.43.

And this expoſition agreeth with Britton, who wrote ſoon after this Statute, (& contemporanea expoſitio eſt fortiſſima in lege) and ſaith, Et ceux que avoient eſtre ſummons, & ne viendront a cels enqueſts des coroners, volons q̃ ils ſoient in noſtre mercie, a la venue de nous Juſtices as primiers aſſiſes en cel Countie, ſi tielz defaults trovant entres en rol de Coroner. Iſſint que nous Coroners, ne nous Eſcheators, ne ſimples Enquirors, ne eient poer de nulluy amercier per nul defaute.

CAP. XIX.

DE Eſſoniis autem proviſum eſt, quod in Comitatu, Hundred', aut in curia Baronis, vel aliis curiis, nullus habeat neceſſe jurare pro eſſonio ſuo Warrantizando. *Vide Glanv. lib.* 1. *cap.* 12. *fol.* 4. Fleta lib. 6. ca. 10.

By the order of the Common Law, for that Eſſoines which were firſt inſtituted upon juſt and neceſſary cauſe, ſhould not be uſed upon feigned cauſes for delay, he that caſt the eſſoine ought to be ſworn, that the cauſe thereof was juſt and true, and this held in all the five Eſſoines before mentioned Cap. 12. and this appeareth in Glanvil, Eſſoniator probabit quodlibet eſſonium jure jurando propria & unica manu, &c. But yet at the Common Law an oath was not always required in that caſe; Non autem omnes eſſoniatores ad diem recipiend' affidabunt, ſed illi tantum qui ſunt Baronibus inferiores, Barones vero & Baroniſſæ & eorum ſuperiores, ſicut Comites, & eorum Artornat' non affidabunt, ſed plegios invenient, &c. Ratio vero hujus diverſitatis talis eſſe poteſt, quod ita nobiles & dignæ perſonæ in Warrantizatione eſſonii non per ſe jurabunt, ſed per procuratores, ſcilicet plegios ſuos, &c. And herewith agreeth other ancient Authors. Vide hic. ca. 21. & 13. Glanv. l. 1. ca. 12. Bract. li. 5. fol. 351, 352. Fleta li 6. cap. 10. Britton fol. 282. cap. 122. See the third part of the Inſtitutes, Cap. Perjury.

¶ De eſſoniis.] This Act ſpeaketh generally of eſſoines, and yet it is particularly to be underſtood of one of the five eſſoines, and that is, of the common eſſoine De malo veniendi; ſo as in the eſſoine De ſervice le Roy, and the reſt, he that caſt the eſſoine muſt ſtill be ſworn; and this Law hath been thus interpreted for two reaſons. 1. For that in the eſſoine De ſervice le Roy, and the reſt, the delay is great, viz. a year and a day, &c. and therefore thoſe eſſoines ought to be more preciſely proved. 2. Ad ea quæ frequentius accidunt jura adaptantur: In thoſe days thoſe other eſſoines were very rare, and therefore the Judges of the Law, that ever hated delays, interpreted this Act to extend to common eſſoines only, that had the leaſt delay in it. 12 H. 4. 14. 2 E. 4. 16. l. 5 E. 4. 70. Vide Gloc. cap. 8.

¶ Vel in aliis curiis.] Theſe general words are interpreted to extend to the Kings Courts of Record at Weſtminſter, and other Courts of Record, although the Act beginneth with inferiour Courts, as it is manifeſt by common experience; And the cauſe is, for that otherwiſe theſe general words ſhould be void, for it cannot according to the general rule extend to inferiour Courts; for none be more inferiour or lower then theſe, that be particularly named, and ſo note a juſt exception out of the general rule. 12 H. 4. 24. per Hankford. Fleta lib. 6. cap. 10. Lib. 2. fol. 46. Leveſque de Cant. caſe. Vide hic cap. 28. W. 1. ca. 3. 15, 26.

¶ Warrantizando.] Eſt autem Warrantizare, jurare quod ita detentus fuit ægritudine in veniendo verſus curiam quod venire non potuit. This was the Oath of him that caſt the eſſoine at the Common Law before this Act. Bract. l. 4. fo. 352: 12 H. 4. 15, 24.

CAP. XX.

NUllus de cætero (excepto Domino Rege) teneat placitum in curia ſua de falſo judicio facto in Curia tenentium ſuorum; quia hujuſmodi placita ſpecialiter ſpectant ad Coronam & dignitatem Domini Regis.

Before the making of this Statute, if a falſe Judgment had been given in a Court Baron, this ſhould have been redreſſed in the Court Baron of the Lord next above him, and ſo upwards of the Lords Paramount, which both was an occaſion of long delays, and the King had alſo many times prejudice thereby, for that thoſe baſe Courts could aſſeſs no fine or amerciament to the King; which is ſo to be underſtood, that if the next immediate Peine had no Court Baron, the falſe Judgment could not be redreſſed in the Court of the Lord next above, for default of privity, but then the falſe Judgment was to be redreſſed in the Court of Common Pleas, or before the Juſtices in Eyre: Hereby ſhall appear, how neceſſary it is to know what the Common Law was before the making of any, and eſpecially of this Statute, for without that this Act could not be underſtood.

Regiſt. fol. 15.

This Act conſiſteth on two branches, the firſt is negative, the other affirmative.

1. That none from henceforth (except the King) ſhall hold plea in his Court of falſe Judgment in the Court of his Tenants.

Hereby is implied that by the Common Law, the falſe Judgment in a Court Baron was to be redreſſed in the Courts of the Lords above.

2. The affirmative is, becauſe ſuch pleas (of falſe Judgment) ſpecially belong to the Crown and Dignity of our Lord the King; this is a reaſon of the taking away of the Juriſdiction of the ſuperiour Lords: And the effect of the reaſon is this, that in ſuch proceedings, many times fines and amerciaments to the King were to be impoſed, which did belong to the Kings Crown and Dignity, that is, to the Kings Courts of Record, and not to inferiour Courts of Lords, that were not of Record: And beſides, if the Judgment were reverſed in the Lords Court, the ſuitors that gave the falſe Judgment were to be amerced to the King, which the inferiour Court could not do.

Dier 9 Eliz. 263.

And for that at the Common Law, for default of Courts of ſuperiour Lords, the falſe Judgment was to be redreſſed in the Court of Common Pleas, therefore though the words be excepto Domino Rege, and hujuſmodi placita ſpectant ad Coronam & Dignitatem Domini Regis, which might give a countenance to the Kings Court, Coram Rege, yet this Statute taketh away no Juriſdiction from the Court of Common Pleas, that it had before this Statute. And this doth Britton, who wrote ſoon after this Statute, grounding himſelf upon this Act, notably expreſs in theſe words:

Britton fol. 59. Et ſi faux Judgment, ou faux Proces ſoit trove in le Record, & la parol ſoit in Counte, de ceo ne voilons nous my que le viſc' ne les ſuiters eient conuſans: mes plein ſoy, que greve ſe ſentira, & face vener le Proces & le Record devant nous Juſtices in Banke, & illonques ſoit redreſſe le error ſi poient iſſint trove.

Regiſt. fol. 15. And the Rule in the Regiſter is,

Si faux Judgment ſoit done en County, Court Baron, ou auter Court nient enfranchiſe, (i. nient de Record) que ont conuſans de plea, celuy contre que Judgement eſt done poet aver brief de recorder la parole devant Juſtices in Banke on

in

in Eire. Et ceſt rule extend auxi bien in autre brē, come in brē de droit, & la ou la parole eſt per brief, ou ſans brief.

And now the Juſtices in Eyre being (as hath bēn ſaid) worn out, the original Writ of falſe Judgment is retornable Coram Juſticiariis noſtris apud Weſtm': which are the Juſtices of the Court of Common Pleas. Regiſt. ubi ſupra.

CAP. XXI.

PRoviſum eſt etiam, quod ſi averia alicujus capiantur, & injuſte detineantur, Vicecomes poſt querimoniam inde ſibi factam, ea ſine impedimento vel contradictione ejus qui dicta averia ceperit, deliberare poſſit, ſi extra libertates capta fuerint. Et ſi infra libertates capta fuerint hujuſmodi averia, & ballivi libertatis ea deliberare noluerint, tunc Vicecom' pro defectu ipſorum ballivorum ea faciat deliberari. Glanv. li. 2. c. 12. 15. Mirror c. 2. § 16. Fleta lib. 2. ca. 39. 1 E. 3. 11. b. Vide W. 1. c. 17.

The miſchiefs before this Statute were firſt when a mans beaſts or other goods were diſtreined and impounded, the owner of the goods had no remedy but a Writ of Replevin, by which delay the beaſts or other goods were long detained from the owner to his great loſs and damage. 21 H. 6. tit. retorn. del Viſc. 17. Dier Mich. 7 & 8. Eliz. 246.

Secondly, when the beaſts or other goods were diſtreined and impounded within any liberty that had retorn of Writs, the Sheriff was driven to make a Warrant to the Baylie of the Liberty to make deliverance, and that wrought a longer delay, for at the Common Law he could not enter into liberty in that caſe. 29 E. 3. 23. F. N. B. 58. b.

A third miſchief was when the diſtreſs was taken out of the liberty and impounded within: Now this Statute doth apply cures to all theſe three miſchiefs.

¶ Poſt querimoniam inde ſibi fact', &c.] That is, the Sheriff upon a pleint made unto him without Writ, may either by paroll, or by precept, command his Baylie to deliver them, that is, to make Replevin of them, and by theſe words poſt querimoniam ſibi fact', the Sheriff may take a pleint out of the * County Court, and make Replevin preſently (which he ought to enter in the County Court) for it ſhould be inconvenient, and againſt the ſcope of this Statute, that the owner for whoſe benefit the Statute was made, ſhould tarry for his beaſts till the next County Court, which is holden from month to month. Mirror c. 2. § 16. 8 E. 4 14. 9 E. 4. 48. 14 H. 7. 9. 16 H. 7. 16. 21 H. 7. 23. F. N. B. 69. Firſt part of the Inſtitutes. ſect. 219. & 237. * 21 E. 4. 66.

And in a Replevin by pleint, the Sheriff may hold plea in his County Court although the value be of 20 l. or above, by force of this Statute, but in other Actions he ſhall hold plea under 40 s.

The uſage of the County of Northampton is, that in the abſence of the Sheriffs Baylie the Frankpledge may make deliverance; Note this. 30 E. 3. 23.

If J. S. be Sheriff, and the diſtreſs was taken by him, the Writ or pleint ſhall be in common form, naming the Sheriff by his chriſten name and ſirname, quæ J. S. cepit, and not quæ tu ipſe cepiſti, and the Sheriff in that caſe ought to make deliverance. Regiſt. 81. b.

¶ Et ſi infra libertates, &c. ballivi libertatis ea deliberare noluerint.] Hereby it appeareth, that when the diſtreſs is taken and impounded within a Liberty that hath retorn of Writs, whether the matter be before the Sheriff by Writ or by pleint, the Sheriff ought to make a Warrant to the Bayliff of the liberty to make deliverance; whereunto if he make no anſwer, or retorn that he will make no deliverance, or the like, the Sheriff may by force of this Statute, and the Statute of W.1. enter into the liberty, and make deliverance; and herewith agreeth Fleta.

W.1. cap.17. F.N.B.68.f.

Fleta li.2.c.39. §. ſi ballivus. Regiſt.82.

Et ſi ballivus alicujus habentis libertatem retorn' brevium poſtque Vicecom' ſibi præcept' Reg', vel aliud mandatum ex officio ſuo dependens averia, ut prædictum eſt, detenta non deliberet, Vicecom' extunc habet ingreſſum, & faciat quod ſuum eſt, &c. Et eodem modo fiat deliberatio licet ſine brevi ſuſcepta ſecuritate de proſequendo, &c.

And if the diſtreſs be taken without the franchiſe, and impounded within, the Sheriff may upon pleint made, preſently enter and make deliverance (without any precept to the Baylie of the Liberty) for the Statute provideth that he ſhall replevy, Si extra libertates capta fuer', & ſi infra libertates capta fuerint hujuſmodi averia, &c. So as there is no precept to be directed to the Baylie of the Liberty, but where the diſtreſs was taken within the Liberty; and where the diſtreſs was taken out of the Liberty, there by the expreſs words of the Statute, the Sheriff may enter and make deliverance preſently.

¶ Sine impedimento, &c.] A man by Deed makes a leaſe for years, reſerving a rent with a clauſe of diſtreſs, and to detain the diſtreſs againſt gages and pledges until grée be made, yet the Sheriff, or Baylie of the Liberty, as the caſe requires, ought to make deliverance of ſuch a diſtreſs.

31 E.3. gager deliverance 15.

Note the original Writ of Repleg' is in nature of a Juſticies, and is not retornable; and in a Juſticies no conuſance can be demanded, becauſe none can demand conuſance, but he that hath a Court of Record, and of a plea in a Court of Record; but the County Court, though the plea be holden therein by a Juſticies the Kings Writ, yet it is no Court of Record, for of a Judgment therein there lieth a Writ of falſe Judgment, and not a Writ of Error: Alſo if the Sheriff ſhould grant the conuſance, he could not award a reſummons, and the Lord of the Franchiſe can demand no conuſance in a Replevin.

34 H.6.48.

F.N.B.73.b. Reg. Orig. 12 H.7.8,9.

And yet divers Lords of Hundreds, and Court Barons have power to hold plea, De vetito namio, in old Books called De vee: for the better underſtanding of this Act, and of divers ancient Acts of Parliament, Books, and Records, it is good to know what the genuine ſenſe of vetitum namium is, wherein many have erred. Namium ſignifieth a taking, or diſtreſs, and vetitum is forbidden, and properly it ſignifieth when the Baylie of the Lord diſtreineth beaſts or goods, and the Lord forbiddeth his Baylie to deliver them when the Sheriff comes to replevy them, and to that end to drive them to places unknown, or to take ſuch a courſe as they ſhould not be replevied: But it is alſo called a diſtreſs, that is, forbidden vetitum namium, when without any words they are eloigned, or ſo handled by a forbidden courſe, as they cannot be replevied, for then they are forbidden in Law to be replevied.

See W.2.cap.2. F.N.B 73.

Now by this it appeareth how they err that take it, that beaſts or goods taken in Withernam ſhould be beaſts or goods taken in vetito namio, for vetitum namium, or vetitum namii is unlawful, for whether the diſtreſs were lawfully taken or no, yet the forbidding of them againſt gages and pledges to be replevied, out of queſtion is unlawful. But the beaſts in Withernam are lawfully taken by authority of Law, in lieu of thoſe that were diſtreined and forbidden to be replevied, and the Writ or precept of Withernam reciteth, Quod poſtquam prædict' B. averia prædict' A. cepit, & in Comit' tuo ea fugavit, &c. per quod ea eidem A. replegiari non potuiſti, nos malitiæ ipſius B. obviare volentes in hac

Bracton lib.3. fol.155.b.

Regiſt.82,83. 79, 80. F.N.B. 73.

hac parte tibi præcipimus quod averia prædict' B. in baliva tua cap' in Withernam, & ea detineas donec eidem A. averia ſua prædict' ſecundum legem & conſuetudinem Regni noſtri replegiar' poſſis, &c. So as the taking in Withernam is a lawful taking by authority of Law, and therefore cannot be termed a taking forbidden, for that it is expreſly commanded to be done, and this agreeth with our old Books. Hereof Bracton ſaith, Si autem averia capiantur per ſervientem Domini (ſine judicio curiæ) & poſtea petita fuerint ab ipſo Domino cum præſens fuerit, & ipſe ea vetuerit per vadium & plegium, uterque tenebitur, ut videtur, unus de captione, & alter de vetito namio; & licet Dominus ipſe advocaverit captionem ſervientis, ſervientem non liberat ſed onerat ſeipſum, & uterque tenetur de facto ſervientis, ſerviens quia cepit, & Dominus dupliciter, quia advocat factum ſervientis, & quia vetat: Item ſunt qui dicunt, quod non tenetur quis reſpondere de vetito, antequam convincatur captio injuſta, ad quod dico, quamvis captio juſta, vel injuſta, tamen vetitum ſemper erit injuſtum.

Bract. l. 3. 158. 155. b 157. a. Sect. 6. Withernam

And in W. 2. Placita de vetito namio, is intended a power to hold plea of taking of diſtreſſes, and forbidding of them to be replevied, as clearly appeareth by the words of that Act, and cannot be intended of Pleas of Withernam.

W. 2. cap. 2.

De vee ſont 2. manners, lun quant un vee vive naam, &c. contre gages, & pledges ſuffiſant, lauter quant lun ne ſuffer my ſoy eſtre diſtrein a droit, & lun & lauter ſont perſonel treſpaſſes contre la peace.

Mirror c. 2. § 16. De vee de naam.

Vee is an old French word, and is as much to ſay, as vetitus, or forbidden.

Naam neſt autre choſe que reaſonable diſtreſſe; It commeth of the Saxon word nemmem, or nammem, to take hold on, or diſtrein, whereof comes namium, i. captio, and ſo vetitum namium ſignifieth in Law a diſtreſs, or taking forbidden to be replevied.

Now ſeeing Withernam hath been mentioned, you ſhall find that the true ſenſe of the word is a proof of the aforeſaid matter, for it is compounded of two old Saxon words, viz. Weder, which common ſpeech hath turned to Oder, or other; and Naam, that ſignifieth, as hath been ſaid, a caption, or taking, and therefore is as much as a taking, or a reprizal of other goods in lieu of them that were formerly taken and eloigned or withholden, and this is Capere in Withernam', whereof the Regiſter ſpeaketh and well expoundeth, which now you ſee clearly is juſt and lawful.

And therefore one ſpeaking of Withernam, and condemning the aforeſaid error ſaith, Verum maximam mihi admirationem movet introducta nominis depravatio, quæ Withernam vetitum (cum potius iteratum ſonat) namium dicit.

Lambard verbo Withernam.

And albeit the diſtreſs were lawful, yet by matter, Ex poſt facto, it may be called Vetitum namium, a wrongful taking: for when (for example) he that diſtreineth them eloigneth them, ſo as they cannot be replevied, the owner ſhall have an Action of Treſpaſs, Quare vi & armis averia ipſius A. cepit & ea ad loca ignota fugavit ita quod averia illa eidem A. ſecundum legem & conſuetudinem Regni noſtri replegiand' inveniri non poterit: whereby it appeareth, that by the matter ſubſequent, the firſt diſtreſs is in this ſenſe, and to this effect, termed unlawful.

F. N. B. 89. u. Regiſt. Vide Bract. ubi ſupra.

CAP.

CAP. XXII.

15 R. 2. cap. 2. 16 R. 2. cap. 2.

NUllus de cætero poſſit diſtringere libere tenentes ſuos ad reſpondendum de libero tenemento ſuo, nec de aliquibus ad liberum tenementum ſuum ſpectantibus, nec jurare faciat libere tenentes ſuos contra voluntatem ſuam, quia hoc nullus facere poteſt ſine præcepto Domini Regis.

This Act is confirmed and enlarged by the Statute of 15 and 16 R. 2.

Rot. clauſ. 18 H. 3. m. 10. in Havering.

Before this Statute, Lords would diſtrain their free tenants to come and ſhew the Deeds, ſpecially the original Deed, whereby they might know by what rent and ſervices the tenancy was holden of them, and obliquely many times peruſing the Deeds, (which are the ſecrets and ſinews of a mans land) brought in queſtion the title of the free-hold it ſelf. Another miſchief was, that the Lords of Court Barons, Hundreds, &c. where the ſuitors were Judges, would conſtrain them to ſwear betwéen party and party, both which miſchiefs are taken away by two ſeveral branches of this Act.

¶ Ad liberum tenementum ſuum ſpectantibus.] By theſe words are intended the Charters or tenure of their Lands, for they do properly belong to the freehold; and if the freeholder be diſtrained contrary to the purview of this Statute, he ſhall have a Writ of Prohibition grounded upon this Act, Cum de communi conſilio Regni noſtri Angliæ ſtatutum ſit, quod nullus diſtringere poſſit libere tenentes ſuos ad reſpondendum de libero tenemento ſuo, nec de aliquibus ad liberum tenementum ſuum ſpectantibus, &c. Tibi præcipimus quod non diſtringas ad reſpondendum, &c.

Regiſt. 171.

And it appeareth by the Regiſter, that this Act doth bind the King, for there is a Writ directed to the Kings Bailiffs of his Manor of N. the words whereof be, Vobis præcipimus, quod non diſtringatis A. ad reſpondendum coram vobis in curia noſtra prædict' de libero tenem' ſuo, nec de aliquibus ad liberum tenementum ſuum ſpectantibus. And if the Kings Bailiff doth not obey this Writ, the tenant ſhall have an attachment againſt him, which alſo appears in the Regiſter.

27 aſſ. p. 6. 20. 39 E. 3. 20. 12 H. 4. 8. b. F.N.B. 75. c.

¶ Nec jurare facit libere tenentes] This is to be underſtood betwéen party and party: but to enquire for the Lord of all the articles belonging to the Court Baron or Hundred, they may be ſworn, and ſo are the books to be underſtood. Hereof you may read a notable Record in 14 E. 1. in Banco, &c.

M. 14 E. 1. rot. 19. Lincoln.

*Gilbertus de Pincebek & Richardus filius Guilielmi de Spalding implacitaver' Priorem de Spalding pro eo quod cum ſint liberi homines, & terras & tenementa ſua tenent libere, ipſe Prior diſtringit eos ad corporale ſacramentum præſtand' ſibi ſine præcepto Regis, contra legem & conſuet' Regni Regis, & contra * prohibitionem, &c. Prior dicit quod habet libertatem & regalitatem, quod ſi quis captus fuerit cum latrocinio, quod ipſe per Balivos ſuos in Curia ſua inde habet cogn'. Et quod ſuper captionem furis cum manuopere dictum fuit dictis Gilberto & Richardo, quod ad rei veritatem inde inquirend' præſtarent ſacramentum, qui illud facere recuſarunt, unde dic' quod per conſiderationem curiæ præd' fuerunt ipſi diſtricti propter contemptum prædict' Judic'. Et quia in caſu hujuſmodi liber*

* That is this Statute.

A freeholder refuſe to preſent for the Lord.

liber homo in curia Domini ſui corporale debet ſacramentum præſtare, ſi per conſuetudinem ejuſdem curiæ ad hoc electus fuerit, & idem Gilbertus & Richardus non poſſunt dedicere, quin per conſuetud' ejuſdem curiæ ad hujuſmodi corporale ſacramentum electi fuerunt. Conſideratum eſt, quod Prior ſine die, & hab' return' averiorum, & ipſi Guilielmi & Richardi in miſericordia.

The cuſtom of the Court.

But in the Læt or Tourn, the ſuitors may be compelled to be ſworn as well for the King, as betwæn party and party; for they are not libere tenentes, as this Statute ſpeaketh, in reſpect of tenure, but do their ſuit in reſpect of reſiance; Alſo the Læts and Tourns are the Courts of the King and of Record; and the Court Baron and Hundred Court of other Lords are not Courts of Record. 39 E.3.35. 44 E.3 19. F.N.B. 75 E.

The rule of Law is, that whenſoever any man hath any thing of common right and by courſe of Law, the ſame may well be enlarged by cuſtom and preſcription; as the Lord of a Manor that hath a Court Baron, of common right and by courſe of Law all pleas therein are determinable by wager of Law, and yet by preſcription the Lord may preſcribe to determine them by Jury. And this branch doth bind the King in his Court Baron, Hundred or County Court. 12 H.7.8, 9. Regiſt. 171. b.

Of both theſe articles Bracton ſaith thus, Non poteſt aliquis Baro, Vicecomes, vel alius de liberis tenementis cognoſcere, nec tenens tenetur reſpondere ſine præcepto vel warranto Domini Regis, nec etiam poſſunt aliquem ad ſacramentum ſine warranto compellere. Bract. li.3. fol.106

In a Writ of Right patent directed to the Lord of the Manor, plea ſhall be holden of freehold, and the Court in that caſe may give an oath, for there is the Kings Writ of Præcipe quod reddat, which is præceptum Domini Regis, Of this you ſhall read plentifully in our old Books, and it properly belongeth to another Treatiſe. And note theſe words in our Act, Sine præcepto Domini Regis, do refer to both clauſes. Glanv. l.12. c.2,3, &c. Bract. l.5.f.328 Brit. cap. 120. Fleta li.6 c.3. Regiſt. fo.1. F.N.B. fo.1.

CAP. XXIII.

PRoviſum eſt etiam, quod ſi balivi, qui compotum ſuum Dominis ſuis reddere tenentur, ſe ſubtraxerint, & terras vel tenementa non habuerint, per quæ diſtringi poſſunt, tunc per eorum corpora attachientur, ita quod vicecomes in cujus baliva inveniantur, eos venire faciat ad compotum ſuum reddend'.

The miſchief before this Statute was, as it appeareth by the letter thereof, that the laſt Proceſs in an Action of Accompt was Diſtres infinite, and the accomptants ſeeking ſubterfuges did withdraw themſelves and become vagrant, flying to ſecret places, ſometimes in forrein Counties, and had no lands or tenements whereby they might be diſtrained, ſo as the Lords were in a manner remedileſs.

This Act doth give to the Lord a Writ of Account, founded upon this Statute, which of the Words of the Writ is called a Monſtravit de compoto, and beginneth thus: Monſtravit nobis A. quod cum B. balivus ſuus, &c. Of which Writ you may read in the Regiſter, in Fleta, and other ancient Books and Records, and lieth in any County where the accountant may be found. Regiſt. 72. 136. F.N.B. 117. h. Fleta li.2. c.64. Brit. fol.163. b. Mirr.c.2. § 17. de contracts, & c.5. § 3.

¶ Balivi

Britton ubi ſup. 17 E.2.Proc.203. 18 E.2. avow.220. 17 E.3.59. Regiſt.137.

¶ Balivi.] This Statute extends not only to Bailiffs according to the letter, but to gardeins in ſocage, receivers, and other accountants: But the Statute of W.2. c.11. extends only to Bailiffs and receivers, and not to a gardein in ſocage; for a Capias lyeth againſt him by this Statute, but no Exigent by the Statute of W.2.

W.2. cap.11. Regiſt. 136. F.N.B.118.

And where ſome have ſuppoſed, that the Statute of W.2. which giveth Proceſs of Utlagary in an Action of Account, hath taken away either the effect or the uſe of this Act, the contrary appeareth in that caſe, and in other caſes in our Books, as hereafter ſhall appear.

¶ Et terras & tenementa non habuerint.] If the accomptants have any lands or tenements, whereby they might be diſtrained, though it be not to the value of the account, yet it ſufficeth to exempt them out of this Statute, but they muſt have lands and tenements for term of life at the leaſt, and ſo is this Act to be underſtood.

4 E.2. breve 791.

For proof whereof; After this Statute, and after the ſaid Statute of W.2. c. 11. viz. in 4 E.2. one brought a Writ of Monſtravit de compoto upon this Statute, and counted that he was his receiver of C l. &c. In which Action four points were reſolved. 1. That our Statute extendeth to a receiver as well as to a Bailiff. 2. That if the Accountant hath any lands or tenements, though they be not ſufficient to render the account, yet he is exempted out of the Statute. 3. By theſe words [Lands and Tenements] is intended an eſtate of freehold; and therefore where it was there found that the accountant had a houſe of the yearly value of vi s. in the right of his wife, who had the inheritance thereof, but for that it was the freehold of his wife, and not his freehold, it was adjudged no ſufficiency within the Statute. 4. Laſtly, it was reſolved, that if the husband had iſſue by his wife, ſo as he had a franktenement for his life, he had been exempted out of the Statute. And the like caſe was in 6 E.2. in caſe of a receiver, and many other authorities and records there be to that effect, whereby it appeareth that both this Act hath ſtill his effect, and that it was in uſe after the Statute of W. 2. c. 11. And herewith agreeth Fleta, which wrote ſoon after the Statute of W.2. and that Statute doth confirm this Act, Et ſi diffugerit, & gratis compotum reddere noluerit, ſicut in aliis ſtatutis alibi continetur: by which words this Statute is meant.

6 E. 2. breve 806. 17 E.2. Proc.203. 17 E.3. 59. F.N.B. 118. Fleta, li.2. cap.64 Britton ubi ſup.

F. N. B. 118. Regiſt. 136, 137.

And good uſe may be made of this Writ of Monſtravit de compoto, if the plaintif can learn in what place or County he lurketh, but he cannot have this Writ ſed per fidem, quam præſtare debet in Cancellaria, &c.

But if any ſue out this Writ of Monſtravit de compoto, and attach the accountants body, where he hath lands and tenements, contrary to this Act, in deceptionem curiæ contra formam ſtatuti, &c. the party grieved ſhall have a Writ for his relief, which appeareth in the Regiſter.

Regiſt. 137.

CAP. XXIV.

See the Statute of Glouc' c. 8.

ITem firmarii tempore firmarum ſuarum vaſtum, venditionem, vel exilium non facient de domibus, boſcis, vel hominibus, nec de aliquibus ad tenementa quæ ad firmam habent ſpectantibus, niſi ſpecialem inde habuerint conceſſionem, per ſcriptum conventionis mentionem faciens quod hoc facere poſſunt. Quod ſi fecerint, & ſuper hoc convincantur,

cantur, dampna plena reſtituant, & per miſericordiam graviter puniantur.

The miſchief before this Statute was, that againſt Leſſées for life or years, there lay no prohibition of Waſte at the Common Law, becauſe they came in by the Act of the Leſſor, and he might have provided upon the making of the leaſe, againſt Waſte to be done, and he that might and would not provide for himſelf, the Common Law would not provide for: Otherwiſe it is of eſtates created by Law, as Tenant in Dower, and the Gardien; but ſéeing waſte and deſtruction is hurtful to the Common-wealth, this Act provideth remedy for Waſte done by Leſſée for life, or Leſſée for years, and it is the firſt Statute that gave remedy in thoſe caſes: for the rule of the Regiſter is, that there are five manner of Writs of Waſtes, viz. two at the Common Law, as for Waſte done by Tenant in Dower, or by the Gardien; and three by Statute, or ſpecial Law, as againſt Tenant for life, Tenant for years, and Tenant by the courteſie. Regiſt.72. Bract.li.4.fo.353, 356, 357.

¶ Firmarii.] For the word firma, whereof firmarius cometh, ſée the firſt part of the Inſtitutes, ſect.1.

Here firmarii do comprehend all ſuch as hold by leaſe for life, or lives, or for years, by déed or without déed: Large ſe habet hæc dictio firmarius ad terminum vitæ, & ad terminum annorum; and ſo much Fleta ſaith, de termino. Fleta lib.5. ca.34.

Albeit the Regiſter ſaith, Sciend', that per Statutum de Marlebride, cap. 23. data fuit quædam prohibitio vaſti verſus tenentem annorum, which is true, though the Statute doth extend to Farmers for life alſo, but this Act extendeth not to Tenant by the courteſie, for he is not a Farmer, but if a leaſe be made for life or years, he is a Farmer, though no rent be reſerved. Regiſt.72.

¶ Vaſtum, venditionem, vel exilium.] Of theſe you ſhall read in the firſt part of the Inſtitutes. But a reaſon is required, that ſéeing as well the eſtate of the Tenant by the courteſie, as the Tenant in Dower are created by Act in Law, wherefore the prohibition of Waſt did not lie as well againſt the Tenant by the courteſie, as the Teant in Dower at the Common Law; and the reaſon is this, for that by having of iſſue the ſtate of Tenant by the courteſie is originally created, and yet after that he ſhall do homage alone in the life of his Wife, which proveth a larger eſtate; and ſéeing at the creation of his eſtate he might do Waſte, the prohibition of Waſte lay not againſt him after his Wives deceaſe; but in the caſe of Tenant in Dower, ſhe is puniſhable of Waſte at the firſt creation of her eſtate: the prohibition of Waſte lay not againſt Tenant in taile apres poſſib. (whoſe ſtate was created by Act in Law) becauſe the original eſtate was not puniſhable of Waſte. First part of the Inſt.ſect.67.

¶ Non faciant.] To do or make Waſte, in legal underſtanding in this place, includes as well permiſſive Waſte, which is Waſte by reaſon of omiſſion, or not doing, as for want of reparation, as Waſte by reaſon of commiſſion, as to cut down timber trées, or proſtrate houſes, or the like; and the ſame word hath the Statute of Glouc.cap.5. Que aver fait Waſte, and yet is underſtood as well of paſſive as active Waſte, for he that ſuffereth a houſe to decay, which he ought to repair, doth the Waſte: and therefore if a man maketh a leaſe for years by Indenture of a houſe and lands, upon condition, that if it happen the Leſſée to do any Waſte, that the Leſſor ſhall re-enter, in this caſe if the Leſſée ſuffer the houſes to be waſted, the Leſſor ſhall re-enter, ſo as this word facere, hath not only this ſignification in a penal Statute, but in a condition alſo. Dier 11 Eliz. 281.b.

This Act provideth that Farmers ſhall not do Waſte, and yet if they ſuffer a ſtranger to do Waſte, they ſhall be charged with it, for it is preſu- 21 H.7.37.a.

med in Law, that the Farmer may withſtand it, Et qui non obſtat quod obſtare poteſt facere videtur. Secondly, the Law doth give to every man his proper Action, ſo as none of them be without due remedy: and therefore in this caſe the Lessor ſhall have his Action of Waſte againſt the Leſſée, and the Leſſée his Action of Treſpaſs againſt him that did the Waſte, and ſo the loſs, as reaſon requireth, in the end ſhall lie upon the wrong doer, and if the Lessor ſhould not have his Action of Waſte, he ſhould be without remedy.

First part Inſt. ſect.67.

¶ Nec de aliquibus ad tenementa quæ habent ad firmam ſpectantibus.] There were before particularly named De domibus, boſcis, & hominibus; Theſe words do comprehend Lands and Meadows belonging to the Farm.

Alſo theſe general words have a further ſignification, and therefore if there had been a Farmer for life or years, of a Mannor, and a Tenancy had eſcheated, this Tenancy ſo eſcheated did belong to the Tenements that he held in farm, and therefore this Act extended to it, and the Lessor ſhall have generally a Writ, and ſuppoſe a leaſe made of the lands eſcheated by the Lessor, and maintain it by the ſpecial matter.

3 E.3. fol.34. 24 E.3.37.

¶ Niſi habeant ſpecialem conceſſionem.] This grant ought to be by Deed, for all Waſte tendeth to the diſinheritance of the Lessor, and therefore no man can claim to be diſpuniſhable of Waſte without Deed.

a Lib.11.fo.82,83. Vide lib.4. fo.63. lib.9.fol.9.

a In Lewis Bowles caſe you may read plentifully of this matter. This ſpecial grant is intended to be abſque impetitione Vaſti, without impeachment of Waſte. Impeachment cometh of the French word empeſhement: *b* The ſages of the Law have uſed the word impetitio, derived of in and peto, and that Sine impetitione Vaſti, is as much as to ſay, as without impeachment, that is, without any demand or challenge for doing of Waſte; but if the clauſe be either Sine imdimento, or impeditione vaſti, it amounteth in Judgment of Law to as much as Sine impetitione vaſti.

b Vide l.11.fo.82.b Lewis Bowls caſe. See the firſt part of the Inſt.ſect. 354. verb. ſans Impeachment de Waſte. Adjudg.Tr.6 Jac. in Com. Banco. Lib.intrat. Co. 664,665.

¶ *c* Damna plena reſtituant & per miſericordiam graviter puniantur.] *d* And this muſt be underſtood in ſuch a prohibition of Waſte upon this Statute, as lay againſt Tenant in Dower at the Common Law, and ſingle damages was given by this Statute againſt Leſſée for life, and Leſſée for years.

c Fleta li.1.ca.11. *d* Regiſt.72.

The Statute of Glouc'. Cap. 5. gave treble damages, and the place waſted againſt Leſſée for life, Leſſée for years, and Tenant by the courteſie, &c.

W.2. cap.14.

But after this Statute, and the Statute of Glouc'. Conſuevit fieri breve de prohibitione vaſti, per quod breve multi fuerunt in errore, credentes quod illi qui vaſtum fecerint non habuerunt neceſſe reſpondere niſi tantum de vaſto facto poſt prohibitionem eis directam; Dominus Rex (ut hujuſmodi error de cætero tollatur) ſtatuit quod de vaſto quocunque, &c. non fiat de cætero breve de prohibitione ſed breve de ſummonitione, quod ille, de quo queritur, reſpondeat de vaſto facto quocunque tempore, &c.

Whereupon the prohibition of Waſte was abrogated, and the Action of Waſte framed upon the Act of Weſtm. 2. as in the Regiſter appeareth.

Regiſt.fol.72.

CAP.

CAP. XXV.

JUſticiarii itinerantes de cætero non amercient villatas in itinere ſuo, pro eo quod ſinguli xij annorum non venerint coram Vicecomitibus & Coronatoribus, ad inquiſitiones de roberiis, incendiis domorum, vel aliis ad Coronam ſpectantibus faciend'. Dum tamen de villatis illis veniant ſufficientes, per quos inquiſitiones hujuſmodi plene fieri poſſunt, exceptis inquiſitionibus de morte hominis faciend'. ubi omnes xij annorum, venire debent, niſi rationabilem cauſam habeant abſentiæ ſuæ. Mag. Chart. ca. 35. Hic ca. 10. & 8.

Two miſchiefs were before the making of this Statute.

First, that if the Sheriff did preſent before the Juſtices in Eyre, that thoſe of the age of twelve years came not to the Tourn, that the Townſhips where they dwelt ſhould be amerced, for that every one above twelve years appeared not at their Tourns, where they ſhould be ſworn, (as hath been ſaid) amongſt other things, that they ſhould do no felony, nor aſſent to any, and therefore albeit they could not be preſent ad inquiſit faciend', being under age of 21. yet they ought to be there to take the oath, and diſcover felonies, if any they knew, according to their oath.

Another miſchief, that when any robbery, burning of houſes, homicide, or other felony was done, the Sheriff, for ſo much as pertained to him, or the Coroner in caſe of the death of man, would ſummon many Townſhips, and ſometime a whole Hundred, where twelve would ſerve to make enquiry: And if all did not appear according to the ſummons, they would preſent the ſame before the Juſtices in Eyre, where the whole Townſhips or Hundred were amerced, albeit many times a ſufficient number to make enquiry did appear. Now this Statute provideth remedy, that when there cometh out of the Townſhips ſo ſummoned, a ſufficient number by whom inquiſitions may be fully made, that no amerciaments ſhall be ſet upon the Townſhips or Hundred by the Juſtices in Eyre, which was one remedy for both the two miſchiefs.

¶ Singuli xij annorum.] Where old Books mention ſometime 14 years, it is but miſprinted; For the time for one to come to the Tourn or Leet, and to take his oath, as is aforeſaid, is twelve years, and ſo it is provided by this Act. Mag. Chart. c. 35.

¶ De roberiis.] See for this word in the firſt part of the Inſtitutes, ſect. 501. Vide W. 1. c. 15.

¶ Incendiis domorum.] By this it appeareth, that burning of houſes was felony by the Common Law, for otherwiſe he could not have enquired of the ſame in his Tourn. Bract. l. 2. fol. Brit. fol. 16. Fleta lib. 2. ca. 35. Stamf. Pl. Cor. fol. 36. a. 11 H. 7. 1.

This is to be underſtood not only of a dwelling houſe, but of the Barn or Stable belonging thereunto.

The Mirror goeth further, for he reckoning the ſame amongſt the higheſt offences, ſaith, Ardours ſont que ardent City, Ville, Maiſon, beatt, ou autres chateux de lour felony in temps de peace pur haine, ou vengeance. Mirror ca. 1. § 8: de Ardours & § 13 Cap. 2. § 11. de Appeal de Arſon & Cap. 1. § 13.

Les appeales de arſons ſe ſont in tiel manner, Cedde icy appeal Harding illonque

(ove les ſurnoſmes) de ceo que come meſme ceſti Cedde avoit un maiſon ou pluſors, ou un taſſe de blee, ou un mollein de feyne, ou auter manner de biens in tiel lieu, &c. la vient meſme celuy Harding, & en le dit meaſon miſt fewe, &c. felonioufment, &c.

Fleta ubi ſupra. And Fleta ſaith, Si quis ædes alienas nequiter ob inimicitiam vel prædæ cauſa tempore pacis combuſſerit, & inde convict' fuer' per appellum vel ſine, capitali debet ſententia puniri. But this belongeth to another Treatiſe.

¶ Vel aliis ad coronam ſpectantibus.] Here is meant other felonies at the Common Law, which are called Placita Coronæ, either inquirable before the Sheriff in his Tourn, or the Coroner, of whom the Statute here ſpeaketh.

¶ Dum tamen de villatis illis veniunt ſufficientes.] But if there appear not ſufficient, as if there appear under 12. then all that were ſummoned ſhall be amerced, and this doth follow the reaſon of the Common Law, for where for trial of any iſſue, there ſhall be ſummoned 24. if there 12 only appear, and are ſworn, the others that made default ſhall not be amerced; but if any of them that do appear be challenged and tried out, ſo that 12 remain not to try the iſſue, then all the reſt ſhall be amerced, as if if there had under 12 originally appeared: And it is a good expoſition of a Statute, when the reaſon of the Common Law is purſued: See before Cap. 18. concerning amerciaments.

Britton cap.6. ¶ Exceptis inquiſitionibus de morte hominis, &c.] The Law hath ſo great reſpect to the puniſhment of homicide or murder, that at that inquiſition before the Coroner, all above 12 muſt appear (to the end the truth may be found out and puniſhed, and the horrible crime or murder detected) unleſs they have a reaſonable excuſe to the contrary.

CAP. XXVI.

Bracton lib.1. fol.120,121. Britton cap.6. Fleta lib.1. ca.23. MUrdrum de cætero non adjudicetur coram Juſticiariis, ubi infortunium tantummodo adjudicatum eſt, ſed locum habeat murdrum de interfectis per feloniam tantum, & non aliter.

Britton cap.7. 3 E.3. Coron.354. 3 E.3. ibid.322. The miſchief before this Statute was, That he that killed a man by miſadventure, per infortunium, as by doing any Act that was not againſt Law, and yet againſt his intent the death of a man enſued, this was adjudged murder: As if a man had caſt a ſtone over an houſe, or ſhot at a mark, and by the fall of the ſtone, or glaunce of the arrow a man was ſlain, the party ſhould ſuffer death. And ſo it was at the Common Law, if a man had killed a man ſe defendendo, he ſhould be hanged, and forfeit in both caſes, as in caſe of murder; ſo tender a regard had the Law to the preſervation of the life of man. And with the Common Law was agreeable the Judaical Law, before the Cities of refuge were appointed; he that killed a man by miſadventure, &c. was put to death, to the end that men ſhould be ſo provident and wary of their actions, as no death of man, woman or child might enſue thereupon.

21 E.3.17.b.

Numb.35.9. Deut.29.2. Joſhua 20,21, &c.

This

This Statute doth remedy both points, for the latter clauſe is general, that it ſhall not be murder, but where it is done per feloniam, i. felleo animo, and by malice prepenſed. And albeit his life in neither of theſe caſes is now loſt, yet the forfeiture of his goods and chateux remained in both caſes. And ſo if a man kill a man by miſadventure, if he eſcape, the Town ſhall be amerced, &c. is alſo a mark of the Common Law. See the Statute of Glouc. c. 9. 2 H. 4. 18. 11 H. 7. 23. 3 E. 3. coron. 302.

¶ Murdrum.] For this word, ſée the firſt part of the Inſtit. Sect. 500. To ſpeak of the parts of homicide, doth belong to another Treatiſe; this only ſhall ſuffice for the underſtanding of this Act.

¶ Per feloniam.] For this word, and the ſignification thereof, ſée the firſt part of the Inſtitutes at large. See the firſt part of the Inſtitut. Sect. 745.

CAP. XXVII.

PRoviſum eſt, quod nullus qui coram Juſticiariis itinerantibus vocatur ad warrantum in placito terræ, vel tenement', amercietur de cætero, pro eo quod præſens non fuerit quando vocatur ad warrantum (excepto primo die adventus Juſticiar' ipſorum) ſed ſi *Warrantus* ille fuerit infra comitatum, tunc injungatur vicecom', quod ipſum infra tertium diem, vel quartum (ſecundum locorum diſtantiam) faciat venire, ſicut in itinere Juſticiar' fieri conſuevit. Et ſi extra comitat' maneat, tunc rationabilem habeat ſummonitionem xv. dierum ad minus, ſecundum diſcretionem Juſticiar' & legem communem. Bract. l. 3. fol. 115, 116. Brit. c. 2. fol. 7. Fleta lib. 1. cap. 9. Mirror cap. 4. cap. Itineris.

By the Common Law, all the men of the County ought to appear before the Juſtices in Eir per breve de generali ſummonitione vic' direct', quod præmoneat omnes de com' quod ſint coram talibus Juſticiariis ad certum diem & locum per quadraginta dies, as well that every man ſhould be ready to anſwer to any matter, wherewith he was to be charged, or commenced againſt them, as to ſerve the King and his Country, as need ſhould require, and to hear and learn the Laws and Cuſtoms of the Realm, under which they lived. Now the miſchief was, that if the * Vouchée appeared not at the firſt day, he was amerced, for that he ought to be preſent. Now this Statute enacteth, that he ſhall not be amerced at the firſt day, but Proceſs ſhall be awarded againſt him, as by this Act is limited; and if he come not then, he ſhall be amerced: wherein it is to be obſerved, how the Common Law provideth for expedition of Juſtice, and how neceſſary it is for underſtanding of old Statutes, to read old Books.

* For this word Vouchee, ſee the firſt Part of the Inſt. § 145. verb. Et il vouche, &c. Cuſtumier de Norm. cap. 50. fol. 64. b.

CAP. XXVIII.

SI Clericus aliquis pro crimine aliquo, vel retto quod ad coronam pertineat, arreſtatus fuerit, & poſtmodum per præceptum Domini Regis in ballium traditus *fuerit* vel replegiatus extiterit, ita quod hii, quibus traditus fuerit in ballium, eum habeant coram Jnſticiariis, non amercientur de cætero illi quibus traditus fuerit in ballium, nec alii pleg' ſui, ſi corpus ſuum habeant coram Juſticiar', licet coram eis propter privilegium clericale reſpondere noluerit, vel non potuerit propter Ordinarios ſuos.

Vide W.1. cap.15 Stam. pl. cor. 72. Regiſt. 77.

¶ In ballium traditus fuerit, vel replegiatus extiterit.] Here note a difference betwæn Bail, and Replevy; for the one is by the higher Courts at Weſtminſter, and the other, viz. Replevy, by the Sheriff, by force of the Writ of homine replegiando.

For the underſtanding of this Act, it is to be known, that at the Common Law when any man was appealed or indicted of felony, if he were bailed, the bail was, that he ſhould appear at a certain day before ſuch Juſtices to anſwer to the felony. Now the miſchief was, that if a man were bailed, or delivered by plevin, albeit he did appear, yet if he claimed the benefit of his Clergy, the perſons that bailed him, or his pledges were amerced, becauſe he refuſed to anſwer to the felony, but took himſelf to his Clergy; this Statute doth provide, that if in that caſe the Clerk doth appear before the Kings Juſtices, his Bail or Pledges ſhall not be amerced, although he will not anſwer before them by reaſon of his Clerks privilege.

a W.2. c.2.Regiſt. in homine repleg. F. N. B. fol.66.

¶ Si Clericus aliquis.] If he were no Clerk at the time of the bail, or delivery by plevin, but learned to read before his appearance, yet he was within this Statute, and yet a Clerk was not bailed nor delivered by plevin.

b Al.Powlters caſe, l.11. 29, 30. Art. cler. c. 14. Mich. 31 E. 3. coram Rege rot.138. in Theſau. Abbas de Miſſenden. 17 E.2 rot. Rom. m. 6. Adam Eveſq; de Heref. 20 E. 2. coro. 283. 19 H. 6. 47. 25 E.3. c.4,5. 18 E.3.c.1. Vide Powlters caſe ubi ſup.

¶ De aliquo crimine vel retto quod ad coronam pertineat.] *a* Where it is printed rectum, it muſt be amended after the Original, and made rettum: This is derived of an old word rette, or reatte, à reatu, and ſignifieth in our legal underſtanding an offence or fault.

b Crimen and rettum are here taken for ſuch offences wherefore a man ſhould loſe life or member, becauſe for no other offences he can have his Clergy, or the privilege of a Clerk. But in crimine læſæ majeſtatis he was not to have his Clergy, and therefore this Act extendeth not to perſons let to bail for high Treaſon, and ſo it is in caſe of ſacrilege, and the like.

And thus is this dark Statute clearly expounded.

c Mirror c. 3. de except. de Clergy Bract. lib. 3.123, 124. Flet.l.1.c.28. Brit.cap.4. fol.11. lib.6. cap.36.

c Now to ſet down in what caſes one ſhall be bailed, or delivered by plevin, and where a man ſhall have the benefit of his Clergy, and where he is barred thereof by Act of Parliament, do belong to another Treatiſe: in the mean time ſomewhat you ſhall read of Clergy in Alex. Powlters Caſe, ubi ſupra, and lib. 4. fol. 44, 45, 46.

CAP. XXIX.

PRoviſum eſt, quod ſi deprædationes, vel rapinæ aliquæ fiant Abbatibus, Prioribus, vel aliis Prælatis Eccleſiaſticis, & ipſi jus ſuum de hujuſmodi deprædationibus proſequentes morte præveniantur, antequam judicium inde fuerint aſſequuti, ſucceſſores eorum habeant actiones ad bona Eccleſiæ ſuæ de manibus hujuſmodi tranſgreſſoris repetend'. Similem inſuper habeant actionem ſucceſſores de hiis quæ domui ſuæ & Eccleſiæ [recenter] ante obitum prædeceſſorum ſuorum per hujuſmodi violentiam fuerint ſubtracta, licet prædicti prædeceſſores ſui jus ſuum proſecuti non fuerint in vita ſua. Si autem in terris & tenementis hujuſmodi religioſorum, de quibus eorum Prælati obierint ſeiſit', ut de jure Eccleſiæ ſuæ, aliqui ſe intrudant tempore vacationis, ſucceſſores ſui breve habeant de ſeiſina recuperand', & adjudicentur eis dampna ſua, ſicut in nova diſſeiſina adjudicari conſuevit.

There were two miſchiefs at the Common Law (as many did hold) that in the caſe of Abbots, Priors, and other regular and religious perſons, if the goods of the Monaſtery were taken away in the life of the predeceſſor, that after his death his ſucceſſor had no remedy for ſuch treſpaſſes: The other miſchief was, that if in time of vacation, when there was no Abbot, Prior, or other regular or religious Soveraign, any intruſion were made, the ſucceſſor had no remedy to recover the land with damages, though thereof his predeceſſour died ſeiſed, and both theſe are remedied by this Act.

¶ Abbatibus, Prioribus, vel aliis Prælatis Eccleſiaſticis.] This Act extendeth only to Abbots, Priors, and other Prelats that be religious and regular, and not to Biſhops and other perſons Eccleſiaſtical being ſecular: For in the ſecond clauſe of this Act, hujuſmodi religioſorum is mentioned for the diſtinction betwæn religious and ſecular. See the firſt part of the Inſtitutes ſect. 133. And the reaſon of this diverſity is, that the Abbots, Priors and other religious and regular perſons are dead perſons in Law, and have capacity to have lands and goods only for the uſe and benefit of the houſe; and cannot make any teſtament; and therefore the Church or religious houſe is holden alwayes one, in reſpect whereof the ſucceeding Abbot ſhall have an Aſſiſe for a diſſeiſin done in the life of the predeceſſor, and an Action of Waſte for waſte done in his predeceſſors time; but ſo ſhall not a Biſhop, Archdeacon, Dean, Parſon, or the like, that are Eccleſiaſtical ſecular, becauſe the Church by their death hath an alteration, and is not alwayes one, and they may make their Teſtament, for that they may have goods and chattels to their own uſe. 42 E.3.22. 2 H. 4. 2,3,19.21 H. 6.46. 4 E.4.8. 9 E.4.33. 18 E.4.16.1 E.5.4 5. Li.2.fo.46.Hicc 19 W.1.c.3.15.26.

Alſo the Biſhop is of an higher degrée than the Abbots and Priors, with which this Act begins.

¶ Morte præveniant.] So it is if an Abbot or Prior be depoſed, the ſucceſſor ſhall have an action upon this Act, although the predeceſſor be alive, as well as if he had died, for as to that houſe he is civiliter mortuus. Temps E. 1. fol. 242.

¶ Suc-

¶ Succeſſores habeant actionem ad bona Eccleſiæ ſuæ de manibus hujuſmodi tranſgreſſoris repetend'.] Some have thought in reſpect of this word repetenda, that this muſt be intended of an action of Detinue, or the like action, wherein the thing it ſelf is to be recovered, but de manibus hujuſmodi tranſgreſſoris make it evident, that it muſt be intended of a treſpaſs quare vi & armis, for thereof was the doubt at the Common Law: for it is holden, that for goods taken from the predeceſſor of an Abbot or Prior, no action was given to the ſucceſſor at the Common Law before this Act, for by the taking the property was deveſted. But an Action of Account, debt, detinue, replevin, and the like Action, which affirms the property to continue, the ſucceſſor ſhall have an action at the Common Law.

12 H. 4. tit. Account 124. 4 E. 3. 11,17. 25 E. 3. 45. 9 H. 6. 25. 17 E. 3. tit. Execut. 106. 11 E 3. Account 57. 47 E. 3. 23.

¶ Bona.] 1. If an obligation be taken from the predeceſſor, it is within this Statute. 2. The ſucceſſor ſhall have by the equity of this Statute an action of Treſpaſs of cutting down of trees, and carrying them away: wherein it is to be obſerved, that Acts that give remedy for wrongs done, ſhall be taken by equity.

3 E. 3. 31. 4 E. 4. 8. 18 E. 4. 16.

7 H. 4 5. 11 H. 4. 55. ſemble.

¶ Eccleſiæ ſuæ.] The Action that the Succeſſor ſhall bring upon this Statute, ſhall be Bona & catalla domus & Eccleſiæ ſuæ tempore J. prædeceſſoris ſui, which without queſtion a Biſhop, Dean, or other Eccleſiaſtical ſecular cannot ſay.

7 E. 4. 15. a. 9 E. 4 33. 9 H. 6. 25, 26. Regiſt. 96.

¶ Recenter ante obitum.] Yet if the taking of the goods were long before the death of the Abbot or Prior, his ſucceſſor ſhall have an Action of Treſpaſs by this Statute.

16 E. 3. tra's 211.

¶ Si autem in terris & tenementis hujuſmodi religioſorum, &c. aliqui ſe intrudant tempore vacationis, &c. breve habeant de ſeiſina ſua, & adjudicentur eis damna.] This branch is alſo taken by equity, for by theſe words, the ſucceſſor of an Abbot, Prior, or any other religious Soveraign ſhall have an Action of Treſpaſs for trees cut down and carried away in the time of vacation.

18 E. 2. tra's 237. 2 H. 4. ubi ſup. 11 E. 4. 16. 18 E 4. 16. F.N.B. 89. i.

But a Biſhop ſhall not have an Action of Treſpaſs in that caſe, 1. As hath been ſaid, for that this Act extends not to him; 2. The King hath the temporalties during the vacation, and therefore he cannot have an Action of Treſpas: But in the Regiſter there is in that caſe an Oier & Terminer to be granted to hear the treſpaſſes done in time of vacation of the Biſhoprick, as thereby appeareth, which ſeemeth in favour of the Church to be granted by the Common Law, for it is not grounded upon this Act, and therefore I leave the marginal notes in the Regiſter that are newly added, and are not warranted by ancient Manuſcripts, to the judicious Reader,

Regiſt. 125. F.N.B. 112. h. & 113.

And the Writ of Intruſion lieth not for the ſucceſſor of the Biſhop, for an intruſion in time of vacation for the Kings poſſeſſion (which he hath without office) preſerveth the inheritance of the Biſhop, but it lieth by this Statute, where one intrudes after the deceaſe of an Abbot or Prior. Vide the firſt part of the Inſtitutes Sect. 443. for this manner of intruſion, while the freehold and inheritance is in conſideration of Law.

4 E. 4. 8.

CAP.

CAP. XXX.

PRoviſum eſt etiam, quod ſi alienationes illæ, de quibus breve de Ingreſſu dari conſuevit, per tot gradus fiant, per quot breve illud in forma prius uſitata fieri non poſſit, habeant conquerentes breve ad recuperandum ſeiſinam ſuam, ſine mentione graduum, ad cujuſcunque manus per hujuſmodi alienationes res illa devenerit, per breve originale, & per commune conſilium Domini Regis inde providendum, &c.

Bract. l. 4. fo. 318. &c. Brit. ca. 114. Fleta lib. 1. ca. 11. Lib. 4. cap. 1. Paſch. 18 E. 1. in Banco Rot. 4. Eborum, John de Hodleſtons caſe.

It is to be obſerved, that the Common Law provided for the quietneſs of mens freehold and inheritance, and that they ſhould not be diſturbed from manurance of their grounds; inſomuch as he that right had could not enter upon him that came in by deſcent or lawful conveyance, but was driven to his Writ of Entry; and the Common Law for the ſafety of mens poſſeſſions further provided, that if the land were conveyed out of the Degrees, ſo as the Demandant could not have his Writ of Entry in le Per, or in the Per & cui, the Demandant (to the end that ſuits might have an end) was driven to his Writ of Right, a long and final remedy, and that he which right had ſhould take his remedy by Writ of Entry before there were above two deſcents, or two conveyances, and alſo within the time of preſcription.

See the firſt part of the Inſtitutes, ſect. 473.

14 H. 4. 39, 40.

This Statute in caſes of deſcents and conveyances, after the Degrees paſt, doth give a Writ of Entry in the Poſt, which in thoſe caſes lay not at the Common Law. But in other caſes, then in caſe of alienation and deſcent, there was a Writ of Entry in the Poſt at the Common Law: as where one entred by diſſeiſin, intruſion, abatement, judgment, ſucceſſion, or as Tenant by the curteſie, in theſe caſes a Writ of Entry in the Poſt did lie at the Common Law, but if the wife recover her Dower by Judgment, yet is ſhe in the Per by her huſband, and if the ſecond alienee be diſſeiſed, and he recover in a real Action, yet lieth the Writ againſt him in the Per & cui, becauſe the alienation to him is the ground of his title, Et ſic de cæteris.

F. N. B. 192. f. Fleta lib. 5. c. 34.

¶ Si alienationes, &c.] Hereby it appeareth that this Act extendeth where the lands were aliened from one to another, either by lawful conveyance, or by deſcent; and by conſtruction this Act extendeth as well to alienations, &c. made before this Statute as after, for Statutes that give remedy to them that right have, are ever favourably expounded; obſerve well the words of this Act: If the diſſeiſee doth releaſe to the diſſeiſor, this doth amount to an alienation, and maketh a degree, but a ſurrender of an eſtate for life maketh no degree, yet is it an alienation.

5 E. 2. cui in vita 23. 7 E. 3. 12. 19 H. 6. 17. 21 H. 6. 8. 9 E. 4. 16 1 H. 6. 1.

¶ Breve de Ingreſſu.] This is underſtood of Writs of Entry, Sur diſſeiſin, in le Poſt, in le quibus, ſine aſſenſu capit', cui in vita, ſur cui in vita, non compos mentis, dum fuit infra ætatem, ad term' qui præteriit, in caſu proviſo, in conſimili caſu ad communem legem; Of intruſion, Cauſa Matrimonii prælocuti.

¶ Per tot gradus fiant.] Gradus dicitur a gradiendo, becauſe the ſtate paſſeth by degrees from one to another, and in the Law it ſignifieth, a conveyance, or a deſcent from one to another, and there be but two degrees, viz. in

50 E. 3. 21.

the Per, and in the Per and cui, if it proceed any further either by conveyance or deſcent, it is out of the degrees: If a gift in taile, or a leaſe for life be made the remainder over, the firſt eſtate, and all the remainder make but one degree.

* 15 H. 3. b're 878. 20 H. 3. Aſſ. 432. 19 E. 2. Aſſ. 450. 4 E. 2. b're 790. 8 E. 3. 63. 8 Aſſ. 28. 7 E. 3. 69. 50 E. 3. 22. 43 Aſſ. 14. 3 E 4. 17. 10 E. 4. 18. W. 2. cap. 25. Bract. fo. 318, 323, 324, 326. Brit. cap. 11. Fleta li. 1. ca. 11. lib. 4. cap. 1.

* And theſe alienations that make degrees, ought (as hath been ſaid) to be ſo lawful, as the alienee may be in by title; and therefore a feoffment by a garden in Chivalry, Socage, or by Nurture, a Termer for years, Tenant at will, or Bayliff, or Tenant in Villenage do make no degree, becauſe they amount to a diſſeiſin, and ſome hold the feoffee was a diſſeiſor at the Common Law; and where the words of the Statute be Quod alienationes, thoſe muſt be intended lawful alienations, ſuch as by the ancient Law ſhould have taken away an Entry.

a W. 1. c. 40. 7 E. 3. 25. 11 E. 3. b're. 472. 22 E. 3. 1. b. 5 E. 3. 216. 24 E. 3. 70. 39 E. 3. 25. 14 H. 4. 39. 27 H. 6. ent. 23. F. N. B. 192. b 31 E. 1. b're. 875. 39 E. 3. 33. 44 E. 3. 45. 9 E. 4. 47. 5 H. 7. 6. 21 H. 6. 8. Br. tit. Entry 19. c 5 E. 3. 31. 3 H. 6. 38.

a Regularly a man ſhould not have a Writ of Entry in the Poſt, where he may have a Writ within the Degrees, and the cauſe thereof is to ouſte falſe Vouchers, yet in ſome caſes a man may have election either to have a Writ of Entry in the Poſt, or a Writ of Entry in the Per & cui; b As if I may have a Writ of Entry in the Per & cui againſt B. who aliens, ſo as now it is out of the Degrees, yet if B. take back an eſtate again, I may chooſe either a Writ of Entry in the Per & cui, or in the Poſt, but prima facie, the Writ of Entry in the Per & cui is more beneficial, becauſe the Tenant in the Writ of Entry in the Poſt may vouch at large, and ſo he cannot do in the other Writ, but only within the Degrees.

c But if the Tenant take back an eſtate to him, and to another, then I am driven to my Writ of Entry in the Poſt, ſo it is if the ſtate be made to the heir of B.

A woman ſeiſed of a Rent taketh husband, the husband purchaſeth the Land whereout, &c. and after alieneth the land in fee, by which he includedly paſſeth the rent and dieth, the wife in a Cui in vita, ſhall ſuppoſe the alienee to be in the Per or Poſt. And yet in ſome caſe one ſhall have a Writ of Entry in the Poſt, when the Degrees be not paſt, (note well the words of this Act.)

7 H. 4. 17. 7 E. 3. 53.

If a diſſeiſor hath iſſue two daughters, and the one daughter hath iſſue and dieth, in this caſe the Aunt is in the Per, and the Niece is in the Per & cui, and one Writ muſt be brought againſt them both, which muſt be in the Poſt, becauſe one Writ cannot be brought both in the Per as to one, and in the Per & cui as to the other.

30 E. 1. brief 884. 4 E. 3. fo 24 E. 3. 32. 36 H. 6. Dower 30. Vide firſt part of the Inſt. ſect. 393.

Howbeit in ſome caſes a Writ of Entry in the Per ſhall lie, although there be many alienations or diſſeiſins; as if the husband be ſeiſed in fee and die, and twenty alienations or diſſeiſins be made, now doth the Writ of Entry in the Poſt lie, but if the Wife be endowed, the entry of the Wife ſhall be ſuppoſed by her husband, but otherwiſe it is of the Tenant by the courteſie, for the Law worketh by iſſue had without any aſſignment, and therefore meerly in the Poſt.

¶ Sine mentione graduum.] This is intended a Writ of Entry in the Poſt, ſo called of this word uſed in the Writ, In quod idem A. non habet ingreſſum niſi poſt diſſeiſinam quam C. injuſte, &c. fecit prædict' B. &c.

As the Writ of Entry, which Writ is ſine mentione graduum, as our Act ſpeaketh: As the Writ of Entry in the Per, is ſo called of this word [per] in the Writ, In quod idem A. non habet ingreſſum niſi per C. qui illud ei dimiſit: And in the Per & cui, of thoſe words in the Writ, In quod idem A. non habet ingreſſum niſi per C. cui D. illud dimiſit, qui inde injuſte, & ſine judicio diſſeiſivit, &c.

But for as much as the Law is never known until the reaſon thereof be apprehended; Wherefore ſhould not the ſucceſſors of a Biſhop, Dean, Abbot, Prior, &c. be as well in the Per, as the heir by deſcent? And the reaſon thereof is, for that the heir cometh in by his anceſtor, and therefore a deſcent ſhall take away an Entry and the Warranty of the Anceſtor ſhall bar the heir, but

in

in caſe of ſucceſſion, a dying ſeiſed taketh not away an Entry, nor the Warranty of the predeceſſor doth bind the ſucceſſor; and therefore the Regiſter delivereth it for a rule, with the reaſon thereof, Breve de ingreſſu debet impetrari verſus ſucceſſorem ſemper in le poſt, *quia ſucceſſor per prædeceſſorem non ingreditur.* And herewith agreeth Bracton, who ſaith, Item quæritur, &c. an faciunt gradum de Abbate in Abbatem, ſicut de hærede in hæredem; & videtur quod non, magis quam in computatione deſcenſus, quia etſi alternatur perſona, non propter hoc alternatur dignitas, ſed ſemper manet. Regiſt. 230. See the firſt part of the Inſtitutes, ſect. 386. 534. 5 Ed. 3. 13.

¶ Res illa devenerit.] This is intended of Lands, Tenements, Rents, and other things whereof a Præcipe doth lie.

¶ Per conſilium Domini Regis inde providendum.] Which was done accordingly, and the Writ ſet down in the Regiſter. Regiſt. 130.

Stat. de Weſtminſt. I.

EDITUM *Anno* 3 Edw. 1.

The Preface of the Statute of W. 1.

CEux ſont les eſtabliſhments le Roy Edward fits le Roy H. faits a Weſtminſt. a ſon primer Parliament general apres ſon Coronement, lendemaine de la cluſe de Paſche, lan de ſon raigne 3. per ſon Counſell, & per laſſentments des Archieveſques, Eveſques, Abbes, Priors, Countes, Barons, & tout le Comminalty de la terre illonques ſummones: Pur ceo que noſtre Seignior le Roy ad graund volunt & deſire del eſtate de ſon Realme redreſſer en les choſes ou meſtier eſt damendment, & ceo pur le common profit de ſaint Eſgliſe, & de *ſon* Realme, & pur ceo que leſtate de ſon Realme, & de ſaint Eſgliſe ad eſte malement garde, & les Prelates & Religious de la terre en mults des manners grieves, & le people auterment treit que eſtre duiſt, & la peace meines garde, & les leyes meins uſes, & les misfeſants meins punies, que eſtre duiſſent, per quoy les gents de la terra doubteront meins a misfaire: cy ad le Roy ordeine & eſtablie les choſes ſouthſcripts, les queux il entende deſtre profitables & covenables a tout le Realme.

¶ Ceux ſont les eſtabliſhments.] Stabilimina, or ſtabilimenta, Eſtabliſhments, or Aſſurances coming of ſtabilis, and that again a ſtando, of ſtanding; And juſtly may not only theſe Chapters challenge that name, but all other the Statutes made in the Reign of this King may be ſtiled by the name of Eſtabliſhments, becauſe they are more conſtant, ſtanding, and durable Laws, then have bẽn made ever ſince: ſo as King E. 1. who (as Sir William Herle Chief Juſtice of the Court of Common Pleas, that lived in his time, ſaid, Fuit le pluis ſage Roy que unques fuit) may well be called our Juſtinian.

5 E. 3. 14.

¶ A ſon Parliament general.] So called, becauſe all the Laws then made were general, and that great and honourable Aſſembly were not entangled with private matters, but with ſuch only, as were for the general good of the Common-wealth, for the end of this Parliament, is, as hereafter in the Preface is expreſſed, Pour le common profit de Saint Eſgliſe, & del Realme.

Apres

¶ Apres ſon coronement.] He began his raign the 16 day of November, Anno Dom. 1272. he then being in the land of Paleſtine; and after his return into England, was crowned the 19 day of Auguſt, in the 2. year of his raign, (and not the 9 day of December, in the 1. year of his raign, as ſome have miſtaken) as evidently appeareth by this Preface, and by ancient Records hereafter remembred. Ver. Mag. Chart. fol. 144.

¶ Lendemaine de la cluſe de Paſche.] That is, in craſtino clauſi Paſchæ, or in craſtino octabis Paſchæ, which is all one: in Engliſh, the morrow of the utas of Eaſter. It is called utas of huit, which ſignifieth eight, viz. the eighth day after, including Eaſter day it ſelf for one. Glanv. l. 1. c. 6.

Note, this Parliament was ſummoned to be holden at London in quindena of the Purification after his Coronation, and prorogued from thence until the morrow after the utas of Eaſter to be holden at Weſtminſter. And the number of eight was much reſpected in the ancient Laws, as amongſt the Laws of King Edward the Confeſſor, Pax Regis die qua coronatus eſt, quæ dies tenet octo, in die natali Domini dies octo, in Paſchate dies octo, in Pentecoſte dies octo, &c. Now the eighth day, accounting the feaſt day for one, is clauſum feſti, that is, the cloſing up of the feaſt for many purpoſes,

¶ L'an de ſon raigne 3.] This proveth that he was crowned in An. 2. for if he had been crowned in Anno 1. of his raign, then this Parliament ſhould have been holden in the 2. year: and this is proved by other matter of Record. But the truth is, that the 19. day of December, in Anno 1. of his raign, he was not returned into England. Vide vet. Mag. Char. 1 part, fol. 144. b.

Rex venerabili in Chriſto Patri, Roberto Cant' Archiepiſcopo, totius Angliæ Primati, ſalutem. Quia generale Parliamentum noſtrum, quod cum Prælatis & Magnatibus regni propoſuimus habere London' ad quindenam Purificationis beatæ Mariæ proxim' futur', quibuſdam certis de cauſis prorogavimus uſque in craſtinum clauſi Paſchæ proxim' ſequen'; vobis mandamus rogantes quatenus eidem Parliamento ibidem in eodem craſtino clauſi Paſchæ interſitis ad tractandum & ordinandum una cum Prælatis & Magnatibus Regni noſtri de negotiis ejuſdem Regni, & hoc nullatenus omittatis. Teſte Rege apud Woodſtock, 27 die Decembris. Dorſ. clauſ. An. 3 E. 1. m. 21.

Rex in primo generali Parliamento ſuo poſt coronationem ſuam in craſtino octabis Paſchæ, Anno Regni ſui 3. de voluntate ſua, & Conſiliariorum ſuorum conſilio, & communitatis Regni ſui ibidem convocat' conſenſu, ad honorem Dei, &c. ordinavit & ſtatuit quod &c. Rot. pat. An. 4 E. 1. m. 9. 14.

Rex Edw. tenuit primum generale Parliamentum ſuum poſt coronationem ſuam in craſtino octabis Paſchæ, Anno 3. Regni ſui. Rot. pat. An. 18 E. 1.

¶ Per ſon counſell.] This proveth that this King and other Kings before him had a Privy Councel, which appeareth by the Writs of Parliament, that Parliaments are ever ſummoned to be holden de adviſamento conſilii noſtri. Of this ſee more in this firſt Chapter.

¶ Per laſſentments des Archeveſques, Eveſques, Abbes, Priors, Countes, & Barons, & tout la cominaltie de la terre illonq; ſummones.] Here is a compleat Parliament for the making or enacting of Laws, the King, the Lords Spiritual and Temporal, and the Commons: for if an Act be made by the King, and the Lords Spiritual and Temporal, or by the King and the Commons, this bindeth not, for it is no Act of Parliament; for the Parliament concerning making or enacting of Laws conſiſteth of the King, the Lords Spiritual and Temporal, and the Commons; and it is no Act of Parliament, unleſs it be made by the King, the Lords and Commons. And where it is ſaid, by all the Commonalty, all the Commons of the Realm are repreſented in Parliament by the Knights, Citizens and Burgeſſes. See the 4. part of the Inſtit. cap. of the high Court of Parliament. 11 H. 7. 27.

The

The purpose of this Parliament is to redress the state of the Church and of the Realm in those things that néed amendment. The end is twofold, Pur le common profit de saint Esglise, & de son Realme.

There were five things that néeded amendment.

1. For that the State of the Realm and of holy Church (which are ever like Hipocrates twins) had bén ill governed.

2. That the Prelates and other men of the Church many ways had bén grieved, and the people otherwise entreated then they ought to have bén.

3. The Peace had not bén well kept, which was against a main Maxim of the Law, Inprimis interest reipublicæ, ut pax in regno conservetur, & quæcunq; paci adversentur, provide declinentur: Which Maxim hath bén repeated and affirmed by authority of Parliament,

3 E.6. cap.12. 1 Mar. cap.12.

4. That the Laws had not bén put in execution against another principle of the Common Law, Nihil infra regnum subditos magis conservat in tranquilitate & concordia, quam debita légum administratio. Affirmed also in Parliament.

32 H.8. cap.9.

5. Offendors seldom punished, Et impunitas continuum affectum tribuit delinquendi; for this Statute saith, By reason whereof the people of the land fear less to offend.

The remedy hath two excellent qualities, which ought to be inseparable to every Act of Parliament, viz. to be profitable, and convenient.

Here shall you sée the effects of the Writs of Parliament, as they be at this day: First, the Writ is, Nos de advisamento Concilii nostri; and this Act saith, Le Roy per son councel.

1. The Writ is, Pro quibusdam arduis & urgentibus negotiis nos, statum & defensionem Regni nostri Angliæ concernentibus: and it is expressed in this Act, Que nostre Seigniour le Roy ad graund volunt, & desire del estate de son Realme redresser, en les choses ou mestier est damendement, & ceo pur le common profit de saint Esglise & de son Realme, & pur ceo que lestate de son Realme & de saint Esglise ad estre malement gardy &c.

And here it is to be observed, that this noble and wise King E.1. was contented in a frée and general Parliament to hear of the misgovernment of the State of the Realm and of the Church, and never sought to cover those irregular procédings, either in his fathers time, or his own; and thought it should be greater honour for him to rip up these grievous ulcers both in the Church and Common-wealth, and to cure them by wholsom rules and Laws, then to cover them, lest it should be vainly feared they should reflect upon his fathers, or his own misgovernment, where in truth all the fault should rest upon great Counsellors, and Officers, and Ministers of Justice, and other the Kings Officers and Ministers; and so it hath fain out in divers other Kings times. This Preamble to all the Statutes is worthy of due and deliberate consideration.

Rot. Parl. 50 E. 3 nu. 10.15,16,17, 18,&c. Rot. Parl. 5 H.4. nu.8. 7 H. 4. nu.30.41. 9 H.4. indemnitie des Seigniors, &c. 1 H. 5. nu.8. &c.

Of this worthy King we have spoken in other places: This we will add out of an approved Author, Nemo in consiliis illo argutior, in eloquio torrentior, in periculis securior, in prosperis cautior, in adversis constantior.

Now this Parliament holden at Westminster, is called Westminster the first for excellency.

CAP.

CAP. I.

EN primes voit le Roy & commaunde, que la peace de ſaint Eſgliſe, & de la terre, ſoit bien garde & mainteign' en touts points, & que common droiture ſoit fait a touts, auxy-bien as povers, come as riches, ſans regard de nulluy. Et pur ceo que les Abbies, & les meaſons de religion de la terre, ont eſte ſurcharges & greves malement, per le venue des graundes gents & dauters, que lour biens ne ſuffiſont a eux meſmes, per que les religious ſont ci abates & impovers, que ilz ne poient eux meſmes ſuſteign', ne la *charge de* charitie quils ſoilent faire. Purview eſt que nul ne veigne manger, herberger, ne giſer a meaſon de religion dauter avowſon, que de la laine, al coſtages de la meaſon, ſi ne ſoit prie & requiſe ſpecialment per le governour de la meaſon, avant que il veigne. Et que nul a ſes coſtages demeſne, ne entr', ne veign' giſer encounter la volunt ceux de la meaſon. Et per cel eſtatute nentend' pas le Roy, que grace de hoſpitality ſoit ſuſtreit as beſoignes, ne que les avowes des meaſons lez puiſſent per lour ſovent venues ſurcharger ne deſtruer. Purview eſt enſement, que nul graund ne petit, per colour de parent, ou deſpecialtie, ou per auter affiance, ne per auter encheſon, ne courage en auter parke, ne peſhe en auter viver, ne veign' manger ne herberger en meaſon, ne en manour, ou en meaſon de Prelate, ne de home de Religion, ne dauter encounter la volunt le ſeignior, ou le bailife, de coſtages le ſeignior, ne a ſon coſt demeſne. Et ſil veigne, ou enter per le gree, ou ſans le gree le ſeignior ou le bailife nul ſarure, huis, ne feneſtre, ne nul maner de ferme ne faire overer, ne de pecher per ſoy, ne per auter, ne nul maner de vitail' ne auter choſe preigne per colour de achate, ne auterment. Et que nul face barter blee, ne prender blee, ne nul maner de vitaile, ne les auters biens, de nulluy Prelate, home de Religion, ne de auter, ne de clerke, ne de lay, per colour de achate, ne auterment enconter la [bone] volunt, & le conge de celuy, a que la choſe ſerra, ou de gardein, deins ville merchandiſe, ou dehors. Et que nul preigne chivals, boſes, chares, ne charets, neeſes, ne bateux, ne auter choſes affaire cariage, ſans le bone volunt de celuy, a que les choſes ſerront. Et ſi il per la bone volunt de celuy le face, lors maintenant face ſon gree ſolonque le covenant fait enter eux. Et ceux que viendront enconter les eſtabliſhments avantdits, & de ceo ſoient attaints, ſoient adjudges a la priſon le Roy, & dillonques ſoient rentes, & punies ſolonque la quantity & le maner du treſpas, & ſolonque ceo que le Roy en ſa court veier que bien ſoit. Et ſoit aſſaver, que ſi ceux

a que

a que le treſpaſſe fuit fait, voillent ſuer les damages, que ils avera reſceux, lour ſerra agarde & reſtore au double. Et ceux que le treſpas averont fait, ſoient enſement punies in le maner avantdit. Et ſi nul ne voile ſuer, eit le Roy la ſuit, come de choſe fait enconter ſon defence, & encounter ſa peace. Et le Roy ferra enquire de an en an, ſicome il quidra que bien ſoit, queux gents eyent tiel treſpas fait. Et ceux queux ſerront endites per ceux enqueſts, ſerront attaches & diſtreign' per la grand diſtreſſe, de vener a certain jour, que conteigne le ſpace du moys en la court del Roy, la ou luy plerra. Et ſi ceux ne veigne a cel jour, ils ſerront auterfoits de recheffe diſtreigne per meſme diſtr', de vener a un auter jour, que conteigne le ſpace de vi. ſemaignes. Et ſi ceux adonques ne veignent, ſoient adjudges come attaints, & rendent le double (per le ſuit del Roy) a ceux queux le dammages averont reſceux, & ſoient grevement rentes, ſolonque le maner del treſpas. Et le Roy defende & commande, que nul deſormes ne face male, damm', ne grevance a nul home de Religion, perſon de ſaint Eſglis, ne a auter, per encheſon de ceo que ils eyent deny lhoſtelle, ou le manger a nulluy, ou per encheſon de ceo que aſcun ſoy pleint ou court, de ceo que il ſoit greve des aſcuns choſes avantdits, & ſi aſcun le face, & de ceo que aſcun ſoy pleint ou court, de ceo que il ſoit greve des aſcuns choſes avantdits, & ſi aſcun le face, & de ceo ſoit attaint, ſoit incurre le peine avantdit. Et eſt purview que ces points avantdits lient auxibien nous Counſellors, Juſtices del Foreſt, & auter nous Juſtices, come auters gents: Et que les points avantdits ſoient mainteignes, gardes, & tenus. Cy defende le Roy ſur ſa grieve forfeiture, que nul Prelate, Abbe, Prior, home de religion, ou bailife daſcun de eux, ou del auter, ne reſceive nul home enconter la forme avantdit. Et que nul envoyau meaſon, ne au manor de religion, ne de auter home, gents, chivalx, ne chiens a ſojourn', ne nul lez reſceive. Et que le ferra, pur ceo que eſt enconter le defence & le commandment le Roy, il ſerra puniſh grievement. Uncore eſt purview, que les Vic' ne herbergent ove nulluy, oveſque plus que v. ou vi. chivalx, ne que ils ne grevevent la gentes de Religion, ne auter per lour ſovent vener, ou giſer a lour meaſons, ne a lour manors.

This

This Chapter doth ſpread it ſelf into thirtéen branches.

¶ En primes voet le Roy, & commaund, que le peace de Saint Eſgliſe, & de la terre ſoit bien gard, & mainteine en touts points, & que common droiture ſoit fait a touts, auxibien as poures, come as riches, ſans regard de nulluy, &c.] 1 *Branch.*

Imprimis Rex vult, & præcipit, quod pax ſacroſanctæ Eccleſiæ, & Regni ſolide cuſtodiatur, & conſervetur in omnibus, quodque juſticia ſingulis, tam pauperibus, quam divitibus adminiſtretur, nulla habita perſonarum ratione. Obſerve well this Law.

This is an ancient maxime of the Common Law repeated and affirmed amongſt the Laws of King Edgar: Primum Eccleſia Dei jura & immunitates ſuas omnes habeto, publici juris beneficio quiſque fruitor, eique ex æquo & bono (ſive is dives, ſive inops fuerit) jus redditor. Inter leges Edgari Regis.

Fleta reciteth this fundamental Law in few words, Quod pax Eccleſiæ, & terræ inviolabiliter obſervetur, ita quod communis juſticia ſingulis pariter exhibeatur. Fleta lib. 1. ca. 29

And this Law hath bæn explained and affirmed by divers other Acts of Parliament. 1 R. 2. cap. 2. 1 H. 4. cap. 1. 2 H. 4. cap. 1. 4 H. 4. cap 8. 7 H. 4. cap. 1. &c.

Britton fol. 1. ſaith, Peace ne poet my bien eſtre ſans Ley; Therefore this Law as a mean, that peace may be kept and maintained, provideth that common Droiture, (i. Juſtice ſelonque le Ley, & cuſtome d'Angliterre) ſoit fait a touts, &c.

But this ancient Law had great néed at this time to be rehearſed, and commanded to be put in execution, for that by reaſon of the often inſurrections, tumults, and inteſtine Wars in the raign of King Hen. 3. the peace of the Church, and of the Land, was for a long time miſerably diſturbed, and in a manner overthrown, for of thoſe inteſtine Wars the Poet ſaid truly,

Nulla fides pietaſque viris, qui caſtra ſequuntur.

And of theſe ſeditious Subjects, another in the perſon of the poor Plough-man in the like caſe ſaid;

Impius hæc tam culta novalia miles habebit?
Barbarus has ſegetes? en quo diſcordia cives
Perduxit miſeros! Virgil.

Another miſchief was, that during theſe tumults and inteſtine Wars, Law and Juſtice lay aſleep, for Silent leges inter arma; But the rule is good, and doth ever hold, Dormiunt aliquando leges, moriuntur nunquam.

By all which it appeareth, Quod ex malis moribus bonæ leges oriuntur.

¶ Purview eſt que nul ne veigne manger, herberger ne giſer al meaſon de Religion, &c.] The miſchief is at large ſet down in this Act, wherein it is to be obſerved, that over and above their own competent maintenance, the reſidue ought to be expended in works of charity. 2 *Branch.* Vide leſtatute de Carliſe, Anno 35 E. 1. Lib. 8. fo. 130. the caſe of Thetford ſchole.

Hereof Fleta ſaith, Et ne religioſi per oberationes indebitas ſupervenientium depauperentur, per quod eleemoſynas & ſervitia ſubtrahere cogantur, vel terras ſuas vendere, vel alienare, ex principis conſtitutione prohibitum eſt, quod nullus hoſpitari præſumat in domibus religioſorum de aliena advocatione, niſi ſpecialiter rogatus, nec ſumptibus domus nec ſuis propriis contra tutorum domuum voluntatem. Fleta lib. 3. cap. 5. Britton fol. 37.

3 *Branch.* ¶ Et per ceſt Statute nentend' pas le Roy, que grace de hoſpitalitie ſoit ſuſtreit as beſoignes.] Here it appeareth that the grace of hoſpitality conſiſteth in diſtributing to them that have nèd.

4 *Branch.* ¶ Ne que les avowes des meſons les puiſſent per lour ſovent venues ſurcharger ne deſtruer.] This is evident.

5 *Branch.* ¶ Purview eſt enſement que nul graund ne petit, per colour de parent', ou deſpecialtie, ou per auter affiance, ne per auter encheſon, ne courge en auter parke, ne peſhe en auter viver, &c.] Hereof Fleta ſaith, Nec etiam præſumat quis temere illicentiatus currere in parco alieno, nec in alterius vivario piſcari, veruntamen ſi contingat aliquis in hujuſmodi domibus per licentiam magiſtri domus vel ejus ballivi, quod non aperiat feneſtras inhibitas, vel aliquas frangat ſeruras, & victualia vel alia bona violenter capiat, vel extrahat ſub colore emptionis, vel alio quoquo modo, &c.

Fleta ubi ſupra.

Vide hic. cap. 20. Here note that vivarium, vivary is here taken for waters where fiſhes are nouriſhed and kept.

6 *Branch.* ¶ Et que nul face barter blee ne prender blee, &c.] This branch againſt purveyors doth extend as well to Lay, as Eccleſiaſtical perſons, and is well explained and confirmed by divers and many Statutes.

Mag. Chart. c. 21.
Artic. Cler. ca. 11.
14 E. 3. cap. 3.
18 E. 3. cap. 3.
Regiſt. 92.

7 *Branch.* ¶ Et que nul preigne chivals, boefs, chares, ne charets niefs, ne bateux, ne auter choſe a faire carriage, &c.] And by the Statutes abovesaid and many others this branch concerning carriage is alſo well explained and confirmed.

8 *Branch.* ¶ Et ceux queux viendront encontre les eſtabliſhments avandits, & de ceo ſoiant attaints.] Here is contained the puniſhments of ſuch as do offend againſt any of theſe eſtabliſhments, as well at the Kings ſuit, as at the ſuit of the party grieved.

Brit fol. 37. And herewith agræth Britton, for he ſaith, Et auxi des Viſcounts & des touts nous auters Miniſters, Juſtices, & Coroners, & auters que gents de Religion, & auters gents greveront per ſurcharges de lour venues pur herberger oveſque eux ſovent a auter coſtages, oveſque trope de frap de gents & per ſojourners de lour gents, & de lour chivaux, ou de cheines, ou auterment per emprompts de lour chivaux ou de cariage, ou de deniers, ou per begger merime, ou fees, ou auter choſe a eux ou a aſcun de lour meyne, ou de lour amys, & in ceo caſe ſoient puny per fyns.

9 *Branch.* ¶ Et le Roy defend, & commaund que nul deſormes face male damage, &c.] This clauſe extends as well to Lay as Eccleſiaſtical perſons.

10 *Branch.* ¶ Et eſt purview que ceux points liont auxibien nous Counſellors, Juſtices de Foreſts, & auters Juſtices, & auters gents.] Of theſe two branches Fleta ſaith thus, Item nec graventur viri religioſi, perſonæ Eccleſiaſticæ, vel alii, pro eo quod vètuerunt hoſpitium, vel victualia alicui, vel pro eo, quod queſti fuerunt de aliquo gravamine eis illato in prædictis articulis contento, quod ſi quis fecerit, & inde convincatur, puniatur per pœnam ſupradictam, nec excipiantur in præmiſſis conſiliarii Regis, nec Juſtic' de foreſta,

Fleta ubi ſupra.

Conſiliarii Regis.

vel

vel alii quicunque Juſticiarii vel miniſtri Regis, non magis quam mediocres, vel minores.

¶ Et que les points avandits ſoient mainteynes, &c.] This branch extends as well to Lay, as Eccleſiaſtical perſons. 11 *Branch.*

¶ Et que nul envoie a meaſon, &c.] This is alſo as general as the former. 12 *Branch.*

Note it is an article, Inter capitula Itineris de hiis qui miſerunt ad domus vel maneria religioſorum homines, equos, vel canes perhendinando ad cuſtum eorum.

¶ Uncore eſt purview q̃ Viſcounts ne herbergent ove nulluy, &c.] Of this Fleta ſaith, De Vic' proviſum eſt quod non hoſpitentur alicubi niſi propriis ſumptibus, veruntamen conceſſum eſt, quod in domibus religioſorum viciſſim per unam noctem tantum cum ſex equis, & non pluribus ſumptibus alienis in ſuis ballivis hoſpitentur, dum tamen frequenter non venerint. See Cap. Itineris de Vicecomitibus venientibus ad hoſpitandum cum pluribus quam 5. vel 6. equis in ballivis ſuis, vel qui per frequentes adventus ultra quoſcunque oneraverint. 13 *Branch.* Fleta ubi ſupra.

Here is to be obſerved that often in Fleta, and other old Authors and Statutes this word perhendinare is uſed, which ſignifieth to ſojourne, and perhendinationes ſignifieth ſojourning.

And that we may note once again for all, whenſoever an Act of Parliament doth generally prohibit any thing, as in this Chapter it doth, the party grieved ſhall not have his Action only for his private relief, but the offender ſhall be puniſhed at the Kings ſuit for the contempt of his Law; and therefore upon this Statute it ſhall be inquired at the Kings ſuit, De hiis qui miſerunt ad domos vel maneria religioſorum vel aliorum homines, equos vel canes perhendinando ad cuſtum eorum, & de Vicecomitibus venientibus ad hoſpitandum cum pluribus quam quinque vel ſex equis in ballivis ſuis, vel qui per frequentes adventus ultra quoſcunque oneraverint. 36 E. 3. Cap. Cap. Itin. Vet. Magna Cart. 154.

CAP. II.

PUrview eſt enſement, que quant Clerke eſt priſe pur rette de felony, & il ſoit demande per Lordinary, il luy ſoit liver, ſolonque le priviledge de Saint Eſgliſe, en tiel peril come ils appent, ſolonque le cuſtome avant ſes heures uſe. Et le Roy amoniſt les Prelates, & eux enjoine en la foy que ils luy doient, & pur la common profit de la peace de la terre, que ceux que ſont endites de tiel rette per ſolempne queſtes des probes homes fait en la Court del Roy, en nul manner ne les deliverent ſans due purgation, iſſint que le Roy neit meſtier de mitter auter remedy. Marlb. cap. 27.

The miſchiefs before this Statute were three: 1. That the ordinary would often challenge one for a Clark that was none. 2. That when any that were of bad ability to be of the Clergy, were indicted of felony, the Ordinary would

preſently demand them, and the Court deliver them without inquiſition. But always after this Statute, the Court took an inquiſition of office, Ut ſciatur qualis ordinario deliberari debeat. 3. That the Ordinaries would often deliver them without due purgation, whereby the King loſt his forfeiture, and offences remained unpuniſhed.

20 E.2. Coro.233. 26 Aſſ.19. 7 H.4. 36. 9 E.4.28. 25 E.3. cap.6.

¶ En tiel peril come il appent.] The peril was, that if the Ordinary ſhould demand any man for a Clark that was none, his temporalties ſhould be for that contempt ſeiſed, and ſome have holden that he ſhould loſe that franchiſe or privilege to demand Clarks for him and his Succeſſors for ever; but ſee the Statute of 25 E.3. Cap.6. for ſince that Statute it hath been holden but finable.

Leſtatute de Bigamis cap.6. & Artic.Cler.ca.15.

¶ Que ceux queux ſont endites de tiel rette per ſolemne enqueſt des probes homes en la Court le Roy in nul manner ne deliverent ſans due purgation.] Before this Statute if any Clark had been arreſted for the death of a man, or any other felony, and the Ordinary did demand him before the ſecular Judge, he was delivered without any inquiſition to be made of the crime; and this appeareth by Bracton, who writing before this Statute ſaith, Cum vero Clericus, &c. captus fuer' pro morte hominis, vel alio crimine, & impriſonatus, & de eo petatur curia Chriſtianitatis ab ordinario loci, &c. impriſonatus ille ſtatim ei deliberetur ſine aliqua inquiſitione facienda.

Bract.l 3. fo.123. Artic.Cler.ca.15.

But after this Statute, to the end that the Ordinary might have more care of purgation to be duly done according to the proviſion of this Act, when any Clark was indicted of any felony, and refuſed to anſwer to the felony, but claimed privilegium Clericale, and was demanded by his Ordinary, yet before he was delivered to the Ordinary, all the Records ſay, Sed ut ſciatur qualis ei (s. ordinario) liberari debeat, inquiratur inde rei veritas per patriam: And thereupon an inquiſition was taken whether he were guilty of the fact or no, and if he were found guilty, his goods and chattels were forfeit, and his lands ſeiſed into the hands of the King.

Brit.ca.4. fo.11.

Britton that wrote after this Statute, ſaith, Si le Clerk encoupe de felony, (i. indite ou appeale de felony) alledge Clergie, & eſt tiel trove (s. que eſt un Clerk) & p Lordinary demaund, donques ſerra inquiſe coment il eſt meſcrue (i. culpable) & ſil ſoit nient meſcrue, &c. donques il ſerra aroge touts quits, & ſil ſoit meſcrue ſi ſoient ſes chateux taxes, & ſes terres priſes in noſtre maine, & ſon corps deliver al Ordinarie: So as by the one Author, who wrote a little before this Statute, and the other who wrote preſently after (together with the continual practiſe thereof) the diverſity doth appear.

8 E.2. Coro.417. 17 E.2. ibid.386. 3 H.7.12.

Monachus indictatus de felonia, petiit privilegium Clericale, Abbas præſens petiit eum tanquam ſuum profeſſum, & ad hoc fuit admiſſus loco ordinarii, inquiſitio capta ex officio dixit quod non culpabilis, ideo quietus receſſit, & ſi culpabilis inventus fuiſſet, adhuc dicto Abbati liberaretur, &c.

But of the allowance of the benefit of Clergy upon the arraignment, it was very prejudicial to the Priſoner, for that he loſt his challenges to the inqueſt, that found him guilty, and yet upon the inqueſt of office formerly uſed, Ut ſciatur qualis ordinario deliberari debet, he forfeited all his goods and chattels, and the profits of his lands until he had made his purgation; And therefore that thrice reverend and learned Judge Sir John Priſot Chief Juſtice of the Court of Common Pleas ſtudying how to relieve the poor priſoners that were deſtitute of counſel, with the advice of the reſt of the Judges in the raign of H. 6. for the ſafety of the innocent, would not allow the Priſoner the benefit of Clergy before he had pleaded to the felony, and having had the benefit of his challenges and other advantages, had been convicted thereof: which juſt and charitable courſe hath been generally obſerved ever ſince.

3 H.7. fo.1,12.

¶ Sans

¶ Sans due purgation.] Before this Statute, Purgations were unduely made, more for favour, then for furtherance of Juſtice, whereby malefactors were encouraged to offend: Wherefore the King admoniſhed and enjoyned by this Act of Parliament the Prelates upon the faith which they ought unto him, &c. to deliver no Clerks, that were indicted, without due purgation, as they tendred the common profit of the peace of the Land. But this royal admonition and injunction (and many other in ſucceeding Ages, as it by Parliament Rolls appeareth) took little effect, but the abuſes in making Purgations in the end became ſo intolerable, as Quæn Elizabeth, by aſſent of the Lords Spiritual and Temporal, and the Commons in Parliament aſſembled, as matter unreformable, took it quite away; but yet, what the Law was therein before that Statute, is good to be known, and therefore ſomewhat ſhall be ſaid thereof in the Treatiſe of the pleas of the Crown, being the proper place for the ſame. 18 Eliz. cap. 6.

CAP. III.

PUrview eſt enſement, que nul rien deſormes ſoit demande, ne priſe, ne levie per Viſcount, ne per auter, pur eſcape de laron, ou felon, jeſque a tant que leſcape ſoit adjudge p Juſtices errants. Et que auterment le ferra, cy rendra a celuy, ou a ceux que tiel averont pay, quant que il avera priſe & reſceive, & au Roy au tant. Regiſt. 184. cap. Itineris. Vet. Mag. Char. 154.

The miſchief before this Statute was, that Sheriffs in their Tournes, and Lords in their Leets, who had juriſdiction to enquire of eſcapes of thieves and felons, upon preſentment before them of ſuch eſcapes, would levy fines or amerciaments for ſuch eſcapes, for that they pretended that the ſaid preſentment was not traverſable: Now forasmuch as it required judgment in Law to diſcern betwæn a voluntary eſcape and a negligent in caſe of felony, and alſo what ſhould be adjudged an eſcape, and what not, they might enquire only, and the Judgment thereupon belonged to the Juſtices in Eire. 18 E. 2. Stat. de viſu Franc'.

This Statute doth declare, that nothing ſhould be demanded, taken, or levied by any Sheriff, or other, until the eſcape be adjudged by the Juſtices in Eire, and addeth a penalty if any ſuch thing be done.

For proof whereof, we find before the making of this Statute, Quod evaſiones latronum ſecundum legem & conſuetudinem regni coram Juſticiariis regis itinerantibus & non alibi, debeant & conſueverunt judicari, & amerciamenta inde provenientia per ſummonitionem Scaccarii ſunt levand'. We find alſo in the ſame year, that before this Act of 3 E. 1. was made another Record, Quia evaſiones latronum coram Juſticiariis regis itinerantibus, & non alibi judicari debent, mandatum eſt vicecomiti quod reſtituat 8. l. W. C. quas ab eo cepit pro evaſione cujuſdam hominis, &c. Now that the Common Law, the miſchief before the Statute, and the purview of the Statute be underſtood, let us peruſe the words of the Act. Rot. clauſ. 2 E. 1. m. 11. Mirr. c. 2. §. 9. Rot. clauſ. 3 E. 1. m. 15.

¶ Per Viſcount, ne per auter, &c. jeſque a tant que leſcape ſerra adjudge per Juſtices Errants.] By theſe words the Court of the

Lib.2. fol.46. Marleb.c.19.28. Hic cap.15.

the Kings Bench which is holden coram rege, is not excluded, but preſentment of ſuch eſcapes may be made there: Firſt, for that this prohibition beginneth with Sheriffs, and therefore the generall words [or by any other] ſhall be intended of Lets, being inferiour Courts, and not of the Juſtices of the Kings Bench, being the higheſt of any ordinary Court of Juſtice in England. Secondly, for that the Court of the Kings Bench is an Eire, (the returns there being Ubicunq; fuerimus in Anglia) and more then an Eire; for if the Kings Bench had come into a County where the Eire had ſit, the Eire had ceaſed, for in præſentia majoris ceſſat poteſtas minoris.

21 E.3.54.b. 21 aſſ.12. 27 aſſ.p.2. *Regula.*

31 E.3.cap.14. Stat.1. 1 R.3. cap 3.

But by the Statute of 31 E. 3. it is enacted, that eſcapes of thieves and felons, &c. from henceforth to be judged before any of the Kings Juſtices ſhall be levied from time to time as they ſhall fall, as well in the time paſt, as in the time to come.

CAP. IV.

Cuſtumier de Norm.cap.17.

DE wreck de mere eſt accorde, que la ou home, chien, ou chat eſcape vive hors de la nieſe, la nieſe ou batell', ou nul rien, que la eins fuit, ne ſoit [adjudge] wreck, mes ſoient les choſes ſaves & gardes pur le vieu del vicont, coroner, ou al', ou del bailiffe le Roy, & bailes en les mains ceux de la ville, ou les choſes ſont troves, iſſint que ſi nul ſue les biens, & puit prover que ils ſoient, ou a ſon ſeigniour, ou en ſa garde peris, deins lan & le jour, ſans delay luy ſoient rendus: ſi non, remaigne au Roy. Et ſoient priſes per le Vic' & Coroners, & bailes a la ville pur reſpoign' devant Juſtices de wrecke que appent a Roy. Et la ou wrecke appent a auter que au Roy, cy le eit per meſme le manner. Et que auterment fra, & de ceo ſoit attaint, ſoit agarde al priſon, & rent al volunt le Roy, & rendra les damages enſement. Et ſi le bailiffe le face, & ſoit diſavow de ſon ſeigniour, & le ſeigniour ne ottrie de ceo a luy, reſpoign' le bailiffe, ſil eit de quoy, & ſil neit de quoy, rendra le ſeigniour le corps du bailiffe au Roy.

Doct. & Stud. cap.51. fo.156.

Many have doubted what the Common Law was before the making of this Statute; and ſome have holden, that the Common Law was, that the goods wrecked upon the ſea were forfeited to the King, and that they be forfeited alſo ſince the Statute, unleſs they be ſaved by following this Statute. To this I anſwer with Macrobius, Multa ignoramus, quæ nobis non laterent, ſi veterum lectio nobis eſſet familiaris: For Bracton, who wrote before this Statute, proveth, that this Act is but a declaration of the Common Law, Magis proprie dici poterit Wreccum, ſi Navis frangantur, & de qua nullus vivus evaſerit, & maxime ſi dominus rerum ſubmerſus fuerit, & quicquid inde ad terram venerit, erit domini regis, &c. & quod hujuſmodi dici debeant Wreccum verum eſt, niſi ita ſit, quod verus dominus aliunde veniens per certa indicia & ſigna docuerit res eſſe ſuas, ut ſi canis vivus inveniatur, &c. Et eodem modo ſi certa ſigna appoſita fuer' mercibus & aliis rebus,

Bract.li.3. fo.120. Brit.fo.7.26.85. Flet.li.1. cap.41.

The

The Mirror ſaith, A lour view (s. les coroners) de wrecks a les appent denquirer ou les wrecks vient a terre, quelles choſes, combien & la value diſtinctment per parcells. Et ſi home, beſte, oiſell, ou auter choſe vivant vint avecq; ou non, & iſſint per dividend ſoit livre a la prochein ville, un ou pluſors pur ent reſponder al verey Seigneur. (i. proprietarie) ſi la vient challenger, & defreſuer de deins lan. Mirr.c.1. §.13. & c.3. §. de wrecks.

And albeit this Author wrote after this Statute, yet he wrote of the ancient Laws before the ſame, and is more large then the words of the Act: for therein is named only of a man, a dog and a cat, that eſcapeth alive; and this Author ſpeaketh generally of any beaſt, hawke, or other living thing, ſo as he purſueth not this Act, but treateth of the Common Law.

Rex pro ſalute animæ ſuæ, & ad malas conſuetudines abolendas, conceſſit, quod bona in mari periclitata non perdantur nomine Wrecci, quando aliquis homo, aut beſtia vivus de navi evaſerit. And now having cleared this point, let us peruſe the words of our Act. Rot.cart.an.20. H.3. Rot.clauſ. 14 H.3. m.6. Vide li.5. fo.107. Sir Hen. Conſtables caſe.

¶ De wrecke de mere.] Wrecke or Shipwrecke is an Engliſh word, in French, Naufrage, in ancient French, Varech, in Latine Naufragium, legally Wreccum maris, Wrecke of the ſea in legal underſtanding is applyed to ſuch goods as after Shipwreck at ſea are by the ſea caſt upon the land, and therefore the juriſdiction thereof pertaineth not to the Lord Admiral, but to the Common Law. Cuſtumier de Norm.c.17. 5 E.3.3. 11 H.4. 16. F.N.B.112.e. Sir Hen.Conſt. Caſe, ubi ſup.

Although this Statute ſpeaketh only of Wrecke, yet this Statute extendeth to Flotſam, Jetſam, and Lagan: for which ſee Sir Henry Conſtables caſe, lib.5. ubi ſupra.

The cauſe wherefore originally Wrecke was given to the Crown ſtood upon two maine Maximes of the Common Law; Firſt, that the property of all goods whatſoever muſt be in ſome perſon. Secondly, that ſuch goods, as no ſubject can claim any property in, do belong to the King by his prerogative, as treaſure trove, ſtrayes, wrecke of the ſea, and others; becauſe of ancient time, when the art of Navigation was not ſo perfect, nor trade of merchandize grown to ſuch perfection, as now it is, it was a matter of great difficulty to be proved, in whom the property of goods wrecked at ſea was. Bracton ſaith, Item tempore dicuntur res in nullius bonis eſſe, ut theſaurus. Item ubi non apparet dominus rei, ſicut eſte de wrecco maris. Item de hiis quæ pro waivio habentur, ſicut de averiis ubi non apparet dominus, quæ olim fuerunt inventoris de jure naturali, jam efficiuntur principis de jure gentium. Others have yelded another reaſon, that the King by old cuſtom of the Realm, as Lord of the Narrow Sea, is bound to ſcoure the Sea of the Pirats and petty robbers of the Sea: and ſo it is read of that noble King Edgar, that he would twice in the year ſcoure the Sea of ſuch Pirats, &c. and becauſe that could not be done without great charge, the Law gave unto him ſuch goods as be wrecked upon the Sea towards the charge. Bract.li.1.fo.8. 9 H.6.45.

If a Ship be ready to periſh, and all the men therein for ſafeguard of their lives leave the Ship, and after the forſaken Ship periſheth, if any of the men be ſaved and come to land, the goods are not loſt. Rot.par. 28 E.1. m.23. in dorſ. the Merchants of Portugals caſe.

A Ship on the Sea is purſued with enemies, the men for ſafeguard of their lives forſake the Ship, the enemies take the Ship, and ſpoil her of her goods and tackle, and turn her into Sea, by the weather ſhe is caſt on land, where her men arrived, and it was reſolved by all the Judges of England that the Ship was no wrecke, nor loſt. 46 E.3.15. Rot.clauſ. 5 R.2. pro Willielmo Fiſhlake.

¶ Home, cheine, ou cat.] This Statute, as hath been ſaid, being but declaratory of the Common Law, theſe three inſtances are put but for examples, for beſides theſe two kind of beaſts, all other beaſts, fowles, birds, hawkes, and other living things are underſtood, whereby the ownerſhip or property of the goods may be known: and Bracton yet goeth farther, Si certa ſigna appoſita fuerint mercibus, & aliis rebus, &c. Bract. ubi ſupra, fo.120. 27 E.3.c. 13. by his marks cart or cocket. 31 H.6.c.4. 2 R.3. fo.2.a.

¶ Mes

¶ Mes ſoient les choſes ſaves & gardes per le vieu del Viſc', Coroner, &c.) Yet if the goods be bona peritura, the Sheriff may ſell ſuch goods within the year, leſt they ſhould periſh, and nothing be made of them; and therefore for neceſſity (which is excepted out of Law) the ſale in that caſe is good within the year.

Pl.Com.466.

¶ Et poient prover, &c. deins l'an & le jour.] Yet if the owner die within the year, his executors or adminiſtrators may make proof, for that this Act is but a declaration of the Common Law.

Doct. & Stud. fo. 118.

This year and day ſhall be accounted from the ſeiſure made as wreeke, for that is the thing whereof the owner may take the beſt notice.

35 H. 6.27. per Nottingham. Sir Hen. Conſt. Caſe, ubi ſupra.

But if the Kings goods be wrecked, and caſt upon ground, where a ſubject hath wreck of the Sea, who ſeiſeth the ſame, the King may make his proofes at any time when he will, and is not confined to a year and a day, as the ſubject is.

35 H.6.27.

Now if the goods or merchandiſes ſo caſt upon the land be not ſeiſed, as is aforeſaid, but taken away by certain wrong doers not known, the party may have a Commiſſion of Oier and Terminer to enquire of them that did the treſpaſs, and to hear and determine the ſame, and to make reſtitution to the party.

Regiſt. fo. F.N.B. 112.

¶ Devant les Juſtices del wreeke que appent al Roy.] That is, it ſhall not be tried in the Admiral Court, but before the Kings Juſtices at the Common Law, becauſe the wreeke is ever caſt upon the land.

Vide Raſt. Pl. cor.fol.611. 15 R.2. cap.3.

¶ Et la ou wrecke appent al auter que au Roy, &c.] Wrecke may belong to the Subject, either by grant from the King, or by preſcription.

Of ancient time, wrecke of the ſea, and other caſualties, as treaſure trove in the land, ſtrayes, and the like, were primi inventoris quaſi totius populi, ſed poſtea ad regem tranſlata fuerunt, quia non modo totius populi, ſed reipublicæ etiam caput eſt: But if treaſure be found in the ſea, the finder ſhall have it at this day.

Bract.li.3.fo.120. Britt.7.26.85.

¶ Et rent al volunt le Roy.] That is, be fined at the Kings will, which is to be underſtood, that the Kings Juſtices, before whom the party is attainted, ſhall ſet the fine, Et non dominus rex per ſe in camera ſua, nec aliter coram ſe, niſi per Juſticiarios ſuos: Et hæc eſt voluntas regis, viz. per Juſticiarios, & legem ſuam, unum eſt dicere.

2 R.3. fol.11. Vide hic ca.9.20, 24,25,26,29.

CAP. V.

ET pur ceo que elections doient eſtre frankes, cy defend le Roy ſur la greeve forfeiture, que nul haute home, ne auter, per poyar des armes, ne per malice ou manaces, ne diſturbe de faire franke election.

Art.ſuper cart. cap.8. & 13. 33 H.8. cap.27. Dier, 8 El.247. 14 H.8.2.29. 31 Eliz.cap.6.

See the Statute of 7 H. 4. that Knights of Shires for the Parliament ſhall be choſen, libere & indifferenter ſine prece aut præcepto.

7 H.4. cap.14.

There

There were two miſchiefs before the making of this Statute. 1. For that elections were not duly made. 2. That elections were not frely made; and both theſe were againſt the ancient maxim of the Law, Fiant electiones rite & libere ſine interruptione aliqua; And again, Electio libera eſt; for before this Act in the irregular raign of H. 3. the Electors had neither their free, nor their due elections, for ſometimes by force, ſometimes by menaces, and ſometimes by malice the Electors were framed, and wrought to make election of men unworthy, or not elegible, ſo as their election was neither due, nor free: This Act briefly rehearſed the old rule of the Common Law, (for that elections ought to be free) wherein both the ſaid points are included; 1. It muſt be a due election, and 2. It muſt be a free election. *Regula.* 7 H. 6. 12.

This Statute doth enact, that no man upon grievous forfeiture ſhall diſturb any to make free election, and is excellently penned in two reſpects; Firſt, for that generally it extendeth to all elections, that is to ſay, to every dignity, office, or place elective, be it Eccleſiaſtical or Temporal, of what kind or quality ſoever. Secondly, the Act is penned in the name of the King, viz. The King commandeth: and therefore the King bindeth himſelf not to diſturb any Electors to make free election, as in the like caſe upon a Statute made in the raign of the ſaid King; the Act ſaying, Rex perpendens, &c. the ſame bound the King. Now that Electors might make free and due elections without diſpleaſure or fear thereof, by this Act of Parliament, as a ſure defence, the King commandeth the ſame upon grievous forfeiture: And this Act extends to all elections, as well by thoſe that at the making of this Act had power to make them, as by thoſe whoſe power was raiſed, or created ſince this Act. W. 2. 13 E. 1. c. 1. Pl. Com. The Lord Berklies Caſe. 14 H. 4. 20, 22. Stamf. Pl Cor. 168. c. d. 12 E. 2. Coro. 381. 22 E. 3. ibid. 275. Dier 12 El. 289. ſemble.

¶ Greve forfeiture.] That is, the diſturbers to be puniſhed by grievous fines and impriſonment,

What offices and places be eligible, See Artic. ſuper Chart. ca. 8. and this Act extendeth to all elections in Counties, Univerſities, Cities, Corporations, and other places. Art. ſuper Chart. cap. 8. & vide hic. cap. 10.

And thus much ſhall ſuffice for the underſtanding of this excellent and neceſſary Act. See hereafter cap. 10.

CAP. VI.

ET que nul City, Borough, ne Ville, ne nul home ſoit amerce ſans reaſonable encheſon, & ſolonque le quantity del treſpaſſe, s. franke home ſavant ſon contenement, Merchant ſavant ſon Merchandiſe, & villein ſavant ſon gainage, & ceo per lour peeres. Cap. Itin. Vet. Mag. Chart. f. 164. b

One miſchief before this Statute was, that ſeeing the words of the Statute of Magna Charta were Liber homo non amercietur, &c. it extended not only to natural and ſingular men, but to ſole bodies politique or corporate, and not to Corporations, or Companies aggregate of many, as Cities, Boroughs, and Towns. Another miſchief was, that many times not only Cities, Boroughs, and Towns, but private men alſo were amerced without cauſe. Laſtly, that the ſaid Statute of Magna Charta extended but to him that was Liber homo. Mag. Chart. c. 14. 13 E. 1. Attachment 8. F. N. B. 170.

For all theſe three this Statute provideth, viz. that no City, Borough or Town, nor any man ſhall be amerced without reaſonable cauſe, and according

to the quantity of his treſpaſs, and upon this Statute the party grieved may have an attachment without any prohibition precedent; for this Act is a prohibition of it ſelf.

Mirror c. 5. § 4. And yet the Mirror doth take it, that all this was contained in the graund Charter.

¶ Quantity de treſpaſſe.] Here Treſpaſs, trangreſſio ſignifieth offence, fault or default, and ſo it is taken in many ancient Records, as taking one example for many: the Statute, that is called Ragman, ordaineth that Juſtices ſhall go through the Land, to enquire, hear, and determine the plaints and querels of treſpaſſes, as well of the Bayliffs and Miniſters of the King, as of the Bayliffs of others, and of other people whatſoever they be, except appeals of felony, &c, which was underſtood as well of outragious takings, as of all manner of treſpaſs, contempt, neglect, default, or offence to the King or any other, &c.

Stat. Voc. Ragman. Anno 4 E. 1.

And in that ſenſe the Apoſtle ſaith, Ubi non eſt lex, ibi non eſt tranſgreſſio. Fleta deſcribing it ſaith, Tranſgreſſio autem eſt, cum modus non ſervatur nec menſura, debet etenim quilibet in facto ſuo modum habere & menſuram.

Fleta lib. 2. cap. 1.

CAP. VII.

Cap. Itineris vet. Mag. Chart. fol. 154. b.

DEs priſes des Conſtables, ou Caſteleins, faits des auters que des gents de la Ville, ou la Caſtles ſont aſſiſe. Purview eſt, que nul Conſtable ne Caſtelein deſormes nul manner de priſe ne face dauter home que de la Ville ou ſon Caſtle eſt aſſiſe, & ceo ſoit paie, ou gree fait deins xl jours, ſi ceo ne ſoit auncient priſe due au Roy, ou a Caſtle, ou al Seignior del Caſtle.

Fleta lib. 2. c. 43. Of this Chapter Fleta ſaith thus, Nullæ priſæ capiantur de aliquo per aliquem Conſtabularium Caſtellanum, præterquam de Villa, in qua ſitum ſit caſtrum, & illis ſatisfact' ſit infra 40 dies, niſi ſint priſæ antiquæ debit' Regi aut Domino caſtri aut caſtro debend'.

Mag. Chart. c. 19. Upon the Statute of Magna Charta, and this Act, there were two Articles amongſt others, that the Juſtices in Eir enquired of, viz. De priſis factis per Vicecomites, vel Conſtabularios, vel alios balivos contra voluntatem eorum quorum catalla fuerint: Item de priſis Domini Regis ſive in terra, ſive in mari, ſive in aqua dulci, ſive in libertatibus ſpectantibus ad caſtra ſua, ſive ad Civitates ſuas, ſive ad Burgos ſuos, vel in aliis locis, quæ ſunt, & quantum valeant, vel quis eas occupaverit, celaverit, vel ſuffocaverit, & quis eas ceperit, Conſtabularius, vel alius, & quid valent.

Bract. l. 3. f. 117. Bracton treating of the Articles of the Juſtices in Eir ſaith thus, De priſis Domini Regis in terra, ſive in aqua dulci, ſive ſalſa, & libertatibus ſpectantibus ad Caſtella ſua, ſive ad Comitatum, ſive ad Burgos ſuos, quæ ſunt, & quantum valeant per annum.

Brit. fol. 27. And Britton writing of the ſame matter ſaith, Et auxi des priſes faits, per nous Caſtellans, & autres que ſont perners de vittaile, ou de autre choſe, per queux tiels priſes ount eſtre faits, & à queux damages, & de quels gents, & en tiel caſe, voillons nous que nul ne ſoit garrant per continuance de ſeiſin in damage.

Fleta ubi ſupra. And Fleta hath it thus, De priſis factis per Vicecom, Conſtabularios, vel alios contra voluntat eorum quorum catalla illa fuerint: Item de priſis Conſtabulariorum

rum caſtrorum factis de bonis aliorum, quam eorum, qui ſunt de Villis ubi caſtra ſita ſunt, & de bonis eorum, &c. ſi non ſatisfact' fuer infra 40 dies, &c.

It is to be obſerved, that in the raign of this King, and in moſt of the ſucceeding Kings, there have been many other Statutes made concerning Purveyors, yet never did any Reporter publiſh any caſe, that I have ſeen, and remember, that may ſerve for the expoſition of any of them, and many proceedings have been judicially upon many of them againſt Purveyors, which do appear of Record. Vide Magna Charta, Cap. 19. and the expoſition thereof, and the third part of the Inſtitutes, Cap. Purveyors.

CAP. VIII.

ET que nul fine ſoit priſe pur Beaupleder, ſicome auterfoits fuit defendu en temps le Roy Henry, pier le Roy que ore eſt.

That is to ſay, by the Statute of Marlebridge, Anno 52 H.3. where this matter is explained. Marleb. cap. 11.

CAP. IX.

ET pur ceo que la Peace de la terre ad eſtre feeblement garde avant ces heures, pur defalt de bone ſuit fait ſur les felons ſolonque due manner, & noſment per encheſon des franchiſes ou les felons ſont reſceves: Purview eſt, que touts communement ſoient preſtes, & aparailes, au commandement & a les ſummons des Viſconts, & au crie de pays, de ſuer & arreſter les felons, quant meſtier ſerra, auxibien deins franchiſes come dehors. Et ceux que ceo ne ferront, & de ceo ſoient attaintes, le Roy prendra a eux grevement. Et ſi le default ſoit trova en le ſeignior de la franchiſe, le Roy ſe prendra a meſme le franchiſe. Et ſi le default ſoit trove en le Bailiſe, eit lenpriſonment dun an, & puis ſoit grevement rente, & ſil neit de quoy, eit lenpriſonment de ii ans. Et ſi Viſcount, Coroner, ou auter Bailiſe deins franchiſe, ou dehors, per lower, ou per prier, ou per poies, ou per nul manner daffinity, concelent, conſentent, ou procurent de conceler les felonies faits en lour Bailies, ou auterment, ſe teignont attacher, ou arreſter les misfeſants per la ou ils purra, ou auterment ſe feignont de faire lour office, en nul maner de favour des misfeſants, & de ceo ſoient attaintes, que ils eient lenpriſonment dun an, & puis ſoient grevement rentes a le volunt le Roy, ſi's eient de quoy, ſinon, eient lenpriſonment de iii ans.

¶ Pur default de bone ſute fait ſur les felons in due manner.] Some have thought that Hue and Cry have been grounded upon this Statute, but this Act proveth that Hue and Cry for the apprehenſion of Felons was before this Statute, for it findeth fault that good ſuit, that is, freſh ſuit, was not duly made; And it appeareth that Hue and Cry in thoſe caſes hath been by the ancient Laws of this Realm.

Mirror ca. 1. § 3. The Author of the Mirror writing of the ancient Laws before the Conqueſt under the title Des articles des viels Royes ordeines, ſaith, Ordeine fuit que cheſcun del age de 14 ans, & ouſtre de mortels pecheors enſuivre de Ville, & Ville a Hue & Cry.

Inter leges Regis Canuti. Si quis latroni obviam dederit, eumque nullo edito clamore abire permiſerit, quanticunque fuerit latronis vita æſtimata, extremum ſolvat denariolum, aut pleno & perfecto jurejurando de facinore nihil habuiſſe cogniti confirmato. Sin quis proclamantem audierit, neque vero fuerit inſecutus, ſuæ in Regem contumaciæ (ni omnem criminis ſuſpicionem diluerit) pœnas dato.

Glanv. l. 14. c. 3. Glanvill calleth Hue and Cry Clamor popularis juxta Aſſiſam (i. Statutum) ſuper hoc proditam. But this Statute is not now extant.

Bract. l. 3. f. 121. Bracton of Hue and Cry ſaith, Statim & recenter inveſtiganda ſunt veſtigia malefactorum, & ſequenda per ductum carectæ, paſſus equorum, & veſtigia hominum, & alio modo, ſecundum quod conſultius & melius fieri poſſit.

Mag. Chart. c. 35. And it is one of the Articles of that ancient Court of the view of frankpledge (of whoſe antiquity we have ſpoken before) to enquire of Hue and Cries levied and not purſued.

All theſe Authorities were before the making of our Act, and therefore it was truly ſaid, whoſoever ſaid it, Pervetuſta Anglorum lege ſancitum eſt, ut ſi quis damnum ex furto paſſus, aut qui ipſum ſpoliatum viderit, ſontem per acclamationem inſequatur, Conſtabularius ejus Villæ cujus opem implorat, auxilia ciere furemque perquirere debeat; quod ſi furem illic non deprehenderit, in proximam commigrare, & Conſtabularium ad ferendas ſuppetias iterum invocare, &c.

Brit. fol. 19, 20. Fleta lib. 1. c. 24. Anno 4 E. 1. 4 E. 1. De offic. Coro. Vid. 13 E. 1 Stat. de Winch. 28 E. 3. ca. 11. 27 Eliz. cap. 13. Of this Hue and Cry our ancient Authors ſince our Statute have alſo written, and divers Acts of Parliament have ſince bæn made concerning Hue and Cry, as the Statute De officio Coronatoris, made the next year after our Act, where it is ſaid, Et omnes ſequantur huteſium, & veſtigium, ſi fieri poteſt; & qui non fecerit, & ſuper hoc convictus fuerit, attachietur, quod ſit coram Juſticiariis de gaola, &c. 28 E. 3. & 27 Eliz.

Cap. Itin. Vet. Mag. Chart. 155. W. 2. cap. 29. 5 H. 7. 5. a. 2 H. 7. 15. b. ¶ Au commandement & a les ſummons des Viſcounts, &c.] When ought to be in theſe caſes at the commandment of the Sheriff, for he hath Cuſtodiam Comitatus committed to him; and he that goeth not at the commandment of the Sheriff or Conſtable at the Cry of the Country, that is, upon Hue and Cry, ſhall be grievouſly fined and impriſoned.

Mirr. cap. 2. Britt. ubi ſup. ¶ Ou a crie de pais.] Note, in legal underſtanding Hue and Cry is all one; in ancient Records they are called Huteſium & Clamor, and here Cry is uſed for both. And this Hue and Cry may be by horn and by voice, avec hue & crie de corne & de bouche. How the Hue and Cry ſhall be made, and all incidents thereunto, you ſhall read in the aboveſaid Statutes, and in our Reports you ſhall find how the ſame have bæn expounded.

Lib. 7. fol. 6, 7. Dier 23 El. 370.

29 E. 3. 39. 11 E. 4 4. b. 5 H 7. 5. 2 H. 7. 15. ¶ De ſuer & arreſter les felons.] By theſe words it is holden, that there muſt be a felony done, or elſe the arreſting of the party, though it be upon Hue and Cry, is unlawful, becauſe it wanteth a foundation; but if a felony be done, and the Hue and Cry is againſt one, that is neither indicted, nor of ill fame, nor ſuſpicious, nor unknown, yet the arreſt of him is lawful, though he be not guilty; for the Hue and Cry of it ſelf is cauſe ſufficient, where there is a foundation of a felony committed. And he that levieth Hue and Cry upon another without cauſe ſhall be attached and puniſhed for diſturbance of the Kings peace.

¶ Auxibien deins franchiſes come dehors.] This was not intended of Sanctuaries, but of Lords, and others, that had Franchiſes of Infangthefe, Outfangthefe, and the like.

¶ Le

¶ Le Roy prendra eux grevement.] That is, at the Kings ſuit they ſhall be fined grievouſly, and impriſoned.

¶ Et ſi le default ſoit trove in le Seigniour de la franchiſe, le Roy ſe prendra a meſme le franchiſe.] It ſeemeth hereby, that the Franchiſe is loſt for ever, for the words be, that the King ſhall take to himſelf the Franchiſe, (viz. as forfeit.)

¶ Et ſi le default ſoit trove en le bailife, eit lenpriſonment dun an, &c.] And this is according to the old rule, Qui non habet in ære, luet in corpore.

¶ Et ſi Viſcount, Coroner, ou auter bailife de franchiſe, ou de hors, &c.] Note here five things are rehearſed, as cauſes wherefore Sheriffs and other the Kings Officers and Miniſters of Juſtice do neglect their duties. 1. By prayer, prece, (by letters, meſſages, or word of mouth.) Præce. 2. Reward, precio, (ſordid bribery.) 3. Fear, metu, (the baſeſt, and yet the moſt forcible of all affections.) 4. Sanguine, any manner of conſanguinity or affinity: under which word (Affinity) in this Act is included as well nearneſs of blood, as alliance by marriage. Laſtly, favore, favour, in reſpect of friendly affection, for men may be corrupted, not only by reward, but in reſpect of the other four alſo, all tending to one and the ſame end, to ſuppreſs truth; as here to conceal, conſent, or procure to conceal the felonies done within their ſeveral precincts or bailiwicks. Precio. Metu. Sanguine. Favore.

¶ Ils eyent lenpriſonment dun an, &c.] Note here the puniſhment for concealment of felonies, or conſenting to, or procuring the concealment of the ſame; for all this make not them acceſſary to the felony, for then they were to have been puniſhed in another manner, but it is called miſpriſion, or concealment of felonies. Obſerve well the puniſhment of this miſpriſion, but the learning thereof appertains to the Treatiſe of the pleas of the Crown, and therefore this little touch here ſhall ſuffice. See the third part of the Inſtitutes, Cap. Miſpriſion.

¶ Al volunt le Roy.] See here Cap. 4. 20, 25.

CAP.

CAP. X.

ET pur ceo que petits gents meins ſages ſoient eſlieus ore de novel communement al office de Coroner: & meſtier ſerroit que probes homes loialx & ſages ſe intermellent de cel office: Purview eſt, que per touts les counties ſoient eſlieus ſuffiſant homes Coroners, des plus loyals & plus ſages chivallers, queux melius ſachent, puiſſent, & voilent a cel office entender, & que loyalment attachent & repreſentent les plees de la corone. Et que le Vicont eit conter rolles ove les Coroners, auxybien des appeales, come des enqueſts, de attachments, ou des auters choſes, que a cel office appendent. Et que nul Coroner riens demande, ne preign' de nulluy pur faire ſon office, ſur paine de la greeve forfeiture al Roy. [14 *E.* 1. *Stat. Exon.*]

The miſchief before doth appear in the Preamble, viz. That men of ſmall value and little underſtanding, of late time were choſen to the office of a Coroner, where it ſhould be needful that a Coroner ſhould have five qualities: 1. That he ſhould be probus homo: 2. Lawful, i. Legalis homo: 3. Of ſufficient underſtanding and knowledge: 4. Of good ability and power to execute his office according to his knowledge: 5. And laſtly, of diligence and intendance for the due execution of the ſaid office. And reaſon required it ſhould ſo be, for that Coroners were in thoſe days the principal gardeins of the Peace, and therefore the Common Law did not only require expert men to be Coroners, but men of ſufficient ability and livelihood for three purpoſes: 1. The Law preſumes that they will do their duty, and not offend the Law, at the leaſt for fear of puniſhment, whereunto their lands and goods be ſubject. 2. That they be able to anſwer to the King all ſuch fines and duties as belong to him, and to diſcharge the Country thereof, wherewith their Country being their electors were chargeable, as hereafter ſhall be touched. 3. That they might execute their office without bribery. And theſe five properties are neceſſary to every Officer. Vide the laſt clauſe of this Act.

Vide devant c. 5.

¶ Soient eſlieus.] It is to be known, that the office of a Coroner ever was, and yet is eligible in full County by the Freeholders, by the Kings Writ De Coronatore eligendo: and the reaſon thereof was, for that both the King and the Country had a great intereſt and benefit in the due execution of his office, and therefore the Common Law gave the Freeholders of the County to be electors of him. And for the ſame reaſon of ancient time the Sheriff called Vicecomes, who had cuſtodiam comitatus, was alſo eligible: For firſt, the Earl himſelf of the County had the office of the Sheriff of the County, and when he gave it over, the Vicecomes (as the word ſignifieth) came in ſtead of the Earl, and was eligible by the Freeholders of the County: And moreover, for the ſame cauſe were conſervators of the Peace in like manner choſen, and ſo were, and yet are elected the Verderors of the Foreſt, and all theſe for the time of Peace: For the time of war, there were likewiſe leaders of the Counties ſouldiers, of ancient time choſen by the Freeholders of the County.

Inter leges Edw. Regis, cap. de Heretochiis.

Erant & aliæ poteſtates & dignitates per provincias & patrias univerſas, & per ſingulos comitatus totius Regni prædict' conſtitutæ, qui Heretoches apud Anglos vocabantur, ſcilicet Barones, Nobiles, & inſignes ſapientes, & fideles & animoſi: Latine vero dicebantur Ductores exercitus, apud Gallos, Capitales Conſtabularii, vel Mareſchalli exercitus. Illi vero ordinabant acies denſiſſimas in præliis, & alas conſtituebant prout decuit, & prout eis viſum fuit, ad honorem coronæ,

&

& ad utilitatem Regni. Iſti vero viri * eligebantur per commune concilium pro communi utilitate Regni, per provincias & patrias univerſas, & per ſingulos comitatus in pleno Folkemote, ſicut & * Vicecomites provinciarum & comitatuum eligi debet, &c. * Nota. * Nota.

The Mirror ſpeaking of the Articles by old Kings ordained, ſaith, Auxi fuer ordeines Coroners in cheſcun countie, & Viſcounts a garder le pais, quant les countes ſoy demiſteront del gard, &c. And the Sheriff was choſen by Writ directed to the Coroners. Mirr. cap. 1. § 3.

And ſo were the conſervators of the Peace eligible alſo, by Writ directed to the Sheriff. Rot. pat. an. 5 E. 1.

For the Verderor, he is ſtill choſen by the Freeholders of the County by the Kings Writ.

Our King in the 28 year of his raign reſtored to his people the ancient election of Sheriffs in theſe words, Le Roy ad grant a ſon people, que ils eient election de lour Viſcount en cheſcun Countie, ou Viſcount neſt my de fee, ſilz voilont. Art. ſuper cart. an. 28 E. 1. c. 8. 13. Vide ſupra.

But now by the Statute of 12 R. 2. the Chancellor, Treaſurer, Keeper of the Privy Seal, Steward of the Kings houſe, the Kings Chamberlain, Clerk of the Rolls, Juſtices of the one Bench and of the other, Barons of the Exchequer, and all other that ſhall be called, are to ordain, name, or make Sheriffs, ſhall be firmly ſworn that they ſhall not ordain, name or make any Sheriff, for any gift or brocage, favour or affection, but that they ſhall be of the moſt lawful men, and ſufficient, to their eſtimation and knowledge. 12 R. 2. cap. 2. Vide Stat. 9 E. 2. De Vic. 14 E. 3. 7.

It is holden in our Books, that albeit the King dieth, yet the Coroner, becauſe he is elected by the Freeholders of the County by Writ, and retourned of Record in the Chancery, which is a judicial act, remained, and ſo of the Verderor: otherwiſe it is of Judges and Juſtices, that hold their places by Writ, Commiſſion, Letters Patents, or otherwiſe at will, which might be a reaſon wherefore the Sheriff of ancient time was eligible, for that he had cuſtodiam comitatus, and a principal conſervator of the Peace; and therefore his authority ſhould not ceaſe by the death of the King, no more then that of the Coroner. Dier 1 El. f. 165.

Now ſeeing that Coroners are elected by the County, if they be inſufficient, and not able to anſwer ſuch fines and other duties in reſpect of their office, as they ought, the County as their ſuperior ſhall anſwer the ſame: As for example, the County of Kent made election, by force of the Kings Writ, of William Herlizon to be one of the Coroners for the ſame County, who after was amerced pro falſo retourno 40 s. whereupon Proceſs went out to the Sheriff to levy it; the Sheriff upon his oath ſaid, that the ſaid William Herlizon non habet terras vel tenementa, bona ſeu catalla in baliva ſua, nec habuit, unde dict' denarii levari poſſint: Now ſaith the Record, Et quia ipſe Coronator electus fuit per comitatum, &c. ita quod in defectu ejuſdem Coronatoris totus comitatus ut elector & ſuperior &c. tenetur Regi reſpondere; præceptum fuit nunc Vicecomiti, quod de terris & tenementis hominum totius comitatus in baliva ſua fieri fac' prædict' 40 s. And the like Law was of the Sheriff, and other the ſaid Officers, when they were eligible. But now let us return to the purview of our Act. In Scaccar. inter præcept. Term. Hill. anno 14 E. 3. ex parte Rememb. Regis. 20 H. 9. Reſpondeat ſuperior.

¶ Homes Coroners.] The number of Coroners are not ſet down by Law: in moſt Counties there are four, in ſome Counties ſix, in ſome fewer, and in ſome Counties one. 23 aſſ. p. 7. 14 H. 4. 34. 39 H. 6. 40.

For the word Coronator, ſee Mag. Cart. cap. 17. F. N. B. 163. k.

¶ Sufficients.] Sufficiens is a large word, and implies as much as idoneus, and it hath two of the attributes mentioned in the Preamble, that is, lawful, and ſage. Li. 8. f. 41. Greiſſlies caſe. F. N. B. 163. n. 4 E. 1. de offic' Coronat'. 14 E. 3. cap. 7.

¶ Chi-

Brit. 3.b. Flet.lib. 1. cap.18 25. 23 aſſ. p.7. Mag. Char. c.17. F.N.B. 164. See the next Chap. & Chap.36. See hereafter Stat. de milit. Regiſt. 177. b. F. N. B. 163. m. Regiſt. & F. N. B. upi ſup.

¶ Chivaliers.] In ancient times none were choſen under the degrée of knighthood to be Coroners. But ſome ſay, that this word (Chivaliers) was put into this Statute, to the end that the party to be choſen might have ſufficient in the County, which may ſerve for interpretation of divers other Statutes, being accompanied with uſe and experience.

¶ Queux melieus ſachent, puiſſent, & voilent a cel office entender, &c.] Qui melius ſciant, poſſint, & velint officio illi intendere, &c. Note well theſe three qualities.

Now what cauſes there be to remove a Coroner, Vide Regiſt. & F. N. B.

Mirr. lib.1. cap.de office de Coroner. Bract. l.3. fol.121. Britt. fol. 3. Flet. lib.1. cap.18.& 25 4 E.1. Stat. de officio Coronat. Regiſt. jud.76.22 aſſ. 98. 4 H.6.16. Mag. Char. cap. 17. Hic cap.14. 4 H.6. ubi ſupra.

¶ Que les Coroners loialment attachent & repreſentent les plees del Coron, &c.] By this it appeareth, that the Coroner is Judge of the cauſe, and not the Sheriff; and this agréeth with our old and latter Books, only the Sheriffs have counter-rolls with the Coroners by force of this Act, and therefore a Certiorari may be directed to the Sheriff and Coroner to remove an appeal by Bill before the Coroner, becauſe the Sheriff hath a counter-roll: But if the Certiorari be directed to the Sheriff only in caſe of appeal or indictment of death, it is not ſufficient to remove the Record, becauſe he is not Judge of the cauſe, but hath only a counter-roll. Vide Magna Chart. cap.17. many authorities cited there concerning this matter.

14 E. 1. Stat. de Exonia. 3 H.7. cap.1. Vide hic c.26. See 5 E.6. c.

¶ Et que nul Coroner riens demaund, ne preigne de nulluy pur faire ſon office, ſur peine de la greve forfeiture al Roy.] And this was the ancient Law of England, that none having any office concerning adminiſtration of Juſtice, ſhould take any fée or reward of any ſubject for the doing of his office, to the end he might be frée and at liberty to do Juſtice, and not to be fettered with golden fées, as fetters to the ſuppreſſion or ſubverſion of truth and juſtice: And therefore this Statute was made in affirmance of the Common Law; this only is added, ſur paine de greve forfeiture al Roy.

3 E.3. coron. 372. A Coroner received 1 d. of every Miſne when they came before the Judges in Eir, as belonging to his office, which was neither againſt the Common Law, nor this Statute; for he took it not for doing of his office, but a right due to his office, which might have a reaſonable beginning, viz. for and towards his travail, attendance, and charges.

3 H. 7. cap.1. And this Statute ſtood in force until the Statute made in 3 H.7. ca.1. which gave him a fée of 13 s. 4 d. upon the view of the body, of the goods of the murderer, &c.

1 H.8. cap.7. But if the Coroner ſit upon the view of any ſlain by miſadventure, he ſhall have nothing. More ſhall be ſaid hereof hereafter, Cap.26.

CAP.

CAP. XI.

ET pur ceo que pluſors reintes de mort de home, & que ſont culpables de meſme la mort ſont (per favorables enqueſts, priſes per Viſconts & per bře le Roy que eſt appelle *Odio & atia*) replevies, jeſques a la venue des Juſtices errants: Purview eſt, que tiel enqueſts ſoient deſormes priſes per probes homes eſlieus per ſerement, dont les deux ſoient a meines chivalers, que per nul affinitie, touchent a les Priſoners, ne auterment ne ſoient ſuſpectious. [Gloc. c.9. Weſt. 2. c.29.]

See the 26 Chapter of Magna Charta where this matter is handled at large, and need not here to be repeated, and how this Writ De odio & atia was taken away, and ſince revived by a later Statute, as there it appeareth. Mag.Cart.ca.26.

CAP. XII.

PUrview eſt enſement, que les felons eſcries, & queux ſont apertement de male fame, & ne ſoy voilent mitter en enqueſts des felonies que homes met ſur eux devant Juſtices a la ſuit le Roy, ſoient miſes en la priſon fort & dure, come ceux queux refuſent eſtre al Common Ley de la terre. Mes ceo neſt mye a entender pur Priſoners que ſont priſes per legier ſuſpection.

¶ Que les felons.] This Statute extendeth not to Treaſon, which is the higheſt offence, nor to petit Larceny, which is of all felonies the loweſt. 15 E.4.32. Stam. pl.cor.150.

This Act doth extend as well to women as to men, and ſo it doth appear by divers ancient and late precedents, and to that end the makers of this Act did uſe this general word, Felons. Tr. 40 El. coram Rege, Rot.4. Jane Wiſemans caſe.

¶ Eſcries & apertement de male fame.] No perſon ſhall be put to this puniſhment unleſs the matter be evident or proveable, which is the duty of the Judge to lok unto.

¶ Ne ſoy voilent mitter en enqueſts des felonies.] This Act ſpeaketh only of indictments at the ſuit of the King. But the judgment of Paine fort & dure was at the Common Law, both in appeals, and in indictments.

A man may ſtand mute two manner of ways; firſt, when he ſtands mute without ſpeaking of any thing, and then it ſhall be enquired, whether he ſtod 43 Aſſ.Pl.30. 8 H.4.1. 4 E.4.11. 7 E.4.29. 14 E.4.7

mute of malice, or by the Act of God; and if it be found, that it was by the Act of God, then the Judges of the Court (who ever are to be of counsel with the Prisoner, to give him Law and Justice) ex officio ought to inquire whether he be the same person, and of all other Pleas which he might have pleaded, if he had not stood mute.

And note well the abovesaid words of our Ewks, [whether of malice, or by the Act of God] for it may be, the Prisoner in truth cannot speak, and yet being not mute by the Act of God, he shall be forthwith put to his penance, as if the delinquent cut out his own tongue, and thereby become mute.

Another kind of mute is, when the Prisoner can speak, and perhaps pleads Not guilty, or plead a plea in Law, and will not conclude to the enquest according to this Act, or speak much, but do not directly answer, &c. for Idem est nihil dicere, & insufficienter dicere: to be short, when in the end he will not put himself upon the enquest, that is, De bono & malo, to be tried by God and the Countrey, then this Act is sufficient warrant, if the cause be evident or probable, to put him to his penance; but if he demur in Law, and it be adjudged against him, he shall have judgment to be hanged: And though by his demurrer he refuse to put himself upon the enquest, according to the Letter of this Act, yet forasmuch as he is out of the reason of this Act, for that he refuseth not the trial of the Common Law, the demurrer being allowed to him by Law, and to be tried by the Judges, he shall not be put to his penance, but have judgment to be hanged; and so it is if he challenge above the number of 36. he shall be hanged, and not have Paine fort & dure.

4 E.4.11. 7 E.4.29
14 E.4.7.

3 H.7.2. & 12.

¶ Al sute le Roy.] This Act extends not to the suit of the party by appeal, because the judgment of Paine fort & dure was both in appeal and indictment at the Common Law, as hath been said, and hereafter shall be said and proved.

¶ Soient mys en la prison fort & dure.] Upon these words there have been divers opinions: First that the punishment of Paine fort & dure was given by this Act.

Stamf. Pl. Cor. 149 i.

Some other have holden, that at the Common Law for felony the Prisoner standing mute should upon a Nihil dicit be hanged, as at this day it is in case of high Treason, and, as they say, in case of appeal. Others have holden that at the Common Law in favour of life he should neither have Paine fort & dure, nor have judgment to be hanged, but to be remanded to Prison until he would answer.

8 H.4.2. Stamf. Pl. Cor. ubi supra. 21 E.3.18.

For the finding out of the truth herein, let us first see what the judgement which our Act calleth Fort & dure is, and then what the reason should be, that so severe a judgment is given in that case.

The judgment is, that the man or woman shall be remanded to the Prison, and laid there in some low and dark house, where they shall lie naked on the bare earth without any litter, rushes, or other clothing, and without any garment about them, but something to cover their privy parts, and that they shall lie upon their backs, their heads uncovered and their feet, and one arm shall be drawn to one quarter of the house with a cord, and the other arm to another quarter, and in the same manner shall be done with their leggs, and there shall be laid upon their bodies iron and stone, so much as they may bear, and more, and the next day following they shall have three morsels of barly bread without any drink, and the second day they shall drink thrice of the water that is next to the house of the Prison (except running water) without any bread, and this shall be their diet until they be dead.

8 H.4.1. 4 E.4.11. Tr. 40 El. ubi sup.

So as upon the matter they shall die three manner of ways, viz. Onere, fame, & frigore, by weight, famine, and cold, and therefore this punishment (if it were

were executed accoꝛding to the ſeverity of the Law) ſhould be of all other the moſt grievous and fearful. But what ſhould be the reaſon of this ſo terrible a judgment? This Act anſwereth, becauſe he refuſeth to ſtand to the Common Law of the Land, that is, lawful and due trial accoꝛding to Law, and theꝛefoꝛe his puniſhment foꝛ this contumacy without compariſon is moꝛe ſevere, laſting, and grievous, then it ſhould have bæn foꝛ the offence of felony it ſelf; and foꝛ the felony it ſelf, it cannot be adjudged without anſwer.

Now let us examine the opinions abovelaid, and we hold, that none of them are conſonant to Law; foꝛ as to the firſt, we hold that this heavy puniſhment was not given, that is, firſt inflicted by this Act: foꝛ what Court oꝛ Judges upon theſe woꝛds [have ſtrong and hard impꝛiſonment] could frame ſuch a judgment as is abovelaid, conſiſting upon ſo many divers particulars? and theꝛefoꝛe it muſt neceſſarily follow, That the ſaid puniſhment which this Statute calleth Fort & dure impꝛiſonment, becauſe the penance was to be done in Pꝛiſon, was befoꝛe this Act, but ſufficiently ſignified (as it hath bæn ever ſince) by theſe two Epithets, Fort & dure; ſo as this Act ſetteth foꝛth the quality of the judgment, and not the judgment it ſelf.

2. This Act deſcribeth what perſons ſhall be puniſhed by Paine fort & dure, viz. notoꝛious felons, and which be openly of ill name, but ſetteth not down (as hath bæn ſaid) what the puniſhment is, but pꝛovideth it ſhall not be foꝛ legier ſuſpition.

3. All Boꝛks, that held with great authoꝛity, that in caſe of appeal the Pꝛiſoner upon ſtanding mute ſhould have judgment De paine fort & dure, do pꝛove that ſuch a judgment was befoꝛe the making of this Act, foꝛ this Statute extends not to appeals, which are the ſuit of the Subject, but only to the ſuit of the King, which is by way of indictment: and herein the woꝛds of Fleta are veꝛy remarkable, Si autem appellatus nihil reſpondere velit, &c. & appellans inde petierit judicium, indefenſus remanebit, morti tamen non condemnabitur, ſed gaolæ committetur, &c. And there ſetteth down the penance, which of neceſſity muſt be (as hath bæn ſaid) by the Common Law. And herewith agræeth Britton that woꝛte ſoon after this Act; ſo as the penance in caſe of appeal, is both by ancient and ſound authoꝛity. Mirror ca. 5. §. 4. 41 Aſſ. p. 30. 8 H. 4. 1. 4 E. 4. 11. 14 E. 4. 7. 3 H. 7. 2. Fleta lib. 1. ca. 32. Britton fol. 40. Fleta ubi ſupra. Britton ubi ſupra.

To the ſecond opinion, if the Pꝛiſoner ſtanding mute ſhould be hanged by the Common Law; The anſwer to the firſt doth anſwer this alſo, and if he ſhould be hanged by the Common Law, this Statute taketh it not away, but oꝛdaineth that he ſhall have ſtrong and hard impꝛiſonment. And theꝛefoꝛe by their opinion, the felon ſtanding mute might be hanged at this day, which is againſt all our Boꝛks, and againſt conſtant and continual experience.

To the third, Let no man imagine that the Common Law, which is the abſolute perfection of reaſon, could foſter ſo unreaſonable and unjuſt a meane of encouragement of felons, that they by their own contumacy againſt the Common Law ſhould ſuffer only one of the loweſt puniſhments, viz. impꝛiſonment until they would anſwer; and the anſwers to the firſt are anſwers to this alſo.

Now let us ſee what our ancient Authoꝛs (who as you have often pꝛeceived, have heretofoꝛe bæn our good guides) ſay in this behalf.

You have already heard Fleta; and Britton alſo mentioneth this penance in two ſeveral places, both upon the indictment, and in the appeal, and voucheth no Statute theꝛefoꝛe, as no doubt in this caſe he would, as in other like caſes he had done, and ſpecially, ſeeing he woꝛte ſoon after this Statute, he would have mentioned the Act that had inflicted ſo ſtrange and ſtupendious a puniſhment, if the Statute had not bæn made in affiꝛmance of the Common Law. Britton fol. 11. a. & 40. b.

And the Mirror ſaith, In peche de homicide chient mortalment ceux que occiont home in priſon per ſurcharge de peine en caſe quant aſcun eſt judge al penance. And in another place writing upon our very Chapter, he ſaith, Le point de mitter gents rettes de felony, que ſe ne voillent mitter in paiis, a Mirror ca. 1. §. 9. Mirror ca. 5. §. 4.

penance, eſt cy diſuſe que ben les tue ſans aver regard as conditions des perſons, &c. This Author, as hath bẽn ſaid, writeth of the ancient Law long before this Act, as he himſelf teſtifieth in the beginning of his Book. He calleth this puniſhment of Paine fort & dure (the penance) becauſe it is the greateſt and moſt ſevere penance, and pain of all other, and ſo it is commonly called in our Books.

CAP. XIII.

Cap.Itineris.15 5. 4 E.1. Offic. Coronatoris. Vid. Paſc. 6 E.1. Rot.4. in Banco Lanc. W.2. 13 E.1.ca.34. 6 R. 2. ca.6. 4 & 5 Ph. & Mar. ca. 18. 18 Eliz. c.6. Regiſt. fo.97.

ET le Roy defend, que nul ne raviſe ne preigne a force damaſelle deins age, ne per ſon gree, ne ſans ſon gree, ne dame ne damaſelle de age, nauter feme mauger le ſoen. Et ſi ul le face, a le ſuit celuy que ſuera deins les 40 jours, le Roy luy fra common droiture. Et ſi nul commence, la ſuit deins les 40 jours, le Roy ſuera, & ceux queux il trovera culpables, ils averont la priſonment de ij ans, & puis ſerront rentes a la volunt le Roy, & ſils nient dont eſtre rents, ſoient punies per plus longe priſonment, ſolonque ceo que le treſpaſſe demande.

For the better underſtanding of this and other Statutes concerning rapes, it is firſt to be ſẽn what this word [rape] doth ſignifie, and ſecondly, what offence rape was at the Common Law before this Statute.

Mirror ca.1. §.12. See the firſt part of the Inſtitutes. ſect.190. Third part Inſt. cap.Rape. 9 E.4.26.

This is well deſcribed by the Mirror, Rape ſolonque le volunt del eſtatute eſt priſe pur un proper mote done pur cheſcun afforcement de fem, de quel le condition quel le ſoit; But better in another place, Rape is, when a man hath carnal knowledge of a woman by force, and againſt her will; and as the Mirror ſaith, it is a proper word; and rapere to raviſh legally ſignifieth as much, as carnaliter cognoſcere, and cannot be expreſſed in legal procẽding by other words, as elſewhere hath bẽn ſaid.

Glanv.li.1. ca.2. lib.14.cap.6. Mirror ca.4. de homicide. Bract.l.3.ſo.147. Brit. fo.3,7,39,45. Fleta l.1.c.25,33.

The offence is called Raptus, and the offender Raptor. This offence was felony at the Common Law, but had a puniſhment under ſuch a condition as no other felony had the like, that I have read of; for firſt, Divers of our ancient Authors, that wrote before our Statute agrée, that of old time Rape was Felony, for which the offender was to ſuffer death, but before this Act the offence was made leſſer, and the puniſhment changed, viz. from death, to the loſs of the members whereby he offended, viz. his eyes, Propter aſpectum decoris, quibus virginem concupivit. Amittit etiam teſticulos, qui calorem ſtupri induxerunt; So as it was no Felony at the making of this Act: And in thoſe days if the offender in the appeal brought by her, that was raviſhed, had bẽn condemned by the Country, without any redemption he ſhould loſe his eyes and his privy members, unleſs ſhe that was raviſhed before judgment demanded him for her husband; for that was only in the will of the woman and not of the man: for if (ſay they) it ſhould have bẽn in the will of the man, this inconvenience might have followed, that a Ribaud, or a Raſcal Slave might raviſh a Noble-woman, and by occaſion of one ſhameful pollution, perpetually to defile her, and to the diſhonour of her houſe to take her to wife.

But

But admit that the raviſher had bẽn a Nobleman, and the woman raviſhed baſe and ignoble, it might be thought that the like inconvenience might follow, if in that caſe the woman ſhould have the election. Reſponſio, quod ſive vir nobilis, ſive ignobilis ſit, voluntas ſemper erit fœminæ, & electio; quia quod eſt in fœmina voluntarium, in viro erit neceſſarium, ut membra ſua redimat ex neceſſitate: cum igitur mulier habeat electionem, & ſpreto judicio petit eum in virum, conceditur ei de gratia domini regis ob favorem matrimonii.

And herewith agrẽeth the Mirror, that before the time of our King Edw. the 1. the puniſhment was by caſtration and putting out of the eyes of the offender, &c. but of ancient time at the Common Law it was death at the election of the ſingle woman raviſhed. Mirr. cap. 4. de homicide.

And that alſo was the Law amongſt the Romans, for Seneca ſaith, Rapta raptoris aut mortem, aut indotatas nuptias optet; upon which Law there aroſe this caſe, Una nocte quidem duas rapuit, altera mortem optat, altera nuptias: there the caſe is largely and doubtfully diſputed, which in our Law would make but little queſtion; for though the one for the offence done to her might take him to her husband, yet ſhall he ſuffer death according to the Law for the offence done to the other. Li. 2. controverſiarum, contr' 5. & 24.

Now let us hear what the Law was herein before the Conqueſt, Qui viduam per vim ſtuprarit proprii capitis æſtimatione compenſato, nec mitiori conditione qui virgini vim intulerit. Qui per vim pagani hominis ancillam ſtuprarit, pagano ſol' ſenos numerato, & 60 præterea ſol' mulctator: Servus autem ſi ſervulam ſtuprarit, virga virilis ei præciditor; qui teneræ ætatis virginem ſtuprarit, eadem lege tenetor, qua is qui adultam compreſſerit. Inter leges regis Canuti. Int. leges Aluredi regis.

And if the Lord had raviſhed his niece or bondwoman, ſhe might have had an appeal of Rape againſt her Lord, as at this day ſhe may. See the 1. part of the Inſt ſect. 190.

And the puniſhment abovelaid, viz. the loſs of the ſaid members in ſuch ſort, as Bracton expreſſed the ſame, continued until the making of this Act; the purpoſe of which Act was once again to change the puniſhment, and yet to make it leſſer, that is, to make it puniſhable by fine and impriſonment at the Kings ſuit, if ſhe purſued not her remedy within forty days, as by this Act appeareth. Bract. ubi ſupra, & li. 3. fo. 123.

But it is not credible what ill ſucceſs this Act, that mitigated the former puniſhment had; for many ill diſpoſed perſons taking upon this occaſion encouragement to follow the heat of luſt, did many ſhameleſs and ſhameful rapes in barbarous and inhumane manner: As taking one example for all, Warren de Henwicke raviſhed openly in the high way Matild the daughter of Syward de Warton, and after he came and deſired to have her to his wife, which was granted by the Juſtices, and was affianced to her in open Court. Hil. 6. E. 1. in com. banc. Rot. 4. Lanc'.

This crying ſin daily increaſing, our noble King, ten years after this Act, made rape by authority of Parliament felony, as by the Statute in that caſe provides, appeareth. W. 2. 13 E. 1. c. 34.

Now this that hath bẽn ſaid doth agrẽe with our Books, and therefore it is benedicta expoſitio, when our ancient Authors, and our year-books, together with conſtant experience do agrẽe: For if rape had not bẽn made felony by the Statute of W. 2. but had bẽn felony when that Act was made, then ſhould the Court of the Lẽt have enquired of it, as of a felony by the Common Law; but ſẽing it was made felony by that Statute, it hath bẽn often adjudged, that the Lẽt cannot inquire thereof: for albeit it was once felony, yet the nature of the offence being changed, as is abovelaid, to be no felony, when another Act made it felony again, yet could not the Lẽt enquire thereof, as of a felony, which is worthy of obſervation. 18 E. 2. Stat. de viſu franc'. 9 E. 4. 26. 22 E. 4. 22. 1 R. 3. 1. 6 H. 7. 4. 11 H. 7. 22. Dier 3 El. 201.

More ſhall be ſaid of Rape in the Treatiſe of the Pleas of the Crown, and when we come to the ſaid Statute of W. 2. cap. 34.

Regiſt.fo.97. 22 E.4.22. Raſt. pl.496 Dier 9 El. 256.

¶ Ne preigne a force.] The taking away by force of a woman whatſoever againſt her will, albeit there be no rape, &c. is generally prohibited by this Act, upon the penalty herein expreſſed.

¶ Deins age.] Here it ſhall be taken for her age of conſent, that is 12. years old, for that is her age of conſent to marriage; and the taking her away within that age, whether ſhe conſent or no, is prohibited by this Act. Whereof, notwithſtanding all the abovelaid Statutes, good uſe may be made, becauſe it is general, and not bound with ſo many fetters as ſome of them be. See more hereof in the Third part of the Inſtitutes, Cap. Rape.

CAP. XIV.

Utlage, Utlagatus, Exlex. Utlagaria, Exlegalitas. Vid. Lam. inter leges Ed. Confeſſ.cap.38. 3. Part of the Inſt. ca. Appeals. Un meſme ley.

ET pur ceo que home ad uſe en aſcun pays de utlager les gentes appeales de commandement, force, aide, ou de receiptment, deins meſme la terme, que home doit utlager celuy que eſt appelle de fait: Purview eſt & commande per le Roy, que null' ne ſoit utlage pur appele de commandement, force, aide, ou de receiptment, jeſque a tant que lappellee del fait ſoit attaint, iſſint que un meſme ley ſoit de ceo per tout la terre, mes celuy que voit appeller, ne leſſa pas pur ceo de attacher ſon appell', al procheine countie vers ceux, auxibien come vers les appellees du fait: Mes lexigent de eux demurge tanque les appellees de fait ſoient attaints per utlagarie, ou auterment.

3. Part of the Inſt.ca. Principal & Acc.

Here are acceſſaries divided into two parts, viz. to acceſſaries before the fact, and to acceſſaries after the fact.

Again, acceſſaries before the fact are divided into three branches: De commandement, force, & aide; acceſſaries after the fact is only by recitement.

¶ Commandement.] Præceptum. Under this is underſtood all thoſe that incite, procure, ſet on, or ſtir up any other to do the fact, and are not preſent when the fact is done.

¶ Force.] Fortia is a word of art, and properly ſignifieth the furniſhing of a weapon of force to do the fact, and by force whereof the fact is committed, and he that furniſheth it is not preſent when the fact is done: For theſe two words, præceptum, & fortia, hear what Bracton ſaith, Ubi factum nullum, ibi fortia nulla, nec præceptum nocere debet. And again, Vulnus, fortia, & præceptum, generant unicum factum; non eſſet vulnus forte, ſi non adfuiſſet fortia; nec vulnus, nec fortia, niſi præceptum præceſſiſſet: and ſometimes in a large ſenſe is taken for any that is acceſſary before the fact.

Bract.li.3.fo.139. Britt.li.5.b. Mirr.ca.1. §.13. 40 aſſ.25.

Fleta li.1.c.23.

Et poteſt quis corporaliter occidi, facto, & lingua.

¶ Aide.] Auxilium. Under this word is comprehended all perſons counſelling, abetting, plotting, aſſenting, conſenting, and encouraging to do the act, and are not preſent when the act is done; for if the party commanding, furniſhing with weapon, or aiding be preſent when the act is done, then is he principal.

Re

¶ Reſceitment.] This is underſtood after the fact done, that is, when one knowing the felony doth receive the felon, and not only conceal his offence, but favour and aid him, that he be not known. Brit. ubi ſupra.

In the Preamble the miſchief is recited, that before this Act in ſome countries it had bẽn uſed to outlaw acceſſaries within the ſame time, that the principal was outlawed. Here it is to be underſtood, that in thoſe days moſt Appeals of death, &c. were ſued by Bill in the County before the Coroner, in which Bill of Appeal the Appellant doth make a diſtinction betwẽn the principal and the acceſſary. And therefore this Act is intended of Appeals commenced by Bill, for in the Appeal by Original Writ, both principals and acceſſaries are generally charged alike, without any diſtinction, who be principals, and who be acceſſaries, until the plaintiff maketh his counte, and therein he muſt diſtinguiſh them; But if the Defendants in ſuch an Appeal, where ſome be principals, and ſome acceſſaries, make default, the Appellant before the Exigent ought to declare, to the end it may be known who be principals, and who be acceſſaries, and to take the Exigent only againſt the principals, and continue the plea againſt the acceſſaries, until the principals be attainted; for if the Plaintiff ſhould pray an Exigent againſt them all, he is concluded afterward to charge any of them as acceſſaries. 43 E.3.17.18.34. The difference between an Appeal by Bill and by Writ. 7 H.4.31. Nota. Declare before any appearance.

This Act was made in affirmance of the Common Law, and it doth not hold only in Appeals at the ſuit of the party, but in indictments alſo at the ſuit of the King; for it is an ancient and fundamental Maxim of the Common Law, Juri non eſt conſonum, quod aliquis acceſſorius in curia Regis convincatur, antequam aliquis de facto fuer' attinctus: Yet if the acceſſary will, he may pray Proces againſt the Enqueſt before the principal be attainted, for quilibet poteſt renunciare juri pro ſe introducto. *Regula.*

¶ Jeſque lappellee de fait ſoit attaint.] If the principal wage battail, and is ſlain in the field, yet he is not attainted, but the Judgment muſt be, that he was vanquiſhed in the field, Ideo conſideratum, quod ſuſ per coll', &c. And this was agreed by the Juſtices, for otherwiſe in this caſe the Lord ſhould have no eſcheat, nor any Outlawry could be ſued by the Appellant againſt the acceſſary. 8 E.3. judgm 225. 3 part of the Inſtit. Hic cap.14. fo.353.

Our Act ſpeaketh Appellee in the ſingular number; yet in an Appeal brought againſt two as principals, and againſt another as acceſſary to them, in this caſe both of them muſt be attainted before the acceſſary be outlawed; and if one of the principals be found not guilty, the acceſſary is diſcharged, for the plaintiff made him acceſſary to two, and therefore he cannot be found acceſſary to one. But where there be divers principals, the Appellant may have his appeal againſt any one of them, and make the Acceſſary acceſſary to him only, if he will, for the felony is ſeveral, but the Appellant cannot have ſeveral appeals of one death. 40 aſſ.25. 7 H.4. 30. Pl.com 99. Li.4.fo.47. Waits caſe. & fo.44,45. Vaux caſe.

In caſe of poyſoning, albeit the delinquent be not preſent when the poiſon is received, yet is he principal, and ſo the principal and acceſſary may be both abſent. Vaux caſe, ubi ſupra.

It is to be obſerved, that in the higheſt offence, and loweſt injury, there are no acceſſaries, but all be principals; as in Treaſon, petit Larceny, and Treſpaſs.

And in one caſe of felony all be principals as well before as after, though they be abſent at the doing of the felony; but that is ſpecially provided by the Statute of 3 H.7.cap.2. of taking of women againſt their wills, &c. 3 H.7.cap.2. 2 E.3.27. 5 lib. aſſ.5. 13 aſſ.14.

¶ Soit attaint.] That is, have Judgement in caſe of felony for the felony; for if the principal be convict by verdict, and prayeth his Clergy; or if the principal upon his arraignment confeſs the felony, and before judgement obtain a pardon, the acceſſary is thereby diſcharged, becauſe the principal 22 E.3.coro.260. 7 H.4.16.36. 10 H.4.5. 11 H.4. 93. 3 H.7.1. 3 H.7. coron.53.

4 E.6.coro.Br.184. Lib.4.fol.43,44. Eyres caſe, & Bibithes caſe.

cipal was never attainted, as our Statute ſpeaketh; And ſo it is if the principal die before Judgment, or upon his arraignment ſtand mute. And theſe caſes have bèn according to this declaratory Act well reſolved, wherein there had bèn great variety of opinions.

2 R.3.fo.21,22.

If the principal be erroniouſly attainted, yet this erronious attainder is within this Act, for the acceſſary ſhall not take advantage of the error, but the principal only.

7 H.4.47. 9 H.7.19.b.

And note, that the attainder of the principal muſt be in the ſame ſuit where the acceſſary is alſo to be put to anſwer; and therefore if the principal be attainted of murder at the Kings ſuit, and after the wife bring an appeal againſt the principal and acceſſary, the principal plead the former attainder, the acceſſary ſhall not be put to anſwer, and yet the principal is attainted.

40 aſſ.p.8. 7 H.4. 30. 9 H.4.2. Li.9. fo.19. Seig. Zanchars caſe.

The experience and courſe at this day is, and warranted by good authority and reaſon, that if the principal plead not guilty, the acceſſary ſhall plead not guilty alſo, and may be tried by one Inqueſt; but the charge of the Jury is, that if they find the principal not guilty, they ſhall find the acceſſary not guilty alſo; and this is for advancement of Juſtice; for if there were no procurers before, nor any receivers after, there would be fewer principals.

9 H.7.19. 50 E.3.15,16.

But if the principal plead not directly to the felony, a plea to bar the plaintiff, as auterfoits attaint, or unques accouple, or the like; there the acceſſary ſhall not plead until that plea be determined: And ſo if the principal plead a plea to the Writ, the acceſſary ſhall not be driven to anſwer until the plea be determined.

For this word [Attaint] and of Attainders in Déed and in Law, ſée the firſt part of the Inſtitutes, ſect.747.

¶ Iſſint que un meſme ley ſoit de ceo per tout la terre.] This is the honour of the Law, when all the Courts of Juſtice through the whole Land, in all caſes pronounce the Law tanquam uno ore, which this branch doth aim at in this particular caſe, and ought to be obſerved in all other caſes; Lex uno ore omnes alloquitur.

¶ Dattacher ſon appeale al procheine Countie.] That is, to commence his appeal before the Coroner at the next County.

Raſt.pl.42,47,48. ¶ Lexigent de eux demurge, &c.] So much hath bèn ſaid as may ſerve for the expoſition of this Act, the reſidue ſhall be handled in the Treatiſe of the Pleas of the Crown. Sée the third part of the Inſtitutes, ubi ſupra.

CAP. XV.

Cap.Itin. Vet. Mag.char.155. 27 E.1.cap.3. 23 H.6.cap.10. Pl.com.67.

ET pur ceo que Viſcounts, & auters, queux ount priſes & retenus en priſon gents rettes de felonie [et] meint foits ount leſſe per replevin les gents, queux ne ſont my repleviſables, & ont detenus en priſon ceux queux ſont repleviſables, per encheſon de gaign' des uns, & de grever les auters, & pur ceo que avant ces heures ne fuit my determine [certainment] queux gents fuiſſent repleviſables, & queux non, forſpris ceux queux fuiſſent priſes pur mort de home, ou per commandement le Roy, ou de les Juſti-

ces,

ces, ou pur la foreſt: Purview eſt, & per le Roy commande, que les priſoners queux ſont avant utlages, & ceux queux eyent forjure la terre, provours, & ceux queux ſont priſes ove mainer, & ceux queux ount debruſe la priſon le Roy, larons apertment eſcries & notories, & ceux que ſont appelles des provours tanque come les provours ſont en vie (ſils ne ſoient de bone fame) & ceux queux ſont priſes pur arſon felonioufment fait, ou pur faux money, ou fauxer le Seale le Roy, ou excommenge priſe per prier' Leveſque, ou pur appiert melveiſt, ou pur Treaſon que touche le Roy meſme, ne ſoient en nul maner repleviſables per le common briefe, ne ſans briefe: Mes ceux queux ſont endites de Larceny per enqueſts des Viſconts, ou des bailifes priſes de lour offices, ou pur legier ſuſpection, ou pur petit Larceny, que namount ouſter le value de 12 deniers, ſils ne ſoient rettes dauter Larceny devant cel heure, ou rettes de receiptment des larons, ou des felons, ou de commaundement, ou de la force, ou del aide de le felony fait, ou rettes dauter treſpaſſe, pur le quel un ne doit perdre vie ne member, & home appell' de provour puis la mort le provour, ſil ne ſoit apert laron eſcrie, ſoit deſormes leſſe per ſuffiſant plevin, devant le Vicont, dont le Vicont voile reſpondre, & ceo ſans rien doner de lour biens pur la plevin. Et ſi le Vicont ou auter leſſent per plevin ul', que ne ſoit repleviſable, ſi ceo ſoit Vicount, Conſtable, ou auter bailife de fee que eit gard de priſons, & de ceo ſoit attaint, perdr' le fee & baillie a touts jours. Et ſi ſoit South-vicount, Conſtable, ou Bailife, ou celuy que ad tiel fee pur garder les priſons, & ait ceo fait ſans la volunt ſon ſeignior, ou auter bailife que ne ſoit de fee, eit lenpriſonment de 3 ans, & ſoit rent a le volunt le Roy. Et ſi ul' deteigne les priſoners repleviſables, puis que le priſoner eit offre ſuffiſant ſuerty, il ſerra en le greve mercy le Roy. Et ſil prent loure pur luy deliverer, il rendra le double au priſoner, & enſement ſerra en le greve mercy le Roy. *De Finibus levatis.* 27 *E.* 1. *cap.* 13.

¶ Viſcounts & autres.] That is to ſay, Sheriffs and gaolers that have cuſtody of gaols, ſo as this Act extends not to any of the Kings Juſtices, or Judges of any ſuperiour Courts of Juſtice; firſt, for that they being ſuperiours are not comprehended in the general words, as often have been obſerved. 2. Queux ount priſes ou reteynus priſoners, which Judges do not. 3. Becauſe in thoſe days priſoners were commonly bailed by the Kings Writ De homine repleg', and then alſo by the Writ De odio & atia, both which were directed to the Sheriff. Lib. 2. fol. 46. Marleb. c. 19, 28.

And here it is proved, that it is an offence as well to bail a man not bailable, as to deny a man bail, that ought to be bailed; and the reaſon is yielded wherefore the Sheriffs and others did ſo offend, becauſe they would gain of the one, and grieve the other, viz. either for avarice, or for malice. Brit. fol. 34. b.

¶ Gents rets de felony.] In thoſe days felony comprehended in it as well Treaſon (as in this Chapter it appeareth) as homicide, rape, or burglary, robbery, arſons, and all larcenies and thefts; for the word and ſignification, ſee the firſt part of the Inſtitutes, Sect. 745.

¶ Avant ces heures ne fuit determine, &c.] Here is another miſchief recited, That it was not certainly determined, what people were repleviſable, For the word repleviſable, ſee Marleb. cap. 28.

Stamf. Pl. Cor. 72. Regiſt. 77.

viſable, and what not, within the general words of the Writ De homine repleg', viz. Pro aliquo alio retto, quare ſecundum conſuetudinem Regni non ſunt replegiabiles.

¶ Et queux homes fuer' repleviſables.] This word [repleviſable] proveth, that this Act intendeth what perſons were to be replevied by the common Writ De homine replegiando, which was directed to the Sheriff under whoſe cuſtody the Priſoners are, and of whom this Act ſpeaketh, and ſo it appeareth by the Regiſter: And replevy, or plevy is applied to the Sheriff to take pledges, and bail to the higheſt Courts of Record. And the Writ De manucaptione directed to the Sheriff is grounded upon this Act, in which Writ not only replegiar' but manucapere alſo is uſed.

Marlb. cap. 28. Regiſt. F. N. B. 249.

Regiſt. 77. & 133 Bract. l. 3. 121, 154. Fleta lib. 2. cap. 2. Britton fol. 73. Hil. 43 E. 3. Coram Rege. Rot. 110.

¶ Forſpris ceux queux fuer' priſes pur mort de home.] Here our Act firſt ſetteth down what perſons were not bailable for certain offences by the common Writ De homine repleg', and they be in number four. But by the ancient Law of the Land in all caſes of felony, if the party accuſed could find ſufficient ſureties, he was not to be committed to priſon, Quia carcer eſt mala manſio: but afterwards it was provided by Parliament that in caſe of homicide the offender was not bailable, for ſo Glanvill ſaith, In omnibus autem placitis de felonia ſolet accuſatus per plegios dimitti, præterquam in placito de homicidio, ubi ad terrorem aliter ſtatutum eſt.

Glanv. l. 14. c. 1. 3. Bract. l. 3. fol. 123.

25 E. 3. 42. 28 E. 3. 94. 40 E. 3. 42. 44 E. 3. 38. 43 E. 3 17. 29 Aſſ. 44. 37. 12. 43 Aſſ. 49. 41 Aſſ. 14. 7 H. 4. 27. 21 E. 4. 84. F. N. B. 250. b.

¶ Pur mort de home.] The death of man is ſo odious in Law, that (as is aboveſaid) by the common Writ De Homine repleg', neither principal nor acceſſary was repleviſable.

¶ Per maundement le Roy.] Per præceptum Regis.

1. *a* The King being a body politick cannot command but by matter of Record, for Rex præcipit, & Lex præcipit are all one, for the King muſt command by matter of Record according to the Law.

a Pl. Com. 234. Seign, Berkleyes Caſe. & 217. le Duchy caſe. Stanf. Pl. Cor. 72, 73.

2. *b* When any judicial Act is by any Act of Parliament referred to the King, it is underſtood to be done in ſome Court of Juſtice according to the Law. And the opinion of Gaſcoine Chief Juſtice is notable in this point, that the King hath committed all his power judicial to divers Courts, ſome in one Court, ſome in another, &c. And becauſe ſome Courts, as the Kings Bench, are Coram Rege, and ſome Coram Juſticiariis, therefore the Act ſaith, Per maundement le Roy, and the next words be, Ou de ſes Juſtices.

b See before c. 4. 2 R. 3. fol. 11.

Huſſey Chief Juſtice reported, that Sir John Markham ſaid to King E. 1. that the King could not arreſt any man for ſuſpition of Treaſon, or Felony, as any of his Subjects might, becauſe if the King did wrong, the party could not have his Action: If the King command me to arreſt a man, and accordingly I do arreſt him, he ſhall have his Action of falſe impriſonment againſt me, albeit he was in the Kings preſence; reſolved by the whole Court in 16 H. 6. which authority might be a good warrant for Markham to deliver his ſaid opinion to E. 4.

1 H. 7. 4. See hereafter at this mark †. Paſch. 18 E. 3. Coram Rege. Rot. 33. Jo. de Bildeſtons caſe. optime. 16 H. 6. tit. Monſtrans des faits 182. Stamf. Pl. Cor. 72. e. Dier 4 & 5. Ph. & Mar. 162. b. 10 El. 275. Mich. 12 & 13 El. 297.

The words of the Statute of 1 R. 2. c. 12. are, Si non que il ſoit per briefe ou auter maundement le Roy; and it was reſolved by all the Judges of England, that the King cannot do it by any commandment, but by Writ, or by Order, or Rule of ſome of his Courts of Juſtice, where the cauſe dependeth, according to Law.

Tr. 21 E. 3. Norf. Coram Rege. Rot. 170. Marlb. cap. 1. Forteſc. cap. 8.

Dominus Rex de aliquo contemptu ſibi illato, alium judicem in Regno, quam in curia ſua, habere non debet. Vide Marleb. cap. 1.

And Forteſcue ſpeaking to the Prince to inſtruct him againſt he ſhould be King, ſaith, Melius enim per alios, quam per teipſum judicia reddes, quo, proprio ore nullus Regum Angliæ uſus eſt, & tamen ſua ſunt omnia judicia Regni, licet per alios ipſa reddantur, ſicut & judicium olim ſententias Joſaphat aſſeruit eſſe judicia Dei.

And

And Bracton ſaith, Nihil aliud poteſt Rex, &c. quam quod de jure poteſt.

So as, maundement le Roy is as much as to ſay (as ſome affirme) as by the Kings Court of Juſtice; * for all matters of judicature, and proceedings in Law are diſtributed to the Courts of Juſtice, and the King doth judge by his Juſtices, 8 H.4. fol.19. & 24 H.8. cap.12. and regularly no man ought to be attached by his body, but either by Proceſs of Law, that is (as hath been ſaid) by the Kings Writs, or by indictment, or lawful warrant, as by many Acts of Parliament is manifeſtly enacted and declared, which are but expoſitions of Magna Charta; and all Statutes made contrary to Magna Charta, which is Lex terræ, from the making thereof until 42 E.3. are declared and enacted to be void, and therefore if this Act of W.1. concerning the extrajudicial commandment of the King be againſt Magna Charta, it is void, and all reſolutions of Judges concerning the commandment of the King are to be underſtood of judicial proceeding. Mag. Char. c.29. 5 E.3.c.9. 28 E.3. c.3. 38 E.3. cap.9. 42 E.3 c.3. 2 E.3 fol. 2. & 3. See Mag. Charta, c. 29. verb. per legem terræ. * 8 H.4.19. Gaſc. & 24 H.8. cap.12. 42 E.3. cap.1.

¶ Ou de les Juſtices.] Upon any cauſe, whereof they are Judges, appearing to them. Britton fol.73. 2 R.3.11.

¶ Ou pur la Foreſt.] And all theſe four are particularly excepted out of the Common Writ De homine replegiando, that the Sheriff in his County Court, which is not a Court of Record, ſhall not replevy any of theſe four that are committed; For example, though the party be committed by the perſonal commandment of the King, albeit the commitment be unlawful, yet the Sheriff ſhall not deal therein by the Writ De homine replegiando, but the ſuperior Courts at Weſtm. upon a Habeas corpus, &c. ſhall do Juſtice to the party in all thoſe four cauſes: So as Stamford, being well conſidered, impugneth not in any ſort this opinion, for his opinion extendeth only to the County Court upon the Writ De homine replegiando, and not to the ſuperior Courts. 1 E.3. cap.9.

But ſince we had written thus much, and paſſed over; ſee the Petition of Right, Anno 3 Caroli Regis, reſolved by the King, the Lords Spiritual, and Temporal, and the Commons in full Parliament.

Now this Act doth provide, that theſe Priſoners hereafter following ſhall not be repleviſable neither by the common Writ (that is the Writ De homine repleg', nor Ex officio (without Writ) by the Sheriff or other gaoler, and they be 13 in number, and all theſe 13 are excepted out of the ſaid common Writ by the ſaid general words, viz. Vel pro aliquo alio retto, quare ſecundum conſuetudinem Regni non ſunt replegiabiles.

¶ 1. Perſons utlages.] Perſons outlawed are attainted in Law, and therefore are not repleviſable or to be bailed; for if a man be arraigned of homicide, and plead not guilty, and is found guilty, and for difficulty of Clergy is reprieved, it was reſolved by the Juſtices, that he was not bailable, for the intendment of the Law in bails is, Quod ſtat indifferenter, whether he be guilty or no; but when he is convict by verdict or confeſſion, then he muſt be deemed in Law to be guilty of the felony, and therefore not bailable at all, à fortiori, when the party is attainted in Law. Bract. l.3.154. 2 Eliz. Dier 179. 15 H. 7. 9. Britton fol.73.

And herewith agreeth Bracton, Nec ſunt illi qui culpabiles inveniuntur, per plegios dimittendi, &c. And yet if the party upon the Cap. utlag' plead miſnomer, or alledge error, &c. he may be bailed. Bract.l.3.121.b. 5 H.7.14. 9 H.6. fol.2.

¶ 2. Queux eient forjure.] They be alſo attainted upon their own confeſſion, and therefore not bailable at all by Law.

¶ 3. Provours.] The reaſon wherefore Provours or Approvours be not bailable is, for Provours do firſt confeſs the felony to be done by themſelves, and therefore they are not bailable, becauſe it appeareth that they be guilty of the fact. Bract. l.3.f.153.b.

¶ 4. Ceux queux ſont priſes ove le mainer.] For in this caſe Non ſtat indifferenter, as hath been ſaid, whether he be guilty or no, being taken with the mainer, that is with the thing ſtoln, as it were in his hand, anciently called handhabbend; the like is anciently called backberend, as a bundle or fardle at his back, which Bracton uſeth for manifeſt theft, furtum manifeſtum, and ſo doth Britton.

Bract. li.3. fol.154 Brit. fol.22. b. & 72. b.

Bract.l.3.153.b.

¶ 5. Ceux queux ont debruſe la Priſon le Roy.] Here be two offences: 1. His breaking of the Priſon; for it is preſumed, that he that is innocent will never break Priſon: And 2. his flying, Quia fateur facinus, qui judicium fugit.

16 E.4.5.

¶ 6. Larons apertment eſcries & notories.] Felons openly known and notorious are not bailable.

¶ 7. Ceux queux ſont appelles des Provours tanque come les Provours ſont en vie (ſilz ne ſoient de bone fame.)] The appeal of the Approver is forcible againſt the Appellée, becauſe the Approver confeſſeth himſelf guilty of the ſame felony, and therefore it ſerveth in nature of an indictment againſt the Appellée, ſo long as the Approver liveth, unleſs the Appellée be of good fame. But yet the general words do receive qualification, for albeit the Prover be alive, yet if the Approver waive his Appeal, the Appellée ſhall be bailed, if no other Appeal be againſt him.

25 E.3.42.

Lib.11. fol.29. Alex. Powlters caſe. Glanv. li. 14. & 1. cap.2. Mirror c.1. § 8. De Ardours. Bract.l.3.f.118. Brit. fol. 16. 39. Fleta li.1. cap.35. 10 E.4.14.11 H.7.1

¶ 8. Ceux queux ſont priſes pur arſon feloniouſment fait.] Burning of houſes, &c. was felony by the Common Law, as it appeareth by this Act, and by our ancient Authors, viz. Glanvill, the Mirror, Bracton, Britton: and Fleta ſaith, Si quis ædes alienas nequiter & ob inimicitiam vel prædæ cauſa tempore pacis combuſſerit, & inde convictus fuerit, &c. capitali debet ſententia puniri. And this ſeemeth to be the Law before the Conqueſt: *a* Incendiariis capitis pœna eſto. And again, *b* Sanè quidem tectorum exciſiones & incendia, apertæ compilationes, cædes manifeſtæ, dominorumque proditores, ſcelera ſunt jure humano inexpiabilia.

a Inter leges Ethelſtani.

b Int' leges Canuti

¶ 9. Ou pur faux money.] This appears to be Treaſon by the Common Law. Glanvill lib.14. cap.7. Bracton lib.3. f.118. Britton fol. 16. Fleta l 1. cap.22. Mirror cap.6.

Int. leges Ethelſtani Regis.

Præterea autem ſtatuimus, ut unus per omnem ditionem noſtram atque idem ſit nummus, eumque nemo extra oppidum cudito, atqui ſi monetariorum quiſq; nummos corruperit, ei manus ſcelere violata præciditor. See the third part of the Inſtitutes, in the expoſition upon the Statute of 25 E.3. c.1. of Treaſon.

¶ 10. Ou fauxer le ſeale le Roy.] This was alſo Treaſon by the Common Law, as it appeareth by the ſaid ancient Authors.

And both theſe were declared to be high Treaſon at the Common Law, by the Statute of 25 E.3. cap.1. See more hereof in the third part of the Inſtit. ubi ſupra.

¶ 11. Ou excommenge priſe per prier del Eveſque.] That is, he that is certified into the Chancery by the Biſhop to be excommunicated, and after is taken by force of the Kings Writ of Excommunicato capiendo, (which is ſo called of words in the Writ called a Significavit) is not bailable, for in ancient time men were excommunicated but for hereſies, propter lepram animæ, or other hainous cauſes of Eccleſiaſtical conuſance, and not for ſmall or petty cauſes; and therefore in thoſe caſes the party was not bailable by the Sheriff, or Gaoler without the Kings Writ: but if the party offered ſufficient caution

Bract.l.5. fol.408, 409. Fleta lib.6. cap.44. Regiſt. F. N. B.63. &c. Doct. & Stud. l.2. cap.32.

De

De parendo mandatis Eccleſiæ in forma juris, then ſhould the party have the Kings Writ to the Biſhop to accept his caution, and to cauſe him to be delivered. And if the Biſhop will not ſend to the Sheriff to deliver him, then ſhall he have a Writ out of the Chancery to the Sheriff for his delivery: Or if he be excommunicated for a temporal cauſe, or for a matter whereof the Eccleſiaſtical Court hath no Conuſance, he ſhall be delivered by the Kings Writ without any ſatisfaction.

¶ 12. Ou pur apert malveiſt.] Or for open or manifeſt offences. For, as hath been ſaid, Bail is quando ſtat indifferenter, and not when the offence is open and manifeſt. Brit. fol. 73.

¶ 13. Ou pur treaſon que touche le Roy.] Britton, who wrote after this Statute, ſaith, Queux ſont repleviſables, & queux non, avons dit in nous Statutes. Et ouſter ceo ne ſont my repleviſables, endite ou appeales de compaſſement de noſtre mort, ſicome deſuis eſt dit, ne ceux que ſont priſes per judgement de nous Juſtices, &c.

For by the Common Law a man accuſed or indicted of high Treaſon, or of any felony whatſoever, was bailable upon good ſurety; for at the Common Law the Gaol was his pledge or ſurety that could find none. And this appeareth by Glanvill, who ſaith, Is qui accuſatur, ut prædiximus, per plegios ſalvos & ſecuros ſolet attachiari, aut ſi plegios non habuerit, in carcerem detrudi: ſo as a man by the common Law was bailable for any offence, until he were convicted: And this ſeemeth to be the old Law of the Land before the Conqueſt, viz. Ingenuus quiſque fidejuſſores, qui enim (ſi quando in crimen vocetur) jus ſuum cuique tribuere quam paratiſſimum fore præſtent, fidiſſimos adhibeto. Glanv. li. 14. cap. 1 & 3. 40 aſſ. p. 33. Int. leges Ethelred Regis.

¶ Ne ſoient in nul manner repleviſables per le common briefe, ne ſauns briefe.] That is, the Sheriff ſhall not replevy them by the common Writ De homine replegiando, nor without Writ, that is, Ex officio: But all or any of theſe may be bailed in the Kings Bench, &c.

¶ Mes ceux queux ſont endites de larcenie.] Latrocinium, larcinium, i. furtum, theft, and this Act divideth larceny into two kinds, ſc. Grand & Petit: Grand larceny is when the thing ſtoln is above the value of 12 d. ouſter le value de 12 d. as our Act ſpeaketh: And petit larceny is when it is of the value of 12 d. or under. And the things ſtoln are to be reaſonably valued, for the ounce of ſilver at the making of this Act was at the value of 20 d. and now it is of the value of 5 s. and above.

Eſt enim furtum de re magna, & re parva: pro minimo tamen latrocinio 12. denariorum, & infra, nullus morte condemnetur, &c. ex pluralitate tamen & cumulo modicorum delictorum poterit capitalis ſententia generari: And this is good Law at this day, and approved by many authorities. Regiſt. 269. Flet. l. 1. c. 36. Bract. lib. 3. fol. 150, 151. Britt. fol. 22. 45 Forteſcue cap 46. 8 E. 2. coron. 404, 406, 415. 18 aſſ. 14. 22 aſſ. p. 39. Tr. 21 E. 3. Coram Rege Rot. 42. 10 E. 4. 14.

¶ Per Enqueſts des Viſcounts ou des bailiffes, &c.] That is, of Sheriffs in their Tourns, or Lords in their Leets, or thoſe that have Infangthiefe and Outfangthiefe, &c.

Here our Act letteth down ſeven kinds of offenders that may be bailed.

1. Perſons indicted of Larceny before the Sheriff, &c. yet this is ſo expounded by the Regiſter, that they be of good fame. Regiſt. 83. 268.

2. Impriſoned for light ſuſpition. Here is added alſo, Dum tamen bonæ famæ ſunt.

3. For petit larceny, which doth not amount above the value of 12 d. if they be not charged with other larceny.

4. Accuſed for the receiving of thieves or felons. Regiſt. ubi ſup.

5. Or of commandment, force, or aid of the felony done. F. N. B. 249, 250.

6. Or accuſed for other treſpaſs, for which a man ought not to loſe life or member.

7. Or

Regiſt. ubi ſup. F. N. B. ubi ſup.

7. Or the appellée of an approver after the death of the approver; and upon our Act is the Writ De manucaptione grounded, which maketh mention thereof.

¶ Soit deſormes leſſe per ſuffiſant plevin devant le Viſcount.] That is to be underſtood where the indictment was taken before the Sheriff in his Tourn, for there he was Judge of the Cauſe, for other priſoners could not be bail without Writ: and if the Sheriff having ſufficient ſurety offered unto him, refuſed to bail him, he ſhould have a Writ De manucaptione directed to the Sheriff, to take pledges of him; And if the Bailiff of a Hundred (which is intended of a Steward in a Lèet) refuſed to take pledges of one indicted before him, the priſoner ſhould have had a Writ De manucaptione to the Sheriff to take pledges of him; and all this appeareth by the Writ De manucaptione. But ſince this time (to ſpeak once for all) this Writ of Manucaptione is taken away by the Statute of 28 E. 3.

Bract. l. 3. fol. 154 Regiſt. 83. 268. 291. F. N. B. 249, 250. F. N. B. ubi ſup.

The Statute of 1 & 2 Phil. & Mar. concerning bailment by Juſtices of Peace, hath relation to our Act, which hath made me the longer in explaining hereof. And ſée the Statute of 2 & 3 Phil. & Mar. concerning that matter.

1 & 2 Ph. & M. c. 13. 2 & 3 P. & M. cap. 10.

¶ Per ſufficient plevin dont le viſcount voille reſponder.] They which take pledges, ought to take ſufficient pledges, for which they will anſwer.

Vide c. 10 & 26.

¶ Et ceo ſans riens doner.] For neither the Sheriff, nor other of the Kings Officers could take any thing for doing his office. Vide cap. 26.

¶ Et ſi le Viſcount ou auter leſſent per plevin ul que ne ſoit pleviſable.] Ou auter. This is expounded by the words following.

¶ Si ceo ſoit Viſcount, Conſtable, ou auter bailife de fee que eit gard de priſoners.] So as at this time there were Sheriffwicks in fée, and Conſtables and Bailiwicks in fée, which had the kéeping of priſons: Theſe being attainted of letting to bail of any priſoner not baileable, ſhould loſe the fée and bailiwick for ever: and upon office found, the King ſhould have the inheritance of the office in him to be grantable over.

¶ Et ſi ſoit ſouth Viſcount, &c. Here it appeareth, that Under-ſheriffs are of greater antiquity, then ſome have ſurmiſed.

39 H. 6 32. For this ſee the Stat. of 26 E. 1. intituled, *Contra Vic. & Clericos.*

Note, the act of the Under-ſheriff or other Under-baily without the aſſent of his ſuperior is no forfeiture of the fée, or bailiwick of his ſuperior, though in many other caſes the ſuperior ſhall anſwer for his deputy.

¶ Et ſil deteine les priſoners repleviſables puis que le priſoner eit offre ſuffiſant ſuretie, il ſerra en le greve mercy le Roy] Here it appeareth, that to deny a man plevin that is pleviſable, and thereby to detain him in priſon, is a great offence, and grievouſly to be puniſhed.

Vet. mag. chart. 159. 160. Vet. N. B. fol. 40.

¶ Et ſi il priſt louer pur luy deliverer.] And if the Sheriff, &c. take any reward for his deliverance, the party ſhall recover double the value, and alſo he ſhall be in the great mercy of the King. Vide cap. 26.

There be many Statutes made ſince our Act, that do prohibite bail or mainprize in very many caſes, and alloweth the ſame in many other, which tend not to the expoſition of our Act, and do belong to another Treatiſe, and therefore we omit to ſpeak of them any farther in this place.

2 E. 4. cap. 2.

Sée the Statute of 1 E. 4. cap. 2. that upon all preſentments and indictments taken before any Sheriff or other in their Tourns, Lèets, or Law-days, they ſhall

ſhall have no power to attach arreſt, or put in priſon any perſon ſo preſented or indicted, but that the Sheriff ſhall deliver all ſuch preſentments and indictments to the Juſtices of Peace at their next Seſſions.

CAP. XVI.

EN droit de ceo que aſcun gents parnount, & prendre fount les avers des auters, & les chaſent hors del countie ou les avers fueront priſes: Purview eſt, que nul deſormes ne le face. Et ſi ul le face, ſoit grevement rente ſolonque ceo que eſt continue en les eſtatutes de *Marleb. cap.* 4. faits en temps le Roy H. pier le Roy que ore eſt. Et per meſme le maner ſoit fait de ceux, queux parnont les avers a tort, & queux font diſtres eu auter fee, plus grevement ſoient punies, ſi le maner de treſpas le demaund. Vide Flet. lib. 2. c. 40. 30 aſſ. 28.

This Statute conſiſteth upon two branches: The firſt is a confirmation of the Statute of Marlebridge, cap. 4. and the ſecond branch is a confirmation of the Statute of Marlebridge, cap. 2 & 15. where you may read the expoſition of them: Only theſe differences I obſerve betwæn them, that Marlebridge, cap. 4. ſpeaketh only of Diſtreſſes, and our Act ſpeaketh of all manner of takings. Marlebridge prohibiteth Diſtreſſes generally, our Act, of beaſts, and goeth no farther. Marlebridge ſpeaketh of Diſtreſſes which he hath taken; our Act which he hath taken, or cauſed to be taken. Marlebridge, cap. 15. excepteth the King and his Miniſters, &c. which our Act doth not, but yet by conſtruction of Law they are excepted, becauſe the King might do it by his Prerogative. Vide Cap. Itin. Vet. mag. char. fol. 155. 13 E. 4. 6.

This Act Fleta reciteth in this manner: Proviſum eſt quod nullus averia alienа capiens per ſe, vel per ſuos notos vel ignotos extra com', in quo capta fuerint, fugare præſumat, &c. Fleta ubi ſup.

CAP.

CAP. XVII.

PUrview eſt enſement, que ſi ul deſormes preigne les avers des auters, & les face chaſe en chaſtell, ou en forcelet, & illonques dedeins le cloſe du chaſtell, ou de forcelet les deteign' encounter gage & pledge, pur que les avers ſerront ſolempnement demandes per viſc', ou per auter bailife le Roy a la ſuit del pl', le viſc' ou le bailife priſe ove luy poyar de ſon countie, ou de ſa bail' & voile affaier de faire de ceo repl' des avers a celuy que les aver' priſe, ou a ſon ſeigniour, ou as auters des homes ſon ſeigniour quicunque queux ſont troves en le lieu, ou les avers fueront enchaſes. Et ſi home luy deforce adonques de la deliverance des avers, ou quel ne trove home pur le ſeigniour, ou pur celuy que les aver' priſe que reſpoign' & face le deliverance, apres ceo que le ſeigniour, ou parnour, per viſc' ou per bailife, ſerra admoniſt de faire la deliverance, ſi ſoit en pays, ou pres, ou la ou il purra per le parnour, ou per auters des fees covenablement eſtre garnie de faire le deliverance, ſil fuit hors de cel pays quant le priſe fuit fait, & ne face adonques maintenant les avers deliver, que le Roy pur le treſpaſs & pur le deſpite, face abate le chaſtell, ou le forcelet ſans recoverie: Et touts les damages que le plaintife avera reſceve de ſes avers, ou de ſon gainage diſturbe, ou en auter maner puis le primer demaund des avers fait per le vic', ou per le bailife, luy ſoient reſtores au double, de ſeigniour ou de celuy que les avers aver' priſe, ſil eit de quoy, & ſil neit de quoy, reſpoign' le ſeigniour quel heure, & en quel maner deliverance ſoit fait apres ceo que le vicount ou le bailife ſerra venue pur la deliverance faire. Et ſoit aſcavoire, que la ou le vic' dever' faire returne del briefe le Roy ou bailife le ſeigniour du chaſtell, ou le forcelet, ou a auter a que returne de briefe le Roy appent, ſi le bailife de cel franchiſe ne face le deliverance, puis que le vicount aver' le return' a luy fait, face le vicount ſon office ſans delay, & ſur lavantdit peine. Et per meſme le maner ſoit fait la deliverance per attachment de pleint fait ſans briefe, & ſur meſme la peine. Et ceo face a entender per tout la, ou le briefe le Roy court. Et ſi ceo ſoit en le marche de Gales, ou ailors, la ou le briefe le Roy ne court mye, le Roy que eſt Soveraigne Seigniour ent fra droit a ceux queux pleindre ſe voudront.

The miſchief before this Act was, that in the irregular time of H. 3. great men, when they took a diſtreſs of the beaſts of their Tenants or neighbours, that ſerved for their tillage or husbandry, to prevent the ſpeedy courſe of Juſtice, and to enforce the owners of the beaſts for neceſſity to yield to their deſire, would drive the beaſts into a Caſtle or Fortreſs, and there detain and keep them againſt gages and pledges, ſo as no replevy could be made according to the ordinary courſe of Law; for that in caſe of a Subject he could not break the Caſtle or Fortreſs, but the Sheriff was to retourne averia elongata, and thereupon the owner was to loſe the uſe of his beaſts of long time. But this Act giveth remedy, that the Sheriff taking with him the power of the County, may make replevin, as by the body of the Act appeareth. Vide Marlb. 52 H.3.ca.1.

¶ Chaſe in Caſtel ou en forcelet.] And ſo it is, if he that diſtrain chaſe the diſtreſſe into any other houſe, park, or other place of ſtrength, the Sheriff to make replevin may by force of this Act break the houſe, caſtle, or fortreſs, park, or other place of ſtrength by force of this Act, at the ſuit of a a Subject. Vide 52 H.3. c.3. Britton 54.b. Fleta lib.2. ca.40. W.2. cap.39. Lib.5.fo.91,92. Semaines Caſe. Vet.N.B. 43,44. Regiſt.83.85.

¶ Pur que les avers ſerront ſolempnement demandes per Viſcont, ou auter Bailife le Roy a la ſute del Plaintife, le Viſcont ou le Bailife priſe ove luy poyar de ſon County, &c.] Nota, every man is bound by the Common Law to aſſiſt not only the Sheriff in his Office for the execution of the Kings Writs (which are the commandements of the King) according to Law; but alſo his Baily, that hath the Sheriffs Warrant in that behalf, hath the ſame authority which his maſter the Sheriff hath, for the Sheriff cannot do all himſelf, and if they do it not being required, they ſhall be fined and impriſoned; But this is ſo to be underſtood, where the Sheriff may lawfully do it, and that before the Sheriff doth uſe any force, he ought (as our Act teacheth) to demand according to the Law the goods to be delivered, ſo as replevy might be thereof made, for ſequi debet potentia mandatum legis, non præcedere, force ought to follow, and not to precede the commandement of the Law. 8 H.4.17. in Repl.

Bracton who wrote before this Act ſaith, Et ſi [Vicecomes] aliquem invenerit reſiſtentem, aſſumptis ſecum (ſi opus fuerit) militibus & liberis hominibus de Com' ad ſufficientiam capiat corpora hominum reſiſtentium, & illos in priſona ſalvo cuſtodiat, donec Dominus Rex inde præceperit voluntatem ſuam, &c. Bract.li.5.442.b. Fleta lib.2.c.62.

And our Statutes of W.1. W.2. and Marlebridge are all in affirmance of the Common Law in that point, ſaving for breaking of the Caſtle, Fortreſs, Houſe, &c. in caſe of the Subject, in which caſe our Act giveth remedy. W.1. ca.9. & 17. W.2.cap.29. Marlb cap.21. Semaines Caſe. ubi ſupra.

If any man, how great ſoever, might have reſiſted the Sheriff in executing of the Kings Writs, then had it been a good retourn for the Sheriff to have retourned ſuch reſiſtance, but as the Statute of W.2. ſaith, Quod hujuſmodi reſponſio multum redundat in dedecus Domini Regis & Coronæ ſuæ; and that which is in dedecus Domini Regis, &c. is againſt the Common Law, therefore of neceſſity, if need be, for the due execution of the Kings Writs, the Sheriff may by the Common Law take poſſe Comitatus to ſuppreſs ſuch unlawful force and reſiſtance. 3 H.7.2.10. 12 H.7.17.b. W.2.cap.39.

R. did grant and render lands by fine to I. I. ſued the Kings Writ to the Sheriff to deliver ſeiſin, the Sheriff returned, that he could not execute the Kings Writ for reſiſtance of B. and others unknown; and becauſe the Sheriff took not the power of the County in aid of the execution, as the Statute willeth, he was amerced at xx marks, and an attachment awarded againſt B. and the reſt, &c. 19 E.2. tit. Execution 24.

And it is holden for a maxim of Law, that it is not lawful for any man to diſturb the Miniſters of the King in the due execution of the Kings Writs, or Proceſs of Law. 8 E.2.tit. Execution 252.

Now beſides the Warrant of the Common Law, the Sheriff hath his Letters Patents of aſſiſtance, whereby the King commandeth, that all Archbiſhops, Biſhops, Dukes, Earls, Barons, Knights, Freemen, and all other of that County be to the Sheriff thereof in omnibus quæ ad officium illud pertinent, intendentes auxiliantes, & reſpondentes; ſo as no man Eccleſiaſtical or Temporal is exempted from this ſervice being above 15. and under 70. for ſo it is by conſtruction of Law.

Fleta li.2.ca.40. ¶ Et voille aſſaier de faire plevin.] By force of this clauſe he ought by the power of the County to make replevin, and it is no retourn for him to ſay, that the beaſts be in a Caſtle, &c. whereof you ſhall read more hereafter in this Chapter.

¶ Que le Roy pur le treſpaſſe & pur le diſpite face abater le Caſtel ou le Forcelet ſans recovery.] But this total proſtrating or demoliſhing of the Caſtle, &c. cannot be done upon the retourn of the Sheriff, but upon a ſuit on the Kings behalf, wherein the parties intereſſed may be called to anſwer, and upon judgment given againſt them Proces to be made to the Sheriff to proſtrate and demoliſh the Caſtle and Fortreſs, and ſo is the book that ſpeaks thereof to be intended.

Semaines Caſe. ubi ſup. fo. 93. a.

¶ De ſes avers, ou ſon gainage diſturbe.] For the Law doth ever favour tillage, and the husbandry of the Realm, as by this clauſe appeareth, and therefore gives the party grieved double damages.

¶ Et ſoit aſſavoir, que la ou le Viſcount dever' faire retorne del briefe le Roy au bailife, le Seignior del Caſtel, ou de forcelet, ou a auter a que retorne del briefe le Roy appent, ſi le bailife del franchiſe ne fait deliverance, &c. face le Viſcont ſon office ſans delay.] This doth give ſome light to the former branch, that if the beaſts be detained in a Caſtle or Fortreſs, the Sheriff muſt do his office without delay, that is, forthwith to replevy the beaſts; and if he ought to do it in this caſe of the franchiſe, the ſame he ought to do in the other caſe.

Regiſt. 83. It appeareth by the Regiſter, that if the Conſtable of the Caſtle upon a Mandat to him to make replevin, nihil inde curavit, or if he make no retourne, &c. at all, upon retourne hereof, a Non omittas ſhall be awarded, &c. F.N.B. 68. But ſuch retournes were permitted before this Act, but now by this Act the 47 E.3.33. Sheriff in that caſe ought preſently to enter, and make deliverance of the beaſts.

¶ Et per meſme le manner ſoit fait la deliverance per attachment de pleint fait ſans briefe & ſur meſme la paine.] Marleb. cap. 21. See the Statute of Marlebridge that provideth to the ſame effect, where you ſhall read more of this matter.

18 E.2.Aſſ.382. 1 E.3.14. 3 E.3.82. 8 E.3.427. 13 E.3. Juriſdict. 23. 15 E.3.ib.24. 24 E. 3.42. 47 E.3.6. 50 E.3.26. 6 H.4.9. 6 H.5. Juriſdiction 34. 35 H.6.30. ¶ Et ſi ceo ſoit en le Marches de Gales.] The Marches of Wales were the Commots, great Seignories, and Baronies in Wales, which were holden of the King in Chiefe, and out of every County of England: If any diſtreſs were driven into a Caſtle or Fortreſs in the Marches of Wales, and detained, a Writ ſhould be directed to the Sheriff of the County of England next adjoyning to the Caſtle or Fortreſs, where the beaſts ſo detained, to make replevy.

¶ Le Roy que eſt Soveraigne Seigniour ent fra doit.] At this time, viz. in 3 E.1. Lluellen was a Prince, or King of Wales, who held the ſame of the King of England as his ſuperiour Lord, and ought him liege, homage,

mage and fealty; and this is proved by our Act, viz. that the King of England was Superior dominus, i. Soveraigne Lord of the Kingdom or Principality of Wales.

King H.3. after Prince Edward had married Elianor daughter of Spain, perceiving him (to uſe the words of mine Author) Ita ſuapte natura tanta indole præditum, ut maturius ad res gerendas idoneum redderet, primo Walliæ principatu donavit, deinde Aquitaniæ & Hiberniæ præpoſuit; hinc natum, ut deinceps unuſquiſque Rex, qui ſecutus eſt, filium majorem natu principem Walliæ facere conſueverit. Polydor Virg. 37 H 3. pag. 306. Pl. Com. 126. b. Cambden in Flintſh. pag 525.

Lluellen Prince of Wales, by the incitation of David his brother, in the 9 year of E. 1. rebelled againſt their Soveraign Lord; in which rebellion Lluellen was ſlain, and the King brought all Wales under his ſubjection: The ſaid David being brother and heir of Lluellen for his Rebellion and Treaſon againſt his Soveraign Lord was after the death of his Brother at a Parliament holden in the 11 year of E. 1. attainted of high Treaſon; of whoſe judgment and execution hear what Fleta ſaith, Et unico malefactori plura poterunt infligi tormenta, prout meruerit, ſicut contigit de Davide principe Walliæ cum per recordum quinque judiciis mortalibus torquebatur, ſuis namque meritis exigentibus, detractus, ſuſpenſus, decollatus, diſmembratus fuit & combuſtus, cujus caput principali Civitati, quatuorque quarteria ad quatuor partes Regni in odium traditorum deferebantur ſuſpendenda. By reaſon whereof, where Wales was before holden of the King, as of his Soveraign Lord, as is aforeſaid, now King Edw. 1. became King of the ſame in poſſeſſion, which appeareth by the Statute of Snowdon in theſe words; Edwardus Dei gratia, &c. Divina providentia, (quæ in ſua diſpoſitione non fallitur) inter alia ſuæ diſpenſationis munera, quibus nos & Regnum noſtrum Angliæ decorari dignata eſt, terram Walliæ cum incolis ſuis prius nobis jure feodali ſubjectam, jam ſui gratia in proprietatis noſtræ dominium, obſtaculis quibuſcunque ceſſantibus, totaliter & cum integritate convertit, & Coronæ Regni prædict' tanquam partem corporis ejuſdem annexuit & univit: By which Act it further appeareth, that King E. 1. had conſidered, and peruſed all the Laws of Wales, and ſome of them he utterly abrogated, ſome of them he permitted, ſome he corrected, and ſome he newly added to the others. Rot. Parl. anno 11 E. 1. Fleta lib. 1. ca. 16. Rot. Parliam. anno 12 E. 1. Pl. Com. 126. that this is a Statute.

We have been, above our uſual manner, the more copious herein, becauſe our deſire is, that truth might prevail. See the Statutes of 27 H. 8. and 34. and 35 H. 8. concerning Wales. See the fourth part of the Inſtitutes, Cap. of the Courts, &c. of Wales. 27 H. 8. cap. 27. 34 & 35 H. 8.

CAP. XVIII.

PUr ceo que la common fine & amerciament de tout le County en Eyre des Juſtices pur faux judgements, ou pur auter treſpas, eſt aſſeſſe per Viſcount & Barretors des Counties malement, iſſint que la ſumme eſt meintfoits encrue, & les parcels auterment aſſeſſe que eſtre ne duiſſent, au damage du people, & pluſors foits ſont paies as Viſcounts & Barretors, que ne poient les acquitent, Purview eſt, & voit le Roy, que deſormes en Eyre des Juſtices devant eux devant lour departure ſoit tiel ſumme aſſeſſe per ſerement de chivalers & des probes homes, ſur touts yceux que eſcoter deveront, & les Juſtices facent mitter en les parcels en lour eſtreats que ils liverent al Eſchequer, & non pas la ſumme totall.

There were four miſchiefs, or rather grievances before this Act.

1. That this common fine and amerciament before Juſtices in Eyre was promiſcuouſly aſſeſſed by the Sheriff and Barretors of the County (for ſo our Act ſpeaketh) upon the faultleſs, as well as upon the faulty, and that after the Juſtices in Eyre were departed and gone.

2. That the ſame was many times by them increaſed.

3. That the parcels were otherwiſe then they ought to be, to the damage of the people.

4. That the ſaid amerciament was paid to the Sheriff, and Barretors, that could not acquit them, and therefore were often doubly charged.

The remedy by the body of the Act conſiſteth on two parts.

1. That ſuch ſums ſhall be aſſeſſed by the oath of Knights, and other honeſt men before the Juſtices in Eyre, upon ſuch as ought to pay the ſame.

2. That the Juſtices ſhall cauſe their parcels to be put in their eſtreats, which ſhall be delivered up in the Exchequer, and not the whole ſum.

Lib. 8. fo. 39. Greiſſlies caſe.

¶ Common fine & amerciament.] Here fine and amerciament are all one, for, as by this Act appeareth, it ought to be afferred, which a fine in his proper ſenſe ought not: This is parcel of the grẽn wax, ſo called, becauſe the eſtreats to the Sheriff for levying of them are ſealed with grẽn wax.

42 E. 3. cap. 9. 7 H. 4. cap. 3.

This common amerciament was a great grievance to the people, for that the faultleſs, as well as the faulty, were (as hath bẽn ſaid) thereby charged; and this was diſperdere innocentem cum delinquente, much like the abuſe of the Clark of the Market, who uſed to take a common fine, until it was remedied by Act of Parliament.

23 R. 2. cap. 4.

Greiſſlies caſe. ubi ſupra.

¶ Eſt aſſiſe.] That is, is afferred.

9 Eliz. Dier 263.

¶ Pur faux judgements.] The ſuitors in a baſe Court for falſe judgments ſhall be amerced, to the end they may be the more wary, and take better advice to do juſtice.

Lib. 8. fol. 36, 37. Firſt part of the Inſt. ſect. 701.

¶ Per Barretors.] For the ſignification of this word, ſee Paſch. 30 Eliz. the caſe of Barretry, and the firſt part of the Inſtitutes.

¶ Sur

¶ Sur touts ceux queux eſcoter deveront.] This is a Law of great equity, that ſuch as be faulty ſhould only be contributory to the payment of fine and amerciament. Mir. lib. 4. § de amerciaments levable.

¶ Al Eſchequer.] For that Court is the true center, into which all the Kings revenue and profit ought to fall, and by this means the toll ſhall come to the right mill. See hereafter cap. 45.

¶ Et non pas le totall.] But particularly, and by parcel, upon every one that ought to contribute. See hereafter cap. 45.

The Commons petitioned, that no common fine of any County from thenceforth ſhould be made, but that every man may be particularly puniſhed. Whereunto the Kings anſwer was, Rot. Parl. An. 17. E. 3. nu. 37.

The King willeth the ſame.

CAP. XIX.

EN droit des Vic', ou auters queux reſpoign' per lour maines al Eſchequer, & queux ount reſc' de les dets le Roy pier le Roy que ore eſt, ou les dets le Roy meſme avant ceux heures, & queux ne ount my acquites de ceo les dettours al Eſchequer: Purview eſt, que le Roy envoiera bones gentes per touts les counties, a oyer touts iceux, queux de ceo pleine ſe voudront, & a terminer iſſint la beſoign', que ceux que purront monſtrer que ils eient iſſint avant paies, a touts jours (ent) ferront quites, le quel que les viconts ou auters ſerront morts ou vives, en certaine forme que lour ſerr' baill'. Et ceux que iſſint naver' fait, ſilz ſoient en vies, ſerront punies grevement; & ſils ſoient morts, lour heires reſpoign', & ſoient charges de la dette. Et commaund le Roy, que les viconts, & les auters avantdits deſormes loialment acquitent les dettors a prochein accompt, puis que ils averont le dette reſceive: & donque ſoit le det allowe al Eſchequer, iſſint que jammes ne veign' en ſummon'. Et ſi le vic' auterment face, & de ceo ſoit attaint, cy rendra al plaintife le treble de ceo que il aver' de luy reſceive, & ſoit rent a le volunt le Roy. Et bien ſe garde cheſcun vicont, que il eit tiel reſceivor, pur que il voudra reſponder, car le Roy ſe prendra del tout as viſcont, & a lour heires. Et ſi auter que reſpoign' per ſa maine al Eſchequer le face, il rendra le treble al plaintife, & ſoit rent en meſme le manner. Et que les vic' facent tayles a touts iceux, queux paieront le det le Roy. Et que la ſummons deſchequer a touts les debtors, queux demander voudront

voudront la view, facent monſtrer ſans denier les a nulluy, & ceo ſans rien prender de lour, & ſans rien don', & que ne le fra, le Roy prendra a luy grevement.

W.1.cap.32. ¶ Detts le Roy.] Under this word [debitum] are all things due to the King comprehended; and not only debts in their proper ſenſe, but duties or things due, as rents, fines, iſſues, amerciaments, and other duties to the King received, or levied by the Sheriff: for Debt in his large ſenſe ſignifies, whatſoever any man doth owe, and debere dicitur, quia deeſt habere: debitori enim deeſt quod habet, cum ſit creditoris, maxime in caſu domini Regis.

¶ Lour heires reſponderont.] That is to be underſtood, quoad reſtitutionem, ſed non quoad pœnam; that is, for the civil, but not for the criminal part: For it is a Maxime in Law, Pœna ex delicto defuncti hæres teneri non debet: And again, In reſtitutionem, non in pœnam hæres ſuccedit.

¶ Au prochein account.] See for this the Statute of 51 H. 3. Statutum de Scaccario, and the Statute of W. 4. Vet. Magna Charta, fo. 33, 34.

¶ Et tiel receivor pur quoy il voet reſponder.] For the rule of this, and like cales of the King, is, Reſpondeat ſuperior.

¶ Et que la ſummons deſchequer a touts les debtors, queux demander voudront la view, facent monſtrer ſans denier les a nulluy, & ceo ſans rien prender de louer, & ſans rien don' &c.] That is, the Proces, together with the Eſtreats under the Seal of the Exchequer ſhall be ſhewed to the party preſently without denial, and freely without any thing to be given therefore, upon pain of grievous fine and impriſonment.
42 E.3.cap.9.
7 H.4. cap.3.

CAP. XX.

Cap.Itin. Vet. Mag.Char.155. PUrview eſt enſement de misfeaſors' en parkes, & en vivers, que ſi ul de ceo ſoit attainte per le ſuite del plaintife, ſoyent agardes bones & hautes amendes, ſolonque le manner del treſpaſs, & eit la priſonment de trois ans, & dillonque ſoit rent a le volunt le Roy, ſil ad de quoy poit eſtre rent, & lors trova bon ſuertie que il jammes ne misface. Et ſil neit dont poit eſtre iſſint rente, apres la priſonment de trois ans, trova meſme le ſuertie; & ſil ne puiſſe trover la ſuerty, forjur' la Realme. Et ſi ul de ceo rette ſoit fugitive, & neit terre, ne tenement ſuffiſant pur quoy il poit eſtre juſtifie, cicourt come le Roy avera

Rot. Clauſ. 17 H.3.m.9.

ceo

ceo trove per bone enqueſt, ſoit demaund de countie en countie. Et ſil ne veigne, ſoit utlage. Purview eſt enſement & accorde, que ſil ne ſuiſt dedeins an & le jour pur le treſpas fait, le Roy avera le ſuit, & ceux queux il trova de ceo rettes per bon enqueſt, ſerront punies per meſme le manner en touts points, ſicome deſuis eſt dit. Et ſi ul tiel misfeiſour ſoit attaint; quil eit priſe en ſes parkes beaſts domeſtes, ou auter choſe en le manner de robberie en venant, ou demurrant, ou en returnant, ſoit fait de luy common Ley, que affiert a celuy que eſt attaint de apert robberie & larceny, auxibien a la ſuit le Roy come dauter.

The cauſe of the making of this Statute was, that at the Common Law, the Plaintiff in an action of Treſpaſs, ſhould, as in other caſes, recover no other damages, but according to the quantity of the treſpaſs: which the plaintiff for treſpaſſes in Parks and Vivaries eſtæmed at a high rate; but the Country commonly found the damages very ſmall; for the Common Law gave no way to matters of pleaſure, (wherein moſt men do excæd) for that they brought no profit to the Common-wealth; and therefore it is not lawful for any man to erect a Park, Chaſe, or Warren, without a licence under the Great Seal of the King, who is pater patriæ, and the Head of the Common-wealth. 47 E.3.10.b. 9 H.6. Temps E.2. tit. act' ſur leſtat. Br.48. Li.11. fo.86,87.

¶ En Parks.] This is underſtood of a lawful Parke, whereunto three things are required: 1. A liberty, either by grant, as is aforeſaid, or by preſcription. 2. Incloſure by pale, wall, or hedge. And 3. beaſts ſavages of the Parke, for the which, and for the name, ſee the firſt part of the Inſtitutes. 1. Part of the Inſt.ſect.378.

But this Statute extendeth not to a nominative Park erected without lawful warrant, albeit it be called a Park; for this Statute is very penal, and therefore, as hath been ſaid, extendeth only to a lawful Parke. But he may have an action of Treſpaſs at the Common Law, quare clauſum fregit, & unam damam cepit, &c. 9 H.6.2. 18 H.6. 21. 19 H.6.6. 22 H.6.59. 34 H. 6.28,43. 10 H.7. 6.b. 12 H.8.10.a. 43 E.3.13,24. 38 E.3.10. 3 H.6. 55. 8 E.4.5.

Under this word Park, a Chaſe is not included.

* This Act extends not to a Forreſt in the hands of a ſubject, for the Law is ſo penal, as it ſhall not be taken by equity. See the Statutes of 13 R.2. cap.13. 19 H.7.cap.11. 14 H.8. cap.1.

¶ Misfeſauns.] In this Act is underſtood when a man either chaſeth in a Park, or by bow, or other engine endeavoureth to kill ſome of the game of the Park againſt the liberty and privilege of the Park, † and not when the Lord of a Park takes beaſts to agiſtment in his Park, and the owner breaks the Park, and takes them away without agreement for their paſture, for it is not within theſe words, De malefactoribus in Parcis, becauſe the treſpaſs concerneth not the liberty of the Park by chaſing of the game thereof, but a collateral treſpaſs, & ſic de ſimilibus. 3 Jac. c.13. 7 Jac. c.13. 21 Jac.c.28. 3 Car.cap.4. * 21 H.7.21. † 30 E.3.f.11. the Counteſs of Athols caſe.

¶ Vivers or Viviers.] This being a French word, ſignifieth Fiſh-ponds, or waters wherein fiſh are kept and nouriſhed; which being a matter of profit, and increaſe of victuals, any man may erect; and that in legal underſtanding it ſignifieth a Fiſh-pond, or waters where fiſh are kept, it appears by our ancient Authors, who wrote ſoon after this time: for Britton ſaith, Auxi de waſt fait per eux en parks & en vivers, de veniſon & de peſſon, & de conies, & auter deſtruction per eux faits en garrens: where he applieth Veniſon to Parks, Peſſon to Vivers, and Conies to Warrens. And Fleta agræth with him, for he ſaith, De feris & piſcibus poteſt fieri furtum: Ex benignitate tamen Brit.fo.34. Flet.li.2.ca.36.

men Principis conſtituitur, ne quis pro hujuſmodi furto vitam perdat, neque membra: Conſtitutio quidem talis eſt, proviſum eſt de malefactoribus in parcis & vivariis, quod ad ſectam querentis ſtatim adjudicentur emendæ, &c. and reciteth ſummarily this Act; and ſo it is taken before in this very Vide hic cap. 1. Parliament, Cap. 1. for fiſh ponds, or places where fiſh are kept, in theſe words, ne curge en auter parke, ne piſher en auter viver. And Bracton, who Bract. ll. 3. fo. 117. wrote a little before our Statute, coupleth them together in the charge given by the Juſtices in Eire, as our Statute doth, viz. De malefactoribus in parcis, & vivariis.

F.N.B. 88. H. It appeareth in the Regiſter, that there be divers forms of Writs for fiſhing in his piſcary: One Writ is, Quare in vivariis ſuis piſcatus fuit: Another, Quare in ſeparali piſcharia ipſius A. piſcatus fuit, &c.

Hic c. 1. Art. ſuper cart. cap. 18. 34 H. 6. 28. 21 H. 7. 21. F.N.B. 67. d. Therefore, as ſome have ſtretched this word too far, extending it to Warrens of Conies, which they might as well under the generality of the word [vivarium] extend it to Forreſts and Chaſes, (for they be loci ubi viventes cuſtodiuntur) whereof you have heard before; ſo ſome would reſtrain this word to Fiſh-ponds only that be in Parks, which is expreſly againſt both the letter and meaning of this Act, and the Fiſh-pond concerneth nothing the liberty and privilege of the Park, whereof alſo a touch hath been given before.

If a man committeth a treſpaſs in the Fiſh-pond, &c. of another, by taking and carrying away of water, he is no miſ-feaſor within this Statute; but if he let out the water, to the end to take fiſh, he is a miſfeaſor within this Statute, or he muſt fiſh there, if he be within the danger of this Law, for collateral treſpaſſes neither in Parks, nor Fiſh-ponds, &c. are within this Act.

And if one hunt in a Park, or Fiſh in a Pond, &c. though he kill no Deer, nor take any Fiſh, yet this is a miſ-feaſans within this Statute.

Regiſt. 111. b. 47 E. 3. 10. b. 5 H. 5. 1. 2 E. 4. 4. 9 H. 6. 2. F.N.B. 67. d. 87. a. 7 El. Dier 238. Lib. Intr. Raſt. 585. ¶ Per le ſuit del Plaintife.] This ſuit is intended in an Action of Treſpaſs, but the Writ muſt rehearſe, and be grounded upon this Statute; for it is a Maxim in the Common Law, that a Statute made in the affirmative, without any negative expreſſed or implyed, doth not take away the Common Law: And therefore in this caſe the Plaintiff may either have his remedy by the Common Law, or upon the Statute; If he bring his action of Treſpaſs generally without grounding the ſame upon the Statute, then he waiveth the benefit of the Statute, and taketh his remedy by the Common Law.

7 El. Dier 238. Regiſt. ubi ſup. The preſidents of this action are, Ad reſpondendum tam domino regi, quam parti querenti: And yet by the Regiſter, he may have this in his own name, and that may be gathered by ſome of our books, quoted before in this Section, in the margent.

¶ Soient agardes bones & hautes amends.] By theſe words [ſhall be awarded good and large amends] if the damages be too ſmall, the Court hath power to increaſe the damages, for this word [award] properly belongeth to the Court.

Dier ubi ſup. 15 El. Dier 323. 9 El. Dier 269. ¶ Et eit la priſonment de trois ans.] Both damages and impriſonment concern the plaintiff, and therefore the Kings pardon cannot diſpence with them: But the ranſome, the finding of ſurety, and the forejuring of the Realm are puniſhments exemplary, and concern the King, and therefore he may pardon the ſame.

¶ Et dillonque ſoit rent a le volunt le Roy.] And after ſhall make fine at the Kings pleaſure.

Vide hic cap. 4. See before for the expoſition of theſe words, Cap. 4.

¶ Et

¶ Et lors trova bone ſurety, que il jammes ne misface.] And then ſhall find good ſurety, that after he ſhall not misdo. Hil. 24 H. 7. Cor. Rege. Rot. 26.

This ſurety muſt be by recogniſance to the King, and not to the Plaintif; For example, the ſureties in 10 l. and the Defendant in 40 l. the condition muſt be general, and not reſtrained to that Park, or Vivary; for example, Quod ipſe in aliquibus parcis & vivariis contra formam Statuti prædict' amplius non malefaciet, &c. Tr. 13 H. 8. Cor. Rege. Rot. 480.

¶ Le Roy avera le ſute.] Either by Indictment, Information, or Action of Treſpaſs upon this Act.

¶ Forjure le Realme.] Fleta tranſlating this Act into Latin, ſaith, Abjurabit Regnum, and ſo doth the Regiſter; and Bracton uſeth the ſame word in caſe of Felony, Abjurabit Regnum. Fleta l. 1. cap. 36. Regiſt. 80. b. & fol. 111. b. Bracton.

And Britton uſeth our word, Forjure noſtre Realme, and fol. 25. in the ſame caſe he uſeth the word of abjuration. Brit. fol. 7. 25.

It ſignifieth in Law a perpetual baniſhment of the Defendant out of the Realm, which to obſerve he bindeth himſelf by oath, for ſo much is implied in this word forjure, or abjure, which properly ſignifieth to forſwear the Realm.

By the Common Law no man can be exiled, or baniſhed out of his Country, but in caſe of abjuration for felony: In all other caſes exile or baniſhment ought to be done by authority of Parliament (as here it is) and ſo are our books that ſpeak of exile or baniſhment to be underſtood. Mag. Chart. c. 29.

If ſuch a perſon, as hath forjured or abjured the Realm, return again, he ſhall be puniſhed at the Kings ſuit for the perjury, and high contempt.

¶ Beaſts domeſts.] This is underſtood of Kine, Oxen, Sheep, and other domeſtical beaſts within the Park.

If there be within the Park tame Deer, and miſdoers come to hunt and kill veniſon, and they kill a tame Deer, and carry it away, not knowing the ſame to be a tame Deer, this is no felony, for the intent maketh felony, and ſo are books to be intended. 10 E. 4. 15. b. Stamf. Pl. Cor. 25. b.

¶ En le manner de robbery.] In this Act robbery is taken in a large ſenſe; ſee the firſt part of the Inſtitutes. First part of the Inſtit. Sect. 501.

CAP. XXI.

EN droit des terres des heires deins age, queux ſont en le garde lour Seigniors: Purview eſt, que les Gardeins les gardent, & ſuſteinent, ſans deſtruction faire en tout rien: & que de tiels manners des Gardes ſoit fait en touts points ſolonque ceo que eſt conteigne en la graund Charter des franchiſes fait en temps le Roy H. pier le Roy que ore eſt, *Magna Charta cap.* 4, 5, & 6. Et que iſſint ſoit uſe deſormes, & per meſme le manner ſoient gardes les Archiveſqueries, Eveſqueries, Abbies, Eſgliſes, & dignities en temps de vacation. *Vide Artic. ſuper Chartas cap.* 18.

Mag. Char. c. 4, 5, 6. Artic. ſuper Chart. cap. 18.

This Act both to heirs in Ward, and the cuſtody of Archbiſhopricks, Biſhopricks, &c. during vacation, is but a confirmation of the Statute of Magna Charta, cap. 4, 5, 6. whereof there you may read at large.

CAP. XXII.

DES Heires maries deins age, ſans le gree de lour Gardeins, avant que ils averont paſſes lage de 14 ans, ſoit fait ſolonque ceo que eſt contenue en le purveiance de Merton cap. 6. Et de ceux que ſerront maries ſans le gree de lour gardeins puis que ils averont paſſes lage de 14 ans, le gardein eit le double value de ſon mariage, ſolonque le tenour de meſme le purveyance. Ouſter ceo ceux queux averont ſuſtret le mariage, rendant le droit value del mariage al Gardein pur le treſpaſſe, & jalemeins le Roy eit les amends ſolonque meſme le purveyance de celuy que le avera ſuſtret, Weſtm. 2. cap. 35. Et des heires females, puis que ils averont accomplies lage de 14 ans, & le ſeignior a que le mariage appent celes ne voudra marier, mes pur covetiſe de la terre, les voudra tener diſmarie. Purview eſt, que le Seignior ne poit aver ne tener per encheſon del mariage, les terres a tielx heires females ouſtre deux ans apres la terme de lavantdit 14 ans. Et ſi le Seignior deins les deux ans ne les marie, donques eiant els actions de recover lour heritage quietment ſans rien done pur le garde, ou pur la mariage. Et ſi els pur malice, ou per malveis counſel ne ſe voillent pur lour chiefe ſeigniors marier, ou els ne ſont diſparages, que les ſeigniors teignent la terre, & la heritage jeſque al age del Enfant male, ceſtaſcavoire, xxi ans, & ouſter jeſque ils eiant priſes le value del mariage.

Merton cap. 6. 21 E. 3. 19, 20. 27 H. 6. tit. gard. 118. 33 E. 3. Judgment 251.

The Statute of Merton provideth (as hath been ſaid) that if any Lay-man raviſh an heir, or detain him within the age of 14 years, that then the Gardien ſhould recover the value of the mariage againſt the Raviſher together with the Infant and his lands, and that the Defendant ſhould be impriſoned until he hath recompenced the Plaintif, &c. and further, until he hath ſatisfied the King for the Treſpaſs.

This Act doth firſt confirm the Statute of Merton, both concerning the raviſhment, and alſo concerning the forfeiture of mariage: And provideth further, that of them that be above the age of 14 years (over and above the double value of the mariage after the tender made according to the Statute of Merton to be recovered againſt the heir) the Gardien ſhall recover againſt the raviſher or detainer, the heir being maried, the full value thereof, and the King ſhall have alſo like amends according to the ſaid Act.

¶ Ceux que averont ſuſtret le mariage.] That is, the raviſher or detainer of the heir, and which married the heir after 14 and before 21.

This extendeth after 14 as well to Eccleſiaſtical, as Lay-perſons, which the Statute of Merton of a raviſhment before 14 doth not, but to Lay-men only.

Brit. fol. 169. 35 H. 6. 40. 35 H. 6 Gard. 71. 39 H. 6. c. 2. F.N.B. 43. d.

¶ Et des heires females.] The miſchief before this Act was, That whereas the heir female after her age of 14 years ought of right to be out of Ward,

Ward, the Lord for covetouſneſs would not marry them, but keep their lands at their will and pleaſure many years after their age of 14. againſt the which wrong this Statute provideth remedy, and was made for the reſtraint of the wrong, and in truth for the advantage of the Lords.

And here we are occaſioned to explain a place in Bracton, Fœmina 14 vel 15. annorum poteſt diſponere domui ſuæ, & habere Cone & Key, &c. Which word [Cone] is miſtaken in the impreſſion, for it ſhould be Cover & Key; and for Cover we uſe Cofer at this day, changing the v to an f, (which is uſual) ſo as at that age like a good huſwife ſhe is able to diſcern what things are in a houſhold fit to be kept in Cofer under lock and key; And the reaſon, wherefore, if the heir female of a Tenant by Knights ſervice be of the age of 14 years at the death of her Anceſter, ſhe ſhall not be in Ward, is, for that ſhe is viri potens, and can govern an houſhold, and may marry an husband, which may do Knights ſervice. Bract. l 2. f. 86. b.

If a man hath two daughters and dieth, the one above the age of 14. and the other within the age of 14. the Lord ſhall have Wardſhip of the body of her within age, and the moity of the land. See the firſt part of the Inſtitutes. Sect. 103, 104.

¶ Purview eſt que le Seignior.] 1. Every Lord is not within the purview of this Act. The heir female ſhall enter upon the Lord by poſteriority, becauſe her mariage belongs not unto him. 35 H. 6. 52.

2. If the Lord grant the mariage of the heir female to one, neither the grantor nor the grantee ſhall have two years, but the heir female ſhall enter at her age of 14. for the grantee cannot hold the land, and the grantor hath not the mariage. 35 H. 6. ubi ſupra; Gard 71.

3. So it is, if the King granteth the Wardſhip of the body of the heir female, ſhe ſhall ſue her livery at her age of fourteen, for neither the King nor his grantee can hold the land during the two years. 35 H. 6. ubi ſupra;

¶ Per 2. ans ouſter les 14. ans.] By this is underſtood that the Lord ſhall not have the 2 years, but where the heir female was within the age of 14. at the death of her Anceſter, and in Ward to the Lord. 35 H. 6. 52.

¶ Les terres.] Here a meſnalty that is holden is underſtood, though this Statute ſpeak of lands only.

¶ Per encheſon de mariage.] Ceſſante cauſa ceſſat effectus, and therefore if within the two years the Lord marieth the heir female, the heir female ſhall preſently enter, becauſe for that cauſe the two years are given. 35 H. 6. ubi ſupra;

If the Gardien marry the heir female after the age of 12 years, he ſhall not detain her land but until her age of 14. for the cauſe ceaſeth.

So it is if the Anceſter marieth his heir female, and dieth before ſhe attain to her age of 14. the land ſhall be in Ward, but the Lord ſhall not have the 2 years. F. N. B. 143. d.

And it is to be obſerved, that the Lord hath theſe two years by force of this Act, and not as gardien, becauſe his gardienſhip ended at her age of 14. and therefore a Writ of Dower doth not lie againſt him during thoſe two years, becauſe he holdeth not the land as gardien. 35 H. 6. 40. tit. Gard. 71. Inſtitutes, ubi ſupra.

And for that cauſe if the Lord tender to her a mariage, and ſhe within the two years marry her ſelf elſewhere, there lieth no forfeiture of mariage againſt her. 35 H. 6. Gard. 71.

¶ Et ſi els per malice ou malveis counſel ne ſoy voillent, &c.] Here the Act in hatred of contradiction and diſobedience, In odium contradictionis & diſobedientiæ, giveth to the Lord her lands until her age of 21, &c. but he holdeth not the ſame as gardien for the cauſe aforeſaid.

Fleta l. 1. cap. 12. **Of this whole Act** Fleta **saith thus,** De fœmellis 14 annos habentibus, quibus Domini sui maritagium competens medio tempore non obtulerint, taliter provisum est, quod negligentia Dominorum hujusmodi talibus hæredibus non sit damnosa, sed retenta hæreditate per duos annos post 14 annos, eam hæredibus sine contradictione reddere non contradicant; quod si infra ætatem competenter & palam contulerint, ipsæque maritari non consenserint, tunc usque ad ætatem masculinam hæreditatem talium impune poterint retinere ulterius quam per duos annos, pro fine maritagii, & in odium contradictionis & inobedientiæ.

¶ Ouster jesque ils eient prises le value.] **Here the profits are accounted to go in satisfaction of the value.** Vide le Statute de Merton, cap. 6.

If the Lord grant over the Wardship of the body only, neither grantor nor grantee shall take the advantage of this branch.

CAP. XXIII.

27 E. 3. stat. 2. c. 17 PUrview est ensement, que en City, Burgh, Ville, Faire, ne Marche, ne soit nul home forein, que soit de ceste Realme, distreine pur dette, dont il nest dettour ou pledge, & que le fra, serra grevousement punie, & sans delay soit le distresse deliver per les Bailifes du lieu, ou per auter Bailifes le Roy, si mestier soit.

The mischief before this Statute was, that divers Cities, the Cinque Ports, Boroughs, Towns Corporate, &c. within this Realm, did claim such a custom, that if any of one City, Society, or Merchant guild were indebted to any of another City, Society, or Merchant guild, if any other of the same City, Society, or Merchant guild that the debtor was of, came into the City, Society, or Merchant guild whereof the Creditor was, that he would charge such a forreiner for the debt of the other; which Customs are taken away by this Statute,

Fleta l. 2. cap. 56. Cap. Itin' in Vet. Mag. Cart. fol. 155 whereof Fleta teacheth in these words; Solent plerique homines in feriis, Mercatis, Civitatibus, Burgis, & feodis, & in jurisdictionibus suis aliquos transeuntes de feodis, vel jurisdictionibus suis nullatenus existentes ad querimoniam alicujus invenientis plegios de prosequendo impedire, distringere & gravare pro alieno debito, cujus non fuerit plegius nec debitor, imponentes ei quod erat tali debitori affinis, ut de una societate vel civitate, & hujusmodi & impune: propter quod provisum est, & inhibitum, ne quis aliquem forinsecum, dum plegius non fuerit nec debitor, pro aliquo debito alieno alicubi distringat, nec ad aliquam solutionem compellat, & qui fecerit graviter punietur.

Mirr. cap. 5. §. 4. **And it seemeth by the Mirror, treating of this Chapter, that such customs were against the Common Law, for there it is said,** Le point de tortiousnes distresses duist conteine le paine de roberie.

¶ Que soit de ceste realme.] **These are material words: For if a Merchant of** England **be either wrongfully imprisoned in the parts beyond the Sea, or have his merchandises or goods taken from him there wrongfully, he shall have the Kings Letter to the King, Prince, or Lord of that Territory, where the wrong is done, wherein the wrong is briefly recited, and request made,** Quod satisfactionem debitam ac justitiæ complementum fieri faciat, &c. **which Letters of divers forms appear in the** Register. **Now if he be destitute**

Regist. fol. 129. **of Justice there, then may he either have the Kings Writ** De arresto facto super bonis mercatorum alienigen' pro transgressione facta mercatoribus Angliæ, **or else according**

according to the Law of Marque, he ſhall have from the King Letters of Marque or repriſal under the great Seal, whereby he may redreſs himſelf of the goods of any of the men of that Territory taken within this Realm. And it is called the Law of Marque, of a Saxon word, which ſignifieth a limit or bound; becauſe ſeeing he cannot obtain Juſtice within the limits of the forein Country, he may be redreſſed of the men of that Country within the limits of his own; which appeareth by the Statute of 27 E. 3. in theſe words, "No "merchant ſtranger be impleaded for anothers treſpaſs, or for anothers debt, "whereof he is not debtor, pledge, nor mainperno'r. Provided always, that if "our liege people, Merchants, or other be endamaged by any Lords of ſtrange "Lands, or their Subjects, and the ſaid Lords (duly required) fail of right to "our ſaid Subjects, we ſhall have the Law of Marque, and of taking them "again, as hath been uſed in times paſt, without fraud or deceit. Wherein many things are worthy of obſervation; and (amongſt them) that this Law of Marque extends not only to Merchants, but to all other the Kings Subjects. And this Law of Marque in ſome Records is called the Kings right, Jus Regium, becauſe thereby he doth his Subjects right: As taking one example for many, In the Parliament holden in 11 H.4. John Kowley of Bridgwater in his Petition prayed the King that he might take Marque and Repriſal of all French-mens goods, (having no ſafe conduct of the King) to a certain value, for certain his Ships and other goods taken by the French in the time of the Truce: The anſwer of the King was, That upon ſuit made to the King, he ſhould have ſuch Letters requiſitory as are needful, and if the French King refuſe to do him right, the King will then ſhew his right. The Letter of Marque or Repriſal was anciently called Litera mercatoria, (becauſe moſt commonly Merchants obtained it) Litera mercatoria conceditur mercatoribus Anglis contra mercatores Heynon, Holland, Zealand, & Friſland. So as if thoſe words [which is of this Realm] had been omitted, and the Statute had been general in the negative, that no forein perſon ſhould be diſtrained for any debt, wherefore he is not debtor or pledge, this had taken away the antient Law of Marque or Repriſal; and therefore neceſſarily were added the ſaid words [which is of this Realm] whereby the Law of Marque or Repriſal is implied and ſaved.

27 E.3. Stat.2. cap.17. 4 H.5. c.7.

27 E.3. ubi ſup.

Rot. Parl. an. 11 H.4.

Norf. Tr. 33 E.1. Coram Rege Rot. 18.

Matth. Paris, fol. 966. b.

¶ Diſtreine pur dett.] At this time a Capias did not lie in an Action of Debt, but is given by the Statute of 25 E.3. but yet this Statute doth extend to the Capias, becauſe the Capias cometh in lieu of the Diſtreſs.

25 E.3. cap.7.

CAP.

CAP. XXIV.

PUrview eſt enſement, que nul Eſchetor, Viſcount, ne autre baiſife le Roy, per colour de ſon office, ſans eſpecial garrant, ou commandement, ou certaine authoritie que appent a ſon office, ne diſſeiſe nul home de ſon franktenement, ne de choſe que appent a ſon franktenement. Et ſi aſcun le fait, ſoit a le volunt le diſſeiſee, que le Roy de ſon office le face amend' a ſon pleint, ou que il eit la Common Ley per briefe de *Novel diſſeiſin.* Et celuy que ſerra de ceo attaint, rendr' les dammages a double a meſme le plaintife, & ſerra en le grevous mercie le Roy.

The miſchiefe before this Statute was, that Eſchaetors, Sheriffs, and other of the Kings Bailiffs, would, colore officii, ſeiſe into the Kings hands the freehold of the Subject, and thereby diſſeiſe the party, who thereupon to his intolerable vexation and delay, was put to his ſuit to the King by Petition, for which this Statute provideth remedy.

¶ Bailiffe le Roy.] Here by Bailiff is underſtood any other officer or miniſter of the Kings.

Pl. com. ¶ Per colour de ſon office.] Colore officii is ever taken in malam partem, as virtute officii is taken in bonam: And therefore this implieth a ſeiſure unduly made againſt Law.

And he may do it colore officii two manner of ways: Either when he hath no warrant at all, or when he hath a warrant, and doth not purſue it.

¶ Eſpecial warrant.] That is, to the Eſchaetor, &c. a Diem clauſit extremum, Mandamus, or any other of the Kings Writs, and office thereupon found for the King.

5 E.6. Br.55.tit. office, Li.8.f.168. Paris Stoughtons caſe. Art. ſuper cart. cap.19. 29 E.1. Stat. de Lincoln. Likewiſe to the Sheriff the Kings Writ, as an Habere facias ſeiſinam, or the like.

By this Act no ſeiſure can be made of lands or tenements into the Kings hands before office found, and ſo is the common experience at this day. See the Statute of Articuli ſuper cart. cap.19. & 29 E.1. leſtat. de Lincolne.

¶ Ou commandement.] Under theſe words are comprehended not only the Kings commandments by his Writs, as hath bèn ſaid, but alſo the commaudment of the Juſtices of the Kings Courts of Juſtice.

* 17 E.2. aſſ. 371. 32 E.1. ibid. 378. 4 E.2. diſſeiſ.10. 8 E.2. coron.390. 3 E.3. coron.347. & 300. 8 E.3.38. 15 E.3. extent 17 31 aſſ.28. 10 E.3. 47. 17 E.3.66. 22 aſſ. 96.81. 44 aſſ. 14. 43 E.3. 24. 26 aſſ. pl. 32. * A man was indicted before the Sheriff in his Tourn of felony, upon which indictment his lands and chattels were by the Sheriff ſeiſed for the King: afterward before Juſtices aſſigned he was acquited, and ſued out a Certiorari to remove the Record into the Kings Bench; which being removed, he prayed there to have reſtitution of his lands and goods; and it was reſolved that the Sheriff had not warrant to ſeiſe the lands, (before he were attainted) and therefore that he ſhould ſue his Aſſiſe againſt the Sheriff upon this Statute. It was further reſolved, that if the Sheriff ſeiſe lands by the commandment

7 H.4.41. 13 H.4.13. Stamf. pl. cor. 192, 193. Pl. com. Morgans caſe, 12, 13. 4 E.1. officium coronat. 1 R.3. cap. 3.

of

of the Juſtices, then is the Sheriff excuſed, though the Juſtices therein did err; and if he did it of his own head, then had the party remedy by an Aſſiſe; therefore the party was required to ſue out a Writ to the Juſtices to certifie if the ſeiſure were made by their commandment.

¶ Ou certain authoritie que appent a ſon office.] That is, Ex officio, without any Writ or commandment: For example, when the Eſchaetor taketh an office virtute officii, he may ſeiſe the land; for this, as our Act ſaith, doth belong to his office; but if of his own head (as hath bẽn ſaid) he ſeiſeth the land without any office, that ſeiſure is colore officii, and therefore the Aſſiſe upon this Statute is maintainable againſt him in that caſe, & ſic de cæteris. Stamf. prærog. Regis, 83,84.

¶ Per briefe de novel diſſeiſin.] This is put for an example, for he may have any other Writ, or Action againſt him.

This Statute is made in affirmance of that, which ought to have bẽn done by the Common Law, and is the foundation as well of our Book-caſes aboveſaid, as of the Acts of Parliament, that after have bẽn made concerning undue ſeiſures by Eſcheators, Sheriffs, and other Bailiffs, as Coroners, and the reſt. Bract. l.3. f.121.b. Brit. f.3,4. Flet l.1 c.18.25. Mirr. c.1. § 5.

And if it doth appear to the Court, that the Kings Officer doth ſeiſe for the King any lands without warrant againſt the Law, in an Action brought againſt the Officer, he ought not to have any aid of the King; Neither doth the Writ De Domino Rege inconſulto lie in that caſe, becauſe that which is done by him is void; and where the cauſe of aid faileth, there no aid is to be granted. It were againſt reaſon, that the King, who is the head of Juſtice, ſhould aid him in his wrong; and therefore this Act for doing of wrong in the Kings name, doth give the party grieved an Aſſiſe againſt him, wherein the plaintif ſhall recover his land, and double damages, and beſides the Kings Officer ſhall be in the grievous mercy of the King, for doing injury in his name to the ſubject. 28 E.3.94. Mortimers caſe. Ret. Parl. 8 R.2. nu.14 the Prior of Mountegues caſe adjudged in Parliament. 4 H.6. 29, 30.

Therefore in a real action, if the Eſchaetor (of whom this Statute ſpeaketh) be examined, and upon his examination ſaith generally, that he hath ſeiſed the lands in demand into the Kings hands; this is not good, and the Action ſhall proceed, for he muſt ſhew the cauſe of the ſeiſure, (as is implied in this Act) which cauſe, if it appear to be againſt the Law, the Judges of the Law ought to diſallow the ſame. 9 H.7.10. 30 aſſ. p.5.

CAP. XXV.

NUl miniſter le Roy, ne maintaine per luy, ne per auter, les plees, parols, ou beſoignes queux ſont en la Court le Roy, des terres, tenements, ou des auters choſes, pur aver part de ceo, ou auter profit per covenant fait. Et que le fra, ſoit punie a le volunt le Roy. *Vide Champerty* 11 *Ed.* 1.

¶ Nul miniſter le Roy.] Fleta in rehearſing this Statute, ſaith, Nullus miniſter Regis cujuſcunque fuerit officii, &c. and another Statute provideth againſt all others. Miniſter Regis was taken in this Kings time to extend to the Judges of the Realm; for in the caſe of Juſtice Heigham for a ſcandal, and reproachful words ſpoken unto him, the Record ſaith, Sicut honor Flet.lib.1. cap.30. Brit. fo.37.b. Art. ſuper cart. cap.11 20 H.6. 30,31. M. 33 & 34 E.1. Coram Rege. See hereafter the 29 & 35 Chapters.

honor & reverentia, quæ Ministris Domini Regis attribuuntur, ipsi Regi attribuuntur; ita dedecus & infamia, quæ Ministris Domini Regis inferuntur, ipsi Regi inferuntur: In which Record and many other of that time [Ministri Regis] extend to the Judges of the Realm, as well as to them, that have Ministerial offices.

¶ Ne mainteine, &c.] Of Maintenance shall be spoken in the exposition upon the 28 & 29 Chapters of this Parliament.

Regist. 183. 30 ass. p. 15. 19 R. 2. Champerty 15. 3 H. 6. 54. 8 E. 4. 13

¶ Queux sont en la Court.] By these words it is declared, that regularly Champerty is pendente placito, and therefore a feoffment after judgment is not within this Statute.

¶ En la Court le Roy.] That is, in some of the Kings Courts of Record.

¶ Pur aver part de ceo.] Here is Champerty forbidden by this Act: First, therefore it is to be seen what Champerty is; and secondly, whether it were not prohibited by the Common Law before this Act; and lastly, what was the cause of the making of the same.

Fleta l. 2. cap. 30. Britton fol. 37. 47 E. 3. 9. 31 H. 6. 9 F.N.B. 171. f. 33 E. 1. Vet. Mag. Char. fo. 9. & 111.

Champerty is derived from two Latin words, Campo & parte, and therefore Champerty is a bargain with the Demandant or Tenant, Plaintif or Defendant, to have part of the thing in suit, if he prevail therein, for maintenance of him in that suit; It is called Campi pars, because he shall have a part of the field or land, &c. in demand, In the Statute called Definitio conspirat', Champertors are called Campi participes, and are thus described, Campi participes sunt, qui per se vel per alios placita movent, vel moveri faciunt, & ea suis sumptibus prosequuntur, ad campi partem, vel pro parte lucri habend'.

Every Champerty is Maintenance, but every Maintenance is not Champerty, for Champerty is but a species of Maintenance, which is the genus.

It was an offence against the Common Law; for the rule of Law is, Culpa est se immiscere rei ad se non pertinenti. And, pendente lite nihil innovetur.

Bract. l. 3. fo. 117. Fleta lib. 1. ca. 20. Brit. ubi supra. Cap. Itineris. Vet. Mag. Chart. 152.

Bracton, who wrote before this Statute, rehearsing the Articles enquirable by the Justices in Eir, saith, De excessibus Vic', & aliorum balivorum, si quam litem suscitaverint, occasione habendi terras vel custodias, vel perquirendi denarios, vel alios profectus, per quod justitia & veritas occultetur, vel dilationem capiat; and Fleta agreeth with him, where it is said, Per quod justitia & veritas occultetur; It appeareth that the end of Champerty and Maintenance is to suppress Justice and Truth, or at least to work delay, and therefore it is malum in se, and against the Common Law.

Mirror cap. 1. § 5.

And the Mirror saith, En perjurie chiont, &c. touts ceux Ministers le Roy, que mainteinont faux actions, faux appeales, ou faux defences a escient.

11 H. 6. fo. 11.

An Action of Maintenance did lie at the Common Law, and if Maintenance in genere was against the Common Law, à fortiori Champerty, for that of all Maintenances is the worst.

8 H. 5. 8. 15 H. 7. 2 in Sub pœna.

And our Act and other Acts concerning Champerty prohibite Maintenance, and Champerty en le Court le Roy, yet an Action of Maintenance in the nature of an Action of Trespas doth lie in ancient demesne, and other base Courts at the Common Law.

11 H. 6. ubi supra.

As it is said in our Books, this Act and other Statutes concerning Champerty and Maintenance do give a greater punishment against them, that offended in Maintenance and Champerty then was at the Common Law; by this Act he shall be punished at the will of the King, i. by his Justices, so as Champerty is both malum in se, by the Common Law, and malum prohibitum, by this Act.

And for that the Kings Ministers or Officers within his Courts, were in place

place to do more miſchief therein to the ſubverting of Juſtice and truth then others, therefore this Act provideth only againſt the Kings Miniſters and Officers of his Courts.

Note it is provided by this Act that no Miniſter of the King ſhould maintain to have part, ſo that hereby it appeareth that it is no Champerty unleſs the ſtate, &c. be made for maintenance; Note the words of the Writ of Champerty be Aſſumpſit manutenend', or Manucepit, &c. But ſée after the 29 Chapter, ſome perſons prohibited to purchaſe at all pendente placito. Regiſt. 182. 4 E. 2. Champerty 12. 21 E. 2. 10, 52. 22 E. 3. 10. 30 aſſ. d. 15. 50 aſſ. 3. 32 E. 3. Champ. 6. 19 R. 2. ibid. 15.

¶ Ou auter profit.] * If the Tenant in a real Action grant a rent, common, or other profit apprender out of the land to maintain, &c. this is Champerty, and yet the rent, common, &c. is not in demand, but they are profits out of the land. 12 H. 4. 26. 13 H. 4. 16, 17. 8 E. 4. 1. 9 H. 7. 18. F.N.B. 172. Regiſt. Judic. 57. * F.N.B. 172. k.

¶ Ou auters choſes.] Within theſe words are included leaſes for years; and other goods and Chattels, debts and duties.

¶ Per covenant fait.] That is, by agrément, either by word or writing; for albeit in the common ſenſe a covenant is taken for an agrément by writing, yet conventio in his large ſenſe is taken (as here it is) for an agrément by writing, or by word. F.N.B. 171. l.

¶ Il ſerra puny a la volunt le Roy.] See before Cap. 4. 9, 10. and hereafter Cap. 26. 29.

This Act concerning Champerty is the foundation of all the Acts and Book Caſes that enſued.

Vide Vet. Mag. Chart. 11 E. 1. Stat. de Champerty. Artic. ſuper Chart. Cap. 11. 33 E. 1. Definitio conſpiratorum. 1 E. 2. cap. 14. 20 E. 3. Cap. 4. 1 R. 2. Cap. 4. And thus much for the underſtanding of this firſt Act which is enlarged by divers of the Acts aboveſaid.

CAP. XXVI.

ET que nul Viſcount, ne auter Miniſter le Roy ne preigne reward pur faire ſon office mes ſont paies de ceo que ilz purnont del Roy, & que la fra rendre le double al plaintife, & ſerra puny a la volunt le Roy. Cap. itineris Vet. Mag. Char. fo. 155. Marlb. ca. 19, 28. W. 1. ca. 3. 15.

¶ Miniſter le Roy.] Under theſe words, the Law beginning with Nul Viſcount, are underſtood Eſcheators, Coroners, Bailiffes, Gaolers, the Kings * Clerk of the Market, Aulnager, and other inferiour Miniſters and Officers of the King, whoſe offices do any way concern the adminiſtration or execution of Juſtice, or the common good of the Subject, or for the Kings ſervice; That none of the Kings Officers or Miniſters do take any reward for any matter touching their offices, but of the King. And ſome do hold that the Kings Heralds are within this Act, for that they are the Kings Miniſters, and were long before this Statute. Fleta li. 2. c. 18. & 39. 27 Aſſ. p. 14. Stamf. Pl. Coron. 49. a. * See the fourth part of the Inſtit. Cap. Court of the Clerk of the Market. Rot. Parl. 50 E. 3. nū. 11.

¶ Ne preigne reward pur faire ſon office.] See before Cap. 10. verſus finem. And Forteſcue ſaith, Quod Vicecomes jurabit ſuper ſancta Dei Evangelia inter articulos alios quod bene, fideliter, & indifferenter exercebit, W. 1. cap. 10. Fort. c. 24. fo. 28.

& faciet officium ſuum toto illo anno, neque aliquid recipiet cõlore, aut cauſa officii ſui ab aliquo alio, quam a Rege; And note it is not ſaid, that he ſhall take no reward generally, but no reward to do his office. Vide devant, Cap.10.

42 E.3.fol.5. 21H.7.17. The Sheriff, or any other Miniſter of the King cannot preſcribe to take a reward or fée for doing of his office: But the fée of 20 d. called War fée time out of mind taken by the Sheriff of every Priſoner that is acquitted, is not againſt this Statute or any other, for it is not taken for doing his office.

Mag.Chart.c.29. 28 E.1. cap.18. 36 E.3. cap. 15. This Statute is made in affirmance of a fundamental Maxime of the Common Law, which is Non capiant Vicecomites, vel alii Miniſtri Regis præmium, vel mercedem, vel aliquid pro officio ſuo faciendo, ſed tantum de feodis ſuis a Domino Rege ſint contenti.

See the Preface to the fourth part of my Reports, and the third part of the Inſtitutes, Cap. Of the high Cours of Parliament. Verb. It is a certain and true obſervation, that the alteration of any of thoſe Maximes of the Common Law is moſt dangerous, whereof you ſhall elſewhere read ſome inſtances; whereunto you may add this ancient Maxime affirmed by our Act of Parliament: For whiles Sheriffs, Eſcheators, Coroners, and other Miniſters of the King, whoſe offices any way did concern the adminiſtration or execution of Juſtice, or the good of the Common Weale, could take no fée at all for doing their office, but of the King, then had they no colour to exact any thing of the Subject, who knew, that they ought to take nothing of them.

See here cap.42. Vide 4 E.3.ca.10. 27 E 3. cap.4. 8 Eliz. cap.12. 23 H.6.cap.10. 34 H.8.cap. 28 Eliz.cap.4. 3 H.7. cap.12. 1 H.8. cap.7. 11 H.7.cap.4. 12 H.7. cap.5. 8 H 6.cap.5. 13 R.2.ca.4. &c. See before ca.4,9, &c. But when ſome Acts of Parliament changing the rule of the Common Law, gave to the ſaid Miniſters of the King fées in ſome particular caſes to be taken of the Subject, whereas before without any taking at all their office was done, now no office at all was done without taking: But at this day they can take no more for doing their office, then have bẽn ſince this Act allowed to them by Authority of Parliament.

This Statute doth add a greater penalty then the Common Law did give, for by this Act the Plaintiff ſhall recover his double damages, and beſides they ſhall be puniſhed at the will of the King, that is, by the Kings Juſtices, before whom the cauſe depends.

CAP. XXVII.

ET que nul Clerke de Juſtice, deſchetor, ou denquiror, nul rien ne preigne pur liverer chapiters, forpris ſolement Clerks des Juſtices errants en lour Eyres, & ceo ij s. & nient plus de cheſcun Wapentake, Hundred, ou Ville, que reſpoigne per xij, ou per vj. ſolonque ceo que auncientment fuit uſe. Et que auterment le fra, rendra le treble de ceo quel avera priſe, & perdra la ſervice de ſon Seigniour per un an.

Mirror ca.4. des Artic. des Eires, Bract.l.3. fo.115, 116. Brit.ca.2.fo. 9,10. Fleta li.1. c.20. Mirror c.2. § 13. See the fourth part of the Inſtitutes. Cap. Juſtices in Eire. For the better underſtanding of this Act, the manner of the proceeding by Juſtices in Eyre in their Eyre is to be known. Firſt, they had their authority and power by Writs, which Writs were at their Seſſions firſt read, Quibus auditis, quidam major eorum & diſcretior publice coram omnibus propoſuit quæ ſit cauſa adventus eorum, quæ ſit utilitas Itinerationis, & quæ commoditas, ſi pax obſervetur, &c. The charge being given, then were the Bayliffes of the Hundreds called, and their names enrolled, and every of them ſworn that out of every Hundred they ſhould chooſe four Knights, who forthwith ſhould come before the Juſtices, and ſhould be ſworn, that they ſhould chooſe twelve Knights, or free and lawful men, if Knights could not be found, &c. by whom the buſi-

neſs

neſs of the King the better, and with greater profit might be expedited; who being returned and ſworn, then ſhould be read to them the Chapters or Articles of their charge in writing indented, the one part whereof was delivered to them, and the other part remained with the Juſtices: And commandement was given to them by the Juſtices, that to every Chapter or Article they ſhould anſwer in their verdict ſeverally and by it ſelf, ſufficiently, diſtinctly, and openly.

Bract. ubi ſupra. Brit. cap. 3. fol. 10. Fleta lib. 1. cap. 20. Cap. Itin' Mag. Chart. fol. 150.

Capitula vero quæ illis duodecim proponenda ſunt, quandoque variantur, ſecundum varietatem temporum & locorum, & quandoque augentur, quandoque minuuntur.

But the ordinary Chapters or Articles, as it appeareth by Capitula Itineris, amounted to the number of 138. or thereabouts.

¶ Enquiror.] Preſently after the making of this Statute, there was added to the Chapters of the Eyre the effect of this Act to be inquired of, viz. De Clericis Juſticiariorum, Eſchaetorum, vel aliorum miniſtrorum capientibus denarios pro capitulis deliberand', &c. Where Enquirors or Inquiſitors are included under the name of Miniſtri.

Before this Statute, not only the Clerks of the Juſtices, but of Eſcheators and other Miniſters and Officers, that followed the Eyre, did uſe to write them, who would do it readily, ſufficiently, and with leſs charge, which was born by the twelve of every Hundred. This liberty that the Subject had, could not be reſtrained but by Act of Parliament, and therefore two things are hereby provided. 1. That no Clerks, &c. but only the Clerks of the Juſtices Errants in their Eyres, ſhould deliver the Chapters. 2. When this Act of Parliament had drawn it to the hands of the Clerks of the Juſtices in Eyre, it was neceſſary to ſet down in certain what they ſhould take, and that was but 2 s. of every Hundred, which they well deſerved, and the County thereby much eaſed.

¶ Pur liverer Chapters.] Capitula are derived a Capite, the higheſt and principal part of man, ſo when matters are diſtributed into principal Articles, they are ſaid to be digeſted into heads, which thereupon are called Capitula: what is intended here by Chapters, is declared before. Cap. Itin' ubi ſup.

¶ Que reſponde per 12. ou per 6.] For ſome Hundreds were ſo decayed, as they uſed to anſwer to the Chapters or Articles by 6. as before time had been anciently uſed.

Now how this Chapter could be underſtood without reading of the ancient Authors and old Records, let the indifferent Reader judge.

¶ Et que auterment le fra rendr' le treble value ceo que il aver priſe.] That is to ſay, If any Clerk, but the Clerks of the Juſtices in Eyre, did for reward deliver the Chapters, or if the Clerks of the Juſtices in Eyre for the delivery of them did take above 2 s. they ſhould render to them of whom they took treble ſo much as they received, and beſides loſe the ſervice of their Maſter for one year.

CAP. XXVIII.

ET que nul Clerke le Roy ne des Justices resceive disormes presentment del Esglise, dont plea ou conteke soit en la court le Roy, sans special conge le Roy, & ceo defende le Roy sur paine de perdre lesglise & son service. Et que nul Clerke de Justice, ne de Vicont, ne mainteine parties en quarels, ne besoignes queux sont en la court le Roy, ne fraud ne face pur common droiture delayer, ou disturber. Et si ull' le fait, il serra punie per la paine procheinment avantdit, ou per pluis grievous, si le trespasse le requiert.

1. This Act is divided into four branches, first, that no Clerk of the King, nor of any Justice receive any presentment to any Church, whereof any plea was depending in the Kings Court; The mischief before this Act was, that depending a suit for a Church in the Kings Court, the one party or the other would present the Chaplain of the King, or of some of the Judges, the more to countenance the one party, and discourage the other, and the mischief was the greater, for that at this time, Cum aliquis jus præsentandi non habens præsentaverit ad aliquam Ecclesiam, cujus præsentatus sit admissus (i. institutus) ipse qui verus est patronus per nullum aliud breve recuperare poterit advocationem suam quam per breve de recto.

Brit. fol. 37. b. W. 2. 13 E. 1. c. 3. 45 E. 3. Quare Imp. 139.

2. The second branch containeth the punishment, viz. that if he doth it without the Kings licence, he shall lose the Church, that is, that the Church shall be void as unto him, and that he shall lose his service, that is, that he be not after Chaplain to the King during one year. And at this time divers Ecclesiastical persons were not only Clerks in the Chancery, and other the Kings Courts, but also Stewards of Houshold to Noble men, Justices, and other great men.

Regist. fol. 58. F.N.B. 44. g.

3. The third branch is, that no Clerk of any Justice or Sheriffe shall maintain any party in any querels, or busines depending in the Kings Courts.

¶ Ne mainteine parties, &c.] Ne manuteneas, whereof cometh the word of art manutenentia, or manutentio, derived a manu & tenere: manus doth not only signifie power or help by word or countenance, but manus is herein used, for that most usually maintenance is done by the hand, either by delivery of money, or other reward, or by writing on the behalf of one of the parties in a suit depending.

It is in the Register thus coupled, manutenuit & sustentavit, and sustentare is properly to underprop any thing that is likely to fall.

Maintenance is an unlawful upholding of the Demandant or Plaintiff, Tenant or Defendant in a cause depending in suit, by word, writing, countenance, or deed,

This Maintenance (as hath been said) is malum in se, and against the Common Law, and that is notably proved by this Act, for hereby Maintenance is branded with this quality that thereby common right is delayed, or disturbed, and consequently against the Common Law.

And

And it is to be underſtood, that Manutenentia eſt duplex, that is to ſay, curialis, that is, in Courts of Juſtice, pendente placito, and of this the ſaid deſcription is given; and ruralis, that is, to ſtir up and maintain querels, that is, complaints, ſuits, and parts in the Country, other then their own, though the ſame depend not in plea, and this is puniſhed with great ſeverity, as by the Acts therefore provided appeareth. 1 E. 3. c. 14. 4 E. 3. c. 11. 20 E. 3. ca. 4. 1 R. 2. cap. 4.

Manutenentia curialis is divided into lawful and unlawful, and into general, and ſpecial, as ſhall be ſhewed in his proper place, viz. in the expoſition of the Act of 28 Ed. 1. Art. ſuper cart'. Art. ſuper cart. cap. 11.

¶ Nul Clerke de Juſtice ne de Viſcount.] Theſe were prohibited by this Act, becauſe they were in place, as before hath been ſaid, to do more miſchief, that is, by their maintenance to diſturb or delay common right. See cap. 24.

¶ Ne fraude ne face.] This fraud is worthy of the puniſhment inflicted by this Act, for that it tendeth to delay, or diſturb common right, that is, the due proceeding of Law.

¶ Pur common droit delayer ou diſturber.] Theſe words refer as well to maintenance, as to fraud.

4. The fourth branch is the puniſhment, which evidently appeareth by the Act.

CAP. XXIX.

PUrview eſt enſement, que ſi ul ſerjeant, counter, ou auter face ul maner de diſceit, ou de colluſion en la court le Roy, ou conſent de faire la, en diſceit de la court, pur engin' le court, ou la partie, & de ceo ſoit attaint, lors puis eit la priſonment dun an & un jour, & ne ſoit oye en la court le Roy a counter pur nulluy. Et ſi ceo ſoit auter que count', per meſme le manner eit la priſon dun an & dun jour a tout le meins. Et ſi le treſpas demande greinder paine, ſoit a volunt le Roy.

Before this Statute, in the irregular raigne of H. 3. Serjeants, Apprentices, Attorneys, Clerks of the Kings Courts, and others did practiſe and put in ure unlawful ſhifts and deviſes ſo cunningly contrived, (and ſpecially in the caſes of great men,) in deceit of the Kings Courts, as oftentimes the Judges of the ſame were by ſuch crafty and ſiniſter ſhifts and practiſes inveigled and beguiled, which was againſt the Common Law, and therefore this Act was made in affirmance of the Common Law; only it added a greater puniſhment: For hear what the Mirror ſaith of the Serjeant at Law, what his office and duty was: Cheſcun Serjeant counter eſt chargeable per ſerement que il ne maintenera, ne defendera tort ne faixime a ſon ſcient, eins guerpera ſon Client, a quel heure que il puit ſon tort a perceiver. Auxi que il ne mitter in court faux delaies, ne faux teſmoignes ne movera, ne profera, ne aux Corruptions, deceits, menſonges, ne aux fauxes lies ne conſentera, mes loialment maintenera le droit de ſon Client, que il ne chiet per follie, negligence, ne default de luy, ne Mirr. ca. 2. ſect. 3. des counters.

de

de reſonne que a luy appendroit de pronouncer & per meſterie, leding, deſpiſer, coup, polie, tenſon, manace, noiſe, ne villanie, ne diſturbera judge, party, ſerjeant, ne auter in court per quoy il diſturbe droit audience. In former times learned and grave Apprentices of Law came not to this ſtate and degrée per ambitum, but contrariwiſe when they were called thereunto, they aſſayed all means to avoid it, taking the degrée of an Apprentice to be the more permanent place: As taking one example for many; In the 5. year of H. 5. John Martine, William Babington, William Pole, William Weſtbury, John June, and Thomas Rolfe, ſix grave and famous Apprentices, having Writs delivered unto them to take the ſtate and degrée of Serjeants retornable in Michaelmas Terme, when all the means which they had uſed could not prevail, they at the return thereof in Chancery abſolutely refuſed the ſame; whereupon they were called into the Parliament then ſitting, and there charged to take the ſtate and degrée upon them, which in the end they did, and divers of them afterwards did worthily ſerve the King in the principal offices of the Law, as by our Ewks appeareth.

Rot. Parl. an. 5. H. 5.

1 Part of the Inſt. ſect.

¶ Serjeant counter.] Of his antiquity and calling ad ſtatum & gradum Servientis ad legem, I have ſpoken in another place. In ancient books he is called Counter, or Narrator of the count or declaration, being grounded upon the original Writ, the foundation of the ſuit: And Serjeant being a general word, Counter is added to it, to reſtrain it to a Serjeant at Law. Vide ca. 30. And until this day, when Serjeants proceed, every of them counteth, that is, reciteth a count in an Action appointed to him by the Judges before them.

Fleta lib. 2. cap. 21. Cuſt. de Norm. cap. 64. Mirr. ubi ſup.

Mirr. ubi ſupra.

The Mirror ſaith, Counters ſont Serjeants ſachants le ley del Realme, que ſervent al common del people a pronouncer & defender les actions en judgement, pur ceux que mitteront pur loier, &c.

¶ Ou auter.] This extendeth to Apprentices, Attornies, Clerks of Courts, or any other.

For the better underſtanding of this Act, it is neceſſary to ſet down the oath of the Serjeant at Law.

The Oath of the Serjeant at Law.

This Oath conſiſteth on four parts.

1. That he ſhall well and truly ſerve the Kings people, as one of the Serjeants of the Law.

2. That he ſhall truly counſel them, that he ſhall be retained with, after his cunning.

3. That he ſhall not defer, tract, or delay their cauſes willingly, for covetouſneſs of money, or other thing that may tend to his profit.

4. That he ſhall give due attendance accordingly.

The Oath of the Kings Serjeant at Law.

This Oath conſiſteth on ſix parts.

1. That he ſhall well and truly ſerve the King and his people, as one of the Kings Serjeants at Law.

2. That he ſhall truly counſel the King in his matters when he ſhall be called.

3. And duely and truly miniſter the Kings matters after the courſe of the Law, to his cunning.

4. He ſhall take no wages or fée of any man for any matters, where the King is party, againſt the King.

5. He ſhall as duly, as haſtily ſpéd ſuch matters, as any man ſhall have to do againſt the King in the Law, as he may lawfully do, without delay, or tarrying the party of his lawful Proces in that belongeth to him.

6. He ſhall be attendant to the Kings matters when he ſhall be called thereto.

The Apprentice at Law is not ſworn.

Con-

Concerning Attorneys, it is provided by the Statute of 4 H.4. cap.18. that they that be good and vertuous, learned, and of good fame, ſhall be received, and their names put into the roll, and ſhall be ſworn well and truly to ſerve in their offices, and ſpecially that they make no ſuit in a forein County. 4 H.4.cap.18. The Roll of Attorneys.

Newton, Chief Juſtice of the Court of Common Pleas, gave judgment of an Attorney of that Court, that had ſued out a Capias without an Original, that his name ſhould be drawn out of the Roll of Attorneys, and that he ſhould never be Attorney in this Court, nor in any other Court of the King, and that he ſhould not meddle in them in the Law; and to perform all this, he in thoſe days was ſworn on a book. And Newton ſaid to him, The King hereafter, when you ſhall have better grace, may pardon you by his Letters Patents, &c. and then you may be reſtored again. 20 H.6.fo.37.

¶ Face ul manner de diſceit.] This muſt be a miſ-feſans, and not a non-feſauns; for the words be Doe, i. faciat aliquam deceptionem ſeu colluſionem, &c. And to illuſtrate this matter, it is good to put ſome examples.

A Writ of Habere facias ſeiſinam did falſly recite a recovery in a real action, (where in truth there was no recovery at all) by colour of which Writ a man was put out of his freehold; *a* this was a colluſion in deceit of the Court, and the delinquent was by this Statute awarded to priſon, &c. *a* 17 E.3.51. F.N.B. 98. o. Hil. 16 E.1. in Banc.58. deceit, & colluſion ſur recovery,&c. Radulphus Paymel, &c. Hil. 22 E.1. Rot.70. in com. Banc. Allan Prats caſe.

b So it is to ſue out a Capias without an Original. *b* 20 H.6. 37.

c Alſo to bring a Præcipe againſt a poor man, knowing that he hath nothing in the land, of purpoſe to get the poſſeſſion of the land againſt the tenant who is in poſſeſſion. *c* 39 E.3. fo.15. 3 E.3.49,50. ſemble. 4 E.3.37. F.N.B.103. a.

d To procure an Attorney to appear for a man, and plead without warrant. *d* 41 E.3.1. Dier 20 El.361.

If a Serjeant, or an Apprentice of the Law in pleading a matter of fact illuable for his Client, alledge the ſame to be done at a town in ſuch a County, where in deed he knoweth there is no ſuch town, of purpoſe to delay Juſtice, & a enginer la court, this is a deceit within this Statute, and ſo it hath been holden.

e A.H. in Execution in the Counter of London, and becauſe that priſon is a ſtrait priſon, deviſed a ſhift (in deceit of the Court) to be removed from thence to the Fleet, and his device was this: He made an Obligation of xx l. to S. and cauſed the Obligation to be put in ſuit againſt himſelf in the name of S. and Judgment in the Court of Common Pleas was given againſt him upon his confeſſion, and procured a habeas corpus cum cauſa, and thereupon he was brought into the Court of Common Pleas, and there one in the name of S. prayed that he might be committed in execution to the Fleet; and the Court being beguiled, and knowing nothing of this deceit, and ſubtil and falſe practiſe, committed him to the Fleet, where S. never had ſuch a debt, nor ever was privie to any of the ſaid proceedings, A.H. and his counſellors, &c. are within this Statute. *e* Dier 8 El.249.

This Act is alſo in affirmance of the Common Law, for fraud and falſhood is againſt the Common Law: And therefore if the Client would have the Attorney to plead a falſe plea, he ought not to do it, for he may plead quod non ſum veraciter informatus, & ideo nullum reſponſum, &c. and that ſhall be entred into the roll to ſave him from damages in a Writ of Diſceit: And if an Attorney ought not wittingly do plead a falſe plea; a fortiori, a Serjeant or an Apprentice ought not to do the ſame. 10 E.4.9.b. F.N.B.98.i.

¶ Pur enginer (*ou engingner*) le court ou la partie.] That is, to beguile the Court, or the party, as by the examples before expreſſed have appeared.

And this artificial deceit is of all other the worſt, for hereby the matter is ſo tricked, ſhadowed, and heightned by colour of painted art, as thereby the Judges themſelves are abuſed and beguiled.

¶ Eit

¶ Eit la prisonment dun an, & ne soit oye en la court le Roy a counter pur nulluy.] This punishment extends as well to the Apprentice, as to the Serjeant.

¶ Soit a volunt le Roy.] These words are before expounded, Cap. 4. &c.

Tr. 18 E. 1. in Ba. Rot. 168. warr'.

William de Wasthill plaintiff against Matthew of the Exchequer, in an Action of Deceit, and declared, that where he had demised to the said Matthew certain lands in Wyrlingscote in the County of Worcester, and Blakgreve in the County of Warwick for the term of twelve years, and covenanted by fine to assure the same, the said Matthew other lands in the said fine fraudulently did insert, to have and to hold to him in fee, to the disherison of the plaintiff, &c. This matter was treated of, and examined by all the Judges of England, and the Treasurer and Barons of the Exchequer in the presence (saith the Record) of Henry de Lacy Earl of Lincoln, Master William de Bishop of Ely, and Robert of Tipetet, and others: and, to use the words of the Record, Super examinationem tam ipsius Matthæi quam recordorum, compertum est, quod hæc & alia perpetravit in deceptionem Curiæ, And thereupon Judgment is given, Quod committatur gaolæ ibidem moratur' per unum annum & unum diem secundum * statutum, & finis † cassetur. The quashing of the fine was by force of these words in this Statute, Et si le trespas demand greinder paine, soit a volunt le Roy, That is, of the Kings Court, where the plea dependeth.

* W. 1. cap. 29.
† Nota hoc.

Nota, Six Judges in the Court of Common Pleas. Mich. 33 E. 1.

Hæc est finalis concordia facta in curia domini Regis apud Westm' a die Sancti Michaelis in xv. dies, Anno regni Regis Edwardi filii Regis Henrici triceſimo tertio, coram Radulpho de Hengham, Willielmo de Bereford, Elia de Bekingham, Petro Malore, Willielmo Howard, & Lamberto de Trykingham Justic', & aliis domini regis fidelibus tunc ibi præsentibus, Inter Rogerum de Gamages, & Ceciliam uxorem ejus querentes, & Johannem filium Johannis de Ballingham deforc' de duabus mesuagiis, quinquaginta & duabus acris terræ, & una acra bosci, & dimid' un' acræ pasturæ, & medietate unius acræ prati, cum pertinentiis in Ballingham, unde placitum conventionis summonitum fuit inter eos in eadem Curia, scilicet quod prædictus R. recogn' prædicta tenementa cum pertinentiis esse jus ipsius Johannis. Et pro hac recognitione, fine & concordia, idem Johannes concessit prædictis Rogero & Ceciliæ prædicta tenementa cum pertinentiis, & illa eis reddidit in eadem curia. Habend' & tenend' eisdem Rogero & Ceciliæ, & hæredibus ipsius Ceciliæ de capitalibus dominis feodi illius per servitia quæ ad tenementa pertinent imperpetuum. Et præterea idem Johannes concessit pro se & hæredibus suis, quod ipsi warrant' eisdem Rogero & Ceciliæ, & hæredibus ipsius Ceciliæ, prædicta tenementa cum pertinentiis contra omnes homines imperpetuum. Et pro hac recognitione, redditione, warrant', fine & concordia iidem Rogerus & Cecilia dederunt prædicto Johanni viginti libr' sterlingorum.

Placit' convent'.

A render to Cecilie, which was not party to the conusans.

Hil. 7 E. 2. coram rege Rot. 93. Hereford.

This Fine being removed coram Rege; the heirs of John Ballingham, viz. Cecilie the wife of Roger Burghull, and her husband, and Sibyl and Cecilie daughters and heirs of Margerie, brought a Writ of Deceit, &c. for the avoiding of the Fine: Asserentes (saith the Record) prædictum finem minus rite esse levatum in deceptionem Curiæ regis, & in exhæredationem hæredum prædict', eo quod prædicta tenementa in prædict' fine contenta sunt de manerio de Ballingham, quod est de antiquo dominico coronæ Angliæ.

After-

Afterwards Roger and Cecilie his wife upon their default were ſevered, and Sibill and Cecilie ſued forth, and prayed that the fine for the cauſe aforeſaid, revocetur & penitus adnulletur, and the Court in this caſe reſolved thus, Et quia videtur Curiæ quod præd' Sibilla & Cecilia filiæ præd' Margeriæ ad breve ſuum præd' reſponder' non debent, eo quod præd' Johannes filius Johannis anteceſſor earundem, &c. ſi modo vixiſſet ad præd' finem adnulland' admitti non debuit: And yet the Record proceedeth for the puniſhment of the deceit to the Court in theſe words, Quæſitum eſt à præfatis Rogero de Gamages, & Cecilia uxore ejus, quid reſpondeant ad deceptionem & colluſionem Curiæ Domini Regis præd', &c. qui dicunt quod præd' tenementa in prædicto fine contenta ſunt ad communem legem placitabilia, & ſemper à tempore, quo non extat memoria hucuſque, &c. & non per breve clauſum de recto, &c. eo quod non ſunt de antiquo dominico, &c. & de hoc pon' ſe * ſuper Patriam, &c. Ideo ven' inde Jurata coram Rege à die Paſchæ in quindecim dies ubicunque, &c.

Vide 17 E. 3. 31. 30 E. 3. 22. 8 aſſ. 35 8 H. 6. 11. The Writ of Deceit is to be brought by the Lord for the adnulling and revoking of the fine, but the Court may puniſh the Deceit to the Court, at the ſuit of the party or his heirs.

* 17 E. 3. 31.

There is a Chapter added amongſt the Acts made in W. 2. Anno 13 E. 1. the laſt Chapter ſaving one in theſe words, Chauncellor, Treaſurer, Juſtices, ne nul del Councel le Roy, ne Clerk de la Chauncery, ne del Eſchequer, ne de Juſtice, ne dauter Miniſter, ne nul del hoſtle le Roy ne Clerk, ne lay, ne puit receiver Eſgliſe, ne advowſon de Eſgliſe, ne terre, ne tenement en fee per done, ne per achate, ne a farme ne a Champerty, ne en auter maner, tanque come le choſe eſt en plea devant nous, ou devant ul de nous Miniſtres, ne nul lower ent ſoit priſe, &c.

It is certain that this Chapter was not enacted in 13 E. 1. therefore it is to be ſæn when it was made a Law.

First, Fleta coupleth the 25 Chapter of this Parliament of W. 1. and the ſaid Chapter inſerted into W. 2. together, whereby it ſæmeth that it was made at this Parliament. Fleta ubi ſupra.

2. It is enacted in the French Tongue, as this Statute of W. 1. is, and all the reſt of the Statute of W. 2. is in Latine.

3. It hath the ſame phraſe and manner of penning that the 25. 28. and 29. Chapters of this Act of W. 1. hath.

4. The Statute of Champerty made in the 11 year of E. 1. (which was before the Statute of W. 2.) reciteth the effect of this Chapter, and the 29 Chapter of the Parliament of W. 1. for by the ſaid Act of 11 E. 1. it is recited, Come contenue ſoit in noſtre Eſtatute, que nul de noſtre Court preigne plea a Champerty per art ne per Engin'; which is a ſummary recital of the ſaid Act inſerted, as is aforeſaid, amongſt the Statutes of W. 2. for the Chancellor, Treaſurer, Juſtices, &c. are all of the Kings Courts, and it was fitter to rehearſe them generally, then by particular names. Stat. de Champ. anno 11 E. 1. Vet. Mag. Chart. f. 80. b.

And further, the ſaid Act of 11 E. 1. reciteth this 29 Chapter concerning Counters, Attornies, and Apprentices, and others, as Fleta doth, rather by way of explanation, then in the ſame words.

5. There is no one Act in W. 1. ſo general as this rehearſal in the 11 E. 1. is, for the 25 Chap. is nul miniſter, and this is nul generalment without limitation.

6. Mention is made in the recital of the ſaid Act of 11 E. 1. of Officers à hauts homes & auters de la terre, and in no Statute before that, any mention is made des hauts homes, that is, of the Chancellor, Treaſurer, the Kings Counſellors, &c. but only in this Act, which is inſerted amongſt the Statutes of W. 2.

7. And where by the 28 Chapter, proviſion was made againſt the Clerks of the King, and of the Juſtices, and by the 29 Chapter againſt Serjeants, Apprentices, Attornies, and others, it had bæn a great omiſſion and defect in the Makers of theſe Laws, to have left out the great Officers and Juſtices themſelves of the Kings Courts, and others recited in this Act inſerted in W. 2. againſt whom it was more neceſſary to provide, then againſt the other, becauſe they had more power to offend; And the Law had not ſæmed equal, if proviſion had not bæn made as well againſt the majorities, as the minorites, the great, as the ſmall.

8. The ſaid Act inſerted into W.2. inflicteth puniſhment (a la volunt le Roy) the Act of 11 E.1. doth add hereunto three years impriſonment, for dignitas perſonæ auget pœnam.

¶ En fee.] That is, in fée ſimple.

¶ Per done.] That is, by a gift in tail.

¶ Ne per achate.] That is, by purchaſe for mony or other conſideration.

30 Aſſ. 15. 30 E. 3. 3. ¶ Ne a farme.] That is, by leaſe for life, or for years.

¶ Ne a Champerty.] This hath béen explained before Chap. 25.

8 E. 4. 13. ¶ Ne en auter maner.] Theſe be general words, and forbid all purchaſes pendente placito by the perſons named in this Act; which is worthy of obſervation, to make a diverſity betwéen theſe perſons herein named, and others: Sée before Cap. 25. and note well the books there quoted.

¶ A volunt le Roy.] This is explained before Cap. 4. &c.

Vide W.2. cap. 49 Stat. de 33 E.1. De conſpiracy, Vet. Mag. Cart. fol. 111. b. ¶ Auxibien celuy que purchaſe come celuy que le fra.] Note the puniſhment lieth by this Act equally, as well upon the giver as the taker.

CAP. XXX.

Vide Mirror c.5. §4. Britton 37. b. ET pur ceo que multz des gents ſe pleignent des Serjeants, criours de fee, & les Marſhals des Juſtices en Eire, & [dauters Juſtices] quelles pernent a tort deniers de ceux queux recoveront ſeiſin del terre, ou queux gaignont lour quereles, & de fine levie, & des jurors, villes, priſoners, & des auters attaches en plees de la Corone, auterment que faire ne duiſſent, en mults des manners, & de ceo quil ad plus grand number de ceux que eſtre ne duiſt, per que le people eſt malement greve; le Roy defende, que ceſtes choſes ne ſoient diſformes faits. Et ſi ull' ſerjeant de fee le face, office ſoit priſe en le maine le Roy. Et ſi Marſhals des Juſtices le facent, ſoient punis grevement a la volunt le Roy. Et a touts les Plaintifes lun & lauter rendre le treble de ceo quels aver' priſe en cel maner.

Fleta, li.2. cap.32. de Virgatoribus. ¶ Serjeants.] Fleta rendreth theſe words thus, Virgatores ſervientes, they were called virgatores a virgis, of white rods, which they carried in their hands before the Juſtices in Eir and other Juſtices.

Fleta ubi ſupra. ¶ Criors de fee.] It appeareth by Fleta that theſe are comprehended under the general name of virgatores, and therefore carried rods alſo, he rendreth theſe words clamatores de feodo.

¶ Et

¶ Et les Marſhals des Juſtices.] Juſticiariorum Mareſchalli. Fleta ubi ſupra.

¶ Et de ceo que il ad pluis nombre que eſtre ne duiſt.] Hereby it appeareth, that the over-great number of theſe Wirgers, Criers, and Marſhals, was a means of extortion, or grievance of the people; and ſo it is in all other caſes of what profeſſion or place ſoever, Multitudo imperitorum perdidit Cariam: Beſides it taketh away the eſtimation and credit of the ſame.

CAP. XXXI.

DE ceux queux parnent outragious tolnet', enconter common uſage du Realme en la ville merchandie: Purview eſt, que ſi ull' le face en la ville le Roy meſme, que ſoit bail' a fee farme, le Roy prendra le franchiſe del marche en ſa maine. Et ſi ſoit auter ville, & ceo ſoit fait per le Seignior de meſme la ville, le Roy le fra per meſme le maner. Et ſil ſoit fait per le bailife ſans le commandement le Seignior, il rendra al Plaintife au tant pur le outragious priſe, come il avoit priſe de luy, ſil uſt import ſon tolne: & il avera priſon del xl jours. Des Citizens, & des Burgeſſes a que le Roy ou ſon pere ad grant murage pur lour villes encloſer, & que tiel murage parnent auterment que lour eſt grante, & de ceo ſoient attaintes: Purview eſt, que ils pardent cel grant de touts le temps que ſerra a vener, & ſerront en le grievous mercy le Roy. Mag. Chart. c. 30. W.2. cap. 25.

In the troubleſom and irregular raign of H. 3. outragious tolls were taken and uſurped in Cities, Boroughs, Towns, where Fairs and Markets were kept, to the great oppreſſion of the Kings Subjects, by reaſon whereof very many did refrain from the coming to Fairs and Markets, to the hinderance of the Common-wealth; for it hath ever been the policy and wiſdom of this Realm that Fairs and Markets, and ſpecially the Markets, be well furniſhed and frequented.

¶ Tolnet.] Toll. For the generality of the word, ſee Jehu Webs Caſe, Lib. 8. Magna Charta, and W. 2. whereof, and of the ſeveral kinds thereof, more ſhall be ſaid in the expoſition of the Statute of W. 2. for that here it is reſtrained, as hereafter appeareth. Lib. 8. fol. 46. Mag. Chart. ubi ſup. W.2. ubi ſup.

¶ Outragious.] That is, either where a reaſonable toll is due and exceſſive toll is taken, or where no toll at all is due, and yet toll is unjuſtly uſurped, for it is an outrage to do ſuch a common injury and wrong; ſometime it is called ſuperfluum, vel indebitum, vel injuſtum. Vide cap. 36. for this word. Cap. Itin. Vet. Mag. Chart.

No toll is due either on the part of the Lord, when he hath a Fair or Market, and not any toll; or on the part of the Market-man, who ought to be diſcharged of toll, or of the thing ſold that is not tollable. Fleta, lib. 2. c. 43. & li. 1. cap. 20.

¶ En la ville merchandie.] That is, in a City, Borough, or Town of Merchandize, where Fairs and open Markets are kept, for Merchandizing, and buying and ſelling. Bract. l. 2. 56, 57. *Forum, Nundinæ, Feria, Mercatus, Oppidum.*

This is intended of toll to the Fair or Market, whereof we will only speak in this place.

Toll to the Fair or Market, is a reasonable sum of money due to the owner of the Fair or Market, upon sale of things tollable within the Fair or Market, or for stallage, picage, or the like.

And this was at the first invented, that contracts might have good testimony, and be made openly; for of old time, privy or secret contracts were forbidden.

Cap. 1. § 3. Inter leges Inæ Regis. and the Mirror said truth, for the ancient Law was, Negotiator in vulgo si quid mercatus fuerit in eam rem testimonia habeto; nemo extra oppidum, nisi præsente præpositо aliisve fide dignis hominibus, quicquam emito. And another, Ne quis extra oppidum quid emat, In these Laws oppidum is taken for Fair or Market.

Inter leges Ethelstani Regis.

And again the same King, Si quis testatò rem aliquam mercatus fuerit, quam alius deinceps quisque suam esse contenderit, eam venditor præstet, atque in se recipiat, sive is servus sive ingenuus fuerit: die autem dominico nemo mercaturam facito; id quod si quis egerit, & ipsa merce, & 30 præterea solidis mulctator.

Here note by the way two things, first, the antiquity of the Law for changing of property according to these ancient Laws, and therefore to this day it is called, Apertum forum, or Apertus mercatus, an open Market, or Market overt; And secondly, that no Merchandizing should be on the Lords Day.

Inter leges Ethelredi Regis. Bonorum (sine fidejussione, & testimonio) emptio, aut permutatio non esto.

Inter leges Canuti Regis. Si quis testibus non adhibitis quicquam fuerit mercatus, idemque alter uti suum ipsius proprium vendicaret, emptori nulla fiat advocandi potestas, verum is Domino rem reddito, &c. Which I have recited for the confirmation of the Mirror, and for the honour of venerable antiquity.

Every one, that hath a Fair or Market, ought to have it by grant or prescription; If the King grant to a man a Fair or Market, and grant no toll, the Patentée shall have no toll, for toll being a matter of private for the benefit of the Lord is not incident to a Fair or Market so granted without a special grant, as it was adjudged in the case of Northampton, for such a Fair or Market is accounted a frée Fair or Market; and there it was also resolved, that after such a grant made the King cannot grant a toll to such a frée Fair or Market without quid pro quo, some proportionable benefit to the Subject. Lastly, it was there resolved, that if the toll granted with the Fair or Market be outragious or unreasonable, the grant of the toll is void, and that the same is a frée Market or Fair.

Mich. 39 & 40 Eliz. Cor. Rege.

Bract. l. 5. cap. 334. But if the King grant unto one a Fair or Market, he shall have without any grant a Court of Record, called a Court of Pipowdres, as incident thereunto, for that is for advancement and expedition of Justice, and for the supporting and maintenance of the Fair or Market; and so note a diversity betwéen the private and the publick.

17 E. 4. c. 2. 1 R. 3. c. 6. 7 E. 4. 23. 13 E. 4. 8. 7 H. 6. 18, 19. 13 H. 7. 19. b. Dier 3 Mar. 132, 133.

* 9 H. 6. fol. 45. tit. toll 7. * No toll for any thing tollable brought to the Fair or Market to be sold, shall be paid to the owner of the Fair or Market before the sale thereof, unless it be by custom time out of mind used, which custom none can challenge that claim the Fair or Market by grant within the time of memory, viz. since the raign of King R. 1. which is a point worthy of observation for the suppression of many outragious and unjust tolls incroached upon the subject to be punished within the purview of this Statute. So note, it is better to have a Fair by prescription, then by grant.

2 & 3 P. & M. c. 7. 31 Eliz. cap. 12. 9 H. 6. 45. Also if the Lord or owner of the Fair or Market do take toll of the seller of horses, &c. he is to be punished within this Statute, for he ought to take it of the buyer only. Vide 2 & 3 Ph. & Mar. & 31 Eliz. And so de communi jure no toll shall be paid for things brought to the Fair or Market, unless they be sold, and then toll to be taken of the buyer; but in ancient Fairs and Markets toll may be paid for the standing in the Fair or Market, though nothing be sold.

If the King or any of his Progenitors have granted to any to be diſcharged of this toll either generally or ſpecially, this grant is good to diſcharge him of all tolls to the Kings own Fairs or Markets, and of the tolls, which together with any Fair or Market have bæn granted after ſuch grant of diſcharge, but cannot diſcharge tolls formerly due to Subjects, either by grant or preſcription. Bract. l. 2. f. 57. 3 E. 3. aſſ. 445. 14 E. 3. Barr. 177. 16 E. 3. grant 53. 39 E. 3. 13. b. 41 E. 3. 24. 43 E. 3. 29. 44 E. 3. 20. F.N.B. 94. f. & 227.

Hereof Bracton ſaid, In omni libertate conceſſa, &c. erit prioritas præferenda. And again, Eſſe enim poterit libertas, ut ſi quis teneatur ad dandum ex ſervitute, ſicut theolonium & conſuetudines, ex libertate defendi poterit ad non dandum, Item ſi ex ſervitute teneatur quis ad non capiendum, ex libertate conceſſa capere poſſit conſuetudines & theolonia. Bract. fol. 56. a. & 57. b.

Tenants in ancient demeſne, for things coming of thoſe lands, ſhall pay no toll, becauſe at the beginning by their tenure they applied themſelves to the manurance and husbandry of the Kings demeans, and therefore for thoſe lands ſo holden, and all that came or renewed thereupon, they had the ſaid priviledge: But if ſuch a tenant be a common Merchant for buying and ſelling of wares or merchandiſes, that riſe not upon the manurance or husbandry of thoſe lands, he ſhall not have the priviledge for them, becauſe they are out of the reaſon of the priviledge of ancient demeſne, and the tenant in ancient demeſne ought rather to be a husbandman then a Merchant by his tenure, and ſo are the books to be intended. And herewith agræth an ancient Record, the effect whereof is, Quod hii qui clamant eſſe immunes de theolonio præſtando, ut tenentes in antiquo dominico, vel per chartas regum, non debent diſtringi pro aliquo theolonio pro merchandizis ad uſus ſuos proprios emptis; imo pro merchandizis qu' emerint vel vendiderint ut mercatores, debent ſolvere pro eis. 7 H. 4. 4. 9 H. 6. 25. F.N.B. 228. d. Reg. Hill. 14 E. 1. coram Rege Rot. 41. Devon.

King H. 3. did grant to the Abbot of L. and his ſucceſſors, Quod ipſi & homines ſui ſint quieti ab omni theolonio in omni foro & in omnibus nundinis, &c. And there it is reſolved, that the Abbot ſhould have this priviledge by force of this general grant in this manner, Quod ipſi & homines ſui ſint quieti a præſtatione theolonii in venditionibus & emptionibus pro ſuis neceſſariis, ut in victu, veſtitu, & ſimilibus, & hoc ad opus proprium ipſius Abbatis & hominum ſuorum. Rot. Parl. An. 18 E. 1. fol. 2. int. Abbatem loci ſancti Edw. & Balivos de Southampton: Mich. 2 E. 2. coram Rege pro mercato de Brimmingham acc'.

* The King ſhall not pay toll for any of his goods, and if any be taken, it is puniſhable within this Statute. * 35 H. 6. 57.

¶ Marche.] This word doth here include as well a Fair as a Market: for Forum, from whence Fair is derived, ſignifieth both: and a Mart is a great Fair holden every year, derived a Merce, becauſe merchandiſes and wares are thither abundantly brought: and Mercatus is derived a mercando.

¶ Prendra le franchiſe.] That is, ſhall ſeiſe the Franchiſe of the Fair or Market until it be redæmed by the owner: But this is intended upon an office to be found, for in Statutes incidents are ever ſupplied by intendment.

¶ Seignior de meſma la ville.] That is, the owner of the Fair or Market.

Fleta collecteth the effect of this former part of the Act in theſe words, Inhibitum eſt ne quis in villis Regis merchandiis, quæ dimiſſæ ſunt & commiſſæ ad feodi, firmam, indebita & injuſta capiat theolonia; quod ſi quis fecerit, extunc eo ipſo capiet Rex libertatem mercati in manum ſuam; eodem modo faciet Rex, licet in alterius villa præmiſſa fieri contigerit, ſi balivus hoc fecerit ſine voluntate Domini ſui, reddet tantum querenti, quantum cepiſſet balivus ab eo, ſi tolnetum aſportaſſet, & nihilominus habeat priſonam 40 dierum. Flet. l. 2. cap. 43. verſus finem.

Here I perſwade my ſelf ſome would deſire to know, what is due for toll to the Fair or Market: To which I anſwer, that I can tell what was due of old, and what was ordained in times paſt by ancient Kings to be paid: for the Mirror ſaith, Que Faires & Markets ſe fiſſent per lieus, & que achators de blee, & beaſts doneſſent toll a les bailifes des ſeigniours de markets, ou de fairs, ceſtaſcavoire Mirror c. 1. § 3.

maile

maile de dixe ſoux de biens, & de meynes, meynes, & de pluis, pluis al afferant, iſſint que nul toll paſſaſt un denier de un maner de merchandize, & ceſt tolle fuit trove pur teſtmoigner les contracts, car cheſcun privie contract fuit defendue. But at this day there is not one certain toll to the market taken, but if that which is taken be not reaſonable, it is puniſhable by this Statute, and what ſhall be deëmed in Law to be reaſonable, ſhall be judged, all circumſtances conſidered, by the Judges of the Law, if it come judicially before them.

Cap. Itin. ubi ſup. 3 E. 3. aſſ. 445. 13 H. 4. 17. a. Rot. pat. 12 E. 3. 1. part m. 30. Harwich. Rot. pat. 8 R. 2. 1. part. m. 35. Salop. m. 38. Yarmouth.

¶ Murage pur lour villes incloſer.] Muragium, à muro, as our Act doth explain it, to wall in, or incloſe with wall a Town, under which word is here included a City and Burghe.

Murage is a reaſonable toll to be taken of every Cart, Waine, Horſe laden coming to that Town, for the incloſing of that Town with walls of defence, for the ſafegard of the people in time of war, inſurrection, tumults, or uproares, and is due either by grant or by preſcription.

* Flet. l. 1. cap. 42 *a* 3 E. 3. & 13 H. 4 ubi ſup. Rot. pat. 1 E. 2. m. 17. de tranſeuntibus ſubtus pontem London. Rot. pat. 12 H. 6. m. 18. 1. part. Reg. 259. F. N. B. 227.

But if a wall be made, which is not defenſible, nor for ſafegard of the people, then ought not this toll to be paid, for the end of the grant or preſcription is not performed.

* He that hath Burghbote granted to him, is diſcharged of Murage granted afterwards: And although Murage be here particularly named, yet are grants of like nature within the purview of this Statute: as,

a Pontage.
b Paviage.
c Keyage, &c.

b Rot. pat. 10 E. 3 m. 32. Henley 2. part. Rot. Pat. 1 E. 2. 1. part. m. 1. Gainsburgh. F. N. B. 227. Regiſt. 259. *c* Rot. Pat. 1 E. 3. m. 10. *d* 22 aſſ. p. 34. 39 H. 6. 32. 20 E. 4 6. 2 H. 7. 11. *e* Bract. l. 2. f. 56. Lib. 3. fol. 117. Flet. li. 1. c. 20. Cap. Itin. ubi ſup.

¶ Pardent cel grant de touts temps.] Here the whole Franchiſe is forfeited, and ſo note a diverſity betwæn prendra la franchiſe, &c. and pardent cel graunt, the one implying a ſeiſure, as hath bæn ſaid, and the other a forfeiture for ever, *d* for it is a miſuſer, or abuſer: *e* And thereof Bracton ſaith, Hujuſmodi autem libertates, &c. ſtatim quaſi transferuntur, & quaſi poſſidentur, &c. donec amiſerit per abuſum, vel non uſum.

It is to be obſerved, that Conſuetudines hath ſeveral ſignifications in Law: for ſometime it ſignifieth Cuſtom, which doth include all manner of tolls: and therefore Bracton ſaith, De novis conſuetudinibus levatis ſive in terra, ſive in aqua, quis eas levavit, & ubi: So called, becauſe they colour things ſo taken under pretext of preſcription or cuſtom, where there is none at all: and therefore here they are called novæ conſuetudines, becauſe they were new tolls or exactions, under the viſard of antiquity.

Flet. l. 2. cap. 43.

Fleta renders this laſt part of this Chapter in theſe words: Item qui muragium ad villam claudendam gravius ceperint, quam conceſſum fuerit per cartam Regis, perdant extunc gratiam ſuæ conceſſionis, & graviter amercientur.

And preſently after the making of this Act, the effect thereof for Juſtices in Eir to enquire of it, was inſerted in the Chapters or Articles of the Eir in

Cap. Itin. ubi ſup.

theſe words: Item de hiis qui ceperunt ſuperflua vel indebita tolneta in civitatibus, burgis, vel alibi contra communem uſum Regni: Item de civibus & burgenſibus qui de muragio per Dominum Regem eis conceſſo, plus ceperunt quam facere deberent, ſecundum conceſſionem Domini Regis factam.

Mirr. cap. 5. § 4.

The Mirror ſaith, touching Murage, thus: Le point que voet que ceux que miſuſent murages les perdent ne fuit miſtier daver eſtre, car ley voet que cheſcun perdra ſon franchiſe que miſuſera: So as this Statute was made in that point for two purpoſes, viz. to affirm the Common Law, and to add a farther puniſhment, viz. to be grievouſly amerced.

CAP.

CAP. XXXII.

DE ceux queux parnent vitaile, ou nul riens al oeps le Roy a creance, ou a garriſon du chaſtell, ou aillors, & quant ils ont reſceive le payment al Exchequer, ou en Garderobe, ou aillors, deteignont le payment des creancers, a grand damage de eux, & en eſclander du Roy: Purview eſt, de ceux queux ont terres ou tenements, que maintenant ſoit ceo leve de lour terres ou de lour chateux, & paies as creancers, ove les damages queux ils averont ewe, & ſoient rentes pur le treſpas, & ſils nient terres ne tenements, ſoient en le priſon a la volunt le Roy. De ceux que pernont part des dets le Roy, ou auter louers pernent des creanſors le Roy, pur faire le payment des meſmes celles dets: Purview eſt, quils rendent le double, & ſoient punies grevement a la volunt le Roy. Et de ceux queux parnont chivals, ou charettes a faire le cariage le Roy, plus que meſtier ſerroit, & pernont louers pur (releſſer) ſes chivals, ou les charettes. Purview eſt, que ſi ul de la court le face, il ſerra grevement chaſtice per les Mareſchals, & ſi ceo ſoit fait hors de la court, (per un del court) ou per auter que de la court, & il (ent) ſoit attaint, il rendra le treble, & ſerra en le priſon le Roy per xl jours.

¶ De ceux queux parnent vitaile.] Concerning this point of Purveiance, we ſhall refer the Reader to Magna Chart. cap. 21. and ſhall ſay no more concerning that matter for three cauſes: 1. For the Text of this Law is evident. 2. For that there have been many excellent Statutes made concerning Purveyors, and Purveyance, in all to the number of 48. which are fully and plainly penned, one of them being a good expoſition and enlargement of another. 3. I find no Book Caſe, nor any Report for the expoſition either of this or of any of the ſaid Statutes, which (to ſay the truth) had more need of execution then expoſition: and therefore either the Purveyors have been ſo honeſt and juſt dealing men, as they ſeldom or never offended; or elſe they have had either ſo good friends, or ſo good hap, as their offences have been covered, or not imputed to them.

¶ De ceux queux parnent part des dets le Roy.] The miſchiefs before this Statute were, Firſt, that in the raign of King H. 3. the Kings Officers, that had charge of his treaſure and revenue, or their agents would, in reſpect of his troubles and expences, pretend to thoſe, to whom the King was indebted, that the Kings coffers were empty, and thereupon paying part to the Kings creditors, compounded for their whole debts, and took their Acquittances for the whole, and converted the reſidue to their own uſe.

The ſecond was, that ſometime they would craftily pay the whole, and take a great reward therefore, which was diſhonorable to the King, damage to the Creditors, and corrupt dealing in thoſe officers, or their agents.

This Act is general againſt all thoſe that take part of the Kings debts, or other reward of the Kings creditors, for payment of the ſame debts. This Law doth provide, that he that ſo doth, ſhall render double to the party grieved, and ſhall be puniſhed grievouſly at the Kings will.

This

This Act is in affirmance of the Common Law, only it addeth a greater punishment.

Rot. Parl. 50 E. 3. nu 17. Richard Lions Merchant of London, and Farmor of the Kings Customs and Subsidies was adjudged in Parliament for buying debts of divers men, due by the King, for small values, and for taking of bribes, to pay to the Kings creditors their due debts, to be imprisoned at the Kings will, and all his lands, tenements, and goods to be seised to the Kings use, which proveth it an offence or mildemeanor against the Common Law, for the Judgment was not given according to this Act.

Rot. Parl. 50 E. 3. nu. 34. John Lord Nevill, while he was one of the Kings Privy Councel, bought divers debts due by the King, namely, of the Lady of Ravensholme, and Simon Love Merchant, far under the value: The Lord Nevill being herewith charged in Parliament, confessed that he received of the said Lady 95 l. which she gave him of her own good will for the obtaining of her debt: for this (amongst others) he had Judgment of imprisonment at the Kings will, and that his offices, lands and goods should be seised into the Kings hands, and to make restitution to the Executors of the Lady (who then was deceased) of the said 95 l.

See for these words before, c. 19 Cap. Itin. Vet. Mag. Char. 155. ¶ Detts le Roy.] See for the exposition of these words before, Cap. 19. Cap. Itineris doth render this clause thus: Et similiter de hiis qui partem ceperunt debitorum Domini Regis, vel alia munera, ut de residuo creditoribus satisfacerent.

Mirror cap. 1. § 5. Cap. 5. § 4. To conclude this point, the Mirror saith, In perjurie vers le Roy pechent ceux ministers, queux rien ne paierent des dets le Roy, solonq; ceo que enjoyne lour fuit a faire, ou rendant part pur satisfaction del entier, & ne rendant au Roy le remnant.

¶ Et de ceux queux parnent chivals, &c. This Article concerns Purveyances, and Purveyors; and therefore for the causes before rehearsed, no more shall be said hereof in this place.

CAP.

CAP. XXXIII.

PUrview eſt, que nul Vicount ne ſuffer' Barretors, ne maintainours des parols en counties, nè Seneſchalles des graundes Seigniours, ne des auters (que ne ſoit Attorney ſon Seigniour) a [la] ſuit faire, ne render les judgments des Counties, ne pronouncer les judgements [ou aſſenter de faire les juſticements] ſil ne ſoit eſpecialment prie & requiſe de touts les ſuitors, & les attornies des ſuitors, queux ſerront a la journe. Et ſi ul le face, le Roy ſe prendra grievouſement al Vicount, & a luy.

Where by the Statute of Merton it is provided, that every frée ſuitor of the County, &c. might frèly make his Attorney to do theſe ſuits for him. Merton cap. 10. See there the expoſition thereof.

Now by colour hereof two miſchiefs did ariſe.

1. That Barretors and Maintainers of querels were by the Sheriff countenanced to be Attorneys to make ſuit, and amongſt the ſuitors to give judgements in the Counties, and ſometimes pronounce judgement in the name of the ſuitors.

2. That Stewards of great Lords, and of others, who had no Letters of Attorney, according to the ſaid Statute of Merton would do the like: This Act doth remedy both theſe miſchiefs, as by the Letter hereof appeareth.

¶ Barretors.] For the word and ſenſe thereof, ſée Lib.8. fol.36. in the caſe of Barretry. Li.8. fo.36. in the caſe of barretry. See the firſt part of the Inſt.701.ſect.

¶ En Counties.] That is, in the County Court, for there the ſuitors be Judges.

¶ Juſticements.] That is, all things belonging to Juſtice.

¶ A la journe.] That is, at the Court.

CAP. XXXIV.

PUr ceo que pluſors ſont ſovent troves in counte controvours des novelles, dont diſcord, ou manner de diſcord ad eſtre ſovent enter le Roy & ſon people, ou [aſcuns de] les hautes homes de ſon Roialme: Defendu eſt pur le damage que ad eſtre, & que uncore ent purra avenier, que deſormes nulle ne ſoit cy harde de dire, ne de counter nulles faux novelles, ou controvor, dont diſcord, ou manner de diſcord, ou eſclaunder puit ſurdre

entre le Roy & ſon people, ou les hautes home de ſon Roialme. Et qui le fra ſoit pris, & detenus in priſon jeſques a tant que il eit trove en court celuy dont la parol ſerra move. 2 *R.*2. *Cap.* 5.

The offences, viz. falſe repoꝛts and news puniſhable by this Law are foꝛbidden by the Law of God:

Exodus 23. 1. Thou ſhalt not have to do with any falſe report, neither ſhalt thou put thy hand to the wicked to be an unrighteous witneſs.

Foꝛ they which gladly hear falſe Repoꝛts and News, will be alſo as ready to publiſh them.

Ep. Jude. ver. 8. ver. 10. Exod. 22. 28. Againſt thoſe that deſpiſe Rulers, and ſpeak evil of thoſe that be in authoꝛity, and againſt thoſe that ſpeak evil of thoſe things which they know not: Judicibus non detrahes, & principi populi non maledices: Thou ſhalt not raile of the Judges, noꝛ ſpeak evil of the Ruler of the people.

Befoꝛe this Statute, in the raigne of King H. 3. two kind of perſons were Authoꝛs of great diſcoꝛd and ſcandal in two ſeveral degrées; firſt, men that did raiſe and imagine out of their own heads, falſe bꝛuits and rumours, and others that repoꝛted and ſpꝛead the ſame, whereby diſcoꝛd and ſcandal was oftentimes ſo kindled, ſometime betwéen the King and his Commons, and other times betwéen the King and his Nobles, the great men of the Realm, as they wꝛought pꝛivy diſcontentment, that pꝛoduced publick diſcoꝛd and ſcandal, whereof our Act ſpeaketh; which ſcandal and diſcoꝛd appeared in many Parliaments betwéen the King and his Commons, and betwéen the King and his Loꝛds of Parliament, and eſpecially in thoſe two Parliaments, the one in 21 H. 3. when Magna Charta was confirmed, and the other in 42 H. 3. holden at Oxford, which in Stoꝛy is called Inſanum Parliamentum; And this diſcoꝛd and ſcandal did oftentimes in the raign of that King bꝛeak out into fearful and bloody Wars and Rebellions accoꝛding to that old obſervation, Improbi rumores diſſipati ſunt rebellionis prodromi, which fully appear in our Hiſtoꝛies warranted by good Recoꝛd, and is implied in this Act in theſe woꝛds; "Foꝛaſmuch as there hath béen "oftentimes found Deviſoꝛs and Repoꝛters of rumoꝛs, &c. whereby diſcoꝛd hath "many times ariſen betwéen the King (meaning H. 3.) and his people, oꝛ the "great men of the Realm. And amongſt all thoſe rebellions in thoſe days, thoſe at Lewes in Suſſex and Eveſham in Worceſterſhire were moſt fearful, bloody, and dangerous, foꝛ at Lewes, the King himſelf manfully fighting, confoſſo ex utroque latere equo capitur cum Richardo Rege Almanorum fratre ſuo, & Edovardo principe filio, &c. And at Eveſham, Simon Mountford Earl of Leiceſter (our Engliſh Cataline) inſtruit aciem impedimentis ex acie remotis, ac in fronte aciei ponit Henricum Regem, quem ſecum captivum ducebat, atque ſuis armis induit, ut ſi fortuna adverſa ſit, dum ille imperatoris perſonam gerens ab hoſte petitur, ipſe interim fuga ſaluti conſulere poſſit: inſtruuntur contra & hoſtes & animis & viribus ſuperiores: committitur utrinque pugna, quæ aliquandiu anceps ſtetit, Henricus inter primos hoſtium ictus non pugnat, ſed Regem Henricum clamando indicat, quod ei ſaluti fuit, &c. Quod ubi Simon animadvertit, ſuos cohortans in medios hoſtes prorumpit, qui a multitudine circumventus præliando occiditur cum Henrico filio.

Polydor Virgil. lib. 16. pag 312. anno Dom. 1264, 1265. 48 & 49 H. 3.

King E. 1. finding by dangerous experience the woful effects of ſuch falſe rumoꝛs and repoꝛts, as is abovelaid, and knowing that the State of every King ſtood moꝛe aſſured by the hearty and inward love of the Subject towards their Soveraign, then by the dꝛead and fear of ſevere and rigoꝛous Laws, did therefoꝛe make this Law foꝛ redꝛeſs both foꝛ the deviſing and ſpꝛeading of ſuch falſe rumours and bꝛuits in all mild and temperate manner, both foꝛ the ſtile and the puniſhment, rather leaving the ſame to the cenſure of the Common Law, (which all men willingly obey) then by inflicting any new deviſed puniſhment, which moderation of our King, leaving the puniſhment to fine and impꝛiſonment,

ment, was the greater, for that the ancient Law of England before the Conqueſt was much more ſevere and rigorous, as by a few examples ſhall appear.

Qui falſi rumoris in vulgus ſparſi author fuiſſe deprehendetur, leviori aliqua pœna non mulctator, verum lingua ei præciditor, ni is eam integra capitis ſui æſtimatione data redemerit. Int' leges Aluredi Regis. cap. 28. Edgari cap. 4.

Si quis alium rumoribus diſſipatis improba voce lacerarit, quam ob rem, aut corpori ejus damnum inferatura, aut de fortunis imminuatur aliquid, tum ſi alter auditiones tanquam falſas refellere & coarguere poterit, aut is linguam data capitis æſtimatione redimito, aut ei lingua præciditor. Inter leges Edgari Regis. & inter leges Canuti Regis.

¶ En Counte.] That is, in the Country or Realm.

¶ Controvors.] That is, Deviſors or Inventors of their own head.

¶ Diſcord.] Diſcordia. That is, diſſentio cordium, diſſention of hearts. This grew (as hath bæn ſaid) to ſuch an height in the raign of H. 3. as that of the Philoſophical Poet might well be applied to it: (which before is remembred.)

Impius hæc tam culta novalia miles habebit?
Barbarus has ſegetes? en quo diſcordia cives
Perduxit miſeros! —— Virgil.

Diſcordes quaſi duo habentes corda.

¶ Ou manner de diſcord.] That is, Latens odium, privy hatred or diſcontentment, which is occaſion of diſcord, and whereby men become male-contents.

¶ Defendu eſt pur le damage que ad eſtre.] This damage or danger you have partly heard before.

¶ De dire, de counter, ou controvor.] Two manner of perſons are hereby prohibited, the firſt, thoſe that tell, ſpread or report falſe and feigned bruits and rumours under theſe words, Dire ou counter; And ſecondly, ſuch as deviſe or invent of their own head the ſame under this word Controvor: Now the perſons being deſcribed, this Statute doth ſet down generally what thoſe bruits and rumours ſhould be.

¶ Faux novels, dont diſcord, ou maner de diſcord ou diſlaunder poet ſurder enter le Roy, & ſon people ou les hauts homes de ſon Realme.] Of theſe falſe news, that is, falſe bruits or rumours, there be five kinds within this Act.

1. Firſt, if they be againſt the King, whereby diſcord or ſcandal may ariſe betwæn the King and his Commons, ſignified here by people.
2. Againſt the Commons, whereby diſcord or ſcandal may be moved betwæn them and the King.
3. Thirdly, againſt the King, whereby diſcord or ſcandal may grow betwæn the King and the Pæers, or Lords and Nobles of the Realm, ſignified here by Les hautes homes de ſon Realme.
4. Fourthly, againſt the Pæers, or Lords, and Nobles of the Realm, whereby diſcord or ſlander may happen betwæn them and the King.
5. Laſtly, whereby diſcord or ſcandal may ariſe betwæn the King, his Lords and Commons.

Quod narratores rumorum qui cedere poſſunt ad timorem, & tremorem populi, & in dedecus Regis & Regni, capiantur, & in carcere detineantur, &c. Tr. 19 E. 2. rot. 15. Coram Rege.

By this Record it appeareth of what quality the rumors muſt be.

By Commiſſions of Oyer and Terminer power is given to enquire, De illicitis verborum propalationibus; and to puniſh the ſame.

Britton fol.33. Britton ſpeaketh of both theſe kind of offenders, viz. the Deviſor, and the Reporter, in theſe words, De ceux que trovont, & content menſoynes del Roy, &c.

Fleta li.2.ca.1. And Fleta ſaith, Sunt etiam quædam atroces injuriæ, quæ priſonam voluntariam inducunt, ſicut de inventoribus malorum rumorum, unde pax poſſit exterminari.

5 R.2.ca.6. 1 E.6. c.12. 1 Mar.cap. The Statute of 5 R. 2. puniſhed ſeditious rumors in an high degree, but that is repealed by 1 E.6. & 1 Mar.

17 R.2.cap.8. 13 H.4.ca.7. 5 Mar. Dier 155. Oldnolles caſe. It was reſolved by all the Juſtices, that horrible and ſlanderous words ſpoken of Queen Mary, were within this Statute and puniſhable hereby, and not by the Statutes of 2 R.2. cap.5. nor 12 R.2. cap.11. for the King or Queen is an exempt perſon, and not included within theſe words, [Les hauts, ou grand homes, ou Nobles, &c.]

Cicero pro Cluentio. Some ſay that Rumores dicuntur a ruendo, quia inducunt ruinam; and true it is that another ſaith, Ut mare, quod ſua natura tranquillum eſt, ventorum vi agitatur; ſic populus ſua ſponte placatus, hominum ſeditioſorum vocibus, ut violentiſſimis tempeſtatibus, attollitur.

Dier fo. 13 H.7. Keylway 28,29. F.N.B 42.g. 2 R.3.9. But it is to be underſtood, that albeit this Statute, and the ſaid Act of 2 R.2. be general in the negative; yet do they not extend to all manner of falſe news, or horrible and falſe ſcandals and lies, &c. for they extend only to extrajudicial ſlanders, &c. And therefore if any man bring an appeal of murder, robbery, or other felony againſt any of the Peers or Nobles of the Realm, &c. and charge them with murder, robbery, or felony, albeit the charge be falſe, yet ſhall they have no Action De ſcandalis magnat', neither at the Common Law, nor upon either of theſe Statutes for the bringing of his Action, nor for affirming the ſame to his Counſel, Attorney, or Curſiter for the framing of his Writ, or for ſpeaking the ſame in evidence to a Jury, or for uſing of thoſe words for the neceſſary commencement or proſecution of his Action judicially; and ſo it is in an Action of Forger of falſe Deeds, or any other Action whatſoever: for it is a Maxim in Law, Que home ne ſerra puny pur ſuer des briefes en Court le Roy, ſoit il a droit ou a tort; And the reaſon thereof is, that men ſhould not be deterred to take their remedy by due courſe of Law; and therefore the Statutes never intended to prohibit the ſuing out of the Kings Writs, and the proceeding thereupon; And ſo it is, if in the Star-chamber a Peer of the Realm be charged with forgery, perjury, or the like; But if in the bill the Plaintiff chargeth him with felony, or any other offence not examinable in that Court, that ſlander is within theſe Statutes, for that the Plaintiff purſueth not his charge in any judicial courſe, ſeeing the Court hath no juriſdiction of the ſame, and ſo hath it been adjudged.

F.N.B.41.g. 22 E.3.15. 43 E.3. 20. tit. faux judgment 10. 43 Aſſ 40. 2 R.3.9. 13 H.7. Keylwey 28,29.

¶ Soit priſe & detenus en priſon jeſque a taunt que il eit trove en court celuy dont le parol ſerra move.] It hath appeared before, that by the body of the Act not only the tellers and reporters of ſuch falſe news, but the deviſors and inventors thereof are prohibited: but no puniſhment is inflicted by this Act upon the deviſor or inventor, for he is left to the Common Law to be puniſhed by fine and impriſonment according to the quality and quantity of the offence, which is aggravated in reſpect that it is prohibited by this Act of Parliament.

Deuter.cap.17. And the Law is grounded upon the Law of God in this point, Non maledices principi populi.

Eccleſiaſtes c.10. May, in the Kings caſe the ſecret cogitation of the heart is prohibited, In cogitatione tua Regni ne detrahas: and the ſcandals of great men are likewiſe forbidden, Et in ſecreto cubiculi tui ne maledixeris diviti, quia aves cœli portabunt vocem tuam, & qui habet pennas annunciabit ſententiam; That is Almighty

Almighty God will provide means, that ſuch detraction and malediction ſhall come to light, and be diſcovered.

Only this Law inflicteth impriſonment upon the reporter, until he hath found out, and brought into Court the Author of thoſe falſe news.

7 E 1. the King ſent Commiſſions to all the Counties of England, to enquire De ſparſoribus rumorum, &c. 25 E. 1. Declaratio regis miſſa ad omnes Com' Angliæ, de rege purgand' de certis rumoribus iniquis contra ipſum ortis, &c.

Rex mandavit Maiori & Vicecom' London' quod facta inquiſitione de ſparſoribus rumorum & ſedic' in civitate ipſos caperet, & in priſona de Newgate detineret, &c.

Vide lib. Intrat. Coke, fo. 302, 303. in Falſe impriſonment.

Rot. Pat. 7 E. 1. m. 13. Rot. Pat. 25 E. 1. pars 2. m. 7. & Franc. m. 4. Rot. claus. Vaſc. anno 10 E. 3. m. 26. In dorſ. claus. anno 20 E. 3. part 1. m. 18. & 26.

CAP. XXXV.

DEs hautes homes, & de lour bailifes, & des auters forſpris les Miniſters le Roy, as queux ſpecial authoritie eſt done de ceo faire) que a le pleint des aſcuns, ou per lour authoritie demeſne attachent auters ove lour biens treſpaſſantes per lour poier a reſponder devant eux des contracts, covenants, ou de treſpaſs faits hors de lour poier, & lour juriſdiction, la ou ils ne teignont riens de eux, ne deins le franchiſe ou lour poier eſt, en prejudice du Roy, & de ſa corone, & a damage du people: Purview eſt, que nul deſormes ne le face. Et ſi aſcun le face, il rendra a celuy, que per cel encheſon ſerra attache, ſon damage au double, & ſerra en le grieve mercy le Roy.

The miſchief before this Statute was, that great men and others that had particular juriſdiction and power to hold plea of contracts, covenants, and treſpaſſes made or done within a certain precinct, as within a Mannor, City, or Borough, would attach others by their goods to anſwer in their Courts of contracts, covenants, and treſpaſſes made or done out of their power or franchiſe, pretending the ſame to be tranſitory, and ſuppoſe the ſame to be done within their power and franchiſe; which was to the prejudice of the King and his Crown in loſing his Fines in Actions of debts and treſpaſſes vi & armis, and amerciaments, and other profits upon a falſe ſuppoſal, not like to the general juriſdiction, and power of the Kings Juſtices of the Court of Common Pleas, through the whole Realm; for whereſoever the contract, covenant, treſpas, &c. were made, the matter being tranſitory, the Plaintiff may alledge it in what County he will, and the King can loſe nothing; and ſo it is in the Kings Bench and Exchequer againſt priviledged perſons in thoſe general Courts: And the Statute ſaith further, and to the damage of the party being attached and ſued, as he is paſſing and traveling within that particular precinct, upon a falſe ſuppoſal, where in truth he ought not. For this miſchief this Act provideth remedy, as by the ſame ſhall appear.

¶ De lour bailifes.] Here Bailiffs are taken for the Judges of the Court, as manifeſtly appeareth hereby. Mag. Chart. c. 28.

¶ Et

¶ Et des auters.] That is, others that have particular jurisdictions and powers, as manifestly appeareth by the exception hereafter.

Regist. fol. 98. Fleta l. 2. ca. 42. Cap. Itineris.

¶ Forspris le ministers le Roy, as queux especial authoritie est done a ceo faire.] Here is to be observed.

1. That all these words belong to the exception, as by the Register appeareth.

2. That Ministri regis are intended here the Kings Justices in his general Courts of Justice, and so taken in this Kings time, as it hath been touched before.

¶ Des contracts, covenants, & trespas fait hors de lour poier & lour jurisdiction.] That is, out of the precinct of the Mannor, or such like particular jurisdiction, &c. where by prescription or grant they have power and jurisdiction to hold plea of contracts, covenants, and debts made or done within the Mannor, or such other particular jurisdiction.

¶ La ou ils ne teignont riens de eux.] This Act beginneth, Des hauts homes: and Bracton saith, Sunt qui Barones, & alii libertatem habentes, scilicet, Soc & Sac, &c. & isti possunt indicare, &c. for Soc is a power or jurisdiction to have a free Court, to hold plea of contracts, covenants, and trespasses of his men and tenants; therefore materially were these words added, that if a great man or others having Soc, should hold plea by force of that liberty of any that is not his tenant, it is coram non judice, and punishable within this Statute.

Bract. l. 2. fo. 14. Lib. 2. fol. 56. Lib. 3. fol. 228. Lib. 5. fol. 328. b.

Mirror ca. 1. § 3. Int' leges S. Edw. fol. 23. & 132.

It is diversly written, viz. Soc, Soca, Sock, Soeke, Soke, Sockne, and Soknes, and it is derived from the old Saxon word Soken, Sochen, or Suchen, i. to enquire or find out, that is, to enquire and find out the truth of the matter in plea before him, and to determine it accordingly, which is as much to say, as ad inquirend', audiend', & terminand'.

Fleta li. 1. ca. 42.

And Fleta therewith agreeth, and saith, Soke significat libertatem curiæ tenentium, quam Sokam appellamus: and Curia implyeth ad audiendum & terminandum.

Mirror ca. 5. § 1.

The Mirrour saith, that En temps le Roy Alfred, perdront les suters de Doncaster lour jurisdiction ouster lauter paine, pur ceo que ils tiendront plea defendu per les usages del realme aux judges ordinaries suters a tener, which I rather vouch together with the derivation of the word Soc, for the great antiquity of the Law in this point.

¶ Ne deins la franchise.] That is, nor within any such like particular power or jurisdiction, either by the grant of the King, or prescription.

Regist. 98.

For the relief of the Subject upon this Statute, two original Writs are framed: The one in nature of a Prohibition before the suit begun, commanding that the party shall not be arrested contrary to the form of this Statute.

The other, after the suit begun, the party to recover the penalty of this Act, viz. double damages, and a command to deliver the goods attached or distrained; both which Writs appear in the Register: But the party may waive the benefit of this Statute, and therefore if he plead to the Action any Bar, &c. he hath concluded himself, and shall not have any Action upon this Statute, therefore he must plead the special matter, and by that means take benefit of this Act.

Fleta lib. 2. c. 42.

Fleta rendreth this Act in this manner: De magnatibus & eorum ballivis & aliis (exceptis ministris regis, quibus ad hoc authoritas data est) qui ad querimoniam aliquorum, vel authoritate propria attachiant alios per bona sua, qui per eandem potestatem & jurisdictionem veniunt ad respondendum coram eis de contractibus, conventionibus, & transgression extra eorum potestatem & jurisdictionem, ubi nihil tenent de eis, nec sunt de libertate eorum aut jurisdictione:

18 E. 2. tit. Testament. f. 6.

statutum

ſtatutum eſt, quod ſi quis de hujuſmodi convictus fuer', reddat querenti damna in duplo, ac etiam graviter amercietur.

And it is to be obſerved that at the making of this Statute, if a man had brought an Action of Debt, Account, Detinue, or Covenant upon any contract by original Writ in the County of Norff. he might have declared of the contract in Suff. or any other County then where the original was brought; for the rule was, that debitum & contractus, &c. ſunt nullius loci, and every duty is a duty in every County; but in caſe of account this diverſity is to be obſerved, that in account againſt a receiver the Law was then as is aforeſaid, but if a man brought an Action of account againſt one as Bayliff in one County, he could not charge him as Bailiff of a Mannor in another County, for that is local.

6 E.3. 10 E.3.7. 12 E.3.brief 479. 14 E.3. brief 274. 30 E.3.26. 4 H.6.6 15 E.4.20. 21 E.4. li.7.fo.3. Bulwers Caſe.

But after this Act it is provided by the Statute of 6 R.2.cap.2. that in pleas of debt, or account, or ſuch like, as detinue, or contract, it ſhall not be declared that the contract was made in any other County, then is contained in the original Writ.

6 R.2. cap.2. 13 R.2. brief 469.

But at the Common Law one that hath a particular juriſdiction to hold plea of debt, contract, detinue, covenant, or treſpaſs within his Mannor, or the like, could not hold plea of a debt, contract, account, detinue, covenant, or treſpaſs alledged to be made out of the Mannor, &c. becauſe albeit it was tranſitory, yet was it (being ſo alledged) not within his power or juriſdiction which he had by preſcription or by grant; for all pleas holden there muſt be infra juriſdictionem Curiæ.

3 H.6.30.

As if a Lord hath Probate of Teſtaments made within the precinct of his Mannor, he cannot prove a Teſtament made out of the precinct of his Mannor.

2 R.3. Teſtam. 4. 11 H.7.12.

And likewiſe of the Court Pipowders of contracts, &c. made out of the Faire or Market. Et ſic de cæteris.

17 E.4.c.2. 1 R.3. c.6. lib.6.fo.20. Michelborns caſe. Dier. 3 Mar. 132. 133. 7 E.4.19. 13 E.4.8. 7 H.6. 18,19. 13 H.7.19.

CAP. XXXVI.

PUr ceo que avant ceux heures ne fuit unques reaſonable aid' a faire leigne fitz chivaler, ne a leigne file marier miſe en certein, ne quant ceo deveroit eſtre priſe, ne quel heure, per quoy les uns leverent outragious aide, & plus toſt que ne ſembleit meſtier, dount la people ſe ſentit greve: Purview eſt, que deſormes de fee de chivaler entier ſolement ſoient dones 20 s. & de 20 l. de terre tenus per ſocage 20 s. & de pluis, pluis, & de meins, meins, ſolonque lafferant. Et que nul ne puiſſe lever tiel aide a faire ſon fits chivaler, tanque que ſon fits ſoit del age de xv ans, ne a ſa file mamarier tanque que el ſoit del age de 7 ans. Et de ceo ſerra fait mention en le briefe le Roy fourm' ſur ceo quant home le voile demander. Et ſi aveigne que le pier, quant il avera tiel aide leve de les tenants, moruſt avant quil eit ſa file marie, les Executors le pier ſoient tenus a la file, en tant come le pier avera reſceu pur ceſt aide. Et ſi les biens le pier ne ſuffiſent, ſon heire ſoit de ceo tenus a la file.

Fleta lib.2. c.40. lib.3.cap.14. Brit. fo.57. & 70. Cuſtumier de Norm.cap.35. fol.53,54.

By the Common Law to every tenure by Knights ſervice, and ſocage, there were three aides of money, called in Law auxilia, incident and implied, without ſpecial reſervation or mention, that is to ſay, relief when the heir was of full age, aide pur faire fits chivalier, and aide pur file marier; Now the firſt aide, viz. relief by reaſon of a tenure by Knights ſervice, was certain, becauſe he was to pay it, if he were of the age of 21 years at the death of his anceſtor, as hath bẽn ſaid before, without regard of any circumſtance; and likewiſe the relief of an heir in ſocage being of the age of 14. at the death of his anceſtor was ever certain, viz. to double his rent. But the aids pur faire fits chivalier, and pur file marier were incertain at the Common Law, for that the Lords many times would pretend their eldeſt ſon, and eldeſt daughter to be hopeful and forward, and therefore would exact too great an aide, and before due time, whereas by the Law they ought to have reaſonable aids, and in reaſonable time, which in a ſuit therefore ſhould be determined by the Juſtices of that Court before whom the ſuit depended. Now the Tenants found themſelves grieved in three things:

5 E.3. fol. 11.
40 E.3. 21, 47.
Mag. Chart. ca. 2.
Vid. Inſt. ſect. 127.

1. That the ſaid aids were outragious and exceſſive, Et exceſſus in re qualibet jure reprobatur communi, ſo as theſe outragious and exceſſive aids were againſt Law, whereof elſewhere you may read at large.

Lib. 11. fol. 44. R. Godfreyes caſe. See before Cap.

2. The Lords exacted thoſe fines at what time they pleaſed before reaſonable age apt for the payment of thoſe aides.

3. That he could not avoid the ſame but by ſuit in Law with his Lord, wherein he found by experience thoſe old verſes true;

Cum pare luctari dubium, cum procere ſtultum,
Cum puero pœna, cum muliere pudor.

And our Act ſaith, Dont le people ſe ſentiſt greve.

These three miſchiefs are redreſſed by this Act, and certainty the mother of quiet and concord eſtabliſhed therein.

18 E.3. fol. 16.
40 E.3. 22, 47.
13 R.2. Avowry 89.
14 H.4.8.
5 E.4.41.

But where it is ſaid that theſe aids are incidents, it is to be underſtood that they are incidents ſeparable, either by ſpecial words at the creation of the tenure, or by diſcharge or releaſe by ſpecial words, or ſpecial rehearſal afterwards.

But if the Lord at the creation of the tenure had reſerved fealty, and 4 marks per annum, pro omnibus ſervitiis, exactionibus & demandis quibuſcunque; or if the Lord after the ſeigniory created had releaſed to the Tenant, omnia ſervitia, exactiones & demanda quæcunque (except' fidelitate & reddit' iv. mercarum per annum,) yet ſhould the Tenant pay relief, aid pur faire fits chivalier, and file marier, which is neceſſary to be known for the underſtanding of auncient deeds.

Britton 57. b.
F.N.B. 82. g.
Regiſt. 87. In the rehearſal of this Act it is ſaid, *Primogenito filio & primogenitæ filiæ.*

¶ A faire leigne fits chivalier.] Lord, Grandfather, Father, and two Sons, the Father dieth, the Lord ſhall not have aide for his eldeſt grandchild, for he is not his eldeſt ſon, much leſs ſhall he have aide for his elder brother, or his eldeſt couſin and heir: but if a man hath iſſue two ſons, and the eldeſt die in the Fathers life without iſſue, he ſhall have aide for the ſecond ſon, for he is now eldeſt, and the Statute ſaith eldeſt ſon, and not firſt-born; yet the Writ grounded upon this Statute is ad primogenitum filium ſuum maritandum, but he is primogenitus then living. But if the Lord had received aide for his eldeſt ſon, he ſhall not have aid again for the ſecond, for unicum auxilium, one aid is only due to one and the ſame Lord, to make his eldeſt ſon a Knight: Non tenetur quis de uno tenemento eidem domino plura dare auxilia ad filium ſuum militem faciend'.

Regiſt. ubi ſupra.

If

If the Lord hath iſſue two ſons, the eldeſt ſon hath iſſue a daughter and dieth, the Lord ſhall not have aid to make his ſecond ſon a Knight, for the ſecond ſon is not his heir apparent (and in this caſe he ought to be his heir apparent) for at this time the ſtate of all lands was fée-ſimple, and the lands of the Lord ſhould deſcend to the daughter, and therfore the Law would not have the dignity of chivalry to be apparelled with poverty, and in reſpect thereof the ſon to be Knighted was to be heir apparent. And this agréeth with the letter and meaning of this Act, A faire ſon eigne fits chivalier, who by common intendment is heir apparent. Mirror ca. 1. § 3. Fleta ubi ſupra. F. N. B. 82.

If the eldeſt ſon be made a Knight before the age of fiftéen, the Lord can have no aid, becauſe the words be A faire leigne fits chivalier; and none was ever due to the Lord.

If the Lord hath iſſue baſtard eigne, and mulier puiſne, he ſhall not have aid to make the baſtard a Knight, for he is not in judgment of Law accounted his ſon, but he ſhall have it for the mulier puiſne.

It was holden in ancient time, that the Lord could not demand aid pur faire fits chivalier, unleſs he himſelf were a Knight, ne filius antecederet patri: But Knights in ancient time grew ſo ſcarce, as Eſquires that were of ability to be Knights, not only in this caſe, but in many other, ſupplied the place of Knights; Sufficiens honor eſt homini, qui dignus honore eſt. Vide cap. 10.

Hereby it appeareth that by the policy of the Law, the eldeſt ſon of a Knight was not only trained up in his tender years in learning and knowledge of liberal arts to adorn the mind, but when he came to convenient years, did for the defence of the Realm learn and exerciſe the déeds of Arms and chivalry, that he might be able to ſerve his Country both in time of peace and War.

¶ Ne a leigne file marier.] By this the policy of the Law appeareth, that the eldeſt daughter might be timely préferred in marriage, for thereby come ſtrength and good alliance to the Family, and both theſe are given by Law without any ſpecial reſervation; and the obſervation of the ancients was, That marry the eldeſt daughter well, and all the reſt will be préferred the better; and to that end aid was granted for the eldeſt daughter. See 35 H. 6. 40. F. N. B. f. 82. c. d.

¶ Outragious aid.] Tenant peravaile ſhall be contributory to the aid for the marriage of the Kings daughter. Sée for this word before Cap. 31. Paſch. 17 E. 1. in Banco Rot. 38. Northampt.

¶ De fee de chivalier entier ſolement ſoient done 20 s.] Here it is to be obſerved (as it hath béen noted) that relief is the fourth part of a Knights fée being then 20 l. is 5 l. and aid pur faire fits chivalier, or pur file marier, is the twentieth part of a Knights fée, viz. 20 s. limited by this Act. Mag. Chart. c. 2.

¶ Et de 20 l. de terre tenus per ſocage.] This ſum is ſet down becauſe the value of a Knights fée was then 20 l. (which then was ſufficient to maintain the dignity of Knighthood) and ſo the Statute maketh them equal in value; the King was not bound by this Statute, but he might take ſuch relief, and at ſuch time as was due by the Common Law. See more hereof in the Commentary upon the Statute of 1 E. 2. De militibus.

But the Statute of 25 E. 3. doth aſſels the aids at ſuch a rate as this Statute doth, and that Act doth well expound this Statute, that none ſhall pay theſe aids but the Tenants of the land holding the ſame immediately in demeſne without any meſne. 25 E. 3. cap. 10. Rot. Parliam. 29 E. 3. nu. 16.

For meſne Lords ought to pay no aid implied in theſe words of our Act, De fee de chivalier, & de 20 l. terre, and if the Tenant peravaile by Knights ſervice goeth with his Lord, &c. he diſchargeth all the meſne Lords. Note theſe words, De fee de chivalier, doth exclude grand ſerjeanty, for he that holdeth by that tenure ſhall pay no aid to the Lord either to make his ſon a Knight, or to marry his daughter; for by this Act it appeareth, that none ſhall pay any aid but Tenants by Knights ſervice, or Tenant in ſocage, and no other tenure. 5 H. 3. Avowry 242. F. N. B. 83. k. 11 H. 4. 34. 10 H. 4. Avowry 267. 10 H. 6. Aunc. demeſne 11. Rot. Par. 9 H. 6 nu. 15.

1 E.2. Stat. de militibus.

¶ Tanque le fits ſoit del age de 15 ans.] Note no man ſhall be compelled to take Knighthood upon him until he be 21 years old, and have ſufficient land for maintenance of that degrée, yet at the age of fifteen years he may begin to learn ſome things that belong to Chivalry, but it is good for the Lord to make what ſpéed he can after that age to recover the aid either by the Writ De auxilio ad filium ſuum militem faciend', or by diſtreſs; for if the ſon die, the Lord loſeth the aid, for that by his death the final cauſe ceaſeth, and ſo likewiſe if the Father dieth, the aid is loſt, for that the duty and remedy is only given to the Father, who in reſpect of nature hath the Wardſhip of his eldeſt ſon, and as a natural Father is to provide for his advancement; and ſo as a Father by the Law of nature is bound to provide a competent mariage for his daughter, which are therefore perſonal to the Father: And ſo note the diverſity betwéen relief, which is abſolutely due to the Lord in reſpect of the ſeigniory méerly, and theſe aids, which are not abſolutely due to the Lord, but for the performance of a duty of nature.

Jura naturalia. Inſtit. Sect. 114. Lib. 7. fol. 13. b. Calvins caſe. 1 E.3 fol. 17. 33 H. 6. 57.

¶ Tanque el (*s. la file*) ſoit de 7 ans.] In ancient time Gentlemen of good houſes, for knitting themſelves in greater bonds of amity and alliance, maried their children very young, which the Law doth ſeem to favour, for that it giveth her Dower, if ſhe be of the age of nine years at the death of her husband, whereof I have known ſome to have proſpered well, but more that have proved unfortunate.

F. N. B. 82. i. & 83. a.

¶ Et moruſt avant que il avoit ſa file marie.] Here our Act giveth only remedy to the daughter, and maketh no mention of the ſon in that caſe, and yet the ſon ſhall have the ſame remedy againſt the Executors, that the daughter ſhall have, being in æquali jure.

Hil. 9 E.2. fol. 62, 63. in libro meo. Phil. Leuteynes caſe.

Tenant for life, or Tenant in Dower ſhall not have aid pur file marier, ou pur faire fits chivalier, but the very Lord, to whom by poſſibility they might inherit, and whom the Lord by nature is bound to prefer; but Tenant for life, &c. ſhall have Eſcuage, Ward, Mariage, and Relief.

5 E.3. Debt 156.

If the Father receive the aid, and after the ſon is Knighted, or the daughter married in the life of the Father, neither ſon nor daughter ſhall have remedy for the aid, for the end of the Law is performed. But by the whole context of this Act it appeareth, that ſmall portions preferred in mariage the daughters of good Families, when vertue and good blood was more eſtéemed then great portions.

¶ Les Executors ſon pier ſont tenus al file.] Note, the Father himſelf hath time to make his eldeſt ſon a Knight after his age of 15 and to marry his daughter after her age of 7 years at any time during his life, and therefore though the Father receive the aids, yet have they no remedy againſt him, but to depend upon his paternal care, and their remedy is againſt the Executors, or Adminiſtrators of the Father, if they be not preferred in his life time, as it appeareth by this Act.

¶ Et ſi les biens le pier ne ſuffiſent, ſon heir de ceo ſoit tenus a le file.] And here it is to be obſerved, that if the perſonal eſtate of the Lord be ſufficient to pay the aid, the heir (who is to maintain the ſtate and countenance of his Father) is not to be charged therewith.

3 E.3. Debt 157.

In an Action of debt brought by the eldeſt daughter againſt the heir for an C s. which the Father received of his Tenants for reaſonable aid to marry her, and that ſhe was not married in his life time, &c. and in her declaration made no mention that the Executors had no aſſets, and yet the count was ruled to be good, for that is the ordinary count in an Action of debt, which the Statute giveth, and if the Executors have aſſets, the heir ſhall plead it in bar.

Although

Although the Statute be, that his heir ſhall be bound to the daughter, it is underſtood, that he ſhall be bound, if he hath aſſets in fee-ſimple by deſcent from his Father.

The daughter ſhall not recover part againſt the Executors, and the reſidue againſt the heir, but either all againſt the Executors, or all againſt the heir, as theſe words do prove.

The eldeſt ſon muſt have his remedy only againſt the Executors, for he himſelf is heir. F. N. B. ubi ſup.

And theſe aids appear by the Mirror to be very ancient, ordained by King Alfred, and other ancient Kings, for he ſaith, Et que Eſcuage, Reliefe & Aides, ſe fiſſent per les Tenants a lour Seigniours de lour heritage reliever, les heires les Seigniours faire chivaliers, & de lour eigneſſes files marier. It is to be obſerved how moderate the aids be by force of this Act, and therefore it is to be collected that the fees of the Heralds were then (and yet ought to be) moderate alſo. Mirror ca. 1. § 3.

CAP. XXXVII.

PUrview eſt & accorde enſement, que ſi home ſoit attaint de diſſeiſin fait en temps le Roy que ore eſt, oveſque robbery, de aſcun maner de chattel ou de moveable, & ſoit trove vers luy per recogniſance de Aſſiſe de Novel diſſeiſin, le judgment ſoit tiel, que le plaintife recovera ſa ſeiſin & les damages, auxibien de chattel & de moveable avantdits, come de ſoile. Et le diſſeiſor ſoit rente, le quel que il ſoit preſent ou non, iſſint que (ſil ſoit preſent) primes ſoit agard a la priſon. Et per meſme le maner ſoit fait de diſſeiſin fait a force & armes, tout ne face home robbery. See Marlb. cap. 14 Verb. Attinct. the firſt part of the Inſt. Sect. 514. Verb. en Attaint.

This Statute is made in affirmance of the Common Law, as appeareth by original Writs of Aſſiſe, wherein the words be, Facias tenement' illud reſeiſiri de catallis quæ in ipſo capta fuerunt, & ipſum tenementum cum catallis eſſe in pace uſque ad primam aſſiſam; which Writ was at the Common Law before this Statute, as it appeareth by Glanvill, and by Bracton who wrote before this Act. Glanv. l. 3. cap. 33, 34, &c. Bract. l. 4. fol. 179

And the Judges of the Aſſiſe ought to enquire of the ſame, for if goods be taken away by the diſſeiſor, it is a diſſeiſin with force, and therefore ex officio, the Judges ought to enquire thereof. 11 H. 4. 16, 17. 11 H. 4. 16, 17.

¶ En temps le Roy que ore eſt.] Yet this Act being in affirmance of the Common Law doth extend to all times after, which the Judges in 4 E. 2. not obſerving, nor remembring the words of the Writ of Aſſiſe denied to enquire of the taking away of the goods. 4 E. 2. damage 10.

¶ Oveſque robbery.] Here (robbery) is taken in a large ſenſe, for a wrongful taking away of goods, as a wrong doer and treſpaſſer.

¶ De aſcun manner de chattel, ou de moveable, &c.] If a man be diſſeiſed, and hath goods, which he hath thereupon as Executor or Adminiſtrator, taken away, theſe are not accounted his goods within this Statute, becauſe he hath them, in auter droit, to the uſe of the dead. 8 E. 3. 3. 54.

A man ſeiſed of land in the right of his wife, or joyntly with his wife, and is diſſeiſed, and his goods taken away; in an Aſſiſe brought by the husband and wife, 11 H. 4. 16. 7 H. 6. 30. b.

wife, he and his wife ſhall recover ſeiſin of the land, and he alone upon that original brought by him and his wife ſhall have damages, which is worthy of obſervation.

And ſo it is, if two joynt-tenants be diſſeiſed, and the goods of one of them taken away, both ſhall recover the land, and the one damages for his goods: Theſe be the only cales that I remember in the Law, where one Demandant or Plaintif without any ſummons or ſeverance ſhall have judgment alone in one original; for regularly the judgment ought to be given according to the original Writ: As if the husband and wife bring an Action of battery for the beating of himſelf and his wife, the Writ ſhall abate, becauſe the wife cannot joyn for the battery of her husband, and the husband cannot have judgment alone, becauſe his wife is joyned with him in the original; Et ſic de ſimilibus. 12 E.4.6.

But the Aſſiſe is a ſpecial cale, for the Plaintif making his plaint to be diſſeiſed of his free-hold in ſuch a Town with the appurtenances generally, yet ſhall he recover his goods, if the diſſeiſin be found with robbery of his goods, as the Statute ſpeaketh, and the goods are contained in the original, and not in the pleint; And the Aſſiſe of Novel diſſeiſin was feſtinum remedium, and much favoured in Law for the relief of the diſſeiſée, both for the regaining of his poſſeſſion of the land, and of his ſtock of cattle, and goods thereupon: therefore where our Act ſaith, that the Plaintif ſhall recover his ſeiſin, and his damages, as well for the goods and moveables aforeſaid, as for the freehold, it is ſo to be underſtood reddendo ſingula ſingulis, according to that which hath been ſaid. William Burcheſter, and Margaret his Wife were diſſeiſed of the land which he held in the right of his wife, and diſpoſſeſſed of his goods; in an Aſſiſe brought by the husband and wife, judgment was given for them both, Damna pro diſſeiſina C l. pro bonis C marc': in a Writ of Error the judgment was reverſed for the C marks, becauſe the wife had nothing in them. Coram Reg. Tr. 4 H. 4. Rot. 24. Suſſ.

¶ Et le diſſeiſor ſoit rente.] And the diſſeiſor ſhall be fined, which is alſo in affirmance of the Common Law, for a diſſeiſin with taking away of goods is a diſſeiſin with force, and therefore finable.

¶ Et per meſme le maner ſoit fait de diſſeiſin fait a force & armes, tout ne face home robbery.] Note the Writ of Aſſiſe mentioneth not a diſſeiſin vi & armis, but the words thereof be Injuſte & ſine judicio diſſeiſivit, and therefore if the Jurors find a diſſeiſin, and no force, the judgment ſhall be Ideo in miſericordia, and not quod capiatur, but as it hath been ſaid, the Court ex officio ought to enquire of the force; but if they do not, it is not error, as it hath been adjudged. M. 25 & 26 El. Co. Reg. in br'e de Error. int. Bartlet & Baxter in Aſſ. de freſhforce in Ipſewich.

CAP.

CAP. XXXVIII.

PUR ceo que aſcuns gentes de la terre doutent meins faux ſerement faire, que faire ne duiſſent, per que mults des gents ſont diſherites, & perdent lour droit: Purview eſt, que le Roy, de ſon office, deſormes donera Attaints ſur les enqueſts en plea de terre, ou de franktenement, ou de choſe que touche franktenement, quant il ſemblera que beſoigne ſoit.

The miſchief before this Statute (which was the firſt concerning Attaints) was, that albeit (as the common opinion is) an attaint did lie upon a falſe verdict given in a plea of land, yet the King many times would not grant it without ſuit made to him, which turned the party grieved, not only to great delay, but to extream trouble, attendance, and charges. And the reaſon that made the difference betwéen the plea real, and the plea perſonal, was, that in the plea perſonal the party grieved had no other remedy, but the Attaint; but in the plea real he had other remedy in an Action of higher nature, and for that cauſe was not granted without difficulty. And ſome Judges held, that in a plea real an Attaint did not lie, and therefore this Act provideth that the King ſhall grant it * ex officio, that is, ex merito juſtitiæ. **And this Act is holden to be in affirmance of the Common Law, whereof you ſhall read at large,** Marlebr.c.14. **And this is the common opinion agréable with our old books, as there you may read.**

Paſch. 32 E.3. fol. 65. in libro meo. H.3. granted to the Burgeſs of S. Albans, that none of them ſhould be impleaded of no freehold in attaint, &c. & *allocatur*.

* De ſon office.

Merleb. cap.14.

That perjury in Jurors was puniſhed before this Act, hath bén ſufficiently proved already: Now the preamble of this Act giveth juſt occaſion to examine whether perjury alſo in witneſſes were puniſhable by the ancient Laws of England: De pejerantibus præterea ſtatutum eſt, ut ſi quis jusjurandum violarit, falſumve dixerit teſtimonium, fides ei in poſterum non habetor, verum is in ordalium adjudicator.

Int' leges Edw. Regis. 48. 3.

Si quis falſum juraſſe convictus fuerit, ei poſtea non modo non creditor, verum etiam ſacra ei etiam prohibetor ſepultura.

Inter leges Ethelſtani 67, 25.

Si quis ſacra tenens pejeraſſe convictus fuerit, ei manus præciditor, &c.

Inter leges Canuti 113.34.

Vide inter leges W. Conq. fol. 125. b.

And the Mirror **ſaith,** Que ſolonque les auncient priviledges, & uſages aſcuns ſe font per perde delponce, come eſt de faux notaries, & de ciſſers de burſes de meyns q̃ 12 d. & pluis que 6 d. que le Roy R. 1. ſe chaungea a la parte de oriel, aſcuns per couper des langues, come ſoloit eſtre de faux teſtmonies.

Mirror cap.4. de paines. 10 H.3. Coron. 434.

And in the ſame Chapter treateth further of this matter, ſaying, Perjury eſt graund peche, &c. **whereof you may read there more at large. Britton ſaith that it was puniſhable, and to be enquired of** De ceux queux ſe voilont purjurer pur lower.

Britton fol. 38. Fleta l.5. c.21. & lib. 2. cap.1. Bract. l.4. fol.289.

Fleta **deſcribeth perjury thus,** Perjurium eſt mendacium cum juramento firmatum; **and further ſaith,** Et tribus modis committitur; primo, cum quis ſcit, vel putat aliquid falſum eſſe falſum, & jurat eſſe verum; ſecundo, cum quis fallitur, & credit verum eſſe quod eſt falſum, & temere & indiſcrete jurat; tertio, ſi quis credit falſum eſſe verum, & jurat quod verum eſt.

Where you may read further of this matter. And of ſome it is called, Crimen læſæ conſcientiæ.

Bract. fol.292.

Thomas Vigars **and two others were found guilty, &c. of perjury.**

Hil. 8 E. 1. in Communi Banc. Rot.38. Eſſex.

18 E. 3. 53. **Once, forſworn, and ever forlorn.**

7 H. 6. 25. **Perjury puniſhed.**

John of Huntingfields Caſe.

Vide **the Statutes of** 3 H.7. cap.1. 11 H.7. cap.25. 32 H.8. cap.9. 5 Eliz.

Upon

Upon all that which hath bæn ſaid touching this point, you may obſerve how mild the late Laws have bæn in puniſhing of perjury in reſpect of the ancient, wherein I have bæn the longer, for that ſome have given out, that perjury was not puniſhed by the ancient Laws of England, wherein there ſhould have bæn a great defect, and an encouragement to ill depoſed men, if Jurors ſhould by the Common Law have bæn puniſhed for perjury, and witneſſes, which are great motives to them of giving their verdict, ſhould be perjured, and not be puniſhed.

Mich. 5 E. 1. in Banco Rot. 63. Midd.

¶ Quant il ſemble que beſoigne ſoit.] See 5 E. 1. which was within two years after this Act, an Attaint was brought upon a falſe verdict given in Aſſiſe before Juſtices in Eir before the making of this Statute: And the Record ſaith, Quod non eſt intentio Domini Regis, nec extitit tempore confectionis ſtatuti prædicti, quod breve de Attinctu tranſiret ſuper hujuſmodi inquiſitionibus ante ſtatutum captis, prout Johannes de Lovet recordatur, imò poſt ſtatutum conceſs' Conſideratum eſt quod querens nihil capiat per breve, &c. And this was the Law taken then by colour of theſe words; but others hold, that theſe words are not to be ſo taken for the reaſon aforeſaid, for that the party grieved in this plea real had remedy in an action of higher nature: but later Statutes quoted before in the margent have cleared this point.

CAP. XXXIX.

ET pur ceo que le temps eſt mult paſſe puis que les brieſes deſouth noſmes fuerent auterfoits limmittes: Purview eſt, que en count countant de deſcent en brieſe de Droit, nul ne ſoit ci oſe de counter de la ſeiſin ſon anc' de plus longe ſeiſin que de temps le Roy R. Uncle le Roy Henry, pier le Roy que ore eſt. Et que le brieſe de *Novel diſſeiſin*, & de purparty, que eſt appelle *Nuper obiit*, eyent le terme puis le primer paſſage le Roy Henry, pier le Roy, que ore eſt en Gaſcoine, mes nemy avant. Et les brieſes de Mortdanc', de Coſinage, de Ayle, de Entre, & brieſe de Neifrie, eiant le terme del coronement meſme le Roy Henry, & nemy avant. Mes que touts les brieſes ore a per meſme purchaſes, ou a purchaſer, entour cy & [la feaſt] S. John en un an, ſoient pledes de temps que avant ſolent eſtre pleades.

1. Inſt. Sect. 170.

¶ De temps le Roy R.] That is by conſtruction from the firſt day of the raign of King Richard the firſt, and ſo hath it bæn reſolved in Parliament.

34 H. 6. 36. Inſtit. ubi ſupra.

This Act doth limit within what time the ſeiſin ſhall be in a Writ of Right, and by conſtruction the time of preſcription is taken for this time.

¶ Puis le premier paſſage le Roy Henry, &c. in Gaſcoine.] That was in anno 5 H. 3.

¶ Del

¶ Del Coronement meſme le Roy Henry.] H. 3. was crowned 28 Octobris, Anno Dom. 1217. & Regni ſui primo; but others ſay he was crowned 16 Junii, Anno Regni ſui primo. Vet. Mag. Chart. 144.

This King was crowned again in anno 5. of his raign, but this Act intendeth his firſt Coronation.

Theſe limitations are altered by the Statute of 32 H. 8. as you may read before in the expoſition upon the Statute of Merton cap. 8. See the firſt part of the Inſtitutes, Sect. 170.

CAP. XL.

PUR ceo que mults des gents ſont delayes de lour droit, per fauxment voucher a garranty: Purview eſt, que en briefes de poſſ. tout adeprimes come en briefe de Mortdanc', Coſinage, del Ayle, *Nuper obiit*, de Intruſion, & auters briefes ſemblables, per les queux terres ou tenements ſont demands, queux devoient diſcender, reverter, remainder, ou eſchier per Mortdanc', ou dauter, que ſi le tenant vouche a garrant', & le demandant luy counterpled', & voile averrer per aſſiſe, ou per pays, ou en auter maner, ſicome le court le Roy agarde, que le tenant ou ſon aunc' que heire il eſt, fuit le primer que entra apres la mort celuy de que ſeiſin il demand, ſoit le averrement del demandant reſceve, ſi le tenant le voile attender, & ſi non, ſoit bote ouſter le auter reſpons ſil neit ſon garrantor en preſent, que luy voile garranter de ſon gree, & maintainant enter reſpons, ſalve al demandant ſes exceptions enconter luy, ſil voile voucher ouſter, come il avoit avant, enconter le primer tenant. De recheſſe en touts maners des briefes Dentre, queux font mention des degrees: Purview (eſt) que nul deſormes vouche hors de la line. Et en auters briefes Dentrie, ou nul mention eſt fait de degrees, les queux briefes ne ſont ſuſtenus, forſque la ou les avantdits briefe de degrees ne poient giſer ne lieu tener. Et en briefe de Droit purview eſt, que ſi le tenant vouche a garranty, & le demandant le voile counterpleder, & ſoit priſt de averrer per pays, que celuy que eſt vouche a garranty, (ne nul) de ſes anceſters ne unques avoient ſeiſi de la terre, ou del tenant demande, ne fee, ne ſervice per la maine le tenant, ou (aſcun) de ſes aunceſters, puis le temps celuy de que ſeiſin le demandant counte jeſques al temps que le briefe fuit purchaſe & plee move, per que il poit le tenant ou ſes aunceſtors aver feoffe: Adonques ſoit laverrement del demandant reſceive, ſi le tenant le voil' attender, & ſinon, ſoit le tenant bote ouſter a auter reſpons, ſil neit ſon garrantor en preſent, que luy voile garranter de ſon gree, & maintenant enter en reſpons, ſalve al demandant ſes exceptions enconter luy, ſicome il avoit avant encounter le primer tenant. Et lavandit exception eit lieu en briefe de Mortdaunceſtre,

&

& en les auters brieſes devant noſmes, auxibien come en brieſes queux touchent droit. Et ſi le tenant per cas eit charter de garranty de auters home *de ceo choſe* que ſoit oblige en nul des avantdits caſes a le garranty de ſon eigne degree, ſalve luy ſoit ſon recoverer per briefe de Garranty de charter de le Chauncellor le Roy, quant il le voudra purchaſer, mes que le pleeine ſoit pur ceo delay.

13 E. 1. counterplea de voucher. 118. 16 E.2. ibid. 110. 8 E.3.61.

The miſchief before this Statute was, that every Tenant in a real Action was permitted to vouch any of the people, though he or any of his Anceſtors had never any thing in the land whereof he might enfeoffe the Tenant or any of his Anceſtors; and again that Vouchée might vouch another in like manner, and upon every ſummons ad Warrantizandum, there muſt be nine retourns, &c. ſo as the delay was in manner infinite, and all upon falſe Vouchers; which matter being ſhewed in this Parliament, Fui adviſe al Roy que ceſt ley fuit malveis, for it is a Maxim in Law, that Lex dilationes ſemper exhorret: whereupon this Act of Parliament for remedy was made.

22 H.6.40. per Markham.

Inſtit. Sect.143. Glanv. l. 13. cap. 9 10. & alibi ſæpe. Bract. l. 5. fol. 380 Britton c. 75.

¶ Vouchee a garranty.] For this word (vouchée) ſée Lit.
Vide Glanv. of this matter.
Vide Bracton, a whole tractate of vouching to Warranty.
Vide Britton, a Chapter of the ſame.

Fleta lib.

Fleta ſaith, Sunt autem nonnulli lites protrahere nitentes, minores falſo vocant ad Warrantes, & de quibus proviſum eſt (ſuming up the principal part of this Statute in few words) quod ſi petens replicando offerat verificare quod vocatus nec aliquis anteceſſorum vocati nunquam ſeiſinam habuit de re petita, feodum nec ſervitium per manus tenentis vel alicujus anteceſſoris ejus à tempore ejus ex cujus ſeiſina petit uſque ad tempus impetrationis brevis & placiti moti, per quod potuit verificare tenentem vel ejus anteceſſores inde feoffatos fuiſſe, admittatur verificatio illa ſi tenens voluit hoc expectare, alioquin ulterius reſpondere compellatur, ſalvis petenti talibus replicationibus, quales verſus principalem tenentem obtineret: Et ſi tenens chartam habuerit alicujus extraneæ perſonæ qui ſe ad Warrantiam obligaverit, vel per anteceſſorem obligatus fuerit qui gratis warrantizare voluerit, tunc competit tenenti remedium per breve de warrantia Chartæ, ſed propterea non capiat placitum jam motum dilationem.

Mirror.

In ancient time it ſæmed ſtrange when the original Præcipe was brought againſt the Tenant of the land, that the Court upon that original ſhould hold plea betwæn the Tenant and the Vouchée, but it is more ſtrange to make a queſtion of that, which hath received an ancient, continual, and conſtant allowance, and the Vouchée cometh in in loco tenentis, and in judgment of Law is a Tenant to the Demandant, and our Act doth allow of true Vouchers, but provideth againſt falſe Vouchers, as our Act ſpeaketh, for delay only.

8 E.3.61.

8 E.3.57.b. 32 E.3 Count. de vowcher 82. 21 E.3. 11. 46 E.3.2. Li.6.f.34,35, &c. Markals caſe.

¶ En brieſes de poſſeſſion.] So called, becauſe either the anceſter, of whoſe ſeiſin he demands, was in poſſeſſion the day he died, or the demandant himſelf was in poſſeſſion, as Mortdaunc', Coſinage, Aiel, Nuper obiit, Intruſion and other like Writs, as Beſaile, &c.

The diverſity betwæn the Actions Aunceſtrel droiturel, and the Actions Aunceſtrel poſſeſſorie, you ſhall read at large in my Reports in Markals Caſe, and is neceſſary to be obſerved for the underſtanding of this Act, which maketh the ſame diſtinction of Actions.

¶ Per

¶ Per les queux terres ou tenements ſont demaundes.] In a Writ of Right of Ward of Body and Land, the Defendant vouched, and the Plaintiff counterpleaded the Voucher by this firſt branch of this Act that the Defendant was the firſt that abated after the death of his Tenant, and the ſame continued till the Voucher, and adjudged a good counterplea; for albeit it is named a Writ of Right, and ſo in letter is out of this branch, yet is it in nature of a Writ of poſſeſſion, and the words are per mort daunceſter ou dauter, and though no Lands or Tenements be demanded, which regularly is intended of an eſtate of freehold, yet this caſe being within the ſame miſchiefe is taken within the remedy. 8 E.3.57,61. 21 E.3.11. 22 E.3.6. 25 E.3.39. 32 E.3. Count.de vow.83.

In Dower the Tenant vouch Coſine & heire T. A. the Demandant ſaid that her husband died ſeiſed, and the Vouchée was the firſt that abated; and a good counterplea within theſe words, Autres brieſes ſembles, but that plea is not in caſe of the heir. 2 E.3.31. 22 E.3.3 32 E.3 75.a. in libro meo.

¶ Diſcender.] A Formedon in the Deſcender is out of this branch, for it is a Writ of Right in his nature, and not a Writ of Poſſeſſion, and he demandeth not the land of the ſeiſin of his anceſtor, as the Statute ſpeaketh, but of the gift. 4 E.3.56. 39 E.3.36.b.

¶ Reverter.] A Formedon in the Reverter is not within this branch, for that it is a Writ of Right in his nature. 32 E.3.infra. †.

¶ Remainder.] A Formedon in the Remainder is not within this branch, for it is no Writ of Poſſeſſion, but a Writ of Right in his nature, and the Demandant doth not demand the land of the ſeiſin of his anceſtor, as the Statute ſpeaketh, but by the Remainder. 4 E.3. Count de voucher. † See 32 E.3.fol. 74,75. in libro meo. Lopinion del Court al contrary. vide 32 E.3. tit. counterplea de voucher 82.

¶ Eſchier.] This is in the Engliſh tranſlation turned to Eſcheat, which ought not to be, but Eſchier ſignifieth to fall, and a Writ of Eſcheat is not within this branch, for that it ſoundeth in the Right, and Reverter, Remainder, or Eſchier is to be intended after the death of his anceſtor, or Tenant for life, Tenant in Dower, or by the Curteſie. 4 E.3.33. 32 E.3. count de vou.82.

An Aſſiſe of Novel diſſeiſin, and an Aſſiſe of Darrein preſentment are within this branch, if the Tenant vouch any named in the Writ, and the Demandant may counterplead the Voucher, as well when the Tenant is preſent in Court, as when he is abſent. 3 E.3.vouch.199. 26 H.6. tit. count de voucher 5. 21 H.6.50.

¶ Que le tenant ou ſon aunceſter que heire il eſt fuit le primier que entra apres la mort celuy de que ſeiſin il demaund, ſoit laverment del demaundant reſceive.] A. dieth ſeiſed in fee, B. abateth, and maketh a leaſe for life, and granteth the reverſion to C. in fee, and dieth, C. granteth the reverſion to D. the heir of B. Tenant for life is impleaded in a Writ of Coſinage, and makes default after default, D. is received and voucheth to warranty C. the Demandant counterpleads the Voucher, for that B. was the firſt that abated after the death of his anceſtor, of whoſe ſeiſin he makes his demand: and two objections were made, that this counterplea was not within this Statute. 1. That D. claimed the reverſion by purchaſe, and ſo B. was not his anceſtor within this Statute, for he claimed not the land as heir. 2. That this Statute ſpeaketh of the Tenant, which muſt be underſtood of the Tenant for life, who is the Tenant to the Præcipe in deed, and not of the Tenant by receit, who is Tenant in Law: As to the firſt it was anſwered and reſolved, That in as much as the abatement is confeſſed, albeit that divers ſtates be made, yet for that D. is heir to the abator, The firſt counterplea given by this Act. 46 E.3.2. 4 E.3. Count. de Voucher 96.

and B. his anceſtor within the letter of the Statute, and Injuria per circuitum non tollitur, and ſo within the meaning. But if the ſtate of the abator had bèn avoided by a title paramount, and the heir of the abator had bèn enfeoffed, there the heir had not claimed under the abatement, and therefore although he were within the letter of this Act, yet had he bèn out of the meaning.

40 Aſſ.22. ¶ Aunceſtre.] And where it is ſaid here anceſtor, predeceſſor is taken by equity; for Acts of Parliament made for ſuppreſſion of falſhood practiſed for delay, as theſe falſe vouchers be, ſhall have a benigne interpretation.

¶ Tenant.] To the ſecond, albeit Tenant by receit be but Tenant in Law, yet is he in lieu of the Tenant, and ſo within this branch, for otherwiſe the abator may make a leaſe for life, and by his default after default be received, and ſo by covin betwèn them make this branch of none effect, which ſhould be againſt reaſon, & in fraudem legis; And Tenant in Law by Warranty is within this Act, albeit he be not preſent in Court.

Hil.9 E.2. fo.63. in lib. meo en Coſinage.

¶ Primier que entra.] A. and B. do abate to the uſe of B. the whole ſtate is in B. if B. infeoffe A. this coadjutor is within this Act, and yet he gained no freehold, but this Statute ſaith, Le primer que enter, and though he entred not at the firſt ſolely, yet is he within this Statute.

But if the abator maketh a feoffement in fee, and taketh back an eſtate to him and a ſtranger, and they both be impleaded in a Writ of Aiel, and vouch their feoffor for the benefit of the ſtranger (who is out of the Statute) the Voucher cannot be counterpleaded within this branch.

But if the ſtranger releaſe to the abator, and he be impleaded, and vouch, this voucher may be counterpleaded by force of this branch.

45 E.3.16.8 H.7.5. ¶ Et ſi non, ſoit bote ouſter al auter reſpons.] So as this clauſe giveth no benefit to the Tenant, unleſs he giveth over his Voucher, and then he ſhall be received to anſwer, but if he ſtand to his Voucher, and demur in Law upon the counterplea, and it be adjourned to another Terme, it is peremptory to the Tenant in reſpect of the delay, in ſuch ſort, as if iſſue had bèn taken, and a trial had: By theſe words [Soit bote a auter reſpons] he may as well vouch as plead in chief. Note the words be, Soit bote a auter reſpons, *& ne dit en chiefe*, ſo as any anſwer ſufficeth, and therefore the vouchée may plead utlawry in the Plaintiff in an Action of Debt, after the laſt continuance.

40 E.3.14. Br.tit. Coun. de vouch.5. 21 E.4.54. 22 H.6.40. 11 H. 4.22. 42 E.3.16. 10 H.7.22.

But if the counterplea be adjudged for the demandant in the ſame term, he may plead in bar, but he cannot vouch.

A demurrer in Law upon a Voucher adjourned to another term is peremptory; for the demurrer is in lieu of an anſwer, otherwiſe in caſe of counterplea the ſame term, as hath bèn ſaid.

Hil. 9 E.2. fo.63. in lib. meo en Coſinage. Temps E.1. Count de vouch. 116. See the ſtatute de Vocat. ad Warr. 20 E.1.

¶ Sil neit ſon garantor en preſent, que luy voille garrant' de ſon gree, &c.] In a Writ of Right of Ward, the Defendant vouch, and for that the Vouchée was preſent in Court, and entred into Warranty, the Plaintiff could not counterplead.

¶ Des

¶ Des rechiefe in touts manners des briefes des entries queux font mention des degrees: purvieu eſt que nul diſormes vouchera hors del lien.] A Diſſeiſor makes a leaſe for life, the Remainder in fee, the Diſſeiſee brings a Writ of Entry ſur diſſeiſin in the Per against the Leſſee, who makes default after default; he in the Remainder is received, he ſhall vouch out of the lien, becauſe he is not within the degrees mentioned in the Writ. The ſecond Counterplea given by this Act. 16 H.7.5. 9 E.3.16. ſimile.

And there is no ſuch miſchief in this caſe, as ſhould follow, if the Law were ſo taken in the firſt branch, as before it appeareth.

But of the Vouchee, in caſe of the Per & Cui, Fleta ſaith, Fiat vocatio de perſona in perſonam, & de warranto in warrantum de perſonis in brevi nominatis uſque ad ipſum diſſeiſitorem; and the reaſon may be, becauſe it appeareth, that the Vouchee is within the degrees mentioned in the Writ: and the words of the Statute are general, Nul vouchera hors de lien; in which words, the Vouchee is included. Laſtly, it had been to little purpoſe, to reſtrain the Tenant in the Per, and to let the Vouchee in the Cui at large; ſo as this branch hath (as you ſee) his ſpecial reaſon. Fleta li.5. ca.37.

If a Writ of Entry in the Per be brought againſt the husband and wife, and upon the default of the husband the wife is received, ſhe ſhall not vouch out of the lien, becauſe ſhe is party to the Writ.

So it is, if a Writ of Entry in the Per be brought againſt the Tenant for life, and he pray in aide of him in the reverſion, and he joyn in aide, he muſt joyn in plea with the Tenant, and therefore ſhall not vouch out of the degrees.

¶ Hors del lien.] Lien is properly the binding of the Vouchee by force of the Warranty; for the Vouchee ſaith, Que aves a vous a lier a garranty; and then the Tenant ſheweth the Lien, that is, the Deed or Fine, &c. that bindeth him to Warranty: here it is taken for the Degrees; of which you have heard before, in the Expoſition of the laſt Chapter of Marlebridge.

In a Writ of Entry in the Per and Cui againſt B. of the feoffment of A. A. dyeth, B. ſhall vouch the heir of A. for the heir is within the intention and meaning of this Law, leſt he ſhould loſe his warranty (ſo much favoured in Law) by the act of God, viz. the death of A. 12 E.3. Count. de Vouch.92. 27 H.6.1.

¶ Et in autres briefes Dentre ou nul mention eſt fait de degrees.] That is, Writs of Entry in the Poſt; whereof, and of this whole clauſe, ſomewhat hath been ſpoken in Expoſition of the ſaid Statute of Marlebridge.

¶ Et in briefe de droit.] This is not only underſtood of a Writ of Right right, but of all Writs of Right in his nature, or which touch the right, as this Law hereafter ſpeaketh, as the Writ of Eſcheat, Writs of Formedon in Reverter, Remainder, Diſcender, &c.

¶ Que celuy que eſt vouche.] If the Tenant vouch A. as Aſſignee to B. the Demandant may counterplead the ſeiſin of B. within the meaning of this branch, for that overthrows the voucher, which is the end of this Law. The third counterplea given by this Act. 12 E.3. Count. de Voucher 42.

a If an Infant be vouched as heir to A. it is not ſufficient to counterplead the ſeiſin of A. the anceſtor, for that the Infant cannot make a feoffment; but he muſt counterplead the ſeiſin of the Infant and his anceſtors, and the infancy ſhall come upon the Lien. a 21 E.3.9. 31 E.3 Count.de Vouch. 88. Dier 13 El. 290.

¶ Ne nul de ces aunceſtres.] *b* Here is implyed (whoſe heir he is) but yet this doth extend as well to the ſpecial heir of the poſſeſſion, (as the heir in Borough English, and in Gavelkind) as to the general heir at the Common Law.

c Where a Biſhop or an Abbot be vouched, the Counterplea muſt not be of the Biſhop or Abbot and his anceſtors, according to the letter of the Law: but of him and his predeceſſors, according to that capacity whereby the land is demanded: and ſo it is of other bodies Politique and Corporate.

d If a Baron and Feme be vouched, the ſeiſin of the Feme and her anceſtors may be counterpleaded, unleſs ſpecial matter be ſhewed to the contrary: and ſo it is, if two others be vouched, it is a good Counterplea to counterplead the ſeiſin of one of them, for ouſting of Delay by eſſoine, protection, death, and his heir within age, &c.

¶ Ne unques avoient ſeiſin de la terre ou tenement, &c. per que il poet aver, &c. feoffe.] *e* Yet if he hath but an eſtate for years, it is ſufficient; for by the livery he gaineth ſeiſin, and both the feoffments de jure and de facto are within this Statute, but otherwiſe it is of an eſtate at will.

If the Vouchée hath but an eſtate for life, ſo as his feoffment ſhould be a ſurrender, yet hath he ſuch an eſtate as is within this Statute.

Husband ceſti que uſe in the right of his wife, or ſeiſed in the right of his wife, hath a ſeiſin dont il poet feoffment faire, a feoffment for maintenance, though the Statute of 1 R. 2. make it void, yet ſeeing it is not void until entry, it is a ſufficient ſeiſin to make a feoffment.

f One Joyntenant cannot enfeoff another, yet hath he ſuch a ſeiſin as is within this Act; for [Feoffement faire] is ſpoken but for example; but a Fine, releaſe, or any other conveyance which giveth an eſtate, is within this Law.

If a Vouchée or any of his anceſtors had any ſeiſin, though it were avoided or determined, it is ſufficient.

¶ En demaunde.] *g* If a Rent be demanded, and the Tenant vouch by reaſon of a feoffment of the land diſcharged of the Rent with warranty, the Demandant may counterplead the ſeiſin of the Vouchée, &c. of the land, albeit the Rent is only in demand.

¶ Ne fee, ne ſervice per la maine le tenant, ou aſcun de ſes anceſters, &c.] *h* For in reſpect of ſome tenure and ſervice, the Tenant may vouch to warranty; as Frankalmoigne, homage anceſtrel, reverſion, &c.

¶ Puis le temps celuy de que ſeiſin le demand' counte.] *i* Here [ſeiſin] is taken for the title of the Demandant in his Writ, for it is a Maxim in counterpleas, that the Demandant is not to counterplead any ſeiſin, but after the title of his Writ; and where the ſeiſin is in the title, there the counterplea muſt be after that ſeiſin: as for example, in a Writ of Right, after the ſeiſin of him of whoſe ſeiſin he demand.

Here is implyed, (and before the Writ purchaſed) for if it be pendente brevi, it ought not to be allowed.

¶ Jeſque le temps que le briefe fuit purchaſe & plea move.] * For no Warranty, created after the purchaſe of the Writ, ſhall delay the Plaintiff, unleſs upon that conveyance the Writ be made good; as if a Præcipe be brought againſt A. of land whereof B. is ſeiſed, and B. infeoffe A. hanging the Writ, he ſhall vouch by force of this Warranty, otherwiſe not.

b 10 E. 3. 30. 18 E. 3. 3. 26. 38 E. 3. 22. 40 E. 3. 14 23. 43 E. 3. 19. 27 H. 6. 1. 35 H. 6. 34. 22 E. 4. 10. 20 H. 7. ibid.
c 40 Aſſ. 22. 19 E. 2. Count. de Vouch. 114. 6 E. 2. View 162. Têps E. 1. ib. 171.
d 22 Aſſ. 30. 48 E. 3. 28. 18 E. 3. 53, 54. 47. 39 E. 3. 30, 32. 16 H. 7. 13. 20 H. 7. ibid.
e Temps E. 1. tit. Count. de Vouch. 126. 50 E. 3. ibid. 124. 16 E. 3. Count. de Garr. 36, 37. 18 E. 3. Iſſue 36. 40 E. 3. 12, 13. 44 E. 3. 27. 13 E. 3. Count. de Vouch. 36. 8 H. 7. 5. 21 H. 6. Count de Vouch. 3. 14 H. 6. 10.
f 44 E. 3. Count. de Vouch. 45 E. 3. 16. 14. 35 H. 6. 10. 9 H. 6. 49. 8 H. 7. 5. 50 E. 3. tit. Count. de Vouch 124.

g 3 E. 3. 36. 5 E. 3. 16. 37. 10 E. 3. 20. 26 R. 6. Count. de Vouch. 5. 12 R. 2. ibid. 34. 35 H. 6. 30. 21 E. 4. 26.
h Fleta li. 6. ca. 23. 13 E. 1. Count. de Vouch. 118. 47 H. 3. Vouch. 270, 271. 9 H. 3. ibid. 277. 1. part Inſtit. ſect. 143.
i 13 E. 3. Count. de Vouch. 118. 6 E. 3. 21. 38 E. 3. 28. 39 E. 3. 36. 41 E. 3. 15. 46 E. 3. 32. 48 E. 3. 2. 11 H. 4. 19. 22 H. 6. 42. 21 E. 4. 20. 21 E. 3. 20. 21 E. 4. 26. 12 H. 7. 2.
* 8 E. 3. 40. 28 E. 3. 90. 41 E. 3. 5. 12 R. 2. Count. de Vouch. 33. 18 E. 4. 27. a ſimile.

¶ Soit

¶ Soit le tenant bote ouſt' al aut' reſpons.] Of this ſufficient hath bæn ſaid before.

¶ Lavantdit exception eit lieu en briefe de mordaunc', & en les autres briefs devant noſmes auxi bien come in briefs queux touchant droit.] By this clauſe, the Demandants in Writs of poſſeſſion, as the Mortdaunceſter, Coſinage, Aiel, Nuper obiit, Intruſion, and the like, have a greater priviledge and advantage then Demandants in Actions which touch the Right; for this Act gives the Demandants in Writs of poſſeſſion, not only the firſt counterplea, that is, that the Tenant or his anceſtor was the firſt that entred, &c. but alſo the laſt counterplea, which is given in Writs touching the Right, viz. that neither the Vouchée nor any of his anceſtors had ever any ſeiſin, &c. 12 H.7.2.b. per Wood & 3. per Brian.

¶ Et ſi le tenant per caſe eit charter de garrantie de auter home, que ſoit oblige in nul des avantdits caſes, &c.] If any man be ouſted of his Voucher by this Statute, yet if he hath a Charter of Warranty, he may have his Writ of Warrantia chartæ; as if a man that never had any thing in the land, nor any of his anceſtors before him, releaſeth to the Tenant of the land with Warranty, if the Tenant vouch him, and the Demandant counterplead the Voucher, by the laſt branch of this Act, viz. that the Vouchée, nor any of his anceſtors had ever any ſeiſin, &c. and the Vouchée is not there preſent, to enter into Warranty; in that caſe the Tenant ſhall be ouſted of his Voucher, but may have his Writ of Warr' chartæ. So if a man after the death of my anceſtor abate, and make a feoffment in fée, and after purchaſe the land again with Warranty, and after is impleaded in an Aſſiſe of Mortdanceſter, he ſhall be ouſted of his Voucher by the firſt branch of this Act, becauſe he was the firſt that entred, &c. but he may have his Warrantia chartæ. So if a diſſeiſor make a feoffment in fée to A. who infeoffeth B. and after repurchaſeth the land of B. with Warranty, againſt whom the Diſſeiſée brings a Writ of Entry in the Per, as he may do, he cannot vouch B. by the ſecond branch of this Statute, but the Diſſeiſor only, and is driven to his Writ of Warrantia chartæ againſt B. Inſtit. 1. part. ſect.743. More of this matter.

It is to be known, that there are counterpleas to the Voucher, and that this Statute giveth to the Demandant againſt the Tenant in three caſes, as hath bæn ſaid.

And there is a counterplea to the Warranty, or to the Lien, (which is all one) and that is betwæn the Tenant and Vouchée, whereof there is no occaſion given to treat at this time; for this Act deals not in any ſort with it.

There were at the Common Law divers counterpleas of the Voucher, to prevent or to ouſt the Demandants delay, whereof it is not impertinent to ſay ſomewhat.

It was a good counterplea at the Common Law to ſay, that there was Nul tiel, as the Vouchée; and that the Statute of 14 E.3. cap.18. was in affirmance of the Common Law. 7 E.3.27. 7 Aſſ.4. 28 E.3.96. * 14 H.6.10.

* So it is, if one be vouched as heir within age, and that the Parol may demur, to ſay, that he is a baſtard; ſo it is, to ſay that the Vouchée is villein to the Demandant. 48 E.3.17. 14 E.3. Count.de Vouch.67.

It was a good counterplea at the Common Law, to ſay that the Vouchée was dead, but upon this diſtinction, that the Demandant ſhew the ſame before any Proceſs awarded; for after Proceſs awarded, it muſt come in by the return of the Sheriff: and that the Statute of 14 E.3. cap.18. was made but in affirmance of the Common Law, for it was adjudged in 5 Edw. 3. a good counterplea. 40 E.3.36. 25 E.3.43. 17 E.3.41. 21 E.3.36. 7 E.3.27. 5 E.3.35.

39 E.3.32. And ſo it is, if two be vouched, it is a good counterplea, to ſay, that one of them is dead for preventing of delay.

18 E.3.55. In dower it is a good counterplea to ſay, that the Tenant entred by her husband.

3 E.3 38. 6 E.3. 18 E.3. Vouch.7. 32 E.3. ibid.99. 7 H.4. 11 H.4.21. 22 H.6.19. It is a good counterplea of the Voucher to ſay, that the Tenant hath formerly prayed in aid of him, in reſpect of the delay.

In all caſes, where one doth vouch out of common courſe, there the Tenant ought to ſhew cauſe.

And whenſoever the Tenant cannot be admitted to his Voucher without ſhewing of cauſe, there by the Common Law the Demandant may counterplead the cauſe.

21 E.3.37. 25 E.3.53. 40 E.3.14. 41 E.3.21. 44 E.3.38. 38 E.3.4. 29 E.3.29. 32 E.3. Vouch.96. 10 H.7.21, 22. 16 H.7.13. 43 E.3.19. When one voucheth himſelf for ſaving of his eſtate tail; or when he voucheth himſelf as heir, and his brother as Tenant in Borough Engliſh, becauſe it is out of common courſe, the Tenant muſt ſhew cauſe, and the Demandant ſhall have a counterplea to the cauſe.

In a Præcipe, the Tenant vouched two brethren as one heir, and that the youngeſt was within age; and becauſe it was out of common courſe, he was ruled to ſhew cauſe; and ſhewed, that the father was ſeiſed of lands in Gavelkind, and that the ſame deſcended to them, and the Demandant counterpleaded the cauſe.

4 E.3.13. 11 H.4.16. 21.48. So it is, if a Præcipe be brought by four, and two be ſummoned and ſevered, the Tenant cannot vouch them that be ſummoned and ſevered, without ſhewing cauſe for the reaſon aforeſaid; and the cauſe being ſhewed, the Demandant ſhall counterplead the ſame.

42 E.3.16. 3 E.3.8 12 H.7.2,3. 3 E.3.38. 8 E.3.61. 17 E.3.61,62. 25. Aſſ.Pl.ult. 31 E.3. Vouch.24. 44 E.3.18. 14 H.6.10. In a Præcipe againſt two they cannot vouch ſeverally without ſhewing of cauſe, becauſe it is out of common courſe, that Jointenants ſhould vouch ſeverally without ſhewing of cauſe; which cauſe the Demandant ſhall counterplead by the Common Law: and ſo in all other caſes, whereof there are plentiful authorities in our Books.

See more of this matter in the firſt part of the Inſtitutes, Cap. Garrantie.

CAP. XLI.

DE ſerements des Champions, eſt iſſint purview: Pur ceo que rarement avient que le champion le demandant ne ſoit perjure en ceo quil jure, que il ou ſon pier veiſt la ſeiſin ſon Seigniour, ou de ſon aunceſtour, & que ſon pier luy commande a faire la darreign', que deſormes ne ſoit le Champion le demandant conſtrent a ceo jurer, mes ſoit le ſerement garde en touts ſes auters points.

Glanv.li.2.ca.3. At the Common Law none could be a Champion for the Demandant, but ſuch an one, as either himſelf ſaw, or heard his father ſay, that he ſaw the ſeiſin of the Demandant or his anceſtor, and that his father commanded him to teſtifie the right, and that this was true, he tok a corporal Oath: But oftentimes the Demandants ſeiſin was ſo ancient, as ſeldom any man could take that oath, and

and yet in theſe caſes, champions in thoſe times took the Oath, though they knew it not, either ex viſu, or ex auditu, &c. and therefore as this Act ſaith, were perjured.

¶ Des ſerements des champions.] Champion, Campio dicitur a campo, becauſe the combat was ſtrucken in the field, and therefore is called Campfight, and he muſt be liber homo, a free man.

This trial by Champion in a Writ of Right hath been anciently allowed by the Common Law, and the Tenant in a Writ of Right hath election either to put himſelf upon the grand Aſſiſe, or upon the trial by combat by his Champion with the Champion of the Demandant, which was inſtituted upon this reaſon, that in reſpect the Tenant had loſt his evidences, or that the ſame were burnt or imbezeled, or that his witneſſes were dead, the Law permitted him to try it by combat between his Champion, and the Champion of the Demandant, hoping that God would give victory to him that right had, and of whoſe party the victory fell out, for him was judgment finally given, for ſeldom death enſued hereupon, (for their weapons were but Batounes) victory only ſufficed.

Bract. l. 3. fo. 344. 9 H. 3. Fleta l. 6. cap. 9. in fine.

Now concerning the oath of the Champions, and the ſolemn manner and order of proceeding therein, and between what parties trial by battel ſhould be joyned, you may read in the Statute of W. 2. cap. 41. and at large in our books; and the oath of the Champion, as well of the Tenant as of the Demandant continued ſince this Statute, followeth in theſe words:

Brac. l. 3. fo. 141. b. 4 E. 3. 41. 17 E. 3. 2 29 E. 3. 12. 30 E. 3 20. 9 H. 4. 3. 1 H. 6. 6. 9 E. 4. 35. 19 H. 6. 35. 21 H. 6. 4. 14 E. 4. 7. 13 Eliz. Dier 301. See the firſt part of the Inſt. § 489. & 514

> Hear this you Judges, that I have this day neither eat, drunk, nor have upon me either bone, ſtone, ne graſs, or any inchantment, ſorcery or witchcraft. where through the power of the word of God might be * inleaſed or diminiſhed, and the Devils power increaſed, and that my appeal is true, ſo help me God and his Saints, and by this Book.

* Of the French word, enlaſſe. i. intangled, or enſnarled.

The Law doth allow a trial by battel in another caſe, and that is in caſe of life in an appeal of felony, the Defendant may chooſe either to put himſelf upon the Country, or to try it by body to body, that is by combat between him and the Plaintiff, but there the parties themſelves ſhall fight.

Brac. l. 3. fo. 138. b. Mirror ca. 1. § 3. Fleta l. 1. cap. 32. Bract. l. 3. fo. 141, 142. Brit. 41 fo. Fleta ubi ſupra. Mir. c. 3. ordinatio pugnantium.

And it appeareth by our ancient Authors, Quod ſi appellatus ſe defenderit contra appellantem tota die uſque horam qua ſtellæ incipiunt apparere, tunc recedat appellatus quietus de appello.

And in caſe of the Writ of Right, the Champions are not bound to fight but until the Stars appear, and if the Champion of the Tenant can defend himſelf until the Stars appear, the Tenant ſhall prevail, for they ſhall combat but once, and it is ſufficient for the Tenant to defend being in poſſeſſion.

The Judges of the Court of Common Pleas are Judges of the battel in a Writ of Right, and the Judges of the Kings Bench in an appeal of felony. But if the cauſe of appeal be not determinable by the Common Law, but before the Conſtable and the Marſhal according to the Civil Law, there the Conſtable and Marſhal are Judges.

Mirror, Bracton, Britton, Fleta } ubi ſupra.

37 H. 6. 26. Rot. Vaſc. 9 H. 4. m. 14.

But this trial in an appeal at the Common Law of later times ſeldom come in uſe, for that the appellant procures the appellee to be indicted, and then he cannot try it by battel: * but if the indictment be inſufficient, then the Defendant may try it by battel.

19 E. 2. Cor. 385. 13 R. 2. cap. 2. 5 Mar. tit. Batt. Br. 15. Dier 13 El. ubi ſupra. * 20 E. 4. 6.

Now the ancient Law was, that the victory ſhould be proclaimed, that he that was vanquiſhed ſhould acknowledge his fault in the audience of the people, or pronounce the horrible word of Cravent in the name of recreantiſe, &c. and preſently judgment was to be given, and after this the recreant ſhould amittere liberam legem, that is, he ſhould become infamous, and ſhould not be accounted in that reſpect Liber & legalis homo, and therefore could not be of any Jury,

Mirror cap. 3. ordinatio pugnantium.

nor

Rot.Pat. Anno 55 H.3.m.3.

Pugil a Champion.

Vide Mic.15 E.1. Rot.8. in Banco Norff. *Duellam percussum, & serviens Abbatis de Bury, tenentis devictus & interfectus.*

Vide Mich. 3 E.1. Rot.19.

Fleta li.1.ca.32.

See lib.9.fo.32.b. Le case del Abbot de Strata Marcella.

Deuter.cap.18. verse 10.

Glanv. ubi supra.

Bract.li.5.fo.373.

nor give testimony as a witnes in any case, because he is become infamous, and of no credit: And this doth notably appear in an ancient Record, where the case was, that battel being joined in a Writ of Right of Advowson, in Anno 55 H.3. before the Justices in Eyre in the County of Northampton, and the champions combating, Philip le Pugil champion for one of the parties was vanquished, and thereupon Proclamation made accordingly; the King by advice of his Councel reciting under his great Seal the joyning of battel in the said Writ of Right of Advowson, and the proceeding thereupon did signifie, Quod in duello prædicto coram Justiciariis prædictis percusso, irruerit in eundem Philippum tanta multitudo hominum, unde oppressus se defendere non potuit, qui homines perpetuam defamationem sibi imposuerunt, & in eodem duello Creantiam proclam': Rex inde certior factus, &c. statuit quod prædictus Philippus propter Creantiam prædict' liberam legem non amitteret, &c.

Of this trial by battel, Fleta saith thus, Duellum singularis pugna inter duos ad probandam veritatem litis, & qui vicerit probasse intelligitur; & quamvis judicium Dei expectetur ibidem, quicunque tamen monamachiam, i. singularem pugnam, sponte susceperit, vel obtulerit, homicida est, & mortale contrahit peccatum.

¶ Son pier luy commande a faire la dereign'.] And these words are well explained by Glanvill, Cui pater suus injunxit in extremis agens, in fide qua filius tenetur patri, quod si aliquando loquelam de terra illa audiret, hoc dirationaret, sicut id quod pater suus vidit & audivit.

¶ Ne soit le champion le Demandant constreint a ceo jurer.] Hereby it appeareth that preventing Justice is better then punishing Justice, Melior est Justitia vere præveniens, quam severe puniens; for when it is punished, yet the offence is committed, but when it is prevented, then there is neither offence nor punishment: This Law preventeth perjury, which taketh away that part of the oath which seldom or never was or could be kept.

CAP. XLII.

PUr ceo que en briefe dassise, dattaints, & de *Juris utrum*, les Jurors sont sovent travels per essoines des tenants: Purview est, que del heure que le tenant un foits apparust en Court, jammes ne puisse *le tenant* se essoine, mes faire son Attorney a suer pur luy, sil voile. Et si non, soit lassise, ou le Jurie prise per son default.

The mischief doth appear by the preamble, and that the rather, for that in these Actions here rehearsed there is a Jury returned the first day, and therefore the delay of the Jurors was the greater, but of two mischiefs, one only remedy was provided; for as great delay had the Jurors where the Demandant, as where the Tenant was essoined, and here provision is made for the essoine of the Tenant which was the greater mischief, for commonly the Tenant seeks delay, and the Plaintiffs expedition; Petens præsumitur desiderare potius instantiam litis, quam dilationem.

Bract.li.5.fo.342.

This

This Act is not underſtood of a Writ of Aſſiſe De novel diſſeiſin, for that in that Writ, the Tenant ſhall not be eſſoined, neither before, nor after appearance, Locum non habet eſſonium in perſona diſſeiſitoris, vel rediſſeiſitoris; but this is intended of an Aſſiſe of Mordaunceſter, and it is ſaid, that the Juſtices of the Kings Bench will not allow an eſſoine for the Plaintif in no manner of Aſſiſe, nor for the Tenant in Aſſiſe of Mordaunc'. Britton fol. 164. Fleta lib. 6. cap. 9. 10 H. 6. 22. 14 H. 6. 22. 8 Aſſ. 22. 22 Aſſ. 79. 30 Aſſ. 51. 34 Aſſ. 6. 6 E. 3. 25.

But albeit no eſſoin for the Tenant doth lie in Aſſiſe of Novel diſſeiſin, yet if the ſame be diſcontinued by the non venu of the Juſtices, or by the demiſe of the King, in a reattachment the Tenant ſhall be eſſoined, and ſo ſhall the Tenant be in a reſummons after a diſcontinuance in Aſſiſe of Mord'. 44 E. 3. 5. 44 Aſſ. 24. 30 Aſſ. p. 5. 8 Aſſ. p. 22.

An Aſſiſe of Mord' was brought in Cheſter, the Tenant vouched a forreiner to warranty, whereupon the Record was removed into the Court of Common Pleas, 15 Paſch. at which day (though it be in an Aſſiſe of Mord') the Tenant may be eſſoined, for the plea in Bank is not the plea of Aſſiſe, but the plea there is only upon the Warranty, for the Aſſiſe ſhall not be taken in Bank.

The Statute of W. 2. doth provide for the other miſchief in the caſe of Aſſiſe of Mord', Attaint, and Juris utrum, viz. that the Demandant therein after appearance ſhall not be eſſoined; but that Statute extendeth not to the Aſſiſe of Novel diſſeiſin. W. 2. c. 28. 26 Aſſ. p. 35. 45 Aſſ. 2. 30 H. 6. 1. 16 Aſſ. 16

¶ Dattaints.] This Statute is intended of the Tenant in an Attaint as well in a plea perſonal, or mixt, as upon a plea meerly in the realty. 26 Aſſ. p. 25. 34 Aſſ. p. 6.

¶ Juris utrum.] See the Statute of W. 2. aboveſaid. 6 E. 3. 25.

¶ Que le Tenant.] This doth extend as well to the Tenant in Law, as the Vouchee, and Tenant by receipt, as to the Tenant in deed, for it is to ouſt delay for expedition of Juſtice, and for the eaſe and benefit of the Jurors, and therefore being in equal miſchief ſhall be within the ſame remedy. 22 Aſſ. p. 79. 23 Aſſ. p. 15.

Hereby it appeareth that this Statute provideth only againſt the Tenant after appearance, and leaveth the eſſoin of the Plaintif (as hath been ſaid) at large.

¶ Se eſſoine.] Though here eſſoin be ſpoken indefinitely, yet is it to be taken in a common ſenſe, and therefore is it to be underſtood of a common eſſoin, and not of an eſſoin de ſervice le Roy, for Statuta per Regem, Dominos, & Communitatem Regni ordinata in communi, & vulgari ſenſu intelliguntur. 12 E. 1. eſſoin 175. 4 E. 3. 34. 6 E. 3. eſſoin 55.

¶ Mes fait ſon Attourney a ſuer pur luy.] By the policy of the Common Law, that ſuits might not encreaſe and multiply, Cum lites potius reſtringendæ ſunt, quam laxandæ, both Plaintif, and Defendant, Demandant, and Tenant in all Actions real, perſonal, and mixt did appear in perſon, as well in Courts of Record, as not of Record, becauſe the Writs do command the Tenant or Defendant to appear, which was always taken in proper perſon; and the entry in every Action for the Demandant or Plaintif is, & prædictus petens, or querens obtulit ſe 4 die, which was ever underſtood in proper perſon: but when this and other Statutes had given way to appear by Attourney, it is not credible how (with Attourneys and their multiplication) ſuits in Law (for the moſt part unneceſſary and for trifling cauſes) when the parties themſelves might ſit quiet at home, increaſed and multiplied: ſo dangerous and ill ſucceſs have ever had the breach of the Maxims and ancient rules of the Common Law, as elſewhere hath been obſerved. F.N.B. 25. Brit. 285, 286, 287, &c. Merton cap. 10. Glouc. c. 8. W. 2. cap. 10. 27 E. 1. de terris. amortiſand. Stat. de York. 12 E. 2. c. 1. 15 E. 2 Stat. de Carliſle. 3 H. 7. cap. 1. 23 H. 8. cap. 3, &c. In the preface to the fourth Book, and here before, Cap. 26.

It appeareth in Glanvills time, that the Juſtices admitted the parties, Per reſponſalem loco ſuo ad lucrandum vel perdendum, but then only when the parties themſelves were preſent, for he ſaith, Verum oportet eum eſſe præſentem in Curia, qui reſponſalem ita in loco ſuo ponit: & nota differentiam inter Reſponſalem & Attornatum. Glanv. li. 11. c. 1. Bract. l. 5. f. 353, 360. Mirror c. 2. § 21. Des Attornies. See the 1. part of the Inſtit. § 196.

And the Mirror ſpeaking of the ancient Law before the Statute ſaith, Abuſion eſt a receiver Attourney, ou nul poier eſt a ceo done per briefe en la Chauncery: Et abuſion eſt a receiver Attourney, ou le parol neſt my attaine per preſence des parties, &c.

Rot. Parl. 20 E. 1. De Attournatis. 4 H. 4. cap. 14. 33 H. 6. cap. 7.

After this in divers Parliaments it was thought good to decreaſe the number of Attourneys, finding them to be the cauſes of multiplication of ſuits. But though divers good Laws have bèn made therein, yet the number of them dayly increaſeth, to great inconvenience in the Common wealth, and to the no ſmall blemiſh and diſcredit of that ancient and neceſſary vocation.

CAP. XLIII.

PUR ceo que les demandants ſont ſovent delayes de tout droit, pur ceo que ou ſont pluſors parceners tenants, dont nul puit reſpoign' ſans auter, ou quil ad pluſours tenants jointment feoffes, ou nul ne ſciet ſon ſeveral, & ceux tenants ſovent forchient per eſſoine, iſſint que cheſcun eit un eſſoine: Purview eſt deſormes, que ceux tenents nient eſſoine, forſque a un jour, nient pluis que un ſole tenant naveroit, iſſint que jammes ne puiſſent forcher, forſque tantſolement aver un eſſoine.

¶ Forchient per eſſoine.] The true underſtanding, what it is to fourch by eſſoin, doth open both what was the miſchief before, and what is remedied by this Statute.

Bract. l. 5. f. 342. 33 H. 6. 25. 2 E. 4. 19

Fourcher by eſſoin, on the part of the Tenant, is when a Præcipe is brought againſt two or more Tenants, and after each of them have had one eſſoin, which is due to them by Law, they over again delay the Demandant by ſucceſſive eſſoins.

For example, a Præcipe is brought againſt A. and B. A. is eſſoined, and B. appears, and hath idem dies given him; at which day A. appears, and B. is eſſoined, this is lawful, but then at that day B. is eſſoined again, and C. appears, & ſic viciſſim & alternis vicibus, this is called fourcher by eſſoin, and ſo it is explained in our books.

39 H. 6. 28. 29. See hereafter verbo Tenants. Fleta lib. 6. cap. 9. Britton fol. 184. 5.

This doth Fleta comprehend in few words, and rendreth to fourch by eſſoin Eſſoniare viciſſim: for he ſaith, Si autem plures fuerint tenentes pro indiviſo proviſum eſt, quod non eſſonientur viciſſim, ſed ſimul ad unicum diem, ſicut fuiſſent unum corpus ratione unitatis juris, & hæreditatis.

To fourch in one of the ſignifications is to divide, and becauſe they divide themſelves in delay of the Demandants by eſſoins and appearances interchangeably, it is called fourcher per eſſoin.

2 E. 4. 19.

Now this miſchief was not that every one of the Tenants ſhould not have one eſſoin, but that there ſhould be a fourcher, a viciſſitude of eſſoins after each of them have had one eſſoin. So as this Act doth only prohibite the fourcher by eſſoin, which was uſed for delay, and not one only eſſoin, as hath bèn ſaid, which is lawful and neceſſary.

20 E. 2. Fourcher 1 16 E. 3. ibid. 9. 38 E. 3. 1. 12 H. 4. 14 H. 4. 37. 3 H. 6. 36 8 H. 6. 15. 9 H. 6. 21 44.

¶ Demandants.] This Act doth extend only to real Actions in reſpect of this word Demandant, which is proper to real Actions; and the words be alſo, Where be divers parceners Tenants, or Tenants joyntly infeoffed, and thoſe Tenants fourch by Eſſoin; ſo as this Act extendeth to Actions in the Realty.

But this Statute extends not to an Action of Debt upon an Obligation, Covenant, or other like perſonal Actions.

¶ Tenants.

¶ Tenants.] This Act is to be underſtood after Apparance, and ſo doth the Statute of Gloc' recite it, for there is no Fourcher but after former Eſſoins and reciprocal Apparance, as hath been ſaid; and this doth alſo prove what Fourcher is. 22 E.3.5. 38 E.3. 12.18. 48 E.3.20 Gloc'. cap.20.

This Statute being made for expedition of Juſtice, and for ouſting of Delays is benignly interpreted; for in a Writ of Annuity againſt a Parſon, he prayeth in aid of the Patron and Ordinary, and they, after each of them have had one Eſſoin, would have fourched by Eſſoin, and could not by the Rule of the Court, and yet the prié in aid is no party to the Writ. 3 H.6 36. F. tit. Fourcher 3. 44 E.3.38. Dyer 28 H.8,26.

And this Statute is made againſt the Fourcher by Eſſoin of the Tenants, and not of the Demandants. Bract. ubi ſupra. 33 H.6.25.

¶ Parceners & jointment feoffes.] This Statute ſpeaking expreſly of Parceners and Jointenants, extends not to Baron and Feme ſeiſed in the right of the wife, which is remedied by the ſaid Statute of Glouc': but where Baron and Feme be joyntly infeoffed, they are within the purview of this Statute: All Jointenants are within this Statute, although their eſtate be created by any other conveyance then by feoffment. Gloc'. cap.10. 6 E.1. Fleta, ubi ſupra.

CAP. XLIV.

PUR ceo que multes des gentes ſe font fauxment eſſoine de ouſtre le mere, la ou ils fuerent en Engleterre le jour de le ſummons: Purview eſt deſormes, que cel eſſoine ne ſoit pas de tout allow, ſi le demaundant le challenge, & ſoit priſt daverrer quil fuit en Engleterre le jour que le ſummons fuiſt fait, & 3 ſemaignes apres: mes ſoit ajourne en ceſt forme, que ſi le demandant ſue a tiel jour averment per pais, ou ſicome la court le Roy agardre & ſoit attaint que le tenant fuiſt deins le quater meres *Dengleterre* le jour que il fuit ſummons, & trois ſemains apres, iſſint que il puit eſtre reaſonablement garny de *la* ſummons, ſoit leſſoine turne en un default, & ceo fait a entend' tantſolement devant les Juſtices le Roy.

Of the diverſity of Eſſoins, and amongſt them, of this Eſſoin, called here Ultra mare, you have heard before in the expoſition of the Statute of Marlebridge: for the better underſtanding of the miſchief before this Act, and of the purview thereof, it is neceſſary to underſtand the diverſity of Eſſoins Ultra mare; ſome of which, ancient Authors call Eſſoines de ſervitio Regis æterni: and ſome, De ſervitio Regis temporalis: of the firſt ſort were, viz. ad terram ſanctam. And this was two-fold, viz. Cum peregrinatio vel paſſagium generale fuerit ad terram ſanctam, & tunc recedant partes ſine die, quouſque eſſoniatus redierit, vel obierit, &c. Semper tamen non habet locum iſtum eſſonium, quia non niſi tempore transfretationis alicujus Regis cum peregrinatione publica & generali, aut cum ſimplex fuerit, dabitur eſſoniato terminus unius anni & unius diei. Marlebridge, c.12. Bract. lib.5. fol. 338,339. Fleta lib.6. cap.8. Brit. cap. 123. Bracton, Britton, Fleta } ubi ſupra. 3 E.3.29. Acc.

Et ſi ſimplex ſit peregrinatio, & ultra annum & diem moram fecerit ultra mare, excuſatur ejus abſentia ſecundum quoſdam per eſſonium ſimplex de ultra mare, & ſic habebit ſpacium 40 dierum & unius Flud & unius Ebbe; & ſi adhuc moram longiorem protraxerit, habet eſſonium ſimplex de malo veniendi citra mare, per Mirror cap. 2. § 20. de Eſſoins.

quod habebit ad minus ſpacium 15 dierum quod verum eſt ad minus habebunt eſſoniati tantum tempus & ex cauſa majus tempus ſecundum diſcretionem Juſticiariorum. Et quid ſi tunc non venerit? procedatur ad defaltam contra eum, niſi forte contingat talem eſſoniari de morte ad cautelam. Si quis autem eſſoniatus fuerit eſſonio de ultra mare citra mare Græcorum quod profectus ſit in ſervitio Domini Regis æterni in peregrinatione alia quam ad terram ſanctam, ſicut apud Sanctum Jacobum, vel alibi, datur dilatio ad minus quadraginta dierum & unius Flud & unius Ebbe ad excuſationem eſſoniati de ſimplici eſſonio de ultra mare, &c. **And after he ſaith,** In hoc caſu induciæ ſunt arbitrariæ dum tamen ad minus quadraginta dierum ut ſupra. **And** Fleta **further ſaith,** Eſſonia autem ultra mare Hiberniæ & Scotiæ vertenda ſunt in eſſonium de malo veniendi 1 per 15 dies.

Mirror, Bracton, Britton, Fleta } ubi ſupra.

Fleta, ubi ſupra. 7 E. 4. 27.

Glanv. l. 1. c. 25. **And** Glanvill, **who wrote before all theſe, ſaith,** Eſt aliud genus eſſoniandi & neceſſarium, cum quis eſſoniat ſe de ultra mare, & tunc ſi recipiatur eſſonium, dabuntur ipſi eſſoniato ad minus quadraginta dies, &c. **And ſpeaking of Eſſoins, by reaſon of Peregrination, he ſaith,** Si verſus Jeruſalem iverit is qui ſe eſſoniare facit, tunc ſolet ei dari reſpectus unius anni & unius diei ad minus, &c.

Idem l. 1. cap. 29.

By theſe ancient Authors it appeareth, what delay this Eſſoine de ultra mare **wrought to the Demandant; and by the Law no averment could be had againſt it, no more then in a Protection, or in the** Eſſoine de ſervice le Roy, **which (ſpecially in thoſe days when ſuch** Eſſoines de ultra mare **were ſo frequent) was very miſchievous; for ſome fained ſuch a paſſage or Peregrination, and ſome went of purpoſe after the purchaſe of the** Præcipe, **which is well expreſſed by** Fleta: Sunt tamen quidam, qui cum fuerint brevia ſuper ipſos impetrata, extra regnum ſe devertunt, ne ſummonitione ſint præventi ut ſic jus petentis per eſſonium de ultra mare deferri poſſit, & unde proviſum eſt, quod ſi petens offerat verificare, quod tenens fuerit in Anglia die ſummonitionis, & per tres ſeptimanas ſequentes, adjournetur eſſonium, & irrotuletur calumnia petentis, & ſi alia die conſtare poſſit Juſtitiariis per inquiſitionem, vel alio modo, quod tenens fuit in Anglia die ſummonitionis, & per tres ſeptimanas ſequentes, ita quod potuit rationabiliter præmuniri, vertatur illud eſſonium in defaltam, ſed hoc obſervetur tantummodo coram Juſtitiariis.

Ubi ſupra.

Mirror cap. 5. § 1. & 4. ¶ Font fauxment eſſoine.] **All falſhood is abhorred in Law, and therefore the** Mirror **ſaid well,** Abuſion eſt que faux cauſes de eſſoine ſont de cy que droit ne allowe fauxime en aſcun caſe; **the Law alloweth no falſhood in any caſe, which is a Maxim of the Common Law,** Contra veritatem lex nunquam aliquid permittit.

¶ Eſſoine de ouſtre mere.] **This Act doth extend only to the** Eſſoine de ultra mare, **whereof we have ſpoken at large, and not to the** Eſſoine de ſervitio Regis, &c. Vide 21 H. 6. fol. 20.

21 H. 6. 20.

Stat. de 33 E. 1. de Prot. 28 H. 6. 3. 21 H. 6. 20. 39 E. 3. 35. 47 E. 3. 6. 1 H. 6. 6. 34 H. 6. 62 35 H. 6. 5. 8. 19 H. 6 35. 5 E. 4. 2. 21 E. 4. 20. *a* Regiſt. fol. 18. F. N. B. 17 H. *b* Gloc. cap. 8. ¶ Et ſoit priſt daverrer, &c.] **This averment, as hath been ſaid, could not be taken by the Common Law, no more then in caſe of a Protection before the Statute of** 33 E. 1. **which giveth an averment in caſe of Protection; of which Statute you ſhall read in our Books, and how the Protection may be repealed; and in the common** Eſſoine de malo veniendi, **or de ſervice le Roy, no ſuch averment can be taken againſt it.** *a* **But if the Tenant be eſſoined in any Action** de ſervitio Regis, **where in truth he is not in the Kings ſervice, then the Demandant or Plaintif may ſue a** *b* **ſpecial Writ out of the Chancery directed to the Juſtices, rehearſing, that he is not in the Kings ſervice, and commanding them to proceed; then the Eſſoin ſhall not be adjourned, but ſhall be quaſhed preſently.**

And ſo before this Statute in the Eſſoine de ultra mare, **if the party were in** England, **the Demandant might have purchaſed the like Writ, as is abovelaid; but for that many times that could not be obtained without great difficulty, this averment was given for avoiding of falſhood.**

¶ Jour

¶ Jour que le ſomons fuiſt fait, & per tres ſemaignes apres.] For the Summons always is made upon the land by two Sumners, whether the Tenant, or any for him, be there or no.

The day of the Summons is not counted parcel of the three weeks, but it muſt be three weeks after that day; otherwiſe had it been, if the words had been, three weeks after the Summons made.

¶ Deins le quater meres D'angleterre.] Within the four Seas is as much to ſay, as within the juriſdiction of the King of England; for all within the four Seas was either part or holden of the Crown of England, as by many ancient Records appeareth.

¶ Que il puit eſtre reaſonablement garny de *la* ſummons.] The three weeks after the day of the Summons were given as a reaſonable time, wherein by common intendment he might have notice of the Summons made upon his land.

¶ Soit leſſoine turne en un default.] This is the remedy given by this Act, for the benefit of the Demandant, who was unjuſtly delayed by this Eſſoin.

A woman Tenant in a Writ of Entre, &c. was eſſoined, for that ſhe was in terra ſancta, viz. from the time of the Eſſoin, for a year and a day, and it was ſaid, that the Tenant ſhould loſe her land, if it be found by Inqueſt, that ſhe was in England the day of the Eſſoin; and there it is ſaid, that at the day that the parties have by the Eſſoin, the Demandant ſhall be received to aver his challenge. Conſider well this Book, and the Book alſo of 28 H.6. which expounds the Statute of 33 E.1. Vide Raſt. Pl. fol. 297. See more for the antiquity of Eſſoins, and great variety of matter, both of this Eſſoin and of all other in the Mirror. 3 E.3.29. 28 H.6.3. Mirror cap. 1. § 3. cap. 2. § 20. de Eſſoins. c. 5. § 1.

And though this kind of Eſſoin is at this day out of uſe, yet have I ſpoken of the ſame thus much for two cauſes: firſt, for that mine endeavour hath been, to explain theſe ancient Laws, and to make every word of them ſo to ſpeak, as they may be underſtood. Secondly, the ſeveral points of Learning that do riſe out of this Law (though the particular caſe be out of uſe) may ſerve to good purpoſes, you ſhall obſerve in this and many others of this nature, in this ſecond part of mine Inſtitutes.

Where the Text is evident, it were loſs of time to make any expoſition.

CAP.

CAP. XLV.

DE delayes en touts maners des brieſes, & des attachments eſt purview, que ſi le tenant ou le defendant, apres le primer attachment teſmoign', face default, maintenant ſoit le grand' diſtreſſe agarde. Et ſi Viſc' ne reſpoigne ſufficientment au jour, ſoit grievouſment amercie. Et ſil maunde que il ad fait lexecution en due maner, & les iſſues bailes as mainpernors, adonques ſoit maunde au Viſcount, que il al auter jour face venir les iſſues devant Juſtices. Et ſi lattachee veigne a ceo jour a ſaver ſes defaults, eit il ſes iſſues. Et ſil ne veigne, eit le Roy les iſſues. Et les Juſtices le Roy les facent liverer a la Gardrobe, & Juſtices del banke a Weſtminſter les facent liverer al Exchequer, & Juſtices en eyre, au Viſcount de ceſl' countie ou ils pledent, auxybien de cel countie, come des foreine counties, & de ceo ſoient charges en ſummons per rolles des Juſtices.

The miſchief appeareth by this ſhort Preamble, to be Delay, &c.

27 H.6.2. 7 H.6.9. Brit. cap.26. de Attachments.

¶ Attachment.] The Attachment muſt be made by moveable goods, and mer perſonal, which may be forfeited by Outlawry, and not by goods which he hath as Executor or Adminiſtrator, nor by a clod of the earth, nor by any chattel real, as Wardſhip, or the like.

Regiſt. judic' f.1. Brit. fol. 50. b. 48 E.3.26.

¶ Grand diſtreſſe] Diſtrictio magna, it is ſo called, not for the quantity, for it is very ſhort; but for the quality, for the extent is very great: for thereby the Sherif is commanded, Quod diſtringat tenentem, ita quod ipſe, nec aliquis per ipſum ad ea manum apponat, donec habuerit aliud præceptum, & quod de exitibus eorundem nobis reſpondeat, & quod habeat corpus ejus, &c.

This Writ lyeth in two caſes, either when the Tenant or Defendant is attached, and ſo retourned, and appeareth not, but makes default, then by this Act a Grand diſtreſs is to be awarded; or when the Tenant or Defendant hath once appeared, and after makes default, then this Writ lyeth by the Common Law in lieu of a Petit Cape.

Brit. ubi ſupra.

Britton ſpeaketh of Diſtreſſes perſonal, which he intendeth of perſonal goods upon the Attachment, and Diſtreſſes real, which concern the Realty; and a third may be added, viz. Diſtreſſes which do concern both the Realty and Perſonalty, as this Grand diſtreſs doth.

18 E.3.Judgment. 120.f.6 E.2. ibid. 230. 14 E.3. Default. 17.

In a ſecta ad molendinum, after Apparance the Defendant made default, whereupon a Grand diſtreſs was awarded, and the Defendant made default again, and thereupon the Plaintif had judgment.

¶ Et ſi latachee veigne a ceo jour a ſaver ſes defaults, eit il ſes iſſues.] Here the Lattachee is taken for him that is diſtrained, and appeareth upon the Grand diſtreſs.

¶ Et

¶ Et ſil ne veigne eit le Roy les iſſues.] For then judgment is to be given againſt the Defendant, as hath been ſaid before, and the King to have the iſſues.

¶ Et les Juſtices le Roy.] That is, the Juſtices of his Bench, ſo called, for that all the pleas there are coram Rege.

¶ Les facent liver a le Gardrobe.] There hath been an ancient Officer of the Kings Houſhold of old time, called Cuſtos magnæ Gardrobæ, Warden or Keeper of the great Wardrope or Wardrobe, of later times called Maſter of the Wardrobe, ſo called, becauſe he hath the keeping and charge of the Royal Robes of former Kings and Queens, and for providing of Robes, &c. of the King: he hath alſo the charge of keeping and providing of hangings, bedding, &c. in ſtanding Wardrobes in the Kings houſes, and the delivery of Velvet and Scarlet allowed for liveries, &c. And many other things belong to his office, which are not neceſſary to be here repeated: he is accountable in the Exchequer. Ockham. 51 H.3. ſtat. de Scacc. Artic. ſup. Chart. 28 E.1. cap.2. Fleta l.2. cap.6.

De articulis porrectis coram Domino Rege per comitem Mareſchallum pro hiis quæ ad officium ſuum in Curia Regis clamabat pertinere, Dominus Rex vult quod dicti articuli irrotulentur in Garderoba, & quod tranſcriptum eorundem liberetur præfato comiti, & quod nec ipſe nec miniſtri ſui aliquid habeant, ſeu ſibi attrahant ultra ea quæ ibidem inveniuntur, &c. Rot. Parl. Paſch. 21 E.1. Rot. 1.

Vide in the Exchequer, de anno 19 E. 2. a privy ſeal bearing date 30 Junii, anno 19 E.2. concerning his account amongſt others. Int' communia in Scacc. de anno 19 E.2.

But here it may be demanded wherefore theſe iſſues were to be delivered into the Wardrobe: For the anſwering hereunto, it muſt be underſtood, that the Kings Juſtices of his Bench did in thoſe days follow the Court (the retourn of the Proceſs of which Court to this day is coram Rege ubicunque fuerimus in Anglia) therefore it was fitteſt for them to make delivery of theſe iſſues to this Officer of Court. Art. ſuper Chart. cap.5. Fleta l.2. cap.2.

¶ Les Juſtices del Banke al Weſtm'.] That is, the Juſtices of the Court of Common Pleas ſhall make their eſtreats, and theſe iſſues are part of the green wax.

¶ Al Viſcount de cel Countie.] In this particular caſe of iſſues the Juſtices in Eir delivered the eſtreats to the Sheriff, vide before cap.18. which extendeth to fines and amerciaments. W.2. cap.18.

¶ Per Rolles des Juſtices.] That is, particularly, and not a total. W.2. cap.18.

Vide more for eſtreats the Statutes of 51 H.3. W.2. cap.8. 42 E.3. cap.9. 7 H.4. cap.3.

CAP. XLVI.

PUrview eſt enſement, & per le Roy commaunde, que les Juſtices de Banke le Roy, & *Juſtices de Bank a* Weſtminſter deſormes per pledant les plees a terminer a un jour, avant que rien ſoit arraine, ou commence des plees del jour enſuant, forſpris

forſpris que lour eſſoines ſoient entres, judges, & rendus, & per encheſon de ceo nul home ſe affie, que il ne veigne au jour que don' luy eſt.

First, In ſome impreſſions both in French and Engliſh of this Act, theſe words [Et Juſtices de Banck al Weſtm'] be omitted, and towards the end theſe words, [forſpriſe lour eſſoines] be likewiſe omitted, both which without queſtion ought to be inſerted as parcel of this excellent Law.

The miſchief before this Statute was, in reſpect of prepoſterous or diſorderly hearing of cauſes; for many times the Judges of the Kings Bench, and of the Court of Common Pleas would by importunacy of great men and others in the irregular time of H. 3. put off matters to be heard at one day until another, and at that time hear ſome other matters appointed to be heard on a day following, whereby the parties, whoſe cauſes were then diſappointed, were not only delayed, and put to further charges, but many times, when their cauſe came to be heard, either were diſappointed of their councel which they had inſtructed, or the day appointed not being come, had no councel inſtructed at all; and beſides where witneſſes were requiſite, they many times failed of them, This Law therefore is made to remedy theſe prepoſterous and diſorderly procedings, and to give Judges a juſt cauſe of denial of any ſuch requeſts, though never ſo powerfully, or importunately made, and that this Law may ſerve for their buckler and ſhield, which Fleta rendreth in theſe words:

Fleta l. 2. cap. 29. Et proviſum eſt, quod Juſticiarii de utroque Banco placita ad unum diem adjournata perfiniant, antequam placita diei ſequentis quicquam placitare incipiant, hoc tamen excepto, quod eſſonium illius diei ſupervenientis admittatur, adjudicetur, & reddatur.

And hereby it appeareth that both the ſaid clauſes ſo omitted, as is aforeſaid, ought to be inſerted. Of this kind of hearing of cauſes it is truly ſaid, Merito hæc dicuntur præpoſtera, quia in hiis præſunt poſteriora.

¶ Que Juſtices de Banke le Roy, & del Banke al Weſtm', &c.] This Statute being made in affirmance of common right doth extend to the Court of Chancery, Court of Exchequer, and to all other Courts of Juſtice, for that all are within the ſame miſchief, and therefore ought to be within the ſame remedy.

¶ A terminer a un jour.] Upon this Act this ancient concluſion of Law doth follow, Judicis officium eſt opus diei in die ipſo perficere.

Mag. Chart. c. 29. And this agreeth with that excellent Law of Magna Charta, Nulli vendemus, nulli negabimus, aut differemus juſtitiam, vel rectum.

CAP. XLVII.

Mirror cap. 5. §4 PUrview eſt enſement, que ſi ul deſormes purchaſe briefe de Novel diſſeiſin, & celuy ſur que le briefe vient, come principal diſſeiſor mourge avant que laſſiſe ſoit paſſe, que le pl' eit ſon briefe Dentre foundus ſur diſſeiſin, ſur le heire, ou ſur *les heires* les diſſeiſors, de quel age que ils ſoient. En meſme le maner eit le heire, ou les heires le diſ-

le diſſeiſee lour briefes Dentre ſur les diſſeiſors *lour* aunceſtre,ou lour heires, de quel age que ils ſoient. Et ſi paraventure le diſſeiſee mourge avant que il eit ſon purchaſe fait, iſſint que pur les nonages des heires dun part ne dauter ne ſoit le briefe abatus, ne le plee delay, mes en quant que lhom' poit ſans ley offender,ſoit haſte pur la freſh ſuit apres le diſſeiſin. Et en meſme le maner ſoit en ceo point gard' en droit des prelates, gents de Religion, & auters, as queux terres & tenements en nul maner puiſſent devener apres auter mort, le quel que ils ſoient diſſeiſees, ou diſſeiſors. Et ſi les parties en pledant diſcendont en enqueſt, & lenqueſt paſſa encounter le heire deins age, & noſmement encounter le heire le diſſeiſee, que il en ceo caſe eit lattaint de la grace le Roy ſans rien doner.

The miſchief before this Statute was, that if a man had been diſſeiſed, and either the diſſeiſée or the diſſeiſor had died, their heir being within age, in a Writ of Entre ſur diſſeiſin brought by the heir of the diſſeiſée being within age, or by the diſſeiſée or his heir againſt the heir of the diſſeiſor being within age, the paroll had demurred until the full age of the heir reſpectively, which was a great delay, and is remedied on both parts by this Act. See the Cuſtum.de Norm.ca.43.

¶ Purchaſe briefe de Novel diſſeiſin.] Albeit the diſſeiſée purchaſed no Writ of Aſſiſe of Novel diſſeiſin, yet the heir or heirs of the diſſeiſor are within this Statute; for ſeeing in this caſe here put by the makers of this Law, true it is, that notwithſtanding the purchaſe of the Writ in a Writ of Entre ſur diſſeiſin brought by the diſſeiſée againſt the heir of the diſſeiſor, the heir ſhould have had his age to the great delay of the Demandant, this is ſhewed for a miſchief in this particular caſe,to perſwade that the Law might be general,though no Writ was brought, as by the body of the Act appeareth. 3 E.3. age 71. 8 E.3.71.

¶ Briefe de Entry foundus ſur diſſeiſin, ſur le heire ou heires les diſſeiſors.] This is to be underſtood of a Writ of Entry in the Per, and not in the Poſt, for the words of the Statute be Sur le heire le diſſeiſor, which is a Writ of Entry in the Per, and therefore if the heir of the diſſeiſor make a feoffment in fée, and the feoffée dieth, his heir within age, in a Writ of Entry againſt the heir, he ſhall have his age, for this Act extends but to the heir of the diſſeiſor, who ſitteth in his Fathers ſeat, and cometh to the land without conſideration; but otherwiſe it is of him that purchaſeth the land of the heir, for he and his heirs are out of the letter and meaning of this Act: the ſame Law is of the Vouchée and priée in Aide within age. 12 E 4.17. 5 E 3. age 70. 6 E.3.3. 21 E 4.15 27 H.6.1. Dier 4 Mar.137.

If the feme heir of the diſſeiſor taketh husband, and hath iſſue within age, and dieth, the diſſeiſée bring a Writ of Entry againſt the Tenant by the curteſie,he pray in aid of the heir within age,he ſhall have his age,for this is a Writ of Entry in the Poſt, being brought againſt the Tenant by the curteſie, and ſo out of the Statute. 17 E.3.61. 27 H.6.1.

If there be two brothers and a ſiſter, the elder brother diſſeiſeth one,and dieth, and the land deſcendeth to his brother,and he enters and dieth ſeiſed,and the land deſcendeth to the ſiſter within age: in a Writ of Entry brought by the diſſeiſée againſt the ſiſter, ſhe ſhall be ouſted of her age by this Statute: wherein three things are to be obſerved. Firſt, that the mediate heir on the part of the diſſeiſor is within this Statute. 2. That though the ſiſter is to make her ſelf ſiſter and heir to the younger brother,and not to the diſſeiſor, for that her younger brother entred, yet is ſhe heir within the meaning of this Statute to the diſſeiſor, and therefore to be ouſted of her age. 3. That a Writ of Entry in the Per and Cui in this ſpecial caſe is within this Act. 24 E.3.25.b.46,47

Special heirs, as in Gavelkind, Borough English, and the ſiſter of the whole blood are on both ſides within this Statute, for though they be not heirs by the

Common Law, yet are they heirs within the intention of this Law, which is to be taken benignly, being made for expedition of Juſtice, and to ouſt delay.

8 E.3.71. 10 E.3. 58. 21 E.3.27. 6 E.3.31.

¶ En meſme le maner eit le heire, ou les heires le diſſeiſee lour briefes Dentre ſur les diſſeiſors ou lour heires.] This is to be underſtood as well of the mediate as of the immediate heir of the diſſeiſor; and therefore if there be Grandfather, Father and Son, and the Grandfather is diſſeiſed and dieth, and the Father of full age likewiſe dieth, the ſon is within age, and brings his Writ of Entry againſt the diſſeiſor, he is an heir within this Statute, for he maketh himſelf heir to the Grandfather, who was the diſſeiſee.

¶ Et ſi peraventure le diſſeiſee murge avant que il eit ſon purchaſe fait.] Here by expreſs words proviſion is made, though the diſſeiſee die before the purchaſe of his Writ, whereof ſomewhat hath been ſaid before.

¶ Iſſint que pur les nonages des heires dun part ne daut', &c.] Where the Demandant or the Tenant ſhall have his age at the Common Law, you may read at large in Markals caſe aboveſaid: It is there reſolved, that the heir as well of the Demandant as the Tenant, ſhould have had his age in this caſe.

¶ Ne ſoit le briefe abatus ne le plea delay.] Here abatement is taken for putting off the Writ and Plea without day until full age, but the Writ is not abated, that is, overthrown, non cadit breve, for ſo Bracton ſaith,

Bract.lib.5. fol. & lib.4.f.218.b.

Minor ante tempus agere non poteſt infra ætatem, maxime in cauſa proprietatis, nec etiam convenire, ſed differetur uſque ætatem, ſed non cadit breve.

8 E.3.71. Dier 4 Mar. ubi ſupra.

¶ Pur la freſh ſuit apres le diſſeiſin.] Statutum de W. 1. habetur intelligi, ubi hæres diſſeiſiti facit recentem ſectam, aliter non.

24 E.3.25,46,47. Lib.6. fol.4. Markals Caſe. 10 E.3.58. 6 E.3. 11. 9 E.2. age 141. 24 E.3.25,46.

This freſh ſuit is not to be underſtood between the diſſeiſor and the diſſeiſee, although the diſſeiſor continue in poſſeſſion by the ſpace of 30 or 40 years, &c. But when the diſſeiſor dies, then is the freſh ſuit to be made, and that is regularly within a year and a day after the death of the diſſeiſor, for within that time continual claim may be made, which is in Law recens & continuum clameum, and within that time an appeal of death may be brought, which is recens inſecutio, and ſic in multis aliis ſimilibus.

¶ En droit des prelats, gents de religion, & auters, &c.] This clauſe is to be underſtood of Eccleſiaſtical perſons, that be regular, and not of Eccleſiaſtical perſons that be ſecular, for the regular are dead perſons in Law, to whom no lands (as this Statute ſpeaketh) can deſcend after the death of any other: but to the ſecular, as to Biſhops, Parſons, Vicars, and the like lands may deſcend, and therefore they are not within this clauſe, but within the former branches of this Act for ſuch lands as they are ſeiſed of to them and their heirs in their natural capacity.

¶ Eit lattaint.] Of the Writ of Attaint, ſee before the Statute of Marlebridge cap.14. and here Cap.37.

CAP.

CAP. XLVIII.

SI gardein ou chiefe ſeignior enfeoffe ul home de la terre que eſt del heritage del enfant (que eſt deins age & en ſa garde) a le diſheritance del heire: Purview eſt, que le heire eit maintenant ſon recovery per briefe de *Novel diſſeiſin* vers ſon gardein, & vers le tenant. Et ſoit la ſeiſin baille per Juſtices (ſi el ſoit recover') al prochein amy lenfant, a que le heritage ne purra my diſcend', pur approver al oeps lenfant, & a reſponder des iſſues al heire quant il viendre a ſon pleine age. Et le gardein perde a tout ſa vie la garde de meſme la choſe recover', & tout le remainder del heritage, quel tient en noſme del heire. Et ſi auter gardein que chiefe ſeigniour le face, perde le garde de tout cel choſe *a cel foits* & ſoit en grieve peine envers le Roy. Et ſi lenfant ſoit eſloigne, ou diſturbe per le gardein, ou per le feoffee, ou per auter, per que il ne puiſſe ſa Aſſiſe ſuer, ſue pur luy un de ſes prochein amies que voudra, & ſoit a ceo reſceve. *W.* 2. *cap.* 15.

The miſchief before this Statute was, that when the Gardein in Chivalry made a feoffment in fee, the Judges, for the ſaving of the Warranty betwéen the Feoffor and the Feoffée, and that the right of each might be ſaved, allowed that a Writ of Entry in the Per did lye for the heir before this Statute, as it appeareth by Bracton, and 15 H.3. nay, the Judges in ancient time did allow a Writ of Entry in the Per, as it appeareth by the old Regiſter, of a Feoffment made by a Baillie; but this opinion, or error rather, was holpen by the reſolution of the Judges; and the alienation of the Gardein (after this Act) to be made is holpen by this Act, by enacting and declaring, that an Aſſiſe of Novel diſſeiſin doth lye againſt the Gardein and his feoffée; therefore of a feoffment made by the Gardein after the Statute, no Writ of Entry in the Per doth lye, but an Aſſiſe of Novel diſſeiſin: and the Statute hath adjudged the feoffment a Diſſeiſin; but of an alienation by the Gardein before this Statute, a Writ of Entry in the Per doth lye after this Act, becauſe this Act doth extend to feoffments made afterwards, as appeareth by the letter thereof; but if the Tenant alien, and the Gardein and his Feoffée dye, or if the heir dye, ſo as no Aſſiſe can lye by this Act, then of ſuch an alienation after this Act a Writ of Entry doth lye: and all this is approved by the authority of our Books, and upon theſe diverſities all the Books are reconciled.

Bract. l. 5. fo. 324.
15 E. 3. Brief 878.
19 E. 2. Aſſ. 400.
4 E. 2. Brief 790.
19 E. 2. Aſſ. 400.
7 E. 3. 69. 8 E. 3. 63
8 Aſſ. 28. 14 E. 3. Feoffments 67.
10 E. 4. 18.
Vide W. 2. ca. 25.

This Statute ſpeaketh only of a Gardein in Chivalry, therefore Tenant for years, Tenant by Elegit, Statute Merchant, &c. ſhall be reſerved till we come to the Statute of W. 2. cap. 25.

Weſt. 2. cap. 25.

¶ Enfeoffe.] The feoffment at theſe times was the general aſſurance of the Realm, but a Fine is within this Act, for that is a feoffment of Record.

¶ Maintenant ſon recoverie per briefe de Novel diſſeiſin vers ſon gardein, & vers le tenant.] Here two things are to be obſerved, 1. upon this word Maintenant, that is, preſently without any delay: And this is the 7. Act made at this Parliament for expedition of Juſtice, and for the ouſting of delays; for as it is commonly ſaid, the devil deviſeth delays: wherein this noble King followed the ſteps of that good King Alfred, in whoſe time the Law of England was as followeth; En ſon temps puiſſoit cheſcun pl' aver commiſſion,

Mirror ca. 5. §. 1.

ou briefe a ſon Viſc' al Seigniour de fee, ou a certein Juſtices aſſignes ſur cheſcun tort; En ſon temps ſe haſta droit de jour en jour, iſſint que ouſter 15. jours neſtoit nul default, ne nul eſſoine adjornable.

Fleta li.1.ca.11. 10 E.4.18. W.2. cap.25.

2. By this Act, not only the Gardein is a diſſeiſor, but the Feoffée alſo; and ſo doth Fleta render it, Et apud Weſtm' fuit proviſum quod cuſtos, qui alienat terras hæredis, habeatur pro diſſeiſitore, &c. and ſoon after he ſaith, Habeantur pro diſſeiſitoribus tam cuſtos, quam emptor.

¶ Et ſoit le ſeiſin baille per Juſtices, &c. al prochein amy del infant, a que le heritage ne purra my diſcend'.] This clauſe Fleta rendreth in this manner,

Fleta ubi ſupra.

Et cum terra fuerit recuperata, tradatur propinquiori amico, cui hæreditas diſcendere non debeat, qui reſpondeat puero de exitibus, cum ad ætatem ſuam pervenerit.

And where the Statute ſaith, Soit, &c. baille per Juſtices, the meaning is no more but this, that the Juſtices before the recovery was had, ſhall charge the next of the kin, to whom the land cannot deſcend, to take according to this Act the cuſtody of the lands, and to yield a true account to the heir at his full age, and to enter an order of Court thereof accordingly.

And he is neither a Gardein in Chivalry, nor in Socage, but a Statute Gardein in lieu of the Gardein in Chivalry by force of this Act.

And if this Gardein dye before the full age of the heir, his Executors ſhall not have the cuſtody, but the next of kin, to whom the land cannot deſcend; for this Act hath annexed it to the next of blood, to whom the land cannot deſcend.

¶ Et le gardein perde a tout ſa vie la garde, &c.] This branch is to be underſtood of a Gardein in Droit, that is to ſay, of the chief Lord, for he is not only to loſe the cuſtody of the land aliened, and of all the reſidue of the heritage which he had in Ward; but alſo to loſe all benefit of Wardſhip of that tenancy by the letter of this Law, during his life, for that againſt the office and duty of a Gardein, he hath ſought the diſheriſon of the heir which he had in his cuſtody: and Fleta tranſlateth this clauſe in theſe words,

Fleta li.1. ca.11.

Vide 1. part Inſtit.ſect.968.

Et ſi ſit capitalis Dominus qui hoc faciat, amittat cuſtodiam tota vita ſua tam de reſiduo, quam de terra alienata; but in this caſe the Lord by his feoffment of the tenancy, or any part thereof, hath extinguiſhed his Seigniory for ever, whether the feoffment be made of all the Tenancy, or but of part, by the Common Law: and theſe words (during his life) being in the affirmative, reſtraine not the operation of the Common Law in this caſe.

¶ Et ſi auter gardein que chiefe Seigniour.] This is intended of a Gardein in fait: as where the Lord aſſigneth over the cuſtodies to another, he is called a Gardein in fait: hereof Fleta ſaith,

Fleta ubi ſupra.

Et ſi alius fuerit cuſtos, quam capitalis dominus feodi illius, amittat cuſtodiam rei recuperatæ, &c.

¶ Perde le garde de tout cel choſe.] The feoffment made by the Gardein in fait is a forfeiture of his eſtate by the Common Law of the whole, if the feoffment were made of the whole; and if of part, then of that part only by the Common Law; but this Statute giveth the forfeiture of the whole land in Ward; but it ſæmeth in this, the Wardſhip of the body is not loſt, becauſe this branch extendeth to the land only; no more then upon the Statute of Glouc' in caſe of waſte done to the diſheriſon of the heir, the Statute ſaith,

Gloc'. cap.5.

Perdra le garde, yet ſhall he not loſe the cuſtody of the body: and in both theſe caſes, the Seigniory, which is the cauſe of the Wardſhip, continueth; but where the Seigniory is extinct, there the heir ſhall be out of Ward, both for body and land.

Mich. 28 H.8. Benloes.

¶ Sue pur luy un de ſes prochein amies.] Before the making of this Act, the Gardein or his feoffée, or ſome other would eſloigne or diſturb the Infant,

Infant, ſo as he could not take his remedy by Law, and by attorney he could not appear, therefore this Act in this particular caſe doth give the Infant to purchaſe and follow his Writ of Aſſiſe upon this Act by prochein amy, albeit he be not preſent in Court; and ever ſince the Statute of Weſtm.2. which is general, the common rule is holden, that an Infant ſhall ſue by prochein amy, and defend by Gardein. See before ca.42. 40 E.3.16. W.2.ca.15.

¶ Prochein amy.] Amicus propinquior; In our Books the names of Gardein and Prochein amy are ſometimes taken the one for the other, becauſe the Gardein and Prochein amye are oftentimes all one, as the Gardein in ſocage is alſo Prochein amy, &c. And now as well the Gardein, as the Prochein amy are allowed by the Judges to be ſome of the Officers of the Court, and both in reſpect of their place and skill, are in troth the beſt Prochein amyes for the good and furtherance of the Infants cauſe.

Fleta rendreth this clauſe in theſe words, Et ſi hæres impeditus fuerit ad ſequendum, ſequatur unus de propinquioribus amicis, & admittatur; and this admiſſion is by the order of the Court, but the Gardein muſt put in a Warrant. Fleta ubi ſupra. 40 E.3.16. 48 E.3.10. 33 E.3. Attorney 94.

In an Action of waſte, brought by an Infant againſt the Abbot of R. as Gardein in Chivalry, quas tenet, the Infant came not in perſon, but one came as Prochein amy by the Statute, which is intended by the ſaid Statute of Weſt. 2. and prayed to be received to ſue, for that the Infant was eſſoined; againſt which this objection was made, that it appeared not judicially to the Court that the Infant was eſſoined, and that ſuch a ſuggeſtion in the caſe of Aſſiſe of Worcheſter had uſed to be made, becauſe the eſſoyning, which is the cauſe that the Statute ſetteth down, might be enquired of, being a jury, the firſt day, but otherwiſe in the caſe at the bar being an Action of waſte; but it was reſolved, that the Prochein amy ought to be admitted upon the ſaid ſuggeſtion in this caſe, for that the Writ is brought againſt the Gardein, which peradventure had eſſoined the Infant, and he of his own wrong ſhall not take advantage, and therefore the Court did award that the Prochein amy ſhould be admitted to ſue, &c. Which caſe I have remembred here, becauſe it may ſerve for an expoſition as well of this Act of Weſtm.1. as of the ſaid Act of Weſtm.2. 11 Aſſ.10. 27 Aſſ. 53. 34 Aſſ.5. 28 Aſſ.2. 29 Aſſ. 67. 35 H.6.12. 20 E.4.2. 16 H.7. 5. F.N.B.27.I. 13 E.3. Attorney 76.

CAP. XLIX.

EN brieſe de Dower dont dame riens nad, ne ſoit le brieſe abatus per exception del tenant, pur ceo que el avera reſceive ſon dower de auter home avant ſon brieſe purchaſe, ſil ne puit monſtre que el eit reſceive part de ſa dower de luy meſme, & en meſme la ville avant ſon brieſe purchaſe.

The miſchief before this Act doth notably appear by Bracton, who treating of this Writ, Unde nihil habet, ſaith, Ad hoc autem quod dicit mulier in intentione ſua (& unde nihil habet) ſi quidem partem dotis habuerit, licet minimam, ſi hoc dedicere non poſſit, vel cum hoc probatum fuerit, cadit breve, nec de reſiduo quod ei defuerit poterit ſibi proſpicere niſi per breve de recto de dote, nihil igitur recipiat de dote ſua ante brevis impetrationem, ita quod breve contineat omnes deforcientes ubicunq; fuerint in uno comitatu, vel in diverſis. Et cum omnes contineantur, tunc primo recipiat, & ſi recipiat ante judicium, etiam ſine judicio non obſtabit ei exceptio, quod aliquid habuerit, quia reſpondere poterit, quod ſatisfactum eſt ei ante judicium, &c. ſi petens dicat quod exceptio, &c. ei nocere non debet, quia nihil habet in tali villa, vel in alia tali villa, non valebit talis ſua replicatio, quia id quod dicitur (unde nihil habet) non debet referri ad villas, ſed ad dotem: hereby doth the miſchief before this Act manifeſtly appear. Bract.lib.4. fol. 311.b.

And

Fleta li.5. ca.25. And Fleta rehearſing the effect of this Statute, ſaith, In brevi autem de dote unde mulier petens, nihil habet, non cadit breve per exceptionem tenentis petentis judicium de brevi, deſicut ſupponit eam nihil habere, cum aliquid habeat,vel dotem ſuam de aliquo receperit pro parte ipſam contingente, niſi partem dotis receperit a ſeipſo in eadem villa ante brevis impetrationem.

Brit.fol.258. 13 E.1. Brief 863. 8 E.2. ibid.809. 18 E.2. ibid.833. 6 E.3.257. 7 E.3. 308. 8 E.3.384. 10 E.3.509. ¶ Per exception del Tenant.] Regularly Tenant is taken for him that is Tenant of the frée-hold, but in the caſe of Dower,it lyeth againſt Gardein in Chivalry, becauſe in that caſe he is to anſwer for the heir, but not againſt the Gardein in Socage. See hereafter in this Chapter, where this exception ſhall lye in the mouth of the Vouchée being Tenant in Law.

11 E.3. Brief 475. 13 E.3. ibid.242. 16 E.3. ibid.657. 4 E.3.42. ¶ De luy meſme. [Firſt, it muſt be of the ſame Tenant, and not of another, though it be in the ſame Town; as if the husband infeoffeth A. of Whiteacre, and B. of Blackacre, both in Dale, and the wife receiveth Dower of A. ſhe notwithſtanding ſhall have a Writ of Dower (unde nihil habet)againſt B. by the expreſs purview of this Act, for he is not the ſame Tenant of whom ſhe received her Dower.

Brit fol.257. 12 E.3. Dower 89. Secondly, if A. having a wife doth infeoffe the husband of one acre, and the wife of another, and both in Dale; A. dyeth, the husband aſſigneth Dower of his acre, yet doth the Writ of Dower (unde nihil habet) lye againſt the husband and wife, for they are not the ſame Tenant.

2 E.2. Dower 124. 12 E.3. Dower 86. Thirdly, if the Baron be ſeiſed of Blackacre and Whiteacre in Dale, and after the coverture maketh a leaſe for life of Blackacre,and granteth Whiteacre and the reverſion of Blackacre to A. and his heirs, to whom attornment is made, and dyeth; the wife receiveth Dower of A. of Whiteacre, and after the Leſſée for life dyeth, the wife ſhall have a Writ of Dower (unde nihil habet) to be endowed of Blackacre; for albeit it be againſt the ſame Tenant, and in the ſame Town, and before the Writ purchaſed, which are the three points required by this Act, yet is there another property neceſſarily implyed, and that is, that he be ſuch a Tenant of both the one land and the other, at the time of the receit of Dower, as ſhe might have had her Writ of Dower (unde nihil habet) againſt him, of both which ſhe could not have in this caſe, in reſpect the leſſée for life was Tenant of the frée-hold at that time, and ſo no default in her.

3 E.3. Dower 76. 3 E.3. Voucher 196. Kelw. 128. The Baron is ſeiſed of a carue of land holden by Knights ſervice, and of Whiteacre in Dale, and after the coverture infeoffeth A. of Whiteacre with Warranty, and dieth, his heir within age, the Gardein aſſigneth Dower of the carue of land, and then the wife brings her Writ of Dower againſt A. who voucheth the heir in the cuſtody of the Gardein, the Gardein pleads the receit of Dower of the ſaid carue in the ſame Town, and adjudged a good plea,and the Writ of Dower (unde nihil habet) abated.

The ſame Law it is, if the Gardein that aſſigned the Dower dyed, and the heir had béen vouched in the guard of his Executors, his Executors in the caſe abovelaid ſhould plead the ſame plea.

First part of the Inſt.ſect.39. And ſo if the heir in that caſe had béen vouched of full age, he might have pleaded as vouchée, as an aſſignment of Dower by himſelf in the ſame Town.

18 E.2.brief 829. 4 E.3. ibid.745. 4 E.3.52. 8 E.4.6. ¶ En meſme la ville.] A Writ of Dower, unde nihil habet,doth lie in an Hamlet, but yet if the Demandant have received Dower out of the Hamlet, and in the ſame Town, the Writ ſhall abate, otherwiſe it is, though it be in the ſame Pariſh, if it be in another Town, for the words of the Statute be, En meſme la ville.

Fleta ubi ſupra. Bracton ubi ſupra. 3 E.3. Vouch. 196. 12 E.3. Dower 86. Regiſt.171. ¶ Avant ſon briefe purchaſe.] Of this clauſe Fleta ſaith thus, Si partem dotis ſuæ receperit poſt breve impetratum, quamvis ab ipſo tenente, non propter hoc cadit breve mulieris, cum dicere poterit ante judicium, quod de reſiduo, vel omiſſione eſt ei ſatisfactum, and ſo it appeareth by Bracton, it was, as to this point, at the Common Law.

CAP.

CAP. L.

ET pur ceo que le Roy ad fait cel choſe al honour de Dieu, & ſaint Eſgliſe, & pur le common profit de people, & pur le allegeance de ceux queux ſont greves, il ne voit my que auterfoits puiſſent turner a prejudice de luy, ne de ſa corone: Mes que les droits, que a luy apperteign', luy ſoient ſaves en touts points.

This is a ſaving to the King of the Rights of his Crown.

¶ Cel choſe.] That is, that this Statute of W. 1. which hath been made to four excellent ends, viz. the honour of God, the honour of the Church, for the Common-wealth, and for the remedy, disburdening, and eaſe of them that be grieved, ſhould not be prejudicial to him, or to his Crown, but that the rights which to him appertain, ſhould be ſaved.

¶ Allegeance de ceux queux ſont greves.] This ſhould be Allevi-ance de ceux, &c. That is, disburdening, remedying, and eaſing of ſuch as be grieved.

¶ Mes que les droits queux a luy appertain'.] That is to ſay, the Kings Rights, or the Kings Rights of his Crown, or the Rights of the Crown, for ſo theſe, which ſince are called prerogatives, before this time were called Jura Regia, or Jura Regia Coronæ, or Jura Coronæ; Bracton calls them Privilegia Regis and Britton, Droit le Roy.

But ſince this Act jus Regni, &c. hath been commonly called Prærogativa Regis, which is all one with this, that this Act calls Droit le Roy.

See the firſt part of the Inſtitutes, ſect. 3. Lex Coronæ.

Regiſt. fol. 61. Bracton.

Britton fol. 1.

17 E. 2. Prærog. Regis. 26 E. 3. Quare Imp. 95. 18 E. 3. Scire fac' 10. 8 H. 4. 2. 9 H. 4. 6. 15 E. 4. 12, 13.

CAP.

CAP. LI.

ET pur ceo que graund charitie ſerra de faire droit a touts en tout temps, ou meſtier ſerroit: Purview eſt per aſſentment des Prelates, que Aſſiſes de Novel diſſeiſin, Mortdaunceſter, & de Darrein preſentment fuiſſent priſes en le Advent, en Septuageſime, & en Quareſme, auxibien come *le home* prent lenqueſts, & ceo pria le Roy as Eveſques.

The cauſe of the making of this Statute doth manifeſtly appear by Britton, who being B. of Hereford, and expert both in the Common and Canon Law, in his Chapter De challenge de Jurors, ſaith thus, Et ſils yſoient aſſets des Jurors uncore purrount aſcuns eſtre removeables per verie challenges des parties, & auxi pur le temps en caſe: Car heures ne ſont pas meures: Car per Canon eſt defendu, de ſaint Eſgliſe ſur peyne de excommengement, que de la ſeptuageſme jeſque al Utas de Paſche, ne del comencement de Advent jeſque al Utas de la Epifayne, ne en jours del quatre temps, ne en jours de major Letanies, ne en jours de Roveyſouns, ne en le ſemaigne de Pentecoſt, ne en temps de ſcier blees, ne de vendenges que durent de la S. Margaret jeſque al 15. de S. Michael, ne en ſolemne jours de feſaints de ſaint, nulluy ne jurge ſur le Evangelies, ne nul ſecular plea ne teigne, ne ſummons ne face en temps avandits, iſſint que tout ceſt temps ſoit done a Dieu prier, & de peſer contekes, & de accorder ceux, que ſont a diſcord, & pur coiller les biens del terre, dont le people doit vivre. Britton ca. 53.

Which in reſpect of ſome difficulty I have thought good to tranſlate; "And if ſufficient Jurors appear, ſome are removable for juſt challenges "of the parties, and alſo for the time in caſe; for all hours are not fit "for all ſeaſons: for it is forbidden by the Cannon of holy Church upon "pain of Excommunication, that from the Septuageſme until eight dayes "after Eaſter, and from the beginning of Advent until eight days after "the Epiphany, (or Twelfth day) or in the days of the four times (that "is, the Ember days appointed for publick Faſts four times in the year) or "in the days of the great Letanies, or in Rogation or Gange days, or in "the week of Pentecoſt, or in time of Harveſt, or of Vintage which dureth "from the Feaſt of S. Margaret (which is the twentieth of July) until 15 days "after the Feaſt of S. Michael the Archangel, or in the ſolemn Feaſts of the "Acts of Saints, no man be ſworn upon the holy Evangeliſts, nor any ſe-"cular plea be holden in the times aforeſaid, but that all theſe times be gi-"ven for prayer to God, and to appeaſe debate, and to accord them that be at "diſcord, and to gather the fruits of the earth, whereof the people may live, "which were works of piety and charity. Harveſt, *Arvi veſtis.*

This Act beginneth with a Maxim of Law, Summa charitas eſt facere juſtitiam ſingulis in omni tempore, quando opus fuerit, and therefore provideth that the three Aſſiſes, viz. of Novel diſſeiſin, Mordaunc', and of Darrein preſentment ſhould be taken in Advent, Septuageſme, and Quareſme.

¶ Tout temps.] Here is underſtood Convenable in Ley, for in the Common Law there be Dies juridici, & dies non juridici; dies non juridici ſunt dies Dominici, the Lords days throughout the whole year, ſo called, becauſe the Lord and Saviour of the world did riſe again on that day: and this was the ancient Law of England, and extended not only to legal proceedings, but to contracts, Int' leges Edw. Regis, anno Dom. 924.

contracts, &c. Dacus ſi die dominico quicquam fuerit mercatus, re ipſa, & oris præterea duodecim mulctator, Anglus triginta ſolidos numerato; And it is truly ſaid, Reges, qui ſerviunt Chriſto, faciunt Leges pro Chriſto. 2. In Ea[illegible] Term the day of the Aſcenſion of the Lord Jeſus Chriſt. 3. Before the Statute of 32 H. 8. Trinity Term extended into the time of Harveſt, and then in that Term the day of the Nativity of S. John Baptiſt was not dies juridicus, but by that Statute that Term is ſo abbreviated, as that day falls not within the ſame, only dies Dominici are not dies juridici in that Term. In Michaelmaſs Term the day of All Saints, and the day of All Souls; And in Hilary Term, the day of the Purification of the bleſſed Virgin Mary, are not dies juridici. 27 H. 6. cap. 5.

And it ſhould ſeem by Forteſcue, that there be alſo horæ juridicæ, for he dedicating his book to the Prince ſaith, Scire te etiam cupio, quod Juſticiarii Angliæ non ſedent in Curiis Regis, niſi per tres horas in die, ſcilicet ab hora octava ante meridiem, uſque horam undecimam completam, quia poſt meridem Curiæ illæ non tenentur, ſed placitantes tunc ſe divertunt ad perviſum, & alibi conſulentes cum ſervientibus ad legem, & aliis conſiliariis ſuis. Quare Juſticiarii, poſtquam ſe refecerint, totum diei reſiduum pertranſeant ſtudendo in legibus; ſacram legendo ſcripturam, & aliter ad eorum libitum contemplando, ut vita ipſorum plus contemplativa videatur, quam activa, &c. Forteſcu. cap. 51. fol. 66. b.

And the Mirror ſaith, Abuſion eſt que tient pleas per Dimenches (i. Sabbath days) ou per auters jours defendus, ou devant le ſoiel levie, ou noctantre, ou in diſhoneſt lieu. Mirror cap. 5. § 1.

¶ Purview eſt per aſſentment des Prelates.] Which is expreſſed, not that the Prelates aſſented alone, but that it was enacted by the King with the whole aſſent of Parliament, which is implied by theſe words, Purview eſt, and this Act is entred into the Parliament Roll with the reſt made in this Parliament. But per aſſent des prelates is added to manifeſt that this Act concerning the croſſing of a Canon of the Church was enacted by their aſſents.

And here it is worthy of obſervation, that albeit divers Judges of the Realm were men of the Church, as Britton, Martin de Patteſhull, William de Raleighe, Robert de Lexinton, Henricus de Stanton, and many others; and that the honorable Officers of the Realm, as Lord Chancellor, Lord Treaſurer, Lord Privy Seal, Maſter of the Rolls, &c. were in thoſe days men of the Church, yet they ever had ſuch honorable and true hearted courage, as they ſuffered no incroachment by any forrein power upon the Rights of the Crown, or the Laws and Cuſtoms of the Realm, as in Cawdryes Caſe in the fifth part of my Reports is partly ſhewed, and much more (if it were requiſite) may be ſaid in that behalf. See the firſt part of the Inſtitutes, Sect. 524. Li. 5. fol. 1. Cawdries Caſe.

¶ En Aſſiſe de Novel diſſeiſin, Mordaunceſter, & Darrein preſentment.] Hereof Britton ſaith, Les Eveſques nequident & Prelats de ſaint Eſgliſe fount diſpenſations que Aſſiſes, & Juries ſont priſes en tiels temps per reaſonable encheſons. Brit. ubi ſupra.

¶ Advent.] Adventus Domini in carne, & incipit die Dominica proxim' ante feſtum Sancti Andreæ, vel ipſa die Sancti Andreæ, ſi in Dominica venerit; and endeth eight days, after Twelf-tide, or the Epiphany. 7 Aſſ. p. 7. 14 Aſſ. 4

¶ Septuageſime.] Septuageſima beginneth on the third Sunday before Shrovesunday, and endureth till eight days after Eaſter.

¶ Quareſme.] Quadrageſima beginneth the firſt Sunday in Lent, and endureth all Lent.

¶ Et ceo pria le Roy as Eveſques.] Fair and good words many times further, but never hinder any good work.

How the Canon aboveſaid took no place in other Actions not named in this Act (if you obſerve the times forbidden by the Canon) is manifeſt by our Books, and common experience in all ages ſince the making thereof.

Statutum

Statutum de Bigamis

EDITUM *Anno* 4 Edw. 1.

IT is called Statutum de Bigamis of the Fift Chapter of this Parliament, wherein thoſe that be Bigami, are barred of the privilege of Clergy.

IN præſentia venerabilium patrum quorundam Epiſcoporum Angliæ, & aliorum de conſilio Regis, recitatæ fuerunt conſtitutiones ſubſcriptæ, & poſtmodum coram Domino Rege & Conſilio ſuo auditæ & publicatæ, quia omnes de conſilio, tam Juſticiarii, quam alii concordaverunt, quod in ſcripturam redigerentur ad perpetuam memoriam, & quod firmiter obſerventur.

Here may you obſerve the ancient order of proceeding in Parliament for paſſing of Bills; firſt a ſelect Committee of certain Biſhops, Barons, and ſome of the Commons, with the Judges aſſiſtants (who after are expreſly named) expreſſed here under theſe words, Et aliorum de conſilio Regis, (for at this time the Lords and Commons ſate together) and after the Commitee of both Houſes had reſolved hereupon, then to Report it to the whole Councel here expreſſed under theſe words [Auditæ & publicatæ:] which order in the ſeveral Houſes is continued to this day.

Shard beholding the manner of the penning of this Act, was of opinion that it was no Act of Parliament; but the contrary is holden by many expreſs authorities both before, and after him. And theſe words in the firſt Chapter [Concord' eſt per Juſticiarios & alios ſapientes de conſilio Regni] do prove it to be by authority of Parliament, for Concilium Regni is the Lords and Commons legally called Commune concilium Regni.

30 Aſſ. 5. 8 E. 2. Dower 169. 5 E. 3 65. 9 E. 3. 33. 10 E. 3. 26. 39 E. 3. 12, 13 2 H. 7. 7. 4 H. 7. 1. 2. tit. Aid le Roy 33.

¶ Quia omnes de conſilio, tam Juſticiarii, quam alii concordaverunt, &c.] And becauſe this was done by the advice of the Juſtices, and was but a declaration of the Common Law concerning aid prier of the King, and Warranties, as by the words of the Act it appeareth, therefore they are inſerted into the Act with this addition, Qui conſuetudines & uſum judiciorum hactenus habuerint; And Sir Ralph de Hengham was chief Juſtice of the Kings Bench, and Sir Thomas de Weyland chief Juſtice of the Court of Common Pleas at this Parliament.

CAP. I.

DE placitis ubi tenens excipit, quod ſine Rege reſpondere non poſſit: Concordatum eſt per Juſticiarios, & alios ſapientes de conſilio Regni Domini Regis, qui conſuetudines & uſum judiciorum hactenus habuerunt, quod ubi feoffamentum factum fuerit per Regem, & charta ſuper hoc confecta, tantam ſe habeat, quod ſi alia perſona per conſimile feoffamentum & conſimilem chartam teneretur ad warrantiam, Juſticiarii ulterius procedere non potuerunt, nec hucuſque proceſſerunt, niſi ſuper hoc præceptum a Rege habuerint, nec videre poſſunt quod procedere poſſint.

¶ Per Juſticiarios, & alios ſapientes de conſilio Regni Domini Regis.] Here was uſed the ancient forms of Parliaments, when the Acts were Rex ex conſilio ſapientum, &c.

Inter leger Inæ, An. dom. 727. At a Parliament holden by King Inas, anno Domini 727. the Statutes began thus, Ego Inas Dei beneficio Rex ſuaſu & inſtituto Cenredi patris mei, Heddæ & Erkenwaldi Epiſcoporum meorum, omnium ſenatorum meorum, & natu majorum ſapientum populi mei in magna ſervorum Dei frequentia, &c. Here is the Parliament expreſſed, as it continueth to this day.

Inter leges Aluredi Regis, An. dom. 900. Has ego Aluredus Rex ſanctiones in unum collegi, &c. multa tamen quæ nobis minus commoda videbantur ex conſulto partim antiquanda, partim innovanda curavi.

And again, Hæc ſunt ſenatus conſulta ac inſtituta, &c. quæ à ſapientibus recitata ſæpius, atque ad communem Regni utilitatem amplificata ſunt.

Inter leges Æthelſtani, Anno dom. 940. Decreta actaque ſunt hæc omnia in celebri Grantaleano concilio, cui Wolſtanus interfuit Archiepiſcopus, & cum eo optimates & ſapientes ab Æthelſtano evocati frequentiſſimi; this is that Grandceſtier in Cambridge-ſhire, of which the Poet ſaid,

Olim Granta fuit multis urbs inclyta rebus.
Nunc etenim magnum nil niſi nomen habet.

Inter leges Ethelredi, An. dom. 1016. And that great Parliament which Etheldred held, is called Sapientum concilium: and more of this kind might be remembred.

¶ Qui conſuetudines & uſum Judiciorum hactenus habuerunt.] For of ancient, and at this time many of the Nobility and of the Clergy were expert in the Laws and Cuſtoms of the Realm, and had judicial places, as partly hereby, and more at large may appear in the firſt part of the Inſtitutes.

See the firſt part of the Inſtitutes, Sect. 534.

¶ Tantum ſe habeat, quod ſi alia perſona per conſimile feoffamentum & conſimilem chartam teneretur ad warrantiam, Juſtic' ulterius procedere non potuerunt.] By this Branch, if the King give lands with clauſe of an expreſs Warranty, yet the Patentee, &c. ſhall not have or recover in value againſt the King, without ſpecial words that the King ſhall yield lands in value upon eviction, &c. and nevertheleſs, in that caſe he ſhall have aid of the King by the general purview of this Law, for it is for the honor of the King, that he aid the Patentee with any Records or evidence that he hath for maintenance of the eſtate which he hath granted and warranted to him. [a] But if the King exchange lands with another by this warranty in Law, the King is bound to Warranty, and to yield in value, and ſo it was adjudged, Hil. 6 E. 1. in communi banco Rot. 2. William Brewſes caſe, Wallia.

3 H.6.56. Sic adjudicatur tempore. E.1.

[a] 17 E.3.12. H. 6 E.1. Rot. 2. in banc' Wallia.

b If the King give lands to one in fée, by this word Dedi, this bindeth not the King to Warranty, and yet the Patentée shall have aid of the King by the letter of this branch, because in that case another person should be bound to Warranty by this word Dedi: And so it is, albeit the tenure by the Patent is to hold of the chief Lords.

b 8 E.3.10. 18 E.3 tit. Aid, 31. & 142. 2 H.7.7. & 15 H.7. 10.

c If it appear to the Court, that the Letters Patents, or other causes of aide prier be void, against Law, or insufficient in Law, no aid shall be granted, for the Law will not suffer those things to be aided or maintained by the countenance of Law, which appear to the Court to be void, against Law, or insufficient; Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa & legitima.

c 28 Ass. 19. 39. 28 E.3.94.b 24 E. 3.34.b. 26 E.3.58 31 Ass.2. 7 E.3.7. 39 E.3.12. 7 H.4. 43 11 H.4.86. 13 H.4.14. 4 H.6. 29. 7 H.6.36. 8 H.6.25. 11 H.6. 12. 8 H.7.9.11.

d And according to former authorities of Law, so was it adjudged 43 Eliz. in Foxleys case, and that aid prier ought not to be used for delay of Justice, fée notable and ancient Records; and where Feoffamentum and Charta mentioned in this Chapter must be taken for lawful Feoffments and Charters, as in other cases.

d Lib.5.f.106.111. Foxleys case.

e And as it hath béen said in the case of aid prier, so it holdeth in all points, in the case when the Tenant or Defendant prayeth not in aid, but a Writ de Domino Rege inconsulto is brought and directed to the Judges; if it appear to the Court, that the cause is not available or sufficient in Law, the Court ought to disallow the Writ, and to procéed in the cause, and if the cause appear to the Court to be just and lawful (as in our Books it appeareth to be, and not brought for delay) then the Judges ought to surcease, &c. and so it was resolved, Mich. 34 & 35 Eliz. in Communi banco, betwéen Giles Bloteild Pl' in ejectione firmæ of the demise of Reighnold Earl of Kent Plaintif, and Thomas Havers Farmor of the Earl of Arundell Defendant, of the Mannor of Winfarthinge in Suffolk.

e Tr. 18 E.1.Coram Rege Rot. 43. Wiltsh. 27 E.1. Coram Just. ad Ass. in Com' de Suff. Radulphus de Mounthering comes Gloc. Pasch. 10 E 3. Coram Rege Rot. 86. Wiltsh. Tr.11 E.3. Coram Rege Rot. 101. South. 21 E.3.24.44. 22 E.3.6. 25 E 3. 48. 2 R.3.13.tit. Aide le Roy 33. 9 H.7.15. 4 H.7.1.

f Upon the aide prier, or Writ, the award is Quod tenens sive defendens sequatur penes Dominum Regem, and the Tenant or Defendant ought to remove the Record into the Chancery, and in case of the aide prier the plea is not put without day.

F.N.B. 153. f. & 154. die. Regist. 220,221,227. l.9. fol. 16. Anna Bedingf. case.

¶ Nisi super hoc præceptum a Rege habuerint.] This Præceptum is by the Kings Writ of Procedendo, whereof there be two sorts, viz. in loquela & ad judicium; for the Kings Commandments in judicial procédings are ever by Writ according to the course of the Common Law, whereof you may read in the *g* Register, F. N. B. and our Books; and which Writs the King, Ex merito justiciæ, in due time ought to grant; for the King himself by the great Charter is presumed in Law to sit in Court, and to say Nulli vendemus, nulli negabimus, vel differemus justiciam, vel rectum; but if a Title doth appear for the King to the possession, then no Procedendo shall be granted.

f Lib.9.f.16. Anna Bedingf. case. 10 E.3.61. 22 Ass. p.5.

g Regist. 220, &c. F.N.B. 153, &c. 26 E.3.58. 12 H.4 18. 11 H.4.72. 13 H.4.3. 9 H.6. 40. 12 H.6. Proc. 9. Dier 1.

Mar. 101. 4 Eliz. 209. 9 Eliz. 256. 15 Eliz. 320.

CAP.

CAP. II.

IN certis autem caſibus, utpote ubi Rex confirmaverit, vel ratificaverit factum alicujus in rem alienam, vel rem aliquam alicui conceſſerit, quantum in ipſo eſt, vel ubi charta profertur, quod ex tenement' aliquod reddiderit, nec clauſula aliqua in ea contineatur, per quam warrantizare debeat, & in conſimilibus caſibus, non erit ſuperſedendum occaſione confirmationis, ratificationis, conceſſionis, ſeu redditionis, aut aliorum conſimilium, quin poſtquam hoc Regi fuerit oſtenſum, ſine dilatione procedatur.

30 Aſſ. p. 5. 8 E. 3 33. 39 E. 3. 12. 35 H 6. 56. 9 H. 6. 50, &c.

¶ Ubi Rex confirmaverit, vel ratificaverit.] Here be three caſes where aid, &c. ought not to be granted of the King, nor the Court ſurceaſe by force of a Writ De Domino Rege inconſulto: whereof the firſt is, when the King confirms or ratifies, &c. which muſt ſo be underſtood, when the confirmation giveth no eſtate, and if it giveth any eſtate, where no rent or ſervice is reſerved, or where in like caſe (as hath been ſaid) another perſon were not bound to Warranty; but if a rent or ſervice be reſerved, and by the Action brought (if the Demandant prevail) the rent or ſervice ſhould be defeated, then there is good cauſe of aide prier, &c. or if a common perſon were in that caſe bound to Warranty, then is the confirmation in nature of a Feoffment, and within the firſt Chapter: what hath been ſaid in caſe of confirmation, the ſame holdeth in caſe of releaſe.

¶ Alicui conceſſerit, quantum in ipſo eſt.] Here is the ſecond caſe where no aid ought to be granted, for the King granteth but his own eſtate without any Warranty.

¶ Quod Rex tenementum aliquod reddiderit, nec clauſula aliqua in ea contineatur, per quam warrantizare debeat, &c.] This is the third caſe where no aid ſhall be granted, in caſe of a reſtitution.

¶ Poſtquam hoc Regi fuerit oſtenſum, ſine dilatione procedatur.] Here ſome have ſuppoſed, that in theſe three caſes aid ſhould be granted, but by force of theſe words, that no ſearch ſhould be granted, wherein two errors be committed: 1. That aid ſhould be granted, which is againſt the expreſs letter of the Statute, Non erit ſuperſedendum, &c. and againſt the Book of 39 E. 3. ubi ſupra. 2. That in caſe of aide prier of the King, or of the Writ De Domino Rege inconſulto, no ſearch ought to be granted, but only in a petition of Right.

2 H. 7. 7, 8. 39 E. 3. 12, 13.

14 E. 3. cap. 14. 9 E. 4. 32. Dier 15 Eliz. 320.

And if aid had been in any of theſe three caſes erroniouſly granted, the Tenant or Defendant ſhould have a Procedendo ſine dilatione, that is, without delay, and of courſe, which is the ſenſe of theſe words.

CAP.

CAP. III.

DE dotibus mulierum ubi aliqui cuſtodes hæreditat' maritorum ſuorum cuſtodias habent ex dono vel conceſſione Regis, ſive cuſtodes rem petitam teneant, ſive hæredes dictorum tenementorum vocentur ad warrant', ſi excipiant, quod ſine Rege reſpondere non poſſint, non ideo ſuperſedeatur, quin in loquela prædict', prout juſtum fuerit, procedatur.

This Statute having not bèn put in print until towards the latter part of the raign of H. 8. and thereby, as it ſæmeth, not commonly known; there have divers aid prayers bèn granted directly againſt both the points of the purview of this Statute, as well when the Writ of Dower hath bèn brought againſt the Kings Graunteè or Committèe, as where the heir came in as Vouchee in his cuſtody; and the like rule Brian gave in 4 H. 7. but when Juſtice Townesend remembred him of this Statute of Bigamis, the aid was overruled.

8 E.3.15. 18 E.3. 38. 19 E.3. aide le Roy 64. 39 E.3.8. 46 E.3.19. 13 R.2. br'e 646. 11 H.4. 39. 5 H.5.13. F.N.B. 154. d. 4 H.7.1,2. 8 E.2. Dower 169. Li 9. fol.15,16. Anna Bedingfields Caſe.

And at the Parliament holden in 18 E.1. an Act is in the Parliament Roll thus entred, Quod viduæ recipiant dotem de terris in cuſtodia Regis exiſtentibus, Dominus Rex præcepit Juſticiariis de Banco, quod viduæ poſt mortem virorum ſuorum petant dotem ſuam, &c. & quod in placitis illis procedant ſecundum communem legem Regni, & quod partibus faciant debitum Juſticiæ complementum.

Ad Parliam. tent. poſt feſtum S. Hil. 18 E. 1. fol.6.

So as ſeeing the letter of this Chapter of 4 E.1. extends but where the King hath granted the cuſtody over, or where the heir came in as Vouchee, this Act of 18 E.1. made about fourteen years after, addeth, that theſe Widows ſhall recover Dower againſt the heir in the cuſtody of the King, where the King granteth not the cuſtody to any, but keepeth the lands in his own hands. And I am verily perſwaded, that ſeeing the granting of aid, where no aid was grantable, was not any Error (whereby the judgment might be reverſed) ſome Judges either for that cauſe, or for fear, have granted aid of the King in many caſes, where it was not to be granted by Law, and the rather, for that in ancient times aids of the King were little or no delay at all; for Writs of Procedendo were ſpeedily granted, whereas of later times aids prayers, and ſpecially Writs De Domino Rege inconſulto are uſed meerly for delay of Juſtice, and that for no ſmall time.

CAP. IV.

DE purpreſturis, ſeu occupationibus quibuſcunque factis ſuper Regem, ſive in libertatibus, ſive alibi: Concordatum eſt quod tempore Regis H. diffinitum erat & concordat', quod ubi occupatores ſuperſtites fuerint, Rex de plano reſumat *ſibi* rem taliter occupatam de manibus occupantium, quod etiam de cætero in Regno obſervetur. Et ſi aliquis de hujuſmodi reſumptionibus conqueratur, prout juſtum fuerit, audiatur.

17 E.2. cap.13.

This

This Act is but a confirmation of a former Statute made in the raign of King H. 3.

¶ De purpreſturis.] Purpreſtura cometh of the French word Purpriſe, or Pourpris, which ſignifieth an incloſure or building, and in legal underſtanding ſignifieth an incroachment upon the King, either upon part of the Kings demeſn lands of his Crown, which are accounted in Law as res publicæ, & ſemper favorabile fuit in omni republica principis patrimonium; or in the high-ways, or in common rivers, or in the common ſtreets of a City, or generally when any common nuſans is done to the King and his people, endeavoring to make that private, which ought to be pubick, which Glanvill very aptly deſcribeth in theſe words, Dicitur autem purpreſtura, vel porpreſtura proprie, quando aliquid ſuper Dominum Regem injuſte occupatur, ut in dominicis Regis, vel in viis publicis obſtruct', vel in aquis publicis tranſverſis à recto curſu, vel quando aliquis in Civitate ſuper regiam plateam aliquid ædificando occupaverit, & generaliter quoties aliquid fit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis.

Glanv. li. 9. c. 11.

Cap. Itineris. It was an Article of the Eir before this Act to enquire De purpreſturis factis ſuper Dominum Regem, ſive in terra, ſive in mari, ſive in aqua dulci, ſive infra libertatem, ſive extra.

It appeareth alſo by Glanvill, that there be alſo purpreſtures done to Subjects, but this Chapter treateth only of purpreſtures done to the King and his people.

¶ Seu occupationibus.] Here occupationes are taken for uſurpations upon the King, and it is properly, when one uſurpeth upon the King by uſing of Liberties and Franchiſes, which he ought not to have: and as an unjuſt Entry upon the King into lands or tenements is called an intruſion, ſo an unlawful uſing of Franchiſes or Liberties is ſaid an uſurpation, but occupationes in a large ſenſe are taken for purpreſtures, intruſions, and uſurpations.

¶ Seu in libertatibus, ſive alibi.] That is to ſay, within liberties, or places that have franchiſes, or priviledges, or without.

¶ Ubi occupatores ſuperſtites fuerint.] This was a Law of great equity, for it extended not but to the wrong doers themſelves.

¶ Rex de plano reſumat.] That is, may clearly releiſe. But this is to be intended upon due conviction, for ſo ſaith Glanvill, Et qui per Juratam ipſam aliquam hujuſmodi feciſſe purpreſturam convictus fuerit, in miſericordia Domini Regis remaneat, &c. & quod occupavit, reddet.

Glanv. ubi ſupra.

¶ Et ſi aliquis de hujuſm' reſumptionibus conqueratur, &c.] And yet ſuch releiſures ſhall not be final, but the party grieved may complain of ſuch releiſures, Et prout juſtum fuerit, audiatur.

CAP.

CAP. V.

DE Bigamis quos dominus Papa in concilio ſuo Lugdunenſi omni privilegio clericali privavit, per conſtitutionem inde editam, & unde quidam Prælati illos qui effecti fuerant Bigami ante prædictam conſtitutionem, quando de felonia rectati fuerunt, tanquam clericos exegerunt ſibi liberandos: Concordatum eſt & declaratum coram rege & concilio ſuo, quod conſtitutio illa intelligenda ſit, quod ſive effecti fuerint Bigami *ante* prædictam conſtitutionem, ſive poſt, de cætero non liberentur prælatis, immo fiat eis juſticia ſicut de laicis.

¶ De Bigamis.] Bigamus is he that either hath married two or more wives, or that hath married a widow, as it appeareth in the Statutes of 18 E. 3. cap. 2. 1 E. 6. cap. 12. Mirror cap. 3. de except. de Clergy. Britton fol. 11. b. Fleta lib. 1. ca. 32.

¶ Concilium Lugdunenſe, &c.] The conſtitution here mentioned is in theſe words, Altercationis antiquæ dubium præſentis declarationis oraculo decidentes Bigamos omni privilegio clericali declaramus eſſe nudatos, & coertioni fori ſecularis addictos, conſuetudine contraria non obſtante; ipſis quoque anathemate prohibemus deferre tonſuram, vel habitum Clericalem. 11 H. 4. 10. 18 E. 3. cap. 3. 2 E. 6. c. 12. Stam. Pl. Co. 135. Per decret. Epiſtol' Gregor. 9. lib. 6. decretal. a Bonifacio 8. in Lugdunenſi conc' edit.

This conſtitution is hereafter in this Chapter explained.

This Councel was holden at the City of Lyons in France, Gregory the tenth being Pope.

At the Councel of Lyons, Britton and Fleta ſay, at Lateran ſaith Bracton, the Pope endeavoured to take away the preſentations from Princes and Lay Patrons to preſent by Laps, for that the conſtitution ſaith, Quod collatio beneficii eſt res ſpiritualis, & aliter credentes eſſent hæretici, &c. and the Common Law ſaith, that a preſentation to a benefice is temporal, and ſo it is declared by divers Acts of Parliament. Britton fol. 225. Fleta li. 1. ca. 32. Bract. l. 4. fo. 247.

At this Councel after ſix moneths the Diocesan ſhall preſent: the Regiſter ſaith, that to preſent by Laps was Dioceſanis ſpecialiter indultum, after ſix moneths, and yet if after the ſix moneths the Patron preſent before the Dioceſan collate, he ought to receive his Clerk, notwithſtanding the general Councel. Regiſt. 18 E. 3. 21. 38 E. 3. 2. 27 E. 3. 8. 5 E. 3. 26. 11 H. 4. 80. 13 E. 4. 3. Doct. & Stud. 116.

But when the Kings turn came to preſent Jure Coronæ by Laps, the Regiſter ſaith, Nullum tempus occurrit Regi ex conſuetudine hactenus obtent' in Regno Angliæ, ſo as the Councel did not bind the right of the King, nor could the Dioceſan preſent by Laps until it was ei indultum; that is, until it was allowed to him by conſent of the Realm, with ſuch limitations and reſtrictions, and with binding him in many caſes to give notice, as was thought juſt and reaſonable in Subjects caſes, for the better ſervice of God and inſtruction of the people. But the King, who is Supremus Dominus, loſeth not his preſentation by any Laps at all, the ſaid conſtitution notwithſtanding. F. N. B. 38. f. & 35. a. See W. 2. ca. 5. verbo ſemeſtre.

¶ Unde quidam Prælati, &c.] Certain Prelates did interpret the ſaid general Councel to extend only to ſuch as became Bigami after the Councel, and they challenged ſuch Clerks as were bigami before that Councel, when they were arraigned for Felony, and required to have delivery of them. See Art. Cler. cap. 15.

2 R.2.cap.6.

But hath the Parliament power in theſe caſes to make Declarations? Yea, and in greater, for by authority of Parliament it was declared, that Urban the twelfth was duly elected, and ought to be accepted Pope; the truth is, that the Cardinals forſook Urban, and elected Clement the ſeventh, therefore it was enacted that all Benefices and Poſſeſſions of Cardinals rebels within England ſhould be ſeiſed, &c.

Theorike. Crentz.

This Schiſme betwéen theſe two Popes continued 39 years, till the Councel of Conſtance, one curſing and warring with another, in ſo much, that by reaſon of this Schiſme, above 200000 Chriſtians were miſerably ſlain, this Urban drowned, five Cardinals ſlew the Biſhop of Aquitane, gave authority to Spencer Biſhop of Norwich againſt Clement the Anti-pope.

¶ Concordatum eſt & declaratum coram Rege & concilio ſuo quod conſtitutio illa intelligenda ſit.] Here the King by aduiſe and counſel of his high Court of Parliament doth expound and explain this conſtitution made at the ſaid general Council, and declareth where Clergy ſhould be taken away in reſpect of Bigamy.

And this interpretation of the Parliament was againſt the practiſe of the Prelates, as before it appeareth, and contrary to the cuſtom before uſed, as by the conſtitution it ſelf appeareth.

12 E.3. Cor.117. 34 H.6.42. 9 E.4. 29. 22 E.4.Coron. 44. 19 H.7.9.

But the true cauſe of this declaration by Act of Parliament was, that ſéeing the Judges of the Common Law were Judges of allowance or diſallowance of Clergy to him that was arraigned of felony, and that the ſaid conſtitution took away the priviledge of Clergy, and by conſequent the life of man, the Judges, before they allowed of the ſaid conſtitution, would have it declared by authority of Parliament.

Rot.Parl. 51 E.3. nu.63. 1 E.6.c.12.

This Law to deprive men that were bigami of the priviledge of their Clergy was complained of in Parliament in 51 E.3. and by King E.6. in the firſt year of his raign wholly abrogated and taken away.

William Thorn, Thomas Sprotte, &c. Rot.Parl. anno 40 E.3. nu.8. Rot. clauſ. 3 E.1. memb.9. in ſchedula.

It fell out at this Council of Lyons mentioned in our Act (as our Hiſtories report) that the Popes Wardrobe in that City (whereiu was that deteſtable Charter which King John made to the Pope to bring the Crown of England in ſervage to the Sée of Rome) then was wholly conſumed with fire; a divine and fiery revocation of that moſt unjuſt and forceleſs Charter, as was unanimouſly reſolved both in Parliament and elſewhere.

CAP.

CAP. VI.

IN Chartis autem ubi continentur (Dedi & conceſſi tale tenementum ſine homagio, vel ſine clauſula quæ continet Warrantiam, & tenend' de donatoribus & hæredibus ſuis per certum ſervitium) Concordat' eſt per eoſdem Juſticiar', quod donatores & hæredes ſui teneantur ad Warrantiam. Ubi autem continentur (Dedi & conceſſi, &c.) tendendum de capitalibus dominis feodi, aut de aliis, quam de feoffatoribus, vel hæredibus ſuis, nullo ſervitio ſibi retento, ſine homagio, vel ſine dicta clauſula *Warrantiæ*, hæredes ſui non teneantur ad Warrantiam. Ipſe tamen feoffator in vita ſua ratione doni proprii tenetur warrantizare. Prædict' autem conſtitutiones editæ fuerunt apud Weſtmonaſterium in Parliamento poſt feſtum ſancti Michaelis, Anno Regni Regis E. filii Regis H. quarto, & extunc locum habeant.

There be two branches of this Act, and two conſequents thereupon, the firſt branch is, that where Dedi is contained in a Deed (albeit there be no other warranty) to hold of the Donor and his heirs (as at the making of this Act, viz. in 4 E. 1. a man might have done) there the feoffor and his heirs had been bound to warranty, and this was the Common Law; for where Dedi is accompanied with a perdurable tenure of the feoffor and his heirs, there Dedi importeth a perdurable Warranty for the feoffor and his heirs to the feoffee and his heirs; and herewith agreeth Glanvil, Tenentur autem hæredes donatorum dona- Glanv. l. 7. ca. 2.
tiones & res donatas ſicut rationabiliter factæ ſunt, illis quibus factæ ſunt, & hæredibus ſuis Warrantizare.

And Bracton herewith agreeth ſaying, Et ſciendum eſt quod ad omnes Char- Bracton lib. 5.
tas de ſimplici donatione competit tenenti Warrantizatio, & tenentur donatores & fol. 388. b.
eorum hæredes ad Warrantiam, ſi hora congrua, & modo debito cum proſecutione competenti vocati fuer' ad Warrantiam, niſi forte in Charta de feoffamento contrarium exprimitur. And in thoſe days regularly the donee did hold of the donor, unleſs there were a ſpecial limitation to the contrary. And when the feoffment 31 E. 1. Voucher
was made by this word [Dedi] to hold of the donor and his heirs, then he and 290.
his heirs are bound to Warranty.

The conſequent is, that although there be an expreſs Warranty contained in 20 E. 3. Count. de
the Deed, yet that taketh not away the Warranty that is wrought by force of garr. 7.
Dedi, but the feoffee may take advantage either of the one, or the other at his 31 E. 3. Vow. 286.
pleaſure. Li. 4. 81. Nokes Caſe.

The ſecond branch is, that where Dedi is contained in the Deed, to hold of 1 Inſt. 384 a.
the chief Lord, and not of the feoffor, there although there be no other War- Britton fol. 88. b.
ranty in the Deed, the feoffor ſhall be bound to Warranty during life. Britton ſaith, Si le purchaſor ſoit del done challenge in ſa ſeiſin, ſi ert le donor tenu de garranter auter ſon done tant come il vivera, tout ne ſoit a ceo oblige per eſpecialtie de eſcript tout face le purchaſor de ceo homage a auter que al donor, ſicome al chiefe Seigniour.

If the gift be made to hold of the chief Lord of the fee, then Dedi binds 31 E. 1. Voucher
none to Warranty, but him that made the gift. 290.

And it is to be known that ſince the Statute of Quia emptores, 18 E. 1. the 6 E. 2. Vouch. 258.
feoffee in fee ſimple doth hold of the Chief Lord, and therefore at this day in 39 E. 3. 26. 2 H. 7. 7.

6 H.7.2. 20 E.3. Count.de garr.7. 6 E.3.11. 22 Aſſ. 52. 18 E.3.8. 14 H.6 25. 6 H.7.2. 10 H.7. F.N.B.134.h. 5 Eliz. Dier 121. Nokes Caſe, ubi ſupra.

that caſe the feoffor is only bound to Warranty during his life; but if a man at this day give lands in taile by the word Dedi, the Donor and his heirs are bound to Warranty; and ſo it is of a leaſe for life, reſerving a rent, though it be without Déed.

The conſequent hereupon is, that albeit there be in this caſe of the ſecond branch an expreſs Warranty, the feoffée may take advantage of the one or the other, as upon the firſt branch hath béen ſaid. See for this Nokes caſe aboveſaid.

Bract.l.5. fo.389. Fleta li.6.ca.23. Britton fol.170. The firſt part of the Inſtitutes, Cap. Homage. Aunceſt.ſect.143.

¶ Sine homagio.] The Law was generally holden in thoſe days, that homage being parcel of the tenure reſerved to the feoffor and his heirs, imported a Warranty to the feoffée and his heirs, and ſo much is implied by theſe words in this Act, Sine homagio, that is, without any Warranty by reaſon of homage, but that was ever intended, ſo long as the Tenancy continued by deſcent in blood of the firſt purchaſer, for if the Tenement were transferred out of his blood by feoffment, or any other tranſlation, in that caſe the Tenant ſhould vouch his Feoffor or his heirs, if he had any Warranty, but not in reſpect of the Homage: And that this was the ancient Law, appeareth by Glanvil, who

Glanv.li.9. ca.4. 14 H.6.25.

ſaith, Si aliquis alicui donaverit aliquod tenementum pro ſervitio & homagio ſuo, quod poſtea alius verſus eum dirationaverit, tenebitur quidem dominus tenementum id ei warrantizare, vel competens excambium ei reddere. Secus eſt tamen de eo, qui de alio tenet feodum ſuum ſicut hæreditatem ſuam, & unde fecerit homagium, quia licet is terram illam amittat, non tenebitur dominus ad eſchambium; and this is ſignified in the doing of Homage, Homagium ſi dominus recipere voluerit, tunc in ſignum warrantiæ acquietationis & defenſionis manus tenentis infra

Vide the firſt part of the Inſtitutes ubi ſup.

manus ſuas tenere debet, dum tenens profert verba homagii. And this day it holdeth in caſe of Homage Aunceſtrel.

31 E.1. Voucher 290.

¶ De donatoribus & hæredibus ſuis.] So it is if a body Politick or Incorporate had by Déed, wherein Dedi was contained, infeoffed another to hold of him and his ſucceſſors, this had created a like Warranty, as in this Act is mentioned.

¶ Concordatum eſt per eoſdem Juſticiarios.] That is (as hath béen ſaid before) enacted according to the advice and reſolution of the Juſtices.

¶ Ipſe tamen feoffator in vita ſua.] The letter of this Act extends but to the Feoffor upon a Feoffment made, but if Dedi doth enure by way of releaſe or confirmation, it importeth a Warranty during the life of him that makes the Déed; ſo it is if a reverſion expectant upon an eſtate for years, life, or in tail be granted by this word Dedi, and Attornment had, here Dedi doth import a Warranty, though the ſtate paſſeth not by way of feoffment; ſo it is of a Rent, of an Advowſon, or the like.

Bract. ubi ſupra. 48 E.3.2.a. 14 H.6.25.

Bracton ſaith, Si vero charta fuerit de confirmatione, non ſequitur inde warrantizatio, niſi in ſe contineat donationem; ut ſi dicatur, do, & confirmo tali & hæredibus ſuis, &c. If a man by Dedi letteth land for life, by this the Leſſée ſhall vouch the Leſſor (though the reverſion be granted away) and yet the Leſſor is not properly Feoffator.

11 H.6.41. 11 H.4. 41. 14 H.6.25. 6 H.7.2. F.13.4.h.

¶ Ratione doni proprii tenetur warrantizare.] Albeit in two places before in this Act Dedi & Conceſſi are coupled together, yet theſe words Ratione doni proprii do appropriate the Warranty to Dedi only; and agréeable to this expoſition in our Books is the common and conſtant opinion of learned men at this day.

39 E.3.26. 11 H.7.13.

Two Jointenants make a feoffment in fée by this word Dedi, the one dies, the ſurvivor ſhall be vouched, and render in value for the whole; for though the ſtate paſſed from both, and the Statute ſaith, Ratione doni proprii, yet each of them

them did warrant the whole by this word Dedi, otherwiſe the ſurvivor ought not to have yielded the whole in value, as it hath been adjudged; and the reaſon is, for that the heir of the Jointenant that dyeth cannot be bound by the Warranty created by this word Dedi.

But if two Jointenants make a Feoffment in fée, with an expreſs Warranty for them and their heirs to the Feoffée and his heirs, and the one of them dye, the ſurvivor ſhall not be vouched alone, but the heir alſo of the other, and the recompence in value ſhall lye equally upon them; but if the one of them have nothing, the other ſhall anſwer the whole; for it is a Marim in Law, Quando de una & eadem re duo onerabiles exiſtunt, unus pro inſufficientia alterius de integro onerabitur. But in the ſaid caſe of Dedi, the ſurvivor was only chargeable with the Warranty.

Statutum

Statut. de Gloceſter,

EDITUM *Anno* 6 Edw. 1.

This Parliament was holden at Gloceſter bordering upon Wales, for the better preſervation of peace in Wales, Lluellin Prince of Wales, and the Welſh-men being a little before this Parliament brought to quietneſs.

LAn du grace M.C.C. lxvii. & del raigne le Roy Ed. fits le Roy Henry, vi. a Glouceſtre le moys Dauguſt, purview ante meſme le Roy, pur amendement de ſon roialme, & pur plus pleiner exhibition de droit ſicome le profit doffice demaunde, appelles les pluis diſcreetes de ſon roialme, auxibien des greinders come des meinders. Eſtablie eſt & concordantment ordaine, que come meſme le roialme en pluſors divers caſes, auxibien des franchiſes, come dauters choſes, en les quels ley avant fallit, & a eſchever les treſgreves damages, & les nient numerables diſheriſons, les quels icel maner default de ley fiſt a la gent du roialme, eit meſtier de divers ſuppletions de ley, & de novels purveiances: Les eſtatutes, ordeinments, & purveyances ſuis eſcriptes de tout la gent de la roialme deſormes ſoient firmement gardes come Prelates, Countees, Barons, & auters del roialme clament daver divers franchiſes, & les quels examiner' & judger', le Roy a meſmes les Prelates, Countees, Barons, & auters, avoit done jour. Purview eſt, & concordantment grante, que les avantdits Prelates, Countees, Barons, & auters cel maner de franchiſe uſent, iſſint que rien ne lour accreſer per uſurpation, ou occupation, ne rien ſur le Roy occupient, jeſque al prochein venue ceo Roy per le countie, ou a le procheine venue des Juſtices errants, as common plees en meſme le countie, ou jeſquel le Roy commaunde auter choſe: ſave le droit le Roy come il en voudra parler, ſolonque ceo que il eit contenue en le briefe le Roy. Et de ceo ſoient maundes briefes as Viſcontes, Bailifes, ou auters pur cheſcun demandant, Et ſoit la forme del briefe change, ſolonq; la diverſitie des franchiſes, les quels cheſcun claime daver. Et les viſcontes per touts lour baillies ferront communement cryer, ceſtaſcavoire, en cities, burghes, & villes merchandes, & aylors, que touts ceux que aſcuns franchiſes claiment aver per les charters les predeceſſors le Roy, Royes Dengleterre, ou en auter maner, ſoient devant le Roy, ou devant Juſtices en Eire a certaine jour & lieu, a monſtrer quel manner de franchiſes ils claimant daver, & per quel garrant. Et les viſconts meſmes donques ſerront illonq; perſonalment, ou lour bailifes & miniſters a certifier le Roy ſur les avantdits franchiſes, & auters choſes que celles franchiſes touchent. Et ceſt crie deſtre devant le Roy conteigne garniſement de iij ſemaignes. Et in meſme le maner ferront les viſconts

viſconts crier en oyer de Juſtices. Et in meſme le maner ſerront ils perſonalment, ou lour bailifes, & lour miniſters, a certifier les Juſtices de tiel maner de franchiſes, & des auters choſes que celles franchiſes touchent. Et ceſt crie conteigne garniſement de quarante jours, ſicome le common ſummons contient: iſſint que ſi la partie, que claime daver franchiſes, ſoit devant le Roy, ne ſoit paz mis en defaut devant les Juſtices en Eyre, pur ceo que le Roy de ſa grace eſpecial ad grant, que il gardera la partie de dammage quant a cel ajornement. Et ſi cel party ſoit impled' ſur tiels maners de franchiſes devant un payer de Juſtices avantdits, meſmes les Juſtices devant les queux la partie eſt en plee, garderent le partie de dammage devant auters Juſtices, & devant le Roy luy meſme, meſq; il ſache per les Juſtices, que le partie fuit en plee devant eux, ſicome il eſt avantdit. Et ſi ceux que tiels franchiſes claiment aver, ne veignent paz al jour avantdit, donques ſoient les franchiſes en noſme de diſtreſſe priſes en la maine le Roy per le viſcont del lieu, iſſint quils tiel manner de franchiſes ne uſent, jeſques ils veigne a receiver droit. Et quant ils veignent per cel diſtres, lour franchiſes eux ſoient replevies ſils les demand, les quels replevies reſpoignent maintenant in la forme avantdit. Et peradventure les parties exceptent, quils ne debuient nient de ceo reſpondre ſans briefe original, donques ſil puiſſe eſtre ſure q̃ eux de lour proper fait, eient uſurpe ou occupy aſcuns franchiſes ſur le Roy, ou ſur ſes predeceſſors, dit lour ſoit q̃ maintenant reſpoignent ſans briefe, & puis reſceivent judgment, ſicome le court le Roy agardera. Et ſils dionr ouſter, q̃ lour anceſter, ou lour anceſters de meſmes les franchiſes morront ſeiſies, ſoient oyes, & maintenant ſoit le verity enquiſe, & ſolonque ceo aillent les avant en le beſoigne. Et ſil ſoit trove q̃ lour anceſters ent moruſt ſeiſie: donques eit le Roy briefe original de ſa Chancery en forme fait de ceo. Le Roy mande ſalute au viſcont: Summones p̃ bon ſummonors un tiel, que il ſoit devant nous a tiel lieu en noſtre prochein venue en cel countie, ou devant nous Juſtices a primer aſſiſes, come ils en celles parties viendront, a monſtrer p̃ q̃l grant il claime daver quitance de torn' p̃ ſoy ou p̃ ſes homes p̃ tout noſtre roialme per continuation apres la mort tiel jadis ſon predeceſſor. Et eits les ſummonors & ceo briefe. Et ſi les parties veignont al jour, reſpoignent, & ſoit reply & judge. Et ſils ne veignent, ne ſoy eſloinent devant le Roy, & ſi le Roy demurra ouſter en cel county, ſoit commande au viſcont que il le face vener al quart jour. A quel jour ſils ne veignent, & le Roy demurr' ouſter en cel county, ſoit fait ſicome en Eyre de Juſtices. Et ſi le Roy depart del countie, ſoient les parties ajornes a briefe jour, & eient reaſonables delaies, juxte les diſcretions des Juſtices, ſicome en actions perſonal. Et les Juſtices en Eyre facent de ceo en lour oyers ſolonq; lordeinment avantdit, & ſolonq; ceo q̃ tiel maner de plees debuient eſtre deduct. En oyer de pleints faits & affaires des bailifes le Roy, & dauters bailifes, ſoit fait ſolonq; lordeinment avant fait de ceo, & ſolonq; les enqueſts de ceo avant priſes, & de ceo ferront les Juſtices en Eyre ſolonq; ceo que le Roy lour ad enjoynt, & ſolonq; les articles que le Roy lour ad livere. Vide tout ceo in latin pluis plaine 30 E. 1. leſtat' de *Quo warranto* tit. Franchiſes 5.

¶ L'an

Vet.Mag Chart. fol.130.

¶ L'an du grace, 1267.] This ſhould be 1278. for that was Anno 6 E.1. this Parliament being holden in Auguſt, anno 6 E.1. for 1267. was in 51 H.3.

This Chapter concerning Liberties and Franchiſes, and the Quo warranto, (and intituled Statutum de quo warranto) hath bẽn ſuppoſed by many to be enacted in Latin, Anno 30 E.1. and therefore ſome have omitted to inſert it in the 6. year; but it is utterly miſtaken: for the King in the 30 year did publiſh and proclaim this Act under the great Seal, and doth recite it to be made, Anno Dom. 1278. and in the 6. year of his raigne. Vide 14 E. 1. Inter original' de Anno 14 E.1. Breve de libertatibus allocandis, and there is another Statute made in 18 E.1. called Statutum de quo warranto novum, ſo called, in reſpect of this former Statute.

Lib.9. fol.28. In the caſe of Strata Marcella.

And beſides, the Statute in French differeth from the recital thereof in 30 E. 1. which, for that it agreeth with the Record, we will follow it when we come to the body of the Act.

¶ Pur amendement de ſon Realme, & pluis plenier exhibition de droit.] Which by the ſaid Proclamation in 30 E.1. is rendred thus, Ad Regni ſui Angliæ meliorationem, & exhibitionem Juſticiæ pleniorem: two excellent ends of a Parliament, Regni melioratio, that is for the common good of the Kingdom, the Parliament being Commune concilium, and exhibitio Juſticiæ plenior, for nothing is more glorious and neceſſary, then full execution of Juſtice.

And it is added, Prout Regalis officii expoſcit utilitas; and accordingly at this Parliament many profitable and juſt Laws were made, as one ſpeaking of this Parliament ſaith truly, In quo quædam de Regni ſtatu decreta ſunt, quæ nunc ut jura, & æquitate plena maxime uſurpantur. And that I may ſpeak once for all, it is worthy of obſervation, that the Statutes made in this noble Kings time are ſo agreeable to common right and equity, as few or none of them have bẽn abrogated, but being founded upon theſe two pillars, (the amendment of the Kingdom, and the due execution of Juſtice) remain and continue as juſt and conſtant Laws to this day.

Pol. Virgil.

Vide Vet.Magna Charta. fol.130. Stat. de Quo Warranto. Pol. Virgil.

¶ Hujuſmodi libertatibus utantur, &c.] For the better underſtanding of this Act it ſhall be neceſſary out of Hiſtory to ſhew the cauſe of the making hereof.

The truth is, that the King wanting money, there were ſome innovatores in thoſe days, that perſwaded the King, that few or none of the Nobility, Clergy, or Commonalty, that had franchiſes of the grants of the Kings predeceſſors, had right to them for that they had no Charter to ſhew for the ſame, for that in troth moſt of their Charters either by length of time, or injury of wars and inſurrections, or by caſualty were either conſumed or loſt: whereupon (as commonly new inventions have new ways) it was openly proclaimed, that every man that held thoſe liberties, or other poſſeſſions by grant from any of the Kings Progenitors, ſhould before certain ſelected perſons thereunto appointed ſhew, quo jure, quove nomine ill' retinerent, &c. whereupon many that had long continued in quiet poſſeſſion, were taken into the Kings hands, Eo quod nulla tabella conſtarent: Hereof the Story ſaith, Viſum eſt omnibus edictum ejuſmodi poſt homines natos longe acerbiſſimum: Qui fremitus hominum? quam irati animi? quanto in odio princeps eſſe repente cœpit?

Magna Charta, cap.1,9,38.

The good King underſtanding hereof, and finding himſelf abuſed by ill counſel, and conſidering the Statute of Magna Charta, at the Parliament holden in the end of his fourth year by Proclamation, and at the petition of the Lords and of the Commons now at this Parliament, by authority of Parliament provideth remedy, as hereafter you ſhall hear: This is fully agreed upon in all our Hiſtories, only the time in ſome of them (as oftentimes in other caſes it falleth out) is miſtaken, which by this Act ſhall be rectified according to true Chronologie.

¶ Pro-

¶ Proviſum eſt & concorditer conceſſum.] It was rightly ſaid concorditer conceſſum, for that the ſaid innovation was like to have bæn a cauſe of great diſcord betwæn the King and the better ſort of his Subjects.

¶ Quod dicti Prælati, Comites, Barones, & alii hujuſmodi libertatibus utantur in forma brevis ſubſcripti.] This form of a Writ is more ſatisfactory, then any other form is, and this was the ancient uſe.

¶ Cum nuper in Parliamento noſtro apud Weſtm'.] That is, in the laſt Parliament holden after Michaelmas, towards the end of the fourth year of his Reign, and therefore the great grievances abovelaid muſt be before that Parliament, for the cure was after the diſeaſe, and the remedy after the grievance.

¶ Proviſum ſit & Proclamatum.] But this was never (that I can find) recorded: Now by this Act it is provided that a Writ ſhall be granted.

¶ Quibus hucuſque rationabiliter uſi ſunt.] See the Regiſter 162, 163. De libertatibus allocandis, & F. N. B. 229, 230.

¶ Uſque ad adventum noſtrum per Comitatum prædictum, vel uſque proximum adventum Juſticiariorum Itenerantium, &c.] That is until the Court of Kings Bench came thither, or the next coming of the Juſtices in Eir: So all men ſhould quietly enjoy their franchiſes, which they had reaſonably uſed, until the Court of Kings Bench, or until the Juſtices in Eir came into that County: Here it is to be obſerved, that this good King and his Councel in Parliament referred the party grieved to a legal proceeding, which implieth, that a contrary courſe was holden before. But you will demand, What remedy was this for him, that could not produce his Charter, to be left to the Law? I anſwer, that this was a full and perfect remedy according to Juſtice and right; for the better apprehenſion whereof theſe diſtinctions are to be obſerved: Firſt, theſe franchiſes intended by this Act be of two ſorts, The one may be claimed by uſage and preſcription, as wreck of the Sea, Waif, Stray, Fairs, Markets, and the like, which are gained by uſage, and may become due without matter of Record: And Felons goods, outlaws goods, and the like, which grow not due but by matter of Record, and therefore cannot be claimed by uſage in paiis, but by Charter: And yet all theſe at the firſt were derived from the Crown.

8 E. 3. 12. 17 E. 3. 11. 26 Aſſ. 24. 30 Aſſ. 31. 34 Aſſ. 14. 38 Aſſ. 1. 1 H. 4. 3. 12 H. 4. 23. 8 H. 6. 8. 2 E. 4. 22. 7 H. 6. 33. 9 H. 7. 12. 10 H. 7. 14. 16 H. 7. 16. 20 H. 7. 7. Kelwey 289, 190. 8 H. 8.

Secondly, Judicis officium eſt, ut res, ita tempora rerum Quærere; All theſe were granted either before the time of memory, or after the time of memory: if before the time of memory, then for the former ſort, ſuch as might be claimed by preſcription, the party grieved might preſcribe, and by Law he ought to be relieved. And for ſuch as lay in point of Charter granted before time of memory, the party grieved had two remedies, either by allowance, or confirmation; by allowance in the Kings Bench, or before the Juſtices in Eir, and in ſome caſe before the Juſtices of the Court of Common Pleas, and in the Exchequer; or by confirmation of the King under the great Seal: and theſe were ſufficient for him without ſhewing the Charter, and the equity of the Law herein was notable, for that no Charter before time of memory was pleadable by Law.

18 H. 6. preſcript. 45. 2 E. 3. 29. 8 H. 8. Kelwey 189. Stat. de 18 E. 1. De quo warranto novum. Lib. 9. fol. 29. in caſe de Strat' Marcella.

If thoſe Franchiſes either of the one ſort or other were granted within memory, yet if the ſame had bæn allowed, as is aforeſaid, the ſame might alſo be claimed by force of the Charter and allowance, without ſhewing the Charter, becauſe it had bæn adjudged and allowed of Record. And it is to be known that all Franchiſes, which any man had either by preſcription or by

Charter, ought to be claimed before Juſtices in Eir, or elſe for non-claim the ſame might be loſt, as hereafter ſhall be ſaid: So as the remedy provided by this Act was plenary and perfect to give relief to them that right had.

34 Aſſ. pl. 14. 40 Aſſ. 21. 6 E. 3. 54, 55. 7 E. 3. 40, 41 18 E. 3. Conuſ. 39. 12 H. 4. 12. 14 H. 6. 12. 33 H. 6. 22. 35 H. 6. 54. 9 H. 7. 11. 10 H. 6. 13. 16 H. 7. 9. * Regiſt. 158. 5 E. 3 50, 51. 6 E. 3. 18. 20 H. 6. 34. 34 H. 6. 36. Dier 8 El. 245. a 3 E. 6. c. 4. 13 El. cap. 6. lib. 5. fo. 52, 53. Pages caſe.

To this for the time may be added, that ancient Charters, whether they be before time of memory, or after, ought to be conſtrued, as the Law was taken when the Charter was made, and according to ancient allowance. * Now what time of memory is, ſee the firſt part of the Inſtitutes, Sect. 170.

a But now by the Statutes of 3 E. 6. and 13 Eliz. there is further remedy given: for albeit the Charter or Letters Patents be loſt, yet the exemplification or conſtat of the Roll may be ſhewed forth, &c. And when any claimed before the Juſtices in Eir any Franchiſes by an ancient Charter, though it had expreſs words for the Franchiſes claimed; or if the words were general, and a continual poſſeſſion pleaded of the Franchiſes claimed, or if the claim was by old and obſcure words, and the party in pleading, expounding them to the Court, and averring continual poſſeſſion according to that expoſition; the Entry was ever Inquiratur ſuper poſſeſſionem & uſum, &c. which I have obſerved in divers Records of thoſe Eirs, agreeable to that old Rule, Optimus interpres rerum uſus.

¶ Habeant præmunitionem per 40 dies.] This was by Writ of the common Summons of the Eir, by the ſpace of 40 days before the ſitting of the Juſtices in Eir.

Now leaving all that is evident, and needeth no expoſition, let us come to the next that is worthy of obſervation.

Bract. li. 1. fol. 5. & 171. 6 E. 3. 50. 22 E. 3. 3. 24 E. 3. 1 23. 43 E. 3. 22. 11 H. 4. 86. 9 H. 6. 58. * Mag. Charta. c. 29 25 E. 3. cap. 4. Stat. 5. 28 E. 3. cap. 3. 42 E. 3. c. 3.

¶ Et ſi forte exceperint quod non tenentur ſine brevi originali reſpondere.] Here is an ancient Maxim in the Law implied, that regularly no man ought to anſwer for his Freehold, Franchiſes, or other thing without original Writ ſecundum legem terræ; and that the * Statutes to that end provided are but declarations of the ancient Common Law, as here it is to be ſeen in caſe of Franchiſes in the Kings own caſe.

Stat. de 18 E. 1. de quo war' nov. 6 E. 35. 8 E. 3. 10, 11. 16 E. 4. 6. 3 H. 7. 15. Stanf. Prærog. 74. Paſch. 9 E. 1. Coram Rege Rot. 17. Suſſex.

¶ Et ſi ulterius dicunt quod anteceſſores ſui inde obierint ſeiſiti, ſtatim audiantur, & ſtatim veritas inquiratur, &c.] By this it appeareth that a deſcent of Franchiſes doth put the King to his Writ of Quo warranto, which Writ is here expreſſed; and note that the Quo warranto is in nature of the Kings Writ of Right for Franchiſes and Liberties, wherein judgment final ſhall be given either againſt the King for the point adjudged, or for the King; and the Salvo jure for the King ſerveth for any other title then that which was adjudged; and therefore William de Penbrugge the Kings Attorney, for proſecuting oſtia Quo warranto againſt the Abbot of Fiſchamp for Franchiſes within the Manor of Steynings ſine præcepto, was committed to the Gaol.

2 E. 3. 29. 6 E. 3. 5. 15 E. 4. 6, 7.

¶ Et ſi non venerint, &c. præcipiatur vicecom' quod faciat eos venire, &c. quo die ſi non venerint, &c. fiat ſicut in Itinere Juſticiariorum.] If before the Juſtice in Eir the party came not, the Franchiſe ſhould be ſeiſed into the Kings hands nomine diſtrictionis, which the party in the ſame Eir might replevy; but if he did not replevy them while the Eir ſate in that County, the Franchiſes were loſt and forfeited for ever.

Therefore if the party now upon the Venire facias (which this Act doth give) come not while the Eir ſit in that County, the Franchiſes be loſt for ever.

And

And ſo it is in the Kings Bench, if the party come not in upon the Venire facias during that term, and replevy his Franchiſes, they be loſt for ever. And therefore we concur not with that chief Juſtice that ſaid, that Non-claim of Liberties before Juſtices in Eir loſt the Liberties, for that (ſaith he) was but of the Kings Grace to grant a Replevy of them, and not of Right; for this opinion is againſt the authority of our Books, and the continual practice before the Juſtices in Eir. Pl. Com. 372. in le Signior Zouches caſe.

See the Statutes of 18 E. 1. De quo warranto novum, and De tallagio non concedendo.

¶ De querimoniis factis & faciendis de balivis Regis & aliorum fiat ſecundum ordinationem prius inde factam.] That is, according to the Articles of the Juſtices in Eir called Capitula Itineris collected and authoriſed amongſt other things, as here it appeareth, by ordinance of Parliament, and entred into the Parliament Roll, which you may ſee in old Magna Charta, fol. 150, 151, &c.

¶ Juxta articulos eiſdem Juſtic' noſtris tradit'.] The French ſaith, Solonque les articles que le Roy lour ad livre. Theſe Articles were delivered by the King to the Juſtices in Eir to be enquired of, heard, and determined by them through all the Counties of England, which afterwards were increaſed, as by the ſame may appear.

CAP. I.

COme avant ces heures damages ne fueront agardes en Aſſiſes de novel diſſeiſin forſque tantſolement vers les diſſeiſors: Purview eſt, que ſi les diſſeiſors aliont les tenements, & niont dont les damages puiſſent eſtre levies, que ceux a que maines ceux tenements deviendront ſoient charges des damages, iſſint que cheſcun reſpoign' de ſon temps. Purview eſt enſement, que le diſſeiſee recover' damages en briefe Dentre foundue ſur diſſeiſin, vers celuy que eſt trove tenant apres le diſſeiſor. Purview eſt enſement, que la ou avant ces heures damages ne fueront agardes en plee de Mortdanceſtor, forſque en caſe ou tenements fueront recoveres devers chiefes ſeigniors (ceo fuiſt per ſtatut' Marlbr. cap. 16.) que deſormes damages ſoient agardes en touts caſes, ou home recover per Aſſiſe de Mortdanceſtor, ſicome eſt avantdit en Aſſiſe de Novel diſſeiſin. Et in meſme le maner recover' home damages en briefe de Coſinage, Ayel, & Beſayel. Et la ou avant ces heures damages ne fueront taxes, forſque a le value des iſſues de la terre: Purview eſt, que le demandant puit recover vers le tenant les coſtages de ſon briefe purchaſe, enſemblement oveſque les damages avantdits. Et tout ceo ſoit tenus en touts caſes, ou home recover damages. Et ſoit deſormes cheſcun tenus a render damages, la ou home recover vers luy de ſa intruſion demeſne, ou de ſon fait demeſne.

See the first part of the Institutes. 685. 37 H.6.35.

Before this Statute no damages were recovered in Assise of Novel disseisin, (which then was frequens & festinum remedium) but only against the Disseisor, and not against the Tenant that came to the lands or tenements after the Disseisin, for no damages could be recovered by the Common Law, but against the wrong doer by him, to whom the wrong was done.

Now the mischief was, that many times the Disseisor was insufficient, and not able to satisfie the damages, and by that means the Disseisée recovered damages in shew against the Disseisor (who was the wrong doer to him) but had not the effect thereof; now this branch doth remedy this mischief, as by the same it appeareth.

¶ Alienont les tenements.] The letter of this Law extendeth only to them, that came in by title, as by feoffment, or fine after the Disseisin; but by equity it extendeth to them, that came in by wrong, and to them also, whose estate was before the Disseisin; for example, if the Disseisor were disseised, the second Disseisor is within this Statute, for if he that comes in by title shall be within the remedy of this Law, à fortiori, he that comes in by wrong; and so it is of all others, that come in under the Disseisor, though it be not by alienation.

14 H.7.28. per Wood.

Also if the Lord distraineth for his rent, and a stranger without the privity of the Tenant maketh Rescous, the stranger is only the Disseisor, and though the Tenant claim not under him, but his estate is before, &c. yet in Assise against the Disseisor and the Tenant, if the Disseisor be found insufficient, the Plaintif by force of this Statute shall recover damages against them both.

10 Ass. p.3. 10 E.3.24.

And yet in some cases the Tenant that claimeth under the Disseisor shall not for the insufficiency of the Disseisor be answerable to yield damages by this Statute; As if the Disseisor of lands holden in Capite alien the same to another, the Alienée dieth, his heir within age, upon office found the King committeth the custody to A. who taketh the whole profits, the Disseisor is insufficient, the heir within age is no Tenant within this Statute, for that he never did, nor could take any profit: But if the Disseisor alien to an Infant, who taketh the profits, he is a Tenant within this Statute; or if the Infant coming in as heir had been out of Ward, and had taken the profits, he had been a Tenant within this Statute.

22 Ass.28.

If the Disseisor infeoffe the Villein of the Disseisée and a stranger, and the Disseisor is insufficient, in this case either the Disseisée must lose his damages, or infranchise his Villein.

48 E.3. 17.

No Lessée for years, or Tenant by Statute Staple, or Merchant, or the like, that have but a chattel, shall be accounted a mean occupier within this Statute, but he that hath the Inheritance or Free-hold at the least; otherwise he is not said to be a Tenant of the land; and so much is implied in this word alien, which cannot be intended of a Lessée for years, &c. where he, that bringeth the Assise, hath right to the Inheritance or Free-hold: But where Tenant by Statute Merchant, or Staple, &c. brings an Assise, there Lessée for years, or Tenant by Statute Merchant, &c. may be a mean occupier, because the Plaintif in the Assise hath right but to a chattel.

¶ Et nient dont les damages poient estre levies.] Hereupon do follow three conclusions in Law: 1. That if the Disseisor be sufficient to yield the whole damages, he is solely to be charged therewith; for then this Statute extendeth not to the Tenant; and, as it appeareth by the Preamble, he was not answerable by the Common Law.

The 2. conclusion is, that for the insufficiency of the Disseisor the Tenant shall answer the damages by this Act.

The 3. conclusion is, that if the Disseisor be able to yield part, and not the whole damages, both shall be charged, and therefore Judgment is ever given alwell against the Disseisor (though he be found insufficient) as against the Tenant generally.

¶ Chescun

¶ Cheſcun reſpondra pur ſon temps.] The ground hereof is, Quod bonæ fidei poſſeſſor in id tantum, quod ad ſe pervenerit, tenetur.

Hereupon ſeven Concluſions are grounded:

1. Albeit the mean occupiers are neither Diſſeiſors nor Tenants, yet unleſs they be named in the Aſſiſe, no Judgment can be given againſt them, neither can they be charged for the time they take the profit. 16 E. 3. Damages. 82.

2. Though they be named, yet, as hath been ſaid, the Diſſeiſor muſt be found by the Aſſiſe to be inſufficient, and the mean occupiers muſt be found to take the profits; for if they be omitted, and none but the Diſſeiſor and Tenant named, and the Diſſeiſor is found inſufficient, and no further enquired of, the Tenant ſhall be charged for the whole.

3. If the Aſſiſe be brought againſt the Diſſeiſor and the Tenant, and it is found by the Aſſiſe, that the Diſſeiſor is inſufficient, and that the Diſſeiſor infeoffed A. who infeoffed B. who infeoffed the Tenant, and that A. had it one year, and B. half a year, and the Tenant two years; upon this ſpecial finding, the Tenant ſhall anſwer damages but for his time, for Cheſcun reſpondra pur ſon temps, and the Plaintif hath loſt his damages againſt A. and B. for that they were not named in the Writ. 35 Aſſ. 5.

4. If the Diſſeiſor, A. and B. and the Tenant in the caſe before be all named, and the Diſſeiſor, A. and B. are all found inſufficient, the Tenant ſhall anſwer for the whole; for although the letter of this Law is, where the Diſſeiſors have nothing, &c. yet theſe words, Cheſcun reſpondra, &c. do imply (If they have ſufficient) for otherwiſe they cannot anſwer, that is, they cannot ſatisfie; for in that ſenſe (Anſwer) is here taken. 35 Aſſ. p. 5.

5. It ſhall never be enquired of the Tenants inſufficiency, for againſt the Diſſeiſor and him muſt the Aſſiſe of neceſſity be brought.

6. Upon theſe words, Cheſcun reſpondra pur ſon temps, ſeveral Judgments ſhall not be given, but one Judgment is to be given intirely againſt all, and ſo was it ever uſed ſince this Statute; but the Sherif upon the execution may uſe ſuch indifferency, as Juſtice requireth. 18 E. 2. tit. Execution. 14.

And it is ſaid, that if the Aſſiſe be brought againſt the Diſſeiſor and the Tenant, and Judgment given for the Plaintif, and a Writ iſſueth to the Sherif, and he returns, that the Diſſeiſor is inſufficient, the Plaintif ſhall have Proces to levy it of the Tenant. 18 E. 2. ubi ſup.

Vide the Statutes of Weſtm. 1. 34 E. 1. 1 H. 4. & 8 H. 6. &c. where double and trehle damages are given in Aſſiſe, there alſo every mean Tenant, that came in to be Tenant of the Frè-hold under the Diſſeiſor, ſhall for the inſufficiency of the Diſſeiſor anſwer every one for his time the treble or double damages. Weſt. 1. cap. 24. 34 E. 1. de plead de Joint. 22 Aſſ. 1. 9 H. 6. 1, 2. 1 H. 4. cap. 8.

7. Laſtly, this giveth no damages where none was recoverable in the Aſſiſe at the Common Law, but giveth damages againſt the Tenant for the inſufficiency of the Diſſeiſor, as hath been ſaid. 8 H. 6. cap. 3 E. 6. cap. 3.

As if he in the reverſion upon a term for years, or Tenant by Statute Staple, &c. be diſſeiſed, he ſhall have an Aſſiſe to recover the ſtate of the land, but ſhall recover no damages for the profits of the lands, becauſe they belonged not to him.

If the Diſſeiſor committed the diſſeiſin with force, and infeoffeth A. who infeoffeth B. who infeoffeth C. an Aſſiſe is brought againſt them all, and treble damages for the inſufficiency of the Diſſeiſor ſhall be levied upon all, according to this Act Cheſcun reſpondra pur ſon temps, that is, what damages ſhould be recovered againſt the Diſſeiſor, if he were ſufficient, ſhall be recovered for his inſufficiency againſt the mean occupiers and the Tenant, and for inſufficiency of the mean occupiers, againſt the Tenant only. 12 E. 4. fol. 1. 22 Aſſ. p. 1.

¶ Purview eſt enſement, que le diſſeiſee recovera damages en brieſe Dentre foundue ſur diſſeiſin vers celuy que eſt trove tenant,

apres

apres le diſſeiſor.] Regularly in perſonal and mixt Actions damages were to be recovered at the Common Law, but in real Actions no damages were to be recovered at the Common Law, becauſe the Court could not give the Demandant that which he demanded not, and the Demandant in real Actions demanded no damages, neither by Writ, nor count: Judex non reddit plus, quam quod petens ipſe requirit, and it is a Maxim in Law, Que droit ne done pluis que ſoit demaunde; and therefore in real Actions, where damages are given by this Act, the Demandant ſhall recover damages pendente brevi, becauſe the old form of the count remaineth. The words of the Act are, Vers celuy que eſt trove tenant; he may be Tenant by tittle, by wrong, or by Act in Law; and of theſe in order.

Regula.

33 H.6.47. 7 E.4.5. 16 H.7.5, &c. See lib.10. fol.117 Pilfords caſe.

42 E.3.7. 39 E. 3. Dam. 66. 20 E. 3. ibid.101. 22 E.3.2 12 E. 3. Dam.95. 3 E.3. ibid.120. 19 E. 3. ibid.99. *4 E.3.39,40,36. 23 Eliz. Dier 320

If the Diſſeiſor make a feoffment in fee, and the Diſſeiſee dieth, the heir of the Diſſeiſee ſhall not recover damages by this Act againſt the Alienee; for this branch of the Act provideth for the Diſſeiſee, and not for his heirs.

* But if a man be diſſeiſed, and the Diſſeiſee dye, his heir ſhall recover damages againſt the Diſſeiſor, but not by this branch, but by a latter branch of this Act, viz. Et ſoit deſormes cheſcun tenus a render damages la ou home recover vers luy de ſa intruſion demeſne, on de ſon tort demeſne: and by this diſtinction the books that ſeemed prima facie to differ are well reconciled; but by the intention of this Law, the heir in his Writ of Entry againſt the Diſſeiſor ſhall recover damages but from the death of his Anceſtor.

22 E.3.2.

16 E.3. Dam.82. 8 E.3.23. 23 El. Dier 320.

The Diſſeiſee ſhall recover damages by this Act in a Writ of Entry ſur diſſeiſin in the Poſt: As if the Tenant cometh to the land by Diſſeiſin, Intruſion, or Abatement, or when by alienation it is out of the degrees; for the words be, Vers celuy que eſt trove tenant apres le diſſeiſor, within which words he that comes in the Poſt is included. Note the Writ of Entry in the Poſt is given by the Statute of Marlebridge, cap. ultimo; for the Diſſeiſee was driven to his Writ of Right at the Common Law.

19 E.3. Dam.99. 3 E.3. ibid. 120. 39 E. 3. ibid. 66. 26 Aſſ. p.4.

And in this ſecond branch the Tenant is only charged with the whole damages, though there were divers mean Tenants, for Cheſcun reſpondra pur ſon temps is only in the caſe of an Aſſiſe upon the firſt branch, neither ought the Writ of Entry to be brought againſt any, but againſt him, that is the Tenant of the land: but in ſome caſe another then the Diſſeiſee ſhall recover damages by this branch; as the ſucceſſor of an Abbot, but otherwiſe of Biſhops, or other ſole ſecular bodies politick.

If the Tenant cometh to the land by Act in Law, which he cannot withſtand, and where there is no Act, or default in him; in that caſe he ſhall not be charged: As if the Diſſeiſor alien to A. and his heirs, and A. dieth without heir, the Law (that there may be a Tenant to a ſtrangers Præcipe) doth caſt the land upon the Lord; in this caſe, if the Lord doth not take any profits of the lands, in a Writ of Entry in the Poſt brought againſt him for the land, the Lord may plead the ſpecial matter, and how that he never took any profits of the lands, and ſo diſcharge himſelf of the damages; for albeit he be a Tenant of the land, yet is he no Tenant againſt his will within the meaning of this Law, becauſe there is no wrong nor default in him.

But if the Lord by Eſcheat doth enter, and take the profits of the land, then ſhall he be charged as a Tenant within this Act, for albeit he could not withſtand the Eſcheat, which made him Tenant in Law, yet might he have refrained to take the profits, which in right belonged to the Diſſeiſee, but his rent or valuable ſervices ſhall be recouped in damages.

And ſo it is in all reſpects, when the Alienee of the Diſſeiſor die ſeiſed, and the land deſcend to his heir, he may refrain from the taking of the profits, and plead the like plea, and diſcharge himſelf of the damages.

First part of the Inſtitutes, Sect. 685.

In like manner, if the Diſſeiſor make a Deed of Feoffment, by the which he infeoffeth A. and B. and maketh livery of ſeiſin to A. in the name of both, B. never agreeing to the feoffment, nor taking any profit of the land, A. dieth; in this caſe

caſe by the Law the freehold and inheritance is veſted in B. by ſurvivor: And in a Writ of Entry in the Per brought by the diſſeiſée againſt B. he may, as is aforeſaid, plead the ſpecial matter, and that he never agréed, nor took any profits, and diſcharge himſelf of the damages for the cauſe aforeſaid.

Et ſic in caſibus conſimilibus: for nemo punitur ſine injuria, facto, ſeu defalta; and Actus legis nemini eſt damnoſus. *Regula.*

The Statute ſaith, Ce' que eſt trove tenant, and yet if a Writ of Entry be brought againſt two joynt-tenants, and the one diſclaim, and the other take the whole tenancy upon him, and plead in bar, and it is found againſt him, the Demandant ſhall recover damages for the whole againſt him, becauſe he took upon him the whole Tenancy.

A diſſeiſor infeoffeth A. which infeoffeth B. the diſſeiſée brings a Writ of Entry in the Per and Cui againſt B. which voucheth A. who pleads and loſeth; judgment for the damages ſhall be given againſt the vouchée, for he is found Tenant in Law. 8 H.4.5. 29 E.3.49 8 E.3.61. 9 E.3. 30. 25 E.3.51. 30 E.3.6.

¶ Purview eſt enſement que lou avant ceux heures damages ne fuer' agardes en plea de Mordaunceſter forſque en caſe, &c.] This plea of Mordaunc', and the other pleas hereafter in this Act named are pleas real, and Aunceſtrel, and therefore no damages are recoverable (as hath béen ſaid) in them by the Common Law.

But yet it is to be obſerved once for all, that theſe Actions in this Act named, are Actions Aunceſtrel poſſeſſorie, and not Actions Aunceſtrel droiturel. Lib.6. cap.3. Markals caſe.

¶ De Mordaunc'.] Of this Writ you ſhall read plentifully in our ancient Authors, and other Books. Glanv. l.13. c.2. 3,4, &c. Bract.l.3. fol.282,283,253, 254. Brit. f.180.

¶ Recoveres devers chiefe Seigniors.] This was by the Statute of Marlebridge cap. 16. Fleta l.5.c.1,2,&c.

In ancient time not only the references, as here, were ever general, but alſo the citing of authorities in Law were in like manner; Eſt tenus in noſtre livres.

¶ Damages ſoient agardes en touts caſes, &c.] This purview being general muſt be taken in a particular ſenſe, that is, in all caſes in the Mordaunc', as in the Aſſiſe, having regard to the time of the damages, viz. from the wrong done, for in the Mordaunc' the Plaintiff ſhall not recover damages againſt the mean occupiers for the inſufficiency of the abator, as in the Aſſiſe for the inſufficiency of the diſſeiſor; for in conſtruction of general references in Acts of Parliament, ſuch reference muſt be made only as may ſtand with reaſon and right; And therefore ſéeing the Writ of Mordaunc' muſt of right be brought againſt the Tenant of the land onely, and not againſt the mean occupiers (as hath béen ſaid in the former clauſe concerning the Writ of Entry) the mean occupiers cannot be charged in the Mordaunc', but the Tenant ſhall be charged for the whole damages.

If a man hath iſſue two ſons, and the Father dieth ſeiſed of lands in fée ſimple, the eldeſt ſon dieth, the ſecond ſon ſhall have an Aſſiſe of Mordaunceſter, and he ſhall make himſelf heir to his Father, and he ſhall recover damages, not only from ſuch time as the right accrued unto him from the death of his brother, but from the death of his Father, becauſe he hath not the right of this land as heir to his brother, but as heir to his Father. More ſhall be ſaid hereof when we come to ſpeak of the Writ of Coſinage &c. 3 E.3. damag. 121 Doct. & Stud. lib. 2. cap.12.

In a Mordaunc', if the Tenant vouch, and the Vouchee plead and loſe, in this caſe the Plaintiff ſhall recover againſt the Tenant the land, and the Tenant in value againſt the Vouchée, and the Plaintiff ſhall recover his damages againſt 9 E.3.30.

21 E.3.57. 28 E.3. damag.61. 13 E.3. ibid. 97.

against the Vouchée. And by this Act damages ſhall be recovered in a Nuper obiit.

¶ En meſme le maner recover' home damages en brieſe de Coſinage, Aiel, & Beſaiel.] In a Writ of Coſinage, of the ſeiſin of the Treſaiel, de ſeiſina Tritavi, ſeu Atavi, &c. it is to be ſeen for what time the Demandant ſhall recover damages by force of this Act, and ſo of the Writ of Beſaiel, breve de Proavo, and of the Writ of Aiel de Avo.

For this Writ ſee all the ancient Authors ubi ſup. 6 E.3.34. 7 E.3. 46, &c.

2 E.3.9. 3 E. 3. dam. 122. 17 E.3. 45. 2 H. 4.13. 2 E.3. dam. 118.

And it is a rule upon this Statute, that in none of theſe Writs the Demandant ſhall recover damages but from the death of his next immediate anceſter, whoſe heir he is: As if there be Grandfather, Father and Son, the Grandfather dieth ſeiſed, an eſtranger abate, the Father dieth, the Son in a Writ of Aiel muſt make his relation as ſon and heir of the Father, Son and heir of the Grandfather, therefore he ſhall in that caſe recover damages but from the death of his Father, becauſe he is his next immediate anceſter, and from him the right deſcended: and ſo in the Writ of Beſaiel, and Coſinage; but in the caſe before, if the Grandfather had ſurvived the Father, the Son ſhall recover damages from the death of his Grandfather, becauſe he is his immediate anceſter, and the right immediately deſcended to him: Et ſic de cæteris.

45 E. 3. 10. 35 H. 6. 23.

If a man hath iſſue two daughters, and dieth ſeiſed of lands, an eſtranger abate, one of the daughters hath iſſue and dieth, the Aunt and the Niece ſhall joyn in an Aſſiſe of Mordaunc', and the Aunt only ſhall recover damages till the death of the ſiſter, and both of them from her death which ſtandeth upon the reaſon aforeſaid.

If there be Grandfather, Father, and Daughter, the Grandfather dieth ſeiſed, an eſtranger abate, the Father dieth, his wife being privement enſeint with a ſon, the ſon is born, he ſhall recover damages in a Writ of Aiel from the death of the Father, for now he is immediate heir to the Father.

¶ Vers le tenant les coſtages de ſon brieſe purchaſe enſemblement oveſque les damages avandits.] Before this Statute at the Common Law no man recovered any coſts of ſute either in plea real, perſonal, or mixt: by this it may be collected that Juſtice was good cheap of ancient times, for in King Alfreds time there were no Writs of grace, but all Writs remedials were granted freely, and Fleta ſaith, Ne clerici ſuperflua petant ſtipendia pro ſcriptura ſua; Conſtitutum eſt, quod tam clerici Juſticiar', quam cancellar' de ſolo denario pro ſcriptura unius brevis ſe teneant contentos. This Statute was the firſt that gave coſts.

Mirror l. 5. § 1. Glanv. li. 1. ca. 32. Fleta l. 2. cap. 12. 14 H. 6. 13.

¶ Coſtages de ſon brieſe purchaſe.] Here is expreſs mention made but of the coſts of his Writ, but it extendeth to all the legal coſts of the ſuit, but not to the coſts and expences of his travel and loſs of time, and therefore coſtages cometh of the verb conſter, and that again of the verb conſtare, for theſe coſtages muſt conſtare to the Court to be legal coſts and expences.

9 E.4.6. 13 H. 4. Execution 118. 21 H.6.9. Livre de entres Raſt. 382. Lib. 10. fol. 10. Jentlemans caſe.

If a Writ doth abate by the Act of God, In a new Writ by Journies Accounts, he ſhall have coſts for the firſt Writ and the proceeding thereupon; but if the firſt Writ be faulty in default of the Demandant or Plaintiff, in the ſecond Writ the Demandant or Plaintiff ſhall have no coſts for ſuch an inſufficient or faulty Writ.

¶ Enſemblement ove les damages.] For coſts are in Law coupled together, as they are accounted parcel of the damages. And therefore if the Plaintiff in Treſpaſs declare to the damages of twenty marks, and the Jury give twenty marks for damages, and twenty marks for coſts, yet ſhall the Plaintiff recover in all but twenty marks, for damages and coſts muſt not exceed

13 H. 7. 16, 17.

exceed the damages which the Plaintiff demands by his count, and the entry reciting both the damages and costs, Quæ damna in toto se attingunt ad, &c.

In an Action real, personal, or mixt, where double or treble, &c. damages are given by any Statute, it hath been controverted in books, whether the Demandant or Plaintiff shall recover costs, and whether the same shall be also doubled or trebled; which doubt and variety of opinions hath grown in respect the right reason of the diversity of the Law in those cases hath not been observed, which is, that whensoever any Statute doth increase damages to the double or treble value, &c. where damages before were given, there the Demandant or Plaintiff shall recover his double or treble damages and costs also, and the costs also as parcel of the damages shall be trebled.

But where damages double or treble are in an Action newly given, where no damages were formerly recoverable, there the Demandant or Plaintiff shall recover those damages only, and no costs. For example, In an Action upon the Statute of forcible Entry upon the Statute of 8 H.6. which giveth treble damages, in this case the Plaintiff shall recover his damages and his costs to the treble, for that he should have recovered single damages at the Common Law, and the Statute increaseth them to treble. 22 H.6.57. 14 H.6. 13. 19 H.6.6,7,32. 27 H.6.10. 12 E.4 1. F.N.B.248.c.

But upon the Statute of 1 & 2 Phil. & Mar. for chasing of distresses out of the Hundred, &c. whereby 5 l. is given and treble damages, the Plaintiff shall recover no costs, because this Action and penalty is newly given. Dier 2 Eliz.177.

And so in the Quare impedit no costs, for that no damages were given at the Common Law. 27 H.6.10.

In an Action of Waste against Tenant for life, or years, the Plaintiff shall recover the place wasted, and treble damages given at this Parliament, Cap.6. but no costs, because no Action lay against them at the Common Law, but the Action and damages are newly given: But against the Gardein, or Tenant in Dower, &c. there the Plaintiff shall recover treble damages and costs also, for that an Action lay against them at the Common Law, and for the Waste damages should be recovered; and so are all the books that seem prima facie to be at variance, well reconciled. 30 E.3.27. 5 E.3. dam.114. 2 H.4. 17. 9 H.6.66. Nota 14 H.6.13. Mich. 29 H.6. in Communi Banc. Rot.103. 5 E.4.7. 12 E.4.1.

¶ Et tout ceo soit tenus en touts cases ou home recover damages.] Before the making of this Statute no Demandant recovered damages in any real Action, but only in a Writ of Dower, unde nihil habet, by the Statute of Merton cap. 1.

This clause doth extend to give costs, where damages are given to any Demandant or Plaintiff in any Action by any Statute made after this Parliament: Ubi damna dantur, victus victori in expensis condemnari debet. *Regula.*

¶ Soit desormes chescun tenus a render damages, la ou home recover vers luy de son intrusion demesne, ou de son fait demesne.] This is a general and beneficial branch, which we have partly expounded before in our expositions upon the second branch of this Chapter; generally this branch giveth damages to him that right hath and his heirs against the Intrudor, Abator, Disseisor, or other wrong doer himself.

And de son fait demesne, is interpreted de son tort demesne, of his own wrong. And therefore if a coparcener refuse to make partition in a Writ of partition against her, the Plaintiff shall not recover damages, for this Writ is a Writ of Right in his nature, and she hath a right per my & per tout to take the profits. 33 E.3. dam.6. 28 E.3. ibid.61. 13 E.3. ibid.97. 4 E.3.39,40. 21 E.3.57. 7 H.6.

If a man make a lease for life, the Lessee dieth, an estranger intrudes, the Lessor or his heir shall have the Writ of Intrusion against the Intrudor himself, and recover damages by this Act, Et sic de similibus. 35,36. 3 E.3 fo.48.

And that I may observe it here once for all concerning these ancient Statutes both of those that are past, and those that are to come, how necessary it is not only to know the Law, but also the rot and reason, out of which the Law deriveth his life, viz. whether from the Common Law, or from some Act of Parliament, lest if he taketh it to spring from the Common Law it may lead him into error in like cases.

CAP. II.

SI enfant deins age ſoit tenus hors de ſon heritage apres la mort ſon pier, coſin, ayel, ou beſayel, per que il covient que il purchaſe briefe, & ſon adverſary veigne en court, & en reſpoignant alleage feoffement, ou auter choſe dit, per que Juſtices agardent lenqueſt, la ou lenqueſt fuit delay jeſque al age lenfant, cy paſſa ore lenqueſt auxi come il fuit de pleine age.

Firſt it is good to clear this Chapter, which is a very benefical Law made for avoiding of delay, that great enemy to Juſtice.

Juſticiam non Juſticium vult juris amicus,
Juſticium non Juſticiam vult juris inimicus.

For the very Text of this Law in two main points hath bin falſified or miſtaken.

Firſt of ancient time ſome Manuſcripts of this Chapter before printing came to us were apres le mort ſon coſin, aiel, ou beſaiel, **omitting theſe words,** ſon pier; **which being ſhewed to the Judges in 8 E. 3. they were of opinion that a Writ of** Mordaunceſter **was not within this Law. And** Fleta **following that error rehearſing this Chapter ſaith,** Apud Gloc' proviſum fuit, ſi hæres infra ætatem petat ſeiſinam conſanguinei, avi ſui, vel proavi, & excipitur contra eum, &c. **omitting** patris ſui.

8 E.3.23.
8 Aſſ.12.

But in the Print the former error is amended, and accordeth with our latter Books.

See the books in 3 E.2. age 133. 42 E.3.13. 18 E.3.23,&c.

And it is not to be thought, that the wiſdom of the Parliament would provide for the ſeiſins of them that were ſo far remote, as in the Writ of Beſaiel **and** Coſinage, **and leave unprovided the ſeiſin that was in the next anceſtor of all, as of the Father, &c.**

And therefore the rule is good, Satius eſt petere fontes, quam ſectari rivulos.

The other error, and that continueth ſtill in the print, was, the words of the Record be, Per que les Juſtices agardent le age, **and inſtead of** le age, **it is in the print** lenqueſt, **which is** oppoſitum in ſubjecto, **for in the Writ of** Aiel, Beſaiel, **and** Coſinage, **there could be no enqueſt awarded before an iſſue joined, neither could any enqueſt in thoſe Writs enquire of circumſtances (as in the Aſſiſe of** Mord', **or Aſſiſe) but of the iſſue joined only, and this alſo may well be collected by our Books.**

18 E.4.23. 8 E.3. 23. Dier 3. & 4. Ph. & Mar.137. Li.6.fo.3. Markhalls caſe.

And theſe words next following, [Ou lenqueſt fuit delay jeſque al age lenfant] **are to be referred to the** Mordanceſter **only, becauſe in that Writ there appeareth a Jury the firſt day, as in the Aſſiſe of** Novel diſſeiſin, **but ſo it is not in the Writ of** Ayel, Beſaiel, **or** Coſinage, **unleſs you will take Enqueſt for Trial, and then the ſeiſe is, where Trial is delayed until the age of the Infant, and then it may have reference to all the Writs named in this Chapter.**

Now theſe clouds being removed, we ſhall more clearly peruſe the Text.

Before the making of this Act, albeit the anceſtor dyed ſeiſed of the lands, ſo as a Free-hold in Law was caſt upon the heir; if an eſtranger abated, in a Mordanceſter, Ayel, Beſaiel, **or** Coſinage, **the Tenant might have ſhewed, that the Demandant was within age, and have prayed that the Paroll might demur until the age of the heir, as he may do when the Action is** Auncеſtrell droiturell, **that is, when the anceſtor hath but a right, and no poſſeſſion, that is, no Free-**

hold

hold and Inheritance at his death, ſo as no Frée-hold and Inheritance deſcend to the heir, but a bare right; and ſo note a diverſity betwéen an Action Auncеſtrell droiturell, and an Action Auncеſtrell poſſeſſory. But at the Common Law, if in a Mordanceſter, Ayel, Beſaiel, or Coſinage, the Tenant did plead a feoffment, or a releaſe from a collateral anceſtor with Warranty in bar, &c. there, leſt the Infant for want of intelligence might receive prejudice by trial thereof during his infancy, the Law in his favour at the firſt gave him the benefit of his age, which when it was uſed for delay to his prejudice, this Act was made for his relief therein.

¶ Apres le mort ſon pier, Couſin, Ayel, ou Beſaiel.] After the death of his father. By this is neceſſarily implied the Aſſiſe of Mordanceſter; and the caſe of the father is here put for an example, for it extendeth to the caſes of the mother, brother, ſiſter, uncle or aunt, nephew or néece, after the dying ſeiſed, of all which perſons a Writ of Mordanceſter doth lye; for all the ſaid caſes are in equal miſchief with the caſe of the father, and therefore are within the ſame remedy. Bract. fol. 253. 254. Brit. fo. 180. Fleta lib. 2. cap. 1, 2, 3, &c.

But in a Formedon in the deſcender brought by an Infant, if the feoffment of his anceſtor be pleaded in bar with Warranty and Aſſets, or a collateral Warranty without Aſſets, this caſe is not within this Statute for two cauſes; firſt, for that is an Action Auncеſtrell droiturell, for nothing deſcended but a right, and therefore had not any Frée-hold and Inheritance at the time of his death, and therefore out of the letter and meaning of this Act. 2. The Formedon in the deſcender is in nature of his Writ of Right, for the iſſue in tail can have no Writ of an higher nature, and therefore not within this Statute; for ſéeing this Act gave the Infant a trial during his minority, it gave it him in ſuch Actions as he might not be foreclоſed of his right; but though he were barred in any of the ſaid Actions during his minority, he might at his full age have recourſe to his Writ of an higher nature, ſo as he ſhould not be remedileſs, or any final Judgment given againſt him during his infancy. 3 E. 2. Age 133. 33 E. 3. Age 153. 8 E. 3. 9. 42 E. 3. 13. 34 H. 6. 3, 4. 18 E. 4. 23. Dier 3. & 4. Ph. & Mar. 137. Lib. 2. fol. 3. Markhalls caſe.

By this it appeareth, that the Writs of Formedon in the Reverter, or Remainder, Dum non fuit compos mentis, Dum fuit infra ætatem, Sur cui in vita, In caſu proviſo, Caſu conſimili, and all Actions of like nature are neither within the miſchief, nor within the letter or meaning of this Act, for that none of them are Actions Auncеſtrel poſſeſſory, as hath bén ſaid. 12 E. 2. Age 145. 8 E. 3. 36, 59. 3 E. 3. Age 72. 34 H. 6. 3, 4. Markhalls caſe ubi ſupra.

¶ Alledge feoffment ou auter choſe.] A feoffment with Warranty from the ſame anceſtor is a bar to the Aſſiſe, and no bar in the Aſſiſe of Mordanceſter; and therefore this is to be intended of a feoffment of a collateral anceſtor with Warranty, or a releaſe with Warranty from ſuch an anceſtor, or ſuch other matter, whereunto the Infant during his minority could not anſwer, as hath bén ſaid, at the Common Law: and the Rule of Glanvile is good, Generaliter verum eſt, quod de nullo placito tenetur reſpondere is, qui infra ætatem eſt, per quod poſſit exhæredari, nec ipſi minori ſuper recto reſpondebit donec plenam habuerit ætatem. And that of Bracton, Quod minor ante tempus agere non poteſt maxime in caſu proprietatis, nec etiam convenire, differetur uſque ætatem, ſed non cadit breve. 30 Aſſ. p. 25. 43 Aſſ. p. 20. 9 E. 2. Age 143. 19 E. 2. Mord. 45. 8 E. 3. 23. 8 Aſſ. 12. 6 E. 4. 11. 43 E. 3. 5. 18 E. 4. 23. Glanv. lib. 13. cap. 15. Bract. lib. 5.

¶ Si paſſa ore lenqueſt come il fuit de plein age.] So as now ſuch pleading, trial and proceeding ſhall be in theſe four Actions, as if the Plaintiff were of full age.

CAP. III.

* Cuſtumer de Norm.cap.119. fol.138.

ESTablie eſt enſement, que ſi home alien tenement, que il tient per le * ley Dengleterre, ſon fits ne ſoit pas forbarre per le fait ſon pier (de que nul heritage luy diſcend') a demander & recoverer per briefe de Mordanceſter de la ſeiſin ſa mier, tout face le charter ſon pier mention que luy & ſes heires ſont tenus a la garrant. Et ſi heritage luy diſcend' de part ſon pier, donques ſoit il forcloſe de le value del heritage, que luy eſt diſcendus. Et ſi en tiel cas apres la mort ſon pier, heritage luy ſoit diſcendus per meſme le pier, donques avera le tenant vers luy recovery de la ſeiſin ſa mier, per briefe de judgement que iſſera hors de rolles des Juſtices, devant queux le plee fuit pleade, a reſom' ſon garrantie ſicome avant ad eſtre fait en auters caſes, ou le garrantie vient en court, & dit que riens ne luy eſt diſcend' de luy per que fait il eſt vouche. Et en meſme le maner eit liſſue le fits recover' per briefe de Coſinage, Ayel, & Beſaiel. Enſement & en meſme le maner ne ſoit l'heire la feme apres la mort le pier & la mier barr' daction a demander le heritage ſa mier per briefe Dentre, que ſon pier en temps ſa mier aliena, dont nul fine neſt levie en court le Roy.

Bract.lib.4. fol. 321,322. Fleta lib.5.ca.34. See the firſt part of the Inſtitutes. ſect.197. 724,726, 727. 32 E.3. Gar. 30.

Before the making of this Statute, when the heir demanded Inheritance on the part of his mother, the Waranty of the Tenant by the courteſie, whoſe heir he was, barred him of that Inheritance without any Aſſets. This Statute doth provide, that it ſhall not be a bar without Aſſets.

But at the Common Law, if the heir had been within age, and his entry congeable, though he had not entred in the life of the anceſtor, the Warranty bound him not, but that he might enter and avoid the Warranty; but if he were driven to his Action, the Warranty had bound him, and ſo it was in caſe of a Fem covert.

Temps E.1. 87. 31 E.1. ibid.95. 7 E.3.53. Bract. lib.4. fol.228. See before cap.1. W.2. cap.41. Temps E.1. gar. 87. 27 E.3.80. 14 E.4. gar.5. 17 E.3.83. Dier 4 Mar.148.

¶ Alien tenements.] This extendeth to alienations made after the Statute, and not before, for it is a Rule and Law of Parliament, that Regularly Nova conſtitutio futuris formam imponere debet, non præteritis.

This word (alien) doth properly ſignifie a tranſmutation of poſſeſſion, but yet a releaſe or confirmation of the Tenant by the courteſie with Warranty, where no tranſmutation of poſſeſſion is, is within the ſame miſchief, and therefore is within the remedy of this Statute; for otherwiſe the Statute ſhould ſerve to little purpoſe.

First part of the Inſtitutes, ſect. 724,725.

See the Statute of 11 H.7. c.20. Temps E.1. gar. 86. 12 Aſſ. p 9.

¶ Tient per la ley Dangleterre.] If the heir demand the heritage of the part of his father, and the Warranty on the part of his mother be pleaded, this caſe is not holpen by this Statute, as in the firſt part of the Inſtitutes it appeareth; for this Act by this branch provideth only for the caſe of the Tenant by the courteſie, and therefore Tenant for life, or Tenant in Dower is not within the caſe or claſſis of this Act; but as concerning the caſe of the Tenant by the courteſie, which is the caſe of this Act, this Statute is taken by equity, as heretofore hath been partly touched, and hereafter ſhall appear.

¶ Son

¶ Son fits ne ſoit pas forbarre.] This doth not only extend to the ſon, but to the daughter, and to any other heir immediate, as here the example is put, or mediate, as couſin and heir, be they never ſo remote. 11 E. 3. gar. 83.

¶ De que nul heritage luy deſcend.] That is to ſay, from whom no lands or tenements in fee ſimple of the yearly value of the inheritance of the part of the mother doth deſcend to the heir, for the warranty is no bar without ſuch aſſets.

And by the equity of this Statute the warranty of Tenant in tail is no bar unleſs there be aſſets in fee ſimple deſcended. 11 E. 2. garranty. Statham. 21 E. 3. 28. 38 E. 3. 23.

Albeit the word heritage be general, yet hath it in conſtruction a ſpecial ſignification, for the aſſets muſt reſpect the eſſential quality of the inheritance, whereof the heir is to be barred, and that is, that it be a local, poſſeſſory, and certain inheritance, as lands, rents, commons, and the like: and therefore an Annuity, that is a perſonal inheritance, and lieth in Action, nor any right of Action of inheritance is no heritage within this Statute, until it be reduced into poſſeſſion, Et ſic de ſimilibus. Pl. Com. 110. Lib. 8. fol. 53. Syms caſe. Doct. & St. fo. 76. Kelwey 124, 125.

¶ Per briefe de Mordaunceſter.] And after the Writs of Aiel, Beſaiel, and Coſinage are alſo named. 11 E. 2. gar. 83. 8 E. 2. ibid. 81.

The intendment of the makers of this Act is, that the Warranty of him that held by the courteſie ſhould not be a bar to the heir of his wife, unleſs he left aſſets; and the makers of the Statute could not put all the caſes that might happen, but did put the ſtrongeſt caſes, and by conſtruction the leſſer ſhall be included, and therefore in all Actions, as the Writ of Right, the Formedon in the deſcender, the Writ of Entry in the Per, the Writ of Entry ad communem legem, and the like are within this Statute. 46 E. 3. age 76. 4 E. 3. gar. 63. F. N. B. 208. b.

¶ Heritage luy deſcend de meſme le pier.] If a Seigniory of homage and fealty deſcend to the heir, this is no aſſets, but if a tenancy doth eſcheat to the heir, although it were never in the Father, this ſhall be accounted aſſets, becauſe the ſeigniory that came from the Father was the means to bring it to the heir, Et ſic de ſimilibus. 16 E. 3. age f. 41. Br. 5. 6 H. 4. 1. Kelwey 104. b. Pl. Com. Chapmans caſe.

¶ Donques avera le tenant vers luy recovery de la ſeiſin ſa mere.] By this Act the Warranty of a Tenant by the courteſie being pleaded with aſſets deſcended is a bar to the heir of the mother; but if aſſets be not then deſcended, but after it deſcend from the ſame Father, then the Tenant ſhall have recovery of the inheritance of the mother by a Writ of judgment, as this Act appointeth: And by the equity of this Act it is taken, that in a Formedon in the Deſcender, if the Warranty of Tenant in tail be pleaded, where no aſſets is then deſcended, but after aſſets doth deſcend to the iſſue, there the Tenant ſhall have a Scire facias to have the aſſets, and not the land in tail, for if he ſhould have the land in tail, it was conſidered, that if the iſſue alienes the aſſets, his iſſue might recover the land tailed in a Formedon: wherein is to be obſerved the great wiſdom of the Sages of the Law in ancient times, ever ſo to reſolve, and give judgment, Ut ſit finis litium. But in none of the books that treat of this matter is expreſſed how the Tenant ſhall demean himſelf in pleading to take advantage upon this Statute of the aſſets, which after deſcended. Hil. 9 E. 2. 62. b. in Entr. ſur diſſ. 43 E. 3. 26. 46 E. 3. 29. Pl. Com. fol. 110.

And therefore if in a Mordanc', &c. the Tenant plead the warranty of the Tenant by the curteſie with aſſets (as in ſome of the books it is ſaid) or in a Formedon the Tenant plead a lineal warranty with aſſets, and the Demandant take iſſue upon the aſſets, and it is found that nothing deſcended, and thereupon the Demandant recover, and after the recovery aſſets deſcend, the Tenant ſhall never have a Scire facias to take benefit of this Act, for he that will take benefit of this Act muſt not begin with an untruth, but muſt plead Pl. Com. 110. Lib. 8. fol. 53. Syms Caſe.

plead the warranty, and confeſs the title of the Demandant, and pray the advantage of this Act, when aſſets ſhall deſcend, and upon this Record when aſſets deſcend, he ſhall have a Scire facias; for our Act ſaith, Per briefe de judgement que iſſera hors de rolles des Juſtices; And this expoſition agreeth with the words of this Act, A reſummon ſon garrantie ſicome avant ad eſtre fait en auters caſes ou le garrantee vient en court, & dit, que riens ne luy eſt diſcend' de luy, per quel fait il eſt vouch: For there without queſtion after aſſets ſhall deſcend, upon the Record a Scire facias ſhall be awarded.

¶ Enſement & en meſme le maner ne ſoit le heire la fem, &c.] This is the laſt branch of this Act.

¶ Barre daction a demander le heritage ſa mere, &c.] By the firſt branch the Act provideth remedy againſt the warranty made by Tenant by the curteſie after the deceaſe of his wife; this branch provideth remedy againſt the alienation of the husband with warranty during the life of his wife: upon theſe words ſome have conceived, that this warranty ſhall not bind, albeit aſſets doth deſcend from the Father, becauſe aſſets is not mentioned in this branch, as it is in the former. But theſe words, enſement & en meſme le maner, do ſo couple this branch by reference to the former, as if in this caſe aſſets doth deſcend, by the warranty and aſſets the heir is barred.

8 E.2. gar. 81. Hil. 9 E.2. ubi ſup. 17 E.3. 51. 27 E.3. 89. Hil. 9 E.2. ubi ſup. Thomas de Mertons caſe.

If the husband make a feoffment in fée of the wives land with warranty, and hath iſſue by her, and they both die, in a Writ of Entry Sur diſſeiſin brought againſt the feoffée he voucheth the heir of the husband, who is alſo the heir of the wife, he may upon this Statute devolve the ten' of the warranty, for that the husband left no aſſets, and that he hath an Action as heir to his mother to recover the land, and if he ſhould enter into the warranty, he ſhould forclose himſelf of his Action, and therefore by the rule of the Court he entred not into the warranty.

See the firſt part of the Inſtitutes, Cap. gar. ſæpe.

¶ Briefe dentre.] That is a Sur cui in vita, but if the lands were entailed to the wife, and after the Statute of Donis condic' de W. 2. the heir brought a Formedon, the collateral warranty of the husband ſhall bar in that Action.

27 E.3. 89. Pl. Com. 57. Firſt part of the Inſtitutes ſect. 729, 730, 731.

¶ Dont nul fine eſt levie en court le Roy.] This is to be underſtood, whereof no fine is lawfully levied, that is by the husband and wife, for then her heir claiming a fée-ſimple is barred; But a fine levied by the husband alone was a wrong, and at that time a diſcontinuance, and therefore ſuch a fine was not within the intention of this Act.

CAP.

CAP. IV.

ENſement ſi home leſſa ſa terre a ferme, ou a trover eſtovers en viver, ou en veſture, que amount a la quart part de la veray value de la terre, & celuy que la terre tient iſſint charge la leſſeſt giſer freſh: iſſint que home ne puit trover diſtreſſe per deux ans, ou per trois, a faire le ferme render, ou a faire ceo que eſt contenue en leſcript ou leas: Eſtablie eſt, que apres les deux ans paſſes eit le leſſor action a demander la terre en demeign' per briefe que il avera en le Chancery. Et ſi celuy vers que la terre eſt demande, veigne avant judgement, & render les arrerages & les damages, & trova ſuerty tiel come la court verra que ſoit ſuffiſant a render en apres [ſolonque] ceo que eſt contenue en leſcript du leas, ci reteign' la terre. Et ſil demurr' tanque ele ſoit recover per judgement, ſoit il forcloſe a remnant. *W.* 2. *cap.*21. *&* *cap.*41.

What the Common Law, or ſome cuſtom was before the making of this Statuce, you may read in Bracton, who wrote a little before this Statute; Item poterit intervenire juſtum judicium ab initio, ut in diſtrictionibus faciendis, & vertitur ex poſt facto in diſſeiſinam, ſicut in burgagiis, terris, tenementis, & tenuris exterioribus. Ut ſi Dominus per conſiderationem curiæ ſuæ pro defectu ſervitii ceperit tenementum tenentis ſui in manum ſuam, ſicut ſimplex namium, donec de redditu fuerit ſatisfactum; ſed cum talis, cujus ten' fuerit, obtulerit de ſatisfaciend' de redditu & arreragiis, reſtitui ei debet poſſeſſio, & ſi Dominus hoc recuſaverit, tunc erit manifeſta diſſeiſina. And afterwards in another place he ſaith; Item ſi propter paupertatem poſſeſſionem dereliquerit, & ita quod Dominus capitalis pro defectu ſervitii tenementum ſuum in manum ſuam ceperit & retinuerit, vel alio excolend' dederit, &c. ſatis moritur tenens ſeiſitus.

Bract.lib.4. fol.205.b.

Fol.262.

And I read amongſt ancient Records, that a ceſſavit was brought in the raign of King John, but this Act is the firſt Statute that was made by authority of Parliament concerning the ceſſavit; After this came the Statutes of Weſtm.2. and 10 E.2. de Gamletto; And note that the Writ framed upon this Act doth recite this Statute.

Int' Record 87. Regis Johannis. W.2.c.21 & 41. 10 E.2. Stat. de gamletto. Vet. Mag.Cha.fo.122. Paſch. 17 E.3. coram Rege. Rot. 139. London. Firſt part of the Inſtitutes,ſect.1. 45 E.3.27. 33 H.6. 53. 13 E.2. Ceſſavit 51.F.N.B. 209.g.

¶ Leſſa ſa terre a ferme.] Leſſa, demiſe, nota dimittere is a good word of a feoffment, and therefore if a man let or demiſe lands to a man and his heirs, and make livery of ſeiſin, this is a good feoffment, and ſo is this word here to be intended, for a ceſſavit lieth not againſt Tenant in tail, or Tenant for life, unleſs the remainder be limited over to another in fee, ſo as he is Tenant to the Lord, as Tenant by the curteſie is.

¶ Eſtovers en viver ou veſture.] That is to ſay, Eſtovers in victu & veſtitu, Of this ſufficient hath been ſaid in the expoſition upon the ſeventh Chapter of Magna Charta.

See Mich. 9 E.1. in Banco Rot.39. Banc. Hil. 13 E.1. in Banco Rot.7. Paſc.16 E.1.Rot.5.

¶ A

¶ A la quart part dè la verie value.] Vide foꝛ fée ferme the expoſition upon the twenty ſeventh Chapter of Magna Charta. And ſuch rent oꝛ other pꝛofit, as was anſwered to the owner of the land, was accounted the very value.

¶ Celuy que la terre tient.] So as there muſt be a tenure betwéen the ſcoffoꝛ and the feoffée in fée-ſimple, foꝛ a ceſſavit lieth not upon a reſervation without ſuch a tenure, and ſo was it adjudged in 11 E.2.

11 E.2. ceſſav.50. 21 E.3.23. 45 E.3. 15,27. 21 H.6.50. 33 H.6.53. F.N.B.209. 11 H.4.3. 27 H.8. 28. Kel.104,105.

At the making of this Act all eſtates of inheritance were in fée ſimple, and therefoꝛe the donoꝛ upon an eſtate in tail (created by a Statute made after this Act) ſhall not have a ceſſavit againſt the donée in tail, noꝛ againſt Tenant foꝛ life; neither foꝛ the ceſſer of the meſne a ceſſavit lieth, foꝛ he holdeth not the land as this Act ſpeaketh, which ought to be overt, and ſufficient to the diſtreſs of the Lord, which is a good plea in a ceſſavit.

Paſc.16E.1.inBan. Rot.5. *Non potuit excolere propter duras diſtrictiones.* Regiſt.237. F.N.B.210.a. 6 E.3.45. 8 E.3. 46,47. 10 E.3.6. 21 E.3.20,21. 30 E.3.22. 43 E.3. 15. 8 H.6.17. 33 H.6.8.

And in this Writ the tenure betwéen the Demandant and the Tenant is traverſable, becauſe this Writ is grounded upon the tenure by foꝛce of this Act, but in this Writ the ſeiſin is not traverſable, becauſe it is not grounded upon the ſeiſin, neither is the quantity of the ſervices traverſable, but to be taken by pꝛoteſtation; foꝛ whether he hold by moꝛe oꝛ leſs, the ceſſavit lieth; but in an Avowry the ſeiſin is traverſable, foꝛ that is grounded as well upon the ſeiſin, as the tenure: Alſo in the ceſſavit the land is to be recovered, and not the ſervices, and it is in his nature a Writ of Right, and the Jury ſhall meaſure in their conſciences the quantity of the ſervice.

Neither is hors de ſon fee a good plea in a ceſſavit, becauſe (as hath bèn ſaid) the tenure is traverſable.

¶ La leſſeſt giſer freſh.] The Tenant of the land is called Tenant peravaile, becauſe it is pꝛeſumed, that he hath availe and pꝛofit by the land, and therefoꝛe the Law never expected that he would let the land lie freſh, that in his pꝛoper ſenſe is as much, as unmanured, oꝛ unoccupied.

It is ſaid in Law to lie freſh, not only when there is no cattle, oꝛ other thing diſtrainable upon the land of the value of the rent, oꝛ other pꝛofit behind; but alſo, though there be a ſufficient diſtreſs to be taken, yet by conſtruction upon this Act, if the land be ſo immured oꝛ incloſed about, as the Lord cannot come to take and carry away the diſtreſs to the pound, it is ſaid to lie freſh, that is, without pꝛofit as to the Lord, foꝛ though it be ſufficient, yet it is not ſufficient to his diſtreſs, ſo as the land muſt lie open and ſufficient to the diſtreſs of the Lord; oꝛ elſe it is ſaid in Law to lie freſh within this Statute, which conſtruction is woꝛthy of obſervation.

Temps E.1.ceſſavit 58. 10 E.4.1,2. 30 E.3.22. 11 E.3 ceſſavit 21. 35 H.6. ibid.7. F.N.B.208, 209.

¶ Per deux ans.] Per biennium; So as by theſe woꝛds is implied, that it lieth only foꝛ annual ſervices, and not foꝛ homage, fealty, oꝛ the like. And upon theſe woꝛds, Rien arere, &c. is a good plea in this Action.

12 E.3. ceſſavit. 8 E.3.46,47. 17 E.3.57. 27 E.3. 17. 14 H.4.44. 33 H.6.44. 6 H.7. 7. 8 H.7.2. 30 E.3.22. 14 E.3. ceſſavit 20. 19 R.2. ſurety 27. 35 H.6. ceſſavit 7. F.N.B. 209.

This Act ſaith, if the Tenant let the land lie freſh, yet if a ſtranger wꝛongfully occupy the ground by putting in his cattle and fèding of it, oꝛ otherwiſe by manurance of the ground, this is ſufficient to the diſtreſs of the Lord within this Act, foꝛ the Lord may diſtrein them, which is the end of this Act; otherwiſe it is in this caſe, if cattle eſcape, and the owner freſhly follow to take them.

¶ Ou a faire choſe que eſt contenue en leſcript.] By theſe woꝛds the ceſſavit did lie foꝛ non-payment of a fée ferme contained in the dèd.

¶ Eyt le leſſor action a demaunder terre en demeign'.]

Five doubts were conceived upon this Act:

1. Whe-

1. Whether the heirs of the Lord might have a ceſſavit, becauſe the words be Eyt le leſſor. Regiſt. 237.

2. Upon the ſame words whether the grantée of the Seignory with attornment, or Tenant by the curteſie, Tenant in dower, &c. might have a Ceſſavit.

3. Whether againſt the alienée of the Tenant or his diſſeiſor, &c. a Ceſſavit did lie upon this Act, becauſe the letter of this Law extended but to the feoffée.

4. Whether the Ceſſavit ſhould be againſt the heirs of the feoffée. 45 E.3.15.

5. Whether it extended to Rents and Services created without Déed, for as much as this Act ſpeaketh of ſuch only, as were reſerved by Déed.

Theſe doubts were conceived upon that notable rule delivered in our Books in the caſe of Ceſſavit, Ou recoverie eſt done en eſpeciall caſe per eſtatut, il coveit que home aver touts voies accord al ſtatut.

As to the firſt Britton ſaith, Fee fermes ſont terres tenus en fee a reſponder pur eux per an le verie value, ou pluis, ou meyns, de quel rent ſi les feoffees ceſſent a reſpondre per deux ans enſemble per tant accreſt action as feoffors & lour heirs a demaunder les tenements en demeane. But notwithſtanding this point and the reſidue of the doubts are briefly and excellently remedied by the Statute of W.2. made ſeven years after this Act, as we ſhall ſhew when we ſhall come to it. W.2. cap.21.

¶ Demaunder ſa terre in demeign'.] Upon theſe words it is concluded that a ceſſavit doth not lie of a meſnalty conſiſting of rents and ſervices, but this Writ lieth againſt the Tenant per availe. 13 E.3. gard 38. 21 E.3 44. 27 H.8 28. 1 H.4.3.

It is holden that a ceſſavit doth lie of an advowſon, and yet it is not in demeſne, and overt, and ſufficient to his diſtreſs cannot be pleaded. 12 R.2. ceſſav. 46.

¶ Per briefe que il avera en la Chauncery.] Hereupon alſo great queſtion grew for the form of the Writ, but in the end a Writ was conceived upon this Act, as it appeareth in the Regiſter, and F. N. B. 5 H.7.37. 43 E.3. 15. 31 E.3. ceſſavit 24. 33 H.6.34. Regiſt. 237. F.N.B. 210.

¶ Avant judgement, & tender les arrerages & damages, &c.] After verdict and before judgment, the Tenant may tender the arrerages, &c. He ought to tender the arrerages in proper perſon, though he be a Lord of Parliament, for the words of this Act be, Celuy vers que le terre eſt demande vient, &c. and he ought to find ſurety. 45 E.3.27.29. 21 E.3.23. 33 H.6.19 7 E.3.58. 13 E.3. ceſſavit 29. 15 H.7.10.

In a ceſſavit after the enqueſt joyned, the Tenant made default, and at the return of the petit cape, the Tenant appeared, and offered to pay the arrerages with damages, and to find ſuch ſurety as the Court would award, which was received, becauſe he came before judgment, and found ſurety, that is, three pledges, which bound their lands to the diſtreſs of the Lord in the ſame form as the Tenant his land is bound. Tr. 9 E.2. fol.65. in libro meo in ceſſavit.

He ought to tender all the arrerages, for ſo are the indefinite words to be taken as well before as after the two years, and damages to be allowed of by the Court, but if the Demandant do not alledge how much is behind over and above the two years, &c. and that be found by the Jury that finds the iſſue, the Tenant need not tender more then for the two years, becauſe it appears not of Record, or by neceſſary conſequence as ſuch arrerages as incur hanging the Writ; and for any arrerages incurred before this tender, the Lord ſhall not avow, becauſe the Tenant ought to have paid all. 5 E.3.30. 7 E.3. 58. 21 E.3.23. 25 E.3.42. 6 E.2. ceſſavit 49. 17 E.3.57.

The Court may aſſeſs the damages by their diſcretion. 13 E.3. ceſſav.20.

Where this Act ſaith, that he ſhall tender the arrerages, it is to be underſtood of ſuch things as may be yielded, as rent, &c. but of ſuit, divine ſervice, and ſuch like which cannot be yielded, damages ſhall be paid for the ſame. 13 E.3. ubi ſupra. 14 H 4.3.4.

If two Jointenants be impleaded in a ceſſavit, and the one make default, &c. the other cannot tender the arrerages but for the moity, for the other jointenant hath power to alien and loſe his moity, the words of the Statute be, Celuy vers que la terre eſt demaund, and the land is demanded againſt both. 40 E.3.40. 31 E.3 ceſſav.23. F.N.B. 209.a. Mic 31 E.3. fo.50 & 51. in lib. meo ceſſavit.

But if A. and B. be ſeiſed to them and the heirs of A. and B. make default, A. may tender for the whole in reſpect of his remainder.

6 E.2. tit. ceſſavit 49. In a ceſſavit, the Jury in Anno 6 E.2. found the ceſſer, and that the rent was behind by 30 years, part of which time was before the Statute whereupon the Writ was grounded, and yet the Demandant ſhall recover all the arrerages, as is well warranted by the Statute.

If the Demandant in the ceſſavit be out-lawed in a perſonal Action, this outlawry may be pleaded in bar of the Action becauſe the arrerages are due to the King.

¶ Et trovera ſuertie come le Court verra ſufficient, &c.] This ſurety is referred to the diſcretion of the Court, for herein upon theſe words there is a rule conceived, Suretie eſt al Court d'ordeiner, & al Tenant daſſent & affirme. And therefore being referred to diſcretion, in divers caſes ſeveral ſureties have bèn ordained upon due conſideration had in reſpect of the ſtate of every particular caſe. 25 E.3.42.

50 E.3.23. 19 E.4.5. 17 E.3. 57. 21 E.3.23. 29 E.3.33. Vet. N.B. 138. Sometime in reſpect of the quality of the Demandant, as if he be a body politick or corporate, Eccleſiaſtical or Temporal for fear of a Mortmain, therefore their collateral ſurety is to be found, &c. Vide 15 Martini, Anno 4 E. 3. Coram Juſtic' Itin' apud Dunſtable, ſurety was granted to the Prior of D. Demandant in a ceſſavit, that he ſhould diſtrain for the rent in other lands.

a 10 E. 4.5. Temps E.1. ceſſavit 55, 56. *a* Sometime in reſpect of the quality of the Tenant in reſpect he is a body politick or corporate, or a feme covert, or an infant.

19 R.2. ſurety 27. 15 E.2. ibid. 20. 19 E.2. ibid. 21. *b* Sometime in reſpect of the Tenancy it ſelf, as if it be a houſe, &c. leſt the Tenant ſhould waſte it, and ſo make it not ſufficient to pay the rent.

4 E. 3.42. 13 E.3. ceſſavit 29. 21 E.3 23. Doct. & Stud. lib.2. Though the Statute referreth the ſurety to the diſcretion of the Court, yet will it be good to follow precedents of former times, for diſcretio eſt diſcernere per legem quod ſit juſtum.

b 41 E.3.29. 19 E.4.5. *c* Albeit it is for the benefit of the Demandant to have ſurety, yet he cannot waive it, becauſe it is made parcel of the judgment.

c 50 E.3.23. 19 E.4.5 *d* 41 E.3.29. 19 R.2 Scire fac' 134. *d* But what if the ſurety be a judgment of the Court, that if he ceſs again by one or two years, que la tre incurgera la remnant, that is, that he ſhall have judgment to hold the land, &c. for ever, wherein the Tenant ſhall never tender any more, and his remedy, that after ſuch ceſſer again, he ſhall have a Scire facias upon the Record, and if the Tenant be warned and make default, &c. the Demandant ſhall have judgment againſt him for ever.

If the Tenant after a Judgment given againſt him in a ceſſavit, that if he ceaſe again, Que la terre incurgera le remnant, in that caſe if the Tenant alien, the alienée ſhall not be bound by the ſaid ſurety or judgment, becauſe it bound him that was Tenant in the ceſſavit only, and upon a new ceſſer a new ceſſavit muſt be brought. But if the ſurety or judgment be, that if he or his aſſigns do ceaſe again, &c. then the aſſignée is bound thereby, and upon a Scire facias the matter ſhall come in queſtion.

¶ Soit forcloſe a remnant.] That is, ſhall be forcloſed or barred for ever, for this Writ is a Writ of Right in his nature; by this Act if the Lord recover by default, judgment final by theſe words, [Soit forcloſe del remnant] ſhall be given, and ſhall be a bar in a Writ of Right; otherwiſe it is of a Judgment by verdict. 5 E.3. 45. 4 E.3. droit 41.

See more of the Writ of ceſſavit in our expoſition upon the Statute of W. 2. cap. 11.

CAP.

CAP. V.

ENſement eſt purview, que home eit deſormes brieſe de Waſte en le Chancery vers home que tient per le Ley Dengleterre, ou en auter maner a terme de vie, ou des ans, ou feme que tient en dower. Et celuy que ſerra attaint de Waſte, perde le choſe que il aver' Waſte: Et ouſter ceo face gree del treble de ceo que le Waſte ſerra taxe. Et en Waſte fait en gard', ſoit fait ſolonque ceo que contenue eſt en le graund Charter cap. 4. Et per la ou il eſt contenue en la graund Charter, que celuy que avera fait Waſte en garde, perdr' le garde: Accorde eſt, que il rendra al heire les damages del Waſte, ſi iſſint ſoit que la garde perdue ne ſuffiſt mie a le value des damages, avant lage del heire de meſme le garde. *W.* 1. *cap.*21. *Articuli ſuper chartas cap.*18.

At the Common Law Waſte was puniſhable in thꝛée perſons, viz. Tenant in Dower, Tenant by the Curteſie, and the Guardien, but not againſt Tenant foꝛ life, oꝛ Tenant foꝛ years; and the reaſon of the diverſity was, foꝛ that the Law created their eſtates and intereſts, and therefoꝛe the Law gave againſt them remedy; but Tenant foꝛ life, and foꝛ years came in by demiſe and leaſe of the owner of the land, &c. and thereforꝛe he might in his demiſe pꝛovide againſt the doing of Waſte by his Leſſée, and if he did not, it was his negligence and default. 12 H.4.3. 21 H.6. 28. Doct.& Stud. lib.2. cap. 1. Regiſt.72. Firſt part of the Inſtitutes, Sect.67.

There is alſo an Action of Waſte by cuſtom, as in London, &c. 7 H.6.35. 8 H.6. 34. 32 H.6.

Now the remedy at the Common Law was in two degrées: Firſt, if he that had the inheritance did fear (foꝛ example) that Tenant in Dower would do Waſte, he that had the inheritance might befoꝛe any Waſte done have a pꝛohibition directed to the Sheriff, that he ſhall not permit her to do Waſte in this foꝛm. Bract.l.4. fol.315. Doct. & Stud. l.2. c.1. F. N. B. 55.c. W.2. cap.14.

Rex Vicecom' Salutem. Præcipimus tibi quod non permittas quod talis mulier faciat vaſtum, vel venditionem, vel exilium de terris, hominibus, redditibus, domibus, boſcis, vel gardinis, quæ tenet in dotem de hæreditate talis in tali villa, ad exhæredationem ipſius talis ne amplius, &c.

And Bractons advice hereupon is as followeth:

Et hoc faciat tempeſtive, ne per negligentiam damnum incurrat, quia melius eſt in tempore occurrere, quam poſt cauſam vulneratam remedium quærere. *Regula.*

And the Sheriff having the Warrant of this Writ may, as in caſe of a Writ of Eſtrepement, take poſſe Comitatus, and withſtand the doing of any Waſte. Lib.5. fol.115. Foljambes caſe.

And this was the remedy that the Law appointed befoꝛe the Waſte done by the Tenant in Dower, Tenant by the curteſie, oꝛ the gardien, to pꝛevent the ſame, and this was an excellent Law, foꝛ Præſtat cautela quam medela, and pꝛeventing Juſtice excelleth puniſhing Juſtice. And this remedy may be uſed at this day. Now after Waſte done there lay an Action of Waſte at the Common Law in this foꝛm. Rex Vicecom'. Salutem. Si talis fecerit te ſecurum de clamore ſuo proſequendo, tunc pone per vad', & ſalvos plegios talem mulierem, &c. quod ſit coram Juſticiariis noſtris, &c. oſtenſura quare fecit vaſtum, venditionem, *Regula.* Vide W.2. c.14.

& exilium de terris, hominibus, redditibus, boſcis, vel gardinis, quæ tenet in dotem de hæreditate talis, in tali villa, contra prohibitionem noſtram, & habeas ibi nomina plegiorum, & hoc breve, teſte, &c.

4 H. 3. Waſte 129. ibid. 140. 8 R. 2. tit. Attachment ſur prohib. 15. Bract. l. 4. fol. 285. Vide W. 2. cap. 14.

Where in this Writ it is ſaid Contra prohibitionem noſtram, the Plaintif ſhould have well maintained his Writ, albeit no Writ of prohibition of Waſte had been ſued out before, for that the Common Law was a prohibition of it ſelf, and ſo ſaith Bracton ſpeaking of the Waſte done by a Guardien, Dominus vaſtum emendabit ſic, quod damna reſtituet, ſive vaſtum fecerit ante prohibitionem, ſive poſt.

Bract. fo. 315, 316.

By this Writ of Waſte the Plaintif, if the Waſte were done in woods, Et mulier inde per inquiſitionem convincatur, talis erit ei pœna infligenda, & in tantum erit coarctanda, quod de cætero nihil capiat in boſco illo, niſi (per viſum * foreſtariorum hæredis) rationabile eſtoverium ſuum, & talis ſervitus imponetur ei ad pœnam, & de foreſtario apponendo fiat tale breve (which there you may read at large) Si cuſtos de vaſto convincatur, amittit cuſtodiam, & reſtituet damna, & det Domino Regi miſericordiam, quod non eſt in muliere, ſi de dote ſua fecerit vaſtum, quia dotem ſuam non amittit, ſed cuſtos vel curator ei adjungatur, qui impediat ne faciat, & damna debet refundere.

* *Foreſtarius* in ancient Authors, is taken for *cuſtos boſcorum*, a Woodward.

So as the Tenant in Dower (and likewiſe the Tenant by the curteſie) had two puniſhments, viz. to yield damages to the value of the Waſte, and a Keeper or Curate to be appointed to them, who ſhould withſtand any Waſte to be afterwards done by them,

And the Guardien had three puniſhments. 1. He ſhould loſe the cuſtody. 2. He ſhould yield damages to the value of the Waſte: and 3. He ſhould be fined to the King, for that contrary to the truſt in him repoſed by reaſon of his Guardienſhip he did Waſte to the diſheriſon of the heir, and this did hold as well in caſe of a Guardien in droit, as a Guardien in fait.

10 H. 3. Waſt. 138. 20 H. 3 ibid. 139. 34 E. 3. Waſt. 146

Temps E. 1. Waſte 132. 30 E. 3. 16. 38 E. 3. 23. 40 E. 3 33. 11 H. 4. 18. Doct. & Stud. l. 2. c. 1. F. N. B. 56.

And the reaſon wherefore at the Common Law the Action of Waſte did lie againſt the Tenant in Dower, or Tenant by the Curteſie, albeit they had aſſigned over their eſtates, was, becauſe no Action of Waſte by the Common Law lay againſt the aſſignee for Waſte done after the aſſignment, therefore the Action of neceſſity did for ſuch Waſte (after the aſſignment) lie againſt the Tenant by the Curteſie, or Tenant in Dower, which Law continueth to this day.

But if the heir granted away the reverſion and the Tenant attourned, the Action failed at the Common Law, as hereafter ſhall be ſhewed more at large. Hereby it appeareth how neceſſary it is for the underſtanding of this Act, to know what the Common Law was, and the reaſon thereof, before the making of our Statutes, whereof you ſhall read more largely in Bracton both concerning the points abovelaid, and other matters concerning Waſte, worthy of your reading and obſervation.

Bract. ubi ſupra. Firſt part of the Inſtit. Sect. 67. F. N. B. 56. b.

But at the Common Law if the Guardian in droit had aſſigned over his eſtate and intereſt, the heir ſhould have had an Action of Waſte for Waſte done after the aſſignment againſt the aſſignee, for he was Guardien in fait, and ſo within the rule of the Common Law.

¶ Home eyt deſormes, &c.] Here the perſons are not named who ſhall have the Action of Waſte, but that is left to the Common Law to judge thereupon, of which matter you ſhall read plentifully in our books, and it were too long to be here inſerted, neither doth it tend to the expoſition of this Act being left to the Common Law.

¶ Briefe de Waſte.] Breve de vaſto. of this word vaſtum you may read in the firſt part of the Inſtitutes, Sect. 67. only this may be added that neither this Act, nor the Statute of Marlebridge doth create new kind of Waſtes, but do give new remedies for old waſtes; and what is Waſte, and what not, muſt be determined by the Common Law.

¶ Home

¶ Home que tient per la ley D'angleterre.] Here Tenant by the curteſie is named for two cauſes: 1. For that albeit the common opinion was, that an Action of Waſte did lie againſt him, yet ſome doubted of the ſame, in reſpect of this word tenet in the Writ, for that the Tenant by the curteſie did not hold of the heir, but of the Lord Paramount, and after this Act the Writ of Waſte grounded thereupon doth recite this Statute. 20 H.6.1. 21 H.6. 38.

2. For that greater penalties were inflicted by this Act, then were at the Common Law.

¶ Ou en auter maner a terme de vie.] If a leaſe be made Quam diu ſola fuer', or quam diu ſe bene geſſerit, or quouſque promotus fuerit, &c. in all theſe and like caſes they are in judgment of Law leaſes for life within this Act. 37 H.6.25.

Upon theſe words there be many concluſions worthy of obſervation.

First, albeit the aſſignée of the Tenant by the curteſie, or Tenant in Dower, is within the letter of this Law, for he holdeth in ſome manner for life, yet no Action of Waſte ſhall be brought by the heir againſt the aſſignée, but only againſt the Tenant by the curteſie, or Tenant in Dower; for in conſtruction of Statutes, the reaſon of the Common Law giveth great light, and the Judges, as much as may be, follow the rule thereof. Temps E.1. Waſte 122. 4 E.3.25. 18 E.3.3. 30 E.3. 16. 38 E.3.23. 11 H.4.18. F.N.B. 56. f.

But if the heir granteth away the reverſion, and the aſſignée attorne, there the grantée by this Statute ſhall have an Action of Waſte againſt the aſſignée, and the Plaintif muſt declare upon this Statute: for (as hath been ſaid) in that caſe there lay no Action of Waſte at the Common Law, ſo as in this point our Act is introductory of a new Law. Regiſt.72. lib.3. fol.43. b. Walkers Caſe. lib.11. fo.84. Bowles caſe.

2. If the heir had granted his reverſion expectant upon an eſtate in Dower or by the curteſie, the grantée ſhould not have had an Action of Waſte againſt Tenant in Dower or by the Curteſie at the Common Law, for that the privity was deſtroyed, therefore the grantée in an Action upon this Statute doth recite the Statute. Regiſt.72. 11 H 4. 3. 5 H. 7 17. Lib.11. fol.83. Bowles caſe.

3. A leſſee for his own life, or for another mans life, is within the words and meaning of this Law, and in this point this Act introduceth that which was not at the Common Law. Marlb. cap.23.

4. If a leaſe for life be made to A. the remainder for life to B. he in the reverſion ſhall have no Action of Waſte againſt the firſt leſſee, for then the eſtate of him in the remainder ſhould be deſtroyed, and ſuch conſtruction muſt be made to preſerve the eſtate of an eſtranger, in whom there is no fault or default. But if he in the remainder for life dieth, then the Waſte is puniſhable as well before, as after his death. 33 E.3. Waſte 144 11 E.3. graunt 13 11 E.3. receit 118 4 E.3.18. 50 E.3.3 10 E.4.9. l. 5 E.4. 89. Regiſt.F.N.B. 59. Lib.5. fol.76.b.

5. * If a leaſe be made to A. for his life, the remainder to A. for the life of B. if A. doth Waſte, an Action of Waſte doth lie againſt him, for the wrong doer hath both the ſtates in him, and of that opinion was Sir James Dier Chief Juſtice of the Common Pleas, Paſch. 18 Eliz. Pagets caſe. 8 E.3.26. *17 E.3.68. 39 E 3 25. 6 E. 3. 19.

6. If a leaſe for life be made, the remainder for years, an Action of Waſte ſhall lie againſt the leſſee, for the recovery therein ſhall not deſtroy the term for years. 4 E.3.18. 3 E.3.18 F.N.B. 59. h.

7. Fem' leſſee for life taketh husband, the husband doth Waſte, the wife dieth, the husband ſhall not be puniſhed by this Law, for the words of this Act be, Home que tient, &c. pur vie, and the husband held not for life, for he was ſeiſed but in the right of his wife, and the eſtate was in his wife. 46 E.3.32. 46 tit. Waſte Statham. Lib.10. fol.11. Southcots caſe.

8. An occupant is within this Law, for the words of this Act (as hath been ſaid) are Home que tient, which are more liberal words then if the Statute had ſpoken of a leaſe or demiſe, and certain it is that the occupant holdeth for life, ſo it is of the Lord that entreth on his villein Tenant for life. 48 E.3.19. l.6. fol.3. Le D. de Worceſters caſe. Lib.10. fol.98.

9. He

* Hil. 16 E.1. in Banco Rot. 63. Buck. & Rot. 73. Hereford.

9. He that hath an eſtate * for life by conveyance at the Common Law, or by limitation of uſe, is a Tenant within this Statute.

10. A leaſe for life is made, the remainder over in tail or in fee, he in the remainder ſhall by this Act have an Action of Waſte; for the words of the Statute are general.

Temps E.1. Waſte 126. 39 E.3.16. 45 E.3.25. Lib.11 fol.83. Ewens caſe 27 H.6. Aide Statham.

11. Albeit Tenant in tail apres poſſibility of iſſue extinct doth hold but for life, and ſo within the letter of this Law, yet is he out of the meaning thereof in reſpect of the inheritance which was once in him, in reſpect whereof his eſtate is by Law diſpuniſhable of Waſte, but his aſſignee ſhall be puniſhed for Waſte by this Statute.

29 E.3.1. b. Doct. & Stud. li. 2. ca.1. Marlb. c. 23. l.11. fol.81. b. Bowles caſe.

12. It is to be obſerved that ſuch remedy as the heir had againſt the Tenant in Dower, and Tenant by the Curteſie, &c. by the Common Law, ſuch remedy had the leſſor and his heirs againſt the Farmors for life or years by the Statute of Marlebridge, which remaineth to this day.

Regiſt.72. 16 E.3. Waſt.100. 21 E.3. 26. Doct. & Stud. fol.66.b. F.N.B. 58.h.lib.6. fol.37. Firſt part of the Inſtitutes, Sect.67. 38 E.3.17. 10 E.4.1 23 H.8. Waſt. Br. 3 E.2. Waſte 3. 30 E.3.16. 8 E.3.26. 10 E.3.32. 44 E.3 34. 45 E.3.35. 9 H.6.11. 12 E.4.2 21 H.7.40. Lib.5. fol.12. Foljambs caſe. Lib.5. fol.78. Booths caſe. 33 E.3.p.6. 6 E.3. 54. 34 E.3. retorn 111. 40 E.3.33. 41 E.3. 27. 43 E.3.15. 48 E.3.19. F.N.B. 56.a. Temps E. 1. Waſte 126. 40 E.3.33. 43 E.3 8. 44 E.3.5.

¶ Ou des ans.] See before the Statute of Marlebridge cap.23.

Tenant by Statute Merchant, or Staple, or Elegit, are not within this Act, for albeit they have but a Chattel, yet are they not Tenant for years.

Although the words of the Act be Tenant for years in the plural number, yet Tenant for a year, or half a year, &c. is within this Act.

Executors or Adminiſtrators of a Term for years, though they hold in auter droit, ſhall be puniſhed for Waſte done in their time, but not in the time of the Teſtator, or Inteſtate.

Two Executors be of a Ward, the one doth Waſte, the Action lieth againſt him only. See more hereof hereafter, and note the diverſity.

Tenant for years grants his eſtate upon condition, the leſſee doth Waſte, the grantee enters for the condition broken, the Action of Waſte is to be brought againſt the grantee, and ſo it is in caſe of leſſee for life.

Tenant by the curteſie, or other Tenant for life maketh a leaſe for years, he in the reverſion confirmeth it, Tenant by the curteſie dieth, an Action of Waſte lieth againſt the leſſee.

Tenant for years of a moity, third, or fourth part pro indiviſo holdeth a term for years, he is within this Act; and ſo it is of a Tenant by the curteſie, or other Tenant for life of a moity, &c. In like manner if two be Plaintifs, and one of them is ſummoned, and ſevered, a moity ſhall be recovered.

Tenant for years or for life aſſigns over his leaſe for years, or eſtate for life, excepting the timber trees, and after Waſte is done in felling down the trees, the Action of Waſte is maintainable againſt the aſſignee, for as to the leſſor they are not ſevered from the land.

Tenant for years, or for life aſſigns over his eſtate, and notwithſtanding takes the profits, an Action of Waſte lieth againſt the firſt leſſee, and ſo it is of mean aſſigns, the Action lieth againſt him that taketh the profits, but this is by the Statute of 11 H.6. cap.5. for in that caſe the perſon of the profits did not hold the land.

Two Jointenants for years, or for life, one of them doth Waſte, this is the Waſte of them both, as to the place waſted, and yet the words of the Act are, (home que tient) but treble damages ſhall be recovered againſt him that did the Waſte only.

Tenant for years or for life doth Waſte, and after aſſigneth over his eſtate, now the words be (home que tient) &c. he that holdeth for life or for years, and after the aſſignment he holdeth not the land, yet ſhall the Action of Waſte be brought againſt him in the tenet, becauſe in the eye of the Law he is Tenant as to the Action of Waſte, and againſt him that was the wrong doer did the Action accrew, which he cannot avoid by his aſſignment, and againſt him ſhall the treble damages be recovered and the place waſted, and ſo it is of the mean aſſigns; a juſt interpretation that he that did the wrong ſhould anſwer the ſame, and this is the cauſe that general nontenure is no plea in an Action

of

of Waſte, but ſpecial non-tenure may be pleaded, as the granting over of his eſtate, before which grant no Waſte was done.

¶ Ou feme que tient en dower.] This is to be underſtood of all the five kinds of Dowers whereof Littleton ſpeaketh, viz. Dower at the Common Law, Dower by the Cuſtom, Dower ad oſtium Eccleſiæ, Dower ex aſſenſu patris, and Dower de la pluis beale, and againſt all theſe the Action of Waſte did lie at the Common Law. Tr. 7 E.1. in Communi Banco Rot. 21. Norff.

¶ Et celuy que ſerra attaint de Waſte.] As it hath bẽn ſaid, if one Joyntenant do the Waſte, both ſhall be attainted of the Waſte, &c.

In an Action of Waſte brought againſt Tenant by the curteſie, Tenant for life, Tenant for years, or Tenant in dower, which before hath bẽn named in this Act, the entry of the plea of the Tenant is quod prædict' (talis) non fecit vaſtum, and yet all theſe by conſtruction of Law ſhall anſwer for the Waſte done by any ſtranger, for he in the reverſion cannot have any remedy but againſt the Tenant, and the Tenant ſhall have his remedy againſt the wrong doer, and recover all in damages againſt him, and by this means the loſs ſhall light upon the wrong doer; for voluntary Waſte and permiſſive Waſte is all one to him that hath the inheritance. But if the Waſte be done by the enemies of the King, the Tenant ſhall not anſwer for the Waſte done by them, for the Tenant hath no remedy over againſt them. The ſame Law it is if the Waſte be done by tempeſt, lightning, or the like, the Tenant ſhall not anſwer for it. It is adjudged in 9 E.2. that if thẽves burn the houſe of Tenant for life, without evil kẽping of leſſẽs for lives fire, the leſſẽ ſhall not be puniſhed therefore in an Action of Waſte; Nota the caſe of fire, &c. 32 E.3. Waſte 30. 19 E.3. ibid. 30. 41 E.3. ibid. 81. 33 H.6.1. F.N.B. 59.b. Dier 28 H.8. 33. 29 H.8.36. 14 Eliz. 314. Paſch. 9 E.2.63.b. In libro meo, Un brieſe de Waſte. 19 E.3. Waſte 31.

A. ſeiſed of land in fẽ acknowledgeth a Statute Merchant, and infeoffeth B. who letteth the ſame for life, the land is extended upon the Statute, B. bringeth an Action of Waſte againſt the leſſẽe, he may plead this execution, &c. before which execution no waſte done, for the poſſeſſion of the land is lawfully taken from him by courſe of Law, which he could not withſtand, and if he ſhould be puniſhed for Waſte, he ſhould have no remedy over.

So it is if a man make a leaſe for years, and put out the leſſẽe, and make a leaſe for life, the leſſẽe enter upon the leſſẽe for life, and doth Waſte, the leſſẽe for life ſhall not be puniſhed therefore for the cauſe aforeſaid.

If Tenant in dower be of a Mannor, and a Copiholder thereof commit Waſte, an Action of Waſte lieth againſt Tenant in dower. 32 E.3. Waſte 104

If an infant be Tenant by the curteſie, or leſſẽe for life, or years, he ſhall anſwer for the Waſte done by a ſtranger, and have his remedy over, though ſome have holden the contrary, for in that caſe alſo the loſs ſhall be upon the wrong doer; and ſo it is in caſe of a feme covert, for the privilege of infancy and coverture in this caſe ſhall not prevail againſt the wrong and diſheriſon done to him that hath the inheritance, eſpecially when they have their remedy over, and the eſtate is of their own purchace or taking. And ſo it is if a leaſe be made to the husband and wife, and the husband doth Waſte, and dieth, if the wife agrẽeth to the eſtate, ſhe ſhall be puniſhed for the waſte done by her husband in like manner, as if a ſtranger had done the Waſte, and after the death of her husband ſhe is in from the leſſor, and if the Action had bẽn brought againſt the husband and wife, the Writ ſhould have been quod fecerunt vaſtum, ſo as it was as well the Waſte of the wife, as of the husband. Doct. & Stud. Temps E.1. Waſte 128. 3 E.3. 13,46. 9 E. 3.42. 11 Aſſ. 11. 10 E.3.17. 42 E.3. 21. 46 E.3 25. 2 H.4.3.a. 7 H.6.2.b. 2 H.6. 24. b. 33 H.6.31. 19 E. 3. br'e 246. 10 E.4.18. 15 H.3 Waſte 133.

¶ Perdra le choſe que il aver Waſte.] That is, theſe four Tenants before named ſhall loſe the thing which he hath waſted, but it is ever rendred amittet locum vaſtatum. * Temps E.1. Waſte 127. 8 E.2. Waſte 112. 4 E.3. 32. 15 E.3. Judgement 134.

* If Waſte be committed in a houſe ſparſim in divers ſeveral parts, the whole houſe ſhall be recovered, although all be not waſted. In ancient time it was holden by ſome, that if the Hall were waſted, the whole houſe ſhould be recovered, 15 E.3. Waſte 108. 34 H.6.44. 15 H.7.11.

vered, for that in thoſe days the hall was the place of greateſt reſort, and uſe, in ſo much as the whole houſe was called by the name of the hall, as Dale-hall, &c. but the purview of this Act is, that he ſhall loſe the thing that he hath waſted.

4 E.6. Waſte Br. 136. 18 H.8.1. So it is of a wood, if Waſte be done ſparſim, though all the wood be not waſted, the whole wood ſhall be recovered: and the reaſon of both theſe caſes was, for that if Waſte were done ſparſim in houſes or woods, that by the conſtruction of theſe words, the whole ſhould be recovered, for that otherwiſe the houſe that was for the habitation of man, or the woods that ſo many ways were for mans neceſſary uſe, could not be enjoyed, neither by him that had the inheritance, nor by the Tenant without continual treſpaſſing the one to the other, Et boni judicis eſt cauſas litium dirimere; But if Waſte were done in one part of the wood that might be conveniently divided from the reſt, that part only is locus vaſtatus, and ſhall be recovered.

And ſo it is of brook medow, if the Tenant plough it up ſparſim (as hath been before ſaid.)

7 H.3. Waſte 141. Pl. Com. in Caſe de Mines. 5 R.2. Waſte 97. Temp. E.1. Waſte 128. A Tenant for life or years of a park, vivary, warren, or dove-houſe, if he deſtroy the deer, or the fiſh in the vivary or ponds, or the game in the warren, or the doves in the dovehouſe, it is Waſte, and he that hath the inheritance ſhall recover the park, vivary, warren, or dovehouſe, and therefore the makers of this Act meaning to include all kind of Waſtes, uſed this general word [choſe.].

And ſo it is if the Tenant kill ſo many of the deer, fiſh, game or doves, as there be not left ſufficient for ſtore having regard to the number that were there when his eſtate or intereſt was created or made, this is Waſte, and ſo it was holden, Paſch. 15 Eliz. in Communi Banco, & ſic de ſimilibus.

Exile and deſtruction of villeins by tallage and oppreſſion is Waſte, and this Act ſaith [perdra le choſe.]

3 E.2. Waſte 2. 9 E.2. Waſte 2. 16 H.3. ibid.135. 9 H.6.42. 22 H.6. 10,11. 11 H.7. per Fineux. 8 E.2 Waſte 113. 17 E.2 ibid.118. 15 H.3. ibid.130. 2 H.6.10 F.N.B. 60.o. Lib.5. fol.115. Foliambes caſe. Regiſt. 72. ¶ Et ouſter ceo face gree de treble de ceo que le Waſte ſerra taxe.] Concerning coſts in this Action ſufficient hath been ſpoken, cap. 1.

The Plaintif ſhall not recover damages for any Waſte done hanging the Writ, and therefore the Plaintif may have a Writ of Eſtrepement in this Action, Et ſic de ſimilibus.

Leſſee for years committeth Waſte, and the years do expire, yet ſhall the leſſor have an Action of Waſte for the treble damages, although he cannot recover the place waſted, and though the Statute be in the conjunctive, perdra le choſe, &c. & ouſter ceo face gree, &c. for as there was at the Common Law two forms of Actions of Waſte, viz. in the tenet, as againſt Tenant by the curteſie, &c. and in the tenuit againſt the Gardein after full age, ſo upon this Act the like kind of forms is framed by equal conſtruction, viz. in the tenet to recover the place waſted, and treble damages, and in the tenuit to recover treble damages only.

46 E.3.25. But this is to be underſtood when the term expires by effluxion of time, as in the caſe of a leaſe for years, or when the eſtate determins by the Act of God, as when ceſti q̃ vie dieth, or when the eſtate is ended or defeated by the act and wrong of the Tenant, as when he makes a feoffment in fee, or commits any other forfeiture, and the leſſor enters, yet the leſſor ſhall have his Action of Waſte; but when the Tenant commits Waſte, and after ſurrendreth to the leſſor his eſtate or term, and he in the reverſion agreeth thereunto, he ſhall not have an Action of Waſte in the tenuit, for he cannot by his own Act alter the form and nature of his Action from the tenet to the tenuit, and he cannot plead, Devant quel ſurrender nul Waſte fait.

19 E.2 Waſte 190 8 H.6.10. 45 E.3.9 8 H.5.3. 4 E.3.33. 14 H.6.14. 19 H.6. 41.66. 12 H.4.5. 3 H.6. Waſte 35. 32 E.3. barre 262 21 R.2. Waſte 99. An Action of Waſte is brought againſt the leſſee for years, or againſt Tenant pur terme dauter vie, and hanging the Action the term expires, or ce' que vie dieth, yet the Writ ſhall not abate, for that an Action of Waſte (as hath been ſaid) lieth only for the damages in thoſe caſes, which he ſhall recover in that action then depending.

In

In an Action of Waſte againſt a leſſée for life for Waſte done in three acres, the Defendant claimeth fée, whereupon iſſue is joined, the Jury finds againſt the Defendant that he hath but an eſtate for life, and enquired further of the Waſte, and found the Waſte done in one acre only, the Plaintiff cannot have judgment for the whole land, in reſpect of the forfeiture and treble damages, for that judgment is not according to this Act, that is to ſay, of the place waſted, and treble damages in reſpect of the place waſted, wherefore he had judgment according to the Statute of the one acre and treble damages. 33 E.3. Judgement 255.

Upon this branch it hath been received for a certain rule, that if Waſte be committed, and he in the reverſion dieth, that the Action of Waſte faileth, for that the heir cannot recover damages for the Waſte done in the life of the anceſtor, and the Waſte was not done by the diſheritance of the heir, and yet the Law doth extend the Action of Waſte favourably as much as with conveniency may be, leſt Waſte which is hurtful to the Common wealth ſhould remain unpuniſhed; and therefore if two coparceners be, and they make a leaſe for life or years, and the leſſée commit Waſte, and one of them hath iſſue and dieth, and after the leſſée commit Waſte again, albeit the Writ ſhall ſay that both the Waſts were done to the diſheritance to the aunt and néece, yet ſhall the Action be maintained, and the judgment ſhall be ſeveral, though the Action be joynt, for judgment ſhall be given for them both for the place waſted, and the damages treble for the Waſte done in their own time, and the aunt ſhall have a ſole judgment for the whole damages for the Waſte done in the time of her ſiſter by ſurvivor, which is a leading caſe, and worthy of great obſervation. 8 E.2. Waſt 110. 11 E.2. ibid.115. 45 E.3.3. 20 E.3. Quar.Imp.63. 35 H.6.23.F.N.B. 6. r. Kelwey 103.

¶ Et en Waſte fait en garde.] There is Gardein in chivalry, and Gardein in ſocage: again Gardein in chivalry is twofold, Gardein in droit, and Gardein in fait of the grant of the King, or of the Subject; alſo both theſe are either Gardeins by right, or Gardeins by claim and poſſeſſion without right: Likewiſe Gardein in ſocage is two-fold, viz. Gardein by right, who is called tutor proprius, and Gardein by poſſeſſion and claime, who is called tutor alienus. *a* Glan.l.7.c.9,10. Bract.li.4. fol.28. & 316,317. Britton 33,34. Fleta l.1.cap.11. 7 H.3. Waſte 141. 9 H.3. ibid.136. 10 H.3. ibid.142. 20 H.3. ibidem.

a Againſt all theſe both a prohibition of Waſte, and an Action of Waſte lie at the Common Law, but none of theſe Gardeins ſhall be charged but for the voluntary or permiſſive Waſte, and not for the Waſte done by a ſtranger. But if there be two Jointenants of a ward, and the one doth Waſte, this is the Waſte of both, for he is no ſtranger, 3 E.3.18. 2 E.2.ib.1.4 E.2. Account 107. 16 E.3. Waſt 100. 13 E.3. account 77. 32 E.3. ibid.59. 41 E.3. ibid.35.

If the Gardein ſuffereth a ſtranger to cut down timber trées, or to proſtrate any of the houſes, and according to his name of Gardein doth not endeavour to kéep and preſerve the inheritance of the Ward in his cuſtody and kéeping, nor to forbid and withſtand the wrong doer, this ſhall be taken in Law for his conſent, for in this caſe, Qui non prohibet quod prohibere poteſt, aſſentire videtur. *b* And if ſuch Waſte and deſtruction be done without the knowledge of the Gardein, or with ſuch number as he could not withſtand, then ought the Gardein to cauſe an Aſſiſe to be brought againſt ſuch wrong doers by the heir, wherein he ſhall recover the fréehold and damages for ſuch wrong and diſherilon: So note a diverſity betwéen the intereſt of a Gardein created by Law, for there in an Aſſiſe the heir ſhall recover damages, but otherwiſe it is in the caſe of a leaſe for years, which is the leſſors own Act. 40 Aſſ.22. 44 E.3. 27. 5 R.2. Waſte. 97. 11 R.2. ib.98 28 H.6. ibid.9. 10 H.6.7. 32 H.6.7. F.N.B.59.b. *b* 40 Aſſ.12. Temps E.1. Waſte 126. 27 E.3.81. F.N.B. 60.g. 26 E.3. Waſte 10.

c The Gardein doth Waſte, and after aſſigneth over his intereſt, an Action of Waſte lieth againſt the grantor in the tenet. *c* Regiſt.72.

d Note that the Action of Waſte againſt the Gardein is general, Fecit vaſtum, &c. de terris, &c. quas habet vel habuit in cuſtodia de hæreditate prædict', which Writ doth extend as well to the Gardein in ſocage as in chivalry. *d* F.N.B 59.e. 2 E.2. Waſte 1.

¶ *e* Perdra la gard, & rendra al heire les damages del Waſte.] So as if the heir bring his Action of Waſte within age, the judgment by this Act is, that he ſhall loſe the whole Wardſhip, not locum vaſtatum only, *e* Mag.Chart.c.4. 19 E.2. tit. Waſte 117 Temps E.1. ib.127. See Mich. 7 E.1. in Communi Banco Eſſex. Picots caſe. Hil. 8 E.1. ibid.Rot.52 NorthLovets caſe. 48 E.3.10. F.N.B.60.c.

and yield to the heir ſingle damages, if the wardſhip be not ſufficient to ſatiſfie the damages; ſée before what the judgment was at the Common Law.

But then it may be demanded, What if the Gardein commit Waſte, and the heir did not, or perhaps could not bring an Action of Waſte, being done ſo near his full age, or having no notice thereof, what remedy hath the heir after his full age, for the Gardein cannot loſe the wardſhip, for his eſtate is ended, and it ſéemeth by the letter of the Law that he muſt bring his Action upon this Statute within age, for the words be [Perdra la gard.] To this it is anſwered that the heir at his full age ſhall have an Action of Waſte, and recover treble damages by this Act, for the wardſhip cannot be loſt, and the wrong and diſheriſon done to the heir ought to be fully recompenced, and the Statute hath annexed treble damages to the Action of Waſte, as if it were enacted by Parliament, that an Action of Waſte ſhould lie againſt Tenant in tail apres poſſib. therein treble damages ſhould be recovered as incident or annexed by this Law to the Action of Waſte.

3 E.2. Waſte 3. 7 E.3.12,13. 43 E.3.88. Regiſt.72.F.N.B. 59.e. & 60.c. Coram Rege per br'e de errore placita apud Dublin. Coram Johanne, Juſtic.Hibern.Paſch.30 E.1.

Bract.l.4.fo.316. F.N.B. 60.c.

And whereſoever the Common Law gave ſingle damages againſt any, this Act doth give treble, unleſs there be any ſpecial proviſion made by this Act. Alſo in an Action of Waſte, the Jurors ſhall have the view of the place waſted, &c. as an incident to the Action of Waſte, for in the Action at the Common Law the Jurors ſhould have had the view.

Bract.l.4. fo.316. 38 E.3.7. 14 H.4. 11,12. 8 E.2. Waſt 111. 34 E.3. ib.146. 12 H.4.3. F.N.B.60.p.

The Law appointeth not of what value the Waſte ſhall be, neither in the caſe of the four Tenants firſt before mentioned, nor in the caſe of the Gardein, who is to loſe all for Waſte done in any part. Herein the rule of Bracton is good, Vaſtum erit injurioſum, niſi vaſtum ita modicum fuerit, propter quod non ſit inquiſitio faciend', and de minimis non curat lex; for Waſte done to the value of xx d. (which now is v s.) the Gardein loſt the whole Wardſhip.

Pl. Com. in Stowels caſe.

If a feme Seignioreſs take husband, the Tenant holding by Knights ſervice dieth his heir within age, the husband doth Waſte and dieth, the Action of Waſte lieth againſt the wife. So if an infant be Gardein in Chivalry, and doth Waſte, an Action of Waſte lieth againſt him, for he is within the letter and meaning of this Law made againſt waſte and deſtruction.

Mich. 6 E.1. in Banco Rot.47. Eſſex Petrus Picots Caſe.

¶ Si le gard' perdue ne ſuffiſt a la value des damages, avant le age de meſme le gard.] Sée a notable Record upon this branch in the ſame year that this Statute was made.

A. hath the Wardſhip of Blackacre and the heir of B. and Whiteacre and the heir of C. per cauſe de gard, A. doth Waſte in Blackacre, he ſhall loſe but Blackacre, for that Waſte is done only to the diſheriſon of that heir; and ſo it is if he doth Waſte in Whiteacre, he ſhall only loſe that acre for the Waſte done there to the diſheriſon of that heir.

11 H.4.75. 12 E.4. 10. 15 H.7.4. Lib.8. fol.146. Les Carpenters Caſe.

At the Common Law in caſe of Tenant by the Curteſie, Tenant in Dower, or Gardein, the heir, &c. might have entred into the houſes and lands to ſée if Waſte were done, to the end that if he found any Waſte done, he might bring his Action, and to that end might the heir or he in reverſion ſend any other to that intent; now this Act giving an Action of Waſte againſt Tenant for life, and Tenant for years, doth impliedly give authority to him in the reverſion either by himſelf, or by another to enter into the houſes or lands ſo letten for life or years, to ſée if any Waſte be done, Quia quando lex aliquid concedit, concedere videtur & id, per quod devenitur ad illud, and therefore he in the reverſion may lawfully enter, to ſée if any Waſte be done, whereupon he may ground an Action upon this Statute.

28 H.6.25. 7 H.6.35. 8 H.6. 35. 22 H.6.18. 20 E.3. Waſt.32. 38 Aſſ.p.1. 42 E.3.22.

An Action of Waſte lieth not upon this Act in the Court of ancient demeſne, becauſe that Court fails of the incidents to an Action of Waſte, viz. to award a Writ to the Sheriff to enquire of the Waſte, &c.

If a Tenant for life or years commit Waſte, ſo as he in the reverſion is intituled to his Action of Waſte, yet if the Tenant repair the ſame before any Action brought, he in the reverſion cannot have an Action of Waſte, but the Tenant

Tenant muſt plead it ſpecially: But if the Tenant doth repair it after the Writ brought, and before he hath day to plead, he cannot plead it in bar of the Action.

Upon the conſtruction of this Act, whether in this mixt Action the place waſted is the principal, or the damages, ſome queſtion hath bẽn made, and in divers reſpects the one is more principal then the other, for in reſpect of the antiquity againſt Tenant in Dower, and Tenant by the Curteſie, the damages are the principal, as hath bẽn before ſhewed; and therefore they ſhall be ſometime preferred, viz. the Plaintiff to have execution of the damages before the place waſted. But in reſpect of the quality, the realty is ever preferred before the perſonalty, and therefore in Waſte, if the Defendant confeſs the Action, the Plaintiff may have judgment of the land, and releaſe his damages, which proveth the realty to be the principal, and an accord is no plea in an Action of Waſte in the tenet, for Omne majus dignum trahit ad ſe minus.

40 E.3.37. 38 E.3. 27. 13 E.4.15.

34 H.6.7. tit. Waſte 50. 48 E.3. 19. per Finchd. 11 H.7.13. 13 H.7. 20. Lib.6.fo.43, 44. Blaks caſe.

And in an Action of Waſte there ſhall be ſummons and ſeverance, for the Writ is ad exhæredationem, and the Action of Waſte is a plea real: In an Action of Waſte brought by two in the tenuit, a releaſe of the one is a bar to both, but otherwiſe it is in the tenet, for there it barreth but himſelf.

6 E.3.47. 9 H.5.15. 30 H.6. barre 39.

Thus have we endeavoured to expound this excellent Law enacted pro bono publico, for preſervation of buildings for the habitation of mankind, and of woods and timber, ſometime one of the beautiful and profitable ornaments of England, and generally againſt all waſte and deſtruction by particular Tenants, which Law being very penal, and ſhortly and artificially penned hath bẽn with great wiſdom and judgment expounded in our Books, and may be a light to many other like caſes. Vide Magna Charta cap.4. Marlebridge cap. 23. W.1. cap. 21. W.2. cap.14.21. 20 E.1. Vet. Magna Charta 124. 28 E.1. ca.18. See the firſt part of the Inſtitutes, ſect. 67,71, 380,381,382, 492,570,573,574,577,585,586, 666,667,668,674,675.

CAP. VI.

PUrview eſt enſement, que ſi home mourge, & eit pluſors heires, dont lun eſt fits ou file, frere ou ſoer, nephew ou niece, & les auters ſont en pluis longe degree, touts les heires deſormes eyent recoverie per briefe de Mortdaunceſter.

It appeareth by our ancient Authors that this Act is made in affirmance of the Common Law, for Bracton ſaith, Cum ſit Aſſiſa mortis anteceſſoris conjungenda cum conſanguinitate, non erit poſt recurrendum ad Præcipe de conſanguinitate, ſed ad Aſſiſam mortis, quia perſona quæ propinquior eſt, & facit Aſſiſam, & trahit ad ſe perſonam & gradum remotiorem, ut ibi potius procedat Aſſiſa, quam Præcipe, quia illud quod eſt majus remotum non trahit ad ſe quod eſt majus junctum; ſed e contrario in omni caſu, & bene poterit quælibet iſtarum conjungi cum alia actione, quia quælibet loquitur de ſeiſina ejus quam habuit die quo obiit, quod non eſt in brevi de Recto, & quælibet de poſſeſſione & non de proprietate.

Bract.l.4.fo.254. 283. Britton fol. 181.b. Fleta lib.5.cap.2.

So as it appeareth by Bracton, that the abovelaid rule doth not hold only in caſe of Mordaunceſter, but in the Writ of Aiel and Beſaiel, which is alſo a proof of the Common Law, for this Act nameth the Aſſiſe of Mordaunc' only, and his opinion is approved by our Books.

Temps E.1. joindre in Action 35. 32 E.1. ibid.34. 19 E.2. ibid.31. 13 E.3. ibid.29.

Alſo this Act extends to dying ſeiſed after the Statute, and yet like joyning ſhall be in the Writ of Mordaunc', Aiel and Beſaiel of dying ſeiſed afore the

19 E.3. ibid.31. 12 E.3. ibid.11.

7 E.3.34. 24 E.3. 13,28. 48 E.3.14. 27 E.3.89. 30 E.1. Joindre en Action 36. 19 E.2. Judgement 239.

Statute, which is another proof of the Common Law. And the ſame Law it is in a Formedon in the Deſcender, and in Writs of Entry Sur diſſeiſin to the common anceſtor, and in a Sur cui in vita, Writs of Entry In caſu proviſo, Conſimili caſu ad communem legem, and the like, the Aunt and the Néece ſhall join at the Common Law.

To know what the Common Law was before the making of any Statute, (whereby it may be known whether the Act be introductory of a new Law, or affirmatory of the old) is the very lock and key to ſet open the windows of the Statute, as partly appeareth by that which hath been ſaid, and particularly in the expoſition of this Act ſhall appear.

¶ Si home mourge.] Hereby it appeareth that one right muſt deſcend from one anceſtor, or elſe the caſe is not within this Law.

5 E.3.185.

If two coparceners die ſeiſed, and a ſtranger abate, the Aunt and the Néece ſhall not join in a Writ of Mordaunc', but have ſeveral Writs, the one a Mordaunc', and the other a Writ of Aiel.

37 H.6.8. 35 H.6.23.

In like manner if two coparceners be diſſeiſed, the one hath iſſue and die, the Aunt and the Néece ſhall not join, for they have not one right, but ſeveral, and therefore they muſt have ſeveral Actions, but when they have recovered they ſhall hold in coparcenery.

¶ Pluſors heires.] Divers heirs either in Gavelkind by the cuſtom, or heirs females coparceners by the Common Law, for this Act extends to both of them.

¶ Dont lun eſt fits ou file, &c.] By this it appears that this Act extends as well to heirs by the cuſtom, as by the Common Law.

The Aunt and the Néece bring a Writ of Mordaunc' of the dying ſeiſed of the Father, the Aunt is ſummoned and severed, yet the Néece ſhall proceed and recover the moity (although ſhe alone could never have a Writ of Mordaunc' of the dying ſeiſed of the Grandfather) becauſe the Writ was rightly and duly commenced, and when the Néece hath recovered, the Aunt may enter, and enjoy that moity with her; for the rule of the Law is, that in all caſes when coparceners, or Jointenants may join in Action, and have one and the ſame remedy, there if one be ſummoned and severed, and the other ſueth forth and recovers the moity, the other may enter with her; but when they are driven to ſeveral Actions, or where their remedies are not equal, there if one recover or continue the one moity, the other cannot enter with her, and yet when both have recovered they ſhall be coparceners again.

10 H.6.10. 19 H.6.45. 31 H.6. Entry cong.54. Firſt part Inſt. ſect.696.

See the ancient Authors, ubi ſup. F.N.B. 195.c.

¶ Frere ou ſoer, nephew ou niece.] Here is implied the Uncle and Aunt being relatives, and then here be all the perſons that may have an Aſſiſe of Mordaunc', and ſo there be one that may have an Aſſiſe of Mordaunc', it maketh no matter how remote the other is.

¶ Deſormes.] So as this Law extends to the future, and not to the time paſt, and yet being made in affirmance of the Common Law, the ſame Law that guideth in futuro, ruleth alſo in præterito.

¶ Eyent recoverie per briefe de Mordaunc'.] Theſe words are general, but they have a ſpecial intendment, for as to the damages, the Aunt alone ſhall recover damages until the death of her husband, and both of them damages from the death of her ſiſter, and ſo it is in the Writ of Aiel, and Beſaiel, and all this is according to the courſe of the Common Law before the making of this Act, ſée the expoſition upon the firſt Chapter of this Parliament.

See cap.1. 45 E.3.3. 35 H.6.23.

CAP.

CAP. VII.

ENſement ſi feme vende, ou done en fee, ou a terme de vie tenement que el tient en dower: Eſtablie eſt, que le heire, on auter, a que la terre deveroit reverter apres le deceaſe la feme, eit maintenant ſon recoverie per briefe Dentre, fait de ceo en la Chancerie. Cuſtumier de Norm.cap.118. fol.138.

The miſchief before the making of this Statute was not, where a gift or feoffment was made in fée, or for term of life by Tenant in Dower, for in that caſe he in the reverſion might enter for the forfeiture, and avoid the eſtate: But the miſchief was, that when the feoffée, or any other died ſeiſed, whereby the entry of him in the reverſion was taken away, he in the reverſion could have no Writ of entry ad communem legem, until after the deceaſe of Tenant in Dower, and then the warranty contained in her Déed (as in thoſe days all Déeds of feoffment for the moſt part comprehended warranty, and ſpecially when ſhe intended to bar her heir that had the reverſion) barred him in the reverſion, if he were her heir, as commonly he was, and for the remedy of this miſchief this Statute gave the Writ of Entry in caſu proviſo in the life time of Tenant in Dower, which is implied by this word [maintenant, &c.] The purview of this Act Fleta rendreth thus, Eſt autem quoddam breve proviſum de ingreſſu, per quod habens ſtatum, recuperabit dotem alienatam per formam ſtatuti, quod tale eſt; ſi mulier alienet dotem ſuam in feodo, vel ad terminum vitæ donatoris, hæres vel alius ad quem ſpectat reverſio, ſtatim ipſo facto habeat actionem petendi dotem illam in dominico. Regiſt.237. Mirror ca.5. §5. Firſt part of the Inſtit.ſect.483. Fleta li.5. ca.34.

¶ Fem', &c. que tient en dower.] The Tenant by the curteſie, or the leſſée for life is not within the caſe of this Statute, but he in the reverſion upon their alienation ſhall have a Writ of Entry in conſimili caſu by that excellent Statute of W.2. cap.24. quotieſcunque evenerit in cancellaria, quod in uno caſu reperitur breve, & in conſimili caſu cadente ſimili indigente remedio, &c. concordent clerici de cancellaria in brevi faciendo, as we ſhall ſhew more at large when we come to that Statute. 22 Aſſ.37. 29 Aſſ. 54. 3 E.2. entry 8. F.N.B. 207.f. 5 H.7.31. 14 H.7. 13,14. 38 H.6.3. 30 14 H.4.28.

Tenant in Dower taketh husband, the husband aliens in fée, he in the reverſion during the husbands life may enter for the forfeiture, but he cannot have a Writ of Entry in caſu proviſo, for the husband hath nothing but during the coverture in the right of the wife, and our Act ſaith, Fem' que tient en dower vend' ou done, ſo as the alienation of the husband is not within the caſe of the Statute, and ſo it is in conſimili caſu, when Tenant for life takes husband and he alien. 16 Aſſ.11.

¶ Done en fee ou a terme de vie.] At this time all eſtates of inheritance were fée-ſimple, and here (for terme of life) is intended of a ſtate for the terme of the life of a ſtranger, and not for the life of the Tenant in Dower her ſelf, for ſuch an eſtate wrought no wrong.

The words of the Writ grounded upon this Statute are general, Et quæ poſt dimiſſionem factam ad præfatum B. reverti debet. without expreſſing any eſtate, and doth count that the Tenant in Dower did alien in fée, and the Tenant ſaith that the Tenant in Dower did not alien in manner and form, &c. if it be found that the Tenant in Dower did alien in fée tail, or for life, the Demandant ſhall recover, See the firſt part of the Inſtitutes, ſect.483,205. F.N.B. 206.g. Bract. fol.332.

recover. as it appeareth by Littleton, for ancient forms of Writs or Counts cannot be altered.

Fleta ubi ſupra. 31 E.1. Entry 64. 12 E.2. ibid.60. 20 E.2.brief 149. 7 E.3.54. 8 E.3. 48. 21 E.3.11. F.N.B.205.n.

¶ A que le terre deveroit reverter.] If a man hath the reverſion in fee, in tail, or for life, either upon his own gift or leaſe, or by aſſignation, he ſhall have a Writ of Entry upon this Statute (and in like caſe a conſimili caſu) for the words of this Act are general (to whom the land ought to revert) and the words of the Writ grounded upon this Statute are, Quam clamat eſſe jus & hæreditatem ſuam, but yet an eſtate for life, as hath been ſaid, is within this Statute. And this Act providing againſt the alienation of Tenant in Dower, ſpeaketh only of him in the reverſion, becauſe there can be no remainder limited upon her eſtate, otherwiſe it is of the Writ of Conſimili caſu, as we ſhall ſhew when we come to the Statute of W.2. cap.24.

Pl.Com. Colthirſts caſe.

And this Act ſpeaketh only of land which lieth in livery, for the feoffment or eſtate for life made by Tenant in Dower deveſteth the reverſion, otherwiſe it is of rents, and other things that lie in grant.

¶ Eyt maintenant.] That is, preſently after the alienation made in the life of Tenant in Dower, which Writ he could not have, as hath been ſaid, at the Common Law in the life of Tenant in Dower.

Bract.l.4. fo.324.

¶ Son recovery per briefe Dentre.] This Writ of Entry goeth by the name of a Writ of Entry in caſu proviſo, ſo called, becauſe it hath the words of the Writ of Entry, ad communem legem (mentioned by Bracton) with this addition, by force of this Act, Et quæ poſt dimiſſionem per ipſum C. (viz. tenentem in dotem) præfato D. contra formam ſtatuti de Gloc', de communi concilio Regni noſtri inde proviſi ad præfatum B. reverti debet per formam ejuſdem ſtatuti ut dicit, and of theſe words, inde proviſo, it taketh his name of the Writ of Entry in caſu proviſo, and by theſe words this Writ differeth from the Writ of Entry, ad communem legem, becauſe this Writ lieth during the life of Tenant in Dower by the reference it hath to this Act, which giveth the Writ maintenant, &c. as hath been ſaid.

Fleta ubi ſupra:

But the Writ of Entry ad communem legem lieth not during the life of Tenant in Dower, and the Writ of Entry ad communem legem doth not make mention of the death of the Tenant for life, but that muſt be expreſſed in the Count.

16 E.3. brief 661.

CAP. VIII.

PUrview eſt enſement, que les viſconts pled' en counties les plees de treſpas, auxi come ils ſoilent eſtre pledes. Et que nul neit deſormes briefes de treſpaſſe devant Juſtices, ſil ne affirme per foy, que les biens emportes vailent 40 s. al meins. Et ſil ſe pleint de batery affirme per foy que ſa pleint eſt veritable. Des plaies, & des maihemes, eit home briefe ſicome home ſoleit aver. Et graunt eſt, que les defend' puiſſent faire attorneies en tiel plees, ou appell' ne giſt mie, iſſint que ſils ſoient attaints *du treſpaſs* en lour abſence, ſoit maund' al viſc', que ils ſoient priſes, & eient adonques la peine, que

que ils averont ſils uſſent eſtre preſents quant le jùdgement fuit rendus. Et ſi les plaintiffes deſormes en tiel treſpas ſe facent eſſoine apres la primer apparans, ſoit jour done jeſques a la venue des Juſtices errants, & les def. en dementires ſoient en peace en tielx plees, & en auters plees, ou attachments, & deſtre giſent. Si le defend' ſe face eſſoine del ſervice le Roy, & ne port ſon garrant au jour que done luy eſt per ſon eſſoine: eſtablie eſt que il rendra al plaintife les damages de la tourne de xx s. ou de pluis, ſolonque le diſcretion des Juſtices, & jademains ſoit en le greve mercy le Roy.

This Act is divided into two branches.

The firſt branch is in affirmance of the Common Law.

The ſecond branch concerning the Affidavit, this is new, and made in favour of the County Court, but experience taught, that this courſe was ſo full of danger and trouble, that it was forborn, and the Defendant left to take ſuch exceptions as the Common Law gave him.

¶ En Countie Courts.] This is put for an example, for the Hundred Court, and the Court Baron being no Courts of Record are alſo within this Law.

¶ Brieſes de treſpas devant Juſtices.] Writs of Treſpaſs are here put but for an example, for Debt, Detinue, Covenant and the like: But if the Treſpaſs be vi & armis, where the King upon the conviction of the Defendant ſhall have a fine, there the Sheriff in his County cannot hold plea of it, for no Court can aſſeſs a fine but a Court of Record, becauſe a Capias to take the body is incident to it: for it is a rule in Law, Quod placita de tranſgreſſione contra pacem Regis in Regno Angliæ vi & armis fact' ſecundum legem & conſuetudinem Angliæ ſine brevi Regis placitari non debent. Regiſt.fol.111. F.N.B.47.a.239.d. Regiſt.11. F.N.B.47.

Neither ſhall he hold plea of Treſpaſs for taking away of Charters concerning inheritance or free-hold, for it is a Maxime in Law, Quod placita concernent' Chart', ſeu ſcript' liberum tenementum tangentia in aliquibus Curiis quæ recordum non habent ſecundum legem & conſuetudinem Regni Angliæ ſine brevi Regis placitari non debent. Regiſt.11. F.N.B.47.

¶ Vaillent 40 s. al meyns.] For as the inferiour Courts which are not of Record regularly cannot hold plea of debt, &c. or damages, but under 40 s. ſo the ſuperiour Courts that are of Record cannot hold plea of debt, &c. or damages regularly, unleſs the ſum amount to 40 s. or above. Now the ounce of ſilver was at the time of making of this Act but 20 d. and now it is above thrice ſo much; for the wiſdom of the Common Law was, that men ſhould not be troubled for ſuits of ſmall value in the Kings Courts, but that they ſhould be heard and determined in the Country with ſmall charge, and little or no travel or loſs of time, for it was then accounted againſt the dignity and inſtitution of thoſe high Courts, to hold plea of ſmall or trifling cauſes, Ne dignitas curiarum illarum vileſceret, & ne materiam ſuperaret opus; otherwiſe the Law that was inſtituted for the quiet of man, and for his defence, might be abuſed to his charge, vexation, and offence.

Now as the ſuperior Courts ought not to incroach upon the inferiour, ſo the inferiour Courts ought not to defraud the ſuperiour Courts of thoſe cauſes that belong to them. For example, if in the County Court, or other inferiour Courts, they ſhall divide a debt of 20 l. into ſeveral pleints under 40 s. in this caſe the Defendant may plead the ſame to the juriſdiction of the Court, or may have a Regiſt.146. F.N.B.46.

pro-

Paſch. 20 E.3. Coram Rege. Rot. 164. Ceſtr. Regiſt. 146. F.N.B.46. Brit.ca.28. fo.61.

prohibition to ſtay that indirect ſuit, for as an ancient Record ſaith, Contra jus commune eſt, petere integrum debitum excedens ſummam 40 s. per diverſas querelas, per parcellas, ſcilicet, 39 s. 11 d. ob. q.

The Maxim of the Common Law is, Quod placita de catallis, debitis, &c. quæ ſummam 40 s. attingunt, vel eam excedunt, ſecundum legem & conſuetudinem Angliæ ſine brevi Regis placitari non debent.

And theſe words, ſine brevi Regis are material words, for by the Kings Writ the Sheriff in the County Court may hold plea of goods, debts, &c. above the value of 40 s. and by force of the Kings Writ of Juſticies, he may hold plea of an Obligation of what ſum ſoever, for example of 1000 marks, the which Writ is in nature of a Commiſſion to the Sheriff to hold plea of debt above 40 s. the words of which Writ are, Rex Vicecom' ſalutem: Præcipimus tibi, quod juſticies A. quod juſte & ſine dilatione reddat B. mille marcas, quas ei debet, ut dicit, &c. ne amplius inde clamorem audiamus pro defectu Juſticiæ. By force of which Writ he may hold plea of the ſame, and the proces therein is attachment by his goods, &c. but no Capias, and although the power of the Court by this Writ is in this particular inlarged, and the words of the Writ to the Sheriff are, Quod Juſticies, &c. yet is not the juriſdiction of the Court, as concerning the judicature thereof, altered, for thoſe words of the Writ do not, nor can make the Sheriff Judge of that Court in that particular caſe, for that were to alter the juriſdiction and judicature of the Court, whereof by the Common Law the ſuitors be Judges, which cannot be altered but by Act of Parliament: The Plaintiff may remove this plea without cauſe ſhewed, but the Defendant cannot without ſhewing of cauſe.

3 H.6.54,55. Glanv.l.12. c.18. Brit.fol.53,54. Fleta l.2.c.55. Brac.l.3.fo.105.b. F.N.B. here afterwards.

Also by force of a Juſticies to the Sheriff, he may hold plea of a Treſpaſs Vi & armis. Vide Regiſter, & F.N.B. divers forms of Writs of Juſticies in many Actions.

Brack. ubi ſupra. Brit. ubi ſupra. 8 E.4.5. 14 H.8.15. F.N.B.86.b.c.d. 85.g. 86.a. 7.a. 117.a.c.119,123, 125,128,132,135, 137,139,148,161, 184,151,152.

The Sheriff may alſo hold plea in a replevin of goods and chattels above the value of 40 s. for if it be by Writ, the words of the Writ be, Rex Vicecom', &c. Præcipimus tibi quod juſte, & ſine dilatione replegiari facias B. averia ſua, or bona & catalla ſua, quæ D. cepit & injuſte detinet, ut dicit, &c. ne amplius inde clamorem audiamus pro defectu Juſticiæ. By force of which Writ, which is in nature of a Commiſſion, the Sheriff may deliver the beaſts, or goods and chattels of what value ſoever. And if the Replevin be by pleint in the County Court, the Sheriff by the Statute of Marlebridge may hold plea of what value ſoever.

The like Writs in the nature of a Commiſſion directed to Sheriffs are the Admeaſurement of paſture, Recaption, Nativo habendo, and many others.

Britt.c.28.fo.61. 19 H.6.8.b.

The ſaid words, Vaillent 40 s. al meins, have received this conſtruction, that the ſame muſt ſo appear to be of value in the Plaintiffs count, for it is not ſufficient that it appears by verdict that the ſum is under 40 s. For example, if the Plaintiff count in Treſpaſs, Debt, Detinue, Covenant, &c. to the damage of 40 s. and the Jury find the damages under 40 s. yet the Plaintiff ſhall have no judgment, albeit in truth the cauſe de jure belonged to the inferiour Courts.

This ſhall ſuffice for the expoſition of this branch of our Act, the reſidue ſhall be referred to the treatiſe concerning the juriſdiction of Courts whereunto this matter properly belongeth.

¶ Des playes & des mayhems eyt home briefe ſicome home ſoiloit aver.] This is the third branch of this Act, and hereby it appeareth that the County Court hath no juriſdiction to hold plea De plagis & maihemiis, of wounds and maihems, but thoſe pleas muſt be determined in the Kings higher Courts, but of battery (without wounding or maiheming) this Act proveth that the County Court hath juriſdiction.

What in Law is adjudged a maiheme, and whereof the word is derived, you ſhall read in the firſt part of the Inſtitutes, ſect.194.

¶ Et

¶ Et graunt eſt, que les defend' puiſſent faire attornies en tiels plees, ou lappeale ne giſt, &c.] See before W. 1. cap. 41. Merton c. 10. W. 2. cap.

Some have thought that this clauſe concerning making of Attourneys is generall, and extendeth to all Actions real and perſonal, but it ſæmeth to be particular, for in ancient manuſcripts the former branch, viz. des playes & des mayhems, &c. is a diſtinct Chapter by it ſelf, and this branch is parcel of that Chapter, ſo as theſe words, en tiels pleas, ſuch pleas muſt be referred to pleas of treſpaſs, battery, wounding, and mayheming, unleſs it be in appeal of mayheme, which being felonice maihemavit, the Defendant ſhould not make an Attorney, no more then he could at the Common Law: and the words ſubſequent (iſſint que ſils ſoient attaint de treſpaſſe en lour abſence) prove that this branch is not generall, but referred to the clauſe next precedent: and note that neither the Plaintif nor Defendant at the Common Law could make an Attourny in any appeal until trial, acquital, judgment, &c.

Regiſt. 19. b. this extends to Juſtices in Eir.

6 H. 7. 1.

3 H. 7. cap. 1.

40 Aſſ. 17. 40 E. 3. 42. 11 H. 4. 11. 8 E. 4. 3.

But it may be objected that againſt this expoſition the book in 21 H. 7. is, Que home ferray Attorney in appeale de maiheme, quod vide de common courſe 16 H. 7. in Caworths Caſe; which Caſe is incertainly reported, for it appeareth not whether it be meant of the Plaintif or Defendant; but of the Defendant it cannot be intended, for that ſhould be againſt our Books, the true interpreters of this Act. And of the Plaintif (it ſæmeth it was intended) he cannot be by Attourney, and that was Caworths Caſe mentioned in the Report of 21 H. 7. the Record whereof being found out is againſt the report thereof; which very point came in queſtion in my time in the Kings Bench in an appeal of mayheme brought by Hudſon againſt Marwood, the Plaintif appeared by Attourney, and declared againſt the Defendant, the Defendant prayed that the Plaintif might be demanded, for that he could not appear by Attourney, and if the Plaintif appeared not, that he might be nonſuited; againſt which the Councel of the Plaintif objected, that the Plaintif in an appeal of mayheme might appear by Attourney, for that it might be, that he was ſo wounded as he could not appear, and for authority cited the ſaid book in 21 H. 7. whereunto anſwer was made by the Councel of the Defendant, and reſolved by the whole Court, that the Plaintif could not appear by Attourney, for the Defendant may demand oyer of the mayheme, &c. which ſhall be peremptory to him being a trial of the mayheme, which is a trial which the Law giveth him.

21 H. 7. 39. b.

8 E. 3. Attourney 93. 2 R. 3. 13. 6 H. 7. 1. F. N. B. 26, 27. Vet. N. B. 19, 20.

M. 25 & 26 Eliz. Coram Rege Rot.

And albeit it may be hard and difficult in ſome particular caſe in reſpect of the grievouſneſs of the mayheme for the Plaintif to appear in perſon, as it was in 16 H. 7. where the mayheme was hainous and horrible, the legs of the Plaintif being broken over a threſhold, yet that muſt not change the Law, nor take from the Defendant his juſt defence and trial, for ſo upon the like ſurmiſe the Defendant might be barred thereof in all caſes.

And Sir Chriſtopher Wray Chief Juſtice ſaid that the Record of Caworths caſe had bæn ſæn, and that the Record thereof was againſt the Report, and thereupon the Plaintif was called, and by the rule of the Court was non-ſuit, and I was of councel in this caſe, which I have the rather reported the more at large, for that no man ſhould be deceived by the ſaid Report of 21 H. 7.

¶ Soit maund al Viſc' que ils ſont priſes.] This is the fourth branch of this Act.

Albeit this Statute ſpeaketh only of the execution of the body, yet might he have had at the making of this Act a Fieri fac': And afterwards by the Statute of W. 2. cap. 45. he may have an Elegit, for this branch being in the affirmative doth not reſtrain the Plaintif to take any other remedy.

¶ Si les Plaintifes deſormes en tiel treſpas, &c. ſe facen' eſſoine, &c. ſoit jour done tanque al venu des Juſtices errants, &c.] This is the

45 E.3. 10. b. Marleb. c. 13,19. W.1. c. 41,42,43, &c.

firſt branch of this Act, and is to be intended of an eſſoin de ſervice le Roy, and extendeth to Actions of Treſpaſs, and not Actions of Debt. Touching common eſſoins, which were uſed for delay only, former proviſions had been made. By matter ſubſequent this branch is become of no uſe, for ſeeing the authority of Juſtices in Eir is ceaſed, when the Plaintif is eſſoined of the ſervice of the King, the Court cannot give day before the Juſtices in Eir, and therefore it remaineth, as it was before the making of this Act.

Tr. 18 E.3. 21 E.3.37. b.

Note that when the Demandant or Plaintif is eſſoined de ſervice le Roy, and at the day brings not in his Warrant, this ſhall be adjudged a non-ſuit.

27 E.3.81. 12 H.4. 14 per Skrene.

¶ En tiels plees & en auters pleas, ou attachments & diſtres giſont.] That is to ſay, in perſonal Actions, where the proceſs is by attachment and diſtreſs. This is the firſt branch of this Act.

Marl.c.19. 12 H.4. 14. 2 E.4.16. l. 5 E.4.70.

¶ Eſſoine de ſervice le Roy.] Herein the delay is great, viz. for a year and a day, therefore he that caſt the eſſoin muſt appear in perſon in Court, to the end he may be ſworn, &c. and that day may be given to bring in the warrant for the eſſoin.

34 H.6.1. 35 H.6.2

¶ Et ne port ſon garrant.] A Warrant under the privy ſeal is not ſufficient, but it muſt be by Writ under the great Seal directed to the Juſtices; alſo the warrant muſt teſtifie that he is in the Kings ſervice, &c. which commonly is upon certificate made to the Lord Chancellor by the Captain of the Hoſt under whom he ſerves.

And this is the firſt Act, that concerned the eſſoin de ſervice le Roy.

4 E.2. eſſoine 79. 28 E.3.98. Kelwey 106. & 107.

¶ Il rendra al Plaintife les damages de la journey de 20s. ou de pluis ſolonque le diſcretion les Juſtices.] The Statute ſpeaketh where there is one Defendant, &c. he ſhall pay 20 s. and if there be divers Defendants, and they are eſſoined de ſervice le Roy, and at the day bring in no warrant, every one of them ſhall pay 20 s. for they are in Law ſeveral eſſoins.

29 E.3.13,36.

And the Court by their diſcretion may by force of the Act increaſe it to a greater ſum, as ſometime to 40 s. &c.

29 E.3.36. 21 E.3. 37.

And albeit this branch doth not by expreſs words determine what ſhall be further done, yet if the eſſoin were caſt after iſſue in a perſonal Action, and ſeeing the eſſoin for want of a Warrant is turned to a default, it followeth that by the Common Law the enqueſt ſhall be awarded by default, and therefore in that caſe he ſhall have the * 20 s. pur la journey by the Statute, and by the enqueſt recover his damages and coſts by the Common Law; for Statutes made for the outting of delays are ever conſtrued liberally and beneficially.

* Hil. 16 E.1. in Banco 75. Buck. & Rot.73. Heref.

* Hil. 16 E.1. ubi ſupra. 20 s. in Action de Waſte vers Tenant pur vie.

In a real Action if an eſſoin be caſt for the Tenant de ſervice le Roy, and no warrant is brought in at the day, he ſhall not pay the 20 s. &c. for this Act extends not to real Actions; but a petit Cape, or a grand Cape ſhall lie as upon a default, as the caſe ſhall require.

CAP.

CAP. IX.

PUrview eſt enſement, que nul briefe ne iſſer' deſormes de le Chauncerie pur mort de home, denquirer ſi home occiſt auſter per miſadventure, ou ſoy defend', ou en auter maner ſans felony, mes celuy ſoit en priſon jeſque al venue des Juſtices errants, ou aſſign' a gaole deliverie, & ſe miſt en pais devant eux de bien & male. Et ſi ſoit trove per pais que il le fiſt ſoy defend', ou per miſadventure, donques fra les Juſtices aſſavoier au Roy, & le Roy luy en fra ſa grace, ſi luy pleiſt. *W.* 1. *cap.* 11. Purview eſt enſement, que nul appell' ſoit abatue ci legierment come avant ad eſte, mes ſi lappellour counte le fait, lan, le jour, le heure, le temps le Roy, & la ville ou le fait fuiſt fait, & de quel arme il fuiſt occiſe, ſe eſtoia la appell', & jammes ne ſoit lappell' abatus per default de freſh ſuit puis que home ſue dedeins lan & le jour apres le fait.

Before the making of this Statute, for that men were detained long in priſon before they were called to anſwer, which was ever odious in Law, Writs De odio & atia iſſued out of the Chancery for their relief (as it appeared before in the expoſition upon the Statute of Magna Charta) ſpecially where the fact was either by Miſadventure, or ſe defendendo; and therefore this Act reſtraining thoſe Writs, doth preſcribe a courſe for their ſpeedy calling to anſwer in thoſe two caſes. But now the Writ De odio & atia is revived by the Statute of 42 E. 3. c. 1. as it appears in the expoſition upon the 26 Chapter of Magna Charta. See the Mirrot cap. 5. § 5. Magn. Chart. cap. 26, 29. See W. 2. cap. 29. Regiſt. 134.

And where the Statute of Marlebridge had determined, that killing of a man by Miſadventure ſhould not be any offence for the which the delinquent ſhould die, this Statute maketh the killing of a man ſe defend in the ſame degree, where by the Common Law he ſhould have died for it. Marlb. cap. 26. 21 E. 1. 17. b.

Laſtly, where the Statute of Marlebridge took an order for the parties ſpeedy delivery out of priſon in caſe of Miſadventure, this Act provideth for the ſame both in caſe of Miſadventure and of ſe defendendo.

¶ Per miſadventure ou ſoy defendant, ou en auter maner ſans felony.] Of this matter ſomewhat hath been ſaid in the expoſition upon the Statute of Marlbridge: an Indictment or a Verdict that A. killed B. ſe defendendo is not good, but the ſpecial matter muſt be ſet down, to the end the Court may adjudge it to be upon inevitable neceſſity; whereof you ſhall read a notable Record in the Parliament Rolls of 3 R. 2. John Imperials caſe; Note the words here, Sans felony, vide Marlbridge ubi ſupra, and in our Books it is ſaid to be no Felony; and the reaſon is, becauſe neither of them is done felleo animo. Marlbr. cap. 25. 43 Aſſ. p. 3. 3 E. 3 Coron. 302, 354. 15 E. 3. ibid. 116. 2 H. 4. 18. 11 H. 7 23. Fleta l. 1. ca. 31 Rot. Parliam. 3 R. 2 nu. 18. John Imperials caſe.

If a man kill another in his own defence, if he eſcape, &c. the Town ſhall be amerced, as an ancient mark of the Common Law, that made it Felony.

¶ Soit en priſon jeſque al venue des Juſtices errants ou aſſign' a gaole deliverie.] Hereby it appeareth what expedition ought to be uſed for avoiding of long impriſonment, viz. until the next coming of the Juſtices; ſee for this Magna Charta. Magn. Chart. c. 26, & 29.

And here it is to be obſerved that the Law of England is a Law of mercy, Lex Angliæ eſt lex miſericordiæ, for three cauſes:

Firſt, That the innocent ſhall not be worn and waſted by long impriſonment, but (as hereby, and by the Statute of Magna Charta appeareth) ſpeedily come to his Trial.

Secondly, That priſoners for criminal cauſes, when they are brought to their Trial, be humanely dealt withal; for * Severos quidem facit Juſticia, inhumanos non facit. And therefore it is ſaid, Cum autem captus coram juſticiariis producendus fuerit, produci non debet ligatis manibus (quamvis aliquando compedibus propter periculum evaſionis) & hoc ideo, ne videatur coactus ad aliquam purgationem ſuſcipiendam. And Fleta ſaith, Cum autem capti in judicio produci debeant, non producantur armati, ſed ut judicium recepturi, nec ligati, ne videantur reſpondere coacti.

* *Regula.*

Bract. lib.3. f. 137 a. Brit. f.17. b.

Fleta lib.1. ca.31.

Thirdly, The Judge ought to exhort him to anſwer without fear, and that juſtice ſhall be duly adminiſtred to him.

It is to be obſerved, that Juſtices of Gaol delivery may take an Indictment of killing of a man ſe defend', becauſe their authority is general, but Juſtices of Peace cannot take ſuch an Indictment, becauſe their Commiſſion is limited, and it is taken not to be within their Commiſſion.

¶ Et ſi ſoit trove per paiis que il ſoy fiſt ſoy defendend' ou per miſadventure, &c.] This may be two ways, either when he is indicted of Murther or Homicide, and the Jury find it ſe defendendo, or when he is ſpecially indicted, that he killed a man ſe defendendo, whereunto (for ſafeguard of his goods) he may plead Not-guilty; and if he be found guilty ſe defendendo, he forfeiteth his goods, if not guilty, he ſaveth them.

37 H.8. Appeal. B.122. 26 Aſſ.32. 29 Aſſ.23. Stamf. Pl. Cor. 15. Pl. Com. 101. 25 E.3. 42. 29 E.3.94.

Here is implied a Maxim of the Common Law, that the life of a man is of ſo precious regard in Law, that the death of a man cannot be juſtified, as in this caſe the Defendant in the appeal cannot juſtifie the death ſe defendendo, but muſt plead Not-guilty, and as our Act ſpeaketh, Si ſoit trove per paiis, &c. the Jury may find veritatem facti, the truth of the fact.

And herein note a diverſity betwéen an appeal of Death, and an appeal of Mayhem; for in appeal of Mayhem, if the Defendant plead Not-guilty, he cannot give in evidence that it was ſe defendendo, for that he ought to have pleaded it by way of juſtification in bar of the Action.

19 H.6.31. 21 H.6 27. 41 Aſſ.21. 9 E.4.28. 22 H.6. 48.

There is alſo another diverſity betwéen an appeal of Mayhem, or an Action of Treſpaſs for wounding, or mannas of life and member; and an Action of Treſpaſs of Aſſault and Battery for a man in defence, or for the preſervation of his poſſeſſion of lands or goods; for in that caſe he may juſtifie an Aſſault and Battery; but he cannot juſtifie either mayheming, or wounding, or mannas of life and member: and ſo note a diverſity betwéen the defence of his perſon, and the defence of his poſſeſſion or goods.

3 Ed3. Coron. 286 See Marlbr. c.25.

If a man be indicted before the Coroner of the death of a man ſe defendendo, and that he fled for the ſame, he ſhall forfeit his goods, which ſavoureth of the Common Law.

15 E.3.Coron.116

No man can be acceſſary to one that killeth another ſe defendendo.

If a man be indicted for killing of a man by Miſadvanture, or ſe defendendo, and is out-lawed thereupon, he ſhall forfeit no lands, but goods and chattels only.

3 E.3. Coron. 261 44 E.3.44. 2 H.4. 18. Stamf. Pl.Cor. fol.16.

¶ Ferra les Juſtices aſſavoir au Roy, & le Roy luy ferra grace ſil luy pleiſt.] To the King, that is, in the Court of Chancery the Pleas whereof be Coram Domino Rege in Cancellaria; and there the Lord Chancellor, upon the Record certified to him in the Chancery by force of a Writ of Certiorari, ſhall of courſe by force of this Act grant him his pardon without ſpeaking hereof to the King, for that ſpeaking is intended judicially in Court, as hath béen ſaid: And note this Clauſe is general, and extendeth alwel to an Appeal, as to an Indictment, and therefore if a man be appealed of Murther, and it is found that he did it ſe defendendo, or by Miſadventure, the King is to pardon it, for the offender cannot be put to death, which is the end of his ſuit, and an Appeal lieth not for ſuch a killing; otherwiſe it is where the Appellée is to have judgment of death, for there the King cannot pardon it.

¶ Ferra

¶ Ferra grace ſi luy pleiſt.] Are but words of reverence to the King, for the King is obliged Ex merito juſticiæ, to grant the pardon, albeit ſome opinion is to the contrary; otherwiſe the Lord Chancellor could not do it without warrant from the King. 3 E. 3. Coron. 361. ibid. 354. 29 E. 3. 42. 44 E. 3. 44. Stamf. Pl. Cor. 16 b. Kelwey 108.

¶ Purview eſt enſement que nul appeale ſoit abatu cy ligerment come avant ad eſtre.] The miſchief before this branch of this Act, was, that there were ſo many exceptions to abate the appeal, eſpecially being ever allowed learned Councel to defend them; and the miſchief was the greater, for that the appeal being once abated, never any other appeal (in favour of life) could be brought afterward. Brit. fol. 40. b.

At the Common Law, theſe Exceptions were allowed to the Plaintif in the appeal of death:

1. That the Plaintif was not preſent at the mortal blow given, or Felony done; for Glanvill ſaith, Ita ut de morte loquatur ſub viſus ſui teſtimonio mulier auditur accuſare aliquem de morte viri ſui ſi de viſu loquatur. And Bracton ſaith, In omni vero caſu criminali, quæ ſub ſe continet feloniam, in appello debet fieri mentio de anno, de loco, de die, de hora, loqui etiam oportet de viſu & auditu. And the concluſion of the Writ of Appeal then was, Offert ſe diſrationare, &c. ſicut ille, ſeu illa, qui vel quæ præſens fuit, & hoc vidit. Glanv. lib. ult. cap. 3, 4, 5, &c. Bract. lib. 3. fol. 138, &c.

And in another place he ſaith, Non autem habet appellum fœmina, niſi de morte viri ſui inter brachia ſua interfecti, &c. And Britton ſaith, Des fems volons nous que nul ne puiſſe appeale de felony de mort de home, forſque de mort ſon baron tue deins lan & jour enter ſes braches. Lib. 3. fol. 125. Brit. ubi ſupra.

Theſe words, Infra brachia, have this ſignification, that ſhe muſt not only be his wife de jure, but alſo de facto, that is, in poſſeſſion; for the wife in poſſeſſion without lawful matrimony ſhall not have the Appeal, but ſhe muſt be his wife both in right and in poſſeſſion without elopement from her husband, &c. or divorce, &c. Many other exceptions were before this Act, as appeareth by our ancient Authors, to be taken, and another manner of count made before this Act, now this Act hath retained all that was certain, and rejected the reſt, as hereafter ſhall appear. Mirror cap. 2. § 7. 7 E. 4. 15. 14 E. 4. 7. 22 E. 4. 39. 50 E. 3. 15. 28 E. 3. 91. 27 Aſſ. 3. Ubi ſupra.

If the Writ of Appeal doth comprehend the ſpecial matter, viz. that the husband or anceſtor was ſlain ſe defendendo, or by Miſadventure, the Writ of his own ſhewing ſhall abate; for an Appeal, as hath been ſaid, lieth not of ſuch a killing, becauſe the end of the Appeal of death is, that the Appellæ may have judgment of death, viz. death for death.

¶ Purview eſt que nul appeale ſoit abatu, &c.] This clauſe, if it be taken by it ſelf, is general, and literally, as ſome have taken it, extendeth to all Appeals, as of Death, Robbery, Rape, Felony, Mayhem, &c. but Ex antecedentibus & conſequentibus fit optima interpretatio, and all the antecedent clauſes do concern the death of man; nay in this very ſentence theſe words are contained, Et de quel arme il fuit occiſe, which manifeſtly do prove that this Act is only intended of the Appeal of the death of man. And therefore the Appeals of Robbery, Rape, and of other Felony and Mayhem are not within this Act, for the miſchief was, as hath been ſaid, in the caſe of the death of man. See 1. part of the Inſtit. Sect. 500, 501. Brit. fol. 45, 46. 22 Aſſ. p. 97. 7 H. 4. 38. Stamf. Pl. Cor. 62.

¶ Lappellour counte le fait, lan, le jour, le heure, le temps le Roy, & la ville ou le fait fuiſt fait, & de quel arme il fuit occiſe.] By this Act the count of the Appellant muſt comprehend theſe ſeven things: 1. The fact, 2. the year, 3. the day, 4. the hour, 5. the time of the King, 6. the Town where the fact was done, and laſtly, with what weapon. See the Statute of 4 E. 1. de offic. Coronatoris.

¶ Le

Brit. fol. 7. lib. 5. fol. 120, 122. Longs case. See hereafter Heydons case.

¶ Le fait.] The fact: Herein must be set forth, first, whether it was by wound, or without wound; if by wound, 4. things are necessary to be rehearsed in the setting out of the fact, besides the circumstances mentioned in the Act, viz. 1. In what part of the body the wound was: 2. of what length and depth the wound was, where the wound is of such a quality, so as it may appear to the Court that the wound was mortal; but if his arm were cut off, or the like, there the length or depth cannot be shewed: 3. that the party wounded died of that wound; and lastly, that it may appear that he died of that wound within the year and day after the giving of the wound; If without wound, either by weapon or without; If by weapon, as by a blow or bruising, or by putting up a hot Iron in the fundament or the like, then as many of the circumstances before mentioned in the declaration of the fact as do agree therewith, and the rest of the circumstances required by the Act are to be set forth: if without weapon, as by poysoning, drowning, burning, suffocating, strangling, or the like, the manner of the fact must be set forth, and so many of the circumstances required by the Act as agree therewith, namely, all the circumstances, saving with what weapon the Felony was done, because no weapon was used in committing of this Felony: but notwithstanding, this Act extendeth to all Homicides, though they were not done with any weapon.

¶ Lan.] That is, the year of the Raign of the King.

Bract. li. 5. fo. 359.

¶ Le jour.] The day here is taken for the natural day, comprehending both the Solare day, and the night also, containing 24 hours, and therefore if it be done in the night, it is said In nocte ejusdem diei.

Lib. 4. fol. 41, 42. Heydons case. 22 E. 3. Coron. 244 11 H. 4. 12. Pl. Com. 401.

If a man be feloniously strucken the 10 day of December, &c. whereof he died the 10 day of January, he cannot alleage the killing the 10 day of December when the stroke was, but he may alleage the killing to be the day that he died; but the surest conclusion is; and so he killed him in manner and form aforesaid: for though to some purpose the death hath relation to the blow, yet this relation being a fiction in Law maketh not the Felony to be then committed.

¶ Le heure.] Hora constat ex 40 momentis. The hour, as for example to say, 10 die Decembris, viz. in hora decima in nocte ejusdem diei.

Bract. ubi supra. Heydons case, ubi supra. Lib. 9. fol. 62. Seign' Zanchars case.

There are divers diversities betwæn the alleaging of the hour, and the day, or year; 1. In the count upon the Appeal one may say, Circa horam 10 ante meridiem, &c. or, Inter horam decimam & undecimam ante meridiem; but the like cannot be done either of day, year, or part of the body: as the fact cannot be alleaged to be done circa 10 diem Decembris, &c. or, inter decimum & 11 diem Decembris, or circa annum sextum Domini Regis nunc, or inter sextum & septimum dicti Domini Regis nunc, or alleage the wound to be given circa or circiter pectus: and the reason of this diversity is, that it is more difficult to alleage the true hour, then the true day or year; and yet the Plaintif in the Appeal is not bound to prove in evidence, neither the precise hour, nor the very day that he alleageth in his count: another diversity is betwæn the Appeal and the Indictment, for in the Indictment the hour nèds not to be alleaged.

And although the day be alleaged, yet if the Jury find him guilty at another day, the verdict is good, but then in the verdict it is good to set down on what day it was done, in respect of the relation of the Felony; and the same Law is in the case of an Indictment.

Pasch. 32 Eliz. resolved by the Justices.

At the Sessions of the peace holden for the County of Norff. one Syer was indicted of Burglary, 1 Augusti, 31 Eliz. and upon not guilty pleaded, it fell out in evidence that the Burglary was done 1 die Septembris in eodem anno, so as primo Augusti there was no Burglary done, and thereupon he was found not guilty, and afterwards he was indicted again 1 Septembris, &c. and it was resolved

ſolved by Wray and Periam Juſtices of Aſſiſe, and by the greateſt part of the Judges, that he ought not to be tried again, for he might have been found guilty upon the firſt indictment, for the day is not material; but it is neceſſary for the Jury in that caſe to ſet down the day, and ſo in caſe of appeal.

¶ Le temps le Roy.] The year being already named, it might ſeem that the time of the King, which is the year of the raign of the King, is needleſs, but it is here again added, to the end, that not only the year ſhall be alledged wherein the blow, &c. was given, but alſo the year when the death enſued thereupon, to the end that it may appear, that he died of that blow, &c. within the year and day; and whenſoever the year of the King ought to be alledged, it draweth with it time and place, that is, the day and time, when and where the death enſued. Vide Machallis Caſe here following, and Heydons Caſe, and Longs Caſe ubi ſupra.

¶ La ville.] This muſt be underſtood, if the murder or homicide were done in a Town, but if it were done in a place known out of any Town, then may it be alledged in that place known in ſuch a County.

And ſo in a City it may be alledged in a Pariſh, &c. becauſe ſuch a Pariſh is in lieu of a Town.

But in the Country if a Pariſh contain divers Towns, the murder or homicide cannot be alledged in ſuch a Pariſh, for that this Statute requireth, that the fact be alledged in a Town.

¶ Et de quel arme fuit occiſe.] With what weapon the wound was given: And albeit one certain weapon muſt be alledged in the Count, yet upon the evidence, if it be proved that the wound were given with any other weapon, the offender ſhall be found guilty; as if it be alledged in the indictment that the wound was given with a Dagger, and it is proved in evidence, that it was given with a Sword, Rapier, Hook, Hatchet, Bill, or any like weapon with which a wound may be made; for it were unreaſonable to drive the Plaintif in the appeal to prove the ſelf ſame particular weapons whereof many times he cannot have notice; But upon ſuch a count, or an indictment in evidence it cannot be proved, that the party was poiſoned, or drowned, or burnt, ſuffocated or ſtrangled or the like, where no weapon at all was uſed; for that evidence doth not maintain the count in the appeal or the indictment, becauſe it is murder or homicide of another kind, and not under the ſame claſſis that is alledged in the count or indictment, and thereof the Plaintif by ſuch as viewed the body may have notice. Lib. fol. Machallis Caſe.

And albeit this Statute requireth, that it be alledged in the count of the appeal, with what weapon he was killed, it is to be underſtood in caſe where he is killed with a weapon, for albeit (as hath been ſaid) there was no weapon at all, as in caſe of poiſoning, drowning, &c. yet doth the appeal lie for ſuch a murder or homicide; and the weapon is in this Act mentioned for example.

¶ Pur default de freſh ſute.] At the Common Law if the Plaintif in the appeal of death had not made freſh ſuit, he ſhould not have maintained his appeal: for freſh ſuit recens inſecutio, that is, a ſpeedy and continual purſuit of the felon for his apprehenſion and conviction, and that is for two ſeveral purpoſes, one to have reſtitution of his goods, as in the appeal of robbery and the like, and the other for the maintenance of the appeal it ſelf, as here in the caſe of death, where no reſtitution of goods is to be had, but puniſhment of the offendor by death, and that freſh ſuit which the Plaintif in the appeal of death is to make, is here intended. What this freſh ſuit was at the Common Law doth notably appear by Bracton, Qui appellare voluerit & bene ſequi, debet ille cui injuriatum erit, ſtatim quam cito poterit hutefium levare, & cum hutefio ire ad villas vicinas & propinquiores, & ibi manifeſtare ſcelera & injurias perpetratas, & continuo accedere debet ad ſervientes Domini Regis, ſi inveniri poſſint Bract. l. 3. fol. 139. Brit. fol. 43. Acc'.

poſſint, & deinde ad coronatores, & ſic inde ſine intervallo ad proximum Comitatum, &c.

¶ Deins l'an & le jour.] Here the year is to be accounted for the whole year according to the Kalender, and not according to 28 days to the month, and the day is intended of the natural day, and by this Act if the appeal of death be commence within the year and the day, it is ſufficient freſh ſuit, but after the year and day the appeal of death cannot be commenced.

27 E.3.83. 32 E.3 age 57. 45 E.3.21 13 Aſſ.10. 21 Aſſ. 24. 21 E.3.23. 11 H.4.94. 17 E.4 2.b. 27 H. 8.11.a. Stamf. Pl. Cor. fol. 60. c. d.

If the next heir of the dead be within age, he muſt bring his appeal of death within the year and the day according to this Act, but it hath been holden in many Books that the parol ſhould demur until his full age; and the reaſon yielded therefore is, that the Defendant cannot wage battel, &c. But it hath been often adjudged and approved by continual experience of latter times that it ſhall proceed during his minority, and the reaſon of failer of Battel is of no force, for that a man above ſeventy years of age ſhall have an appeal, &c. and yet the Defendant ſhall be ouſted of battel, and ſo if the Plaintif in an appeal be mayhemed, &c. the Defendant ſhall be ouſted of battel, and yet the appeal ſhall proceed.

15 E.2. Cor.385.

¶ Apres le fait.] That is, after the felony by homicide committed.

Stanf. Pl. Cor. fol. 63. a.

If a man be mortally wounded, &c. the firſt day of May, and thereof dieth the firſt day of July, ſome do hold that the appeal is to be brought within the year and day after the blow given, for that the death enſuing hath relation to it, and that is the cauſe of the death, and the offender did nothing the day of the death.

See the fourth part of the Inſt. Cap. Juſtices in Eir, and all the ancient Authors quoted there.

Here the Law hath made a limitation in the appeal of death: By the ancient Law Juſtices in Eir did ride from ſeven year to ſeven year, and before them no plea of the Crown could be inquired of for any offence committed before the laſt former Eir: So the Juſtices in Eir in the Kings foreſts may hold a Juſtice ſeat from three year to three year. But no offence in the foreſt can be at the Juſtice ſeat inquired of before the laſt former Juſtice ſeat.

See the fourth part of the Inſt. Cap. the Courts of the Foreſt.

* Heydons Caſe ubi ſupra.

* But the year and the day ſhall be accounted from the death, for before that time no felony was committed, and thus it hath been often reſolved and adjudged, and the reaſon abovelaid grounded upon relation, which is a fiction in Law, holdeth not in this caſe.

26 Aſſ. p.52.

If an appeal of murder be brought, and hanging the ſuit, and after the year and day is run out, one become acceſſary to the appellee, the Plaintif ſhall have an appeal againſt him after the year and day paſt after the death, but it muſt be brought within the year and day after this new felony as acceſſary, for that in this caſe [apres le fait] is underſtood after this new felony as acceſſary done.

Thus much ſhall ſuffice for the expoſition of this Law, more ſhall be ſaid concerning appeals in the treatiſe of Pleas of the Crown, whereunto it properly belongeth.

See the Statute of 3 H.7. cap.1.

CAP.

CAP. X.

COme il ſoit contenue en leſtatute le Roy que ore eſt *W.* 1. *cap.* 43. que deux parceners, ou deux queux teigne en common, ne puiſſent fourcher per eſſoine, del heure que ils ount un foits apparus en courte: Purview eſt, que meſme ceo ſoit tenus & garde per la ou home & ſa feme ſont enpledes en la court le Roy.

The miſchief before this Statute was, that notwithſtanding the Statute of W. 1. the husband and wife (unleſs they were jointly enfeoffed) might Fourch by eſſoine, for that Statute extended but to Parceners and Jointenants: See in the expoſition upon the Statute of W. 1. cap. 43. 39 E. 3. 29.

This Statute extendeth to common eſſoines, and not to eſſoine de ſervice le Roy. 13 E. 3. eſſoine 5. 3 E. 3. 29. 12 H. 4. 3.

Alſo this Statute extendeth only to real Actions, and therefore in perſonal Actions baron and feme may Fourch by eſſoin. 38 E. 3. 18. 39 E. 3. 29. 12 H. 4. 1.

Moreover this Act extendeth to eſſoines after appearance, that is, that all the Tenants have appeared, and therefore baron and feme may Fourch by eſſoine before appearance notwithſtanding this Act; hereby it appeareth that eſſoines, at the firſt allowed upon juſt cauſe, were afterwards uſed meerly for delay. 22 E. 3. 5. b. & 14. 2. 2 E. 4. 1.

CAP. XI.

PUrview eſt enſement, que ſi home bailla en la Citie de Londres ſon tenement a terme des ans, & celuy a que le franktenement eſt, ſe face empled' per colluſion, & face default apres default, ou veigne en court, & la voile render pur faire le termour perdre ſon terme, & le demandant eit querele, iſſint que le termour puiſſe aver recover' per briefe de covenant, le Maire & les Bailifes puiſſent enquirer per bone viſne en la preſence del termour, & del demandant, le quel le demandant moveſt ſon plee per bon droit quel avoit, ou per colluſion & per fraude pur faire le termour perdre ſon terme. Et ſi trove ſoit per enqueſt, que le demandant moveſt ſon plee per bon droit quil avoit, cy ſoit le judgement performe maintenant. Et ſi trove ſoit per enqueſt, que il luy empleda per fraud' pur toller le termour ſon terme, ci demurge le termour en ſon terme, & lexecution del judgement pur le demandant ſoit ſuſpendus, jeſques apres le terme paſſe. Et en meſme le maner ſoit fait de equitie en tiel caſe devant Juſtices, ſi le termour le challenge devant judgement rendus.

The general miſchief before this Statute was, that the Tenant for terme of years was ſubject to the pleaſure of him that had the freehold, for if he had ſuffered a recovery in a real Action, though in truth it were by colluſion (ſuch credit the Common Law gave to recoveries in real Actions) the intereſt of the termour was overthrown, becauſe he could not falſifie the recovery of the freehold,

for that by the Common Law none could falſifie a recovery of a freehold, but he that had a freehold. This Act provideth a twofold remedy: 1. for the City of London by Writ in nature of a Commiſſion to the Mayor and Bailifes grounded upon this Statute, &c. 2. generally by receit before judgment, which Act Fleta doth render in theſe words, Conſtitutum eſt, quod ſi quis in hujuſmodi locis (viz. Civitatibus & Burgis privilegiatis) tenementum dimiſit ad terminum annorum & ille cujus liberum eſt tenementum permiſerit ſe implacitari per colluſionem, & defaltam fecerit poſt defaltam, (and ſo to the end) Vide Fleta.

Fleta lib.2.ca.48.

Another miſchief was, that after ſuch a recovery had by colluſion, and the leſſee ouſted thereupon, he ſhould have his Action of Covenant (at the leaſt upon this word dimiſit, &c.) againſt the leſſor, and ſo the termour loſt his poſſeſſion, and was driven to his Action, which was a cauſe of multiplication of ſuits, Et boni legiſlatoris eſt lites dirimere.

¶ Bailla a ſon tenant a terme des ans.] At the making of this Statute there was neither Tenant by Statute Merchant, nor Staple, nor Elegit, for theſe executions againſt lands were given by Acts of Parliament made afterwards, and yet having but Chattels, they could not falſifie (as hath been ſaid) no more then Tenant for years. And though in our books there be a Conceſſum that Tenant by Statute Merchant might falſifie, yet the reaſon yielded there doth weaken the authority thereof, for there they give the reaſon, for that he was not made party, which he could not be in the Præcipe, he having but a chattel: And latter authorities are againſt it, and a judgment in Parliament alſo, yet being in equal miſchief, though they be created ſince our Statute, yet are they within the remedy of this Act, for upon the matter they are but termours. But otherwiſe it is holden in caſe of a Gardein in Chivalry, that he is not within this Act, for he cometh not in by any contract between the parties, as leſſee for years, and Tenant by Statute Merchant, Staple, or Elegit originally do, but meerly by Act in Law.

19 E.3. Aſſ.82. 10 E.3.46. 22 E.3. 8. 16 E.3. receit 100. 7 H.4.12.a. & b.30 H.6.Fauxer de recovery 9. 30 H.6.16. 9 E.4. 38. 1 H.7.9. 7 H.7.12. Pl. Com. 83. Kelwey 108. F.N.B. 198. Lib.6. fol.135. Bredimans Caſe. Lib.9.85. Aſcoughs Caſe. 21 H.8.cap.15. 24 E.3.27. 7 H.4. 12. Kelwey 128.

This termour for years intended by this Law muſt be by Deed by the expreſs words of the body of this Act, Iſſint que le termour eit recoverie per briefe de covenant; which muſt be by Deed, as in thoſe days few were made otherwiſe, and ſo it was reſolved by the Court of Common pleas, and this Act requires a Deed, leſt it might be uſed for delay. But now by the Statute of 21 H.8. cap. 15. Tenant for years by Deed or without Deed may falſifie, and ſo by that Law may Tenant by Statute Merchant, Staple, or Elegit do, which Act being a beneficial Law is conſtrued favourably.

33 H.6.41.b. Priſot. 9 E.4.30. 19 E.3. receit 15. 9 Eliz. Dier. Britton 93.b. Tr. 3 Jacobi in Communi Banco. 21 H.8.cap.15. Lib.11.fo.33.b. Powlters caſe.

¶ En la Citie de Londres.] That is in the Court of the Huſtings, the greateſt and higheſt Court in London; it is called Huſtingum or Huſtings of two Saxon words, viz. Huſ. i. domus, & in . i. placitum, ſo Huſtingum is as much to ſay, as domus placitorum, or forum contentioſum, where cauſes are pleaded; and other Cities have the like Court, and ſo called, as York, Lincoln, Wincheſter, &c.

Here the City of London is named, but it appeareth by that which hath been ſaid out of Fleta, that this Act extends to ſuch Cities and Boroughs priviledged, that is, ſuch as have ſuch priviledge to hold plea as London hath.

Fleta ubi ſupra.

But London was named for excellency, for that in thoſe days it excelled in freedom and fulneſs of Trade and Merchandizing (with order, but without monopolizing) like the good Bayliffes of the Kingdom, exporting our native, neceſſary, and real commodities, and importing profitable and neceſſary commodities. And in thoſe days the exportation far exceeded the importation, whereby the Realm flouriſhed in all opulency, and in multitude of Ships, Merchants, and Mariners, as well in war as in peace, inſomuch as taking one example that was next my hand, in time when England was deeply ingaged in a long and chargeable war, the native Commodities exported (as taking one year for example) amounted to the value of Two hundred and twelve thouſand,

28 E.3. in Scaccar'.

thouſand, three hundred thirty and eight pounds, the Ounce of Silver then being xx d. and the goods imported to the ſum of Thirty and eight thouſand fourſcore pounds and nine pence; whereby it may be concluded what money was brought into the Realm, and how much the exportation exceeded the importation.

And to the end, that Merchants and others might enjoy the houſes which they held for years, for the advancement of Trade and Traffique, London was particularly named.

¶ Et celuy a que franktenement eſt.] Theſe words are ſtronger, then if the Statute had ſaid Tenant, and yet the vouchée is taken within this, and the other branch alſo, as in the expoſition upon the ſecond branch ſhall be ſhewed.

¶ Se face implead per colluſion.] But the Termor that is to be received by the ſecond branch, which referreth to this, muſt not only alledge the Colluſion, but alledge matter for the ſafeguard of his intereſt, as there ſhall be ſhewed.

¶ Face default ou voille render.] Faint pleader is not taken to be within this Act: ſée the laſt clauſe of this Act.

¶ Et le demandant eit querel'.] That is, if the Demandant have execution, and the Termor ouſted, ſo as he may have his Action of Covenant.

¶ Le Maire & les bailifes puiſſent inquirer, &c.] And this enquiry muſt be done by Writ in nature of a Commiſſion grounded upon this Act, directed to the Maior and Bailifes, reciting the Leaſe, the bringing of the Action by colluſion, and this Statute, and concluding thus, Ideo vobis mandamus, quod convocatis partibus coram vobis, & inquiſita ſuper hoc plenius veritate, eidem A. (that is, the Termor) de prædict' meſſuagio terminum ſuum quod juſtum fuerit, ſecundum formam ſtatuti prædict' habere faciatis. And ſo regularly, when any like authority is generally given by any Act to do juſtice, it ought to be done by force of the Kings Writ grounded upon the Act, and the Writ grounded upon this Act is called, Breve de inquirendo veritatem ſuper ſtatutum Gloc'. Regiſt. 179. a.

¶ Execution del judgement pur le demandant ſoit ſuſpendus.] So as the Leſſor and his heirs in the mean time having the reverſion, notwithſtanding the Judgment, ſhall have the Rent, and ſhall puniſh Waſte, &c. 17 E. 3. fol. 29. Kelw. 108. b.

¶ En meſme le manner ſoit fait de equitie in tiel caſe devant Juſtices, ſi le termour ceo challenge devant judgement.] This Termor muſt be by force of a leaſe by Déed, as it was reſolved Trinit. 3. Jacobi ubi ſupra. 4 E. 2. Receit 159. 10 E. 3. 45. 21 E. 3. 1. 17 E. 3. 29.

This is the firſt Act that gave receit in any caſe, and by force of this Act the Termor before Judgment may pray to be received to defend the right and intereſt of his term upon the Default, or Render, or Nient dedire of the Tenant, but not upon Faint pleader: and Tenant by Statute Merchant, Staple, and Elegit are taken within this branch, as well as within the former branch of this Act. 22 E. 3. 8. 19 E. 3. Receit 112. 9 E. 4. 30. 7 H. 7. 11, 12. 21 H. 7. 25. 14 H. 8. 4. 45 E. 3. 7. 27 H. 8. 7. 19 Eliz. Dier 263. b.

And it is not ſufficient for the Termor to alledge Colluſion, but he muſt alſo traverſe the point of the Demandants Writ, or plead ſome bar to his title; for this Law that giveth him to be received, enableth him to plead for the ſafeguard of his intereſt.

The Termor muſt be received before Judgment, and albeit he doth defend his term, he ſhall not arreſt Judgment, but ſuſpend execution during the term; for theſe words, En meſme le manner, maketh this branch in equipage with the former. 19 E. 3. Receit 15.

14 H.8.4. 27 H.8.7. If the Tenant vouch, and the Vouchée enter into Warranty, and after make default, the Termor ſhall be received; for albeit the firſt branch (whereunto this doth refer) is when he that hath the franktenement make default, yet in as much as the Vouchée is Tenant in Law (this Law being beneficial for ſafeguard of the intereſt of the Termor) he ſhall be received, for it is within the ſame miſchief.

CAP. XII.

PUrview eſt enſement, que ſi home ſoit implede de tenement en meſme la citie, & vouch' forrein' a garrantie, quel veigne en la chancery & eit briefe de ſommons ſon garrantor a certe jour devant Juſtices du banke, & un auter briefe au Maire & as Bailifes, que ils ſurceſſent en le parolle que eſt devant eux per briefe, jeſques a tant que le paroll' de le garrantee ſerra termine devant Juſtices du bank: Et quant le parol de la garrant' ſerra termine devant Juſtices du bank, donques ſerra dit au garrant' que il veigne en la Citie de Londres a reſpoign' de chiefe plee. Et le demandant per ſa ſuit eit brief de Juſtices de bank, au Maire & as bailifes, que ils voilent avant en le plee. Et ſi le demandant recover vers le tenant, veigne le tenant as Juſtices de bank, & eit briefe au Maire & as bailifes, que ſi le tenant eit la terre perdus, que ils facient extende la terre, & retorne lextent en bank a certe jour, & apres ſoit maunde au viſcount du pais ou le garrantee fuiſt ſummons, que il luy face aver de la terre le garrantor a le value. *Vide Articul' Glouc' correct' Anno 9 Edw. 2.*

Regiſt. 2. b. 14 H. 4. 25. See how this is corrected by the Statute of 9 E. 2. intitled, *Articulos Statuti Gloc' correctos, &c.*

The miſchief at the Common Law, when the Tenant did vouch one to Warranty, and prayed that the Vouchée might be ſummoned in a forrein County, was the great delay that the Demandant had thereby, and ſpecially in London, for that in London the Plea could not be removed neither by Tolt nor Pone; but the Plea was put without day, and the Record removed by the Kings Writ into the Court of Common Pleas, &c. and ſome did hold, that at the Common Law the inferiour Court was put out of juriſdiction: but now by this Statute, and that of 9 E. 2. the Demandant ſhall ſue out of the Chancery a Writ of Summons ad warrantizandum againſt the Vouchée, returnable before the Juſtices of the Court of Common pleas at a certain day, and another Writ out of the Chancery, called a Recordare to the Maior and Bailifes to remove the Record before the ſame Juſtices at the ſame day, and thereupon the Maior and Bailifes, being required thereunto by that Writ, to prefix the day of the return of that Writ to the parties to appear at the return of that Writ; and when the Court of Common pleas hath determined of the Warranty, then the Vouchée ſhall be commanded to go into London to anſwer to the chief Plea, and by a judicial Writ the Court of Common Pleas ſhall remand the Record, requiring them to proceed in the ſame Plea; and ſo forth, as it is contained in both theſe Acts.

Fleta li. 2. ca. 48. Regiſt. 2. 7. 8 Aſſ. 22. 15 E. 3. Record 37. 49 E. 3. 9.

¶ En la citie.] That is, the City of London ſpecially named for the cauſe aforeſaid, but extendeth by equity to all other priviledged places where a forrein Voucher is made, as to Cheſter, Durham, Salop, &c.

Ancient

Ancient demeſne is (as ſome do hold) within this Statute, becauſe the Freehold is in the Tenants, and is within theſe words (Soit implead de tenement) but otherwiſe it is of a Tenant by copy Roll in a Court Baron, becauſe he hath no franktenement.

3 Aſſ.p.10. 10 E.3. 24. Record 13. 11 H.4 27,28. 14 H.4.25. 18 H. 8.1. 5 E.6. Dier 69. 12 E.3. Voucher 115. 21 E 3. ibid. 122. 13 E.1. ibid.269. 35 E.3. ibid.316. 8 E 4. 10. 34 H.6.42. 13 E.4. Cauſe de remover plea 23. Temps E.1. Gar' de Chartres 23. 1 H.7.10. 27 H.8. 12. Paſch. 15 H.8. Rot.343. in Communi Banco.

¶ Vouch forrein' a garrantie.] De forinſecis vocatis ad warrantiam, that is, when one is vouched, and the Tenant prayeth that the Vouchée may be ſummoned in a forrein County.

[a] This Act being a beneficial Law for furtherance of juſtice, and for ouſting of delay, is taken in this point alſo by equity, not only to forrein pleas in real actions, but alſo to pleas although they be not forrein, yet for default of power to proceed, the ſame ſhall be removed ut ſupra, and remanded ut ſupra: as if in an Action Aunceſtrell the Tenant plead baſtardy in the Demandant, or in a Writ of Dower the Tenant plead unques accouple in loyal matrimony, neither [b] the Court in London, or any like inferiour Court cannot award a Writ to the Biſhop for trial thereof, for Nullus alius præter regem poſſit Epiſcopo demandare inquiſitionem faciendam. And another treating of the Plea of Ne unques accouple, in bar of a Writ of Dower, ſaith, Ac ſi alius quam Rex demandaret Epiſcopo quod inde inquireretur, Epiſcopus alterius mandatum quam Regis non tenetur obtemperare; and herewith agree our Books in all ſucceſſions of Ages.

a 46 E.3. Voucher 223. 3 H.4.12.a. 32 H.6.26. 34 H. 6.42. F.N.B.6.b.

b Bract.l.3. f.106. Brit.fol.248.b. Fleta li.5. ca.24.

And therefore if ſuch Pleas be pleaded in London, or ſuch other inferiour Courts, the Record ſhall be removed, and after a Writ to the Biſhop, and Certificate made by the Biſhop, the Record ſhall be remanded: [c] and it appeareth that this Act doth extend to real Actions wherein Voucher lieth, and not to perſonal Actions; [d] and leſt that forrein Vouchers ſhould be uſed for delay, they muſt ſhew a Charter, &c. comprehending Warranty to the Court.

8 E. 3.59. 14 E.3. Trials 63. 24 E.3. 33,42. 40 E.3.2. 44 E. 3.28. 35 H. 6.30. 36 H. 6.33. 37 H.6.30. 14 H. 7.21. 21 H.7.34, 35. 14 H.4.26.b.

¶ Veigne en la Chancerie & eit briefe de ſummons, &c.] [e] This is corrected and altred by the ſaid Article upon this Statute in An. 9 E.2. for by that Statute the Maior and Bailifes ſhall adjourn the parties before the Juſtices of the Bench at a certain day, and ſhall ſend the Record thither, Et le Juſtices face ſummon le garrantee devant eux & pledent le garrantie, and hereby the Juſtices of the Bench ſhall award the Summons ad auxiliandum, &c. and [f] not fetch it out of the Chancery: and by the ſaid Act of 9 E.2. it is provided, that if at the day given in banke the Tenant make default, a Petit cape ſhall be awarded to the Maior and Bailifes, to give Judgment upon that default, if it cannot be ſaved, &c.

Judgement cite per Hankford.

c 3 H.4.fol.12. 32 H.6.26.

d 35 E.3. Voucher 316.

e 9 E.2. ubi ſupra.

f See a notable caſe, Paſch. 31 E.3 fol.31. a. & b. in libro meo.

In a Præcipe in the Huſtings in London, the Tenant voucheth one in London, and other forrein Vouchées in the County of Norfolk, &c. In this caſe as well the Voucher within London as the forrein Vouchers ſhall be removed, for although the words of this Act be, Vouch forrein' a garrantie, yet becauſe Proceſſe muſt be made againſt all the Vouchées at one time, and if Proceſſe ſhould be made by the Court of Common pleas only againſt the forrein Vouchées, although they came in, they ſhould not warrant, nor anſwer without the others before Proceſs were determined againſt them in London; ſo as neceſſity requireth, that Proceſs ſhould be made againſt all at one time, and that ought to be done in the more worthy Court, and when the Warranty is determined in the Court of Common pleas, all ſhall be remanded.

49 E.3. 9 & 10. 50 E.3. Voucher 217. 29 Aſſ.48.

¶ Que le parol del garrantie ſerra termine devant les Juſtices del banke.] This is the power given to the Juſtices of the Court of Commen pleas, and this Act is in nature of a Commiſſion to them, therefore it is good to be ſeen what is within their Commiſſion, the words of the ſaid Writ of Recordare are, Ut terminata warrantia illa coram præfat' Juſtic' eadem recordum & proceſs' vobis remittamus, &c.

18 E.3.1. 49 E.3. 9,10. Paſch. 15 H.8. Rot.343. in communi banc. 5 E.6. Dier 69.

Kelw. 109. 13 E. 3. Vouch. 18. 32 E. 3. Ibid. 101. 50 E. 3. Ibid. 217. 41 E. 3. 31. 42 E. 3. 1. 49 E. 3. Vouch. 223. 20 E. 3. Eſſoin 28. 8 Aſſ. 22. 16 E. 3. Eſſoin 167. 28 H. 8. 1.

If the Tenant vouch a forreiner to Warranty, and the Record is removed into the Court of Common pleas to determine the Warranty, the Vouchée may vouch over in a forrein County, and that Vouchée may vouch over, and if the Vouchée make default, the Court may make Proceſs againſt him, &c. Quia quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur; but none of the Vouchées can plead in chief, but that muſt be pleaded in the inferiour Court, for that is not within the ſaid Commiſſion given by this Act. But if the Demandant in Banke appear not, the Court may award a Non-ſuit as incident, and ſo the Tenant in Banke may be eſſoined.

In Dower in the Huſtings in London againſt the husband and wife, who vouch a forreiner to Warranty, whereupon the plea is adjorned into the Common pleas at a certain day, at which day the husband and wife ſued out a Writ againſt the Vouchée; whereupon the Vouchée appeared, and the baron made default, and the wife prayed to be received upon his default; and by the rule of the Court ſhe was received, and that it was within their Commiſſion, for that the default was made in this Court, whereupon the land was to be loſt if ſhe were not received; for it is a Maxim in Law, Neceſſitas ſub lege non continetur, quia quod alias non eſt licitum, neceſſitas facit licitum, but yet others are of another opinion.

18 E. 3. 1. a. b. tit. Receit 106. 31 E. 3. Receit 125.

Bract. lib. 2. fo. 93. 31 E. 3. Receit 125.

¶ Un auter briefe al Maire & Bailifes que il ſucceſs', &c.] That is, the ſaid Writ of Recordare, whereby they are commanded quod recordum & proceſſum ejuſdem loquelæ cum omnibus ea tangentibus Juſticiariis noſtris de banco ſub ſigillo veſtro mittatis, &c. which to them is a Superſedeas in Law.

Regiſt. fol. 7.

¶ Et le demandant per ſa ſute eit briefe des Juſtices.] That is a Procedendo in loquela directed to the Maior, &c to proceed, which you may read in the Judicial Regiſter.

Regiſt. judic. fol. 73.

¶ Que ils facient extender la terre, &c.] For the better performance of this Act, the Tenant muſt ſurmiſe, that Execution is ſued againſt him, and pray a Venire fac' recordum.

By force of this Act the Juſtices of the Common pleas upon that Record ſhall award a Writ of Extendi & appreciari fac', to the Maior and Bailifes, which Writs grounded upon this Act are ſufficient expoſitions of the ſame, and will reſolve many doubts that may ariſe hereupon.

Hil. 24 E. 3. in com' banc'. Raſt. livre de Entres. 240, 354. 615. Coke Pl. fo. 176. Note here the forrein Voucher.

A notable Record you may read in libro G. in the Chamber of the Guild-hall in London, fol. 7. in Anno 24 E. 3. whereby it appeareth that Thomas Drokenſfield and Emme his wife brought a Writ of Dower in the Huſtings, againſt Alice Colwell, to be indowed of a houſe in London, of the indowment of R. de Envil late her baron; the Tenant appeared, and vouched to Warranty Thomas ſon and heir of John de Colwell, and prayed that he might be ſummoned in the County of Middleſex, whereupon the Record ſaith, Dies datus eſt partibus coram Juſticiariis Domini Regis de Banco apud Weſtm' in craſtino Purificationis, ut tunc fiat ibi juxta formam Artic' Gloc', pro Civibus London inde correcti.

And there it appeareth that the Juſtices of the Common pleas awarded the ſummons againſt the vouchée, who appeared upon the grand Cape, and entred into the warranty, Ideo loquela præd' remittatur in Huſting' coram Majore & Vicecom', ut ibi ulterius fiat, prout hactenus de jure fieri conſuevit: whereupon a reſummons was awarded in the Huſtings againſt Alice the Tenant, & idem dies given to the Demandant, at which day the Tenant appeared and the vouchée alſo, and rendred Dower, and thereupon judgment was given againſt Alice the Tenant, Et dictum eſt per Curiam dictæ Aliciæ, quod ſequatur in Curia Domini Regis coram Juſticiariis de Banco ad habendum de terra dict' Thomæ de Colewell tenentis per warrantiam in Comitat' Midd', ſi ſibi viderit expedire. And after the Tenant came into the Court of Common pleas, and prayed her remedy againſt

the

the vouchée ſurmiſing that execution was ſued againſt her, and a third part of the houſe delivered to the Demandant, whereupon a Writ iſſued out of the Court of Common Pleas, Ad venire faciendum recordum coram Juſtic' de Banco: by which it appeareth that in the Huſtings by the forrein Voucher, Placitum prædict. ſine die remanſit, & partes prædict. ſecundum formam ſtatuti coram præfatis Juſticiariis noſtris apud Weſtm', ut eadem Alicia verſus prædict. hæredem de warrantia ſua habenda ſecundum formam ejuſdem Statuti proſequi poſſit, adjornat' fuiſſent, &c.

I have ſet forth this Record the more at large, for that it ſetteth forth this Statute, and that of 9. E. 2. in their lively colours, ſo as a man may ſée that (as it were) acted, which by thoſe Acts is required. And I know that many have followed that Precedent; which is worthy to be ſéen at large: But he that is deſirous to read this whole Chapter in a ſmall Map, let him read Fleta who ſaith, De warrantis vocatis extra juriſdictionem hujuſmodi locorum privilegiatorum (viz. Civitat & Burgorum, &c.). taliter ſtatutum eſt, quod ſi implacitati per breve de recto aliquem forinſecum vocarunt ad warrantum, tunc perquirant ſibi de Cancellaria duo brevia, viz. ad ſummon' warrant' coram Juſtic' de Banco ad certum diem, & aliud ballivis Civitatis, quod placitum illud ſuperſedeant, donec de placito warrantiæ fuerit terminat', quando terminat', dicatur warrantis, quod adeant Civitatem & reſpondeant de placito principali, & habeant brevia judicialia ad ballivos quod tenementa petita extendantur ſi fuerint amiſſa, & retornentur extentæ ad certum diem coram Juſtic', per quod mandetur Vicecom' quod faciat tenentibus habere ad valenciam eſchambium. And it is worthy the obſervation that at the Common Law in caſe of a forrein voucher in the Huſtings of London, the plea was adjorned before the Juſtices in Eyre, when they came to the Tower of London; for the Court of the Huſtings London was not derived out of the Juriſdiction of the Court of Common pleas, as other Courts that have power to hold pleas real are, and therefore the adjornment was (as hath béen ſaid) before the Juſtices in Eyre: For the antiquity of this Court of Huſtings amongſt the Laws of S. Edward, you ſhall read, Debet enim in London, quæ caput eſt regni & legum, ſemper curia domini Regis ſingulis ſeptimanis die Lunæ Huſtingis ſedere, & teneri, &c.

Fleta lib. 2. ca. 48.

Int' leges Ed. Regis Lamb. 136. b.

CAP.

CAP. XIII.

PUrview eſt enſement, que del heure que plee ſerra move en la Citie de Londres per briefe, que le tenant neit power de faire Waſte, ne Eſtrepement du tenement que eſt en demande pendant le plee, & ſil face, le Maire & les Bailifes facent garde a le ſuit le Demandant. Et meſme le ord' & Statute ſoit garde en auters Cities, Boroughs, & ailours per tout le Roialme.

Bract. fol. 395. 4 H. 3. Eſtrepement 12. 22 E. 3. 2. 21 E. 3. 51. 4 E. 3. 32. 6 H. 4. 1. 5 E. 2. Eſtrepement 81. 2 H. 6. 13. 3 H. 6. 16. 21 E. 3. 51. 34 E. 3. Eſtrepement 14. Lib. 5. fol. 48. Littletons Caſe. Regiſt. 126. F.N.B. 61.

Before this Statute there lay at the Common Law a Writ of Eſtrepement after judgment, and before execution; and ſo an Eſtrepement doth lie for Waſt done after verdict, and before judgment.

There are two kinds of Eſtrepements prohibiting Waſte pendente placito, one original, and may be ſued out of the Chancery, either together with the original Præcipe by which the land is demanded, or at any time after pendant le plea directed to the Sheriff, the party, or both; the other is judicial to be granted by that Court where the plea dependeth.

And ſome do hold that the original Writ of Eſtrepement did lie at the Common Law to prohibit any Waſte done pendente placito, for (ſay they) there lieth a Writ De bonis arreſtandis ne diſſipentur pendente placito, &c. a Fortiori in caſe of inheritance, wherein if Waſte ſhould be done, it ſhould be inconvenient, and againſt the Common wealth: But certain it is, that the judicial Writ is given pendente placito by this Statute.

Mirror fol. 76.

¶ Que plea ſerra move.] Some do hold that this is to be intended of real Actions, wherein no damages are to be recovered, for that in real Actions where the Demandant ſhall recover damages, he ſhall recover damages pendant le briefe, and that is the reaſon, that in thoſe caſes the Demandant count to no damages, and therefore in thoſe caſes the Tenant might be doubly charged, once in the Eſtrepement, and again in the principal Action. To this it is by ſome anſwered. 1. That this Statute is general to real Actions. 2. There is no miſchief, for a recovery of damages in the one is a bar to the other. 3. It is (as hath bèn ſaid) inconvenient and againſt the Common-wealth, that Waſte ſhould be done. But where damages are to be recovered, but not pendente placito, there without queſtion Eſtrepement doth lie.

Lib. 5. fol. 115. Foljambes Caſe.

Rot. Parl. 28 E. 3. nu. 19.

Amongſt the petitions of the Commons in the Parliament holden in Anno 28 E. 3. one was, that the Writ of Eſtrepement might lie in every Action where the party ſhould recover damages for Eſtrepement after the Writ purchaſed; And the anſwer was, the old Law ſhould be continued.

28 H. 6. 8. b. F.N.B. 61. b.

¶ Que le tenant.] If the Tenant make a feoffment pendente placito, in Law he remaineth Tenant; and yet the Demandant may have an Eſtrepement againſt him and the feoffée alſo, and ſo againſt the Tenant and the Vouchée or Priee in aide.

22 E. 3. 2. F.N.B. 61. p.

If there be two Tenants, the Demandant may ſue an Eſtrepement againſt the one of them; and after judgment a Writ of Eſtrepement lieth againſt the Tenant and ſtranger by the Common Law.

3 H. 6. 16.

In an Eſtrepement the Tenant ſhall not have his age, for it is in nature of a Treſpaſs.

12 R. 2. Eſtrepement 6. 32 E. 3. ibid. 7. 3 H. 6. 17. F.N.B. 61. h.

In the Eſtrepement pendente placito, the Demandant ſhall not recover damages before judgment be given in the principal.

If an eſtranger of his own wrong without the privity of the Tenant doth Eſtrepement or Waſte after the Writ ſued out, the Tenant ſhall not be puniſhed for this Waſte.

¶ Dun

¶ Dun tenement que eſt en demaund.] In a Scire fac' to execute a fine or a recovery (though no land be demanded thereby) yet may the Plaintif have a Writ of Eſtrepement, for it is in equal miſchief, and ſo it is in a Quid juris clamat, and in an Attaint an Eſtrepment doth lie, and yet no land is demanded. 2 H.6.13. 33 H.6. 6. 14 H.7.8. b. F.N.B. 61. i. Dier 16 Eliz. 315. 34 E. 3. Eſtrepement 15.

In an Action of Waſte no land is demanded, and yet an Eſtrepement in that caſe lieth. 4 E.3.32. Foljambs Caſe ubi ſupra.

In a partitione fac' no Eſtrepement doth lie, for both of them are in poſſeſſion, and there is no reaſon, that one ſhall be reſtrained, and not the other. 12 R.2. Eſtrep. Br. 13. Paſch. 33

If a Formedon be brought of a Manor, and the Demandant ſue out an Eſtrepement, and after that a Tenancy eſcheat, the Writ of Eſtrepement extends to the land eſcheated, becauſe it cometh in lieu of the ſervices, and yet that land was not demanded. H.8. Bendloes. F.N.B. 61.

¶ Neyt power de faire Waſte.] The Tenant notwithſtanding the prohibition in the Writ of Eſtrepement may cut down corn, or graſs, or underwood, or the like, ſo it be no Waſte or deſtruction. F.N.B. 61. c.

¶ Pendant le plea.] This is to be underſtood of a judicial Writ of Eſtrepement granted out of the Court of Common Pleas, &c. when the principal Writ is returned, for before that it is not depending there, but the Demandant may have an original Writ of Eſtrepement (as hath been ſaid) together with the principal Writ out of the Chancery. 18 H.8.5. 2 H.6.13

This Act is ſo conſtrued, that by a conſequent the party ſhall recover damages for Waſte done (pendente placito) after the Writ delivered, and therefore it is good policy to purchaſe the Writ of Eſtrepement together with the Writ. Note the Writ it ſelf founded upon this Statute is but a prohibition, and upon the attachment the parties do plead, &c.

But note upon the Writ of Eſtrepement at the Common Law, viz. after judgment, the Plaintif ſhall recover damages for the Waſte done before without any prohibition formerly delivered. Regiſt. judic. 13. 22 E.3. Eſtrepement 9.

And upon a Writ of Eſtrepement grounded upon this Act, the Sherif may reſiſt them that do or offer to do Waſte; and if otherwiſe he cannot do it, he may lawfully impriſon them, or make a warrant to others to do it, and if neceſſity require it, he may take poſſe Comitatus: ſo odious in Law is Waſte and deſtruction. Foljambs Caſe, ubi ſupra.

CAP. XIV.

LE Roy grant de ſa grace as Citizens de Londres, que la ou avant ces heures ceux queux fueront diſſeiſies de lour franktenement en meſme la Citie, ne poient recover lour damages avant le venue des Juſtices a la Tower: Que deſormes iceux diſſeiſies eyent lour damages per recogniſans de laſſiſe, per le quel ils recoveront lour tenements, & les diſſeiſors ſoient amercies devant deux Barons Dexchequer, queux un foits per an veindr' en le Citie a ceo faire. Et ceo ſoit maunde a Treaſorer & as Barons Dexchequer quels le facient faire cheſcun an per ii de eux a lour lever apres la Chaunceleure. Et les amercements per les ſummons del Eſchequer ſoient levies al oeps le Roy, & al Eſchequer deliveres.

Fleta li. 2. cap. 48. The miſchief before this Statute was, that in London if one were diſſeiſed of his freehold, he could not in the Aſſiſe of freſh-force recover damages, but the land only, becauſe the Aſſiſe of freſh-force did not lie by original Writ, but by Bill; and therefore if he would recover damages, he muſt tarry until the Juſtices in Eir came into the Tower, which came but once in ſeven years: And

Lib. intrat. Raſt. F.N.B. 7. 13. therefore this Statute doth give damages in the Aſſiſe of freſh-force, and by equity it extendeth to Gloceſter, and to other Cities and Boroughs which by uſage and cuſtom hold plea of Aſſiſe of freſh-force by Bill.

Bract. 164. b. Note Bracton ſaith, Recognitio Aſſiſæ novæ diſſeiſinæ multis vigiliis excogitata & inventa recuperandæ poſſeſſ. gratia, ut per ſummariam cognitionem abſque magna juris ſolemnitate, quaſi per compendium negotium terminetur: And it was called [Aſſiſa novæ diſſeiſinæ] in reſpect of the delay before the Juſtices in Eir.

¶ Citizens de Londres.] Note London is a Corporation by preſcription, and therefore may have divers names of Corporation, as namely here (Citizens.)

CAP. XV.

PUrview eſt enſement, que le Maire & les Bailifes avant le venue de ceux Barons enquergent des Vines vendus encounter laſſiſe, & le preſentent devant eux a lour venue, & donque ſoient amercies, la ou ils ſoient attendre, jeſque a le venue des Juſtices errants. Dones a Glouceſtre le quart jour de October, lan du raigne le Roy Edward fits le Roy Henry 6.

The like miſchief was concerning the enquiry of the breach of Aſſiſe of wines, as before in the former Chapter concerning the recovery of damages: Therefore this Act giveth power to the Mayor and Bailifs to enquire of the breach of the Aſſiſe of wine, and not to tarry till the Juſtices in Eir do come.

Cap. 5. ¶ Des vines vendus enconter laſſiſe.] This Statute here intended is limited by the Statute De piſtoribus & Braciatoribus.

Aſſiſa vini ſecundum Aſſiſam Domini Regis obſervetur, ſcilicet ſixtertium ad xii d. & ſi Tabernarii illam Aſſiſam exceſſerint, per Majorem & Balivos oſtia claudantur, & non permittant vinum vendere, donec licentiam à Domino Rege obtinuerint. But this Act is repealed by 21 Regis Jacobi.

Statutum

Stat. de Weſtm. II.

EDITUM *Anno* 13 Edw. 1.

The Preface of the Statute of W. 2.

CUM nuper Dominus Rex, in quindena Sancti Johannis Baptiſtæ, anno Regni ſui ſexto, convocatis Prælatis, Comitibus, Baronibus, & concilio ſuo apud Glouceſtre: Quia plures de Regno ſuo exhæredationem patiebantur, eo quod in multis caſibus, ubi remedium apponi debuit prius, non fuit per prædeceſſores ſuos, aut per ipſum remedium proviſum, quædam ſtatuta populo ſuo valde neceſſaria & utilia edidit, per quæ populus ſuus Anglicanus & Hybernicus ſub ſuo regimine gubernatus, celeriorem juſticiam, quam prius, in ſuis oppreſſionibus conſecutus eſt, ac quidam caſus, in quibus Lex deficiebat, remanſerunt indeterminati, & quidam ad reprimendam oppreſſionem populi remanſerunt ſtatuend'. Dominus Rex in Parliamento ſuo, poſt Paſcham, anno Regni ſui tertio decimo apud Weſtminſter, multas oppreſſiones populi, & Legum defectus, ad ſuppletionem dictorum Statutorum apud Gloceſter editorum, recitari fecit, & ſtatuta edidit, ut patebit in ſequent'.

IT is commonly called Weſtminſter the Second: Weſtminſter, because this Parliament was holden at Weſtminſter; and the Second, in reſpect of the former Parliament holden at Weſtminſter, called Weſtminſter the Firſt.

CAP. I.

IN primis, de tenementis, quæ multotiens dantur ſub cónditione, videlicet, cum aliquis dat terram ſuam alicui viro & ejus uxori, & hæred' de ipſis viro & muliere procreatis, adjecta conditione expreſſa tali. Si hujuſmodi vir & mulier ſine hæred' de ipſis viro & muliere procreat' obiiſſent, terra ſic data ad donatorem, vel ad ejus hæredem revertatur. In caſu etiam cum quis dat tenementum alicui in liberum maritagium, quod donum habet conditionem annexam, licet non exprimatur in charta doni quæ talis eſt. Quod ſi hujuſmodi vir & mulier ſine hæred' de ipſis viro & muliere procreat' obiiſſent, tenementum ſic datum ad donatorem, vel ad ejus hæredem revertatur. In caſu etiam cum quis dat tenementum alicui, & hæred' de corpore ſuo exeuntibus, durum videbatur, & adhuc videtur, hujuſmodi donatoribus, & hæredibus donatorum, quod voluntas donatorum ipſorum in donis ſuis expreſſa, non fuit prius, nec adhuc eſt obſervata. In omnibus enim prædictis caſibus poſt prolem ſuſcitatam, & exeuntem ab ipſis quibus tenementum ſic conditionaliter fuit datum, hucuſque habuerunt hujuſmodi feoffati poteſtatem alienandi tenementum ſic datum, & exhæredandi exitum eorum, contra voluntatem donatorum, & contra formam in dono expreſſam. Et præterea cum deficiente exitu de hujuſmodi feoffatis, tenementum ſic datum ad donatorem, vel ad ejus hæredes reverti debuit per formam in charta de dono hujuſmodi expreſſam, licet exitus (ſi quis fuerit) *obiiſſet* per factum *tamen* & feoffamentum eorum, quibus tenementum ſic fuit datum ſub conditione, excluſi fuerunt hucuſque de reverſione eorundem *tenementorum*, quod manifeſte fuit contra formam doni: Propter quod dominus Rex perpendens, quod neceſſarium & utile eſt in prædictis caſibus apponere remedium, ſtatuit quod voluntas donatoris, ſecundum formam in charta doni ſui manifeſte expreſſam, de cætero obſervetur, ita quod non habeant illi, quibus tenementum ſic fuit datum ſub conditione, poteſtatem alienandi tenementum ſic datum, quo minus ad exitum illorum, quibus tenementum ſic fuerit datum remaneat poſt eorum obitum, vel ad donatorem, vel ad ejus hæredem (ſi exitus deficiat) revertatur, per hoc quod nullus ſit exitus omnino, vel (ſi aliquis exitus fuerit, & per mortem deficiet) hærede de corpore hujuſmodi exitus deficiente. Nec habeat de cætero ſecundus vir hujuſmodi mulieris aliquid in tenemento ſic dato per conditionem, poſt mortem uxoris ſuæ, per legem Angliæ: nec exitus de ſecundo viro & muliere ſucceſſionem hæreditariam: ſed ſtatim poſt mortem viri & mulieris, quibus tenementum ſic fuit datum, poſt eorum obitum ad eorum exitum, vel ad donatorem, vel ad ejus hæredem (ut prædictum eſt) revertatur. Et quia in novo caſu

caſu novum remedium eſt apponendum: fiat impetranti tale breve. Præcipe A. quod juſte, &c. reddat B. tale manerium cum pertinentiis, quod C. dedit tali viro, & tali mulieri, & hæred' de ipſis viro & muliere exeuntibus. Vel quod C. dedit tali viro in liberum maritagium cum tali muliere, & quod poſt mortem prædictorum viri & mulieris prædicto B. filio eorundem viri & mulieris deſcendere debet per formam donationis prædictæ, ut dicit: Vel quod C. dedit tali & hæred' de corpore ſuo exeuntibus, & quod poſt mortem ipſius talis, prædict' B. filio prædicti talis deſcendere debet per formam donationis, &c. Breve per quod donator habet recuperare deficiente exitu, ſatis eſt in uſu in Cancellaria. Et ſciendum eſt, quod hoc ſtatutum quoad alienationem tenementi contra formam doni impoſterum faciendam, locum habeat, & ad dona prius facta non extendatur. Et ſi finis ſuper hujuſmodi tenementum impoſterum levetur, ipſo jure ſit nullus. Nec habeant hæredes hujuſmodi, aut illi ad quos ſpectat reverſio, (licet fuerunt plenæ ætatis, in Anglia, & extra priſonam) neceſſe apponere clameum ſuum.

¶ In primis de tenementis.] What Inheritances may be intailed within this Act, you may read at large in the firſt part of the Inſtitutes, cap. Tail, Sect. 14. See the firſt part of the Inſtitutes, Sect. 14.

¶ Multotiens dantur ſub conditione.] Before this Statute, all Inheritances were eſtates in fée, viz. either fée-ſimple abſolute, or fée conditional, or a qualified fée, whereof you may alſo read in the firſt part of the Inſtitutes, Sect. 1. And Tenant of lands intailed had before this Statute a fée-ſimple conditional ſubſequent; for albeit Britton, who wrote before this Statute, ſaith, That if any purchaſe to him and his wife, and to the heirs of them lawfully begotten, the Donées have preſently but an eſtate of Frée-hold for the term of their lives, and the fée accrueth to their iſſue, &c. taking the condition to be precedent, yet had the Donées at the Common Law a fée-ſimple conditional preſently by the gift. See the firſt part of the Inſtitutes, Sect. 13. Brit. cap. 36.

For if lands had been given to a man and the heirs of his body iſſuing, and before iſſue he had before this Statute made a Feoffment in fée, the Donor ſhould not have entred for the forfeiture, but this Feoffment had barred the iſſue had afterwards; which proveth that he preſently by the gift had a fée ſimple conditional, and this agréeth with the authority of Littleton, ubi ſupra. 19 E. 2. Formd. 61. 30 E 1. ibid. 65. Pl. Com. often in the Lord Berkleys caſe.

Now for the better underſtanding of this Act, ſéeing that the eſtate was conditional at the Common Law, it is neceſſary to be known when the condition was performed, and to what purpoſes. If the Donée had iſſue, he had not thereby a fée-ſimple abſolute, for if after he had died without iſſue, the Donor ſhould have entred as in his Reverter. But after iſſue had, the condition was performed to this purpoſe, that he might have aliened, and thereby have barred the Donor and his heirs from all poſſibility of Reverter for default of iſſue, for the heirs of his body (he having a fée conditional) might have barred them alwel before iſſue (as hath been ſaid) as after: and to what other purpoſes the condition by having of iſſue was performed. Vide the firſt part of the Inſtitutes, ubi ſupra. See the firſt part of the Inſtitutes, cap. Tail, Sect. 13.

¶ Et

See the firſt part of the Inſtitutes, Sect. 1. & 14.

¶ Et hæredibus de ipſis.] For to a gift in tail made, this word [Heirs] is requiſite, unleſs it be in caſe of a laſt Will, &c.

¶ Adjecta conditione expreſſa tali, &c.] If this condition expreſſed had not been added, the very gift would have implied ſo much.

See the firſt part of the Inſtitutes, Sect. 17.

¶ In caſu etiam cum quis dat tenementum alicui in liberum maritagium, &c.] By this clauſe it appeareth that an Inheritance paſſeth by theſe words Frank-mariage, whereof we have in another place written at large.

¶ In caſu etiam cum quis dat tenementum alicui & hæredibus de corpore ſuo exeuntibus, &c.] This Act having put two example of eſtates tail ſpecial, viz. the firſt to a man and to his wife, and to the heirs of their bodies; the ſecond, of a gift in Frank-mariage, a ſpecial caſe, and a ſpecial eſtate in tail; Here he putteth a caſe of an eſtate tail general, not that the makers of this Statute meant to enumerate all the forms of eſtates in tail, but to put theſe as examples, ſo as all manner of eſtates tail, general or ſpecial, are within the purview of this Act.

3 E. 3. 31, 32. 18 E. 3. 46. 33 E. 3 Tail 5. Dier 1. Mar. 96.

8 E. 3. 379. 44 E. 3. 3.

¶ Poteſtatem alienandi, &c.] That is to ſay, by Fine, Feoffment, Releaſe, or Confirmation.

7 E. 3. 368. 5 E. 3. 141. 7 H. 4. 31.

But the Tenant in tail had not only poteſtatem alienandi, but forisfaciendi, &c. alſo; for if after iſſue had, he had been attainted of Treaſon or Felony, the land entailed had been forfeited, and thereby the Donor barred of the poſſibility of Reverter, and forisfacere is alienum facere, and therefore in this Act is included in theſe words, poteſtatem alienandi. And ſo might the Tenant in tail, before the making of this Act, have charged the land with Rent, common, or the like, to have bound his iſſue, but by this Act he is reſtrained alwel to charge as to alien.

3 E 3. Formed. 46 See the firſt part of the Inſtitutes, Sect. 3.

In the firſt part of the Inſtitutes, ubi ſupra.

But the having of iſſue before this Act did not alter the courſe of deſcent, as in another place we have ſaid.

¶ Exhæredandi exitum eorum contra voluntatem donatorum.] Whereby it appeareth that there were two miſchiefs before this Act, viz. firſt, the diſheriſon of the iſſues in tail; ſecondly, that it was contra voluntatem donatorum, & contra formam in dono expreſſam, for the Donor and his heirs were barred of the poſſibility of Reverter: and both theſe were wrongs, for which at the Common Law there lay no remedy; for diſheriſons, and breaking the expreſs will and intention of the Donor are wrongs which this Act doth remedy.

Pl. Com. 247. a.]

¶ Per formam in charta de dono, &c.] It was ſaid before, Contra formam in dono expreſſam, ſo as whether the eſtate were made by Deed or without Deed, it is all one to the intention of this Act, and the moſt uſual gifts in tail being of Inheritance, were by Deed.

7 H. 7. 14. 11 H. 7. 27. 39 E. 3. 7. For the divers forms of Parliaments, ſee lib. 8. the Princes caſe. Bro. tit. Parliament 76.

¶ Propter quod Dominus Rex, &c. ſtatuit.] Albeit here be no mention made of the aſſent of the Lords and Commons (whoſe aſſents are neceſſary to the making of every Law) yet foraſmuch as in the Preface of this Parliament it is ſaid, Dominus Rex in Parliamento ſuo, &c. ſtatuta edidit, and that this Act and the reſt were entred into the Roll of the Parliament, and that this word [Statuit] implieth the aſſent of the Lords and Commons, for it cannot be Statutum without their aſſents, therefore it hath (as many other of like form) been without queſtion received for an Act of Parliament.

¶ 1. Quod

¶ 1. Quod voluntas donatoris, ſecundum formam in charta doni ſui manifeſte expreſſam, de cætero obſervetur; 2. Ita quod non habeant illi, quibus tenementum ſic fuerit datum ſub conditione poteſtatem alienandi tenementum ſic datum, quo minus ad exitum illorum, quibus tenementum ſic fuerit datum remaneat poſt eorum obitum, vel ad donatorem, vel ad ejus hæredem (ſi exitus deficiat) revertatur, &c.] Upon theſe two branches, viz. that the will of the donor ſhould be obſerved, and that the donee ſhould not have power to alien, the Judges by a threefold conſtruction did not only remedy all the ſaid former miſchiefs, but prevent all other that might ariſe.

1. Therefore in execution of the will of the donor, and that he ſhould have no power to alien either lands that lay in livery, or tenements that lay in grant, they adjudged that the donee ſhould not have a fee-ſimple, but divided the eſtates, and created a particular eſtate in the donee, and a reverſion in the donor, ſo as where the donee had a fee-ſimple before, by this Act he had but an eſtate tail, and where the donor had but a poſſibility before, which after iſſue might be barred at the pleaſure of the donee, now by conſtruction upon this Act the donor had the fee-ſimple expectant upon the eſtate tail, which we call a reverſion; ſo as by this diviſion of the eſtates the donee after iſſue, or before could not bar or charge his iſſue, nor for default of iſſue the donor or his heirs, either by alienation, forfeiture, or any charge whatſoever.

5 H. 7. 14. vide c. 4. verb. quando ux' dotata, &c. & verb. non habeant aliud recuperare, &c. 9 E. 3. 22.

Sir William Herle Chief Juſtice of the Court of Common pleas ſaid of them that made this Statute, Ilz fueront ſages gents queux fieront ceſt Statut; And I may ſay as truly, Que ils fueront ſages gents queux interpretont ceſt Act. And in another place he ſaith, Nous veiomus ceux queux fieront leſtatut, & auxi en temps de quel Roy leſtatut fuit fait, que fuit le pluis ſage Roy que unques fuit, & le cauſe del ſtatut fuit, a ſaver le heritage en le ſang ceux as queux le done ſe fiſt. 5 E. 3. 14.

The ſecond conſtruction was, that no lineal warranty ſhould bar the iſſue in tail, unleſs there were aſſets deſcended in fee-ſimple from the ſame anceſtor, but a collateral warranty made by a collateral anceſtor ſhould bar the iſſue in tail without aſſets, for that warranty is not reſtrained by this Act, whereof we have ſpoken at large in another place; and ſo likewiſe the collateral warranty of the donee ſhall bar the donor, and is not reſtrained by this Act, as well as the warranty of the donor ſhall bar the donee, as there alſo it appeareth. See the firſt part of the Inſtitutes, Sect. 712.

The third conſtruction was, that albeit Tenant in tail was reſtrained from power of alienations, yet of lands and tenements that lay in livery, his fine or feoffment ſhould work a diſcontinuance, and drive the iſſue in tail to his Action: for ſeeing he had an eſtate of inheritance, the Judges compared it to the caſe where a man was ſeiſed in the right of his wife, or a Biſhop in the right of his Biſhoprick, or an Abbot in the right of his Monaſtery, Et ſic in ſimilibus; and of inheritances that lay in grant, as of Rents, Advowſons, and the like, Tenant in tail could not make any diſcontinuance, no more then the others before recited might do, which conſtruction was made according to the rule and reaſon of the Common Law in other like caſes. 3.

¶ Secundum formam in Charta doni ſui, &c.] This holdeth, though there be no deed, as before hath been ſaid.

¶ Non habeant illi quibus tenementum ſic fuerit datum.] It was adjudged by Beresford, that the iſſues in tail ſhould not alien no more then they to whom the land was given, and that was the intent of the makers of this Act, and it was but their negligence, that it was omitted, as there it is ſaid. 5 E. 2. Formedon 52. 4 E. 3. 29.

ſaid. In this caſe by way of purchaſe the land is given to the donees, and by way of limitation to the iſſues in tail, and therefore by a benign interpretation the purview of this extends to the iſſues in tail.

Pl. Co. 247. Seig' Berklies Caſe.

¶ Nec habeat de cætero ſecundus vir, &c.] These are but conſequents to the words of the purview, and are but explanatory, and not of ſubſtance, and might well have been omitted.

10 E. 1. Form. 66. Vide Paſc. 18 E. 1 in Banco Rot. 27. in Dower.

Yet was it adjudged ſoon after the making of this Act, that where lands were given in frankmariage, and the husband died, and the wife took another husband, and had iſſue before this Act, that the husband ſhould be Tenant by the curteſie, and the principal reaſon was upon this branch of the Statute, Nec habeat de cætero ſecundus vir, &c. for that this reſtraint proved, as there it is ſaid, that the Law before was, that he ſhould be Tenant by the curteſie, and yet without queſtion the iſſue ſhould not inherit that land.

¶ Succeſſionem hæreditariam.] In ancient time if land had been given to I. S. and his ſucceſſors, he had had a fee-ſimple, but otherwiſe it is at this day, as it appeareth in the firſt part of the Inſtitutes, Sect. 1.

¶ Et quia in novo caſu novum remedium eſt apponendum.]

Regula. Ea quæ de novo emergunt, novo indigent remedio.

10 E. 2. Formed. 55. 4 E. 2. ibid. 50 21 E. 3. 47. F. N. B. 211. Pl. Com. 240.

Hereby it appeareth that a Formedon in the Deſcender lay not at the Common Law, but was given by this Act, and the form of the Writ is here ſet down.

Fleta l. 5. cap. 34. Regiſt. 238, 239. 5 H. 7. 17. b.

¶ Præcipe A. quod juſte reddat B. &c.] Here is the form of the Formedon in the Deſcender ſet down, and therefore this Statute need not be recited, nor any Statute which giveth the form of the Writ.

Regiſt. 243. F. N. B. 217, 218.

¶ Breve quod donator habeat recuperare deficiente exitu ſatis eſt in uſu in Cancellaria.] The Formedon in Reverter did lie at the Common Law, but not a Formedon in Remainder upon an eſtate tail, becauſe it was a fee-ſimple conditional, whereupon no Remainder could be limited at the Common Law, but after this Statute a Remainder may be limited upon an eſtate tail in reſpect of the diviſion of the eſtates.

¶ Sciendum eſt quod hoc ſtatutum quoad alienationem tenementi contra formam doni impoſterum faciendam locum habeat, & ad dona prius facta non extenditur.] This clauſe ought to receive a two-fold interpretation. 1. That [ad dona prius facta] muſt be intended of feoffments or alienations made by the donée or his iſſues, and not to gifts made by the donor, for to them this Act doth extend.

4 E. 2. Formedon 50. 12 H. 4. 7. 21 E. 3. 45. Pl. Com. 246. Firſt part of the Inſtit. Sect. 729, 730.

2. Dona prius facta, that is, poſt prolem ſuſcitatam, for then the alienation by the Tenant in tail, or his iſſues was good in Law: ſo as [dona] here are to be intended lawful gifts, and made in due manner, and ſuch as could not be avoided, for Law alloweth no wrong.

6 E. 3. 20. 8 H. 4. 10 33 E. 3. Eſtoppel 280. 33 H. 6. 18.

¶ Et ſi finis ſuper hujuſmodi tenementum impoſterum levetur, ipſo jure ſit nullus.] This Act doth not make the fine void, but ipſo jure ſit nullus, that is, it ſhall not bind the right, yet it ſhall (as hath been ſaid) make a diſcontinuance.

But now by the Statutes of 4 H. 7. cap. 24. and 32 H. 8. cap. 34. a fine levied with

with Proclamations doth bar the iſſues in tail, but a fine without Proclamations is a diſcontinuance only, and no bar.

¶ Nec habeant hæredes hujuſmodi, nec illi ad quos ſpectat reverſio, licet fuerint plenæ ætatis, in Anglia, & extra priſonam.] Here is Non compos mentis left out, and ſo is a Feme covert. See the firſt part of the Inſtitutes, ſect. 440. Cuſtumier cap. 48.

Hereby it may be gathered (as the Law was) that a fine at the Common Law did not bind a ſtranger that was within age, in Priſon, or beyond the Seas. See the firſt part of the Inſtitutes, ſect. 441.

See more for the conſtruction of this Statute in the firſt part of the Inſtitutes, ſect. 21, 22. 23, 271, 362, 363, 441, 746, 747. 4 H. 7. cap. 24. Stat. de modo levand. fines 18 E. 1.

CAP. II.

QUia domini feodorum diſtringentes tenentes ſuos pro ſervitiis & conſuetudinibus ſibi debitis multotiens gravantur per hoc, quod cùm tenentes ſui diſtrictionem ſuam per breve, vel ſine brevi replegiaverint, ac cum ipſi domini (ad querimoniam tenentium ſuorum) ad com', vel ad aliam curiam habentem poteſtatem placitandi placita de Vetito namio, per attachiament' venerint, & rationabilem & juſtam diſtrictionem advocaverint, per hoc quod tenentes diſadvocant nihil tenere, nec clamant tenere de eo qui diſtrictionem fecit, & advocavit, remanſit ille, qui diſtrinxit in miſericordia, & tenentes ſui quieti, quibus pro illa diſadvocatione per recordum Com', ſive aliarum curiarum, quæ recordum non habent, pœna infligi non poteſt. De cætero proviſum eſt & ſtatutum, quod cum hujuſmodi domini in com' vel hujuſmodi curia juſticiam de hujuſmodi tenentibus ſuis conſequi non poſſint, quam cito attachiati fuerint ad ſectam tenentium ſuorum, concedatur eis breve ad ponend' loquelam *illam* coram Juſticiariis, coram quibus *& non alibi* juſticia hujuſmodi dominis exhiberi poterit, & inferatur cauſa in brevi, quia talis diſtrinxit in feodo ſuo pro ſervic' & conſuetud' ſibi debitis. Nec per iſtud ſtatutum derogat' Legi communi uſitatæ, quod non permiſit aliquod placitum poni coram Juſtic' ad petitionem defendentis: quia licet prima facie videatur tenens actor, & dominus defendens, habito tamen reſpectu ad hoc quod dominus diſtrinxit, & ſequitur pro ſervitiis & conſ. ſibi aretro exiſten' realiter apparebit potius actor, ſive querens, quam defendens. Et ut in certo ſint Juſtic' de qua recenti ſeiſina poterint domini advocare rationabilem diſtrictionem ſuper tenentes ſuos: De cætero concordatum eſt, quod

rationabilis diſtrictio poterit advocari de ſeiſina anteceſſorem vel prædeceſſorum ſuorum, a tempore quo breve Novæ diſſeiſinæ currit. *Vide W.* 1. *cap.* 38. Et quia aliquando contingit, quod tenens poſtquam replegiaverit averia ſua, averia illa vendit vel elongat, quo minus retornum poſſit fieri domino diſtringenti, ſi adjudicetur: Proviſum eſt, quod Vicecomes, vel Ballivi de cætero non recipiant a conquerentibus ſolummodo plegios de proſequendo, antequam deliberationem faciant de averiis, ſed etiam de averiis retornandis, ſi adjudicetur retornand'. Et ſi quis alio modo plegios ceperit, reſpondeat ipſe de precio averiorum. Et habeat dominus diſtringens recuperare per breve, quod reddat ei tot averia, vel catalla. Et ſi non habeat ballivus unde reddat, reddat ſuperior ſuus. Et quia aliquando contingit, quod poſtquam adjudicat' fuerit diſtringenti retornum averiorum, & ſic diſtrictus, poſtquam averia ſic retornata iterum replegiaverit, & cum viderit diſtringent' comparentem in curia paratum ſibi reſpondere, defaltam fecerit, ob quam iterum readjudicabitur diſtringenti retornum averiorum, & ſic bis, vel ter, & in infinitum replegiabuntur averia, nec habebunt judicia Curiæ Regis in hoc caſu effectum, ſuper quo non fuit prius remedium proviſum. Ordinat' eſt in hoc caſu talis proceſſus, quod quam cito adjudicatum fuerit retornum averiorum diſtringenti per breve de Judicio, mandetur Vicecomiti, quod retornum habere faciat diſtringenti de averiis in quo brevi inſeratur, quod Vicecom' ea non deliberet ſine brevi, in quo fiat mentio de judicio per Juſtic' reddit': quod fieri non poterit, niſi per breve quod exeat de rotulis Juſtic', coram quibus deduct' fuerit loquela. Cum igitur *diſtrictus* adierit Juſtic', & petierit averia ſua iterum ſibi replegiari, fiat ei breve de Judicio, quod Vic' (capta ſecuritate de proſequendo, & etiam de averiis ſeu catallis retornand', vel eorum precio, ſi adjudicetur retornum) deliberet ei averia, vel catalla prius retornata: & attachietur ille qui diſtrinxit ad veniend' ad certum diem coram Juſtic', coram quibus placitum deducatur in præſentia partium. Et ſi iterato ille, qui replegiaverit averia, fecerit defaltam, vel alia occaſione adjudicetur retornum diſtrictionis jam bis replegiat', remaneat diſtrictio illa in perpetuum irreplegiabilis. Sed ſi de novo, & de nova cauſa fiat diſtrictio, de nova diſtrictione ſervetur proceſſus ſupradictus.

¶ Quia

¶ Quia domini feodorum diſtringentes tenentes ſuos, &c.] In this Preamble is the miſchief ſet down, that was at the Common Law before the making of this Act. Fleta lib. 2. ca. 37.

The Mirror without cauſe doth find great fault with this Act, which you may read, and being of no uſe need not here to be inſerted. Mirror cap. 5. § 5.

¶ Ad comitatum vel aliam curiam habentem poteſtatem placitandi de vetito namio.] De vetito namio, of a forbidden or unjuſt taking, and is not underſtood of a taking in Withernam, for that is a juſt and no forbidden taking, as in another place I have proved more at large. Vide Marlbr. cap. 21.

¶ Vel aliam curiam.] So as Lords of Hundreds, Wapentakes, &c. may have power to hold plea of Replevin, &c. Marlbr. ubi ſupra. F.N.B. 73. b.

¶ Diſadvocant', &c.] That is diſclaim, whereof the Court being no Court could have no Conuſans, becauſe it concerned Free-hold. F.N.B. 70. b.

¶ Quod cum hujuſmodi domini in com' vel hujuſmodi Curia Juſticiam de hujuſmodi tenentibus ſuis conſequi non poſſunt, &c. concedatur illis breve ad ponend' loquel' illam coram Juſticiariis, &c.] Failer of Juſtice, is ever a good cauſe to remove the plea.

¶ Ad ponend' loquelam.] The Writ of Pone doth lye when there is a Replevin depending by Writ out of the Chancery, the Plaintiff or Defendant may remove the Plea by a Pone; and if the Plea be depending in the County, the Plaintiff may remove the ſame without cauſe, but the Defendant cannot remove it without cauſe, and that cauſe muſt be put in the end of the Writ. And if it be upon this Statute, the words be, Quia prædict' B. cepit averia prædict. in feodo ſuo pro conſuetudinibus & ſervitiis ut dicitur, which are the very expreſs words of this Act. Fleta ubi ſupra. F.N.B. 69. in Regiſt. 84. a. Regiſt. ubi ſupra.

And when the plaint is in the County by Writ or without Writ, or in the Court of any other, the ſame may be removed by a Writ of Recordari fac' loquelam.

And if the plaint be in the County, the Plaintiff may remove the ſame without cauſe, as hath been ſaid; but the Defendant cannot remove it (as hath been ſaid) without cauſe. But if the plaint be in the Court of any other, neither the Plaintiff nor Defendant can remove the plaint without cauſe, for the prejudice that may come thereby to the Lord.

¶ Quod non permiſit aliquod placitum poni coram Juſtic' ad petitionem defendentis.] This muſt be underſtood without cauſe ſhewed, for by the Common Law, the Defendant for cauſe ſhewed might remove the plaint. F.N.B. 70. a. Regiſt. 83.

¶ Potius actor ſive querens quam defendens.] In truth the Defendant by making Avowry doth become Actor, and ſhall have Judgment given for him, and after Avowry he ſhall not have a Protection caſt for him no more then a Plaintiff ſhall, becauſe he is become an Actor, and not meerly a Defendant. 5 H. 5. 5.

¶ Et ut in certo ſint Juſticiarii, &c.] It was a doubt before this Act, within what limitation of time an Avowry might be made, and by this Act it is provided, Quod rationabilis diſtrictio poterit advocari de ſeiſina anteceſſorum, vel prædeceſſorum ſuorum a tempore quo breve novæ diſſeiſinæ currit; which limitation in an Aſſiſe appeareth before in W.1. cap.38. which was Poſt primam transfretationem Regis H.3. in Vaſconiam, in the fifth year of his reign. But this limitation, both in the Aſſiſe and in the Avowry, is altered by a latter Statute.

5 H.3. W.1. ca.38. 32 H.8. cap.3.

¶ Non ſolummodo plegios de proſequendo, &c. ſed etiam de averiis retornandis, &c.] If the Sheriff return inſufficient pledges, they are no pledges within this Statute, and in that caſe the Sheriff ſhall be charged by this Act, as if he had taken no pledges at all.

Fleta lib.2.ca.38. Regiſt.Judic.4. 2 H.6.15.

If the return of pledges be upon a Writ of Replevin, then if the Plaintiff be Nonſute, &c. if upon the Writ De retorno habendo, the Sheriff return Averia elongata, &c. the Plaintiff may have a Writ to have return of the beaſts of the pledges. But if the deliverance were by plaint, becauſe in that caſe the pledges do not appear to the Court, the Plaintiff can have no ſuch Writ.

8 E.3.72.39E.3.28

And if upon the Writ to have return of the beaſts of the pledges, the Sheriff return Nihil, then may the Plaintiff have a Scire facias againſt the Sheriff, quod reddat ei tot averia, or tot catalla; and that which hath been ſaid of the Sheriff, is to be intended of the Bailiff of a Franchiſe.

2 H.6.15. 9 H.6.42. & 48.

¶ Et ſi non habeat ballivus unde reddat, reddat ſuperior ſuus.] Vide Simile, 44 E. 3. 13. Vide 52 H. 3. Leſtatute del Eſchequer. Vide 2 H. 6. cap. 10.

¶ Defaltam fecerint, &c.] At the Common Law, if the Plaintiff in the Replevin had been Nonſute either before or after Verdict, the Defendant that diſtrained ſhould have had return, but not irrepleviſable, ſo as the Plaintiff after Nonſute might have had as many Replevins as he would, which was vexatious and miſchievous; for remedy whereof, this Act doth reſtrain the Plaintiff from any more Replevin after Nonſute, but giveth a Writ of ſecond Deliverance, whereof we ſhall ſpeak in his proper place.

34 E.1. Judgment 244. 34 H.6.37. 19 E.2. Repl.25. 6 E.3.37. 24 E.3. 71. 21 E.4.6.

If the Writ of Replevin doth abate for want of form in default of the Clerk, the Defendant ſhall not have return at all; but if it abate for matter apparant by miſ-information, or other default of the Plaintiff, the Defendant ſhall have return, but not irrepleviſable.

11 E.2. Ret. des avers 31. 10 E. 2. ibid.5. 41 E.3. ibid.14. 21 R.2. ibid.29. 3 H.6.2,3. 27 H.6.3.

But if the Defendant doth plead a Plea to the Writ, and the Plaintiff confeſſeth it, then the Plaintiff ſhall have return, but not irrepleviſable, for the Plaintiff may have a new Writ of Replevin; for this Act only giveth remedy in caſe of Nonſute.

48 E.3.10. 49 E.3. 24. 2 H.4.23. 4 H.6.8,9. 34 H. 6.37. 12 H.7.4,5. 13 H.7. Retorne des avers Miſreport per Fitzh. See the Authorities next before concerning theſe matters.

But if the Plea to the Writ, or any other Plea be tried by Verdict, or judged upon a Demurrer, Return irrepleviſable ſhall be awarded, and no new Replevin ſhall be granted, nor any ſecond Deliverance by this Act, but (as it hath been ſaid) upon a Nonſute.

Temps E. 1. Ret. des avers 33.

¶ Averia ſic retornata.] Note neither Court Baron, nor County Court, nor any Court that is not the Court of the King before his Juſtices can award return irrepleviſable.

¶ In infinitum.] Infinitum in jure reprobatur.

¶ Nec

¶ Nec habebunt judicia, &c.] Here is a Maxim of the Common Law implied, viz. Judicia ſuum effectum habere debent. Judicium non debet eſſe illuſorium.

¶ Per breve de judicio, &c. quod exeat de rotulis Juſtic coram quibus deducta fuerit loquela.] The Writ of ſecond Deliverance given by this Act is a Writ Judicial, as here it appeareth, and iſſueth out of the Record of the Replevin in which the Nonſuit was; and Regularly the Judicial Writ ought not to vary from the Record out of which it iſſueth; and therefore if after Nonſuit the Sheriff return Averia elongata, and the Defendant upon the Withernam hath other beaſts delivered to him, the Plaintiff is to have his ſecond Deliverance of the firſt beaſts mentioned in the former Record.

17 E.2. Repl.21. 6 E.3.37. 20 E.3. Eſtopp.186. 20 E.3. Avowry 125. 21 E.3.43. 16 E.3. Aide 131. 3 H.6.9. 12 H.7.4. 21 H.7.28. 26 H. 8.6. Vide Mich. 31 E.3. fol.50. in lib.meo.

¶ Fiat ei breve de judicio, &c.] The effect of the Writ of ſecond Deliverance is here ſet down, and appeareth in the Judicial Regiſter.

And this Writ is a Superſedeas in Law to the Sheriff, that he make no return to the Defendant upon the former Nonſuit.

Dier 36 H.8 f.59. Regiſt. Judic' 58.

33 Avowry 256. Dier 30 H.8.41.b.

¶ Et ſi iterato, ille qui replegiaverit averia, fecerit defaltam, vel alia occaſione adjudicetur retornum diſtrictionis jam bis replegiat', remaneat diſtrictio illa in perpetuum irreplegiabilis.] If the Plaintiff in the ſecond Deliverance be Nonſuit, or if the Plea be diſcontinued, or the Writ abate, or if he prevail not in his ſute, return irreplevisable ſhall be granted.

But if return irreplevisable be granted, the owner of the cattel or other goods diſtrained may come to the Defendant and offer the arrerages, &c. and if the Defendant refuſe to deliver the Diſtreſs, the Plaintiff may have an Action of Detinue, and by that means recover them, for they are in nature of a gage.

5 E.2. Ret. des avers 64. 10 E. 2. ibid.5. 33 E.3. ib. 34. 8 R.2. ibid.35. 6 E.3.37. 17 H 8. Second Deliverance. Br.15. Pl. Com.82.b. 45 E.3.9. 14 H. 4.4. 33 H.6.27.

¶ Sed ſi de nova cauſa.] The ſecond Deliverance muſt be brought for the ſame diſtreſs, but if the ſame Lord diſtrain the ſame Tenant for a Rent, or other ſervice behind at another day, or for another cauſe, there the Replevin doth lye, and ſuch proceeding as is abovesaid.

CAP.

CAP. III.

IN caſu quando vir amiſerit per defaltam tenementum, quod fuit jus uxoris ſuæ, durum fuit quod uxor poſt mortem viri non habuerit aliud recuperare, quam per breve de Recto: Propter quod dominus Rex ſtatuit, quod mulier poſt mortem viri ſui habeat recuperare per breve de Ingreſſu, cui ipſa in vita ſua contradicere non potuit, quod in forma ſubſcripta erit placitandum. Si contra petitionem mulieris tenens excipiat, quod habuerit ingreſſum per judicium, & compertum fuerit, quod per defaltam, ad quod tenens neceſſe habet reſponder', ſi ab eo quæratur, tunc ulterius habet neceſſe oſtendere jus ſuum, ſecundum formam brevis, quod prius impetravit ſuper virum & uxorem. Et ſi verificare poterit quod habuerit, vel habet jus in tenemento petito, nihil capiat mulier per breve ſuum. Quod ſi oſtendere non poterit, recuperet mulier tenementum petitum: Hoc obſervato, quod ſi vir abſentaverit ſe, & noluerit jus uxoris ſuæ defendere, vel invita uxore ſua reddere voluerit, ſi uxor ante judicium venerit, parata petenti reſpondere, & jus ſuum defendere, admittatur uxor. Eodem modo ſi tenens in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel per donum in quo reſervatur reverſio, fecerit defaltam, vel reddere voluerit, admittantur hæredes, vel illi ad quos ſpectat reverſio, ad reſponſionem, ſi venerint ante judicium. Et ſi per defaltam, vel reddition' reddatur judicium, tunc habeant hæred', vel illi ad quos ſpectat reverſio, poſt mortem hujuſmodi tenentium, recuperare per breve de ingreſſu: in quo obſervetur idem proceſſus, ſicut prædict. eſt in caſu ubi vir amittat per defaltam tenementum uxoris ſuæ. Et ſic in caſibus prædict. duæ concurrunt actiones: una inter petentem & tenentem, & alia inter tenentem jus ſuum oſtendentem & petentem. *Vide* 20 E. 1. *defenſio juris fol.* 88.

¶ Vir amiſerit.] This is to be underſtood of the husband and the wife, for the husband alone is not Tenant to the Præcipe, and therefore it was the opinion of Hankford, that if the land be recovered againſt the husband ſole, that after the death of the husband the wife ſhall have an Aſſiſe; but Fitzh. in abbreviating this caſe ſaith, that it is hard to be proved by Reaſon, becauſe the wife cannot be diſſeiſed (during the coverture) but where the husband is diſſeiſed, but of ſuch a recovery ſhe cannot have a Cui in vita upon this Statute: but ſeeing the husband was not Tenant to the Præcipe, this can be no diſcontinuance, and therefore not like to a Feoffment, for that conveyance is compleat and good, but ſo is not the recovery, and therefore in that caſe the wife may enter after the death of her husband; but when the Præcipe is brought againſt the husband and wife, it may be ſaid that vir amiſerit, for it is principally his act or default; and therefore though the words of the Statute of 32 H. 8. be (ſuffered by the husband only) yet a feined recovery againſt the husband and wife is within that Statute.

10 H.4. Diſſeiſ.7. 30 E.3. 6. Receit 128. 48 E.3. Pl. Com. 57. b. 19 E.2. Receit 176. 2 E.2. ibid. 148.

32 H.8. cap. 28.

¶ Per defaltam.] A recovery by Render is within the equity of this Statute, becauſe it is within the ſame miſchief; but a recovery by Action tried is out of this Statute.

It is ſaid, that a recovery by default in a Ceſſavit againſt the husband and wife, doth bind the wife; but I hold the Law to the contrary, unleſs the cauſe of

49 E.3.23. 50 E.3.7. 47 E.3.13. See the firſt part of the Inſtitutes, ſect. 675. 4 E.2. Cui in vita. 20. F.N.B. 193. i. 36 H.6. Fauxer Recovery 27.

of the Action be juſt, and then it bindeth, as in all other caſes; for this Act giveth no remedy, but where the recovery is without title. 2 H.5. 1. 7 E.3.15. 19 E.3. Receit 14. 34 Aſſ. p.3.

In a Quid juris clam', Quod permittat, Aſſiſe of Rent, Scire facias, Attaint, &c. the wife upon the default of the husband ſhall be received. Paſch. 28 E.1. Coram Rege. Ceſtria. Bract. lib.fol.367. Fleta lib.5. ca.22. 7 E.3. 62. Lib.6. fol.8. Ferrers caſe.

In a Quare Impedit againſt the husband and wife, the wife ſhall not be received upon the default of the husband; for the Record ſaith, Inſpecta cauſa confectionis ſtatuti manifeſte liquet, quod non eſt in caſu conſimili; for the husband may preſent alone.

¶ Quod fuerit jus uxoris ſuæ.] This is intended of a fee-ſimple, for ſo is jus regularly taken; and this Act ſaith, that the wife had no recovery but by a Writ of Right, which none can have but Tenant in fee-ſimple, and ſo one part of this Act doth expound another; and for Tenant in tail (reduced formerly (as hath been ſaid) at this Parliament to a divided and particular eſtate) and for Tenant for life proviſion is made in the next Chapter by a Quod ei deforceat, as ſhall be declared when we come thereunto; for Tenant in tail, and Tenant for life are out of the letter of this Statute, becauſe they could have no Writ of Right; and yet if the husband and wife ſeiſed in the right of his wife for term of her life loſe in a Præcipe quod reddat by default, and the husband die, the wife ſhall have a Cui in vita, for this is, as it were, a demiſe made by the husband, for otherwiſe ſhe ſhould be without remedy, for ſhe cannot have a Quod ei deforceat, as ſhall be ſaid hereafter. 4 E.3.38,39. 5 E.3.4. 33 E.3. Avowry 255. 2 E.4.13. F.N.B. 156. 7 E.3.6.

If lands during the coverture be given to the husband and wife, and their heirs, this is jus uxoris within this Statute. 4 E.3.19.

¶ Cui ipſa in vita.] Sir William Herle ſaid, that he had ſeen in ancient time, that where the husband alienedthe right of his wife, ſhe had no other recovery but by a Writ of Right, yet I find in Bracton and Fleta, that a Cui in vita in their times lay upon the alienation of her husband. 5 E.3.58. See the firſt part of the Inſtitutes, ſect.594. Bract.li.4.321.b. Fleta l.5.c.34,36. Cuſtumier de Norm.cap.100.

¶ Quod in forma ſubſcripta erit placitand'.] If the Tenant doth plead in bar the recovery by default, he muſt aver the title of his Writ, whereupon if iſſue be taken, and found for the Tenant, the Demandant ſhall take nothing by her Writ, and if it be found for her, ſhe ſhall recover the land. 21 E.4.65. 22 E.4. 30. 24 H.8. Pleadings Br.

¶ Hoc obſervato quod ſi vir abſentaverit.] This Act having before given the wife a Cui in vita after the deceaſe of her husband, doth by this branch give her a remedy upon the default, or reddition of her husband in his life time to defend her right, ſo as ſhe ſhould not be driven to a real Action after the deceaſe of her husband, and this receit to the wife is given by this Act, which ſhe could not have at the Common Law.

[a] This Act doth extend to Courts that be not of Record; as if husband and wife be ſued in a Court baron by Writ of Right, &c. upon the husbands default the wife ſhall be received. *a* Regiſt. F.N.B. 19.g. Mich. 18 E.1. in Banco Rot.222. Thomas de Maws Caſe. 33 H.6.21.

Upon feint pleder of the husband, the wife ſhall not be received by the opinion of Priſot: But it is reſolved in 8 E.2. to the contrary; yet I hold the Law with Priſot; upon a Nient dedire, and a Nihil dicit the feme ſhall be received within the purview of this Statute, 4 E.3. receit 46. Vide 13 R.2.c.17. 8 E.2. receit 182. 4 E.3. receit.46.

¶ Si uxor ante judicium venerit.] [b] It is to be obſerved, Firſt, that the time of the receit is when judgment ſhould be given. 2. It is to be underſtood de principali judicio, as in an admeaſurement of paſture judgment is given that admeaſurement ſhall be made, and if after admeaſurement made and returned the baron maketh default, the wife ſhall be received before the principal judgment given. *b* 5 E.2. receit 165. See the firſt part of the Inſtitutes, ſect.668,669, 675. Lib.11.fol.39. Metcalfes Caſe. 12 Aſſ.31. 22 E.3. receit 139. 17 E.2. ibid.173.

c 22 Aſſ.11.22. 24 E.3.29. 2 H 4.2. d 10 E.3.27.12 E.3 receit 139. 14 E.3. ib.139. 29 Aſſ.36. 38 E.3.23. 3 H.4. 18. 34 H.6. receit 73.22 H.6.1.2 E.4. 16. 33 H.6.19. 37 H.6.1. 3 H.6.58 20. 11 H.6.51. 11 H.4 3. 3 H.4.13. 22H.6.1. 14 H.6.1. 7 H 4.16.

c So in an Aſſiſe of Mordaunc' againſt the husband and wife, if the Aſſiſe be awarded by default, if after the baron make default before the principal judgment, the wife may be received; and ſo in the Aſſiſe of Novel diſſeiſin.

d And albeit ſhe come not at the time of default, yet if ſhe come before judgment ſhe ſhall be received, and ſo of him in the reverſion or remainder, and ſo if default be made at the Niſi prius, receit may be prayed in bank, for the Juſtices of Niſi prius have no power to allow the receit, but the ſafe way is to pray it there.

In an Aſſiſe the husband and wife plead a Record and fail thereof, the words of an Act made at this Parliament Cap.25. be, Habeat' pro diſſeiſitore abſque ulla recognitione, and yet the wife ſhall be received in that caſe upon the default of her husband, for the words be Abſque ulla recognitione, that is, of the Recognitors of the Aſſiſe, and not Abſque ulla receptione, &c.

2 H.4.2. 7 E.3.22. 28 E.91. 20 E.3. receit 16.22 Aſſ.27

Al briefe de inquirer pur Waſte le fem ſerra receive, mes apres le Waſte trove ſur le briefe d'enquirer pur Waſte, el ne ſerra receive, car ſerra inconvenient que le fem trier' le matter de novel.

9 E.3.12. 20 H.6.37. Firſt part of the Inſtitutes, ſect. 665,668,669. 42 Aſſ.4. 3 E.3. receit 47. 19 E.3. ibid.15. 10 E.3. 51. 9 E.4.16. *10 E.3.4. 12 R.2. receit 97. 18 E.3. 32,33. * 5 E.3. age 61. 24 E.3.68. 20 H.6.23. 10 E.3.27. 10 E.3. 32,33. 31 E.3. receit 126 11 E.3. ibid.119. 48 E.3.25. 2 E.4.27.

¶ Parata petenti reſpondere.] And in reſpect of this word [parata] Tenant by receit ought alway to appear, for upon any default made, judgment ſhall be given.

Littleton ſaith, that in every caſe that the wife is received for default of her husband, ſhe ſhall plead and have the ſame advantage in pleading to defend her right, as if ſhe were a feme ſole (ſée the firſt part of the Inſtitutes, ſect.665,668,669) But ſhe cannot after receit levy a fine, for that * were not to defend, but to give away her right, but he in the reverſion that is received may confeſs the Action.

* The wife after ſhe is received ſhall have her age, or pray in aide, though the words of this Act be parata petenti reſpondere, that is to be underſtood, that when ſhe ought to plead by Law, then ſhe ſhall be ready to plead.

The wife after ſhe be received ſhall vouch and plead all manner of pleas, and take all other advantages, which ſhe and her husband might have done, and ſpecially ſuch pleas, as trench to the miſchief of the warranty.

17 Aſſ.41. 22 Aſſ. 13. 23 E.3.21. 9 E.3.17. 38 E 3. 10,11. 12 Aſſ 41. 25 E.3.40. 14 E.3. procedendo 4. 32 E.3. Quar.Imp. 2. 9 E.4.16. 5 E.2. receit 62. 8 E.2. ib.181,182, 183. 19 E.2. ibid. 176. 7 E.3.44. 48 E.3.28.b. 31 E.1. receit 186. 9 H.5.10.10 E.3.4. 12 R.2. receit 97. 18 E.3.32,33. See the firſt part of the Inſtitutes, ſect.302.

¶ Et jus ſuum defendere.] This right muſt be intended, which the wife had in the lands in demand at the time when the Præcipe was brought againſt her husband and her, and not at the time of the receit, for if a Præcipe be brought againſt her and her husband, and after the husband and wife levy a fine, and after the husband make default after default, albeit the wife hath no right in the land at this time, yet may ſhe pray to be received for the right which ſhe had at the time of the original purchaſed, which in judgment, and by preſervation of Law, as to the Demandant, ſhall be ſuppoſed to continue in uno & eodem ſtatu in the Tenancy as Tenant in Law without any change or alteration of the eſtate, notwithſtanding any Act done by the Tenant.

This alſo is to be underſtood not only of a Tenancy in Déed, but alſo of a Tenancy in Law, for if the husband and wife be vouched, the wife upon the default of her husband ſhall be received, and yet ſhe can have no Cui in vita in that caſe according as this Act limits.

The words be jus ſuum defendere, and therefore ſhe being not to all intents a feme ſole cannot confeſs, nor render the Action, but he in the reverſion that is received may confeſs, or render the Action.

Bracton lib.5. fol.393.b. nu 14.

¶ Eodem modo ſi tenens in dotē, p legem Angliæ, vel aliter ad terminū vitæ, vel p donū in quo reſervatur reverſio fecerit defaltam vel reddere voluerit, admittantur hæredes vel illi ad quos ſpectat reverſio ad reſponſionem, ſi venerint ante judicium.] It appeareth by Bracton, who wrote before this Statute, that he in the reverſion ſhould be received by the Common Law for he ſaith, Poterit etiam quis intrare in Warrantiam, & ſi non vocetur

vocetur ad warrantum ad proprii juris tuitionem, ut ſi quis tenuerit ad vitam ſuam, ſicut mulier nomine dotis, vel alio modo, vel ad terminum terram aliquam, quæ poſt vitam vel terminum reverſura eſſet ad Dominum proprietatis, ſi ſe in fraudem & exhæredationem ipſius permiſerit implacitari ab aliquo cum poſſit Dominum proprietatis inde vocare ad warrantum ad defenſionem ſuam, hoc omiſerit; bene poterit Dominus ille proprietatis, cum ſibi viderit exinde periculum imminere, comparere per ſe, & ſi non vocetur, intrare in warrantiam ad ſui proprii juris defenſionem; cum melius & utilius ſit in tempore occurrere, quam poſt cauſam vulneratam quærere remedium, & malitiis hominum obviare.

Upon the recovery againſt ſuch a particular Tenant he in the reverſion was driven to his Writ of Right, but he in the remainder was without remedy, if he never had ſeiſin; See the firſt part of the Inſtitutes. See the firſt part of the Inſtitutes, Sect. 481, 482.

¶ Eodem modo.] Though it be ſaid here Eodē modo, in the ſame manner, yet it is not the ſame manner to all purpoſes, for the wife upon the default of her husband ſhall be received without ſhewing any cauſe. But ſo ſhall not he in the reverſion, and therefore it is not eodem modo in that reſpect, and the reaſon of the diverſity is, for that the feme is party to the Action, and affirmed Tenant by the bringing of the Præcipe, but he in the reverſion is a meer ſtranger to the Action, and therefore ought to ſhew cauſe how the reverſion is in him. 28 E.3.90. 12 E.3 iſſue 25. 22 E.3. ib.20. 10 E.3.10. 4 H.6.5. 8 H.6. 21 H.6.13. 32 H.6 12. 33 H.6. 39,41 9 H. 5.3. 8 E.3.39

But as to age, he in the reverſion ſhall have the ſame in the ſame manner, as the wife ſhall have it, the Demandant ſhall count of new againſt the wife that is received, and eodem modo againſt them in reverſion or remainder. 18 E.3.32. 3 H.6. 41. 21 H. 6.48. 21 Aſſ.17. 21 E.3. 45. 33 H.6.52.

¶ Si tenens in dotem vel aliter ad terminum vitæ.] In a Writ brought againſt a feme Gardien in Chivalry and her husband, the wife ſhall not be received for the default of her husband, for it is out of the words of the Statute, and the husband hath power to alien, or loſe the chattel. 15 E.3 receit 122, 123. 19 E.2. ibid. 179. 8 E.2. ibid. 170. 32 Aſſ. 9 E.4 16.

¶ Vel per donum.] This is to be underſtood of a Tenancy in tail, apres poſſibilitie de iſſue extinct, and not of an eſtate in tail general or ſpecial, for upon an eſtate in tail no receit is given by this Act, becauſe it is an inheritance which may continue for ever. 2 E. 2. receit 147 5 E.2. ibid. 161. 11 H.4.13. 39 E.3 18. 42 E.3.12. 20 E. 3. receit 17 16 E.2. ibid. 104.

¶ Admittantur hæredes.] * By colour of theſe words, the heir apparent of Tenant in tail making default, &c. hath bēn admitted, Sed non eſt lex, quia nullus eſt hæres viventis. 33 H.6.22. l.10. f.44. Jenings caſe. Regiſt.135. * 2 E.2.receit 147 20 E.3. receit. 17

¶ Ad quos ſpectat reverſio.] He muſt have a reverſion, and not only a condition or poſſibility. 8 E.3.3. 45 E.3.19. 23 H.6

A wife being Tenant for life is received upon the default of her husband, and after makes default, he in the reverſion ſhall be received; and ſo note a receit upon a receit; and ſo if a baron and feme be received, and after the baron make default, the feme ſhall be received. receit 156. 5 E.3 61. 6 E.3.14. 15 E.3. receit 124 5 H.5.11. 11 E.3. receit 117.

If an infant make a leaſe for life, though the leaſe be defeaſible, yet upon the default of the leſſee, he ſhall be received, and ſo it is of a leaſe by baron and feme. 10 H.6.24. 28 E.3 98. 33 H.6.52.

One may be received by Attorney by a ſpecial Writ affirming infirmity, and the words of the Statute are general. 41 E.3.8. 22 H.6.5 19 H. 6. 46.

In a Præcipe the Tenant maketh default, &c. he in the reverſion prayeth to be received, and ſheweth that he let the land to the Tenant and another for life, and the Demandant was driven to maintain his Writ. 40 E.3.12.

If Tenant for life pray in aid of him in reverſion, and he refuſe to joyn, and after Tenant for life maketh default, &c. he in reverſion ſhall not be received, becauſe he refuſed to joyn, but if he had joyned, and after the Tenant make default, he ſhould have bēn received. 4 E 2. receit 160 18 E.3.13. 23 E.3 tit. receit 156.

4 E. 4. 14. 18 E. 4 25, 27. Regularly for a reverſion created hanging the Writ there ſhall be no receit: But if the leſſee make the Writ good, there ſhall be a receit: As if a Præcipe be brought againſt B. that hath nothing, and the terre-tenant make a leaſe for life to B. he ſhall be received.

a 5 H. 4. 2. 32 H. 6. 12. 7 E. 3. 15. 18 E. 3. 13. 47. 16 H. 7. 5. *a* If Tenant for life be impleaded, and ſurrender hanging the Writ to him in reverſion, he ſhall be received, and yet he hath no reverſion in him, Et ſic in ſimilibus.

b 32 E. 1. receit 185 9 E. 4. 40. 10 E. 4. 9 13 E. 3. receit 17 E. 2. ibid. 175 24 E. 3. 33, 35. 4 E. 2. receit 160 13 E. 3. ibid. 145 19 E. 3. ibid. 111 14 E. 3. mr'ans des faits 6. 29 E. 3 48. Rot. Parliam. 29 E. 3. nu. 11 H. 4 15. 4 E. 3. 38. 25 E. 3. 47. *b* If a rent be demanded againſt Tenant for life, he in the reverſion or remainder ſhall be received by the equity of this Statute; albeit the words be Ad quos ſpectat revertio, yet he in the remainder upon default of Tenant for life, ſhall be received, for he is in the ſame miſchief.

The King ſhall not be received, for he cannot become Tenant, nor be in loco tenentis. 4 E. 3. 38. 25 E. 3. 47.

c 1 E. 3. receit 118 4 E. 3. ibid. 160. 18 E. 2. ibid. 174. 18 E. 3. 12. 42 E. 3. 12. b. 24 E. 3. 32. Lib. 10. fol. 44. Jenings Caſe. *c* It is not neceſſary, that he that prayeth to be received hath the immediate reverſion; for if a leaſe for life be made, the remainder for life, he in the reverſion ſhall be received; ſo it is where the reverſion is granted for life, he in the reverſion in fee may be received: But if he that hath the mean eſtate, and he in the reverſion or remainder in fee pray to be received at one time, he that hath the immediate particular eſtate, in reſpect of the proximity ſhall be received, but if he be received and make default, he in the reverſion in fee ſhall not be received.

¶ Fecerit defaltam vel reddere voluerit.] *d* Feynt pleder was not (as hath been ſaid) within this Act, but is remedied by a later Statute, in caſe of him in reverſion.

d 13 R. 2. c. 17. 6 E. 3 16. 4 E. receit 4. 22 E. 3. 10. 1 H. 6. 4 2 H. 6. 14. 20 E. 3 receit 18, 19. *e* But a Nient dedire, and a Nihil dicit are (as hath been ſaid) within the purview of this Act, both for him in the reverſion, and the wife alſo, for they are in equal miſchief.

If the appearance of the Tenant be recorded, and after he depart in deſpight of the Court, he in the reverſion ſhall be received, for judgment is to be given upon the default.

e 4 E. 3. receit 46 19 E. 2. ibid. 184, 158. 6 E. 2. ibid. 168. 14 E. 3. ibid. 136. 19 E. ib. 114. F. N. B. 155. i. ¶ Ad reſponſionem.] *f* That is, when the time come when by Law he ought to anſwer, and therefore he ſhall have his age, or pray in aid, &c.

f 19 E. 3. receit 1. 5 E. 2. ibid. 163. *g* Vide Statut de Anno 20 E. 1. where he that prayeth to be received, before his receit ſhall find ſurety, &c. and the Statute of 13 R. 2. cap. 17. to that purpoſe, but thoſe Statutes extend not to a feme, that is to be received in default of her husband, becauſe ſhe is party to the Writ, but to him in the reverſion or remainder, that is a ſtranger to the Writ, Et venit a latere.

g 9 H. 5. 10. 48 E. 3 13. 29 E. 3. 48. 34 E. 3. receit 190 11 E. 3. ibid. 117 19 E. 3. ibid. 112 6 R. 2. ibid. 94. ¶ *h* Poſt mortem hujuſmodi tenentium recuperare per breve de ingreſſu, &c.] This is underſtood of a Writ of Entry ad communem legem, which is a ſpedier remedy, then a Writ of Right, and the Demandant ſhall count upon a demiſe according to the Writ and uſual form, and if the Tenant traverſe the demiſe, the Demandant ſhall maintain his count by the recovery by default.

h Vet. N. B. 136. Regiſt. 235. ¶ Et ſic in caſibus prædictis duæ concurrunt actiones.] For in theſe caſes the Tenant ſhall ſhew his right according to the form of the Writ, whereupon he recovered, even as the Tenant ſhall do in the Cui in vita, upon the former part of this Act, and therefore this branch ſaith, Duæ concurrunt actiones, viz. the Writ of Entry upon this Action, and the former Writ, whereupon the recovery was by default.

Regiſt. ubi ſupra.

CAP.

CAP. IV.

IN caſu quando vir implacitatus de tenemento reddit tenementum peritum adverſario ſuo de plano, poſt mortem viri, Juſticiarii adjudicent mulieri dotem ſuam, ſi per breve petat. Sed in caſu quando vir amittet per defaltam tenementum petitum, ſi mulier poſt mortem viri petat dotem, & compertum eſt, quod per aliquos Juſticiarios adjudicata fuit dos mulieri petenti, non obſtante defalta', quam vir ſuus fecit, aliis Juſticiariis in contraria opinione exiſtentibus, & contrarium judicantibus, ut de cætero hujuſmodi ambiguitas amputetur, & ſit in certo: Ordinatum eſt quod in utroque caſu audiatur mulier, quæ dotem petit. Et ſi excipiatur contra ipſam, quod vir ſuus tenementum, unde dos petita eſt, amiſit per judicium, per quod dotem habere non debet, & ſi quæratur per quod judicium, & compertum fuerit quod per defaltam, ad quod tenens neceſſe habet reſpondere, tunc oportet tenentem ulterius reſpondere, & oſtendere quod ipſe *tenens* jus habuit, & habet in prædicto tenemento, ſecundum formam brevis, quod tenens prius ſuper virum impetravit. Et ſi oſtendere poterit, quod vir mulieris non habet jus in tenement', nec aliquis alius quam ipſe qui tenet: recedat quietus, & uxor nihil capiat de dote. Quod ſi oſtendere non poterit, recuperet mulier dotem ſuam. Et ſic in caſibus iſtis, & in quibuſdam caſibus ſubſequent'. s. quando uxor dotata amittat dotem ſuam per defaltam, & tenentes in libero maritagio per legem Angliæ, vel ad terminum vitæ, vel per feodum talliatum, concurrunt plures actiones. Quia hujuſmodi tenentes, cum oporteat eos petere tenementa ſua per defaltam amiſſa, & cum ad hoc pervent' fuerit, quod tenens neceſſe habeat oſtendere jus ſuum, non poſſunt ipſi, ſine his ad quos ſpectat reverſio, de jure reſpondere: & ideo concedatur eis, quod vocent ad warrant' ſecundum tenorem brevis, ac ſi eſſent tenentes *in priori breve* warrant' habeant. Et cum warrantus warrantizaverit, procedat placit' inter illum qui ſeiſitus eſt & warrantum, ſecundum tenorem brevis, quod tenens prius impetravit, & per quod recupaverit per defaltam. Et ſi ex pluribus actionibus ad ultimum perveniat ad unum judicium, videlicet ad hoc quod hujuſmodi petentes recuperent petitionem ſuam, vel quod tenentes eant quieti. Et ſi actio hujuſmodi tenentis, qui neceſſe habet oſtendere jus ſuum, mota fuerit per breve de Recto, licet magna aſſiſa, vel duellum jungi non poſſunt per verba conſueta, *jungi* tamen poſſunt per verba ſatis apta. Quia cum tenens in hoc quod oſtendat jus ſuum, quod ei competet per breve quod prius impetravit & ſit loco actoris, bene poterit

warrant' defendere jus tenentis, qui loco petentis (ut dictum eſt) habet, & ſeiſinam anteceſſoris ſui offerre & defendere per corpus liberi hominis ſui, vel ponere ſe in magnam aſſiſam, & petere inde recognitionem fieri, utrum ipſe majus jus habeat in tenemento petito, an prædictus talis: vel alio modo jungi poterit magna aſſiſa, & ſic talis warrantus defend' jus, &c. Et cognoſcit ſeiſinam anteceſſoris ſui & ponit ſe in magnam aſſiſam, &c. & petit recognitionem fieri, utrum ipſe majus jus habeat in prædicto tenemento, ut in illo de quo feoffavit talem, vel quod talis remiſit, & quietum clamavit, &c. an prædictus talis, &c. Cum aliquando contingat, quod mulier non habens *jus* petendi dotem hæreditatis hæredis alicujus infra ætatem exiſten', impetret breve de dote ſuper cuſtodem, & cuſtos per favorem mulieri dotem reddiderit, vel defaltam fecerit, vel placitum ita fictum per colluſionem defenderit, per quod dos hujuſmodi mulieri (in præjudicium hæredis) adjudicata fuerit: Proviſum eſt quod hæres, cum ad ætatem pervenerit, habeat actionem petendi ſeiſinam anteceſſoris ſui verſus hujuſmodi mulierem, qualem haberet verſus quemcunque alium deforciatorem, ita tamen quod ſalva ſit mulieri verſus petentem exceptio oſtendendi, quod jus habet in dote ſua, quod ſi oſtendere poterit, recedat quieta, & dotem ſuam retineat, & ſit hæres in miſericordia, & amercietur graviter ſecundum diſcretionem Juſticiariorum. Sin autem recuperet hæres petitionem ſuam. Eodem modo ſubveniatur mulieri, ſi hæres vel alius eam implacitaverit de dote ſua, ſi dotem ſuam per defaltam amiſerit. In quo caſu ſua defalta non ſit ei ita præjudicialis, quin dotem ſuam (ſi jus habeat) recuperare poſſit, & fiat ei tale breve. Præcipe A. quod juſte, &c. reddat tali, quæ fuit uxor talis tantam terram cum pertinentiis in C. quam clamat eſſe rationabilem dotem ſuam, vel de rationabili dote ſua, & quam prædictus talis ei deforceat. Et ad iſtud breve habeat tenens exceptionem ſuam, ad oſtendendum, quod mulier jus non habet in dote: Quod ſi verificare poterit, recedat quietus, alioquin recuperet mulier tenementum, quod prius tenuit in dote. Et cum temporibus retroactis aliquis amiſiſſet terram ſuam per defaltam, non habuit aliud recuperare quam per breve de Recto, quod eis competere non potuit, qui de mero jure loqui non potuerit, veluti tenentes ad terminum vitæ, vel per liberum maritagium, vel per feodum talliatum, in quibus caſibus ſalvatur reverſio. Proviſum eſt quod de cætero non ſit eorum defalta eis ita præjudicialis, quin ſtatum ſuum (ſi jus habeant) recuperare poſſint per aliud breve quam per breve de Recto. De maritagio amiſſo per defaltam fiat tale breve. Præcipe A. quod juſte, &c. reddat B. manerium de C. cum pertinentiis, quod clamat eſſe jus & maritagium ſuum, & quod prædictus A. ei deforceat. Eodem modo de tenemento ad terminum vitæ per defaltam amiſſo, fiat tale breve. Præcipe A. quod juſte, &c. reddat B. manerium de C. cum pertinentiis, quod clamat tenere ad terminum vitæ ſuæ,

&

& quod prædictus A. ei deforceat. Similiter quod clamat tenere ſibi & hæredibus ſuis de corpore ſuo legitime procreatis, & quod prædictus A. ei deforceat, &c.

¶ In caſu quando vir implacitatus, &c.] It appeareth by the Preamble of this Statute, that if a recovery had bèn in a real Action againſt the husband, and the husband did render the land to the Demandant, that notwithſtanding this recovery, the wife ſhould recover her Dower. But if the husband had loſt by default, it was a queſtion and a doubt, whether in that caſe ſhe ſhould recover or no: and ſome Judges would give Judgment for the woman, and ſome were in a contrary opinion. Here is to be noted, that a recovery by reddition of the husband, is not of ſo great account in Law as a recovery againſt the husband by default: But therein before this Act this diverſity was holden for Law, that if in a Writ of Dower the Tenant did plead the recovery in bar, the Demandant might reply, Que ceo fuit per fraud, ou per colluſion, ou per gree le baron, as Britton ſaith, who wrote before this Statute; but if it were by default without covin, then the greater opinion was, it barred the feme.

Brit. cap. 109. fol. 261. Fleta lib. 5. cap. 22.

But the reddition of the husband was holden for clear Law, as it was adjudged the year before the making of this Act, for that the wife was ready to maintain the title of her husband.

12 E. 1. Dower 173. 49 E. 3. 23. 12 H. 4. 21.

All this is to be underſtood, where he that recovereth hath no right, for where he that recovered either by reddition or default had right, there neither the Common Law, nor this Statute extended thereunto.

36 H. 6. Fauxer de recovery 27.

If the recovery be had by Verdict, the feme ſhall not falſifie in the point tried, but ſhe may ſay, that he might have pleaded a better plea, or confeſs and avoid the recovery.

47 E. 3. 13. 50 E. 3. 7. 36 H. 6. ubi ſup. 14 H. 4. 32. 4 E. 3. 52. 53.

¶ Quando uxor dotata amittat dotem ſuam per * defaltam, & tenentes in libero maritagio per legem Angliæ, vel ad terminum vitæ, vel per feodum talliat', concurrunt plures actiones, &c.] By this Act the Writ of Quod ei deforceat is given; at the Common Law there lay no Writ of Quod ei deforceat, but by Cuſtom there did, as in Wales.

* Cuſtumier de Norm. cap. 28. fol. 56.

2 E. 4. 13. 33 H. 6. 46. 4 H. 7. 2. Lib. 5. fol. 85. l. 3. f. 9.

If Tenant in Dower, Tenant by the courteſie, or Tenant for life had loſt by default, they were without remedy, becauſe they could not have a Writ of Right. Another miſchief was, that ſeeing by the firſt Chapter of this Parliament it did alter the eſtate of Tenant in Frank-mariage, and Tenant to them and the heirs of their bodies, &c. from a fee-ſimple to an eſtate Tail, whereupon a reverſion in point of ſtate was in the Donor expectant; by reaſon whereof, if a recovery by default had bèn againſt Tenant in Frank-mariage, or other Tenant in Tail, they had bèn alſo without remedy, becauſe their eſtate being ſo changed, they could not have a Writ of Right no more then the other Tenants for life here recited could have; therefore by this Act a Quod ei deforceat is given to them all, whereby it appeareth, that (as hath bèn ſaid) the makers of the Act intended a change of the eſtate Tail, and providently made proviſion for Tenant in Tail by this Act.

See the firſt part of the Inſtitutes, 481, 482, 674, 675.

It

4 E.3.38. 5 E.3. 4.8. 33 E.3. Avowry 255. 29 E.3.47. 41 E.3 30. 2 E.4.13. F.N.B. 156. a. c.

It is agreed, that if a recovery by default be had againſt the husband and wife, Tenant in Frank-mariage, or Tenants for term of their lives, that they ſhall have a Quod ei deforceat upon this Act; but it is holden in ſome Books, that if the husband and the wife be ſeiſed, as in the right of the wife, for term of her life, and a recovery be had againſt them by default, that they ſhall not have a Quod ei deforceat for three reaſons:

1. That the husband is not within the words of the Statute, for he is not Tenant for life, but ſeiſed in the right of his wife, who is Tenant for life.

2. That the husband may diſpoſe of his wives eſtate, and alien the ſame during his life.

3. Proviſion is made by the next precedent Chapter, that the wife in this caſe may have a Cui in vita after the deceaſe of her husband.

But I take it that in this caſe, if the recovery be had meerly by default without the agreement of the husband, that the husband and wife may have a Quod ei deforceat by this Act; for as to the firſt reaſon, though the husband be ſeiſed but in the right of his wife, yet the wife is Tenant for life, and the husband is named but for conformity.

And if a Leaſe be made to a feme ſole, and ſhe taketh husband, and a recovery be had by default againſt them, they ſhall have a Quod ei deforceat by this Act.

As to the ſecond reaſon, the ſame may be ſaid, when the husband and wife are Donées in Frank-mariage, or Joyntenants for life; for in thoſe caſes the husband may diſpoſe of the lands during his life.

And as to the laſt reaſon, this Statute intended to give to the Tenants for life a preſent remedy to relieve themſelves, as in this caſe the husband and wife may during the life of the husband; for it is agreed, that after the death of the husband the wife ſhall have a Quod ei deforceat.

But if the recovery be had by the agreement of the husband, then he can never bring a Quod ei deforceat.

10 E.4.2.

¶ Amittat dotem, &c.] This Statute doth alſo extend to Courts that be not of Record, as the Court Baron, as in a Writ of Right in a Court Baron, &c.

See the firſt part of the Inſtitutes, Sect. 674, 675. 46 E.3.21.

¶ Per defaltam.] If A. and B. be ſeiſed of lands, and to the heirs of A. a recovery is had againſt them by default, A. ſhall have a Writ of Right of his moity, and B. a Quod ei deforceat upon this Statute, and when they recover they ſhall be Joyntenants again.

a 46 E.3.21. F.N.B. 155. h. *b* 14 H.7.5.b. F.N.B. 155. f. 5 H.7. Quod ei deforc' 9. *c* 15 E.3. Quod ei deforc' 9. F.N.B. 155. i. Paſch. 33 Eliz. Rot. 1125. in Banco Elimers Caſe. *d* 33 E.3 Quod ei deforc' 17. F.N.B. 155.c. 49 E.3.8. 2 H.4.2. 21 H.6.56 9 E.4.16.

a Two coparceners in tail loſe by default, they ſhall joyn in a Quod ei deforceat, yet the default of the one is not the default of the other: *b* But if Tenant in tail loſe by default, &c. and die, the iſſue in tail ſhall not have a Quod ei deforceat but a Formedon in the Deſcender.

c A departure in deſpight of the Court (unleſs it be in a Writ of Right after the miſe joyned) is holden to be within this Act, for he makes default in that caſe when he is demanded; But upon a Nihil dicit, no Quod ei deforceat doth lie.

d A Tenant for term of life makes default in a Præcipe, whereupon he in the revercion is received and plead to iſſue, and it is found againſt the Tenant by receit, and judgment is given for the Demandant, the Tenant ſhall have a Quod ei deforceat, for albeit there is a verdict given, yet the judgment is given upon the default.

But

But in an Aſſiſe, and in an Action of Waſte, although the Tenant make default, yet there is a verdict given, and upon that verdict the judgment is given in both caſes, and therefore there no Quod ei deforceat doth lie within this Act.

A woman brings a Writ of Dower againſt Tenant for life, and recover by default, the Tenant brings a Quod ei deforceat, and recover by default, the Tenant in Dower ſhall have a Quod ei deforceat by this Statute: And ſo note a Quod ei deforceat upon a Quod ei deforceat. 13 E.1. voucher 286.

If the Tenant for life in a Præcipe vouch, and the vouchée will not appear, by reaſon whereof the Tenant loſeth by default, he ſhall have a Quod ei deforceat by this Act, albeit the judgment is not given for the proper default of the Tenant, for this Statute ſaith, per defaltam generally, and not per defaltam ſuam. F.N.B. 156. b.

¶ Cum ad hoc perventum fuerit, quod tenens neceſſe habet oſtendere jus ſuum, non poſſunt ipſi ſine hiis ad quod ſpectat reverſio de jure reſpondere: & ideo concedatur eis quod vocent ad warrant' ſecundum tenorem brevis ac ſi eſſent tenentes in priori brevi, warrant' habeant.] For the better underſtanding whereof the form and order of the Entry of the Record and pleading (a window which letteth in light to many caſes) is herein to be known, which is, that in the Quod ei deforceat, the Demandant count that he or ſhe was ſeiſed of the land for term of life, or in tail, without ſhewing of whole leaſe or gift, for that the Action is brought of his own poſſeſſion, and alledgeth the eſplees in himſelf, and that the Defendant hath deforced him without making of any mention of the Record. And then the Tenant may defend the right of the Demandant, &c. and either ſhew how he recovered againſt the Demandant by Formedon or other real Action, and in the purcloſe of his plea ſhall ſay, that ipſe paratus eſt ad manutenendum jus & titulum ſuum prædict' per donum prædict', &c. unde petit judicium, whereby the Defendant in the Quod ei deforceat is become actor, and in effect reviveth the former Action, and the Demandant in the Quod ei deforceat is become in manner of a Tenant to the former Action, and may vouch as if he were Tenant to the former Action, becauſe if he hath but an eſtate for life, it is not ſafe for him to plead in chief, but to vouch him in the reverſion, therefore he can vouch no other, but him in the reverſion; or if the Defendant notwithſtanding upon the title of the former recovery plead ſome other bar, then the Demandant in the Quod ei deforceat ſhall not vouch at all, becauſe the former Action is not revived. And if the Defendant plead the former recovery, the Demandant may traverſe the title, or plead any thing in barre of the title. 29 E.3.47. 10 E.4. 2. F. N. B. 156.d. 9 E.3.22. 41 E.3. 30. 48 E.3.8. 2 E.4.11.

¶ Quod tenens neceſſe habet.] It is not of neceſſity that the Defendant in the Writ of Quod ei deforceat, do plead the former recovery, but (as hath been ſaid) he may plead any other bar.

¶ Non poſſunt ipſi ſine hiis, &c.] By theſe words the Demandant in the Quod ei deforceat after the recovery pleaded cannot vouch any other but him in the reverſion. 9 E. 3.22. 33 E.3 Count Pl. de vouch. 101. 33 H.6.46. L. 11. fol.62. D. Foſters caſe.

¶ Concedatur iis quod vocent ad warrantum, &c. ac ſi eſſent tenentes in priori brevi.] Upon theſe words, two concluſions are to be obſerved.

Firſt,

First, That albeit the Demandant in the Quod ei deforceat after the recovery pleaded cannot vouch, yet the Quod ei deforceat may be maintenable.

Secondly, If the recovery by default be in such an Action where no voucher doth lie, yet the Quod ei deforceat is maintenable, and these words are to be intended, that such Tenant shall vouch which might have vouched in the first Writ.

14 H.7.9.18. b. 41 E.3.30. 44 E.3 42 El.11. ubi sup. And therefore if the judgment by default be in a Scire facias brought upon a recovery or fine, or in a Writ of Entry, or in the quibus brought against the disseisor himself, there lieth no voucher, and yet a Quod ei deforceat is given by this Act upon such a recovery by default. And where the vouchée should not have his age in the former Writ, he shall 50 E.3.25. not have his age in this Writ, for this Writ is of the nature of the other.

10 H.7.10. The Tenant in a Quod ei deforceat may vouch, &c. and so both Tenant and Demandant (as hath been said) may vouch in this Act, seeing the Statute doth give a voucher, by consequence he shall recover in value.

10 H.7.29.a. 9 E.2.22. But note this Act doth give but one voucher, and therefore the vouchée shall not vouch over, and Sir William Herle said, that they were sages gents queux firent cest statut.

41 E.3.8.30. 50 E.3.25. F.N.B. 155.f. ¶ Cum oportet eos petere tenementa per defaltam amissa.] Hereupon it is holden, that he that lost by default may have a Quod ei deforceat against the alienée of the recoveror, because the words of the Statute are indefinite; and unless the Writ did lie against the alienée, the Demandant could not have the effect of his suit, viz. the restitution of the land.

See the first part of the Institutes, Sect. 674, 675.

¶ Cum aliquando contingat.] By the purview of this Statute, if the wife having no right to be indowed, bring a Writ of Dower against the Gardein in Chivalry, and by favour the Gardein in Chivalry do yield Dower, or make default, or plead faintly, by means whereof the wife recovereth her Dower in prejudice of the heir, the heir after he cometh to his full age shall have a Writ of Mordaunc' against the wife, as he might have against any other deforceor.

See the Statute of Marlb. c.16.

¶ Præcipe A. quod juste, &c.] Here the form of the Writ of Quod ei deforceat for Tenant in Dower is set down, and it is so called, because of these words in the Writ, Quod ei deforceat, and seeing the form of the Writ is here expressed, the Statute that giveth the Writ needs not be recited, as before hath been said.

See before cap. 1. Formedon.

Regist. 171. Note in none of these Writs it is said injuste deforceat (as commonly in Writs it is) because this Act giveth the form, and injuste is not in the Statute.

¶ Quod mulier jus non habet in dote.] Note, this is a good bar in a Quod ei deforceat.

¶ Non habuit aliquod recuperare quam per breve de recto, quod eis competere non potuit qui de mero jure competere non potuerunt veluti tenentes ad terminum vitæ vel liberum maritagium, vel per feodum talliatum, in quibus casibus salvatur reversio.] Upon these words four things are to be observed.

1. First

1. Firſt that none ſhall have a Writ of Right, but he that hath a fee-ſimple, here called merum jus.

2. That Tenants in tail cannot have a Writ of Right.

3. This is an Expoſition of the firſt Chapter of this Parliament, that thereby the eſtate tail is of an eſtate in fee-ſimple become a divided and particular eſtate, whereupon the reverſion in fee is expectant.

4. Fourthly, albeit Tenant by the curteſie be not expreſly named in theſe former Writs, yet is he within the miſchief and purview of this Statute, for he is tenens ad terminum vitæ. Regiſt. 171. b.

CAP. V.

CUM de Advocationibus Eccleſiarum non ſint niſi tria brevia originalia, videlicet breve de Recto, & duo de poſſeſſiones ſcil. Ultimæ præſentationis, & Quare Impedit, & hucuſque uſitatum fuerit in Regno, quod cum aliquis jus præſentandi non habens præſentaverit ad aliquam Eccleſiam, cujus præſentatus ſit admiſſus, ipſe qui verus eſt patronus per nullum aliud breve recuperare potuit advocationem ſuam, quam per breve de Recto quod habet terminare per duellum, vel per magnam Aſſiſam, per quod hæredes infra ætatem exiſtentes per fraudem & negligentiam cuſtodum, hæredes etam ſive majores, ſive minores per negligentiam vel fraudem tenentium per legem Angliæ, vel mulierum tenentium in dotem, vel alio modo ad terminum vitæ, vel annorum, vel per feodum talliatum, multotiens exhæredationem patiebantur de advocationibus illis, vel ad minus (quod eis melius fuit) ponebantur ad breve de Recto, & in caſu omnino exhæredati fuerunt hucuſque: Statutum eſt quod hujuſmodi præſentationes non ſint hujuſmodi rectis hæredibus, aut illis ad quos poſt mortem aliquorum, hujuſmodi advocationes reverti *debent* ita præjudiciales, quin quotieſcunque aliquis jus non habens, tempore hujuſmodi cuſtodiarum præſentaverit, vel tempore tenentium in dote, per legem Angliæ, vel alio modo, ad terminum vitæ, vel annorum, vel per feodum talliatum, in proxima vacatione, poſtquam hæres ad ætatem pervenerit, vel advocatio poſt mortem tenentium in forma prædicta ad hæredem plenæ ætatis exiſtentem revertetur, habeat eandem actionem recuperationem per breve de advocatione poſſeſſorium, qualem haberet ultimus anteceſſor hujuſmodi hæredis plenam habens ætatem, in ultima vacatione tempor' ſuo accidente ante mortem ſuam, vel antequam dimiſſio facta fuerit ad terminum vel ad feodum talliatum, ut prædictum eſt. Hoc idem obſervetur de præſentationibus factis ad Eccleſias de hæreditate uxorum, tempore quo fuerunt ſub poteſtate virorum ſuorum, quibus per iſtud ſtatutum ſubveniatur, per remedium ſupradictum. Viris etiam Religioſis, Epiſcopis, Archidiaconis, Rectoribus Eccleſiarum, & aliis perſonis Eccleſiaſticis per iſtud idem ſtatutum ſubveniatur: ſi aliquis

quis jus præſentandi non habens præſentaverit ad Eccleſias domus ſive prælatiæ, dignitati, aut perſonatui ſpectantes, tempore quo vacaverint prælatiæ, dignitates, aut perſonatus hujuſmodi. Nec tamen ita large intelligatur iſtud ſtatutum, quod perſonæ, ad quorum remedium ſtatutum iſtud eſt editum, habeant recuperare ſupradictum, dicentes quod cuſtodes, tenentes in dotem, per legem Angliæ, vel alias ad terminum vitæ, vel annorum, vel viri ficte defenderint placitum per ipſos, vel contra ipſos motum, quia judicia in curia Regis reddita per iſtud ſtatutum non adnihilentur, ſed ſtet judicium in ſuo robore, quouſque per judicium curia *Regis*, tanquam erroneum (ſi error inveniatur) adnulletur, vel aſſiſa ultimæ præſentationis, vel inquiſitio per Quare impedit ſi tranſierit per attinctam, vel per certificationem adnulletur, quæ gratis concedatur. Et de cætero una forma placitandi in brevibus ultimæ præſentationis, & Quare impedit, inter Juſticiarios obſervetur, quoad hoc, quod ſi pars rea excipiat de plenitudine Eccleſiæ per ſuam propriam præſentationem, non propter illam plenitudinem remaneat loquela, dummodo breve infra tempus ſemeſtre impetretur, quanquam infra tempus ſemeſtre præſentationem ſuam recuperare non poſſit. Et cum aliquando inter plures clamantes advocationem alicujus Eccleſiæ pax fuerit formata inter partes, & irrotulata coram Juſticiariis in rotulo, vel *in* fine ſub hac forma, quod unus primo præſentet, & in ſequente vacatione alius, & in tertia tertius, & ſic de pluribus, ſi plures ſint. Et cum unus præſentaverit, & habuerit ſuam præſentationem, quam habere debet per formam conventionis illius, & in proxima vacatione impediatur ille ad quem ſpectat ſequens præſentatio per aliquem qui fuit pars illius conventionis, vel loco ejus: Statutum eſt quod de cætero non habeat hujmſmodi impeditus neceſſe perquirere breve de Quare impedit, ſed habeat recurſum ad rotulum, vel ad finem. Et ſi in rotulo, vel in fine comperta fuerit prædict' pax, vel conventio, mandetur Vicecomiti, quod Scire faciat parti impedienti, quod ſit ad aliquem brevem diem continentem ſpacium xv dierum, vel trium ſeptimanarum, ſecundum quod locus eſt propinquus vel remotus oſtenſ. (ſi quid ſciat dicere) quare ſic impeditus talem præſentationem ſuam habere non debeat. Et ſi non venerit, vel forte venerit, & nihil ſciat dicere, quare ſic impeditus præſentationem ſuam habere non debeat, ratione alicujus facti poſt pacem factam, vel irrot ulatam, vel chirographatam, recuperet præſentationem ſuam cum damnis ſuis. Et cum contingat quod poſt mortem anteceſſoris ſui, qui ad aliquam Eccleſiam præſentavit perſonam, aſſignata fuerit illa advocatio in dotem alicujus mulieris, vel tenenti per legem Angliæ, & tenentes in dotem, vel tenentes per legem Angliæ præſentaverint, & verus hæres poſt mortem hujuſmodi tenentium per legem Angliæ, vel in dotem, impediatur præſentare, cum Eccleſia vacaverit: Proviſum eſt, quod de cætero ſit in electione impediti, utrum perquirere velit per breve de Quare impedit, vel ultimæ præſentationis. Hoc etiam de cætero obſer-

obſervetur de advocationibus dimiſſis ad terminum vitæ, vel annorum, vel ad feodum talliatum. Et de cætero in brevibus ultimæ præſentationis, & Quare impedit adjudicentur dampna, videlicet, ſi tempus ſemeſtre tranſierit per impedimentum alicujus, ita quod Epiſcopus Eccleſiam conferat, & verus patronus ea vice præſentationem ſuam amittat, adjudicentur dampna ad valorem Eccleſiæ de duobus annis. Et ſi tempus ſemeſtre non tranſierit, ſed diſrationetur præſentatio infra tempus prædictum, tunc adjudicentur damna ad valorem medietatis Eccleſiæ per unum annum. Et ſi impeditor nihil habeat, unde reſtituere poſſit damna, in caſu quando Epiſcopus confert *Eccleſiæ* per lapſum temporis, puniatur per priſonam duorum annorum. Et ſi advocatio diſrationetur infra tempus ſemeſtre, puniatur tamen impeditor per priſonam dimidii anni. Et de cætero concedantur brevia de Capellis, præbendis, vicariis, hoſpitalibus, abbatiis, prioratibus, & aliis domibus quæ ſunt de advocationibus aliorum, quæ prius concedi non conſueverunt. Et cum per breve Indicavit, impeditur rector alicujus Eccleſiæ, ad petend' decimas in vicina parochia, habeat patronus rectori ſic impedit' breve ad petendum advocationem decimarum petitarum. Et cum diſrationatum fuerit, procedeat poſtmodum placitum in curia Chriſtianitatis, quatenus diſrationatum fuerit in curia Regis. Cum advocatio deſcendat participibus, licet unus bis præſentet, & uſurpet ſuper cohæredem, non propter hoc excluſus ſit ille in toto qui fuit negligens, ſed alias habeat turnum ſuum præſentandi, cum acciderit.

¶ Cum de advocationibus Eccleſiarum non ſint niſi tria brevia originalia, viz. Breve de Recto, & duo de poſſeſſione, ſcil. Ultimæ præſentationis & Quare impedit.] An Aſſiſe of Darrein Preſentment no man can have, without alledging a Preſentment in his own time.

A Writ of Right of Advowſon a purchaſer cannot have without alledging a preſentation in his own time, but a Quare impedit a purchaſer may have, and alledge a preſentation in him, from whom he purchaſed the ſame; and to that end ſaith Britton was the Quare impedit provided for remedy of ſuch purchaſers, but the Quare impedit is more ancient than the time of E. 1. as appeareth by Glanvill. Brit. cap. 94. f. 233 Bract. l. 4. 246, 247 Fleta l. 5. c. 12, 13, 14, 15, 16. Glanv. li. 6. ca. 17. lib. 13. cap. 20, 21.

In 8 E. 1. it appeareth, Quod ſunt tria brevia de Advocatione placitabilia, Breve de Recto, Quare impedit, & Ultimæ præſentationis; but yet the original Writs of Dower and Ceſſavit, &c. do lie of an Advowſon, and ſo doth the judicial Writ of Scire facias. Tr. 8 E. 1. Rot. 26 Coram Rege. Bract. l. 4. f. 246. 247. Fleta lib. 5. cap. 17. 7 E. 3. 27. 43 E. 3. 15. 14 E. 2 Quare imp. 172.

¶ Et hucuſque uſitatum fuerit in regno, quod cum aliquis jus præſentandi non habens præſentaverit ad aliquam Eccleſiam, cujus præſentatus ſit admiſſus, ipſe qui verus eſt patronus, per nullum aliud breve recuperare potuit advocationem ſuam, quam per breve de Recto.] For theſe words, Advocatio, Præſentatio, Eccleſia, &c. whereof they are derived, and the ſeveral ſorts of them, ſee the firſt part of the Inſtitutes. See the firſt part of the Inſtitutes, Sect. 10, 180, 184, 643, 644, 645, 646, 647, 648.

See l.6.f.50. Boſwels caſe. Bro. tit. Preſent. al egliſe 46. 6 E.3.38,39. See the 1 part of the Inſtit. Sect.648 b.

¶ Præſentaverit.] By the order of the Common Law, if one had preſented to a Church where unto he had no right, and the Biſhop had admitted and inſtituted his Clerk, this Incumbent could not be removed for divers reaſons.

First, For that he came into the Church by a judicial Act from the Biſhop (who the Law intended, ſcrutatis archivis, to do right) the Incumbet could not be removed, neither by Writ of Right of Advowſon, nor Aſſiſe of Darrein Preſentment, nor Quare impedit, only the Patron ſhould recover his Advowſon in a Writ of Right of Advowſon, which by the uſurpation was devested from him.

2. Regiſt. F.N.B. 36.

Secondly, That by the Common Law in every Town and Pariſh there ought to be perſona idonea, and this appeareth by the words of the Writ of Quare impedit &c. Quod permittat præſentare idoneam perſon', &c. And when the Biſhop had admitted him able, which implied that he was Idonea perſona, then the Law had his final intention, viz. that the Church ſhould be ſufficiently provided for, and then the Church was ſaid to be Plena & conſulta.

3. Bract. l.4.f.244. 35 E.1. Quare imp. 180. 1 E.2. ib.41. 10 E.2. Com.22. 6 E.3.52. 11 E.3. Quare imp. 158. 39 E.3,24. 44 E.3 21. 35 H.6.64.

Thirdly, That the Incumbent having curam animarum might the more effectually and peaceably intend ſo great charge, the Common Law provided, that after inſtitution he ſhould not be ſubject to any Action, to be removed at the ſuit of any common perſon, without all reſpect of age, coverture, impriſonment or Non-ſane memory, and without regard of title, either by deſcent or purchaſe, or of any eſtate; wherein you may (as often it hath been) obſerve what inconveniences follow, when the right inſtitution of the Common Law is not obſerved.

Lib.6. f.5. Boſwels caſe. 17 E.3.64.b.

By this word Præſentaverit, it appeareth that no plenarty doth put the Patron that hath title to preſent, out of poſſeſſion, but only plenarty by preſentation; but plenarty by collation doth put him that had right to collate out of poſſeſſion.

50 E.3.14. b.

¶ Pari jure & ratione jus præſentandi non habens.] If Tenant for years, or Gardein in Chivalry bring a Quare Impedit, although the Defendant hath a Writ to the Biſhop againſt the Termor or Gardein, and his Clerk is admitted, inſtituted and inducted, notwithſtanding the Tenant of the free-hold of the Advowſon is not put out of poſſeſſion. Note a diverſity between a mere uſurpation, and him that comes in by courſe of Law.

¶ Ad Eccleſiam.] This is intended of a Church preſentative.

¶ Cujus præſentatus ſit admiſſus.] Albeit that admiſſus in his proper ſenſe is, when the Biſhop upon examination findeth him able (that is) idonea perſona, yet here it is taken for Inſtitution; for here is implied ad eandem Eccleſiam, and therefore of neceſſity it muſt be here taken for Inſtitution, and the rather, for that before Inſtitution the rightful Patron is not put out of poſſeſſion. And it is to be obſerved, that by the Inſtitution the Church, as to all common perſons, is Plena & conſulta as to the ſpiritualty, that is to ſay, the cure of ſouls: for when the Biſhop doth inſtitute him, he ſaith, Inſtituo te ad tale beneficium, & habere curam animarum, & accipe curam tuam & meam; but before induction the Parſon hath not the temporalties belonging to his Rectory.

33 H.6.13. Boſwels caſe ubi ſup. Pl. Com.f.528.l.4.f.79 Digby's caſe.

18 El. Dier. Giles caſe, li.9.f.132. Holts caſe.

But the Church is not full againſt the King before induction, becauſe in the Kings caſe plenarty is to be intended of a full and compleat plenarty, alwel to the Temporalties as to the Spiritualty. Nota, preſent Admiſſions and Inſti-

Inſtitutions, &c. are the life of Advowſons; and therefore if Patrons ſuſpect that the Regiſter of the Biſhop will be negligent in keeping of them, he may have a Certiorari to the Biſhop, to certifie them into the Chancery. Regiſt. 286. b. F.N. B. 246. m. 2 H. 4. 17 8 H. 4. 20. 14 H. 6. 21. 1 H. 7. 19. 10 H. 7 15. 25 E. 3. cap. 3.

And if there be an uſurpation upon the King by a compleat plenarty, the King cannot preſent to the Church, before he hath removed the Incumbent by Quare impedit, leſt contentions might grow in the Church betwéen the ſeveral claimers of the Benefice, to the diſturbance or hinderance of Divine Service, and this was by the Common Law. 13 R. 2. c. 1. 4 H. 4 c. 21. F.N.B. 36. k. 143. & 34. k.

But in that caſe the King is only put out of poſſeſſion, as to the bringing of an Action, but the inheritance of the Advowſon is not deveſted out of him: See in the fourth part of the Inſtitutes, cap. Ireland; when an * Incumbent is made a Biſhop, either in England or Ireland, &c. who ſhall preſent. 21 E. 4. 34. 43 E. 3. 3. b. 22 H. 6. 27. 38 E. 3. 8, 9. * Paſch. 24 E. 3. Coram Rege Cornub. Tr. 32 E. 1. Coram Rege Rot. 75. 17 E. 3. 40.

¶ Quam per breve de recto.] This is to be underſtood where the Patron that had a Fée-ſimple, and that he or ſome of his Anceſtors had preſented: But if the Patron claimed the Fée-ſimple of the Advowſon by purchaſe, and had never preſented, there he could have no Writ of Right of Advowſon, but before this Statute had loſt the Advowſon. And likewiſe if Tenant in Tail, or Tenant for life had ſuffered any uſurpation, they had been remedileſs by the Common Law, becauſe they could have no Writ of Right. 21 E. 3. 40. 41 E. 3. 5. 46 E. 3. 32. 6 Eliz. Dier 228. 45 E. 3. Quare Imp. 139. 43 E. 3. 15. 43 Aſſ. 21. 5 E. 3. 60. F.N.B. 34. 35 H. 6. 54, 60. 5 E. 3. 60. 19 H. 6. 40.

If a Biſhop, Abbot or Prior, &c. purchaſe an Advowſon, and ſuffer an uſurpation before they preſent, they and their ſucceſſors are barred for ever, unleſs by force of this Act the uſurpation be avoided in a Quare impedit.

Therefore in peruſing over the ſeveral branches of this Statute, it ſhall appear what caſes be remedied by this Act, and what remain at the Common Law.

¶ Per quod hæredes infra ætatem exiſtentes per fraudem & negligentiam cuſtodum, hæredes etiam ſive majores ſive minores per negligentiam, vel fraudem tenementium per legem Angliæ, vel mulierum tenentium in dotem, vel alio modo ad terminum vitæ, vel annorum, vel per feodum talliatum multotiens exhæredationem patiebantur de advocationibus illis, vel ad minus (quod eis melius fuit) ponebantur ad breve de recto, & in caſu omnino exhæredati fuerunt hucuſque, &c. Here is the Preamble containing the miſchief, let us therefore peruſe the words of the Act.

¶ Statutum eſt quod hujuſmodi præſentationes.] The Preamble extendeth only to heirs in Ward, per fraudem & negligentiam cuſtodum, &c. and the words of the body of the Act are, Quod hujuſmodi præſentationes, ſuch preſentations; but theſe words are to be expounded, Such preſentations that be in the ſame miſchief: and therefore this Act extends to heirs of Advowſons, though they be out of Ward. 44 E. 3. 21. li. 11. f. 33. Powlters caſe. For this word *Hujuſmodi*, ſee cap. 4 & circumſpecte agatis.

¶ Rectis hæredibus.] This Act relieveth only Infants that have Advowſons by deſcent; for if an Infant have an Advowſon by purchaſe, he remaineth at the Common Law, and is not remedied by this Act. 35 H. 6. 64.

And

35 H.6. ubi ſup. Lib. 21. f. 72. Magd. Colledge caſe.

And this being a Law that ſuppreſſeth wrong, and advanceth right, doth bind the King, though he be not named in the Act.

P. com. 58. F.N.B. 31. g.

¶ Aut illis ad quos poſt mortem aliquorum hujuſmodi advocationes reverti debent.] Nota [illis] hoc eſt illis hæredibus, to thoſe heirs that have the reverſion of the Advowſon by deſcent; for the Preamble ſaith, Hæredes etiam ſive majores, ſive minores, &c. And the cloſe of this branch is, Qualem haberet ultimus anteceſſor hujuſmodi hæredis, &c.

Bro. tit. Preſentment al egliſe 46.

So as this Statute doth help the heir of him in the reverſion, and not the Leſſor himſelf, but the heir of him in the remainder is not within the purview of this Act.

¶ Poſt mortem aliquorum hujuſmodi.] That is, of Tenant by the courteſie, Tenant in Dower, or otherwiſe for life, or for years, or in Fee-tail.

34 H.6. 30.

¶ Pro termino annorum.] Tenant for term of half a year, or a year, and Grantee of the next avoidance are within the purview and meaning of this Act; Tenant by Statute Merchant, or Staple, or Elegit, are within the purview of this Statute.

8 E.2. Quare impedit. 167. 16 E.3. Ibid. 67.

¶ Vel feodum talliatum.] Tenant in Tail of a Mannor, whereunto an Advowſon was appendant, and before this Statute an ſtranger uſurped, and then the Statute of Donis condit' and this Act is made, Tenant in Tail dieth, and the Mannor deſcendeth to his iſſue; yet the heir in Tail hath no remedy, becauſe the Advowſon was ſevered by the uſurpation: and this Act extendeth not to uſurpations before this Act.

8 E.2. ubi ſupra. 46 Aſſ. 4.

But if Tenant in Tail ſuffer an uſurpation after this Act, and dieth, his iſſue ſhall have remedy by Quare impedit within the purview of this Statute.

16 E.3. Quare imp. 67. F.N.B. 31. b. Boſwels caſe, ubi ſupra.

¶ In proxima vacatione poſtquam hæres ad ætatem pervenerit.] Note, albeit the heir hath the Advowſon by deſcent, yet if he ſuffereth an uſurpation, he hath no remedy by this branch, until after he cometh of full age; this is to be intended when the heir is in Ward, for ſo this Act putteth the caſe: but if the heir be out of Ward, he may have his Quare impedit, or his Aſſiſe of Darrein Preſentment during his minority.

¶ Per breve de advocatione poſſeſſorium.] This is by Quare impedit, or Aſſiſe of Darrein Preſentment.

¶ Qualem haberet ultimus anteceſſor, &c.] Then put caſe, that one purchaſeth an Advowſon in fee, and dieth before any preſentation made by him, and this deſcends to his heir within age, the Church becomes void; if the heir be in Ward, the heir may have his Quare impedit at his full age, and if he be within age, and out of Ward, he may have his Quare impedit, and count of a preſentation made by him of whom the purchaſe was made; but he can have no Writ of Right of Advowſon, becauſe his Anceſtor, or he never preſented.

Note it is not ſaid here, Qualem habuit, but Qualem haberet, as the Anceſtor ſhould have had if the Church had become void in his time, and his title to preſent had accrued unto him, for there the right, or at leaſt the poſſibility of Action doth deſcend.

One

One ſeiſed of an Advowſon in fée, preſenteth to the Church being void, and granteth the ſame to A. for life, and after granteth the reverſion to K. and his heirs; A. Tenant for life ſuffereth an uſurpation to the Church, the heir of K. having the right of this Advowſon by deſcent, ſhall, after the death of A. the Church becoming void, preſent, and yet K. could not have had a Quare impedit: but if A. had died before the uſurpation, then might K. have had a Quare impedit, and therefore his heir ſhall have at the next avoidance that remedy which by poſſibility he might have had; and herewith agréeth the authority of the Book in 2 E. 3. for there Tond taketh this exception, but durſt not demur. 2 E. 3. 10, 11.

¶ Vel antequam dimiſſio facta fuerit ad terminum vel ad feodum talliatum.] Hereof ſufficient hath béen ſaid before.

¶ Hoc idem obſervetur de præſentationibus factis ad Eccleſias de hæreditate uxorum.] If a Feme covert hath an Advowſon by purchaſe, ſhe is not within the remedy of this Act, and that for two reaſons: 1 E. 2. Quare imp. 43. 5 E. 3. 30. 43 E. 3. 15. Thorp. F.N.B. 34. s. Bro. tit. Preſentment al egliſe 46.

Firſt, Here it is ſaid, Hoc idem obſervetur, but an Infant having an Advowſon by purchaſe is not holpen by this Act, Et hoc idem obſervetur in caſe of a Feme covert.

Secondly, De hæreditate uxorum, is here intended of an Advowſon by deſcent; For this word Hæreditas, ſee the firſt part of the Inſtitutes, Sect. 9.

¶ Viris etiam religioſis, &c.] By this preſentation and uſurpation in time of vacation, albeit the fréehold and inheritance is in abeiance, in gremio legis, yet the uſurper gaineth a fée-ſimple in the Advowſon; like as if one entereth into lands during the vacation, and claim the ſame as his inheritance, he gaineth an inheritance by wrong; but yet as the dying ſeiſed of lands in that caſe during the vacation ſhall not take away the entry of the ſucceſſor, no more ſhall the uſurpation during the vacacion take away his right of preſentation, when the Church becomes void, and if he be diſturbed, he ſhall have his Quare Impedit. See the firſt part of the Inſtitutes, Sect. 443. F.N.B. 34. m. Br. Preſentment al egliſe 46. See Marlbr. c. 28.

¶ Nec tamen ita large intelligatur, &c. ficte defenderint.] So great regard the Law hath to Judgments, as this Act provideth, that by any general words of this Act they ſhall not be avoided by pretence of Feint defence; Quia judicia in curia Regis reddita pro veritate accipiuntur, & judicia ſunt tanquam juris dicta.

¶ Quia judicia in curia Regis reddita.] Here is one of the Maxims of the Common Law.

" Judicia in curia Regis reddita non adnihilentur, ſed ſtent in ſuo robore, quo-
" uſque per errorem, aut attinctam adnullentur.

" Nihil tam conveniens eſt naturali æquitati, unumquodq; diſſolvi eo ligamine,
" quo ligatum eſt.

" Intereſt reipub. res judicatas non reſcindi.

¶ Et de cætero una forma placitandi in brevibus ultimæ præſentationis, & Quare impedit, inter Juſticiarios obſervetur, quoad hoc, quod ſi pars rea excipiat de plenitudine Eccleſiæ per ſuam propriam

propriam præſentationem, non propter illam plenitudinem remaneat loquela, dummodo breve infra tempus ſemeſtre impetretur.]

Brit. fol. 234. By the Common Law (as hath bæn ſaid) plenarty before the Writ of Quare impedit brought was a good plea, but plenarty hanging the Writ was no bar at the Commom Law; but now by this Statute, plenarty is no plea in a Quare impedit, or Darrein Preſentment, unleſs it be by the ſpace of ſix moneths before the Quare impedit brought; for if the rightful Patron bring his Action withſn the ſix moneths, it is maintainable by this Statute, which ſhort purview doth remedy many miſchiefs at the Common Law.

But this act doth not bind the King, for plenarty by the ſpace of ſix moneths is no bar againſt him, but he may have his Quare impedit when he will, for nullum tempus occurrit Regi.

Mich. 25 E. 1. Rot. 148. in banco 3 H. 6. tit. coron. ſimil. 18 E. 3. 2. But ſome have taken a diverſity, when the King claimeth the advowſon in his own right in jure coronæ, and when he claimeth it in the right of a ſubject; for then he ſhall not be in better caſe then the ſubject was: As where the King was intitled to preſent in the right of a Ward, and one did uſurp, and the Church was full by the ſpace of ſix moneths, and it was adjudged within twelve years after the making of this act, that the King by this plenarty was barred of his Quare impedit. But ſince that time the Law hath bæn otherwiſe taken.

8 E. 3. 38. 43 E. 3 13. 25 E. 3. 54. 4 E. 3. 1. 18 E. 3. 2. 24 E. 3. 76. Plenarty by ſix moneths againſt the Quæn is a good plea, albeit ſhe claim the advowſon by the Kings indowment.

And yet in all caſes plenarty by ſix moneths is no plea in a Quare impedit. If an advowſon be aliened in Mortmain, and the Church become void, and a ſtranger uſurp, and his Clerk is in by ſix moneths, yet the immediate Lord ſhall have a Quare impedit within the year, for the Statute of 7 E. 1. de religioſis, giveth him a year, and the immediate Lord half a year after, &c. and for that cauſe alſo no deſcent of lands in the mean time ſhall take away his entry.

Lib. 6. fol. 61, 62. Catesbies caſe. ¶ Infra tempus ſemeſtre.] i. infra ſex menſes. And becauſe this computation doth concern the Church, it is great reaſon that it ſhall be made according to the computation of the Church, which Church-men do beſt know; and therefore the computation ſhall be made according to the Kalender for one half year, and not accounting 28 days to the moneth, and ſo was it reſolved in the Court of Common Pleas, temps E. 2. and temps H. 8. as in the ſaid caſe it appeareth.

Bract. l. 4. fol. 247 nu. 5. Flet. lib. 5. c. 14. Extr. ſuppl. prælat. negl. 3. & 4. de conc' præb. cap. 5. &c. Cap. unico §. 1. de jure patronatus. Mich. 3 E. 1. in banco 105. Stafford. prior de Lauda. Ante Concilium Lateranenſe nullum currebat tempus contra præſentantes, but the Biſhop was to provide one to ſerve the Cure in the mean time, and the Patron might preſent when he would. Britton fol. 225. a. calleth it the Councel of Lyons in France, for the Councel of Lateran in Rome. This Councel of Lateran was holden under Pope Alexander the third, Anno Domini 1179. 25 H. 2. But our Lapſe is not according to the times and perſons expreſſed in the Cannons, for they do give four moneths to a Lay Patron, and ſix moneths to an Eccleſiaſtical, &c. neither hath therein the King any ſupreme title by them to confer by Lapſe. And by the Councel, tempus ſemeſtre is to be accounted per dies, & non per menſes anni: And therefore we hold, that the time and title to preſent by Lapſe, is per legem Angliæ, occaſioned and eſtabliſhed it may be by reaſon of the ſaid general Councel. See lib. 6. fol. 62. in Catesbyes caſe.

Mich. 5 E. 1. Rot. 100. in banco Lincoln. Nota. * Rot. par. 27 E. 3 pars 1. m. 18. The Councel bound not the Prerogative of the King. * In the reign of Ed. 3. the Clergy pretended that Lapſe ſhould incur againſt the King, whereupon it was thus reſolved and publiſhed, Rex ad agnitionem veritatis, & ad tollendum dubitationis ſcrupulum, quam quidem prærogativarum & jurium coronæ ſuæ, neſcii hæredicuntur, omn' patr' voluit notitiæ, quod ab exordio naſcente Eccleſia in Anglia. Reges Angliæ ad omnia Eccleſiaſtica

beneſi-

beneficia qualitercunque vacantia, ad eorum collationem, &c. ſpectantia, quandocunque placeret eis, jure ſuo regio præſentarunt, &c. ſuique præſentati, &c. admiſſi fuerunt, &c. non obſtantibus aliquibus curriculis temporum, ſeu * Conſtitutionibus de præſentationibus hujuſmodi infra certum tempus fact' in contrarium edit' &c.

* Concilium Lateran.

But ſée the Regiſter, Rex venerabili in Chriſto Patri R. Epiſcopo London', &c. Quia ſecundum legem & conſuetudinem Regni noſtri Angliæ, Epiſcopi, ſeu alii Dioceſani Eccleſias, ſeu alia beneficia de quorumcunque patronatu exiſtunt, infra Dioceſariam ſuam vacantia per lapſum temporis ante ſex menſes à tempore vacationis earundem tranſactas conferre non debent, &c.

Regiſt. 42. b. Nota per lapſum, &c. eſt ſecundum legem & conſuetudinem Angliæ. Paſch. 9 E. 1. in banco Rot. 58. Southt' the Biſhop of Canterburies caſe per tempus ſemeſtre. 19 E. 2. brev. 842.

And albeit if the Lapſe were eſtabliſhed by authority of ſome Act of Parliament now (as many others be in like caſes) not extant, yet the Writ may ſerve ſecundum legem & conſuetudinem Angliæ, as our Books do warrant.

It was well and graciouſly done of King James in his general pardon at his Parliament holden in Anno 21. of his Reign, he pardoned all titles and actions of Quare impedit, as his Majeſty had or might, by reaſon of Laps incur above three years then paſt. A neceſſary branch to be contained in every general pardon. For we have known an incumbent turned out of his Benefice after 40 years quiet poſſeſſion, by pretence of a Laps upon the Statute of 21 H. 8. cap. 13. yet after ſo long poſſeſſion omnia præſumi debent ſolenniter eſſe acta.

Regiſt. f. 98. nota.

¶ Et cum aliquando inter plures clamantes advocationem alicujus Eccleſiæ pax fuerit formata inter partes quod unus primo præſentet, &c.] This clauſe extendeth as well to ſtrangers of blood, as to coparceners that are privy in blood, and if one of the parties or his heirs, or any ſtranger uſurp in the turn of another, the party wronged is not driven to his Quare impedit; for ſo it may be, that the Quare impedit, or aſſiſe of Darrein preſentment may fail, and yet he may have remedy by this branch of the Act, for albeit there be a plenarty by ſix moneths, yet the party may have a Scire facias upon the Roll or fine, and therein recover the preſentation and damages.

22 E. 3. 9. 30 E. 3. Quare imp. 49. 43 E. 3. 35. F.N.B. 36. c.

¶ Et cum contingat, &c. utrum perquirere velit breve de Quare impedit, vel ultimæ præſentationis.] Upon this branch two concluſions are to be obſerved.

F.N.B. 31. g. i. Glanv. l. 13. c. 19. Bract. l. 4. 240, 241. &c. Brit. cap. 62. fol. 224. Flet. lib. 5. cap. 11

1. Firſt, that the heir in reverſion is provided for in this caſe, and not the leſſor himſelf; for here it is ſaid, Verus hæres.

2. That albeit tenant by the curteſie, tenant in dower, tenant for life or tenant in tail preſented laſt, yet the heir, to whom the reverſion falleth in poſſeſſion, ſhall have by this branch an aſſiſe of Darrein preſentment, albeit the heir or his anceſtor did not immediately preſent before.

20 E. 3. Darr. preſent. 13.

¶ Et de cætero in brevibus ultimæ præſentationis, & Quare impedit, adjudicentur damna, *viz.* ſi tempus ſemeſtre tranſierit per impedimentum alicujus, ita quod Epiſcopus Eccleſiam conferat, & verus patronus ea vice præſentationem ſuam amittat, adjudicentur damna, ad valorem Eccleſiæ de duobus annis.

¶ Adjudicentur damna.] Before the making of this Act, the Plaintif in a Quare impedit recovered no damages, leſt any profit the Patron ſhould take ſhould ſavour of ſimony, which the Common Law did ſo deteſt: and this

Lib. 5. fol. 58, 59. Specot's caſe. Lib. 6. fol. 49, 51. Boſwels caſe.

14 E.3. Quare imped. 54. Temps E. 1. ibid. 181. 3 H.6. damag. 17. 34 H.6. 51. 18 E.1 coram Rege & Concilio ad Parliament. fol. 2. inter Dominum Regem & Epiſcopum Winton. pro cuſtod. hoſpit. South.

is the cauſe that the King in a Quare impedit recovereth no damages, becauſe he could recover none by the Common Law, and the King is not within the purview of this act, for the cauſes ſhewed in Boſwels caſe.

And foraſmuch as no damages were in a Quare impedit at the Common Law, and this Act after the Statute of Gloceſter giveth damages only, the Plaintif ſhall recover no coſts.

In a Quare impedit againſt a Prior Patron, and Incumbent, the Prior plead in bar, and the Incumbent plead the ſame plea, whereupon iſſues are joyned, the Prior dieth, the iſſue is found for the Incumbent, he ſhall not recover damages by this Act, for he cannot have a Writ to the Biſhop, and he continued in poſſeſſion.

27 H.6. 10. 9 H.6. 30, 32. 13 E.4. 3.

¶ Si tempus ſemeſtre.] If upon the foundation of a Chauntery the compoſition be, that if the Patron preſent not within a moneth, the Ordinary ſhall collate in a Quare impedit brought for this Chauntery, if the moneth be paſt, the Plaintif ſhall recover damages for two years within the equity of this Statute, for that the Patron in this caſe loſeth the preſentation, although the words of the Statute be per tempus ſemeſtre, and this is per tempus menſis tantum.

11 H.4. 80. lib. 9. fol. 26. Strat. mercella. 8 E.3. 11.

¶ Ita quod Epiſcopus Eccleſiam conferat, &c.] Here conferat is to be taken for legitime conferat.

Albeit the Biſhop hath not collated, yet if he hath jus conferendi, the Plaintif ſhall, if he will, recover double damages within the meaning of this Act.

8 E.3. 5. Quare imped. 24. 39 E.3. 15 46 E.3. 15. 13 E.3 enqueſt 43. 11 H.4 40. 13 E. 4. 3. Dyer 3 El. 15. 7 El. 241.

But albeit the ſix moneths be paſt, ſo as the Biſhop hath a juſt title to preſent by Lapſe, yet if the Church doth remain void, the Plaintif at his peril may pray a Writ to the Biſhop: but then he ſhall not recover double damages but for half a year only, becauſe in that caſe he ſhall recover his preſentation, ſo as it is in the Plaintifs election in that caſe, either to loſe his preſentation, and have double damages, or to have his preſentation, and ſingle damages.

27 E.3. damages 106.

The Plaintif in a Quare impedit after appearance was non-ſuit, whereupon the Court awarded a Writ to the Biſhop for the Defendant, and a Writ to the Sherif to enquire when the Church became void, the yearly value thereof, and whether the Church were full, &c. the Sherif returned the time of the voidance, the yearly value, and that the Biſhop had collated by Lapſe, whereby it appeared tempus ſemeſtre was paſt before the Writ could be ſerved, yet ſeeing the judgment was given within the ſix moneths, he could recover the damages but for half a year.

And it is to be obſerved, that albeit the Biſhop doth collate, yet if his Incumbent be removed by judgment within the ſix moneths, or after, the Plaintif ſhall recover the damages but for half a year, for the words of this branch are, Et verus patronus ea vice præſentationem ſuam amittat, ſo as if he loſe not his preſentation, the collation of the Biſhop is not material.

24 E.3. 35. 39 E.3 15. Regiſt. 50. 54 F.N.B. 52.

¶ Ad valorem Eccleſiæ.] This ſhall be accounted according to the very true value, as the ſame may be letten.

46 E.3. 15. b.

¶ Et ſi impeditor, &c.] No damages by this Act are to be recovered but againſt him that is impeditor, a diſturber.

In a Quare impedit againſt the Patron and Incumbent, the Plaintif recovers the advowſon poſt ſemeſtre tempus, and becauſe the Incumbent was impeditor, for that he had counterpleaded the title of the Plaintif, therefore he recovered the value for two years as well againſt the Incumbent as the Patron.

¶ Et

¶ Et de cætero concedantur brevia de Capellis, Præbendis, Vicariis, Hoſpitalibus, Abbatiis, Prioratibus, & aliis domibus quæ ſunt de advocationibus aliorum, quæ prius concedi non conſueverunt.]

Eccleſia, Capella. When the queſtion was, whether it were Eccleſia, aut Capella pertinens ad matricem Eccleſiam, The iſſue was, whether it had baptiſterium & ſepulturam: for if it had the adminiſtration of Sacraments and Sepulture, it was in Law judged a Church, Trin. 20 E. 1. in banco Rot. 177. in Quare imped' Ric' de Smithes caſe, Mich. 21 E. 1. in banco Rot. 1. Hertf. Prior de Elies caſe. Hill. 8 E. 1. in banco, Roger de Bigod, & Counte de Norff. caſe. Hill. 8 E. 2 coram Rege Cornub. pro capella ſancti Berione. A capella venit capellania Rot. Cart 26. Nov. an. 28 H. 3. in cart' fact' Will. Oxon' Epiſcopo & Capellan' ut patet, Mich. 32 E. 1. coram Rege Gloc' Capellania ſancti Oſwaldi, prioratus ſancti Oſwaldi de Gloc' quæ eſt de libera capellania noſtra.

Trin. 23 H. 3. Rot. 15. in Turri. Bract. l. 4. f. 241. b. Brit. fol. 226. b. Fleta lib. 3. cap. 14. 14 H. 3 Quare imp. 183. 34 E. 1. ib. 187 47 E. 3. 4. 8 H. 6. 32 24 E. 3. ibid. 26. 45 E. 3. ibid. 138. 14 H. 4. 11.

It appeareth here, and by 6 E. 3. that before this Act Writs did not lie de capellis, præbendis, &c. and yet it is adjudged in 14 H. 3. which was long before this Statute, that a Quare impedit did lie of a Chappel, and it was reſolved in Parliament, Hill. 19 H. 3. Quod nulla aſſiſa ultimæ præſentationis capiatur de Eccleſiis præbendatus, nec de præbendis: but now this Act hath made it clear, and the Writ ſhall be ad capellam, &c.

Inter brevia 28. Maii, anno Regis E. 1. 11. 6 E. 3. 5. 39 Bract. lib. 4. f. 240. 241. Regiſt. 31. a. 19 H. 3. Dar. preſentment, pl. ult. Vid. Rot. clauſ. 18 H. 3. m. 3.

If a patron of a Chappel preſent unto it by the name of a Church, and the Clerk be inſtituted and inducted thereunto, &c. it hath loſt the name of a Chappel.

47 E. 3. 4. 8 H. 6. 32.

¶ Brevia.] That is, Writs of Right of Advowſon, Quare impedit, and aſſiſe of Darren preſentment, which in this Act had bèn named before.

¶ Et cum per breve de Indicavit impeditur rector alicujus Eccleſiæ ad petendum decimas in vicina parochia, habeat patronus rectoris ſic impediti breve ad petendam advocationem decimarum petitarum. Et cum diſrationatum fuerit, procedat poſtmodum placitum in curia Chriſtianitatis, quatenus diſrationatum fuerit in curia Regis.

¶ Indicavit.] Hereby, and by the Regiſter, and F. N. B. it appeareth where the Writ of Indicavit doth lie, and it properly appertaineth to another Treatiſe.

Regiſt. 35. 36.

But this is an ancient Writ by the Common Law of England, the form whereof appeareth in Glanvill, and other ancient Authors.

Glanv. lib. 4. c. 13. Bract. l. 5. f. 402. b. Brit. f. 260. 31 H. 6 14. b. Mich. 2 E. 1 in banco Rot. 52.

¶ * Ad petendum decimas.] By the Common Law, if the incumbent of one patron demanded tithes againſt the incumbent of another patron, the Writ of Indicavit did lie, for that the right of the patronage ſhould come in queſtion, for by the preſentation of the patron, his incumbent is to have the tithes, which are the profits of the Church; and in a Writ of Right of advowſon the patron ſhall alledge the eſplées in his incumbent in taking of the great and ſmall tithes: and therefore if the right of tithes came in queſtion, that concerned the right of advowſon, the Writ of Indicavit did lie, and this appeareth by the Writ it ſelf.

Leic' indicavit de 4. Part. * 4 E. 3. 27. 7 E. 3. 42. 31 H. 6. 14. 38 H. 6. 20, 21. 12 E. 4. 13. 2 H. 7 12.

But for ſubtraction of tithes againſt an inhabitant within the Pariſh of the Rector claiming from one patron, where the right of the advowſon of the tithes never come in queſtion, the Court Chriſtian hath juriſdiction.

Bract. lib. 5. 402. Brit. f. 33. 28 E. 3. 97.

The miſchief before this Statute was, that ſæing the right of tithes could not be tried betwæn the two perſons after the Indicavit granted, the perſon

4 E. 3. 27. 31 H. 6. 14. 38 H. 6. 20, 21.

prohibited was without remedy for trial of the right of tithes; and therefore this act doth give the patron, whoſe Clerk is prohibited, a Writ of Right de advocatione decimarum, the form of which Writ appeareth in the Regiſter, and if the right be tried for the Demandant, the cauſe ſhall be remanded into the Court Chriſtian.

But what if the patron hath but an eſtate in tail, or an eſtate for life, &c. ſo as he cannot have this Writ of Right of advowſon, what remedy ſhall be had for trial of the right of tithes in this caſe? It ſeemeth that by conſtruction of this Statute, the Defendant in the Indicavit appearing upon the attachment ſhall plead to the right of the tithes in the Kings Court, or otherwiſe he ſhall be without remedy. And this ſtandeth well with the words of the Writ of Indicavit, viz. Vobis prohibemus, ne placitum illud teneatis, donec diſcuſſum fuerit in Curia noſtra, ad quem illorum pertineat ejuſdem Eccleſiæ advocatio, &c.

See Art. cleri c. 2. 9 E. 2. Bract. l. 5. 402, 403. 38 H. 6. 20.

By this branch it appeareth, that the value of the tithes at the making of this act was not material; for of whatſoever value they were of, the right of tithes could not be determined in Court Chriſtian; but by the Statute of Artic' cleri, cap. 2. the tithes muſt amount to a fourth part of the value of the Church in that caſe, or otherwiſe the Writ of Indicavit doth not lie, but the King may have a Writ of a leſſer part, for he is not bound by that Act.

Regiſt. 29. F.N.B. 45. b. Anno 34 E. 1. 31 H. 6. 13, 14.

Alſo by this Act a Writ of Indicavit was maintainable ante litem conteſtatam, that is, when the party hath libelled in Court Chriſtian, and the adverſe party hath anſwered thereunto, but this is remedied by the Statute of Conjunctim feoffatis.

F.N.B. 45. b. 12 E. 4. 13.

A Writ of Indicavit muſt be brought by the patron before ſentence given in Court Chriſtian, as it appeareth by the words of the Writ; for it is but a ſuperſed donec, &c. ne placitum illud teneatis, donec diſcuſſum fuerit, &c. and this Act ſaith, Procedat poſtmodum placitum in Curia Chriſtianitatis, which could not be after ſentence.

38 E. 3. 13. a. 4 E. 3. 28. F.N.B. 45. Doct. & Stud. c. 25. f. 108.

And albeit this Statute doth give the Writ of Right of advowſon of tithes, yet a Writ may be brought de decimis & oblationibus; for oblations be in conſimili caſu.

Rot. Parliament. 50 E. 3. nu. 203.

This Writ of Indicavit is againſt the Canonical ſanction, and yet hath been ever obeyed; for all forrain ſanctions or canons againſt the Law or cuſtom of the Realm are of no force, and bind not here, as elſewhere hath been ſpoken more at large.

F.N.B. 45. d.

The Writ of Indicavit ſhall not mention that the tithes, &c. in ſuit amount to a fourth part of the Church, but it ſhall be pleaded by the other party to have a conſultation.

31 H. 6. 14. 38 H. 6 26. F.N.B. 45. c.

If an Abbot be parſon in-parſonée of the Church of D. and another Abbot is parſon in-parſonée of the Church of E. ſo as there be (in reſpect of the appropriations) but two parſons, yet for that each party is both patron and incumbent, an Indicavit lieth betwæn them.

¶ Cum advocatio diſcendat participibus, licet unus bis præſentet, & uſurpet ſuper cohæredem, non propter hoc excluſus ſit ille in toto qui fuit negligens, ſed alias habeat turnum ſuum præſentandi, cum acciderit.] By the Common Law, if an advowſon deſcended to divers coparceners, if they cannot agree to preſent, the eldeſt ſiſter ſhall have the firſt turn, and the ſecond the ſecond turn, & ſic de cæteris, every one in turn according to ſeniority, and this privilege extends not only to their heirs, but to the ſeveral aſſignées of every coparcener, whether he hath the eſtate of them by conveyance,

18 E. 2. Quare Imp. 176. 19 E. 2. ibid. 177. 19 E. 3 ibid. 59. 31 E. 3. lib. 1. 20 E. 3. ibid. 63, 64. 7 E. 3. 20. 45 E. 3. 12. 11 H. 4. 54. 5 H. 5. 10. 22 H. 6. 47. 34 H. 6 40. 35 H. 6. 59. 38 H. 6. 8, 9. 2 H. 7 4. 5 H. 7. 8. lib. 8. fol. 22. Walkers caſe F. N. B. 36. d. 15 E. 3. Darr. preſent. 11. 22 E. 4. 94. 33 E. 3. Quare imped. 146. 30 E. 3. Statham Quare imped. 21 E. 3. 32. 13 E. 3. Quare imped. 58. 6 E. 3. 39. 52. 7 E. 3. 20, 21. 15 E. 3. Darr. preſent. 11. 20 E. 3. monſt' de faits 72. 13 E. 3. Quare imped. 58. 17 E. 3. 30. 37. 21 E. 3. 37. 11 H. 4. 54. 27 H. 8. 11. 36 H. 8. tit. preſent. Bro. Bract. lib. 4. fol. 238. 245. Brit. fol. 224.

or by act in Law, as tenant by the curteſie, he ſhall have the ſame priviledge by preſenting in turn as the ſiſters had: Therefore albeit the coparceners do make compoſition to preſent by turn, this being no more then the Law doth appoint, expreſſio eorum quæ tacite inſunt nihil operatur: therefore they remain coparceners of the advowſon, and the inheritance of the advowſon is not divided, and notwithſtanding this compoſition they may joyn in a Quare impedit, if any eſtranger uſurp in the turn of any of them: And the ſole preſentation out of her turn did not put her ſiſter out of poſſeſſion in reſpect of the privity of eſtate, no more then if one coparcener taketh the whole profits. If one joyntenant preſent alone, this doth not put the other out of poſſeſſion in reſpect of the unity of the title, but the Ordinary might have refuſed his preſentée, as he might the preſentée of one tenant in common, in reſpect of ſome varying opinions in old books: therefore this Act doth declare the Law, as here it appeareth.

This Law doth extend to uſurpations by one coparcener upon another, as well before partition, as after.

CAP. VI.

CUM quis petat tenementum verſus alium, & implacitatus vocaverit ad warrantum, & warrantus dedicat warrantiam, & diu pendeat placitum inter tenentem & warrantum, cum ad ultimum convincatur, quod vocatus ad warrantum warrantizare tenetur per legem & conſ. hactenus uſitatam, non fuit antea alia pœna inflicta vocato, qui warrantiam dedixit, niſi tamen quod warrantizaret, & eſſet in miſericordia, quia prius non warrantizavit, quod durum fuit petenti, quia multotiens per colluſionem inter tenentem & warrantum magnas ſuſtinuit dilationes. Propter quod Dominus Rex ſtatuit, quod ſicut tenens amitteret tenementum petitum, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de warrantia: Eodem modo amittat warrantus ſi warrantiam dedicat, & convincatur quod warrantizare debeat. Et ſi inquiſitio pendeat inter tenentem & warrantum, & petens petat per breve ad faciendum venire juratum, concedatur ei, &c.

Albeit the Mirror ſaith of this Act, L'eſtatute de garranties neſt forſque revocation de error uſee jeſque a droit ley, yet the tenant, according as it is here recited in the preamble of this Act, after the warranty tried, could have no other judgment, but that the vouchée ſhould warrant the land, according to the voucher of the tenant, but this was many times in great delay of the Demandant by colluſion or agréement betweén the tenant and the vouchée; for remedy whereof this Statute was made.

¶ Propter quod Dominus Rex ſtatuit quod ſicut tenens amitteret tenentem petitum, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de warrantia, eodem modo amittat warrantus, ſi warrantiam dedicat, & convincatur quod warrantizare debeat.

Which

Lib.6. cap.23. Which Fleta rendreth in theſe words:

Si is qui ad warrantiam tenetur warrantizare falſo contradixerit, proviſum eſt, quod ſicut tenens amitteret tenementum, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de warrantia, eodem modo amittat warrantus warrantizare dedicens, ſi convincatur quod warrantizare debeat.

Mich. 16 E.1. in banco Rot. 44. Rog.de Mowbrays caſe. 5 E.3.voucher 249. Paris caſe 30 E.3.6.Simeons caſe. Liber plac' Raſt. 352.614.6 H.4.304

¶ Si warrantiam dedicat.] This is not to be underſtood only where the vouchée denieth the déed, or other cauſe of the warranty, and thereupon iſſue is taken, and found againſt the vouchée: And where the vouchée entereth into the warranty, and demands of the tenant what he hath to bind him to warranty, and the tenant ſheweth ſpecial matter to bind him to warranty, and the vouchée demurreth in Law upon the lien, this is within the remedy of this Act; for the words ſubſequent be, Si convincatur quod warrantizare debeat, which the vouchée is in this caſe; and this Act being made to ouſt delays, which are odious in Law, is to be interpreted favourably.

And it is to be obſerved, that here is Sicut, which is an adverb of ſimilitude, viz. Sicut tenens amitteret, ſi vocaſſet ad warrantum, & warrantus ſe poſſet devolvere de Warrantia. Under which words are included, if the vouchée can devolve him of the warranty by demurrer, or any iſſue whatſoever, eodem modo (ſaith this Act) amittat warrantus, &c. which fortifieth the former expoſition that hath béen made; and to be ſhort, whereſoever the judgment at the Common Law ſhould have béen againſt the vouchée upon falſe plea, or demurrer, &c. quod warrantizaret, all theſe caſes are within the proviſion of this Act.

¶ Et ſi inquiſitio pendeat inter tenentem & warrantum, & petens petat breve ad fac' venire juratum, concedatur ei.] Here is further remedy given for the Demandants expedition, that he may ſue out the venire fac' for the trial of any iſſue betwéen the tenant and vouchée.

Theſe things are neceſſary to be known; for at this day vouchers are moſt commonly uſed for delay.

CAP.

CAP. VII.

CUſtodi de cætero concedatur breve de admenſuratione dotis. Nec per ſectam cuſtodis, ſi ficte & per colluſionem ſequatur verſus mulierem tenentem in dotem, præcludatur hæres cum ad ætatem pervenerit ad dotem admenſurandam, ſecundum quod per legem Angliæ fuit admenſuranda. Et tam in iſto brevi, quam in brevi de admenſuratione paſturæ, celerior quam prius de cætero ſit proceſſus, ita quod cum perventum fuerit ad magnam diſtrictionem, dentur dies, infra quos duo comit. teneantur, ad quos publica fiat proclamatio, quod defendens veniat ad diem in brevi contentum querenti reſponſurus. Ad quem diem ſi venerit, procedat placitum inter eos, & ſi non venerit, & proclamatio ſupradicta modo per Vicecomitem teſtificata fuerit, procedatur per defaltam ad admenſurationem faciendam.

Vide Mich. 10 E. 1. in banco Rot. 105. Northt. Paſc. 18 E. 1. in banco Rot. 15. Laurence de Oyſileurs caſe.

Before this Act, if the heir within age, before the garden in chivalry enter into the land, had aſſigned dower to the wife more then ſhe ought to have, the garden had been without remedy: for no Writ of admeaſurement of dower being a real action lay for the garden at the Common Law implied by de cætero. Brit. c. 113. f. 263.

¶ Cuſtodi.] Garden in droit or in fait ſhall have this Writ by this Act, if the aſſignment of dower be made in his own time: but if the aſſignment be made by the heir in time of garden in droit, and after the garden in droit aſſigneth his intereſt over, the aſſignée ſhall not have a Writ of admeaſurement, for that the garden in droit had but a choſe in action; but if the aſſignment had been made in the time of the garden in fait, he ſhould have had a Writ of admeaſurement of dower by this Act. 7 R. 2. tit. admeaſurement 4. F. N. B. 149. a.

But this is to be underſtood (though the Statute be general) when the heir within age aſſigneth dower, as is aforeſaid, or when dower is aſſigned in the right of the heir, or the garden aſſigneth more dower then he ought, the heir after his full age ſhall have a Writ of admeaſurement of dower by the Common Law, and he cannot have it before, becauſe the intereſt of the garden (which he may give away) endureth until that time; but if the heir within age be out of ward, and aſſigneth more dower then he ought within age, he may have an admeaſurement of dower within age, for enter he cannot. Glanv. l. 6. cap. 13. Bract. lib. 2. fol. 93 lib. 4. 314, 315. Flet. lib. 5. cap. 22 & 33. Brit. fol. 263 Mirror cap. 5. § 5 7 E. 4. 22. b. 7 E. 2 admeaſur. 13. 7 R. 2. ibid. 4. 21 H. 7. 43.

If the garden aſſigneth more dower then he ought, and the heir dieth, his heir ſhall have a Writ of admeaſurement of dower.

* And ſo if the heir within age aſſign dower, and dieth, his heir ſhall have the like Writ; but if the anceſter of full age, being tenant in fée-ſimple, aſſigneth dower more then he ought, his heir ſhall never avoid it, becauſe he had full power to aſſign as much as he would. * Brit. c. 113. f. 263. b. 6 H. 3. admeaſur. 8. 7 R. 2. tit. admeaſur. 4. le Counteſs de Devons caſe. 17 E. 3. 71. F. N. B. 149.

The King is intituled by falſe office to the wardſhip of the body and lands of the heir of J. S. being within age, dower is aſſigned to the wife more then ſhe ought, the garden in chivalry traverſeth the office, and avoideth it, this garden ſhall by this Act have a Writ of admeaſurement of dower of the aſſignment made by the King, having but a defeaſible title to the wardſhip.

By the like reaſon, if tenant by Knight-ſervice dieth, his heir within age an eſtranger abate, and endoweth the wife of more then ſhe ought, the garden ſeiſeth the ward, he ſhall by this Act have a Writ of admeaſurement of dower: And ſo if J. S. ſeiſed of lands in fée taketh wife, and is diſſeiſed and dieth, the

diſſeiſor

diſſeiſor aſſigneth more in dower then ſhe ought, the heir entreth into the reſidue, he ſhall have a Writ of admeaſurement by the Common Law, and this well agreeth with the words of the Writ, viz. Quod C. quæ fuit uxor prædict' B. plus habet in dotem de libero tenemento, quod fuit prædict' B. quondam viri ſui in N. quam habere debet, & ad ipſam pertinet habendam.

14 H.3. admeaſur. 10. F.N.B.149.c. And albeit the words of the Writ be in the preſent time, plus habet in dotē, &c. yet it is to be taken, that ſhe had more in value at the time of the aſſignment of dower; for if by her induſtry and policy it be made of greater value afterward, no Writ of admeaſurement lieth for this improvement.

¶ Nec per ſectam cuſtodis ſi ficte per colluſionem ſequatur, &c.] Hereby is remedy given to the heir at his full age, if the garden proſecute feintly, or by colluſion againſt the wife, ſo as the heir ſhall not be barred in his Writ of admeaſurement againſt the tenant in dower.

11 H.4.3. Plow. com. 55. The heir ſhall not be driven to ſhew the manner of the feint pleading, but to alledge the ſame generally.

9 H.6.5. The tenant in a Præcipe doth plead, that an eſtranger hath recovered againſt him by verdict in an aſſiſe, the Plaintif againſt this verdict cannot generally aver, that this was by covin, but muſt ſhew ſome ſpecial matter.

Regiſt. 171. Vet. N.B. 9. & 10. F.N.B. 148. h. ¶ Et tam in iſto brevi, quam in breve de admenſuratione paſturæ, celerior quam prius de cætero fiat proceſſus.] Whereas by the Common Law the proceſs in both theſe Writs were Summons, Attachment, and Diſtreſs infinite, by this Act a more ſpēdy procēding is provided.

34 E. 3. damag. 2. 42 E.3.19. Regiſt. 171. There is great affinity betwēn theſe two Writs, as hereby it appeareth: amongſt others there is one difference, that in a Writ of admeaſurement of dower the Demandant ſhall recover damages, if the tenant appear not the firſt day, and yield to admeaſurement for the iſſues in the mean time; but in admeaſurement of paſture no damages ſhall be recovered at all.

More ſhall be ſaid of the proceſs, and procēding in this Writ of admeaſurement of dower in the expoſition of the next Chapter, only to remember by the way what the Mirror ſaith, Le'ſtatute de admeaſurement eſt reprovable in pluſors points quant as proclamations, de ſicome admeaſurement, & ſurcharge ſont feaſibles per juries de office. Mirror cap. 5. § 5.

¶ Ita quod cum pervēntum fuerit ad magnam diſtrictionem, dentur dies, infra quos duo comitatus teneantur, &c.] By reaſon of theſe words, Cum perventum fuerit ad magnam diſtrict' the very Writ of diſtreſs ſhall contain, & interim in duobus plenis comitatibus tuis publice proclamari fac', quod prædict' A. quæ fuit uxor T. veniat coram præfatis Juſticiariis ad reſpondendum, &c. ſi voluerit, & ad audiendum judicium ſuum pro pluribus defaltis.

4 E.3. admeaſur. 12. And yet I find, that after the grand diſtreſs returned, the Plaintif prayed a Proclamation, and there it is taken, that he had not ſurceſſed his time, but it was granted.

See more of admeaſurement of dower in the next Chapter following.

CAP.

CAP. VIII.

CUm per placitum motum per breve de admenſuratione paſturæ, paſtura fuerit admenſurata aliquando coram Juſtic̃, aliquando in com̃ coram Vicecom̃, multotiens contingit, quod poſt hujuſmodi admenſurat̃ actam, iterum ponit ille, qui primo ſuperoneravit paſturam, pluria animalia quam ad ipſum pertinet habend̃, nec ſuper hoc hucuſque proviſum fuiſſet remedium: Statutum eſt, quod de ſecunda ſuperoneratione fiat remedium conquerenti ſub hac forma, Quod conquerens habeat breve de Judicio, ſi coram Juſtic̃ admenſurata fuerit paſtura, quod Vic̃ in præſentia partium præmonitarum (ſi intereſſe voluerint) inquirat de ſecunda ſuperoneratione. Quæ ſi inventa fuerit, mandetur Juſtic̃ ſub ſigillo Vic̃, & ſigillis Juratorum, & Juſtic̃ adjudicent conquerenti damna, & ponant in extractis valorem animalium quæ ſuperoner̃ poſt admenſurationem factam poſuit in paſtura, ultra quod debuit, & extractas liberent Baronibus de Scaccario, ut inde reſpondeant Domino Regi. Si in com̃ facta fuerit admenſuratio, tunc ad inſtantiam querentis exeat breve de Cancellaria, quod Vic̃ inquirat ſuper hujuſmodi ſuperoner̃, & de averiis poſitis in paſturam ultra debitum numerum, vel de pretio Dom̃ Regi ad Scaccar' ſuum reſpondeat. Et ne Vic̃ fraudem faciat Domino Regi in iſto caſu, concordatum eſt, quod omnia hujuſm̃ brevia de ſecunda ſuperoner̃, quæ exeunt de Cancel' irrotulentur, & in fine anni mittantur tranſcripta ad Scaccar', ſub ſigillo Cancellarii, ut videant Theſaurius & Barones de Scaccar' qualiter Vic̃ reſpondeat de exitibus hujuſmodi brevium. Eodem modo irrotulentur brevia de Rediſſeiſina, & mittantur ad Scaccarium in fine anni.

Glanv. li. 12. c. 13. Bract. li. 4. fo. 229. Brit. fol. 138. Flet. lib. 4. cap. 23. Mirr. cap. 5. § 5.

It is to be obſerved, that the Writs of admeaſurement of paſture and of dower are vicountel, and are not returnable, and the parties may thereupon plead before the Sheriff in the County.

7 E. 4. 22. F.N.B. 225. h. & 148 f. g. 44 E. 3. 10.

Both theſe pleas may be removed out of the County Court by pone at the ſuit of the Plaintiff, without ſhewing cauſe in the Writ, but at the ſuit of the Defendant he ought to ſhew cauſe.

Now where this Statute ſaith, Aliquando coram Juſticiariis, that is, when the plea is removed before the Juſtices, there upon pleading, or confeſſion before them after admeaſurement made and returned, judgment ſhall be given by the Juſtices; but if the plea be not removed, the admeaſurement ſhall be enquired of, and made before the Sheriff, and ſo be theſe words (aliquando in comit' coram Vicecom̃) to be underſtood.

Regiſt. judic. fol. 36. b. & 40. a.

See the judicial Writ of admeaſurement of paſture granted by the Court of Common pleas for making of admeaſurement, which Writ is returnable before the Juſtices.

Regiſt. Judic. ubi ſupra.

¶ Nec ſuper hoc hucuſque proviſum fuiſſet.] Yet I have ſeen a Record in 11 H.3. where a Writ de ſecunda ſuperoneratione was granted.

Anno 11 H.3. in archivis turris. London.

¶ Statutum eſt, quod de ſecunda ſuperoneratione fiat remedium conquerenti ſub hac forma, Quod conquerens habeat breve de judicio, ſi coram Juſticiariis admenſurata fuerit paſtura.] The effect of which judicial Writ is, That the Sheriff in the preſence of the parties, if they will be preſent, being warned, ſhall enquire by a Jury of the ſecond ſurcharge, and what cattel ſecondly ſurcharged, and the value of them, which if it be found, and returned under the ſeal of the Sheriff, and the ſeals of the Jurors, the Juſtices ſhall adjudge damages to the party, and the cattel which ſurcharged after the admeaſurement made ſhall be forfeited to the King, and the value of them ſhall be eſtreated into the Exchequer, that thereof the King may be anſwered.

Regiſt. 157. Regiſt. judic. 36. F.N.B. 126. Flet. lib. 4. ca. 23. 7 E. 4. 22. Vet. N.B. fol. 72.

¶ Si in com̃ fact' fuerit admenſuratio, tunc ad inſtantiam querentis exeat breve de Cancellaria.] Which Writ you may find in the Regiſter.

Regiſtr. 157.

¶ De ſecunda ſuperoneratione.] And here it is to be known, that a Writ de ſecunda ſuperoneratione lyeth not againſt any that ſurchargeth after a former admeaſurement, but only againſt them, againſt whom the Writ was brought, and which were particularly charged with ſurcharge in the Writ; for all the Commoners, as well thoſe which ſurcharged not, as thoſe which ſurcharged, are to be admeaſured; and therefore it appeareth not who ſurcharged, but only they that are charged therewith, and ſo found: Hereupon it followeth, that a Writ de ſecunda ſuperoneratione lyeth not againſt any, but againſt them that were named, and thereof convicted in the firſt Writ; for he cannot be charged with a ſecond, that was not culpable of the firſt: and therefore none but ſuch as were named in the former Writ ſhall forfeit their cattel, &c. or yield damages.

Temps E. 1. admeaſurement 15. 18 E. 3. 30. 7 E. 4. 23. 8 H. 6. 26. F.N.B. 126. i.

¶ Et ne Vicecomes fraudem fac̃ Domino Regi.] Here is proviſion made to prevent the fraud of Sheriffs, leſt by their fraud they ſhould prevent the King of his duty.

CAP.

CAP. IX.

CUm capitales domini diſtringunt feodum ſuum pro conſuetudinibus & ſervitiis ſibi debitis, & medius ſit qui tenentem acquietare debeat, cum non jaceat in ore tenentis, poſtquam diſtrictionem replegiaverit, dedicere demanda capitalis domini ſui, qui advocat in curia Regis juſtam diſtrictionem fieri ſuper tenentem ſuum, *viz.* ſuper medium: multi per hujuſmodi diſtrictiones hucuſque gravati extiterunt, per hoc quod medius (licet haberet per quod diſtringi poſſet) magnas fecit dilationes antequam ad curiam venerit ad reſpondendum hujuſmodi tenentibus ſuis ad breve de medio: per hoc etiam quod durius fuit in caſu quando medius nihil habuit, in caſu etiam cum tenens paratus eſſet facere capitali domino ſervitia & conſuetudines exactas, & capitalis dominus ſervitia & conſuetudines ſibi debitas renuebat percipere per manum alterius, quam per manum proximi tenentis ſui, & ſic amiſerunt hujuſmodi tenentes in dominico proficuum terrarum ſuarum aliquando ad tempus, aliquando toto tempore ſuo, nec fuit antea aliquod remedium in hoc caſu proviſum. Ordinatum eſt & proviſum in hoc caſu remedium in poſterum, ſub hac forma. Quod quam cito hujuſmodi tenens in dominico, habens medium inter ipſum & capitalem dominum, diſtringitur, ſtatim perquirat ſibi tenens breve de medio. Et ſi medius habens terram in eodem comitatu diffugerit uſque ad magnam diſtrictionem, detur querenti in brevi ſuo de magna diſtrict' talis dies, ante cujus adventum duo comitatus teneantur, & præcipiatur Vicecom̃, quod diſtringat medium per magnam diſtrictionem, prout in brevi continetur. Et nihilominus Vicecomes in duobus plenis comitatibus ſolemniter proclamare faciat, quod hujuſmodi medius veniat ad diem in brevi contento, reſponſurus tenenti ſuo. Ad quem diem ſi venerit, procedat placitum inter eos modo conjuncto. Et ſi non venerit hujuſmodi medius, amittat ſervitium tenentis ſui, & a modo non reſpondeat ei tenens in aliquo, ſed (omiſſo illo medio reſpondeat capitali domino de eiſdem ſervitiis & conſuetudinibus, quæ prius facere debuit prædictus medius. Nec habeat capitalis dominus poteſtatem diſtringendi tenentes in dominico, dum prædictus tenens offerat ei ſervitia debita & conſueta. Et ſi capitalis dominus exegerit plus quam medius ei facere deberet, habeat tenens in hoc caſu exceptionem verſus dominum quam haberet medius. Si vero medius nihil habuerit in poteſtate Regis, nihilominus perquirat tenens breve ſuum de medio ad Vicecomitem illius comitatus in quo diſtringitur. Et ſi Vicecomes mandaverit, quod medius nihil habet unde poteſt ſummoneri, nihilominus ſequatur breve de

Attachiamento. Et ſi Vicecomes mandaverit, quod nihil habet per quod poteſt attachiari, nihilominus ſequatur breve de magna diſtrictione, & fiat proclamatio in forma prædicta. Si vero medius non habeat terram in comitatu in quo fit diſtrictio, ſed habeat terram in alio comitatu, tunc exeat breve originale ad ſummonendum medium ad Vicecomitem illius comitatus in quo fit diſtrictio. Et cum teſtificatum fuerit per illum Vicecomitem, quod nihil habet in comitatu ſuo, exeat breve de Judicio ad ſummonend' medium ad Vicecomitem illius comitatus in quo teſtificatum fuerit quod habet tenement', & fiat ſecta in illo comitatu, quouſque perveniatur ad magnam diſtrictionem, & proclamationem, ſicut dictum eſt ſupra de medio habente terram in eodem comitatu in quo ſit diſtrictio. Et nihilominus fiat ſecta in comitatu in quo nihil habet (ſicut dictum eſt ſupra de medio nihil habente) quouſque perveniatur ad magnam diſtrictionem & proclamationem, & ſic poſt proclamationem in utroque comitatu factam adjudicetur medius de feodo & ſervitio ſuo. Et cum aliquando contingat, quod tenens in dominico feoffatus eſt ad tenendum de medio per minus ſervitium, quam medius facere debuit capitali domino, cum poſt hujuſmodi proclamationem attornatus ſit tenens capitali domino, medio omiſſo, neceſſe habet tenens reſpondere capitali domino de ſervitiis & conſuetud. quæ medius ei prius facere debuit, & poſtquam medius venerit in Curiam, & cognoverit, quod acquietare debet tenentem ſuum, vel adjudicetur ad acquietandum, ſi poſt hujuſmodi cognitionem aut judicium queremonia perveniat, quod medius non acquietat tenentem, tunc exeat breve de Judicio, quod Vicecomes diſtringat medium ad acquietandum tenentem, & ad eſſendum coram Juſticiariis ad certum diem ad oſtendendum quare prius eum non acquietavit. Et cum per diſtrictionem venerit, audiatur querens. Et ſi querens verificare poterit, quod ipſum non acquietavit, ſatisfaciat de damnis, & per judicium recedat tenens quietus de ſuo medio, & attornetur capitali domino. Et ſi ad primam diſtrictionem non venerit, exeat breve de alia diſtrictione, & fiat proclamatio, & poſtquam teſtificatum fuerit, procedatur ad judicium, ſicut ſuperius dictum eſt. Et ſciendum eſt, quod per hoc ſtatutum non excluduntur tenentes, quin habeant warrantiam, ſi de tenementis ſuis implacitentur, ſuper medios ſuos & eorum hæredes, ſecundum quod prius habuerunt, nec etiam excluduntur tenentes, quin ſequi poſſunt verſus medios ſuos, ſecundum conſuetudinem prius uſitatam, ſi viderint quod proceſſus eorum plus valeat per antiquam conſuetudinem, quam per iſtud ſtatutum. Et ſciendum eſt, quod per iſtud ſtatutum non providetur remedium quibuſcunque mediis, ſed ſolummodo in caſu cum ſit unus medius tantum inter dominum diſtringentem & tenentem, & in caſu quando medius ille eſt plenæ ætatis, & in caſu quando tenens, ſine præjudicio alterius quam medii, attornare ſe poteſt

poteſt capitali domino, quod dictum eſt pro mulieribus tenentibus in dotem, & tenentibus per legem Angliæ, vel aliter ad terminum vitæ, vel per feodum talliatum, quibus pro aliquibus cauſis nondum eſt proviſum remedium: (ſed Deo dante) alias providebitur.

One miſchief here firſt mentioned before the making of this Statute was, the great delays which were uſed in the Writs of Meſne, in which the proceſs at the Common Law was Summons, Attachment, and Diſtreſs infinite; and yet the tenant in default of the Meſne was preſently diſtrained by the Lord Paramount, which miſchief appeareth by the preamble of this Act: For remedy whereof a more ſpeedy proceeding is given by this Act in a Writ of Meſne. 50 E.3.23.

Another miſchief was, when the Meſne had nothing within the ſame County; for there the Tenant was without remedy, and though the Meſne had ſufficient in another County, the Common Law extended not thereunto, in both which caſes remedy is given by this Act.

¶ Pro conſuetudinibus & ſervitiis, &c.] The diſtreſs muſt be taken for the cuſtoms or ſervices which the Meſne by reaſon of his tenure ought to do to the Lord, within which, ſute ſervice to a Hundred is comprehended, but not ſute real, that is, by reliancy, either to Hundred, Leet, or Tourne, for that is not by reaſon of his tenure. 4 E.3.42. F.N.B.137.a.

But if the Tenant be diſtrained for the relief of the Meſne, or for reaſonable aide, albeit they are rather improvements of ſervices then ſervices, yet the Tenant ſhall have a Writ of Meſne, becauſe they grow by reaſon of the tenure. 5 E.3.49. 10 H.6. 26. 39 H.6. 31.a. 9 E.4.27. F.N.B. 136.m.

¶ Et medius ſit.] If there be A. Lord, B. Meſne, C. Meſne, D. tenant peravaile, A. the Lord Paramount diſtrein D. for ſervices, &c. he bringeth a Writ of Meſne againſt C. and recovereth damages againſt him, whereupon C. the Meſne may have a Writ of Meſne againſt B. but if B. plead nient diſtrein in ſon default, the ſpecial matter muſt be ſhewed, and not to take the general iſſue, and ſo every Meſne ſhall have his Writ againſt his Meſne. 18 E.3.19. 29 E.3.34. 39 E. 3.19. 39 H.6.31.b.

¶ Qui tenentem acquietare debeat.] There be two kinds of acquitals: one expreſs, and the other implyed: expreſs, three manner of ways: 31 E.1. meſne 55. 7 E.2. ibid.66. 20 E.2. ibid.59. 8 E.3.49. 39 E.3. 19. 38 E.3.10. F.N.B.136.

Firſt, by fine or deed, either at the creation of the tenure, or after: ſecondly, by acknowledgment of acquital: thirdly, by preſcription.

Implyed, five manner of ways:

Firſt, by owelty of ſervices; ſecondly, by tenure in frankalmoigne; thirdly, in frankmarriage; fourthly, by homage aunceſtrel; and fifthly, in dower.

¶ In caſu etiam cum tenens paratus eſſet facere capitali Domino ſervitia & conſuetudines exactas, & capitalis Dominus ſervitia & conſuetudines ſibi debitas renuebat percipere per manum alterius, quam per manum proximi tenentis ſui, &c.] By the Common Law the Lord Paramount might have refuſed his ſervices by the hands of the tenant peravaile, or by the hands of tenant for life, where the reverſion was over, becauſe the Meſne or he in reverſion was his very tenant in privity, for the which remedy is given by this Act. Lib.6.58. Bredimans caſe, lib.9. fol.110,111. 21 E.3.49. 2 H.6.3. 8 H.6.16.

¶ Uſque

¶ Uſque ad magnam diſtrictionem.] This muſt be underſtood of a Writ of Meſne returnable into the Court of Common Pleas, and not of a Writ of Meſne that is vicountell, and not returnable.

F.N.B.136.d. And although a Writ of Meſne be depending betwæn the tenant and the Meſne, yet the Lord Paramount may proceed, &c. for he ſhall not tarry till the matter be tried in the Writ of Meſne.

Flet.li.2.cap.43. Brit.fol.58.b. But it appeareth by Fleta, Si medius ſit paratus ipſum tenentem acquietare de ſervitiis, quod capitalis Dominus ab eo exigit, tunc ſecundum æquitatem juris ſubvenietur tenenti per breve, *viz.* quod capitalis Dominus deſiſtat, and there the Writ in that caſe appeareth.

¶ Et ſi medius habens terram in eodem comitatu, &c.] Here is provided a more ſpædy procæding in the Writ of Meſne, if the Meſne had land in the ſame County.

Brit.ubi ſupra.

¶ Et ſi non venerit hujuſmodi medius, amittat ſervitium tenentis ſui, & a modo non reſpondeat, &c.] If the Meſne appear not at the grand diſtrels, he ſhall be fore-judged, that is to ſay, that the Meſne ſhall loſe the ſervices of his tenant of the tenements before holden. And that the Meſne being omitted, the tenant from thencefoorth ſhall be attendens & reſpondens to the chief Lord by the ſame ſervices, as the Meſne holdeth by.

Flet lib.2. cap.43. Brit.fol.58. 10 H.6.26.

21 E.3. meſne 48. 10 H.6.fol.26. 4 H.6.28. But it is to be obſerved, that the immediate chief Lord muſt be named in the fore-judger; for albeit he be a ſtranger to the Writ, and by his death the Writ of Meſne ſhall not abate; yet in the judgment he that is then immediate Lord Paramount muſt be particularly named.

¶ Nec habeat capitalis Dominus poteſtatem diſtringendi tenentes in dominico, dum prædictus tenens offerat ei ſervitia debita, & conſueta.] Here three things are to be obſerved.

1. That the Tenant muſt offer and tender the rent or ſervice due upon the land, and not be ready only, by reaſon of the word (offerat.)

2 H.6. avowry 1. 2 H.6.fol.3. 21 E.3.49. Bredimans caſe, ubi ſupra. li.9. fol.110, 111.

2. This muſt be done at the time, when the Lord comes to diſtrain.

3. That this Act is to be underſtood of ſervices and cuſtoms whith the tenant may do, as payment of rents, delivery of heriot-ſervice, or the like; but extendeth not to perſonal ſervices annexed to the perſon of the Meſne, as homage, fealty, &c. for he cannot ſay, I become your man: nor ſwear to him fealty, &c. But after fore-judger, then the tenant ſhall do all manner of ſervices which the Meſne ought to have done, for then the Meſnalty is extinct; but as long as the Meſnalty remains, the perſonal ſervices remain with the Meſne, Servitia perſonalia ſequuntur perſonam.

¶ Et ſi capitalis Dominus exegerit plus, quam medius ei facere deberet, habeat tenens in hoc caſu exceptionem verſus Dominum quam haberet medius.] Hereby proviſion is made for the tenant to take any advantage that the Meſne might do, if the chief Lord demand other ſervices then the Meſne ought to do, albeit he be a ſtranger to the avowry.

¶ Si vero medius nihil habuerit in poteſtate Regis.] Here ſub poteſtate Regis is taken for the power of the King to adminiſter juſtice to his ſubjects by his Writs, Poteſtas regia eſt facere juſtitiam. See the firſt part of the Inſtitutes, ſect.199.

Lib.7. in Calvins caſe, cap. Itineris, vet. Magn. Chart. fol.154.

And by this branch remedy is given to the tenant where the Meſne had nothing, where he had no remedy by the Common Law.

¶ Si

¶ Si vero medius non habeat terram in comitatu in quo ſit diſtrictio, ſed habeat terram in alio comitatu, &c.] Here is remedy given to the Tenant, where the Meſne hath land in a forrain County.

¶ Adjudicetur medius de feodo & ſervitio ſuo.] Here alſo foreiudger is given in the caſes here mentioned, which is a better and ſpædier remedy than the Common Law gave. Mich. 17 E. 1. in banco rot. 147. Suff. Rich. de Rokeles caſe.

¶ Et poſtquam medius, &c. cognoverit, &c. vel adjudicetur ad acquietandum, &c. ſi poſt, &c. medius non acquietavit tenentem.] Medius, the heir of the Meſne ſhall not be foreiudged within this Statute, for that this Act ſpeaketh of the Meſne only, and not of the Meſne and his heirs. 31 E. 1. meſne 55. 18 E. 2. ibid. 57. 46 E. 3. 31.

¶ Satisfaciat de damnis, & p judicium recedat, &c.] This branch of the Statute giveth damages and foreiudger, and the Plaintiff cannot take damages, and leave the foreiudger, but he muſt either take both, according to this branch, or neither of them. 31 E. 1. meſne 55. 13 E. 2. ib. 68. 46 E. 3. 31. 49 E. 3. 8.

¶ Et ſciendum eſt, quod per hoc Stat non excluduntur tenentes, quin habeant warrantiam.] By this clauſe the warranty of the tenant (which was ever much eſtæmed in law) is ſaved and preſerved, and many deeds comprehended both warranty and acquital. 8 E. 3. 49.

¶ Nec etiam excluduntur tenentes, &c.] Here the tenant hath election either to take the benefit of this Act, by taking the proceſs given by the ſame, or to take the proceſs at the Common Law, and this was abundans cautela: for this Statute being in the affirmative, the tenant might have had election (if this clauſe had not been) but abundans cautela non nocet: and the ancient Sages of the Law did ever make things as plain, and leave as little to conſtruction as might be. 13 E. 2. meſne 68. 50 E. 3. 23. F. N. B. 137. b.

¶ Sed ſolummodo quando unus ſit medius, &c.] Hereby it appeareth, that no foreiudger can be, but when there is but one Meſne between the Lord Paramount and the tenant.

¶ In caſu quando medius eſt plenæ ætatis.] Albeit a feme covert be not here excepted, yet by good conſtruction ſhe is excepted. 7 E. 2. meſne 76. 9 E. 2. ibid. 67. 7 E. 3. fol. 41.

¶ Sine præjudicio alterius.] Theſe words were ſpecially intended of tenant in dower, or of tenant for life, or in tail with a remainder over; for againſt them no foreiudger ſhall be given, but their extent is far more large. 34 E. 3. meſne 47. Dier 2. mar. 104. 14 E. 2. tit. meſne 70.

If the diſſeiſor, or any other that hath a defeaſible title in the tenancy doth foreiudge the Meſne, this ſhall not prejudice the diſſeiſee, or him that right hath; for they are within the remedy of theſe words, That every foreiudger ought to be ſine præjudicio alterius.

But if the daughter foreiudge the Meſne, and a ſon is born after the foreiudgment, the ſon ſhall not avoid it; for it was ſine præjudicio alterius, when the judgment was given.

If two jointenants bring a Writ of Meſne, and the one is ſummoned and ſevered, and the other ſueth forth, he cannot foreiudge the Meſne, becauſe he cannot reſpondere capitali domino de eiſdem ſervitiis & conſuetudinibus, quæ prius facere debuit prædictus medius. 14 H. 4. 37.

So it is, if there be two joynt Meſnes, and the one appear, and the other make default, no foreiudgment ſhall be, for the ſame cauſe neceſſarily collected upon the ſame words.

They

19 E. 3. tit. meſne Statham. They that are ſeiſed in auter droit, as the Biſhop in right of his Biſhoprick, or the Abbot or Prior in the right of his Monaſtery, or the like, ſhall neither fore-judge, nor be fore-judged, becauſe it is to be intended, that it cannot be done ſine præjudicio alterius, for that the conſent of them is not had, which by Law to the alteration of any eſtate is requiſite, as the Dean and Chapter to the Biſhop, and the Covent to the Abbot, Prior, &c.

34 E. 3. meſne 47. If the Meſne hanging the Writ of Meſne againſt him alien by fine, albeit the right of the meſnalty paſſeth to the conuſee, yet the Meſne may be fore-judged, and the conuſee ſhall not take advantage of theſe words, Sine præjudicio alterius, becauſe he came to the meſnalty, pendente brevi, and in judgment of Law the Meſne (as to the Plaintiff) remain ſeiſed of the meſnalty; for, pendente lite nihil innovetur.

CAP. X.

Regiſtr. 19. b. CUm in itinere Juſtic̃ proclamat̃ fuerit, quod omnes qui brevia liberare voluerint, ea liberent infra certum terminum, poſt quem nullum breve recipiatur, multi de hoc confidentes, cum moram fecerint uſque ad prædictum terminum, & nullum breve ſuper eos fuerit liberatum, de licentia Juſtic̃ recedunt, poſt quorum receſſum adverſarii ſui ipſorum abſent̃ percipientes, brevia ſua porrigunt in cera, quæ aliquando per favorem, aliquando pro dono per Vicecomitem recipiuntur, & illi, qui ſecure credebant receſſiſſe, ten̄ ſua amittunt: ut hujuſmodi fraudi ſubveniatur impoſterum, ſtatuit Dominus Rex, quod Juſtic̃ in Itineribus ſuis ſtatuant terminum quindenæ, vel menſis, minoris vel majoris termini, ſecundum quod com̃it̃ fuerit major vel minor, infra quem terminum publice proclametur, quod omnes qui brevia liberare voluerit, ea liberent infra terminum illum. Et in adventum illius termini certificet Vicecomes capitali Juſtic̃ itineranti, quot brevia habet, & quæ, & quod ultra illum terminum nullum breve recipiatur, quod ſi receptum fuerit, proceſſus per illud factus pro nullo habeatur: excepto quod breve ceſſatum durante toto itinere relevari poterit. Breve etiam de dote de viris qui obierint al' ſeiſiti infra ſummonitionem itineris, aſſiſæ ultimæ præſentationis, & quare impedit, de Eccleſiis vacantibus, infra ſummonitionem præd', quocunque tempore ante receſſum Juſtic̃ recipiantur in itinere. Breve etiam novæ diſſeiſinæ, quocunque tempore facta fuerit diſſeiſina, recipiantur in itineribus Juſtic̃.

Concedit Dominus Rex de gratia ſpeciali, quod illi qui habent tenem̄ in diverſis comitatibus, in quibus Juſtic̃ itinerant, vel de quibuſdam ten̄ in com̄ in quo Juſtic̃ non itinerant, timent implacitar', & de aliis tenem̄ in comitatu, in quo Juſtic̃ non itinerant, implacitentur: ut coram Juſtic̃ apud Weſtm̄, vel de banco domini Regis, vel coram Juſticiariis ad Aſſiſas capiendas

piendas aſſignatis, vel in aliquo comitatu coram vic', vel in aliqua Cur' Baronum, facere poſſint generalem attornat' ad proſequendum pro eis in omnibus placitis in itinere Juſtic' pro ipſis, vel contra ipſos motis vel movendis, durante itinere. Qui quidem Attornatus, vel Attorñ, habeat poteſtatem in placitis motis in itinere quouſque placitum terminetur, vel dominus ſuus ipſum amoverit, nec per hoc excuſentur, quin ſint in juratis, & aſſiſis, coram eiſdem Juſtic'.

¶ Cum in itinere Juſtic' proclamat' fuerit quod omnes qui brevia liberari voluerint ea liberent infra certum terminum, &c.]
Hereby is recited the miſchief which was before the making of this Act, the remedy followeth.

¶ Ut hujuſmodi fraudi ſubveniatur impoſterum, ſtatuit dom Rex, quod Juſticiarii in itineribus ſuis ſtatuant terminum, quindenæ, vel menſis, minoris vel majoris termini ſecundum quod comitatus fuit major vel minor, infra quem terminum publice proclametur, quod omnes qui brevia liberare voluerint ea liberent infra terminum illum, & in adventu illius termini certificet vicecomes capitali Juſticiar' itineranti quot brevia habent & quæ, & quod ultra illum terminum nullum breve recipiatur, quod ſi receptum fuerit, proceſſus per illud factus pro nullo habeatur.] Fleta li. 1. ca. 19.
Upon this purview was great queſtion, whether the King might diſpenſe with this Law, and give a further day, then hereby is preſcribed, and in the end adjudged that he might for advancement and furtherance of Juſtice. Of this purview, the Mirror with too much aſperity ſaith thus, Leſtatute de ſuſpention de briefes en Eyres eſt reprovable come repugnant a la grand chartre, que dit, nous ne veerons a nul droit, ne delaierons. Et pur quoy ſont briefes rebotables de audience; Eins pur le multitude des briefes, que adonques ſe font, & pur le petit nombre des Juſtices perit droit de pluſors. Tr. 6 E.2. in Theſaur. Regiſt. fo. 19. F.n.b. 17. E. Mirror ca. 5. § 3.

¶ Excepto quod breve, &c.] Here followeth five exceptions:
1. The firſt is, that a Writ abated may during the whole Eyre, be amended.
2. Writs of Dower of the ſeiſin of men that died within the Summons of the heir, (which is by the ſpace of forty days before the beginning of the heir.) Brit. cap. 2. Fleta lib. 1. cap. 19, &c.
3. Aſſiſes of Darrein Preſentment.
4. Quare impedits of Churches vacant within the aforeſaid Summons ſhall be received at any time before the departure of the Juſtices.
5. Writs of Aſſiſe of Novel diſſeiſin, at what time ſoever the diſſeiſin was done, ſhall be received during the Eyre of the Juſtices.

¶ Concedit dom Rex de gratia ſpeciali quod illi qui habent tenem, &c.] Here is an Act of grace, and therefore it is termed accordingly, De gratia ſpeciali; for where the King by his Prerogative before this and other Statutes made by Letters Patents, or by Writ under his great Seal, grant to any Demandant or Pl', Tenant, or Defendant, to make Attorney in any Action, and to command the Judges to admit ſuch perſons to be Attorneys for them: Now juſtly is this Act ſtiled an Act of Grace, for that the King gave his Royal aſſent to this Law for the quiet and ſafety of his Subjects, Regiſt. fo. 19, 20. F.N.B. 25. c. e. 26. a. c. d. 18 E. 3. 46. 8 E. 3. 20.

giving them power hereby to make Attorneys in caſes herein expreſſed, whereby the King loſt ſuch profit of the great Seal, as he formerly received in ſuch caſes. Statutum ex gratia Regia dicitur, quando Rex dignatur cedere de jure ſuo Regio pro quiete & commodo populi ſui.

¶ Illi qui habent, &c.] This Act extends as well to Corporations aggregate of many, as Maior and Comminalty, and to ſole Corporations, as to private perſons: and it extendeth as well to Juſtices in Eyre of the Foreſt, as to other Juſtices in Eyre; ſée the fourth part of the Inſtitutes, cap. Juſtices in Eyre, & cap. the Courts of the Foreſts, and the Regiſter ubi ſupra for claim of Liberties.

4 E.3. Attorney 18. 8 E.3.9. 32 H. 6.1. 33 H.6.49. 34 H.6.51.

¶ Quouſque placitum terminetur.] By the Judgment againſt the defendant, the Warranty of Attorney is determined; for thereby Placitum terminatur, but only to ſue Execution (which is the fruit of the Judgment) within the year: and if he ſue out Execution within the year, he may proſecute the ſame after the year; but if he ſue out no Execution within the year, then after the year is ended after Judgment, his Warrant of Attorney is determined.

8 E.3.20. 18 E.3. 47. F.N.B. 25 E. Regiſt.19,20.

¶ Attornatum generalem.] Of this general Attorney you ſhall often read in our Books.

¶ In omnibus placitis in itinere.] This is not underſtood of an Aſſiſe of Novel diſſeiſin, for it is querela, and not placitum Aſſiſæ, whereof (as elſewhere hath béen ſaid) there is plentiful authority in our Books.

¶ Nec per hoc excuſentur quin ſint in Juratis & Aſſiſis coram eiſdem Juſtic'.] The wiſdom of Parliaments, and of the Sages of the Law hath ever béen, that able and ſufficient men ſhould not (to the hindrance of Juſtice) be exempted for ſervice in Juries and Aſſiſes.

Marlbr.cap.14. 39 E.3.15. 34 H. 6.25. 35 H.6.42.

CAP.

CAP. XI.

DE ſervientibus, ballivis, camerariis, & quibuſcunque receptoribus, qui ad compotum reddendum tenentur: Concordatum eſt & ſtatutum, quod cum dominus hujuſmodi ſervient̃ dederit eis auditores compoti, & contingat ipſos eſſe in arreragiis ſuper compotum ſuum omnibus allocatis, & allocandis, arreſtentur corpora eorum, & per teſtimonium auditorum ejuſdem compoti, mittantur & liberentur proximæ gaolæ domini Regis in partibus illis, & a Vic̃, ſeu cuſtodi ejuſdem gaolæ recipiantur, & carceri mancipentur in ferris, & ſub bona cuſtodia, & in illa priſona remaneant de ſuo proprio viventes, quouſque dominis ſuis de arreragiis plenarie ſatisfecerint. At tamen ſi quis ſic gaolæ liberatus conqueratur; quod auditores compoti ſui injuſte gravaverunt, onerando ipſum de receptis quæ non recepit, vel non allocando ei expenſas aut liberationes rationabiles, & inveniat amicos, qui eum manucapere voluerint ad ducendum coram Baronibus de Scaccario, liberetur eis, & ſcire faciat Vicecomes (in cujus priſona fuerit) domino, quod ſit coram Baronibus de Scaccario ad aliquem certum diem cum rotulis & aliis, per quos compotum ſuum reddiderit, & in præſentia Baronum vel auditor', quos aſſignare voluerint, recitetur compotus, & fiat partibus juſtitia, ita quod ſi fuerit in arreragiis, committatur Gaolæ de Fleete, ut ſupradictum eſt. Et ſi diffugerit, & gratis compotum reddere noluerit, ſicut in aliis ſtatutis alibi continetur; *Marlbridge cap.* 23. diſtringatur ad veniendum coram Juſticiariis, ad compotum reddendum, ſi habeat per quod diſtringi poſſit. Et cum ad curiam venerit, dentur ei Auditores compoti, coram quibus ſi fuerit in arreragiis,& ſtatim arreragia ſolvere non poſſit, committatur gaolæ cuſtodiend' in forma prædict'. Et ſi diffugerit, & teſtificatum fuerit per Vicecomit̃, quod non ſit inventus, exigatur de comit̃ in comitatum, quouſque utlagetur. Et ſit hujuſmodi incarceratus irreplegiabilis. Et caveat ſibi vicecomes, vel cuſtos ejuſdem gaolæ, ſive ſit infra libertatem ſive extra, quod per commune breve, quod dicitur Replegiare, vel alio modo ſine aſſenſu domini ipſum a priſona exire non permittat. Quod ſi fecerit, & ſuper hoc convincatur, reſpondeat domino de damnis, per hujuſmodi ſervientem ſibi illatis, ſecundum quod per patriam verificare poterit, & habeat dominus ſuum recuperare per breve de debito *verſus cuſtodem.* Et ſi cuſtos gaolæ non habeat, per quod juſticietur, vel unde ſolvat, reſpondeat ſuperior ſuus qui cuſtodiam hujuſmodi gaolæ ſibi commiſit, per idem breve.

Fleta lib. 2. ca. 64. Brit. fol. 70. a.

¶ Servientibus.] Every Writ of Account muſt be brought againſt one, either as Bailiff, Receiver, or Gardein in Socage; and therefore againſt a ſervant as ſervant, or againſt an Apprentice, or a Controller, Surveyor, Meſſenger, or the like, a Writ of Account lyeth not, unleſs he be charged as Bailiff or Receiver.

3 E.3.8. 4 E.3.7. 13 E.3. Account 76. 41 E.3.ib.74. 8 E.3.46. 2 R.2. Account 45. 11 R.2. ibid.48. F.N.B. b.c.d.e.

A Gardein in Socage cannot be committed to priſon by force of this Act, for a Gardein in Socage is in loco parentis, and this Act beginneth with Servientibus, and this word Servientibus is to be applied to Ballivis, camerariis, & receptoribus

17 E.2. Procl. 203. 18 E.2. Avowry 220. 17 E.3.59. 29 E.3.5.

See the first part of the Institutes, sect. 124. For this *Servientes*, see towards the end of this Chapter.

toribus; for this Act soon after this saith, Cum domini hujusmodi servientum dederit eis auditores, &c. Where these words are to be observed, viz. Domini, the Lords or Masters, and Servientes, servants, which word Servientes extends to all and therefore the Gardein in Socage being no Servant, nor the Heir Lord, or Master is not by this Act to be imprisoned, &c.

1 Part of the Institutes, ubi sup.

¶ Ballivis.] This word is sufficiently known, and if Gardein in Socage occupy after the heir attain to the age of 14 years, he may be charged as Bailiff.

1 Part of the Institutes, 153. Fleta li. 2. ca. 70.

¶ Camerariis.] Receivers were anciently called Chamberlains, because they were wont to keep the money received in Chambers specially provided for that purpose; yet cannot he be charged as Chamberlain in an account, but as Bailiff, or Receiver, for the cause abovesaid.

¶ Et quibuscunq; receptoribus qui ad compotū reddend' tenentur.] Receptores is a known word, and needeth no further explication.

43 E. 3. 31. 49 E. 3. 2. 50 E. 3. 17. 27 Ass. 3. 20 H. 6. 17, 18, 41, 45. 8 H. 6. 15. 14 H. 6. 24. 22 H. 6. 35, 47. lib. 10. fol. 103. Denbauds case, 38 H 6. 6. 2 H. 6. 41 10 H. 6. 24, 25. Denbauds case, ubi supra.

¶ Dederit eis auditores.] An account taken before one Auditor, is not within the purview of this Statute; for this Act is in nature of a Commission, and a Commission being made to two or more, cannot be executed by one alone.

By this Act the Auditors are Judges of Record, and therefore by consequence in an Action of Debt for the arrerages of an account before two or more Auditors, the Defendant shall not wage his Law.

And by the same consequence of reason, if the Lord be found in surplusage upon the account determined by the Auditors as an incident to their authority in an Action of Debt brought by the Bailiff for this surplusage, the Lord shall not wage his Law, because by force of this Act (they being Judges of Record) no wager of Law can be allowed against their Record: and so was it adjudged in the Exchequer Chamber, as it is reported in 20 H. 6. But if the account be made before one Auditor, this (as hath been said) is out of the Statute, and therefore there he shall wage his Law; but the Lord cannot be committed to prison (for the cause aforesaid) by force of this Act.

5 H. 4. cap. 8.

20 H. 6. 17, 18. 14 H. 6. 24. Vide infra, †

43 E. 3. 21.

In an Action of account against a Receiver, for 13 s. 4 d. or any other sum under 40 s. the Sheriff in his County Court shall not hold plea of it; and the reason thereof is, because the Sheriff cannot assign Auditors who (as hath been said) are Judges of Record, and the County Court is no Court of Record.

¶ Omnibus allocatis & allocandis.] †By these words, if the Lord be found in surplusage, it is within their authority, and therefore parcel of their Record, and so in that case (as hath been said) no wager of Law.

But albeit the Auditors do disallow a just demand, yet shall he take no averment or advantage upon these words, against the Record of the judgment of the Auditors; for, Judicium pro veritate accipitur, and Nemo potest contra recordum verificare per patriam: but he hath remedy after by this Act, by a Writ of Ex parte talis for his relief, whereof more shall be said hereafter in his proper place.

Marlbr. cap. 23. lib. 3. fol. 11. Sir William Herberts case.

¶ Arrestentur corpora eorum.] Note at the Common Law, the Process in Account was Summons, Attachment, and Distress infinite; by the Statute of Marlbr. a Writ of Monstravit de compoto was given; and here by this branch the body may be arrested, and after by this Act proces of outlawry is given in account, so as after the account determined the body of the Defendant may be arrested, &c.

46 E. 3. 30. 27 H. 6. 8. Lib. 8. fol. 119. D. Bonhams case.

Note the words in effect be super compotum suum, &c. arrestentur & liberentur, so as the auditors by force of this Act ought to commit him, &c. presently after the account determined.

¶ Proximæ

¶ Proximæ gaolæ Domini Regis.] This is intended of the next Gaol, though it be not in the ſame County, for, as it hath been ſaid, the Statute is in nature of a Commiſſion, and therefore this word proximæ muſt be purſued. 13 E.3. barre 253. 27 H.6.8.

¶ Et a Vic̃ ſeu cuſtodi ejuſdem gaolæ recipiantur.] The Auditors muſt make a warrant in writing under their ſeals to the Sheriff upon the ſpecial matter, and thereupon the Sheriff ought to receive the accountant in execution. Dier 24 H.8.249. Lib.3.fol.44. Boyntons caſe.

¶ Carceri mancipentur in ferris.] Hereby it appeareth that the Sheriff ought to kæp him in ſalva & arcta cuſtodia, and hath power by this Act, if næd require, to lay Irons upon him for his ſafe kæping; but this the Gaoler could not have done by the Common Law, as by all our ancient Authors it appeareth. Lib.8. fol.100. Pl.Com.360.a. Brac.l.3. 105,137. Brit.fol.14,17. Fleta l.1.ca.26. Mirror ca.5. § 1.

¶ De ſuo proprio viventes.] By this clauſe it appeareth, that he that is ſo impriſoned muſt live of his own. 8 E.2. Coron.432. Vide 3 part des Inſtitutes. Cap. petit treaſ. in fine.

¶ Auditores compoti ſui ipſum injuſte gravaverunt.] By this clauſe is the Writ of Ex parte talis given to the accountant, if the Auditors aſſigned by the Lord either charge him de receptis quæ non recepit, vel non allocando ei expenſas aut liberationes rationabiles, and this Writ is in nature of a Commiſſion to the Barons of the Exchequer, for that they are the Soveraign Auditors of England to hear and audite the account, Et quod fiat Juſticia partibus. Britton fol.70. Fleta l.2.c.64. Regiſt.137. F.N B.129.f. 13 E.3. barre 253. 14 E.3. account 74. 2 E.3.12.

But this Writ lieth not, but where the account is taken before Auditors aſſigned by the Lord, for if there be a Writ of account brought, and the Court aſſigneth Auditors, there lieth no Writ of Ex parte talis, for in that caſe he ought to ſhew his grief to the Juſtices, and they ought to do him Juſtice, and the Writ of Ex parte talis is grounded upon this Act, where the Lord aſſigneth Auditors.

¶ Quod ſit coram Baronibus de Scaccario.] The Writ in the Regiſter, and F.N.B. ubi ſupra, is Coram Theſaurario & Baronibus noſtris de Scaccario, but it ought to be coram Baronibus de Scaccario according to this Act, and that the rather, becauſe the Barons are (as hath been ſaid) the Soveraign Auditors of England, and herewith agræth Fleta. Fleta l.2.ca.64.

Upon ſureties found he ſhall be at large to follow his Writ of Ex parte talis, before the Barons, but if it be found that he was in arrerages, he ſhall be in execution again. Dier 36 H.8. c.64.

¶ Et ſi diffugerit, & gratis compotum reddere noluerit, &c.] Vide Marlebridge, whereby the Writ De monſtravit de compoto is given. Marlb.ca.23.

¶ Et ſi diffugerit & teſtificatum, &c.] Here is proces of outlawry given in account. Fleta ubi ſupra.

¶ Et caveat ſibi Vicecomes vel cuſtos ejuſdem gaolæ ſi ſit infra libertatem.] This Act extends to all Kæpers of Gaols, and therefore if one hath the kæping of a Gaol by wrong, or de facto, and ſuffereth an eſcape, he is within this Statute, as well as he that hath the kæping of it de jure. 11 H.4.73. See 1 R.2.c.12.

¶ Sine aſſenſu Domini.] And this aſſent may be by paroll, and ſhall be a ſufficient bar in an Action of Debt brought for the eſcape. 27 H 8.24.b. per Curiam.

¶ Et

¶ Et habeat dominus ſuum recuperare per breve de debito, &c.] There was no Action of Debt againſt the Gaoler for an eſcape at the Common Law, but the party was driven to his ſpecial Action upon his caſe, which Action was grounded upon a Treſpaſs or wrong, and not upon any contract in deed or in Law, but this Act firſt gave the Action of Debt againſt the Gaoler, which had let one to eſcape, which was committed to priſon by auditors for arrerages of account, but it lieth not againſt the Gaolers Executors, becauſe it is a Treſpaſs, and before any other Act of Parliament by the equity of this Act an Action of Debt did lie againſt the Gaoler for an eſcape in Court of Pipowders, and ſo in all other caſes.

14 E.4.3. Dier 15 El.322. 16 E.3. damag.81. 13 E.3. barre 253. 42 Aſſ. Pl.11. 45 E.3.1. 2 R.2. iſſue 160. 9 H.6.19. 30 H.6.6. Dier 10 Eliz.275.

1 R.2.cap.12. Afterwards the Statute of 1 R. 2. for a further declaration gave the Action againſt the Gardein of the Fleet.

But albeit this Act, and the Statute of 1 R.2. alſo doth ſpeak per breve, yet a bill of Debt lieth alſo by the equity of this and that Statute, albeit it hath been holden to the contrary, but ſince it hath been often adjudged that a bill of debt is maintenable upon the ſaid Acts.

42 Aſſ p.11. 7 H.6.5. Pl.Com.38.a. 16 E.3.dam.81. 13 E.3.ibid. Lib.8.fol.44. Wittinghams caſe.

Now for as much as the Statutes do give recovery by Writ of Debt, incidently, they do give damages alſo.

This Act doth extend to feme coverts and infants, that are keepers of Gaols, to charge them in an Action of Debt for the eſcape of one in execution.

¶ Reſpondeat ſuperior ſuus, qui cuſtodiam hujuſmodi gaolæ ſibi commiſerit.] This is to be underſtood, when one that hath the cuſtody of a gaol of freehold or inheritance, committeth the ſame to another that is not ſufficient, his ſuperior ſhall anſwer for the eſcape of the priſoner; But he ſhall not have the Action of Debt againſt the ſuperior as long as the inferior is ſufficient.

See cap.43. 13 E. 3. bar 253.

The Mayor and Citizens of London have the Sheriwalty of London in fee, and the Sheriffs of London are Gardeins under them, and removable from year to year, in this caſe the Sheriffs of London are Gardeins, and the Mayor and Citizens their ſuperiors; and though the Sheriffs appoint a Keeper under them, yet he is not within this Statute, becauſe it is intendable when the Gardein cometh in by him that hath the freehold or inheritance in the cuſtody, for this Act doth extend but unto two ſuch degrees, for there cannot be two ſuperiors within this Act, but one ſuperior and one inferior.

11 E.2. Debt 272. 11 El. Dier 278.

The Duke of Norfolk being Marſhal of England of inheritance, and having authority to make a Deputy doth make a Deputy, who hath the cuſtody of the gaol, he is the Gardein, and the Duke of Norfolk his ſuperior within this Act.

11 El. ubi ſupra.

CAP. XII.

QUia multi per malitiam volentes alios gravare, procurant falſa appella fieri de homicidiis, & aliis feloniis, per appellatores nihil habentes, unde domino Regi pro falſo appello, nec appellatis de damnis reſpondere poſſint: Statutum eſt, quod cum aliquis ſic appellatus de felonia ſibi impoſita ſe acquietaverit in curia Regis modo debito, vel ad ſectam appellatoris, vel Domini Regis: Juſticiarii coram quibus auditum erit hujuſmodi appellum & terminatum, puniant appellatorem per priſonam unius anni, & nihilominus reſtituant hujuſmodi appellatores damna appellatis, ſecundum diſcretionem Juſtic̃, habito reſpectu ad priſonam vel arreſtationem quam occaſione hujuſmodi appellorum ſuſtinuerint appellati, & ad infamiam ſuam, quam per impriſonamentum, vel alio modo incurrerunt, & nihilominus verſus dominum Regem graviter redimantur. Et ſi forte hujuſmodi appellatores non habeant, unde prædicta damna reſtituere poſſint, inquiratur per quorum abbettum formatum fuerit hujuſmodi appellum per malitiam, ſi appellatus hoc petat. Et ſi inveniatur per illam inquiſitionem, quod aliquis ſit abbettator per malitiam, per breve de Judicio ad ſectam appellati diſtringatur ad veniendum coram Juſtic̃. Et ſi legitimo modo convictus fuerit de hujuſmodi abbetto per malitiam, puniatur per priſonam, & teneatur ad reſtitutionem damnorum, ſicut ſuperius dictum eſt de appellatore. *Vide anno* 1 R. 2. *cap.* 13. Nec jaceat de cætero appellatori in appello de morte hominis eſſonium, in quacunque curia ubi appellum fuerit terminandum.

By the words hereof it appeareth, that before this Statute the Defendant being duly acquitted, ſhould recover his damages, but that is to be underſtood in a Writ of conſpiracy, wherein he ſhould recover damages for ſatisfaction in regard of the infamy, impriſonment, and vexation done to him, and further that the parties convicted ſhould be fined to the King and impriſoned, which, I have read, began in this ſort before the raign of H. 1. They which plotted, or compaſſed the death of a man under pretext of Law by bringing of falſe appeals, or preferring untrue indictments againſt the innocent of felony, who being duly acquitted, both the appellant and his abbettors were to ſuffer death. See the Mirror c. 4. de homicide. 48 E. 3. 22. Stamf. Pl. Cor. 167. c. F.N.B. 114. f. Regiſt. 134.

But King H. 1. by authority of Parliament did mitigate the ſeverity of this ancient Law (leſt men ſhould be deterred and afraid to accuſe) and did ordain, that if the delinquents were convicted at the ſuit of the party, they ſhould make ſatisfaction, and be fined and impriſoned: But if they were convicted by judgement at the ſuit of the King, (whom they pretended to intitle to the forfeiture) then they ſhould loſe the freedom of the Law; they ſhould be ſo infamous as never to be any witneſs, or to be of any Jury; That they ſhould never come in or near the Kings Court, but make their Attornies; that they, their wives, and their children, ſhould be caſt out of their houſes, and their houſes proſtrated, their trees eradicated and ſubverted, their meadows ploughed up and waſted, every thing to be deſtroyed which nouriſhed or comforted them, in reſpect of the villany and ſhame done to the delinquent, all againſt nature and order, for that the delinquent ſought the blood of the innocent under pretext and colour of Law, and this in later books is called a villanous judgment, all which in caſe 24 E. 3. 24. 27 Aſſ. 59. Tr. 18 E. 3. Coram Rege. Rot. 148. 43 E. 3. conſpir. 11.

caſe of conſpiracy remain a conſtant Law to this day. But this Act doth give the party a ſpædier remedy for his ſatisfaction then he had before, as hereafter ſhall appear.

¶ Per malitiam.] Theſe words do open divers windows for the better underſtanding and inlightening of the general words of this Statute.

Paſch. 30 E.1. Coram Rege. Northampt. Joh. de Boſco, &c. Hil. 26 E.1. Coram Rege. Leic' Will. Burnell. 22 Aſſ.39. 43 Aſſ. p.18. 40 E.3. 42. 33 H.6.2. 14 H.7.2 26 H.8.3.4. Firſt part of the Inſtitutes, ſect.208. 9 H.4.2. 9 H.5.2. 20 E.4.6.

1. If the appellée be firſt indicted of the felony whereof he is appealed, the appeal ſhall not be underſtood to be commenced per malitiam, becauſe the Plaintiff hath a foundation to build upon, viz. an indictment by the oath of twelve or more men, ſo as it ſhall be preſumed that the Plaintiff was moved to his appeal by the indictment, & non per malitiam; for in thoſe days (as yet it ought to be) indictments taken in the abſence of the party were formed upon plain and direct proof, and not upon improbabilities or inferences: but if the indictment be inſufficient, then it is in judgment of Law as no indictment, and then the appeal may notwithſtanding be commenced per malitiam, & ſic in ſimilibus, or if it be a good indictment, and found after the appeal commenced, yet may the appeal be commenced per malitiam.

22 Aſſ. p.77.

2. If one be appealed of murder, and it is found by verdict that he killed him ſe defendendo, this ſhall not be ſaid to be per malitiam, becauſe he had a juſt cauſe, for, Quod quiſque ob tutelam corporis ſui fecerit, jure id feciſſe videtur; & ſic de ſimilibus.

Term. Mic. 21 E.1. Coram Rege. Rot. 276. Hoylands caſe. 6 E.3.33.

3. The heir or other near of kin may abbet the wife Plaintiff in the appeal, Et ſic adjudicatur quod pater, mater, frater, &c. non ſunt in caſu hujus ſtatuti ratione propinquitatis ſanguinis, & ad eos pertinet prædictam mortem ulciſci: Hoylands Caſe, and cannot be ſaid to be per malitiam.

4. Malitia referreth only to the procurers and abettors, as it appeareth by the expreſs words of this Act.

Mich. 34 E.1. Coram Rege. Linc' Rot. 19. Potius ſtultitia quam falſitas.

¶ Falſa appella.] Soon after the making of this Statute, the wife and her ſecond husband brought an appeal for the death of her former husband, the Record ſaith, Non poteſt eſſe appellatrix pro morte prioris mariti, &c. ipſa pro repellend' pœna ſtatuti pro falſis appellis advocat appellum ſuum eſſe juſtum, nec falſum, licet ſit caſſatum, & licet illud proſequi non poteſt, quia habet virum; quæ quidem cauſa potius eſt quædam ſtultitia, quam falſitas, ideo ex gratia curiæ conceſſ. eſt in præſent aliorum Juſtic' de banco, poſtquam priſonam 15. dierum habuerit, quod finem fac' cum Rege.

¶ De homicidio & aliis feloniis.] This is not only intended of ſuch offences as were felonies at the making of this Act, but of all ſuch offences alſo, as have been made felonies by any Act of Parliament ſince this Act.

¶ Se acquietaverit in Curia Regis modo debito.] This Statute doth extend both to acquitals in Deed, and to acquitals in Law.

Regiſt. 34. 24 E.3. 73. 41 E.3. Coro. 98. 21 H.6. Cor. 12.

Acquitals in deed, as either by verdict, or by battel, and in that caſe when the Plaintiff yields himſelf creant, or vanquiſhed in the field, the judgment ſhall be that the appellée ſhall go quit, and that he ſhall recover his damages againſt the appellor; but if the Plaintiff had been ſlain, then no judgment can be given againſt a dead perſon.

Acquittals in Law, as if two be appealed of felony, the one as principal, and the other as acceſſary, and both of them plead not guilty, &c. and the Jury doth acquit the principal, in this caſe by Law the acceſſary is acquitted, and ſhall recover damages by this Act againſt the appellant, &c. or may have his Writ of Conſpiracy at the Common Law.

33 H.6.2. 8 H.5.6.

41 Aſſ.24.

But if the principal be acquitted by verdict, proces depending againſt the acceſſory, the acceſſory ſhall not recover damages within this Statute, becauſe no Jury can be returned to aſſeſs them.

If

If one be appealed as acceſſory to two principals, one of the principals is acquitted, the acceſſory ſhall recover no damages until the other principal be acquitted. 3 Mar. 120. Dier.

If the Plaintiff in an appeal be non-ſuit, and the Defendant is arraigned at the ſuit of the King, and acquitted, he ſhall recover his damages by this Act, for the words be, Vel ad ſectam appellantis vel Domini Regis, but this ſuit of the King muſt be intended upon the appeal after non-ſuit, for an acquittal upon an indictment is not within this Statute. 41 Aſſ. 24. 46 E. 3. Coro. 102. 14 H. 7. 2. 9 H. 5. 2. Stamf. Pl. Cor. 135. F.N.B. 214.

For debito modo acquietatus, ſee 9 H. 5. 2. that the Defendant being acquitted by verdict, yet if his life was never in jeopardy either in the original, or proces, though it be in default of the Plaintiff himſelf, yet is he not debito modo acquietatus within this Statute. 9 H. 5. 2. 20 E. 4. 5. 9 H. 4. 2.

The wife of Copleſton brought an appeal of murder againſt Stowell and five of his ſervants as principals by being preſent, aiding and abetting Stowel to commit the murder, and Stowell appeared, againſt whom the Plaintiff declared with a ſimul cum of his five ſervants, and Stowell pleaded not-guilty, and proces was continued againſt the other five, and by verdict it was found that Stowell killed Copleſtone in his own defence, whereupon he was acquitted, and had his pardon of grace; and it was reſolved by all the Judges of England, that this acquittal of him was in Law an acquittal of all the other five that were charged as principals by being preſent, aiding, and abetting, and Stowell could not upon this Statute recover damages for the cauſe before remembred. Paſch. 15 Eliz. Coram Rege. Dier Manuſcript. 27 Aſſ. 25.

If the Defendant plead that there is a nearer heir, and iſſue thereupon taken, and found for the Defendant, he is diſcharged of the Action, but is not acquitted of the felony within the purview of this Statute; ſo it is if the Defendant be diſcharged by Clergy, he is not acquitted within the purview of this Statute. 17 E. 2. Cor. 386.

If the Defendant wage battel, and the Plaintiff demur upon it, and it is adjudged againſt the Plaintiff, the Defendant is diſcharged of the appeal, but he is not acquitted, until he be acquitted of the fact at the ſuit of the King.

¶ Damna appellatis ſecundum diſcret' Juſticiar' habito reſpectu ad priſonam.] Though this branch be general, yet every appellée ſhall not upon his acquittal recover damages, for if a Monk be appealed, or a feme covert be appealed alone without her husband and acquitted, they cannot recover any damages by this Act in reſpect of their diſability, for the general words of this Act doth not enable any to recover damages that thereunto was diſabled by Law. But if an appeal be brought againſt the husband and wife, and they be acquitted, damages ſhall be given to the husband alone for his damage, and to the husband and wife for the damage of the wife. 22 E. 3. Coro. 276. Artic. Cleri c. 16. Lib. 9. fol. 73. D. Huſſeyes caſe. Lib. 11. fol. 77. Magd. Coll caſe. 12 R. 2. judg. 108.

And where ſeveral perſons be acquitted, the damages muſt be ſeveral, for the words of the Statute be Habito reſpectu ad perſonam. Tr. 30 E. 1. Rot. 22.

But then may be demanded, what remedy hath the Monk or feme covert being ſolely appealed: The anſwer is, that they have no remedy by this Statute, but the Abbot and Monk, and the husband and wife may have a Writ of Conſpiracy at the Common Law. London. 8 H. 6. 5, 6. 24 E. 3. 73.

Whenſoever any is acquitted by verdict, and yet his life was never in jeopardy, either by reaſon of the erronious proces, or original, or otherwiſe, though this be within the letter of the Law, yet it is out of the meaning, and therefore the Defendant in that caſe ſhall recover no damages. 9 H. 5. 2. ubi ſupra.

¶ Ad infamiam ſuam.] For a mans fame is above all things to be repaired.

Omnia ſi perdas, famam ſervare memento:
Qua ſemel amiſſa, poſtea nullus eris.

¶ Et ſi forte hujuſmodi appellatores non habeant, &c. inquiratur per quorum abettum.] If the Defendant in an appeal be tried before Juſtices of Niſi prius, albeit they have but delegatam poteſtatem, yet they ſhall inquire of the inſufficiency of the Plaintiff, and of the abbettors, and the words of this Act are, Quod Juſtic' coram quibus auditum fuerit appellum & terminatum; but that great over-ruler experientia hath ruled, and over-ruled it by precedents, that they cannot give judgment for the damages.

3 E.2. Action ſur leſtat.28. 22 E.4. 19. 10 E.4.14. Dier 3 Mar.120. Tr. 30 E.1. Coram Rege. Rot.2. London.

This inſufficiency of the Plaintiff in the appeal muſt be found by the Jury, and cannot come in by the averment of the party, and ſo it is in other like caſes.

But here it may be demanded, What if the Plaintiff in the appeal be ſufficient for part of the damages, and not for all, may not the Defendant by this Act recover part againſt the Plaintiff, and part againſt the abbettors? And it is reſolved that he muſt recover either all againſt the Plaintiff, or all againſt the abbettors, and not by parcels, ſo as if the Plaintiff be not ſufficient for the whole, the Defendant ſhall recover the whole againſt the abbettors, for prædicta damna & omnia damna, are all one.

8 E.4.3. 8 H.5 6. 17 E.2. Cor.386. 26 H.8.3.4. Tr.30 E.1. ubi ſup.

It is a certain concluſion upon theſe words of the Statute, that where damages ſhall not be recovered againſt the Plaintiff, there none ſhall be recovered againſt the abbettors; Alſo where the Plaintiff is ſufficient and ſo found by the Jury, the abbettors ſhall not be inquired of.

¶ Abbettator per malitiam.] Abbettors were found (upon the acquittal of the Defendant) by name, Et quod procuraverunt, inſtigaverunt & abbettaverunt prædictum querentem ad capiendum & proſequendum appellum prædictum in forma prædicta, and ſaid not per malitiam, and yet allowed of. But nota the ſurer way is to purſue the words, falſo & per malitiam, according to this Act.

3 Mar. Dier 120. Tr. 30 E.1. ubi ſupra.

¶ Per breve de judicio ad ſectam appellati diſtringatur, &c.] This Writ is given in lieu of the Writ of Conſpiracy at the Common Law, the abbettors coming in upon this proces may travers the abbetment, becauſe they were eſtrangers to the verdict, and if the Defendant that ſueth the diſtreſs be non-ſuit, yet may he have a new Writ, and it is not peremptory to him. And albeit the Jury find neither the time, nor the place where the abbetment was, yet if they find the abbettors, it is ſufficient, for when the Plaintiff appeareth, the Defendant may ſhew time and place in good time.

Reg.34. 8 E.4.3. 17 E.2. Cor.386. Tr. 19 E.2. Coram Rege. Rot.82. 40 E.3. dam.77. Tr.30 E.1. ubi ſup. 22 E.4. Coro.45.

Note in 46 E.3. the Court granted firſt a Venire facias, and then a Diſtreſs, but it ſeemeth that the Proceſs given by the Statute is a Diſtreſs infinite.

But if the Jury give too ſmall damages, it being but an Enqueſt of office, the Plaintiff may have an original Writ of Abbetment, and Count to greater damages. Vide 8 H.6. cap,10.

46 E.3. Coro.102. 3 E.2. Action ſur leſtatut.28. 8 H.6.cap.10. F.N.B. 115.i. Kelwey 21. Tr. 30 E.1. Coram Rege. Rot.2. Hil. 35 E.1. ibid. Rot.19. Tr. 19 E. 2. ibid.82. Mich. 14 H.7. ibid.Rot. 76. Tr. 14 H.7. ibid.Rot.74. Hil. 10 H.7. ibid.Rot. 38.Mich. 19 H.7. ib.Rot.27. Liure de Entries. Raſt. 56. & 297. Stamf.Pl.Cor. 297.

Note Reader, that Judicial Precedents, and the right Entries of Pleas upon this (or any other) Statute are good Interpreters of the ſame, and of queſtions that have been, or may be moved thereupon.

¶ Nec jaceat de cætero appellatori in appello de morte hominis eſſonium.] The Defendant that is appealed of the death of a man ought to have convenient expedition, and not to be detained in priſon, or to live under the infamy of a murtherer longer than there is cauſe: and this Statute was chiefly made for the benefit of the Defendant.

Vide the Statute of 1 E.3.cap.7. Parliament' primo, & Statut' de 1 R.2. ca.13.

CAP.

CAP. XIII.

QUia etiam Vicecomites multoties fingentes aliquos coram eis in Turnis ſuis indictatos de furtis, & aliis malefactis, capiunt homines non culpabiles, nec legitimo modo indictatos, & eos impriſonant, ut ab eis pecuniam extorqueant, cum legitimo modo per duodecim Juratores non fuerint indictati: Statutum eſt, quod Vic̃ in Turnis ſuis, & alibi, cum inquirere habeant de malefactoribus per præceptum Regis, vel ex officio ſuo, per legales homines ad minus duodecim faciant inquiſitiones ſuas de hujuſmodi malefactoribus, qui hujuſmodi inquiſitionibus ſigilla ſua apponant, & illos quos per hujuſmodi inquiſitiones invenerint culpabiles, capiant & impriſonent, ſecundum quod alias fieri conſuevit. Et ſi aliquos aliter impriſonaverint, quam per hujuſmodi inquiſitiones indictatos, habeant hujuſmodi impriſonati actionem ſuam per breve de impriſonamento verſus Vicecom̃, ſicut haberent verſus quamcunque aliam perſonam, qui eos impriſonaret ſine Warranto. Et ſicut dictum eſt de Vicecom̃ obſervetur de quolibet ballivo libertatis.

¶ Quia etiam Vicecomites multotiens fingentes aliquos coram eis in Turnis ſuis indictatos de furtis & aliis malefactis.] Two things are provided, or rather declared by this Act: Fleta li.2. ca.45.

1. Per legales homines ad minus 12. faciant inquiſitiones.

That Indictments in Tournes ought to be found by 12 at the leaſt.

¶ Legales homines.] More ſhall be ſaid hereof when we come to the eight and thirtieth Chapter of this Parliament, and the ninth Chapter of Articuli ſuper Chartas. F.N.B. 165.

¶ Ut ab eis pecuniam extorqueant.] This is the greateſt injuſtice, when the innocent under colour of Juſtice, whereby he ought to be protected, is oppreſſed, and wrought to give money to redeem his vexation: Three things (it is ſaid) overthrew the flouriſhing eſtate of the Roman Empire, Latens odium, Juvenile conſilium, & Privatum lucrum. Vide cap. Itineris.

By this Act you may ſee that Juſtice was pretended, and ſordid Lucre intended, which this Act in relief of the innocent provideth to prevent.

¶ Per præceptum Regis.] That is, by the Kings Writ or Commiſſion; but thereupon grew ſo many evils and miſchiefs for the ſingular profit of the Sheriffs, that by a latter Statute it is provided that no ſuch Writs or Commiſſions ſhould be granted to them; ſo as at this day the Sheriffs cannot proceed in thoſe caſes per præceptum Regis. See hereafter how this power Ex officio is reſtrained. 28 E.3. cap.9. F.N.B. 92. cap.144. I.250.a.

¶ Qui hujuſmodi inquiſitionibus ſigilla ſua apponant.] The ſecond part is, that the Jurors do put their Seals to the Inquiſitions or Indictments.

1 E.3. Parliam.2. cap.17. By a latter Statute, theſe Indictments are to be by a Roll indented, whereof one part is to remain with the Indictors, and the other part with him that takes the Enqueſt.

This Act of 1 E.3. doth extend to Preſentments or Indictments, not only in Tourns, but in Leets alſo, and the like.

1 R.3. ca.4. See the Statute of 1 R.3. of what quality, hability, and livelihood, the Indictors in Tourns and Leets ought to be.

But ſuch corrupt and partial proceedings upon Preſentments and Indictments before the Sheriff Ex officio, were, notwithſtanding all theſe proviſions in Tourns and Leets, continued, until by the Statute of 1 E. 4. the power of them, ſave only to take Preſentments and Indictments, and to deliver the ſame to the Juſtices of Peace at the next Seſſions of the Peace, &c. is taken away; and by that Act authority is given to Juſtices of Peace, to award Proces upon all ſuch Preſentments and Indictments delivered to them, &c. which is to be intended of ſuch as be lawful.

1 E.4. c.2. 4 E.4. 31. 8 E.4.5. lib.9. fol.96. Strata Marcella.

¶ Per breve de impriſonament.] This Act doth not only preſcribe a form for the Sheriff to purſue, but giveth the party remedy againſt the Sheriff, if he purſueth not the form of the Act; for, Non obſervata forma infertur adnullatio actus.

¶ Et ſicut dictum eſt de Vicecom̃, obſervetur de quolibet ballivo libertatis.] Every Bailiff of Franchiſe, that is, of Leets, and views of Frankpledge, which are exempted out of the Sheriffs Tourn, and are the Franchiſes here intended.

CAP.

CAP. XIV.

CUm de vaſto facto in hæreditate alicujus per cuſtodes, tenentes in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel annorum, conſueverit fieri breve de prohibitione vaſti, per quod breve multi fuerunt in errore, credentes quod illi qui vaſtum fecerint, non habuerint neceſſe reſpondꝛ, niſi tamen de vaſto facto poſt prohibitionem eis directam, Dominus Rex (ut hujuſmodi error de cætero tollatur) ſtatuit, quod de vaſto quocunque ad nocumentum alicujus facto, non fiat de cætero breve de prohibitione, ſed breve de ſummonitione, ita quod ille, de quo queritur, reſpondeat de vaſto facto quocunque tempore. Et ſi poſt ſummonitionem non venerit, attachietur, & poſt attachiamentum diſtringatur, & poſt diſtrictionem, ſi non venerit, mandetur Vicecom̃, quod in propria perſona, aſſumptis ſecum xij, &c. accedat ad locum vaſtatum, & inquirat de vaſto facto, & retornet inquiſitionem. Poſtquam retornata fuerit inquiſitio, procedatur ad judicium, ſecundum quod continetur in ſtatuto prius edito apud Gloceſt' cap. 5. de vaſto, 20 E. 1.

¶ Cum de vaſto facto in hæreditate alicujus per cuſtodes, &c. conſueverit fieri breve de prohibitione vaſti, &c.] This errour herein recived is hereby clearly confuted, and hereof you may read more in the Statute of Gloc. Gloc. ca. 5.

¶ Non fiat de cætero breve de prohibitione.] By this the prohibition of Waſte, whereupon an Attachment did lye, &c. is taken away, and in lieu thereof an Action called here a Writ of Summons, becauſe the Writ beginneth, Si A. fecerit te ſecurum, &c. tunc ſummoneas per bonos ſommonitores, &c. is given. 4 E. 3. Waſte 129. 15 H. 3. ibid. 130. Regiſt. 172. F. N. B. 55.

¶ Ita quod reſpondeat de vaſto facto quocunque tempore. Et ſi poſt ſummonitionem non venerit, attachietur, & poſt attachiamentum diſtringatur, & poſt diſtrictionem, ſi non venerit, mandetur Vicecomiti, &c.] If the Defendant be returned Nihil, &c. ſo as peradventure he was never ſummoned, nor any other Writ ſerved, whereby he might have notice, yet a Writ of inquiry of Waſte ſhall be awarded by this branch; for here it is not ſpecified that iſſues ſhould be returned, &c. but generally and by the Writ, the Waſte ſhall be inquired of by the oath of twelve men, where the Defendant or any for him may attend if he will, and the Jurors may find againſt the Plaintiff. 21 H. 6. 56. 34 H. 6. 44. 11 H. 6. 3. 3 H. 6. 29.

Note the words here be, Et poſt diſtrictionem, ſi non venerit, mandetur Vicecomiti, &c. So as if the Defendant appear upon the Diſtreſs, and plead, and after make default, the Plaintiff ſhall not by this branch have a Writ to enquire of the Waſte, becauſe it is out of the words and purview of this Act. 7 H. 4. 15. 12 H. 4. 3. 4.

¶ Quod

¶ Quod in propria perſona ſua aſſumptis ſecum duodecim accedat ad locum vaſtatum.] Here are three things to be obſerved:

a Regiſt. judic. 23, 25, 27. 2 H 4. 2. 3 H. 6. 29. 11 H. 6. 6. 11 H. 4. 82. lib. 4. fol. 65. Fulwoods caſe, lib. 8. fol. 52. Althams caſe.

1. a That the Sheriff ought to go in proper perſon, for that, though in rei veritate he is no Judge, yet this Writ is in nature of a Commiſſion unto him, and he is in loco Judicis, and therefore he ought to go in propria perſona. If the Sheriff upon this Writ return, Quod mandavi ballivo libertatis, &c. qui mihi nullam dedit reſponſionem, the return is inſufficient, becauſe by the Writ (as the Book ſaith) he is a Judge, and hath power to enter into the Franchiſe.

b F. N. B. 10. 7. c. Regiſt. judic. ubi ſup. 41 E. 3. 7. 48 E. 3. 19. 2 H. 4. 2. 3 H. 6. 29. 21 H. 6. 56. 34 H. 6. 12.

2. b Where ſome have holden, that the Sheriff may inquire upon this Writ by the oath of 6 or 8 perſons, it appeareth, that there ought not to be under 12. for the words of this branch are, Aſſumptis ſecum 12. yet this is but an Inqueſt of office, for it is taken ſans miſe des parties, that is, without any iſſue joined.

c 16 E. 3. Retorn de Viſcont 82. 34 H. 6. 42, 44.

3. c The Sheriff muſt go ad locum vaſtatum, together with the Jurors, and view the ſame; for, Iſta cadunt potius ſub viſu, quam ſub auditu.

d 16 E. 3. ubi ſup. 34 H. 6. ubi ſup.

¶ Et inquirat de vaſto facto.] d If the Waſte be aſſigned in divers Towns, the Sheriff and the Jurors muſt view (as hath been ſaid) all the places waſted in every of the Towns, but he may inquire thereof in any one of the Towns; and this copulative doth ſo knit the words together, as he cannot inquire of it in a forrein Town.

See more of this matter in the expoſition upon the Statute of Gloc. cap. 5.

CAP. XV.

IN omni caſu quo minores infra ætatem implacitare poſſunt: Conceſſum eſt, quod ſi hujuſmodi minores elongati ſint, quo minus perſonaliter ſequi poſſint, propinquiores amici admittantur ad ſequendum pro eis, Weſtminſt' 1. cap. 47.

W. 1. cap. 47.

The Act of W. 1. touching this matter was particular, but this Act is general.

Regiſt. 78. 28 Aſſ. 22. 2 E. 3. 16. 40 E. 3. 6. 13 E. 3. Attorney 76. 34 H. 6. 4. 20 E. 4. 2. F. N. B. 27. 37 H. 8. fol. 11.

Upon this Statute, whether the Infant be eſloigned or no, he ſhall ſue by Prochein amy, for the eſloignment is put in this Act, to ſhew what miſchief may fall out in this caſe; and therefore when a Sergeant offered, that oath ſhould be made of the eſloignment of the heir, the Judge ſaid, he would take it upon his honeſty; but if the ſurmiſe that the Plaintiff is within age be untrue, and that the Plaintiff is of full age, his admittance by Prochein amy is errour.

See before in the expoſition upon the 40 Chapter of W. 1. where this matter is handled at large; and obſerve well our Books, where many times a Gardein is taken for a Prochein amy, and a Prochein amy for a Gardein.

33 H. 6. 28. F. N. B. 248.

This Act extends not to an Ideot.

CAP. XVI.

IN caſu quo alicui minori deſcendat hæreditas ex parte patris, qui tenuit de uno domino, & ex parte matris quæ tenuit de alio domino, dubitatio hucuſque extitit de maritagio hujuſmodi minoris, ad quem de duobus dominis pertineat. Concordatum eſt, quod ille dominus de cætero habeat maritagium, de quo anteceſſor ſuus prius fuit feoffatus, non habito reſpect ad ſexum, nec ad quantitatem tenementi, ſed ſolummodo ad antiquius feoffamentum per ſervitium militare.

Albeit this Act putteth a caſe only where one inheritance deſcends on the part of the Father, and when another deſcends on the part of the Mother, yet this Statute extends to all caſes of priority. 4 E.3. receit 46.

By theſe words in the Act, [non habito reſpectu ad ſexum nec ad quantitatem.] the doubts at the Common Law are here mentioned: the firſt, that ſome did hold opinion that the part of the Father being digniori de ſanguine, the worthier blood ſhould be preferred; others did hold opinion that if the Lord of the land of the part of the Mother, firſt happed or ſeiſed the Ward, he ſhould have it, and that melior eſt conditio poſſidentis. 14 E.3. gard 37. 8 H.3. gard 139.

Laſtly, ſome did hold that the tenure by the greater quantity and value ſhould be preferred: all which doubts are cleared by the purview of this Act.

¶ De uno domino, &c. de alio domino, &c.] This Act extendeth not to the King, becauſe before the making of this Act he was to have the Wardſhip of the body though the land were holden of him by poſteriority; and ſo it is, if the King grant that Seigniory for life, the grantee ſhall have the ſame benefit, in reſpect that the reverſion remain in the King: but if the King granteth the fee-ſimple to another, there the Lord by priority ſhall have the Wardſhip, and the tenure by priority is revived, for the King had the Wardſhip in reſpect of his perſon and prerogative. 11 E.2. c. 2. 21 E.3. 41. 11 E.3. gard Statham. 5 E.3.4. 12 E.3. Prærog. 23 24 E.3.31,65. 18 E.3.29. 12 H.4. 25. 14 H.4.9. 9 H.4.4. ſimile.

¶ Alicui minori deſcendat hæreditas.] This Act is to be underſtood of a deſcent from one anceſtor to one heir, and not from divers anceſtors to one heir, nor from one anceſtor to divers heirs, nor from one anceſtor to one heir at ſeveral times.

As if a man ſeiſed in fee of the Manor of D. of the part of the Father holden of A. by Knights ſervice, and of the Manor of S. of the part of the mother holden of B. by Knights ſervice, and dieth, his heir within age, this caſe (as by the letter thereof it appeareth) is within the ſcope and purview of this Statute; for if the Father holdeth land by Knights ſervice, and the Mother hold land alſo by Knights ſervice, which of them die firſt, the Lord of whom the land is holden, albeit there be but one heir to both, ſhall have the Wardſhip of the body, which being once veſted, ſhall not after be devеſted in reſpect of any priority, no though it were in the Kings Caſe. 24 E.3.26,45. 15 E.4.14. 3 H.7.15.

The Tenant maketh a feoffment in fee upon condition of the land holden by priority, and dieth ſeiſed of the land holden by poſteriority his heir within age, the Lord by poſteriority ſeiſeth the body, the condition is broken, the heir entreth into the land holden by priority, the Lord by poſteriority ſhall retain the Wardſhip, for ſeeing that both deſcended not at one time, it is out of this Statute. Vet.N.B. 97.b.

¶ Habet

¶ Habet maritagium.] The Lord by priority ſhall have the Wardſhip of the body, for the Lord by poſteriority ſhall have the Wardſhip of the land holden of him, as well as the Lord by priority of the land holden of him, but the Wardſhip of the body being intire, and which both cannot have, of right belongeth to the Lord by priority by this Act, and therefore if the Lord by priority waive the Wardſhip of the body, and refuſe to take the ſame, yet the Lord by poſteriority cannot take advantage of it, for by this Act the Wardſhip of the body belongeth to the Lord by priority, and to no other.

44 E. 3. 15.

¶ De quo anteceſſor ſuus fuerit feoffatus, habito reſpectu ſolummodo antiquius feoffamentum.] Here it appeareth that the feoffment of the Tenancy doth only make the priority, and not the change of the Seigniory.

14 E. 3. gard 37.

But where this Statute ſpeaketh of a feoffment, it is to be underſtood of any other aſſurance or conveyance of the Tenancy.

Per antiquius feoffamentum, are not to be underſtood of the feoffment of the Lord upon the creation of the Seigniory, but of the feoffment made by the Tenant of the Land.

3 E. 3. gard 19.

To illuſtrate the meaning of this Law by examples:

One holdeth Black acre of A. by Knights ſervice, and White acre of B. by Knights ſervice, Anno 10 Reg. Eliz. infeoffeth C. of Black acre, and 20 Reg. Eliz. infeoffeth C. of White acre, who dieth his heir within age, B. ſhall have the Wardſhip of the body, for C. had Black acre per antiquius feoffamentum.

So it is if the heir of C. die ſeiſed, and both acres had deſcended to his heir, he had holden Black acre by priority, that is, per antiquius feoffamentum made to his anceſtor, and ſo from heir to heir ſo long as both acres continue in that line by deſcent.

On the Lords ſide the priority ſhall not only continue as long as the Seigniories continue in the lines of the Lords, but alſo the change of the Seigniory maketh no alteration, and therefore though the Lord of whom Black acre is holden alien the Seigniory, yet if he taketh it back to him again, Black acre ſhall be ſtill holden of him by priority, the aſſignee of the Lord by priority ſhall take advantage of it as well as the grantor.

Temps E. 1. gard 134. F.N.B. 142. f. 13 E. 1. Cor. Rege Rot. 40. Eborum. 2 E. 2. gard 2. 7 E. 3. 11. 34, 35. 13 E. 3. gard 39. 18 E. 3. 29. b. 7 E. 3. 11. 63, 64. 11 E. 3. gard 115. 14 E. 3. gard 37. 33 E. 3. ibid. 12. F.N.B. 142. 13 E. 3. gard 38.

But if the Tenant had alienated Black acre to another, and acquired it back again, yet ſhall he hold it by poſteriority, for now he holdeth White acre, per antiquius feoffamentum; ſo as the feoffment of the land (as hath been ſaid) doth make the priority, and that feoffment muſt be underſtood of the immediate feoffment, but the priority of the land doth attend on the Seigniory, into whoſe hands ſoever it cometh.

If there be Lord, Meſne, and Tenant, and the Meſne hold by priority, the Tenant in a Writ of Meſne doth forejudge the Meſne; in this caſe the meſnalty is extinct, and the Tenant ſhall be anſwerable to the Lord, De eiſdem ſerviciis & conſuetudinibus quæ prius facere debuit prædictus medius; in this caſe the Tenant ſhall hold by priority: for 1. he ſhall hold per antiquius feoffamentum; 2. The Meſne in ſuppoſition of Law was ſaid to hold the land. 3. The Statute of W. 2. that gives the forejudger, provideth that he ſhall hold by the ſame ſervices and cuſtoms, and in ſuch ſort, as it may be done ſine præjudicio alterius, and this ſhould be to the prejudice of the Lord by priority, if he ſhould loſe that benefit.

7 E. 3. 11. 34, 35. 21 E. 3. 11. 19. 4 E. 3. 37. 30 E. 3. 7 13 E. 3. gard 39. 30 E. 3. 7.

In a Raviſhment of Ward the Defendant pleaded that the Father of the Infant held the Manor of D. of him the Defendant by Knights ſervice, Et quod

tenuit

tenuit manerium illud de ipſo per antiquius feoffamentum, quam pater ſuus tenuit manerium de K. de modo querente; and this was agréd to be a good plea without ſhewing of whoſe feoffment he held by priority, but generally, which is worthy of obſervation.

A. holds land of B. by priority, and other land of C. by poſteriority, and infeoffeth D. of both: this caſe is out of this Statute, becauſe he cometh to both the lands at one time, ſo as he holds not either of them per antiquius feoffamentum, ſed per unum & idem feoffamentum; And therefore if he dieth, his heir within age, the Lord which firſt ſeiſeth the body in this caſe ſhall have it. 8 E.3.57. 18 E.3. 29. Vet. N. B. 97 F.N.B. 142. f. Bro. gard 115.

CAP. XVII.

IN itinere Juſtic' non admittatur de cætero eſſonium de malo lecti de tenemento in eodem comitatu, niſi ille, qui ſe facit eſſoniari, veraciter ſit infirmus, quia ſi excipiatur à petente, quod tenens non eſt infirmus, nec in illo ſtatu, quo minus venire potuit coram Juſticiariis, admittatur ejus calumnia. Et ſi hoc per inquiſitionem convinci poterit, vertatur illud eſſonium in defaltam. Nec jaceat de cætero illud eſſonium in brevi de Recto inter duos clamantes per eundem deſcenſum.

We have before in general ſpoken of the five kinds of eſſoins, but reſerved to ſpeak more particularly of this kind of eſſoine de malo lecti in the expoſition of this Chapter, as in his proper place. See Marlb. c. 12.

¶ De malo lecti.] This eſſoin differeth from all other kinds of eſſoins, for this eſſoin lieth only ad certum diem, for he ought to appear ad primum diem, &c. & ad tertium diem il avera ceſt eſſoine. 20 E.3. eſſoine 27

And in this caſe he ſhall have two eſſoiners, and the one ſhall caſt the eſſoin, and the other ſhall ſwear, that he ſaw the party ſick, &c.

The miſchief before this Act was, that the adverſe party could not take iſſue, that he that offered to be eſſoined de malo lecti was in health, and not ſick, and try it by a Jury; but it was inquired by four Knights returned for that purpoſe by the Sheriff, Si fuer' languidus aut non, and if they found that he was not languidus, then he ſhould have fiftéen days after to appear, ſo as the party was delayed thereby fiftéen days, and all the time before, and this was miſchievous: for remedy whereof this Act provideth, that the party ſhall take iſſue, that he is not languidus, which if it be ſo found, it ſhall turn to a default; and if it be found that he is languidus, then he ought to have time to appear a year and a day, and before he cometh out, he ought to have a Writ de licentia ſurgendi, &c. as it appeareth by the authorities cited in the expoſition of the ſaid 12 Chapter of Marlebridge. 3 H.3. eſſoine 186

¶ In itinere Juſtic'.] Although Juſtices in Eir are here particularly mentioned, yet this Act being a beneficial Law to ouſte delays is taken by equity, and doth extend to the Court of Common Pleas.

¶ De malo lecti.] Sufficient hereof hath bèn ſpoken, only this may be added that this eſſoin lieth not for an Attourney, for no eſſoin ſhall be caſt for an Attourney but the common eſſoin only.

15 H. 3. eſſoin 196

¶ De tenementis in eodem com'.] This eſſoin de malo lecti doth only lie in a Writ of Right right, and not in a Writ of Right in his nature.

15 H. 3. eſſoin 191 192, 194. 20 E. 3. eſſoin 27.

¶ Clamantes per eundem deſcenſum.] This eſſoin de malo lecti is wholly ouſted in a Writ of Right betweén two claiming by the ſame deſcent.

As betweén two parceners either at the Common Law or by Cuſtom, &c. But if one coparcener claim the land by feoffment made by her anceſter in fée, now if the other coparcener deforce her of this land in a Writ of Right brought againſt her ſiſter, ſhe may be eſſoined de malo lecti, and ſo betwéen two brethren: ſo as this Statute is intended where they claim the land per eundem deſcenſum, and not where they derive their blood only per eundem deſcenſum; for in the caſe put before where they claim by ſeveral titles, they may join the miſe by grand Aſſiſe, or by battel, which they cannot do when they claim by one deſcent.

Bract. l. 2. fol. 66. Britton fol. 190. 13 E. 1. droit 51. F. N. B. 10. a.

CAP. XVIII.

Fleta l. 2. cap. 55. See the firſt part of the Inſtitutes, Sect. 504. verb. per Elegit.

CUM debitum fuerit recuperatum, vel in curia Regis recognitum, vel damna adjudicata, ſit de cætero in electione illius qui ſequitur pro hujuſmodi debito, aut damnis, ſequi breve quod Vicecom' fieri faciat de terris & catallis debitoris, quod Vicecom' liberet ei omnia catalla debitoris, (exceptis bobus & afris carucæ) & medietatem terræ ſuæ, quouſque debitum fuerit levatum per rationabile precium & extentum. Et ſi ejiciatur de illo tenemento, habeat recuperare per breve Novæ diſſeiſinæ, & poſtea per breve de rediſſeiſina, ſi neceſſe fuerit.

Vide Mag. Char. c. 8. Dier 23 El. 305. b.

At the Common Law where a Subject ſued execution upon a judgment for debt or damages, he ſhould not have the body of the Defendant, or his land in execution (unleſs it were in ſpecial caſes,) and the reaſon of the Law was: that the body in caſe of debt ſhould not be detained in priſon, but be at liberty, not only to follow his own affairs and buſineſs, but alſo to ſerve the King and his Country when néed ſhould require; nor to take away the poſſeſſion of his lands in that caſe, for that would hinder the following of his husbandry and tillage, which is ſo beneficial to the Common-wealth, whereof you may read at large in Sir William Herberts Caſe.

Lib. 3. fol. 11, 12, &c. Sir Will. Herberts Caſe.

But by the Common Law he ſhould have execution in that caſe only of his goods and chattels, and of his corn, and other preſent profit that grew upon his land, to which purpoſe the Law gave him two ſeveral Writs to be ſued within the year, one a Levari facias, whereby the Sheriff was commanded, Quod de terris & catallis ipſius A. levari fac', and the other called a Fieri fac', which alſo was only de bonis & catallis.

Now the Common Law being underſtood, let us peruſe the words of the Act.

¶ Cum debitum fuerit recuperatum.] That is, by Judgment in an Action of debt, or any Action wherein damages are recovered.

¶ Aut recognitum.] That is, by Recogniſance knowledged in any Court of Record that hath power to receive the ſame.

It

If two do knowledge a Recogniſance of C l. quilibet eorum in ſolido, that is, joyntly and ſeverally, the Conuſée may ſue ſeveral Scire fac' againſt the Conuſors upon this Recogniſance. 29 E.3.38,39.5 E. 3.26,35. 34 E.3. Execution 129. 36 H.6.2,3. 10 E.3.34,35.

A ſpecial Recogniſance may by expreſs words bind the lands of the Conuſor in one County only.

¶ Sit in electione illius.] This Election ſhall the Executors or Adminiſtrators of the Plaintif, or Reconuſée have, albeit they be not named; and ſo likewiſe ſhall the ſucceſſor of the Conuſée have alſo: but the Executors ſhall not have Execution of the Judgment or Recogniſance in the time of the Teſtator, within the year, without ſuing a Scire facias; but otherwiſe it is of a Statute, &c. F.N.B. 267. c. Lib.3. f.65. Fulwoods caſe. 21 Aſſ. 15. 15 H.7.5.20 E. 2. Execution Statham. 2 R.3.8. F.N.B. 267.b.

When the Plaintif or Conuſée prayeth an Elegit, the Entry is Quod elegit ſibi executionem fieri de omnibus catallis, & medietate terræ; and the Writ of Elegit is, Ac cum idem H. juxta ſtatutum inde editum (meaning this Statute) elegerit ſibi liberari pro prædict' 20 libris omnia catalla, & medietatem terræ ipſius R. And therefore after the ſuing out of the Elegit, the Plaintif, that hath a Judgment in an Action of Debt, cannot have a Capias, &c. Regiſt.299. 15 H.7. 15. 21 H.7.19. 30 E.3.24. 31 E.3 Proc.52. 47 E.3.26 50 E.3.4. 30 E.3 Execution Statham. 22 Aſſ.43. 17 E. 4 4.b. 18 E.4.12. 34 H 6.20. 19 H.6.4

¶ Fieri facias.] Here under theſe words is alſo the Writ of Levari facias included.

¶ Vel quod Vicecom' liberet ei omnia catalla, exceptis bobus & afris carucæ.] The Mayor and Aldermen of London take a Recogniſance of 250 pounds to the Chamberlain of the City of London, and his ſucceſſors according to the Cuſtom for Orphanage money; in this caſe the Chamberlain for the time being may ſue out a Precept in the nature of an Elegit to a Sergeant at Mace, and miniſter of that Court to do execution upon this Act: and albeit the words of this Statute are, Quod Vicecomes liberet; yet being a beneficial Law, by equity it is extended to every other immediate officer to every other Court of Record. Lib.3. fol.65. Fulwoods caſe.

a If the Chattels be ſufficient to pay the debt, and ſo may appear to the Sheriff, whereby he may ſatisfie the debt, then he ought not to extend the land for the reſidue; and all this appeareth by the Writ of Elegit framed upon this Act. *a* Regiſt. 299. *b* 19 E.2. Execut. 249. 2 H.4.14. 42 E.3.11. 42 Aſſ. 17. 3 E.3. Execut. 107. 10 E.2. Execut.137. 6 E.3.15 17. 7 E 3.7. 8 E.3 15,17. 17 E. 3.15 30 E.3.26,50. 11 H.4.70. 9 H.6.58

¶ Et medietatem terræ ſuæ.] *b* This is to be underſtood of the half of ſuch land as the Defendant had at the time of the Judgment given, or of the Recogniſance knowledged, unleſs it be conveyed away by fraud and covin to deceive his Creditors, contrary to the Statutes in that caſe provided.

c A man doth knowledge a Recogniſance of 100 pounds to be paid at five days; preſently after the firſt day he may ſue an Elegit upon this Act for 20 l. and have the moity of the land delivered unto him; and when the ſecond day is paſt, he may have another Elegit for that 20 l. and have the moity of the remnant delivered to him, Et ſic de cæteris; for they be in effect in nature of ſeveral Judgments in Law. *c* 16 E. 2. Execut. 138. 2 E.2. ib.120 16 E.3. Fieri fac.4 F. N. B. 267. b. Vid. Mich. 31 E.3 fol.50.b. in libro meo per Fiſher & Finchden.

And upon theſe words, Medietatem terræ ſuæ, the Sheriff hath extended a term for years, and the like. 31 Aſſ.6. 38 Aſſ.4 lib.8. fol.171.

It is to be obſerved, that the general words of this Act do not take away the priviledge which the Law giveth to any perſon; and therefore no Elegit upon this Act ſhall be ſued againſt the heir of the Conuſor during his minority. Sir George Fletwoods caſe. 44 E.3.16. 7 H.6.2 29 Aſſ.37. 29 E.3 50. Sir William Herberts caſe, ubi ſupra.

Upon the equal conſtruction of theſe words, if the Conuſor be ſeiſed of Black acre, White acre, and Green acre, and after the Judgment given, or Recogniſance knowledged, infeoffeth A. of White acre, and B. of Black acre, and retains Green acre to himſelf, in this caſe he may have the moity of Green acre, and never intermedle with the reſt: but he cannot extend the moity of the Acre

in the hand of any purchaſer, except he extend alſo the moity of all the land ſubject to the Judgment, or Recogniſance; and if he omit any, the Extent ſhall be avoided in an Audita querela: for where it is ſaid in Books, that each purchaſer ſhall have contribution in that caſe, the meaning is, that ſuch extent of part ſhall be avoided, and all the land extended and equally charged; and ſo it is if Green acre deſcends to an heir, the moity thereof may be only extended, without dealing with any of the reſt: ſo likewiſe if there be two or more Conuſors, the lands of them all muſt be extended; and hereof you may read at large in Sir William Herberts caſe, all which are juſt and righteous expoſitions.

29 Aſſ. 37. 29 E. 3 50. Sir William Herberts caſe, ubi ſupra.

¶ Quouſque debitum fuer' levatum.] The Elegit framed upon theſe words, ſaith, Tenendum ut liberum tenementum, quouſque debitum prædict' inde fuer' levatum; and yet whenſoever the party pay and ſatisfie the debt of Record, he ſhall enter into his land: and ſo it is when the Tenant by Elegit is ſatisfied by the ordinary Extent, the Tenant of the land may enter. But if it be in reſpect of any caſual profit, to avoid the Extent he muſt have a Scire fac' in reſpect of the incertainty.

13 E. 3. Scire fac. 17. 21 E. 3. 36. 17 E. 3. 43. 46 Aſſ. tit. Scire fac. 47 E. 3. 11. 31 E. 3 Extent 31. Regiſt. 299. Fulwoods caſe, ubi ſupra.

¶ Per rationabile precium & extentum.] Per rationabile precium doth refer to goods and chattels, and Rationabile extentum referreth to lands.

Dier 2 Mar. 100. l. 4. f. 74. Palmers caſe. 15 H. 7. 15. 9 H. 7. 9. 22 Aſſ. 44 22 E. 3. 31. 44 E. 3 10. Temps R. 2. Pl. ult. tit. Extent. 15 E. 3. Scire fac. 115. 31 E. 3. Extent 13. 15 E. 3. Ibid. 17. 22 E. 3. Recovery in value 22. 7 H. 4. 19. 22 R. 2. Execution 165 Dier 6 E. 6. 73. Regiſt. Judic. 13, 14, 20. * 19 E. 2. Execut. 246.

And hereby is implied, that this Appriſement and Extent upon the Elegit muſt be found by enqueſt of 12 men, and ſo returned of Record.

That ſhall be ſaid a reaſonable Extent, which is found by the oath of 12 men, and returned by the Sherif, and filed; and there can be no re-extent granted upon ſurmiſe, that it is more then the half in value, or the like, becauſe it extendeth only to a chattel in lands: but before the Extent be filed, the Court may examine the cauſe, and if there be found fraud, deceit, or partiality, they may ſtay the filing of that Writ, and grant a new.

But ſee 22 R. 2. 165. in Dower, and in caſe of Free-hold in Hil. 13 E. 2. f. 74. b. the caſe of the Hoſpital of T. a Scire facias granted for the ſurpluſage upon a Return in value, and delivered to the Sherif by Habere fac' ad valorem, for that it concerneth an Inheritance, and ſo it was adjudged. Note the diverſity, the Tenant by Elegit may for reaſonable cauſe hold over the ordinary courſe of the Extent, * by a reaſonable conſtruction upon this Statute.

¶ Per breve novæ diſſeiſinæ, & per breve de rediſſeiſina, &c.] The words of the Writ of Elegit (as hath been ſaid) are, Tenendum ut liberum tenementum, &c. becauſe this Statute giveth him remedy by Aſſiſe, &c. but he hath but a Chattel, and no Free-hold; and therefore it is ſaid, Si ejiciatur: and the Writ ſaith ſimiltudinary, Ut liberum tenement', in reſpect of the Aſſiſe, &c.

28 Aſſ. p. 7. F. N. B. 189. I.

This Branch doth give the Aſſiſe to the Tenant by Elegit, and yet his Executors or Adminiſtrators ſhall have it by the equity of this Act; and ſo ſhall the Executors or Adminiſtrators of Tenant by Statute Merchant, and Tenant by Statute Staple.

I have ſeen a Record of a Judgment in the Raign of E. 2. that the Aſſignee of a Tenant by Elegit ſhould not have an Aſſiſe by the purview of this Statute.

Tr. 15 E. 2. Coram Rege Rot. 40. John Semers caſe.

Tenant by Statute Merchant of lands, which the Conuſor had in the right of his wife, brought an Aſſiſe upon this Statute, the Tenant pleaded Ancient demeſne, &c. and ſo found, &c. and yet the Plaintif had Judgment; and the reaſon of the Judgment given in the Record is this, Licet manerium prædict' ſit de antiquo Dominico coronæ, & tenementa in eodem manerio exiſtentia per parvum breve tantum placitabilia, & prædict' Ranulphus Huntingfeld in cognitione prædict' quam fecit præd' I. in ſtatuto obligavit tenementa præd' in ſumma ejuſdem cognitionis, quæ quidem obligatio naturam eorundem tenementorum non mutat, nec eſt ad præjudicium Domini, aut exhæredationem tenentium, ex quo tenementa illa per obligationem præd' ſolummodo onerata ſunt ad certum tempus, poſt quod tempus reverti debent præd' Ranulpho & uxori ſuæ exonerata, tenend' ut prius, &c. Conſideratum eſt, &c.

Mich. 31 E. 1. Co. Coram Rege Ebor. Ranulp. de Huntingfelds caſe.

By this Judgment three things are to be obſerved; 1. That lands in Ancient demeſne may be † extended by the Statute de Mercatoribus, Anno 13 E. 1. 2. That Ancient demeſne is* no plea in Aſſiſe brought by Tenant by Statute Merchant, upon this Statute. 3. That in an Aſſiſe of Novel diſſeiſin (which is feſtinum remedium) Ancient demeſne ſhall be tried by the Recognitors of the Aſſiſe.

† 7 H. 7. 1. l. 5. f. 10. Aldens caſe.
* 22 Aſſ. 45. lib. 5. ubi ſupra.
22 Aſſ. ubi ſupra.
8 Aſſ. p. 35. 9 Aſſ. 9 12 Aſſ. 18. 2 E. 3 42. b. 41 E. 3. 2. 49 E. 3. 23. 3 H. 6. 47

CAP. XIX.

CUM poſt mortem alicujus decedentis inteſtati, & obligati aliquibus in debito, bona deveniant ad Ordinarium diſponend', obligetur de cætero Ordinarius ad reſpondendum de debitis quatenus bona defuncti ſufficiunt. Eodem modo quo Executores reſpondere tenerentur, ſi teſtamentum feciſſent.

¶ Decedentis inteſtati.] There be divers kinds of Inteſtates, one that make no Will at all, another that make a Will and Executors, and they refuſe; in this caſe he dieth Quaſi inteſtatus, and theſe are within the purview of this Act: therefore the Ordinary is the perſon whom the Law appointeth to have the charge or Adminiſtration of the goods and chattels of the party that dieth inteſtate, or Quaſi inteſtatus; and juſtly did the Law in this caſe appoint the Ordinary: for the Law preſumed, that he that had the care of his ſoul in his life time, would after his death have care of his temporal goods and chattels, to ſee them well diſpoſed and adminiſtred.

Lib. 6. fol. 67. Sir Moyle Finches caſe.

And this Act was made in affirmance of the Common Law, as hereafter upon the expoſition of ſome parts of the Act ſhall appear.

17 E. 2. Br. 822. 24 E. 3. 55. 11 E. 3 Executors 77. 18 H. 6. 23. 9 E. 4 33. 11 H. 7. 12. F N. B. 120. lib. 5 fol. 83. Snellings caſe. Dier 4 El. 247

¶ Et obligati.] This is not only intended of an Obligation or Deed in writing, but howſoever he was charged in Law, as for Rent upon a Leaſe, or upon an Aſſumpſit, or the like.

And after it is ſaid in this Chapter, Obligetur de cætero ordinar', where Obligetur is not taken, that he ſhould be bound in an Obligation, but that he ſhould be charged, or ſubject to an Action.

¶ In debito.] This Act is not only intended of that which is properly a debt, but of all duties, covenants, or juſt cauſes of Actions, ſuch as might be brought againſt Executors.

¶ Bona deveniant ad ordinarium diſponend'.] Unleſs ſome of the goods or chattels came to the hands and poſſeſſion of the Ordinary, he was not to be charged by the Common Law; but if they came to his hands, and he would neither adminiſter and pay the debts and duties himſelf, nor commit them over to the kin and friends of the Inteſtate that would, the Common Law did charge him, and ſo doth this Act which is made in affirmance of it.

If a man dye Inteſtate, and a ſtranger taketh the goods, the Ordinary ſhall not have an Action of Treſpaſs for taking of them (unleſs he had taken them into his poſſeſſion.) But the Executor or Adminiſtrator before ſeiſure may have an Action of Treſpaſs.

7 H. 4. 18.

Neither can the Ordinary have any Action of Debt, Covenant, or any other Action which belonged to the Inteſtate; but thoſe to whom the Ordinary commit Adminiſtration may have all theſe Actions by the Statute of 31 E. 3. but before

31 E. 3. cap. 11. 19 E. 3. Adminiſt. 20 & 24. 7 H. 4. 18 Fitz. Treſp. 97.

before that Statute, there was no remedy by Law given to the Adminiſtrators to recover thoſe things in Action.

25 E.3. Exec. 105
11 H.4.71. 18 H.6 22. F.N.B. 92. a. Pl. com. 278.

a But by the Common Law, an Action of Debt did lye againſt the Adminiſtrators, but it was by the name of Executors until the ſaid Statute of 31 E. 3.

a 41 E.3.2. 11 H.4 72. lib.5. f. 82, 83 Snellings caſe.

b If the Ordinary take goods of the Inteſtate, being out of his Dioceſs, he ſhall not be charged as Ordinary by this Act, becauſe he taketh them of his own wrong, and not as Ordinary, in which right he is to be charged by this Act.

b 12 R.2. Adminiſtrat. 21.

If it be demanded what intereſt the Ordinary hath in the goods of the Inteſtate, which come to his hands; it is anſwered, that he hath ſuch an intereſt as the Adminiſtrator, to whom adminiſtration is committed, Durante minore ætate executoris, ad opus, commodum, & utilitatem ipſius executoris, & non aliter, ſeu alio modo. So as the Ordinary may adminiſter for the good of the Inteſtate, but cannot give the goods of the Inteſtate, or do any thing to his prejudice.

Lib.5. fol.29. the Princes caſe.
9 El.Dier 255,256 lib. fol.
Sir Moyle Finches caſe.

¶ Obligetur de cætero ordinarius.] Ordinarius; this word in the Law of England, in the uſual and common ſenſe ſignifieth a Biſhop, or he, or they that have Ordinary Juriſdiction, and is derived ab Ordine, to put him in mind of the duty of his place, and of that order and office that he is called unto; And this was the wiſdom of Antiquity, that names of men in great places ſhould put them in mind (as often as they were named) of their duty: as the Treaſurer of England to have ſpecial care of the Kings treaſure; and they that had places in the Kings principal Courts of Juſtice are called Juſtices, to put them in continual memory to do Juſtice, & ſic de cæteris.

c 17 E. 2. Br. 822
5 E.2.ib.16.17 E.3 23.21 E.3.60.
41 Aſſ.29. 7 E.4.14
12 E.4.15. 31 H.6 10. 15 E.3. Quare non admiſit 5. Dier 18 El.350. Regiſt.67. Capitulum ſede vacante ſuccedit Epiſcopo in ordinaria juriſdictione.
And this is regularly true, unleſs it be by preſcription or compoſition.
Vide lib.3.f.73.the Dean and Chapter of Norwich caſe.

c In this Statute Ordinarius is not only taken for a Biſhop, but every one that is in loco Epiſcopi, as Gardeins of the Spiritualties, and ſuch as have peculiar and exempt Eccleſiaſtical Juriſdiction, and be immediate officers to the Kings Courts of Juſtice: and not only an Ordinary or Gardein of the Spiritualties, or others that be in loco Ordinarii, that of right are within this Act, but alſo ſuch as uſurp the place, and are in poſſeſſion by wrong, are to be charged by this Act.

d Reg 141. 11 R.2 & 16 E.3. Adjudg. 11 E.3. Execut. 177. 24 E.3.54. 11 H.4.73. F.N.B. 120. Pl. Com. 280

d If goods of the Inteſtate come to the hands of the Ordinary, and he dieth; although the words be [Obligetur de cætero ordinarius] yet his Executors or Adminiſtrators ſhall be charged in an Action of Debt; for when this Act bindeth the Ordinary, by conſequent his Executors or Adminiſtrators are bound. But if the Ordinary commit adminiſtration to one, and he taketh the goods into his poſſeſſion and dieth no Action lieth againſt his Executors.

e 11 R.2. Adminiſtrat. 21.

e If the Ordinary take goods into his hands of the Inteſtate, and after commit adminiſtration, and the Ordinary retaineth the goods, he ſhall be charged, notwithſtanding the committing of adminiſtration.

CAP.

CAP. XX.

CUM Juſticiarii in placito mortis anteceſſoris conſueverint admittere reſponſionem tenentis, quod petens non eſt propinquior hæres anteceſſoris, de cujus morte tenementum petitur, & hoc paratus eſt per aſſiſam inquirere: Concordatum eſt, quod in brevibus de conſanguinitate, avo, & proavo, quæ ſunt ejuſdem naturæ, admittatur illa reſponſio, & inquiratur, & ſecundum illam inquiſitionem ad judicium procedatur. Fleta l. 5. cap. 8.

¶ Conſueverint admittere reſponſionem.] Hereby it appeareth that admiſſion and allowance of the Juſtices ought to be holden for Law, and ſo it is affirmed by this Act.

¶ Quod petens non eſt propinquior hæres.] It is to be underſtood that the Entry in an Aſſiſe of Mord' brought for (example) by P. againſt R. of 20 acres of land in S. is according to the words of the Writ Aſſiſa venit recognoſcere ſi [1] O. pater P. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo de 20 acris terræ cum pertinentiis in S. die quo obiit. Et [2] ſi obiit infra 50 annos jam ultime elapſos ante Teſte brevis. Et ſi P. propinquior hæres ejus ſit.

These three points in this Aſſiſe of Mordaunc' ſhall be inquired of by the recognitors of the Aſſiſe, albeit the Tenant make default, and no iſſue be joyned thereupon: But ſo it is not in the Writs of Aiel, Beſaiel, or Coſinage; for they are no Aſſiſes but Writs of Præcipe quod reddat, and therefore if default be made therein, judgment ſhall be given by default, as in other Writs of Præcipe quod reddat, without inquiry of any point of the Writ: The three points of the Aſſiſe are hypothetical, the Demandant affirming nothing, and the words of the other three Writs here mentioned are categorical; Præcipe A. quod juſte, &c. reddat B. unum meſſuagium, &c. de quo W. avus prædict' B. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo die quo obiit; Now quod petens non eſt propinquior hæres is a denial of one of the points of the Writ of Mordaunc'. 31 E. 1. Mord. 58. 4 E. 2. Mord. 38. 8 E. 2. ibid. 42. 2 E. 3. 9. 9 E. 3. 30. 9 Aſſ. 3. 10 E. 3. 4. 45. 30 E. 3. 8. 2 Aſſ. 10. 8 Aſſ. 17.

And it is to be underſtood that when the Tenant pleadeth in bar of the Aſſiſe, as matter of Record, or a releaſe, or warranty, or any other bar that is out of the ſaid three points of the Aſſiſe, there the Tenant beginneth his plea with Aſſiſa non, &c. and therefore the trial of that iſſue is peremptory, and the Aſſiſe ſhall never inquire of any of the points of the Writ; but when the Tenant ſaith, that he is ready to hear the recogniſance of the Aſſiſe, he cannot ſay Aſſiſa non, for that ſhould be repugnant to his own ſaying; and if he ſay that he is ready to hear the recogniſance of the Aſſiſe of one of the points of the Writ, or traverſe one of the points of the Writ, yet the Court Ex officio ought to enquire of them all: and ſo it is if the Tenant plead in abatement of the Writ, or vouch, and the Demandant counterplead the Voucher, and theſe pleas be tried, or adjudged for the Demandant, yet the points of the Writs ſhall be enquired, and ought to be found for the Demandant, or elſe he ſhall not recover. 14 E. 3. Mord. 8. 29 Aſſ. 1. 11. 39 Aſſ. 13. 40 E. 3. 48. 33 E. 3. Mord. 34. 27 H. 8. 14. 12 Aſſ. 48.

Now the miſchief before this Statute was, that in the Writs of Aiel, Beſaiel, and Coſinage, the Tenant was not admitted to plead, that the Demandant was not heir to him, upon whoſe dying ſeiſed the Writ was conceived, but he muſt ſhew who was his next heir, which now by this Act he need not to 6 E. 3. 53.

do, but yet he may plead the like plea, as he might have done at the Common Law as he did in 6 E. 3.

Mirror cap. 5. § 5 But hear what the Mirror ſpeaking of this Act ſaith, Leſtatut de allower un manner de exception in ſemblable actions ne fuit my miſtier daver eſtre ordein ſinon pur negligence des Juſtices, car cheſcun affirmative eſt encounterable de ſon negative al peril del deliverant.

12 E. 3. Mordanc' 10. 30 E. 3. 8. 33 E. 3. Mord. 34. If the Tenant ſaith, that he is ready to hear the recogniſance of the Aſſiſe, he cannot give in evidence that the Demandant is a baſtard, but he ought to have pleaded the ſame.

¶ Anteceſſoris.] This anteceſſor in a Writ of Mordaunc' is intended of the father, mother, brother, ſiſter, uncle, aunt, nephew, or niece of the Demandant, and of no other.

¶ Quæ ſunt ejuſdem naturæ.] The difference betwéen the Aſſiſe of Mordaunc', and theſe three Præcipes appeareth by that which hath been ſaid, and yet in ſome reſpect the words of this Act that they be ejuſdem naturæ are true.

For as the Writ of Mordaunc' ſaith, Si O. pater P. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo de 20 acris terræ cum pertinen' in S. die quo obiit. So the words of the Writ of Aiel be, De quibus N. avus prædict' P. cujus hæres ipſe eſt, fuit ſeiſitus in dominico ſuo ut de feodo die quo obiit, &c.

¶ Et ſecundum illam inquiſitionem ad judicium procedatur.] Herein is the difference betwéen this plea in Aſſiſe of Mordauuc', and the other Writs; for in the Aſſiſe of Mordaunc' the reſt of the points of the Writ, as hath been ſaid, ſhall be enquired.

But in the Writs of Aiel, Beſaiel, and Coſinage, the trial of this iſſue is peremptory, and thereupon the Court ſhall proceed to judgment as here is expreſſed.

CAP.

CAP. XXI.

CUM in ſtatuto edito apud Glouc' contineatur, quod ſi quis dimiſerit terram alicui ad reddend' valorem quartæ partis ten' vel majoris, habeat ille qui dimiſit, vel ejus hæres (poſtquam ceſſatum fuerit à ſolutione per biennium) actionem petendi ten' ſic dimiſſum in dominico. Eodem modo concordatum eſt, quod ſi quis detineat Domino ſuo ſervitium debitum & conſuetum per biennium, habeat Dominus actionem petendi ten' in dominico per tale breve. Præcipe A. quod juſte, &c. reddat B. tale ten', quod A. de eo tenuit per tale ſervitium, & quod ad præd' B. reverti debeat, eo quod prædictus A. in faciend' prædictum ſervitium per biennium ceſſavit ut dicit. Et non ſolum in iſto caſu, ſed in caſu de quo fit mentio in prædicto ſtatuto Glouc' fiant brevia de ingreſſu hæredi petenti ſuper hæredem tenentem, & ſuper eos quibus alienat' fuerit hujuſmodi tenementum. Glouc' cap. 4.

¶ Cum in ſtatuto edito apud Glouc', &c.] The Statute of Glouc' is miſrecited for [vel ejus hæres] are not in that Statute.

1. Hereby it appeareth that the Statute of Glouc' extended only, when upon the creation of the tenure a fee farm was reſerved, the deteinment whereof was more prejudice to the Lord then common and uſual rents and ſervices, and therefore that Act was not extended by equity to other rents, or ſervices.

2. That albeit the Statute of Glouc. mentioneth a Deed, yet if the fee farm be reſerved without Deed, that Act extended to it, for here in the recital of the Act no Deed is mentioned, ſo as that Statute is extended to all fee farms.

3. Here it is ſaid eodem modo concordatum eſt, quod ſi quis detineat Domino ſuo ſervitium debitum & conſuetum; and if the Statute of Glouc' had not extended to fee farms without Deed, then ſhould not a Ceſſavit lie for other ſervices upon this Act, unleſs they had bin reſerved by Deed, by reaſon of theſe words, eodem modo, &c.

¶ Eodem modo concordatum eſt, &c.] By theſe words this Act is ſo incorporated into the Statute of Glouc'; as the letting of the land to lie freſh, the tender of the arrerages, finding of ſurety, &c. are to be applied to this Act concerning other ſervices.

¶ Si quis detineat.] Theſe words extend as well to bodies politique or incorporate, either ſole or aggregate of many, as to natural perſons; alſo to feme coverts and infants, unleſs the infant have the land by deſcent, and then although the ceſſer be in his time, he ſhall have his age, for that by intendment of Law he knows not what arrerages to tender. 3 E. 3. 26. 4 E. 2. Cui in vita. 22. lib. 8. fol. 44. Wittinghams Caſe Lib. 9. fo'. 85. Combs caſe.

If a villein ſeiſe and the Lord enter, no Ceſſavit ſhall lie againſt the Lord for the ceſſer by the villein. 34 E. 3. br'e 924.

¶ Domino ſuo.] This is not intended only of a Lord that hath an eſtate in fee-ſimple in a Seigniory, but of ſuch alſo that have an eſtate tail, or any eſtate for life derived out of a fee-ſimple; but he in the reverſion ſhall not have a Ceſſavit againſt the donee in tail or Tenant for life, for he in the reverſion is not Dominus within this Statute. 32 E. 1. ceſſav. 29. 11 E. 2. ceſſavit. 13 E. 2. ibid. 52. 8 E. 3. receit 36. 43 E. 3. 15. 45 E. 3. 27. 33 H. 6. 53.

If the Tenant ceaſe by one year, and the Lord grant over his Seigniory, and then the Tenant ceaſe another year, neither of them is Dominus within this Act. Lib. 2. fol. 93. Binghams Caſe. 9 H. 7. 16. F. N. B. 209. Ver. N. B. 78

See the Expoſition upon the Statute of Glouc' cap. 4. what ſervices are intended within this Statute, viz. ſervices annual, as rent, ſuit, and the like, and

not homage, or fealty, or the like, for this Act ſaith per biennium, which impli-eth annual ſervices. But this Act extendeth not to rent ſervice created upon a fée farm, but a Ceſſavit upon a fée farm muſt be conceived upon the Statute of Regiſt. 237. Glouceſter, for which purpoſe there be ſeveral Writs in the Regiſter.

14 E. 2. br'e 815. 14 E. 3. ibid. 269 19 E. 3. ibid. 249 21 E. 3. 44. 30 E. 3 22. 28 E. 3. 95. 48 E. 3. 4. 27 E. 3. 27. 39 E. 3. 15. 12 R. 2. ceſſavit 460. 33 H. 6. 53. 12 E. 4. fol. ult. 27 H. 8. 28. Kelwey 104, 105. 13 E. 3. gard 38. 1 H. 4. 3. per Burgh.

¶ In dominico.] It was the wiſdom of ancient Parliaments to com-prehend much matter in few words, as in this caſe, if the Tenant made a leaſe for life, or a gift in tail, and a ceſſer was by two years, in this caſe a Ceſſavit ſhould be brought againſt the Tenant for life or in tail, and ſuppoſe that he in reverſion did hold of him, and that the Tenant for life, or in tail did ceaſe: and ſo if the Tenant was diſſeiſed, and the diſſeiſor ceaſed, the Writ of Ceſſavit ſhould ſuppoſe that the diſſeiſée did hold, and that the diſſeiſor did ceaſe: and likewiſe if the Tenant by whoſe hands the Lord was ſeiſed of his ſervice made a feoffment in fée, the Writ of Ceſſavit ſhould ſuppoſe that the feoffée ceaſed, and that the feoffor did hold of him, Et ſic de ſimilibus: and the reaſon of theſe and the like caſes was, for that the Lord by his Ceſſavit was to recover the land in dominico; and therefore theſe Writs were framed and allowed accordingly: and for the ſame reaſon, if there be Lord Meſne and Tenant, and the Te-nant peravaile ceaſe by two years, the Lord ſhall have a Ceſſavit againſt the Te-nant (for a Ceſſavit doth not lie of a rent) and ſuppoſe that the Meſne ceaſed.

Lib. 8. fol. 86. Buckmers caſe. 21 E. 3. 44. b. &c. Regiſt. 237. Vet. N. B. 78. 138, 139. F. N. B. 208.

¶ Præcipe A. quod juſte, &c.] Here is the Writ of Ceſſavit framed; now the great Objection upon that which hath been ſaid, how the ceſſer can be alledged in the Tenant, againſt whom the Præcipe is brought, and the tenure alledged in another, when the Writ ſo formed doth ſuppoſe him, againſt whom the Ceſſavit is brought, to hold alſo of the Demandant; The Anſwer is, that the Writ formed by this Act is put but for example, and ſeeing that, if ſuch Writs, as are aboveſaid, ſhould not be maintained, no Ceſſavit ſhould be maintenable at all in thoſe caſes, therefore they have been adjudged to be good.

Regiſt. 237. Here is a Writ in a new caſe framed by this Act, and therefore the Act is not to be recited, (as often we have obſerved before) but the form preſcribed is to be purſued; but in a Ceſſavit upon the Statute of Glouc', the Statute is re-hearſed, becauſe there is no form of Writ preſcribed by that Act.

¶ Fiant brevia de ingreſſu hæredi.] A Ceſſavit is properly called Breve de ingreſſu, when it is in the Per, or in the Per & Cui.

33 E. 3. ceſſav. 42 Pl. Com. 110. F. N. B. 209. f. Lib. 8. fol. 118. D. Bonhams caſe.

Certain it is that the heir ſhall not have a Ceſſavit for a ceſſer in the life time of the anceſtor, becauſe the heir cannot have the arrerages which the Te-nant in the Ceſſavit hath power to tender, and therefore this Act is to be in-tended of a ceſſer in the time of the heir, otherwiſe the Act ſhould be contrary to it ſelf, which in all Expoſitions is to be avoided.

33 E. 3. ubi ſupra. F. N. B. ubi ſupra.

And ſo it is of the Aunt and Néece, they ſhall not joyn for a ceſſer in the time of the Mother of the Néece, but for a ceſſer in the time of both of them the Ceſſavit doth lie.

Fleta l. 2. cap. 48.

See the Statute of 10 E. 1. Statutum de Gaveletto in London, Vet. Magna Charta fol. 122. where it is ſaid, Implacitentur de gaveletto, which is a kind of Ceſſavit, for gavel or gabble, or gabel in one of the ſenſes is taken for cenſus, rent, &c. and gavellettum is as much to ſay, as to ceaſe, or let to pay the rent, Breve de Gavelletto in London eſt breve de Ceſſavit in biennium, &c. pro redditu ibidem, quia tenementa fuerunt indiſtringibilia.

Coram Rege Paſc. 17 E. 3. Rot. 139. London.

CAP.

CAP. XXII.

CUM duo vel plures teneant boſcum, turbariam, piſcariam, vel alia hujuſmodi in communi, abſque hoc quod aliquis ſciat ſuum ſeperale, & aliquis eorum faciat vaſtum contra voluntatem alterius: moveatur actio per breve de vaſto. Et habeat defendens, cum ad judicium venerit, electionem capiendi partem ſuam in certo loco per vic', & per viſum, & ſacram', ac aſſignationem vicinorum ad hoc elect' & juratorum: vel quod concedat quod nihil capiat de cætero in hujuſmodi boſco, turbaria, & aliis, niſi ſecund' quod participes ſui capere voluerint. Et ſi eligat capere partem ſuam in certo loco, aſſignetur ei locus vaſtatus in ſuam partem, ſecundum quod fuit antequam vaſtum fecit. Et eſt tale breve in hoc caſu: ſcil. cum A. & B. teneant boſcum pro indiviſo, B. fecit vaſtum, &c.

Fleta li. 1. cap. 11. See the firſt part of the Inſtitutes, 323.

¶ Boſcum, &c.] This Act extendeth not to caſtles, houſes, or other places for the habitation of man, for one Joyntenant, or Tenant in common might have had for reparation of them a Writ de raparatione faciend'. Regiſt. 76. 23 H. 7. Kelw. 98. F.N.B. 127. a.

¶ Teneant, &c. in communi, &c.] Theſe words do include alwel Joyntenants as Tenants in common, for both of them hold in communi, and ſo do old Books and Records term them both: but though the generality of theſe words do extend to coparcenërs, yet in good conſtruction they are not within the purview of this Act, becauſe they were compellable to make partition; for this Act extends not to them that had remedy by the Common Law, as hath bëen ſaid before. 27 H.8.13. 21 E.3. 29. 29 E.3.39.

This word [Teneant] doth imply a Frë-hold at leaſt.

A Parſon of a Church being Tenant in common with another ſhall have an Action of Waſte upon this Statute; and it is holden, that an Action of Waſte upon this Act is maintainable betwëen Joyntenants, or Tenants in common for lives, and yet the words of the Writ be, Ad exhæredationem. F.N.B. 49, 59. d. 21 E. 3. 29. 3 E.2. Waſte 25.

If woods be given to two, and the heirs of one of them, he that hath the Frë ſhall have an Action of Waſte upon this Statute, for no other Action of Waſte he can have. 50 E. 3. 3.

But if woods be letten to two, the one for life, and the other for years, they are not within this Statute, in reſpect of the ſaid word Teneant.

¶ Faciat vaſtum.] What ſhall be ſaid Waſte or deſtruction in a Tenant for life, &c. ſhall be ſaid Waſte within this Act.

¶ Habeat defendens, cum ad judic' venerit, electionem, &c.] Here the Defendant hath election, either to have his part in certain, and to take the place waſted as part thereof, or that he findeth ſurety to take no more then belongs to his part.

And the Defendant hath at this day a further election, either to have an Action of Waſte upon this Act, or a Writ of Partition by the late Statutes. 28 H.8. cap. 1. 32 H.8. cap. 32.

¶ Concedat.] That is expounded, that he find ſuch convenient ſurety, as the Court ſhall allow of.

¶ Aſſignetur eis locus vaſtatus.] This is not literally to be taken, for it may be, that the place waſted is more than his portion, therefore it muſt be underſtood of ſo much as belong to his part.

CAP. XXIII.

HAbeant de cætero executores breve de compoto, & eandem actionem, & proceſſum per illud breve, quale habuit mortuus, & haberet ſi vixiſſet.

7 E.3.62.19 E.3. Account 56. Hil. 31 E.3. fol.30. in libro meo in Account. F.N.B.117. b. 38 E.3.7.31E.3 Account.57.

By the Common Law Executors ſhould not have an Action of account for an account to be made to the Teſtator, becauſe the account reſted in privity: for remedy whereof this Act was made; but per legem mercatoriam an Action of account did lie for Executors. The ſucceſſor of a Prior, or the like ſhould have an Action of account for an account to be made to the predeceſſor, becauſe the houſe never dieth.

31 E.3. cap.11. 25 E.3. cap. 5. Pl. Com. 286, 287. 10 E.2. Execut. 100.

¶ Executores.] Adminiſtrators had no Action until the Statute of 31 E. 3. No Action of account was given to the Executors of Executors till the Statute of 25 E.3. But this Act of 25 E.3. as to the Action of debt, covenant, &c. therein mentioned, is but in affirmance of the Common Law.

¶ Eandem actionem & proceſſum.] The heir in Socage dieth before the age of 14 his Executors or Adminiſtrators ſhall have an Action of account preſently, and yet the heir himſelf ſhould not have an Action before 14 but the Statute ſaith, Eandem actionem, and not Ad idem tempus.

CAP.

CAP. XXIV.

IN caſibus in quibus conceditur breve de Cancellaria de facto alicujus, de cætero non recedant querentes a cur' Regis ſine remedio, pro eo quod tenement' transfertur de uno in alium. Et in regiſtro de Cancellaria non eſt inventum aliquod breve in iſto caſu ſpeciale, ſicuti de muro, domo, mercato, conceditur breve ſuper eum qui levavit ad nocumentum. Et ſi transferatur domus, murus, & his ſimilia in aliam perſonam, breve non deneget': ſed de cætero cum in uno caſu conceditur breve, in conſimili caſu ſimili remedio indigente, ſicuti prius, fiat breve: Queſtus eſt nobis A. quod B. injuſte, &c. levavit domum, murum, mercatum, & alia quæ ſunt ad nocumentum liberi tenementi ſui. Et ſi hujuſmodi levata ad nocumentum transferantur in aliam perſonam, de cætero fiat breve ſic: Queſtus eſt nobis A. quod B. & C. levaverunt, &c. Eodem modo ſicut perſona alicujus Eccleſiæ recuperare poteſt communiam paſtur' per breve novæ diſſeiſinæ. Eodem modo de cætero recuperet ſucceſſor ſuper diſſeiſitorem, vel ejus hæredem per breve, quod permittat, licet hujuſmodi breve prius in Cancellaria non fuerit conceſſum. Eodem modo ſicut conceditur breve, utrum aliquod tenem' ſit libera eleemoſina alicujus Eccleſiæ, vel laicum feodum, tale fiat de cætero breve utrum ſit libera eleemoſina talis Eccleſiæ, vel alterius Eccleſiæ, in caſu quo libera eleemoſina unius Eccleſiæ transferatur in poſſeſſionem alterius Eccleſiæ. Et quotieſcunque de cætero evenerit in Cancellar', quod in uno caſu reperitur breve, & in conſimili caſu cadente ſub eodem jure, & ſimili indigente remedio non reperitur: concordent clerici de Cancellaria in brevi faciendo, vel atterminent querentes in proximum Parliamentum: & ſcribantur caſus, in quibus concordare non poſſunt, & referant eos ad proximum Parliamentum: & de conſenſu juriſperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in juſtitia perquirenda.

Before the making of this Act, an Aſſiſe of Muſans did not lye againſt him that levied the Muſans, and againſt his alienée; ſo as by the alienation of the wrong doer, the Aſſiſe of Muſans failed: and he, to whom the Muſans was done, was driven to his Quod permittat (which was a Writ of Right in his nature, wherein was great delay) againſt the alienée; and the reaſon thereof was, for that there was no Writ of Aſſiſe of Muſans in the Regiſter, but that ſuppoſed that the Tenant in the Aſſiſe Levavit, which is remedied by this Act. 4 Aſſ. 3. 4 E. 3. 36. 5 E. 3. 43. lib. 5. fol. 101. Penrud-docks caſe.

¶ De cætero non recedant querentes a curia Regis ſine remedio.] This is an ancient Maxim of the Common Law, and the reaſon thereof is, Ne curia Regis deficeret in Juſtitia exhibenda, ſo as in one Court or other the party injured ſhould have Juſtice.

¶ A curia, &c.] The makers of this Act knew well, that the party injured by the Muſans, albeit the wrong doer made it in his own ground, yet might the party grieved (albeit he had but an eſtate for years) enter and abate, and demoliſh the Muſans, be it houſe, wall, or other Muſans, not only when it was in the hands of the wrong doer, but in the hands of the alienée: but this Act doth give the Tenant of the Frée-hold as ſpeedy a remedy by Law, as is the Aſſiſe of Novel diſſeiſin, which was ever counted feſtinum remedium; and yet Bract. l. 4. f. 231. 6 E. 2. Aſſ. 454. Fleta lib. 4. cap. 27. 9 E. 4. 35. F.N.B. 184. g. l. 5. f. 181. Penrud. caſe.

if

if the wrong doer reform the Nuſans before the Aſſiſe, or Quod permittat brought, the Action lieth not; howbeit, if the party had any particular loſs by the Nuſans, he ſhall recover damages therefore in an Action upon the caſe, Ne querentes recederent a curia ſine remedio.

¶ Tenementum transfertur.] Transfertur is a more general word then Alienetur, for Alienare is regularly intended of the Act of the party, but Transferre comprehendeth alſo Acts in Law, as Deſcents, Eſcheats, and the like: and therefore if two coparceners levy a Nuſans upon their ground, and one dye, ſo as her part deſcend to her heir, the Aſſiſe of Nuſance is maintainable againſt the Aunt as a wrong doer, and the neece as a Tenant of a moity, which moity is transferred, but not alienated to her, and ſo if the alienee dye ſeiſed.

1. Part of the Inſtitutes, Sect. 101, 234. Preface to the 3. Book of my Reports.

¶ In regiſtro de cancellaria.] This is a Book of great Antiquity and authority in Law, whereof in another place I have ſpoken.

¶ De mercato.] Here it is to be obſerved, that if one hath a Market, either by preſcription, or by Letters Patents of the King, and another obtains a Market to the Nuſans of the former Market, he ſhall not tarry till he have avoided the Letters Patents of the latter Market by courſe of Law, but he may have an Aſſiſe of Nuſans.

Note there be words in the grant of a Market, Ita quod non ſit ad nocumentum alterius mercati.

And note that Fairs are taken within this Law, for every Fair is a Market, but every Market is not a Fair.

a Bract. l. 4. f. 235. Brit. f. 159. Flet. l. 4 c. 28. 11 H. 4. 5, 6, 47. 22 H. 6. 16.

a Now in what caſes a Fair or Market ſhall be ſaid to be levied to the Nuſans of another, you may read in our old and latter Books, this only that hath been ſaid is ſufficient touching this point, for the underſtanding of this Act.

b Paſch. 33 E. 1. Coram Rege, the Prior of Tynemouths caſe. Northumber.

¶ Levavit ad nocumentum, &c.] *b* A grant of a Fair, &c. Niſi ſit ad nocumentum feriarum vicinarum, where ad nocumentum feriarum is put but for example; for if it be ad aliquod damnum, either of the King, or ſubject in any other thing, the Fair ſhall be revoked.

c Fleta l. 4. c. 27. Glan. l. 9. c. 11. l. 13 c. 34. 19 E. 3. Barre 179.

c Nocumentum eſt triplex; 1. Publicum ſive generale. 2. Commune. 3. Privatum ſive ſpeciale.

d Glā. l. 13. c. 34, &c. Bract. l. 4. f. 231, &c. Fleta l. 4. c. 18, 23. 26, &c. Brit. f. 71.

Publicum, ad nocumentum totius regni; Commune, ad commune nocumentum tranſeuntium; Privatum, to a houſe, a mill, &c.

d It is true that a private Nuſans may be committed three manner of ways; viz. Faciendo, non faciendo, permittendo, & non permittendo.

2 H. 4. 11. 11 H. 4. 83. 29 E. 3 32.

e By this word Levavit, and theſe words in the beginning of the Chapter, De facto alicujus, it appeareth that this Act only extendeth to Nuſances that are committed by doing or diſturbing; for, for not doing no Aſſiſe of Nuſans lieth, but an Action upon the caſe.

f Temps E. 1. Aſſ. 422. 7 E. 3. 56. 8 E. 3 21. 8 Aſſ. 32 Aſſ. 2 42 Aſſ. 15. 18 E. 3. 18 E. 2. 32. tit. Aſſ. 375. 5 H. 3 ibid. 426. 3 E. 3. ibid. 445. F. N. B. 183, 184. Regiſt. 452. 9 Aſſ. 19. 48 E. 3. 27.

f Though the word Levavit is only here, and in the Writ (herein mentioned) uſed, yet Exaltavit, deexaltavit, Obſtruxit, obſtupavit, Arctavit, Divertit, &c. nay Proſtravit, which is the oppoſite to Levavit, &c. are within this Act.

¶ Cum in uno caſu conceditur breve, in conſimili caſu ſimili remedio indigente, ſicuti prius, fiat breve.] See hereafter in this Chapter concerning this Rule.

g 13 E. 1. Juris utrū 15. 30 E. 1. Quod permittat 10. 32 E. 1. ib. 14. & tit. Common 24. 31 E. 1. Br. 874. tit. Quod permittat 8. 4 E. 3. 38. 43 E. 3. 25. 1 H. 4. 3 F. N. B. 49. c.

¶ Eodem modo ſicuti perſona, &c.] *g* A Parſon of a Church ſhall have a Quod permittat of a Common in the right, and alſo in nature of a Mordanc', &c. becauſe the Parſon had an Inheritance in the Common in the right of his Church.

But of a Nuſans done in the time of the predeceſſor againſt the Diſſeiſor or his

his heir, being an injury and wrong, no Quod permittat did lie in that caſe before this Statute, as it plainly appeareth by this Act it ſelf, and the reaſon was, for that there was no Writ in the Regiſter in that caſe.

¶ Perſona alicujus Eccleſiæ.] Theſe words do include Vicars, Prebendaries, &c. and all other Eccleſiaſtical perſons which could not have a Quod permittat in the like caſe before the making of this Act; For private perſons, though they had but an eſtate tail they might have had a Quod permittat, and therefore no proviſion was made for them, but only for Parſons of a Church, and the like. Regiſt. 32,33.

¶ Breve utrum.] A Juris utrum did lie at the Common Law for a Parſon againſt a lay man, and for a lay man againſt a Parſon, but no Juris utrum did lie for one Parſon againſt another before this Act, becauſe it was the right of a Church, and no lay fee. And the words of the Writ at the Common Law were an ſit laicum feodum, &c. Glanv. l.13.c.23. Bract. l.5.f.286. Brit. f.234, 55, 65. Fleta l.5.c.19.& 26. 11E.3. Juris utrū 3 First part of the Inſtitut. Sect. 646 Cuſtumier de Norm. c.115.

If an Abbot hath a Parſonage appropriated to him, and aliens the glebe of the Parſonage, his ſucceſſor ſhall have a Juris utrum, which he hath as Parſon, and not as Abbot.

A Parſon or Chaplain of a Chappel, which comes in by admiſſion and inſtitution, ſhall have a Juris utrum, becauſe he hath no other remedy; otherwiſe it is of a Gardein of an hoſpital, a Prior, and the like, becauſe they may have a Writ of Right. 20E.3. Juris utrum 5. 19H 3. ibid.16 8 E.3.60. 5 E.3. Juris utrum 9. 19 R.2. ibid.17.

¶ Et quotieſcunque evenerit.] This is a moſt excellent and neceſſary rule, for before this Act the Juſtices did punctually hold themſelves to the Writs in the Regiſter, becauſe they could not change them without Act of Parliament; (as elſewhere hath been ſaid) therefore by this general Law it is notably provided for expedition and adminiſtration of Juſtice, that as often as it ſhould happen in the Chancery, that in one caſe there is a Writ (in the Regiſter of the Chancery) found, and in like caſe happening under the ſame right, and needing the like remedy, a Writ is not found, let the Clerks of the Chancery agree in making of a Writ, or adjourn the Plaintif until the next Parliament, &c. But now let us peruſe the words. Bract. l.5. fol. 413 Fleta l.2. cap.12. Lib.8. fol.48,49. John Webs caſe. First part of the Inſtit. Sect.67.

¶ Conſimili caſu.] Although there be a ſpecial Writ grounded upon this Statute, called by the particular name of a Writ In conſimili caſu, yet many other Writs (though they bear not the name) are grounded upon this Act, as it appeareth in our Books. 31 E.1. br'e 874. 38 E.3.13.

¶ Concordent Clerici.] And albeit that we have treated of this in another place, yet for the underſtanding of theſe words, ſomewhat ſhall here be ſaid. First part of the Inſtit. Sect.67.

Theſe that here are called Clerici, were at this time, and before called alſo Magiſtri Cancellariæ, and were aſſociated to the Lord Chancellor; of whom Fleta ſaith, Cui aſſocientur Clerici honeſti & circumſpecti, Domino Regi jurati, qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem, quorum officium ſit ſupplicationes, & querelas conquerentium audire & examinare, & eis ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per brevia Regis. Lib.8. fol.48,49. John Webs caſe. Fleta l.2. cap.12. 21 E.3. fol.38.

And theſe Writs agreed upon by theſe Maſter Clerks were called Magiſtralia, for diſtinction ſake, between brevia formata de curſu, and theſe called Magiſtralia, but hereof more hath been ſaid in another place. Lib.8. ubi ſupra.

And one ſpecial note is to be taken, that this general Law extends not only to Writs at the Common Law, but to Writs alſo grounded upon Acts of Parliament: for example, the Statute of Glouceſter doth give a Writ of Entry in caſe of alienation by Tenant in Dower, to be brought in the life of Tenant in 3 E.2. Entry 8. F.N.B. 206. f.

Dower,

3 E.2. ubi ſupra. 18 E. 2. Entry 74. 11 E.2. Entry 68. ibid. 12 E.2.60. 7 E.3.17.8 E.3.48 6E.3.39,40.16 Aſſ. p.11.Regiſt.237.& 235.F.N.B.207.b. 31 E.1. Entry 64.

Dower, which thereupon is called a Writ of Entry in caſu proviſo: now upon theſe general words Writs have been framed in conſimili caſu, that is, where Tenant by the curteſie, or Tenant for life do alien, but it muſt be in conſimili caſu with the Statute of Glouceſter; for where that Statute ſpeaketh of a reverſion, a remainder is not in conſimili caſu, as ſome do hold, that a reverſion ex aſſignatione, though it be but for life, is within the Act.

Bract. lib.1. ca.2. Britton fol.141. 19 H.3. Juris utr. 16. 1 E.3.7,8. 2 E. 3.7. 21 E.3.31.37, 50. 33 E.3. Quar. Imp. 94. 37 Aſſ. 7. 18 Aſſ.p ult. 17 E. 3.35,49. 39 E.3.21 35. 17 E.3.35,49. 40 E. 3. 34,38. 41 Aſſ. p. 28. 46 E. 3. petit. 18. 13 voucher 119. 13 H. 4. 4. 14 H. 4. 34. * Mirr. c.2. §3.& cap.5. § 1.

¶ Atterminent querentes uſque in proximum Parliamentum.] Matters of great difficulty were in ancient time uſually adjourned into Parliament to be reſolved and decided there, whereof Bracton ſaith, Si aliqua nova & inconſueta emerſerint, quæ nunquam prius evenerunt, & obſcurum, & difficile ſit eorum judicium, tunc ponantur judicia in reſpectu uſque ad magnam Curiam, ut ibi per conſilium Curiæ teminetur: And this agreeth with our Books from time to time.

And hereof there be infinite precedents in the Rolls of Parliaments. Vide the Statute of 14 E.3. cap.5. ſée 22 E.3.3. & 2 H.7.19.

To which end Parliaments were often holden, * King Alfred or Alured did ordain by authority of Parliament, that for ever twice a year, or oftner, if need were, in time of peace a Parliament ſhould be holden at London: Pur parlamenter ſur le guidement del people de Dieu, coment gents ſe garderont de pecher, viveront in quiet, receiveront droit per certein uſages, & ſants judgements, of whom the Poet ſung.

Anglorum ſic Regna regens, ut non foret illi
Antea Rex ſimilis, æqualis poſtea nullus.

In hiſtoria Elienſi lib.2. fol.38.

And in ancient Chronicle I read of him, Aluredus acerrimi ingenii princeps & doctiſſimus totumque novum & vetus Teſtamentum in eulogiam Anglicæ gentis tranſmutavit, &c.

In the raign of E.1. Parliaments were very frequent, and often holden, and for the moſt part one Parliament in two years.

4 E.3. cap.14. 36 E.3. cap.10.

King Edw.3. ordained by authority of Parliament, that a Parliament ſhould be holden every year once, or more often, if need be: to what end? For maintenance and execution of Laws, and for redreſs of divers miſchiefs, and grievances which dayly happen.

W.2. cap. 31.

¶ Quod Curia Domini Regis deficiat, &c.] For it is a rule in Law, Quod Curia Regis non debet deficere conquerentibus in juſtitia exhibenda.

CAP.

CAP. XXV.

QUia non eſt aliquod breve in Cancellaria, per quod querentes habent tam feſtinum remedium, ſicut per breve Novæ diſſeiſinæ, Dominus Rex voluntatem habens ut celeris fiat juſtitia, & quod dilationes in placito communi amputentur & abbrevientur, concedit quod breve Aſſiſæ novæ diſſeiſinæ locum habeat in pluribus caſibus, quam prius habuit. Et concedit quod de eſtoveriis boſci, proficuo capiendo in boſco, de nucibus, & glandibus, & aliis fructibus colligend', de corrodio, liberatione bladi, & aliorum victualium, ac neceſſariorum in certo loco annuatim recipiend', tolneto, tronagio, paſſagio, pontagio, pannagio, & his ſimilibus in certis locis capiend', cuſtodiis boſcorum, parcorum, foreſtarum, chacearum, warennarum, portarum, & aliis balivis, & officiis in feod', jaceat de cætero aſſiſa Novæ diſſeiſinæ. Et in omnibus ſupradictis caſibus modo conſueto fiat breve de libero ten'. Et ſicut prius jacuit, & locum habuit in communia paſturæ: ita de cætero locum habeat in communia turbariæ, piſcariæ, & aliis commun' his ſimilibus, quas quis habet pertinentes ad liberum tenementum, vel etiam ſine ten' per ſpeciale factum, ad minus ad terminum vitæ. In caſu etiam quando quis tenens ten' ad terminum annorum, vel in cuſtod' illud alienat in feodo, & per illam alienationem transfertur liberum ten' in feoffatum, fiat remedium per breve Novæ diſſeiſinæ. Et habeantur pro diſſeiſitoribus tam ille qui feoffat, quam feoffatus: Ita quod vivente altero eorum locum habeat prædictum breve. Et ſi per mortem perſonarum ceſſet remedium per prædictum breve, fiat remedium per breve de Ingreſſu: Et quamvis ſuperius fiat mentio de aliquibus caſibus, de quibus locum non habuit prius breve Novæ diſſeiſinæ, non propter hoc credat aliquis illud breve non competere, ubi prius competebat. Et licet dubitaverint quidam, utrum in caſu quo quis paſcat alterius ſeperale, fieri poterit remedium per prædictum breve, teneatur pro certo, quod in caſu illo per prædictum breve bonum & certum eſt remedium. Caveant de cætero illi qui nominati ſunt diſſeiſitores, quod non proponant falſas exceptiones, per quas captio Aſſiſæ differatur, dicendo quod alias tranſivit Aſſiſa de eodem ten' inter eaſdem partes, vel dicendo & mentiendo, quod breve de altiori natura pendet inter eaſdem partes de eodem ten', & ſuper his & conſimilibus vocent rotulos, vel recordum ad warrantum, ut per illam vocationem aſportare poſſint veſturam, & levare redditus, & alia proficua ad magnum detrimentum querentis. Et quia prius aliam pœnam non habuit, qui hujuſmodi falſas exceptiones mendaciter propoſuit, niſi tantum quod poſt mendacium ſuum convi-

ctum proceſſum fuit ad captionem Aſſiſæ: Dominus Rex, cui odioſæ ſunt hujuſmodi falſæ exceptiones, ſtatuit quod ſi quis diſſeiſitor nominatus perſonaliter proponat illam exceptionem ad diem ſibi datum, ſi defecerit de warranto quod vocavit, habeatur pro diſſeiſitore abſque recognitione Aſſiſæ, & reſtituat damna prius inquiſita, vel poſt inquirenda de duplo: & nihilominus pro falſitate ſua puniatur per priſonam unius anni. Et ſi illa exceptio proponatur per balivum, non propter hoc differatur captio aſſiſæ, nec judicium ſuper reſtitutione ten', & damn': Ita tamen quod ſi Dominus illius balivi, qui abſens fuerit, poſtmodum veniat coram Juſtic', qui aſſiſam ceperint, & offerat verificare per recordum, vel per rotulos, quod aſſiſa alias tranſivit de eodem ten' inter eaſdem partes, vel quod querens alias ſe retraxit de brevi conſimili, vel placitum pendeat per breve de altiori natura: fiat ei breve de faciendo venire ſuper hoc recordum. Et cum illud habuerit, & videant Juſtic', quod recordum ita ei miſſum valeret ante judicium, quod per illud excluderetur querens ab actione ſua, ſtatim faciant Juſtic' ſcire parti, quæ prius recuperavit, quod ſit ad certum diem, ad quem rehabeat defendens ſeiſinam ſuam, & damna, ſi quæ prius ſolvit per primum judicium, ſimul cum damnis quæ habuit poſt primum judicium reddit': quæ ei reſtituantur in duplo, ſicut ſupradictum eſt: & nihilominus puniatur ille qui primo recuperavit, per priſonam ſecundum diſcretionem Juſtic'. Eodem modo ſi defendens, contra quem tranſivit aſſiſa, in ſua abſentia oſtendat chartas, vel quiet' clam', ſuper quarum confectione non fuerunt jurat' examinat', nec examinari poterunt, pro eo quod de eis non fiebat mentio in placitand', & probabiliter ignorare potuerunt confectionem hujuſmodi ſcriptorum: Juſtic' viſis ſcriptis illis faciant ſcire parti, quæ recuperavit, quod ſit ad certum diem coram eis: & venire fac' jurat' ejuſdem aſſiſæ. Et ſi per veredictum juratorum, vel forte per irrotulamentum ſcripta illa verificaverint, puniatur, ille qui aſſiſam impetravit contra factum ſuum, per pœnam ſupradictam. Nec capiat Vic' de cætero bovem a diſſeiſito, ſed a diſſeiſitore tantum. Et ſi plures ſint diſſeiſitores in uno brevi nominati, nihilominus de uno bove ſit contentus: nec exigat bovem niſi de precio v s. vel precium.

¶ Tam feſtinum remedium.] The Aſſiſe of Novel diſſeiſin is not onely maxime feſtinum, ſed maxime beneficiale remedium, for many cauſes:

1. The Defendant ſhall not be eſſoigned.
2. The Defendant ſhall not caſt a Protection.
3. He ſhall not pray in aid, but of the King.
4. He ſhall not vouch any ſtranger, nor any party to the Writ, unleſs he enter into Warranty maintenant.
5. The ſame Law of Receit.
6. The Parol ſhall not demur, either for the nonage of the Plaintif, or the Tenant, and for divers other cauſes.

¶ Ut

¶ Ut celeris fiat Juſtitia, & quod dilationes, &c.] This concerneth the Common-wealth, for Expedit reipublicæ, ut ſit finis litium; and the duty of every good Judge, for Boni judicis eſt lites dirimere. *Regula.* *Regula.*

¶ In pluribus caſibus quam prius habuit.] It is to be obſerved, that at the Common Law there were but two forms of Writs of Aſſiſe of Novel diſſeiſin in the Regiſter of the Chancery, that is to ſay, an Aſſiſe De libero tenemento, and an Aſſiſe De communia paſturæ for his cattel, &c. which was ſo neceſſary, as without it his Free-hold could not be manured: and the Aſſiſe De libero tenemento did lye of houſes, land, rent, and other things which lay in Render, whereof a Præcipe did lye at the Common Law; but of all profits aprender, which conſiſted in Capiendo, Colligendo, Habendo, Recipiendo, & Exercendo, an Aſſiſe of Novel Diſſeiſin did not lye at the Common Law; but the party was driven to his Quod permittat, in which was great delay, and they which had but an eſtate for life could not maintain that Writ: therefore this Act doth give in all the ſaid caſes a ſpeedy remedy by an Aſſiſe in lieu of the Quod permittat, ſo the ſaid profits were to be taken or had in certo loco; and therefore theſe words, In pluribus caſibus, &c. are verified. 4 E.2. Aſſ.43. 35 Aſſ. p.11. 11 H.6.22. 31 E.1. Aſſ. 440. 4 E.2. ibid. 449. 8 E.2. ibid. 385. 16 E.2. ibid. 370.

¶ De eſtoveriis boſci.] Theſe (as by this Act appeareth) conſiſt in Capiendo. Lib.5. fol. 25. 1.8. f.47,48. l.9. f.112.

Of this word Eſtoverium, and of the ſeveral kinds thereof, I have ſpoken at large in other places.

¶ De nucibus, glandibus, & aliis fructibus colligendis.] Theſe and the like conſiſt in Colligendo, and are to be taken in woods: Notandum eſt quod ſub nomine herbagii, non continetur glans, & ideo tempore glandis, & peſſone excluduntur porci, & capræ, niſi ad hoc ſpecialiter agatur, quod talem habeant communiam; glandis enim nomine continentur glans, caſtanea, fagina, ficus & nuces, & alia quæque quæ edi & paſci poterunt præter herbam. Bract. lib.4. 226.

Nec de concuſſa tantum pluit ilice glandis. Virg. Geo. 4.

¶ De corrodio.] This being a reaſonable ſuſtenance for a man, conſiſteth in Habendo, as by the Writ De corrodio habend' appeareth. 44 E.3.24,25.

And albeit this Act ſpeaketh De corrodio, yet an Aſſiſe ſhall be maintained of the part of a Corrodie, but therein alſo are diverſities, as you may read, Lib. 8. in Jehu Webs caſe. Lib.8. fol.46. Jehu Webs caſe.

¶ De liberatione bladorum, & aliorum victualium.] Theſe conſiſt in Recipiendo, as belonging to a Corrodie.

¶ Ac aliorum neceſſariorum.] Theſe alſo conſiſt in Recipiendo, as things Quæ pertinent ad victum, veſtitum, & habitationem hominis.

¶ In certo loco annuatim recipiendis.] Note this clauſe, In certo loco, extends to Eſtovers, and all the profits aprender, and not to the clauſe of Offices. But yet the Office muſt be In certo loco, which is ſo to be underſtood, as albeit the Office be removeable, yet it muſt be In certo loco, when the Aſſiſe is brought. Jehu Webs caſe. ubi ſupra.

¶ Tolneto, tronagio, paſſagio, pontagio, pannagio, & hiis ſimilibus in certis locis capiend'.] These conſiſt in Capiendo, and of these you may read at large in Jehu Webs caſe, ubi ſupra.

7 E.3.63. 8 E.3. 55,56. 10 E.3.27 18 E.3.27. 19 E.2 Vieu 77. 7 Aſſ.12 10 Aſſ.11. 30 Aſſ.4 18 E.2. Aſſ.377. 4 E.2. ibid. 449. 8 E. 2. ibid. 385. 16 E.2. ibid.370.

¶ Cuſtodiis boſcorum, parcorum, foreſtarum, chacearum, warrennarum, portarum, & aliis balivis.] Of these and other Offices, you may read at large in Jehu Webs caſe; and this Act concerning these Offices is but declaratory, for an Aſſiſe did lye of them at the Common Law, becauſe a Præcipe did lye of them, as in that caſe it appeareth.

7 H.6.8. 22 H.6.9 9 E.4.6. 27 H.8.a. 28 H.8. Dier 7. 3 Mar. Dier 153. 31 H.8. Br. gentes 134.

¶ Et officiis in feodo.] This Statute being herein (as hath been ſaid) made in affirmance of the Common Law, although the Statute ſpeaketh only of Offices in fee *; yet ſuch as have Offices in tail, or for life, ſhall have an Aſſiſe, as by the authorities before cited doth appear.

† And albeit the words be general, yet this Act is only to be intended of Offices of profits, and not of Offices of charge, and no profit.

*Jehu Webs caſe, ubi ſupr. F.N.B. 178. f.

But this Act doth extend alwel to Offices in the Admiral Court, Eccleſiaſtical Court, or any other Court, where either the Civil or Eccleſiaſtical

†31 E.1. Aſſ. 440 21 E.3.4.b. 27 H.8 12.

Law, or any other Law then the Common Law, &c. of England doth rule; as to Offices in Temporal Courts which are governed by the Common Law, &c. as by the authorities aboveſaid, and Jehu Webs caſe appeareth.

13 E 3. Parl. 23. 12 Aſſ.23. 8 Aſſ.4 3 E.3. Aſſ. 175. 22 H.6.11. 15 E.4 4. 30 Aſſ. 4.

If a man be diſſeiſed of the whole Office, he ſhall have an Aſſiſe De officio cum pertinen'; and albeit the Statute ſpeaketh, De officiis, and if he be diſſeiſed of parcel of the profits, he may have an Aſſiſe of that parcel: but therein alſo are diverſities, as you may read in Jehu Webs caſe.

11 Aſſ. p.13. lib.5 f. 61. Je. Webs caſe.

¶ Breve de libero tenemento.] So as now by this Act, in all the caſes aboveſaid concerning profits aprender, the Aſſiſe of Novel diſſeiſin ſhall be De libero tenemento.

Brack.l.4. f. 231 23 H.3. Aſſ. 438. 12 H.3. ibid. 417. Temps R.2. Grant 104.

¶ Et ſicut prius jacuit, & locum habuit in communia paſturæ, ita de cætero in communia turbariæ, piſcariæ, & aliis communibus hiis ſimilibus.] Bracton, who wrote before the making of this Act, ſaith, Quod locum habet Aſſiſa de qualibet communia pertinen' ad liberum tenementum, ſcil. communia paſturæ, turbariæ, &c. And in the Raign of H.3. which was before the making of this Act, an Aſſiſe did lye of a Common of Piſcary; and theſe opinions had great probability of reaſon: yet becauſe (as hath been ſaid) there was no Writ in the Regiſter in thoſe caſes, therefore before this Act no Writ did lye by the general opinion of the Judges; but now this Act hath cleared the queſtion.

4 E.2. Aſſ. 790. 19 E.2 ibid. 400. 3 E.4.1. 15 H.7.4

¶ In caſu etiam quando quis tenet tenementum ad terminum annorum, vel in cuſtodiam, & alienat in feodo.] This branch is an affirmance of the Common Law, for the Free-hold being in the leſſor, or in the heir, the livery being made by the Leſſee for years, or Gardein, doth work a diſſeiſin, becauſe by his tortious livery he diſſeiſeth the leſſor or heir, for the which they may have an Aſſiſe of Novel diſſeiſin at the Common Law, and both the Feoffor for making, and the Feoffee for taking a tortious livery were both Diſſeiſors: and ſo it is if Tenant at will, or Tenant at ſufferance

12 E.4.12.

make a Leaſe for years, and the Leſſee enter, this is a Diſſeiſin to the Leſſor at the Common Law.

This

This Act ſpeaketh firſt of a Tenant for years, and yet a Tenant by Elegit, Statute Merchant, or the Staple are within this Law: and ſo it is of a Tenant at will, or a Tenant at ſufferance, for all theſe have a poſſeſſion, but otherwiſe it is of a Bailif, for he hath no poſſeſſion at all. See the ancient Terms, cap. Elegit. 3 E.4.1. 4 E.2 Aſſ. 790.

2. Of Gardein, which extendeth not only to Gardein in Chivalry, but to Gardein in Socage, & pur cauſe de nurture. 8 Aſſ.28 8 E.3.63 15 H.5. Bre.878.

3. * Of an alienation in fée, and yet an alienation in tail, or for life is within this Act, becauſe they are within the ſame miſchief. 20 H.3. Aſſ.432. * Bract. l.4. t.216 Brit. cap.32. Diſſeiſin.

4. † If Tenant for years, or a Gardein make a Leaſe for life, the Remainder for life, the Remainder in fée, and Tenant for life enter, he is a Diſſeiſor, becauſe he taketh the firſt livery; and ſo it is of him in the Remainder for life, or in fée, if he enter. Fleta lib.4. cap. 17 7 E.3.11. 43 Aſſ. 45. † 50 E.3.22.

¶ Fiat remedium per breve de ingreſſu.] Here it is objected, that if Tam feoffator, quam feoffatus be Diſſeiſors, by the Common Law, and ſo declared by this Statute:

1. How the Leſſor or heir can have a Writ of Entry, and ſuppoſe the Entry by the Leſſée or Gardein?

2. Whether the Leſſor or the heir may not have an election, either to have his Aſſiſe, or his Writ of Entry?

To the firſt it is anſwered, that albeit it be a Diſſeiſin, having regard to the Leſſor or heir, for the benefit of the Aſſiſe; yet between the Leſſee or Gardein, and the Feoffee, it is a Feoffment, whereunto a Warranty may be annexed, and a Voucher had of them to recover in value (as in another place hath been ſaid) ſo as the Leſſor or the heir may have a Writ of Entry in the Per againſt the Alienee, and principally, becauſe it is affirmed by this Act. See the firſt Part of the Inſtitutes, Sect.698. & 611.

To the ſecond, this Act hath preſcribed a form and order concerning alienations after the Act, viz. that living either the Feoffor or Feoffee, an Aſſiſe ſhould lye; and therefore living either of them, a Writ of Entry doth not lye: but for alienations before this Act, a Writ of Entry might have been brought ſince this Act. 4 E.2. Aſſ.790. 19 E.2. ibid. 400. 15 H.3. Br'e 878.

¶ Et quamvis ſuperius fiat mentio, &c.] This is but abundans cautela, and yet prudently added ad majorem rei ſecuritatem.

¶ Et licet dubitaverint quidam utrum in caſu quo quis paſcat alterius ſeperale, &c.] This Aſſiſe was in this caſe maintainable by the Common Law.

Theſe words are to be intended, when one claimeth Common in the ſeveral land of another, and puts in his cattel to uſe the ſame; the owner of the ſoil hath two ways to help himſelf, either to waive the poſſeſſion, and then to bring his Aſſiſe as one out of poſſeſſion, as in the common caſe of a Diſſeiſin, and then he ſhall have Judgment to recover the land and damages; or elſe he may keep his poſſeſſion, and bring his general Writ of Aſſiſe of Novel diſſeiſin: and if the Tenant plead to the Aſſiſe, that the Plaintif was Tenant of the land the day of the Writ purchaſed, and yet is; the Plaintif may maintain his Writ, and ſay that the land was, and is his ſeveral, and the Defendant did feed his ſeveral with his cattel, and according to this branch of this Act he prayeth the Aſſiſe; and in this caſe if it be found for the Plaintif, he ſhall have Judgment to hold the land as his ſeveral, and damages. 27 Aſſ. p. 30. Kelwey 12 H.7.20 F.N.B. 178. h. Liure de Entries Raſt. 65.

Note that in this caſe he is not diſſeiſed of the land, but of the ſeveralty of his land.

And

And this feeding is to be underſtood, when one claimeth a Common appendant, appurtenant, or in groſs, and for the uſe of the ſame doth put in his cattel; this claim, and putting in of his cattel is a Diſſeiſin of the ſeveralty of the land, and ſhall have Judgment, as is aforeſaid, accordingly: but if the cattel come in by way of eſcape, this is a Treſpaſs, and no Diſſeiſin of the ſeveralty within this Statute.

Bract. l.4. f.217. Fleta lib.4. cap.1. 27 Aſſ. p.51. 28 Aſſ. p. 50. F.N.B. 178. i.

By the Common Law a man that is in ſeiſin of his land may have an Aſſiſe, for that he is diſſeiſed of the quiet inſoying of his land; as when the Lord, or any other that hath a Rent, and oftentimes diſtreineth for the Rent, where none is behind, the Tenant ſhall have an Aſſiſe of Novel diſſeiſin of the land, for that, by reaſon of the frequency of diſtreſſes, he is diſſeiſed of the quiet inſoying of his land, and cannot make his advantage thereof, and frequentia mutat

Bract. l.4. fol.216

tranſgreſſionem in diſſeiſinam.

Mirror ca. 2. §. 15 Brit. fol.108.

And the Mirror ſaith, that diſturbance of one that is in peaceable poſſeſſion, in three caſes doth amount to a Diſſeiſin: as if the Lord that is in quiet poſſeſſion of his Rent cometh to diſtrein, and is by the Tenant diſturbed, ſo as he cannot take a diſtreſs, this diſturbance is a diſſeiſin of the Rent.

2. When the Lord hath taken a Diſtreſs, and the Tenant pay not his Rent, but diſturb him by unjuſt ſute of Replevy.

3. When any diſtrein ſo outragiouſly (that is, ſo often) as the terre Tenant cannot plough, or duly uſe his ground.

13 Aſſ.p.1. 26 Aſſ. p.35. 44 E 3.23. 7 H.4.16. 1 H.4.51, 52. Bro.covert.68 Doct. & Stud. li.2. ſo.113. 29 E.3.27 M. 18 E.1. Coram Rege Rot. 35. North. 13 R.2. Record 32.

¶ Caveant de cætero illi qui nominati ſunt diſſeiſitores, &c.] A Feme covert and an Infant are not within this Statute to have corporal puniſhment by impriſonment by their plea, by vouching of a Record, and failing of it.

This Act doth not extend to an Aſſiſe of Mordanc'.

See a notable Record ſeen after the making of this Act, upon this branch of this Act, Mich. 18 E.1. Coram Rege Rot. 35. North.

In a Formedon, or any other real Action, if the Tenant plead a Record, and fail thereof at the day, the Demandant ſhall not have ſeiſin of the land, but only a Petit cape; for this Statute extendeth only to the Aſſiſe of Novel diſſeiſin: and in caſe of the Aſſiſe, if the Tenant before this Statute had pleaded a Record, and failed thereof, yet the Aſſiſe ſhould have been taken, as appeareth by this Act.

1. Part of the Inſtitutes, Sect. 494 Lib.7. fol.26.

Here it is to be obſerved, that every man ſhall plead that, which is apt and pertinent to his caſe; and therefore a Diſſeiſor that is not Tenant of the land ſhall not plead any thing that concerns the tenancy of the land, as a releaſe of all Actions reals, but ſhall plead a releaſe of Actions perſonals, or any other plea that doth excuſe himſelf of damages.

1 Aſſ. Pl. 1. 2 Aſſ. Pl. 4. 8 E. 3.1. 8 Aſſ.2. 9 E.3.13. 16. 9 Aſſ.4.25 Aſſ. 26. 8 H.6.9. 21 H.6 58. 22 H. 6. 44. 1 E.4.4. 8 H.7.11 9 H.7.24. 11 H.7. 11. F.N.B. 182. a.

¶ Et ſi illa exceptio proponatur per balivum, non propter hoc differatur captio Aſſiſæ, nec judicium, ſuper reſtitutione tenementi, &c. In an Aſſiſe, as by this branch it appeareth, the Bailif cannot plead any matter of Record, either in bar or to the Writ; for the Bailif cannot plead any matter, or any plea but of the point of the Aſſiſe, nor any thing that is not triable by the Aſſiſe, nor any plea which he cannot conclude, Et ſi trove ne ſoit nul tort, nul diſſeiſin. Hereby it appeareth what treaſure may be found in the Mines of theſe ancient Statutes.

And if therefore the Bailif do plead any matter of Record, yet the Juſtices ſhall proceed, &c. and give Judgment; but then the Defendant named in the Aſſiſe may come unto the Juſtices, and verifie that there was ſuch a matter of Record, &c. and he ſhall have a Certificate of Aſſiſe by force of this Act.

And

And the Writ that is given in this caſe is after judgment, but the certificate of Aſſiſe that was at the Common Law was after verdict; and before or after judgment when the verdict was not well examined by the Juſtices, &c. the Juſtices of office might examine it, whereof we need not treat any further in this place, for that this Statute doth not extend to that kind of certificate; only I may note two things, 1. That when the Recognitors of the Aſſiſe give a full general verdict, there lieth no certificate at the Common Law. 2. That if any of the Recognitors of the Aſſiſe that gave the verdict dies, the certificate failed at the Common Law, for it was to ſupply the defect of their former verdict: See hereafter more of this matter in this Chapter. Bract. l. 4. fol. 289, &c. 293. Britton fol. 239. 43 Aſſ. 1, 5 Regiſt. 200. Judic' 22. 17 E. 3. 28. 12 H. 4. 9. 2 H. 5. 5. F. N. B. 180, 183. ver. N. B. 111, &c. Hil. 19 E. 1. Coram Rege Rot. 35. Suff. 8 E. 2. Aſſ. 412 12 H. 4. 9.

Note the words of the Aſſiſe are Attachias eum, vel balivum ſuum, &c. And the Bailif plead in his own name; I. de C. tanquam balivus A. de B. dicit: and not A. de B. per balivum ſuum.

¶ Eodem modo ſi defendens, contra quem tranſivit aſſiſa, in ſua abſentia oſtendat chartas, vel quiet' clam', &c.] This branch doth not only extend to an Aſſiſe of Novel diſſeiſin, but to the Aſſiſe of Darrein preſentment, Juris utrum, an Aſſiſe of Mordaunc', and ſome have thought to an attaint alſo: So as the Tenant ſhall not only have a Certificate of an Aſſiſe by the former branch upon matter of Record, but alſo by this branch upon Deeds and Quiet claims, and the reaſon thereof is, for that the Bailif could not plead the ſame. Regiſt. Judic' 11, 12. 12 H. 4. 9. F. N. B. 183. e. f. & 196. c. 32 Aſſ. p. 1. 2 H. 5. 5. 33 H. 6. 20.

And it is to be obſerved, that after the Baily hath pleaded to the Aſſiſe, the Tenant may come before the Aſſiſe taken, though it be after the Aſſiſe awarded, and plead any Deed, Quiet claim, or other matter of Certificate, and ſhall not be driven after the Aſſiſe taken, &c. to ſue his Certificate upon this Act to trouble the Tenant and the Recognitors of the Aſſiſe, Quia fruſtra fit per plura, quod fieri poteſt per pauciora. 11 H. 7. 11. 11 Aſſ. p. 3. 11 E. 3. Aſſ. 85 20 Aſſ. 6. 50 E. 3. 20

¶ Venire facias jurat' ejuſdem Aſſiſæ: Et ſi per veredictum juratorum, &c.] Upon this branch it hath been conceived, that albeit that ſome of the former Recognitors be dead, that it ſhall be tried by the former and by others; for though this Act doth ordain that a Venire facias ſhall be awarded to the Jurors of the ſame Aſſiſe, yet the ſubſequent words be, Et ſi per veredictum juratorum, and ſaith not prædictorum; ſo as upon this Act an addition may be made. 12 H. 4. 10. 7 H. 4. 45. 32 Aſſ. 1. F. N. B. 183. c.

In an Aſſiſe the Plaintif made title to ten Marks rent by ſpecialty of the grant of the Tenant, and the Aſſiſe was taken by default, and after the Tenant upon ſhewing of a Deed of defeaſance of the ſame rent upon certain conditions to be performed on the Plaintifs part, or otherwiſe the rent to ceaſe, which he averred to be broken, which Deed of defeaſance did bear date in a forein County, viz. in London, whereupon a Certificate upon this Statute was prayed before the Juſtices of Aſſiſe, who adjourned the ſame in Bank to be reſolved, whether a Certificate did lie upon this forein defeaſance: where it was awarded that the Certificate was maintainable, and that the Deed of defeaſance being denied ſhould be tried in London, where it was found for the Tenant, whereupon the Certificate was remanded to be taken in the County where the Aſſiſe was brought: Out of this Record three things are to be obſerved. 32 Aſſ. p. 1. 14 E. 3 receit 134. Br. certificat Daſſ. 13 Paſch. 31 E. 3. f. 35 in libro meo, le Counteſſe de Atholes Caſe.

1. That a Certificate doth lie upon a defeaſance bearing date in a forein County (as well as upon a Charter or acquittance) which was tried by Jurors of that forein County, and by none of the Recognitors of the Aſſiſe.

2. That a Certificate lieth by this Act upon a recovery by default, as well as where the Tenant pleadeth by Baily to the Aſſiſe.

3. That

26 Aſſ. p. 5. 12 H. 4 20. F.N.B. 182. c.

3. That the Certificate muſt be ſued and adjudged in the County where the Aſſiſe was ſued.

¶ Nec capiat Vic' de cætero bovem a diſſeiſito, ſed a diſſeiſitore tantum.] This Ox which the Sheriff took was not any reward for doing of his office, (pro officio ſuo exequendo) for that was prohibited by the Statute of W. 1. cap. 26. but this was a duty due by ancient cuſtom after the cauſe ended.

W. 1. c. 26. 42 E. 3 5. 4 E. 4. 10. 21 H. 7. 17. Stamf. Pl. Cor. 49. a.

But where it was due only from the diſſeiſor, the Sherif before this Act did alſo incroach the like upon the diſſeiſée, which is reſtrained by this Act, and to be taken only of the wrong doer, and neither of the diſſeiſée, nor of the Tenant that is no diſſeiſor.

¶ Et ſi plures ſint diſſeiſitores in uno breve nominat', nihilominus de uno bove ſit contentus.] This branch is in affirmance of the Law, for ſeing they are joyned in one Writ, they are as to this purpoſe but as one diſſeiſor, and therefore but one Ox is due unto the Sherif.

26 Aſſ. p. 47. A man that is indicted and arraigned for two felonies, ſhall pay but for one deliverance only, for though the felonies be ſeveral, yet the perſon that is delivered is but one.

¶ Nec exigat bovem, niſi de precio 5 s. vel precium.] Herein the makers of this Law did add this branch very providently, for there is nothing more incertain then prices of things which oftentimes riſe and fall, and ſpecially of victuals, and therefore here having ſet down the price of the Ox, they add, if that ſhould not be the juſt price of the Ox, which they foreſaw might not continue long, then the Sherif ſhould have 5 s.

CAP. XXVI.

IN brevibus de rediſſeiſina adjudicentur de cætero damna in duplo: & ſint rediſſeiſitores de cætero irreplegiabiles per commune breve. Et ſicut in ſtatuto de Merton proviſum fuit illud breve de his qui diſſeiſit' fuerint, poſtquam recuperaverint per aſſiſam Novæ diſſeiſinæ, mortis anteceſſoris, aut per alias juratas ulterius de cætero habeat illud breve locum in illis qui recuperaverint per defaltam, redditionem, aut alio modo ſine recognitione aſſiſarum vel juratarum.

Merton cap. 3. By the Statute of Merton both the Writ of Rediſſeiſin, and of the Poſt diſſeiſin were given.

This Statute is an Act additional in three ſeveral points.

1. Where the Statute of Merton gave but ſingle damages, this Act doth give double damages both in the Rediſſeiſin and Poſt diſſeiſin, but the Jury is to give the ſingle, and the Court is to double them.

Marlb. cap. 8. 2. Where notwithanding the Statute of Merton and of Marlebridge, cap. 8. he might be replevied by the Common Writ, yet by this Act he cannot ſo be.

3. Where

3. Where the Statute of Merton extends only to Rediſſeiſins upon recoveries in Aſſiſe of Novel diſſeiſin by verdict of the Recognitors, and to Poſt diſſeiſins upon recoveries by verdict only; this Act doth extend to recoveries by defauli, reddition, aut alio modo, as upon demurrer, &c. ſo as hereby the Rediſſeiſin, and Poſt diſſeiſin do lie in many more cales then they lay before.

See before in the Expoſition of the Statute of Merton and Marlebridge.

If an Aſſiſe be brought againſt A. and B. and A. is found the diſſeiſor, and B. the Tenant, and the Plaintiff recovereth, and B. the Tenant diſſeiſeth the Plaintiff again, the Plaintiff ſhall have no Rediſſeiſin, but a Poſt diſſeiſin, becauſe a Rediſſeiſin lieth not but againſt him that was party to the former Diſſeiſin.

CAP. XXVII.

POſtquam aliquis poſuerit ſe in inquiſitionem aliquam ad proximum diem, allocetur ei eſſonium: ſed ad alios dies ſequentes per eſſonium non differatur captio inquiſitionis, ſive prius habuit eſſon', ſive non. Nec admittat eſſon' poſt diem datum prece partium, in caſu in quo partes conſentiunt venire ſine eſſonio.

The Statute of Marlebridge did provide, Quod poſtquam aliquis poſuerit ſe in inquiſitionem aliquam, &c. non habebit niſi unicum eſſonium, &c. By which Statute it was not certainly limited when he ſhould have that one eſſoin, and thereof enſued a great miſchief, for the Defendant would not be eſſoined but at the Habeas corpus, and then the Jurors ſhould loſe their iſſues, and the inqueſt ſhould not be taken, to the great vexation and loſs of the Jurors. Marlb.cap.13. 9 H.5.12. Weſtm.1.cap.41.

And therefore this Statute chiefly for the eaſe of the Jurors provideth, that the Defendant ſhould have but one eſſoine, and that eſſoine muſt be at the next day, and that is at the Venire facias, and if he neglect that next time, he ſhall never have it after.

This Act is to be intended only of a plea perſonal, and of a common eſſoine, and not of an eſſoine de ſervice le Roy, for that he may cail when he will. See the Expoſition upon the Statute of Marlebridge cap. 13. 7 E.2.eſſoin 81,83. Dier 15 El. 324.b.

And albeit the words of this Act are general, yet it muſt be underſtood only in caſes where an eſſoine doth lie, which is implied by this word allocetur, and therefore if the Defendant come in by Exigent, or Cepi corpus, and join iſſue ad proximum diem, he cannot be eſſoined, for that he either remaineth in Ward, or goeth by Mainprize, and therefore before this Statute could not be eſſoined, and this is a branch of reſtraint, and not of enlargement. 35 H.6.53.

¶ Nec admittatur eſſonium poſt diem datum prece partium.] And the reaſon is, for that ſeeing this day is given by the prayer and agreement of the parties without any eſſoine, this Statute doth enact, that poſt diem datum prece partium, no eſſoine ſhall be admitted.

CAP. XXVIII.

W. 1. cap. 41.

CUm per Statutum Weſtm. 1. ſtatuatur quod poſtquam tenentes ſemel comparuerint in Curia, non allocetur eis eſſonium in brevibus Aſſiſarum: eodem modo de cætero obſervetur de petentibus.

¶ In brevibus Aſſiſarum.] This Act extendeth not to Aſſiſes of Novel diſſeiſin no more then the ſaid Statute of W. 1. here recited doth. See before the Expoſition of the Statute of W. 1. and the rather for that this Act ſaith de petentibus, and the Plaintiff in an Aſſiſe of Novel diſſeiſin is called querens and not petens, but this Act extendeth to Mordaunc', Juris utrum, and Attaints, and doth remedy the miſchief of the Demandants ſide, which was omitted in the Statute of W. 1. And note that a Writ of Attaint is here comprehended under this word Aſſiſa, becauſe it hath the quality of an Aſſiſe, viz. to have a Jury returned the firſt day, and ſo in equal miſchief.

¶ Eodem modo.] This is an Act of reference, that in all caſes where the Act of W. 1. doth take away the common eſſoine from the Tenant after appearance, there this Act doth take it from the Demandant after appearance. See more of this matter in the Expoſition upon the ſaid Act of W. 1.

CAP. XXIX.

BReve de tranſgreſſione ad audiendum & terminandum de cætero non concedatur coram aliquibus Juſticiariis exceptis Juſticiariis de utroque banco, & Juſticiariis itinerantibus, niſi pro enormi tranſgreſſione, ubi neceſſe eſt apponere feſtinum remedium. Et dominus Rex de gratia ſua ſpeciali hoc duxit concedendum. Nec etiam de cætero concedatur breve ad audiend' & terminand' appella coram Juſtic aſſign', niſi in ſpeciali caſu, & certa cauſa, cum dominus Rex hoc præceperit. Sed ne hujuſmodi appellati, vel indictati diu detineantur in priſona, habeant breve de Odio & Atia, ſicut in Magna Charta, & aliis ſtatutis dictum eſt.

Mag. Chart. c. 26. W. 1. cap. 11. Gloc'. cap. 9.

¶ Breve de tranſgreſſione.] Albeit the Statute mentioneth only a Writ, becauſe Commiſſions were in thoſe days moſt commonly granted by Writ, as the Commiſſion to Juſtices in Eyre, Juſtices of Oier and Terminer, of

of Gaol Delivery, &c. yet this Act doth not only extend to authority granted by Writ, but by Commiſſion alſo.

Tranſgreſſion here is taken in a large ſenſe, for any outrage or miſdemeanour.

Commiſſions of Oier and Terminer are of three ſorts.

One general at the ſuit of the King, as to hear and determine all manner of Treaſons, Felonies, Riots, Routs, Treſpaſſes, &c. 2 E. 3. cap. 8.

Another particular at the ſute of the party, and that in two ſorts: One naming particularly the party grieved, as Rex dilectis & fidelibus ſuis A. B. & C. ſalutem. Ex gravi querela D. accepimus quod E. F. & G. & alii malefactores, & pacis noſtræ perturbatores in ipſum D. apud N. vi & armis inſultum fecerunt, &c. And the other is more general, and of this form, Rex dilectis, &c. Ex clamoſis querimoniis diverſorum hominum de Com' N. ad noſtrum ſæpius pervenit auditum, quod A. Epiſcopus Winton', &c. plures & diverſas oppreſſiones, &c. 29 E. 3. 37.

The third is as well at the ſuit of the King, as of the party, all in one Writ or Commiſſion, as hereafter in this Chapter ſhall be touched.

The miſchief before the making of this Act was, that Commiſſioners of Oier and Terminer, &c. were procured, and named by the parties whom the matter concerned; ſo as the Commiſſioners were neither indifferent, nor of ſufficient knowledge and learning. And the miſchief was the greater, for that when a man ſued out a Commiſſion of Oier and Terminer at the ſuit of the party againſt divers perſons for taking of his goods, and for eſloigning the ſame, to the end to Waſte and convert the ſame to their own uſes; the party that ſued the Oier and Terminer ſhould have a Writ to the Sheriff, rehearſing this matter, and command him to arreſt the goods, and to put them in ſafeguard until it be otherwiſe provided or adjudged by the Juſtices of Oier and Terminer, &c. and if upon this ſute it were found for the Plaintiff, the Juſtices of Oier and Terminer might reſtore the party to his goods, or give damages to him for them; wherein it doth vary from an Action of Treſpaſs ſued before Juſtices of the one Bench or the other: and where the party in particular is to be reſtored to his goods, or to recover damages, the ſute is properly by Writ, according to the words of this Act (Breve de tranſgreſſione:) and by the Statute of 34 E. 3. the Commiſſioners or Juſtices named in the Writ are to be named by the Court, and not by the party. Regiſt. 126, 127. F.N.B. 112. f. F.N.B. 112. f. Regiſt. 123. 34 E. 3. cap. 1.

The ancient form of Commiſſions of Oier and Terminer were of all Treaſons, Felonies, &c. Grievances, Extortions, and Deceits made to the King and to his people, as well at the ſuit of the King, as of the party, &c. 42 Aſſ. p. 5.

If a Commiſſion of Oier and Terminer be diſcontinued or expired, &c. the Indictments and Records ſhall be removed into the Kings Bench, as to their proper center. 44 E. 3. 31. F.N.B. 243. 38 H. 8. Commiſſ. Br.

¶ Exceptis Juſticiariis de utroque banco.] Here is remedy for both the ſaid miſchiefs, for the Juſtices of either Benches are preſumed to be men of integrity, indifferency, ſkill and knowledge.

Hereof you may read in Stamford. Plac. cor. 55, 56.

¶ Niſi pro enormi tranſgreſſione, ubi neceſſe eſt apponere feſtinum remedium.] Here it is called, Enormis tranſgreſſio.

In the Statute of 2 E. 3. cap. 2. it is called, Grand Leads, or horrible Treſpaſſes.

Fitzherbert ſaith, that this Writ is to be granted when a great aſſembly, inſurrection, or heinous miſdemeanour, or Treſpaſs is committed in any place, then the manner and uſe is to make ſuch a Commiſſion, to hear and determine ſuch miſbehaviours. F.N.B. ubi ſupra.

Regiſt. 125. a. Regiſt. 124. b. 32 Aſſ. p. 21.

The Regiſter termineth it, Enormis ſeu horribilis.

And if the Treſpaſs be not Enormis ſeu horribilis, there lyeth a Writ of Superſedeas, or Revocation, Quia non enormis, ſeu horribilis.

Magna Charta, cap. 8. W. 1. ca. 42.

¶ Dom̃ Rex de gratia ſua ſpeciali, &c.] This is an Act of Grace, for hereby the King is reſtrained of his power to grant Commiſſions of Oier and Terminer to whom he will at his pleaſure.

Nota.

The ſtile of the Record before Juſtices or Commiſſioners of Oier and Terminer, ſometimes have bẽn, Coram Rege & concilio ſuo apud S. &c. and ſometime, Coram concilio Regis apud, &c. whereof take one Record for example, ſtiled thus:

Paſc. 11 E. 3. Coram conc. regis.

Placita coram concilio Regis apud Weſtmon' de Termino Paſchæ, Anno regni Regis E. 3. 11. Nicholas Keriels caſe in a Commiſſion of Oier and Terminer.

Brit. fol. 5. 22 E. 3. Coron. 97, 98. 4 H. 6. 15. Regiſt. judic. 76. 3 H. 7. cap. 1. 9 H. 4. 2. 13 H. 4. 10. 17 E. 3. 13. 22 E. 4. 19. Dier 120.

¶ Nec etiam de cætero concedatur.] An Appeal doth lye either by Writ Original, or by Bill.

The Original Writ iſſueth out of the Chancery. By Bill, as in the County before the Sheriff and Coroners; alſo before Juſtices of Gaol-delivery, if the appellée be in priſon before them, and (as it appeareth by this Act) before Commiſſioners of Oier and Terminer, before Juſtices of Niſi prius, and by Bill alſo before the Juſtices of the Kings Bench.

44 E. 3. 44. tit. Coron. F. 95.

It ſeemed to Fitzherbert, in abridging of the caſe of 44 E. 3. that Juſtices of Peace having power by the Statute of 34 E. 3. (which there is called, Le novel Statute) might receive an Appeal by Bill, becauſe they had power to hear and determine Felonies; but that Statute doth give them power to hear and determine Felonies at the ſute of the King, and the Book at large ſpeaketh only of Juſtices of Gaol-delivery.

¶ Sed ne hujuſmodi appellati, vel indictati diu detineantur in priſona, habeant breve de Odio & Atia.] See before in Magna Charta, cap. 26. & 29. Glouc. cap. 9. this branch well explained.

CAP.

CAP. XXX.

ASſignentur de cætero duo Juſticiarii jurati, coram quibus, & non aliis capiantur Aſſiſæ novæ diſſeiſinæ, mortis anteceſſoris, & attinctæ: & aſſocient ſibi duos, vel unum de diſcretioribus militibus com̃, in quem venerint: & capiant aſſiſas prædictas, & attinctas, ad plus ter per annum, viz. ſemel inter quindenam Sancti Joannis Baptiſtæ, & gulam Auguſti: & iterum inter feſtum Exaltationis ſanctæ Crucis, & Octab. Sancti Michaelis: & tertio inter feſtum Epiphaniæ, & feſtum Purificationis beatæ Mariæ. Et in quolibet com̃, ad quamlibet captionem aſſiſæ, antequam recedant, ſtatuant diem de redditu ſuo; ita quod omnes de com̃ ſcire poſſint eorum adventum: & de termino in terminum adjornent aſſiſas. Si per vocationem warranti, per eſſon̄, vel per defectum recognitorum, ſi ad unum diem captio earum differatur. Et ſi aliqua de cauſa viderint, quod utile ſit, quod aſſiſæ mortis anteceſſoris per eſſonium, vel vocationem warranti reſpectuate adjornentur in banco, liceat eis hoc facere, & tunc mittant Juſticiar' de banco recordum cum brevi originali. Et cum loquela pervenerit ad captionem aſſiſæ, remittatur loquela cum brevi originali per Juſticiar' de banco, ad priores Juſticiar': coram quibus capiatur aſſiſa. Sed de cætero dent Juſtic̃ de banco in hujuſmodi aſſiſis ad minus quatuor dies per annum, coram præfat̃ Juſtic̃ aſſignatis, ut parcant laboribus & expenſis. Atterminentur inquiſit̃ capiend' de tranſgreſſ' placitat̃ corā Juſticiar̃ de utroq; banco: niſi ita enormis ſit tranſgreſſio, quod magna indigeat examinatione. Atterminentur etiā inquiſit̃ corā eis de aliis placitis placitatis in utroq; banco, in quibus facilis eſt examinatio, ut quum dedicitur ingreſſus, vel ſeiſina alicujus, vel in caſu quum de uno articulo ſit inquirend'. Sed inquiſitiones de groſſis & pluribus articulis, qui magna indigeant examinatione, capiantur coram Juſtic̃ de bancis, niſi ambæ partes petant, quod inquiſitio capiatur coram aliquibus de ſocietate, cum in partes illas venerint: quod de cætero non fiat niſi per duos Juſtic̃, vel unum, cum aliquo milite de com̃, in quem partes conſentiunt. Nec atterminentur hujuſmodi inquiſitiones coram aliquibus Juſticiariis de banco, niſi ſtatuatur certus dies & locus in com̃, in præſentia partium: & dies & locus inſerantur in brevi de judicio per hæc verba: Præcipimus tibi quod Venire facias coram Juſticiariis noſtris apud Weſtmonaſt', in octab. Sancti Michaelis, niſi talis & talis tali die & loco ad partes illas venerint, xij, &c. Et cum hujuſmodi inquiſitiones captæ fuerint, retornentur in bancis, & ibi fiat judicium, & irrotulentur. Et ſi omiſſa forma prædicta aliquæ inquiſitiones capiantur, pro nullis habeantur: excepto quod aſſiſæ ultimæ præſentationis, & inquiſitiones ſuper Quare impedit atterminentur in proprio com̃ coram uno Juſticiar' de banco, & uno Milite, ad certos tamen diem & locum in banco ſtatutos, ſive defendens conſentiat, ſive non: & ibi ſtatim reddatur judicium. Habeant de cætero omnes Juſticiarii de bancis in itineribus

neribus clericos irrotulantes omnia placita coram eis placitat̃, ſicut antiquitus habere conſueverunt. Item ordinatum eſt, quod Juſticiarii ad aſſiſas capiend̃ aſſignati non compellant juratores dicere præciſe, ſi ſit diſſeiſina vel non̄, dummodo dicere voluerint veritatem facti, & petere auxilium Juſtic̃. Sed ſi ſponte velint dicere, quod diſſeiſina eſt, vel non, admittatur eorum veredictum ſub ſuo periculo. Et de cætero non ponant Juſtic̃ in aſſiſis, aut juratis aliquos jurat̃, niſi eos qui ad hoc prius fuerunt ſummoniti.

This Statute conſiſteth of many branches, whereof we ſhall ſpeak in their order: and firſt it is to be ſeen what miſchiefs were before the making hereof, the principal whereof we ſhall touch.

1. Before the making of the Statute of Magna Charta, Aſſiſes were only to be taken in the Court of Common Pleas, which was miſchievous to the Recognitors of the Aſſile: it is provided by Magna Charta, that they ſhall be taken in the proper County once every year, and that remedy was too ſhort, and therefore they are by this Act to be taken oftner.

2. Another miſchief was, that the Juſtices of Aſſile were not ſometime but Apprentices of the Law, and a Knight aſſociate to them which oftentimes were favourable.

3. And if the Recognitors of the Aſſile had not given their verdict, the Juſtices could not (before this Act) have adjourned the Record into the Court of Common Pleas.

27 E.1. cap.4. York 12 E.2.ca.3.

4. Alſo, if a forrein Plea had been pleaded, or forrein Voucher had, they could not have adjourned it into the Court aforeſaid.

5. Before the making of this Act, all Jurors, together with the parties, came up to the Kings higher Courts of Juſtice, where the cauſe depended, & propter tantam, & intolerabilem populi noſtri jacturam, non ſolum ad eorundem juratorum exonerationem, ſed etiam ad celerem partibus in curia noſtra placitantibus Juſtitiam exhibendam, &c. And this is the firſt Act that gave the Writ of Niſi prius.

6. Alſo before this Act ſome Juſtices did rule over the Recognitors, to give a preciſe or direct verdict without finding the ſpecial matter.

Now the remedies do follow.

¶ Aſſignentur de cætero duo Juſtic̃ jurati, coram quibus & non aliis, &c.] Hereby it appeareth what an honourable Opinion the Law hath of the Kings Juſtices ſworn, that they are omni exceptione majores.

27 E.1. cap. 4.

But this branch hath been manifoldly altered, for by the Statute of 27 E. 1. cap. 4. theſe Inquiſitions and Recognitions were to be taken coram aliquo Juſticiar' eorundem, coram quibus placitum deductum fuerit, aſſociato uno milite comitatus illius, &c.

12 E.2.cap.3.

By the Statute of York, they are to be taken before one Juſtice of the one place or the other, having aſſociate to him, un piode home de paiis, chivalier, ou auter.

14 E.3.cap.16.

But by the Statute of 14 E.3. they may be taken before any Juſtices of the one Bench or the other, or the Kings Serjeant ſworn, which is intended of any Serjeant at Law, for that every Serjeant is ſworn.

Bro. Niſi prius 37. See the form of the *Poſtea* hereafter in this Chapter.

And this Act is extended to the Kings Attorney, being joined with one of the Juſtices or Serjeants; and albeit the King make choice of ſome Serjeants to be of his Counſel and fee, yet in a general ſenſe all be called the Kings Serjeants, becauſe they be all called by the Kings Writ.

¶ Ad

¶ Ad plus terræ per annum.] Hereby the former time given by Magna Charta is inlarged.

These days are altered by later Statutes.

By 27 E. 1. it is provided they ſhall be taken tempore vacationis, Vide 14 E. 3. 27 E. 1. & 14 E. 3. ubi ſupra.

¶ Quindena Sancti Johannis Baptiſtæ.] This return amongſt others is taken away by the Statute of 32 H. 8. 32 H. 8. cap. 21.

¶ Gula Auguſti.] Gule of Auguſt. This is alſo mentioned in the Statute of 27 E. 3. &c. the Feaſt of S. Peter ad vincula is on this day, being the firſt day of Auguſt, as it appeareth in Pl. Com. where it is ſaid, Al feaſt de S. Peter en la Gule de Auguſt. 27 E. 3. ſtat. 3. F. N. B. 62. i. Pl. Com. 316.

The reaſon why it is called Gula Auguſti, you may read in Durand, in his Book De rationali divinorum, Lib. 7. De feſto Sancti Petri ad vincula.

This I have added, not out of any curioſity, but that the Reader might underſtand what he reads, which hath been mine endeavour throughout all this work.

¶ Statuant diem de reditu ſuo.] That is, by Proclamation in open Court.

¶ De termino in terminum adjornent Aſſiſas.] See the Expoſition upon the Statute of Magna Charta. Et vide lib. 4. fol. 4. Vernons Caſe, & lib. 8. fo. 57. Le Countee de Rutlands caſe. Mag. Chart. c. 12.

¶ Per vocationem warranti.] Forrein pleas are taken within the equity of this Act, and ſo are demurrers doubtful, and other pleas and proceedings, &c. as well before as after verdict. Mag. Chart. c. 12. Br. adjorn. 29. 47 Aſſ. 1. 49 Aſſ. 23. 48 E. 3. 7. 22 Aſſ. p. 11.

In an Aſſiſe, the Tenant pleads a releaſe made in a forrein County, whereupon the Record is adjourned into the Court of Common Pleas; that Court may grant a Niſi prius into the forrein County, for albeit in this caſe the Court of Common Pleas hath by this Act delegatam poteſtatem for the trial of the releaſe, yet all incidents thereunto are therewith granted.

¶ Per eſſonium.] This muſt be intended of an eſſoin ultra mare, for the common eſſoin, or de ſervitio Regis lieth not in this caſe.

¶ Remittatur loquela.] That is, the Record of the Aſſiſe, together with the original Writ ſhall be remanded to be taken, &c. in the proper County before the former Juſtices.

¶ Atterminentur etiam inquiſitiones coram eis de aliis placitis, &c. in quibus eſt facilis examinatio, &c. Sed inquiſitionem de groſſis & pluribus articulis quæ magna indigeant examinatione, &c. niſi ambæ partes petant, &c.] Upon this Statute a Writ in the Regiſter is framed, Quod inquiſitiones, quæ magnæ ſunt examinationis, non capiantur in patria, & de ſuperſedendo, &c. Regiſt. 186.

¶ In brevi de judicio in hæc verba.] Præcipimus tibi, quod Venire facias coram Juſticiariis noſtris apud Weſtm̃ in Octabis Sancti Michaelis, niſi talis & talis, tali die & loco ad partes illas venerint, 12, &c. 42 E. 3. cap. 11.

The

The judicial Writ now in use hath [prius] before [venerit] and thereof it taketh the name of Nisi prius.

14 E.3.cap.16. 33 E.3. attaint 77. Although the Statute of 14 E. 3. speak not of an attaint, yet is an attaint within it, for the effect of that Ordinance is, that in all cases where a Nisi prius is grantable, it shall be granted before Justices of Assise.

23 E.3.23. 24 E.3. 23. 25 E.3.39. 14 E.3. Nisi prius 16. F.N.B.241.a. Albeit this Act be general, yet a Nisi prius shall not be granted where the King is party, or where the matter toucheth the right of the King, without a special warrant from the King, or the assent of the Kings Attorney.

32 H.6.9.F.N.B. 241. a. 11 E.3. Visne 59. The Duke of Exeter being Plaintiff in Trespass, for the Duke a Nisi prius was prayed, and it was denied, for that the Duke was of great power in that County, and if trial should be had in the Country, inconvenience might thereupon follow.

¶ Et cum hujusmodi inquisitiones captæ fuerint, retornentur in bancis, & ibi fiat judicium, & irrotulentur.] Herewith agreeth the Statute of York ubi supra.

By the Statute of 14 E.3. cap.16. the Chief Justice of that place shall return the Record, and shall return the verdict under his seal.

The return of the Justices is, Ad quem diem hic venerunt partes præd', & Justiciarii ad assisas coram quibus, &c. miserunt hic record' in hæc verba; And this return is called the Postea, because the Record beginneth thus: Postea die & loco infra contentis coram (and nameth the Justices of Assise) Justiciariis ipsius domini Regis ad assisas in Com̃ N. capiend' assignat̃ per formam statuti venerunt tam le Pl. quam le Def. &c.

Barre de entries. Rast.101. Hil.19. H.7. Rot.409. in Communi Banco. 2 H.7.10. Emile. Dier 5. Mar.163. If one of the Justices of Assise die before the return, a Certiorari may be awarded out of the Court of Common Pleas to the survivor to certifie the verdict; If both the Justices die, the Clerk of the Assise may bring it in without a Certiorari, or a Certiorari may be awarded to the Executors, or Administrators of them to certifie the Record.

Statute of York. 12 E.2.c.4. 14 E.3. c.16. 17 E.3.23. But this Act was defective, for hereby the Justices of Nisi prius might take verdicts and inquisitions, but they could not Record non-suits of the Demandant or Plaintiff, or defaults of the Tenant or Defendant, which was remedied by the Statute of York.

¶ Et si omissa forma prædicta aliquæ inquisitiones capiantur, pro nullis habeantur.] For the rule of Law is, Non observata forma infertur adnullatio actus; but that rule is to be understood, De essentiali forma, and not De accidentali.

Regula.

¶ Excepto quod Assisæ ultimæ præsentationis, & inquisitiones super Quare impedit atterminentur in proprio Com̃, &c. & ibi statim reddatur judicium.] The reason of making of this branch was in respect of the danger of laps, and therefore in favour of the Patrons this clause was added, that the Justices of Nisi prius have power to give judgment in these two Actions.

4 Mar. Dier 135. 9 El. Dier 260. And albeit the words of this branch be, Et ibi statim reddatur judicium, yet if the Justices of Nisi prius do not give judgment, upon return of the Postea judgment may be given by the Court to which the return is made, for by these words the higher Court is not restrained; and this branch giving to the Justices of Nisi prius power to give judgment, they have thereby power includedly, as incident, given to award execution, that is, a Writ to the Bishop, but that Writ is not returnable; but after the Record be returned into the Common Bench, if the former Writ be not executed, that Court may grant a Writ

Incident.

Sicut

Sicut alias, returnable into that Court, all which is worthy of ſingular obſervation.

And Juſtices of Niſi prius have power to inquire of incidents. 18 E.3.49,50.

Alſo Juſtices of Niſi prius may amerce Jurors, and demand them upon a pain, and alſo puniſh them for miſdemeanors done in their preſence, which are in deſpite of the King, and thereupon make proces, and what lieth in aid and furtherance of the buſineſs they may record, likewiſe they may record a prayer to be received. 17 E.3.23.

¶ Habeant de cætero omnes Juſticiarii de bancis in Itineribus Clericos irrotulantes omnia placita coram eis placitat', ſicut antiquitus habere conſueverint.] Hereby it appeareth that the Juſtices of Courts did ever appoint their Clerks, ſome of which after by preſcription grew to be Officers in their Courts; as here it is put for example, that the Juſtices of the Benches in their Circuits had Clerks that enrolled all Pleas pleaded before them as anciently they uſed to have, that is, as by the Common Law. Dier 1 Eliz.175.

Now the cauſe of the making of this branch, was, that the King was informed that he might erect Offices for entring and inrolment of Records in his Courts of Juſtice, and ſpecially before Juſtices of Aſſiſe, which this branch declareth to belong to the Juſtices, and that they had enjoyed the ſame of ancient time, that is, by the Common Law.

And the reaſon thereof is twofold. 1. For that the Law doth ever appoint thoſe that have the greateſt knowledge and skill, to perform that which is to be done. 2. The Officers and Clerks are but to enter, inroll, or effect that which the Juſtices do adjudge, award, or order, the inſufficient doing whereof maketh the proceeding of the Juſtices erroneous, then the which nothing can be more diſhonourable and grievous to the Juſtices, and prejudicial to the party; therefore the Law, as here it appeareth, did appropriate to the Juſtices the making of their own Clerks and Officers, and ſo to proceed judicially by their own inſtruments: And that this was the Common Law, the King cannot grant the Office of the Shire or County Clerk, (who is to enter all judgments and proceedings in the County Court) for that the making of the Shire Clerk belongeth to the Sheriff by the Common Law, as in Mittons caſe it appeareth, Et ſic de cæteris. Lib.4.fol.32. Mittons Caſe.

¶ Juſticiarii ad aſſiſas capiend' aſſignat' non compellant juratores dicere præciſe ſi ſit diſſeiſina, vel non, dummodo dicere voluerint veritatem facti, & petere auxilium Juſtic': Sed ſi ſponte voluerint, &c.] The firſt queſtion upon this branch was, Whether in caſe of Aſſiſe, if the iſſue were joined upon a collateral matter out of the point of the Aſſiſe, whether upon this ſpecial iſſue the Jury might give a ſpecial verdict. Lib.9.fo.1,11,13. Dowmans Caſe. See the firſt part of the Inſtitutes, ſect.366,367.

2. The ſecond queſtion was, Whether it did extend to all other Actions, or only to thoſe Actions wherein the Defendant or Tenant might plead a general iſſue. 45 E.3.20. 42 E.3.1. 40 E.3.2.

3. Thirdly, whether in all Actions the Jury might give a ſpecial verdict upon a ſpecial iſſue, upon an abſque hoc, or otherwiſe. 41 E.3.10. 47 E.3.19. 16 E.3. verdict 21. 9 H.7.3.

In the end it hath been reſolved, that in all Actions real, perſonal, and mixt, and upon all iſſues joined general or ſpecial, the Jury might find the ſpecial matter of fact pertinent, and tending only to the iſſue joined, and thereupon pray the diſcretion of the Court for the Law: and this the Jurors might do at the Common Law, not only in caſes between party and party, whereof this Act putteth an example of the Aſſiſe, but alſo in Pleas of the Crown at Dier 28 H.8.32. 2 Mar.115. 9 El.260. 11 El.279. 13 El.30. 32 H.8.47. Pl.Com.92. 3 E.3. Cor.284, 286. 43 aſſ.31. 44 E.3.44. 26 H.8.5.

at the Kings ſuit, which is a proof of the Common Law, for if this Act had made a new Law, and that other like caſes betwæn party and party had bæn taken by equity, yet the King had not bæn bound thereby: and note the next precedent clauſe of this Act, and the ſubſequent are both in affirmance alſo of the Common Law.

¶ Et de cætero non ponant Juſtic' in aſſiſis, aut juratis aliquos juratores, niſi eos qui ad hoc prius fuer' ſummoniti. ¶ Where this branch ſaith, non ponant Juſtic' in aſſiſis, the meaning is, that the Juſtices ſhould not ſuffer the Sheriff to put into the pannell any men which were never ſummoned: for before this Act if the Sheriff had made a pannell, and the Jurors had not appeared, the Sheriff would have impannelled others of the ſame County who were never ſummoned, which was a wrong to them that were ſo newly returned, and is now prohibited by this Act, whereupon any ſo unduly returned may have this Action againſt the Sheriff, for this Act is made for the relief of them that were ſo unduly returned.

Lib. 9. fol. 13. Dowmans caſe.

CAP. XXXI.

CUm aliquis implacitat' coram aliquibus Juſtic', proponat exceptionem, & petat quod Juſtic' eam allocent, quam ſi allocare noluerint, ſi ille qui exceptionem propoſuerit, ſcribat illam exceptionem, & petat, quod Juſtic' ſigillum ſuum apponant in teſtimonio, Juſticiarii apponant ſigilla ſua. Et ſi unus apponere noluerit, apponat alius de ſocietate. Et ſi forte ad querimoniam de facto Juſticiariormm venire fac dominus Rex recordum coram eo, & ſi illa exceptio non inveniatur in rotulo, & querens oſtendat exceptionem ſcriptam ſub ſigillo Juſtic' appenſo, mandetur Juſticiario, quod ſit ad certum diem ad cognoſcendum ſigillum ſuum, vel ad dedicendum. Et ſi Juſtic' ſigillum ſuum dedicere non poſſit, procedatur ad judicium ſecundum illam exceptionem, prout admittend' eſſet vel caſſand'.

At the Common Law, before the making of this Act, a man might have had a Writ of Error for an Error in Law, either in redditione judicii, in redditione executionis, or in proceſſu, &c. and this Error in Law muſt be apparent in the Record, &c. For the Writ of Error ſaith, Quia in Recordo & proceſſu, &c. error intervenit manifeſtus, &c. Or for Error in fait, by alledging matter out of the Record, as death of either party, &c. before judgment: Now the miſchief before this Statute was, that when the Demandant or Plaintiff, or the Tenant or Defendant did offer to alledge any exception, (as in thoſe days they did ore tenus at the bar) praying the Juſtices to allow it, and the Juſtices over-ruling it ſo as

as it was never entred of Record, this the party could not aſſign for error, becauſe it neither appeared within the Record, nor was any error in fait, but in Law, and ſo the party grieved was without remedy, for whoſe relief this Statute was made.

¶ Cum aliquis implacitatur.] This Act doth extend as well to the Demandant or Plaintiff, as to the Tenant or Defendant in all Actions real; perſonal, and mixt; and regularly it extendeth not to a ſtranger to the Record, which is not to come in lieu of the Tenant, &c. For example, if the Bailiff of a Franchiſe demand Conuſans, and the Juſtices over-rule the ſame, he cannot pray the Juſtices to inſeal a Bill, becauſe he is no party to the Record: but yet one that offereth to be received, and is denied, albeit he be none of the parties to the Writ, yet becauſe he is privy in eſtate, and to be in loco tenentis, he ſhall have the benefit of this Act; and ſo it is of the Vouchée, though he be no party to the Writ, becauſe he is in loco tenentis. F.N.B. 21.n. & 22.a. 20 E. 3. Conuſans 46. 17 E.3.23.a.

¶ Coram aliquibus Juſticiariis.] Albeit the letter of this branch ſæmeth to extend to the Juſtices of the Common Pleas only, by reaſon of theſe words, Et ſi forte ad querimoniam de facto Juſtic' Venire fac' Dominus Rex recordum coram eo, (which is by Writ of Error into the Kings Bench) yet that is put but for an example, and this Act extendeth not only to all other Courts of Record (for upon Judgments given in them a Writ of Error lyeth in the Kings Bench) but to the County Court, the Hundred, and Court baron, for therein the Judges were more likely to err; and albeit, of Judgments given in them a Writ of Error lyeth not, but a Writ of falſe Judgment in the Court of Common Pleas, yet the caſe being in the ſame, or greater miſchief, the purview of this Statute doth extend to thoſe inferiour Courts.

¶ Proponat exceptionem.] This extendeth not only to all Pleas dilatory and peremptory, &c. and (as hath been ſaid) to prayers to be received, Oier of any Record or Deed, and the like; but alſo to all challenges of any Jurors, and any material Evidence given to any Jury, which by the Court is over-ruled. 11 H.4.52.65. 9 Aſſ. p.8. 16 E.3. Quare non admiſit 3. Regiſt.182. 21 E.4.2.b. 21 E.4.12.b. F.N.B.21.n.

¶ Juſticiarii apponant ſigilla ſua.] Here is an expreſs commandment given to the Juſtices; and yet if one refuſe, and any of the other inſeal the Bill, it ſufficeth, but if they all refuſe, it is a contempt in them all; for it lyeth not in the power of the Juſtices that denied to perform the purview of this Act, to take advantage of their own wrong, and the party grieved may have a Writ grounded upon this Statute to the Juſtices, commanding them to put their Seals, Juxta formam ſtatuti, & hoc ſub periculo quod incumbit nullatenus omittatis. Regiſt.182.

And though no time be appointed by this Act, when the Juſtices ſhall put their Seals, the party muſt pray the ſame before Judgment; but if they deny it, then may they be commanded after Judgment to put their Seals, and then the putting of their Seals after Judgment ſhall be ſufficient. 11 H.4.52,63. Regiſt.ubi ſupra. F.N.B. 22.a.

¶ Et querens oſtendat exceptionem ſcriptam ſub ſigillo.] Albeit the party grieved be dead, yet his heirs or Executors, &c. according to the caſe, ſhall have a Writ of Error upon this Bill of Exception.

In this caſe the Plaintiff can alledge no diminution, for he muſt hold himſelf to the matter in the Bill ſealed; and if it be not there, it was his folly to omit it. 11 H.4. ubi ſupra.

¶ Mandetur Juſticiario quod ſit ad certum diem.] Albeit ſome have holden, that the Juſtices may bring in the Bill under their Seal, and acknowledge it, yet the ſurer way is to follow the order preſcribed by this Act.

If the Juſtice dye, yet ſhall there a Scire facias go againſt his Executor or Adminiſtrator; for the death of the Judge, which is the act of GOD, cannot prejudice the party, nor make the purview of this Statute to be of no force.

1 Part of the Inſtitutes, ſect. 102. As if a man be outlawed, and at the time of his Outlawry he was beyond the Seas in War in the Kings ſervice, and brings a Writ of Error to reverſe his Outlawry, and obtains a Certificate of the Marſhal of the Kings hoſt under his Seal (as he ought to do) In this caſe notwithſtanding the Marſhal dye, yet may he aſſign the ſame for Error, and upon ſhewing the Certificate have a Scire facias to the Executors or Adminiſtrators of the Marſhal.

¶ Et ſi Juſticiarius ſigillum ſuum dedicere non poſſit, procedatur, &c.] On the other ſide, if the Judge deny his Seal, then may the Plaintiff in the Writ of Error take iſſue thereupon, and prove it by witneſſes; for it lyeth not in the Judge in this caſe to fruſtrate this excellent Law made for advancement of Juſtice and right.

Book of Entries, Raſt. 275, 323. Vet. N. B. 54. For the order of proceeding herein according to this Act, ſee the Book of Entries.

CAP. XXXII.

Statut. de Religioſis. Anno 7 E. 1. CUm viri religioſi, & aliæ perſonæ Eccleſiaſticæ implacitent aliquem, & implacitatus fecerit defaltam, ob quam tenement' amittere debeat: quia Juſticiar' hucuſque tenuerunt, quod ſi implacitat' fecerit defaltam per colluſionm, ut cum petens occaſione ſtatuti per titulum doni, vel alterius alienationis, ſeiſinam de tenement' conſequi non poſſet, per illam defaltam conſequeretur, & ſic fieret fraus ſtatuto: Ordinat' eſt per dominum regem, & conceſſum in hoc caſu, quod poſtquam defalta facta fuerit, inquiratur per patriam, utrum petens habeat jus in ſua petitione, vel non. Et ſi compertum fuerit, quod petens jus habuerit, procedatur ad judicium pro petente, & recuperet ſeiſinam ſuam. Et ſi jus non habuerit, incurratur tenement' proximo domino feodi, ſi illud petat infra annum a tempore inquiſitionis captæ. Et ſi infra annum non petat, ſuperiori domino incurratur, ſi petat infra dimidium annum poſt illum annum. Et ſic habeat quilibet dominus poſt proximum dominum, ſpacium dimidii anni ad petendum ſucceſſive, quouſque perveniatur ad regem, cui ad ultimum pro defectu aliorum dominorum tenementum incurratur. Et ad calumniandum Juratores inquiſitionis, admittantur quicunque capitales domini feodorum,

feodorum, & ſimiliter pro Rege qui calumniare voluerint. Et remaneat terra, poſtquam judicium datum fuerit in manu domini Regis quouſque teneñ per petentem, vel per aliquem capitalem dominum diſrationetur, & oneretur Vic̃ ad reſpondend' inde ad Scaccarium.

Notwithſtanding the Statute of Magna Charta, and the Statute of De Religioſis, Anno 7 Edw. 1. yet this evaſion was found out, that Religious and Eccleſiaſtical perſons did recover lands by default; which, albeit it were by conſent and colluſion, yet the Juſtices did hold that theſe Religious and Eccleſiaſtical perſons came not to the land per titulum doni, vel alienationis, nor was within the general words of the Statute of 7 Edw. 1. Aut alio quoviſmodo, arte, vel ingenio ſibi appropriare præſumat: for that Recoveries being proſecuted in courſe of Law were by Law preſumed to be juſt and lawful, it was holden by the Juſtices, that they were not within the former Statute; and yet theſe Recoveries were done in fraudem legis, for remedy whereof this Statute was made.

Magna Charta, cap 36. Stat. de Religioſis 7 E. 1. 33 H. 6. 25.

¶ Et implacitatus.] All Actions brought for any lands or tenements, wherein a freehold, inheritance, or a long term is recovered, as within this Statute, as Præcipes quod reddat, Quare impedit, Droit de gard, Ejectione firmæ, Quare ejecit infra terminum, Warrantia Chartæ, Convenuit to levy a Fine, Execution per Elegit, Statute Merchant, or Statute Staple, &c.

This Act doth extend to them that are no parties to the Writ, as to the Vouchée, and Tenant by receit, and the like.

And this Statute doth extend by equity when the Abbot, &c. is Tenant or Defendant, as when a Writ of Right is brought againſt an Abbot, &c. and after the Miſe joined, the Demandant maketh default, and is Nonſute, the colluſion ſhall be inquired, and this caſe wherein the Abbot is Tenant is within the ſame miſchief, and therefore within the equity of this Law: and ſo it is if a Quare impedit be brought againſt a Prior of the Church of D. and the Plaintiff become Nonſute, the Defendant ſhall recover the preſentment, and the colluſion ſhall be inquired.

2 E. 3. 10. 10 E. 3. 17. 21 E. 3. 5. 24 E. 3. 27. 38 E. 3. 12, 27. 3 E. 4. 12, 13. 1 E. 2. Colluſion 11. 7 E. 3. ibi. 17. 16 E. 3. ibid. 21. 34 E. 3. ibid. 46 20 H. 6. 38.

5 E. 2. Colluſ. 19. 2 E. 3. 18. 6 E. 3. 23, 25. 19 E. 3. Colluſion 18.

¶ Fecerit defaltam.] This Act doth not extend only, according to the letter, to Recoveries by default, but to all manner of Recoveries by verdict, or otherwiſe, if they be had by colluſion.

If it be by default, then a Judicial Writ called a Quale jus grounded upon this Statute is awarded, which Writ conſiſteth upon five parts:

1. It reciteth the Recovery.

2. The doubt of the fraud, Et quia dubitatur de fraude inter eos prælocuta contra ſtatutum.

3. A commandment to the Sheriff to return a Jury, Præcipimus tibi quod Venire fac' coram Juſticiar' noſtris apud Weſtmonaſt' duodecim, &c. the charge of the Jury is ad recogñ ſuper ſacramentum ſuum hæc tria; 1. Quale jus idem abbas habuit in prædict. meſſuagio: 2. Et Quis prædeceſſorum fuit inde ſeiſitus ut de jure Eccleſiæ ſuæ præd': 3. Et Quantum illud meſſuagium valet per annum.

Regiſt. judic. 16, 17.

20 E. 3. Colluſion 34.

4. The fourth is another commandment to the Sheriff, Et interim meſſuagium illud in manum noſtram capias, &c. & quod de exitibus ad ſcaccarium nobis reſpondeas.

5. The Sheriff is commanded, Et Scire facias capitalibus Dominis feodi illius mediatis, & immediatis, quod tunc ſint ibi aduturi juratam illam, ſi voluerint.

Which Writ I have the more at large rehearſed, for that it giveth a great light to all the parts of this Act.

And

And it is to be obſerved, that if the Jury find that his predeceſſor was ſeiſed of it in his Demeſne as of fée in the right of his Church, before the ſaid Statute de Religioſis, Anno 7 E. 1. this is a good verdict for the Demandant without finding of any Licenſe; for though there were no Licenſe, the alienation was good: But if they find that his predeceſſor was ſeiſed after the Statute, then they ought to find a Licenſe, or otherwiſe the land belongeth to the Lord or King.

13 E 3. Colluſion 32. 16 E.3. ibid. 42. 34 E.3. ibid. 40. 20 H.6.38.

The value of the land is inquired of, becauſe the iſſues thereof are to be by this Act anſwered to the King.

20 H.6.38. Stamf. Prærog. 84.b.

If there be an iſſue joined in the Action brought by the Abbot, the Jury ſhall not only inquire of the iſſue, but of the colluſion, but as concerning the colluſion, it is but an Inqueſt of Office, whereof no Attaint lyeth.

38 E.3.12. 45 E. 3.8. 50 E.3.22. 14 Aſſ.13. 5 E.3. 29. 6 E.3.11.

If a Recovery by verdict were not within the purview of this Act, ſuch an iſſue of diſadvantage might be joined, and ſo feint Evidence might be given, as this Statute ſhould be of little force.

20 H.6.38. 33 H. 6.25. 6 R.2. Colluſion 40.

And if the Jury do not inquire of the colluſion, ſo as the Abbot, &c. recover by verdict, yet the colluſion ſhall be inquired of by a ſpecial Writ, and not by a Quale jus.

33 H.6.25.

If an Abbot bring an Aſſiſe, and the Tenant plead a forrein Releaſe, they of the forrein County cannot inquire of the colluſion, but a ſpecial Writ ſhall be granted.

If the Tenant appear, and confeſs the Action, or Judgment be given upon a Nihil dicit, or a departure in deſpight of the Court, theſe alſo are within this Statute, and the Colluſion ſhall be inquired, and ſo if a Recovery be had upon a demurrer in Law, that Recovery is alſo within the equity of this Statute.

6 E.3.11. 17 E.3.5.

In ſome caſe no Colluſion ſhall be inquired at all, as if a perſon bring a Juris utrum, and the Jury find that the land is the right of the Church, this ſufficeth without inquiring of the Colluſion.

29 E.3.35. 6 R.2. Colluſion 40. 31 H.6.10.

¶ Et ſi compertum fuerit quod petens jus habuerit.] This is either by Jury upon trial of the iſſue, or by Quale jus, if the Tenant make default.

¶ Procedatur ad judicium.] Hereby it appeareth that the Quale jus ſhould be ſued out after the default, and before Judgment, and ſo it is ſaid the uſe hath béen; and if the Colluſion be found, the Lord, &c. ſhall enter, though Judgment be never given.

Kelwey 134.

But yet if Judgment be given upon the default, yet may the Quale jus be ſued out, and ſo it appeareth by the Judicial Regiſter, and many other authorities, but Execution ſhall ceaſe until the Colluſion be inquired.

5 E.3.29. Regiſt. Judic. 16,17.

In a Writ of Right, if Judgment final be given for the Abbot, &c. the Colluſion ſhall be inquired; for albeit the Judgment final be given betwéen them, yet the Lord by this Statute ſhall enter: and ſo it is of a Recovery by default in a Ceſſavit.

34 E.3. Colluſion 46. 13 E.3. ibid. 28. 12 E 3. Judgment 163. 4 E.3.8. Regiſt. Judic. 16,17.

¶ Et ſi jus non habuerit, incurratur tenementum proximo Domino feodi, ſi illud petat infra annum, &c.] Here be the certain times appointed when the Lords mediate and immediate ſhall enter, whereof ſufficient hath béen ſaid in the Expoſition of the Statute de Religioſis, 7 E. 1.

¶ Et ad calumniandum juratores inquiſitionis, admittantur quicunque capitales Domini feodorum.] Hereupon, as hath béen ſaid, the Sheriff ſhall warn the Lords mediate and immediate to appear, and take their challenges.

If any of the Lords mediate or immediate be within age, in reſpect of theſe words, Quicunque domini feodorum, the Court will adviſe whether any thing ſhall be done to his prejudice, during his minority.

¶ Et ſimiliter pro Rege qui clamare voluerit.] The King is always (in judgment of Law) preſent in Court, and therefore any man may challenge for the King, but by the Statute of 33 E. 1. they which challenge for the King muſt ſhew a cauſe certain, and the truth thereof is to be tried. Stat. de Inquiſ. Anno 33 E. 1.

Obſerve well what Expoſition hath been made of this Act, and how the Judges extended the ſame by equity, for otherwiſe the Churchmen by advice of their learned Councel (whereof they had the beſt) would have had ſome evaſion or other out of the letter of the Law.

See the Expoſition before of the Statute De Religioſis, anno 7 E. 1.

CAP. XXXIII.

QUia multi tenentes erigunt cruces in tenementis ſuis, aut erigi permittunt, in præjudicium dominorum ſuorum, ut tenentes per privilegium Templariorum & Hoſpitaliorum tueri ſe poſſent contra capitales dominos feodorum: Statutum eſt, quod hujuſmodi ten̄ capitalibus dominis, aut Regi incurrantur. Eodem modo quo ſtatuit alibi de tenementis alienatis ad manum mortuam. Fleta l. 2. cap. 43. Lib. 5. cap. 34. Doct. & Stud. Li. 2. ca. 34. & 46. Rot. Pat. 2 E. 3. Rot. clauſ. 18 E. 3.

For the better underſtanding of this Statute; it is to be known that the order of the Templers, otherwiſe Knights of the Temple being men profeſſed, were by Gelaſius the Pope founded Anno Domini 1117. which was Anno 18 H. 1. 18 H. 1.

Theſe were called Templarii, becauſe they were firſt founded in ſome of the Edifices adjoining and belonging to the Temple, and had the charge and kæping of the Lords Sepulchre, and not only entertained Pilgrims that came to ſee the Sepulchre, &c. but in their armour conducted Chriſtians that had a deſire to ſee the City of Jeruſalem, and other places in the Land of Paleſtine, and to guard them from the Saracens and Infidels.

Soon after, viz. Anno Domini 1120. which was in Anno 21 H. 1. the Hoſpitallers, commonly called Milites Sancti Johannis Jeroſolymitani, being profeſſed Friers of S. John of Jeruſalem, under the rule of S. Auguſtine, were founded, Honorius then being Pope, and they were called Hoſpitularii, Hoſpitallers, becauſe they had the care of holding and providing Hoſpitals for Pilgrims, &c. travelling to Jeruſalem, &c. and for their ſafe-conduct againſt Saracens and Infidels. Theſe two orders, (but eſpecially the Templers) did ſo overſpread throughout Chriſtendom, and ſo exceedingly increaſed in poſſeſſions, revenues, and wealth, and ſpecially in England, as you will wonder to read in approved Hiſtories, and withall obtained ſo great and large priviledges, liberties, and immunities for themſelves, their Tenants and Farmers, &c. as no other order had the like.

Councel of Vienna, Anno Dom. 1311. 4 E. 2. Kelwey 6 H. 8. fol. 169, 170.

At the Councel of Vienna holden Anno Domini 1311. which was Anno 4 E. 2. Clemens quintus then being Pope, the order of the Templers was by that Councel dissolved throughout all Christendom, and their possessions and revenues here in England given to the Hospitallers by Act of Parliament, Anno 17 E. 1.

Anno 17 E. 2. Vet. Mag. Chart. fol. 42. second part. 5 E. 3. 36. 35 H. 6. 46. 32 H. 8. cap. 24.

But the Hospitallers continued here in England till an Act of Parliament made in 32 H. 8. by which Act they were dissolved, so as albeit both these orders mentioned in this Act are dissolved, and therefore this Act may seem to be obsolete and out of use, yet will we not omit the Exposition of it for two causes; 1. For that we have hitherto omitted not one; and 2. it may serve for very good use, as hereafter shall appear.

¶ Erigunt cruces.] The reason wherefore Crosses were erected, was, for that the Knights of both the said orders were Cruce signati, and because that was the ensign of their profession, and for that their Tenants enjoyed great priviledges, to the end they might be known to be the Tenants of the said orders, and thereby freed from many duties and services which other Tenants were subject unto, did erect Crosses upon their houses; and many Tenants of other Lords perceiving the state and greatness of the Knights of both the said Orders, and withall seeing the great priviledges their Tenants enjoyed, did set up Crosses upon their houses, as their very Tenants used to do, to the prejudice of their Lords.

¶ In tenementis suis.] The Crosse was erected upon their houses, but both the house and lands holden by one tenure were forfeited to the Lord, and therefore the Act saith, In tenementis suis.

21 H. 7. 34.

¶ Aut erigi permittunt.] This word [permit] or [suffer] hath in the Law two significations; First, where he that suffereth it is party, and then it is equivalent to his own Act; as if a man suffereth a recovery against him, and the like: the other signification is when a stranger doth the Act whereunto he is not party; as here if a stranger of his own head erecteth a Crosse upon the Tenants house, if after notice the Tenant doth suffer it, this is a permission within this Act; even as in Waste in houses, if it be done by a stranger, the Tenant must answer for it, if he repair it not before the Action brought; so if after notice the Tenant doth not put down the Crosse, but doth by colour thereof any thing to the prejudice of the Lord, he is within this Statute.

¶ In præjudicium dominorum suorum.] Somewhat must be done to the prejudice of the Lord, for if the Tenant erecteth, or suffereth to be erected a Crosse upon his house, this is no forfeiture of his Tenancy; but if after the erection of the Crosse, he claimeth and putteth in ure any of the priviledges of either of the said orders against the Lord to his prejudice, then is the Tenancy forfeited.

Regist. fol. 20, 21. See hereafter c. 43.

¶ Per privilegium Templariorum & Hospitaliorum.] The Tenants of the Knights of both these orders enjoyed great priviledges, as well against the King, as against the other Lords; as to be free from tenths and fifteens to be paid to the King, to be discharged of purveyance, that they should not be sued for any Ecclesiastical cause before the Ordinary, Sed coram conservatoribus privilegiorum suorum; Also of ancient time they claimed that a Felon might take such houses having such Crosses for his safety, as well as any Church, and many others: Now if a Crosse be erected, and any of these, or other priviledges claimed and put in ure by the Tenant, &c. then was his land forfeited to the Lord of whom the land in truth was holden.

If after the Crosse levied, the Prior of S. John of Jerusalem had distrained for rent or service, and the Tenant had acknowledged the tenure of him, the very

very Lord might enter by the purview of this Statute, and ſo if the Tenant do prove any Will whereof he is made Executor before the Conſervator of the priviledges, the Lord may enter, Et ſic in ſimilibus.

¶ Eodem modo.] This is an Act of reference as well to the Statute De religioſis, Anno 7 E. 1. as to the 32. Chapter of this Parliament of Weſtm the ſecond; and therefore if the King take benefit of this Act, he ought to grant the lands over in ſuch ſort, as is preſcribed by the ſaid Act of 7 E. 1.

And albeit the ſtate of the Tenancy was not hereby changed, as in the caſe of the Mortmaine, (whereunto this Act referreth) yet ſuch were the height, power, and greatneſs of theſe orders, that this Act doth put the matter prohibited by this Act in equipage, with an alienation in Mortmaine.

CAP. XXXIV.

PUrview eſt, que ſi home raviſt feme eſpouſe, dameſelle, ou auter feme deſormes, per la ou el ne ſoit aſſentus, ne avant, ne apres, eit judgement de vie & de membre. Et enſement per la ou home raviſt feme, dame eſpouſe, damaſelle, ou auter feme a force, tout ſoit que el ſoy aſſent apres, eit tiel judgement come devant eſt dit, ſil ſoit attaint a le ſuit le Roy, & la eit le Roy ſa ſuit. De mulieribus abductis cum bonis virorum ſuorum, habeat Rex ſectam de bonis ſic aſportatis. Et ſi uxor ſponte reliquerit virum ſuum, & abierit, & moretur cum adultero ſuo, amittat in perpetuum actionem petendi dotem ſuam, quæ ei competere poſſet de teñ viri ſui, ſi ſuper hoc convincatur, niſi vir ſuus ſponte, & abſque cohertione Eccleſiaſtica eam reconciliet, & ſecum cohabitare permittat, in quo caſu reſtituatur ei actio. Qui monialem a domo ſua abducat, licet monialis conſentiat, puniatur per priſonam trium annorum, & ſatisfaciat domui a qua abducta fuerit, competenter: & nihilominus redimatur ad voluntatem Regis. 31 E. 1. Endictment 31.

¶ Purview eſt, que ſi home raviſt feme eſpouſe, dameſelle, ou auter feme deſormes, per la ou el ne ſoit aſſentus, ne avant, ne apres, eyt judgement de vie & de membre.] This clauſe is intended of an appeal to be brought by the party raviſhed, for if ſhe give conſent either before or after, ſhe ſhall have no appeal, but if ſhe conſented neither before nor after, then ſhe ſhall have an appeal of rape, and there is no Law that gives a woman an appeal of rape but this. 13 E. 3. Coron. 122.

Hereby the ancient Law concerning the election given to her that is raviſhed is taken away. Vide Weſtm. 1. cap. 13. See the firſt part of the Inſtitutes, ſect. 190.

6 R.2.c.6.5 E.4.6. Lo. 5 E.4.58. 1 H.6.1. 9 H.7.25. Pl.Com.45. lib.3. fol.61. Shelleyes Caſe.

Afterwards by the Statute of R. 2. a greater puniſhment is inflicted upon the party raviſhed, if ſhe after conſent to the raviſher, viz. that as well the raviſhed as the raviſher ſhould be diſabled to challenge inheritance, dower, or joynt-feoffment, &c. and that the next of blood ſhould enter, &c.

11 H.4.13.1 H.6.1.

And moreover the husband of her that is ſo raviſhed and after gives her conſent, or if ſhe have no husband, her Father, or other next of her blood ſhall have the appeal of rape, wherein no wager of battel ſhall be allowed; ſo as this Act of R.2. gave an appeal in caſe where no appeal lay before, and alſo to other perſons, ſo as the woman that never conſented may have her appeal upon this Statute, and if ſhe give conſent afterwards, then the appeal of rape is given by the Statute of 6 R.2.

28 H.6.Coro.459.

If a woman be raviſhed by her next of kin, and conſenteth to him, and hath neither husband nor Father, the next of kin to him ſhall have the appeal, for he hath diſabled himſelf by the rape, whereby he becomes a Felon.

De frangent. priſonam. 1 E.2. 14 E.3.cap.9. 9 E.4.26. 21 E.4. 23. Broke Coron. 203.

¶ Judgement de vie & de membre.] That is to ſay, he ſhall be attainted of Felony.

In the appeal being the ſuit of the party, the pardon of the King doth not diſcharge the party, as it doth upon the indictment at the ſuit of the King.

¶ Et enſement per la ou home raviſt feme, &c. a force, tout ſoit que el aſſent apres, eit tiel judgement come eſt avandit ſil ſoit atteint a le ſute le Roy, &c.] Hereby it appeareth that the firſt clauſe is to be intended of the ſuit of the party, this branch providing expreſly for the ſuit of the King.

W.1.c.13. 13 E.3. Utlag.49. Firſt part of the Inſtit.ſect.190.

See the Expoſition of the 13. Chapter of Weſtm. 1. and the firſt part of the Inſtitutes, ſect.190.

7 H.3. Treſpaſs 244. Temps E.1. Ibid.241.

¶ De mulieribus abductis cum bonis virorum ſuorum habeat Rex ſectam de bonis ſic aſportatis.] At the Common Law the husband might have had an Action of Treſpaſs, De uxore abducta cum bonis viri.

This is alſo prohibited by the Statute of Weſtm. the 1. cap.13. and a further puniſhment inflicted then was at the Common Law, and therefore in the original Writ, De uxore abducta cum bonis viri, it is concluded Contra formam Statuti in hujuſmodi caſu proviſo, meaning the ſaid Statute of Weſtm. 1. for this Act of Weſtm.2. extendeth only to the ſuit of the King: and if the Writ be brought at the Common Law omitting the words, Contra formam Statuti, then it is Si A. fecerit, &c. tunc pone, &c. quod ſit, &c. but if Contra formam Statuti be added, then the Writ is, Si A. fecerit, &c. tunc attachies B. ita quod eum habeas, &c.

Regiſt.97.a. F.N.B.89.o. 42 Aſſ.p.16. Dier 256. Regiſt.ubi ſup. 14 H.6.2.

And albeit the words be, Habeat Rex ſectam, yet may the husband alſo have his Action, as is aforeſaid.

¶ De mulieribus.] That is to ſay uxoribus, for of ancient time mulier was taken for a wife.

43 E.3.23. 44 Aſſ. 13. 7 R.2. Treſpaſs 206.

If the wife be taken away, and after be divorced, or if ſhe die, yet the husband ſhall have his Action, De uxore abducta cum bonis viri; for in this Action he ſhall not recover his wife, but damages. And he cannot have an Action for taking her away as his ſervant, becauſe the Law gives him an Action in another form.

If the wife be infra annos nubiles, viz. under the age of twelve years at the time of taking away, ſome have holden that the husband ſhall not have a Writ De uxore abducta cum bonis viri. But I hold the Law is to the contrary, for ſhe is Uxor until diſagreement. 47 E.3. Action ſur leſtat.37.

¶ Cum bonis virorum.] The Plaintiff muſt in his count ſhew the goods in certain. 43 E.3.23.

Albeit the words of the Writ be Rapuit, yet here it is taken for a violent taking away, and not when carnal knowledge is had, ſo as this Action may be brought againſt women as well as men. 43 E.3. ubi ſupra.

¶ Et ſi uxor ſponte reliquerit virum ſuum, & abierit, & moretur cum adultero, amittat in perpetuum actionem petendi dotem ſuam, &c. niſi vir ſuus ſponte, & ſine coertione Eccleſiaſtica eam reconciliet, & ſecum cohabitare permittat, &c.] In this caſe of elopement, and remaining with the adulterer, &c. the wife could not be barred of her Dower by the Common Law, no though a Divorce were ſued and had for the ſaid adultery, as you may read in the firſt part of the Inſtitutes, ſect.36. Fleta lib.5.ca.22. Brit.cap.109. Mirror ca.5. § 5. 1 Part of the Inſtitutes,ſect.36. Cuſtumier de Norm.cap.101.

¶ Si ſponte reliquerit, & abierit, & moretur cum adultero, &c.] Albeit the words of this branch be in the Conjunctive, yet if the woman be taken away not ſponte, but againſt her will, and after conſent, and remain with the adulterer without being reconciled, &c. ſhe ſhall loſe her Dower; for the cauſe of the bar of her Dower is not the manner of the going away, but the remaining with the adulterer in Avowtry without reconciliation, that is the bar of the Dower: See more of theſe words (Reliquerit & Abierit) in this Chapter. 43 E. 3. 19.

If the wife goeth away with her husbands agreement and conſent with A.B. if after A.B. commit adultery with her, and ſhe remain with him without reconciliation, ſhe ſhall be barred of her Dower by this branch; whereof you ſhall read in an ancient Parliament Roll a rare and ſtrange caſe, which was the firſt Judgment that I find given upon this branch, and the Judgment was given in Parliament; and the caſe which I have taken out of the Record it ſelf, was this:

Sir William Paynel Knight, and Margaret his wife did demand the third part of the Mannor of Torpul, as the Dower of the ſaid Margaret after the death of John de Camoys her firſt husband, that Mannor being then in the ſeiſin of the King: The Kings Attorney anſwered, that ſhe ought not to be endowed, Quia receſſit a marito ſuo in vita ſua, & vixit ut adultera cum prædict' Guilielmo, & non fuit viro ſuo reconciliata ante mortem ſuam, & ſic per formam * ſtatuti inde prius editi non debet inde dotari. Rot.Parliam.oct. ſancti Joh.Bapt. An.30 E.1. Rot.2. * Viz. this ſtatute of W.2.cap.34.

The Demandants replied, and pleaded a Deed of the ſaid John Camoys under Seal, in theſe words:

Omnibus Chriſti fidelibus ad quos hoc præſens ſcriptum pervenerit, Johannes de Camoys filius & hæres domini Radulphi de Camoys, ſalutem in domino. Noveritis me tradidiſſe & dimiſiſſe ſpontanea mea voluntate domino Guiliel. Paynel militi Margaretam de Camoys filiam & hæredem Johannis de Gateſden uxorem meam. Et etiam dediſſe, conceſſiſſe, & eidem domino Guilielmo relaxaſſe, & quietum clamaſſe omnia bona, & catalla quæ ipſa Margareta habet, vel de cætero habere poſſit, & etiam quicquid mei eſt de præd' Margaretæ bonis, vel catallis cum ſuis pertinen'. Ita quod nec ego, nec aliquis alius nomine meo in prædicta Margareta, bonis, & catallis ipſius Margareæ cum ſuis pertinen' de cætero exigere, ſeu vindicare poterimus, nec debemus imperpetuum. Volo & concedo, & per Conceſſio mirabilis & inaudita.

præſens ſcriptum confirmo, quod prædicta Margareta cum prædicto domino Guilielmo ſit, & maneat, ex voluntate ipſius Guilielmi. In cujus rei teſtimonium ſigillum meum appoſui, &c. hiis teſtibus.

And concluded their replication thus; Virtute cujus ſcripti dicit, quod non vixit, ut adultera cum prædicto Guilielmo, ſed ut uxor ejuſdem Guilielmi.

Whereupon the Kings Attorney demurred in Law, and the Record ſaith, Et ſuper hoc proceſſum eſt ad judicium, quod non debet dotari.

By this Record it appeareth, that ſhe was barred of her Dower by force of this branch, whereof the Kings Attorney took advantage: and in the Record it is further contained, that the Demandants protulerunt quaſdam alias literas Epiſcoporum de purgatione adulterii, quæ recitantur in memorand'. Et quia ſuper teſtimonio Epiſcoporum non ſunt judicia in curia regis faciend', licet literæ Epiſcoporum in curiam regis fuer' porrectæ, niſi iidem Epiſcopi ad mandatum regis ipſi regi reſcriberent.

This Deed, for the ſtrangeneſs thereof, we have recited at large de verbo in verbum.

46 E.3. Bar.214. 1 E 4.1. 20 H.7.2. 21 H.7.13. But the husband may give Licenſe to a man to carry his wife to his houſe, and this ſhall be a good bar in an Action brought de muliere abducta cum bonis viri.

3 E.3.2. 6 E.3.29. ¶ Moretur cum adultero.] Albeit ſhe doth not continually remain in Avowtry with the adulterer, yet if ſhe be with him and commit adultery, it is a tarrying within this Statute.

Alſo if ſhe once remain with the adulterer in Avowtry, and after he kéepeth her againſt her will; or if the Avowterer turn her away, yet ſhe ſhall be ſaid morari cum adultero within this Act.

If the wife doth elope from her husbands houſe of habitation, and commit adultery in any other the Lands or Mannors of her husband, this without the frée reconciliation of the husband is within the purview of this Statute: See hereafter in this Chapter for this point.

And there be parvæ moræ, and magnæ, and both of them within this branch.

¶ Niſi vir ſuus ſponte, & abſque cohertione Eccleſiæ eam reconciliet, & ſecum cohabitare permittat.] Note that cohabitation is not ſufficient without reconciliation made by the husband ſponte, ſo as cohabitation only in the ſame houſe with the husband availeth her not; a Fortiori, though ſhe remain with the Avowtrer in any of the lands or Mannors of her husband, yet ſhe ſhall be barred of her Dower by this branch, without the husbands frée reconciliation, albeit it hath béen otherwiſe holden: and the reaſon that they yielded, is becauſe it is no elopement, whereas it appeareth before that the words of Reliquerit & Abierit, are not of the ſubſtance of the bar of Dower, but the adultery, and the remaining with the adulterer, as is abovéſaid: and albeit ſhe and the adulterer remain within any of the Lands or Mannors of the husband, yet (the words being, Si uxor ſponte reliquerit & abierit) ſhe hath left and gone from her husband in that caſe, which is a perſonal offence. See the firſt part of the Inſtitutes, ſect. 36. for bars of Dower, whereunto you may add a caſe in Tr. 9 E. 2. fol. 65. in libro meo, That if a woman ſay that ſhe is conceived with child by her husband whiles he lived, and in truth is not, whereby the next heir is diſturbed, ſhe ſhall loſe her Dower, if ſhe acknowledge the ſame before the Juſtices.

19 E.3. Dower 94. 8 E.2. Dower 153 F.N.B.150. 43 E.3.19. Brit.fol.258.b. Tr. 9 E.2. fol.65. b. in libro meo.

And albeit ſhe both cohabite, and be reconciled, yet if it be by the cohertion of the Church, ſhe ſhall be barred of her Dower.

¶ Qui

¶ Qui monialem a domo ſua abducat, licet monialis conſentiat, puniatur per priſonam trium annorum, & ſatisfaciat domui a qua abducta fuerit competenter, & nihilominus redimatur ad voluntatem regis.] Monialis, 1. Monacha, Nonna, quaſi non nupta, ſed Deo conſecrata, he that carrieth a Monk out of his Cloiſter, the Abbot or Prior, &c. of the houſe ſhall not have an Action of Treſpaſs for the taking of him away, but his remedy is by the Writ of Apoſtata capiendo: but that Writ doth not lye for a Nun: and therefore the Common Law did give an Action of Treſpaſs for taking her away, as the Lord might have an Action of Treſpaſs at the Common Law for his Ward; and this Act was made to give a further puniſhment; for the Writ in the Regiſter doth not recite this Act, but the Plaintiff ſhall not take advantage of this Act, unleſs he conclude, Contra formam ſtatuti, &c. Regiſt. 71. 267. 6 E. 3. 17. F.N.B. 233. 22 E. 3. 2. Rot. Pat. part 3. lib. 9. 72. D. Huſſeys caſe. 3 E. 3. 3. 8 E. 3. 52. 29 E. 3. 24. 29 Aſſ. 35. 22 R. 2. Dam. 130. 12 H. 7. Kelw. 20, 21. F.N.B. 90. h. 140.

Now the Writ De moniale abducta ſaith, Quare vi & armis clauſuras ipſius Prioriſſæ apud L. fregit, & ſororem Jocoſam Aſhe commonialem ſuam ibid' exiſtent' cepit, & abduxit, per quod divinum ſervitium in Eccleſia ipſius Prioriſſæ Sanctæ Helenæ London' multipliciter ſubtractum fuit, & diminutum, & alia enormia, &c. Regiſt. 71, 267.

¶ Et nihilominus redimatur ad voluntatem regis.] So as albeit the Abbeſs or Prioreſs ſhall recover damages, and the Defendant have Judgment to remain in priſon by three years, yet he ſhall be indicted and ranſomed at the Kings ſuit in a legal proceeding, Et ſic e converſo.

CAP. XXXV.

DE pueris maſculis, ſive femellis, (quorum maritagium ad aliquem pertineat) raptis & abductis, ſi ille qui rapuit non habens jus in maritagio, licet poſtmodum reſtituat puerum non maritatum, vel de maritagio ſatisfecerit, puniatur tamen pro tranſgreſſione per priſonam duorum annorum. Et ſi non reſtituerit, vel hæredem poſt annos nubiles maritaverit, & de maritagio ſatisfacere non potuerit, abjuret regnum, vel habeat perpetuam priſonam. Et ſuper hoc habeat querens tale breve: Si A. fecerit te ſecurum, &c. tunc pone per vad', &c. B. quod ſit coram Juſticiariis noſtris, &c. oſtens' quare talem hæred' infra ætatem exiſtentem, cujus maritagium ad ipſum A. pertinet, apud C. inventum, tali loco rapuit & abduxit, contra voluntatem ipſius A. & contra pacem, &c. Et ſi hæres ſit in eodem comitatu, tunc addatur iſta clauſula. Et diligenter inquiras ubi ille hæres ſit in balliva tua, & ipſum ubicunque inventus fuerit capias, & ſalvo & ſecure cuſtodias, ita quod eum

See the firſt part of the Inſtitutes, ſect. 203.

eum habeas coram præfat̃ Juſticiariis noſtris ad præfatum terminum, ad reddend' cui prædictorum A. & B. reddi debeat. Et fiat ſecta verſus partem de qua queritur, quouſque per diſtrictionem venerit, ſi habeat per quod diſtringi poterit, vel per contumaciam (ſi non ſit juſtificabilis) exigatur, & utlagetur. Si forte hujuſmodi hæres ducatur, & transferatur in alium comitat̃, tunc Vic̃ illius comitatus fiat tale breve ſub hac forma: Queſtus eſt nobis A. quod B. nuper talem hæredem infra ætatem, & in cuſtodia ſua exiſtent̃, tali loco in comitatu tali rapuit, & de comitatu illo ad talem locum in com̃ tuo abduxit, contra voluntatem ipſius A. & contra pacem, &c. Et ideo tibi præcipimus, quod prædictum hæredem, ubicunque eum in balliva tua invenire poteris, capias, & ſalvo & ſecure eum cuſtodias, ita quod eum habeas coram Juſticiariis noſtris, &c. tali loco & die, quem diem idem A. habet verſus prædictum B. ad reddend' cui de jure reddi debeat. Et ſi hæres antequam inveniri poterit, vel antequam reſtituatur querenti, obierit, nihilominus procedat placitum inter eos, quouſque terminetur, cui reſtitui deberet, ſi ſuperſtes fuiſſet. Nec excuſabitur aut alleviabitur ille, qui injuſte rapuit hujuſmodi hæred' de pœna ſupradicta per mortem hæred', cujus extitit male fidei poſſeſſor dum vixit. Et ſi querens obierit ante placitum terminatum, ſi jus ei competebat ratione proprii feodi ſui, reſummoneatur loquela ad ſectam hæred' querentis, & procedat placit̃ debito ordine. Si vero per alium titulum competat ei jus, ſicut titulo donationis, venditionis, aut alio hujuſmodi titulo, tunc reſummoneatur loquela ad ſectam executor' querentis, & procedat placit̃ ut prædictum eſt. Eodem modo ſi moriatur pars defendens antequam placit̃ terminetur, vel hæres reſtituatur, procedat placit̃ per reſum̃ inter querentem, vel ejus hæredem, ſeu executores, & executores defendentis, vel ejus hæredem, ſi executores non ſufficiant, quoad ſatisfactionem de valore maritagii ſecundum quod in aliis ſtatutis continetur, ſed non quoad pœnam priſonæ, quia quis pro alieno facto non eſt puniendus. Eodem modo cum pendeat placitum inter partes de cuſtodia terræ, vel hæredis, vel utriuſque per commune breve, quod incipit: Præcipe tali, &c. quod reddat, &c. fiat reſummonitio inter hæredes & executores querentis, & ſimiliter hæredes aut executores defendentis, ſi mors alteram partem præveniat ante placitum terminatum. Et cum perveniatur ad magnam diſtrictionem, detur terminus, infra quem tres com̃ teneantur ad minus, in quorum quolibet comitatu fiat publica proclamatio, quod deforciator veniat ad bancum ad diem in brevi contentum, reſponſurus querenti. Ad quem diem ſi non venerit, & proclamatio ſic ſemel, ſecundo, & tertio teſtificatum fuerit, procedatur ad judicium pro querente: ſalvo jure defendentis, ſi poſtmodum inde loqui voluerit. Eodem modo fiat in brevi de tranſgreſſioñ cum quis queritur ſe ejectum fuiſſe de hujuſmodi cuſtodiis.

This

This Act of Parliament hath made divers alterations and additions to the Statute of Merton cap. 6. as hereafter in the Expoſition of this Act ſhall appear. Merton cap. 6.

¶ De pueris maſculis ſive femellis.] The Statute of Merton extended only to heirs males, and this Act extendeth by expreſs words to heirs females alſo. Lib. 9. fol. 72. D. Huſſeyes Caſe.

Alſo the Statute of Merton concerning this matter extended to heirs infra 14. annos; and this Act extendeth to all that are poſt annos nubiles.

¶ Si ille qui rapuerit jus non habens.] The Statute of Merton extended to Laymen only, this Act extendeth as well to Eccleſiaſtical perſons, regular or ſecular, as to Laymen. D. Huſſeyes Caſe, ubi ſupra. 7 E. 3. 11.

¶ Raptis & abductis.] The words of the Statute of Merton are Vi abductis & detentis.

¶ Per priſonam duorum annorum, &c.] The Statute of Merton gave impriſonment donec emendaverit delictum, &c. This Act gives the impriſonment of two years, albeit the Ward be delivered unmarried, or though amends be made.

The King may pardon this impriſonment for two years, which was added by this Act. P. 34 E. 1. Coram Rege. Rot. 30.

¶ De maritagio ſatisfacere non potuerit.] The Defendant ſhall be intended ſufficient to ſatisfie the Plaintiff, if the Plaintiff doth not pray that the Jurors ſhould inquire of his ſufficiency. 8 E. 3. 52. 22 R. 2. damages 130.

¶ Abjuret regnum, vel habeat perpetuam priſonam.] And in this caſe the election is not given to the Defendant, but it is in the diſcretion of the Court to give judgment either of abjuration, or perpetual impriſonment. Lib. 9. fol. 73. D. Huſſeys Caſe.

This puniſhment is alſo added to the Statute of Merton.

Albeit the party that is by judgment abjured return again, yet ſhall he not be hanged, becauſe he was not abjured for felony, but he may be puniſhed for his contempt, and remanded.

¶ Et ſuper hoc habeat querens tale breve, &c.] By this branch the Writ of Raviſhment of Gard is given, and the form of the Writ is here expreſſed. Temps E. 1. gard 133. 3 E. 2. ibid. 6.

The Statute of Merton extended to the Writ of Right of Ward. 11 H. 3. ibid. 141. 11 E. 2. ibid. 127. 33 E. 3. ibid. 163.

A Gardein in ſocage cannot have a Raviſhment of Ward upon this Act, but only a Gardein in Chivalry, but the Gardein in Socage ſhall have a Raviſhment de Gard. But it was adjudged ſoon after the making of this Act, that by the 24. Chapter of this Parliament, which giveth the Writ In conſimili caſu cadente ſub eodem jure & ſimili indigente remedio, the Gardein in Socage ſhall maintain a Writ of Raviſhment of Ward for the body, and a Writ De ejectione cuſtodiæ for the land. 1 E. 3. 19, 20. 4 E. 3. 5. 17 E. 3. 42. 26 E. 3. 65. 6 R. 2. gard 166. 13 H. 4. 17. F. N. B. 140. c. 39. f.

For the cuſtom of the City of London concerning Orphanage, ſee 32 E. 3: 8 R. 2. 32 E. 3. gard 31. 8 R. 2. gard 166.

In this Writ if the iſſue be found for the Plaintiff, yet upon the contexte of this Act the Jury ſhall enquire, 1. of the value of the marriage, 2. of the age of the Ward, and 3. whether he be married or no: and for the firſt and ſecond they muſt give a direct verdict; for the other they may give a conditional verdict, 9 E. 3. 37, 38. 22 E. 3. 19. 24 E. 3. 49.

dict, as to ſay, whether he be married or no they know not, and if he be married then alſes greater damages, which enquiry is but an inqueſt of office.

9 E.2. 37,38. 14 E.3 gard 157. 19 E.3. gard 172,127. 16 E.3. ibid. 107. 17 E.3. 57. 45 E.3. 15. 47 E.3. 19. 11 H.4. 80. 21 H.6. 41. 32 H.6. 3. 11 H.7. 5.

Now albeit the verdict be conditional, yet in this caſe the judgment ſhall not be conditional, but in this caſe the Plaintiff may have judgment to recover the marriage and leſſer damages, and have execution of the body, and if the Sheriff return that he is married, then may the Plaintiff have a Scire facias for the greater damages, and have judgment to recover them, and ſo it is in an Action of Detinue, &c.

¶ Rapuit & abduxit.] There be two ſorts of Raviſhments of Wards, that is to ſay, Raviſhments in deeds, and Raviſhments in Law, and this Statute extends to both of them.

First part of the Inſtit. ſect. 202.

Raviſhments in deed, as when one take and carry away a Ward; and Raviſhments in Law be, as if the Ward enter into Religion, this is a Raviſhment in Law, for which the Soveraign ſhall anſwer, for that his admiſſion of him is a Raviſhment in Law.

8 E.3.52.

If a man or woman marry a Ward to his or her daughter, or to any other, this is a Raviſhment in Law.

11 H.4.24. 30 E.3.6.b.

A man procureth a Ward to go from his Gardein, this is a Raviſhment in Law.

38 E.3.18. 38 Aſſ.

If one raviſh a Ward, or eject the Lord to the uſe of a ſtranger without his privity, yet if the ſtranger agree thereunto, he is the raviſher or ejecter.

18 E.3.25. 41 E.3. 15. First part of the Inſtitutes, ſect. 114. many authorities there cited.

This Act is intended of a Gardein in Chivalry, as hath been ſaid: and though the Father ſhall have a Writ of Raviſhment of Ward, Quare filium ſuum & hæredem rapuit, cujus maritagium ad ipſum pertinet; and albeit the anceſtor ſhall have the like Action for the taking of his collateral heir apparent, yet none of thoſe are within this Statute, but remain at the Common Law.

See the firſt part of the Inſtitutes, ſect. 114.

7 H.4.9.

The Count in the Raviſhment of Ward upon this Act muſt not be by Vi & armis.

¶ Si forte hujuſmodi hæres ducatur & transferatur in alium comitatum.] A man cannot have a Writ of Raviſhment of Ward in the County of York; and ſuppoſe the raviſhment in the County of Derby, Et quod abductus fuit ab eodem Comitatu uſque Coñ Eborum. But his original muſt be in the County of Derby, and by this branch he ſhall have the Writ here mentioned, Queſtus eſt nobis directed to the Sheriff of York, whither the body is carried.

Dier 12 El. 289. 34 E.3. gard 164.

If the Ward be reſiant in another County then where the land is, the Lord may have a Writ of Right of Ward in that forrein County where the Ward is reſiant.

40 E.3.6. 21 E.3.45.

¶ Et ſi hæres obierit.] Albeit the body ſhall be recovered in the Writ of Raviſhment of Ward given by this Act, yet it is expreſly provided by this branch that the death of the heir ſhall not abate the Writ; but otherwiſe it is in a Writ of Right of Ward, for in that caſe the death of the heir ſhall abate the Writ; and ſo it is if the heir (hanging the Writ) cometh to his full age, the Writ of Right of Ward ſhall abate, but not the Raviſhment of Ward, but if he be of full age at the time of the Writ of Raviſhment brought, then the Writ ſhall abate for the words of the Writ, Cujus maritagium ad ipſum pertinet.

46 E.3. brief 776. 18 E.3. Scire fac' 10. 34 E.1. gard 129. 30 E.3.14. 9 E.4.50.

¶ Et ſi querens obierit ante placitum terminatum.] Two joynt Lords or two coparceners of a Seigniory bring a Writ of Ward, and one of the Plaintiffs die, the Writ is abated, and the ſurvivor ſhall not have a reſummons, for this Act giveth the reſummons either to the heir, or to the Executors,

19 E.3. Scire fac' 119. 38 E.3.36.

ecutors, and not to any ſurvivor, who may have a new original; and ſo it is if the baron and feme be Plaintiffs, and the husband dieth, the Writ ſhall abate, and no reſummons ſhall be ſued, becauſe one of the Plaintiffs is alive, to whom the Wardſhip ſurviveth, & pars querens non obiit; and the nature of a reſummons is to continue the original Writ, for by the Common Law no reſummons did lie but againſt him that was party to the original, or which came in by voucher or receit, &c. ſo long as the Tenant lived, and only where the Plea was put without day, without any laches or default in the party, as upon a conuſans granted and failer of right by the demiſe of the King, the non venú of the Juſtices, or when the paroll demurred for nonage, or upon the allowance of a protection and the like; but if the Proces be not continued by the negligence of the Plaintiff, no reſummons lieth. 24 E.3.48. 5 H.7.38.

Alſo no reſummons lieth for the Defendant or Tenant, becauſe reſummons is compounded of re, ſub, & moneo: and the Defendant or Tenant never ſued out ſummons, and therefore can have no reſummons, neither ſhall a reſummons be granted but againſt him that was formerly ſummoned, and upon the reſummons by this Act the party cannot vary from the former plea, but only for matter that cometh of puiſne time, as a releaſe, &c.

And where ſome have holden that the makers of this Act were not learned in the Law, becauſe the reſummons is given to the heir, where by Law the heir cannot have the Wardſhip being but a chattel, the makers of the Law knew that as well as the Objector, for it is ſaid in 9 E. 3. that they were ſage gents that were at this Parliament, but ſeing no reſummons in this caſe did lie by the Common Law, the makers of this Act gave the reſummons to the heir when the Wardſhip accrued ratione proprii feodi, for there the inheritance of the tenure might come in queſtion which concerned the heir more then the Wardſhip, hac vice, could concern the Executors, and as if the Defendant make his Teſtament, and deviſeth the Ward to another, yet the reſummons ſhall be awarded by the next ſubſequent clauſe of this Act againſt the Executors, although they have nothing in the Ward, and, for their inſufficiency againſt the heir, who cannot claim the Ward being but a chattel; ſo in novo caſu providebant novum remedium, and in one caſe charged the heir of the Defendant, whom the Law could not charge, and in another gave remedy to another heir upon good reaſon, who by Law had none. 11 H.4.54. per Hill. 9 E.3.22. 18 E.3. 4,5. 24 E.3.48,49. 18 E.3.4.b.

¶ Eodem modo ſi moriatur pars def. &c.] If a Writ of Ward be brought againſt two, and one of them die, no reſummons ſhall be ſued by this branch, becauſe one of the Defendants are alive, and he ſhall have the Ward by ſurvivor, and this branch giveth the reſummons either againſt the Executors or heir, Et pars defendens non eſt mortuus. 50 E.3.7.b.

And the nature of a reſummons (as hath been ſaid) is to continue the original.

If the Plaintiff in the Writ of Ward dieth, and a reſummons is ſued by the heir, upon the next precedent branch, if the Defendant dieth the heir ſhall have a reſummons againſt the Executors of the Defendant, for the words of this branch be, Inter querentem, vel ejus hæredem ſeu executores, & executores defendentis, &c. 24 E.3.48.

Though this branch ſaith, eodem modo, yet for ſo much as is otherwiſe provided for, there is no reference by theſe words to the former clauſe, for a reſummons lieth not againſt the heir of the Defendant, if the Executors have aſſets, and it is a good plea for the heir to ſay that the Executors have ſufficient; but if the Executors have aſſets for part, and the heir aſſets for part, yet no reſummons is given againſt them both by this Act. 7 E.3.48. 18 E.3. 4,5. 24 E.3.49.

And in a reſummons againſt the Executors upon this Act of Parliament pleinment adminiſter is a good plea; but then the Plaintiff ſhall have judgment maintenant to recover the Ward; and in a reſummons againſt the heir for the

inſufficiency of the Executors, it is a good plea for him, that he hath nothing by deſcent in fee-ſimple.

If the Executors have not aſſets, ſo as the heir is to be charged, yet ſhall damages only be recovered againſt him: But the puniſhment ordained by this Act ſhall not be inflicted upon him, for that ſhould be againſt a Maxim of the Common Law here rehearſed, Quod quis pro alieno facto non eſt puniendus, & pœna ex delicto defuncti hæres teneri non debet; And again, In hæredes non ſolent tranſire actiones, quæ pœnales ex maleficio ſunt: And, Toties in hæredem damus actionem de eo quod ad eum pervenit, quoties ex dolo defuncti convenitur non toties ex ſuo. Bracton.

And, Filius non portabit iniquitatem patris.

¶ Eodem modo cum pendeat placitum inter partes de cuſtodia terræ, vel hæredis, vel utriuſque, per commune breve Præcipe tali, &c. quod reddat, &c.] Per commune breve. Hereupon it is called, Breve de communi cuſtodia, that is, Breve de recto de cuſtodia, and to that Writ only the Statute of Marlbridge extended. Marlb. cap. 7.

¶ Et cum pervenerit ad magnam diſtrictionem, detur terminus.] The Statute of Marlbridge gave a Proclamation, Si ad magnam diſtrictionem non venerint, &c. ſo as by that Act the grand diſtreſs muſt be returned before the Proclamation iſſued, but by this Act the Proclamation is to iſſue when the grand diſtreſs is granted, for the words be, Cum pervenerit ad magnam diſtrictionem, detur terminus, &c. Marlb. cap. 7. 14 E. 3. Proclam. 8. 30 E. 3. 10, 11. 49 E. 3. 19.

Alſo the Statute of Marlbridge provided, that bis vel ter, &c. infra medietatem anni ſequentis, the Proclamation ſhould be made, ſo as the Counties were put in certain when the Proclamation ſhould be made; now this Act abridgeth the ſix months to three months, and ſets the time of the Proclamation in certain. This branch extendeth only to the Writ of Right of Ward, as the Statute of Marlbridge did, vide in the end of this Chapter. Marlb. cap. 7.

This branch reſtraining the Common Law, extendeth not to the vouchée, but only to the Defendant in Deed, and not to the Defendant in Law. 29 E. 3. 48. 13. Proclam. 9.

If Propter brevitatem temporis there were but two Proclamations made, the Plaintiff ſhall not have a Writ, Cum allocatione comitat', becauſe he purſued not the Statute, and it was his folly that the Writ contained not longer time. 3 H. 4. 1.

In a Writ of Ward againſt two, the one appeareth, and the other makes default, or if the one have nothing, and the other is diſtrained, no Proclamation ſhall be awarded againſt the one of them, for both of them make but one Defendant, and therefore either againſt both, or againſt none. 19 E. 3. Procl. 5. & 10. 17 E. 3. 70. 14 H. 4. 37.

If a diſtreſs with a Proclamation be granted, and the Defendant hath nothing but within a franchiſe, the Sheriff ſhall make the Proclamations in the County, and the Baily of the liberty ſhall diſtrain him. 2 H. 4. 1.

The Proclamation muſt be granted in the ſame County where the original is brought; and therefore if the Plaintiff ſurmiſe that the Defendant hath ſufficient in a forrein County, he ſhall have a diſtreſs at the Common Law, but not with Proclamation by this Statute. 17 E. 3. 70, 71.

¶ Veniat ad bancum.] This extends not to Juſtices in Eyre, nor to Commiſſioners of Oier and Terminer, but the Plaintiff may have an Action of Treſpaſs before them at the Common Law. 3 E. 3. Proclam. 17. 29 E. 3. 37.

¶ Ad

¶ Ad quem diem ſi non venerit, &c.] See 17 E. 3. 19. here in the next Paragraph, by which it appeareth that he muſt come Ad quem diem, & non ad alium. 17 E.3.19.

¶ Procedatur ad judicium.] At the Common Law he could not have Judgment by default without Plea of the party, &c. but Diſtreſs infinite; if upon the Proclamation returned the Defendant be demanded, and appear, and taketh a day by Prece partium, and at that day make default, the Plaintiff ſhall not have Judgment upon this Statute, becauſe he made not default at the return of the Diſtreſs, for this Act ſaid, Ad quem diem ſi non venerit. 22 E.3.19.

And where it is ſaid, Procedatur ad judicium, yet upon this default no Judgment can be yet given, but the Court muſt award a Writ to the Sheriff, to inquire of the value of the marriage, of the age of the Ward, and whether he be married, &c. as is aforeſaid; and upon the return of that Writ, then Judgment ſhall be given. 42 H.3.1. 38 E.3.21.

But if the Defendant appear at the return of the Proclamation, and confeſs the Action, the Plaintiff ſhall have Judgment of the damages in his Count.

¶ Salvo jure defendentis, ſi poſtmodum inde loqui voluerit.] Some have conceited upon theſe words [Inde loqui voluerit] that if a man recovereth in a Writ of Right of Ward by default, that the Defendant might have a Writ of Right of Ward, and recover again that which he formerly loſt; but by reaſon of this word [Poſtmodum] thoſe words ſhall be intended, that he may have a Writ of Right of Ward after that another Tenant of the ſame land happen to dye his heir within age, but for the ſame Wardſhip, whereof Judgment is given in the Writ of Right of Ward, the Defendant is barred. 16 E.3. Gard 108.

¶ Eodem modo fiat in brevi de tranſgreſſione cum quis queritur ſe ejectum fuiſſe de hujuſmodi cuſtodiis.] The Writ here intended, is an Ejectment de gard, Breve de ejectione cuſtodiæ, which is a Writ at the Common Law. De Attornato inde. 3 E.3.7. 30 E.3. 10,11. Regiſt.162.

Inter H. & R. de quadam tranſgreſſione eidem H. per præfatum R. illata ut dicitur.

By this branch, Proclamation ſhall be made in this Writ of the Ejectment of gard, which ſhall not be made in the Raviſhment de gard. Regiſt.ubi ſupra. 14 E.3. Procl.7.

CAP. XXXVI.

QUia domini cur', & alii qui cur' tenent, & Seneſcalli, volentes gravare ſubditos ſuos, cum non habeant legalem viam eos gravandi, procurant alios movere querelas verſus eos, & dare vadium, & offerre plegios, vel impetrare brevia, & ad ſectas hujuſmodi querentium compellunt eos ſequi comitatum, hundredum, wapentachium, & cur', quouſque finem fecerint cum ipſis pro voluntate ſua: Statutum eſt, quod hoc de cætero non fiat. Et ſi quis per hujuſmodi falſas querimonias fuerit attachiatus, replegiet diſtrictionem ſuam ſic captam, & poni fac' loquelam coram Juſticiariis, coram quibus ſi Vicecomes, vel alius ballivus, vel dominus, poſtquam ſit diſtrictus formaverit querimoniam ſuam, advocaverit juſtam diſtrictionem ratione hujuſmodi querimoniarum coram eis factarum, & replicet, quod hujuſmodi querimoniæ movebantur verſus eos malitioſe, ad inſtantiam ſeu procurationem Vic', aut aliorum ballivorum, aut dominorum, admittatur illa replicatio. Et ſi ſuper hoc convicti fuerint, verſus dominum Regem redimantur, & nihilominus hujuſmodi ſic gravatis damna in triplo reſtituantur.

This Act was made in affirmance of the Common Law, and to add a greater puniſhment then the Common Law did; for the delinquent ſhall be ranſomed at the Kings ſuit, and the party grieved ſhall recover treble damages, where he ſhould recover but ſingle at the Common Law.

43 E.3.20. F.N.B. 98.m. Regiſt. judic.37. If A. procure B. to ſue an Action in any Court of Record, or other inferiour Court againſt C. he may have an Action of Deceit againſt A. at the Common Law, and recover his ſingle damages.

41 E.3. Avowry 78. 11 H.4.91. 13 H.4.2. & E.4.5. ¶ Quia domini curiarum, & Seneſchalli, &c.] This Act extendeth to Court Barons, Leets, and to County Courts, Tourns, Hundreds, and not to the Courts at Weſtminſter (they being afterwards named in this Act, &c.) but they remain at the Common Law.

13 H.4.2,3. 41 E.3. Avowry 78. Though Seneſchalli be here named, yet Bailiffs, and other Officers are within this Act, and the Bailiff, or other officer may be puniſhed, without naming the Lord.

¶ Volentes gravare ſubditos ſuos.] Subditos is here taken for any man that is ſubject to their Juriſdiction, and ſo it is to be taken in all other like places.

22 E.3.15. 11 H. 4.91. 13 H.4.2. ¶ Procurant alios movere querelas, &c.] Theſe words are general, and therefore if the Lord, Bailiff, Steward, or any other officer procure any man to ſue a lawful Action, he ſhall be puniſhed by this Act, Quia culpa eſt ſe immiſcere rei ad ſe non pertinenti.

13 H.4.2.b. ¶ Replegiet diſtrictionem ſuam.] This Act extendeth only to a Replevin, and not to an Action of Treſpaſs, or any other Action.

And here a diſtreſs is taken for an Attachment.

¶ Advo-

¶ Advocaverit juſtam diſtrictionem ratione hujuſmodi querimoniar', &c.] By the letter of this branch the Defendant muſt make an Avowry, but it muſt be extended further then the letter: for admit that the Lord, &c. will (to ſave himſelf from treble damages) make no Avowry, but plead that the goods were not diſtrained, &c. or the like plea, whereupon iſſue being joined, the Plaintiff after proof of the iſſue may give in evidence for the treble damages the purview of this Act, and that the Lord now Defendant, procured a ſuit, &c. contrary to this Act, and that he is guilty of the Diſtreſs, or Attachment, and therefore ought to yield treble damages; and if this be found by the Jury (although it were not pleaded) the Plaintiff ſhall recover treble damages; for it lyeth not in the power of the Defendant by his falſe plea to excuſe himſelf of treble damages given by this Act: as if the Diſſeiſor alieneth to perſons unknown, and in an Aſſiſe brought againſt the Diſſeiſor he plead Nul ten' de franktenement noſme in le briefe, & ſi trove ne ſoit nul tort nul diſſeiſin, the Plaintiff may give in evidence, that the ſaid alienation was made to defraud the Plaintiff of his Action, and that the Diſſeiſor took the profits, in which caſe he is to be relieved by the Statutes of 1 R.2. 4 H.4. and 11 H. 6.

Vide lib.5. fol.60. Gooches caſe, a Statute given in evidence, and not pleaded.

1 R.2. cap.9. 4 H.4. cap.7. 11 H.6. cap.4. 9 H.6.14,15. lib.1. cap.123. Chudleys caſe.

See before cap.35. in the caſe of Raviſhment of Ward.

¶ Malitioſe, ad inſtantiam, ſeu procurationem Vicecom̃, aut aliorum ballivorum, ſeu dominorum.] Here it is to be obſerved that the procurement is the ſubſtance, and that doth imply, that it was done malitioſe; and therefore if the Jury find the procurement, and that it was not done maliciouſly, yet the Court ſhall (for that it judicially appeareth to them) adjudge it done maliciouſly.

22 E.3.15.

¶ Verſus dominum regem redimantur, &c.] That is, they ſhall be fined to the King in that ſuit brought by Replevin.

CAP. XXXVII.

QUia etiam Ballivi, ad quos ex officio pertinet diſtrictiones facere, gravare volentes ſubditos ſuos, ut ab eis pecuniam extorqueant, mittunt ignotos ad faciend' diſtrictiones, ea intentione, ut ſubditos gravare poſſint, per hoc quod ſic diſtricti non habentes notitiam perſonarum non permittunt hujuſmodi diſtrictiones ſuper eos fieri: Statutum eſt, quod nulla diſtrictio fiat niſi per ballivos notos & juratos. Et ſi alio modo diſtrictiones fecerint, & de hoc convicti fuerint, ſi gravati breve de tranſgreſſ. impetraverint, reſtituant gravatis damna [*alias in triplo*] & verſus regem graviter puniantur.

This Act is made in affirmance of the Common Law, and for reformation of an abuſe by Sheriffs, who uſed to make Bailiffs to diſtrain, who were unknown, to the intent that the owner of the cattel might make Reſcous, and thereupon the Sheriff, &c. to extort money from him; wherefore remedy is given by this Act.

¶ Nulla

Lib. 3. fol. 12. Sir William Herberts caſe. 25 E. 3. cap. 25.

¶ Nulla diſtrictio fiat.] At the time of the making of this Act, this Proceſs lay in an Action of Debt, (for the Capias in that caſe is given by the Statute of 25 E. 3.) ſo as this Statute extending to an Action of Debt, although the latter Act give a Capias, yet the Capias coming in lieu of the Diſtreſs is within this Act.

¶ Niſi per ballivos notos, & juratos.] By this Act the Bailiffs muſt both be known and ſworn: an Act yet ſtanding in force, and worthy to be put in execution: Fleta doth render this branch thus:

Fleta.

Proviſum eſt quod nulla diſtrictio fiat per ballivos regis, niſi jurati fuerint & noti, & ſi quis alio modo diſtringeret, & de hoc convincatur ad ſectam diſtricti, cui in hoc caſu conſulitur per breve de tranſgreſſione, damna reddet gravato, & verſus regem graviter punietur.

Mirror ca. 5. § 5.

Of this branch the Mirror ſaith thus, Leſtatute de diſtreſſes eſt diſtinguiſhable, car in diſtreſſes torcious ſans garrant tient lieu le judgment de robbery, & per garrant cheſcun eſt reſceivable conus & diſconus. But the Statute is in the Negative, and neceſſary to be obſerved.

¶ Damna.] Some Editions have alias in triplo, but the original is damna, and not in triplo, and therewith agreeth Fleta.

CAP. XXXVIII.

Fleta lib. 4. cap. 5. See 21 E. 1. Stat. de non ponendis. 34 E. 1. Ordinat. &c. dit ſuper Chart. cap 9. Marlbr. cap. 24. For Jurors. See Cuſtumier de Norm. cap. 69.

QUia etiam Vic Hundredarii, & Ballivi libertatum conſueverunt gravare ſubditos ſuos ponendo in Aſſiſis & juratis homines languidos, & decrepitos, perpetua vel temporali infirmitate languentes, homines etiam tempore ſummonition' ſuæ in patria non commorantes, ſummonendo etiam effrenatam multitudinem juratorum, ita ut a quibuſdam eos in pace dimittendo pecuniam extorqueant, & ſic fiunt aſſiſæ & juratæ multotiens per pauperiores, divitibus pro ſuo dando domi commorantibus: Statutum eſt, quod de cætero non ſummoneantur in una aſſiſ. plures quam xxiv. Senes etiam videlicet ultra 70. annos, perpetuo languidi, vel tempore ſummonitionis infirmi, vel in patria non commorantes, non ponantur in juratis, vel minoribus aſſiſis. Nec etiam ponantur in Aſſiſis vel juratis, licet in proprio com̃ capi debeant aliqui qui minus ten̄ habeant, quam ad valentiam viginti ſolidorum per annum. Et ſi hujuſmodi Aſſiſæ & Jurat̄ extra comitatum capi debeant, non ponantur in eis aliqui qui minus tenement̄ non habeant, quam ad valentiam xl s. per annum, illis exceptis qui teſtes ſunt in chartis, vel aliis ſcriptis, quorum præſentia neceſſaria eſt, dum tamen potentes ſint ad laborandum. Nec debet iſtud ſtatutum extendi ad magnas Aſſiſas, in quibus oportet aliquando ponere Milites in patria non reſidentes, propter paucitatem Militum, dum tamen tenement̄ habeant in comit̄. Et ſi Vic̄ vel ſubbalivi ſui, vel ballivi libertatum contra iſtud ſtatutum in aliquo articulo

articulo venerint, & ſuper hoc convincantur, reſtituant dampna gravatis, & nihilominus ſint in miſericordia domini Regis. Et habeant Juſticiarii ad aſſiſas capiend' aſſign', cum in com̃ venerint, poteſtatem audiendi querimonias ſingulorum conquerentium, quoad articulos in iſto ſtatuto contentos, & juſticiam in forma prædicta exhibend'.

The miſchief doth plainly appear by the preamble, and the end of theſe miſchiefs was, that the Sheriffs by ſuch means did pecuniam extorquere, &c.

See the firſt part of the Inſtitutes for the antiquity and right inſtitution of trials by twelve men, and of the number of twelve. Sect. 234. and Magna Charta cap. 29.

¶ In una aſſiſa plures quam 24.] This was but the abuſe of the Sheriff, for though the Writ, which is his warrant, is but twelve, yet regularly he muſt return twenty four, and no more, unleſs it be in ſpecial caſes: Supponendo, inquit Fleta, ſuperfluam hominum multitudinem, ita quod quaſdam in pace dimitterent prece vel precio; but in a Writ of Right there be ſixtẽ Jurors returned only. 2 H. 7. 8. Fleta ubi ſupra. Dier 1. Mar. 98. Fleta ubi ſupra.

¶ Senes ultra 70. annos, &c.] This Statute is a direct prohibition in it ſelf, and therefore the party grieved may have his Action upon this Act againſt the Sheriff without giving any notice either of this, or of ſickneſs, or non-commorancy, and yet the uſe is to ſue out a Writ grounded upon this Act to the Sheriff that he return them not. F.N.B. 166. d. F.N.B. ibid. a.

But without queſtion notice by word were good, if notice were requiſite; and this ſeemeth to be in affirmance of the Common Law, for if a Coroner be ſenio confractus, it is a good cauſe to remove him, and the Prophet David ſaith, Dies noſtrorum in ipſis ſeptuaginta anni. F.N.B. ibid. a. Regiſt. 177. Pſalm 89. 10.

¶ Perpetuo languidi.] As if he be morbo paralyſi percuſſus, or if he be leproſus, or ſtricken with any other continual ſickneſs.

It alſo extended to men that are blind, deaf, of no ſound memory, or ſo lame as they cannot well go nor ſtand, and theſe ſhall take the benefit of this Statute, of what age ſoever they be; and this point is in affirmance of the Common Law, for theſe be good cauſes to remove a Coroner. F.N.B. 164. Regiſt. 177.

¶ Tempore ſummonitionis infirmi.] This muſt be ſo intended, ſo infirm as he is not able to ſerve; and this is alſo in affirmance of the Common Law.

¶ In patria non commorantes.] The Statute of Articuli ſuper Chartas doth add to this, that albeit they be commorant in the ſame County, yet muſt the Jurors have two qualities, viz. two of the moſt, and one of the leaſt, that is moſt near the place, moſt ſufficient, and leaſt ſuſpicious, or otherwiſe the Demandant ſhall render double damages, and be grievouſly amerced. Art. ſuper Chart. cap. 9. Regiſt. 177. F.N.B. 165. Regiſt. ubi ſup.

See what a Coroner ought to be, viz. Qui melius ſciat et poſſit officio illi intendere. Regiſt. ubi ſupra.

If any be returned contrary to the purview of this Act, he cannot be challenged, neither can the party grieved alledge the matter for his diſcharge, but he muſt take his remedy by Action againſt the Sheriff upon this Act. F.N.B. 166. d.

Now

Now may it be a queſtion, Who is the party grieved that ſhall have his Action, if the Sheriff return magis remotos, minus ſufficientes, & magis ſuſpectos? whereunto hear what S. William Herle Chief Juſtice of the Common Pleas ſaith, This Statute may be intended, in caſe where the Demandant or Plaintiff is delayed of his ſuit by ſuch return of the Sheriff, that he by the Statute ſhall recover damages againſt him, or where the Tenant or Defendant after he hath loſt his land, or cauſe by the oath of them that be ſo returned contrary to the form of the Statute, and after he doth convict them in an attaint, and thereby be reſtored, then he may have his Action upon the Statute to recover his damages, &c. and thereunto Hill Juſtice agreed, which (as concerning the Tenant or Defendant) muſt of neceſſity be intended of this Act of W. 2. for the Statute of Articuli ſuper Chartas give double damages only to the Demandant, and not to the Tenant: alſo hereupon it followeth that the Act of Articuli ſuper Chartas is but an Expoſition of this Act, and addeth a further penalty.

8 E. 3. 30.
7 E. 3. 26. bis.

More ſhall be ſaid hereof, when we come to the ſaid Statute of Articuli ſuper Chartas.

Art. ſuper Chart. cap. 9.

¶ Vel in minoribus aſſiſis.] For as hath been ſaid, this Act extends not to a Writ of Right, as hereafter in this Act by expreſs words it appeareth.

¶ Qui minus tenementa habeant quam ad valenciam viginti ſolid' per annum, &c.] Theſe ſums of 20 s. and 40 s. are altered by later Statutes, viz. by 2 H. 5. and 27 Eliz.

2 H. 5. c. 3. Stat. 2.
27 Eliz. cap. 10.

See the firſt part of the Inſtitutes, ſect. 464.

¶ Exceptis qui teſtes ſunt in Chartis, &c.] Here is an exception of witneſſes named in the Deed, who in many caſes are joined to the Jury without regard had to age or yearly revenue, both becauſe the Sheriff hath an expreſs warrant to ſummon or diſtrain them by name, and for that their preſence is neceſſary, and yet with this caution, Dum tamen potentes ſint ad laborandum.

Stat. of York c. 2.
6 H. 3. Proc. 209.
8 H. 3. ibid. 210.
Kelw. 97. Regiſt. judic'. 6. b. 7. b. 56, 58. 69.

¶ Et habeant Juſtic' ad aſſiſas capiend' aſſignat'.] This clauſe is in the affirmative, and therefore the party grieved may take his remedy upon this Act, either before Juſtices of Aſſiſe, or in any other Court that have conuſans thereof: for Juſtices of Aſſiſe could not have power in this caſe without expreſs words, but other Judges have power without any expreſs words, and therefore if the meaning be to exclude other Judges, then thoſe that be named, there muſt be words negative, viz. and not in any other Court, nor before any other Judges.

CAP.

CAP. XXXIX.

QUia Juſticiarii (ad quorum officium ſpectat unicuique coram eis placitandi juſticiam exhibere) frequentius impediuntur, quò minus officium ſuum debit' modo exequi poſſint, per hoc quod Vic' brevia originalia & judicialia non retornant, per hoc etiam quod ad brevia Domini Regis falſum retornant reſponſum : Providit Dominus Rex & ordinavit, quod illi qui timent malitiam Vic', liberent brevia ſua originalia & judicialia in pleno com', vel *in* retro com', ubi fit collatio denariorum Domini Regis, & capiatur billettum de Vic' præſente, vel Subvic', in quo billetto contineantur nomina petentium & tenentium in brevi nominat', & ad requiſitionem illius qui breve liberavit, apponat' billeto ſigillum Vic' vel Subvic' in teſtim', & fiat mentio de die liberationis brevis. Et ſi Vicecomes vel Subvicecomes hujuſmodi billetto ſigillum ſuum apponere noluerit, capiatur teſtimonium Militum, & aliorum fide dignorum qui præſentes fuerint, qui ſigill' ſua hujuſmodi billetto apponant. Et ſi Vic' brevia ſibi liberata non retornaverit, & ſuper hoc ad Juſticiarios perveniat querimonia, mandetur per breve de judicio Juſtic' ad aſſiſas capiendas aſſign', quod inquirent per eos qui præſentes fuerint quando breve Vic' liberatum fuit, ſi ſciverint de illa deliberatione, & inquiſitio returnetur. Et ſi compertum fuerit per inquiſitionem, quod breve fuit ei liberat', adjudicentur querenti vel petenti damna, habito reſpectu ad qualitatem & quantitatem actionis, & ad periculum quod ei evenire poſſet, per dilationem quam patiebatur. (*Anno* 2 *E.* 3. *cap.* 5. *apud Not'.*) Et per iſtam viam fiat remedium quando Vic' reſpondet, quod breve adeo tarde venit, quod præceptum Regis exequi non potuit. Multociens etiam capiunt placita dilationes per hoc quod Vicecom' reſpondet, quod præcepit balivis alicujus libertatis, qui nihil inde fecerint; & nominet libertates, quæ nunquam retornum brevium habuerunt. Propter quod, ordinavit Dominus Rex quod Theſaurarius & Baron' de Scaccario liberent Juſticiar' in rotulo omnes libertates in quibuſcunque com' qui habent retornum brevium. Et ſi Vicecom' reſpondet quod retornum fecit balivo alterius libertatis, quam alicujus contentæ in prædict' rotulo, ſtatim puniatur Vicecom' tanquam exhæredator Regis & coronæ ſuæ. Et ſi forte reſpondeat quod mandavit balivo alicujus libertatis, quæ veraciter retorn' habet (*qui inde nihil fecit,*) mandetur Vicecom' quod non omittat propter aliquam libertatem prædict', quin exequatur præceptum Domini Regis, & quod Scire faciat balivis, quibus fecit retorn' quod ſint ad diem in brevi contentum ad reſpondendum, quare de præ-

Fleta li. 2. cap. 61
Art. ſuper Chart. cap. 16.

cepto Domini Regis executionem non fecerint. Et ſi ad diem venerint, & ſe acquietent, quod retornum brevis non fuit eis factum, ſtatim condemnetur Vicecom' Domino illius libertatis, & ſimiliter parti læſæ per dilationem in reſtitutionem damnorum. Et ſi ad diem non venerint balivi, vel venerint, & ſupradicto modo ſe non acquietaverint in quolibet brevi de judicio, quamdiu durat placitum, præcipiatur Vicecomiti quod non omittat propter libertatem, &c. Multotiens etiam Vicecom' falſum dant reſponſum, quo ad illum articulum quod de exit', &c. mandantes aliquando & mentientes, quod nulli ſunt exitus, aliquando quod parvi ſunt exitus, cum de majoribus reſpondere poſſint, aliquando non facientes mentionem de exitibus. Propter quod ordinatum eſt & concordatum, quod ſi querens petat auditum reſponſionis Vicecom', concedatur ei. Et ſi offerat verificare, quod Vicecom' de majoribus exitibus Regi reſpondere potuit, fiat ei breve de judicio ad Juſtic' ad aſſiſas capiendas aſſignatos, quod inquirant in preſentia Vicecomitis, ſi intereſſe voluerit, de quibus & quantis exit' Vicecom' reſpondere potuit a die impetrationis brevis uſque ad diem in brevi contentum (*al' receptionis vide P.* 27 *H.* 8. *cap.* 10. *fol.* 3. *&* *P.* 20 *H.* 6. *cap.* 10. *fol.* 25.) & cum inquiſitio retornata fuerit, ſi de pleno prius non reſponderit, oneretur de ſuperpluſagio per extractas Juſtic' libertates ad ſcaccarium, & nihilominus graviter amercietur pro concelamento. Et ſciat Vicecom' quod redditus, blada in grangia, & omnia mobilia, præter equitaturam, indumenta, & utenſilia domus continentur ſub nomine exituum.

Et præcepit Dominus Rex, quod Vicecom' pro hujuſmodi falſis reſponſionibus, ſemel & iterum, (ſi ſit neceſſe) per Juſtic' caſtigentur. Et ſi tertio deliquerint, alius non apponat manum quam Dominus Rex. Multotiens etiam falſum dant reſponſum, mandando quod non potuerunt (*exequi*) præceptum regis propter reſiſtentiam poteſtatis alicujus magnatis, de quo caveat Vicecom' de cætero, quia hujuſmodi reſponſio multum redundat in dedecus Domini Regis & coronæ ſuæ.

Et quam cito ſubbalivi ſui teſtificentur, quod invenerunt hujuſmodi reſiſtentiam, ſtatim (omnibus omiſſis) aſſumpto ſecum poſſe comit' ſui, eat in propria perſona ſua ad faciend' executionem.

Et ſi inveniat ſubbalivos ſuos mendaces, puniat eos per priſonam, ita quod alii per eorum pœnam caſtigentur.

Et ſi inveniat eos veraces, caſtiget reſiſtentes per priſonam, a qua non deliberentur ſine ſpeciali præcepto Dom' Regis. Et ſi forte Vicecom', cum venerit, reſiſtentiam invenerit, certificet cur' de nominibus reſiſtentium, auxiliantium, conſentientium, præcipientium & fautorum, & per breve de judicio attachientur hujuſmodi per corpora ad veniendum ad cur' Regis. Et ſi de hujuſmodi reſiſtentia convincantur, puniantur ſecundum quod Domino Regi placuerit.

placuerit. Nec intromittat ſe aliquis miniſter Domini Regis de pœna hujuſmodi infligenda, quia Dominus Rex hoc ſibi ſpecial' reſervat, pro eo quod hujuſmodi reſiſtentes cenſentur pacis ſuæ & Regni perturbatores, (13 *E.* 1. *de Mercatoribus*, *Articuli ſuper Chartas*, *cap.* 16.)

Here is a Maxim of the Law recited, viz. Ad officium Juſticiariorum ſpectat, unicuique coram eis placitanti juſtitiam exhibere.

By this Chapter there be five miſchiefs, or rather abuſes of Sheriffs rehearſed and provided for, which we ſhall handle in order, as they ſhall ariſe in this Chapter.

The firſt miſchief was, that the Sheriff returned not the Writs to him directed, but imbezeled the ſame, and commonly the Demandant or Plaintif for default of proof was without remedy, or elſe without the effect of a juſt remedy being againſt a Sheriff, for the which a remedy is provided by this Act in manner inſuing.

¶ Illi qui timent malitiam Vicecom' liberent brevia ſua originalia, & judicialia in pleno com', vel in retro com' ubi ſit collatio denariorum Domini Regis, & capiatur bilettum, &c.] This branch was taken to be ſhort, for it was no more but Capiatur bilettum, and no commandment to the Sheriff to receive the Writs and to make a Bill; but by the Statute of 2 E.3. the Sheriff and under-Sheriff are commanded, that they ſhall receive the ſaid Writs, and make a Bill, and ſo throughout. 2 E.3. cap. 5.

So as now it is a contempt in the Sheriff or under-Sheriff, if he make it not, and in default of them, it ſhall be alſo a contempt in the others appointed to ſeal it, if they refuſe.

In this ſpecial caſe the Demandant or Plaintif ſhall have an Action againſt the Sheriff for not returning the Writ, whereas regularly for not returning of a Writ the Sheriff ſhall be amerced quouſque; but for a falſe return, or for imbezeling of a Writ, an Action doth lye at the Common Law againſt the Sheriff. 26 Aſſ. 48. 38 Aſſ. 13. 42 Aſſ. 12. 8 H.6.1. 1 H.6.1. F.N.B. 93. b. 31 E.3. Procl. 55. Regiſt. 85, 86.

And the Demandant or Plaintif, if he fear the malice (as this Act ſpeaketh) of the Sheriff, he may cauſe the Sheriff or under-Sheriff to be called into the Court, and deliver the Writ to him of Record, that he may take the benefit of this Statute. 19 H. 6. 29. Bract. lib. 5. fol. 441. b.

See the Action brought upon this branch of the Statute, in the Book of Entries Raſtall. Fol. 501, 626.

¶ Retro comitatus.] Is after the County Court, as to Pleas, be ended; it is holden further, for the collection of the Kings money, that is, his green Wax.

¶ Et per iſtam viam fiat remedium quando Vicecomes reſpondet quod breve adeo tarde venit, &c.] The ſecond miſchief was, the Sheriff would return a Tarde, which by this purview is prevented; and ſo it is if the Writ be delivered to the Sheriff of Record, as hath been ſaid.

Where Bracton further in the ſame place ſaith, Et unde infiniti ſunt caſus de genere iſto ubi Vicecom' per fraudem reſcribit, & prætendit non cauſam ut cauſam. Bract. lib. 5. f. 441.

¶ Multotiens etiam capiunt placita dilationes per hoc, quod Vicecom' reſpondet quod præcepit balivis alicujus libertatis, &c.]

Here is the third mischief, that great delays are used by the false return of Sheriffs in making of Mandates to fained liberties, supposing them to have return of Writs, where in troth there be no such liberties, for redzels whereof the remedy followeth.

¶ Quod Thesaurarius, & Barones de scaccario, &c.] Albeit it be inrolled in the Chancery, that such a man hath return of Writs, yet is not that within the purview of this Act, for that the Record of the Court of Exchequer is only prescribed by this Act, and therefore a Certiorari may be awarded out of the Chancery to the Exchequer to the Treasurer, that he bring in the Roll of the Liberties in his hand to the Justices, before whom the return is made.

11 E.4.4. a.

¶ Omnes libertates.] This must be understood of a Bailif of a Franchise or Seigniory, which have return of Writs, and not to a Bailif created Itinerant, (for example) in the County of S. and to have return of all Writs, and execution of the same by the Kings Letters patents; for such a Grant is void, for in effect it taketh away the Office of the Sherif; and therefore where such a return was made upon a Mandate to such a new found Bailif, the Court was in purpose to have punished the Sherif by this branch of this Act, tanquam exhæredatorem Domini Regis.

2 H. 4. 4.

¶ Statim puniatur Vicecomes tanquam exhæredator Regis, & coronæ suæ.] Because he fain a Liberty or Franchise against the King, to the disherison of the King and of his Crown, foralmuch as no man can have such a Liberty or Franchise, but from the Crown.

This punishment shall be by ransom and imprisonment.

¶ Quæ veraciter retornum habet, qui nihil inde fecit mandetur Vicecomiti, quod non omittat.] Here is the fourth mischief, that where there was indeed a Bailif of a Liberty, who truly had return of Writs, yet he upon a Mandate to him would do nothing; remedy is hereby provided, that it shall be commanded to the Sherif, Quod non omittat, &c. quin exequatur præceptum Domini Regis, &c.

Bract. l. 5. fol. 442 a. Regist. 82. F.N.B. 68. f. & 74. a.

This branch concerning the Non omittas, is in affirmance of the Common Law; and therefore Bracton who wrote before this Statute, treating of this matter, saith, Et quo casu cum balivi nihil inde fecerint, propter defectum eorum, præcipietur Vicecomiti, quod non omitteret propter libertatem talem, quin, &c.

¶ Nihil inde fecit.] This Nihil is to be understood, not only where nothing at all is done, but also where the Bailif of the Liberty maketh an insufficient return, for that is Nihil in Law; and therefore a Non omittas, &c. shall be thereupon granted; for, Idem est nihil, & insufficienter dicere.

4 H.6.25. b. 5 H.7 28. F.N.B. 74. a. 2 H.6.15. Simile. 19 H.6.28. 21 H.6 28. 8 E.4.5. b. Simile.

¶ Et quod scire faciat balivis.] This seemeth to be added by this branch to the Common Law.

¶ Multotiens etiam Vicecom' falsum dant responsum quoad illum articulum de exitibus.] Now cometh the fifth mischief, that the Sheriffs would return so small issues, in which case by the Common Law the Plaintif could not have an averment against the return of the Sherif; for the Sherif is but an Officer to the Court, and hath no day in Court to answer to the party: but this is remedied in this case by this branch.

Fleta lib. 2. cap. 61

21 H. 7. 8. b.

¶ Et

¶ Et ſi offerat verificare, &c.] Here is the remedy given, and the mean prescribed, how the averment ſhall be proved, and the Plaintif muſt in his averment alledge what the value of the iſſues be. 27 H.8.3. 20 H.6. 25. 22 E.4.10. 10 H.7.11. a.

See the Book of Entries for the Judicial Writ to the Juſtices of Aſſiſe. Raſt. 383.

And where it is here ſaid, Vicecomites falſum dant reſponſum, this branch mentioning Sheriffs extended not to Bailifs of Liberties, which is holpen by the Statute of 1 E.3. 1 E.3. cap.5. Vet. N.B. fol.53.

¶ A die impetrationis uſque diem in brevi contentum.] Theſe iſſues, that is, the value of the land muſt be inquired, from the teſte of the Writ, until the day of the return of it; and it is holden, that this Act extendeth not to the return of iſſues upon Jurors after iſſue joyned. 27 H.8.3. 20 H.6. 25. 22 E. 4.10. 10 H.7.11. a.b.

¶ Et cum inquiſitio retorn' fuerit, ſi de pleno prius non reſponderit, oneretur de ſurpluſagio, &c.] As if the Sherif return but 10 s. iſſues, and it be found before the Juſtices of Aſſiſe, that the iſſues amounted to 50 s. the Sherif ſhall be charged with 40 s. by this branch, and ſo after that rate and proportion. 27 H.8.3.

¶ Et ſciat Vicecomes, quod redditus, blada in grangia, & omnia mobilia, præter equitaturam, indumenta, & utenſilia domus continentur ſub nomine exituum.] By this branch is explained what ſhall be accounted Iſſues, for the better direction of Sheriffs in this caſe, that is to ſay, not only the rent and revenue of the land, but the Corn in the grange, and all other moveables, as Hay in the barn, and other moveable or perſonal goods whatſoever, except thoſe things belonging to his riding, his apparel and utenſils of houſe: and certainly this is a good and neceſſary Law, if it were put in execution according to the purview of this Act. Fleta li.2. cap. 62. 27 H.8.3. 24 E.3. 29.

¶ Alius non apponat manum quam Dominus Rex.] That is, that the delinquent ſhall be puniſhed Coram Domino Rege; that is, in the Kings Bench, his Court of ordinary Juſtice.

¶ Multotiens etiam falſum dant reſponſum mandando, quod non potuerint exequi præceptum Regis propter reſiſtentiam.] Now we are come to the ſixth miſchief, or rather the abuſe of Sheriffs, as by theſe words, Falſum dant reſponſum, appeareth.

¶ Caveat Vicecomes de cætero quia hujuſmodi reſponſio multum redundat in dedecus Domini Regis, & coronæ ſuæ.] Hereby ſuch a return is forbidden. Fleta lib.2. c.62.

For this matter, ſee the Expoſition upon the Statute of W. 1. W. 1. cap.17.

¶ Statim (omnibus omiſſis) aſſumpto ſecum poſſe comitatus ſui eat in propria perſona ad faciend' executionem.] This branch is in affirmance of the Common Law, as appeareth in the Expoſition upon the ſaid Statute of W. 1. where you may read of this matter at large.

¶ Et ſi inveniat ſubbalivos ſuos mendaces.] This is plain, and needeth no explanation.

¶ Et

¶ Et ſi inveniat eos veraces, caſtiget reſiſtentes per priſonam, a qua non deliberentur ſine ſpeciali præcepto Dom' Regis.] This is evident in it ſelf.

Fleta lib. 2. cap. 62

¶ Et ſi forte, cum venerit, reſiſtentiam invenerit.] Albeit by the penning of this Act it may ſæm, that the Sherif ſhould take poſſe comitatus after complaint made, poſt querimoniam factam; yet ſeeing he may take poſſe comitatus by the Common Law, he may either take it poſt, vel ante querimoniam.

But he muſt take it after reſiſtance, and not before, for Sequi debet potentia Juſtitiam, non præcedere.

¶ De nominibus reſiſtentium, auxiliantium, conſentientium, præcipientium & fautorum, & per breve de judicio attachientur.] Fautorum; this word is of a large extent, whereof you may read in the Statute of 16 R. 2. and in Engliſh it properly ſignifieth a Favourer.

16 R. 2. cap. 5.

¶ Secundum quod Domino Rege placuerit.] That is according to that which ſhall be upon due proceeding adjudged coram Rege, in the Kings Court of Juſtice.

¶ Nec intromittat ſe aliquis miniſter Domini Regis, &c. quia Dominus Rex hoc ſibi ſpecialiter reſervat.] That is, as hath been ſaid, that the delinquents ſhall be puniſhed coram Rege, in his Court of Juſtice; for no man can be puniſhed by abſolute power, but ſecundum legem & conſuetudinem Angliæ, as hath been ſaid before in the Expoſition of Magna Charta, and elſewhere hath been often ſaid.

Magna Charta, cap. 29.

CAP.

CAP. XL.

CUM quis alienat jus uxoris ſuæ concordat' eſt quod de cætero ſecta mulieris, aut ejus hæredis non differatur poſt obitum viri per minorem ætatem hæredis, qui warrantizare debet, ſed expectet emptor (qui ignorare non debuit quod jus alienum emit) uſque ad ætatem warranti ſui, de warrantia ſua habenda.

The miſchief before this Statute was, that when the husband alienes the right of his wife, this working a diſcontinuance, and the wife driven to her Cui in vita, or her heir to his Sur cui in vita, thoſe juſt Actions were delayed oftentimes, when the purchaſer vouched the heir of the baron being within age, until his full age, which is remedied by this Act.

And this Act reſtraineth the Common Law, and therefore it is taken ſtricti Juris, as ſhall appear in the Expoſition hereafter. 18 E.4.16. 14 H.7 19.

¶ De cætero ſecta mulieris aut ejus hæredis.] This ſuit of the wife or her heir extendeth only to a Cui in vita, or a Sur cui in vita, which are the proper Actions upon an alienation made by the baron of the right of his wife, the former words being [cum quis alienat jus uxoris ſuæ,] for if the wife be Tenant in tail, and the baron alienes in fee and dies, and the wife dies, the iſſue in tail cannot have a Sur cui in vita, but he muſt have his Formedon in the Diſcender by the Statute of W.2. cap.1. and in this Action the purchaſer may vouch the heir of the baron, and for his nonage the parol ſhall demur, for that Action is out of this Statute. 46 E.3. age 76.

¶ * Per minorem ætatem hæredis qui warrantizare debet.] This by the contexte of this Act extendeth only to the heir of the baron who made the alienation, and therefore the heir of a ſtranger is out of this Statute. * Contr. judicat' in 14 E. 1. in Banco Rot. 81. Buck. The latter Authorities have over-ruled the judgment given the next year of the Statute. 7 E.2. age 139. 46 E.3. ibid. 76.

† The baron alienes to A. hath iſſue two daughters and dies, the wife brings a Cui in vita againſt A. who voucheth the daughters as heirs to the baron, whereof the one only was within age, the parol ſhall not demur; although all the coparceners, which make but one heir, are not within age, and the words Per minorem ætatem hæredis, yet ſeeing by the Common Law the parol for the whole ſhould have demurred, judgment ſhall be given for the Demandant, and the Tenant ſhall attend for his Warranty for the whole in this caſe, until the full age of the coparcener, that then is within age. 6 E. 3.46. 17 E.3. 59. Lib.1. fol.15. Sir William Pelhams Caſe. Lib.4. fol. 50. A. Ognels caſe. Lib.6. f.5. Markal. † 3 E.2. voucher 210. 8 E.2. judgment 240.

¶ Sed expectet emptor.] As the Actions, wherein the voucher ſhall be, and the heir to be vouched are ſet down in certain, ſo the perſon that is to vouch is alſo ſpecified, ſo as if any other vouch the heir of the husband, the parol ſhall demur for his nonage, and therefore the purchaſer or buyer of the husband is only he, by reaſon of this word emptor, that is bound by this Statute.

Therefore this emptor muſt have three properties:

1. He muſt be emptor, that is, purchaſer immediately from the baron, and therefore if this emptor alien in fee, the alienee is emptor, that is a purchaſer, but becauſe he is not the immediate purchaſer from the baron (albeit he may vouch the heir of the baron as aſſignee) yet is not he bound by this Statute. 7 E.2. age 139. 6 E.3.49. Pl. Com 17,47.

2. He

20 E.2. age 126. 19 E.3. ibid.2. 9 E.3.4. 18 E.4.16

2. He that is an emptor within this Act muſt be the Tenant in Déed againſt whom the Cui in vita, or Sur cui in vita is brought, and therefore in the caſe before, if the ſecond alienée vouch him that was immediate emptor, yet if he vouch the heir of the husband, the parol ſhall demur for his nonage, and the Demandant ſhall not have judgment maintenant, becauſe the Cui in vita, &c. was not brought againſt him that was immediate emptor, as Tenant in Déed of the land, but he came in as vouchée; ſo it is if he that was immediate emptor cometh in by receit upon default of Tenant for life, he is not bound by this Act, cauſa qua ſupra.

Vide Mich.14 E.1 ubi ſup. adjudged that this Statute extendeth to the ſecond vouchee, but the later books are to the contrary in this point alſo.

3. *a* He muſt be ipſe emptor, and not alter ipſe, and therefore if the immediate emptor dieth, albeit his heir ſitteth in his anceſtors ſeat, and is alter idem, yet is not the heir bound by this Act, becauſe he is not ipſe idem.

a 16 E. 3. age 47. 47 E.3. ibid.76. 14 H.7.19.

b Now what eſtate an emptor ſhall have, he that purchaſeth any eſtate of frée-hold, be it in fée-ſimple, fée-tail, or for life, he is an emptor or purchaſer within this Act, and yet the words of this Act be, Qui alienat jus uxoris ſuæ.

b 3 E.2. vouchee 210. 8 E. 2. jugement 140. Gloc'. cap.3.

For this word (alienare) ſée the Statute of Glouc', and the next Chapter enſuing.

Alſo if the baron alien, though it be for no valuable conſideration, yet is he an emptor, that is a purchaſer within this Statute.

¶ Uſque ad ætatem warranti ſui.] And at the full age of the vouchée the Tenant ſhall ſue a reſummons.

3 E.2. voucher 210. 8 E.2. judgement 140. Raſt.fol.135.

For the order of proceéding herein ſée the Books of Entries.

¶ De warrantia ſua habenda.] This Act doth extend as well to a warranty in Law, for example, in reſpect of a reverſion, &c. as to a warranty in Déed. And albeit the Statute of 32 H. 8. doth notwithſtanding the alienation of the husband, &c. give to the wife and her heirs a right to enter, as by that Act appeareth, ſo as the wife or her heirs are not driven to their Action, as at the time of the making of this Act they were, and therefore this Act may ſéem to ſome to be of no great uſe, yet for divers points of notable learning, and for the diſcuſſing of like caſes ſtanding upon like reaſon, as you have perceived, we held it very profitable and neceſſary to be explained.

3 E.2. ubi ſupra. 8 E.2. ubi ſupra. 9 E.3.4. 6 E.3.46 32 H.8. cap.28.

CAP. XLI.

STatuit Dominus Rex, quod ſi Abbates, Priores, Cuſtodes hoſpitalium, & aliarum domorum religioſarum fundatarum ab ipſo, vel à progenitoribus ſuis alienaverint de cætero tenementa domibus ipſis ab ipſo vel à progenitoribus ſuis collata, tenementa illa in manum Domini Regis capiantur, & ad voluntatem ſuam retineantur, & emptor amittat ſuum recuperare, tàm de tenementis quam de pecunia, quam paiavit. Si autem domus illa à com', baron' vel ab aliis fundat' fuerit, de ten' ſic alienat' habeat ille, à quo vel à cujus anteceſſore ten' ſic alienat' collatum fuerit, breve ad recuperand' ten' illud in dominico, quod tale eſt: *Præcipe* tali Abbati, quod juſte, &c. reddat B. tale ten' quod eidem domui collatum fuit in liberam eleemoſynam per præd' B. vel anteceſſores ſuos, & quod ad prædict' B. reverti debet per alienationem, quam prædict' Abbas fecit de prædicto ten' contra formam collationis prædictæ, ut dic'. Eodem modo de ten' dat' pro Cantaria *ſuſtinenda* vel luminari in aliqua Eccleſia vel capella, vel alia eleemoſyna ſuſtentanda, ſi ten' ſic dat' alienetur. Et ſi forte ten' ſic dat' pro Cantaria, luminari, paſtu pauperum, vel alia eleemoſyna ſuſtentanda vel faciend', non fuerit alienat', ſed ſubtracta fuerit hujuſmodi eleemoſyna per biennium, competat actio donatori aut ejus hæredi ad petendum tenement' ſic datum in dominico, ſicut ſtatutum eſt in Statuto Gloceſt' de tenementis dimiſſis ad faciendum vel reddendum quartam partem valoris tenement', vel majorem. Gloc'. cap. 4.

At the Common Law, as it appeareth by Glanvill, Nec Epiſcopus, nec Abbas, quia eorum Baroniæ ſunt de eleemoſyna Domini Regis, & anteceſſorum ejus, non poſſunt de dominicis ſuis aliquam partem dare ad remanentiam ſine aſſenſu & confirmatione Domini Regis. Glanv. l. 7. cap. 1.

The meaning whereof is, that ſæing thoſe that hold of the King per baroniã, **did hold of the King in** Capite, **that therefore, by his opinion, they could not alien any part thereof without the Kings aſſent; but yet if the Biſhop with the aſſent of his Chapter, or the Abbot with the aſſent of his Covent, and the like, had aliened the land, the eſtate of the alienæ could not have bæn avoided.** Lib 5. fol. 10, 11. de jure Regis Eccleſiaſtico.

See the Charter of H. 1. of the foundation of the Abbey of Reading **in the 26 year of his raign, wherein you ſhall read,** Qui autem, Deo annuente, canonica electione Abbas ſubſtitutus fuerit, non cum ſuis ſecularibus conſanguineis, ſeu quibuſlibet aliis, eleemoſynas monaſterii malo utendo diſperdat ſed pauperibus, & peregrinis, & hoſpitibus ſuſcipiendis curam gerat, terras cenſuales non ad feodum donet.

So as no doubt the alienation was againſt the mind of the founder, & contra formam donationis, **yet they having a fæ-ſimple, the Common Law reſtrained them not from alienation,** concurrentibus his, quæ in jure requiruntur.

So as the miſchief was, when the alienation was a bar to the Succeſſor. *40 E. 3. 27. 46 E. 3. forfeiture 18. li 2. f. 46. Leveſq; de Cant. caſe. 2 Mar. Dier 109. 33 H. 8. cap. 36. 34 & 35 H. 8. c. 15 Art. ſuper Chart. cap. 11. Vide hic poſtea cap. 47. 33 E. 3. aide le Roy 103.

¶ Si Abbates, Priores, cuſtodes hoſpitalium, & aliarum domorum religioſarum.] * **Seeing this Act beginneth with Abbots, &c. and concludeth with other religious houſes, Biſhops are not comprehended within this Act, for they are ſuperior to Abbots, &c. and theſe words (other religious houſes) ſhall extend to houſes inferior to them that were mentioned before.**

Alſo Biſhops are not properly religious, that is, regular, but ſecular; but yet this Act doth refer to inferior houſes that are Eccleſiaſtical and ſecular, as hereafter in this Chapter ſhall appear.

See the firſt part of the Inſtitutes, Sect. 133.
See Brook tit. Alienation 15.

¶ Fundatarum ab ipſo, vel à progenitoribus ſuis.] Albeit he that giveth the firſt land upon raiſing and creation of the houſe be the founder, though it be much leſs then the lands after given to the houſe in liberam eleemoſynam, yet this Act doth extend not only to lands ratione fundationis, but alſo to lands ratione dotationis, ſo they were given in liberam eleemoſynam. Vide hereafter in this Chapter. F.N.B. 211.h.

¶ Alienaverint.] This Act ſpeaketh of an alienation made by Abbots, &c. but it muſt be intended of alienations with the aſſent of the Covent, or elſe the ſucceſſor might recover the ſame by a Writ of Entry ſine aſſenſu capituli; for where Acts of Parliament give remedy, it is ever intended that it ſhall not be illuſory. 40 E.3.27. F.N.B. 211. Vet. N. B. 142. 46 E.3. forfeiture 18. Capit. eſcheat' Vet. Mag. Chart. 161.

And albeit this Act ſpeaketh of the Abbots that alien, it is underſtood when the Abbots alien with conſent, as is aforeſaid, thereby is a right veſted in the King; and albeit the Abbot dieth, yet the King may have an office to find his right, and recover the land in the time of the ſucceſſor; and ſo may a common perſon have remedy in that caſe, as ſhall be ſaid hereafter.

And ſome have ſaid, that this alienation is intended when the alienation is in fée, and not when the eſtate is made but for life, or in tail; but then ſhould the Statute be of ſmall effect, for then might he make many gifts in tail, or multiply leaſes for many lives, without reſerving the accuſtomed rent, and thereby utterly overthrow the houſe, as in former times it hath done. See the books laſt before mentioned.

As you may read that it was found by inquiſition in the raign of E. 3. that Thomas de Pipe, Abbot of the Monaſtery of Stonely, in the County of Warwick (of the foundation of King Henry fitz Empreſſe (which was H.2.) and that he gave to the ſaid houſe in liberam eleemoſynam, the Manor of Stonely in the ſaid County) alienavit diverſis hominibus particulariter, prout pater inferius, viz. Iſabellæ de Beneſhale Concubinæ dicti Abbatis, & Johanni filio eorundem Abbatis & Iſabellæ primogenito filio unum meſſuagium, & unam carucatam terræ, & decem mercatus redditus cum pertin' in Fynham. Habendum & tenendum ad terminum vitæ eorundem Iſabellæ & Johannis abſque aliquo inde reddendo annuatim: And found alſo divers other leaſes for lives of parts of the ſaid Manor made to divers perſons, to and for the benefit of the ſaid Abbot, and of his Concubine, and of her and his baſtards; but it is beſt to uſe the words of the Record it ſelf, Abſq; aliquo inde reddendo vel præ manibus inde de eiſdem percepto, ſed tantummodo ad opus & proficuum ipſius Abbatis, & maxime pro ſuſtentatione & inventione prædictorum Iſabellæ & puerorum eorundem Abbatis & Iſabellæ, qui excedunt numerum monachorum ſuorum miſſas celebrantium, ſi forte deponeretur de ſtatu ſuo, &c. Hil. 38 E.3. Rot. 14. Coram Rege Abbot de Stonleys Caſe.

Sometime alienare is taken for alienum facere, and therefore if land be recovered in value, &c. the founder ſhall have a Writ of contra formam within this Statute. 45 E.3.18. F.N.B. 211.

If the Abbot with conſent of the Covent doth charge the land, this is not within this Act, for no land or tenement is alienes. 7 H.6.2.

¶ Collata.] Lands and Tenements given in frée almoigne after the foundation ratione dotationis, are within this word [collata] which extendeth as well to lands ratione dotationis, as to lands ratione fundationis. F.N.B. 211. Regiſt.

¶ In manum Domini Regis capiantur.] The King in this caſe muſt have an office found for him, and a Scire fac' againſt the ter-tenant, by the intendment and conſtruction of this Act, for all neceſſary incidents are to be underſtood, and in the Scire fac' the ter-tenant is not concluded by any trial had againſt the Abbot. 13 H.7.5.8.45 E.3 18. Stamf. Prer. F.N.B. 212.

¶ Si

¶ Si autem domus illa à Comite, Barone, vel aliis fundata fuerit.] Having provided remedy when the King was founder, now this Act provideth when a Subject is founder. 23 E.3. contr' collat. 3.

¶ Tenementum ſic alienatum.] Theſe words couple all that hath been ſaid before to this branch.

¶ Collatum fuerit in liberam eleemoſinam.] So as of neceſſity the lands and tenements within the purview of this Act muſt be given in Frank-almoigne, for ſo be the words of the Writ framed and formed by this Act. Regiſt. 238. F.N.B. 211. a. See the firſt Part of the Inſtitutes, Sect. 136, 137. What Free almoigne is. Fleta lib. 5. cap. 24.

Fleta treating hereof, ſaith, Alia eſt cauſa cum res detur in eleemoſina, & alienetur, in quo caſu proviſum fuit quod breve de ingreſſu ad recuperandum hujuſmodi tenementum alienatum in dominico. Vide capit' Eſchaetrie, Vet' Magna Charta 161.

¶ Habeat, &c. breve ad recuperandum.] This branch ſaith, Habeat breve: But what if the alienation be of ſuch a Tenement or Hereditament, as there lieth no Writ of Contra formam collationis? As for example, if an Advowſon be alienedContra formam collationis, the founder ſhall preſent, becauſe he can have no Writ; for when a right is given, the Law with it will give a remedy, ſo as this Act is to be underſtood, that his remedy ſhall be by Writ, where a Writ doth lye. 29 E.3. Contra formam collat. 8. F.N.B. 211. f. 32 E.3. Ceſſavit 24. Fleta l. 5. c. 34 For this Writ.

After a recovery had by force of this Writ againſt the Abbot, there muſt be a Scire fac' (as hath been ſaid) againſt the Tenant of the land, who is not concluded by any trial, &c. had againſt the Abbot, &c.

Vide 32 E.3. tit. breve 291. for the form of this Writ. 32 E.3. br'e 291. 17 E.3. Contra form. collat. i.

The heir ſhall have this Writ for an alienation in the time of his anceſtor, for the right of Action once veſted in the anceſtor cannot dye. 32 E.3. Br'e. 291.

This Writ alſo lieth againſt the ſucceſſor for an alienation made by the predeceſſor, notwithſtanding theſe words in the Writ, Prædictus abbas; or the heir may have an Action againſt the ſucceſſor. 2 H.4.17. F.N.B. 211. Regiſt. 238. Vet. N.B. 242.

* This Action of Contra formam collationis conſiſteth only in privity for none but only for the founder, or donor, or his heir, and not for any ſtranger. Lib. intrat. Raſt. 126. See the laſt clauſe of this Chapter.

¶ Eodem modo de tenemento dato pro Cantaria ſuſtinenda, vel luminari in aliqua Eccleſia, ſeu Capella, vel alia eleemoſina ſuſtinenda, ſi tenementum ſic datum alienetur.] Eleemoſina: See the firſt part of the Inſtitutes, Sect. 133, &c. Et le Cuſtumier de Norm. cap. 32. Tenure per omoſne, & le lattin com' ſur ceo. * 7 R.2. Ceſſavit 18. F.N.B. 211.

This is a clauſe of reference, Eodem modo, &c. But this clauſe extendeth not to the lands or tenements parcel of the foundation of the Abbey, or Prior, for the former branches of this Act had made ſufficient proviſion for them. 7 H.4.20.

But this clauſe extendeth to lands or tenements given to any Eccleſiaſtical perſon, that is, either Religious, as Abbots, Priors, &c. or Secular, as Parſons of Churches, Deans, &c. for the finding of a Chauntery Prieſt, or of a light, or any other charitable or alms-deeds, or when a Chauntery is incorporated, and lands given for maintenance of the ſame. 10 H.6.5. b.

And this branch being general, viz. De tenemento dato pro Cantaria, &c. the ſame extendeth alwel to Biſhops, and all other Secular perſons, or Eccleſiaſtical, as Religious, conſiſting of one ſole perſon, or aggregate of many: and ſo note the diverſity betwen this and the former branch, and the ſeveral reaſons of the ſame. Regiſt. 238. F.N.B. 209. k.

By theſe words (Eodem modo) if lands were given to an Abbot, Pro Cantaria ſuſtinenda, aut pro paſtu pauperum, or other ſuch ſervice in certain; and the Abbot alienedwith conſent of the Covent, yet the Contra formam collationis did lye againſt the Abbot upon this branch, by reference to the former branch. 18 E.3.5.a. 32 E.3. Br'e 291. cap. Eſchaet. Vet. Mag. Chart. 162. See the 1. part of the Inſtit. § 530.

¶ Et ſi forte tenementa ſic data, pro Cantaria, luminari, paſtu pauperum, vel alia eleemoſina ſuſtinenda, vel facienda, non fuerit alienata, ſed ſubtracta fuerit hujuſmodi eleemoſina per biennium.] By this branch is a Ceſſavit given, where lands were given to find a Chaplein to ſing Divine Service, or to find a light in ſuch a Church, &c. or to diſtribute certain Bread and Beer every day, week, or moneth to poor people, &c.

Regiſt. 238. F.N.B. 209. k. Capit' Eſchaet' Ver. Magna Charta 162. 1. Part of the Inſtitutes, Sect. 137.

7 H. 4. 20. F.N.B. 210. E. 7 E. 4. 11. per Caresby. 1. Part of the Inſtitutes, Sect. 137.

¶ Tenementa ſic data, &c.] This branch extendeth not to a gift in tail, for the Donor ſhall not have a Ceſſavit within this Statute.

It is holden, that this branch concerning the Ceſſavit, extendeth not to lands or tenements given by the founder upon the foundation of the houſe; albeit, as it appeareth by the ſaid Charter of H. 1. the lands were generally given, not only for celebration of Divine Service in the Church, &c. but for ſuſtentation of poor people, or other alms deeds, which are alſo adjudged in Law Divine Service.

11 R. 2. View 65.

And this clauſe, that giveth the Ceſſavit, referreth only to the laſt branch concerning Chauntries, lights, and other particular alms deeds, and not to the former branch concerning the foundations and dotations in libera eleemoſina in general; for this branch extendeth not at all to lands given in Free almoigne, as the firſt and ſecond clauſes did, for in Free almoigne no certain ſervice is to be done, and therefore for them no Ceſſavit can lye, but lieth only where particular Divine Services are mentioned.

1. Part of the Inſtitutes, Sect. 136, 137.

1. Part of the Inſtitutes, Sect. 137 F.N.B. 210. E.

Note here the excellent judgment of the makers of this Act, for they, for alienation of lands given in Free almoigne, that is, for celebration of Divine Services, &c. incertain, gave a Contra formam collationis, but gave no Ceſſavit for ceſſer, becauſe no Ceſſavit could lye for Divine Service incertain; but for Divine Service certain, both a Contra formam collationis, and a Ceſſavit reſpectively by this Act doth lye, alwel as an Avowry for the ſame at the Common Law.

¶ Competat actio donatori, aut ejus hæredi.] In this caſe the heir ſhall upon this branch have a Ceſſavit pro paſtu pauperum, for the ceſſer done in the life of his anceſtor, but ſo ſhall not the heir of the Lord in a Ceſſavit upon the Statut of Glouceſt': and the reaſon of the diverſity is, for that in a Ceſſavit brought upon this branch De paſtu pauperum, no tender of the arrerages ſhall be by the Tenant to the Demandant, becauſe they belong to the poor, and never belonged to the Demandant or his anceſtor; but the rent and ſervice upon the Statute of Glouc' belonged to the Lord to whom the tender was to be made, but his heir is out of that Statute, becauſe the tender of the arrerages in the life of the anceſtor belonged not to him.

F.N.B. 209. k. Pl. Com. 58. b. 12 H. 4. 24. 14 H. 4. 4.

¶ Sicut ſtatutum eſt in ſtatuto Glouc'.] Although this branch hath a reference to the Statute of Glouc', yet it is to be underſtood, to extend to ſuch clauſes of that Act, as may ſtand with reaſon of Law and convenience, as you perceive by an example before remembred, Et ſic de ſimilibus.

CAP.

CAP. XLII.

DE Mareſcallis Domini Regis de feodo, Camerariis, cuſtodibus hoſtiorum in itinere Juſtic̃, & ſervientibus virgam portantibus coram Juſtic̃ apud Weſtm̃, qui officium illud habeant de feodo, & qui plus exigunt ratione feodi ſui quam exigere conſueverunt, ſecundum quod multi queruntur ſuper eos qui ſtatut' cuſ a multo tempore viderunt & ſciunt, Dominus Rex inquiri fecit, quem ſtatuſ prædict' miniſtri de feodo habere conſueverunt temporibus retroactis, & per inquiſitionem ſtatuit & præcepit, quod Mareſcallus de feodo qui de novo exigit palefridum de Comitibus, Baronibus, & aliis per partem Baroniæ tenent', quando homagium fecerint, & nihilominus ad malitiam eorum alium palefridum, & de quibuſdam (de quibus palefridum habere non debuit) palefridum de novo exigunt, ordinavit quod prædictus Mareſcallus de quolibet Comite & Barone (integram baroniam tenente) de uno palefrido ſit contentus, vel de precio quale antiquitus percipere conſuevit, ita quod ſi ad homagium, quod fecit, palefridum vel precium in forma prædicta ceperit, ad malitiam ſuam nihil capiat.

Et ſi forte ad homagium nihil ceperit, ad malitiam ſuam capiat. De Abbatibus & Prioribus integram baroniam tenentibus, cum homagium aut fidelitatem pro baroniis ſuis fecerint, capiat palefridum vel precium, ut prædictum eſt.

Hoc idem de Archiepiſcopis, & Epiſcopis obſervand' eſt. De his autem qui partem baroniæ tenent', ſive ſint religioſi, ſive ſeculares, capiat ſecund' portionem partis baroniæ, quam tenent'. De Religioſis tenent' in liberam eleemoſinam, & non per baroniam, vel partem baroniæ, nihil de cætero exigat Mareſcallus.

Et conceſſit Dominus Rex, quod per hoc ſtatutum non præcludatur Mareſcallus ſuus de feodo in plus petendo, ſi impoſterum oſtendere poterit, quod jus habeat plus petendi.

Camerarii Domini Regis habeant de cætero de Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, & aliis perſonis Eccleſiaſticis, Comit', Baron', integram baroniam tenent', rationabilem fidem cum homagium aut fidelitatem pro baroniis ſuis fecerint. Et ſi per partem baroniæ teneant, capiant rationabilem finem ſecundum portionem ipſos contingentem. Alii vero Abbates, Priores, Religioſi, & ſeculares non tenentes per baroniam, vel partem baroniæ, non diſtringantur ad finem faciend', ſecundum quod de tenentibus per baroniam vel partem baroniæ dictum eſt, ſed ſit Camerarius de ſuperiori indumento contentus, vel de precio indumenti: quod plus honeſte dictum eſt pro Religioſis quam ſecularibus, quia honeſtius eſt, quod Religioſi faciant pro ſuperiori indumento, quam exuant.

W.1. cap. 40.

The miſchief before this Statute was, that not only the Marſhal, and the Chamberlein of the Kings houſe, but ſome inferior Officers, as the Porters, or door-keepers of the Juſtices in Eir; and likewiſe the bearers of Rods or Staves before the Juſtices at Weſtminſter, did extort of the ſubject exceſſive Fées, more then was due to them: whereupon many that of long time had known the Kings Court, and other the ſaid Courts, did greatly complain; for remedy whereof this Act was made; the particular miſchiefs ſhall be ſpecified in their due places.

The Statute of W.1. had provided againſt the Extortion by Sergeants, Cryers, and Marſhals of Juſtices in Eir, and of other Juſtices; now this Act provideth againſt the Officers following.

Brit. fol.1.b. 1. Part of the Inſtitutes, Sect. cap. Grand Sergeanty. Fleta l.2. c. 3,4,5 Lib.10. f.68, &c. Lib.6. fol.20,21. Lib.7. fol.17.

¶ De Mareſchallis Domini Regis.] This is intended of the Marſhal of the Kings houſe. Of this Officer Britton ſaith thus, Et que le Mareſchal de noſtre hoſtele teigne noſtre lieu deins la vierge de noſtre hoſtele, &c. The Steward of the Kings houſe and this Marſhal have a Court of Juſtice, as elſewhere we have ſhewed.

Fleta lib.2. cap.6. Fleta ubi ſupra.

¶ De camerariis.] This is alſo intended of the Chamberlein of the Kings houſe. The L. Chamberlein of the Kings houſhold is a great Officer of the Kings houſe, ſo called becauſe his Office doth principally concern the Chambers, that is, matters above the ſtairs; Of his Office, Fleta writeth thus, Camerarius autem, & ſubminiſtri cameræ à juriſdictione Sen', & Mar̄ exempti ſunt, veluti omnes garderobarii, ut in quibuſdam; Non enim extendit ſe juriſdictio Sen' ad modica delicta Camerariorum, vel garderobariorum audienda, vel terminanda, eo quod ex conſuetudine hoſpitii ſunt exempti, dum tamen illi de quibus exigi contigerit cur̄ coram Seneſch', Cameris Regis & Reginæ, ac garderobæ aſſiduè ſint intendentes; Sed coram ipſis Theſaur̄ & Camerar̄ audiantur querimoniæ de hujuſmodi miniſtris & ſubditis ſuis, & terminabuntur, præſente tamen clerico Regis ad placita Aulæ deputato; Ita quod de finibus, & amerciament̄ ex hujuſmodi placitis provenientibus nihil regi depereat. Debet enim Camerarius decenter diſponere pro lecto Regis, & ut Cameræ tapetis, & banqueriis ornentur, & quod ignes ſufficienter fiant in caminis, & providere ne ullus defectus inveniatur quatenus officium ſuum contigerit. Obſerve here, what anciently belonged to the Office of the Chamberlein of the Kings houſhold.

W.1. cap. 30. See hereafter in the next Chapter towards the end.

¶ De feodo.] Theſe words are not only meant of them that have a fée-ſimple in their Offices, but ſuch as have any fixed eſtate, either in tail or for life, and ſo are theſe words intended throughout this Act; and the Office of the Chamberlain of the houſhold was never granted in fée: and ſome do hold, that the ſenſe of theſe words (De feodo) are ſuch Officers as have fées due, and belonging to them.

¶ Per inquiſitionem.] Obſerve here, that before the King, the Lords and Commons made this Law, the King did inquire by oath of a Jury ſworn of the truth and certainty of the fees hereafter in this Act ſet down.

¶ Quod Mareſchallus de feodo qui de novo exigit palefridum, &c.] Before this Act the Marſhal of the Kings houſe claimed and did take for his fee of every Earl, Baron, and of others holding by part of a Barony, when they did their homage, his Palfrey; and notwithſtanding, when they were made Knights, did challenge and take another Palfrey; wherein he did wrong in two reſpects:

1. That in that caſe he took two Palfreys where he ought to take but one.
2. That he took one of them, that held by part of a Barony, both which are remedied by this Act.

¶ Præ-

¶ Prædictus Mareſchallus de quolibet Comite & Barone integram baroniam tenente de uno palfrido ſit contentus, &c.] So as by this Act he ought to have but one Palfrey, both at his doing of homage, and at his making of Knight.

¶ Per integram Baroniam.] What a whole Barony is, and of how many Knights fées it conſiſteth, hath bèn before ſhewed, Magna Charta, cap. 2. Mag. Chart. c. 2.

And if one had divers Baronies, yet ſéing that he was but one perſon, the Marſhal ſhould have but one horſe, De uno palefrido ſit contentus; and ſo it is of one that is made Knight, though he hath many Knights fées.

¶ Vel de precio quale antiquitus percipere conſuevit.] That we may ſay once for all, the ancient price of the horſe of every Archbiſhop, Biſhop, Abbot, Prior, Earl, or Baron holding by an entire Barony is x l. Ex pervetuſt. Manuſcript.

Alſo the ancient price of the horſe of one that is made Knight, or that doth homage, having no part of a Barony, is v Marks.

See the Statute of 4 H. 4. cap. 23. 4 H. 4. cap. 23.

¶ De hiis qui partem Baroniæ tenent, ſive ſint religioſi, ſive ſeculares, capiat ſecundum portionem partis Baroniæ.] As for example, if he hold by half a Barony, he ſhall pay v l. which is halt the price of the horſe of him, that holdeth by an entire Barony, and ſo according to rate of the value of the horſe, &c.

But the Marſhal ſhall take nothing of Religious or Eccleſiaſtical perſons, that hold in liberam eleemoſynam, & non per Baroniam, nec per partem Baroniæ.

¶ Non præcludatur Mareſchallus de feodo in plus petendo, ſi in poſterum oſtendere poterit quod jus habet plus petendi.] Here is a ſaving for the Marſhal of his right of demanding other fées upon better proof made; but at the making of this Act it appeared by the ſaid inquiſition, that no other fées were due to him, then are here expreſſed; but note there is no ſaving for the Chamberlain.

¶ Camerarii Domini Regis habeant de cætero de Archiepiſcopis.] The Kings Chamberlain, that is, the Chamberlain of the Kings houſhold ſhall have a reaſonable fine, when any Eccleſiaſtical or Lay perſon, holding by an entire Barony, do his homage or fealty, and of them that hold by part of a Barony a reaſonable fine according to the portion which they have.

So as nothing is due to the Kings Chamberlain when one is made Knight, as it appeareth by the context of this.

¶ Alii vero Abbates, Priores religioſi & ſeculares non tenentes per Baroniam vel partem Baroniæ non diſtringantur ad finem faciend'.] They which hold not by a Barony, nor part of a Barony ſhall yield no fine to the Chamberlain, but the Chamberlain of them ſhall have their uppermoſt garment, or the price thereof; and it is more honeſt for the Chamberlain to take the price in that caſe of the Eccleſiaſtical perſon, then of the ſecular, and the reaſon is there rendred, Quia honeſtius eſt, quod religioſi ſolvant pro ſuperiori indumento, quam exuantur.

CAP.

CAP. XLIII.

PRohibeatur de cætero Hoſpitulariis & Templariis, ne de cætero trahant aliquem in placitum coram conſervatoribus privilegiorum ſuorum de aliqua re, cujus cognitio ſpectat ad forum Regium: Quod ſi fecerint, primo reſtituant damna parti gravatæ, & verſus Dominum Regem graviter puniantur. Prohibet etiam Dominus Rex conſervatoribus privilegiorum eorundem, ne de cætero (ad inſtantiam Hoſpitulariorum, Templariorum, aut aliorum privilegiatorum) concedant Citationes: priuſquam exprimatur 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 citationem faciant, nec cognoſcant. Et ſi aliter fecerint conſervatores, reſpondeant parti læſæ de damnis, & nihilominus verſus Dominum Regem graviter puniantur. Et quia hujuſmodi privilegiati impetrant conſervatores, ſubpriores, præſentator', ſacriſtas, religioſos, qui nihil habent unde læſis, aut Domino Regi ſatisfacere poſſint, qui audaciores ſint ad lædend' dignitatem Domini Regis quam eorum ſuperiores, quibus per eorum temporalia pœna poteſt infligi: Caveant de cætero Prælati hujuſmodi obedientiariorum, ne permittant obedientiarios ſuos aſſumere ſibi juriſdictionem in præjudicium Domini Regis & coronæ ſuæ. Quod ſi fecerint, pro facto ipſorum reſpondeant ſui ſuperiores, ac ſi de proprio facto ſuo convicti eſſent.

¶ Prohibeatur de cætero Hoſpitulariis & Templariis.] The Hoſpitallers and Templars had divers great liberties and priviledges, and amongſt the reſt they held an Eccleſiaſtical Court before a Canoniſt or ſome of the Clergy whom they termed Conſervator privilegiorum ſuorum, which Judge having in Deed more authority then was convenient, yet did he daply in reſpect of the height and greatneſs of theſe two orders, and at their inſtance and direction, incroach and hold plea of matters determinable by the Common Law, for Cui plus licet quam par eſt, plus vult quam licet; And this was one great miſchief.

F.N.B. 41. a. 20 E. 3. excom. 9. 28 E. 3. 97. 20 E. 4. 20. b.

Another miſchief was that this Judge likewiſe at their inſtance in caſes wherein he had juriſdiction, would make general citations, as pro ſalute animæ, and the like, without expreſſing the matter, whereupon the citation was made, which alſo was againſt Law, and tended to the grievous vexation of the Subject, both which miſchiefs, or rather abuſes are remedied by this Act.

¶ Cujus cognitio ſpectat ad forum regium.] This branch is in affirmance of the Common Law.

¶ Quod

¶ Quod ſi fecerint, primo reſtituant damna parti gravatæ, & verſus Dominum regem graviter puniantur.] By this branch the Hoſpitallers and Templers are to yield damages to the party grieved, and to be grievouſly fined to the King, if they draw any man in plea before the conſervator of their priviledges of any thing determinable in the Kings Courts.

¶ Ad inſtantiam hoſpit' templar' aut aliorum privilegiatorum.] Hereby it appeareth that their jurisdiction extendeth reſpectively, not only to the Hoſpitallers and Templers, but to perſons priviledged, or within their priviledges, and for that cauſe the Judge was termed Conſervator privilegiorum.

¶ Prohibet Dominus Rex conſervatoribus, &c. ne de cætero, &c. concedant citationes priuſquam exprimatur ſuper qua re fieri debeat citatio.] This branch is in affirmance of the Common Law, as before in this Chapter it hath appeared; And this agreeth with Linwood, who taketh a citation in foro Eccleſiaſtico to be, as the Writ in foro ſeculari, for ſo it is by him defined. Breve idem importat quod præceptum vel citatio, & in eo continetur gravamen, ſuper quo procedit actio ipſius agentis ſeu proſequentis. Linwood de foro comper. cap. 2.

¶ Et ſi aliter fecerint conſervatores, &c.] By this branch the party grieved ſhall recover his damages alſo againſt the ſaid Judge, if he grant any citation, or hold any plea of or for any matter determinable in the Kings Court, ſo as the party grieved ſhall have double remedy, both againſt the Hoſpitallers and Templers, and alſo againſt their Judge, and the King to have a double fine in reſpect of the wrong done to his Crown, and Dignity, and the unjuſt vexation of his Subjects.

¶ Conſervatores.] For this word ſee hereafter cap. 47.
Alſo if the Judge did grant a general citation without expreſſing the cauſe, by colour whereof the party was troubled, he ſhould yield to the party damages, and be grievouſly fined to the King.

¶ Et quia hujuſmodi privilegiati impetrant conſervatores, ſubpriores, præſentatores, ſacriſtas, religioſos, qui nihil habent.] Before this Act there was another miſchief or abuſe, and that was, that theſe Hoſpitallers and Templers, to defeat the remedy that was given to the party grieved againſt the Judge in the caſes abovelaid by the Common Law, did conſtitute Subpriors, Chaunters, Sextens, and other Religious men, which had nothing to ſatisfie the party grieved, nor the King (whereby it appeareth that the party grieved in the caſes abovelaid had remedy by the Common Law) were more bold to offend againſt the Kings Crown and Dignity then their ſuperiors, &c. for this miſchief, or rather abuſe, remedy is here provided.

¶ Qui audaciores ſint.] The wisdom of the Common Law was ever, that men of ability and ſufficient means to live ſhould be called to Offices, and Judicial places for three cauſes:
1. Firſt, For that they would fear to offend; for men that are in place of Judicature, and without means, are, as here it appeareth, boldeſt to offend.

2. They to maintain their countenances are proneſt to bribe and extort.
3. That if they offend, they may be able to ſatisfie the party grieved, and the King his fine: which three cauſes do appear by this branch.

¶ Ad lædendum dignitatem Regis.] Here it appeareth that incroachment of jurisdiction by Eccleſiaſtical Judges contrary to the Kings Laws is Crimen læſæ dignitatis Regis: which appeareth by theſe words, and hereafter it is in this branch ſaid, In præjudicium Domini Regis & Coronæ ſuæ.

Fleta li. 6. c. 36. reſpondeat ſuperior. 52 H. 3. Stat. de Scac'. W. 2 c. 2 & 11. 44 E. 3. 13. 41 Aſſ. 10. 50 E. 3. 5. 39 H. 6. 32. 2 H. 6 c. 10. l. 11. fol. 92. The Earl of Devonſhires caſe. Hil. 14 E. 3. ex parte remem. Regis in Scac' Rot. 9. Herlizans Caſe. 39 H. 6. 32.

¶ Quod ſi fecerint, pro facto ipſorum reſpondeant ſui ſuperiores, ac ſi de proprio facto ſuo convicti eſſent.] Here is the remedy provided for the laſt mentioned miſchief or abuſe, viz. that the ſuperiors, that is, thoſe that appoint ſuch Judges (as are not ſufficient to ſatisfie the party grieved his damages, and the King his fine) ſhall out of their Temporalties ſatisfie the ſame according to the rule of reſpondeat ſuperior.

And by the Common Law, if the Coroner be inſufficient, the whole County, who made election and choice of him, ſhall tanquam elector & ſuperior anſwer for him, and ſo ſhall the Officer anſwer for his Deputy.

CAP. XLIV.

See W. 1. cap. 26, 27, 29.

DE cuſtodibus hoſtiorum in itineribus, virgam portantibus coram Juſtic' de Banco: Ordinatum eſt, quod de qualibet Aſſiſa & jurata quam cuſtodiunt, capiant decem denarios tantum, de Chirographis nihil. De his qui recuperant demandas ſuas verſus plures per defaltam, redditionem, vel alio modo per judicium ſine aſſiſa, vel jurat', nihil. De his qui recedunt ſine die per defaltam petentis vel querentis, nihil capiant. Et ſi quis recuperavit demandam ſuam verſus plures per unum breve, & per recognitionem aſſiſæ vel jurat' de quatuor denariis ſint contenti. Et ſimiliter ſi plures in uno brevi nominati per recognitionem aſſiſæ vel juratæ recuperaverint demandam, de quatuor denariis ſint contenti. De his qui faciunt homagium in banco, de ſuperiori panno ſint contenti. De magnis aſſiſis, attinctis, juratis, & duello percuſſo xii d. tantum capiant. De his qui vocati ſunt coram Juſtic' ad ſequend', vel defendend' placitum ſuum, nihil capiant pro egreſſu vel ingreſſu. Ad placita Coronæ de qualibet duodena xii d. tantum capiantur. De quolibet priſonario deliberato iv d. tantum capiantur. De quolibet cujus pax proclamata fuerit xii d. tantum capiatur. De inventoribus occiſorum, & aliis attachiat' vill', iv d. De decennariis hominibus, al', de quatuor hominibus & propoſito ac decenariis nihil capiatur. De Chirographariis pro Chirographo faciendo ſtatutum eſt, quod de quatuor ſolidis

ſint

ſint contenti. De Clericis ſcribentibus brevia originalia & judicialia ſtatutum eſt, quod pro uno brevi de uno denario ſint contenti. Et injungit Dominus Rex omnibus & ſingulis Juſticiariis ſuis in fide & ſacramento quibus ei tenentur, quod ſi hujuſmodi miniſtri contra prædict' ſtatutum in aliquo articulo venerint, & querimonia ad eos perveniat, pœnam eis infligant rationabilem. Et ſi iterum deliquerint majorem pœnam eis infligant, qua caſtigari merito debeant. Et ſi tertio deliquerint, & ſuper hoc convicti fuerint, ſi ſint miniſtri de feodo, amittant feodum ſuum, & ſi alii ſint, amittant curiam Regis, nec redeant ſine ipſius Regis ſpeciali præcepto aut gratia.

¶ De cuſtodibus hoſtiorum in itineribus virgam portantibus, &c.] This noble and wiſe King, knowing that Extortion was a grievous burthen to his Subjects, and having provided againſt the ſame by many Laws, as before hath appeared: In this Chapter he ſetteth down in particular, as an addition to his former Acts, what Fées the Porters bearring vierge before the Juſtices of the Common Pleas in their Circuit, the Chirographers, and Clerks writing Writs Original or judicial ſhould take, which were the due Fées before this Act; but yet it was thought neceſſary that the ſame ſhould be ſet down, and publiſhed by Act of Parliament for three cauſes.

1. That all the Subjects of the Realm might take notice, and know in what caſes to give, and in what not.

2. In caſes where they ought to give, what they were to give in certainty.

3. That the Officers or miniſters take no more then is here preſcribed, under pretence of Expedition, or other pretext whatſoever, nor to take any thing where nothing is due to them, under the pains hereby inflicted.

¶ Et ſi quis recuperaverit demandam ſuam verſus plures, &c.] Where there were many Tenants or Defendants, 4 d. was before this Act extorted for every Tenant or Defendant upon a recovery againſt them, where (they all being but as one Tenant or Defendant) there ought to be given but one 4 d. as it is declared by this Act. 26 Aſſ. 47.

¶ De chirographariis pro chirographo faciendo ſtatutum eſt quod de 4 s. ſint contenti.] Chirographarius cometh of the Greek word χειρογραφῶ, which is as much to ſay, as a hand writing, ſo called, becauſe he writeth the Chirographs, that is, the Indentures of the Fine, one for the buyer, and another for the ſeller; and the Fine is ſaid to be ingroſſed, when the Chirographer maketh the Indentures, and delivers them. F.N.B. 147. a

By the Statute of 2 Henry 4. cap. 8. it is provided, that the Chirographer ſhall take but the ſaid ſum of 4 s. mentioned in this Act for a Fine levied. 2 H. 4. cap. 8.

¶ Et injungit Dominus Rex omnibus, & ſingulis Juſticiariis ſuis in fide, & ſacramento quibus ei tenentur, &c.] By this great injunction, and Commandment of ſo high a nature to the Juſtices, the odiouſneſs of Extortion appeareth, and what an high offence it is, for that moſt commonly it is accompanied with Perjury, and that it hath a conſuming

quality; whereof the Prophet David ſpeaking againſt the enemies of Almighty GOD, ſaith, Let the Extortioner conſume that he hath, and let the ſtranger ſpoil his labour.

¶ Et ſi tertio deliquerint, & ſuper hoc convicti fuerint.] Convicti fuerint is here taken for adjudicati fuerint.

See W.2. cap.4.

Though this branch ſaith, Et ſuper hoc convicti fuer', and may ſeem to refer to the third offence, yet cannot he be convicted of the third before he be convicted of the ſecond, nor of the ſecond before he be convicted of the firſt; and the ſecond offence muſt be committed after the firſt conviction, and the third after the ſecond conviction, and ſeveral Judgments thereupon given: for ſo it is to be underſtood in other Acts of Parliament, where there be degrees of puniſhment inflicted, for the firſt, ſecond, and third offence, &c. there muſt be ſeveral Convictions, that is to ſay, Judgements given upon legal proceeding for every ſeveral offence, for it appeareth to be no offence until Judgment by proceeding of Law be given againſt him.

¶ Si ſint miniſtri de feodo.] This is underſtood of Officers that have any fixed eſtate, although it be not in fee-ſimple, as in the forty ſecond Chapter is ſhewed; for the largeſt eſtate of any of the miniſterial Offices ſpecified in this Act that ever was granted, was for term of life; and this appeareth by the diverſity of puniſhments impoſed by this Act; for if they have their Offices De feodo, that is, of a fixed eſtate, for the third offence amittant feodum, that is, Officium ſuum; and if they have no fixed eſtate, but at pleaſure, amittant curiam Regis, that is, be forjudged the Kings Court.

See before, cap. 2. the ſenſe of theſe words, De feodo.

CAP.

CAP. XLV.

QUia de his quæ recordata ſunt coram Cancellario Domini Regis, & ejus Juſtic' qui recordum habent, & in eorum rotulis irrotulatur, non debet fieri proceſſus placiti per ſummonitiones, attachiamenta, eſſonium, viſus terræ, & alias ſolemnitates curiæ, ſicut fieri conſuevit de contractibus & conventionibus factis extra cur': Obſervandum eſt de cætero, quod ea quæ inveniuntur irrotulat' coram his, qui recordum habent, vel in finibus content', ſive ſint contractus, ſive conventiones, ſive obligationes, ſive ſervitia, aut conſuetudines, recognita, ſive alia quæcunque irrotulata, quibus curia Domini Regis (ſine juris & conſuetudinis offenſo) authoritatem præſtare poteſt, talem de cætero habeant vigor' quod non ſit neceſſe in poſterum de his placitare, ſed cum venerit conquerens ad cur' Domini Regis, ſi recens ſit cognito, vel finis levat', viz. infra annum, ſtatim habeat breve de executione illius recognitionis factæ. Et ſi forte a majori tempore tranſacto facta fuerit illa recognitio, vel finis levatus, præcipiatur Vicecom' quod ſcire faciat parti, de qua ſit querimonia, quod ſit ad certum diem coram Juſtic', oſtendens (ſi quid ſciat dicere) quare hujuſmodi irrotulat', vel in fine content' executionem habere non debeant. Et ſi ad diem non venerit, vel forte venerit, & nihil ſciat dicere, quare executio fieri non debeat, præcipiatur Vicecom', quod rem irrotulatam, vel in fine content' exequi faciat. Eodem modo mandetur Ordinario in ſuo caſu, obſervetur nihilominus quod (*W.* 2. *cap.* 9.) ſupradict' eſt de medio, qui per recognition' aut judicium obligatus eſt ad acquietandum. (13 *E.* 1. *Mercatoribus.*)

Some diverſity of opinion hath been, whether there was a Scire fac' at the Common Law before this Act: and the doubt grew for want of diſtinguiſhing between perſonal Actions, and real Actions; for true it is, that in perſonal Actions, if the Plaintif after Judgment given, or Recogniſance knowledged, ſued out no proceſs of Execution within the year, he could have no Scire fac'; but the Plaintif or Conuſee was driven to his Original, (which is to be intended upon the Judgment or Recogniſance) as in Actions of Debt, Writs of Annuity, or other perſonal Actions, wherein debts or damages were recovered, or upon Recogniſances.

Vide devant. c. 18. Hil. 13 E. 2. f. 74. b. in libro meo, Adjudge al common ley. 8 E. 3. 28, 29, 44. 21 E. 3. 55. 40 E. 3. 16. Lib. 3. 3 fol. 12. Sir Will. Herberts caſe, lib. 6. fol. 88 Garnons caſe.

But in real Actions, or upon a Fine levied, though the Demandant or Conuſee ſued out no Execution within the year after the Judgment given, or Fine levyed, the Demandant or Conuſee of the Fine after the year might have had a Scire fac' for the land, &c. becauſe he could not have any new Original, either upon the Judgment or Fine, as he might have in the other caſes. Now this Act giveth a Scire facias in perſonal Actions in lieu of a new Original.

19 H. 6. 5. 20 H. 6. 20 F. N. B. 265. g. Regiſt. 298, 299. 1. Part of the Inſtitutes, Sect. 505 506, 690. 18 E. 3. 33, 34. Nota dictum Willby. 21 E. 4. 19. b. 1 H. 5. 4.

And in real Actions, two things are remedied by this Act, that is, Firſt, the tedious Proceſs, which was at the Common Law, is hereby abridged; and ſecondly, the great delays uſed therein are ouſted, as views of the land, and other ſolemnities uſed in real Actions.

And

Regula. And the diſtinction aboveſaid appeareth (if it be well obſerved) in our Books, and therefore the old Rule is hereby verified, Qui bene diſtinguit, bene docet.

And thus much being ſpoken for the cauſe of the making of this Act, let us now perule the words.

2 E.3.7,8. 46 E.3 Scire fac. 134. 16 E.3. Bre. 651 15 E.3. Scire fac. 115. 19 R.2. ibid. 154. 17 E.3.36. 21 E.3.1,4,16. 14 H. 7.6,7.

¶ Quia de hiis quæ recordata ſunt.] Regularly upon this Act, a Scire fac' cannot be granted but upon a Record; but in many caſes a Scire fac' is granted, partly upon a Record, and partly upon ſuch a ſuggeſtion, without wich no proceeding could be upon the Record.

Hil. 13 E.2. fol.74 b. in libro meo le caſe del Mr. Hoſpital de T.

¶ Non debet fieri proceſſus placiti per ſummon', attachiament', eſſon', viſus terræ, & alias ſolemnitates curiæ.] Here be four things particularly named to be ouſted, viz. Proceſs of Summons, Proceſs of Attachment, Eſſoins, View of the land, and then general words, other ſolemnities of Courts.

2 H.7.10. & 11. Hill. 13 E. 2. ubi ſupra.

¶ Eſſoin.] The Eſſoin of the Tenant or Defendant is not only reſtrained by this Act, but of the Priee in aid, who is a ſtranger to the Writ, is alſo reſtrained.

10 E.3.30. 12 H.6 8.

And the Plaintif in the Scire fac' ſhall not be eſſoined, although it is his own delay.

21 E.4.19.

¶ Et alias ſolemnitates curiæ.] It hath been reſolved, that a Protection is within theſe words, and that it ſhould not be allowed in a Scire facias.

40 E.3.18. 47 E.3 3. 37 H. 6.32. 15 H. 7.8. * 17 E 3.46. 18 E. 3.32. 40 E.3.18. 37 H.6.32.

And divers authorities are againſt it.

* Aid, Age, and Receit ſhall be granted in a Scire facias; for Solemnitates curiæ are properly delays in reſpect of the ſolemn Judicial proceedings of Court, and theſe words extend not to the right of the party to have his age, or to be received, or to have aid of another.

13 E.3. Scire fac. 118. W.2. cap.5.

¶ In finibus.] Upon a Fine Sur grant & render of an Advowſon, a Scire facias ſhall be granted, for this is a Judicial, and no Original Writ, for de advocat', non ſunt niſi tria brevia originalia.

And though Fines be here named, yet Recoveries in real Actions are within the purview of this Act.

36 H.6.32. 21 E. 4.23.b. * 8 E.3.56. 15 E.3 Age 43,95. 10 R.2 Fauxer de recovery 47. 3 H.6.34 b. 7 H.6.39. 10 H.6.5. 7 H.7. 13. 12 H.8.8. † 1. Part of the Inſtitutes, Sect.505.

¶ Quod non ſit neceſſe in poſterum de hiis placitare.] This branch is thus to be underſtood, that the Tenant or Defendant, though he be a ſtranger to the recovery, ſhall not plead againſt the recovery any thing that proveth it erroneous or voidable; but he may plead matter that proveth the recovery void, as that it was had coram non judice, or the like.

* Neither ſhall he in a Scire fac' plead any thing againſt the title or matter of the recovery, where he may have an Action, and therein falſifie the ſame.

† But the Tenant or Defendant may plead divers matters after the Judgement given, to bar the Plaintif of Execution, as Outlawry, or a releaſe of Actions, &c.

For receipts ſee Bract. l.5. fol.377 21 E.3.22.b. 21 E.3. ubi ſupra.

¶ Si recens fit cognitio, vel finis levat' infra annum, ſtatim habeat breve de executione.] It hath been ruled that theſe words have relation to the teſte of the recognisance, and not to the day of payment, and therefore if a recogniſance be knowledged to pay a ſum a year and half after, a Scire facias lieth, and no Fieri facias.

10 E.2. exec. 137 16 E. 2. ibid. 138 16 E.3.Scire fac' 4 21 E.3. exec' Staſham.

But I take that rule to be againſt Law, and that recens cognitio is as much as recens ſolutio cognitionis; for the words be Statim habeat breve de executione, which he cannot have before the day of payment be paſt.

If

If a Judgment be given in a Writ of annuity, the Plaintif ſhall have execution within the year after every day of payment by Fieri fac', or Elegit, though it be many years after the judgment; And ſo if a man be bound by Recogniſance in C l. to pay it yearly at five ſeveral days xx l. now immediately after the firſt day of payment he may have an Elegit, or Fieri facias for the xx l. and ſo at the ſecond day paſſed, &c. and yet in both theſe caſes there is above a year after the Judgment given or Recogniſance knowledged, therefore theſe words recens fit cognitio ſhall relate to the day of payment of the money, which is the effect of the Recogniſance, and not to the teſte of the Recogniſance, which is but the aſſurance for payment of the money. 8 E.3.44. F.N.B. 266. c.267.b.

And this word recens importeth, when the party may ſue for the ſame, which he cannot do before the day of payment be paſt, but this is to be underſtood, when the ſeveral days of payment are contained in the Recogniſance it ſelf, for if there be a day of payment expreſſed in the Recogniſance, and a condition or defeaſance there of the ſame limiting other days of payment, there, theſe words recens fit cognitio, &c. ſhall relate to the day of payment expreſſed in the Recogniſance, and not to the condition or defeaſance, and if there be no day of payment in the Recogniſance, then theſe words recens cognitio, &c. do relate to the teſte of the Recogniſance.

And albeit the Plaintif cannot have execution within the year, according to the Letter of this Statute, yet if he come within a year of the payment, it ſufficeth. 8 E. 3.44.

If lands be granted and rendred by fine, and in the fine it be mentioned that W. holdeth the ſame for 26 years after the term ended, he ſhall have a Scire fac' albeit he could have no Writ of Execution within the year; and ſo it is if a reverſion expectant upon an eſtate for life be granted by fine, and after Tenant for life liveth many years and dieth, the conuſee ſhall have a Scire facias, and yet could he not have a Writ of Execution within the year.

If the Demandant or Plaintif taketh his Proceſs of Execution within the year, though it be not ſerved within the year, yet if he continue the ſame, he may have Proceſs of Execution at any time after the year.

One that is not party to the Record, Recogniſance, Fine, or Judgment, as the Heir, Executor, or Adminiſtrator, though they be privy, and though it be within the year, ſhall have no Writ of Execution, but are to have a Scire facias to enable themſelves to the ſuit; and ſo likewiſe of the Tenant or Defendants part, for the alteration of perſon altereth the Proceſs; otherwiſe it is in caſe of a Statute Staple, or Merchant, &c. becauſe the Proceſs is given by other Acts of Parliament. F.N.B. 267. d. 2 R.3.8. 14 H.7. 16. b.

But if a Judgment be given in the Court of Common Pleas, and within the year the Judgment is affirmed in a Writ of Error in the Kings Bench, the alteration of the Court worketh no alteration of the Proceſs, but he may have his Writ of Execution within the year, and not be driven to his Scire facias, though it hath bẽn otherwiſe holden, but now the common experience and later reſolutions are to the contrary. 21 Aſſ. p.14. 14 H.7.15. 15 H.7. 5. Lib.5. fol. 88. Garnons Caſe.

¶ Et ſi forte a majori tempore tranſacto facta fuerit illa recognitio, vel finis levatus, præcipiatur Vicec' quod Scire faciat parti de qua ſit querimon', &c. quare executionem habere non debeat.]

Upon theſe words Scire faciat parti, in a Scire fac' upon a Recogniſance out of the Common Pleas, the Conuſee muſt name all the terre-Tenants at his peril, but in other Courts the Writ is general againſt all terre-Tenants. 20 E.3. Scire fac' 121. 39 E.3.15. 46 E. 3.29. b.

The point of the Writ is Quare executionem habere non debat, and therefore the Tenant ſhall not vouch. 8 H.6.17. 21 E.4.19.

This Statute is in the affirmative, and therefore it reſtraineth not the Common Law, but the party may waive the benefit of the Scire facias given by this Act, and take his original Action of Debt by the Common Law. 39 H. 6. 2.

The

27 H.6.2. 35 H.6. 24. 30 H.6.5. 19 H.6.49. 44 E.3 11. 20 E.3. Scire fac' 121. 46 E.3. 29. 10 H.4.2,3. *30 E.3.25.17 E.3 74,76,77. Sir Will. Herberts caſe, ubi ſupra. * 18 E.3. exec. 57 33 H.6.42. 10 H.6. 12. 2 H.7.3.l.5 E.4 1. 4 H.7.7. Lib.5 fol.32. Peiſers Caſe.

The forms of Scire fac' upon Recogniſances, &c. and likewiſe upon * fines and recoveries appear in our Books.

And ſeeing the words of the Scire fac' be, Quare executionem habere non debet, the Tenant or Defendant may plead any thing in bar of Execution, as hath been ſaid before.

¶ Et ſi ad diem non venerit.] * The party muſt either be warned, or regularly two nihils returned, and then by default execution ſhall be granted, and how the warning is to be made, it appeareth in our Books.

The courſe of the Court of Common Pleas is, that upon a recovery the Plaintif ſhall have execution upon one nihil returned.

¶ Eodem modo mandetur ordinario in ſuo caſu.] This branch is to be thus intended, that if a Scire facias be brought upon a Recogniſance, or upon a Judgment in a Writ of Annuity, and the Sheriff return that the Defendant is Clericus & beneficiatus nullum habens laicum feodum, &c. the Plaintiff ſhall have a Writ to the Biſhop of the ſame Dioceſs to warn the Defendant, and upon warning, or two nihils returned, and default made, or if he appeareth, and ſhew no matter, wherefore execution ſhould not be granted, then a Writ ſhall be awarded to the Biſhop to levy execution De bonis Eccleſiaſticis.

¶ Obſervatur nihilominus quod ſupradictum eſt de medio, qui per recognitionem aut judicium obligatus eſt ad acquietand'.] This clauſe was added in majorem rei cautelam, that the proviſion before made at this Parliament cap. 9. in caſe that in a Writ of Nelne, Poſtquam medius venerit in curiam & cognoverit, quod acquietare debet tenentem ſuum, vel adjudicetur ad acquietandum, ſi poſt hujuſmodi cognitionem aut judicium querimonia perveniat, quod medius non acquitavit tenentem ſuum, tunc exeat breve de judicio, quod Vic' diſtringat medium ad acquietandum tenentem: whereupon fore-judger is given; now if the Plaintif in the Writ of Nelne ſhould only take his Scire facias, then no fore-judger ſhould follow thereupon, therefore this clauſe was added, that the former general words of this Act, Sive alia quæcunque irrotulata, &c. ſhould not take away the benefit of the former Act concerning the fore-judger in a Writ of Nelne, but, as hath been ſaid, this Act being in the affirmative taketh not away neither the Common Law, nor the benefit of the former Act concerning the ſaid fore-judger; for the Plaintif may take advantage either of the one or other, at his election; wherein it is to be obſerved that an Act of Parliament cannot be made too plain: But note the fore-judger is given only againſt him that made the acknowledgment, or againſt whom judgment was given, and not againſt his heir, and therefore this Act is an additi-on declarative to the former, viz. that a Scire fac' may in thoſe caſes lie againſt the heir.

Regiſt. judic' fol. 22, 26. W.2. cap.9.

14 E.3. meſne 9. 46 E.3.31. ſee W.2 cap. 9. more of this matter.

CAP.

CAP. XLVI.

CUM in ſtatuto edito apud Merton, conceſſum fuerit; quod domini vaſtorum, boſcorum, & paſturarum appruare ſe poſſint de vaſtis, boſcis, & paſturis illis, non obſtante contradictione tenentium ſuorum, dummodo tenentes ipſi haberent ſufficientem paſturam ad tenementa ſua, cum libero ingreſſu & egreſſu ad eadem. Et pro eo quod nulla fiebat mentio inter vicinum & vicinum, multi domini vaſtorum, boſcorum, & paſturarum hucuſque impediti extiterint per contradictionem vicinorum ſufficientem paſturam habentium. Et quia forinſeci tenentes non habent majus jus communicandi in boſco, vaſto, aut paſtur' alicujus domini, quam proprii tenentes ipſius domini: ſtatutum eſt de cætero, quod ſtatutum apud Merton proviſum inter dominum & tenentes ſuos, locum habeat de cætero inter dominos vaſtorum, boſcorum, & paſturarum & vicinos, ita quod domini hujuſmodi vaſtorum, boſcorum, & paſtur' ſalva ſufficienti paſtura hominibus ſuis & vicinis, appruare ſibi poſſint de reſiduo. Et hoc obſervetur de his qui clamant paſtur' tanquam pertinentem ad tenementum ſuum. Sed ſi quis clamat communiam paſtur' per ſpeciale feoffamentum, vel conceſſionem ad certum numerum averiorum, vel alio modo, quam de jure communi habere deberet, cum conventio legi deroget, habeat ſuum recuperare, quale habere deberet per formam conceſſionis ſibi factæ. Occaſione molendini ventritici, bercariæ, vaccariæ, neceſſarii, augmentationis cur', aut curtilagii de cætero non gravetur quis per Aſſiſam novæ diſſeiſinæ de communia paſtur'. Et cum contingat aliquando, quod aliquis jus habens appruare, foſſatum aut ſepem levaverit, & aliqui noctanter, vel alio tali tempore quo non credant factum eorum ſciri, foſſatum aut ſepem proſtraverint, nec ſciri poterit per veredictum aſſiſæ, aut juratæ, qui foſſatum aut ſepem proſtraverint, nec velint homines de villatis vicinis indictare de hujuſmodi facto culpabiles, diſtringantur propinquæ villatæ circum adjacentes, levare foſſatum aut ſepem, ad coſtum proprium, & damna reſtituere. Et cum aliquis jus non habens communicandi uſurpet communiam tempore quo hæredes infra ætatem extiterint, vel uxores ſub poteſtate virorum ſuorum exiſtentes; vel paſtura ſit in manu tenentium in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel annorum, vel per feodum talliatum, & paſtura illa diu fuerint uſi; multi ſunt in opinione quod hujuſmodi paſturæ debent dici pertinere ad liberum ten', & quod hujuſmodi poſſeſſori competere debet actio per breve Nov. diſ-

ſeiſ. ſi ab hujuſmodi paſtur' deforceantur: ſed de cætero tenendum eſt, quod habentes hujuſmodi ingreſſum a tempore quo currit breve mortis anteceſſoris, ſi antea communiam non habuerunt, non habeant recuperare per breve Nov. diſſ. ſi fuerint deforciati.

¶ Cum in ſtatuto edito apud Merton, conceſſum fuerit, quod domini vaſtorum, boſcorum, & paſturarum appruare ſe poſſint, &c.] Here is the Statute of Merton recited, and becaule in that Act no mention was made betwæn neighbour and neighbour, the doubt was, whether that Statute extended only betwæn Lord and Tenant, and therefore many Lords of Waſtes, Woods, and Paſtures have bæn letted to make approvement by the contradiction of neighbours, though they had ſufficient paſture; for remedy whereof this Statute was made.

6 H.3.Common 26. 12 H.3. ibid.25. ¶ Per contradictionem vicinorum.] Note it is not ſaid that the Lord could not improve againſt a neighbour, but that the Lords were letted by the contradiction of the neighbours; for by the Common Law the Lord might improve againſt any that had common appendant, but not againſt a Commoner by grant.

¶ Statutum eſt de cætero, quod ſtatutum apud Merton proviſum inter dominos, & tenentes ſuos, locum habeat de cætero inter dominos vaſtorum, &c. & vicinos.] This branch is from the making of this Act, an Expoſition of the Statute of Merton, ſo as now the Statute of Merton doth extend inter vicinum & vicinum; but though it be an Act of Expoſition of a former Act, yet this Expoſition ſhall take effect but de cætero, that is, from the making of this Act of Expoſition. And the reaſon that this Act had a retroſpect to the Statute of Merton was, Quia forinſeci tenentes non habent majus jus communicandi in boſco, vaſto, aut alicujus domini, quam proprii tenentes ipſius domini.

Brit.fol.144,147. 18 Aſſ.Pl.4. 18 E. 3.43. 13 H.7.13. 32 H.8.Dier 47.b. 14 Eliz. Dier 13, 16. Vicinus is properly qui una in eodem vico eſt, but here it is taken for a neighbour, though he dwell in another Town, ſo the Towns and Commons be adjoining together; and if the Lord hath Common in the Tenants ground, the Tenant may improve within this Act, for there the Lord is in this caſe Vicinus.

Ad aſſiſas capt' apud Penreth in com' Cumbriæ, coram Roberto de Hereford & ſociis ſuis, &c. die veneris in craſt' inventionis Sanctæ crucis, Anno regis Ed. 1. 30. Which Record we have ſeen. In an Aſſiſe brought by John of Rowbery, and Iſabel his wife, againſt Matild of Multon, and others, of 20 acres of paſture and wood in O. the caſe appeareth by the verdict of the Recognitors of Aſſiſe, viz.

Note this preſcription. Vide 3 E.3.3. 8 E. 3.37. 46 E.3.13, 23. Similia. *Quod prædict' Matild, & ſimiliter omnes anteceſſ. ſui domini de Gilleſland a tempore quo Waren' de Gilleſland devenit ad manus antec' ſuorum uſi ſunt hujuſmodi libertate, quod nullus libere tenens infra baron' illam, ſe appruire poſſet de vaſto ſuo, ſine licentia, & voluntate prædict' Matild, & anteceſſ. ſuorum, nec aliquis temporibus retroactis in aliquo de vaſto ſe appruiavit niſi ſatisfecerit prædict' Matild, ſeu anteceſſ. ſuis; & quæſiti ſi prædict. Matild habeat*

*beat communiam in ten' de quo, &c. dicunt quod ſic ratione manerii ſui de Cuquyntyngton, quod quidem maner' diſtat, a ten' circit' per unam leucam; quæſiti ſi prædict. Matild habeat ſufficientem communiam extra ten' præd' cum libero ingreſſu & egreſſu, dicunt quod ſic; Dies datus eſt eis de audo' Judo' ſuo apud Weſtmonaſt', a die Sancti Michaelis in xv dies, &c. Poſtea a die Sancti Hilar' in xv dies, Anno Regni domini Regis nunc viceſimo venerunt prædict' Walterus, & Iſab. per attornatum ipſius Iſab', & ſimiliter prædict. Matild per ballivum ſuum, & petunt recordum, &c. Et quia conjunctum eſt per aſſiſam iſtam, quod a tempore quo Waren' prædict. devenit in ſeiſina prædict. Matild, ipſi antec', & ſimiliter ipſa Matild tali libertate uſi ſunt, quod nullus libere tenens infra Baroniam illam, ſe poſſet appruiar' de vaſto ſuo ſine licent', & voluntate prædict. Matild, & anteceſſ. ſuorum, nec aliquis temporibus retroactis in aliquo de vaſto ſe appruiavit niſi prius ſatisfecerit prædict' Matild, ſeu ſuis anteceſſoribus. Et ten' quod nec proviſio de Merton', nec ſtatut' domini Regis nunc de appruiament' fact', ſeu faciend', &c. non operat. in caſu propoſito, cum illud de Merton' habeat locum inter dominum appruiant', & tenentem communiam clamantem. Et ſtatutum Regis nunc inter vicinum appruiantem, & vicinum communiam clamantem, & hoc de communia pertin' ad liberum ten', & caſus propoſitus inter dominam comm' clamantem, & tenent. appruiantem, & * hoc de communia non pertinente ad ten', imo uſitata in Baron' prædict. per prædict. Matild, & anteceſſores ſuos ratione dominii ſui in eadem Baronia, a tempore præd'. Conſid. eſt quod præd. Matild, & alii inde ſine die. Et quod præd. Walterus, & Iſab. nihil capiant per aſſiſam, ſet ſint in miſericordia pro falſo clamor', &c.*

* Nota hoc.

This Judgment, being given in the ſame Kings time that the ſaid Statute of W. 2. was made, both in reſpect of the ſaid preſcription, together with the Common reſerved at the time of the creation of the tenancy, as by the Record it appeareth, ſtandeth well with the Books of 18 E. 3. and 18 Aſſ. for there was no ſuch preſcription; and there it is holden, that if the Lord had the Common by reſervation at the time of the firſt feoffment, then no approvement could be made by his Tenant againſt him: and note the quality of the Common mentioned in the Judgment.

¶ Et hoc obſervetur de hiis qui clamant paſturam tanquam pertinentem ad tenementum ſuum. Sed ſi quis clamat communiam paſturæ per ſpeciale feoffamentum, vel conceſſionem ad certum numerum averiorum, vel alio modo, &c.] So here it is to be obſerved, that neither this Statute, nor the Statute of Merton doth extend to any Common, but to Common appendant, or appurtenant to his tenement, and not to a Common in groſs or a certain number.

12 H. 3. ubi ſupra. 3 E. 2. Common 21. See the Expoſition upon the Stat. of Merton.

¶ Occaſione molendini ventritici, bercariæ, vaccariæ, neceſſarii, augmentationis curiæ, aut curtilagii de cætero non gravetur quis per Aſſiſam, &c.] Here be five kinds of improvements expreſſed, that both betwæn Lord and Tenant, and Neighbour and Neighbour, may be done, without leaving ſufficient Common to them that have it (any thing either herein, or in the Statute of Merton to the contrary notwithſtanding) and theſe five are put but for examples; for the Lord may erect a houſe for the dwelling of a beaſt-kæper for the ſafe cuſtody of the beaſts as well of the Lord, as of the Commoners depaſturing there in that ſoil; and yet it is not within the letter of this Law.

7 H.4.38.

¶ Bercariæ.] Bercaria ſignifieth a Shæp-houſe, and is derived from the French word Bergerie, which alſo ſignifieth a Shæp-houſe; and by turning g into c, the legal word is made Bercaria, and ſo it is taken in this Act: In Domeſday it is called Berquarium; it ſignifieth alſo a Tan-houſe, derived of the Saxon word Berc. For this, ſæ the firſt part of the Inſtitutes, ſect. 1. Verbo Bercaria.

Domeſday, tit. Sudſex Piccam. &c.

¶ Vaccariæ.] Vaccaria is derived a vacca, and ſignifieth ſtabulum vaccarum, a Cow-houſe, as Vaccheria doth in Italian.

Fleta betwæn Bercariæ and Vaccariæ, hath Dayerye; this word I find not in the printed Books, but in ancient Manuſcripts, and it ſignifieth a Dayery or Milk-houſe; in Latine, Lactarium.

¶ Neceſſarii.] Is to be applied to Curtilagii, both in congruity and by our Books, and Neceſſary ſhall not be taken according to the quantity of the Frée-hold he hath there, but according to his perſon, eſtate or degrée, and for his neceſſary dwelling and abode; for if he hath no Frée-hold there in that Town, but his houſe only, yet may he make a neceſſary inlargement of his Curtilage.

32 Aſſ. 5.

¶ Et cum contingat aliquando, quod aliquis jus habens appruare, foſſatum aut ſepem levaverit, & aliqui noctanter, vel alio tali tempore quo non credant factum eorum ſciri, foſſatum aut ſepem proſtraverint, &c.] Foraſmuch as the Lord, (as hath bæn ſaid in the Expoſition upon the Statute of Merton) ought to divide the parts improved, by the hedge, ditch, or other defence: now this branch provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the Lord cannot know againſt whom to bring his Aſſiſe or other Action; and the men of the Towns next adjoining thereunto round about do not indict the miſdoers of the fact, thoſe next Towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yield damages to the Lord; ſed certe opus eſt interprete.

¶ Indictare.] That is, to indict them at the Kings ſuit, either of a Riot, Force, or Treſpaſs: But here it is demanded, what time have the next Towns round about adjoining to indict the miſdoers, ſæing here is no time appointed? and the anſwer is, that ſæing no time is appointed, the Law doth appoint (as in many caſes it doth) a year and a day for the indicting of the miſdoers; and by the Indictment, the Lord ſhall know againſt whom to bring his Action.

See the firſt part of the Inſtitutes, ſect. 69.

¶ Diſtrin-

¶ Diſtringantur propinquæ villatæ circum adjacentes levare foſſatum aut ſepem, ad coſtum proprium, & damna reſtituere.] For, Vicini vicinorum facta præſumuntur ſcire: If the bordering Towns do not within a year and a day indict the miſdoers, then ſhall the Lord or other party grieved bring his Action upon this branch againſt the Towns bordering round about the Town wherein the fact was done, and Judgment ſhall be given, that they ſhall at their proper coſts make the dith or hedge, &c. and yield damages; and after Judgment given, they ſhall be diſtrained to make the hedge or ditch, &c. and ſo it was holden in the Star-chamber, Hilar. 14 Jac. in Sir William Mallories caſe. Hil. 14 Jac. in Camera ſtellata.

At the Parliament holden the eighth day of October in 13 E. 1. at Wincheſter, remedy is given to the party robbed, upon Hue and Cry, (if the men of the Hundred where the robbery was done, take not the offender) againſt the men of that Hundred: and there is ſpecial proviſion made, that the Country ſhall have no longer ſpace then forty days, &c. which prevented the time limited by the Law. 13 E. 1. Stat. de Wincheſter. Lib. 7. fol. 6, 7. Milborns caſe. 27 Eliz. cap. 13. 3 E. 3. Coron. 299. Simile.

¶ Et cum aliquis jus non habens communicandi uſurpet communiam, &c.] This branch is in affirmance of the Common Law, for no man can have either Common appendant or in groſs by preſcription, but by uſage time out of mind, which is well expounded by Littleton, ſection 170. 1 Part of the Inſtitutes, ſect. 170.

And here is to be obſerved, that uſurpations of Commons in the times of Infants, Feme coverts, Tenant in Dower, Tenant by the courteſie, or otherwiſe for life or years, or Tenant in tail, ſhall not bind, though there be long poſſeſſion.

¶ A tempore brevis mortis anteceſſoris.] That is, A coronatione Regis H. 3. which was in the firſt year of his Raign, and between the Coronation of H. 3. and this Act, there was about 69 years, but yet that poſſeſſion by that time, as here it appeareth, maketh no title in Law to the Common, if the commencement thereof can be ſhewed ſince the time of the Raign of R. 1. but the ſaid long poſſeſſion is great evidence, and a ſtrong preſumption of the right of the Common, and ſtabitur præſumptio, donec probetur in contrarium.]

CAP.

CAP. XLVII.

PRoviſum eſt, quod aquæ de Humbre, Ouſe, Trent, Doue, Arre, Derewent, Wharff. Niddiore, Swale, Teſe, Tyne, Eden. & omnes aliæ aquæ *in Regno* in quibus Salmones capiuntur, ponantur in defenſo, quo ad Salmones capiendos, a die Nativitatis beatæ Mariæ, uſque ad diem ſancti Martini. Et ſimiliter quod ſalmunculi non capiantur, nec deſtruantur per retia, nec per alia ingenia ad ſtagna molendinorum, a medio Aprilis uſque ad nativitatem ſancti Johan. Baptiſtæ. Et in partibus ubi hujuſmodi ripariæ fuerint, aſſignentur conſervatores iſtius ſtatuti, qui ad hoc jurati ſæpius videant & inquirant de hujuſmodi tranſgreſſione, & in prima tranſgr' puniantur per combuſtionem retium, & ingeniorum ſuorum. Et ſi iterato deliquerint, puniantur per priſonam quarterii anni. Et ſi tertio deliquerint, puniantur per priſonam unius anni. Et ſic multiplicata tranſgreſſione, creſcat pœnæ inflictio.

Before the making of this Act, Fiſhermen for a little lucre did very much harm, and deſtroy the increaſe of Salmons by fiſhing for them in unſeaſonable times, which were between the beginning of September, and about the midſt of November; and likewiſe for young Salmons, or Salmon peals, between the midſt of April, and towards the end of June: againſt both which, proviſion is made by this Act.

17 R.2. cap.9. W.2.ca.41.lib.2. 46. the B. of Cant. caſe.

Herein the Thames, Thameſis nobile illud flumen is not named, and it was holden, that the general words extended not to inferiour Rivers, and therefore the Thames is added by another Act in the firſt place.

¶ Ponantur in defenſo.] That is, that by this Act it is prohibited that Salmons, or young Salmons ſhall be taken between the times mentioned in this Act.

¶ A die nativitatis beatæ mariæ.] Which is on the eighth day of September.

¶ Uſque ad diem Sancti Martini.] Which is the eleventh day of November.

And note, that the day of Saint Martin, and the Feaſt of Saint Martin is all one, and the Feaſt in legal underſtanding beginneth and endeth with the day.

13 R.2.cap.19. 17 R.2.cap.9.

¶ Salmunculi.] That is, young Salmons, or Salmon peals, or Salmon ſmelts; for ſo this Act is expounded by another Statute: they are alſo called Salmon ſews, or Salmon iſſues.

¶ Uſque nativitatem Sancti Johannis Baptiſtæ.] This is not taken literally for the Nativity of Saint John Baptiſt, for that is long ſince paſt; but it is taken according to the intention of the makers, until the day or Feaſt of his Nativity.

And ſuch conſtruction ſhall be made of Covenants, or Bonds to pay money, or do any act; for example, at the Annunciation of our Lady, it ſhall be taken for

for the Feaſt of the Annunciation, as here the Nativity, &c. is taken for the day of the Nativity.

¶ Ubi ripariæ fuerint.] Ripariæ is a word derived from Ripa, and here it ſignifieth the water, or river running betwæn the banks, be it freſh or ſalt; and thereupon Riparius is taken for a Fiſherman.

¶ Aſſignentur conſervatores iſtius ſtatuti.] And this aſſignation muſt be by Commiſſion under the great Seal, and ſuch a Commiſſion could not have bæn made without warrant by authority of Parliament; for legal Commiſſions have their due forms, as well as Original Writs, and none can be newly framed without Act of Parliament, how neceſſary ſoever they ſeem to be; as in this caſe it was neceſſary that ſuch a Commiſſion ſhould be granted for preſervation of Salmons and of their young, and for avoiding of the deſtruction of the ſame, being victual of great and precious account; and what is more neceſſary then increaſe of victual? yet could it not be newly raiſed without Act of Parliament; but Commiſſions of new inquiries, &c. and of new invention, have bæn condemned by authority of Parliament, and by the Common Law. Regiſt. 123, 125. 64, 138, 88, &c. F.N.B. 110, 111, 112, 113. 18 E. 3. ca. 1, 4. Stat. 1. Rot. Parliam. 5 H.4. nu. 36. 2 H.4. Rot. Parl. nu. 22. Dier 1 El. Scrogs caſe.

¶ Conſervatores.] See this word before, cap. 43.

¶ Qui ad hoc jurati ſæpius videant, & inquirant.] Execution of the Law is the life of the Law, and therefore here is proviſion made for the continual, due, and ſpædy execution of the Law.

¶ Jurati.] A new Oath cannot be impoſed upon any Judge, Commiſſioner, or any other ſubject without authority of Parliament, as here it was; but the giving of every Oath muſt be warranted by Act of Parliament, or by the Common Law time out of mind. Stat. de 20 E. 3. 4 H.4. c. 18. 2 H.5. ca. 6. 17 E.4. ca. 2. 1 R.3. ca. 6. 5 R.2. cap. 13. 32 H.8.

The Oath of the Counſellors, Judges, Sheriffs, Under-ſheriffs, Eſcheators, Attorneys, Maiors and Bailifes are eſtabliſhed by Act of Parliament. cap. 46. 21 H.8. ca. 16. 1 Eliz. c. 1. 28 Eliz. cap. 4. 43 Eliz. cap. 12.

¶ Et in prima tranſgreſſione punietur, per combuſtionem retium.] This ought to be by Indictment at the ſuit of the King, and the puniſhment cannot be inflicted upon the delinquent before upon due conviction, Secundum legem, & conſuetudinem Angliæ, Judgment be given. Stat. de 20 E. 3. ubi ſupra.

And, as hath bæn ſaid in the like caſe, he cannot be puniſhed for the ſecond offence, before he be adjudged for the firſt, and that ſecond offence muſt be committed after the Judgment given for the firſt; nor for the third, before he be adjudged for the ſecond, and that third muſt be committed after the Judgment for the ſecond; for Quod non apparet non eſt, & non apparet judicialiter in iſto caſu ante judicium. See W.2. cap. 44.

¶ Multiplicata tranſgreſſione, creſcat pœnæ inflictio.] This is a Maxim of the Law, agræing with thoſe other, *Regula.*

Ex frequenti delicto augetur pœna:
Creſcente malitia creſcere debet & pœna. *Regula.*

CAP.

CAP. XLVIII.

Glanv. li. 2. ca. 1.

DE viſu terræ ordinatum eſt & ſtatutum, quod de cætero non concedatur viſus, niſi in caſu quando viſus eſt neceſſarius: Sicut ſi aliquis amittat tenementum per defaltam: & ille qui amiſit ſuſcitet aliud breve ad petendum idem tenemenť. Et in caſu quando aliquis per exceptionem dilatoriam caſſat breve poſt viſum terræ, ſicut per non tenuram, vel male nominando villam, vel hujuſmodi, ſi ſuſcitet aliud breve, in hoc caſu & in ſuperiori de cætero non concedatur viſus, dummodo viſum habuerit in prioribus brevibus. In brevi de dote cum petatur eos de tenemento, quod vir uxoris alienavit tenenti aut ejus anteceſſori, cum ignorare non debeat tenens, quale ten' vir uxoris alienavit ſibi, vel anteceſſori ſuo licet vir non obiit ſeiſitus, nihilominus tenenti de cetero non erit viſus concedendus. In brevi etiam de ingreſſu caſſato per hoc quod petens nominavit male ingreſſum, ſi petens ſuſcitet aliud breve de alio ingreſſu, ſi tenens in priori brevi viſum habuerit, in ſecundo non habebit. In omnibus etiam brevibus per quæ teñ petunť ratione dimiſſionis, quam petens vel ejus anteceſſor fecit tenenti, & non ejus anteceſſori, ſicut quod ei dimiſit, dum fuit infra ætatem, non compos mentis, in priſona, & conſimilibus, non jaceat de cætero viſus, ſed ſi dimiſſio facta fuerit anteceſſori jaceat viſus ſicut prius.

¶ De viſu terræ ordinatum eſt & Statut', quod de cetero non concedatur viſus, niſi in caſu quando viſus eſt neceſſarius.]

8 E.3.55. 38 E.3.1 39 E.3.38. & 18. 46 E.3.16,17. 21 H.6.42. 3 E.3. View 135. 12 E.3. Ibid.79. 13 E.3. Ibid.81. 24 E.3. ibid.95. 22 E.3:9. 29 E.3. 46; 21 H.6.42.

There be divers Books in Law, wherein this Maxim is cited.

¶ Per exceptionem dilatoriam.] The Writ muſt be abated by Exception, and therefore if the Demandant be nonſuit, the Tenant ſhall have the view again.

If the Writ doth abate by Conuſans of the Demandant, and not by the Plea and Exception of the Defendant, the Tenant ſhall have the view in the new Writ.

If the Tenant hath the view, and the Demandant diſcontinue his ſuit, in a new Action the Tenant ſhall have the view.

¶ Sicut ſi aliquis amittat tenementum per defaltam: & ille qui amiſit ſuſcitet aliud breve ad petendum idem teñ.]

7 E.3.36. 41 E.3.8 30. 44 E.3.43. 46 E.3.34. 50 E. 3.25.

This branch is not to be underſtood according to the letter, for if one loſe by default in an Aſſiſe, and the Tenant bring a Writ of Right of the ſame lands againſt the recoveror, he ſhall have the view; but this branch is to be underſtood of a Quod ei deforceat upon the recovery by default, which Writ is grounded upon the former Record, ſo as the Tenant hath ſufficient notice thereby; and therefore neither party privy nor eſtranger ſhall have view in this Writ: but otherwiſe it is in the former caſe of the Writ of Right, for that is not grounded upon the Record.

¶ Et in caſu quando aliquis per exceptionem dilatoriam caſſat breve poſt viſum terræ.] Here be two Examples ſet down of dilatory pleas in particular, that is to ſay, Non-tenure, and miſnaming of the Town where the lands do lye, both which Exceptions do riſe upon the view.

A

A Præcipe is brought againſt a Feme, who abateth the Writ for miſnaming of the Town, the wife taketh husband, in a new Writ againſt husband and wife they ſhall have the view; for albeit it be the Act of the wife to take husband, yet for that the husband was not party to the firſt Writ, they ſhall have the view in the ſecond. 30 E.3.8.

¶ Vel hujuſmodi.] Theſe general words, or the like, are thus to be expounded, that the Writ muſt abate for ſuch a Plea dilatory, as doth riſe upon the view, as the two particular Examples of Non-tenure, and miſnaming of the Town do; but when the Writ abates for ſome dilatories which riſe not upon the view, then in a new Writ the view ſhall be granted; as where the Writ is abated for Jointenancy, and the new Writ is brought againſt them both, they ſhall have the view, becauſe in the new Writ another perſon is joined; and ſo it is if any more or leſs land be contained in the new Writ: But if the firſt Writ after the view abated for default of form, or for falſe Latin, or by taking of husband, in a new Writ the Tenant ſhall have the view again, for theſe caſes are not within this word hujuſmodi; for they riſe not upon the view, as the two examples herein expreſſed do. See Circumſpecte agatis, ſimile. W.2.cap.5. ſimile. Lib.11. fol.33. the Poulters caſe. 8 E.3.55. 18 E.3. 31. 21 H.6.42. 6 E.3.15. 17 E.3. 39,40. 18 E.3.41. 38 E.3.1. 19 E.3. view 111. 33 E.3. ib.184. 30 E.3.8. 21 H.6.42. 34 H.6. 10. 42 E.3.23. 43 E.3.35. 29 E.3. 17.45. 38 E.3.1. 39 E.3. 27. 6 E.2. view 163. 5 R.2. ibid.63. 20 E.2. ibid.112. 26 H.6. ibid.14. 21 H.6.

And beſides the firſt was no ſufficient Writ, and an inſufficient Writ and no Writ is all one; ſo it is if one of the Tenants after the view dieth, in a new Writ the ſurviving Tenant ſhall have the view again, albeit the feme came in as a feme ſole by receit, and the husband died, for this did not riſe upon the view, but by the Act of God.

But if the firſt Writ were brought in K. and the Tenant plead that part of the lands extend in L. in a new Writ for the lands in K. and L. though a new Town be added, yet becauſe the new Town was added by force of the plea of the Tenant himſelf, he was ouſted of the view. 42. 21 H.6.55. 2 H.6.14. 17 E.3.41.b. 22 E.3.9.

It is not required by this Act that the ſecond Writ ſhould be brought freſhly by journes accounts, though it be ſo pleaded in many books.

¶ In hoc caſu & in ſuperiori.] This branch extendeth not to the clauſe of the recovery by default, for in the Quod ei deforceat, the Writ being grounded direcly upon the former Record, wherein the Tenant in the Quod ei deforceat recovered in the former Writ, he hath ſufficient notice thereof, and therefore, as hath bẽn ſaid, ſhall not have the view. 41 E.3.8.30. 44 E.3.43. 50 E.3.25.

And therefore theſe words [in hoc caſu] are to be referred to the laſt general words, viz. [vel hujuſmodi] and theſe words, [& in ſuperiori] are to be referred to the two examples dilatory of nontenure, and miſnaming of the Town.

¶ In brevi de dote cum petatur dos de tenemento quod vir uxoris alienavit tenenti aut ejus anteceſſori, &c.] This branch extendeth not to a Writ of Dower, unde nihil habet, for therein no view did lie at the Common Law, but extendeth to other Writs of Dower, whether for Dower at the Common Law, or ex aſſenſu patris, ad hoſtium Eccleſiæ, &c. or by cuſtom. 45 E.3.17. Temps E.1. view 172.20 E.3.ib.113.

At the Common Law if the husband died ſeiſed of the land of eſtate of inheritance, whereof Dower is demanded, the heir or any claiming under him ſhould not have the view, becauſe it was preſumed that the heir was conuſant what lands his anceſtor had at the time of his death, and herewith agreeth Bracton who wrote before this Statute; Item denegatur viſus in placito dotis de terra & tenemento de quibus vir mulieris nuper obiit ſeiſitus, quia habet tenens quod tantundem valet. 22 E.3.9. 3 E.3.16 8 E.3.55. 2 H.4. 20. 5 H.5.4. 34 H.6.3. 35 H.6.59. Bract.l.5. fo.377. 18 E.3.55.

But where the husband aliened, there at the Common Law view was granted, which was a delay to the Demandant in Dower (whole life did ſpend) and is taken away by this Act.

If the baron demiſe to a feme and dieth, the feme taketh husband, in Dower againſt them they ſhall have the view; for the alienation was not made to the husband, but to the wife, and the Act ſaith tenenti. 30 E.3. fol.8.

2 H.4.1. 7 H.4.18. 5 E.3.6. 18E.3.55. 30E.3.3.26 E.3.59 2 E.4.17. 9 E.4.6.

¶ Alienavit.] If the Tenant diſſeiſed the husband of the Demandant in a Writ of Dower, he ſhall have the view, for this is no alienation, and therefore remain at the Common Law.

The beſt pleading to counterplead the view in caſe of alienation is, that the Tenant entred by her husband, though the word of the Act is aliened.

44 E.3.31. 18 E.3.55. 14 H.4.32. 3 H.4.18. 19 E.2. view 76. 13 E.3.ib. 103, 104. 14 E. 3. ibid.93. 19 E. 3. ibid.106.

In Dower of a rent the Tenant ſhall not have the view of the land, if the husband died ſeiſed of the rent, nor the Tenant of the land have view thereof, if he had the rent by the releaſe of her husband.

Tenant in Dower of two acres, the Demandant to counterplead the view ſaid, that the Tenant entred by her husband, the Jury found, that ſhe entred into one acre by her husband, and into the other acre by another, the Demandant recovered her Dower in the one acre, and the Tenant had the view for the other.

20 E.2. view 166. 29 E.3.32. 2 E.2. view 137.

¶ In brevi etiam de ingreſſu caſſato per hoc, &c.] A Cui in vita is taken within this branch, and ſo is a Sur Cui in vita.

¶ In omnibus brevibus per quæ tenementa petuntur ratione dimiſſionis, quam petens vel anteceſſor fecerit tenenti & non ejus anteceſſori, ſicut quod ei dimiſit dum fuit infra ætatem, dum non fuit compos mentis, &c.] This branch ſpeaketh particularly of three examples, viz. of the dum fuit infra ætatem, & non compos mentis, and in priſona, and generally in conſimilibus.

48 E.3.31. 46 E.3. 34. 35 H.6.59.

29 E.3.30. view 155.

This branch extends not to theſe Writs brought in the Per & cui, for that is a degree further then this branch provideth for.

46 E.3.29.

¶ Per quæ tenementa petuntur.] Yet if any of theſe Writs be brought of a rent, if the Tenant demand the view of the land, though it be of another thing then is demanded, the Tenant ſhall be ouſted of the view.

Circumſpecte agatis, ſimile. Temps E.1. view 171. 6 E.2. ibid.152. 36 H.6. view 30.

¶ Et conſimilibus.] By theſe words the predeceſſor of a Biſhop, or the like is taken where this branch ſpeaketh de anteceſſore, and not de prædeceſſore.

It is to be obſerved that the two examples here put are of a dum fuit infra ætatem, and non compos mentis, and when the heir brings either of theſe Writs of the demiſe of his anceſtor from whom he claims the land as heir [& conſimilibus] ſhall be intended of Writs of like nature; and therefore if a Sur cui in vita be brought ſuppoſing that the Tenant had not entred but by one D. late husband of E. mother to the Demandant, whoſe heir he is, the Tenant ſhall have the view, for he claimeth not as heir to him that made the demiſe, and therefore it is not Actio conſimilis.

Bract.l.2.fo.16.b. Britton fol.19. Fleta lib.2.ca.54. l.3.ca.7. l.6.ca.6. 7. & 14. Firſt part of the Inſt. ſect.437,438. Firſt part of the Inſt. ſect.406.

¶ In priſona.] At this time, viz. in 13 E.1. as hereby it appeareth there lay a Writ of an alienation made by dures, dum fuit in priſona, and the Writ of dum fuit infra ætatem, and this Writ of dum fuit in priſona did lie for the party himſelf that made the alienation, but ſo doth not the other Writ of non compos mentis, for that lieth not for the party himſelf, but for his heir.

In priſona; Every reſtraint of the liberty of a Freeman is an impriſonment, although he be not within the walls of any common Priſon.

15 H.3. dures 15. 2 E.2. ibid. 18. 8 E.3.57. 8 Aſſ.25. 43 E.3.6.10. 6 R.2. dures 12. 11 H.4.6. 4 E.4. 17. 12 E.4.7.

If a man be impriſoned by order of Law, the Plaintiff may take a feoffment of him or a bond for his ſatisfaction, and for the deliverance of the Defendant, notwithſtanding that impriſonment, for this is not by dures of impriſonment, becauſe he was in Priſon by courſe of Law; for it is not accounted in Law dures of impriſonment, but where either the impriſonment or the dures that is offered in the Priſon, or at large is tortious and unlawful, for executio juris non habet injuriam.

But

But now albeit the Writ mentioned in this Act is antiquated and gone in deſuetudinem, yet may good uſe be made of this part of this branch, Dum fuit in priſona, ſuch excellent learning may be drawn out of theſe ancient fountains.

It may be gathered upon this Act that the feoffment made by one by dures of impriſonment is not void, but voidable; for if it were void, then no Præcipe could have been maintained upon a void alienation, and this branch ſaith, In omnibus brevibus in quibus tenementa petuntur ratione dimiſſionis, &c. dum fuit in priſona. And ſo it is in the caſe of the Infant, with whom he is paralleled in this branch, and whole caſes are very like in many reſpects: for as in the caſe of an Infant, if he ſeal and deliver a Deed, he cannot plead Non eſt factum, but muſt avoid it by plea of infancy; ſo it is in the caſe of a Bond made by dures of impriſonment: and as it is in the caſe of the Infant, that a feoffment by livery of ſeiſin made by his own hand is voidable by entry, or Action, and not void; ſo it is in the caſe of a feoffment made by one by dures of impriſonment, and livery made by his own hand, as by this branch it appeareth: and as in the caſe of an Infant, a feoffment made by Letter of Attorny is void, and the Feoffée is a Diſſeiſor; ſo it is in the caſe of a man that maketh it in the ſame manner by dures of impriſonment.

Lib.5. fol. 119. Whelpdales caſe. 1 H.7.15.

Lib.8. fol.42,43. &c. Whittingams caſe. 14 Aſſ.p.20. 39 E. 3.28. 41 E.3.9. Feoffment & Faits 49. 9 H.6.6. 38 H. 6.27. 2 E.4.21. Whittingams caſe, ubi ſupra.

And as none ſhall avoid the feoffment of the Infant when livery is made by his own hand, but only he himſelf or his heirs, which are privies in blood inheritable, and neither privies in Law, nor privies in eſtate: ſo it is in caſe of a feoffment made in like manner by dures of impriſonment, it is only voidable by privies in blood inheritable, and not by privies in Law or eſtate.

And by theſe reſemblances and diverſities this Act is underſtood, and our Books that ſeem prima facie are well reconciled: The dures per minas, aut cauſa metus, belongeth not properly to be treated of here; for this branch ſpeaketh only dum fuit in priſona; only for affinity ſake it is to be known, that a man ſhall avoid his Deed for mannas of impriſonment, albeit he were never impriſoned: for a man ſhall avoid his own act for mannas in four caſes, viz. 1. for fear of loſs of life, 2. of loſs of member, 3. of mayhem, and 4. of impriſonment; otherwiſe it is for fear of battery, which may be very light, or for burning of his houſes, or taking away, or deſtroying of his goods, or the like, for there he may have ſatisfaction by recovery of damages.

39 E.3.28. 11 R.2: Dures 21. 35 H.6. 17. 38 H.6. 21,27. 39 H.6.5. 7 E.4.21

This fear, by reaſon of mannas, is well deſcribed by Bracton, Metus autem eſt præſentis, vel futuri periculi cauſa, mentis trepidatio, & præſentem debemus accipere metum, non ſuſpicionem inferendi ejus, vel cujuſlibet vani & meticuloſi hominis, ſed talem qui cadere poſſit in virum conſtantem; talis enim debet eſſe metus, qui in ſe continet mortis periculum, & corporis cruciatum.

Bract.l.2.fo.16.b.

But there is a great diverſity betwæn the making of a continual claim, or entry into lands, and the avoiding of a mans own act; for, fear of battery is a good cauſe to make a claim as near the land as he dare for fear of battery (for the recontinuance of an ancient right is favoured in Law) but it is no cauſe to avoid his own act; wherein it is obſervable, how fear of impriſonment (which is a manner of captivity) is more grievous and odious in Law, then the fear of battery.

13 H.4. Dures 20. 1 Part of the Inſtitutes, ſect.419.

See more of this matter in the firſt part of the Inſtitutes, ubi ſupra.

* See the Stat. de modo levand. Fines. Li.4.fo.127, &c. Beverlies caſe, Rot. Parliam. 50 E.3. nu.127.

¶ Ratione dimiſſionis.] Here, as in many other places [Demiſe] is applied to an eſtate either in fee-ſimple, fee-tail, or for term of life, and ſo commonly it is taken in many Writs.

* But this Act extendeth not to every kind of demiſe or conveyance; for if the demiſe or conveyance be by Fine or other matter of Record, &c. this branch extends not to it, for regularly conveyances, or other Acts of Record knowledged, or made by one that is Non compos mentis, or by dures of impriſonment, are unavoidable by him or his heirs by Law: Hereof ſee Beverleys caſe, Lib.4. fol.127.

6 E.3.39. 17 E.3. 76. 17 Aſſ.17. 13 E.3. Audita querela 26. 20 E.3. ibid.27. 18 E.3. 29. 21 E.3.24. 27 Aſſ.53. 8 H.6. 30. 15 E.4.5.

1 H.7.15. 16 H.7. 5.b. 6 H.8. Saver def. Br. 50. F.N.B. 104.k.l. 16 Eliz. Dier. 3 H.6.10. 7 H.6.38.

And ſuch conveyances, or other Acts of Record knowledged, or made by an Infant, are alſo unavoidable, unleſs he doth avoid them by Writ of Error, or Audita querela, during his minority; and therefore this branch is to be underſtood of alienations made in paiis, and not by matter of Record.

A recovery by default againſt an Infant is erroneous, and ſo is a recovery by default againſt a man in priſon, though he be lawfully impriſoned; but the Infant muſt reverſe it by Writ of Error during his minority, becauſe his infancy muſt be tried by inſpection, but the man in priſon may reverſe it when he will.

3 Part of the Inſtitutes, ſect. 438.

CAP. XLIX.

CHancellor, Treaſurer, Juſtices, ne nul de councel le Roy, ne Clerke de la Chancery, ne del Eſchequer, ne de Juſtice, ne dauter miniſter, ne nul del hoſtel le Roy, ne Clerk, ne lay, ne puis reſceiver eſgliſe, ne advowſon de eſgliſe, ne terre, ne tenement in fee per done, ne per achate, ne a ferm', ne a champerty, ne en auter maner, tanque come le choſe eſt en plee devant nous, ou devant ull' de nous miniſtr', ne nul lower ent ſoit pris. Et qui encounter ceſt choſe face, ou per luy ou per auter, ou nul [*bargeine ent*] face, ſoit punie a la volunt le Roy, auxibien celuy qui le purchaſera, come celuy qui le fra, 11 *E.*1. *Champertie* 1. *Articuli ſuper Chartas, cap.* 11.

¶ Chancellor, Treaſurer, Juſtices, ne nul de councel, &c.] This is a Law of addition and explanation for the Statute of W.1.cap.25. Purveiant que nul miniſter le Roy, &c. It was doubted, whether the Chancellor, Treaſurer, Juſtices, and thoſe of the Kings Councel, being perſons of ſuch eminency, were within theſe words [Nul miniſter le Roy,] and therefore this Act by way of addition and explanation doth add, Chancellor, Treaſurer, Juſtices, & Councel le Roy.

Alſo this Act is an addition to W. 1. cap. 28. for that extendeth but to the Clerks of the King, or of the Juſtices; this Act addeth, Clerks of the Chancery, and of the Exchequer, and of any other Officer; it addeth alſo thoſe of the Kings houſe, be they of the Clergy or Laity; and alſo that they ſhall take no reward, &c.

And it is to be obſerved, that neither the Chancellor, Treaſurer, any of the Juſtices, or any of the Kings Councel, nor any Clerk herein mentioned, nor any of the Kings houſe of the Clergy or Laity ſhall (hanging the Plea) receive any advowſon, land or tenement, by gift, purchaſe or fearm, either for champerty or otherwiſe; ſo as none of theſe perſons here prohibited can acquire any advowſon, land, or tenement, depending the plea, though it be bona fide, and not for champerty or maintenance; partly in reſpect of their greatneſs, and partly in reſpect of their places, both in the Kings Court, and in the Court of Juſtice; ſo as the very countenance and places of theſe men, when they become intereſſed in the land (eo ipſo) are apparent hinderances of the due and indifferent proceeding of Law and Juſtice. An excellent Law, and worthy to be known, and moſt neceſſary to be put in execution; ſo as true it is, that if any other perſon purchaſe bona fide, depending the ſuit, he is not in danger of champerty: But theſe perſons here prohibited cannot purchaſe at all, neither for champerty nor otherwiſe, depending the Plea. But theſe perſons here prohibited muſt be charged upon this Act, and not for champerty, unleſs they maintain.

50 Aſſ. p. 3. 32 E. 3. Champerty 6. where the caſes were of ſome of theſe perſons, otherwiſe they could not be law. 4 E. 2. ibid. 12, &c. F.N.B. 172. E. 22 E. 3. 10. 8 E. 4. 1.

And

And this a great addition to the Statute of W.1. cap.25. which extended only where the purchaſer (pendente placito) did maintain. 6 E.3.33. F.N.B. 172. Pl.Com.88.

And in theſe caſes prohibited by this Law, the child cannot infeoffe the father, nor the father his child, or the like, as they may do upon the other Statutes.

And the prohibition here for taking of rewards is very remarkable.

¶ Soit punie a la volunt le Roy.] Theſe words are expounded before upon W.1. cap.25.

And where both the ſaid Statutes conclude in effect concerning the puniſhment, Et que le fra; this Act addeth, Auxibien celuy que le purchaſera, come celuy que le fra, that is, both the giver and taker. See the Statute of Conſpiracy, Simile 33 E.1. 32 H.8. cap.9. Simile.

See the Statute of W.1.cap.25. & 28. and the Statute of 28 E.1. cap.11. and laſtly, the Statute of 32 H.8. cap.9. whereby all former Statutes concerning maintenance, champerty, and imbracery are confirmed, and commanded to be put in due execution, and by that Statute excellent proviſions are made concerning the ſame. W.1, cap.25,28. 28 E.1. cap.11. 32 H.8.cap.9.

¶ Auxibien celuy que le purchaſera, come celuy que le fra.] And yet the party grieved may have his Action againſt the purchaſer only, if he will. 31 E.3. Champerty 5.

We have been the more brief in expoſition hereof, becauſe we have treated of this ſubject before in the expoſition of the Statute of W.1.cap.25. & 28. and ſhall have more occaſion to ſpeak hereof when we come to the ſaid Act of 28 E.1. cap.11. See the Statute of 11 E.3. Vet. Magna Chart. Stat. de Champerty.

The cauſe wherefore this Chapter was publiſhed in French, was, for that the ſaid two Chapters of W.1. whereunto this Act maketh additions, were likewiſe publiſhed in French.

See Articuli ſuper Chartas, cap.11.

CAP. L.

OMnia prædicta ſtatuta incipiant conſervari ad feſtum ſancti Michaelis proximo venturum, ita quod occaſione aliquorum delictorum contra aliquod prædictorum ſtatutorum citra prædictum feſtum perpetratorum, pœna delinquentibus, de quibus mentio fit in ſtatutis, non infligatur. Super vero ſtatutis in defectum legis, & ad remedia editis, ne diutius querentes cum ad curiam Regis venerint recedant de remedio deſperati, habeant brevia ſua in ſuo caſu proviſa, ſed non placitent uſq; poſt feſtum ſancti Michaelis ſupradictum.

¶ Omnia prædicta ſtatuta incipiant conſervari, &c.] This was very juſtly added, to the intent that all men dwelling far or near might be well informed of theſe Laws before they were puniſhed by them; the Parliament begun poſt Paſch. and hereby day was given until the Feaſt of Saint Michael.

¶ Ad feſtum Sancti Michaelis.] Albeit there be two Feaſts of Saint Michael, Saint Michael the Archangel, and Saint Michael de monte tumba, commonly called Saint Michaelis in the mount in Cornwall; yet that Feaſt that is moſt notorious and of greateſt account is to be taken, and that is the Feaſt of Saint Michael the Archangel celebrated on the 29. day of September, and not the Feaſt celebrated the 16 day of November. 5 E.3.6. 20 H.6. 23. 3 H.7. Endictment 22. 1 Part of the Inſtitutes, ſect.99.

Note,

Cambden Brit. 136,137. Note, that both were the Feaſts of Saint Michael the Archangel, but the Feaſt of Saint Michael the 29. of September is the moſt notorious, both in Legal procædings, as Octabis Michaelis, &c. and never Octabis Michaelis Arch', and common eſtimation for payment of Rents, beginning and ending of Leaſes, and the like.

¶ Super vero ſtatutis in defectum legis & ad remedia editis, ne diutius querentes, cum ad curiam Regis venerint, recedant de remedio deſperati, habeant brevia ſua in ſuo caſu proviſa.] Ad remedia; that is, when any the Statutes made at this Parliament provide remedy for the party grieved, he ſhall have an Action grounded upon this Act for his relief therein; and theſe words [Ad remedia] do diſtinguiſh them from thoſe Acts which give the penalty to the King alone. And hereupon they are called in ancient Authors, Brevia remedialia, which are to be framed upon theſe Acts by learned men, whereof Fleta ſpeaking of the Maſters of the Chancery, ſaith, Ipſi autem collaterales & ſocii Cancellarii eſſe; dicuntur præceptores, eo quod brevia (cauſis examinatis) remedialia fieri præcipiunt. And ſometimes they are called, Brevia magiſtralia, becauſe (being out of courſe) it is a maſters piece to frame them as they ought.

Fleta lib. 1. ca. 12.

Brack. li. 5. fo. 413.

¶ Recedant de remedio.] See before in the Expoſition upon the 24. Chapter of W. 2. the like clauſe.

Statutum

Stat. de Circumſpecte agatis,

EDITUM *Anno* 13 Edw. 1.

REX talibus Judicibus Salutem. Circumſpecte agatis de negotiis tangentibus Epiſcopum Norwicenſem, & ejus Clerum, non puniend' eos ſi placitum tenuerint in Curia Chriſtianitatis de his quæ mere ſunt ſpiritualia, viz. de correctionibus quas Prælati faciunt pro mortali peccato, viz. pro fornicatione, adulterio & hujuſmodi, pro quibus aliquando infligitur pœna corporalis, aliquando pecuniaria, maxime ſi convictus fuerit de hujuſmodi liber homo. Item ſi Prælatus puniat pro cimeterio non clauſo, Eccleſia diſcooperta, vel non decenter ornata, in quibus caſibus alia pœna non poteſt infligi quam pecuniaria. Item ſi rector petat verſus parochianos oblationes & decimas debitas vel conſuetas, vel ſi rector agat contra rectorem de decimis majoribus, vel minoribus, dummodo non petatur quarta pars valoris Eccleſiæ. Item ſi rector petat mortuarium in partibus ubi mortuarium dari conſuevit. Item ſi Prælatus alicujus Eccleſiæ, vel advocatus petat a rectore penſionem ſibi debitam, omnes hujuſmodi petitiones ſunt faciend' in foro Eccleſiaſtico. De violentia manuum injectione in Clericum, & in cauſa diffamationis conceſſum fuit alias, quod placitum inde teneatur in Curia Chriſtianitatis, cum non petatur pecunia, ſed agatur ad correctionem peccati, & ſimiliter pro fidei læſione. In omnibus prædictis caſibus habet judex Eccleſiaſticus cognoſcere regia prohibitione non obſtante.

¶ Circumſpecte agatis.] There was alſo at this Parliament holden at Weſtm' Anno 13 E. 1. a Writ deviſed, called Circumſpecte agatis de negotiis tangentibus Epiſcopum Norwicenſem, & ejus Clerum. Though ſome have ſaid that this was no Statute, but made by the Prelates themſelves, yet that this is an Act of Parliament, it is proved not only by our Books, but alſo by an Act of Parliament. Rot. Parl. 25 E. 3. Stat. 3. nu. 62. 19 E. 3. juriſd. 28. 27 Aſſ. p. 7. 10 H. 4. 1. 12 H. 7. 23. Pl. Com. 36. b. 2 E. 6. c. 13. verſus finem. l. 4. fol. 47. inter Palmer & Thorp. l. 5. fol. 67. l. 7. fol. 44. Pl. Com. 36. b.

¶ De negotiis tangentibus Epiſcopum Norwicenſem.] The Biſhop of Norwich is here put but for example, but it extendeth to all the Biſhops within this Realm.

¶ In

Glanv. l.12. ca.21. Bract.l.5. fo.463. & ſæpe alibi. Britton 226. & ſæpe alibi. Fleta lib.6. ca. 41. Regiſt.339. W.2. cap.5. 4 E.3.27. Smith de rep. Anglorum. li.3. ca.9. F.N.B.41,&c. Linwood de foro compet.cap. Circumſpecte agatis fol.71. Liber rub. in Cuſtod. rem. Regis. cap.48. fol.41.

¶ In Curia Chriſtianitatis.] So called, becauſe as in the ſecular Courts the Kings Laws do ſway and decide cauſes, ſo in Eccleſiaſtical Courts the Laws of Chriſt ſhould rule and direct, for which cauſe the Judges in thoſe Courts are Divines,as Archbiſhops, Biſhops,Archdeacons,&c. Linwoods words are theſe, In Curia Chriſtianitatis, i. Eccleſiæ, in qua ſervantur leges Chriſti, cum tamen in foro regio ſerventur leges mundi. In libro rubeo in Scaccar' inter leges H. 1. thus it is contained, Sicut antiqua fuerat inſtitutione formatum ſalutari Regis imperio vera nuper eſt recordatione formatũ generalia comitatuum placita certis locis & vicibus, &c. interſint autem Epiſcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermani, Præfecti, Præpoſiti, Barones, Vavaſores, Tingrevii, & cæteri terrarum domini diligenter intendentes, ne malorum impunitas, aut gravionum pravitas, vel Judicium ſubverſio ſolita miſeros laceratione confiniant. Agantur primo debita veræ Chriſtianitatis jura, ſecundo regis placita, poſtremo cauſæ ſingulorum dignis ſatisfactionibus expleantur.

Int' leges Regis Edgari cap.5. Lamb. verbo Senator, Alderman, or Elderman. i. Senator, which ſignifieth the Sherive. i. Præpoſitus, ſeu cuſtos Comitatus.

And if any deſire to lok before the Conqueſt concerning this matter, he may read amongſt the Laws publiſhed by King Edgar, Celeberrimus autem ex omni ſatrapia conventus bis quotannis agitor, cui quidem illius Dioceſis Epiſcopus & Aldermanus interſunto, quorum alter jura divina, alter humana populum edoceto.

Thus much by reaſon of this word [Chriſtianitatis] having bẽn ſaid, let us return to our Act.

¶ Mere ſpiritualia.] Sic dicta, quia non habent mixturam temporalium: They are here called mẽr ſpiritual, for that they have no mixture of the temporalties, and becauſe they are corrections pro ſalute animæ.

Britton fol.11.b. Bracton l.5. fol. 403,&c. Fleta l.2. cap.53. li.6.ca.36. &c. Linwood cap. de foro compet. fol.7. li.7. fo.44. Kennes Caſe. See hereafter in this Chapter verbo Mortuary. Linwood ubi ſup.

Britton ſaith, Que ſeint Eſgliſe eit conuſance de juger de pure ſpiritualite: Hereſie, Schiſmes, holy Orders, and the like are mẽr ſpiritual things; Note it appeareth by the conſtitution of John Stratford, Archbiſhop of Canterbury in a Synod in London Anno Domini 1380. §. quidam etiam, &c. that adminiſtration of the goods of a man dying inteſtate, was granted to Ordinaries, Conſenſu Regis & magnatum regni Angliæ tanquam pro jure & Eccleſiaſtica libertate ab olim extiterit ordinatum. And Linwood ſaith, that Probate of Teſtaments, De conſuetudine Angliæ, & non de jure communi, belong to Court Chriſtian: which I have added for three cauſes.

1. That theſe things being temporal, and not mẽr ſpiritual, as our Act ſpeaketh, belonged not ab initio to the Court Chriſtian.

2. That the Eccleſiaſtical Judges derive their Juriſdiction therein by Parliament, and the cuſtom of the Realm, and not from any forrein power.

3. And laſtly, that herewith our Records and Books do accord and agrée.

2 R.2. tit. Teſtam. 4. 12 H.7.12.b. See hereafter verbo Mortuary.

¶ Pro mortali peccato, viz. fornicatione, adulterio, &c.] There be two examples put in particular of mẽr ſpiritualty for correction of theſe offences.

In ancient time the Kings Courts, and ſpecially the Lẽts had power to enquire of, and puniſh fornication and adultery by the name of Letherwite and it appeareth often in the Book of Domeſday that the King had the fines aſſeſſed for thoſe offences which were aſſeſſed in the Kings Courts, and could not be inflicted in curia Chriſtianitatis.

¶ Et hujuſmodi.] Theſe are to be taken for offences of like nature, as the two offences here particularly expreſſed be, as ſolicitation of any womans chaſtity, which is leſſer then theſe, and for inceſt, which is greater; and herewith agrẽeth Linwood, who expounding this Act ſaith, Non intelligas de omni mortali peccato, ſed de tali, cujus punitio de ſua natura ſpectat ad forum Eccleſiaſticum; nam ſi de ratione cujuſlibet peccati mortalis cognoſceret eccleſia, ſic periret temporalis gladii juriſdictio.

Linwood ubi ſup. Kennes caſe ubi ſupra.

¶ Pro

¶ Pro quibus aliquando infligitur pœna corporalis, aliquando pecuniaria.] Here pœna pecuniaria muſt be intended by way of commutation of penance, as it is clearly expounded by the Statute of Articuli ſuper Chartas; Item ſi Prælatus imponat pœnam pecuniariam alicui pro peccato, & repetat illam, regia prohibitio locum habeat: And ſo doth Britton take it. Art. ſuper Chart. cap. 2. Britton 11.b. F.N.B.53.a.

Vide Artic' contra prohibit' regiam Vet. Magna Charta, pro Cœmeterio non clauſo. Vet.Mag.Chart.

The Pariſhioners ought to repair the incloſure of the Church-yard, becauſe the bodies of the more common ſort are buried there, and for the preſervation of the burials of thoſe, that were, or ſhould have bèn whiles they lived the Temples of the Holy Ghoſt: And cœmiterium is derived of the Greek verb κοιμάω, that is, dormio, and therefore cœmeterium eſt quaſi dormitorium, quia mortui dormire dicuntur uſque ad reſurrectionem. And alſo if the Church-yard be not decently incloſed, the Church which is domus Dei cannot decently be kept, and therefore this the Pariſhioners ought to do per conſuetudinem notoriam & approbatam, and the conuſans thereof is allowed by this Act. Regiſter. Brit.fo,11.lib.5. fo.67. Jeffreys caſe Regiſt.44.b.

¶ Eccleſia diſcooperta, vel non decenter ornata.] In the ſame manner the Pariſhioners by this Act ought to repair the Church, for that it is the place where Divine Service is celebrated, and the bodies of the Pariſhioners of the beſt quality are buried; in reſpect whereof this Law doth allow the Eccleſiaſtical Court to have conuſans thereof, and for the providing of decent ornaments for the celebration of Divine Service.

¶ Eccleſia diſcooperta.] This is intended not only of the body of the Church, which is parochial, but alſo of any publick Chappel annexed to it; but it extendeth not to the private Chappel of any, though it be fixed to the Church, for that muſt be repaired by him that hath the proper uſe of it; for, qui ſentit commodum, ſentire debet & onus; and this the Pariſhioners ought to do per conſuetudinem notoriam & approbatam, and the conuſans thereof is allowed to them by this Act, but the Chauncell is to be repaired by the Parſon, &c. Regiſt.ubi ſupra. F.N.B.50.n. Britton fol.11. Regiſt.44.b.

¶ Oblationes, decimas debitas, vel conſuetas.] Oblationes in the Canon Law are thus defined. Art' contra proh. regiam Vet.Mag. Chart.Art.Cleri cap.1,2. 2 E.6. cap.13. Cap.Cler. quæſt.13.

Oblationes dicuntur quæcunque a piis fidelibuſq; Chriſtianis offeruntur Deo & Eccleſiæ, ſive res ſolid', ſive mobiles.

¶ Decimæ.] It appeareth by the ancient Writ, De recto de advocatione decimarum, and by the like ancient Writ of Indicavit, whereof you may read before in W.2. cap.5. verſus finem, that the right of tithes was tried in the Kings Court. Regiſt.fol.29.& 35 F.N.B.30.b.

* And this appeareth by an Act of Parliament in Anno 18 E.3. cap.7. and it is agréed in 4 E.3. that before the Statute (meaning W.2. cap.5.) every Parſon was ouſted to demand tithes in Court Chriſtian. * 18 E.3. cap.7. F.N.B.30.g. 4 E.3.27. 38 E.3. 13. 38 H.6.20.

Bracton lib. 5. fol. 401. ſaith, Quod decimæ ſunt ſpiritualitati annexæ: and Britton, who was Biſhop of Hereford, and learned in the Laws of this Realm, treating of what things the Church hath conuſans, omitteth tithes. Bract.li.5.fo.401. Brit. ubi ſupra. * Int' leges Edw. Regis, cap.8. fol. 128. having ſpoken of tithes, it is ſaid, *Hæc prædicavit beatus Auguſtinus & conceſſa ſunt a Rege Baronibus & populo*

Hereby it appeareth that the recital in the Statute of 1 R.2. that purſuit for tithes of right ought, and of ancient time did pertain to the Spiritual Court, muſt be intended by force of former Acts of * Parliament, (as things annexed to the Spiritualty) as of W.2. of this Act made in 13 E. 1. Articuli Cleri, cap. 1. &c. 18 E.3. cap.1. and is confirmed by later Acts of Parliament, as 27 H.8. cap.20. 32 H.8. cap.7. and 2 E.6. cap.13.

Now of tithes there be three kinds, predial, perſonal, and mixt, and this Act extendeth to them all, and for perſonal tithes ſée the Statute of 2 E.6. cap.13.

And true it is, that of ancient time the Parſons did ſue for ſubtraction of tithes in Court Chriſtian, but if the right of tithes had come in queſtion, it ſhould have been tried by the Common Law: and therefore in libro rubeo inter leges Henr. 1. ſpeaking of purſuit for tithes in Court Chriſtian, it is ſaid, Si Rex patiatur; but at this day it is without queſtion, as hath been ſaid, that for ſubtraction of tithes the conuſans by force of divers Acts of Parliament doth belong to the Eccleſiaſtical Court.

See the Act of 2 E.6. cap.13. 39 E.3. juriſdict. 8 E.4.14. 7 E.6. 79. Doct. & Stud. 166,167.

¶ Vel conſuetas.] By this Act modus decimandi, real compoſition, or by preſcription, or cuſtom is eſtabliſhed, for hereby are tithes divided into two parts, in decimas debitas, and that is quota pars, the tenth part, and into decimas conſuetas, and that is a duty perſonal due by cuſtom and uſage to the Parſon, &c. in ſatisfaction of tithes; as a yearly ſum of money, or other duty, and theſe are here called decimæ conſuetæ, and for this modus decimandi the Parſon, &c. may ſue in Court Chriſtian, and is warranted by this Act.

8 E.4. ubi ſupra. F.N.B. 41,43.

There is alſo a real ſatisfaction for tithes, as if of ancient time land hath been given by the conſent of the Patron and Ordinary to the Parſon and his Succeſſors in ſatisfaction of tithes out of other lands, this is alſo a good diſcharge of tithes, but for this or the like real ſatisfaction he cannot ſue in Court Chriſtian, but at the Common Law: Of this real ſatisfaction you may read a notable Record in 25 H.3. which was before the making of this Act, and the effect thereof is this:

Mich.25 H.3. Coram Rege Rot.5. Wilteſh.

See the Regiſter fo.34. and Glanv. li.12. cap.21. for this form of Writ.

Sampſon Foliot brought a prohibition againſt Thomas Parſon of Swindon, Quare ſecutus eſt in Curia Chriſtianitatis de laico feodo ipſius Sampſon in Draicot, &c. the Defendant pleaded that non eſt ſecutus placitum, &c. de laico feodo, ſed verum vult dicere, & dicit quod revera coram judicibus delegatis petiit ab eodem decimas feni de quodam prato in Walcot infra parochiam ſuam de Walcot, &c. & nihil petiit in parochia de Draicot, &c. Et Sampſon dicit quod anteceſſores ſui antiquitus dederunt 2 acras prati Eccleſiæ de Draicot pro decima feni, quam prædictus Thomas petit, & in eodem prato, quas eadem Eccleſia adhuc habet, & ſemper hucuſque habuit, unde videtur quod illud quod prædictus Thomas petit decimas eſt in laico feodo, & quod pratum illud de quo idem Thomas petit decimas eſt in Draicot ſicut breve dicit & non in Walcot, & de hoc ponit ſe ſuper patriam, &c. Whereupon ſeveral iſſues being joined, the Jury gave this verdict, that the ſaid Thomas purſued his plea in curia Chriſtianitatis de laico feodo prædict. Sampſon, &c. petendo ab eo decimas feni, of the ſaid meadow of the ſaid Sampſon in Draicot, unde anteceſſores ſui dederunt Eccleſiæ de Draicot duas acras prati pro decima feni quam prædict. Thomas modo petit, & quas eadem Eccleſia adhuc habet, & ſemper hucuſque habuit. And found that the ſaid meadow, &c. did lie in Draicot, &c. and thereupon judgment is given for the Plaintiff in the prohibition, and that he ſhould recover 20 marks damages, &c. Which Record, both for the antiquity thereof, and for that it agreeth with our Books, being a leading caſe, I have recited the more at large.

See the like groũd of prohibition, Regiſt.fol.38. 8 H. 6.14. 8 E.4.14. F. N.B.41.g. & 43.k.

That bounds of Pariſhes are to be tried by the Common Law. 39 E.3.23. 14 H.4. 17. 5 H.5.18. 34 H.6.10,11. 22 E.4.24. 12 H.7. 22.

Mich. 26 & 27 El. in Commu. Banc. Rot.2617. Lords caſe adjudged.

A man ſeiſed of eight acres of meadow, and one of paſture, for the tithes whereof he hath been paid time out of mind v s. iv d. afterwards the owner builds a Corn-mill upon the ſame, he ſhall pay no tithes for the Corn-mill, becauſe the land was diſcharged per modum decimandi: what things be indecimable by the Law, and ought not to pay tithe, Vide lib.11. fol.48,49. F.N.B 53. g. &c. ſee the Statute of 45 E. 3. 31 H.8. cap. & 2 E. 6. cap. 13. for diſcharge of Tithes. I have read of an ancient Concord de modo decimandi, which is worthy to be read at large, whereof we will give you the effect, Concordia fact' inter Willum Mallet, & rectorem Eccleſiæ de Aure, Heyton, Bathon' & Wellen Dioces' ex una parte, & nobilem virum Johannem de Acton militem ex altera, de modo decimandi omnia in Parochia de Aure per conſenſum Epiſcopi & capituli Bathon & Wellen, unde placitum fuit prius in cur captum.

45 E.3.c. 31 H. 8. cap. 2 E.6. ca.13. 9 H.5. fol.9. 30 E.3.10. M.9 E.1. Incip. 10. in com' banc. Rot.63. Somerſet.

¶ Dum-

¶ Dummodo non petatur 4. pars.] So as at this day in caſe when one perſon of the preſentation of one patron demand Tithes againſt another perſon of the preſentation of another patron in Court Chriſtian, amounting to a fourth part, &c. the right of Tithes at this day is to be tried at the Common Law. See W.2. cap.5.

¶ Mortuarie.] Or, a corſe preſent. Mortuarium is a gift left by a man at his death, pro recompenſatione ſubtractionis decimarum perſonalium, & oblationum. Brit.fol.11.b. Artic.Cler.cap.1. 10 H.4.1. 2 H.5.10. 21 H.8. cap.6.

In 2 H. 5. the opinion was againſt the Mortuaries, becauſe they were not contained in the Statute (meaning Artic' Cleri.)

There is no Mortuary due by Law, but only by Cuſtom, which is proved by the words of this Act, viz. Ubi mortuarium dari conſuevit. And this Act alloweth the Conuſans thereof to Court Chriſtian.

See the Statute of 21 H. 8. cap. 6. where Mortuaries ought to be paid, for what perſons, and how much, and in what caſe none is due. 21 H.8. cap.6.

Some have ſaid, that the King hath a Mortuary after the deceaſes of every Archbiſhop and Biſhop; true it is, that the King after their deceaſes hath ſix things, viz. to uſe the words of the Records) 1. Optimum equum ſive palefridum ipſius Epiſcopi cum ſella, & fræno. 2. Unam chlamydem ſive clocam cum capella. 3. Unum ciphum cum coopertorio. 4. Unum pelvem cum lavatorio ſive aquar'. 5. Unum annulum aureum. 6. Necnon * mutam canum, quæ (ſaith the Record) ad dominum regem ratione prærogativæ ſuæ ſpectant, & pertinent. Inter communia Hil. 2 E.2. in Scacc. poſt mort. epiſc.Bath & Wel. Tr. 36 E.3. ibid. poſt mortem epiſc. Cirenceſt. Hill. 5 E.4. ibid. Rot.47. poſt mortem archiep. Ebor.

And there is a ſpecial Writ that iſſueth out of the Exchequer, after the deceaſe of the Biſhop, for anſwering of the ſame. And in the Records this is called, Multa Epiſcopi, or Multura Epiſcopi, derived a Mulcta, for that it was a Fine, or final ſatisfaction given to the King, that they might have power to make their laſt Wills and Teſtaments, and to have the probate of other mens Teſtaments, and the granting of Adminiſtrations: for true it is that is ſaid, Nullam habebant Epiſcopi authoritatem præter eam quam a rege acceptam referebant, jus teſtamenta probandi non habebant, adminiſtrationis poteſtatem cuiquam delegare non poterant, nec ipſi quidem teſtamenta facere de jure communi, dum id illis regnante Henrico 3. conceſſum erat, & confirmatum vivente Edw.1.&c. Lib.MatheiParker, publiſhed Anno dom.1573. Rot. clauſ. 7 H.3.m.16. Rot.Pat. 36 H.3. m.1. Tit. de conſuet. cap.nullus. fo.19.

Linwood, who wrote in the Raign of H.6. ſaith, Beneficiatus non poteſt teſtari de communi jure, ſed de conſuetudine in Anglia. See before in this Chapter, verbo mere ſpiritualia.

So as this duty, which the King hath after the death of Archbiſhops and Biſhops, is not any Mortuary.

* *Muta* cometh of the French word, *Mente de chiens.*

¶ Si prælatus alicujus Eccleſiæ, vel ejus advocatus petat a rectore penſionem.] This Act giveth Conuſans of ſuit for a Penſion, when a Prelate or a Prior demand a Penſion of a Parſon of a Church. Regiſt.fol.47. F.N.B. 52.b.

But this muſt be intended of a Penſion which had his eſſence by ſome Ordinance made by the Ordinary upon a controverſie for Tithes, or the like; by which Ordinance the Tithes are to be injoyed by the one, and he is to pay a Penſion for the ſame to the other: for this Penſion, becauſe it beginneth by an Eccleſiaſtical Act, and by an Eccleſiaſtical Judge, he may take his remedy by force of this Act in the Eccleſiaſtical Court; but if a Penſion be claimed by preſcription, there, ſeeing a Writ of Annuity doth lye, and that preſcriptions muſt be tried by the Common Law, becauſe the Common and the Canon Law do therein differ, they cannot ſue for ſuch a Penſion in the Eccleſiaſtical Court, no more then if a Penſion be granted by Deed by a Parſon with the conſent of the Prior and Ordinary. 5 E.3.17. 6 E.3. 54,55.7 E.3.40.41 17 E.3.32. 19 E.3. Preſcription 98. 31 E.3. ibid.26. 31 E.3. Juriſd.26. 16 E.3A.nnuity 24 40 E.3.3.b. Regiſt. 38.a. 11 H.4.68. 8 H.6.23. 7 E.6. Dier 79.

A Writ of Annuity muſt be brought therefore at the Common Law: and all this doth notably appear by a Judgment in the next year after the making of this Statute, where the caſe was, that the Abbot and Covent of Leiceſter did by their Deed under their Covent ſeal, bearing date Anno 25 H.3. grant to the Abbot of Paſch.14 E.1. in Banc.Rot.69. Leiceſt.

Saint Ebrulfe and his ſucceſſors a yearly Rent or annuity, for certain Tithes granted by the Abbot and Covent of Saint Ebrulfe to the Abbot of Leiceſter and his ſucceſſors; for which annuity or yearly Rent (being granted out of no lands) the Abbot of Saint Ebrulfe brought a Writ of Annuity againſt the Abbot of Leiceſter: wherein the Judgment was, Et quia cognitio placiti petendi annuum redditum directe ſecundum conſuetudinem regni ſpectat ad curiam domini Regis, & in ea debet hujuſmodi placitari,& prædictus Abbas de ſancto Ebr. petit quendam annual' redd' ſibi debitum per præd' contractum in præd' ſcriptis contentum inter prædeceſſorem ſuum, & prædec' præd' Abbatis Leiceſt', & non aliquas decimas.Conſiderat' eſt, quod præd' Abbas de ſanct. Ebr' recuperet de cætero præd' annuum redditum verſus præd. Abbat. de Leic', & ſimiliter arreragia ſua de tempore iſtius Abbatis de ſanct. Ebr, quæ taxantur p Juſtic' ad xl l. & Abbas de Leiceſt' in miſericordia,&c. Poſtea venit prædict. Abbas de Leiceſt', & ſatisfecit præd. Abbati de ſancto Ebr de lx l. ad tres vices, & etiam de aliis arreragiis præd' redditus uſq; ad hunc diem a tempore impetrationis brevis, de tempore præd' Abbatis de ſancto Ebrulpho,&c.

And upon this diverſity this Statute is well explained, and all our Books reconciled.

See the Statute of 21 H.8. ca.6. where Mortuaries ought to be paid,for what perſons, and how much, and in what caſes none is due.

7 H.3. Prohibition 30. 5 H.3. Prohibition 29. 31 E.3. Bre.258.M.33 E.3. Rot.23. Coram Rege caſus prioris Sanctæ crucis juxta turrim London. 8 R.2. Monſtr. des faits 184.

¶ De violenta manuum injectione in clericum.] Note a diverſity betwæn a Spiritual man of the Church conſecrated to the ſervice of God, and goods dedicated to Divine ſervice, or mærly Eccleſiaſtical: for laying of violent hands upon the perſon of any, infra ſacros ordines, the Eccleſiaſtical Court hath Conuſans; but for the violent taking away, or conſuming of the Ornaments of the Church, or goods dedicated to Divine ſervice, that Court hath no Conuſans, for that is not given to them; as for taking away of the Bible, the Book of Divine Service, the Chalice, and the like, or for the taking away of an Image out of the Church; but remedy muſt be taken for theſe at the Common Law.

Tr.4 E.3. Rot.100. Coram Rege Eſſex. Bract.li.5. fol.401. &c. Brit.11.b. Regiſt.34.

And I find a Record that William de Brinckle recovered at the Common Law by verdict, againſt Otho Parſon of the Church of Beſton, xl. pro ſubtractione unius bullæ Papalis de ordinibus, alterius bullæ de legitimatione, & tertiæ bullæ de veniam exorantibus pro animabus anteceſſorum ſuorum. And yet theſe were accounted in thoſe days Spiritual; but by the ancient Common Law they have juriſdiction of no goods or chattels, but ſuch as be de teſtamento & matrimonio.

Artic. contra prohib. Regiam. Vet. Magna Charta Artic.Cleri.cap.1,3. 11 H.4.81. 18 H.6. 6. 20 E.4.10.b. Regiſt.49.b. F.N.B,41.51.k. 52.f.53. * Hil. 7 H.3. Prohib.30.Regi. 49.a. Vide ſupra verbo Mortuary. Artic.cont. Prohibit. Regiam. Vet.Mag.Chart. Regiſt. 46,47,&c. 54. F.N.B. 51. I.K.52.d. m.53.a.f. 18 E.4.6. 22 E.4.20. 33 E.3. Bre.912. 12 H.7. 22. Lib.4.fol.20. Inter Palmer & Thorp. Artic. Cleri, cap.4.

And for laying violent hands upon one of the Clergy, the end of that ſuit is only pro ſalute animæ, by Excommunication, or corporal Penance: but if a Clergy-man be arreſted by Proceſs of Law, he cannot for this ſue in the Eccleſiaſtical Court. And if the Clerk ſue in Court Chriſtian for damages for the battery, he is in caſe of Præmunire, for in that caſe the Eccleſiaſtical Judge ought to proceed ex officio, only to correct the ſin.

¶ In cauſa defamationis conceſſum fuit alias.] Where it is ſaid here, Conceſſum fuit alias, by it appeareth that the Conuſans of defamation that concerneth mær Spiritualty, was granted by Act of Parliament, implied by this word [Conceſſum] for otherwiſe it could not be granted.

Defamations granted to the Conuſans of Eccleſiaſtical Judges ought to have their incidents; Firſt, that it concerns matter mærly Spiritual, as to call him Heretick, Schiſmatick, or the like: 2. That it concerns mær Spiritual matter only, and not mixt with any matter determinable at the Common Law. 3. Although the Defamation be mærly and only Spiritual, yet he that is defamed cannot ſue there for amends or damages, but the ſuit there ought to be for correction of the ſin, pro ſalute animæ, and they muſt expreſs in particular the defamation in their Libell in Court Chriſtian.

If a man give evidence to an Inqueſt to indict one, he cannot ſue for this defamation in Court Chriſtian.

The

The Prior of Laund libelled in the Spiritual Court againſt Robert Lee, and John Lee, for calling the Prior Churls ſon, rotten churl, and canker'd churl, and a Prohibition was granted, for the words concerned no Spiritual matter, and therefore he could not ſue for them in the Eccleſiaſtical Court, neither could he have any Action for them at the Common Law. Tr. 19 H.8. Coram Rege Spilm. Report.

If a man call one a perjured man, he muſt take his remedy at the Common Law. 30 H.8. Br. Action ſur le caſe 104.

A ſuit was in the Eccleſiaſtical Court for calling one Falſe knave; and for the ſame cauſe a Prohibition was granted, and Knave ab initio was no word of reproach, but ſignified a man-ſervant, and a knave-child a man-child; and this caſe was between March and Bele of Kent. M.22 H.8. Coram Rege Spilm. 23 E.3. Stat. de Labourers. Vide ſtat. de Labourers. 23 E.3.

¶ Pro læſione fidei.] This is to be underſtood where the thing to be done is mær Spiritual, and neither Temporal, nor mixt with the Temporalty, be is real or perſonal, becauſe the Eccleſiaſtical Court cannot hold plea of the principal, and where they cannot hold plea of the principal, they cannot hold plea of the acceſſory, Quia cujus juris (i. juriſdictionis) eſt principale, ejuſdem juris erit acceſſorium. 22 Aſſ. p.7. 2 H.4. 10. 11 H.4.88. 38 H.6.29.20 E.4. 10.b. Kelw.39. Bract.lib.5. fol. 401. & 406.b.

And again, Juriſdictionem non mutat fidei interpoſitio, ſacramentum præſtitum, nec ſpontanea renunciatio partium, &c. Et illud idem dicendum erit de debitis, & catallis quæ non ſunt de teſtamento, vel matrimonio.

More ſhall be ſaid of theſe matters when we come to the Statute of Artic. Cleri, Anno 9 E.2. Vide R. Book of Entries, 444. Vide Vet. Magn' Chart', part 2. fol.70. Prohibitio formata de Stat. Articuli Cleri.

Statutum

Statutum de quo Warranto.

EDITUM *Anno* 18 Edw. 1.

Statutum de quo Warranto novum Anno 18 E. 1. *qualiter brevia de quo Warranto debent terminari, & de cætero terminari.*

QUia brevia de quo Warranto & etiam judicia ſuper placita eorundem reddend' diutinam ceperunt dilationem, eo quod Juſticiarii in judiciis illis reddendis de voluntate domini regis non fuerunt hucuſque certiorari: Idem dominus Rex ad Parliamentum ſuum poſt Paſch. apud Weſtm̃, anno regni ſui xviij de gratia ſua ſpeciali, & propter affectionem quam habet erga Prælatos, Comites, & Barones, & cæteros de regno ſuo conceſſit, quod omnes de regno ſuo quicunque fuerint, tam religioſi, quam alii, qui per bonam inquiſitionem patriæ aut alio modo verificare poterunt, quod ipſi & anteceſſores eorum vel prædeceſſores uſi fuerint libertatibus quibuſcunque de quibus per brevia prædicta fuerint implacitati ante tempus regis Rich' conſanguinei ſui aut toto tempore ſuo, & hucuſque continuerint: ita quod libertatibus illis non ſunt abuſi, quod partes adjornentur ulterius uſque certum diem rationabilem coram eiſdem Juſticiar': infra quem dominum regem adire poſſint cum recordo Juſtic' ſigillo ſuo aſſignat̃ & redire. Et dominus Rex confirmabit per literas ſuas patentes ſtatum eorum. Et illi qui non poterunt ſeiſinam anteceſſorum ſeu prædeceſſorum verificare eodem modo, quo prædictum eſt, deducantur & judicentur ſecundum legem & conſuet̃ regni. Et illi qui habent chartas regales ſecundum chartas illas judicentur. Præterea dominus Rex de gratia ſua ſpeciali conceſſit, quod omnia judicia quæ reddenda ſunt in placitis de quo Warranto per Juſtic̃ ſuos apud Weſtm̃ poſt Paſch. prædictum, & pro ipſo domino Rege ſi partes quæ amiſerunt ad ipſum dominum regem revenire voluerint, tale habebunt reme-

remedium de gratia domini regis ſicut ſuperius ſcriptum eſt. Conceſſit etiam idem dominus Rex ad parcend' miſis & expenſis populi de regno ſuo: quod placita de Quo warranto de cætero placitentur & terminentur in itinere Juſtic', & quod placita adhuc pendentia readjornentur in ſingulis com ſuis uſque adventum Juſticiar' in partibus illis.

The miſchief before this Statute, as here it is rehearſed, was, that there had bẽn [diutina dilatio] in Writs of Quo warranto, becauſe the Judges would not proceed to judgment (the ſame being final) without being certified de voluntate Regis by the Writ de libertatibus allocandis, which was not only a great delay, but a great charge to the Subject: But the truth is, that this Kings Officers to get thanks of the King by filling of his coffers, cauſed very many Writs of Quo warranto for liberties to be brought; for where it is ſaid in our Chronicles, that thoſe Writs of Quo warranto were for lands and tenements, therein they are miſtaken, for it appeareth that after, that is to ſay, in the 31 year of his raign the King did bring a Quo warranto againſt the Lady of S. to know by what warrant ſhe claimed to hold the Mannor of C. which belonged to his Crown, as that which of ancient time was ancient demeſne, and there it is affirmed and not denied, that this was the firſt Writ that ever was ſeen to be brought for lands; But certain it is, that there were an exceeding number of Writs of Quo warranto brought as well againſt the Prelates and other of the Clergy, as againſt the Nobles and others of the Realm for their liberties, franchiſes, and priviledges, for that partly by length and proces of time, and partly during the troubleſome times and civil broils and wars in the raigns of King John and H.3. many of their Charters, Records of allowances, and other evidences and muniments were deſtroyed, waſted or made away; amongſt others a Quo warranto was brought againſt John Warren Earl of Surrey, who appearing before the Juſtices ſpake boldly and ſtoutly againſt this kind of procæding, as our Hiſtories do teſtifie. 31 E.1. brief 886. Vide Bract.l.5. 367. Polydor. Trivet, Abingdon. Hollingſ. pag. 280. a.b.

Certain it is, that as well the Lords Spiritual and Temporal, as the Commons aſſembled in this Parliament did complain hereof to the King, and beſought him that he would be pleaſed of his grace and favour, for it was a legal courſe which was attempted and proſecuted in the Kings name, but a matter of great rigour and extremity invented and eagerly followed by his Officers, to the general diſtaſte and grief of the whole Realm.

The noble and wiſe King knowing that ſummum jus was ſumma injuria, and not intending to take advantage of the extremity of his Laws in ſo hard a caſe did of his grace and favour (for ſo the Act ſpeaketh) Ex ſpeciali gratia & etiam propter affectionem quam habet erga Prælatos, Comites, Barones, & cæteros de Regno ſuo, provide by this Act remedy for the ſaid miſchief.

Bracton and Fleta treating of a Quo warranto, both of them almoſt totidem verbis ſayen, Eſt etiam alia actio, quæ dicitur duplex, in uno brevi, & ubi duæ concurrunt actiones, ſcilicet in perſonam, & in rem: primo in perſonam, quod quis ſit ad reſpondendum quo warranto teneat aliquam libertatem ſeu aliam rem. In rem, cum præterea addatur in fine quam Rex clamat ut jus & hæreditatem ſuam vel eſchaetam ſuam, vel de antiquo dominico Coronæ ſuæ, vel hujuſmodi, vel quam talis clamat in N. contra coronam & dignitatem Regis. Bract.l.5.fo.367. Fleta l.5.cap.9.

¶ De gratia ſua ſpeciali.] This, as hath bẽn ſaid, is an Act of grace, for it bindeth the King in this particular of his prerogative, Quod nullum tempus occurrit Regi, for by this Act continuance of poſſeſſion of liberties from the beginning of the raign of R.1. till this Act, which was under an hundred years, ſhould be a bar to the Crown, if ſo it were found by inquiſition, which was the time of preſcription that bound the Subject in caſe of preſcription. Acts of grace. Mag.Chart.ca.8. W.2.cap.10,29. 2 E.3. fol.28,29. Firſt part of the Inſt.Sect.190.

¶ Qui

¶ Qui per bonam inquiſitionem patriæ, vel aliquo alio modo verificare poterint, &c.] This is as much to ſay, as to prove by inquiſition, or verdict of the Country, who are to enquire of the fact, that is, of the poſſeſſion of the time aforeſaid, or to prove by matter of Record (whereof Juries are not to enquire) that is, by allowance before Juſtices in Eyre, &c. implied neceſſarily in theſe words, [Vel aliquo alio modo] that muſt be alio modo, then by matter in fait inquirable by the Country; ſo as albeit it be ſaid, that a poſſeſſion of liberties warranted alſo by allowance is within this Statute, that doth not exclude, but that a poſſeſſion found by inquiſition is within the expreſs letter and meaning of this Act.

2 E.3.28,29. Roger Mortimers Caſe upon this branch.

¶ Libertatibus quibuſcunque.] This extends to all liberties, as well to thoſe that lie in point of Charter, as conuſans of pleas, felons goods, and the like; as to thoſe that may be claimed by preſcription, as waif and ſtray, and the like.

2 E.3. ubi ſupra.

The remedy is conformable to the miſchief, for the miſchief was, as hath been ſaid, concerning liberties, and not concerning lands; and the Quo warranto was framed for franchiſes which belong to the Crown, and ſuch as the Subject hath, are derived from the Crown, Libertates regales ad coronam ſpectantes ex conceſſione regum a Corona exierunt.

31 E.1. brief 886. Bract. ubi ſupra. Tr. 29 E.1. coram Rege. Rot. 57. the Biſhop of Durhams Caſe.

¶ Ante tempus conſanguinei ſui Ric aut toto tempore ſui.] This is King Richard the firſt, and here is called conſanguineus, becauſe the King derived not lineally from him, for he was elder brother to King John, who was Grandfather to King Edw.1. Note here this disjunctive [aut] ſo as the time of preſcription, as hath been ſaid, in the caſe of a Subject is the time limited by this Act.

¶ Ita quod libertatibus illis non ſunt abuſi.] This clauſe extendeth not only to miſuſer, diſuſer, and non-uſer of liberties, but to faux claime of them, and the like.

¶ Regem adire poſſint cum recordo.] Here is an excellent pattern, that the King be informed by the Judges, and by the Record it ſelf, before he make any grant or confirmation thereof; ſo careful were they in thoſe days, that the King, before he paſſed any thing, might be truly informed.

¶ Et dominus Rex ſtatum eorum affirmabit.] In thoſe days ſuch faith were given to verdicts of twelve men, as they were vere dicta, and dicta veritatis, ſo as upon one inquiſition, &c. the King by this Act was to affirm the liberties according to the verdict, &c.

¶ Deducantur & judicentur ſecundum legem communem.] That is according to the Kings prerogative of nullum tempus occurrit Regi. Hereby it appears that the Kings prerogative is part of the Law of England, and comprehended within the ſame.

¶ Et illi qui habent Chartas regales ſecundum Chartas illas & earundem plenitudinem judicentur.] Here is an excellent rule for conſtruction of the Kings Letters Patents, not only of liberties but of lands, tenements,

ments, and other things which he may lawfully grant, that they have no ſtrict or narrow interpretation for the overthrowing of them, Sed ſecundum earundem plenitudinem judicentur, that is, to have a liberal and favourable conſtruction for the making of them available in Law, uſque ad plenitudinem, for the honor of the King. Lib.6. fol.5,6. Sir John Molins Caſe.

Alſo hereby is implied that they are to be conſtrued ſecundum earum plenitudinem, that is, as fully and beneficially as the Law was taken at that time when they were made: and certainly theſe ancient Laws were directions to the ſages of the Law, for the conſtruction of the Kings Charters, and Letters Patents, as it appeareth in our Books. 6 E. 3. 54, 55. 7 E. 3. 40, 41. 18 E. 3. conuſans 39. 34 Aſſ. 14. 40 Aſſ. 23. 12 H. 4 12. 14 H. 6. 12. 33 H. 6. 22. 35 H. 6 54. 9 H. 7. 11. 10 H. 7. 13, 14. 16 H. 7. 9.

¶ Præterea Dominus Rex de gratia ſua ſpeciali conceſſit, quod omnia judicia quæ reddenda ſunt in placitis de Quo warranto per Juſtic̃ apud Weſtmonaſt' poſt Paſch' prædict', & pro ipſo Domino Rege, ſi partes quæ amiſerunt ad ipſum Dominum Regem revenire voluerint, tale habebunt remedium de gratia Domini Regis, ſicut ſuperius eſt conceſſum.] This was a ſpecial grace indeed of the King, that though judgments had been given in any of his Courts at Weſtminſter ſince the feaſt of Eaſter in Pleas of Quo warranto for him againſt any of his Subjects, (which judgments in Law againſt the Subjects were final) yet, thoſe judgments notwithſtanding, the parties grieved ſhould be within the remedy of this Act.

¶ Conceſſit etiam idem Dominus Rex ad parcend' miſſis & expenſis populi de Regno, quod placita de Quo warranto de cætero & placitentur & terminentur in Itineribus Juſticiar'.] The coſts, charges, and expences of the Subjects in theſe caſes were exceſſive, and therefore, to meet with this miſchief, and that the Subject might receive Juſtice in his own Country, as it were at his own doors, it is likewiſe of the Kings ſpecial grace that Pleas of Quo warranto ſhould be heard and determined in the Eirs of the Juſtices.

Of this branch we find a notable caſe in our Books, and I will cite the caſe as I find it of Record, and as it may be gathered in our Books. The Archbiſhop of York was in poſſeſſion of Priſage of Wines in the Port of Hull, and in the Raign of E. 2. in the time of John Archbiſhop, the ſame franchiſe was ſeiſed into the Kings hands; after the deceaſe of John Archbiſhop, William Archbiſhop his ſucceſſor ſued in Parliament in the Raign of E. 3. by Petition of Right to be reſtored to the ſaid Franchiſe; and afterward by Parliament the Petitioner was reſtored to the poſſeſſion of the ſaid Franchiſe, and by the ſame award it was adjudged that the ſaid William Archbiſhop the Petitioner ſhould anſwer the King, when and where he pleaſed; and the like award was made upon the Petition of the ſaid William Archbiſhop in the Parliament the morrow after the Feaſt of St. Katherine in the fourth year of the ſame King; whereupon the King brought a Writ of Quo warranto againſt the ſaid William Archbiſhop returnable in the Court of Common Pleas, to know by what warrant he claimed to have Priſage of Wines in the Port of Hull; Parning that famous Serjant (who after was Chief Juſtice, and after that Lord Treaſurer of England, and laſtly Lord Chancellor of England) of Councel with the Archbiſhop, pleaded to the juriſdiction of the Court, and demanded judgment, if the Archbiſhop ought to make any anſwer there, for that King Edward, Grandfather of E. 3. made a Statute (intending this Statute of 18 E. 1.) which provided, that the Pleas of Quo warranto ſhould be pleaded before Juſtices in Eir in the Counties, and that it was ordained by a Statute made in the time of 5 E. 3. 65. 6 E. 3. 5, &c.

King E. 3. at his Parliament at Northampton (which was in 2 E. 3.) that by a Writ under the Great, or Privy Seal, no disturbance should be that common right should not be done to all, and we intend not (saith he) that against the said Statute, which is a Law common to all, that we ought to answer in this Court. The matter concerning this Act of 18 E. 1. was not denied, but Sir William Herle Chief Justice, that gave the rule, relying upon the award in Parliament, that the Archbishop should answer the King when and where he would, and there it is said, that the award of Parliament was the highest Law that could be, and thereupon Serjant Parning answered over.

Now when Justices in Eir ceased, then this branch for the ease of the Subject, and for saving of their costs, charges, and expences, lost his effect, for with Justices of Eir this branch lived, and with them it died.

Some have supposed that Henry the second, did first institute Justices in Eir, whereof one saith, Justiciarii Itinerantes constituti per Henr. 2. 1. Qui divisit Regnum suum in sex partes, per quarum singulas tres Justiciarios Itinerantes constituit; and they likewise agrée, Quod hoc institutum sub Edwardo 3. evanuit.

Rog. Hoveden poster. parte annalium, fol. 313. Mat. Paris. Camden Brit. 129.

Wherein how men otherwise learned, but not skilful in legal antiquities have mistaken both these points, we shall in a word or two satisfie the learned Reader.

These Justices Itinerants, were also called perlustrantes; they were first instituted ad dilationes amputandas, & ad subditorum labores, sumptusque sublevandos.

Lucubr. Ockham

It appeareth by the Mirror, who had seen the old Rolls in the raigns of ancient Kings, and namely of King Alfred, and wrote of the Laws from the time of King Arthur, who saith, Que auncientment soloient les Royes en proper persons eroer de paiis in paiis pur inquirer, Oier & Terminer les peches, & pur redresser de torts, & ceux queux ne sont my attaine en tielz Eires des persones treſpasses faitz avant remeint al judgement de Dieu. Et puis pur multiplication de peches ne purront my les Royes touts faire per eux meſmes & pur ceo ilz envoieront lour Comissaries, que sont ore appels Justices errants, que nount power de Oier & Terminer nul persone treſpasse forsque pur chose attaine, & nient termine in le darraine Eire ou puis fait, (which agréeth with our Books) and further saith, Estoiet auncient ordein que les Royes per eux, ou per lour chiefe Justices, ou per Justices generals a touts pleas Oier & Terminer erraſſent de 7 ans, in 7 ans per my touts Counties pur receiver les Rolles de touts Justices assignes, des Coroners de inquiries, des escheators, de Viscounts, de Hundreders, de Bailies, & de touts Seneschals, &c. And again, Chescun pais soloiet deestre garnie per 40 jours per general summons, &c. All which agréeth with our Books; and after he saith, Abusion est que Justices & lour Ministers, que occient le gent per faux judgement, ne sont distreints al fere de autres homicides, que fist le Roy Alfred que fist pender 44 Justices in un anne tant come homicides pur lour faux judgements: And there he nameth those corrupt Justices, which is to be intended of Justices Itinerant, for there were not so many resident.

Mirror c. 2. § 15.

Bract. l. 3. fol. 108, 115, 116, &c. Brit. fol. 127, &c. Fleta l. 1. c. 15, &c. 2 E. 3. 27. 4 E. 3. 41 6 E. 3. 55. 23 E. 3. 21. 6 E. 2. Ass. b. 496. 14 H. 7. 21. 15 H. 7. 5.

Miror c. 4. § Le office des Justices In Eir. cap. 5. § 1. The books aforesaid, ubi supra.

And the institution of Justices Itinerant, and the circuit of Justices in the Countries had his ground from holy Scripture, for there it is said, Judicabat quoque Samuel Israelem cunctis diebus vitæ suæ, & ibat per singulos annos circuiens Bethel, & Galgala, & Maspha tti; & judicabat Israelem in supradictis locis, revertebaturque in Ramatha; ibi enim erat domus ejus, & ibi judicabat Israelem.

1 Sam. c. 7. ver. 16

As to the second point, that Justices in Eir should cease in the raign of Edward the third, they have not only erred in fonte, but in fine also, for they ceased not in the raign of King Edward the third, for it is enacted by Act of Parliament

liament after that Kings raign, (in reſpect of the troubles and forein affairs) that no Eirs ſhould be holden during two years; and after in 16 R.2. that no Eir ſhould be holden till the next Parliament; but thus much in a caſe ſo evident ſhall ſuffice. We have added thus much, not of curioſity, nor of a ſpirit of contradiction, but for two reſpects; the one, that when our Hiſtorians do meddle with any Legal point, or matter concerning the Law, we would adviſe them, that they would before they write, conſult with thoſe that be learned, and appriſed in the Laws of this Realm: the other, that truth might be manifeſted, and prevail. Rot. Parliam. An. 6 R.2. nu.35. 16 R.2. nu.12.

But hereof more largely ſhall be ſpoken in the Treatiſe concerning the Juriſdiction of Courts.

Stat. de Weſtm. III.

EDITUM *Anno* 18 Edw. 1.

Ad Parliamentum poſt feſtum Hil. & Paſchæ.

In the Parliament Roll it is intituled.

Statutum Regis de terris vendendis & emendis.

1. Part of the Inſtitutes, Sect. 140. IT is called the Statute of Weſtm. 3. becauſe two notable Parliaments had béen before holden at Weſtminſter, the one called Weſtm. 1. and the other called Weſtm. 2. In reſpect whereof, and of the excellency of it, this Parliament being holden at Weſtminſter, is called Weſtm. 3.

CAP. I.

QUia emptores terrarum & tenementoꝝ de feodis Magnatum & aliorum Dominorum in præjudicium eorundem, temporibus retroactis, multotiens in feodis ſuis ſunt ingreſſi, quibus libere tenentes eorundem magnatum & aliorum terras & teñ ſua vendiderunt, tenend' in feod' ſibi & hæredibus ſuis de feoffatoribus (*& hæredibus*) ſuis, & non de capitalibus doñ feodorum, per quod iidem capitales Domini eſchaetas, maritagia, & cuſtodias terrarum & tenemenť dē feodis ſuis exiſtentium ſæpius amiſerunt: quod quidem eiſdem Magnatibus & aliis Dominis quam plurimum durum & difficile videbatur, & (*ſic*) in hoc caſu exheredatio manifeſta. Dominus Rex in Parliamento ſuo apud Weſtmon' poſt Paſch. anno Regni ſui 18 videlicet in quindena Sancti Johan. Bapt. ad inſtantiam Magnatum Regni ſui, conceſſit, providit, & ſtatuit, quod de cætero liceat unicuique libero homini, terras ſuas, ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere, ita tamen quod feoffatus teneat terram illam, ſeu tenemenť illud de capitali Domino feodi illius per eadem ſervitia & conſuetudines, per quæ feoffator ſuus illa prius tenuit.

Lib. 3. fol. 23, 24. Walkers caſe. Mag. Char. c. 32. ¶ Quia emptores terrarum, &c.] The cauſe of the making of this Statute, appeareth by the Preamble, and by that which hath béen ſaid upon the Expoſition of the 32 Chapter of the Statute of Magna Charta; where alſo the principal parts of this Act are explained, yet ſome things are thereunto neceſſarily to be added.

At

At the Common Law, if A. had made a feoffment in fée to B. reddend' inde, ſive Tenend' de ſe & hæredibus ſuis per 6 d. pro omnibus ſervitiis, & fac' capitalibus Dominis feodi pro prædict' A. & hæredibus ſuis omnia ſervitia debita, &c. 31 Aſſ.p.30. 2 E.3. 33. 49 E. 3.10.

In this caſe by the firſt Reddend' or Tenend' the land had bæn holden of the Feoffor, and all the ſervices due ſhall be done to him; for to do ſervice for a man, is to do it to him; qui pro me aliquid facit, mihi feciſſe videtur.

If the Tenant had made a feoffment in fée before this Statute generally, without reſervation of any tenure, the feoffée ſhould have holden of the Feoffor, as he had held over; For example, if he had holden by Knights ſervice, the Feoffée by creation of Law had holden by Knights ſervice of the Feoffor, in reſpect of the tenure over by him; and therefore if the Lord had confirmed the eſtate of the Feoffor, viz. the Meſne, to hold by fealty only (which was Socage) the tenure betwæn the Tenant and the Feoffor ſhould be Socage alſo, becauſe the tenure created by Law followeth the tenure, in reſpect whereof it was created. 3 Aſſ.8. 33 E.3. Annuity 52. 22 Aſſ.53. 45 E.3. 15. b. 4 H.6.20. 49 E.3.10.

¶ Quod de cætero liceat unicuique libero homini, terras ſuas, ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere.] By the Common Law, the Tenant might have made a feoffment in fée of the whole tenancy to be holden of the chief Lord; but notwithſtanding the Lord might, during the life of the Feoffor, take him for his Tenant, and avow upon him (in reſpect of the former fealty, ſervice, and privity) albeit the Feoffée gave notice, and tendred him all the arrerages, which now this Statute hath altred. 33 E.3. Avowry 255. 4 H.6.20. 12 E.4.16. lib.3. fol.23. Walkers caſe.

See the Expoſition upon the 32 Chapter of Magna Charta. Mag. Chart. c.32.

¶ Vendere.] Is here not only taken for a ſale, but for any alienation by gift, feoffment, fine, or otherwiſe: But ſale was the moſt common aſſurance.

¶ Libero homini.] i. Libere tenenti; to every Frée-holder. Hereby are excluded not only nativi, but alſo nativè tenentes, Copy-holders, or Tenants at will, according to the cuſtom of the Mannor.

¶ Ita tamen quod feoffatus teneat terram illam, ſeu tenementum illud de capitali Domino feodi illius.] The general words of this Act take not away neceſſary incidents, as that the Feoffée of all, or of part, ſhall give notice, and tender the arrerages before the Lord ſhall be compelled to avow upon him: neither do theſe, or the former words [De cætero liceat] take away the fine for *licenſe* of alienation, &c. of lands holden of the King in capite, for that belongeth to the King by the ſaid Statute of Magna Charta. See Mag. Charta, cap.32. 4 H.6.20. 8 E.4.18. Mag. Chart.c.32.

Theſe general words have a tacite exception, viz. unleſs all the Lords mediate and immediate do aſſent thereunto; for, Quilibet renunciare poteſt benefic' juris pro ſe introduct'. 27 H.8.26. 2 E.2 Avowry 185.

¶ Capitalis Dominus.] Is here taken for the next immediate Lord, and ſo by degrées upward to every Lord Paramount, albeit the Act ſpeaketh in the ſingular number: and it is to be known, that all the lands and tenements in England are holden either mediately or immediately of the King, and therefore he is Summus Dominus ſupra omnes.

* If the King be Lord, A. Meſne, C. Meſne, and Tenant, the Tenancy cometh to the hands of the King by forfeiture or conveyance, the King granteth the lands to another in fée, [Tenend' de capitali Domino per ſervitia debita, & conſueta] this grant ſhall revive not only the immediate tenure of C. but of A. and of the King alſo, albeit the Tenend' de capitali Domino be in the ſingular number, (as here the Statute ſpeaketh) yet is it as much as capitalibus Dominis. * 33 H.6.7. 8 E.3 283. 17 E.3.59. 46 E.3. Petition 19. lib.6. fol.5,6. Sir John Molyns caſe. Eodem lib. fol. 130, 131. Bewlies caſe.

¶ Per

¶ Per eadem ſervitia & conſuetudines, per quæ feoffator ſuus illa prius tenuit.] A. holdeth lands by Knights ſervice, and giveth the ſame to B. in tail, to hold of him in Socage; B. maketh a feoffment in fee, the Feoffee ſhall not hold of the Lord in Socage, as the Feoffor held, but by Knights ſervice, as A. the Donor held: for by the feoffment the reverſion in fee holden by Knights ſervice is drawn out of the Donor, and paſſeth to the Feoffee; and the Feoffee in this caſe cannot hold of the Donor: and this caſe is not againſt the letter of the Law, but within the intent and meaning thereof: for the meaning of this Law was, that the Feoffee ſhould hold of the Lord, as the Feoffor did when the Feoffee held of the ſame Lord: and this Act was made for the advantage of the Lords; and therefore in conſtruction the Feoffee ſhall hold, not as the Feoffor, but as the Donor held.

2 E.2. Avowry 181. 10 E.3.26. 18 E.3.7. 31 E.3. Gard 116. 48 E.3. 8. 1 H.5. 5 E.4.8. 15 E.4.13. Tr. 18 Eliz. in communi banco, in Wyats caſe. Per cur' which I heard and obſerved.

If the husband ſeiſed of land in the right of his wife make a feoffment in fee, the Feoffee ſhall hold as the wife held, for the husband had nothing but in her right.

Alſo if the Tenant that holds by priority make a feoffment in fee, the Feoffee ſhall not hold by priority; for this Act ſaith, Per eadem ſervitia, by the ſame ſervices, and not according to every collateral quality.

If Tenant in Frank almoign alien in fee, that Feoffee ſhall not hold of the Lord per eadem ſervitia, albeit he be a man of the Church; but he ſhall hold of the Lord by fealty only: for by the firſt words of this Act he ſhall hold of the Lord, but he cannot hold of the Lord per eadem ſervitia, becauſe it is againſt the nature of the tenure in Frank almoign, to hold of any but of the Donor or his heirs; and general words of an Act ſhall not be taken to work any thing againſt the nature of the thing, or the rule of Law; but he ſhall hold by fealty only, which was as free a tenure, and as near to the former, as can be, and therefore by conſtruction [eadem ſervitia] the ſame ſervices ſhall be taken as near the ſame ſervices as may be.

1. Part of the Inſtitutes, Sect. 139 Lib. 9. fol. 123. Anth. Lows caſe.

And this Act extendeth to lands holden by fee farm.

45 E. 3. 15. b.

¶ Conſuetudines.] Is here taken for ſervices, as in the Writ De conſuetudinibus & ſervitiis, and not for cuſtoms.

If the Meſne releaſe to the Tenant, the Tenant ſhall hold per eadem ſervitia & conſuetudines, as the Meſne did; and ſo if the Tenant infeoffe the Meſne, the Meſne ſhall hold per eadem ſervitia, as he did before: and ſo it is if the tenancy come to the meſnalty by Act in Law, as by eſcheat or deſcent, the Meſne ſhall hold per eadem ſervitia & conſuetudines, as he held before; for albeit the Tenure between the Tenant and the Meſne in theſe caſes be extinct, yet the Seigniory Paramount, which alſo was iſſuing out of the tenancy, remaineth ſtill.

Mag. Chart. c. 30. verb. Conſuetud. 22 E.3. Dower 131. 38 Aſſ. 17. 2 E.4.6. 7 E. 4.12

If there be Lord Meſne, Meſne, and Tenant, and the firſt Meſne dieth without heir, and the meſnalty eſcheat to the ſecond Meſne; or if the Meſne grant the meſnalty to the Meſne, the meſnalty that which is neareſt to the tenancy doth drown the more remote meſnalty, and the Tenant ſhall hold per eadem ſervitia & conſuetudines, as he held before: But the ſecond Meſne ſhall hold of the Lord Paramount per eadem ſervitia & conſuetudines, as he held before the extinguiſhment of his meſnalty for the cauſe aforeſaid.

10 Aſſ. p. 29. W. 2. cap. 9. Le caſe de Forjudger.

CAP.

CAP. II.

ET ſi partem aliquam earundem terrarum, ſeu tenementorum alicui vendiderit, feoffatus illam teneat immediate de capitali Domino, & oneretur ſtatim de ſervitiis quantum pertineat ſive pertinere debet eidem capitali Domino pro particula illa ſecundum quantitatem terræ ſeu ten' ſic vendit'. Et ſic in hoc caſu decidat capitali Domino ipſa pars ſervitii per manus feoffati capiend', ex quo feoffatus debet eidem capitali Domino juxta quantitatem terræ ſeu ten' venditi, de particula illius ſervitii ſic debiti eſſe intendens & reſpondens.

¶ Feoffatus ille partem illam teneat immediate de capitali Domino pro particula illa.] [Particula illa] is underſtood of a part in ſeveralty, and not in common, and therefore it is holden that if the Tenant make a feoffment in fee of the moity or third part, &c. of the Tenancy, that ſuch a feoffee is not within the purview of this Statute; for a moity or a third part, &c. pro indiviſo is not particula, for that word implieth a part in ſeveralty. 29 H.8. tenures. Br.64. 17 E.3.15

And this branch by reaſon of this word [feoffatus] is underſtood when part of the Tenancy pervaile is aliened, and not when part of the meſnalty. 17 E.3.15.

¶ Pro particula illa.] Is underſtood of ſervices diviſible and apportionable, and not of entire ſervices, be they annual or not annual, whereof you ſhall read notable matter, when entire ſervices by alienation of part ſhall be multiplied, and when not, and what ſervices ſhall be extinct by the purchaſe of part by the Lord, and what remain, and what ſhall be apportioned, in Bruertons Caſe in the firſt part of the Reports, and in Talbots Caſe in the eight part. Lib.6. fol.1. Bruertons caſe, Lib.8 fol. 105, 106. Talbots caſe. Firſt part of the Inſtit. Sect. 222. verbo annual. Whereunto you may add for the caſe of ſuit-ſervice. Mich. 18 E.1 in Banco Rot.232 Ro. Lutterels caſe. 12 E.4.16. 6 H.7.7

Alſo when the Lord purchaſeth part, he ſhall hold that part pro particula of the Lord Paramount by the purview of this Statute.

¶ Secundum quantitatem terræ.] The Statute doth ordain that the feoffee of part ſhall hold pro particula of the Lord, but it is neceſſary to be known how the ſame ſhall be apportioned: for Parum proficit ſcire quid fieri debet, ſi non cognoſcas, quo modo ſit facturum: Therefore admit that there be Lord and Tenant of twenty acres of land by fealty, and 1 s. rent, the Lord doth purchaſe two acres, and taking the rent to be apportioned according to the quantity of the land doth diſtrain for ix s. and the Tenant maketh reſcous, the Lord brings his Aſſiſe, the Tenant pleads nul tort, the Recognitors of the Aſſiſe ſhall extend the land according to the value, and not according to the quantity, and that the Lord ought upon the true valuation of the ſaid two acres ſo purchaſed to have but 8 s. 6 d. *Regula.* 18 E.2. Avowry 218. 4 Aſſ. 5. 12 E.4.16. Pl. Com. 82.

In this caſe, albeit the Plaintiff did miſtake the juſt reſidue upon the apportionment, yet ſhall he recover ſo much as is found by the Jury to be due; for it were too hard, and a cauſe of multiplication of ſuits, and againſt the meaning of the makers of this Act, that the Lord ſhould be driven in his

his Aſſiſe or Avowry, &c. to hit the juſt ſum due upon the apportionment, but though he demand more, yet ſhall he recover but that juſt ſum which is implied in theſe words, Secundum quantitatem terræ, i. Secundum quantitatem valoris terræ: But if he demand leſs in that Action, he ſhall not recover the greater.

Paſch 39 El. Rot. 233. coram Rege inter Collins & Harding. Hil. 42 El. in Communi Banco. int' Ewer & Moile. Tr. 43 El. in Communi Banco. Rot. 243.

And ſo it is, if a man make a leaſe for years reſerving a rent, if he grant away part of the reverſion, the rent ſhall be apportioned by the Common Law, and albeit the grantée of part demand or claim more in his Action of Debt, or Avowry then is due; yet ſhall he recover ſo much as the Jury ſhall find upon a juſt apportionment to be due, againſt a ſudden opinion reported by Serjant Bendloes, Hil. 6. & 7 E. 6. that the rent in that caſe ſhould not be apportioned, but loſt; but the Law hath been often adjudged to the contrary for four reaſons:

1. For that it is a rent ſervice, and not a bare contract, and rent ſervices were apportionable at the Common Law.

2. It is incident to the reverſion, which is ſeverable, Et acceſſorium ſequitur naturam ſui principalis.

3. The rent, being a rent ſervice, is ſeverable by recovery of part, in an Action of Waſte, or upon ſurrender in part.

4. Laſtly, it is a general caſe, and ſpecially in caſe of Wills, which many times are void for a third part.

And where the caſe hath been put of a leſſée for years, the ſame Law holdeth in the caſe of a leaſe for life, whereupon a rent is reſerved, for the apportionment of the rent, whereby it appeareth, that there was an apportionment at the Common Law, pro particula ſecundum quantitatem valoris, &c. for to none of theſe caſes our Act doth extend unto.

CAP. III.

ET ſciendum eſt quod per prædictas venditiones ſeu emptiones terrarum ſeu ten', aut partis alicujus earundem nullo modo poſſunt terræ ſeu ten' illa in parte vel in toto ad manum mortuam devenire, arte vel ingenio, contra formam ſtatuti ſuper hoc dudum editi. Et ſciendum eſt quod iſtud ſtatut̃ tenet locum de terris venditis tenend' in feodo ſimplici tantum. Et quod ſe extendit ad tempus futurum. Et incipiet locum tenere ad feſtum ſancti Andreæ Apoſtoli proxim̃ futur̃ Anno Regni Regis E. filii Regis H. xviii.

¶ Ad manum mortuam devenire, arte vel ingenio, contra formam ſtatuti ſuper hoc dudum edit̃.] This is underſtood of the Statute de 7 E. 1. De Religioſis, and by this branch that Act is in no ſort impeached by this, but ſtandeth in full force: and note the manner of ſaving of former Statutes in ancient times by general words, which is the ſureſt way.

¶ In

¶ In feodo ſimplici.] And therefore if Tenant for life grant his eſtate in ſeveral parts to ſeveral perſons, yet may the leſſor diſtrain for the whole rent in every part, for this Act extendeth only to Tenants in fee-ſimple. 22 Aſſ. 42. 3 Aſſ. 18. 4 H. 6. 20. 11 H. 8. 8. Kelwey.

But yet Tenant for life, and Tenant in tail are not wholly excluded by force of theſe words [in feodo ſimplici] out of this Statute, for where the whole fee-ſimple paſſeth out of the feoffor, there this Act extendeth to eſtates for life and in tail; as if an eſtate for life or in tail be made of land, the remainder in fee, there then Tenant for life or in tail ſhall hold de capitali Domino by force of this Act, but otherwiſe it is when a reverſion remaineth in the donor or leſſor. 1 E. 3. 3. 4 H. 6. 20. 21. 22. 20 E. 3. avowry 131. 20 E. 3. ubi ſupra. 38 E. 3. 7. 4 H. 6. 20, 21, &c. Lib. 2. fol. 92. Binghams Caſe. Lib. 3. fol. 8. Heydons Caſe.

For if a man at this day make a gift in tail, Tenend' de capitalibus Dominis feodi, &c. theſe words are void, and he ſhall hold of the donor.

Stat. de Judaiſmo.

Ad Parliamentum tentum poſt feſtum Sancti Hillarii, & poſt Paſch', Anno 18 E. 1.

PUR ceo que le Roy ad vieu que mults des males & diſheriſons des probes homes de ſa terre ſont avenus per les uſurers que les Jewes ont fait en arere, & que mults des peches ent ount ſurs de ceo, meſque luy & ſes aunc̃ eyent ent grand pren de la Jewrie tout en ceo en arere, ment pur quant en le honor de Dieu & pur le common pren del people ordein le Roy & eſtablie que nul Jew deſormes ne priſt rien a uſury ſur les terres rents ne ſur autres choſes, & que nul uſury ne curge * de S. EDWARD procheinment paſſe en avant, mes que les covenants avant faits ſoient tenus ſave que les uſurers mes ceſſent.

* That is from the feaſt of S. Edw. next before paſſed, which is the 18 day of March.

By the preamble hereof, two great miſchiefs did follow before the making of this Statute upon Jewiſh uſury; now the difficulty was how the ſame ſhould be remedied. The miſchiefs were theſe:

1. The evils and diſheriſons of the good men of the land.
2. That many of the ſins or offences of the Realm had riſen and bẽn committed by reaſon thereof, to the great diſhonor of Almighty God.

The difficulty how to apply a remedy, was, conſidering what great yearly revenue the King had by the Uſury of the Jews, and how neceſſary it was that the King ſhould be ſupplied with treaſure; what benefit the Crown had before the making of this Act appeareth by former Records; as take one for many: from the ſeventeenth of December in the fiftieth year of Henry the third, until the Tueſday in Shrovetide the ſecond year of Edward the firſt, which was about ſeven years, the Crown had four hundred and twenty thouſand pounds fiftẽn ſhillings and four pence De exitibus Judaiſmi; at what time the ounce of ſilver was but twenty pence, and now it is more then treble ſo much, ſo as the recital of the Preamble is true, Meſque luy & ſes aunceſtres eyent ent graund pren de la Jewry.

Rot. Patent Anno 3 E. 1. m. 14, 17, 26 Will. Middleton reddit. compotum.

Many

Many proviſions were made both by this King and others, ſome time they were baniſhed, but their cruel Uſury continued; and ſoon after they returned, and for reſpect of lucre and gain, King John in the ſecond year of his Raign granted unto them large liberties and priviledges, whereby the miſchiefs rehearſed in this Act without meaſure multiplied. Tempore R. 1. Ver. Mag. Chart. fol. 144. Rot. Chart. 2. Johan. nu. 49,53. 18 H. 3 Dorſ. clauſ. m. 27.

Our noble King Edw. 1. and his father H. 3. before him, ſought by divers Acts and Ordinances to uſe ſome mean and moderation herein, but in the end it was found, that there was no mean in miſchief; and as Seneca ſaith, Res profecto ſtulta eſt nequitiæ modus. And therefore King E. 1. as this Act ſaith, in the honour of God, and for the common profit of his people, without all reſpect (in reſpect of theſe) of the filling of his own Coffers, did ordain, that no Jew from thenceforth ſhould make any bargain, or contract for Uſury, nor upon any former contract ſhould take any Uſury, from the Feaſt of Saint Edward then laſt paſt; ſo in effect all Jewiſh Uſury was forbidden. Dorſ. Pat. 55 H. 3. m. 10. Rot. 2 E. 1. m. 1, 3,5. Rot. clauſ. 3 E. 1. m. 8,10,13,16, 23. Rot. Pat. 3 E. 1 m. 36. & 17. Dorſ. clauſ. 7 E. 1. m. 6.

The King of France, Anno Domini 1253. 37 H. 3. baniſhed out of France all the Jews perpetually, ſaving Merchants, and ſuch as ſhould get their living by the work of their hands; but ſoon after they returned again. Matth. Paris, p. 833

This Law ſtruck at the root of this peſtilent weed, for hereby Uſury it ſelf was forbidden; and thereupon the cruel Jews thirſting after wicked gain, to the number of 15060 departed out of this Realm into forein parts, where they might uſe their Jewiſh trade of Uſury, and from that time that Nation never returned again into this Realm.

Some are of opinion, (and ſo it is ſaid in ſome of our Hiſtories) that it was decreed by authority of Parliament, That the uſurious Jews ſhould be baniſhed out of the Realm; but the truth is, that their Uſury was baniſhed by this Act of Parliament, and that was the cauſe that they baniſhed themſelves into forein Countries, where they might live by their Uſury; and for that they were odious both to God and Man, that they might paſs out of the Realm in ſafety, they made Petition to the King, that a certain day might be prefixed to them to depart the Realm, to the end that they might have the Kings Writ to his Sheriffs for their ſafe conduct, and that no injury, moleſtation, damage, or grievance be offered to them in the mean time: One of which Writs we will tranſcribe: Holl. fol. 285. Walſ. hypod. 72. Florilegus Cron. Dunſtable. Baniſh the trade, and baniſh the tradeſman. Divers Kings had baniſhed the Jews, and yet they returned, but no King baniſhed their Uſury before

Rex Vic' G. Cum Judæis Regni noſtri univerſis certum tempus præfixerimus à Regno illo transfretandi, nolentes quod ipſi per miniſtros noſtros, aut alios quoſcunque, aliter quam fieri conſuevit, indebite pertrectentur: Tibi præcipimus quod per totam balivam tuam publice proclamari, & firmiter inhiberi facias, ne quis eis infra tempus prædictum, injuriam, moleſtiam, damnum inferat, ſeu gravamen. Et cum contingat ipſos cum catallis ſuis, * quæ eis conceſſimus, verſus partes London, cauſa transfretationis ſuæ, dirigere greſſus ſuos, ſalvum & ſecurum conductum eis habere facias ſumptibus eorundem. Proviſo quod Judæi prædicti ante receſſum ſuum vadia Chriſtianorum quæ penes ſe habeant, illis quorum fuerint, ſi ea acquietare voluerint, reſtituant, ut tenentur. Teſte Rege apud Weſtm. 18. die Julii, Anno 18 E. 1. Rot. clauſ. 18 E. 1 m. 6. 18 Julii. The like Writs to other Counties, and intituled, *De Judæis Regni Angliæ exeuntibus;* * Nota.

This Statute de Judaiſmo was made at the Parliament poſt feſtum Hillarii, Anno 18 E. 1. At which Parliament the King had a Fifteenth granted to him pro expulſione Judæorum. And this Writ was granted in July following, the King beginning his Raign, Novemb. 16. for the Parliament knew, that by baniſhing of Uſury, the Jews would not remain. And thus this noble King by this means baniſhed for ever theſe infidel uſurious Jews; the number of which Jews thus baniſhed, was fifteen thouſand and three ſcore. Parliam. 18 E. 1. poſt feſtum Hill. & Paſch. at which Parliament the Stat. of W. 3. *de Quia Emptores terrarum* was made

But lucre and gain, which King John had, and expected of the infidel Jews, made him impie Judaiſare; for to the end they ſhould exerciſe the Laws of their Sacrifices, (which they could not do without a Prieſthood) the King by his Charter granted them to have one, &c. which, for the great rarity thereof, and for that we find it not either in our Books, or Hiſtories, that we remember, we will rehearſe in hæc verba.

Rot. Chart. 1. Regis Johan. part. 1. m. 28 Chart. 171. This King had a moſt troubleſom and diſhonorable Raign, God raiſing againſt him for his juſt puniſhment two potent enemies, Pope Innocent the 3. and Philip King of France. And beſides (which was the worſt) he loſt the hearts and love of his Baronage and Subjects, and at the laſt had a fearful end.

Rex omnibus fidelibus ſuis, & omnibus, & Judæis, & Anglis Salutem. Sciatis nos conceſſiſſe, & præſenti charta noſtra confirmaſſe Jacobo Judæo de Londoniis Presbytero Judæorum Presbyteratum omnium Judæorum totius Angliæ. Habendum & tenendum, quam diu vixerit, libere & quiete, & honorifice & integre, ita quod nemo ei ſuper hoc moleſtiam aliquam, aut gravamen inferre præſumat. Quare volumus & firmiter præcipimus, quod eidem Jacobo, quoad vixerit, Preſbyteratum Judæorum per totam Angliam garantetis, manuteneatis, & pacifice defendatis. Et ſi quis ei ſuper eo forisfacere præſumpſerit, id ei ſine dilatione (ſalva nobis emenda noſtra) de forisfactura noſtra emendari faciatis tanquam dominico Judæo noſtro, quem ſpecialiter in ſervitio noſtro retinuimus. Prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum, niſi coram nobis aut coram capitali Juſticiario noſtro, ſicut charta Regis Richardi fratris noſtri teſtatur. Teſte S. Bathonienſi Epiſcopo, &c. Dat' per manus *H. Cantuarienſis Archiepiſcopi Cancellarii noſtri apud Rothomagum 31 die Julii, Anno Regni noſtri primo.

* H. id eſt, Huberti.

Walter Archbiſhop of Canterbury, and Chancellor of England, born in Weſtdereham in Norfolk, and brought up by Ranulph de Glanvile chief Juſtice of England, founded the Monaſtery of Weſtdereham, Premonſtratenſis ordinis. Vide Lib. de antiquitate Britannicæ Eccleſiæ, cap. 42. Hubertus p. 134. worthy to be read and obſerved.

At this Parliament alſo of this noble King E. 1. in the 18 year of his Raign, another kind of Jews were ſeverely puniſhed, viz. the Judges of the Kings Bench, and of the Common Pleas, the Barons of the Exchequer, and the Juſtices Itinerants, except two, whom for their honour we will name (in memoria æterna erit juſtus) viz. Sir John of Metingham chief Juſtice of the Common Pleas, and Elias de Bekingham one of his companions, [Qui poſiti fuerunt in fornace, & prodierunt aurum:] For they had dealt uprightly in their places, and had never ſtained their hands with ſordid Bribery. But let us return to our natural Jews.

The richeſt of theſe ſon after this Parliament, by force of the Kings Writ having imbarked themſelves with their treaſure in a tall ſhip of great burthen, when the ſhip was under ſail, and gotten down the Thames towards the mouth of the River beyond Quinborough, the Maſter of the ſhip confederating with ſome of the Mariners, invented a Stratagem to deſtroy them, and to bring the ſame to paſs, commanded to caſt anchor, and rode at the ſame till the ſhip at an ebb lay on the dry ſands; the Maſter and his confederates, in further execution of their wicked plot, moved and inticed thoſe rich Jews to walk with the Maſter on land, for their recreation and preſervation of health, which they did: At laſt, when the Maſter underſtood the tide to be coming in, he ſtole away from them, and got him back to the ſhip, whither he was, as it was before plotted, drawn up by a cord; the Jews made not ſo much haſte as he did, becauſe they knew not the danger, but when they perceived in what peril they were in (that had ſhewed no mercy to numbers that cried to them) cried to him for help: his wicked and prophane anſwer to them was, That they ought rather to cry to Moſes, by whoſe conduct their fathers paſſed through the red ſea, and that he was able to deliver them out of thoſe raging flouds which now came in upon them; and within a ſhort ſpace ſwallowed up them all: The Maſter, and ſuch other as were conſenting to this foul fact, were before the Juſtices Itinerants indicted, convicted of murther, and hanged.

And

And hereby it appeareth, that Divine ultion did follow theſe cruel Jews, wicked and wretched men; for the debts of cruelty are ſeldom unpaid. Chron. de Dunſtable & Vet. Manuſcr. Itiner. Kanc. coram Juſtic. Itiner. An. 18 E. 1

We will here add a Record de Priore de Bridlington, the information or charge is not in the Record, this only we find:

Et quia prædictus Prior cognoſcit quod prædicta pecunia præd' Judæo debebatur, viz. 300 *l. nec ei ſolvebatur ante exilium Judæorum, &* quicquid remanſit de eorum debitis, aut catallis in Regno poſt eorum exilium Domino Regi fuit; Conſideratum eſt quod Dominus Rex recuperet pecuniam præd', & dictum eſt eidem Priori quod non exeat villa antequam Domino Regi de præd' pecunia ſatisfaciat. Et reſpondeat Johannes Archiepiſcopus Eborum, quia præcepit dicto Priori ſolvere valett' ſuo prædictam pecuniam in deceptionem Regis, contra* ſacramentum & fidelitatem ſuam Domino Regi datam, &c. Idem in alio Rot. Anno* 22 *E.* 1. *Rot.* 5.

Pl. Parlam. poſt Paſch. apud London 21 E. 1. Rot. 4

* Note a good expoſition upon this Statute.

What offence it is to deceive the King of any of his forfeitures.

* For in doing of his fealty he is ſworn.

The Archbiſhop confeſſing the ſame, was adjudged to be in miſericordia Regis, ſed idem Dominus Rex reſervat ſibi ipſi taxationem miſericordiæ.

This light touch we have given to this branch of this Act, to the end it may be a preſedent and pattern in like caſes to apply the like remedy, and will leave the Reader to peruſe the reſidue of this Act, which is worthy to be read, and needeth not any Expoſition.

Modus

Modus levandi Fines,

EDITUM Anno 18 Edw. 1.

QUant le briefe original ſoit lie en preſence des parties devant Juſtices, donques dira un countour iſſint: Sur Juſtice, conge daccord': le Juſtice dirra, que dirra? Sir Robert, & noſmera un des parties. Donques quant ils ſerront agree de la ſumme de pecune que eſt done al Roy, donques dirra le Juſtice, Cries la peace. Et puis dirra le countour, iſſint que la peace eſt tiell, a vous conge, que William & Alice ſa feme, que cy ſont, recogniſont le mannour de B. ove les appurtenances contenus en le briefe, eſtre droit du R. come cell que il ad de lour done, A. aver & tener a luy & a ſes heires, de W. & Alice, & les heires A. come en demeſne, rent, ſeigniories, courts, plees, purchaſes, gardes, mariages, relieſes, eſcheats, molins, avowſons de Eſgliſes, & touts auters franchiſes, & franke cuſtomes al avantdits mannours apperteignant, rendant per a N. & ſes heires, chiefes ſeigniours de fee, ſervice due, & cuſtomes pur touts ſervices. Et fait aſſavoir, que order de ley ne ſuffre mye, que final accorde ſoit leve en la court le Roy ſans briefe orignal, & ceo a tout le meins devant iv Juſtices en bank, ou en Eyre, & non pas aillours, & en preſence des parties noſmes en briefe, queux ſoient de pleine age, & de bone memorie, & hors de pryſon. Et ſi feme covert de baron ſoit un des parties, donques covient que el ſoit primerment confeſſe de iv Juſtices avantdits. Et ſi el naſſent al fine, ne ceo liver' mie. Et la cauſe pur que tiel ſolempnitie doit eſtre fait en cel fine eſt, pur ceo que fine eſt ci hault barre, & de ci graund force, & de ci puiſſant nature en ſoy, que el forclos nemy ſolement ceux queux ſont parties & privies a la fine, & lour heires, mes touts auters gentes de mound', queux ſont de pleine age, hors de pryſon, & de bone memorie, & deins les iv meres, le jour del fine levie, ſils ne mettront lour claime de lour action pur le pays, deins lan & le jour.

For the antiquity of fines, it is certain that they were frequent before the Conquest. Pl. Com. 368. a. Glanv. li.8. c. 1,2. &c. Bract. lib.5. fol. 435. lib.3. fol. 106. lib.4. fol.256 Brit. fol.91 & 216 Fleta l. 6. cap. 52. Lib. 2. cap. 12. Lib. 5. f.38. Teyes Case. Lib.4. f.124 Beverlies Case.

For what end and purpose fines, or a final concord were first instituted, and wherefore it is called finis, it appeareth in the said ancient Authors, ubi supra, which wrote before this Act, * and by others, and further by an ancient Record of Parliament, Anno 19 E. 1. in these words, Nec in Regno isto provideatur vel sit aliqua securitas major vel solemnior, per quam aliquis statum certiorem habere possit, vel ad statum suum verificandum aliquod solemnius testimonium producere, quam finem in curia Domini Regis levatum, qui quidem finis sic vocatur, eo quod finis & consummatio omnium placitorum esse debet. See the Record, for it is notable.

* Inter placita de Parliament' apud Asheridge, Anno 19 E.1. Rot. 12. The Case of Margery, late the wife of Thomas Weyland. 27 E.1. cap.1. acc' First part of the Institutes, Sect. 441.

For the hautels and puissant force and nature of a fine, somewhat shall be said hereafter in this Chapter, in the mean time the true pleading of a fine is not, that I. S. Levavit quendam finem, sed quod quidam finis se levavit, &c. without alledging of any seisin. Dier 12 El. 291. Pl. Com. 254. Stowels Case. & 432. Stapletons Case. Lib.6. f.38, 39. Teyes Case.

For the parts of a fine, see Teyes Case, lib. 6.

¶ Un countor.] That is to say, a Serjant, as before it hath been said.

¶ Conge daccorder.] i. Licentia concordandi.

For this license a fine is due to the King, which is called Finis pro licentia concordandi. And the reason that this fine is taken, is for that the King loseth by reason of this concord the fines or amerciaments, which should have been due to him upon the Judgment or non-suit, and other advantages.

This fine Pro licentia concordandi is an ancient flower of the Crown, and is called the Kings silver, and the post fine, and it is called the post fine in respect of the primer fine, or the fine in the Hamper; For in every real Action of lands or tenements of the yearly value of five marks, there is due in the Hamper upon the original six shillings eight pence, viz. for every five marks of land six shillings eight pence, and if it be under five marks, no fine in the Hamper upon the original is due: A Writ of covenant to levy a fine (whereupon fines in these days are usually levied) is holden a real Writ, for which a fine in the Hamper is paid. Now the fine pro licentia concordandi, or the post fine is also certain, for it is as much as the primer fine, and half as much more. As for example (Quia exempla illustrant) a Writ of covenant is brought to levy a fine of land, of the yearly value of five marks, there is six shillings eight pence, due presently for the primer fine, or fine in the Hamper, but the fine pro licentia concordandi, or the post fine is not due till Conge d'accorder be granted by the Court, in this case the post fine is ten shillings, that is as much, and half as much as the primer fine was, but if the land be under five marks, so as no primer fine is due, yet shall there be a fine pur conge daccorder, and that is also certain, viz. six shillings eight pence.

And note there is no post fine due, but when there is conge daccorder, and in the Court of Common Pleas there is a special Clerk for the entring of the Kings silver in a Roll, which is also endorsed upon the Writ of Covenant.

And these fines Pro licentia concordandi are not against Magna Charta, c.29. for it is an ancient revenue of the Crown.

And the post fine is paid (as here it appeareth) for the concord, for that is the foundation and substance of the fine, for after that, and the Kings silver Dier 5 El.220. b. Lib.5. fol. 39. Teyes Case.

ver entred, though the conuſor dieth, the fine is good, and the land paſſeth, but if the Kings ſilver be not entred, the fine may be reverſed in a Writ of Error.

5 Eliz. Dier 227. If a man bring two orignial Writs of Covenant, the one for land in Suff. of the yearly value of vi l. and another in Eſſex of xxiv l. and albeit there be two originals, yet there is but one concord, and for that concord one entire fine is due and not ſeveral.

Lib. 5. fol. 39. Teyes Caſe. ¶ Que donera.] The printed books are faulty, for they be Que dirra: which ſhould be Que donera, that who is the conuſée, that he may give it, and the Serjant nameth him.

Now the conuſée doth pay the the fine, pur licence daccorder, as here it appeareth, and if there be more then one in the fine, then he, in whom the fee repoſeth by the fine, prayeth the ſame.

And this fine pur conge daccorder do belong to the King in ſo high degrée of his prerogative, that they paſs not by his general grant of all fines, albeit the grant be ex certa ſcientia, ſpeciali gratia, & mero motu, &c.

¶ Quant ils ſont agree del ſomme de pecunie.] Which is eaſily done, for the fine upon a juſt computation of the primer fine, is, as is afore-ſaid, certain.

¶ Cries la peace.] Some hath it, Treates le peace, that is, drawn the peace: here peace is taken for the concord, and the Serjant ſhall ſay, Le peace eſt tiel ove voſtre conge.

¶ Que William & Alice ſa feme, que cy ſont, recogniſont le Mannor de B. ove les appurtenances, &c.] Here it appeareth that they which levy the fine ought to do it in perſon, and in open Court expreſſed in theſe words [que cy ſont;] and the reaſon thereof was, that the Judges in open Court might upon the view, and other good means diſcern of their age, Ideocy, Non compos mentis, and Coverture, and whether thoſe that appear were the ſame perſons, all which might better be diſcerned in open Court, and the Judges informed of the truth thereof, where ſome people of moſt of the parts of the Kingdom are many times preſent, and men will be more fearful to offer any thing that is unjuſt in open Court (which is the publick ſeat of Juſtice) then in a private Chamber, and this was in reſpect of the hautels and puiſſant force and nature of a fine.

Stat. de Carliſle. 15 E. 2. But this is altered by a later Statute, whereby it is provided, that if any perſon aged or decrepit, impotent, or by caſualty be ſo oppreſſed or holden, that by no means he is able to come before the Juſtices in Court, that in ſuch caſe two or one of the Juſtices, by aſſent of the reſidue of the Bench, ſhall viſit the party ſo diſeaſed, and ſhall receive his conuſance upon the plea, and form of the plea, that he hath in Court, whereupon the ſame fine ought to be levied; And if there go but one, he ſhall take with him an Abbot, a Prior, or a Knight of good fame and credence; and hereof the Writ of Dedimus poteſtatem had his beginning; and at the firſt was not granted, but where the party was ſo aged, decrepit, or impotent, as he could not come to the Court, and accordingly the Writ of Dedimus poteſtatem was framed, Ac præfatus A. adeo impotens exiſtat, quod abſque maximo ſui corporis periculo uſque ad Weſtmonaſt' ad diem in brevi prædict' content' ad recognitionem quod in hac parte requiritur faciend' laborare non ſufficit; which form albeit it continueth to this day, yet is the conuſans taken of them that be in health, and able to travel. And where that Act ſpeaketh of a Juſtice, a Dedimus poteſtatem is granted to a Serjant at Law, ſworn to the King, as common

Vet. N.B. fol. 103. Br. tit. fines 120.

experience

experience teacheth; And the Chief Juſtice of the Court of Common Pleas may take a conuſas of a fine, virtute officii ſui, without any Writ of Dedimus poteſtatem. 1 H.7.9. a.

Here is a form of the moſt principal fine, viz. the fine ſur conuſance de droit come ceo que il ad de ſon droit.

It is to be known that there are two kinds of fines, viz. one executed, and the other executory. Executed, that is, where the preſent eſtate paſſeth unto, or is ſuppoſed in the conuſee, for ſuch a fine is a feoffement of Record, as this fine come ceo, or ſur releas, or confirmation, or ſur ſurrender. 41 E.3.14. 21 E.4.4.

Executory, as when no eſtate is veſted in the conuſee until it be executed by Entry or Action, as fines ſur graunt & render by the conuſee, which muſt be made upon a fine come ceo, or ſur releas, &c. or other fine which is executed, or otherwiſe the conuſee could not make any grant and render of that land, &c. which he had not; more ſhall be ſaid hereof in the Expoſition upon the Statute of 27 E.1. De finibus. 50 E.3.9. 28 E.3. 95. 44 Aſſ. 36. 21 E.3. fines 23. 7 H.4.16. 1 H.7.12 22,23, &c. 31 E. 1. grant 90. 7 E. 3.14. 24 E.3 26. 39 E.3.1. 50 E.3. fines 1.

¶ Recogniſont, &c.] Recognoverunt is the ancient and uſual word in a fine for the conveyance of lands, &c. and very apt, for it is made a plea of land depending when either the Demandant or Tenant doth acknowledge the land to be the right of the other Per amicabilem compoſitionem, & finalem concordiam, as Glanvill ſaith. Glanv. l. 8. cap. 3 Glanv. l. 8. cap. 1.

The agreement of the parties have altered the form of the conuſance here expreſſed, and do add, Et illud remiſit & quietum clamavit, &c. Alſo the fine ſur conuſans de droit come ceo, doth now comprehend a clauſe of warranty, which is here omitted.

¶ Le Mannor de B. ove les appurtenances.] Of what hereditaments a fine may be levied? Regularly it may be levied of any thing whereof a Præcipe quod reddat doth lie, as of land, rent, &c. or whereof a Præcipe quod faciat, as the Writ of cuſtoms and ſervices, or whereof a Præcipe quod permittat, as to have common, a way, &c. or to be ſhort, whereof a Præcipe quod teneat doth lie, as the Writ of Covenant to levy a fine and the like. But of ancient times fines were levied of other things, then will be at this day allowed, and yet thoſe ancient fines ſhall be holden now as available, as they were taken to be when they were levied. 13 E.1. attaint 71 2 E.3.19. 21 E.3. 44. 32 E.3. Scire fac' in ration. diviſis. 50 E.3.23. 4 E. 4.2. 18 E.4. 22. 19 E.4.23. 21 E.4.4.

A fine cannot be levied of a Mannor, or lands, that is ancient demeſne, for that ſhould be a wrong to the Lord of whom the land is holden, for by the fine it ſhould become frank fee, and not impleadable in his Court, &c. and if any ſuch fine be levied, the Lord ſhall reverſe the ſame in a Writ of deceit, for res inter alios acta alteri nocere non debet. 17 E.3. fol. 31. 21 E.3.20. 44 E.3 7 H.4.44. 8 H.4. 23. 8 E.4.6.

¶ Come in demeſne, rents, ſeigniories, courts, pleas, &c.] At the time of the making of this Act, the form was to enumerate in general whereof the Mannor conſiſted, but that form is now alſo altered, and that clauſe wholly omitted at this day.

¶ Le ordre del Ley ne ſuffer my que final concord ſoit levy en la Court le Roy ſans brief original.] Hereby it appeareth that this Act is a declaration of the Common Law, and the ignorance or error of ſome Judges was the cauſe of declaring of the Law herein.

Firſt, If there be no original Writ, yet the fine is not void, but voidable by Law, and therefore the Act ſaith [Le ordre de Ley ne ſuffer] and that is by Writ of Error, and that holdeth alſo when there is an original Writ, and 7 E. 3.64. 24 E.3. 28. 18 E.4.22. 19 E.2.2. l.3.f.5. Owen & Morgans Caſe.

the fine is levied as well of that which is contained in the Writ, as of some other thing not contained: as if the Writ of Covenant be of the Mannor of D. and the fine is of the Mannor of D. and likewise of the Mannor of S. it is voidable for the Mannor of S. by Writ of Error. It holdeth also when the fine is levied immediately to a person not named in the Writ of Covenant; as if A. be Plaintiff in the Writ of Covenant against C. and C. levieth the fine to A. and B. it is voidable by Writ of Error, but the learning must be further expressed.

10 E.3.35,54. 18 E.3.9. 19 E.3. Abbot 13. 20 E.3 br'e 686.26 Ass.37 29 E.3.3. 38 E.3.17. 18 E.4,22. 19 E.4.2,3. 21 E.4 4. b.

For as concerning the thing whereof the fine is levied, it is to be known that in case of a fine sur grant & render, which containeth a double fine, there is a great diversity betwéen the fine sur conusans de droit come ceo, &c. for that must be levied of the land, &c. in the original, but the grant and render may be of another thing then is expressed in the original: As A. bringeth a Writ of Covenant against B. for the Mannor of D. B. cannot levy a fine to A. of a rent to be issuing out of the Mannor of D. but he must levy the fine of the Mannor of D. according to the Writ, and his Covenant therein expressed, but A. may grant and render to B. a rent out of the same Mannor contained in the fine, but not out of any other land, neither can the grant and render be of any thing collateral to the land, &c. contained in the Writ, or of another nature, and neither issuing out of, nor incident to the land, &c. contained in the original.

24 E.3.35.

If two do levy the fine, the grant and render may be to one of them.

6 E.2. fines 117. 7 E.3.37. 64. 10 E.3.32. 16 E.3 fines 8. 18 H.7. fines Br.111. 30 H.8. Bro. fines 108.

As concerning the persons to be named in the fine, the fine sur conusans de droit come ceo, &c. cannot be levied to any person that is not party to the Writ of Covenant, neither can the grant and render of the land, &c. be immediately in primo gradu to any that is no party to the Writ, but mediately or in secundo gradu, &c. it may: For example, if a Writ of Covenant be brought by A. against B. of the Mannor of D. B. levy a fine to A. come ceo, A. may grant and render the same to B. for life, or in tail, the remainder to F. in fée; for albeit the Writ of Covenant be inter A. querent' & B. deforc', so as F. is a méer stranger to the Writ, yet séeing he taketh it by way of remainder depending upon an estate warranted by the fine, it hath béen allowed in our Books, and hath béen compared to a Déed indented betwéen A. and B. whereby A. doth give lands to B. to have and to hold to B. for life, or in tail, the remainder to C. (who is a stranger to the Déed) in fée.

18 E.3.12. 8 H.4.5 21 E.4.4. 5 H.7.41

¶ Briefe original.] It is not said, Briefe original enter les parties, but generally, and therefore a fine may be levied by a vouchée to the Demandant, or by the Demandant to him, and so likewise by Tenant by receit to the Demandant, or by the Demandant to him, and yet they are not parties to the Writ.

2 E.3.19. 10 E.3 5. 18 E.4.22. 19 E.4.2,3. 21 E.4.4.b. See 27 E.1. cap.1

In ancient times fines were levied upon originals that were mixt, as in the Assise of Darrein presentment, Quare impedit, or the like, which later times have thought to be against the height and force of a fine. For the form of the original Writ is to be observed, that if a fine be levied of eight several things, as of a Mannor, a Rectory, a house, &c. after the naming of the Mannor, the form is, Ac de rectoria, necnon de messuagio; for the fourth, Ac etiam; for the fifth, Præterea; for the sixth, Ac ulterius; for the seventh, Ac etiam; for the eighth, Ac insuper; and if there be more, then to begin again: And I have known a Chirografe of a fine discovered of forgery by not observing this order.

¶ Et ceo a tout le meyns devant quater Justices en banke.] The Statute of 27 E.1. saith, Quia fines in Curia nostra levati, &c. and by the Statute

Statute of 4 H. 7. it is provided that after the engrossing of every fine to be levied, &c. in the Kings Court, before his Justices of the Common Pleas, &c. so as the number of Justices here mentioned are not requisite at this day: but before the making of this Statute, the Justices before whom the fine was levied, were named in the fine, and specially upon the making of this Act, to the end the number of the Justices might appear; for though the number of four be not required, yet there must be above the number of one. And this is the reason that a fine levied Coram Thom. Brian milite, & sociis suis Justiciariis de communi banco, were not good; because no other Judge of that Court was named but one, and before one a fine cannot be levied in respect of the solemnity thereof. But many Writs that come out of the Chancery, are Coram Thoma Brian & sociis suis. 27 E.1.c.1. 4 H.7 c.24. 32 H.8. c.36. 1 H.7. 10,11. per les Justices.

¶ Et non pas ailours.] A fine cannot be levied, to have the force of a final Concord by any that hath power tenere placita, but only before the Justices of the Court of Common Pleas, or before Justices in Eir (whiles they stood) & non pas ailours, saith this Act: and therefore the King cannot grant power to hold plea for the levying of Fines, against this negative Statute. 50 Ass.p.9. 44 E.3 38. 31 H.8. Fines Bro.110.

¶ Et en presence des parties nosmes en le briefe.] The Mouchée and Tenant by receit are not named in the Writ, and yet they may (as hath been said) levy a fine to the demandant, or the Demandant to them; and these words being in the affirmative do not restrain them.

¶ Et si feme covert de baron soit un des parties, donques covient que el soit primerment confesse devant iv Justices avantdits.] This must be understood where the husband and wife do levy a fine, for there she ought to be examined; but where the husband and wife do take by a fine, and depart with nothing, there the feme covert is not to be examined. 24 E.3.62. 42 E.3 37. 46 E.3.15. 3 H.6.4. 8 H.6.4.

If a fine be levied of land to the husband and wife, and the husband and wife grant and render the land, there the wife shall be examined, and the examination must ever be upon the Writ; and therefore a baron and feme upon a fine levied to them of land cannot grant and render a rent out of the land, because that rent is not contained in the Writ. 25 E.3.44. 4 E.3 41. 5 E. 3.24. 6 E. 3.22. 10 E.3 26. 18 E.2. Fines 121. 4 E.3. ibid.43 16 E.3. ibid.6.

The examination must be solely and secretly, and the effect thereof is, whether she be content of her own free good will, without any menace or threat to levy a fine of these parcels, and name them unto her, every thing distinctly contained in the Writ, so as she perfectly understand what she doth; and if the Judge doubteth of her age, he may examine her upon her oath. 25 E.3.44.

But what if the woman cannot speak any language that the Judge doth understand, as Cornish, Welsh, Dutch, or the like? Then there shall be a Latimer, that is, an Interpreter upon his oath to interpret truly. 45 E.3. tit. Examination 22.

¶ Et sil nassent al fine, ne ceo liera mie.] This is so to be understood, that it ought not to be received, if she be not examined, and freely assent, as is aforesaid; but if the fine be received, and recorded, the feme covert or her heirs shall not be received to aver that she was not examined nor assented: for this should be against the Record of the Court, and tending to the weaking of the general assurances of the Realm.

Lib.2. fol. 58. Beckwiths caſe.

¶ De plein age, & de bone memorie, & hors de pryſon.] Sée W.2. cap. 48. hereof, and ſée Beverlies caſe, lib. 4. 123, 124, &c. Sée lib.2. fol. 58. in Beckwiths caſe.

¶ Et la cauſe pur que tiel ſolempnitie doit eſtre fait en cel fine eſt, pur ceo que fine eſt ci hault barre, & de ci graund force, & de ci puiſſant nature en ſoy, que el forclos nemy ſolement ceux queux ſont parties & privies a la fine, & lour heires, mes toutes auters gentes de mond', queux ſont de pleine age, hors de pryſon, & de bone memorie, & deins les quater meres, le jour del fine levie, ſils ne mettront lour claime de lour action pur le pais, deins lan & le jour.] Here are four things to be obſerved:

1. Firſt, the cauſe that ſuch ſolemnity is uſed in the levying of a fine, wherein three things are to be obſerved; 1. For that it is ſo high a bar, 2. Of ſo great force, 3. Of ſo puiſſant a nature.

2. The end, to make an end of troubles and controverſies, and to eſtabliſh concord, peace, and repoſe in mens poſſeſſions and inheritances; and therefore a fine is called Finalis concordia.

3. The means to attain to the ſame, viz. to forcloſe two kind of perſons, viz. parties and privies preſently, and alſo the ſtrangers in the world, in futuro.

Bract. li.5. fo.405 &c. Brit. f.216. b. Fleta li.6. cap. 53. W.2. cap.1. 1. Part of the Inſtitutes, Sect. 441. * This is altred by the Statute of 4 H.7. cap.24.

4. A two-fold proviſion full of right and equity is made for ſtrangers; firſt, that they be of full age, out of priſon, of good memory, and within the four ſeas; ſecondly, that they put in their claim within the year and the day, after the fine levied.

By this Act, if any ſtranger were within age, or in priſon, or non compos mentis, or beyond the ſeas at the fine levied, * he is totally and for ever excepted; ſo as he after his full age, or coming out of priſon, or recovering his memory, or coming into the Realm, or any of their heirs need not to make any claim: and hereby a woman covert was bounden, if claim were not made within the year and day; and the reaſon was, for that ſhe had a husband that was able to put in his claim: but if the husband were within age at the time of the fine levied, though the wife were of full age, the infancy of the husband (who was to make the claim, the wife being ſub poteſtate viri) ſhould priviledge the ſtate of the wife for ever. So as by the Juſtice of the ancient Common Law, whereof this Act is a * declaration, two kind of ſtrangers to the fine were exempted and provided for; firſt, ſuch as by preſumption of Law had not ſufficient underſtanding, as the Infant, or non compos mentis; or had no notice, as the man in priſon, or beyond Sea, of the fine levied to make claim: And ſecondly, for ſuch as had ancient rights, who are ever favoured in Law, if they made their claim within the year and day.

This Act was made An. 18 E.1. * Vid.Mic. 15 E.1 in banco Rot. 107 Eſſex. Paſch. 10 E.1. Rot.72. in banco Heref. John de la Cumbes caſe. Pl. com.357.

¶ Parties & privies, & lour heires.] Parties are thoſe that are parties to the original.

Lib.3. f.23. Walkers caſe. Pl. com. 363. per Brown. W.1.c.39. 6 E.2. View 161. 40 Aſſ. Pl.2. 19 E.2. Count. de Vouch. 114.

¶ Privies.] Firſt, this is to be underſtood of privies in blood, not only of the heirs by the Common Law, which are here named; but heirs by the cuſtom, here comprehended under this word [Privies] as Borough English, Gavelkind, or the like, which claim as heirs by cuſtom: and is not intended of privies in eſtate, as Joyntenants, the Donor and Donee, Leſſor and

and Leſſée, or the like: alſo this is to be underſtood of privies in ſucceſſion, as Biſhops, Abbots, and the like. 12 E.3. ib. 326. Pl. com. Howels caſe.

¶ Mes auxy toutes auters gentes de mond'.] In theſe words are included, alwel Tenant for years, Tenant by Statute Merchant, and Staple, Copy-holders, and Cuſtomary-holders, as Tenants of Frée-hold and inheritance, if they be out of poſſeſſion or ſeiſin at the time of the fine levied, for a fine levied by a ſtranger cannot bar him that is in poſſeſſion. And albeit the words of this Law are very general, yet do they not abrogate the Statute of W. 2. De donis conditionalibus, which provideth for preſervation of eſtates in tail. Quod ſi finis ſuper hujuſmodi tenementa impoſterum levetur, finis ipſo jure ſit nullus, nec habent hæredes hujuſmodi, aut illi ad quos ſpectat reverſio, &c. neceſſe apponere clameum. * But that branch de donis conditionalibus continued in force, notwithſtanding this Act, as to the right of the eſtate tail, until the Statute of Anno 4 Henr. 7. by which Act, and by the Statute of Anno 32 Henr. 8. an eſtate in tail is barred by fine with Proclamations levied, and had according to thoſe Acts. Lib. 5. fol. 123. Saffyns caſe. l. 9. fol. 105. Mary Podgers caſe. 41 E. 3. 13. l. 2. 93. Bingham l. 3. 84. &c. Caſe de Fines, f. 77. Fermors caſe l. 4. f. 125. l. 8. 100. 72. l. 9, 87, 139. l. 10 90, 97. l. 11. f. 69, 71, 78. 33 E. 3. Eſtoppel 380. 21 E. 3. 21. 8 H. 4. 9 Dier 22 El. 373. 4 E. 4. 12. Stanf. Prærog. 69. * 4 H. 7. cap. 24. 32 H. 8. cap. 36.

a In ſome caſe the party himſelf ſhall not be concluded of his averment againſt the expreſs fine; as if two Joyntenants be in fée, and they accept a fine Sur conuſans de droit come ceo a eux, & les heires de lun, the eſtate is not changed, and they may plead the former feoffment to them and their heirs, and that by Law they could have no other fine. *a* 6 R. 2. Eſtoppel 211.

And in ſome caſes privies in blood, and inheritable alſo ſhall have an averment againſt the fine, notwithſtanding this Statute: and therefore if Tenant in tail accept a fine Sur conuſans de droit come ceo, &c. yet the iſſue in tail, that is privy and heir in tail ſhall aver continuance of poſſeſſion in the father; for it ſtandeth well with the fine, which is [Come ceo que ad de ſon done;] and ſo it is in the caſe above, if Tenant in tail had granted, and rendred the land to the Conuſor, the iſſue in tail might have averred continuance of poſſeſſion in the father, for the fine was executory, and nothing veſted in the Conuſor until execution: But if Tenant in tail levy a fine Sur conuſans de droit come ceo, the iſſue in tail, though he be not barred by the fine, yet he ſhall not againſt this fine aver continuance of poſſeſſion in the father, and that diverſity was holden for Law after this Statute; neither after this Statute could the iſſue in tail have generally pleaded, that partes finis nihil habuerunt, but was ouſted thereof by this Statute, albeit ſome have relied much upon theſe words in this Act, Rite levatus; now the Statute of 4 H. 7. and 32 H. 8. and the Expoſition thereof ubi ſupra, make this out of queſtion. 42 E. 3. 9. 41 E. 3. 14. 8 Aſſ. 33. 4 E. 3 469. 13 Aſſ. 8. 8 H. 4. 8, 9. 12 E. 4. 15, &c. Lib. 3. f. 88, 89. in caſe de Fines. 46 E. 3. 14. 13 E. 3 Replication 62. 17 E. 3. 53. 33 E. 3 Eſtoppel 280. 22 E. 3. 17. 33 H. 6 18. Lib. 3. f. 88, 89. Caſe de Fines.

¶ Le jour del fine levie.] This is to be underſtood of a compleat fine, which giveth a double notice, one by the ſolemnity of the fine in Court, and another by tranſmutation of poſſeſſion in the Country: As for example, one that hath a defeaſible title in land accepts a fine thereof Sur conuſans de droit come ceo, &c. and granteth and rendreth the ſame to the Conuſor, who ſueth not execution within the year and day, this fine ſhall not bar him that had the ancient right, becauſe it is no compleat fine without poſſeſſion, within the meaning of this Act, for that by intendment he that had right cannot take notice of the fine without tranſmutation of poſſeſſion, and ſo out of the meaning of the Law. 4 E. 3. 46. Opinion al cont. 7 E. 3. 37. Acc. 13 E. 3. Replication 62. 11 R. 2. Eſcheat 13 14 H. 4. 32. per Hankford. pl. com. 357. b. Dier 3 Mar. 117. This is altred by the Statute of 4 H. 7. and five years given, &c. 22 H. 6. 13. Pl. com. 432.

Note a fine Sur conuſans de droit come ceo, &c. is ſaid to be levied when the Writ of Covenant is returned, and the concord and the Kings ſilver duly entred,

entred, this maketh the land to pass, and from this shall the year and day be accounted, albeit the fine be ingrossed afterward.

Pl. com. 358, 359, &c. in Stow. case.

¶ Si ils ne mettront lour claime, &c.] For the preserving of ancient rights at the Common Law, there were four manner of claims, whereof two were by matter of Record, and two by Act in the Country; by matter of Record, as by a Præcipe quod reddat, according to the truth of the case brought within the year and day by him that right had, or in ancient time by an entry of a claim, entred in the Record of the *foot of the fine; but first it must have been made in open Court, [Appono clameum meum tali liti vel concordiæ, &c.] And two by Acts in the Country, as by an actual entry into the land, by him which right had, and whose entry was congeable, or by a continual claim which amounted to an entry; but all these must be done by him that had a present right of action, or a present right of entry, for no other person could make any claim: and therefore if there were Tenant for life, or in tail, the Reversion or Remainder over in *a* fee, he that had right of Reversion or Remainder expectant upon an estate for life, or in tail, could make no claim, because he had neither present right of action nor of entry; and therefore in that case the Tenant for life, or in tail must make his claim, and that claim either by action or entry upon the foot of the fine, or by lawful entry or continual claim, should not only have preserved their own right, but also the right of them in Reversion or Remainder; but if no claim were made by the particular Tenant, the right of them in the Remainder or Reversion were for ever bound by the Common Law.

* Vide infra Pasch. 18 E. 1. Bract. li. 5. f. 436. nu. 7. Fleta lib. 6. cap. 52. Hil. 16 E. 2. in cui in vita. Pl. com. 359. See 1. Part of the Instit. Sect. 416.

a Mich. 15 E. 1. in banco Rot. 107. Essex. Luca filia Johan. de Northope.

But there it is adjudged, that if Tenant for life, the Reversion over, and an Estranger that hath nothing in the land levy a fine, without devesting or displacing of any of the estates, he in the Reversion shall not be bound to make any claim, because *Partes fia. nihil habuerint.*

b This is altred in two respects by the said Act of 4 H. 7. for thereby the claim must be by action or entry, and therefore a claim entred upon the foot of the fine at this day is not available. Also they that have a right of a Reversion or Remainder expectant upon an estate tail, or for life, shall have five years after their title come unto them, as by that Act appeareth.

b 4 H. 7. cap. 24. See Pasch. 18 E. 1 Rot. 1. Robert Bakuns case, a claim made upon the foot of the fine. Westmerl.

And in the same roll Robert de Hustings made the like claim for five shillings rent. Northampt.

The words of this Act be, [Silz ne mettont lour claime] and yet in some case the right of one that might claim, and doth not, shall be preserved; *c* as if a Disseisor be disseised, and the second Disseisor levy a fine, in this case if the first Disseisor enter within the year, this shall preserve the right of the Disseisée, because the first Disseisor by his entry avoided the whole estate given by the fine, and yet the Disseisée might have entred himself [& sic de similibus;] but it must not have been an empty fine that should have barred the right of a stranger, but a fine compleat, as hath been said.

c 16 E. 2. Cont. claim 10. Pl. com. 358. b.

d This Law continued until the Parliament in the four and thirtieth year of E. 3. and then the Statute of Non-claim was in that Parliament made, which took away the effect and force of this Law, and of the Common Law in this point, whereby great contention arose, and few men were sure of their possessions, which continued till the *e* Parliament, Anno 4 H. 7. and then that mischief was reformed, and the ancient Common Law excellently moderated by the Statute of 4 H. 7. See the Statute of 32 H. 8. which Acts have for the common quiet and repose of all been with great wisdom and judgment expoun-

d See the 1. part of the Institutes, Sect. 441.

e 4 H. 7. cap. 24. 32 H. 8. cap. 34. Lib. 1. fol. 96. Shellings case. Lib. 2. fol. 15, 16. Wiseman's case.

93. Binghams case. Lib. 3. fol. 84. &c. Le case de Fines, & ibid. 77, &c. Fearmors case. Lib. 4. fol. 125. Beverlies case. Lib. 5. f. 124. Lib. 8. 100, 72. Lib. 9. 87, 104, 105, 106, 139, 140, 141. Lib. 10. 52, 96, 97. Lib. 11. 67, 71, 78. Pl. com. 360, 361. Stowels case.

ded;

ded; and that a fine with Procl. and five years paſt doth bar the Lord in ancient demeſne of his Writ of Deceit, and likewiſe a Writ of Error is alſo thereby barred.

And though this Act of 18 E. 1. be repealed, yet may it ſerve in many reſpects to explain the Statutes of 4 H. 7. and 32 H. 8. For the true underſtanding of the Common Law, and of former Statutes, is the ſure maſter Expoſitor of the latter.

To the former Reports or Expoſitions (wherein are former Authorities out of the Lord Dier & Pl. com. cited) two things are neceſſary to be added; the firſt, wherein the Statute of 4 H. 7. is altred, or ſtrengthened by any latter Act of Parliament: ſecondly, what other caſe heretofore adjudged upon any branch of either of the ſaid Statutes, and not heretofore publiſhed, or any other matter, may ſerve for the ſtrengthening of fines, being the common aſſurance of the Realm, or of the eſtates of the Subjects concerning free-holds and inheritances.

As to the firſt, where by the Statute of 4 H. 7. it is ordained that after the ingroſſing of the fine, &c. the ſame fine be openly and ſolemnly read and proclaimed in the ſame Court the ſame Term, and in three Terms then next following the ſame ingroſſing, in the ſame Court, at four ſeveral days in every Term. By the Statute of 31 Eliz. it is enacted, that all fines with Proclamations ſhall be proclaimed only four times, that is to ſay, once in the Term, wherein it is ingroſſed, and once in every of the three Terms holden next after the ſame ingroſſing; and that every fine proclaimed, as is aforeſaid, ſhall be of as great force and effect in Law to all intents, and purpoſes, as if the ſame had been ſixteen times proclaimed, according to the Statutes heretofore made: A beneficial Law; for the fewer Proclamations, the ſafer. See the Statute of 1 Mar. for ſtrengthening of fines when Proclamations be not made, &c. by reaſon of adjournment of any Term. 31 Eliz. cap. 2. 1 Mar. Parl. 2. c. 7

It hath been reſolved that this Act extendeth where but part of the Term is adjourned, for it is a favourable Law, and to be taken by equity. Dier 3 El. fol. 186

Another Statute is made for the eſtabliſhment of fines and recoveries in Anno 23 Eliz. which is evident, and whereupon we have known no queſtion made, and therefore refer the Reader to the whole Chapter, being a profitable and benefical Law, and of the moſt part of freeholders of this Realm neceſſary to be known. 23 El. cap. 3. Vide lib. 5. fol. 40. Dormers caſe. Eodem Lib. fol. 28 & 39. & 43, 44, 45. for amendment of fines, &c.

As to the ſecond, between Sunie & Howes, Trin. 32 Eliz. in Communi Banco, the caſe was, Thomas Cotton was Tenant in tail of the moity of certain lands, and of the other moity he was Tenant for life, the remainder to William Cotton his eldeſt ſon in tail, William Cotton went beyond Sea to Antwerpe, and after the ſaid Thomas Cotton, Anno 19 Eliz. levied a fine of the whole with Proclamations, and within the year William Cotton died at Antwerpe, and never came into England; William his ſon being within age entred, Anno 31 Eliz. And it was adjudged that for the moity whereof Thomas Cotton was Tenant in tail, William the ſon of William was barred by this Act of 4 Hen. 7. but for the moity of William the Father, the entry of his ſon William was lawful; for albeit that William the ſon could not take advantage of the clauſe that gives benefit to him that is beyond Sea, and his heirs to enter, or take his Action within five years after they be within this land, becauſe in this caſe William the Father after the fine levied never was within the land; yet for that perſons out of the Realm at the time of the fine levied, amongſt others having a preſent right, are excepted out of the body of the Act (which worketh the bar) therefore where he that is beyond Sea at the time of the fine levied, and never returns, is within the exception out of the body of the Act, and he and his heirs may enter Tr. 32 Eliz. in Communi Banc. Cottons Caſe.

See Pl. Com. fol. 366. a. the opinion of Brown and Saunders, lege, & perlege nil temere

ter or take his Action at any time: but in case he doth return, he and his heirs must enter or take his Action within five years after his return: and so it is of an infant being party to the fine, and having a present right, if he dieth during his infancy, he or his heirs may enter or take his Action at any time: and so it is of a person that is Non compos mentis by the Act of God, if he die whiles he is Non compos mentis; or a man in Prison, which is by Act in Law, if he die in Prison; or a feme covert, which is by her own Act, if she die whiles she is covert, being no parties to the fine. For all these are within the reason of the case adjudged of him that is out of the Realm (which going out of the Realm was his own Act) and never returned.

See the Statute of 21 Jacobi Regis cap. 2. for the strengthening of the estates of the Subjects against the King and his Successors.

Statutum

Sta. de finibus levatis,

EDITUM *Anno* 27 Edw. 1.

QUia fines in curia noſtra levaꝫ finem litibus debent imponere, & imponunt, & ideo fines vocantur maxime, cum poſt duellum & magnam aſſiſam in ſuo caſu ultimum locum finalem teneant imperpetuum; jamque per aliquod tempus præteritum tam tempore claræ memoriæ domini Henrici Regis avi noſtri quam noſtro partes eorundem finium & earum partium hæredes contra leges & conſuetudines regni noſtri antiquitus uſitatas ſuper hujuſmodi finibus adnullandis & evacuandis admittebantur, proponentes quod ante finem levatum a tempore levationis ejuſdem, & poſtea petentes ſeu querentes aut eorum anteceſſores de tenementis in finibus contentis, aut de aliqua parte eorundem ſemper fuerunt ſeiſiti, & ſic fines hujuſmodi rite levaꝫ per juratores patriæ falſo ſubornatos & malitioſe procuratos multotiens evacuabantur & adnullabantur minus juſte: Nos volentes ſuper præmiſſis remẽdium adhibere in Parliamento noſtro ad Weſtm̃, ſtatuimus, quod dictæ exceptiones ſeu reſponſiones vel inquiſitiones patriæ ſuper hujuſmodi exceptionibus ſeu reſponſionibus nullo modo contra hujuſmodi recognitiones & fines de cætero admittantur. Et nos vero volumus, quod ſtatutum iſtud tam locum habeat ad fines prius levaꝫ quam impoſterum levand'. Et videant Juſtic̃, quod notæ & fines in curia noſtra impoſterum levand' publice & ſolempniter legantur, & quod placita interim ceſſent omnino, & hoc fiat per duos dies in ſeptimana ſecundum diſcretiouem Juſtic̃.

¶ Quia fines in curia noſtra levati finem litibus debent imponere, & imponunt, & ideo fines vocantur, maxime cum poſt duellum & magnam aſſiſam in ſuo caſu ultimum locum finalem teneant imperpetuum. jamque per aliquod tempus præteritum.] Herewith do agrée all our ancient Authors, viz. Glanvill, Nota quod talis dicitur finalis concordia eo quod finem imponit negotio, adeo ut neuter litigantium ab eo de cætero liceat decedere. Glanv.li.8.ca.3.

Bracton, Item ſi per concordiam, & finem fact', quæ ſimiliter peremptoria eſt, quia dicitur finalis concordia, & ideo finalis, quia imponit finem litibus. Bract.l.5.fol.435. Li.3.106. Lib.4. 246.

Britton fol.90. & 91. Sont aſcuns choſes corporels que home ne purra my bien purchaſer ſans aide de noſtre Court, ſicome fees, & propretes & dont per accord del purchaſer, & del donor, coviendra lever fine en noſtre Court parmy la quel tiel manner de purchaſe tiendrent effect & eſtablete. Britton fo.90,91.

See before in the Expoſition of the Statute, called Modus levandi fines, in the Parliament Roll, Anno 19 E. 1. Rot. 12. the Caſe of Margery late wife of Thomas Weyland.

¶ Jamque per aliquod tempus præteritum tam tempore claræ memoriæ domini Henrici Regis patris noſtri quam noſtro partes earundem finium & earum partium hæredes (contra leges & conſuetudines Regni noſtri antiquitus uſitatas) ſuper hujuſmodi finibus, &c.] The miſchief, or rather the abuſe before this Statute, was in allowance of averments by parties and privies for annulling of fines levied Contra leges & conſuetudines Regni noſtri antiquitus uſitatas, &c. Whereby fines were many times unjuſtly avoided: and what ſuch averments were, and wherefore they were admitted, is declared by Stoner, one of the Juſtices of the Court of Com-
6 E. 3. fol. 28. mon Pleas, who reported that he heard Sir William Bereford Knight, then Chief Juſtice of that Court ſay, that in ancient times parties and privies could not avoid fines, [proponentes] as this Act ſaith, Quod ante finem levatum & tempore levationis ejuſdem, & poſtea petentes ſeu querentes aut eorum anteceſſores detenementis in finibus contentis, aut de aliqua parte earundem ſemper fuer' ſeiſiti. But afterwards (in the raign of H. 3. in the time of inſurrections and civil wars by the Grandées of this Realm) it was uſed by the maintenance of the Grandées, that parties and privies might avoid fines by ſuch averments, which averments in the raign of E. 1. were continued until the making of this Act; all which was affirmed by Sir William Herle Chief Juſtice, and fur-
4 E. 3. 46. ther he ſaid, that the ſame appeared alſo by this Statute De finibus, as in truth it doth.

¶ Partes earundem finium & earum partium hæredes, &c.] So as this Act taketh away the ſaid averment, which by the maintenance of the Grandées of the Realm had unjuſtly crept in by parties and privies; for the miſchief before this Statute was, as hath been ſaid, that when the conuſans de droit, &c. was made to him that had never any thing before, and the conuſée granted, and rendred the ſame back again at the ſame inſtant to the conuſor for life, or in tail with remainder over, who always was ſeiſed, and in poſſeſſion of the land; privies (by colour that there was no tranſmutation of poſſeſſion) were againſt Law permitted to avoid fines by the averment aforeſaid.

And albeit this Statute extendeth to averments taken by parties and privies, and extendeth not to averments made by ſtrangers, that are no parties nor privies to the fine, yet by the Common Law the hauteſſe and puiſſant force and nature of fines was ſuch, that a meer ſtranger could not have a general averment againſt a fine; and therefore it is reported by Shard, one of the
17 E. 3. 54. Wakes caſe. 13 E. 3. Replication 62. Juſtices of the Court of Common Pleas, that it was reſolved by the Sages of the Law, that the parties, or their heirs, ſhould have no averments againſt
32 E. 3. Vouch. 96. 13. ibid. 119. Garranty 37. fines levied contrary to the fine to avoid it; and that a ſtranger ſhould have no general averment directly to avoid a fine, if it were not upon ſome ſpecial
41 E. 3. 14. 14 H. 4. 33. b. matter, for he that is Tenant after the fine levied, is intended Tenant under the ſtate of ſome of the parties to the fine, to whom by the Common Law a general averment is not given more then to the party or privy: and the ſpecial matter which giveth him the averment is, that after that he pleads that the parties to the fine had nothing in the land at the time of the fine le-
40 E. 3. 30. b. Dier 12 Eliz. 290. 291. 33 H. 6. 21. 22 H. 6. 57. 17 E. 3. 53. 32 E. 3. Replication 63. 42 E. 3. 21 19 R. 2. Replication 53. 14 H. 4. 53. 12 E. 4. 13. vied, he doth formerly add, that either he himſelf, or ſome other whoſe eſtate he hath, was ſeiſed at the time of the fine levied, &c. But yet that matter is not traverſable, but a mean to traverſe and avoid the fine, and therefore the Tenant that pleads that Plea doth conclude, Et de hoc ponit ſe ſuper patriam, without a further replication; for Littleton himſelf that famous Lawyer reporteth, that it was adjudged in the time of Sir John Ivyn, Chief Juſtice of the Court of Common Pleas (who was conſtituted Chief Juſtice of that Court, Februar. 9. Anno 14 H. 6. and continued until the 20 of Jan. Anno 17.

of

of the ſame King, and then was made Chief Juſtice of the Kings Bench) that when the Tenant pleads in bar againſt a fine, Quod partes finis nihil habuerunt in ten' tempore levationis finis, nec aliquis eorum aliquid habuit, ſed quidam T. B. adtunc fuit ſeiſitus, &c. cujus ſtatum, &c. Et de hoc ponit ſe ſuper patriam, & prædictus querens ſimiliter. And if it be found, that the parties to the fine had nothing, &c. the fine ſhall be avoided, though the ſpecial matter of the ſeiſin of himſelf, or of a ſtranger at the time of the fine levied be not found. And ſo it is in the caſe of the like Plea to avoid a recovery, or in caſe of a counterplea of a Voucher, and the like: all which you may read in that Report; and this kind of pleading remains at the Common Law ſince the Statute of 4 H.7.

3 H.7.9. Dier 12 Eliz 291. 33 H.6.21,&c. ubi ſupra. 40 E.3.30.b. 41 E.3. fol. 14. Dier 12 Eliz. 290, 291. Dier ubi ſupra. Pl.Com.354.432.

¶ Et earum partium hæredes.] This is not intended of an heir in blod only, but of the heir of the land; for Hæres dicitur ab hæreditate: and therefore if the heir apparent be ſeiſed of land, and the anceſtor levy a fine of the ſame land, and dyeth, this ſhall not bar the heir, for he claims not the land, whereof the fine is levied, as heir unto him.

13 E.3. Replic. 62. 17 E.3.53.

See in the Parliament Roll of Anno 14 E.3. a notable caſe of an averment taken by a ſtranger againſt a fine, and afterwards adjudged, which caſe is abridged by Fitzherbert, 13 E.3. tit. Voucher 119. but more effectually in the Parliament Roll.

Rot. Parliam. An. 14 E.3. nu.31. The caſe of Sir John Stanton, and Anne his wife in a Formd.

But ſeeing the learning concerning averments of parties, and privies, and of ſtrangers hath been delivered as is aforeſaid, it is objected, that when Jointenancy is pleaded by fine in abatement of the Writ, that a ſtranger for maintenance of his Writ could not take any general averment againſt the fine. And this being agreed unto them, as is aboveſaid, then they proceeded, that in the caſe of a fine the Demandant could have no replication thereunto, as to ſay that the other Jointenant not named in the Writ by his Deed releaſed before the Writ brought, or that they both infeoffed A. which reinfeoffed the Tenant; and this was ſaid to be in reſpect of the height, and puiſſant force and nature of the fine: But to this it was anſwered, that the ſame held at the Common Law in caſe of Jointenancy by Deed, and therefore that could not be the cauſe thereof. Then another reaſon was ſought for, and that was, that the land was the free-hold of another, and therefore it ſhould not be put in Tenancy (that is, in plea of Law in danger to be loſt) without the party himſelf: But if the Fine or Deed were made by the Demandant himſelf to the Tenant and another, then he might confeſs and avoid the fine, as to ſay, that ſince that time the Jointenant infeoffed him, or the like, becauſe the Demandant was party. But again it was affirmed, that that reaſon could not hold in reſpect of the ſtrangers free-hold, for that might hold alſo where Joyntenancy is pleaded without Fine or Deed, but there it is evident that the Demandant ſhall maintain his Writ, and try a third perſons free-hold, nay the Judges themſelves were ſometimes ſo fearful to weaken the ſtrength and force of fines, and ſometime ſo bedazeled with the bright ſolemnity of the fine, as Sir John Stoner Chief Juſtice of the Court of Common Pleas did ſee, that an averment ought to be had againſt a fine, both by Conſcience and the Law of God; and yet leſt the fine ſhould be avoided, he would be adviſed. This doubtfulneſs grew, for that the true diverſity was not obſerved between averments, where they were made by parties and privies, and where by ſtrangers, nor the true pleading thereof reſolved upon.

22 E.3.4. 24 E.3. 36,78,79. 29 E.3. 18. 18 Aſſ.6. 21 Aſſ.28. 25 Aſſ. p.3. 43 Aſſ.6. 23 Aſſ.13. 15 E.3. Maint. de Bre. 55. 3 E.3. ibid.13,14. Itiner. North. 17 E.2. Ibid.1. 1 E.3.5. 2 E.3.30. 24 E.3.79. 4 E.3. 30. 8 E.3.33. 24 E.3.79.

12 E.2. Aſſ.116.

13 E.3. Garranty 17.

Now, that truth (the mother of Juſtice) might not be ſuppreſſed, it hath been reſolved, that againſt a Jointenancy pleaded by fine, the Demandant may confeſs and avoid the fine, as to ſay, that the Jointenant not named releaſed before the Writ brought, or that they both infeoffed one, who reinfeoffed the Tenant, or the like; for theſe or the like Pleas confeſſing and avoiding the fine, do in no ſort weaken the ſtrength or force of the ſame.

3 E.3.25.b. 24 E.3. 78. 14 H.6.8,25. Dier 13 Eliz.290, 291. Stat. de Conjunctim feoffatis.

34 E.1.cap.1. 17 E.2. Maint. de Bre.1. Regiſt.12. 1 E.3.5. 2 E.3.20. 4 E.3.30.8 E.3.33. 15 E.3. Maint. de Bre.55.3 E.3.ib.13 14.18 Aſſ.6.21 Aſſ. 28. 22 E.3.45,46. 22 Aſſ.54. 23 Aſſ. 13.24 E.3. 76,79. 29 E.3.18. 43 Aſſ. p.6. 32 Aſſ.p.4. * 37 Aſſ. p.3. 41 E.3.15. 49 E.3. 17. 7 R.2. Maint. de Bre.8. † 9 H.6.1. 34 H.6. 16.

But againſt Jointenancy by fine the Demandant cannot take a generall averment, that the Tenant is ſole ſeiſed, for that ſhould ſæm to weaken the force of the fine: and the Statute of Conjunctim feoffatis, Anno 34 E. 1. extends not to Jointenancy by Fine, but to Jointenancy by Dæd only, to take the general averment againſt the Dæd, that the Tenant is ſole ſeiſed: and thus are all the Boks (whereof there be many) that ſæmed prima facie to diſagrée, well reconciled. And this Statute De conjunctim feoffatis, extends not only to Aſſiſes, but to Writs of Dower, and other real Writs of Præcipe quod reddat, * but not to Writs of Gard, or the like.

† Green Chief Juſtice, Anno 24 E. 3. granted, that this Act of 34 E. 1. was made more in damage of the people, then in amendment of the Common Law.

Confirma-

Confirmationes Chartarum

de libertatibus Angliæ & Foreſtæ. *Anno* viceſimo quinto Edwardi primi.

CAP. I.

EDward per la grace de Dieu Roy Dangleterre, Seigniour Dirlande, & Duke Daquitaine, a touts ceux que ceſtes letters preſents oiront, ou verront, Salutem. Saches nous al honor de Dieu, & de ſaint eſgliſe, & au profit de noſtre realme, avoir grant pur nous, & pur nous heires, que la chartre des franchiſes, & la chartre de la foreſt, les queux fuerent faitz per commen de tout Royalme en le temps le Roy Henry pier, ſoient tenus en touts lour points, ſans nul blemiſment, & volons que meſmes cels chartres deſous noſtre ſeale ſoient envoyes a nous Juſtices auxi bien de la foreſt, come as autres: & a touts les viſcontes des counties, & a touts nous autres miniſtres, & a touts nous cities parmy le realme enſemblement ove nous briefes, en les queux ſerra contenus que ils facent les avantdits chartres publier, & que ils facent dire al people, que nous les avons grants en touts points & a nous Juſtices, Viſcontes, Maires, & autres miniſtres, que les loies de la terre de ſous nous ount a guier meſmes les chartres en touts lour points empledes devant eux en jugement, facent allower: ceſtaſcavoir le grande chartre come ley common, & la charter de la foreſt, en amendement de noſtre realme.

For the ſtile of the Kings, and for the King that ſpake firſt in the plural number [Nous] as our King here doth, ſée Magna Charta, cap. 1. and the firſt part of the Inſtitutes, ſect. 1.

¶ Per ſes letters patents.] Acts of Parliaments are many times in form of Charters, or Letters Patents, Vide Magna Charta, cap. 1. & liber 8. fol. 1. &c. in caſu Principis.

The title of theſe Statutes is, Confirmationes Chartarum de libertatibus Angliæ & Foreſtæ; and true it is, that hereby the ſaid Charters are expreſly confirmed: But they are alſo excellently interpreted (which is a confirmation in Law) for here is nothing enacted, but it is included within Magna Charta.

¶ Al honour de Dieu, & de ſaint eſgliſe, & au profit de noſtre realme.] This is, or ſhould be the true end of all Parliaments.

Sée

Sæ Magna Charta in the ſtile thereof, and all ſuccæding Parliaments have in effect followed this precedent.

¶ Per commen de tout realme.] That is, by the common aſſent of the Realm by authority of Parliament; and many times per communitatem Angliæ: it ſignifieth alſo an Act of Parliament; for it cannot be per communitatem Angliæ, but by Parliament, as hereafter ſhall be ſhewed.

¶ Soient envoyes a nous Juſtices, &c. & a touts nous cities, &c. enſemblement ove nous briefs.] Before Printing, and till the Reign of H.7. Statutes were ingroſſed in parchment, and by the Kings Writ proclaimed by the Sheriff of every County: this was the ancient Law of England, that the Kings commandments iſſued, and were publiſhed in form of Writs (as here it was:) An excellent courſe, and worthy to be reſtored.

¶ Que les loyes de la terre de ſous nous ount a guier meſmes les chartres, &c.] This is a clauſe worthy to be written in letters of Gold, viz. that our Juſtices, Sheriffs, Maiors, and other Miniſters, which under us have the Laws of our Land to guide them, ſhall allow the ſaid Charters in all their points, which in any Plea ſhall come before them in Judgment: And here it is to be obſerved, that the Laws are the Judges, guides, or leaders, according to that old rule, Lex eſt exercitus judicum tutiſſimus ductor, or Lex eſt optimus Judicis Zenagogus, and Lex eſt tutiſſima caſſis.

There is an old Legal word, called [Guidagium] which ſignifieth an office of guiding of travellors through dangerous and unknown ways; here it appeareth, that the Laws of the Realm hath this office to guide the Judges in all cauſes that come before them in the ways of right Juſtice, who never yet miſguided any man, that certainly knew them, and truly followed them.

¶ Le grand chartre come ley common, & la chartre de la foreſt, en amendement de noſtre realme.] The ſenſe hereof is, that the great Charter, and the Charter of the Forreſt are to be holden for the Common Law, that is, the Law common to all; and that both the Charters are in amendment of the Realm; that is, to amend great miſchiefs and inconveniences which oppreſſed the whole Realm before the making of them.

CAP. II.

ET volons, que ſi nul judgment ſoit done deſormes encountre les points des chartres avantdits per Juſtic, ou per autres de nous miniſtres, que encountre les points des chartres tenont plee devant eux, ſoit defait, & pur nient tenus.

Whatſoever judgment is given againſt the Statute of Magna Charta, or of Charta de Foreſta is made void by this Act, and may be reverſed by Writ of Error, becauſe the judgment is given againſt the Law, for this Act ſaith, Soit defait, & pur nient tenus.

CAP.

CAP. III.

ET volons que meſmes ceſtes charters deſous noſtre ſeale ſoient envoyes as Eſgliſes Cathedrals par my noſtre royalme, & la demoergent, & ſoient deux foits per an lieus devant le people.

Here it is to be obſerved what care was taken for the preſervation of theſe Charters, and of this Act of Parliament, for it is good chance to obtain, but great wiſdom to keep.

CAP. IV.

ET que Archeveſques & Eveſques denuncent les ſentences dexcommengement countre touts iceux, que countre les avantdits chartres vendront en dict ou en fait, ou en eide, ou en counſeil, ou en nul point enfraindrant, ou countre vendront. Et que ceſs ſentences ſoient denuncies & publies deux foits per an per les prelates avantdits. Et ſi meſmes les prelates en nul de eux ſoient negligentes en la denunciation ſuiſdit faire, per les Archeveſques de Canterbrie, & Deverwike, que pur temps ſerront, ſicome covient, ſoient repris & deſtreintx a meſme cel denunciation faire en la forme avantdit. Stat. de Tallagio, &c. cap. 5.

This Excommunication the Prelates could not pronounce without warrant by authority of Parliament, becauſe it concerned Temporal cauſes.

CAP. V.

ET pur ceo que aſcuns gents de noſtre realme ſoy doubtent, que les eides & les miſes, queux il nous ount fait avant ſes heurs pur nous guerres & auter boſoignes de lour grant & lour bon voluntie, en quel maner que faits ſoient, puiſſont turner en ſervage a eux & a lour heires, pour ceo que ils ſerront autre foits troves en rolle, & auxint priſes que ount eſte faits parmy le royalme per nous miniſters en noſtre noſme. Nous avons grantes pur nous & pur nous heires, que mes tielx eides, miſes ne priſes, ne trerons a cuſtome pur nul choſe que ſoit fait, ou que per rolle, ou en autre maner poet eſtre trove.

¶ Eydes & miſes.] Auxilia at this time was a general word, not only including aides due by Law, and tenure, as aide pur faire fits chivalier, pur file marier, &c. but aides alſo granted by the free will of the Subjects in Parliaments, which afterwards were called Subſidies; and here this word eides is taken for an aide granted by authority of Parliament. See hereafter for this word, Stat. de Tallag. non conced. 34 E. 1.

¶ Miſes

See the Statute of 34 E. 1. ubi ſup.

¶ Miſes.] Are properly taken for expences or charges, but here in this Act they are taken for tasks, taxes, tallages, or takings.

Vide Calvins Caſe. Lib. 7. fol. 7, 8, &c.

¶ Pur nous guerres, &c.] The King had obtained by free conſent, and good will in Parliaments precedent Aids, Subſidies or Tasks for the maintenance of his Wars in forrein parts, which howſoever they were granted in full Parliament, yet (as here it appeareth) many men doubted, might turn in ſervage of the Subjects of the Realm, for that it was holden that they ought not to contribute to the maintenance of the Kings Wars out of the Realm; And thereupon Bohun Earl of Hereford, and Eſſex High Conſtable of England, and Bigot Earl of Norfolk, and Suffolk, and Marſhal of England, for that it concerned matter of Arms and War, exhibited a Petition to the King in French, in Anno 25 E. 1. before the making of this Act, which I have ſeen anciently recorded, on the behalf of the Commons of England, concerning the ſaid matter, and thereupon the King at this Parliament yielded to this Act, that ſuch aides, tasks, or taking ſhould not be drawn to cuſtom for any thing that had been done in that behalf.

But yet this matter was never in quiet until it was more particularly explained by divers Acts of Parliament, which we have drawn into one body of a Law divided into ſeveral branches.

1 E. 3. c. 5. & c. 7. 25 E. 3. cap. 8. 1 E. 3. cap. 5. 4 H. 4. cap. 13. 18 E. 3. cap. 7. 4 H. 4. cap. 13.

1. No man ſhall be charged to arm himſelf, or to find men of arms, or any Hoblers or Archers (others then thoſe that hold by ſuch ſervices, or devoires of the King, or of other Lords) if it be not by common conſent, and grant in Parliament.

2. No man ſhall be compelled to go to the Kings War out of his Shire, but where neceſſity of ſudden coming of ſtrange enemies into the Realm.

Lib. 7. cap. 7, 8. Calvins Caſe. Rot. Parl. 1 H. 5. nu. 17. 7 H. 5. nu. 9, &c. See 25 E. 3. cap. 7. Rot. Parl. 4 H. 4. nu. 48. 20 R. 2. nu. 48. 4 H. 4. cap. 13. 11 H. 7. c. 7. 19 H. 7 c. 1. vid. Rot. clauſus 44 E. 3. Sir Rich. Pembrughs Caſe. Vide Mag. Chart. c. 20. verb. exile. Confirm. Chart. 25 E. 1.

3. No man ſhall be charged to give any wages either to the preparers or conveyors of Souldiers, or to the Soldiers to go into Scotland, Gaſcoin, or elſewhere; but that men of Arms, Hoblers, and Archers, choſen to go into the Kings ſervice out of England, ſhall be at the Kings wages from the day they depart out of the Counties where they were choſen, till they return.

Which Acts of Parliament are but declarations of the ancient Law of England.

And according to this ancient Law, the Commons after the ſaid declaratory Acts of Parliament did, when this point concerning maintenance of Wars out of England came in queſtion, make their continual claim of their ancient freedom and birth-right, as in 1 H. 5. and in 7 H. 5. &c. the Commons made proteſtation that they were not bound to the maintenance of War in Scotland, Ireland, Calice, France, Normandie, or other forrein parts, and cauſed their proteſtations to be entred into the Parliament Roll where they yet remain; which in effect agreeth with that, which upon like occaſion was made in this Parliament of 25 E. 1.

But here may be obſerved, that when any ancient Law or Cuſtom of Parliament is broken, and the Crown poſſeſſed of a precedent, how difficult a thing it is to reſtore the Subject again to his former freedom and ſafety.

Now how of ancient time Soldiers were levied, muſtered and entred of Record, &c. (an excellent military policy) which will conduce much to the finding of the true ſenſe of this, and other Statutes, concerning this matter, ſee the third part of the Inſtitutes, Cap. Felony in Soldiers that depart, &c. in the Expoſition of the Statute of 18 H. 6. cap. 19. See the Statutes of 11 H. 7. cap. 7. and 19 H. 7. cap. 1.

CAP.

CAP. VI.

ET auxint avons graunt pur nous, & pur nous heires, as Archeveſques, Eveſques, Abbes, Priors, & as autres gents de S. Egliſe, as Countes, Barons, & a tout la Comminalty de la terre, que mes per nul beſoigne tiels manners des aides, miſes, ne priſes, ne prendrons forſque de common aſſent de tout le Royalme, & pur le common profit de ceo: ſaves les ancient aides, & priſes dues & accuſtomes.

The cauſe of the making of this branch, and of ſuch ſpecial mentioning of the Clergy was, that the King did againſt the ancient Laws and Cuſtoms of the Realm collect money by Commiſſion without aſſent of Parliament, not only of Earls, Barons, and Comminalty, but of the Clergy, who in thoſe days claimed a priviledge, and immunity from ſecular Aides and Subſidies, by (pretext of a late conſtitution made by Pope Boniface:) The Clergy ſtood ſo ſtoutly in defence of their priviledge, that Sir Robert de Brabazon the Kings Chief Juſtice pronounced openly in the Kings Bench, (in terrorem) that from thenceforth no Juſtice ſhould be done for them at their ſuit, but Juſtice ſhould be done againſt them in the Kings Courts at any other mans ſuit. But at this Parliament this branch gave ſatisfaction to all, for hereby it is enacted that every aide and task and other taking muſt have two ſpecial properties, the one in the Creation, viz. that it be given by the common conſent of the whole Realm in Parliament; the other in the execution, viz. that it be given and imployed for the common benefit of the whole Realm, and not for private or other reſpects; which words, [Et pur le common profit de ceo] in the impreſſion of Tottell are injuriouſly omitted.

Vid. Stat. de 34 E. 1. De Tallagio non concedendo.

¶ Saves les auncient aides & priſes dues & accuſtomes.] The ancient aides are here intended, Aide pur file marier, pur faire fits chivalier, and reliefs by reaſon of tenures, and the ancient takings or ſeiſures are here intended, ſuch as were due to the Crown, Jure prærogativæ, as waifes, ſtrayes, the goods of Felons and Outlaws, Deodands, and the like, [ratione tenuræ] as Heriots and ſuch other as did lie in ſeiſure or taking by reaſon of any tenure or cuſtom.

CAP. VII.

ET pur ceo que touts le pluis de la comminaltie du Realme ſeiſent durement greve de la maletot des leyns, ceſtaſcavoir de cheſcun ſacke de leyn quarant ſoulz, & nous ont pries, que nous les voudrons releſſer: Nous a lour prier les avons pleinment releſſes. Et nous avons graunt pur nous & pur nous heires, que mes ces ne prendrons ſans lour common aſſente, & lour bone volunte. Sauve a nous & a nous heires la cuſtome des leyns, pealx, & quires avant grauntes per la comminaltie avantdit. En teſmoignances des queux choſes nous avons fait faire ceſtes nous letters overts. Teſmoigne Edwarde noſtre fits a Londres le x. jour Doctobre, lan de noſtre reigne. xxv.

See before the Statute of Magna Charta cap. 30.

¶ Et pur ceo que tout le pluis de la comminaltie du Realme ſeiſent durement greve de la maletot des leynes. s. de cheſcun ſacke de leyne 40. s. &c.] The grievance was, that the King had lately, without common aſſent of Parliament, ſet a charge of forty ſhillings upon every ſack of wool, here called by the name of maletot, that is, the ill toll or charge, for the word [Impoſition] was not yet heard of in any Record.

See more of this matter in the Expoſition upon the 30. Chapter of Magna Charta.

This is an excellent precedent, that when grievances are found out, and proved, that they be put down and overthrown by Authority of Parliament.

¶ Et nous avons graunt pur nous & pur nous heires, que mes celes ne prendrons ſans lour common aſſent & lour bone volunt.] This is worthy of obſervation, whereof you may read in the Expoſition of the 30 Chapter of Magna Charta.

¶ Avant graunts per le comminaltie avantdit.] By the Comminalty aforeſaid, that is, by Act of Parliament, for the Comminalty of England cannot grant but by Parliament.

And ſome ſay that the Comminalty are here named for three reſpects: 1. For that they are the greater part. 2. For all Aids and Subſidies begun with them. 3. For that the far greater benefit to the King comes from them. For in Subſidies the Comminalty filleth the Kings coffers; but ſome have ſaid that * commune and Comminalty do ſignifie as much as the people, that is, all the Subjects of the Realm, and ſo it was taken in divers Parliaments in this Kings raign, and in this alſo, ſo as comune ſhould ſignifie the people, and Commons a part of them.

Rot. Pat. 3 E. 1. m. & 9. Mich. 26 E. 1. Int' retorn' brev. In Scacc'. per communitatem Angliæ, &c. vid. Magna Chart. cap. 30.
* Art. ſuper Chart. cap. 1.

¶ Les cuſtomes de leynes.] The cuſtoms here intended to be granted by

by Parliament, were 6 s. 8 d. for the tranſportation of a ſack of Wool, and 6 s. 8 d. for every 300 Pelts tranſported, and 13 s. 4 d. for the tranſportation of a laſt of Leather.

Theſe cuſtoms were granted to King Edw. 1. as it appeareth in Rot. patent. 3 E. 1. Cum Prælati, Magnates, & tota communitas regni noſtri nobis conceſſ' quandam novam conſuetudinem de lanis, pellibus, & coriis tam in Anglia, quam in Hibernia, & Wallia regnum noſtrum exeuntibus imperpetuum nobis, & hæredibus noſtris, percipiend' in forma ſubſcripta, viz. de quolibet ſacco lanæ dimidiam marcam, de ſingulis treſcentis pellibus lanutis quæ faciunt unum ſaccum dimidiam marcam, & de qualibet laſta coriorum unam marcam, illorum ſcilicet coriorium, pellium, & lanarum, quæ portus Angliæ, Hiberniæ, & Walliæ regnum noſtrum exibunt, &c.

Rot. Pat. 3 E. 1. m. 1. & 9. Rot. Finium. 3 E. 1. Acc. Mich. 26 E. 1. in Scacc. inter retorn. brevium ex rem. Theſaur. See in the Expoſition upon the Statute of Magna Chart. ca. 30.

Stat. de Tallagio non concedendo;

EDITUM *Anno* 34 Edw. 1.

CAP. I.

NUllum tallagium, vel auxilium per nos, vel hæredes noſtros in regno noſtro ponatur, ſeu levetur ſine voluntate, & aſſenſu Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, Militum, Burgenſium, & aliorum liberorum com̃ de regno noſtro.

Albeit that this Act is not next in courſe of time, yet being next in matter, we have thought good to handle this Act before others.

There were two cauſes of the making of this Act; the firſt was, that where King E. 1. having conceived juſt diſpleaſure againſt the French King, for the injury done unto him, in with-holding Aquitaine, and other his Inheritance in France; and where the French King had grievouſly, and with ſtrong hand vexed and over-layed Guy Earl of Flanders, and had won much of his lands from him: King Edw. the firſt intending to aid and aſſiſt the ſaid Earl, and to reſcue him out of the hands of the French King, who was ready to devour him and his Earldom, did require ſpecially of Humfrey le Bohun Earl of Hereford and Eſſex, and Conſtable of England, and of Roger Bigot Earl of Norfolk and Suffolk, Marſhal of England, and of all the Earls, Barons, Knights, and Eſquires, and of all Free-holders of 20 l. land within his kingdom, whether they held of the King in capite, or of other whatſoever, to contribute to his Wars in Flanders in reſcue of the ſaid Earl, or find able men to go with him on that journey: which the Conſtable and Marſhal, and many of the Nobility, and of the Knights and Eſquires, and ſpecially John Ferrers taking part with them, and all the Free-holders abovеſaid vehemently denied, unleſs it were ſo ordained and determined by common conſent of Parliament, as had bẽn before enacted in the Parliament of Anno 25 E.1. by the Act of Confirmationes Chartarum, as before it appeareth.

The ſecond cauſe was, that the King the year before had taken a Tallage of all Cities, Boroughs and Towns, without aſſent of Parliament; whereupon grew great murmuring and diſcontentment among the Commons. For pacifying of which diſcord betwẽn the King and his Nobles, and for the quieting of the Commons, and for a perpetual and a conſtant Law for ever after both in this and other like caſes, this Act was made in the four and thirtieth year of his Raign.

For this word Tallage, vide 15 E.3. Avowry 106. F.N.B. 14,16. 38 H.6.10. 32 E.3. Monſtr. 16. 3 E. 3. Quo War. Bre. 2.

¶ Nullum tallagium.] Tallagium, or Tailagium cometh of the French word Tailer, to ſhare or cut out a part, and metaphorically is taken when the King or any other hath a ſhare or part of the value of a mans goods or chattels, or a ſhare or part of the annual revenue of his lands, or puts any charge or burthen upon another; ſo as Tallagium is a general word, and doth include

include all Subſidies, Taxes, Tenths, Fifteens, Impoſitions, or other burthens or charge put or ſet upon any man, and ſo is expounded in our Books; here it is reſtrained to Tallages, ſet or levied by the King or his heirs. Clauſ. 19 H. 3. m. 16. ibid. m. 13. Clauſ 11 H. 3 m. 17. Regiſt. 142, 143. F.N.B. 150. 13 E 1. Vill. 38.

* *Robertus do Haye impl' Richardum de Waleyes cum al' pro captione averiorum in duobus locis, apud Lindeſield vocat' Northflet & Southuſe, Ipſi dicunt quod Willielmus filius Walteri le Haye tenet de eo quædam ten' apud Lindefand per ſervitium xi s. & per Tallagium ei faciend' ad voluntatem ipſius Richardi, & quia ipſum Willelmum talliavit, Anno Regis nono, una vice ad ij s. & alia vice Anno decimo, ad xviij d. quod Tallagium ei a retro fuit pro prædictis ij s. per annum, ipſum Willielmum diſtrinxit ſuper feodum ſuum pro præd' arreragiis: Robertus dic' quod præd' Willielmus tenuit de eo prædict' ten' per certum ſervitium, & non per Tallagium ad voluntatem ſuam, & dic' quod de illo ſervitio nihil ei a retro fuit, &c. Richardus dicit quod advocat prædictam diſtrictionem ſuper prædict' Willielmum, & non ſuper ipſum Robertum; Et petit Judicium ſi idem Robertus, qui non eſt tenens ſuus, nec diſtrictio ſuper ipſum advocatur, poſſit ſervitium ſuum dedicere: Ideo conſiderat' eſt quod prædictus Richardus inde ſine die. Et prædictus Robertus nihil cap' per breve ſuum, ſet ſit in miſericordia pro falſo clam' ſuo; Et prædictus Richardus habeat returnum averiorum, &c.* Rot. Almã 12 E. 3. part. 1. m. 2. Rot. Parliam. 6 E. 3. nu. 4. 1 E. 2. Stat. de Militibus, Rot. Parliam. 13 H. 4. nu. 14. 19 H. 6. 32. 38 H. 6. 10. Rot. Pat. 1 H. 7. part 3. m. 16. Vid. in Waſte Tallage de Villens, &c. Modus tenend. Parl. Vet. Manuſcript. * Mich. 11 E. 1. in banco Rot. 49. Suſſex.

¶ Auxilium.] And this word was uſed in the Statute of 25 E. 1. whereof ſomewhat hath been ſaid in the Expoſition thereof.

You may read further in that ancient Record intituled, De modo tenendi Parliamentum tempore Regis Edw. filii Etheldredi; debent auxilia peti in pleno Parliamento. So, as hath been ſaid before in the Expoſition upon the 30 Chapter of Magna Charta, and of 25 E. 1. Theſe Acts are but declarations of the ancient Common Laws of this Realm.

¶ Nullum tallagium, vel * auxilium per nos, vel hæredes noſtros in regno noſtro ponatur, ſeu levetur ſine voluntate, & aſſenſu Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, Militum, Burgenſium, & aliorum liberorum com̃ de regno noſtro.] Theſe words are plain without any ſcruple, abſolute without any ſaving. Abſoluta ſententia expoſitore non indiget. * Vide fol. 41. Math. Par. 247. Walſ. 40. Forteſcue, ca. 9. fol. 13. & cap. 12. 18. 34. & 35.

And this is as much as to ſay, that no Subſidy, Task, Tenth, Fifteenth, Impoſition, or other aid or charge whatſoever, ſhall by the King or his heirs be put or levied without the Common Councel of the Realm, that is, by the will and aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and others of the Counties, that is to ſay, by grant and common aſſent in Parliament.

Within this Act are all new Offices erected with new fees, or old Offices with new fees, for that is a Tallage put upon the Subject, which cannot be done without common aſſent by Act of Parliament. And this doth notably appear by a Petition in Parliament in Anno 13 H. 4. where the Commons complain, that an Office was erected for meaſurage of Clothes and Canvas, with a new fee for the ſame by colour of the Kings Letters Patents, and pray that theſe Letters Patents might be revoked, for that the King could erect no Offices with new fees to be taken of the people, who may not be ſo be charged by Parliament. Rot. Parliam. 13 H. 4. nu. 43.

The Royal anſwer of the King in Parliament was, that the Statutes therefore provided ſhall be obſerved, which Statutes were the ſaid Act of 25 E. 1. and this of 34 E. 1, &c. and accordingly Judgment was alſo given in the Kings Bench, ſo as this point was both reſolved in Parliament, and adjudged by Law 13 H. 4. fol. 16, 17.

Law according to theſe Statutes; and hereby it appeareth that theſe were Acts of Parliament.

Rot. Parl. 22 E.3. nu. 31. Rot. Parl. 25 E.3.

King Edw.3. had granted to Robert Poley a new office of meaſuring of Woolſteads with a new fée; and it was at the Petition of the Commons reſolved in Parliament to be void, and afterward revoked as void by authority of Parliament; and the like Law is in all like caſes.

Note that the words of this branch are general, Nullum tallagium, &c. ponatur, ſeu levetur ſine voluntate, &c. and ſaith, Per nos, & hæred' noſtros, but not Pro nobis, aut ad opus noſtrum. But generally ſo as all Tallages, burthens, or charges put upon the Subject by the King, either to or for the King, or to or for any Subject by the Kings Letters Patents, or other commandement or order, is prohibited by this Act, unleſs it be by common conſent of Parliament; And note that the words are in the diſjunctive, [Ponatur ſeu levetur] ſo as if it be ſet by the King, although it be not levied by him, but by a Subject, as it was in the caſes aboveſaid, it is within the purview of this Statute.

CAP. II.

NUllus miniſter noſter, vel hæredum noſtrorum capiat bladas, corea, aut aliqua alia bona cujuſcunque, ſine voluntate & aſſenſu illius, cujus fuerint bona.

Of this branch we ſhall have juſt occaſion to ſpeak when we come to the Statute of 28 E.1. cap.2. and therefore do purpoſely omit to ſpeak of it here.

CAP. III.

NIhil capiatur de cætero nomine, vel occaſione maletot de ſacco lanæ.

See for Maletot 25 E.3. cap.6. & Magna Charta, cap.30. and albeit it was ouſted before, yet Nunquam nimis dicitur, quod nunquam ſatis diſcitur; by this Act it is both prohibited by the general purview, and alſo by this particular branch.

CAP. IV.

VOlumus & concedimus pro nobis & hæredibus noſtris, quod omnes clerici & laici de regno noſtro habeant omnes leges, libertates, & liberas conſuetudines ſuas ita libere & integre, ſicut eas aliquo tempore melius & plenius habere conſueverunt. Et ſi contra illas quocunque articulo in præſenti Charta contento ſtatuta fuerint edita

edita per nos & anteceſſores noſtros, vel conſuetudines introductæ: Volumus & concedimus, quod hujuſmodi conſuetudines & ſtatuta vacua & nulla ſint in perpetuum.

This containeth a reſtitution general to the Subjects of all their Laws, Liberties, and frée Cuſtoms, as frélу and wholly, as at any time befoze in the better and fuller manner they uſed to have the ſame, and this doth not only extend to Magna Charta, and Charta de Foreſta, but to all other Laws, Liberties, oz Frédoms, and frée-cuſtoms whatſoever.

But what if any Act of Parliament have bèn made contrary to any Article in this Act contained; this later clauſe, viz. Et ſi contra illas, &c. containeth a repeal of all Statutes made by King E. 1. oz any of his anceſtoꝛs againſt any Article in this Act contained, that is to ſay, concerning the firſt Chapter, Nullum tallagium, &c. oz the ſecond, Nullus miniſter noſter; oz the third, Nihil capiatur; oz this fourth, which is moſt general, Volumus & concedimus, &c. 42 E. 3. ca. 1. ſimile.

Hereby it may be obſerved how pꝛudent antiquity could contain much matter in few woꝛds.

CAP. V.

REmiſimus etiam Humfredo le Bohun, Comiti Hereford' & Eſſex, Conſtabular' Angliæ, & Roger' Bigot Comiti Norff. & Suff. Mareſcallo Angliæ, & aliis Comitibus, Baronibus, Militibus, Armigeris, & I. de Ferreres, ac omnibus aliis de eorum ſocietate, confœderatione, & concordia exiſtentibus: necnon & omnibus viginti libratas terræ tenentibus in regno noſtro, ſive de nobis teneant in capite, ſive de alio quocunque ad transfretand' nobiſcum in Fland' certo die vocatis, rancorem & malam voluntatem erga nos habitam, ac etiam tranſgreſſiones ſi quas nobis fecerint, uſque ad præſentis Chartæ confectionem. Et ad majorem hujuſmodi rei ſecuritatem volumus & concedimus, quod omnes Archiepiſcopi, & Epiſcopi in perpetuum habeant in ſuis Cathedralibus Eccleſiis, habitanti præſenti Charta lecta excommunicare, & publice in ſingulis parochialibus Eccleſiis ſuarum Dioc̃ excommunicatos denunciare bis in anno omnes illos, qui contra tenorem præſentis Chartæ vim & effectum quoquo modo vel articulo ſcienter fecerint, aut fieri procuraverint. In cujus rei teſtimonium præſenti Chartæ ſigillum noſtrum eſt appenſum una cum ſigillis Archiepiſcoporum, Epiſcoporum, &c. qui ſponte juraverunt, quod tenorem præſentis Chartæ, quantum in eis eſt, in omnibus cauſis & ſingulis articulis ſervabunt, & ad obſervationem fidele auxilium præſtabunt, &c.

If you compare our Engliſh Hiſtoꝛies with this Act of Parliament, the old ſaying ſhall be verified, that Recoꝛds of Parliament are the trueſt Hiſtoꝛies.

Although the King had conceived a déep diſpleaſure againſt the Conſtable, Marſhal, and others of the Nobility, Gentry, and Commons of the Realm, foꝛ denying of that which he ſo much deſired, yet foꝛ that they ſtood in defence of their Laws, Liberties, and frée Cuſtoms, the King, who (as Sir William Herle Chief Juſtice of the Common Pleas, who lived in his time, and ſerved him, ſaid) was the wiſeſt King that ever was, did not only reſtoꝛe the ſame to them 5 E. 3. fol. 14.

them as is aforeſaid, but granted a ſpecial pardon to thoſe of whom he had conceived ſo great diſpleaſure; ſuch a one as you ſhall not read of the like, for hereby he pardoned three things:

¶ 1. Rancorem.] Rancor is taken here metaphorically for a feſtring of indignation, or diſpleaſure in the mind of the King, which the King releaſeth and diſchargeth them of the ſame, and incidently reſtoreth them to his favour.

¶ 2. Malam voluntatem.] Ill will or unkindneſs: of this ſo much may be ſaid as hath been ſaid of rancor.

¶ 3. Et etiam tranſgreſſiones, ſi quas fecerint.] Here theſe words [Si quas fecerint] are added, leſt by acceptance of a pardon of tranſgreſſions they ſhould impliedly confeſs that they had tranſgreſſed: ſo careful were the Lords and Commons in former times to preſerve the ancient Laws, Liberties, and free Cuſtoms of their Country.

25 E.1. Confirm. Chartar. cap. 4.

¶ Et quod omnes Archiepiſcopi, &c.] Here power is given to Archbiſhops and Biſhops twice in the year, upon the reading of this Act, to excommunicate all the violaters thereof, &c.

Rot. Parl. 7 H. 4. nu. 60. ſimile. 28 E.1. br'e procerum, & Comitat. 70. cap. ſigillat. Walſ. pag. 48.

¶ In cujus rei teſtimonium præſenti Chartæ ſigillum noſtrum eſt appenſum una cum ſigillis Archiepiſcoporum, Epiſcoporum, Comitum, Baronum, &c.] Nota the ſolemnity of this Act, in that all the Archbiſhops, Biſhops, Earls, Barons, &c. did put their ſeal thereunto: A rare example, which was done for the obliging of them the more firmly to the obſervation of this Act, which concerned the Laws, Liberties, and free Cuſtoms of their Country.

¶ Qui ſponte juraverunt, quod tenorem præſentis Chartæ, quantum in eis eſt, in omnibus cauſis & ſingulis articulis ſervabunt, & ad obſervand' fidele auxilium præſtabunt, &c.] And for their greater obligation for the due obſervation of this Act, they took a voluntary corporal oath.

Here note, that either houſes of Parliament being Courts may take voluntary oathes, as here it appeareth.

Articuli

Articuli ſuper Chartas,

Editum *Anno* 28 Edw. 1.

PUr ceo que les points de la graund Chartre, des fraunchiſes, & de la foreſt, les queux le Roy Henry pier noſtre ſeigniour le Roy qui ore eſt, granta a ſon people pour le preue de ſon roialme, ne ont pas eſte tenus, ne gardes avant ces heures, pour ceo que avant ces heures peine ne fuit eſtablie vers les treſpaſſants countre les points des chartres avantdits: Noſtre ſeigniour le Roy les adde novel graunt, renovele & confirme. Et a la requeſtes des Prelates, Counts, & Barons a ſon Parliament a Weſtm̃, en quareſme lan de ſon reigne xxviij. ad certains points affirme, & peine ordeigne, & eſtablie, encounter touts yceux, que encountre les points des avantdits Chartres, ou nul point de eux, en nul manner viendront, ou miſprendrent, en la forme que lenſuit.

One cauſe of the making of this Act, was, that albeit the King had confirmed the ſaid Charters at this Parliament holden in 25 E. 1. and ſtiled the Act by the name of Confirmationes Chartarum de libertatibus Angliæ & Foreſtæ, yet becauſe there was a ſaving in that Act, [Saves les auncient aides & priſes dues & accuſtomes] although they were to be underſtood of aids by reaſon of tenure, &c. as in the Expoſition thereof it appeareth, yet it was a colour for the Kings Officers and Miniſters to make an evaſion when the Parliament was: And thereupon the Lords of Parliament did importune the King to confirm the ſaid Charters; which the King promiſed to do: but when it came to be ſet down in form of an Act, the King would have added a ſaving of the right of his Crown, which the Lords did mainly inveigh againſt, and preſſed the King with his promiſe to confirm them as abſolutely as his Noble Father King H. 3. had granted them; which in the end he yielded unto, as by this Act it appeareth.

And another cauſe of the making of this Act, as by the Preamble is ſuggeſted, was, that there was no certain puniſhment in many points eſtabliſhed by the ſaid Charters againſt the violaters of the ſame, which alſo by this Act are remedied.

¶ Grant a ſon people.] This word populus here doth include all the Kings Subjects, both the Prelates, and other of the Clergy, and the Nobles and Commons of this Realm, for all be the Kings people [ſon people.]

¶ Peine ne fuit eſtablie.] Some read it [peine ne fuit executé] that is true in effect, but the original is peine ne fuit eſtablie, that is, no pain was ſet down in certain.

¶ A le requeſt les Prelates, Countes, & Barons.] Theſe Articles were preferred by the Lords of Parliament, becauſe they had a promiſe of the King to paſs the ſaid Articles; There were at this Parliament 93 Earls and Barons of the Realm, beſides the Lords of the Clergy, which then were many.

Rot. Parl. 5 H. 4. nu. 61. 2 E. 3. 27. Piers de Salt. marſh. Caſe. Vide li. 10. fo. 74. Le Caſe de Marſhalſea.

The title is here Articuli ſuper Chartas, ſometime they ſtiled it by the name of Novi Articuli ſuper Chartas, ſometimes, Explanations ſur les Chartres; and juſtly they are called Articuli ſuper Chartas, meaning Magna Charta, and Charta de Foreſta, for that they contain the ſubſtance of all that is contained in theſe Articles.

CAP. I.

CEſtaſcavoir, que de cy en avant la grand Chartre des Franchiſes Dengleterre, grante a tout la commune Dengleterre, & la Chartre de la Foreſt in meſme le manner grante, ſoient tenus, gardes, & maintenus en cheſcun article, & cheſcun point, auxy pleinment come le Roy les ad graunte, renovele, & per ſa Chartre confirme. Et que celles Chartres ſoient bailles a cheſcun Viſcont Dengleterre deſoubes le ſeale le Roy, a lier quatre foits per an devant le people en pleine Countie: ceſtaſcavoir, au prochein Countie apres la ſaint Michael', au prochein Countie apres le Noel, au prochein Countie apres la Paſche, & au prochein Countie apres la ſaint Johan' Baptiſt. Et a ceux deux Chartres en cheſcun point, & en cheſcun article dicele, firmement tener, & garder, ou remedie ne fuit avant per la common Ley, ſoient eſleus en cheſcun Countie per la commune de meſme la Countie trois prodes homes chivalers, ou auters loialx, ſages, & aviſes, que ſoient jures & aſſignes per les Letters le Roy overtes de ſon graund ſeale, de Oier & Terminer, ſans auter briefe que lour common graunt, les pleints que ſe ferront de touts yceux, que contreviendront ou meſprendront en nul des dits points des avantdits Chartres en Counties ou ils ſont aſſignes, auxibien dedeins franchiſes, come dehors, & auxibien des Miniſters le Roy hors de lour places, comes des auters, & les pleints oier de jour en jour ſans delay: & les terminent ſans allower les delayes, que ſont allowes per la Common Ley, & que meſme ceux

ceux chivalers eyent poyer de punier touts ceux que ſerront attaints de treſpaſs fait, encountre nul points des chartres avantdits, ou remedy ne ſuit avant per la common ley, auxi come avant eſt dit, per impriſonment, ou per ranſome, ou per amerciament, ſolonque ceo que le treſpaſs le demaund. Et pur ceo nentende pas le Roy, ne nul des ſoyens que a ceſt ordeignement fuerent, que les chivalers avantdits, teignent nul plee per le power que done lour ſoit, en cas ou avant ces heures fuit remedie purview ſolonque la Common Ley, per briefe: Ne que prejudice ſoit fait a la Common Ley, ne a les chartres avantdits, en nul de lour points. Et voit le Roy, que ſi touts trois ne ſoient preſentes, ou ne perront a touts les foits attendre, a faire lour office en la forme avantdit, que deux des trois le facent. Et ordeigne eſt, que les viſcounts, & les bailifes le Roy, ſoient attendants a les commandements des avantdits Juſtices, en quant que appent a lour office. Et ouſtre ces choſes grants ſur les points des chartres avantdits, le Roy de ſa grace eſpeciall, en allegeance des grevances, que ſon people ad eu per les guerres que ont eſte, & en amendement de lour eſtate, & pur tant que ils ſoient plus preſtes a ſon ſervice, & plus voluntiers aidants, quant il en avera a faire, ad grant aſcuns articles, les queux il entend' que tiendront auxibien lieu a ſon people, & auxi grand profit ferront, ou plus que les points avant grantes.

¶ A le commune D'angleterre.] Here Commune is taken for people, ſo as [Tout le commune] is taken here for all the people; and this is proved by the ſenſe of the words, for Magna Charta was not granted to the Commons of the Realm; but generally to all the Subjects of the Realm, viz. to thoſe of the Clergy, and to thoſe of the Nobility, and to the Commons alſo: And that [Commune] in this place ſignifieth people, it is proved by the Preamble, for there the great Charter, and the Charter of the Foreſt, are rehearſed to be granted by King H. 3. to his people; and here they are ſaid to be granted [A le commune:] and ſee before 25 E. 1. Confirmat. Chart. cap. 1. & cap. 6. for this word commune and comminaltie: ſo as [A le commune] here ſignifieth not to the Commons of the Realm, but to the people of the whole Realm; and herewith agreeth our Books, that for a common Nuſance, which concerns Le commune, ou le comminaltie, le ſuit ſerr' done au Roy, where [commune] and [comminaltie] include all the Kings Subjects. 2 E. 3. 26. &c.

¶ Auxi pleinement come le Roy, les ad grante, renovele, & per ſon chartre confirme.] Here it is to be underſtood, that this King Edw. 1. the 28 day of March, in this 28 year of his raign had abſolutely confirmed, ſo as now by force of this Act of Parliament in Anno 34 E. 1. it hath only the force of a Charter, but this is eſtabliſhed by this Act of Parliament.

¶ Et que les chartres ſont bailles a cheſcun Viſc', &c.] And that theſe Charters ſhould be read four times in the year in full County; here is order taken for the publiſhing of theſe Charters.

See the Statute de Confirmat. Chart. cap. 1,3,4.

¶ Ou remedie ne fuit avant per le common ley.] That is, where no Action was given by the Kings Writ to be purſued at the Common Law.

¶ Apres le Saint Michael, &c. Soient eſleus en cheſcun countie, per la commune de meſme le countie, trois prodes chivaliers, ou auters loyals, ſages, & aviſes, que ſoient jurees & aſſignes per les letters le Roy overtes de ſon grand ſeale, de Oier & Terminer ſans auter briefe que lour commen grant, les pleints que ſe ferront de touts ceux, que contrevendront, &c.] Here, for the better execution of thoſe glorious two lights, Magna Charta, and Charta de Foreſta, a new Court and new Juſtices were appointed, with limitation, that they ſhould meddle only with thoſe points againſt thoſe Charters, for the which before this Act there was no remedy by the Common Law.

Here by the way it is to be obſerved, that three new things which have fair pretences are moſt commonly hurtful to the Common wealth, viz. 1. New Courts, (as here was one,) for commonly they tend to the grievous vexation and oppreſſion of the Subject, and not to that glorious end that at the firſt was pretended; for erect new Courts, and conſtitute great men to be Judges, and make what limitations you will, they will never want authority and juriſdiction. 2. New Offices either in Courts of Juſtice, or out of them, which cannot be done as here it was, but by Parliament; but they under pretence of the common good are exerciſed to the intolerable grievance of the Subject. 3. New Corporations trading into forrein parts, and at home, which under the fair pretence of order and government, in concluſion tend to the hinderance of Trade and Traffique, and in the end produce Monopolies. But now to the Text.

¶ Et auxibien des miniſters le Roy hors de lour places, come des auters: & les pleintes oier de jour en jour ſans delaie: & les terminent ſans allower les delaies, que ſont allowes per la common ley.] Here was the firſt ground for the raiſing of the Juſtices of Trebaſton, or Trailbaſton, ſo called (in reſpect of their precipitate proceeding from day to day, without ſuch convenient leiſure and time as Common Law allowed) for that their proceedings were as ſpeedy and ready as one might draw a ſtaff.

Rot. Pat. 33 E. 1. in Dorſ. m. 1. 2 E. 3. fol. 27. 27 Aſſ. 57. Stat. de Ragman. Vet. Chart. part 2. fol. 28. Matth. Pariſ. 450. Holl. 312,313. Stat. 33 E. 1. Vet. N. B. 52.

Their authority was increaſed in Anno 33 E. 1. and if you deſire to read their Commiſſion, you may read the ſame in Rot. Pat. Anno 33 E. 1.

They in the end had ſuch authority as Juſtices in Eyre; but albeit they had their authority by Act of Parliament, yet if they erred in Judgment, a Writ of Error did lie by the general rule of the Common Law to reverſe their Judgment in the Kings Bench; which being once reſolved and known, and their Juriſdiction fettered with ſo many limitations, their authority by little and little vaniſhed.

¶ Le

¶ Le Roy de ſa grace eſpecial, &c. & pur tant que ils ſoient plus preſtes a ſon ſervice, & plus voluntiers aidants, quant il en avera a faire.] Here is to be obſerved, that the Subject ought to retribute to the King for a Bill of Grace two things: firſt, to be the more ready to do him ſervice; and ſecondly, to aid him in time of need.

CAP. II.

EN primes pur ceo que un grande grevance eſt en ceſt realme, & dammage ſans nombre, de ceo que le Roy & ſes miniſters de ſa meignee, auxibien les aliens come les deniſens, ſont lour priſes per la ou ils paſſent parmy le realme, & pernent les biens des gents, des cleres, & des layes, ſans rien paier, ou bien meins que la value: Ordeine eſt, que de cy en avant, nul ne preign' priſes parmy realme, forſque les parnours le Roy, & ſes purveyours pour loſtell' le Roy: Et pur les parnours le Roy, & purveyours pour ſon hoſtell', ne preignent riens, forſque pur meſme loſtell': Et des priſes que ils ferront parmy le pais, de manger ou de boire, & des auters menus neceſſaries pur loſtell', que ils facent la paie ou gree a ceux, des queux les choſes ſerront priſes. Et que touts ceux parnours le Roy, purveyours, ou achatours, eient de cy en avant lour garrante oveſque eux du grand ſeale, ou du petite ſeale le Roy, conteinant lour poiar, & les choſes dont ils ferront priſes, au purveyance: le quel garrant ils monſtrent a ceux des queux ils ferront la priſe, avant ceo que ils impreignent rien. Et que ceux parnours, purveyours, ou achatours le Roy, ne preignent plus que beſoigne, & meſter ne ſoit, pour le Roy & ſon hoſtell', & de ſes enfants. Et que riens ne preignent pur ceux que ſont as gages, ne pur nul auter. Et que ils reſpoignent en loſtell', ou en la gardrobe pleinment de toutes lour priſes, ſans faire lour largeſſes aillours, ou liveries des choſes, que pour le Roy ſerront priſes. Et ſi nul parnour del hoſtell' le Roy, per garrantie que il eit, face priſes, ou liveres en auter maner, que deſus neſt dit, per plaint fait al ſeneſchall', & au treaſorer del hoſtell' le Roy, ſoit la verite inquiſe. Et ſi de ceo ſoit atteint, ſoit gre maintenant fait al pleintif, & ſoit ouſte de ſervice le Roy pur touts jours, & demoerge en priſon a la volunte le Roy.

This Chapter is confirmed by 18 E. 1. cap. 2.

Roy. Et ſi null' face priſes ſans garrante, & les emporte encountre la volunte de celuy a que les biens ſont, ſoit maintenant arreſte per la ville, ou le priſe ſerra fait, & ameſne a la prochein gaole. Et ſi de ceo ſoit atteint, ſoit la fait de luy, come de laron, ſi la quantite des biens le demand'. Et quant as priſes faire en faires, & en bons villes, & en portes pur la grande garderobe le Roy, eient les pernours lour commen garrant per le grand ſeale. Et des choſes que ils prendront, eient la teſmoign' du ſeale du gardein de la garderobe. Et des choſes iſſint per eux priſes, de nombre, de quantite, & de value ſoit fait dividende entre les pernours, & les gardeins des faires, maires, ou chief baylies des villes, & portes, per la vieu des Merchants, des queux les biens ſerront iſſint priſes. Et riens ne luy ſoit ſuffert de plus prendre que il ne mette en dividende. Et cell' dividende ſoit port en garderobe ſoubs le ſeale le gardein, maire, ou chiefe bailife avantdits: & la demoerge tanque ſur laccompte du garderobe le Roy. Et ſil ſoit trove que nul eit autrement priſe que faire ne deveroit, ſoit puny ſur laccompte per le gardein de la garderobe le Roy, ſolonque ſa deſerte. Et ſi nul face tielx priſes ſans garrante, & ſur ceo ſoit atteint, ſoit fait de luy come de ceux que font priſes pur loſtell' le Roy ſans garrante, come deſus eſt dit. Et nentende mye le Roy, ne ſon counſail, que per ceſt eſtatute rien decreſſe au Roy de ſon droit des auncient priſes dues & accuſtomes, come des vins, & auters biens: meſque en toutes pointes pleinment luy ſoit ſave.

Seeing by many Acts of Parliaments the Kings purveyance is limited in certain, ſo as the Law there is certain, and without queſtion; it ſhall not be impertinent nor unneceſſary to learn from Antiquity, how, and in what ſort the Kings houſhold was in thoſe days provided of victuals: Certain it is, that as well before as after the Conqueſt, the King upon his ancient demeſnes of the Crown of England, had houſes of Husbandry, and ſtocks for the furniſhing of neceſſary proviſions for his houſhold; and the Tenants of thoſe Mannors did by their tenures, manure, till, &c. and reap the Corn upon the Kings demeſnes, mowed his Meadows, &c. repaired the Fences, and performed all neceſſary things belonging to husbandry upon the Kings demeanes: In reſpect of which ſervices, and to the end they might apply the ſame the better, they had many liberties and priviledges, as that they ſhould not be ſued out of the Court of that Mannor, nor impannelled of any Jury or Inqueſt, nor appear at any other Court, but only at the Court of the ſaid Mannor, nor be contributory to the expences of the Knights of the Shire which ſerve at Parliament, nor pay any Toll, &c. which liberties and immunities continue to this day, albeit the original cauſe thereof is ceaſed; Now all the Mannors that were in the hands of Edward the Confeſſor before the Conqueſt, or in the hands of William the Conqueror, and ſo, appear in the Book called Domeſday, are accounted the ancient demeans of the Crown of England, and had been the demeans of the Crown long before.

* Inter leges Canut. regis ca. 67. Omnibus hanc porro impartimus allevationē ut quo prius opprimebat' onere populum liberemus: Inprimis præfectis meis omnibus mand', ut ex prædiis meis propriis quæ mihi fuerint ad victū neceſſaria ſuppeditent, neque alius quiſquam victui noſtro alimenta præſtare invitus cogatur. Itaq; ſi eorum aliquis hoc nomine mulctam petierit, is proprii capitis æſtimationem regi dependito.

In

In libro rubeo Scacc' cap. A quibus & ad quid fuit argent' examinatio; you ſhall read that which is very obſervable. In primitivo regni ſtatu poſt conquiſitionem, regibus de fundis ſuis non auri & argenti pondera, ſed ſola victualia ſolvebantur, ex quibus in uſus quotidianos domus Regis neceſſaria miniſtrabantur, &c. And ſee the reaſon wherefore theſe proviſions of victuals were changed. Lucubrat.

And this is evident by many Records, but by little and little this courſe of good Husbandry vaniſhed. Rot.clauſ. 13 H. 3. m. 10. in dorſ. Rot.finium 3 E. 1. 35. Kelwey 114. Brit. 75, 76. Fleta lib. 2. cap. 8. & 11.

When the Kings own proviſions for the moſt part failed, then to ſupply neceſſary proviſions, there was a continual Market kept at the Court gate, where the King was better ſerved with viands for his houſhold, then by Purveyors, the Subject better uſed, and the King at far leſs charge in reſpect of the multitude of Purveyors, and the Officer of this Market was called Clericus mercati hoſpitii Regis, the Clerk of the Market of the Kings houſe, ſo as he retaineth his name ſtill according to the firſt inſtitution, although the good end thereof ceaſeth; when this Market was diſcontinued, then Purveyors ſtarted up, and the number of them daily increaſed, who by the Laws and Statutes of this Realm ought to obſerve five things: 1. To take only for the Kings Houſhold 2. With the conſent of the owner. 3. For the price as was ſold in the Market. 4. To take no more then was neceſſary for the Kings Houſhold. 5. Where it might beſt be ſpared, and where more plenty was. Rot. Parl. 50 E. 3. nu. 87. & 152. 12 R. 2. cap. 4. Lib. intr' Co. 445. 32 H. 8. cap. 20. The number of Purveyors enacted to be abridged. 34 E. 3. ca. 3. 36 E. 3. ca. 2. That they be ſufficient men.

All which was inquirable before the Juſtices in Eyre, before our Statute made in 28 E. 1. and at the firſt they were called emptores, buyers; and it was a ſpecial Article inquired by the Juſtices in Eyre, De priſis fact' per Vicecomites, vel Conſtabular', vel alios balivos contra voluntatem eorum quorum catalla fuerint; and this was before the making of our Statute of 28 E. 1. Bract. l. 3. fo. 117. cap. Itin' ſæpe. Brit. fol. 33, 36. Fleta l. 1. ca. 20. Lib. 2. cap. 16. Forteſcue ca. 36. fol. 43. See the Statutes hereafter mentioned.

And for a concluſion hereof it is declared by authority of Parliament, in theſe words, Nullus miniſter noſter, vel hæredum noſtrorum, capiat bladа, corea, vel aliqua alia bona cujuſcunque ſine voluntate & conſenſu illius cujus fuerint bona: And this is confirmed and eſtabliſhed by the Statute of 18 E. 3. Stat. de Tallagio. 34 E. 1. 4 E. 3. c. 3. 18 E. 3. cap. 7. Int' brevia 6 H. 3. Balivus de Hoyl and Lenne, & Gernem'. 7 H. 3. tit. Waſte 141. Pl. Com. in Caſe de Mynes.

So as no queſtion can be hereof made, and if you read of any taking or purveyance in ancient time, it muſt be taken with theſe limitations; and the reaſon why theſe words, ſine voluntate & conſenſu, &c. without the will and agrément were expreſſed, was, for that Purveyors would take the goods of ſuch men as had no will to ſell them, but to uſe or ſpend them for their own neceſſary uſe.

¶ En primes pur ceo que un graund grevance, &c.] The miſchief before this Statute was, that the inſolency of the Purveyors bearing themſelves ſo proudly under the great Officers of the Kings Houſhold, grew to that height that they would take what and how much as it pleaſed them, and many times where it might be leaſt forborn or ſpared, and for others then for the Kings Houſhold, and ſometimes would pay nothing, and many times leſs then the true value, and many perſons would make purveyance without any warrant at all; of theſe great grievances and loſſes without number, infinite damages, the Subjects complained of at this Parliament, and for reſtraining of the abuſes of the Purveyors and relief of the Subjects, this Act of Parliament was made.

¶ Font

Paſch. 30 E.1. coram Rege Lanc'. The Cinque Ports Caſe. * Rot.Cha. 17 July Anno 6 E.1. Baronibus 5. Port. conceſſus.

¶ Font lour priſes.] Of the French word priſe, comes the word priſa, uſed in Law for the things taken by Purveyors: Recta priſa, right taking or purveyance is there expounded, viz. De uno dol' ante malum & alio poſt malum; * and ſo explained in the Charter of E. 1. This is called Recta priſa, right taking or purveyance, becauſe it diſtinguiſhed it from the taking or purveyance againſt right. Vide ſpeculum Regis M.S. written by Ilfep Archbiſhop of Cant. to King E.3.

In ligul. de præcept. de Term. Hil. Anno 16 E.2. Nota pro Juſtic. de Banco Regis & eorum honore & ſuprema juriſdictione. * Purveyance. 28 E.1. Art. ſuper Chart. cap. 2.

28 E.1. Art. ſuper Chart. cap. 20. Anno 33 E.1. de conſpirat.

*Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitan' dilectis & fidelibus ſuis Henric' le Scrop' & ſociis ſuis Juſtic' noſtris ad placita coram nobis tenend' aſſignat', Salutem. Miramur quod cum vos præfat' locum noſtrum in placitis hujuſmodi teneatis, & noſtram præſentiam per loca per quæ regno noſtro tranſieritis in præmiſſis ſupplere debeatis, * de priſis Bladorum, victualium, & aliorum bonorum ſubditorum noſtrorum, contra voluntatem eorundem conſpiratoribus, tranſgreſſoribus, informatoribus falſarum querelarum, conventiculis & confederationibus illicitis factis non inquiritis, nec ulterius facitis quod deceret': Volentes igitur hujuſmodi mala puniri prout decet, vobis mandamus firmiter injungentes quod de hujuſmodi priſis, conſpirationibus, tranſgreſſionibus, informationibus falſarum querelarum, conventiculis, & confederationibus exnunc per ſingula loca per quæ tranſieritis, tam infra libertates quam extra, cum omn' diligentia & modis quibus poteritis inquiratis, & omnes illos quos legitime convinci, contingit puniatis juxta formam ſtatutorum, & articulorum inde editorum, & ſecundum legem, & conſuetudinem Regni noſtri in hac parte talit' vos habentes, quod querela ad nos inde non perveniat iterata. T. me ipſo apud Newarke, xxx die Januarii, Anno Regni noſtri 16. Per ipſum Regem.*

4 E.3.c.3. 25 E.3. ca.1. 36 E.3. ca.2.

¶ Ou bien meynes que la value.] Hereby it appeareth that the very value ought to be paid for the things purveyed according to that which appeared in our ancient Authors.

4 E.3.c.3. 25 E.3. ca.1. 36 E.3. c.2. Rot.Pat. 10 E.2. part 2.m.20. li.10. fol.73. In Caſe de Marſhalſea.

¶ Forſque le pernours le Roy, & les purveyors pur le hoſtle le Roy.] Herewith agreeth many later Statutes, and explained to be the Houſhold of the King and Quæn, at this Parliament, cap. 5. that the Chancellor and Juſtices of the Kings Bench ſhould follow the Court, and by pretext thereof, purveyance was made for them as part of the Houſhold, which laſted until 4 E.3. cap.3. at what time (the Chancellor and Judges diſcontinuing to follow the Court) it is provided againſt them, and all other that be not of the Kings houſhold.

¶ Ne pernont riens forſque pur meſme le houſholde, &c.] All this is in affirmance of the ancient common above mentioned, and ratified by the later Acts of Parliament laſt above remembred.

¶ Et

¶ Et des priſes que ilz ferront per my le pays de manger ou de boyer, & des auters menus neceſſaries per le hoſtele, que ilz facient le paie ou gree a ceux des queux le choſes ſerront priſes.] This is to be underſtood, when the King is paſſing in the Country, as in his progreſs, or in any journey, as it appeareth by the preamble; there the purveior may take meat and drink, which this Act here in reſpect of the Kings paſſage calls ſmall things, but he muſt pay the very value therefore, and make preſent payment, or agree with the party.

This is made certain by a latter Statute, that in all caſes where the thing to be taken is under 40 s. there preſent payment to be made, or elſe the owner may retain and reſiſt, and for the trial of the true value, the thing to be taken is to be praiſed or priced according to the very value by the Lord or his Baily, or the Conſtable, and four good men of the Town where ſuch taking ſhall be, there to be ſworn, in covenable and eaſie manner without threats or dures and by Indenture the quantity of the thing taken, the price, and of what perſons; but if it be not in the Kings paſſage, but for his ſtanding houſe, then the King cannot take any beer or ale, becauſe it is a manufacture, no more then he can take for his ſtanding houſe any other victual made by art and labour of mans hand, as bread, or the like; but mault, having the ſubſtance of the barley remaining, and having nothing added to it, is no ſuch manufacture, as it appeareth by a later Act of Parliament. But then the King by his officers muſt convert it into beer; for he cannot ſell, or otherwiſe imploy the ſame, which hath been the cauſe that never any mault was taken, and it muſt be taken at the very value in the Market. 4 E. 3. cap. 3. 5 E. 3. cap. 2. 36 E. 3. cap. 2. &c. 36 E. 3. cap. 2.

¶ Eyent de cy en avant lour de garrantie, ove eux du grand ſeale, ou de petit ſeale le Roy, conteynant lour power, & les choſes dont ils ferront priſes.] By latter Statutes the commiſſion muſt be under the great ſeal only, and every half year to be renewed. 36 E. 3. cap. 2. 2 & 3 Ph. & Mar. cap. 6.

¶ Le quel garrant ils juront a eux des queux ils ferront le priſe avant ceo que ils empreigne rien.] This is evident, and confirmed by later Statutes.

¶ Ne preigne plus que beſoigne & meſter ne ſoit, &c.] The Statute of 36 E. 3. confirmeth this, and doth add, that the takings muſt be in ſuch places where greateſt plenty is, and in a covenable time.

I have read a book called Speculum Regis, written in Latin by Simon Iſlip Archbiſhop of Canterbury to King Edward the third, wherein he ſharply enveigheth againſt the intolerable abuſes of purveiors and purveyance in many particulars, and earneſtly adviſeth, and inſtantly preſſeth the King to provide remedy for thoſe inſufferable oppreſſions and wrongs offered to his ſubjects, which the King keeping with him, and often peruſing, it wrought ſuch effect, that the King at divers of his Parliaments, but ſpecially at his Parliament holden in the 36 year of his Reign, of his own will, without motion of the great men or commons, as the Record of Parliament ſpeaketh, cauſed to be made many excellent Laws againſt the oppreſſions, malice, and falſhood of purveyors. Speculum Regis.

¶ Et que ils reſpoinent in loſtel ou en la garde robe pleinment de touts lour priſes ſans faire lour largeſſes ailours, ou liveries des choſes, que per le Roy ſerra priſes.] This account is to be made by this Act for victuals, &c. to the Houſhold, that is, to the officers of the Green cloth; and for ſuch things as belong to the Wardrobe, to the maſter of the Wardrobe.

¶ Et ſi nul face priſes ſans garrant, & les emport encounter le volunt de celuy, &c. Et ſi de c̄ ſoit attaint, ſoit fait de luy, come de laron.] By this branch, if any purveyor take any thing without warrant, &c. it is felony. And here it is to be obſerved, that theſe words, Come de laron, ſhall be underſtood of a theft that ſtealeth above the value of 12 pence; for he that committeth petit larceny is not un laron within this Act.

Vid. the form of an inditement in Lambards Juſtice of Peace in fine libri.

¶ Encounter le volunt.] That is, when he takes it as the Kings purveyor, pretending to have a warrant where he hath none, this is in Law as againſt his will, for with his will he would not have ſuffered him to take it, if he had known he had no warrant; but if the owner knew that he had no warrant, and yet willingly ſold it him, then cannot it be ſaid, that he carried it away againſt his will.

5 E.3. cap. 2.
25 E.3. cap.1.
Hol. Cronic' fol.369. 36 E.3. c.2.4
7 R.2. cap. 4.
32 E.3. tit. Barre 259. Stamf. Pl. cor. 37. a.
Lib.8. fol. 146. b.
le 6. Carpent. caſe.

If the purveyors take any thing without praiſment made by the Conſtables, or other diſcreet men thereto ſworn, or otherwiſe againſt that Statute, it is felony, and divers purveyors in 20 E.3. were attainted and hanged for offending againſt theſe Laws.

If any purveyor make any takings or buyings, or take any carriage in any other manner then is conteined in his commiſſion, it is felony; or if the purveyor take more then he deliver, and have not paid for that which is taken, it is felony.

And at the Seſſions at Newgate holden in January, An. 32 El. Nichols one of the Queens purveyors was attainted and hanged for offending of this Law.

Hill. 23 E. 3. coram Rege apud Ebor' inditements de Purveyors.
Lib.2. cap.6.7.

¶ Et quant as priſes faits en faires, & en bones villes, & en ports per le grand Gardrobe le Roy, eyent les pernours lour common garrant per le grand ſeale.] For the Wardrobe ſee Fleta.

And the letter of the Law is plain.

¶ Et ſi nul face tiels priſes ſans garrant, & ſur ceo ſoit attaint, ſoit fait de luy come de ceux que ſont priſes pur le hoſtel le Roy ſans garrant, come de ſuis eſt dit.] That is to ſay, let it be done of him as a theft.

¶ Et nentend mye le Roy ne ſon Counſaile, que per ceſt Statute rien decreſſe al Roy de ſon droit des auncient priſes dues, & accuſtomes, come des vines, & auters biens: meſque en touts points pleinment luy ſont ſave.] Vide 25 E.1. confirm' chartarum, the like ſaving explained, and whereof this ancient prices is to be intended.

Confirm. Chart. cap.6.

And hereby it may appear how neceſſary it was, firſt to know what belonged to the King of common Right, and at the common Law.

34 E.1. de tall' non conced' cap.2

But to prevent all ſcruples by colour of this ſaving, the ſaid Act of Parliament de tallag' non conced' Anno 34 E. 1. was made after this Act of 28 E. 1. which is a general negative Law, without any ſaving.

And therefore what ſubſequent Acts of Parliament have given to the King, the ſame ought to be obſerved and kept in ſuch manner and order as thereby is preſcribed.

CAP.

CAP. III.

DES eſtates des Seneſchals, & des Marſhals, & des plees qũ eux devoient tener, & coment: Ordeine eſt, que deſormes ne teigne plee de franktenement, ne de dette, ne de covenant, ne de contract des gents de people, forſque tantſolement de treſpaſſes del hoſtel, & dauters treſpaſſes fait dedeins la Vierge, & des contracts & covenants, que aſcun del hoſtel le Roy avera fait a auter de meſme le hoſtel, & en meſme le hoſtel, & nemy ailours. Et nul plee de treſpaſſe ne pledront, auter que ne ſoit attache per eux, avant ceo que le Roy iſſera hors de la Vierge, ou la treſpaſſe ſerra fait. Et les pleder' haſtivement de jour en jour, iſſint que ils ſoient pledes & termines avant ceo que le Roy iſſera hors des boundes de cel Vierge, ou le treſpaſſe fuit fait. Et ſi par cas dedeins les bounds de cel Vierge ne poient eſtre termines, ceſſent tiels plees devant le Seneſchalle, & ſoient les plees a la common Ley. Ne deſormes ne preigne le Seneſchalle conuſances des dets, ne dauter choſe, forſque des gents del hoſtel avantdit, ne nul auter plee en tiend per obligac̃ fait a le diſtreſſe le Seneſchalle, ou le Mareſchalle. Et ſi les Seneſchals, ou le Mareſchals rien facent encounter ceſt ordinance, ſoit lour fait tenus pur nul. Et pur ceo que avant ces heures mults des felonies faits dedeins la Vierge ount eſtre depunies, pur ceo que les Coroners de pays ne ſe ont pas entermis denquirer des tiels maners des felonies dedeins la Vierge, mes le Coroner del hoſtel le Roy, que eſt paſſant, de quoy iſſue nad my eſte fait en due manner, ne les felons mis en exigent, ne utlages, ne rien de ceo preſent en eyre, que ad eſtre a graund damage du Roy, & a meins bone garde de la peace: Ordeine eſt, que deſormes en caſe de mort de home, ou office de Coroner appent as viewes, & enqueſts de ceo faire, ſoit maund al Coroner del pays, que enſemblement ove le Coroner del hoſtel le Roy face loffice que appent, & le metter enrolle. Et ceo que ne purra mie devant le Seneſchal eſtre termine, pur ceo que les felons ne purront eſtre attaches, ou pur auter encheſon, demurge a la common Ley, iſſint que les exigents, utlagaries, & preſentments en eyre ſoient de ceo faits per le Coroner du pays, auxy come des auters felonies faits hors de la Vierge. Mes pur ceo ne ſoit leſſe, que les attachments ne ſoyent faits freſhment ſur les felonies faits.

¶ Des eſtates, des Seneſchals, & des Marſhals, & des plees, que eux devoient tener & coment.] Here in this ſhort and effectual preamble three things are to be obſerved:

1. Des eſtates, that is the extent of the juriſdiction or ſtate of the Steward and Marſhal, whereupon they may juſtly and ſafely ſtand.

2. What pleas they ought to hold, where this word (devoien t) is obſervable, for this Act doth reſtore and confine this Court of the Marſhalſea to his right and juſt juriſdiction, and to hold thoſe pleas which the Steward and Marſhal ought, that is, of right ought to hold.

3. How and in what order and manner thoſe pleas ought to be holden, expreſſed in this word coment.

Hereby it appeareth, that this Act is in affirmance of the Common Law, and purpoſely made for relieving the ſubject againſt the uſurpations and incroachments of the Steward and Marſhal.

Lib. 10. fol. 68. in caſe of the Marſhalſea.

¶ De Seneſchals & Marſhals, &c.] Theſe words are general, but they are to be underſtood of the Steward of the Court of the Marſhalſea of the houſhold, who is ever a profeſſor of the Common Law, and not of the Steward of the Kings houſhold; and the Marſhal is here to be underſtood the Marſhal of the houſhold, and the Marſhalſea is to be underſtood of the houſhold, and not of the Kings Marſhalſea; for that belongeth to the Kings Bench.

¶ Ordeine eſt, que ne teigne plee de franktenement.] This is negative, abſolute, and in affirmance of the Common Law.

¶ Ne de dette, ne de covenant, ne de contract des gents de people, forſque tant ſolement des treſpaſſes del hoſtel, & dauters treſpaſſes faits deins la Vierge, & des contracts & covenants, que aſcun del hoſtel le Roy avera fait al auter de meſme le hoſtel, & nemy ailours.] Here by this Act it is declared, that the ſaid Steward and Marſhal cannot hold plea but of three actions, viz. of debt, covenant, and treſpaſſes: In debt and covenant both the parties muſt be of the Kings houſhold; in treſpaſſes it ſufficeth that one of the parties be of the Kings houſhold.

38 E. 3. 17. Regiſt. 185. & 111. 6 R. 2 action ſur leſtature pl. ult. 3 H. 6 eſtopp. 18. action ſur leſtat. 13. 7 H. 6 30. 10 H. 6. 13. 14 H. 6. 6. Lib. 5. E. 4. 129. 19 E. 4. 8. b. 20 E. 4. 16. 22 E. 4. 11, 16, 31. F.N.B. 241, 242. Hil. 5 Jac. coram Rege Rot. 876. 33 H. 8. cap. 12.

And though this Act ſpeaketh generally of treſpaſſes, yet is it only intendable of treſpaſſes vi & armis, as of battery, or taking away of goods, and not of treſpaſſes quare clauſum fregit, nor of treſpaſſes and ejectment, nor of treſpaſſes ſur le caſe, nor of detinue, nor of any other perſonal action, nor of any real or mixt action, notwithſtanding the general words of the Statute of 33 H. 8. as you may read at large in the caſe of the * Marſhalſea; for particular juriſdictions derogating from the juriſdictions of the general Courts of the Common Law are ever taken ſtrictly.

* Lib. 10. fol. 60. en caſe de Marſhalſea.

¶ Et nul plee de treſpaſſes pledront, auter que ne ſoit attache.] This is explained in the caſe of the Marſhalſea, ubi ſupra.

32 H. 8. cap. 20. F.N.B. 241.

¶ Avant que le Roy iſſera.] Albeit the King himſelf do go out of the bounds of the Vierge for his recreation, as to hunt, with no purpoſe to reſt, tarry, abide, or make his repoſe there, and his Councel and Houſhold continue where they were, this is no removing within this Statute: But when the King goeth in progreſs, there his Houſhold goeth with him, there the King removeth within this Act.

The caſe of the Marſhalſea, ubi ſupra.

¶ Hors des bounds de ceſt Vierge.] The bounds of the Vierge. See Fleta and the Mirror, that the bounds of the Vierge was twelve miles round about the Kings houſe, ſo as it ſeemeth, that 13 R. 2. was but in affirmance of the Common Law. Vide 33 H. 8. the bounds of the Kings houſe, or Palace.

13 R. 2. cap. 3. 33 H. 8. cap. 12.

¶ Ne nul auter plee teigne per obligation.] This is alſo notably explained in the ſaid caſe of the Marſhalſea, ubi ſupra.

¶ Et

¶ Et pur ceo que avant ceux heures mults des felonies faits deins la Vierge, ount eſtre diſpunies.] Here are to be obſerved, that as the actions aboveſaid determinable before the Steward and Marſhal, are confined to the Vierge; ſo felonies alſo determinable before the Steward and Marſhal, are alſo confined to the Vierge: and as they are limited of all the cauſes of actions riſing within the Vierge only to theſe, and they not generally extending to all, but ſpecially confined to certain particular perſons; ſo of felonies done within the Vierge, the juriſdiction of the Steward and Marſhal extend not to all, but to certain, and thoſe again limited to certain perſons: For of ancient time they had general authority, as Juſtices in Eir, and as Vicegerents of the chief Juſtice of England within the Vierge, at what time they held plea of all felonies within the Vierge, which power is now vaniſhed; but as Steward and Marſhal of the Court of Marſhalſea of the Kings houſhold, the title of their Court in criminal cauſes was, placita coronæ Aulæ hoſpitii Domini Regis coram Seneſchallo & Mariſchallo, and always confined to felonies done within the circuit of the Kings houſhold, the bounds whereof are made certain by the ſaid Act of 33 H.8. And by that Act it is provided, that all treaſons, miſpriſions of treaſons, murthers, manſlaughters, bloodſheds, and other malicious ſtrikings, by reaſon whereof blood is or ſhall be ſhed, which ſhall be done in any of the Kings palaces or houſes, &c. ſhall be enquired, tried, heard, and determined before the Lord Steward for the time being of the Kings houſhold, or in his abſence before the Treaſurer, and Controller, and Steward of the Marſhalſea, or any two of them, whereof the Steward to be one: ſo as theſe great Officers and Councellors of State, the Lord Steward, Treaſurer, and Controller have no juriſdiction in theſe criminal cauſes, but only within the circuit of the Kings palace or houſe: And it is to be obſerved, that this Court of the Marſhalſea of the Kings houſe was, as Books ſpeak, of ancient time inſtituted for thoſe of the Kings houſe, but they have incroached beyond their true juriſdiction: And Stanford ſaith, that the Steward and Marſhal before the ſaid Act of 33 H. 8. might have heard and determined all felonies, &c. perpetrate within the Kings palace or houſe.

2 H.4. c.23. 9 R.2 c.5. 18 E. 3. c.7.

Vide le caſe de Marſhalſea, ubi ſupra.

Stanf. pl. cor. fol.57.

L.5 E.4.13. of this incroachment complaint hath been made in Parliament. 8 H. 4. nu.42. Stanf. ubi ſupra.

A robbery was committed in a Town within the Vierge, and this appearing to the Court, yet the ſame was enquired of, heard, and determined in the Kings Bench, and ſo it may be before Juſtices of Oir and Terminer, and Juſtices of Peace, becauſe their Juriſdiction is general through the whole County; but of an offence within the Kings palace, it ſhall be heard and determined according to the ſaid Act of 33 H.8. upon which Act this is obſervable, that if a man ſtrike in the Kings palace, where his Royal Perſon is reſiant, unleſs blood be ſhed he loſeth not his hand; but in Weſtminſter Hall, when the Kings Courts ſit, or before the Juſtices of Aſſiſe ſitting in their place, if any man ſtrike another, though he draw no blood, yet ſhall he loſe his right hand, ſo great honour and reverence do Laws give to the Kings Courts: for in judgment of Law the King himſelf is always preſent to miniſter juſtice by his Judges in thoſe Courts of juſtice, according to his Kingly office to all his ſubjects, ſecundum legem & conſuetudinem Angliæ.

Paſch' 12 E. 2. Rot.280. coram Rege, the caſe of William Swetton, lib.4. fol.47. Kath. Wroths caſe.

41 E.3. coron.280 22 E.3.13. 19 E.3 judgment. Dyer. 3 El.188.

¶ Les Coroners de pays ne ſoient pas intermis denquirer des felonies deins la Vierge.] This is underſtood of felonies of the death of man; for the enquiry of that felony belongs to the office of the Coroner of the Vierge, and ſo it is hereafter in this Act explained, Office del Coroner appent a views & enqueſts de ceo faire.

Hereby it appeareth, that by the Common Law the Coroner of the County could not intermeddle within the Vierge, but the Coroner of the Vierge, and that if he took an inditement of the death of man, it was not allowable in Law; and ſo it is if the Coroner of the Kings houſe take an inditement of the death of man

Brit. fol.1. Lib.4. fol. 46, 47. ubi ſupra.

man out of the Vierge, it is void, and coram non Judice. And if an inditement of the death of a man being ſlain out of the Vierge, be taken before the Coroner of the Kings houſe, and the Coroner of the County, and ſo entred of Record, it is inſufficient, becauſe the Coroner of the Kings houſe joyned with him, who had no authority.

¶ Ne les felonies miſe in exigent, &c.] And yet the felony was not diſpuniſhable; for at this time it might after the remove of the King be inquired of in the Kings Bench, if the Bench ſate in that County, or before Juſtices of Oir and Terminer, &c. or if the Coroner of the Vierge had taken an inditement, though the King went out of the Vierge, yet the inditement ought to be removed into the Kings Bench; for that is the center whereunto all Records of that nature do fall, and there the offence might be heard and determined.

Lib. 9. fol. 118, 119 Seignior Zanchers caſe.

But this Act was made for more ſpeedy proceeding, for being removed into the Kings Bench, there ought to be 15 days, &c.

And if a murder had been committed within the Vierge, and the King had removed before any inditement taken by the Coroner of the Vierge, the Coroner of the County might have inquired of the ſame at the Common Law, Ne maleficia remanerent impunita.

Magna Charta cap. 17.

See the Statute of Magna Charta, Nullus Vicecomes, Conſtabular', Coronator, vel alii Balivi noſtri teneant placita coronæ noſtræ. See the expoſition of that Statute concerning this branch for awarding of exigents, &c.

Albeit the treaty of theſe matters concerning the Marſhalſea do properly belong to the juriſdiction of Courts, yet it is pertinent to this place to ſay ſo much as ſerved for the expoſition of this Chapter.

See the ſaid caſe of the Marſhalſea throughout, which indeed doth open the windows of the greateſt part of this Act.

CAP. IV.

OUſter ceo nul common plee ne ſoit deſormes tenus a Leſchequer, encounter la forme de la graund Charter.

Here is intended the 11 Chapter of Magna Charta, whereof this Chapter (according to the title of Articuli ſuper chartas) is an expoſition; for where that Chapter is, Communia placita non ſequantur Curiam noſtram, ſed teneantur in loco certo, this Chapter expoundeth the ſame, that from henceforth no common plea ſhall be holden in the Exchequer againſt the form of the great Charter: for Curia noſtra in Magna Charta are taken collective, and include as well the Exchequer as the Kings Bench.

2. This Act maketh it without queſtion; for admit that the Court of the Kings Bench had been named in that Chapter of Magna Charta, and this Act prohibiteth that no common plea ſhould be holden in the Exchequer againſt the form of Magna Charta, that is, againſt the form that Magna Charta provideth for the Kings Bench: And this is alſo confirmed by a Statute made in the Reign of E. 1. and tranſcribed to the Exchequer under the great Seal, in Anno 10 E. 1. called the Statute of Roteland, in theſe words: Sed quia quædam placita, &c.

Now

Now that this was a Statute, the title or Stile of the Act is, Statutum novum de Scaccario, aliter dictum, Statutum de Roteland. In libro rubeo it is called Statutum de Roteland, and there is a Writ in the Regiſter under the title of brevia de Statut', Rex Theſaurario, & Baronibus ſalutem: Cum ſecundum legem & conſuetudinem Regni noſtri communia placita coram vobis ad Scaccarium prædictum placitari non debent, niſi placita illa nos vel aliquem miniſtrorum noſtrorum ejuſdem Scaccarii ſpecialiter tangunt, &c. which Writ reciteth the words of the Statute of Rutland, and in the margent of the Writ is quoted Statutum de Roteland, ſo as without queſtion this Act was made by authority of Parliament, ſo as without queſtion whatſoever pleas were holden in the Exchequer, in the Reign of H.2. when Glanvile wrote, yet now by two Acts of Parliament their juriſdiction is limited and ſettled: and therefore reject a late opinion contrary to ſuch authority, and never read nor heard of before.

Regiſt. fol. 187. 8 Eliz. Dyer fol. 250.

Pl. com. 208, 209.

Per Saunders.

The Exchequer is an ancient Court of Record for the Kings affairs, touching his rights and revenues of his Crown, and for debts and duties, and other things due to the King in the right of his Crown. Britton treating of the juriſdiction of the Exchequer, ſaith, A Oier & Determiner touts les cauſes que touchent nous detts, & auxi a nous fees, & les incidents choſes, &c.

Mirr. cap. 4. de juriſdict. Flet. lib. 2. cap. 25, 26. 38 Aſſ. p. 20. 40 Aſſ. p. 35. 14 E. 3. Scire fac' 122. 2 E. 3. 24, 25. Pl. com. 208. 320. Brit. fol. 2. 29, 38.

[a] Yet in theſe caſes the Court of Exchequer hath juriſdiction of Common Pleas between common perſons in perſonal actions only.

1. Where an officer or miniſter is one of the parties in any perſonal action, becauſe that his abſence in other Courts may hinder the affairs of the King in his Court of Exchequer.

[a] Regiſt. 187. b. Stat. de Roteland, ubi ſupra. 2 E. 3. 25. lib. rubeus 36 9 E. 4. 33.

2. Any man that is a priſoner of this Court, or an accountant that is entred into his account, or any other that ought to have the like priviledge of this Court of Exchequer, ſhall not be ſued in any perſonal action but in this Court; and the reaſon is, becauſe neither of theſe Acts of Parliament take away the priviledge of any Court; for then, if the party priviledged were ſued in any other Court, he ſhould not in reſpect of his priviledge of the Exchequer anſwer there; and therefore leſt the party ſhould be without remedy, he may commence his action perſonal againſt him in the Exchequer, for Statutes muſt be ſo expounded, as there be no failer of Juſtice.

See the expoſition of Magna Charta, cap. 11.

3. He that is a Farmer, or indebted to the King, for the Kings more ſpeedy ſatisfaction of his debt or duty, ſhall ſue his debtor by a quo minus in the Exchequer, and this appeareth by Britton, who treating of the juriſdiction of the Exchequer ſaith, Et que il eyt power a conuſter de dett, que lun doit a nous detters per ou nous puiſſons pluis toſt approcher a noſtre.

2 E. 3. 25. 20 E. 3 ley 52. 44 E. 3. 44 2 H. 4. 7. 11. 8 H. 5. 6. 8 H. 6. 34. 32 H. 8. 24. 7 E. 4. 30. 11 H. 7. 29. 27 H. 8. 23. Brit. f. 2. Flet. ubi ſupra. Dyer 2 El. 174. 3 El. 201. 16 El. 328. Pl. com. 208 a. b.

Now concerning the old Court and the new Court of Exchequer, mentioned in 2 E. 3. and other matter concerning this Court of Exchequer, for that the ſame do properly belong to the treaty concerning the juriſdiction of Courts, we ſhall no further ſpeak of it here, for that ſufficient hath been ſaid already for the underſtanding of this Chapter.

CAP. V.

ET dauter part le Roy voit que le Chauncellor & les Juſtices de ſon bank luy ſuivent, iſſint que il eyt touts jours pres de luy aſcun Sages de la Ley, que ſachent les beſoignes, que veignent a la Court duement deliverer a touts les foits que meſtier ſerra.

The true cauſes wherefore the Chancellor followed the Kings Court were, Firſt, that the great Seal is clavis Regni, and in the cuſtody of the Chancellor, and meet it was, that the King ſhould have the key of his Kingdom about him.

2. That

2. That Curia Cancellariæ, was Officina Juſticiæ; for in thoſe days not only original Writs in Regiſt' Cancellariæ, but all commandments upon any occaſion for the ſafety of the Realm, or the good government thereof, were by Writs, and paſſed under the great Seal: and therefore neceſſary in thoſe days, that the Chancellor, having the cuſtody of the great Seal, ſhould be about the King at all times; and this is the cauſe that the Court of Chancery cannot be adjourned.

3. The ſtile of the Court of Chancery is coram Domino Rege in Cancellaria. But where ſome have ſuppoſed, that at the making of this Statute the Chancellor held a Court of equity, and that the Judges in this Act named attended on the King to decide matter of Law, and the Chancellor attended on him to decide matter of equity, it is mainly oppoſed, that at this time the Chancellor had no Court of equity, but only a Court of record of ordinary juriſdiction, according to the courſe of the Common Law. Maſter Lambert that was a Maſter of the Chancery, and had the képing of the Records of the Tower, and had abridged many of the principal of them (which I have ſéen) and was well learned, and beſides a great ſearcher of antiquities, in his treatiſe of the juriſdiction of Courts ſaith, that he could not find that the Chancellor held any Court of equity, nor that any cauſes were drawn before the Chancellor for help in equity before the time of Hen. 4. in whoſe days, by reaſon of the inteſtine troubles, feoffments to uſes did firſt begin, as ſome think, or elſe did firſt grow common and familiar, as all men muſt agrée: So he. And he that adviſedly reads our ancient Authors, which ſpeak of the Court of Chancery, they all ſpeak of the ordinary juriſdiction of the Chancellor, but none of them of any Court of equity.

Glanvile, Bract. Brit. fol. 12. Flet. lib. 2. cap. 12, 13. Mirr. cap. 2. § 13. & cap. 4. de ordinance, de judgmēt & juriſdiction.

Alſo the Book called the Diverſity of Courts, written in the Reign of Ed. 3. treateth of the juriſdiction of the Chancellor according to his ordinary power, but nothing of that which he holdeth in cauſes of equity. Neither ſhall you find in any Book caſe, or Reports of the Law, any mention made of any Court of equity before or in the Reign of H. 5. and yet all of them ſpeak of the ordinary power or juriſdiction of the Chancellor. But in the Reign of H. 6. and E. 4. caſes have bén reported where the Chancellor hath heard ſome few cauſes in equity by Engliſh bill, and moſt of them concerning uſes of lands. It is true, that the Chancellor ſaid in 2 E. 3. in the Court of Chancery at Weſtminſter, in Theoband de Verons caſe, in a caſe that concerned Livery, which belonged to his ordinary power, that the Court of Chancery is a Court of equity, where we grant a Writ to every man that comes to demand his heritage, according to that which is found by office, &c. So he. And in that extent of equity, all the Courts at Weſtminſter are Courts of equity, viz. to adminiſter juſtice according to the Common Law; and thereupon it is ſaid in 10 E. 3. that the Chancery and the Kings Bench is one place or Court: But here it is to be noted, that at this time, and before, the Court of Chancery was a ſettled Court in a certain place, to the great benefit and eaſe of the ſubject.

2 E. 3. 20. 10 E. 3 59, 60. 13 E. 3. prohibit. 1. 24 E. 3. 65 26 E. 3. 61. 42 Aſſ. 5. 42 Aſſ. 35. *31 H. 6. ſub pœna, 19 & 23. 35 H. 6. ibid. 22. 37 H. 6. 35. 5 E. 4. 7. 7 E. 4. 24, 29. 16 E. 4. 4. 22 E. 4. 6. 7 H. 7. 2. 14 H. 8. 7, 9. 24. b.

Sir Robert Parning, that was Lord Chancellor in 14 E. 3. and had bén chief Juſtice of the Common Pleas, would in the Term time come and ſit in the Court of Common Pleas to hear matters in Law debated and reſolved, when he was Lord Chancellor, and ſpeak to them himſelf, as it appeareth, Hillar. 17 E. 3. fol. 14. b. & Trin. 17 E. 3. 37. b. and in both theſe Terms Sir John de Stonore Knight was chief Juſtice of the Court of Common Pleas.

Vide Rot. Parliament, 45 E. 3. n. 8.

And Sir Robert de Thorpe Knight, being chief Juſtice of the Common Pleas, was made Chancellor 26 Martii, 45 E. 3. and yet in Michaelmas Term following he ſate in the Court of Common Pleas, and ſpake to matters in Law, Mich. 45 E. 3. fol. 12. b. Trin. 45 E. 3. 19, 22, 23. b. 24, 25, 26, 27, 28. William de Finchden then being chief Juſtice of the Court of Common Pleas.

So Sir Knivet Knight, being chief Juſtice of the Kings Bench, was made Chancellor of England, 5 Julii, 46 E. 3. and in 47 E. 3. fol. 13. b. Finch-

den

den chief Juſtice of the common Pleas in a matter of Law depending in that Court ſaid, that he would confer with the Chancellor and the Juſtices of the Kings Bench, and in the end judgment was given by the advice of the Chancellor (viz. Knivet) and all the Judges of the Realm. In 49 E. 3. 4. b. Knivet Chancellor argueth a matter in Law, and giveth judgment.

Alſo peruſe all the Acts of Parliament printed and not printed, and you ſhall find none that giveth him power to hold any Court of equity, where ſome have thought, that the Statute 36 E. 3. c. 9. doth give the Chancellor power to draw men before him for relief in equity, but that Statute without queſtion referreth to his ordinary power; for thereby it is provided, that if any man, that finds himſelf grieved contrary to the Articles above written, or others contained in divers Statutes, will come into the Chancery, or any for him, and thereof make his complaint, he ſhall preſently there have remedy by force of the ſaid Articles and Statutes, without purſuing elſewhere to have remedy; that is, the party grieved ſhall have an original Writ in the Chancery grounded upon theſe Statutes for his relief, although no certain remedy be expreſſed in the Statutes without purſuit in Parliament, which Act is but a declaration of the Common Law, as oftentimes hath been obſerved before, and giveth no ſhadow to the Chancellor of any abſolute power.

If you look into the Parliament Rolls: The firſt decree in Chancery that I find made by the Chancellor was in 17 R. 2. John de Wyndeſor complaineth in Parliament againſt Sir Ric. le Scroope, and requireth to be reſtored to the Mannors of Rampton, Cotenham, and Weſtwike in Cambridgeſhire, the which were adjudged and ordered to him by the Kings award, then being in the poſſeſſion of Sir John Liſley, and now withholden by Sir Ric. le Scrope, who by champerty bought the ſame: briefly, the caſe, as in the Parliament Roll it appeareth, was this: upon the petition of John de Wyndeſor againſt Sir John Liſley for the ſaid Mannors, they compromitted the matter to the Kings order and award; the King committed the ſame to the Councel, they hearing the ſame, do order and adjudge the matter in controverſie for Sir John de Wyndeſor under the priv Seal, and ſent a warrant to Arundell Archbiſhop of Canterbury, then Chancellor of England, to confirm the Kings award made by advice of his Councel, who forthwith without more ado confirmed it by his decree, and granted an injunction under the great Seal againſt Sir John Liſley. After Sir John Liſley by petition to the King requireth that his title to the ſaid Mannors might be tried and determined as it ought by the Common Law, notwithſtanding any former matter, the King by priv Seal giveth warrant to the Chancellor to make a Superſedeas, which the Chancellor without any ſticking at it did by priv Seal: after which Sir Richard le Scroope purchaſed the ſaid Mannors: Upon the deliberate hearing of the whole matter by the Lords of Parliament, it was reſolved, that the purchaſe of the ſaid Mannors was no champerty, and it was adjudged, that Sir John de Wyndeſor ſhould take nothing by his ſute, but ſtand to the Common Law, and that Sir Richard le Scroope ſhould go without day. Rot. Parliament. 17 R. 2. nu. 10.

It is thought, that this Court of equity began under Henry Beauford, ſon of John of Gaunt, that great Biſhop of Wincheſter, afterwards Cardinal in the Reign of Hen. 5. and in the beginning of H. 6. and increaſed while John Kemp, Biſhop of York, and Cardinal, was Lord Chancellor in the 28 year of H. 6. But it increaſed moſt of all, when Cardinal Wolſey was Lord Chancellor of England, An. 8 H. 8. and continued until the 21 year of the ſame King: of whom the old ſaying was verified, That great men in judicial places will never want authority. But the juriſdiction of this Court belongeth to another treatiſe; and therefore thus much, which was pertinent to the underſtanding of this branch of this Act, upon this juſt occaſion ſhall ſuffice: only thus much for the honour and antiquity of that Court, you read, that in the time of King Alfred (who began to Reign Anno Domini, 872. and reigned 29 years and ſix monethes) he gave a Mirr. cap. 5. §. 1.

pardon to Wolſton, and that it was inrolled in the Court of Chancery, which Record Wolſton vouched.

¶ Et les Juſtices de ſon bank.] The cauſes of their attendance on the King are afterwards in this Chapter ſet down; therefore we purpoſely omit to ſpeak of this high and honorable Court, but refer the ſame to the treatiſe of the Juriſdiction of Courts, only this may be obſerved, that albeit this Court and the Chancery became to have certain and ſetled places about one time, yet the return of Writs coram Rege are ſtill coram nobis ubicunque fuerimus in Anglia.

Flet. lib. 2. cap. 2.

¶ Iſſint que il eyt touts jours pres de luy aſcun Sages de la Ley, que ſachent les beſoignes, &c.] This clauſe referreth to the Judges of the Kings Bench, who are termed Sages de la Ley, and which could decide the buſineſs which came to the Court, and duly deliver juſtice to all when need ſhould be. This proveth alſo, that at this time the Chancellor held no Court of equity for the Sages of the Law (the Judges of the Kings Bench) were duly to deliver Juſtice to all: and hereunto may be applied the ſaid book in 10 E. 3. that the Court of Chancery and of the Kings Bench was but one place (that is) to be guided by one and the ſame Law.

See more before in this Chapter concerning the Chancery. 10 E. 3. 59, 60.

At the making of this Act John Langton Biſhop of Chicheſter was Lord Chancellor of England: and at that time Sir Roger Brabazon Knight, a man excellently learned in the Laws of the Realm, was chief Juſtice of the Kings Bench, and three other learned Judges, here called Sages de la Ley, were his companions: theſe in Fleta and ancient Records are called, Locum tenentes Regis.

Flet. ubi ſupra. 17 E. 1. coram Rege.

CAP. VI.

DEſouth le petit Seale, ne iſſera deſormes nul briefe que touche le common Ley.

The print that ſaith [De touts les privy ſeales] is not according to the Record.

For the better underſtanding of this Act, it is to be underſtood, that at the making of this Statute, the King had three ſeals: 1. Magnum ſigillum, the great ſeal; 2. Parvum ſigillum, the little or petit ſeal; 3. Signettum, the ſignet.

The great ſeal is in the cuſtody of the Lord Chancellor or Lord Keeper of the great ſeal; and there is a ſpecial officer in the Court of Chancery, called Sigillator, who hath the ſealing of Writs, and other things that paſs the great ſeal. Parvum ſigillum, the little or petit ſeal, after this time called the privy ſeal: This ſeal is in the cuſtody of the Clerk of the privy ſeal, ſometime called Keeper of the privy ſeal, after called Lord privy ſeal, of whom Fleta ſaith thus, Cuſtodi ſigilli privati aſſocientur Clerici honeſti, & circumſpecti Domino Regi jurati, qui in legibus & conſuetudinibus Anglicanis noticiam habeant pleniorem, quorum officium ſit ſupplicationes & querelas conquerentium audire & examinare, & eis ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per brevia Regis. By this ancient Writer three things are to be obſerved:

2 E. 3. cap. 8. Rot. Parliam. 50 E. 3. nu. 10. 11 R. 2. cap. 11. 12 R. 2. cap. 2. cap. 11. Flet. lib. 2. cap. 12

1. That the Clerks, aſſociates to the Keeper of the privy Seal, are thoſe that we now call the Maſters of Requeſts, Magiſtri à libellis ſupplicium, whoſe office is here lively purtrayed out, viz. quorum officium ſit ſupplicationes & querelas conquerentium audire & examinare.

2. Of

2. Of what quality ought theſe Maſters of the Requeſts to be? They muſt have three qualities: 1. They muſt be honeſti & circumſpecti: 2. Domino Regi jurati: 3. Qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem.

3. To what end did they hear and examine the matters contained in theſe petitions? Ut eis (id eſt) conquerentibus ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per breve Regis. So as their office was, that being learned in the Law, they ſhould direct ſuch as petitioned to the King, to take their remedy by the Kings Writ, that is, by original Writ in the Chancery. And hereby it appeareth, that this Act is but in affirmance of the Common Law; for no Writ before this Act could have been ſealed by the privy ſeal.

Sigillum Regis generally ſpoken is the great ſeal; and ſo is Bracton to be underſtood, where he ſaith, Si aliquis accuſatus fuerit vel convictus, quod ſigillum Domini Regis falſaverit, conſignando inde chartas, vel brevia, &c. pro voluntate Regis judicium ſuſtinebit. Bract. lib. 3. f. 119 Brit. f. 10. b. acc'.

And the Mirror yet more plainly, Inter les exceptions al power del Judge; ſi le commiſſion (i. le briefe) ne ſoit ſeale del ſeale le Roy de ſa Chancery, car al privie ſeale le Roy, &c. ne auter forſque ſolement al ſeale, que eſt aſſigne dée conue de la cominaltie del people, & noſmement en juriſdictions & breves originals, neſtoit a nul obeyer, &c. And in another place he ſaith, Et iſſint ordeineront nous Auncients un ſeale, & un Chancellour pur le garder, & pur doner briefes remediels a touts ſauns danger, &c. per cel ſeale ſolement eſt juriſdiction aſſignable a touts pleintifes ſans difficultie, &c. Mirr. cap. 3. cap. 3 except al poier de le Judge. Cap. 4. Ordinance de judgment.

There are four Clerks of the privy ſeal, who give their attendance on the Lord privy ſeal: The principal office and charge of the Lord privy ſeal and of his Clerks is about ſuch things as paſs by bill ſigned, and are to go to the great ſeal: Of this you may read in the Statute of 27 H. 8. cap. 11. & lib. 8. fol. 18. in caſu Principis.

¶ Deſouth le petit ſeale.] This Act ſaith not, that all Writs which concern the Common Law ſhall paſs under the great ſeal; but no Writs ſhall paſs under the privy ſeal which touch the Common Law: For it is to be known, that the Courts of the Kings Bench and the Common Pleas had at the making of this Statute ſeveral ſeals, whereby they ſealed judicial Writs: As the ſeal belonging to the Court of Kings Bench is in the cuſtody of the chief Juſtice; and ſo likewiſe the ſeal belonging to the Court of Common Pleas is in the cuſtody of the chief Juſtice of that Court; and the ſeal belonging to the Court of Exchequer is in the cuſtody of the Chancellor of that Court. Ad Cancellarium Scaccarii pertinet cuſtodia ſigilli Regis. Officium Cancellarii eſt ſigillum Regis cuſtodire, ſimul cum controrotulis ſuis pro proficuo Regni. And theſe ſeals are incidents inſeparable to the ſaid Courts for the ſealing of all judicial writs, &c. which, for adminiſtration of juſtice diſtributive to all men, are reſpectively under the ſaid ſeals, and without which the Courts cannot adminiſter juſtice: And therefore the profits coming of theſe ſeals have been letten and demiſed of ancient and later times, but the ſeals themſelves were never demiſed, or letten, nor could be, nor any other keeper appointed to be keeper of them, then hath been time out of mind. Lib. 2. fol. 17. Lanes caſe. Ockam cap. de officio Cancellarii. Flet. lib. 2. cap. 25. Rot. pat. an. 24 E. 3. part 2. m. 12. ibid. 30 E. 3. part 3. m. 12.

No Eſſoin de ſervitio Regis can be warranted by the King under his privy ſeal, nor protection granted under the privy ſeal, but both of them under the great ſeal, becauſe they tend to the great delay of juſtice, if they be not duly obtained: and therefore the Law doth require the great ſeal in theſe caſes. But a warrant of the King under the privy ſeal to iſſue out mony out of his coffers is ſufficient; becauſe it concerneth but a chattel in poſſeſſion. And in matters of ſmall moment, and which can work no delay to the ſubject, the privy ſeal is ſufficient; as to grant a Superſedeas of a proceſs in the Kings own caſe, or to grant a Niſi prius where the King is party, or to allow a plea againſt the King to cancel a recognizance made to the King, to diſcharge a debt, or the like. 34 H. 6. 1. 35 H. 6. 2 Lib. 11. fol. 92. in le Countee de Devons caſe. 4 E. 4. 16. 32, 40. 46 E. 3. petit 19. 48 E. 3. 30. F. N. B. 85. Pl. com. f. 20. Dyer 5. Mar. 161 b. 7 El. 232. b.

At the making of this Statute the King had another ſeal, and that is called Signettum, his Signet. This ſeal is ever in the cuſtody of the principal Secretary. And there be four Clerks of the Signet, called Clerici Signetti attending on him. The reaſon wherefore it is in the Secretaries cuſtody, is, for that the Kings private letters are ſigned therewith. Alſo the duty of the Clerk of the Signet is to write out ſuch grants or Letters patents as paſs by bill ſigned (that is, a bill ſuperſcribed with the ſignature, or ſign Manual, or Royal Hand of the King) to the privy ſeal, which bill being tranſcribed and ſealed with the ſignet is a warrant to the privy ſeal, and the privy ſeal is a warrant to the great ſeal. Such was the wiſdom of prudent antiquity, that whatſoever ſhould paſs the great ſeal ſhould come through ſo many hands, to the end that nothing ſhould paſs that great ſeal, that is ſo highly eſteemed and accounted of in Law, that was againſt Law, or inconvenient; or that any thing ſhould paſs from the King any ways, which he intended not, by undue or ſurreptitious means.

F.N.B. fol. 85. a. And of the Signet the Law in ſome caſes taketh notice; for a Ne exeat regnũ may be by the Kings Writ under the great ſeal, or by commandment under the privy ſeal, or under the ſignet; for in this caſe the ſubject ought to take notice as well of the privy ſeal and ſignet, as of the great ſeal: for this is but a ſignification of the Kings commandment, and nothing paſſeth from him. But a warrant under the privy ſignet to iſſue any treaſure is not ſufficient, but there it ought to be either under the great or privy ſeal. The miſchief before this Act was not concerning Writs under the ſignet; for that was not attempted, but under the petit or privy ſeal, which this Act ouſteth as a thing done againſt Magna Charta, cap. 29. where it is ſaid, Nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terræ. And to grant Writs under the privy or petit ſeal was contra legem terræ.

Hill. 1 E. 4. Rot. 14 indorſ. in Scaccario, Petilians caſe. Lib. 11. fol. 92. in le Countee de Devons caſe. Vid. 42 E. 3. c. 3.

CAP. VII.

LE Conſtable du Chaſtle de Dover ne plede deſormes a la port de Chaſtle nul plee forreine du Countie, que ne touche la gard du Chaſtle. Et le dit Conſtable ne diſtreiner les gents du Cinque Ports, a pleader ailours ne en auter manner que ils devoient, ſolonque la forme des charters que ils ount des Royes, de lour franchiſes auncients affirmes per le grand Charter.

F.N.B. 240. b. ¶ Conſtable du Chaſtle de Dover.] It is to be known, that he that is the Conſtable, or Lieftenant, or kæper of the Caſtle of Dover, is alſo the Warden of the Cinque Ports. And the Kings Writs directed to him, are directed, Rex, &c. B. Conſtabulario Caſtri ſui de Dover, & cuſtodi Quinque Portuum ſuorum. But he is commonly called Lord Warden of the Cinque Ports. The Cinque Ports be, Haſtings, Dover, Hithe, Rumney, and Sandwich, whereunto Winchelſey and Rye (as moſt of note) and other Towns be adjoyned.

Regiſt. fol. 132. F.N.B. 240.

The Conſtable of Dover and Lord Warden hath two jurisdictions, viz. 1. The authority of an Admiral; and the ſpecial charge is committed to one that is not only of great prowels, wiſdom, and experience in military knowledge, and ſpecially in ſea-ſervice; but alſo of approved truſt and loyalty, becauſe, in regard of their ſituation, they require the vigilant care of their particular Admiral, and his reſidence thereupon, in reſpect of the danger of the invaſion of enemies by reaſon

reaſon of the narrowneſs of the Sea there, and that this Realm was never conquered by any enemy, but landing at one of theſe five Ports; as by the Roman at by the Saxon at and by the Norman at Haſtings. But with this juriſdiction our Statute dealeth not withal.

2. This Conſtable of the Caſtle of Dover mentioned in our Act hath a juriſdiction to hold plea by bill concerning the guard of the Caſtle, &c. according to the courſe of the Common Law, and of this juriſdiction doth our Statute ſpeak. Bract. l. 5. f. 411. b. Flet. lib. 6. c. 36. 49 E. 3. 24. 12 E. 4. 17, 18. 1 E. 3. 1. b. 30 H. 6. 5. 1 E. 4. 10.

And it is to be known, that of ſuch things, whereof the Conſtable of Dover and Lord Warden hath juriſdiction, he is the immediate officer to the Court, and, as it hath bẽn ſaid, Writs ſhall be directed to him, as in all real actions, &c. for land within the cinque Ports. And true it is, that they of the cinque Ports have great liberties and priviledges, in reſpect of their neceſſary attendance in the Ports for the defence and ſafety of the Realm: but yet the cinque Ports are not exempted out of the County, for divers cauſes: 21 E. 3. 49. F. N. B. 132. 33 E. 3. Juriſd. 60. 11 R. 2. brev. 636.

1. The Conſtable of Dover hath no general juriſdiction within the cinque Ports, but it is limited; For example, If a man be murdered in any of the cinque Ports, the Wife ſhall have an appeal againſt the murderer directed to the Sherif of the County, and he ſhall execute the Writ within the cinque Ports, for the Conſtable hath no juriſdiction to hold plea thereof, as it was reſolved, Trin. 42 Eliz. in an appeal brought by Dorothy Waes againſt Baynes, for the murder of her huſband at Feverſham in the County of Kent. And ſo it is, if he be in cuſtodia Mareſcalli, the appeal may be brought by bill againſt him for murder in any of the cinque Ports. Alſo if the Conſtable of Dover hold plea of a forrain plea, contrary to the purport of this Statute, an action upon the Statute doth lye againſt him, and the Writ may be directed to the Sherif of the County, and he may ſerve it within the cinque Ports. Trin. 42 El. coram Rege in appeal. 19 H. 6. 1, 2. Vide a notable Record, Paſch' 30 E. 1. coram Rege, Banc'.

2. If a ſtranger doth treſpaſs, &c. in the cinque Ports, &c. the ſuit ſhall be by Writ, leſt the treſpaſs ſhould be diſpuniſhable.

3. If a Præcipe be brought againſt one for land within the cinque Ports, and he appear and plead to it, and judgment be given againſt him in the Court of Common Pleas, this judgment ſhall bind him for ever; for the land is not exempted out of the County, and the tenant may waive the benefit of his priviledge. 50 E. 3. 5.

4. The priviledge extendeth not but to certain particular Towns, whereof the Kings Courts cannot judicially take notice.

But otherwiſe it is of a judgment given in the Common Pleas in a Præcipe of lands that lye in any of the County Palatines of Cheſter, Lancaſter, and Durham; for they are exempted from the juriſdiction of the Kings Courts, and within them are jura regalia, and plenary juriſdiction, and ſo known to the Kings Courts: for they take notice of all the Counties of England, becauſe they be immediate to them for direction of Writs: And therefore although the tenant doth admit the juriſdiction of the Court in thoſe cales the judgment againſt him for many of ſuch lands is void. And thus are the doubts in ſome books in this and other like cales fully reſolved. 9 H. 7. 12. 33 H. 6. 33. 39 H. 6. 21.

It is further to be underſtood, that the Mayor and Jurats of the ſeveral cinque Ports have power to hold pleas, &c. and upon their judgment no Writ of error out of the Chancery doth lye returnable in the Kings Bench, nor Writ of falſe judgment returnable into the Court of Common Pleas: but by the franchiſe and cuſtom of the cinque Ports ſuch an erroneous judgment ſhall be by bill, in the nature of a Writ of error, examined coram Domino cuſtode ſeu gardiano quinque Portuum, apud Curiam ſuam de Shipwey. And if the judgment be erroneous, it ſhall be reverſed by the Warden of the cinque Ports, and the Mayor and Jurats ſhall be fined, and the Mayor removed from his place, and yet the Court is a Court of Record. 12 E. 4. 16. 45 E. 3. juriſ. 53. 40 E. 3. 24. 49 E. 3. 24. 50 E. 3. 5. 14 H. 4. 20. Bract. l. 5. f. 411. Flet. lib. 6. cap. 36. Dyer 23. El. 376. 30 H. 6. 6. 49 E. 3. 24. 33 E. 3. juriſd. 66. diverſity des Courts, c. 5. Ports. Brook, cinque Ports 25. 30 H. 6. 6. Pl. com. 37. b.

And this kind of juriſdiction could not begin by Letters Patents, but by Parliament. And I find in the Book of Domeſday of the liberties and franchiſes granted

granted to the cinque Ports, as granted in the Reign of King Edward the Confeſſor.

See the Terms of the Law, verb. Cinque Ports.

And this manner of reverſing of a judgment, and the judgment thereupon, is the only Phenix of the Law for three reſpects:

Firſt, That a judgment in a Court of Record ſhall be reverſed or affirmed without the Kings Writ purchaſed out of the Chancery.

Secondly, That they being Judges of record ſhall be fined, where in a Writ of falſe judgment the ſuiters ſhall be but amerced.

And thirdly, That the Mayor that gave the judgment ſhall be removed from his place. But our Act extends only to Courts holden before the Conſtable in our Act mentioned, and not to the Court holden before the Mayor and Jurats. Rot. cart. 1 Johan. part 2. m. 12. 2 Johan. m. 51. Rot. clauſ. 8 H. 3. & 10 H. 3. in dorſ. m. 18. Paſch. 9 E. 1. coram Rege Kanc' Rot. 35. Rot. Parliam. 18 E. 1. fol. 6. Hill. 21 E. 1. Rot. 4. Paſch. 21 E. 1. fol. 4. Rot. Vaſc. an. 22 E. 1. n. 2, 3, 7, 13. Rot. clauſ. 23 E. 1. Rot. pat. 34 E. 1. m. 25. Rot. Parliam. 13 E. 3. nu. 11. Pat. 33 E. 3. m. 6. Rot. brevium, 1 E. 3. part 1. Rot. clauſ. 10 R. 2. bis. Rot. clauſ. 8 H. 6. m. 15.

He that deſires to read more of the liberties and priviledges of the cinque Ports, he may read the Records (amongſt many others) next before cited.

¶ Et le dit Conſtable ne diſtreinera, &c.] This branch is evident; and therefore without further expoſition, with one record of Parliament I will conclude this Chapter.

Rot. Parliament. nu. 135.

The Commons of the County of Kent complained againſt the officers of the Caſtle of Dover, for arreſting them by their Catchpoles to anſwer before them, whereunto they were not bound. The anſwer hereunto was, that the officers ſhould have no juriſdiction out of the fée of the Honor and Caſtle of Dover, nor ſhould make no proceſs by Capias out of the liberties of the cinque Ports.

CAP. VIII.

LE Roy ad grant a ſon people, que ils eyent election de lour Viſcount en cheſcun Countie, ou Viſcount neſt my de fee, ſils voilont.

Vid. inter leges Sancti Edwardi, Lamb. fol. 136. Hovenden annal. cap. 35. F.N.B. 163. k.

Of ancient time before the making of this Act ſuch officers or miniſters as were inſtituted either for preſervation of the peace of the County, or for execution of juſtice, becauſe it concerned all the ſubjects of that County, and they had a great intereſt in juſt and due exerciſes of their ſeveral places, were by force of the Kings Writ in every ſeveral County choſen in full or open County by the freeholders of that County: as before the inſtitution of Juſtices of Peace there were Conſervatores pacis in every County, whoſe office (according to their names) was to conſerve the Kings peace, and to protect the obedient and innocent ſubjects from force and violence. Theſe Conſervators by the ancient Common Law were by force of the Kings Writ choſen in full and open County de probioribus & potentioribus comitatus, &c. by the freeholders of the County; after which election ſo made and returned, then in that caſe the King directed a Writ to the party ſo elected. Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, dilecto & fideli Johanni de Bretun ſalutem. Cum Vicecomes noſter Norff. & Comitas ejuſdem comitatus elegerunt vos in cuſtodem pacis noſtræ ibidem, vobis mandamus quod ad hoc diligenter intendatis prout idem Vicecomes vobis ſcribi faciet ex parte noſtra, donec aliud inde præceperimus. In cujus rei, &c. datum, &c. apud Ceſtr. 2. die Sept. anno Regni noſtri 5.

Rot. pat. an. 5 E. 1

This Bretun was Lord of the Manor of Wichingham in Norff.

ſtri 5. And ſo it was then, and yet is of Coꝛoners to be choſen in full and open County by the fræholders of the County by foꝛce of the Kings Writ: And though the woꝛds of this Writ be de aſſenſu comitatus, and of the other, per communitatem ejuſdem comitatus, and by this Act, by the people, yet ought the election to be by the fræholders of the County: And ſo it was then, and yet is of the Knights of the Shires foꝛ the Parliament, and of the Merdeꝛs of a Foꝛeſt. Regiſt. 177. F.N.B. 163. k. 4 E. 4. 44. F.N.B. 164. c. Regiſt.

And likewiſe it was of ancient time of the Sherif of the County, and reſtoꝛed by this Act to the fræholders of the County; but this is altred by divers Acts of Parliament, viz. the Act of 9 E.2. Lincoln de Vicecomitibus, 14 E.3. 12 R.2. and 23 H.6. The Knights and Burgeſſes of Parliament were then, and yet are eligible as daily experience teacheth. Now becauſe that theſe and others were eligible, the Statute of W. 1. pꝛovideth, that elections ſhould be fræly and duly made without any diſturbance, as by that Act appeareth. Sée hereafter Cap. 13. 9 E.2. Linc. de Vicecom. 14 E.3. cap.7. 23 H.6. ca.8. 12 R.2. ca. 3 Forteſcue, cap. 24 & 26. W.1. cap.5.

But I could not let paſs a reſolution of all the Judges of England in 34 H.6. which grew upon this occaſion, Upon a reference by the Kings pꝛiuy Councel to Sir John Forteſcue, and Sir John Priſot chief Juſtices, and to the reſt of the Juſtices concerning a Sherif conſtituted by the King himſelf, it is thus in the Councel Book recoꝛded, 3 Martii anno 34 Hen. 6. as followeth in theſe woꝛds:

Upon a demand that my Loꝛd Chancelloꝛ made to the chief Juges, and to the remnant of the Juges, howe that the Kings Laws, neyther Juſtice might not be executed in Lincolneſhire, bycauſe ther was no Sherrief there, and that the Kinge by his Letters patents under his great ſeale had deputed certaine men foꝛ to have be Sherrieſes there: What them ſemed ſhould be don in this behalfe. So that the Kings Lawes and Juſtice might ben executed in that Shire, as it is executed in other Shires of England. Sherife.

The ii chiefe Juſtices the ſame day came unto my Loꝛds of the Kings Counſiel in the ſterred Chamber, and upon the abovеſaid demaund ſayde, that them ſemed, and ſo it ſemed unto the remnant of the Juges, that the King did an erroꝛ, when that he made another perſon Sherrief of Lincolnſhire then was choſen and pꝛeſented unto his Highnes after theffect of theſtatut in ſuch behalfe made.

And though that he that ſo was made Sherrief wolde not take it upon him, ought not to be ſo puniſhed, and to make alſo great a fine foꝛ his diſobeiſſance, as that yif he had be one of the iii perſons that were choſen to be Sherrieſs after the teneur of the ſtatute.

And furthermoꝛe then ſemed, that the King ſhould have recours to the thꝛée perſons that were choſen after the teneur of theſtatut, and make one of hem Sherrief by Letters patents beringe date ether at the day of thelection of hem, oꝛ els at Michelmas.

And though that ſithence the ſaid election any of hem have gete him an exemption, that he ſhould not be made Sherrief, yet them ſemeth that he ſhould be charged to take the ſaid office upon him.

And furthermoꝛe then ſemeth, that yif none of the ſaid iii perſons choſen be made, that then ſome other thꝛifty man dwelling in a foꝛeine Shire be entreted to occupy the ſaid office foꝛ this year. And the next year, that in eſchuing of ſuch inconveniences, that the oꝛder of theſtatut in ſuch behalfe made be obſerved and kept.

To the King our Sovereigne Lord, and to the Lords Spirituel and Temporel of his moſt noble Counſail

Beſechith mekely your humble liegeman John Tempeſt Knight, to graunt your Letters under your pꝛiuy ſeal to be made in foꝛme following, And he ſhall pꝛay to God foꝛ your moſt noble eſtate.

Henry, &c. To the Treſoꝛer and Barons of our Eſchequer. Foꝛaſmuch as our truſty and welbeloved John Tempeſt Knight, by us oꝛdeyned and deputed to be Sherrief of Lincolnſhire foꝛ this yere, hath foꝛ certaine cauſes foꝛ him alledged utterly

utterly refuſed to take upon him the charge of the ſaid office, without that it like us ſo to puruel for him, that he take no loſs in the ſaid office, as we have doon now in late yeres for othir that have ben Sheriefs of the ſaid ſhire. We conſidering the hurts and manifold inconveniences that ſhould enſue not only to us, but alſo to our ſubgites, namely, in letting of their ſuites at commune law, if the ſaid ſhire ſhould long ſtand deſtitute of a Sherief; Wol and by thadvice of our Counſail have graunted to the ſaid John, that he ſhall occupy the ſaid office by approwment, and ſo accompte for this yere. And therefore we charge you, that in his accompt that he ſhalbe to yeilde unto us bycauſe of his ſaid office, ye charge him not with the hoole extent of the ſaid ſhire, that is to ſay, of thees two fermes called de reman' firmæ Com' poſt terras dat' and firma Com' numero. And alſo of thees particular prouffites, called de firmis Ballivorum, auxilium Vic' Francipleg' Certi fines, iſſues, prouffites, nor none othir things by him to be reiſed by vertue of the ſommons of the Pipe, or of the Grenewer in the ſaid ſhire, ſave onely of ſuch parcelles as he with his true diligence ſhall arrere and gader. And that of all the remenant that ſhall come and grow unto us of the ſaid ſhire, ye utterly and clerely diſcharge and acquite the ſaid John Tempeſt Knight Sherief aforeſaid by his othe, or by th'othe of his deputy ſufficiant accompting for him, withouten any iſſue, tryall, or averrement betwix us, and him to be had therein. Yeven, &c.

T. Cant'. R. Salisbury.
W. Ebor. R. York. R. Sancti Johannis.
T. London. Stourton.
J. Lincoln. W. Faucomberge.

Indorſiamen: XIX. die Novembris, an. 34 apud Weſtm' in camera ſtellata Rex de aviſamento conſilii voluit, & mandavit, quod Cuſtos privati Sigilli ſui literas ſub eodem ſigillo fieri faceret ſecundum tenorem infraſcriptum Dominis ſe ſubſcribentibus, ut patet attent' ut Henricus Ratford qui fuit Vicecomes anno præterito ejuſdem com', & nonnulli alii Vicecomites retroactis temporibus eodem modo habuerunt, & occupaverunt.

T. Kent.

Which aboveſaid unanimous opinion, being the adviſed reſolution of two ſuch famous chief Juſtices, and of all the Judges of England, and finding it in the Councel book, I thought it fit to be publiſhed in ſuch words, as it is there ſet down, as a ſure and juſt expoſition of the Statutes concerning the making of Sheriffs.

CAP. IX.

LE Roy voet & commaund, que nul Viſcount, ne Bailife, ne mitte en Enqueſts, ne in Juries plus des gents, ne auters ne en auter manner que il neſt ordeine per eſtatute, & que ils mittent en tiels Enqueſts & Juries le plus procheines, le plus ſuffiſants, & meynes ſuſpicious. Et que auterment le ferra, & de ceo ſoit attaint, rend' al Plaintife ſes damages au double, & ſoit en la greve mercie le Roy.

1. Part of the Inſtitutes, Sect. 234 Of the antiquity and right inſtitution of the trial by 12 and of the number of 12 &c. See the firſt part of the Inſtitutes.

¶ Ordeine

¶ Ordeine per leſtatute.] That is, by the Statute of W.2. c.38. See the Statute of 21 E.1. Vet. Magna Charta 87. and ſee before in the expoſition of the Statute of W.2. cap.38.

¶ Enqueſts.] This Act doth extend to all enqueſts ex officio, or for trial of an iſſue betwæn the King and the ſubject, or betwæn party and party, alſo to all ſuits or procædings either criminal or civil, real, perſonal, or mixt, publick or private, grand or petit, Aſſiſes, or Enqueſts.

¶ Le pluis procheine, &c.] If the purview of this Act were well executed, then were the right inſtitution of tryal by Juries obſerved; for then every Juror muſt have two moſts, and one leaſt, viz. moſt near, moſt ſufficient, and leaſt ſuſpicious. See the Regiſter, and F.N.B. how the party grieved may have remedy upon this Statute, and that in Writs of aſſiſe, attaints, and other actions, where there be Juries at the firſt day, or when a Venire fac' is awarded to the Sherif to return a Jury, the Demandant or Plaintif, the Tenant or Defendant may have a Writ to the Sherif to return Jurors accoʒding to this Act, and if he doth not accoʒdingly, an attachment lieth againſt him. And where the party plead to iſſue, and ſuffer the Jury to be ſwoʒn, or challengeth them, and tried indifferent, and paſs againſt him; it is ſaid, that he hath no remedy, but firſt to reverſe the judgment by Writ of attaint, and then to take his remedy upon this Statute. But ſee the Statutes of 20 E. 3. cap. 6. and 34 E. 3. cap. 4. 42 E.3. cap.11. & 4 E.3. cap.11. & 5 E.3. cap.10.

Vid. 7 E.3.26.bis. 8 E. 3.30. Regiſt. 178,179,180. Forteſcue, cap. 27 F.N.B. 165. a. & 166. d. lib.8.f.118 Bonhams caſe. See the firſt part of the Inſtitutes, Sect.234. W. 2. cap.38. Magna Charta, cap.29. Regiſt.186. & 187.

¶ Ses damages au double.] That is double the value of the land, debt, damages, or other thing that he loſt, or was barred of by reaſon of that verdict.

CAP. X.

EN droit des conſpirators, faux enformers, & malveyes procurers des douſeins, enqueſts, aſſiſes, & juries, le Roy ad ordeine remedie as Plaintifes per briefes de Chancelarie. Et jademeins voet le Roy, que les Juſtices de lune bank & de lauter, & Juſtices daſſiſes prend' aſſignes, quant ils veignent en pais a faire lour office, de ceo facent lour enqueſts a cheſcun pleint ſans briefe, & ſans delay facent droit as Pleintifes.

¶ Conſpiratours.] Theſe are deſcribed by the Statute of 33 E.1.

Definitio de cõnſpirat. 33 E.2. Vet. Mag. Chart.90.b.

¶ Faux enformers.] Theſe are to be underſtood of imbʒacers, and under-hand inſtructers, and leaders of Juroʒs returned, and albeit the matter which he enfoʒmeth be true, yet is he a falſe infoʒmer, becauſe he doth it in an undue and unjuſt manner.

¶ Malveis procurors.] That is underſtood of ſuch as uſe to pack Juries by nomination, or other practice, or procurement.

¶ Douſeins, duodenæ in Letis, &c.] Note here this Law beginneth with the inferior, as Douſeins in Lætis, and therefore the makers of the Act do particularize the reſt, viz. Inquiſitions, Aſſiſes, and Juries.

F.N.B. 116. a.

¶ Le Roy ad ordeine remedie per briefe de Chancelarie.] The ordinance here mentioned, whereby a Writ is given againſt conſpirators (which Writ was framed per Gilbertum de Rowberie Clericum de Concilio Domini Regis, and allowed by authority of Parliament) was enacted at the Parliament holden an. 21 E.1. Rot.2. which ordinance you may read in Vet. Magna Charta. But there it is ſet down to be made in 33 E. 1. where in truth it was made in 21 E.1. which error there, and the miſtaking of Richard Tottell the Printer, in quoting 33 E.1. to this branch (as if the makers of this Act had been indued with a prophetical Spirit) would in the next impreſſion be amended.

This Gilbert de Rowbery was one of the Kings Juſtices of his Bench as hereafter ſhall appear. Vet. Mag. Chart. 111.

This ordinance was but in affirmance of the Common Law; for the Writ of conſpiracy was maintainable both in caſes criminal concerning life, and civil, as it appeareth in the Regiſter and F.N.B. and plentifully in our Books: And in caſes concerning life, if the conſpirators be indited and convicted at the Kings ſuit, judgment villanous ſhall be given againſt him, but not at the ſuit of the party, which judgment is by the Common Law, for it is given by no Statute.

Regiſt. F.N.B. 114, 115. &c. Stamf. pl. cor. 172. &c.

27 Aſſ. p. 59. 24 E. 3. 34.

¶ Et jademaines voit le Roy que les Juſtices de lun bank & lauter, &c.] See the Statutes of 5 E.3. 34 E. 3. 38 E. 3. &c. by the which the Statute is inlarged as to the Juſtices. And a notable caſe in 41 E.3. in expounding of theſe Statutes, and upon like reaſon this Act concerning the proceeding by bill, according to the words of this branch, ſans briefe, & ſans delay.

43 E.3. conſp. 11. 4 H.5. judgm. 220 Stamf. pl. cor. 175 198. lib. 9. fol. 56. Poulters caſe. 5 E.3. cap. 10. 34 E.3. c. 8. 38 E.3 c. 12. 41 E.3. 15. Coram Rege apud Linc. Hil. 29 E.1. Rot. 19. Secundum ordinationem Regis, i. 21 E.1. ubi ſupra.

In the next year after the making of this Act, which was in the 29 year of E.1. William de Welbye brought an action by original Writ of conſpiracy, returnable in the Kings Bench againſt William of Hemſwell, Parſon of the Church of Newton, and John of Malden, Parſon of the Church of Askerbye, ſecundum ordinationem Regis; for that they per conſpirationem & confederationem inter eos malitioſe fact' apud Groham, &c. anno Regni Domini Regis nunc 29 procuraverunt & fecerunt præfatum Willum de Welbye citari coram Nicholao de Whitechurch Archidiacono Epiſc' Lincoln' ad reſpondendum præfat' Will' &c. for a treſpaſs, whereof he had been acquitted in the Kings Court. Hemſwel pleaded not guilty. Malden the other Parſon pleaded that he was communis advocatus, & pro ſuo dando, &c. and juſtified as an Attorney, and denied that he conſpired, &c. Whereupon iſſue being joyned, it was found before Gilbert de Rowberie, that Malden the Parſon of Askerbye was communis advocatus, and was not guilty of the conſpiracy, &c. and the other was found guilty, and judgment was given againſt him; for in this and the like a conſpiracy will lye againſt one: otherwiſe it is in caſe of felony. By this Record it appeareth, that a Writ of conſpiracy doth lye upon the ſaid Act of 21 E.1. (for the conſpiracy was alledged before our Statute) for a conſpiracy betwéen two for the one of them to ſue the Plaintif in the Spiritual Court; and note the Record ſaith, Contra ordinationem Domini Regis. And note, it did lye for conſpiracy in a ſuit in the Eccleſiaſtical Court.

Gilbert de Rowbery. F. N. B. fol. 116. k. 3 E.3. 19. 8 E.3.18. 11 H.4.2. 22 R.2. br'e 88. 18 E.4.1. 24 E.3.34. Vid. 22 E.3.1.

CAP. XI.

DE rechiefe pur ceo que le Roy avoit avant ordeine per leſtatute, que nul de ſes miniſters ne priſt nul plee a champertie, & per cel eſtatute auters miniſters neſtaient pas avant ces heures a ceo lies: Voit le Roy, que nul miniſter, ne nul auter, pur part avoier des choſes que ſont en plee, enpreigne les beſoignes que ſont en plee. Ne nul ſur tiel covenant ſon droit ne leſſe a auter. Et ſi ul le face, & de ceo ſoit attaint, ſoit forfait, & encurr' devers le Roy des biens, & des ter-

res

res le parnour, a la value de tant come ſa part de ſon purchaſe per tiel empriſe amounteſ. Et a ceo attend', ſoit reſcue celuy que ſuer voudſ pur le Roy devant les Juſtices, devant queux le plee avera eſte, & per eux ſoit lagard' fait. Mes en ceo caſe neſt mye a entender, que home ne poit aver counſaile des Countours, & des Sages gents pur ſon donant, ne de ſes procheine amies.

The cauſe of the making of this Statute was, that where the Statutes of W.1. 11 E.1. and W.2. of champerty were particular, and extended only to the Kings miniſters, the Chancellor, the Treaſurer, Juſtices, the Kings Counſellers, Clerks of the Chancery, of the Exchequer, and of Juſtices, and to thoſe of the Kings houſhold, Clerk or Lay. Now this Act is general, and doth extend to all perſons; for the words are general, Nul miniſter, ne nul auter. W.1.cap.25. W.2. c.29. Stat. de Champerty, an.11 E.1. Vet. Mag. Chart. fol. 80. b.

¶ Pur part aver des choſes que ſont in plea.] If A. bargain with B. owner of the Mannor of D. B. is impleaded, B. enfeoffed A. hanging the ſuit according to the bargain, though this be within the letter of the Law, yet is it not within the meaning. On the other ſide, it is adjudged champerty, if he maintain any party hanging the plea to have part, though he purchaſe not, nor take any eſtate. And this Act extendeth to all actions, as well perſonal, real, and mixt. If the Tenant hanging the plea grant a rent out of the land, this is champerty, and yet it is no part of the thing in demand, but it is within the ſame miſchief. In an Aſſiſe brought againſt the diſſeiſor, and the tenant maintain the plea upon covenant or promiſe after recovery to have part; although the diſſeiſor hath nothing in the land, yet ſhall he have an action of champerty, becauſe he may be charged with damages, and the tenant ſhall have his action alſo. 19 R.2. champert. 15. Pl. com. 465. 30 Aſſ.p.13. 8 E.4. 13. 47 E.3.9. F.N.B. 172.k. 47 E.3.9. F. N. B. 172.

If the husband and wife be impleaded, and one doth maintain for champerty, the husband only may have the action, or the husband and wife may joyn. 47 E.3.9.

And this action may be brought hanging the principal plea before judgment; and if the Demandant be non-ſuit, yet may he have an action of champarty. 47 E.3.9. 33 E.3. mainten. 26.

If two be impleaded in a real action, and one doth maintain the Demandant to have part, the Tenants bring a Writ of champerty, the non-ſuit of one is not the non-ſuit of the other, becauſe the action of champerty being but acceſſary, doth follow the nature of the principal action. 47 E.3.6. Lib.6. fol.25.

If the Tenant make a feoffment in fee hanging the Writ, if one doth maintain the Demandant to have part, the feoffor ſhall have the action of champerty; for he remains Tenant to the Demandant.

¶ A la value de tant, &c.] That is to ſay, the value of the land. See the Statute of 32 H.8. cap.9. 8 E.4.13.

¶ Devant les Juſtices devant queux.] See the Statute of 4 E.3.c.11.

Note, the party grieved may upon this Statute either have a Writ directed to the Sherif, or a Writ directed to the Juſtices before whom the principal action dependeth. Regiſt. 185. 22 H.6.7.

¶ Ne nul ſur tiel covenant.] Here it is taken for a promiſe or contract by parol, as well as by deed. F.N.B. 172.l

See the Statutes of 1 E.3. and 32 H.8. 1 E.3.c.14. 1 R.2. c.4. 32 H.8. c.9.

¶ Mes en ceo caſe neſt my a entender, que home ne poet aver councell de ſes Countours, ne des Sages gents.] Councell, conſilium, is taken for advice and direction in Law, and that is to be had of three perſons, viz. 1. Of Serjeants at Law, ſervientes ad legem, expreſſed here under the name of Countors: 2. Of Apprentices of Law, Apprenticii legis, in pleading called homines conſiliarii, & in lege periti, expreſſed here under this word Sages.

And theſe have officium ingenii: 3. Attornies of Law, that have officium laboris, in following the advice of the learned, and diſpatching of matters of courſe and experience, and they are under theſe words, Sages gents. Conſilium is alſo taken for aſſiſtance, maintenance, and comfort in their ſuits. And ſo it is taken here.

¶ De ſes prochein amyes.] That is, of their next of blood, who are or ought to be their ſureſt aſſiſtants, aiders, and comforters; for naturæ vis maxima, and as ſome ſay, Natura bis maxima.

And according to this diverſity of ſignification, if the Serjeant at Law, Apprentice, or Attorney do take a feoffment hanging the plea, or the like to maintain the Tenant, though it be pro ſuo dando, in lieu of his fee, yet is this champerty within the purview of this Statute; for their counſel, that is, their advice and direction in their profeſſion of Law is accepted: but to take any eſtate in the land, hanging the Writ, for maintenance, is to become a party, and in no ſort allowed to them by this Act.

6 E.3. fol.33. 20 H.6.12. Pl. com.305. F.N.B. 172. h. Lib.7. fol. 13,14. Calvins caſe. 21 H.6.16.b. 29 H.6. maintenance 12. 19 E.4 3.b. 34 H.6.26. 39 H.6.5. 6 E.4.5 9 E.4.32. 14 H.7.2 &c.

But if a father be impleaded, he may infeoffe his ſon for his aſſiſtance maintenance, and comfort; for that is natures profeſſion for the ſon aſſiſtere, manutenere, & conſolari, & e converſo, & ſic de ſimilibus: & ſic alia eſt profeſſio legis, & alia naturæ.

So it is, that the ſon may of his own mony, and in his own name give fees to his fathers Councel, or Attorney, without any expectation of repayment, and ſo may the father to his ſons Councel; for he is procheine amye, but ſo cannot the Serjeant nor Apprentice, for that their counſel, advice, and direction in Law is only ſaved to them. But the Attorney may in his Maſters name lay out his own mony to his Councel, to be repaid to him by his Maſter again.

In like manner, and by the like reaſon, if the father be Demandant in a Præcipe, he may promiſe and contract with the ſon to aſſure him the land after the recovery, and is not any champerty within this Act, and ſo of any other Anceſter and his heir apparent: but ſo it is not of the Serjeant, Apprentice, or Attorney; for they cannot contract to have any part of the thing in demand after the recovery, & ſic de ſimilibus. And therefore Penros caſe maketh not againſt this, nor any thing that hath been ſaid: For there the caſe (as Hankford imperfectly citeth it) was, that in a Writ of champerty brought againſt Penros, for that he had parcel of the land recovered againſt him at another mans ſuit, Penros ſaid that he was of councel with the party which recovered, and had that land for his wages: But let us take the ſaid as we find it (though Fitzherb. in abridging this caſe, not knowing what to make it, omitted it) the taking of the ſtate for his wages after the recovery could be no champerty, unleſs there had been a covenant or promiſe hanging the plea on the demandants part, to make the ſame after the recovery, which was not alledged but only the taking of the ſtate: neither doth it appear what became of Penros plea: And we are of opinion, that it ſhall remain for ever a blemiſh to his reputation, as often as it is cited; for, quamvis aliquid ex ſe non ſit malum, tamen ſi ſit mali exempli, non eſt faciendum.

13 H.4.19.

F. tit. mainten.23

¶ De ſes prochein amyes, &c.] Of prochein amyes you have heard before, this is to be added, that there be not only prochein amyes in blood, but in eſtate alſo: And therefore as the next of blood is prochein amy, in reſpect of the expectancy of a diſcent (and yet it may be it ſhall never deſcend to him: for ſolus Deus facit hæredes, non homo) ſo they that have reverſions, or remainders expectant upon eſtates in tail, life or lives, are prochein amyes in eſtate, and are excepted out of this Law, and yet it may be the land ſhall never come in poſſeſſion to them: and therefore if a Præcipe be brought againſt a Tenant for life, and he ſurrender to him in the reverſion or remainder, hanging the Writ, for maintenance, this is no champerty within this Act, no more then it is when the Tenant infeoffeth his heir apparent: And ſo it is if Tenant in tail, hanging the Writ, conveyeth the land to him in reverſion or remainder, this is no champerty for the cauſe aforeſaid within this Act.

17 E.3. champerty 14 per les Juſtices. 19 E.4.3.b. F.N.B.

For

For the word Prochein amy, proximus amicus, or amicus propinquus, ſee W.1. and W.2. &c. Littl. Sect. 123. W.1. c.48. W.2. cap.15.

CAP. XII.

DE rechiefe voet le Roy que diſtreſſes, que ſont a faire pur ſa dett, ne ſoyent faits per beſtes des charues, tanque come home poet auter trover, ſolonque ceo que eſt ordeine ailours per eſtatute, ove la paine, &c. Et ne voet que trope greve diſtreſſe ſoit priſe pur ſa dett, ne trope loigne meſne. Et ſi le dettour poet trover ſuffiſant, & covenable ſuretie, jeſque a un jour deins le jour al Viſcount, dedeins le quel home puiſſe purchaſer remedie a faire gree de la demaund, ſoit la diſtres releſſe endementiers, & que auterment le fra ſoit grevement punie.

¶ Per ſtatute.] This is intended of the Statute intituled, Statutum de diſtrictionibus Scaccarii, editi an. 51 H. 3. which by miſtaking is in the abridgement of Statutes, tit. Diſtreſſes 10. ſuppoſed to be in an. 20 E. 1. which ſhould be made 51 H. 3. the words of that Act (amongſt other things) are, Que nul home de religion, ne auter ſoit diſtrein per les beſtes, queux gaingnont ſa terre, ne per les barbites pur la det le Roy, ne pur le dett dauter home, ne pur auter encheſon per les baillies le Roy, ne per auters homes, tanque come un trove auter diſtres ou auters chateux ſuffiſantes, dont ils poient lever le det, ou que ſuffiſt la demande, &c. But hereof ſufficient hath been ſaid in the expoſition of the Statute of Marlebridge. 51 H.3. Vet. N.B. fol.89.b. Regiſt.97 b. Raſt.pl.118,393, 450. F.N.B.174. Regiſt. 97.185. Marlbrid. c.15.

¶ Et ne voet q̃ trope greve diſtres ſoit priſe, ne trope loigne meſne.] This is alſo provided for by the ſaid Act of 51 H. 3. and ſufficient alſo hath hereof been ſaid in the expoſition of the ſaid Statute of Marlebridge, cap. 15. and theſe Acts were made to take away the abuſe of the Sherifs, Bailifs, and other Miniſters. F.N.B.174. Regiſt. 97.

¶ Et ſi le dettor poet trover ſuffiſant & covenable ſuertie, &c.] This is an Act of grace, and upon this Act there lyeth a Writ directed to the Sherif, commanding him to receive ſurety according to this Act, which if he refuſe, an Attachment lyeth againſt him, or the party offering ſurety according to this Act, if it be refuſed, may have an action againſt the Sherif, &c. Act of grace. Vid. Mag. Chart. cap.8. &c. Regiſt.185, 186. F.N.B. 174. 36 E.3. cap.9.

CAP.

CAP. XIII.

ET pur ceo que le Roy ad grant le election des Viſcounts a ceux des Counties, voit le Roy que ils eſlient tiels Viſcounts, que ne les charge my: & ne mittent nul miniſter en bailie pur lower, ne pur don. Et que tiels ne ſe herbergent trope ſovent en un lieu, ne ſur les povers, ne ſur les religious.

¶ Ad grant.] This grant was made before at this Parliament, cap. 8.

By this Act five things are to be obſerved by the Sherif: 1. That he be not chargeable to the County: 2. That he ſhall put no miniſter in office under him for hire, gift, or bribe: 3. That they ſhall not too often lodge or harbour in one place: 4. That they ſhall not lodge or harbour at all with thoſe that are poor: 5. Nor with religious men.

And albeit the manner of making of Sherifs be altered, as before in the expoſition of the eighth Chapter doth appear, yet the ſaid Articles are to be obſerved by him: for they follow the office of the Sherif without reſpect of the manner of his making: And therefore if any Sherif take any hire, gift, or bribe of any Undersherif, Bailif, Keeper of the Gaol, or other miniſter for his office or place, he may be indited, and fined, and impriſoned.

12 R. 2. cap. 2. 11 H. 4. Rot. Parl. nu. 28. 5 E. 6. c. 16

See other Statutes againſt ſale of offices, &c. 12 R. 2. 11 H. 4. 5 E. 6. And in like manner touching the reſt of the Articles prohibited by this Chapter, ſee the next Chapter.

CAP. XIV.

DE rechiefe voit le Roy, que les Bailifes & les Hund' du Roy, ne les auters grand Seigniors de la terre ne ſoient leſſes a trope grand ſumme a ferme, per quoy le people ſoit greve, ne charge per contribution faire a tiels fermes.

1 R. 3. cap. 15.

This Act was made for avoiding of extortion and oppreſſion; for they that buy dear, muſt ſell dear. For addition to this Law it was enacted, that Sherifs ſhould not let their Hundreds and Wapentakes but for the old rent, and not above.

14 E. 3. cap. 9.

After by another Act neither Sherif, nor Bailifs, or Hundredors in fee ſhould let any Hundreds, &c. but for the ancient ferme, without any thing increaſing.

4 H. 4. cap. 5.

And by another Statute it was provided, that he ſhould not let his Bailiwick at all to any man, and that it ſhould be parcel of his oath. Upon which Act ſome doubt was conceived, whether if he let not his whole Bailiwick, it was within that Law; and beſides, there was no penalty inflicted by that Act: Therefore by another Law it is enacted, that no Sherif ſhall let to ferme in any manner his County, nor any of his Bailiwicks, Hundreds, or Wapentakes, upon pain of forfeiture of xl l.

23 H. 6. cap. 10. 20 H. 7. 12. & 21 H. 7. 36. Pl. com. 87. & 124. Vid. Mag. Chart. c. 8. &c.

And this Act, as to the King, is a Bill of grace.

CAP.

CAP. XV.

EN Summons & Attachments en plea de terre, deſormes conteigne la Summons ou lattachment le terme de xv jours a tout la meyns, ſolonque la common Ley, ſil ne ſoit en attachment des Aſſiſes prender en preſence le Roy, ou devant les Juſtices del common bank, ou des plees devant Juſtices en Eire, durant le Eire. See Marlbridge, cap. 12. & 26.

The printed Books leave out (ou devant les Juſtices del common bank) which ought to be added. F.N.B. 177. d. e. 11 Aſſ. p. 30. 22 Aſſ. p. 79. 30 Aſſ. 26. & 44.

This Statute was made in affirmance of the Common Law, as by the expreſs words of the Statute it appeareth, contrary to a ſudden and miſconceived opinion in our * Books: For Glanvill ſaith, Summonebitur per intervallum quindecim dierum ad minus: and therewith agreeth Bracton and Britton, Et ſi aſcun ſoit reſonablement ſummon, il doit aver ſpace de xv jours au meynes, de ſoy garner de ſon reſpons. And Fleta ſaith, Nec etiam ſufficit quod ſummonitio fiat ad ſtatim reſpondendum, ſed decet quod quilibet habet tempus xv dierum ante diem litis, & ſi ſummonitio minus ſpacium, pro illegitima debet reputari, niſi in cauſis ſpecialibus; ut ſunt cauſæ mercatorum, & cruceſignatorum, & hujuſmodi quæ inſtantiam deſiderant & celeritatem, &c. And all theſe Authors wrote before the making of our Act: and the Author of the Mirror that wrote of the ancient Laws of this Realm, ſpeaking of the time of Summons, ſaith, Et reaſonable reſpit al meyns de xv jours de purveire reſpons, & de parer en judgement. And the cauſe wherefore the Common Law ſet down the certain time of 15 days was, for that a days journey is accounted in Law 20 miles, rationabilis dieta conſtat ex viginti miliaribus: for dieta both in the common and civil Law ſignifieth a days journey, continet legalis dieta viginti miliaria. And therefore 15 days was accounted by the Common Law a reaſonable time of ſummons or attachment, within which time whereſoever the Court of Juſtice ſate in England, the party ſummoned or attached, whereſoever he dwelt in England, afore the Kings Writ did come, might per prædictas dietas computatas, by the ſaid account of days journies appear in Court, &c.

* 12 E. 4. 11. Glanv. lib. 1. ca. 7. Bract. l. 4. f. 255. & 182. Brit. f. 279 b. Flet. lib. 6. c. 6

Mirr. cap. 2. § 19

Bract. li. 4. f. 235. b. 19 H. 7. cap. 1. the like account is made. Lib. intr. tit. Journies accounts, fol. 382. l. 6. f. 10. & 11. Spencers caſe. 18 E. 3. 42. 32 E. 3. journies acc' 16. Cuſtumere c. 61. f. 76, 77.

¶ En ſummons.] In a Writ of Pone, to remove a replevin at the ſuit of the Defendant, the Writ ſaith, Et dic præfato querenti, quod ſit coram Juſticiariis noſtris apud Weſtm' tali die, there ought to be a warning by 15 days, for that this (dic querenti) is in nature of a ſummons, and ſo the Writ of venire fac' for returning of a Jury is in nature of a ſummons: but this Statute extends not to a Writ of error, nor to days of prefixion, as upon a forrein voucher in London, and the like. 12 E. 4. 11.

This Act ſpeaketh of a ſummons, and ſo it is in a re-ſummons. 1 E. 5. 2. b. Bract. l. 4. f. 255.

¶ Et attachments.] And ſo it is in a re-attachment. 1 E. 5. 2. b.

¶ En plea de terre.] Upon an original Writ in any real action the Tenant muſt be ſummoned by 15 days, as is aforeſaid; but if the original Writ be returned tarde, the ſummoneas ſicut alias muſt have nine returns between the teſte and the return: for albeit the ſummoneas ſicut alias be in lieu of the ſummons in the original, yet being a judicial proceſs in a real action, there muſt be nine returns, &c. and the ſummons thereupon ought to be made by 15 days, or more, before the return. Dyer 8 El. 252. 9 E. 4. 18.

¶ Le

24 E.3.35,46. 22 E.3.7. 31 H.6. 13. 27 H.6.2.

¶ Le terme de 15 jours a tout le meynes.] Theſe 15 dayes or more muſt be before the day of the return of the Writ, and the day of the return muſt be accounted none of them.

¶ Si ne ſoit en aſſiſes prender en preſence del Roy, &c.] En preſence del Roy, that is, in the Kings Bench, for there all pleas be coram Rege. It was accorded in 7 E.2. by Sir Guilliam Inge chief Juſtice of the Kings Bench, and the Juſtices, that in Writs of attaints upon an Aſſiſe of novel diſſeiſin taken in the Kings Bench, there ſhall be a certain day given as in the Aſſiſe; for example, the Monday, or the morrow, or in the utas or quinden' of Eaſter: but it behoveth that the Tenant hath garniſhment by 15 days in the attaint, for this Statute of Articuli ſuper chartas doth not give any leſs term, but only in an Aſſiſe of novel diſſeiſin in the Kings Bench, Common Pleas, or in Eir.

Regiſt. 264. a. 7 E.2. per les Juſtices. F.N.B.109.a

Lib. 9. fol. 118. b. Seignior Zanchars caſe.

This branch, as to the Kings Bench, ſeemeth to be in affirmance of the Common Law; for in criminal cauſes which concern the life of man, if a man be indited of treaſon or felony in the County where the Kings Bench doth ſit, the venire fac' for the returning of the Jury need not have 15 days betwéen the Teſte and the return, nay the entry may be ideo immediate venit inde jurata, &c. But if the inditement be taken in any other County, and removed into the Kings Bench, there ought to be 15 days betwéen the Teſte of the venire fac' and the return.

* Hill. 2 H.4. Rot. 4 Thomas Marks Eveſq; de Carlile, treaſon. Lunæ poſt feſtum Mich. an. 1 H.8. Sir Richard Empſon, treaſon. 10 Decem. 3 E.6. Thomas Bonham, before Portman chief Juſtice, and other Juſtices, treaſon. 2 Decem. 3 E.6. before Lyſter, Mountague, Cholmeley, &c. Robert Bell, treaſon. &c. treaſon.

*Commiſſioners of Oier and Terminer may in caſe of treaſon, felony, miſpriſion, treſpaſs, &c. try the priſoner the ſame day they award the venire fac', as by divers preſidents ancient and late do appear; but the Commiſſioners muſt make a precept in parchment under their ſeals for the returning of a Jury immediately the ſame day, if they will, or any day after, and likewiſe Juſtices of Gaol delivery, or Juſtices of Peace may try the priſoner the ſame day, or any day after, but need not make any particular precept: for the Juſtices of Gaol delivery, and Juſtices of the Peace make a general precept in parchment under their ſeals for the ſummons of the Seſſions, and for return of Juries, &c. and therefore any particular precept is not requiſite.

There was a general ſummons made 40 dayes before the ſitting of the Juſtices in Eir.

4 Auguſt 10 El. John Felton, &c. London, treaſon. Hill. 36 El. Doct. Lopes in London, treaſon.

*4 H.5. tit. enqueſt 55. Paſch. 9 H. 8. Kelwey. Holl. Chronic. 8 H. 8. fol. 843. 22 E.4. tit. coron. 44.

*We have the rather ſpoken ſomewhat hereof, becauſe there is a report of the reſolution of the Judges, that Commiſſioners of Oier and Terminer, or Juſtices of Peace cannot try a priſoner that pleads not guilty the ſame day that he pleads, &c. But herein at this day not only juriſpiriti, but uſuperiti alſo do agree.

CAP. XVI.

SOit fait de ceux que font faux retornes des briefes al maundement le Roy, per quoy droiture eſt delay, auxy come ordeine eſt en le ſecond eſtatute de Weſtminſter ove la peine.

This is an Act of confirmation, whereby the Statute of W.2. c.39. touching falſe returns, is confirmed.

CAP.

CAP. XVII.

ET pur ceo que mults misfeaſors ſont en la terre pluis que ne ſolent, & robberies, arſions, e homicides faits ſans number, & la peace meynes bien garde, pur ceo que leſtatute, que le Roy fiſt faire nadgaires paſſes a Wincheſter, nad pas eſte tenus: Voit le Roy que cel eſtatute ſoit de novel envoy en cheſcun County, & ſoit lie & publie 4 foits per an, auxibien come les deux graund charters, & firmement gardes en cheſcun point, ſur les paines que la cyens ſont aſſeſſes. Et a cel eſtatute garder & mainteiner, ſoient charges les trois chivaliers, que ſont aſſignes per mye les Counties pur redreſſer les choſes faits encounter les grand charters, & de ceo eyent garrantie.

The effect of the Statute of Wincheſter made at a Parliament holden in 13 E.1. is this, That from thenceforth every Country ſhould be ſo well kept, that immediately upon ſuch robberies and felonies committed, freſh ſuit ſhould be made, &c. Vid.Flet.lib.1. cap.24. this ſtatute of Wincheſter recited.

The letter of this Statute is general; and firſt, concerning the place: If a man be robbed in his houſe, it is not within the meaning of this ſtatute. Secondly, the time: If a man travel in the night, and be robbed, he ſhall not take the benefit of this Act, as you may read at large, lib.7. ubi ſupra. Vid.li.7. fol.6,7. caſes ſur ceſt ſtatute. 3 E.3. coron. 293.

See the ſtatutes of 28 E.3. and 27 Eliz. which have in ſome points altered, in ſome explained, and added divers Articles to this ſtatute of Wincheſter. 28 E.3.cap.11. 27 Eliz. cap.13.

Britton maketh mention of the ſtatute of Wincheſter in theſe words, Solonque noſtre ordinance de nous Statutes de Wincheſter, and of the Statute of W.2. an. 13 E.1. So as he wrote not his book in 5 E. 1. as Priſot ſuppoſed: neither died he in 3 E.1. anno Dom.1272. as Bale, fol.111. hath miſtaken; but certainly he wrote his book after 13 E.1. Dier 23 El.370. Brit.fol.20.32.b. & 263.160. Elegit.

And it appeareth by Fleta, ubi ſupra, that the time given to the Country by the ſtatute of Wincheſter is not within 40 days, as the book of ſtatutes lately printed miſtakes it, but infra dimid' anni, and ſo is the printed book of ſtatutes by Berthelet; and therefore it would be reformed accordingly. True it is, that the ſtatute of 28 E.3. doth expreſly ſet down 40 days; but yet the words of the ſtatute of Wincheſter muſt remain as they were. 28 E.3. cap.11.

For actions brought upon the ſtatute of Wincheſter, See Hil.4.H.8.rot.525. Paſch.4.H.8 rot.310. Mich.6.H.8.rot.1. Paſch.12. & 13. Hen.8.rot. 4 Eliz.rot.508. &c. which were before the ſtatute of 27 Eliz. Lib.intr' Raſt.580. Lib.7. fol.6. ubi ſupra.

See Trin.28 Eliz.rot.75. Aſhpoles caſe, and Trin.29 El.rot.1027. Milborns caſe. Lib.intr' Co.fol. 348.

Which precedents I have added, becauſe they ſerve both for expoſition of the ſaid ſtatutes, and for direction to the party grieved to attain to the benefit of the ſame. Lib.7.fol.6. ubi ſupra.

If any deſire to ſee ſome precedent nearer the making of the ſtatute of Wincheſter, let them ſee the record of that notable caſe of Ellice Caller in 2 E.3. and they ſhall perceive, that actions grounded upon this ſtatute were not ſubject to ſuch captious and curious exceptions, as now they be. There the caſe was, that Ellice Caller was robbed in the Hundred of H. in the confines of two Counties, &c. and brought his action upon this Statute, and had judgment, and ſued execution to the Sheriff of Stafford, who returned, that he had levied x Marks of the men of the Biſhop of Coventry and Lichfield of the Hundred of H. the Biſhop came and ſaid, that the Hundred of H. was of the right of his Church of Saint Cadde of Lichfield, and ſhewed forth to the Court the charter of King Richard the firſt, by the which he granted to E. then Biſhop of Coventry and Lichfield, and to his men, that they ſhould be quit of murder and larceny, that Hil. 2 E.3.fol.6. & 7.

is, to be quit and diſcharged of every thing that lieth in charge of his men, by reaſon of murder or felony; as of amerciaments and of preſentments of murder and felony. But the authority of the book is, that the Biſhops men ought not to be diſcharged, and Shard that giveth the rule, giveth alſo two reaſons thereof.

Firſt, that the charter of Rich. 1. could not diſcharge this action, for that at the time of that charter an action againſt the inhabitants, by reaſon of robbery, &c. was not granted, but it was granted long after, that is to ſay, in an. 13 E. 1. and we do not intend, that by reaſon of the charter, being more ancient then the ſtatute of Wincheſter, you may bar or diſcharge the execution.

Secondly, albeit the King by his charter may grant, that a man may be acquitted againſt him and his ſucceſſors, yet thereby the action or right of the party cannot be taken away.

11 H. 6. fol. 47. a. 8 H. 6. cap. 27. The Burgeſſes of the Town of Tewksbury in the County of Glouceſter, brought an action of debt upon the ſtatute of 8 H. 6. which hath reference to this ſtatute of Wincheſter, if ſatisfaction be not made for the robbery therein mentioned within 15 days after proclamation, and the action is given againſt the comminalties of the Foreſt of Deane, which are adjacent to the river of Severn, and of the Hundreds of Bledſtow and Weſtbury, and the writ was, Præcipe communitati Foreſtæ de Deane, & Hundredis de B. & W. and exception was taken to the writ, for that the writ ought to have been Præcipe communitati Foreſtæ de Deane, & Hundredorum de B. & W. according to the words of the ſtatute of 8 H. 6. as one entire comminalty; and yet the writ was awarded good, for that it was the ſame in effect, though it had been the better, if it had accorded with the words of the ſtatute.

It is ſaid, that one that took upon him the profeſſion of the Law, made a motion, that all the ſuperfluous caſes of the Law reported in our Books might be rejected, and left out of the next impreſſion, and principally thoſe that Fitzherbert had not vouchſafed to abridge. But indeed the motion was ſuperfluous and ſmoakie, and therefore vaniſhed; for there is no caſe reported in our Books, but is worthy of obſervation; for thereof great uſe may be made at one time or other, if it be well underſtood and remembred, and we ſhould have been right ſorry, if theſe two excellent caſes, amongſt many others, had been rejected.

¶ Et ſoit lye & publie 4 foits per ann'.] This is evident.

¶ Auxibien come les deux grand charters.] Here it is to be obſerved, that Magna Charta, and Charta de Foreſta are called, Les deux grand Charters.

By the firſt Chapter of the Acts of this Parliament it is provided, that theſe two Charters ſhall be read four times every year before the people in full County, that is to ſay, in the next County after the feaſt of Saint Michael, and after the feaſt of the nativity of our Saviour, after Eaſter, and after the nativity of Saint John Baptiſt, and ſo oft, and at thoſe times ought the ſtatute of Wincheſter to be read and publiſhed.

¶ Soit charge les trois Chivaliers.] Theſe three Knights are authoriſed before, Cap. 1.

CAP.

CAP. XVIII.

EN droit des waſtes & deſtructions faits en gards per Eſcheators & Subeſcheators de meaſons, bois, parkes, viuers, & de touts auters choſes, que eſchient en les maynes le Roy: Voit le Roy, que celuy que aver' le dam reſceve, eit briefe de waſt en la Chancery vers Leſcheator de ſon fait, ou Subeſcheator de ſon fait, ſil eit de quoy reſponder, & ſil nad de quoy, cy reſpond ſon Soveraigne per autiel peine, quant as damages, come darreine ordeine eſt per eſtatute ſur ceux que font waſt en gardes.

Where ſome have thought that the Eſcheator and Undereſcheator are not within the ſtatute of Magna Charta; and therefore in this point the title of confirmatio Chartarum is not apt as to this Chapter, let them read the ſtatute of 36 E.3. and they will be ſatisfied. 36 E.3. cap.13. & Magna Chart. cap.5.

¶ Per Eſcheators & Subeſcheators.] Of their * names, and whence they are derived, of their antiquity and office, of their number in ancient time, and what alteration hath bèn by Acts of Parliament of later times, you may read in the firſt part of the Inſtitutes. * Regiſt.301.cap. Eſcheatrie. Mirr.cap.1. §.5. Statut. de Scacc' 51 H.3. Brit.fol.33,34. Flet.lib.1.cap.6. Rot.Parl.18 E.1. fol.7. & 21 E.1. rot.1. 28 E.1. cap.18. 29 E.1. de eſcheat. 14 E.3 cap.8. 1 H.8. ca.8. F.N.B.100. Stamf.pr.81. 1 Part of the Inſtitutes, ſect.4.

¶ Parkes, viuers.] Here viuers, viuaria, are taken for fiſh-ponds and warrens, as heretofore we have obſerved.

¶ Et de touts auter choſes, que eſchient en le maynes le Roy.] a That is, of all other things which caſually fall, or eſcheat, or come into the Kings hands.

¶ Eit briefe de waſte.] b For the action of waſt againſt the Eſcheator, ſée the Regiſter, F.N.B. &c.

¶ Reſpond' ſon Soveraigne.] Reſpondeat ſuperior, that is, the Eſcheator ſhall anſwer for the deputy Eſcheator, or Undereſcheator.

¶ Per eſtatute.] That is, by the ſtatute of Gloceſter, anno 6 E.1.ca.5. and W.2. anno 13 E.1. cap.21.

And it is to be obſerved (that we may note it once for all) that in this and other ancient Acts of Parliament that have relation or reference to any former, there is not any mention made of the year or Chapter of the former ſtatute, but the general reference was then thought the ſureſt, and the more Parliamentary way.

a See the firſt part of the Inſtitutes, ubi ſupra.

b Regiſt.72. F.N.B.59.b. Vet.N.B. fol.36. Stamf.prer.81. 14 E.3. cap.13. 36 E.3.cap.13.

CAP. XIX.

Vid. W. 1. cap. 24.

DE rechiefe la ou Leſcheator, ou le Viſcount ſeiſient en la mayne le Roy auters terres, la ou il n'ad reaſon de ſeiſier: & puis quant trove eſt la non reaſon, les iſſues du meſne temps ont eſtre ceo en arere retenus, & nemy rendus, quant le Roy ad la mayne ouſte: Voit le Roy que deſormes, la ou terres ſont iſſint ſeiſies, & puis la mayne ouſte pur ceo que il n'ad reaſon de ſeiſier, ne ceo tener, ſoient les iſſues pleinment rendus a celuy a que la terre demurt, & avera le damage reſceive.

See the ſtatute of 29 E. 1. de Eſchaetoribus, commonly called the ſtatute of Lincoln, made the year after this law; and upon theſe two ſtatutes ten points are to be obſerved:

1. That by the Common Law, although the ſeiſure was not lawful, yet for the meſne profits upon the livery, or ouſter le mayne, the party grieved was not reſtored to the meſne profits, which miſchief is remedied by theſe two ſtatutes.

24 E. 3. 28, 29, 59. 5 E. 26.

2. Iſſues are intended rents and things leviable by the Eſcheator, which may be reſtored, though the Eſcheator hath accounted for them, and not paid; but the mony, being once in the Kings coffers, ſhall not be reſtored.

3. That though both theſe ſtatutes ſpeak only of an ouſter le mayne, yet being both beneficial laws for reſtitution to be made to the party grieved, by equity they extend to liveries.

4. Where the words ſeem to extend only to ſeiſures before office, and after by the office that is found the King is not intitled, yet by conſtruction the ſame extend only to ſeiſures after office found. See hereafter verbo, Seiſent.

24 E. 3. 33. 9 E. 4. 52. Kelwey, 1 H. 8. 156.

5. Theſe ſtatutes extend by equity to ouſter le mayne, and amoveas manus upon petitions, and monſtrans de droits, not only in caſes concerning wardſhip, but freehold and inheritance.

6. Theſe ſtatutes extend alſo by like equity to ouſter le maynes upon traverſes, although traverſes were not in uſe at the time of the making of theſe ſtatutes.

28 H. 6. fol. 9. b. 5 H. 5. 2. 30 aſſ. 28. F. N. B. 260. 4 H. 7. 5. Dier 8 El. 248, 249. 21 E. 3. 1. 21 aſſ. 15. 12 R. 2. livery 28. 40 aſſ. * 21 E. 3. 1. 21 aſſ. 15. 40 aſſ. 36. 9 E. 4. 51, 52. * 18 E. 3. liver. 3. 24 E. 3. 65. Darcies caſe. 44 E. 3. 12. Stamf. pr. fol. 11. & 80, 81. Brok reſeiſ. 13. 24 E. 3. 33.

7. By the ſaid ſtatute of 29 E. 1. if any former office or record be found after livery, or ouſter le mayne, that maintaineth the title, by reaſon whereof the King is ſeiſed, the King upon that record ſhall not reſeiſe maintenant, but thereupon ſue out a Scire facias, &c.

8. But if an * office be found, which doth entitle the King to the land by a title grown to him ſince the livery, or ouſter le mayne, neither of theſe ſtatutes reſtrain the King, but that he may reſeiſe without a Scire facias.

9. * There is a diverſity when the party hath a livery or ouſter le mayne upon an inſufficient office, or by erroneous proceſs, there though the party hath right, yet the King ſhall reſeiſe without Scire fac': for a livery miſ-ſued is as it had been never ſued, and the ſtatute of 29 E. 1. is to be underſtood of a livery or ouſter le mayne, duly and lawfully ſued, for that which is inſufficient is nothing in law: But when the party ſueth out his livery or ouſter le mayne duly and according to law, where in truth he hath no right, but the King, if he had been appriſed of his title appearing of record, no livery or ouſter le mayne ought to have been granted, yet there upon that record the King cannot reſeiſe without a Scire facias.

10. Some

10. Some have holden, that at the Common Law he that was in poſſeſſion of the land, &c. by judgment, as in caſe of an ouſter le mayne, livery, or amoveas manum, that no reſeiſure could be made for the King without a Scire facias, and therein to avoid the former record by matter of as high nature: for the general rules of Law be, Nihil tam conveniens eſt naturali æquitati, unumquodque diſſolvi eo ligamine, quo ligatum eſt: Et judicia ſunt tanquam juris dicta, & pro veritate accipiuntur.

¶ Seiſient en la mayne le Roy.] This ſeiſure is intended after office: for before office lands or tenements cannot be ſeiſed into the Kings hands, and ſo is the common experience at this day. 5 E.6.tit. Office. Br.55. Lib.8. fol.169. Paris Stoughtons caſe.

See the ſtatute of W.1. cap.24.

That we paſs over nothing that the ſtatute of 29 E.1. giveth us occaſion to remember which is worthy of obſervation; It is there ſaid, that the ſtatute was commanded to be obſerved de concilio venerabilis patris Walteri de Langton, Coventr' & Lichfield Epiſc', tunc ejuſdem Regis Theſaurarii, & Johannis de Langton Cancellarii, who then had the dealing with Wards, &c. we will ſpeak ſomewhat of both theſe great Officers.

This Walter de Langton, a Gentleman of an ancient and fair deſcended family, was made Lord Treaſurer of England in the 23 year of King Edward the firſt, he was a grave and a wiſe man, and was much favoured by the King, and in great authority under him, the rather, for that he with great diſcretion and moderation did wiſely diſſwade Prince Edward (who after was King by the name of Edward the ſecond) from ſuch diſhonourable and diſſolute courſes as he took, and was the principal motive that Pierce Gaveſton, the wicked corrupter of the Princes youth, was baniſhed the Realm. The Prince in requital hereof, on a time amongſt other injuries, gave the Treaſurer foul and diſgraceful words, whereof the noble King underſtanding, deemed the offence done unto himſelf; for ſo I find it of record in the ſame Kings time, which record ſpeaketh in theſe terms: Et hoc expreſſe nuper apparuit, cum idem Rex filium ſuum primogenitum, & chariſſimum Principem Walliæ, pro eo quod quædam verba groſſa & acerba cuidam miniſtro ſuo dixerat, ab hoſpitio ſuo fere per dimid' an' amovit, nec ipſum filium ſuum in conſpectu ſuo venire permiſit, quouſque dicto miniſtro de præd' tranſgreſſione ſatisfecerat: quia, ſicut honor & reverentia qui miniſtris Domini Regis ratione officii fiunt, ipſo Regi attribuuntur; ſic dedecus & contemptus miniſtris ipſius Domini Regis fact' eidem Domino Regi inferuntur. Coram Rege Mich.33 E.1. Rot.75.

But we are ſorry to remember, that the favour of a King, and the height of proſperity, which rightly uſed are the bleſſings of God, ſhould make him preſume to defile his hands with corrupt and ſordid bribery, and to beguile himſelf to think that no man ſhould dare to bring him in queſtion. True it is, that he was judicially convicted in the firſt year of King Edward the ſecond, but it was before four of the principal Judges of the Realm, and in effect upon his own confeſſion.

All theſe briberies you may read in a bundle of the records remaining in the Treaſury, intitled Placita apud Winſor coram Roberto de Brabazon, Will. de Bereford, Rogero de Heigham, & Will. Inge Juſticiariis, &c. aſſignatis in cro' Sancti Andreæ Apoſtoli, anno regni Regis E. filii Regis E. primo, rot.3.8.14. &c. Servile eſt expilationis crimen, ſola innocentia libera. Hiſtories may ſafely be believed when there is a record to warrant them.

John Langton named alſo in the Act of 29 E.1. was then Biſhop of Chicheſter, and Lord Chancellor of England, he was of a great ſpirit, and feared not the face of great men in that dangerous time to do that which he ought: For whereas Thomas the noble Earl of Lancaſter had lawfully married Alice only daughter and heir of Henry Lacie Earl of Lincoln, ſon and heir of William de Longa Spatha Earl of Salisbury; and John Earl Warren and of Surrey had to wife the Kings Niece, that is, Joan daughter of Henry Earl of Barre, and of Elinor his wife daughter of King Edward the firſt, yet the ſaid Earl

Warren

Warren by great force and ſtrong hand (ut dicebatur aſſenſu regio) cauſed the ſaid Alice Counteſs of Lancaſter to be fetched from the Earl of Lancaſters houſe in Canford in Dorſetſhire, and in great pomp and bravery (in deſpight of the Earl of Lancaſter) to be brought to him to his Caſtle of Rygate in Surrey, where they lived in open advoutry. This worthy Biſhop loking neither above him nor about him, but according to his office and duty called the ſaid Earl Warren in queſtion for the ſaid ſhameful and open adultery, and by Eccleſiaſtical cenſures excommunicated him for the ſame, as he well deſerved: In revenge whereof the Earl, adding a new offence to the old, came with many of his followers weaponed for the purpoſe towards the Biſhop, to lay violent hands on him: But the Biſhop himſelf being a man of great courage, and being well attended with Gentlemen and other his houſhold ſervants, underſtanding thereof, they addreſſed themſelves, and having put themſelves in good order, iſſued out, and encountred with the Earl and his men, and not only manfully defended themſelves againſt that barbarous attempt, but valiantly overcame the Earl and his followers, and took them into their poſſeſſion, and laid the Earl and his Gallants faſt in priſon by the Biſhops commandment.

Vid. Paſch' 8 E. 2. rot. 111. coram Rege.

An. Dom. 1317. & 10 E. 2.

Armaque in armatos ſumere jura ſinunt.

But, fearing that one of Virgils Verſes ſhould be applied to us.

Virg. 5. Æneid. Sed jam age, carpe viam, ſuſceptum perfice munus,

We will return to our Statute.

CAP. XX.

ORdeigne eſt que nul Orfeure Dangleterre ne ailors de la Seigniory le Roy, ne ouere, ne face de cy en avant nul manner de veſſel, ne joialx, ne auter choſe dore ne dargent, que ne ſoit de bone & veray allay, ceſtaſſavoir, ore de certain touch, & argent del allay del eſterling, ou de melior allay, ſolonq; le volunt de celuy, a q̄les ouerers ſont. Et que nul ouer pejor argent que money. Et que nul maner de veſſel dargent ne depart hors des maines des ouerours, tanque el ſoit aſſay per les gardeins de la miſter, & auxi que el ſoit ſign̄ dun teſte dun Leopard. Et que nul ne ouere pejor ore que de touche de Paris. Et que les gardeins du miſterie allent de ſhope en ſhope enter les orfeours, aſſaiants que lore ſoit tiel come la touche avantdit. Et ſils trovont ul pejor que la touche, que lour ſoit forfeit al Roy. Et que nul ne face auneux, croix, ne firmaux. Et nul ne met̄ pire en ore, ſi il ne ſoit naturel. Et que taillours des aimans & des ſeales, rendant a cheſcun ſon poyz dargent & done auxi avant come ils le purront ſcaver ſur lour foialtie. Et les joyaux dore, que ils ónt entermaines de veil ouere, que ils ſeu deliveront a plus toſt que ils purront. Et ſils achatent deſor en avant de meſme cell' oueragie, que ils lachatent pur defere, & nemy pur revender. Et touts les bones villes Dengleterre, la ou il y ad orfeures, que ils facent per meſme leſtatute, come ceux de Londres ſont. Et que un veigne de cheſcun ville pur touts, a Lon-

a Londres, de quel lour certaine touche. Et ſi ull' Orfeure ſoit attaint que auterment le face que deſuis neſt ordeine, ſoit punie per priſon, & per ranſome a la volunt le Roy. Et en touts les choſes deſuis dits, & cheſcun de els voit le Roy, & tend' il & ſon Councel, & touts ceux que a ceſt ordeinment fuerent, que le droit & la ſeigniorie de la Corone ſaves luy ſoient per touts, &c.

¶ Ore de certeine touche.] The pound of gold and ſilver containeth 12 ounces: 12 grains of fine gold make a caret, 24 carets of fine gold make an ounce, 12 ounces make a pound of fine gold of the touch of Paris; but by the ſtatutes of 18 Eliz. 22 carets fine make an ounce. See hereafter in this Chapter. 18 Eliz. cap. 15.

¶ Et argent del allay de eſterling.] In our Law it is called Sterlingum. For the name of Eſterling or Sterling money there be divers opinions. 37 E. 3. cap. 7.

Our Hiſtorians think it is ſo called, ab effigie Sturni, aviculæ, quæ in altera parte nummi impreſſa fuit, nam Sturnus anglice Sterling dicitur, &c. vel quod numulus in altera parte haberet notam ſtellæ, quam Angli Ster vocant. Polid. Virg. fol. 304. &c.

And with the conceit of the Sterling agreeth * Linwood the Civilian in his gloſs upon the Provincial conſtitutions. *Tit. de Teſtamentis cap. Item quia verbo centum ſolid.

The Scots think it ſhould take his name of a Town in Scotland, called Striveling, alias Sterling. Maſter Skene.

But the Eſterling or Sterling peny took the name of the workmen, being Eſterlings that both coined it, and gave it the allay as the Florence of gold is called of the Florentines, and the Portagues of the Portugals, &c. The name. Hovend. parte poſter. annalium. fol. 377. b.

And the Eſterling peny was firſt coined by the Eſterlings in the reign of Henry the ſecond; and now money of that allay is counted the lawful money of England. 20 E. 1. Vet. Mag. Chart. 167. The time.

20 pence of ſilver made an ounce, and twelve ounces made a pound of fine ſilver, and eleven ounces of fine ſilver, and one ounce of allay maketh a pound weight of Sterling ſilver intended by this Act. Dier 7 El. fol. 82. The value.

By the ſtatute of 18 Eliz. plate of ſilver ought to be the fines of xj ounces two peny weight.

Allay is the mixture of a baſer metal then ſilver or gold, called in our Books falſe metal. 9 H. 5. Stat. 2. cap. 4. & 6.

And if more allay be put into the money then is limited to them by the Indenture betwæn the King and them, or make it of leſs weight, it is treaſon, and herewith agreeth Britton, treating of treaſon, where he ſaith; Auxi le feſors de noſtre money counterfeit, ou plus de allay mys en noſtre money que miſter ne ſerra ſolonq; le forme & uſage de noſtre Realme, and hereunto accordeth Fleta. 3 H. 7. 10. a. b. 3 H. 7. ubi ſupra. Brit. fol. 10. b. Flet. lib. 1. ca. 22.

The ancient currant ſilver was the penny: for ſo I find in the Regiſter in an action of account againſt a receiver, the Plaintiff ſuppoſed the Defendant to be receptor denariorum: And when a man wageth his law in an action of debt, the entry is, quod non debet præfato querenti 4. libras, nec aliquem denarium inde. And at the making of this ſtatute in 28 E. 1. the peny was the currant money of England: It is called in Latine Denarius, and very aptly to by derived a numero denario, as it is taken by us; quilibet enim denarius argenti valebat 10 denarios æris: Denarii dicti, quia denos ære valebant; quilibet denarius puri auri valebat 10 denarios puri argenti. What kind of coin Regiſt. 135. F. N. B. 82. Stat. de 31 E. 1. de ord. menſur. lib. intrat. Denarius unde.

Penny in Engliſh cometh of the Saxon word pennyg.

In 13 H. 3. there was found by a Plowman in tilling the earth money in veſſels ſo ancient, as it was not known; the Record ſaith, De veteri moneta ignota in doliis arando reperta, &c. Rot. clauſ. an. 13 H. 3.

The richeſt King of England of treaſure, that I have read of, was King Henry the ſeventh, who left at his death in ready mony Fifty and three hundred thouſand pounds, moſt of it in forrain coine. Rot. clauſ. an. 3 H. 8.

¶ Et

¶ Et que nul oure, pejor argent que monie.] The ſenſe hereof is, that none ſhall gild worſe ſilver then of the fines of ſterling; for ſuch ought the mony to be, and all ſilver veſſel ought to be of the allay of good ſterling; for the plate of England is both for the honour and riches of the Realm.

37 E.3. cap.7. 2 H.5.ca.4.Sta.2. 2 H.6.cap.14.

¶ Tanque il ſoit aſſaie per les gardens del miſterie.] This is evident of it ſelf.

¶ Auxi que ſoit ſigne dun teſte de Leopard.] This is obſerved to this day: the ſtatute of 37 E.3. added, that every Goldſmith ſhould have his private mark, &c. to the end it may be known who made it; beſides the Surveyors muſt ſet their mark; and then an alphabetical letter muſt be alſo ſet unto it, ſo as it muſt have four marks.

37 E.3.cap.7.

For theſe matters ſée the Statutes of 2 H 6.ca.14. 17 E.4.ca.1. 4 H.7. cap.2. 18 Eliz. cap.14.

¶ Et que nul ne oure pejor ore que de touche de Paris.] Of this ſufficient hath béen ſaid before.

¶ Et que nul ne fac' auneux, croix, ne firmeaux.] This branch is repealed by 21 Jacobi regis, cap.28. verſus finem.

¶ Et nul mett' pier en ore, ſi il ne ſoit naturel.] Counterfeit ſtones ſhould not be ſet in gold, to the end that the ſubject ſhould not be deceived thereby.

¶ Que le droit & le Seigniorie de la Corone ſaves luy ſoient per touts.] Here is offered juſt occaſion to ſpeak what prerogative the King hath in ſilver and gold, and firſt and principally in making of money currant within the Realm.

Plo.com.316.

It is ſaid by thoſe that were of councel with the King in caſe of the Mines, that it doth pertain to the King only to put a value to the coin, and to make the price of the quantity, and to put a point to it; which being done, the coin is currant for ſo much as the King hath limited. Before we ſpeak to this, let us ſée what our ancient Authors and Acts of Parliament have holden and enacted concerning the monies of England in genere, and then ſhall we the better conceive of this opinion.

Mirr.cap.1.§.3.

The Mirror treating, Des Articles per veiels Roys ordeins, ſaith thus, Ordein fuit que nul Roy de ceſt Realme ne poet changer ſa money, ne impairer, ne amender, ne auter money faire, que de ore ou dargent ſans laſſent de touts ſes Counties, that is, without aſſent of Parliament.

Eucilides, lib.1. cap.1. Geo.agricol. lib.10.cap.1.

For the better underſtanding hereof, and of that which ſhall be ſaid hereafter, it is to be underſtood, Quod metallorum ſunt ſeptem ſpecies, viz. Aurum, Argentum, Æs, ſive Cuprum (ſic dictum, quia primo inventum fuit in Cypro) Stannum, Ferrum, Plumbum, & Aurichalcum. Now as to the making of coin theſe metals by the law of England are ſubdivided in metallum legale, ſive verum, & metallum illegitimum ſive falſum. And this ſubdiviſion appeareth both by Act of Parliament, and by our Books.

Statutum de dimiſſione denariorum, an.20 E.1. Vet.Mag.Chart. fol.167.

Quicunque in emptionibus & venditionibus obulum ſeu quadrantem legalis metalli, & debitam habentem formam recuſare præſumpſerit, tanquam regiæ majeſtatis contemptor capiatur, & in carcerem detrudatur. By this Act it appeareth, that no ſubject can be enforced to take in buying or ſelling, or other payment, any money made, but only of lawful metal, that is, of ſilver or gold, as the Mirror hath told you, and by this it is proved, that having reſpect to money, there is an unlawful metal, and theſe be the other five.

The

The mony of England is the treaſure of England, and nothing is ſaid to be treaſure trove but gold and ſilver. See the third part of the Inſtitutes, cap. Treaſure trove. And this is the reaſon that the Law doth give to the King mines of gold and ſilver, thereof to make mony, and not any other metal which a ſubject may have, becauſe mony thereof cannot be made. And hereof there is great reaſon, for the value of money being the meaſure of all contracts, &c. is in effect the value of every man. And herewith agreeth the book in 3 H.7. Quod ille qui facit monetam contra ordinationem, &c. alliatam, viz. alcamino, vel alio falſo metallo, proditio eſt, where all the ſaid five baſe metals (as to be put in coin) are deemed falſe metals, Bracton calleth mony made of them, monetam reprobam, & monetam falſam.

Pl.com.316. the point adjudged. In nummis tria requiruntur, metallum legale, pondus, & forma. 3 H.7. ubi ſupra. 9 E.3. cap.2. Glanv.lib.14. cap.7. Bract.lib.3.fo.118. Flet.lib.1. ca.22.

To omit many things that might be ſaid to the ſame intent, and to confirm this point with an Act of Parliament made in the 25 year of the reign of that wiſe and victorious King Edward the third, in theſe words: "Item, it is accord-"ded, that the mony of gold and ſilver which now is currant, ſhall not be im-"paired in weight or allay, but as ſoon as the good way may be found, that the "ſame be put in the ancient ſtate, as in the Sterling.

25 E.3.cap.13. 9 H.5.ſtat.2.ca.6. See the third part of the Inſtitutes, cap. Felony, by bringing in of certain coin, &c.

By this Act three things are to be obſerved: 1. That the mony of England muſt either be of gold or ſilver: 2. That the currant mony of England cannot be impaired either in weight or in allay: 3. That the allay of the ſterling was the ancient currant money of England. And herewith agreeth the ſtatute of 9 H. 5.

By an Act made, not in print, it is enacted, that ſilver ſhall be coined according to the old eſterling in poize and allay, to be currant amongſt the ſubjects, and not to be carried over, on pain of death. And if the Flemings ſhall coin their ſilver accordingly, that the ſame be currant amongſt Merchants. And that the ſterling mony was the ancient currant money of England. That in the raign of E. 1. there were divers white monies called Pollards, Crocards, Stalvings, Eagles, Leonines, and Steepings artificially made of ſilver, copper, and ſulphur, and yet currant within the Realm; and for that two pieces of thoſe monies were but of the value of one ſterling, King E. 1. by his Proclamation utterly forbad the ſame. And yet to look somewhat higher, Matth. Paris 33 H.3. pa. Denarius Angliæ qui nominatur ſterlingus rotundus ſine tonſura ponderabit 12 grana frumenti in medio ſpicæ, & 20 denarii faciunt unicam, & 12 unciæ faciunt libram, &c.

Rot.Parl.17 E.3. nu.15. Rot.fin.an. 28 E.1. Holl.pag.309.a. Walſ.an.28 E.1. See Matth.Paris 31 H.2.

And yet to aſcend to former times, Hæc ſunt jura quæ Rex Angliæ ſolus & ſuper omnes habet in terra ſua, &c. viz. murdrum, falſaria monetæ ſuæ, incendium, hamſockna, forſtall', Firdinga, flemen firmæ, præmeditat' aſſultus, robberia, &c.

Inter leges H.1. cap.11. de jure regis.

But I will deſire the ſtudious Reader to caſt his eyes upon the laws before the Conqueſt.

Si quis nummum corripuerit, ei manus ſcelere violata præceditor, eamque prece vel pretio redimi nefas eſto, &c.

In dimenſione & pondere nihil eſto iniquum, ab iniquitate deinceps quiſque temperat, &c.

Inter leges Ethelſtani regis, cap.14. & Edgari, cap.8. & Canuti regis, ca. 8. 7 E.2.cap.12.

And melting of the good monies of the Realm, and altering the ſame into baſe coin was deemed in Parliament amongſt the reſt of the calamities that then fell upon this Realm. And that the law is this, it is beſt for the King; for by the impairing of the coin of England either in weight or in allay, the King hath the greateſt loſs both in his own revenues, forfeitures, and ſubſidies, and alſo in the diſvaluation of his ſubjects: for the King can never be rich, or his Kingdoms ſafe, when his ſubjects be poor, and the fineneſs and goodneſs of his coin is inter magnalia & regalia coronæ.

At the aforeſaid Parliament of 25 Ed.3. another excellent law was made in theſe words: "Item, it is accorded and aſſented, that the moniers, and other war-"dens and miniſters of the money ſhall receive plate of gold and ſilver by the "weight, and not by number, and in the ſame manner ſhall deliver the money, "when it ſhall be made by weight, and not by number, without delay.

25 E.3.cap.20.

Queen Elizabeth (Angliæ amor) finding in the beginning of her raign ſome Copper money, and all to much and againſt law allayed, amongſt many others, reformed the ſame, as upon her Tomb in Weſtminſter it appeareth, Religio reformata, pax fundata, moneta ad ſuum valorem reducta, claſſis inſtructiſſima apparata, gloria navalis reſtituta, rebellio extincta, Anglia totos 40 annos prudentiſſime adminiſtrata, ditata, & munita, Scotia a Gallis liberata, Gallia ſublevata, Belgia ſuſtentata, Hiſpania coercita, Hibernia pacata, orbiſque terrarum ſemel atque iterum circumvagatus.

Pl.com. In the caſe of the mines, fol. 314.&c. Bract.lib.2.fo.122. b. Flet.lib.4.ca.19. Glanv.lib.14. ca.2. Mich.33 E.1. rot. 126. coram Rege, Derby. Rot. Parl. 3 R.2.nu.43. Regiſt.165. 21 E.3. fol.60. 27 aſſ.19. 43 E.3.35.&c. * Mich. 18 E.1. in banco rot. 139. Cumberl. Minera argent. de Aldeneſton. Libertates mineræ.

Now for the Kings Prerogative in the mines or veines of gold and ſilver (for he hath no prerogative in any other metal) you may read at large in the caſe of the mines. If you deſire to read other authorities not cited there de Auri fodinis, Argenti fodinis, & aliis mineris, you may read Bracton, Fleta the Regiſter, and other ancient Authors, Records, and Book-Caſes. And to this you may add a Record which we lately found out.

* *Patrius del Gile & xxvi. alii Minetarii apud Aldeneſton implacitantur per Henr' de Whiteby, & Joannam uxorem ejus pro eo quod ſuccid erunt arbores ſuas apud Aldeneſton vi & armis, & eas aſportaverunt ad valentiam xl l. &c. Ipſi dicunt quod tenent mineram de Aldeneſton ad firmam de Dom' Rege, & dicunt quod talis eſt libertas mineræ prædictæ, quod minetarii ejuſdem mineræ poſſunt capere boſcum, cujuſcunque fuerit, propinquiorem & utiliorem venæ argenteæ prædictæ mineræ, quam invenire contigerit. Et quod idem minetarii poſſint capere pro voluntate ſua boſcum illum ad mineram illam ardendam & fundendam. Et licitum eſt eis capere boſcum illum ad ædificandum, & ardendum, & claudendum. Et quod licitum eſt eis boſcum illum dare miniſtris mineræ prædictæ pro ſtipendiis ſuis. Et etiam licitum eſt divitibus ejuſdem mineræ dare pauperibus de boſco illo ad ſuſtentationem ſuam quantum voluerint. Et dicunt, quod, quia prædictus boſcus fuit propinquior & utilior cuidam venæ quam ipſi invenerunt, ipſi ſuccid erunt boſcum prædictum ad comburendam, & fundendam mineram prædictam, & ad ædificandum, claudendum, & ad dandum pauperibus & miniſtris ejuſdem mineræ pro ſtipendiis ſuis, ſicut prædictum eſt. Dicunt etiam, quod non eſt licitum aliquibus dominis boſcorum poſtquam op'i minetarii inceperint ſuccidere in boſcis illis ad mineram prædictam, ſicut prædictum eſt, aliquid de boſcis illis vendere, nec dare, niſi tantum inde capere rationabilia eſtoveria ſua. Et dicunt quod ipſi & Anteceſſ. ſui, nomine Domini Regis in boſcis vicinis quorumcunque fuerint ad mineram tali libertate uſi ſunt a tempore quo non extat memoria, unde bene advocant quod ipſi ſuccid erunt prædictum boſcum ratione ejuſdem libertatis, & non contra pacem, &c. Et Henr' & Joan' bene cognoſcunt quod licitum eſt minetariis prædictis capere de propinquioribus & utilioribus boſcis ad mineram Regis ardendam & fundendam, ſet dicunt, quod, ultra neceſſaria ſufficientia ad mineram illam ardendam & fundendam, vi & armis boſcum ſuum ad valentiam xl li. ſuccid erunt, vendiderunt, & aſportaverunt, de quo nihil proficui ad mineram Regis devenit, nec ad ejuſdem mineræ promotionem. Et quod ita ſit, petunt quod inquiratur; unde ſi boſcus ille & alii de partibus illis deſtruantur, & ad aliqua alia inde facienda, quam ad mineram prædictam comburend' & fundend', hoc erit ad dampnum Domini Regis; pet' judic' ſi minetarii prædicti ad præmiſſa quæ allegant, cum in manifeſtum dampnum Domini Regis redundant, admitti debeant, &c. cum deſtructis boſcis illis ceſſabit mineræ illius proficuum, &c. dies dat' eſt in tres Paſch', &c.*

Modo

Modo reddit Oxenford lx li. ad numerum de 20. in ora, (i.) ad numerum de xx d. in uncia, ſic interpretatur in lib. Abbatiæ de Burton in [a] com' Staff.

* Moneta appellata eſt, quia nos monet ne qua fraus in metallo vel pondere fiat: [b] Pecunia a pecudibus eſt appellata, ſicut a juvando jumenta dicta ſunt, quia in pecudibus univerſa antiquorum ſubſtantia conſtabat: Antiquiſſimi nondum auro & argento invento, [c] ære utebantur, nam prius ærea pecunia in uſu fuit, poſtea [d] argentea, deinde [e] aurea ſubſequuta. Sed ab ea quæ incepit nomen retinuit, unde ærarium dicitur, quod prius æs fuit in uſu. Hæc Iſidorus.

[f] Νόμισμα ἀπὸ τοῦ νόμος, hoc eſt, a lege o in u commutato, quia cum anteá permutatione mercium homines uti ſolerent lege, lege uſus nummi introductus eſt. **Some deriveth it,** a Numa Romanorum Rege, quia ipſe primus imaginibus notavit, & titulo nominis ſui præſcripſit, **Others imagine,** quod dicitur nummus, eo quod nominibus effigieque ſignatur.

Panis Waſtelli de Ferlingo (i.) quadrantis, derivatur a verbo Saxonico ꝑeoꝛðling, per contractionem Ferling.

Where you read de auri fodinis **and** argenti fodinis, **it is affirmed by Merchants that have travelled for gold, that there are ſilver mines, that is, there is oare or ſoil of ſilver digged out of the earth, and out of that by art is ſilver tried, but there is no oare or ſoil of gold, but it is gold originally in ſmaller pieces as it were duſt, which being waſhed down the ſhoar, it is found by the yellowneſs of the water. And this is confirmed by** Job; **for he ſaith,** Habet argentum venarum ſuarum principia, & auro locus eſt in quo conflatur: **Surely, there is a vein for the ſilver, and a place for gold where they find it. And ſon after,** Locus Sapphiri lapides ejus, & glebæ illius aurum; **The ſtones of it are a place of Saphires, and the duſt of it is gold. And yet for diſtinction ſake it is called** aurifodina.

For Stannum, **Tinn, England hath of ancient time furniſhed other countries, both far and near, as you may read in** Diodorus Siculus, **who lived in Auguſtus time. But** Polibius, **who wrote about two hundred years before him, affirmed this Iſland to be abundantly ſtored with tinn; And we have taken the greater liberty herein (to delight, if we could, the Reader) for that herewith we conclude this laſt Chapter of this excellent Parliament.**

[a] Domeſday Oxenfordſir. ora Oxenford. & ibi ſæpe. Mich. 37 H. 3. rot. 4.
[a] Duæ horæ quæ valent 32 d.
* Moneta unde Iſidor. lib. 16. Ethic. cap. 17.
[b] Pecunia unde.
[c] Unde æs, vide Ceſars Commen.
[d] Argentea pecunia quando.
[e] Aurea quando.
[f] Nummus unde.
Ferlingus unde, Stat. de 51 H. 3. Aſſiſa panis, &c.

Jobi, ca. 28. ver. 1. & ver. 6.

Diodorus Siculus, lib. 5. cap. 8. fol. 142. b.
Polibius, lib. 3.

Statut. de Aſportatis Religioſorum,

Editum *Anno* 35 Edw. 1. apud Carliolen.

NUper ad notitiam Domini Regis ex gravi querela Magnatum, Procerum, & aliorum Nobilium regni ſui pervenit; quod cum Monaſteria, Prioratus, & Domus Religioſæ ad laudem & honorem Dei, & ad exaltationem ſanctæ Eccleſiæ per Regem & progenitores ſuos, & per dictos Magnates, Nobiles, & eorum anteceſſores fundata fuiſſent, & terræ & tenementa quæ plurima eſſent data per ipſos dictis Monaſteriis, Prioratibus, & Domibus, ac viris Religioſis in eiſdem Deo ſervientibus, ut in hujuſmodi Monaſteriis, Prioratibus, & Domibus Religioſis, tam Clerici quam Laici admitterentur, ſecundum ſuarum ſufficientiam facultatum; & infirmi ac debiles ſuſtentarentur, hoſpitalitates, eleemoſynarum largitiones, & alia pietatis opera exercerentur; & pro animabus fundatorum prædictorum, & hæredum ſuorum fierent in eiſdem: Abbates, Priores, & Cuſtodes earumdem domorum, & quidam eorum ſuperiores alienigenæ, utpote Abbates, & Priores Clunacen', & Præmontraten', & ſanctorum Auguſtini, & Benedicti ordinum, & cæteri qui plures alterius Religionis & ordinis noviter per ſingula Monaſteria, & domos eis ſubjecta in Anglia, Hibernia, Scotia, & Wallia diverſa tallagia, cenſus, & impoſitiones inſolitas, graves, & importabiles, Domino Regi & Magnatibus ſuis inconſultis, fieri ſtatuerunt, & pro ſuo libito ordinaverunt, contra leges & conſuetudines dicti regni. Ex quo fit, ut numerus Religioſorum & aliorum ſervitiorum in hujuſmodi domibus & locis Religioſis per tallagia hujuſmodi, cenſus, & impoſitiones oppreſſis, minuitur cultus divinus, & eleemoſynæ pauperibus, infirmis, & debilibus ſubtrahuntur, & ſalutes vivorum, & animæ mortuorum miſerabiliter defraudantur: hoſpitalitates, eleemoſynarum largitiones, ac cætera ceſſant opera pietatis, ſicque quod olim in uſus pios, & ad divini cultus augmentum charitative fuerat erogatum, jam in cenſum reprobum eſt converſum. Unde præterea, quæ prætermittentur, ſcandalum non modicum creſcit in populo, & damna

damna innumera, & exhæredationem fundatorum prædictorum, & hæredum ſuorum, procul dubio perveniſſe noſcuntur: & adhuc veriſimiliter præſumuntur pervenire, niſi tantis & tam gravibus detrimentis celeri & ſalubri remedio obvietur. Conſiderans igitur Præfatus Dominus Rex ſibi & populo ſuo valde fore damnoſum, ſi tam grandes jacturas & inſolentias ſuſtineret diutius ſub diſſimulatione tranſire.

¶ Volenſque idcirco Monaſteria, Prioratus, & alias Domos Religioſas, & loca in regno & terris dominio ſuo ſubjectis conſtituta ſecundum voluntatem & pia vota fundatorum ipſorum manutenere & defendere, & contra hujuſmodi oppreſſiones de congruo remedio providere de cætero, ut tenetur de conſilio Comitum, Baronum, Magnatum, Procerum, & aliorum Nobilium, & regni ſui Comitatum in Parliamento ſuo apud Weſtmonaſt' die Dominica proxim' poſt feſtum Sancti Matthiæ Apoſtoli Anno Regni ſui 33. habito ordinavit & ſtatuit, ne quis Abbas, Prior, Magiſter, Cuſtos, ſeu quivis alius Religioſus, cujuſcunque conditionis, aut ſtatus ſeu Religionis exſtat ſub poteſtate & juriſdictione ſua conſtitutus, cenſum aliquem per ſuperiores ſuos Abbates, Priores, Magiſtros, Cuſtodes Religioſarum Domorum, vel locorum impoſitum, vel inter ſe ipſos aliqualiter ordinatum extra regnum & dominium ſuum ſub nomine redditus, tallagii, apporti ſeu impoſitionis cujuſcunque, vel alias nomine excambii, venditionis mutui, vel alterius contractus quocunque nomine cenſeatur, per ſe vel Mercatores, aut alios clam vel palam, arte vel ingenio defer' vel tranſmittat, ſeu deferri faciat quoquo modo, nec etiam ad partes exteras ſe divertat cauſa viſitationis, aut alio colore quæſito, ut ſic bona Monaſteriorum & Domorum ſuarum extra regnum & dominium prædictum abducat. Et ſi quis contra præſens ſtatutum venire præſumpſerit, conſiderata qualitate delicti, & regiæ prohibitionis penſato contemptu, graviter puniatur.

¶ Præterea inhibet præfatus Dominus Rex omnibus & ſingulis Abbatibus, Prioribus, Magiſtris, & Cuſtodibus Religioſarum domorum & locorum, alieniginis quorum poteſtati, ſubjectioni, & obedientiæ domus eorumdem ordinum in regno & dominio ſuo exiſtentes, ſubdunt, ne de cætero tallagia, cenſus, impoſitiones, apporta, ſeu alia quæcunque onera aliquibus Monaſteriis, Prioratibus, ſeu aliis domibus Religioſis eis (ut prædicitur) ſic ſubjectis imponant, ſeu faciant aliqualiter aſſidere, & hoc ſub forisfactura omnium, quæ in poteſtate ſua obtinent, & forisfacere poterunt in futurum.

¶ Et inſuper ordinavit Dominus Rex & ſtatuit, quod Abbates Ciſterc', & Præm' ordinum aliorum Religioſorum, quorum ſigillum in cuſtod' Abbatis, & non conventus, prius reſidere

ſidere tantummodo conſuevit, de cætero habeant ſigillum commune, & illud in cuſtod' Prioris Monaſterii ſeu domus & quatuor de dignioribus, & diſcretioribus ejuſdem loci conventus, ſub privato ſigillo Abbatis ipſius loci cuſtod' deponend'. Ita quod Abbas, ſeu Prior domus cui præeſt, per ſe contra aliquem ſeu oblig̃ nullatenus poſſit firmar', ſicut hactenus fieri conſuevit. Et ſi forſan aliqua ſcripta oblig' donationum, emptionum, venditionum, alienationum, ſeu aliorum quorumcunque contract' alio ſigillo, quam tali ſigillo communi, ſicut præmittitur cuſtodito, inveniantur a modo ſigillata, pro nullis penitus habeantur, omnique careant firmitate. Cæterum intentionis Domini Regis non exiſtit Abbates, Priores, & alios Religioſos alienigenas per ordinationes & ſtatuta expreſſa ſuperius ab officio viſitationis in regno & in dominio ſuo exercendo excludere, quin per ſe ipſos vel alios, Monaſteria & alia loca eis in regno & in dominio ſuis prædictis ſubjecta, juxta officii ſui debitum in his duntaxat quæ ad obſervantiam regularem, & ordinis ſui diſciplinam pertinent, libere valeant viſitare. Proviſo quod illi qui officium hujuſmodi viſitationis exercuerint, nihil de bonis aut rebus hujuſmodi Monaſteriorum, Prioratuum, & domorum extra præfatum regnum & dominium, præter rationabiles & moderatas eorum exemplas, deferant, vel deferri procurant.

¶ Et licet ordinationum & ſtatutorum præſcriptorum pronunciatio & publicatio a Parliamento proximo præterito uſque ad præſens Parliamentum apud Carliolum in Octabis Sancti Hillarii, anno regni ejuſdem Regis Edwardi 35. certis ex cauſis, & ut cum majore deliberatione & maturitate procederent, remanſerit in ſuſpenſo, Dominus Rex poſt deliberationem plenariam & tractatum cum Comitibus, Baronibus, Proceribus, & aliis Nobilibus & Comitibus regni ſui habitum in præmiſſis, de conſenſu eorum unanimi & concordi ordinavit & ſtatuit, ut ordinationes & ſtatuta prædicta ſub forma modis & conditionibus ſupra contentis a primo die Maii prox' futur' in antea inviolabiliter obſerventur perpetuis temporibus valitura: quodque tranſgreſſores ipſorum pœnis extunc ſubjaceat annotatis.

The reaſon wherefore this Parliament was holden at Carliſle, appeareth by the writ of Parliament directed to the Lords, viz. Quia ſuper ordinationem & ſtabilimentum terræ noſtræ Scotiæ, necnon & aliis negotiis nos, & ſtatum regni noſtri ſpecialiter tangentibus, apud Carliolum in octab. ſancti Hillarii proxim' futur' Parliamentum tenere, &c.

There were two miſchiefs before the making of this Act, but both of them tended to one end, viz. the grievous oppreſſion of Churches and Monaſteries; the one from the Pope, the other mentioned in the Preamble.

For the firſt, In hoc Parliamento per majores graves depoſitæ fuerunt querimoniæ de oppreſſionibus Eccleſiarum, & Monaſteriorum multiplicibus, & extortionibus pecuniarum per Clericum Domini Papæ, magiſtrum Wil' Teſta noviter in regno inductum:

ductum: præceptum eſt eidem Clerico de aſſenſu Comitum & Baronum, ne de cætero talia exequatur: For the King and the Lords adjudged it unjuſt, that the Pope ſhould take any profit of the houſes of their foundation: and therefore this Act dealeth not herewith, but the Lords prohibited his collector, and left the party grieved to his remedy by Prohibition, or other remedy by Law, as had bẽn before, and after was uſed, as by the Records and Authorities quoted in the margent (amongſt many others) which are worthy your reading, more at large appeareth; and ſo much for that firſt miſchief. The other miſchief appeareth at large in the Preamble, wherein the Pope, having ſo great power over the Abbots and Priors aliens, had a hand for his own benefit.

Rot.clauſ. 17 H.3. m.37. Rot. Franc' 16 H.3. Rex,&c. Juſtic' ſuis de bãco 29 H.3. tit.3. a tergo. 39 E.3.tit.22. a tergo. 48 E.3. tit. 33. Bract.lib.4. fol. 250.b. Rot.Parl. 50 E.3.nu.64.&c. to the 117. 51 E.3. nu.78. Rot.Parl. 13 R.2.nu.43. 2 H.2.fol.10.&c. 4 H.4. rot.clauſ. m.11.

* The Commons complain againſt proviſions coming from Rome, whereby ſtrangers were enabled within this Realm to enjoy Eccleſiaſtical dignities, &c. by means whereof daily alms was decayed, the treaſure of the Realm tranſported, the ſecrets of the Realm diſcovered, and the Clerks within the Realm impoveriſhed; And that the Pope had in moſt covert wiſe granted to two new Cardinals ſundry Eccleſiaſtical livings within the Realm, and namely to Cardinal Paragots above 10000 Marks yearly tax: they therefore require of the King and Lords ſome remedy, for that they neither could, nor would any longer bear thoſe ſtrange oppreſſions, or elſe to help them to expell out of this Realm the Popes power by force. The anſwer of the King was, that he underſtood well theſe miſchiefs, and willeth, that betwẽn the Lords and Commons ſome remedy might be found, whereunto he might aſſent: hereupon the Lords and Commons ſent for this Act of 35 E.1. upon the like complaint, thereby forbidding, that any thing ſhould be attempted, or brought into the Realm, which ſhould tend to the blemiſhment of the Kings Prerogative, or in prejudice of his Lords or Commons, and ſo at that time, upon conſideration had of this Act of 35 E.1. and for further remedy, an Act of proviſion was made.

* Rot.Parl.17 E.3. nu.59.

Alſo the Statute of 25 E.3. made againſt proviſions, reſervations, &c. reciteth this Statute of 35 E.1. and grounded that Act upon the ſame. So as this Act (as you may perceive) hath bẽn of very great and high account. And now let us peruſe the words thereof.

25 E.3.ſtat.unic. * 25 E.3. de proviſor' per aſſent des Counts, Barons & auters Nobles.

¶ Ex gravi querela Magnatum, Procerum, & aliorum Nobilium regni.] It is recited by the ſaid Act of 25 E.3. that this Act of 35 E.1. was made at the petition of the Comminalty of the Realm, and here it is ſaid, ex gravi querela Magnatum, &c. and yet both ſtand well together; for Knights of the Shire, and other Gentlemen of the houſe of Commons are included under theſe words, aliorum * Nobilium: for Nobilitas eſt duplex, ſuperior & inferior; ſuperior belongeth to the Lords of Parliament, and inferior to Knights and Gentlemen of name and blood, who are in this Act termed Nobiles.

9 E.3.cap.2. 27 E.3. ſtat.ſtap. per les Prelates, Counts, Barons, & auters Grandees des Counties,&c. Vid. 9 E.2.ſtat. of Shrieſes. 7 E.1. de Religioſis. W.2. in the Preamble.

¶ Quod cum Monaſteria, Prioratus, & domus religioſæ, &c.] Here is rehearſed the end of the creation of Religious houſes, viz. ad laudem & honorem Dei, & exaltationem ſanctæ Eccleſiæ per Regem, & progenitores ſuos, & per dictos Magnates, & Nobiles, & eorum anteceſſores fundata fuiſſent, &c.

4 R.2.nu.13. Rot.Parl.1 R.2. nu. & 13 R.2.nu.19.

Quidam eorum ſuperiores alieniginæ.] It appeareth in a Parliament Roll, that the Clergy (whereof Priors aliens were part) had a third part of the poſſeſſions of the Realm. Theſe Abbots, Priors, and Prioreſſes aliens were juſtly complained of, as by this Act appeareth, and many times upon like complaints fair promiſes were made for reformation, but no amendment could be had, till they were taken away, and their poſſeſſions given to the King by Act of Parliament. See the Parliament Rolls of 4 H.4. and 1 H.5.

Rot.Parl.an.4 H.4. nu.23.& 48. 1 H.5. ca.7. & Rot.Parl. 1 H.5.nu.38. 22 E. 4.44. 38 H.6.34. 21 H.7.fol.1. &c. 13 E.3.264. 14 E.3.21. 20 E.3. annuity 24. 40 E.3.10. 27 aſſ.48. 14 H.4. 37. 22 E.4.44. 21 H.7.7. 7 R.2. cap.12. 13 R.2. cap. 1 H.5.ca.7.

Note, theſe Priors and Prioreſſes aliens were Normans and French men, and in time of War with France, the King by the Common Law might and did ſeiſe the poſſeſſions of the Priors aliens within this Realm into his hands, without any office, &c. See the ſtatutes of 7 R.2. 13 R.2. 1 H.5. againſt Frenchmen and aliens, to receive or have any Benefice in England.

¶ In

¶ In Anglia, Hibernia, Scotia, & Wallia.] For Scotland, &c. ſee divers records and authorities in Law, Rot. Parl. Paſch. 21 E.1. rot.1. & rot.2. magnum placitum inter Regem de Norwey, & Regem Scotiæ. Rot. Vaſc' 22 E.1. m.23. Trin.25 E.1. coram Rege, rot.6. Norff. Robertus de Tony, &c. Mich. 33 E.1. coram Rege, rot.127. Scotia. 28 E.1. the letters of all the Nobility of England in the name of themſelves, and of the whole Comminalty in Parliament aſſembled to the Pope, a Duplicat whereof under the ſeals remain in the Exchequer, which we have ſeen, and a copy whereof we have. In the ſame year read alſo the Kings letters to the Pope, which Walſingham rehearſeth, pag.49. and the Lords letters, pag.54. Read alſo Walſing. pag.17, &c. where many more Authors be cited, & pag.31,32. 121,138. & Matth' Weſtm' pag. 420,428,443,452. &c. Holl.fol.116,117. Policron.lib.7.cap.39. Stow,303. Fox, 269,341. Rot.Parl. 14 E.3. nu.13. Stat.2. & 42 E.3. nu.7. See in the Parliament Rolls, in every Parliament petitiones Scotiæ. Rot.pat.10 E.3. 2 part comes Arundel, &c. Brit.fol.25. a.b. 6 E.3.18. 1 E.3.17. per Cant' 8 R.2. cont' claim 13. 7 H.4. corody 7. 13 Hen.4.4. & 5. 8 Hen.5.4. 7 E.4.27. Forteſcue, fol.17. Pl.com.126. Dier 13 El. in manuſcript.

¶ Diverſa tallagia, cenſus, & impoſitiones inſolitas, graves & importabiles, &c.] See the expoſition upon the Statute of Magna Charta, cap. 30. when the King began to uſe the word of impoſition; but here is the firſt ſtatute that we remember, wherein this word Impoſition was uſed; and obſerve well from whom it came; and therefore here theſe impoſitions be called inſolitæ, and this word Noviter &c. expreſſeth ſo much; and becauſe they were unaccuſtomed and newly impoſed, they were graves and importabiles, and againſt the laws and cuſtoms of the Realm.

¶ Contra leges & conſuetudines dicti regni.] Here it appeareth, that tallages, aſſeſſments, or impoſitions, ſet by any ſuperiour, forreiner or other, Eccleſiaſtical or Temporal, upon his inferiour, or any other, though they have never ſo fair pretexts, as to recover the holy Land, &c. are againſt the law and cuſtom of the Kingdom of England.

12 H.7. cap.6. accord.

And here it is to be obſerved, how this Act hath ſince the 17 year of E.3. been dealt withall; for at that year a branch of this Statute was recited, that forbad that any thing ſhould be attempted or brought into the Realm, which ſhould tend to the blemiſhment of the Kings prerogative, or in prejudice of his Lords and Commons, which now is wholly omitted,

Rot.Parl.17 E.3. ubi ſupra. nu.59.

Accipe nunc horum inſidias, & crimine ab uno
Diſce omnes——

¶ Minuitur cultus divinus, &c.] That Acts of Parliament have been made at the petition ſometime of the Nobles, many times of the Commons, and of the Lords and Commons in cauſes Eccleſiaſtical for the honour of God, for advancement of divine worſhip, for the inſtruction of Gods people, and maintenance of works of piety, and the like, appeareth in this Act, and in many other Acts of Parliament: for Reges qui ſerviunt Chriſto, faciunt leges pro Chriſto. To omit the ancient Statutes made in Parliament before the Conqueſt of Maſter Lamberts edition, we will recite ſome few which ſhall ſuffice in a matter ſo frequent and evident, W.2.13 E.1. cap.43. 21 E.3. fol.60. the Biſhop of Norwich his caſe, 25 E.3. cap.22. 25 E.3. Stat.de proviſoribus, 27 E.3.cap.1. 36 E.3.cap.8. 38 E.3.Stat.2.cap.1. & cap.4. 45 E.3.cap.3. Rot.Parl.51 E.3.nu.13. 3 R.2. ca.3. 7 R.2.cap.12. 12 R.2.ca.15. 13 R.2.Stat.2.cap.2.& 3. 16 R.2.cap.5. 2 H.4.ca. 3.& 4. 4 H.4.cap.12.& 13. 6 H.4.cap.1. 7 H.4.cap.6.& 8. 9 H.4.cap.8. 1 H.5.cap.5. 3 H.5.cap.4. 2 H.5.cap.3. 2 H.5. Stat.2. ca.2. 4 H.5.ca.6. 3 H.7.ca.6. 11 H.7cap.8. and generally all Statutes that take away privilege and benefit of Clergy and Sanctuary.

¶ Sic

¶ Sic quod olim in uſus pios, & ad divini cultus augmentum charitative fuerat erogatũ, nunc in cenſum reprobum eſt converſum.] If it be obſerved of whom they are ſpoken, theſe words are ſharp and bitter: for, as a reprobate is abjectus & creatus diabolo, ſo a reprobate ſenſe is an abject and damned ſenſe, and the like is frequent in Parliaments, when any thing is attempted or done againſt the honour of God, the prerogative and dignity of the King, the laws of the Realm or the Common-wealth. Lib. 11. fol. 73. b. Magd. Coll. caſe.

* The Pope, for divers uſurpations, is called the common enemy to the King and the Realm. Rot. Parl. * 18 E. 3. Stat. 1. nu. 38. Vid. 17 E. 3. nu. 59.

a By brocage and unlawful means the Pope receiveth ſo much of Eccleſiaſtical dignities in this Realm, as is more then the Kings wars, who then was, and of long time had been in an open and chargeable war with France. *a* 25 E. 3. nu. 13. *b* 38 E. 3. cap. 1, 2, 3, 4.

b Note, in the Roll of Parliament of the Statute of Proviſors, there are more ſharp and biting words againſt the Pope, then in the print, a myſtery often in uſe, but not to be known of all men. *c* Rot. Parl. 50 E. 3. nu. 96. Rot. Parl. 18 E. 3. nu. 32. Stat. 2.

c That the brocars of the ſinful City of Rome for money promote many Caitifes, being altogether unlearned and unworthy, to a thouſands Marks livings yearly, where the learned and worthy can hardly obtain twenty Marks, whereby learning decayeth. Rot. Parl. 51 E. 3. nu. 13. 3 R. 2. ca. 3. & Rot. Parl. nu. 37. 6 H. 4. cap. 1. of the horrible miſchiefs and damnable cuſtoms introduct of new into the Court of Rome, &c. 3 H. 5. nu. 11.

¶ De concilio Comitum, Baronum, Magnatum, Procerum, & aliorum Nobilium, & regni ſui Comitatuum in Parliamento ſuo, &c.] Here the Prelates are omitted, and this Statute was made by the King, the Nobles, and the Comminalty; and it is objected, that therefore this is no Act of Parliament, and for authority the Roll of Parliament in 21 R. 2. is cited, where it is ſaid, that divers judgments were heretofore undone, for that the Clergy were not preſent. To this ſome have anſwered, that a Parliament may be holden by the King, the Nobles and Commons, and never call the Prelates to it; But we hold the contrary to both theſe, and ſhall make it manifeſt by Records of Parliament, wherein for the better underſtanding hereof, we will obſerve this order: firſt, that the Biſhops ought to be called to Parliament: ſecondly, where Acts of Parliament are good without them: and laſtly, that this Act of 35 E. 1. is an Act of Parliament.

To the firſt, every Biſhop hath a Barony, in reſpect whereof, ſecundum legem & conſuetudinem Parliamenti, he ought to be ſummoned to the Parliament as well as any of the Nobles of the Realm: And likewiſe 26 Abbots, and two Priors had Baronies, and thereby were alſo Lords of Parliament; and when the Monaſteries were diſſolved, the Lords houſe loſt ſo many members that had voices in Parliament. But ſeing it was done by authority of Parliament, it was no impeachment to the procedings in Parliament.

To the ſecond, if they voluntarily abſent themſelves, then may the King, the Nobles and Commons make an Act of Parliament without them, as where any offender is to be attainted of high treaſon, or felony, and the Biſhops abſent themſelves, and the Act proceed, the Act is good and perfect.

Likewiſe if they be preſent, and refuſe to give any voices, and the Act proceed, the Act of Parliament is good without them.

Alſo where the voices in Parliament ought to be abſolute, either in the affirmative or negative, and they give their voices with limitation or condition, and the Act proceeds, the Act is good; for their conditional voices are no voices.

Of every of theſe we will produce examples out of the Records and Rolls of Parliament.

At a Parliament holden a die Nativitatis Sancti Johannis Baptiſtæ, in 3 ſeptimanas anno 15 E. 2. the Prelates, Counts, Barons, and Commons of the Realm charge Sir Hugh Spencer the father Earl of Wincheſter, and Hugh his ſon Earl of Gloceſter with many high and hainous offences, as the Act called Dorſ. clauſ. an. 15 E. 2. m. 25. See Vet. Mag. Char. 2 part fol. 56.

exilium Hugonis Leſpencer patris & filii; the Earls and Barons, Peers of the Realm, in the preſence of the King pronounce judgment againſt them, as by the Act appeareth: And after at a Parliament holden at York, a die Paſch. in 3 ſeptimanas, the ſaid judgment and attainder againſt them (by the Kings exorbitant favour towards them, whoſe favourites they were) was annulled; and one of the cauſes was, for that the ſaid judgment was given without the Prelates, whereas the ſame being an Act of Parliament, and entered into the Parliament Roll, as other Acts at that Parliament were, and the conſent of the Biſhops doth manifeſtly appear, for that they were parties to the charge, and after it was adjudged by authority of Parliament, that the ſaid judgment againſt them was good, and confirmed the ſame; ſo as they that beheld but on the outſide of the annullation, and looked not into all parts of the former Act, and knew not the Act of 1 E. 3. might ſay as the Commons ſaid, as is aforeſaid, in 21 R. 2.

Dorſ. clauſ. 15 E. 2. m. 13. in ſchedula.

1 E. 3. cap. 1.

3 R. 2. ſtat. 2. ca. 3. Read the Statute at large.

At the Parliament holden in the third year of King Richard the ſecond, a Bill was exhibited againſt the Clergy with many bitter words, for the ill diſpoſing of the Dignities, Offices, Parſonages, Canouries, Prebends, and other Benefices, whereof they were Patrons, and were in their gift, whereof many inconveniences followed, the Biſhops and other Prelates taking great offence at this Bill, abſented themſelves, whereupon the King, upon the complaint of his Commons, by the advice and common aſſent of all the Lords Temporal, paſſed the Bill.

Rot. Parl. 3 R. 2. nu. 38. & 40. See 7 R. 2. ca. 12.

In the ſame Parliament great complaint was made of the extortions committed by the Biſhops and their Officers; and thereupon a Bill was framed, that Juſtices of Peace might enquire thereof, and a form of a Commiſſion deſired to be enacted; the Prelates and Clergy made their proteſtation expreſly againſt the ſaid Bill, to bear extortions, &c. tending to the blemiſhing of the liberty of the Church, &c. whereunto it was replied for the King, that neither for their ſaid proteſtation, nor other words in their behalf, the King would not ſtay to grant to his Juſtices in that caſe, and all other caſes, as was uſed to be done in times paſt, and was bound to do by vertue of his oath done at his Coronation, whereupon the act and form of a Commiſſion paſſed as was deſired.

Rot. Parl. 11 R. 2. nu. 9, 10.

At the Parliament holden in the 11 year of Richard the ſecond, in the beginning of the Parliament holden in that year, the Archbiſhop of Canterbury made openly in the Parliament a ſolemn proteſtation for himſelf, and the whole Clergy of his Province, which he deſired might be entred, and ſo it was: the effect whereof was, that albeit they might lawfully be preſent in all Parliaments, yet for that in this Parliament matters of treaſon were to be entreated of, whereat by the Canonical law they ought not to be preſent; they therefore abſented themſelves, ſaving their liberties therein otherwiſe: The like proteſtation did the Biſhop of Dureſme and Carliſle make. At which Parliaments divers ſtatutes were made, nothing concerning life or member, as the 7 Chapter concerning Merchants, the 8 Chapter touching Annuities, the 9 Chapter againſt new Impoſitions, the 11 concerning keeping of Aſſiſes, &c. all which were good and perfect ſtatutes, and yet the Prelates aſſented not to them.

13 R. 2. cap. 2.
13 R. 2. cap. 3.
Vid. 1 H. 5. ca. 7.

At the Parliament holden in the 13 year of Richard the ſecond, when the two Bills were read, the one intitled a Confirmation of the ſtatute of proviſors, and the forfeiture of him that accepteth a Benefice againſt that ſtatute; the other intitled the penalty of him that bringeth in a ſummons or ſentence of excommunication of the Pope againſt any perſon upon the ſtatute of Proviſors, and of a Prelate executing it, both which Bills tended to reſtrain the Popes authority, which he claimed in diſpoſing of Eccleſiaſtical promotions within this Realm. The Archbiſhops of Canterbury and York for the whole Clergy of their provinces made their ſolemn proteſtations in open Parliament, that they in no wiſe meant or would aſſent to any ſtatute or law in reſtraint of the Popes authority, but utterly withſtood the ſame, the which their proteſtations at their

Rot. Parl. 13 R. 2. nu. 24.

requeſts

requeſts were inrolled, and yet both Bills paſſed by the King, Lords and Commons, which are in print.

See the ſtatute of 16 R.2. and many others. 16 R.2. cap.5.

It is enacted by the King, Lords Temporal, and Commons, that no man ſhould contract or marry himſelf to any Queen of England, without the ſpecial licence and aſſent of the King, on pain to loſe all his goods and lands. Rot.Parliament. 6 H.6.nu.27.

The Biſhops and Clergy being preſent 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 impoſed no deadly ſin, this was holden no aſſent; and therefore it was enacted by the King, Lords Temporal, and Commons, and ſo ſpecially entred, omitting the Prelates.

And thus much as concerning the ſecond Article ſhall ſuffice.

As to the third point, when an Act is ſpecially entred, that it was enacted by the King, the Lords Temporal and Commons, it muſt be intended, that the Biſhops abſented themſelves, or, if they were preſent, proteſted againſt it, or gave ſuch voices as were contra legem & conſuetudinem Parliamenti. And for this Act of 35 E.1. in Letters patents made within 8 years after this ſtatute, it is affirmed to be an Act of Parliament; by four Acts of Parliament in the 4 and 5. and 25 year of E.3. the ſame is holden for an Act of Parliament, and ſo it is in 13 R.2. cap.2. ſtat.2. Rot.Patent. 7 E.2. 1 part m.6. 4 E.3.ca.6. 5 E.3. cap.3. 25 E.3. ſtat unic. and by the Record of Parliament in 17 E.3. ubi ſupra. 20 E.3. Abb.14. 27 H.6. annuitie 41.

¶ Cenſum aliquem per ſuperiores, &c.] This branch is plain, and needeth no expoſition.

¶ Conſiderata qualitate delicti, & regiæ prohibitionis penſato contemptu, graviter puniatur.] That is, by fine and impriſonment, according to the quality of the offence.

¶ Ne de cætero tallagia, &c.] Hereby are all ſuch tallages forbidden.

¶ Et hoc ſub forisfactura omnium, quæ in poteſtate ſua obtinent, & forisfacere poterunt in futuro.] This is the like forfeiture as is given by other ſtatutes in caſe of Præmunire, viz. the forfeiture of his lands, which he may forfeit, and of his goods, and to be impriſoned at the will of the King. Vid.ſtat. de monet a mag.cap.3. Vet.Mag.Chart. fol.38. 20 E.3. cap.1.

¶ Quod Abbates Ciſterc & Præmonſtr ordinum, &c.] This branch (as it hath been reſolved) is impoſſible, and inconvenient to be obſerved: impoſſible, becauſe it is hereby enacted, that the common ſeal, &c. ſhould be in the cuſtody of the Prior, and of four of the worthieſt and diſcreeteſt of the Covent, ſealed up with the private ſeal of the Abbot, &c. and if any writing, &c. ſhould be ſealed with any other ſeal then with the ſaid common ſeal ſo (as is aforeſaid) kept in cuſtody, it ſhould be void, &c. for if it be kept in cuſtody under the ſeal of the Abbot, then no writing can be ſealed by the Abbot, and if the Abbot taketh it out, and ſeal, &c. then is it not kept in cuſtody under his private ſeal; and therefore it was reſolved by the whole Court of the Common Pleas, that this branch being impoſſible to be obſerved, is void; the Court alſo reſolved, that it was inconvenient: for they ſaid, that if the ſtatute ſhould be obſerved, every deed that paſſed under the common ſeal might be undone by a ſimple ſurmiſe, &c. 27 H.6. annuitie 41. Lib.8. fol.118. Doct. Bonhams caſe.

Bracton ſaith, that Lex eſt ſanctio juſta, jubens honeſta, & prohibens contraria; ſo as every law muſt have three qualities: 1. it muſt be juſta: 2. jubens honeſta: 3. prohibens contraria. And if it be juſta, it muſt have five properties; 1. it muſt be 1. poſſibilis, 2. neceſſaria, 3. conveniens, 4. manifeſta, 5. nullo privato commodo, ſed communi utilitati edita. And this is grounded upon holy writ, Legum conditores juſta decernunt. Væ qui condunt leges iniquas, & ſcribentes injuſtitiam ſcripſerunt. Bract.lib.1.cap. Prov.cap.8. ver.15. Eſa.cap.10. ver.1.

¶ Cæterum intentio Domini Regis non exiſtit, &c.] By this branch the power of viſitation is reſerved with three reſtrictions or limitations: 1. Juxta officii ſui debitum, 2. in his duntaxat, quæ ad obſervantiam regularem, & ordinis ſui diſciplinam pertinent: 3. proviſo quod,&c. nihil, &c. extra præfatum regnum, &c. deferant.

¶ Et licet ordinationum & ſtatutorum, &c. a Parliamento proxim præterito.] That is, at a Parliament holden at Weſtminſter, die Dominica prox' poſt feſtum ſancti Matthæi Apoſtoli, in the 33 year of E. 1.

¶ Cum majore deliberatione & maturitate procederent.] According to the ancient rule, Deliberandum eſt diu, quod ſtatuendum eſt ſemel.

Statutum de frangentibus Priſonam,
EDITUM *Anno* 1 Edw. 2.

DE priſonariis priſonam frangentibus, Dominus Rex vult & præcipit, quod nullus de cætero, qui priſonam fregerit, ſubeat judicium vitæ vel membrorum pro fractione priſonæ tantum, niſi cauſa, pro qua captus & impriſonatus fuerit, tale judicium requirat, ſi de illa ſecundum legem & conſuetudinem terræ fuiſſet convictus, licet temporibus præteritis aliter fieri conſuevit.

At a Parliament holden at Weſtminſter in anno regni E.1.23. the like Act of Parliament was made with the like title as this is, totidem verbis; and therefore it may be, that it was recited and affirmed at the Parliament holden in 1 Ed.2. which only is mentioned in our printed Bwks. Inter placita & mem. coram Domino Rege, anno 23 E.1.

It appeareth by our ancient Authors of the Law, that if a priſoner, whatſoever the cauſe was for which he was committed, had broken the Kings priſon, and eſcaped out, it was felony; becauſe, intereſt reip. ut carceres ſint in tuto: but yet it muſt have been an actual breaking of the priſon; for if the dor had been open, and he had gone out, or if others without his privity had broken open the priſon dor, &c. and he goeth out and eſcapeth, or if the Gaoler himſelf had let him out; in theſe caſes it had been no felony, becauſe the priſoners did not actually break the priſon. And ſo it is of a felon that is under cuſtody of the Kings officer (which is an impriſonment in Law) and divers men do reſcue or take him by force out of the cuſtody of the Kings officer, this is felony in them all by the common Law. And ſo doth Huſſey chief Juſtice report the caſe, that in the raign of Ed.4. when he was Attorney, it was reſolved by Billing chief Juſtice, Choke, and the Judges, that the reſcous of a felon, to take him out of cuſtody and priſon, was always felony by the common law, but of the priſoner himſelf it was not, &c. which muſt of neceſſity be intended, when other men did reſcue him, or break open the priſon without his privity, and theſe words in the report (tanque leſtatute fuit fait de frangentibus priſonam) ought to be omitted. Bract.lib.2.fol. Brit.fol.17. Flet.lib.1.ca.26. Stanf.pl.cor.30.b. 1 H.7. fol.6.a.

Forasmuch as every man deſireth to be at natural liberty, the Mirror complains of the common law in this point, and ſaith, Abuſion eſt a tener eſcape de priſoner, ou de bruſerie del Gaole pur peche mortell, car cel uſage neſt garrant per nul ley, ne in nul part eſt uſe forſque in ceſt Realme, & en France, eins eſt leu garrantie de ceo faire per la ley de nature. Hoc ille. Mirr.cap.5.§.1.

¶ Nullus de cætero qui priſonam fregerit.] Nota, *a* he that is in the Stocks, or under lawful arreſt, is ſaid to be in priſon, although he be not infra parietes carceris: and therefore this branch extendeth as well to a priſon in law, as to a priſon in deed. *b* Albeit divers lords of liberties have cuſtody of the priſons, and ſome in fee, yet the priſon it ſelf is the Kings pro bono publico; and therefore it is to be repaired at the common charge: for no ſubject can have the priſon it ſelf, but the King only: And therefore Britton, ubi ſupra, ſpeaking of the Kings priſon, doth include all priſons. * For that which was called the Biſhops

a 1 aſſ. p.6. 1 E.3. 17. 3 E.3. coron. 312. 22 E.3. ibid. 251.
b 11 E.2. det.172. 13 E.3. barr.153. 27 aſſ.27. 8 H.4. 18. 20 E.4.5. Brit.72. 5 H.4. cap.10.
* 22 E.3. coron. 250. 8 E.2. ibid. 419. 23 H.8.c.11. 1 E.6.cap.12.

Biſhops priſon, ſée the ſtatutes of 23 H.8. and 1 E.6. This (fregerit) is intended an actual breaking of priſon, as hath béen ſaid.

1 aſſ.p.6. 3 E.3. coron.333. Fitz. Juſtice of Peace, fo.23. 15 H.7.1,2. Pl.com.fol.13.

If the Sheriff have a Capias upon an indictment of felony againſt A. and coming to arreſt him, is ſo diſturbed, that he cannot arreſt him, this is no felony; for A. was never in priſon: and therefore priſon in that caſe could not be broken.

In ſome caſes it is lawful for the priſoner to break priſon both at the common law, and notwithſtanding this ſtatute: As if the priſon be ſet on fire, either by lightning or otherwiſe, unleſs it be by the privity of the priſoner, he may break priſon for ſafeguard of his life. Et ſic in ſimilibus. For, Quodcunque aliquis ob tutelam corporis ſui fecerit, jure id feciſſe videtur. But it muſt be inevitabilis neceſſitas.

1 H.6.5. 9 E.4.26. See W.2. cap.34. Rot.parl.an. 2 H 6. nu.60. Vid. 14 El. cap.2.

¶ Subeat judicium vitæ vel membrorum.] Theſe words at the making of this Act extended as well to treaſon as to felony. In 2 H.6. it was enacted to continue till the next Parliament, that if any be indicted, appealed, or taken for ſuſpition of high treaſon, and break the ſame priſon, it ſhould be high treaſon. And the reaſon of that Act was, becauſe that by the ſtatute of 25 Ed.3. de proditionibus, no other offence then is therein mentioned can be adjudged high treaſon, until it be declared by Act of Parliament; And therefore that Act of Parliament being in the negative, if a man be indicted or appealed for high treaſon, and break the priſon, this breaking of priſon is not high treaſon, till it be ſo declared by Parliament, becauſe ſuch offence is not mentioned in the Act of 25 E.3. and therefore according to the Act of 25 E.3. it is ſo declared by the Act of 2 H.6. And yet the reſolution of the Judges in 1 H.6. is good law: for there the caſe is, that a man outlawed of felony was in priſon in the Kings Bench, in which priſon he knew that certain perſons were there committed for high treaſon, and brake priſon, and carried and led out the priſoners that were there in Gaol for treaſon; and ſéeing there be no acceſſaries in high treaſon, this was an abetting and aiding of them for their eſcape, he knowing them to be impriſoned for high treaſon; and therefore he was indicted, and arraigned, and pleaded not guilty, and was found guilty. And it was adjudged by all the Juſtices, that he was a Traitor, and was drawn and hanged, which are the words of the book. And the principal end of this caſe was to prove, that a man attainted of felony might be indicted, arraigned, tried, and adjudged for high treaſon, for the benefit of the King, and the odiouſneſs of the offence, and the ſcope and end of the caſe is ever to be obſerved; for in that caſe it muſt alſo be intended, that the treaſon was committed before the felony. And it is to be remembred, that the ſtatute of 1 Mar. doth not only repeal all treaſons, but all declarations of treaſon made by any Act of Parliament, ſince the ſaid Act of 25 E.3. A man impriſoned for petit larceny, or for killing of a man, ſe defendendo, or by miſfortune, and break priſon, it is no felony, becauſe he ſhall not for the firſt offence ſubire judicium vitæ vel membri. Et ſic de ſimilibus.

Rot.parl. 2 H.6. nu.18. Sir John Mortimers caſe declared in Parliament to be treaſon.

2 H.6. cap.ult. in print.

Staf.pl.coron.32.f.

Vid.Stanf.pl.coron.107.b.

1 Mar. the firſt Statute.

¶ Niſi cauſa, &c.] This Act ſpeaking of a cauſe, is to be intended of a lawful cauſe; and therefore falſe impriſonment is not within this Act.

Impriſonment is a reſtraint of a mans liberty under the cuſtody of another, by lawful warrant in déed or in law. Lawful warrant is, when the offence appeareth by matter of record, or when it doth not appear by matter of record. By matter of record, as when the party is taken upon an indictment at the ſuit of the King, or upon an appeal at the ſuit of the party. When it doth not appear by matter of record, as when a felony is done, and the offender by a lawful Mittimus is committed to the Gaol for the ſame. But betwéen theſe two caſes there is a great diverſity: for in the firſt caſe, whether any felony were committed or no, if the offender be taken by force of a Capias, the warrant is lawful; and if he break priſon it is felony, albeit no felony were committed. But in the other caſe, if no felony be done at all, and yet he is committed to priſon for a ſuppoſed felony, and break priſon, this is no felony, for there is no cauſe; and the words of this

See Magna Charta cap.29.

Act

Act are, Niſi cauſa, pro qua captus fuerit, tale judicium requirit. So as the cauſe muſt be juſt, and not feigned; for things feigned require no judgment.

If A. give B. a mortal wound, for which A. is committed to priſon, and breaketh priſon, B. dyeth of the wound within the year, this death hath relation to the ſtroke; but becauſe relations are but fictions in law, and fictions are not here intended, this eſcape is no felony, 11 H.4.11. Plowd.com.401. Coles caſe.

Seeing the weight of this buſineſs touching this point, to make the eſcape either in the party, or in the Gaoler, felony, dependeth upon the lawfulneſs of the Mittimus, it ſhall be neceſſary to ſay ſomewhat hereof: First, it muſt be in writing in the name, and under the ſeal of him that makes the ſame, expreſſing his office, place and authority, by force whereof he maketh the Mittimus, and is to be directed to the Gaoler, or Keeper of the gaol or priſon. 2. It muſt contain the cauſe (as it expreſly appeareth by this Act, niſi cauſa pro qua captus, &c.) but not ſo certainly, as an indictment ought, and yet with ſuch convenient certainty, as it may appear judicially, that the offence tale judicium requirit as pro alta proditione, viz. in perſonam Domini Regis, or pro contrafactura magni ſigilli Domini Regis, &c. or pro contrafactura monetæ Domini Regis, or pro parva proditione, viz. pro morte (talis) magiſtri ſui, or pro felonia, viz. pro morte talis, &c. or pro burglaria, or robberia, &c. or pro felonia, viz. for ſtealing of a horſe, &c. or the like, ſo as it may in ſuch a generality appear judicially, that the offence tale judicium requirit. And this is proved both by reaſon and authority. By reaſon, firſt, for that it is in caſe of felony, quæ inducit ultimum ſupplicium; and therefore ought to have convenient certainty, as is aforeſaid. 2. Alſo it muſt have convenient certainty, for that a voluntary eſcape is felony in the Gaoler. 3. If the Mittimus ſhould be good generally pro felonia, then as the old rule is, Ignorantia Judicis foret calamitas innocentis; for the truth of the caſe may be, that he did ſteal Charters of land, or wood growing, or the like, which in law are no felonies; and therefore in reaſon in a caſe of ſo high nature concerning the life of man, the convenient certainty ought to be ſhewed.

25 E.3.42.b. coron.134. 32 E.3. coron. 248. 9 E.4.32.

By Authority. The conſtant form of the indictment in that caſe for eſcape either by the party, or voluntarily ſuffered by the Gaoler is, that he was arreſted pro ſuſpicione cujuſdam feloniæ, viz. pro morte cujuſdam M.N. felonice interfecti, or the like; for the indictment muſt rehearſe the effect of the Mittimus, which directly proveth, that the cauſe in ſuch a general certainty ought to be ſhewed. Vide 25 E.3. fol.42.

Alſo if a man be indicted of treaſon, or indicted or appealed for felony, the Capias thereupon, whereby the party is to be arreſted, comprehendeth the cauſe. A fortiori the Mittimus, whereby the party is to be arreſted, having no ſuch ground of record as the Capias hath, muſt, purſuing the effect of the Capias, comprehend the cauſe in convenient certainty, 25 E.3.fol.42. pl.32. there ought to be a certain cauſe: and in the ſame leaf, pl.35. in caſe of breaking of priſon, the cauſe of the impriſonment ought to be ſhewed.

25 E.3.fol.42.

If a man be indicted, quod felonice fregit priſonam, &c. generally, it is not good; for the indictment ought to rehearſe the ſpecialty of the matter according to the ſtatute, that he being impriſoned for felony, &c. fregit priſonam. We have quoted many other books, which though they be not ſo certainly reported, as might have been wiſhed, yet the judicious Reader will gather fruit of them. But ſee before the expoſition of Magna Charta, cap.29. verbo, Aut per legem terræ, and obſerve well the words of the writ of Habeas corpus, for a direct proof that the cauſe ought to be ſhewed.

9 E.4.26. 41 aſſ. 5. 22 E.3. coron. 242,243,248. 43 E.3. ibid.424. 3 E.3. ibid.312, 328,333,345,346. 2 E.3.fo.1. 26 aſſ. 51. 22 E.3.13. 27 aſſ.42. 27 aſſ. p.116. 15 E.2. coron.38. 9 H.4.1. 10 H.4.7. 11 H.4. 11. 8 E 2.coro.422 430,431. 27 H.6.7. 39 H.6.33. 1 R.3. ca.3. 2 H.5. cap.7. 21 H.7.17.

Laſtly, ſee hereafter in the expoſition of the ſtatute of Articuli cleri, the reſolution of all the Judges of England, the anſwer to the 21. and 22. objections, which we will in no ſort abridge for the excellency thereof, but refer you to the fountains themſelves.

Hereupon it appeareth, that the common Warrant or Mittimus to anſwer to ſuch things as ſhall be objected againſt him, is utterly againſt law.

Now as the Mittimus muſt contain the cauſe, ſo the concluſion muſt be according

ding to law, viz. the priſoner ſafely to keep, until he be delivered by due order of law, and not until he that made it ſhall give other order, or the like.

And if the Warrant be not lawful, if the Gaoler ſuffer ſuch a priſoner to eſcape voluntarily, it is no felony in him. But admit the Warrant be lawful, and in particular for felony, and the Gaoler ſuffer him willingly to eſcape, until the priſoner be attainted, the Gaoler ſhall not anſwer to the eſcape, though the priſoner be indicted; for the felony of the priſoner ſhall not be tried betwæn the King and the Gaoler, becauſe the priſoner is a ſtranger thereunto. But if the Warrant be lawful, and there is a felony done, and one is lawfully committed for the ſame, if he break priſon, he may be indicted for that eſcape before he be attainted of the offence, becauſe he is party. And albeit the Gaoler be de facto, & non de jure, yet ſhall he be charged for the eſcape.

4 E.3.17. 1 H.7.6.

39 H.6.33.

And certainly this law of Niſi cauſa, &c. agræth with that judicial ſaying of Felix in the holy hiſtory, Sine ratione mihi videtur mittere vinctum, & cauſas ejus non ſignificare. And whatſoever Felix was, yet according to that old rule, Veritas à quocunque dicitur, a Deo eſt.

Act. Apoſt. ca. 25. ver. 27.

¶ Tale judicium requirit.] If a man be committed by lawful Warrant for ſuſpition of felony done, if he break priſon, he may be indicted for that eſcape, albeit the commitment be for ſuſpition of felony, and yet no judgment can be given againſt him for ſuſpicion, but for the felony it ſelf, whereof he is ſuſpected; and ſo be many preſidents.

43 E.3. cor. 454. 44 aſſ. 12. Rot. Parl. 2 H.6. nu. 18. Sir John Mortimers caſe. 1 H.6.5. 1 Mar. Dier 99.

And albeit the words be in the preſent time, yet if a felony be made after by Parliament, it is within the proviſion of this ſtatute.

For other matters concerning eſcapes, you may read the learned Treatiſe of Juſtice Stanford, pl. coron. fol. 30, 31. &c. which need not here to be inſerted.

Statutum

Stat. de Militibus.

EDITUM *Anno* 1 Edw. 2.

THis Writ King Edward the ſecond granted in the time of the Parliament, and cauſed it to be entred of Record; and therefore is here ſtiled by the name of a Statute or Ordinance, and the very frame of the Writ doth prove it to be no Act of Parliament: but let us take the ſord as we find it, and peruſe the words thereof.

DOminus Rex conceſſit, quod omnes illi qui milites eſſe debent, & non ſunt, & diſtricti fuerint ad arma militaria ſuſcipienda infra feſtum natalis Domini, habeant reſponſum ad prædicta arma militaria ſuſcipienda uſque in octab' ſancti Hilarii ſine actione: & extunc diſtringantur, niſi interveniant. Cap. 1.

¶ Item conceſſit quod ſi aliquis queſtus fuerit in Cancellaria, quod diſtrictus fuerit, &c. & non habeat 20 l. terræ in feodo, vel ad terminum vitæ ſuæ, & hoc velit verificare per patriam, tunc diſcretis & legalibus militibus de Comit' ad prædictam inquiſitionem capiendam ſcribatur. Et ſi per illam inquiſitionem ita fuiſſe conſtiterit, fiat ei remedium, & ceſſet diſtrictio. 2.

¶ Item ſi aliquis implacitatus fuerit de tota terra ſua, vel etiam de parte ejuſdem, ita quod reſiduum non ſufficiat ad valentiam xx l. & hoc poſſit verificare, tunc ceſſet diſtrictio, donec placitum illud terminetur. 3.

¶ Item ſi quis eorum teneatur in certis debitis atterminatis ad Scaccarium, ad certam ſummam inde percipiendam per annum, & reſiduum terrarum ſuarum ultra prædictam ſummam valorem xx l. annuarum non attingat, ceſſet diſtrictio donec prædictum debitum fuerit ſolutum. 4.

¶ Et nullus diſtringatur ad arma militaria ſuſcipienda antequam venerit ad ætatem 21 annorum. 5.

¶ Item nullus ratione terræ ſuæ, quam tenet in maneriis, quæ nunc ſunt de antiquo dominico coron', & tanquam ſokemanus, & quæ terra dabit tallagium, quando dominica Regis talliantur, diſtringatur ad arma militaria ſuſcipienda. 6.

¶ Item de illis qui terras ſuas tenent in ſocagio de aliis maneriis quam de maneriis coronæ, & nullum faciunt ſervitium forinſecum, ſcrutentur rotuli de Cancellaria de tempore Prædeceſſorum Domini Regis, & fiat ſecundum quod fieri conſuevit. 7.

¶ Eodem modo fiat de Clericis infra ſacros exiſtentibus laicum feodum tenentibus, qui milites eſſe deberent, ſi laici fuiſſent. 8.

9. ¶ Item nullus diſtringatur pro Burgagiis ſuis, licet valorem xx l. attingant, aut plus.

10. ¶ Item qui milites eſſe debent & non ſunt, qui per modicum tempus terras ſuas tenuerunt, & ſimiliter qui nimiam ſenectutem, vel defectum membrorum habent, ſeu morbum incurabilem, vel onus liberorum, vel placitorum allegant, vel alias cauſas neceſſarias prætendunt: adeant ad Robertum Typtoſt, & Anto' de Berk', & coram eis fines faciant: quibus eſt injunctum, quod ſecundum diſcretionem eorum, rationabiles fines admittant de viris prædictis.

¶ Dominus Rex conceſſit, quod omnes illi qui milites eſſe debent, & non ſunt.] That is, the King doth grant, that all they which ought to be Knights, and be not, &c. In theſe words conſiſt the lock and the key of this Writ, viz. who by the Common Laws of this Realm ought (that is, de jure) to be compelled to be a Knight. For the underſtanding whereof, and of all the parts of this Writ, ſeven things fall into conſideration. (There being four kinds of Knights, viz. Knights of the Garter, Knights Banaret, Knights of the Bath, and Knights Bachelor of the Spur, 3 E.4. cap.5.)

1 First, Of what degree Knighthood is. This Writ being underſtood of a Knight Bachelor.

11 E.3. brev.259. 26 E.3. brev.250 42 E.3.9. 22 R.2. brev.925. 4 H.4.2 7 H.4.7. 11 H.4.19 14 H.4.21. 7 H.6. 15. 14 H. 6. 15. 22 H. 6. 32 H. 6. 29. 35 H.6.55. 5 E.4.19. 15 E.4. 14. 18 E.4.20. 21 E.4.71. * Brit. cap.25. f. 49.b. Mic. 9 E.1. in banco Rot. 63. Somerſet.

It is reſolved in our Books without any contradiction, that the name of this Knight is a name of dignity, and of the inferior degree of Nobility; and therefore is parcel of his name. And in Writs and inditements he ought to be named Knight by the Common Law; but ſo it is not of the ſtate of an Eſquire or Gentleman. * Britton ſtileth a Knight honorable, and in the Record of 9 E.1. Sir John Acton Knight hath the addition of Nobilis; and certain it is, that, ſeeing it is a name of dignity, it followeth, that he ought to have ſufficient revenue to maintain that dignity. See W. 1. c.10. verbo Chivalers, that in ancient times Coroners ought to have been Knights, and the reaſon was, for that being Knights, the Law did intend, that they had ſufficient to anſwer both the King and the Subject, if cauſe ſhould require. But hereof more ſhall be ſaid hereafter.

In the mean time this is to be obſerved, that the greater dignity doth never drown the leſſer dignity, but both ſtand together in one perſon: And therefore, if a Knight be created a Baron, yet he remaineth a Knight ſtill; and if the Baron be created an Earl, yet the dignity of a Baron remaineth, & ſic de cæteris. But if an Eſquire (which is no name of dignity) be made a Knight, the degree of the Eſquire is changed, and gone, and cannot ſo be named in any judicial proceeding.

7 E.4.7. adjudge. 32 H.6.29.

2 Secondly, Of what quality he that is to be a Knight ought to be, debet, &c. We have not found that a Baron, being a Lord of Parliament, or higher degree, hath been diſtrained ad arma militis ſuſcipienda. But he that is diſtrained, &c. ought to be a Gentleman of name and blood, claro loco natus, or elſe non debet, he ought not to be compelled by this Writ to take the dignity of Knighthood upon him.

Vid. 7 E.3 cap.19 Un Gentlehome de eſtate. Pat. 38 E.3. part 1. m.10. Rex licentiam dedit Johanni Beverly armigero ſuo, &c. Rot. clauſ. 19 R.2. in dorſ. proclam. ne quis Miles, Armiger, &c. 11 H. Rot. clauſ. m. 2. Omnes qui tenent per ſervitium militare in capite, milites fiant. * See here cap. 6. & 7. Glanv. lib. 7. cap.9. Burgenſis.

Of ancient time thoſe that held by Knights ſervice were regularly Gentile, and thoſe which held by Socage, or in Burgage, were Peomen or Burgeſſes: and this appeareth by the ancient rule of Law, * Lex Angliæ nullum ſcutagium aut ſervitium militare de Sockmannis aut Burgenſibus expetit. It appeareth alſo by many ancient Records, and particularly by this Writ, that Sockmannus, &c. &

qui

qui terras tenent in ſocagio, &c. & nullum faciunt forinſecum ſervitium, that is, thoſe which hold in Socage, of what value ſoever, and do no Knights ſervice, ought not to be Knights, non debent, &c. And our Writ ſaith, Nullus diſtringatur pro Burgagiis ſuis, &c. no man ought to be diſtrained to be a Knight for the land which he holds in Burgage, &c. of what value ſoever. But though it were of ancient time a badge of Gentry to hold by Knights ſervice, yet now tempora mutantur, and many a Yeoman, Burgeſs, or Tradeſman purchaſe lands holden by Knights ſervice, and yet (non debet) ought not for want of Gentry be a Knight. At this day the ſureſt rule is, Nobiles ſunt qui arma gentilicia anteceſſorum ſuorum proferre poſſunt; therefore they are called Scutiferi, Armigeri, &c. When a Knight is degraded one of his puniſhments is, Quod Clypeus ſuus gentilicius reverſus erit, and here his arms be reverſed that beareth none.

Lands and tenements anciently holden by Knights ſervice, belonging to the Nobility and Gentry of the Realm, are not of the cuſtom of Gavelkind, which belonged to the Yeomanry, and were holden in Socage for the ſervice of the Plow: and this appeareth by the judgment of the whole Parliament in *a* 31 H. 8. c. 3. and by the book of 9 H. 3. tit. Preſcription 63. & 26 H. 8. f. 4. and the reaſon thereof was, becauſe the lands and tenements holden by Knights ſervice ſhould not be carried by deſcent into many hands of iſſues males, whereby the ſervice for defence of the Realm in a few deſcents ſhould be loſt or diminiſhed, and the owners (the lands being divided into ſo many hands) ſhould not be able to maintain the countenance of their order and degree. Inter Statuta ſeu Inſtitutiones H. 1. c. 11. Militibus qui per loricas terras ſuas deſerviunt, terras dominicarum carucarum ſuarum quietas ab omnibus gildis, & ab omni opere ipſo dono meo concedo; ut ſicut benignitas mea propenſior eſt in eis, ita mihi fideles ſint: & ſicut tam magno gravamine alleviati ſunt, ita equis & armis ſe bene inſtruant, ut apti & parati ſint ad ſervitium meum, & ad defenſionem Regni mei. And where it is enacted by the Statute of Prerogat' Regis, cap. 16. quod fœminæ non participabunt cum maſculis, it is to be underſtood of ſuch as be in equal degree; as the ſiſter ſhall not inherit with the brother, becauſe they be in equal degree; but the daughter of the ſon ſhall have a part with her uncle, for they be not in equal degree.

Mich. 9 E. 2. f. 61 in libro meo. Dower de ſocage terre, & nemy de terre tenus per ſervice de Chivaler, Litt. de la pluis beale.
a 31 H. 8. cap. 3. 9 H. 3. preſcript. 63. 26 H. 8. 4. b. Bract. fol. 77. Glanvil. fol. 46. In Bundello eſchaet. an. 1 E. 3 acc'.

Prerogat Regis, cap. 16. Vid. Paſch. 4 E. 1 in com' banco Rot. 22. Banc' for the cuſtom of Gavelkind. Hill. 10 E. 1. in banco Banc' per de Benbrokes caſe, & m. 18 E. 1. in banco Rot. 68. Suff. Laurence le Fryes caſe.

A Knight is by creation, and not by deſcent; a Gentleman is by deſcent, and yet I read of the creation of a *b* Gentleman; and thus it was: A Knight of France came into England, and challenged John Kingſton (a good and ſtrong man at arms, but no Gentleman) as the Record ſaith, Ad certa armorum puncta, &c. perficienda. Rex, ut prædictus Johannes honorabilius in præmiſſis accipiatur, ipſum Johannem ad ordinem Generoſorum adoptavit, & Armigerum conſtituit, & certa honoris inſignia ei conceſſit, &c. Note, the King made him no Knight, as his adverſary was, becauſe he was no Gentleman.

b Rot. Patent. an. 13 R. 2. part 1. 7 H. 4. fol. 7. 1 H. 5. cap. 1.

But for any thing that I have read and do remember in the Raign of H. 4. or ever before, Gentlemen of name and blood had very rarely the addition of Generoſus or Armiger, as of a ſtate or degree; but were diſtinguiſhed from Yeomen, who ſerve by the Plow, by their ſervice, viz. Knights ſervice, forinſecum ſervitium, but in the raign of H. 5. and ever ſince, they have had the addition of Gentlemen or Eſquires, and the reaſon thereof is this: It is enacted by the Statute of 1 H. 5. that in every Writ original of actions perſonals, appeals, and inditements, in which proceſs of outlary do lye, that to the name of the Defendants addition be made of the eſtate or degree, or myſtery: And hereupon in thoſe Writs addition was made as the caſe required, of Generoſus or Armiger; for if a Gentleman were named in ſuch a Writ Husbandman, or Yeoman, he may abate the Writ, by pleading that he is a Gentleman. And after this the like additions were made in Commiſſions, and after that in Grants and Conveyances, &c.

1 H. 5. cap. 5.

14 H. 6. 15. 22 H. 6. 3. 28 H. 6. 8. 38 H. 6. 10. 23 H. 6 cap. 15.

And great diſcord and diſcontentment would ariſe within the Realm, if Yeomen and Tradeſmen ſhould be called to the dignity of Knighthood, to take the place and precedency of the ancient and noble Gentry of the Realm. And the

eldeſt ſon of a Knight is an Eſquire, as his father ought to be, before he was called to the dignity of Knighthood.

3. Thirdly, Of what livelihood or revenue a Knight ought to be, debet, &c. And it is certain, that he ought to have a Knights fee: i. feodum unius militis. Herein three things are to be obſerved: Firſt, Whether the Law doth determine of what yearly value a Knights fee (viz. the lands and revenue of a Knight) ought to be. Secondly, If the Law define not the certainty of the value, what is eſteemed in Law a Knights fee. Thirdly, What eſtate he ought to have in it.

Lib.9. fol.124. Lowes caſe. 1.Part of the Inſtitutes, Sect. 112 Sir Tho. Smith, lib.1. cap.18. 11 H.3. ubi ſup.

To the firſt, The Law doth reſpect rather the value, then the content, viz. to be of ſufficient value to maintain the degree of a Knight, but doth not determine of any certain yearly value: for nothing is more incertain then the values of lands in ſucceſſion. And therefore in a Writ in the raign of H. 3. no value was expreſſed, but a Writ iſſued out of the Chancery generally to diſtrain omnes qui tenent per ſervitium militare.

9 H.3. Mag. Chart. c.2. Glanv. l.9.c.4 lib.7. fol.33. b. Rot.Parl. 20 E.1. Rot.4. * Trin. 1 E.2. coram Rege Rot. 4. Linc'. a Rot.clauſ.19 E.2 m. 16. in dorſ. b Brev. Regis, part 1 & 2. 2 R. 2. c Rot. Parl. * Hill. 40 H. 3. pag. 254. a. 30. ibid. a. 60.

At the making of Magna Charta a Knights fee was accounted the value of 20 l. and the fourth part thereof was a Knights relief. In anno 20 E.1. the value of the Knights fee in the Writ was 40 l. by our Writ in 1 E.2. 20 l. * Trin. 1 E.2.48. carucat terræ faciunt unum feodum militis. This was in the ſame year that this Writ was granted. a 19 E. 2. feodum unius militis annui valoris 40 l. b 2 R. 2. 10 l. per annum. 7 H.6. fol. 15. 10 l. per annum. c 18 H.6. nu. 43. 40 l. per an. &c. So as (as hath been ſaid) nothing is more incertain then the values of lands; but he muſt have feodum unius militis. And in ſeveral ages a Knights fee, as before it appeareth, was valued at ſeveral values. * The King cauſed a Proclamation to be ſet forth, that all ſuch as might diſpend 15 l. in lands ſhould receive the order of Knighthood, and thoſe that would not, or could not, ſhould pay their fines.

There was 5 Marks ſet on every Shriefs head, becauſe they had not diſtrained every perſon that might diſpend 15 l. lands, to receive the order of Knighthood, as was to the ſame Shriefs commanded.

d Vid. Camden. Brit. pag. 126. Note, a Baron and others of higher degrees are preſumed to have greater livings, as appeareth by their relief, Mag. Chart. cap. 2. l.2. fol.124. ubi ſup. Glanv. lib. 2. c.3 acc'. Paſch. 3 E.1 coram Rogero de Seton & ſociis ſuis, Rot.10. Ralph Normanvills caſe. 19 E.2. ubi ſup. e See here, cap.3.

d As to the ſecond, It appeareth before, that he ought to have a Knights fee: Then the only queſtion is, what quantity of land a Knights fee is. And without doubt this ſhall not be accounted by the acres; for ſome acre is of far greater value then another: and therefore that ſhould be as uncertain as the values be; but this is reſolved by prudent Sages of the Law of ancient time, who have reduced a Knights fee to a certain number of Carues, or Plow lands, which though they be incertain (for if the land be fertile and heavy, there goeth to a Plow land the leſſe; and if it be lighter, a greater quantity) yet it is as near to certainty as can be, and this computation time cannot alter: and therefore a Knights fee containeth e 12 Plow lands. And by this Writ it appeareth, that a Knights fee is here valued at 20 l. per an. And if he be impleaded for it, or any part thereof, &c. that he ſhall not be compelled to be a Knight, until the action be determined. And ſo likewiſe, if he be indebted to the King, and his debt ſtalled, he ſhall not be compelled to be a Knight, until his debt be paid: and the reaſon hereof is, that poverty ſhould not be apparelled with honour and dignity.

As to the third, he ought to have an eſtate in fee-ſimple or fee tail, as it appeareth in 20 Ed.1. ubi ſupra, in feodo & hæreditate. Or as Tenant by the curteſie (which in this Writ is intended by the name of tenant for life) whoſe heir by poſſibility may inherit.

4. The end. Fourthly, To what end he ought to be called to this dignity of Knighthood. And our Writ doth truly anſwer, ad arma militaria ſuſcipienda, to take upon him the military arms, or the arms of a Knight for the honor, and ſervice, and defence of the Realm; this is pro bono publico.

The Writs of Parliament are to return two Knights for every County gladiis cinctos, not that they ſhould come to the Parliament girt with ſwords, but that they ſhould be able to do Knights ſervice, & arma militaria exercere, the

ſword

ſworn being named, for that it is the Warden of all weapons: And therefore this end ought not to be pretended, and a private intended. Dicuntur arma, quia armos tegunt, & ab humeris dependent, & continent ſcutum, gladium, tela, & ea quibus præliantur. No inſufficient men are to be called ad arma militaria ſuſcipienda, ne dignitas hujus ordinis vileſceret.

Fifthly, Of what age he ought to be, &c. when he is called, debet, &c. By this Writ it appeareth, that he ought to be above 21. and this agreeth with Littleton, and other authorities and records; but this is ſo to be underſtood, that he cannot be compelled to be a Knight before 21. but, if he be made a Knight before that age, it is good enough. 5.

* And above the age of 60. (which in this Writ is called nimia ſenectus) no man ought to be compelled ad arma militaria ſuſcipienda, or to ſerve as a ſouldier. If the Plaintif in an appeal of death, &c. be of the age of 60. or maimed, or of any great infirmity, ſo as he is not able to fight, he ſhall not be compelled to wage battel. And by this Writ it appeareth, that if he hath defectum membrorum, ſeu morbum incurabilem, vel alias cauſas rationabiles, that he ſhall not be compelled ad arma militaria ſuſcipienda, becauſe he is not able to perform the ſervice and duty of Knight-hood. * See here, cap. 10 Rot. claus. 20. H. 3 part 1. m. 25. & m. 22, 23. Rot. Parl. 5 H. 4. nu. 24, 25. 33 H. 8. c. 22 E. 4 19. 15 E. 2. coron. 185. Brit. f. 40. Fitz. N. B. 163. n. ſimile. See here, cap. 10.

Sixthly, By what means he ought to be called, debet, &c. he ought to be called by Writ. It hereby appeareth, that this Writ iſſueth out of the Chancery to the Shrief, commanding him, quod proclamari faciat, quod omnes illi qui habent * terræ, arma militaria ſuſcipiant citra (tale feſtum) & quod ſummoneri fac' eos, &c. and this Writ is returnable into the Chancery at a certain return. At which day of the return it is neceſſary for them that are ſummoned to appear; for if they make default, it is finable (which, it may be, is the mark that is aimed at) but if they appear, and take the dignity upon them, or refuſe for the cauſes aforeſaid, or any of them, they ought not to be fined. 6. 7 H. 6. 15. See here, cap. 2. * The yearly value of the land.

This Writ and the return thereof is by Writ of Mittimus tranſmitted into the Court of Exchequer, who cannot make a commiſſion to others concerning this matter, but ought to proceed legally themſelves, becauſe they have but delegatam poteſtatem, quæ non poteſt delegari, and they are learned and ſworn Judges, and able to allow the parties their juſt exceptions.

For Writs of Summons or Diſtringas for the dignity of Bachelor Knight-hood, ſee Rot. claus. 29 H. 3. m. 9. 44 H. 3. parte prima. ibid. 6 E. 1. dorſ. 8. ibid. 6 E. 2. dorſ. 29. &c.

Seventhly, If he ought to be a Knight, and refuſe, or make default, how often he may be fined. 7.

He can by the Law be fined but once, no more then an apprentice at Law, that is called by Writ ad ſtatum & gradum ſervientis ad legem, if he refuſe, and be fined, he cannot be fined again; for ſo he might be fined infinitely, & infinitum in jure reprobatur. Rot. Parl. 18 H. 6. nu. 43. 14 H. 6. 2, 3 Fitz. N. B. 231. b. Le Roy navera que un penſion.

The Commons petitioned (to have a declaratory Law) that no perſon once making fine for not being Knight, be never after called thereunto again. But this was but to avoid charge and veration. Vid. Dyer 35 H. 8. 55. Brook briefe 150. fine pur contempts 19.

We do not remember that we have read any thing touching this matter in Bracton, Britton, Fleta, Mirror, the Regiſter, or F. N. B.

No Clerk within holy Orders, be he regular or ſecular, though he hath a Knights fee, can be made a Knight, as by this Writ it appeareth. See here, cap. 7.

See Matth. Paris, anno 29 H. 3. pag. 882. Rex de natali Johannem de Gateſden Clericum, & multis ditatum beneficiis, ſed omnibus ante expectatum reſignatis, quia ſic oportuit, baltheo cinxit militari. This laſt clauſe, Item qui milites eſſe debent, & non ſunt, and yet have juſt cauſe of excuſe (as for inſtance, that they are impleaded for their land, which before by this Writ is allowed for a good excuſe, &c. or have any other of the juſt cauſes of excuſe here expreſſed, and yet will not ſtand to a legal and chargeable pleading and proceeding) See here, cap. 10.

ceeding) they may, if they will, redeem their vexation and charge, and ſubmit themſelves to a reaſonable fine: And therefore by this Writ Robert Tiptoft, and Anthony de Berke are appointed to aſſeſs reaſonable fines; but this muſt be underſtood by conſent, for this was no legal proceeding. I find in the Parliament Roll de anno 18 E. 1. Rot. 6. that Robert Tiptoft was Juſticiarius Domini Regis. And ſo, it is like, Anthony Berk was; but certainly what he was, we have not yet found.

For Knights of the Bath.

Writs to divers ad ordinem militiæ de Balneo ſuſcipiendum juxta antiquam conſuetudinem in creatione uſitatam, Rot. clauſ. in dorſo, 10 Hen. 7. 20. Septembris.

For Knights Bachelors.

See Rot. Vaſch' 13 E. 3. m. 13. William de la Pole created. Rot. eodem m. 1. Rich. de Cobham created. Rot. Pat. 15 E. 3. part 2. m. 22. John Coupland created. See Matth. Paris, pag. 1354, 1355, &c. Camden Brit. 124.

Articuli

Articuli Cleri,

EDIT' Anno nono Edwardi 2.

LOng before the making of this Statute, that is, Anno 42 H.3. An. Domini 1258. Boniface younger ſon of Thomas Earl of Savoy, Archbiſhop of Canterbury, Uncle of Elianor Queen of England, who was daughter of Reymond Earl of Province by Beatrix daughter of Thomas Earl of Savoy, and ſiſter to the ſaid Boniface, made divers and many Canons and Conſtitutions Provincial directly againſt the Laws of the Realm, which Canons begun thus: Univerſis Chriſti fidelibus ad quos præſens pagina pervenerit, Bonifacius miſeratione divina Cantuarienſis Archiepiſcopus, totius Angliæ Primas, & ſui ſuffraganei in verbo ſalutari Salutem. And ending thus, Actum apud Weſtm', ſexto Iduum Junii Anno Domini 1258. In quorum omnium robur & teſtimonium, &c. which being exceeding long, we could not here inſert. But the effect of them is, ſo to uſurp and incroach upon many matters, which apparently belonged to the Common Law, as, amongſt many others, the trial of limits and bounds of pariſhes, and right of patronage againſt trial of right of tithes (by Indicavit) againſt Writs to the Biſhop upon a recovery in a Quare impedit, &c. in the Kings Courts. That none of their poſſeſſions or liberties, which any of the Clergy had in the right of their Church, ſhould be tried before any ſecular Judge; (ſo as they would not have conuſance of things ſpiritual, but of temporal alſo) and concerning diſtreſſes and attachments within their fees, and in effect, that no quo warranto ſhould be brought againſt them, when they had been long in poſſeſſion, with an invective againſt the perverſe interpretation by the Judges of the Realm (ſo they termed it) of Charters, &c. granted to them, and in ſubſtance againſt the ancient and juſt Writs of Prohibition in caſes, where by the Laws of the Realm they are maintainable: and commandment given to admoniſh the King, and interdict his lands and revenues, and thunder out excommunications againſt the Judges and others if they violated, or obeyed not the ſaid Canons and Conſtitutions. And this was the principal ground of the controverſies between the Judges of the Realm and the Biſhops: for this cauſed Eccleſiaſtical Judges to uſurp and incroach upon the Common Law. But notwithſtanding the greatneſs of the Archbiſhop Boniface, and that divers of the Judges of the Realm were of the Clergy, and all the great Officers of the Realm, as Chancellor, Treaſurer, Privy Seal, &c. were Prelates; yet the Judges proceeded according to the Laws of the Realm, and ſtill kept, though with great difficulty, the Eccleſiaſtical Courts within their juſt and proper limits. The Courts by pretext of theſe Canons being at variance, at length at a Parliament holden in the 51 year of Henry the third, Boniface, and the reſt of Clergy complained (which was ultimum refugium, and yet the right way) and exhibited many Articles as grievances, called Articuli Cleri. the Articles exhibited by the Clergy either by accident or induſtry are not to be found; ſome of the Anſwers are extant, viz. Ex fragmento Rot. Parl. anno 51 H.3.

Ad 16 Articulum de uſuris reſpondetur, quod licet Epiſcopus, &c.

Ad 17 Articulum de defamatione, &c. reſpondetur, ſi aliquis defamatus, &c. ſi autem certæ perſonæ nominatæ fuerint, per quas rei veritas melius ſcire poterit, nominantur, ad proband' matrimonium vel teſtamentum: & ſimiliter in accuſationibus tales perſonæ impediendæ non ſunt, quia teſtimonium perhibent veritati, ſed propter hoc non eſt congregatio Laicorum faciend', quia per congregationem hujuſmodi ſervitia Dominus poſſit deperire.

Ad 18 Artic' Dominus poſuit remedium.

Ad 19 Artic' reſpondetur, quod Archiepiſcopus de Epiſcopatu vacante non ſe intromittat quantum ad temporalia, ſed tantum ſe de ſpiritualibus intromittat, &c.

Ad 20 Artic' reſpondetur, quod de Clericis occiſis, & de hiis qui forſan occidi contigerit, in futurum fiat juſtitia, ſecundum legem & conſuetudinem terræ, &c.

Ad 21 Artic' reſpondetur, quod excommunicatus per Ordinarium, aut alium Judicem competentem, & denunciatus taliter, debebit ab aliis evitari, niſi forſan excommunicatus conqueratur ſe eſſe injuſte excommunicatum pro aliqua re temporali, de qua non debeat coram Ordinario reſpondere, ad cujus probationem debet admitti, ſed in cæteris quæ proponit, ut actor, eſt interim evitandus.

Ad 22 Artic' mandabitur Juſticiariis, quod non fiant aliquæ priſæ per totam terram de bonis aliquorum, niſi debitæ priſæ & conſuetæ.

Ad 23 Artic' reſpondetur, quod cum aliqui teneant aliquod de Rege in capite unde cuſtodia debeatur, cuſtodiæ omnium terrarum de quibuſcunque tenentes illi tenementa illa teneant cum acciderint (ſi inde cuſtodia habere debeatur) hactenus ex conſuetudine approbata ſpectarunt ad Regem, ſed Epiſcopi ſi expedire videant, inhibeant tenentibus ſuis, ne aliqua tenementa ſibi perquirant de feodis Regis.

Theſe anſwers are yet extant of Record, and are worthy to be read at large as they yet remain; whereunto we refer the Reader. This is to be obſerved, That none of Boniface's Canons againſt the Laws of the Realm, and the Crown and Dignity of the King, and the Birth-right of the Subject, are here confirmed.

What the reſidue of the Articles and the Anſwers were, may be collected by that Act of Parliament entitled prohibitio formata de Statuto Articuli Cleri, **which was made in the time of** Edward **the firſt, about the beginning of his raign, which beginneth thus:** Edwardus, &c. Prælatis, &c. **wherein divers points are to be obſerved againſt the Canons of** Boniface: 1. Quod cognitiones Placitorum ſuper feodalibus & libertatibus feodalium, diſtrictionibus, officiis miniſtrorum, executionibus contra pacem noſtram factis, felonum negotiationibus, conſuetudinibus ſecularibus, attachiamentis, vi laica malefactoribus rectatis, robberiis, arreſtationibus, maneriis, advocationibus Eccleſiarum, ſufficientibus aſſiſis juratis, recognitionibus laicum feodum contingentibus, & rebus aliis, & cauſis pecuniarum, & de aliis catallis & debitis quæ non ſunt de teſtament' vel matrimon' ad Coronam & dignitatem Regiam pertineant, & de Regno de conſuetud' ejuſdem Regni approbata, & hactenus obſervata.

Prohibitio formata de Statut'Artic' Cleri. Vet. Magn. Chart.

2. Et Proceres, & Magnates, aut alii de eodem Regno temporibus noſtrorum Prædeceſſorum regum Angliæ, ſeu noſtra authoritate alicujus non conſueverunt contra conſuetudinem illam ſuper hujuſmodi rebus in cauſa trahi vel compelli ad comparendum coram quocunque Judice Eccleſiaſtico.

3. Et quod Vicecomites non permittant, quod aliqui laici in baliva ſua conveniunt ad aliquas recognitiones per ſacramenta ſua faciend', niſi in cauſis matrimonialibus & teſtamentariis. **Of the ſubſtance of this prohibition,** Britton **ſpeaketh in theſe words,** Et queux ount ſuffert pleader en Court Chriſtian auters pleas, que de teſtament ou matrimonie, & de pure ſpiritueltie ſans deniers prender de lay home. Ou ſuffert Lay home jorrer devant Lordinary.

Vid. Brit. fol. 35.b. Regiſt. 36.b. 29 E. 3.29. F.N.B. 41.a. Vid. Vet. Magn. Chart. fol. 91. Bertelets impreſſion.

After this the Clergy, at a Parliament holden in the raign of the ſame King E. 1. **preferred Articles intitled** Articuli contra prohibitionem Regis, **fearing leſt by reaſon of ſome general words therein they might be prohibited in cauſes, which of right belonged to the Eccleſiaſtical juriſdiction, in theſe words,** Sub hac forma impetrant laici prohibitionem in genere ſuper decimis, oblationibus, obventionibus, mortuariis, redemptionibus penitentiarum, violenta manuum injectione in clericum vel commiſſarum, & in cauſa defamationis, in quibus caſibus agitur ad pœnam canonicam imponendam. **And a juſt and legal anſwer was made thereunto, as thereby appeareth. But it is to be obſerved, that they claimed nothing which was againſt the true meaning of the ſaid Act, called** Prohibitio

bitio formata de ſtatuto Artic' Cleri, nor any of Boniface's Canons to be confirmed: and ſo theſe matters reſted, until the Parliament holden at Lincoln in the ninth year of Edw. 2. where Walter Reynolds Biſhop of Canterbury (whom the King favoured, ſaith one, ſingularly for the opinion he had of his fidelity and great wiſdom, and Walterus Archiepiſcopus Cantuarienſis Regi gratioſiſſimus fuit, hæc Regis æquiſſima reſponſa ad Prælatorum petita obtinuit) in the name of himſelf and of the Clergy, preferred theſe 16 Articles, and by authority of Parliament had the anſwers here following ſeriatim to every one of them. And now it may ſeem high time that we ſhould deſcend to the peruſal of the Preamble, and the Articles and Anſwers. But before we come to it, it ſhall conduce much to the right underſtanding of divers parts of this Act of Parliament, to report unto you what Articles Richard Bancroft Archbiſhop of Canterbury exhibited in the name of the whole Clergy in Michaelmas Term Anno 3 Jac. Regis to the Lords of the Priby Councel againſt the Judges of the Realm, intitled, Certain Articles of abuſes, which are deſired to be reformed, in granting of Prohibitions, and the anſwers thereunto, upon mature deliberation and conſideration, in Eaſter Term following, by all the Judges of England, and the Barons of the Exchequer, with one unanimous conſent under their hands (reſolutions of higheſt authorities in Law) which were delivered to the Lords of the Councel. And we for diſtinction ſake (becauſe we ſhall have occaſion often to cite them) call them Articuli Cleri 3 Jacobi. Mat. Parker f. 229

His Majeſty hath power to reform abuſes in Prohibitions. 1.

The Clergy well hoped, that they had taken a good courſe in ſeeking ſome redreſs at his Majeſties hands concerning ſundry abuſes offered to his Eccleſiaſtical juriſdiction, by the over frequent and undue granting of Prohibitions; for both they and we ſuppoſed (all juriſdiction, both Eccleſiaſtical and Temporal being annexed to the Imperial Crown of this Realm) that his Highneſs had bæn held to have had ſufficient authority in himſelf, with the aſſiſtance of his Councel, to judge what is amiſs in either of his ſaid juriſdictions, and to have reformed the ſame accordingly; otherwiſe a wrong courſe is taken by us, if nothing may be reformed that is now complained of, but what the Temporal Judges ſhall of themſelves willingly yield unto. This is therefore the firſt point, which upon occaſion lately offered before your Lordſhips by ſome of the Judges, we deſire may be cleared, becauſe we are ſtrongly perſwaded as touching the validity of his Majeſties ſaid authority, and do hope we ſhall be able to juſtifie the ſame, notwithſtanding any thing that the Judges, or any other can alledge to the contrary. Objection.

No man maketh any queſtion, but that both the juriſdictions are lawfully and juſtly in his Majeſty, and that if any abuſes be, they ought to be reformed; but what the Law doth warrant in caſes of Prohibitions to kæp every juriſdiction in his true limits, is not to be ſaid an abuſe, nor can be altered but by Parliament. Anſwer of the Judges.

The forms of Prohibitions prejudicial to his Majeſties authority in cauſes Eccleſiaſtical. 2.

Concerning the form of Prohibitions, foraſmuch as both the Eccleſiaſtical and Temporal juriſdictions be now united in his Majeſty, which were heretofore de facto, though not de jure derived from ſeveral heads, we deſire to be ſatisfied by the Judges, whether, as the caſe now ſtandeth, the former manner of Prohibitions heretofore uſed importing an Eccleſiaſtical Court to be aliud forum à foro regio, and the Eccleſiaſtical Law not to be Legem terræ, and the procædings in thoſe Courts to be contra Coronam & Dignitatem Regiam, may now without offence and derogation to the Kings Eccleſiaſtical prerogative be continued, as though either the ſaid juriſdictions remained now ſo diſtin- Objection.

guished and severed as they were before, or that the Laws Ecclesiastical, which we put in execution, were not the Kings and the Realms Ecclesiastical Laws, as well as the Temporal Laws.

Answer. It is true, that both the jurisdictions were ever de jure in the Crown, though the one sometimes usurped by the See of Rome; but neither in the one time, nor in the other hath ever the form of Prohibitions been altered, nor can be but by Parliament. And it is contra Coronam & Dignitatem Regiam for any to usurp to deal in that, which they have not lawful warrant from the Crown to deal in, or to take from the Temporal jurisdiction that which belongeth to it. The Prohibitions do not import, that the Ecclesiastical Courts are aliud then the Kings, or not the Kings Courts, but do import, that the cause is drawn into aliud examen then it ought to be: And therefore it is always said in the Prohibitions (be the Court Temporal or Ecclesiastical, to which it is awarded) if they deal in any case which they have not power to hold plea of, that the cause is drawn ad aliud examen then it ought to be: And therefore contra Coronam & Dignitatem Regiam.

3. A fit time to be assigned for the Defendant, if he will seek a Prohibition.

Objection. As touching the time when Prohibitions are granted, it seemeth strange to us, that they are not only granted at the suit of the Defendant in the Ecclesiastical Court after his answer (whereby he affirmeth the jurisdiction of the said Court, and submitteth himself unto the same;) but also after all allegations and proofs made on both sides, when the cause is fully instructed and furnished for sentence: yea, after sentence, yea after two or three sentences given, and after execution of the said sentence or sentences, and when the party for his long continued disobedience is laid in prison upon the Writ of excommunicato capiendo, which courses, forasmuch as they are against the rules of the Common Law in like cases (as we take it) and do tend so greatly to the delay of justice, vexation, and charge of the subject, and the disgrace and discredit of his Majesties jurisdiction Ecclesiastical, the Judges (as we suppose) notwithstanding their great learning in the Laws, will be hardly able in defence of them to satisfie your Lordships.

Answer. Prohibitions by Law are to be granted at any time to restrain a Court to intermeddle with, or execute any thing, which by Law they ought not to hold plea of, and they are much mistaken that maintain the contrary. And it is the folly of such as will proceed in the Ecclesiastical Court for that, whereof that Court hath not jurisdiction; or in that, whereof the Kings temporal Courts should have the jurisdiction. And so themselves (by their extraordinary dealing) are the cause of such extraordinary charges, and not the Law; for their proceedings in such case are coram non Judice. And the Kings Courts that may award Prohibitions, being informed either by the parties themselves, or by any stranger, that any Court Temporal or Ecclesiastical doth hold plea of that (whereof they have not jurisdiction) may lawfully prohibit the same, as well after judgment and execution, as before.

4. Prohibitions unduly awarded heretofore in all causes almost of Ecclesiastical cognizance.

Objection. Whereas it will be confessed, that causes concerning Testaments, Matrimony, Benefices, Churches, and Divine Service, with many offences against the 1,2,3 4,5.6,7,8,9, & 10. Commandments, are by the Laws of this Realm of Ecclesiastical cognizance, yet there are few of them, wherein sundry Prohibitions have not been granted, and that more ordinarily of latter times, then ever heretofore, not because we that are Ecclesiastical Judges do give greater cause of such granting

granting of them, then before have bæn given, but for that the humor of the time is grown to be to eager against all Eccleſiaſtical juriſdiction. For whereas (for examples ſake) during the raign of the late Quæn of worthy memory there have bæn 488 Prohibitions, and ſince his Majeſties time 82 ſent into the Court of the Arches; We humbly deſire your Lordſhips, that the Judges may be urged to bring forth one Prohibition of ten, nay the twentieth Prohibition of all the ſaid 488. and but two of the ſaid 82. which upon due conſiderations with the libels in the Eccleſiaſtical Court, they ſhall be able to juſtifie to have bæn rightly awarded: we ſuppoſe they cannot; our Predeceſſors, and we our ſelves have ever bæn ſo careful not to exceed the compaſs and limits of the Eccleſiaſtical juriſdiction: which if they ſhall refuſe to attempt, or ſhall not be able to perform, then we refer our ſelves to your Lordſhips wiſdoms, whether we have not juſt cauſe to complain, and crave reſtraint of this over laviſh granting of Prohibitions in every cauſe without reſpect. That which we have ſaid of the Prohibitions in the Court of the Arches, we verily perſwade our ſelves may be truly affirmed of all the Eccleſiaſtical Courts in England, which doth ſo much the more aggravate this abuſe.

Anſwer. It had bæn fit they ſhould have ſet down ſome particular caſes, in which they find the Eccleſiaſtical Courts injured by the Temporal (as their Lordſhips did order) unto which we would have given a particular anſwer; but upon theſe generalities nothing but clamor can be concluded. And where they ſpeak of multitudes of Prohibitions; for all granted to, or in reſpect of any Eccleſiaſtical Court, we have heretofore cauſed diligent ſearch to be made in the Kings Bench and Common Pleas, from the beginning of his Majeſties raign, unto the end of Hilary Term, in the third year of his raign; in which time we find, that there were granted unto all the Eccleſiaſtical Courts in England out of the Kings Bench but 251. whereof 149. were de modo decimandi, upon unity of poſſeſſion, for trees of 20 years growth and upwards, and for barren and heath ground, and all out of the Common Pleas, but 62 whereof 31 were ſuch as before, and the reſt grounded upon the bounds of Pariſhes, or ſuch other cauſes as they ought to be granted for; but for that which was done in the late Quæns time, it would be too long a ſearch for us to make, to deliver any certainty thereof. And for his Majeſties time, they requiring to have but two to be lawfully warranted upon the libel in the Eccleſiaſtical Court, we have ſix to ſhew to be lawfully warranted upon the libel there, and ſo are all the reſt of like kind, by which it will appear, that this ſuggeſtion is not only untrue, but alſo, that the extraordinary charges growing unto poor men, are of neceſſity by means of the undue practices of Eccleſiaſtical Courts.

The multiplying of Prohibitions in one and the ſame cauſe, the libel being not altered.

Objection. Although it hath bæn anciently ordained by a Statute, that when a conſultation is once duly granted upon a Prohibition made to the Judge of holy Church, the ſame Judge may proceed in the cauſe, by vertue of that conſultation, notwithſtanding any other Prohibition to him delivered, provided that the matter in the libel of the ſame cauſe be not engroſſed, enlarged, or otherwiſe changed; yet notwithſtanding Prohibitions and conſultations in one and the ſame cauſe, the libel being no ways altered according to the ſaid Statute, are lately ſo multiplied, as that in ſome one cauſe, as aforeſaid, two, in ſome three, in ſome other ſix Prohibitions, and ſo many conſultations have bæn awarded, yea divers are ſo granted out of one Court: As for example, when after long ſuit a conſultation is obtained, it is thought a ſufficient cauſe to ſend out another Prohibition in revocation of the ſaid conſultation, upon ſuggeſtion therein contained, that the ſaid conſultation minus commode emanavit. By which pretty device the Judges of thoſe Courts which grant Prohibitions, may, notwithſtanding the

ſaid Statute, upon one libel not altered, grant as many Prohibitions as they liſt, commanding the Eccleſiaſtical Judges in his Majeſties name, not to proceed in any cauſe that is ſo divers times by them prohibited, whereby the poor Plaintifs do not know when their conſultations (procured with great charge) will hold, and ſo finding ſuch and ſo many difficulties, are driven to go home in great grief, and to leave the cauſes in Weſtminſter Hall, the Eccleſiaſtical Judges not daring to hold any plea of them. Now may it pleaſe your Lordſhips, the premiſſes being true, we humbly deſire to hear what the Judges are able to produce for the juſtifying of theſe their proceedings.

Anſwer. It were fit they ſhould ſet down particular cauſes, whereupon this grievance is grounded, and then we doubt not but to anſwer it ſufficiently, without uſing any pretty device, ſuch as is ſet down in this Article.

6. The multiplying of Prohibitions in divers cauſes, but of the ſame nature, after conſultations formerly awarded.

Objection. We ſuppoſe, that as well his Majeſties Eccleſiaſtical juriſdiction, as alſo very many of his poor, but dutiful ſubjects, are greatly prejudiced by the granting of divers ſeveral Prohibitions, and conſultations in cauſes of one and the ſame nature and condition, and upon the ſelf ſame ſuggeſtions: For example, in caſe of beating a Clerk, the Prohibition being granted upon this ſuggeſtion, that all pleas de vi & armis belong to the Crown, &c. notwithſtanding a conſultation doth thereupon enſue, yet the very next day after, if the like ſuggeſtion be made upon the beating of another Clerk, even in the ſame Court another Prohibition is awarded. As alſo, where 570 Prohibitions have been granted ſince the late Queens time into the Court of Arches (as before is mentioned) and but 113 conſultations afterwards upon ſo many of them obtained: Yet it is evident by the ſaid conſultations, that (in effect) all the reſt of the ſaid Prohibitions ought not to have been awarded, as being grounded upon the ſame ſuggeſtions, whereupon conſultations have been formerly granted: And ſo it followeth, that the cauſes why conſultations were awarded upon the reſt of the ſaid Prohibitions, were for that either the Plaintifs in the Court Eccleſiaſtical were driven for ſaving of further charge, to compound, to their loſs, with their adverſaries, or were not able to ſue for them; or being able, yet through ſtrength of oppoſition againſt them, were conſtrained to deſiſt; which is an argument to us, that the Temporal Judges do wittingly and willingly grant Prohibitions, whereupon they know, before hand, that conſultations are due: And if we miſtake any thing in the premiſſes, we deſire your Lordſhips, that the Judges, for the juſtification of their courſes, may better enform us.

Anſwer. It ſhall be good, the Eccleſiaſtical Judges do better enform themſelves, and that they put ſome one or two particular caſes to prove their ſuggeſtions, and thereupon they will find their own error; for the caſe may be ſo, that two ſeveral Miniſters ſuing in the Eccleſiaſtical Court for beating of them in one and the ſelf ſame form, that the one may and ought to have a conſultation, and the other not. And ſo it is in caſes of Prohibitions, de modo decimandi; and hereof groweth the overſight in making this objection. And we aſſure our ſelves, that they ſhall not find 570 Prohibitions granted into the Arches ſince her late Majeſties death; for we find (if our Clerks affirm truly upon their ſearch) that out of the Kings Bench have been granted to all the Eccleſiaſtical Courts in England but 251 Prohibitions (as before is mentioned) from the beginning of his Majeſties raign, unto the end of Hilary Term laſt; and out of the Common Pleas not 63. And therefore it cannot be true, that ſo many have paſſed to the Arches in that time, as is ſet down in the Article; and this Article in that point doth exceed that which is ſet down in the fourth Article by almoſt 500. and therefore whoſoever ſet this down, was much forgetful of that which was before

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ſet down in the fourth Article, and might well have forborn to lay ſo great a ſcandal upon the Judges, as to affirm it to be a witting and willing error in them, as is ſet down in this Article.

New forms of Conſultations, not expreſſing the cauſe of the granting of them.

Whereas upon the granting of Conſultations, the Judges in time paſt did therein expreſs and acknowledge the cauſes ſo remitted to be of Eccleſiaſtical cognizance, which were preſidents and judgments for the better aſſurance of Eccleſiaſtical Judges, that they might afterward hold plea in ſuch caſes, and the like; and were alſo ſome bar as well to the Temporal Judges themſelves, as alſo to many troubleſom and contentious perſons from either granting or ſeeking Prohibitions in ſuch caſes, when ſo it did appear unto them upon record, that Conſultations had been formerly granted in them; they the ſaid Temporal Judges have now altered that courſe, and do only tell us, that they grant their Conſultations certis de cauſis ipſos apud Weſtm' moventibus, not expreſſing the ſame particularly, according to their ancient preſidents. By means whereof the Temporal Judges leave themſelves at liberty without prejudice, though they deny a Conſultation; at another time upon the ſame matter contentious perſons are animated, finding no cauſe expreſſed, why they may not at another time ſeek for a Prohibition in the ſame cauſe; and the Eccleſiaſtical Judges are left at large to think what they liſt, being no way inſtructed of the nature of the cauſe which procured the Conſultation: The reaſon of which alteration in ſuch Conſultations, we humbly intreat your Lordſhips, that the Judges, for our better inſtruction, may be required to expreſs. Objection.

If we find the declaration upon the ſurmiſe, upon which the Prohibition is granted, not to warrant the ſurmiſe, then we forthwith grant a Conſultation in that form which is mentioned, and that matter being mentioned in the Conſultation would be very long and cumberſom, and give the Eccleſiaſtical Court little information, to direct them in any thing thereafter; and therefore in ſuch caſes, for brevity ſake, it is uſual: but when the matter is to receive end by demurrer in Law, or trial, the Conſultation is in another form. And it is their ignorance in the Arches, that will not underſtand this, and we may not ſupply their defects with changing our forms of proceedings, wherein if they would take the advice of any learned in the Laws, they might ſoon receive ſatisfaction. Anſwer.

That Conſultations may be obtained with leſs charge and difficulty.

The great expences and manifold difficulties in obtaining of Conſultations are become very burthenſom to thoſe that ſeek for them; for now a days, through the malice of the Plaintiffs in the Temporal Courts, and the covetous humors of the Clerks, Prohibitions are ſo extended and enlarged, without any neceſſity of the matter (ſome one Prohibition containing more words and lines then forty Prohibitions in ancient times) as by means thereof the party in the Eccleſiaſtical Court, againſt whom the Prohibition is granted, becomes either unwilling, or unable to ſue for a Conſultation, it being now uſual and ordinary, that in the Conſultations muſt be recited in eadem verba the whole tenor of the Prohibition, be it never ſo long; for the which (to omit divers other fees, which are very great) he muſt pay for a draught of it in paper 8 d. the ſheet, and for the entry of it 12 d. the ſheet. Furthermore, the Prohibition is quick and ſpeedy; for it is ordinarily granted out of Court by any one of the Judges in his Chamber, whereas the Conſultation is very ſlowly and hardly obtained, not without (oftentimes) coſtly motions in open Court, pleadings, demurrers, and ſundry judicial hearings of both parties, and long attendance for the ſpace of two or three, nay, ſometimes of eight or nine years before it Objection.

it be obtained. The inconvenience of which proceedings is so intolerable, as we trust, such as are to grant consultations will by your Lordships means not only do it expeditely, and moderate the said fees; but also reform the length of the said consultations, according to the forms of consultations in the Register.

Answer. It were fit the particular cause were set down, whereupon the general grievance, that is mentioned in this Article, is grounded; and that done, it may have a full answer: for a Prohibition is grounded upon the libel, and the consultation must agree therewith also; and therefore we doubt not, but the ground of this grievance, when it is well looked into, will grow from themselves in interlacing of much nugatory and unnecessary matter in their libels: And for the fees taken; we assure our selves, none are taken, but such as are anciently due and accustomed; and it will appear, that we have abridged the fees, and length of pleadings, and use no delays, but such as are of necessity; and we wish they would do the like, and upon examination it will appear of which side it grows, that the fees or delays are so intolerable. And where in ancient time such as sued for tithes, would not sue but for things questionable, and never sought at their Parishoners hands their tithes in other kinds then anciently they had been used to have been paid; now many turbulent Ministers do infinitely vex their Parishioners for such kinds of tithes as they never had, whereby many Parishes have been much impoverished: And for example, we shall shew one Record, wherein the Minister did demand seventeen several kinds of tithes, whereupon the party suing a Prohibition had eight or nine of them adjudged against the Minister upon demurrer in Law, and other passed against him by trial, and this must of necessity grow to a matter of great charge; but where is the fault, but in the Minister that gave occasion? And we will shew one other Record, wherein the party confessed to some of us, that he was to sue his Parishioner but for a Calf and a Gosle; and that his proctor nevertheless put in the libel or demand of tithes, of seven or eight things more then he had cause to sue for: this enlarged the Prohibition, and gave occasion of more expence then needed; and where is the fault of this, but in the Ecclesiastical Courts? And as in these, so can we approve in many others; and therefore we must retort the cause and ground of this grievance upon themselves, as more particularly may appear by the several presidents to be shewed in this behalf.

5. Prohibitions not to be granted upon frivolous suggestions.

Objection. It is a prejudice and derision to both his Majesties Ecclesiastical and Temporal jurisdictions, that many Prohibitions are granted upon trifling and frivolous suggestions, altogether unworthy to proceed from the one, or to give any hinderance or interruption to the other: as upon a suit of tithes brought by a Minister against his Parishioner, a Prohibition flieth out upon suggestion, that in regard of a special receipt, called a Cup of buttered Bear made by the great skill of the said Parishoner to cure a grievous disease called a Cold which sorely troubled the said Minister, all his tithes were discharged. And likewise a woman being convented for adultery committed with one that suspiciously resorted to her house in the night time, the suggestion of a Prohibition in this case was, that omnia placita de nocturnis ambulationibus belong to the King, &c. Also where a Legatary sued for his legacy given in a will, the Prohibition was, Quia omnia placita de donis & concessionibus spectant ad forum Regium, & non ad forum Ecclesiasticum, dummodo non sint de testamento & matrimonio; as if a legacy were not donatio de or in testamento, with many other of like sort. The reformation of all which frivolous proceedings, so chargeable notwithstanding to many poor men, and the great hinderance of justice, we humbly refer to your Lordships consideration.

Answer. We grant none upon frivolous suggestions, but for the case put, it is ridiculous

lous in the Miniſter to make ſuch a contract (if any ſuch were) but that maketh not the contract void, but diſcovereth the unworthineſs of the party that made the ſame, and yet no fault in granting the Prohibition, but when it ſhall appear unto us, that ſuch a matter is ſuggeſted by fraud of any Clerk or Counceller at Law, we will not remit ſuch offences, but will exclude ſuch Attorney from the Court, and ſuch Councellers from their practice at the Bar. And if they will ſuggeſt adultery to one, againſt whom they prove but night-walking, and do adjudge him for it, we are in ſuch a caſe to prohibite their proceedings: for that is a matter meerly pertinent to the Temporal Court; ſo, if it appear he hath entred the houſe as a thief, or a burglarer, and ſo in many other caſes alſo. And if any ſurmiſe a legacy from the dead, where it was but a promiſe of payment in his life time, in that caſe ſuch a ſuit is to be prohibited: but if in theſe caſes the parties were named, then we might ſee the Record, and thereupon be directed to ſhew upon what conſideration theſe Prohibitions were granted, otherwiſe we ſhall think that theſe are caſes newly invented.

No Prohibition to be granted at his ſuit, who is Plaintif in the Spiritual Court. 10.

Objection. We ſuppoſe it to be no warrantable nor reaſonable courſe, that Prohibitions are granted at the ſuit of the Plaintif in the Eccleſiaſtical Court, who having made choice thereof, and brought his adverſary there into trial, doth by all intendment of Law and reaſon, and by the uſage of all other judicial places conclude himſelf in that behalf: and although he cannot be preſumed to hope for help in any other Court by way of Prohibition, yet it is very uſual for every ſuch perſon ſo proceeding only of meer malice for vexation of the party, and to the great delay and hinderance of juſtice, to find favour for the obtaining of Prohibitions, ſometimes after two or three ſentences, thereby taking advantage (as he muſt plead) of his own wrong, and receiving aid from that Court, which, by his own confeſſion, he before did contemne; touching the equity whereof, we will expect the anſwer of the Judges.

Anſwer. None may purſue in the Eccleſiaſtical Court for that which the Kings Courts ought to hold plea of, but upon information thereof given to the Kings Courts, either by the Plaintif, or by any meer ſtranger, they are to be prohibited, becauſe they deal in that which appertaineth not to their juriſdiction, where if they would be careful not to hold plea of that which appertaineth not to them, this needed not: and if they will proceed in the Kings Courts againſt ſuch as purſue in the Eccleſiaſtical Courts for matter Temporal, that is to be inflicted upon them, which the quality of their offence requireth; and how many ſentences howſoever are given, yet Prohibitions thereupon are not of favor, but of juſtice to be granted.

No Prohibition to be granted, but upon due conſideration of the libel. 11.

Objection. It is (we are perſwaded) a great abuſe, and one of the chief grounds of the moſt of the former abuſes, and many other, that Prohibitions are granted without ſight of the libel in the Eccleſiaſtical Court; yea, ſometimes before the libel be there exhibited, whereas by the Laws and Statutes of this Realm (as we think) the libel (being a brief declaration of the matter in debate between the Plaintif and Defendant) is appointed as the only rule and direction for the due granting of a Prohibition, the reaſon whereof is evident, viz. upon diligent conſideration of the libel it will eaſily appear, whether the cauſe belong to the Temporal or Eccleſiaſtical cognizance, as on the other ſide without ſight of the libel, the Prohibition muſt needs range and roave with ſtrange and forraign ſuggeſtions at the will and pleaſure of the deviſor, nothing pertinent to

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the matter in demand: whereupon it cometh to paſs, that when the Judge Eccleſiaſtical is handling a matter of Simony, a Prohibition is grounded upon a ſuggeſtion, that the Court trieth placita de advocationibus Eccleſiarum, & de jure patronatus. And when the libel containeth nothing but the demand of tithe Wool and Lamb, the Prohibition ſurmiſeth a cuſtom of paying of tithe Pigeons. So that if it may be made a matter of conſcience to grant Prohibitions only, where they do rightly lye, or to preſerve the juriſdiction Eccleſiaſtical united to his Majeſties Crown, it cannot (we hope) but ſeem neceſſary to your Lordſhips, that due conſideration be firſt had of the libel in the Eccleſiaſtical Court, before any Prohibition be granted.

Anſwer. Who hath an advowſon granted to him for money, being ſued for Simony, ſhall have a Prohibition; and it is manifeſt, that though in the libel there appear no matter to grant a Prohibition, yet upon a collateral ſurmiſe the Prohibition is to be granted: As where one is ſued in a Spiritual Court for tithes of ſilva cædua, the party may ſuggeſt, that they were groſs or great trees, and have a Prohibition, yet no ſuch matter appeareth in the libel. So if one be ſued there for violent hands laid on a Miniſter by an Officer, as a Conſtable, he being ſued there may ſuggeſt, that the Plaintif made an affray upon another, and he to preſerve the peace laid hands on him, and ſo have a Prohibition. And ſo in very many other like caſes, and yet upon the libel no matter appeareth why a Prohibition ſhould be granted: And they will never ſhew, that a cuſtom to pay Pigeons was allowed to diſcharge the payment of Wool, Lamb, or ſuch like.

12. No Prohibition to be granted under pretence, that one witneſs cannot be received in the Eccleſiaſtical Court, to ground a judgment upon.

Objection. There is a new deviſed ſuggeſtion in the Temporal Courts commonly received and allowed, whereby they may at their will and pleaſure draw any cauſe whatſoever from the Eccleſiaſtical Court: For example, Many Prohibitions have lately come forth upon this ſuggeſtion, that the Laws Eccleſiaſtical do require two witneſſes, where the Common Law accepteth of one; and therefore it is contra legem terræ, for the Eccleſiaſtical Judge to inſiſt upon two witneſſes to prove his cauſe: upon which ſuggeſtion, although many conſultations have been granted (the ſame being no way as yet able to warrant and maintain a Prohibition) yet becauſe we are not ſure, but that either by reaſon of the uſe of it, or of ſome future conſtruction, it may have given to it more ſtrength then is convenient, the ſame tending to the utter overthrow of all Eccleſiaſtical juriſdiction, we moſt humbly deſire, that by your Lordſhips good means, the ſame may be ordered to be no more uſed.

Anſwer. If the queſtion be upon payment, or ſetting out of tithes, or upon the proof of a legacy, or marriage, or ſuch like incidence, we are to leave it to the trial of their Law, though the party have but one witneſs; but where the matter is not determinable in the Eccleſiaſtical Court, there lieth a Prohibition either upon, or without ſuch a ſurmiſe.

13. No good ſuggeſtion for a Prohibition, that the cauſe is neither teſtamentary, nor matrimonial.

Objection. As the former device laſt mentioned endeavoureth to ſtrike away at one blow the whole Eccleſiaſtical juriſdiction; ſo there is another as uſual, or rather more frequent then the former, which is content to ſpare us two kind of cauſes to deal in, viz. Teſtamentary, and Matrimonial: and this device inſulteth mightily in many Prohibitions, commanding the Eccleſiaſtical Judge, that be the cauſe never ſo apparently of Eccleſiaſtical cognizance, yet he ſhall ſurceaſe; for

for that is neither a cauſe Teſtamentary, nor Matrimonial: which ſuggeſtion, as it grew at the firſt upon miſtaking, and omitting the words, de bonis & catallis, &c. as may appear by divers ancient Prohibitions in the Regiſter; ſo it will not be denied, but that, beſides thoſe two, divers and ſundry other cauſes are notoriouſly known to be of Eccleſiaſtical cognizance, and that conſultations are as uſually awarded (if ſuit in that behalf be proſecuted) notwithſtanding the ſaid ſuggeſtion, as their Prohibitions are eaſily granted; which, as an injury, marching with the reſt to wound poor men, protract ſuits, and prejudice the Courts Eccleſiaſtical, we deſire that the Judges will be pleaſed to redreſs.

If they obſerve well the anſwer to the former objections, they may be thereby ſatisfied, that we prohibit not ſo generally as they pretend, nor do in any wiſe deal further then we ought to do, to the prejudice of that which appertaineth to that juriſdiction; but when they will deal with matters of Temporal contracts, coloured with pretended Eccleſiaſtical matter, we ought to prohibit them with that form of Prohibitions, mentioning, that it concerneth not matter of Marriage, nor Teſtamentary: And they ſhall not find, but by form warranted, both by the Regiſter, and by Law: And when ſuggeſtions, carrying matter ſufficient, appear to us judicially to be untrue and inſufficient, we are as ready to grant conſultations as Prohibitions; and we may not alter the form of our Prohibitions upon the conceits of Eccleſiaſtical Judges, and Prohibitions granted in the form ſet down in the Article, are of that form which by Law they ought to be, and cannot be altered but by Parliament. Anſwer.

No Prohibition upon ſurmiſe only to be granted, either out of the Kings Bench, or Common Pleas, but out of the Chancery only. 14

Amongſt the cauſes whereby the Eccleſiaſtical juriſdiction is oppreſſed with multitude of Prohibitions upon ſurmiſes only, this hath a chief place, in that through incroachment (as we ſuppoſe) there are ſo many ſeveral Courts, and Judges in them, that take upon them to grant the ſame, as in the Kings Bench five, and in the Common Pleas as many, the one Court oftentimes croſſing the proceedings of the other, whereas we are perſwaded, that all ſuch kinds of prohibitions, being original Writs, ought only to iſſue out of the Chancery, and neither out of the Kings Bench, nor Common Pleas. And that this hath been the ancient practice in that behalf, appeareth by ſome Statutes of the Realm, and ſundry judgments at the Common Law; the renewing of which practiſe carrieth with it an apparant ſhew of great benefit and conveniency, both to the Church, and to the Subject: for if Prohibitions were to iſſue only out of one Court, and from one man of ſuch integrity, judgment, ſincerity, and wiſdom, as we are to imagine the Lord Chancellor of England to be endued with, it is not likely, that he would ever be induced to prejudice and peſter the Eccleſiaſtical Courts with ſo many needleſs Prohibitions; or, after a conſultation, to ſend out in one cauſe, and upon one and the ſame libel not altered, Prohibition upon Prohibition, his own act remaining upon record before him to the contrary. The further conſideration whereof, when, upon the Judges anſwer thereunto, it ſhall be more throughly debated, we muſt refer to your Lordſhips honorable direction and wiſdom. Objection.

A ſtrange preſumption in the Eccleſiaſtical Judges, to require that the Kings Courts ſhould not do that which by Law they ought to do, and always have done, and which by oath they are bound to do. And if this ſhall be holden inconvenient, and they can in diſcharge of us obtain ſome Act of Parliament to take it from all other Courts then the Chancery, they ſhall do unto us a great eaſe: but the Law of the Realm cannot be changed, but by Parliament and what relief or eaſe ſuch an Act may work to the Subject, wiſe men will ſoon find out and diſcern: but by theſe Articles thus diſperſed abroad, there is a general Anſwer.

unbeſæming aſperſion of that upon the Judges, which ought to have bẽn forborn.

15. No Prohibition to be awarded under a falſe pretence, that the Eccleſiaſtical Judges would hold no plea for cuſtomes for tithes.

Objection. Amongſt many devices, whereby the cognizance of cauſes of tithes is drawn from Eccleſiaſtical Judges, this is one of the chiefeſt, viz. concerning the tryal of cuſtoms in payment of tithes, that it muſt be made in a Temporal Court; for upon a quirk and falſe ſuggeſtion in Edward the fourth his time, made by ſome Sergeants, a conceit hath riſen (which hath lately taken greater ſtrength then before) that Eccleſiaſtical Judges will allow no plea of cuſtom or preſcription, either in non decimando, or in modo decimandi; and thereupon, when contentious perſons are ſued in the Eccleſiaſtical Court for tithes, and do perceive, that upon good proof judgment will be given againſt them, even in their own pleas, ſometimes for cuſtoms, do preſently (knowing their own ſtrength with Jurors in the Country) flie unto Weſtminſter Hall, and there ſuggeſting that they pleaded cuſtom for themſelves in the Eccleſiaſtical Courts, but could not be heard, do procure thence very readily a Prohibition; and albeit the ſaid ſuggeſtion be notoriouſly falſe, yet the party prohibited may not be permitted to traverſe the ſame in the Temporal Court (directly contrary to a Statute made in that behalf): neither may the Judge prohibited proceed without danger of an attachment, though himſelf do certainly know, either that no ſuch cuſtom was ever alledged before him, or being alledged, that he did receive the ſame, and all manner of proofs offered thereupon: which courſe ſeemeth the more ſtrange unto us, becauſe the ground thereof laid in Edward the fourth his time, as aforeſaid, was altogether untrue, and cannot with any ſound reaſon be maintained: Divers Statutes and Judgments at the Common Law do allow the Eccleſiaſtical Courts to hold plea of ſuch cuſtoms; all our books and general learning do therewith concur, and the Eccleſiaſtical Courts, both then and ever ſince, even until this day, have, and ſtill do admit the ſame, as both by our ancient and recent Records it doth and may to any moſt manifeſtly appear. And beſides, there are ſome conſultations to be ſhewed in this very point, wherein the ſaid ſurmiſe and ſuggeſtion, that the Eccleſiaſtical Judges will hear no plea of cuſtoms, is affirmed to be inſufficient in Law to maintain any ſuch Prohibition: and therefore we hope, that if we ſhall be able, notwithſtanding any thing the Judges ſhall anſwer thereunto, to juſtifie the premiſes, your Lordſhips will be a means, that the abuſes herein complained of, having ſo falſe a ground, may be amended.

Anſwer. The Temporal Courts have always granted Prohibitions as well in caſes de modo decimandi, as in caſes upon real compoſitions, either in diſcharge of tithes, or the manner of tithing; for that modus decimandi had his original ground upon ſome compoſition in that kind made, and all preſcriptions and compoſitions in theſe caſes are to be tryed at the Common Law, and the Eccleſiaſtical Courts ought to be prohibited, if in theſe caſes they had plea of tithes in kind: but if they will ſue in the Eccleſiaſtical Court de modo decimandi, or according to compoſition, then we prohibit them not: and the cauſe why the Eccleſiaſtical Judges find fault herewith, is, becauſe many Miniſters have grown of late more troubleſom to their Pariſhioners, then in times paſt; and thereby work unto theſe Courts more commodity, whereas in former ages they were well contented to accept that which was uſed to be paid, and not to contend againſt any preſcription or compoſition; but now they grow ſo troubleſom to their neighbors, as, were it not for the Prohibition (as may appear by the preſidents before remembred) they would ſoon overthrow all preſcriptions and compoſitions that are for tithes, which doth and would breed ſuch a general garboil amongſt the people, as were to be pitied, and not to be permitted. And where they

they ſay, there be many Statutes that take away theſe proceedings from the Temporal Courts, they are much deceived; and if they lok well unto it, they ſhall find even the ſame Statutes (they pretend) to give way unto it. And it is ſtrange they will affirm ſo great an untruth, as to ſay, they are not permitted to traverſe the ſuggeſtion in the Temporal Court; for both the Law and daily practice doth allow it.

The cuſtoms for tithes are only to be tried in the Eccleſiaſtical Courts, and ought not to be drawn thence by Prohibitions. 16.

Although ſome indiſcreet Eccleſiaſtical Judges, either in the time of King Edward the fourth, or Edward the ſixth, might, againſt Law, have refuſed in ſome one cauſe to admit a plea of cuſtom of tithes, to the prejudice of ſome perſon whom he favoured, and might thereby peradventure have given occaſion of ſome one Prohibition (but whether they did ſo or no, the ſuggeſtion of a Lawyer for his fee is no good proof) yet forаſmuch as by three Statutes made ſince that time, wherein it is ordained, viz. both that tithes ſhould be truly paid, according to the cuſtom, and the trial of ſuch payments, according to cuſtom upon any default or oppoſition, ſhould be tried in the Kings Eccleſiaſtical Courts, and by the Kings Eccleſiaſtical Laws, and not otherwiſe, or before any other Judges then Eccleſiaſtical, We moſt humbly deſire your Lordſhips, that if according to the ſaid Laws we be moſt ready to hear any plea of cuſtoms your Lordſhips would be pleaſed, that the Judges may not be permitted hereafter to grant any Prohibitions upon ſuch falſe ſurmiſes, or if they ſhall anſwer, that we miſtake the ſaid Statutes, that then the ſaid three Statutes may be throughly debated before your Lordſhips, leſt under pretence of a right, which they challenge, to expound theſe kind of Statutes, the truth may be over-born, and poor Miniſters ſtill left unto Country trials, there to juſtifie the right of their tithes before unconſcionable Jurors in theſe caſes. Objection.

The anſwer to the former Article may ſerve for this; and where the objection ſeemeth to impeach the trial at the Common Law by Jurors, we hold, and ſhall be able to approve it to be a far better courſe for matter of fact upon the teſtimony of witneſſes, ſworn viva voce, then upon the conſcience of any one particular man, being guided by paper proofs; and we never heard it excepted unto heretofore, that any Statute ſhould be expounded by any other then the Judges of the land; neither was there ever any ſo much over-ſeen, as to oppoſe himſelf againſt the practice of all ages to make that queſtion, or to lay any ſuch unjuſt imputation upon the Judges of the Realm. Anſwer.

No Prohibition to be granted, becauſe the treble value of tithes is ſued for in the Eccleſiaſtical Court. 17.

Whereas it appeareth plainly by the tenor of the Statute of Edw. 6. cap. 13. that Judges Eccleſiaſtical, and none other, are to hear and determine all ſuits of tithes, and other duties for the ſame, which are given by the ſaid Act; and that nothing elſe is added to former Laws by that Statute, but only certain penalties, for example, one of treble value: Forаſmuch as the ſaid penalty, being only deviſed as a means to work the better payment of tithes, and for that there are no words uſed in the ſaid Statute to give juriſdiction to any Temporal Court, We hold it moſt apparent, that the ſaid penalty of treble value, being a duty given in the ſaid Statute for non-payment of tithes, cannot be demanded in the Temporal Court, but only before the Eccleſiaſtical Judges, according to the expreſs words of the ſaid Statute: And the rather, we are ſo perſwaded, becauſe it is moſt agreeable to all Laws and reaſon, that where the principal cauſe is to be decided, there all things incident and acceſſary are to be determined. Beſides, it was the practice of all Eccleſiaſtical Courts in this Realm, Objection.

immediately after the making of the ſaid Statute, and hath continued ſo ever ſince to award treble damages (when there hath bæn cauſe) without any oppoſition, until about ten years paſt, when, or about which time, notwithſtanding the premiſes, the Temporal Judges began to hold plea of treble value, and do now accompt it ſo proper and peculiar to their juriſdictions, as by colour thereof they admit ſuits originally for the ſaid penalty, and do make thereby (very abſurdly) the penalty of treble value to be principal, which is indæd but the acceſſary: and the cognizance of tithes to be but the acceſſary, which in all due conſtruction is moſt evident to be the principal, thereby wholly perverting the true meaning and drift of that Statute, whereupon if in the Spiritual Court the treble value be now demanded by the libel as a duty, according to that Statute, or that ſentence be awarded directly and ſincerely upon the ſaid libel, preſently, as contentious perſons are diſpoſed, a Prohibition is granted, and ſome ſharp words are further uſed, as if the Eccleſiaſtical Judges were in ſome further danger for holding of theſe kind of pleas: and therefore we moſt humbly deſire, that if the Judges ſhall inſiſt in their anſwers upon ſuch their straining of the ſaid Statute, your Lordſhips will be pleaſed to hear the ſame further debated by us with them.

Anſwer. If they obſerve well the Statute, they ſhall find, that the Eccleſiaſtical Court is by that Statute to hold plea of no more, then that which is ſpecially thereby limited for them to hold plea of; and the Temporal Court not reſtrained thereby, to hold plea of that which is not limited unto the Eccleſiaſtical Court by that Act, and of that they had juriſdiction of before: and the forfeiture of double value is expreſſly limited to be recovered before the Eccleſiaſtical Judges; but where a forfeiture is given by an Act generally not limiting where to be recovered, it is to be recovered in the Kings Temporal Courts, and the cauſe why it is ſo divided, ſæmeth to be for that, where by that Act, Temporal men were to ſue for their tithes in the Eccleſiaſtical Court, where it was then preſumed they were to have no great favour: Therefore the party grieved might (if he would) purſue for the forfeiture of the treble value in the Temporal Court, where he was to recover no tithes; but if he would ſue where he might alſo recover the tithes, then he would purſue for the double value: for that is ſpecially appointed to be recovered in the Eccleſiaſtical Court, but not the treble value. And although they alledge, that they ſometimes uſed to maintain ſuit for the treble value, yet as ſoon as that was complained of to the Kings Courts, they gave remedy unto it as appertained.

18. No Prohibition to be awarded, where the perſon is ſtopped from carrying away of his tithes by him that ſetteth them forth.

Objection. As the ſaid Statute of Edw. the 6. laſt mentioned aſſigneth a penalty of treble value, if a man upon pretence of cuſtom, which cannot be juſtified, ſhall take away his corn before he hath ſet out his tithes, ſo alſo in the ſaid Statute it is provided, that if any man having ſet out his tithes, ſhall not afterwards ſuffer the Parſon to carry them away, &c. he ſhall pay the double value thereof ſo carried away, the ſame to be recovered in the Eccleſiaſtical Court. Howbeit the clearneſs of the Statute in this point, notwithſtanding means are found to draw this cauſe alſo from the Eccleſiaſtical Court; for ſuch as of hatred towards their Miniſters are diſpoſed to vex them with ſuits at the Common Law (where they find more favour to maintain their wrangling, then they can hope for in the Eccleſiaſtical Court) will not fail to ſet out their tithes before witneſſes, but not with any meaning or intent that the Parſon ſhall ever carry them away; for preſently thereupon they will cauſe their own ſervants to load them away to their own barns, and leave the Parſon as he can to ſeek his remedy; which if he do attempt in the Eccleſiaſtical Court, out cometh a Prohibition, ſuggeſting that upon ſeverance and ſetting forth of the tenth part from the nine, the ſame

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tenths were presently by Law in the Parsons possession, and being thereupon become a lay chattel, must be recovered by an action of trespas at the Common Law, whereas the whole pretence is grounded upon a mèer perverting of the Statute, which doth both ordain, that all tithes shall be set forth truly and justly without fraud and guile; and that also the Parson shall not be stopped or hindered from carrying them away, neither of which conditions are observed when the Farmer doth set them forth, meaning to carry them away himself (for that is the fraudulent setting of them out;) and also, when accordingly he taketh them away to his own use; for thereby he stoppeth the Parson to carry them away: and consequently, the penalty of this offence is to be recovered in the said Ecclesiastical Courts, according to the words of the said Statute, and not in any Court Temporal: wherefore we most humbly desire your Lordships, that either the Judges may make it apparent to your Lordships, that we mislike this Statute in this point, or that our Ecclesiastical Courts may ever hereafter be freed from such kinds of Prohibitions.

For the matter of this Article it is answered before, and where the truth of the case is, that he that ought to pay predial tithes, doth not divide out his tithes, or doth in any wise interrupt the Parson, or his deputy, to see the dividing or setting of them out, that appearing unto us judicially, we maintain no Prohibition upon any suit there for the double value, but if after the tithes severed, the Parson will sell the tithes to the party that divided them, upon the surmise thereof, we do, and ought to grant a Prohibition; but if that surmise do prove untrue, we do as readily grant a consultation, and the party seeking the same, is, according to the Statute, to have his double costs and damages. Answer.

No Prohibition to be granted upon any incident plea in an Ecclesiastical cause. 19.

We conceive it to be great injury to his Majesties Ecclesiastical jurisdiction, that Prohibitions are awarded to his Ecclesiastical Courts upon every by, and every incident plea or matter alledged there in bar, or by way of exception, the principal cause being undoubtedly of Ecclesiastical cognizance: For example, In suit for tithes in kind, if the limits of the Parish, agreements, compositions, and arbitraments, as also whether the Minister that sueth as Parson, be indeed Parson or Vicar, do come in debate by way of bar, although the same particulars were of Temporal cognizance (as some of them we may boldly say are not) yet they were in this case examinable in the Ecclesiastical Court, because they are matters incident, which come not in that case finally to be sentenced and determined, but are used as a mean and furtherance for the decision of the main matter in question. And so the case standeth in other such incident pleas by way of bar; for otherwise either party in every cause might at his pleasure, by pleading some matter Temporal by way of exception, make any cause Ecclesiastical whatsoever subject to a Prohibition, which is contrary to the reason of the Common Law, and sundry judgments thereupon given, as we hope the Judges themselves will acknowledge, and thereupon yield to have such Prohibitions hereafter restrained. Objection.

Matters incident that fall out to be mèer Temporal, are to be dealt withal in the Temporal, and not in the Ecclesiastical Court, as is before particularly set down in the eleventh Article. Answer.

That no Temporal Judges, under colour of authority to interpret Statutes, ought, in favour of their Prohibitions, to make causes Ecclesiastical to be of Temporal cognizance. 20.

Although of late days it hath bèen strongly held by some, that the interpretation of all Statutes whatsoever do belong to the Judges Temporal, yet we suppose, by certain evil effects, that this opinion is to be bounded within certain limits; for the strong conceit of it hath already brought forth this fruit, Objection.

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that even thoſe very Statutes which do concern matters mérly Eccleſiaſtical, and were made of purpoſe with great caution, to preſerve, enlarge, and ſtrengthen the juriſdiſion Eccleſiaſtical, have bén by colour thereof turned to the reſtraining, weakning, and utter overthrow of the ſame, contrary to the true intent and meaning of the ſaid Statutes: As for example (beſides the ſtrange interpretation of the Statutes before mentioned, for the payment of tithes) When parties have bén ſued in the Eccleſiaſtical Courts, in caſe of an inceſtuous marriage, a Prohibition hath bén awarded, ſuggeſting, under pretence of a Statute in the time of King H.8. that it appertaineth to the Temporal Courts, and not to the Eccleſiaſtical, to determine what marriages are lawful, and what are inceſtuous by the Word of God. As alſo a Miniſter, being upon point of deprivation for his inſufficiency in the Eccleſiaſtical Court, a Prohibition was granted, upon ſuggeſtion that all pleas of the fitneſs, learning, and ſufficiency of Miniſters belong only to the Kings Temporal Courts, relying, as we ſuppoſe, upon the Statute of 13 El. by which kind of interpretation of Statutes, if the naming, diſpoſing, or ordering of cauſes Eccleſiaſtical in a Statute ſhall make the ſame to be of Temporal cognizance, and ſo aboliſh the juriſdiction of the Eccleſiaſtical Court, without any further circumſtances, or expreſs words to warrant the ſame, It followeth, that foraſmuch as the common Book and Articles of Religion are eſtabliſhed and confirmed by ſeveral Acts of Parliament, the Temporal Judges may challenge to themſelves an authority to end and determine of all cauſes of Faith and Religion, and to ſend out their Prohibitions, if any Eccleſiaſtical Judge ſhall deal or proceed in any of them: which conceit, how abſurd it is, néedeth no proof, and teacheth us, that when matters mérly Eccleſiaſtical are compriſed in any Statute, it doth not therefore follow, that the interpretation of the ſaid matters doth belong to the Temporal Judges, who by their profeſſion, and as they are Judges, are not acquainted with that kind of learning: Hereunto, when we ſhall receive the anſwer of the Judges, we ſhall be ready to juſtifie every part of this Article.

Anſwer. If any ſuch have ſlipt, as is ſet down in this Article, without other circumſtances to maintain it, we make no doubt, but when that appeared to the Kings Temporal Court, it hath bén preſently remitted; and yet there be cales, that we may deal both with marriages and matters of deprivation, As where they will call the marriage in queſtion after the death of any of the parties, the marriage may not then be called in queſtion, becauſe it is to baſtard and diſ-inherit the iſſues, who cannot ſo well defend the marriage, as the parties both living themſelves might have done; and ſo is it, if they will deprive a Miniſter not for matter appertaining to the Eccleſiaſtical cognizance, but for that which doth mérly belong to the cognizance of the Kings Temporal Courts. And for the Judges expounding of Statutes that concern the Eccleſiaſtical government or proceédings, it belongeth unto the Temporal Judges; and we think they have bén expounded as much to their advantage, as either the letter or intention of Laws would or could allow of. And when they have bén expounded to their liking, then they could approve of it; but if the expoſition be not for their purpoſe, then will they ſay, as now they do, that it appertaineth not unto us to determine of them.

21. That perſons impriſoned upon the Writ of *de Excommunicato capiendo* are unduly delivered, and Prohibitions unduly awarded for their greater ſecurity.

Objection. Foraſmuch as impriſonment upon the Writ of Excommunicato capiendo is the chiefeſt Temporal ſtrength of Eccleſiaſtical juriſdiction, and that by the Laws of the Realm none ſo committed for their contempt in matters of Eccleſiaſtical cognizance, ought to be delivered until the Eccleſiaſtical Courts were ſatisfied, or caution given in that behalf, we would gladly be reſolved by what authority

authority the Temporal Judges do cauſe the Sheriffs to bring the ſaid parties into their Courts, and by their own diſcretions ſet them at liberty, without notice thereof firſt given to the Eccleſiaſtical Judges, or any ſatisfaction made either to the parties at whoſe ſuit he was impriſoned, or the Eccleſiaſtical Court, where certain lawful fées are due: And after all this, why do they likewiſe ſend out their Prohibitions to the ſaid Court, commanding, that all cenſures againſt the ſaid parties ſhall be remitted, and that they be no more proceéded with for the ſame cauſes in thoſe Courts. Of this our deſire, we hope your Lordſhips do ſée ſufficent cauſe, and will therefore procure us from the Judges ſome reaſonable anſwer.

We affirm, if the party excommunicate be impriſoned, we ought upon complaint to ſend the Kings Writ for the body and the cauſe, and if in the return no cauſe, or no ſufficient cauſe appear, then we do (as we ought) ſet him at liberty; otherwiſe, if upon removing the body, the matter appear to be of Eccleſiaſtical cognizance, then we remit him again: and this we ought to do in both caſes; for the Temporal Courts muſt always have an eye, that the Eccleſiaſtical juriſdiction uſurp not upon the Temporal. Anſwer.

The Kings authority in Eccleſiaſtical cauſes is greatly impugned by Prohibitions. 22.

We are not a little perplexed touching the authority of his Majeſty in cauſes Eccleſiaſtical, in that we find the ſame to be ſo impeached by Prohibitions, that it is in effect thereby almoſt extinguiſhed; for it ſéemeth, that the innovating humor is grown ſo rank, and that ſome of the Temporal Judges are come to be of opinion, that the Commiſſioners appointed by his Majeſty for his cauſes Eccleſiaſtical (having committed unto them the execution of all Eccleſiaſtical juriſdiction annexed to his Majeſties Imperial Crown, by vertue of an Act of Parliament made in that behalf, and according to the tenor and effect of his Majeſties Letters Patents, wherein they are authoriſed to impriſon, and impoſe fines, as they ſhall ſée cauſe) cannot otherwiſe proceéd, the ſaid Act and Letters Patents notwithſtanding then by Eccleſiaſtical cenſures only: And thereupon of latter days, 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 Kingdom with threatning ſpéeches, and ſundry railing terms (no way to be endured) were thereupon fined and impriſoned by the ſaid Commiſſioners, till they ſhould enter into bonds to perform further orders of the ſaid Court; the one was delivered by an Habeas corpus out of the Kings Bench, and the other by a like Writ out of the common Pleas: and ſundry other Prohibitions have béen likewiſe awarded to his Majeſties ſaid Commiſſioners upon theſe ſuggeſtions, viz. That they had no authority either to fine or impriſon any man; which innovating conceit being added to this that followeth, That the Writ of de excommunicato capiendo cannot lawfully be awarded upon any certificate or ſignificavit made by the ſaid Commiſſioners, we find his Majeſties ſaid ſupréam authority in cauſes Eccleſiaſtical (ſo largely amplified in ſundry Statutes) to be altogether deſtitute in effect of any means to uphold it, if the ſaid proceédings by Temporal Judges ſhall be by them maintained and juſtified; and therefore we moſt humbly deſire your Lordſhips, that they may declare themſelves herein, and be reſtrained hereafter (if there be cauſe found) from uſing the Kings name in their Prohibitions, to ſo great préjudice of his Majeſties ſaid authority, as in debating the ſame before your Lordſhips will hereafter more fully appear. Objection.

We do not, neither will we in any wiſe impugne the Eccleſiaſtical authority in any thing that appertaineth unto it; but if any by the Eccleſiaſtical authority commit any man to priſon, upon complaint unto us that he is impriſoned without juſt cauſe, we are to ſend to have the body, & to be certified of the cauſe; and if they will not certifie unto us the particular cauſe, but generally, without expreſſing Anſwer.

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any particular cauſe, whereby it may appear unto us to be a matter of the Eccleſiaſtical cognizance, and his impriſonment be juſt, then we do and ought to deliver him: and this is their fault, and not ours. And although ſome of us have dealt with them to make ſome ſuch particular certificate to us, whereby we may be able to judge upon it, as by Law they ought to do, yet they will by no means do it; and therefore their error is the cauſe of this, and no fault in us: for if we ſee not a juſt cauſe of the parties impriſonment by them, then we ought, and are bound by oath to deliver him.

22. No Prohibition to be granted, under pretence to reform the manner of proceedings by the Eccleſiaſtical Laws, in cauſes confeſſed to be of Eccleſiaſtical cognizance.

Objection. Notwithſtanding that the Eccleſiaſtical juriſdiction hath been much impeached heretofore through the multitude of Prohibitions, yet the ſuggeſtions in them had ſome colour of juſtice, as pretending, that the Judges Eccleſiaſtical dealt with Temporal cauſes: but now, as it ſeemeth, they are ſubject to the ſame controlments, whether the cauſe they deal in be either Eccleſiaſtical or Temporal, in that Prohibitions of late are wreſted out of their own proper courſe, in the nature of a Writ of error, or of an appeal: For, whereas the true and only uſe of a Prohibition is to reſtrain the Judges Eccleſiaſtical from dealing in a matter of Temporal cognizance, now Prohibitions are awarded upon theſe ſurmiſes, viz. That the Libel, the Articles, the Sentence, and the Eccleſiaſtical Court, according to the Eccleſiaſtical Laws, are grievous and inſufficient, though the matter there dealt withal be meerly Eccleſiaſtical: and by colour of ſuch Prohibitions, the Temporal Judges to alter and change the decrees and ſentences of the Judges Eccleſiaſtical, and to moderate the expences taxed in the Eccleſiaſtical Courts, and to award conſultations upon conditions: As for example, That the Plaintif in the Eccleſiaſtical Court ſhall accept of the one half of the coſts awarded, and that the Regiſter ſhall loſe his fees; and that the ſaid Plaintif ſhall be contented with the payment of his legacy, which was the principal ſued for, and adjudged due unto him at ſuch day, as they the ſaid Temporal Judges ſhall appoint, or elſe the Prohibition muſt ſtand. And alſo where his Majeſties Commiſſioners, for cauſes Eccleſiaſtical, have not been accuſtomed to give a copy of the Articles to any party, before he hath anſwered them; and that the Statute of H. 5. touching the delivering of the libel, was not only publickly adjudged in the Kings Bench, not to extend to the deliverance of Articles, where the party is proceeded with ex officio, but likewiſe imparted to his Majeſty, and afterwards divulged in the Star-chamber, as a full reſolution of the Judges, Yet within 4 or 5 moneths after, a Prohibition was awarded to the ſaid Commiſſioners out of the Kings Bench, upon ſuggeſtion, that the party ought to have a copy of the Articles, being called in queſtion ex officio, before he ſhould anſwer them; and notwithſtanding that a motion was made in full Court ſhortly after for a conſultation, yet an order was entred, that the Prohibition ſhould ſtand until the ſaid party had a copy of the ſaid Articles given him; which novel and extraordinary courſes do ſeem very ſtrange unto us, and are contrary not only to the whole courſe of his Majeſties Laws Eccleſiaſtical, but alſo to the very maxims and judgment of the Common Law, and ſundry Statutes of this Realm, as we ſhall be ready to juſtifie before your Lordſhips, if the Judges ſhall endeavour to maintain theſe their proceedings.

Anſwer. To this we ſay, that though where parties are proceeded withal ex officio, there needeth no libel, yet ought they to have the cauſe made known unto them for which they are called ex officio, before they be examined, to the end it may appear unto them before their examination, whether the cauſe be of Eccleſiaſtical cognizane, otherwiſe they ought not to examine them upon oath. And touching the reſt of this Article, they do utterly miſtake it.

That

That Temporal Judges are ſworn to defend the Eccleſiaſtical Juriſdiction. 24.

We may not omit to ſignifie unto your Lordſhips, that (as we take it) the Temporal Judges are not only bound by their ancient oath, that they ſhall do nothing to the diſheriſon of the Crown, but alſo by a latter oath unto the Kings Supremacy, wherein they do ſwear, that, to their power they will aſſiſt and defend all juriſdictions, priviledges, preheminences, and authorities united and annexed to the Imperial Crown of this Realm; in which words the Eccleſiaſtical juriſdiction is ſpecially aimed at: ſo that whereas they do oftentimes inſiſt upon for their oath, for doing of juſtice in Temporal cauſes, and do ſeldom make mention of the ſecond oath taken by them for the defence of the Eccleſiaſtical juriſdiction, with the rights and immunities belonging to the Church; we think that they ought to weigh their ſaid oaths better together, and not ſo far to extend the one, as that in any ſort it ſhould prejudice the other: The due conſideration whereof (which we moſt inſtantly deſire) would put them in mind (any ſuggeſtion to the contrary notwithſtanding) to be as careful not to do any thing that may prejudice the lawful proceedings of the Eccleſiaſtical Judges in Eccleſiaſtical cauſes, as they are circumſpect not to ſuffer any impeachment, or blemiſh of their own juriſdictions and proceedings in cauſes Temporal. Objection.

We are aſſured, that none can juſtly charge any of us with violating our oaths, and it is a ſtrange part to tax Judges in this manner, and to lay ſo great an imputation upon us; and what ſcandal it will be to the juſtice of the Realm to have ſo great levity, and ſo foul an imputation laid upon the Judges, as is done in this, is too manifeſt. And we are aſſured it cannot be ſhewed, that the like hath been done in any former age; and for leſs ſcandals then this of the juſtice of the Realm, divers have been ſeverely puniſhed. Anſwer.

That Excommunication is as lawful as Prohibition, for the mutual preſervation of both his Majeſties ſupream juriſdiction. 25.

To conclude, whereas for the better preſerving of his Majeſties two ſupream juriſdictions before mentioned, viz. the Eccleſiaſtical and the Temporal, that the one might not uſurp upon the other, two means heretofore have of ancient time been ordained, that is to ſay, the cenſure of excommunication, and the writ of prohibition; the one to reſtrain the incroachment of the Temporal juriſdiction upon the Eccleſiaſtical, the other of the Eccleſiaſtical upon the Temporal, We moſt humbly deſire your Lordſhips, that by your means the Judges may be induced to reſolve us, why excommunications may not as freely be put in ure for the preſervation of the juriſdiction Eccleſiaſtical, as prohibitions are, under pretence to defend the Temporal, eſpecially againſt ſuch contentious perſons, as do wittingly and willingly, upon falſe and frivolous ſuggeſtions, to the delay of juſtice, vexation of the ſubjects, and great ſcandal of Eccleſiaſtical juriſdictions, daily procure, without fear either of God or men, ſuch undue prohibitions, as we have heretofore mentioned. Objection.

The excommunication cannot be gain-ſaid, neither may the prohibition be denied upon the ſurmiſe made, that the matter purſued in the Eccleſiaſtical Court is of Temporal cognizance; but as ſoon as that ſhall appear unto us judicially to be falſe, we grant the conſultation. Anſwer.

For the better ſatisfaction of his Majeſty, and your Lordſhips, touching the objections delivered againſt prohibitions, we have thought good to ſet down (as may be perceived by that which hath been ſaid) the ordinary proceeding in his Majeſties Courts therein; whereby it may appear both what the Judges do, and ought to do in thoſe cauſes; and the Eccleſiaſtical Judges may do well to

conſider what iſſue the courſe they therein hold can have in the end: and they ſhall find it can be no other, but to caſt a ſcandal upon the juſtice of the Realm; for the Judges doing but what they ought, and by their oaths are bound to do; it is not to be called in queſtion: and if it fall out, that they err in judgment, it cannot otherwiſe be reformed, but judicially in a ſuperiour Court, or by Parliament.

Subſcribed by all the Judges of England, and the Barons of the Exchequer, *Paſch.* 4 *Jacobi*, and delivered to the Lord Chancellour of England.

Which anſwers and reſolutions, although they were not enacted by authority of Parliament, as our Statute of Articuli Cleri in 9 E.2. was; yet, being reſolved unanimouſly by all the Judges of England, and Barons of the Exchequer, are for matters in law of higheſt authority next unto the Court of Parliament.

Magna eſt veritas, & prævalet.

Artic. Cleri 3 Jac. ad artic. 20.

But now we will peruſe the Preamble, and after every Chapter in order, and proceed to the expoſition of the ſame; which office the Clergy claimed, viz. to interpret all Statute Laws concerning the Clergy; but it was reſolved by all the Judges of England, that the interpretation of all Statutes concerning the Clergy, being parcel of the Laws of the Realm, do belong to the Judges of the Common Law.

EDwardus Dei gratia Rex Angliæ, &c. Omnibus ad quos præſentes literæ pervenerint, ſalutem. Sciatis quod cum dudum, temporibus progenitorum noſtrorum quondam Regum Angliæ, in diverſis Parliamentis ſuis, & ſimiliter poſtquam regni noſtri gubernacula ſuſcepimus, in Parliamentis noſtris, per Prælatos, & Clerum regni noſtri plures Articuli continentes gravamina aliqua Eccleſiæ Anglicanæ, & ipſis Prælatis & Clero illata (ut in eiſdem aſſerebatur) porrecti fuiſſent, & cum inſtantia ſupplicatum, ut inde apponeretur remedium opportunum: ac nuper in Parliamento noſtro apud Lincoln', anno regni noſtri ix. articulos ſubſcriptos, & quaſdam reſponſiones ad aliquos eorum prius factas, coram Concilio noſtro recitari, ac quaſdam reſponſiones corrigi, & cæteris articulis ſubſcriptis per nos, & dictum concilium noſtrum fecerimus reſponderi: quorum quidem articulorum & reſponſionum tenores ſubſequuntur in hunc modum.

¶ Cum dudum temporibus progenitorum noſtrorum, &c. in diverſis Parliamentis.] That is, in the ſaid Parliament holden anno 51 H.3. Articuli Cleri, and of the ſaid Acts in the raign of E.1. called Prohibitio formata ſuper Artic' Cleri, and Articuli contra prohibitionem regiam, which have been cited before.

Rot. Parl. 5 E.2. m.3. & 8 E.2.

¶ In Parliamentis noſtris.] Viz. 5 E.2. & 8 E.2.

¶ Ac nuper in Parliamento noſtro apud Lincoln' anno regni noſtri nono.] There were two Parliaments holden in this ninth year, viz. the one at Lincoln, 15 Hill. mentioned in this Preamble; and the other, 15 Paſch' anno nono at Weſtminſter: and as one ſaith, Merito in Parliamento conqueſti ſunt, quia Lex Angliæ ſine Parliamento mutari non poteſt.

Vid. artic. Cler. anno 3 Jacobi regis ad artic' 1. & 13.

And note well what is ſaid there, viz. what the Law doth warrant in caſes of prohibition, to keep every juriſdiction in his true limits, cannot be altered but by Parliament.

¶ Per

¶ Per Prælatos & Clerum, &c.] In theſe Parliaments complaint was made by the Clergy only; but the Kings Courts, that may award prohibitions, being informed by the parties themſelves, or by any ſtranger, that any Court temporal or Eccleſiaſtical do hold plea of that whereof they have not juriſdiction, may lawfully prohibit the ſame, as well after judgment and execution, as before; and ſo reſolved by all the Judges of England, and Barons of the Exchequer, agreeable to make authorities in law. Vid. ubi ſupra ad artic' 3. Vid. ad artic. 10, 21

CAP. I.

INprimis Laici impętrant prohibitiones in genere ſuper decimis, obventionibus, oblationibus, mortuariis, redemptionibus penitentiarum, violenta manuum injectione in Clericum vel converſum, & in cauſa diffamationis: in quibus caſibus agitur ad pœnam Canonicam imponendum: Rex ad iſtum articulum reſpondit, quod in decimis, oblationibus, obventionibus, mortuariis, quando ſub iſtis nominibus proponuntur, prohibitioni regiæ non eſt locus; etiamſi, propter detentionem iſtorum diuturnam, ad æſtimationem eorundem pecuniariam veniatur. Sed ſi clericus, vel religioſus decimas ſuas in horreo ſuo congregatas, vel alibi exiſtentes vendiderit alicui pro pecunia: ſi petatur pecunia coram Judice Eccleſiaſtico, locum habet regia prohibitio, quia per venditionem res ſpirituales fiunt temporales, & tranſeunt decimæ in catalla.

Of theſe ſufficient hath been ſaid in the expoſition upon the ſtatute of Circumſpecte agatis; whereunto we refer the Reader; only this we may add (which we have reſerved to this place) the reſolution of all the Judges of England to the 5, 8, 15, 16, 18. Articles in Artic' Cleri 3 Jacobi Regis, in many caſes concerning tithes, &c.

CAP. II.

ITem ſi ſit contentio de jure decimarum, originem habens de jure patronatus, & earundem decimarum quantitas aſcendat ad quartam partem bonorum Eccleſiæ, locum habeat regia prohibitio, ſi hæc cauſa coram Judice Eccleſiaſtico ventileť. Item, ſi Prælatus imponat pœnam pecuniariam alicui pro peccato, & repetat illam, regia prohibitio locum habet. Veruntamen, ſi Prælati imponant pœnitentias corporales, & ſic puniti velint hujuſmodi pœnitentias per pecuniam redimere ſponte, non habet locum regia prohibitio, ſi coram Prælatis pecunia ab eis exigatur.

This is intended of the Kings writ of Indicavit, whereof, and of the trial of the right of tithes at the Common Law, we have ſpoken ſufficiently for the underſtanding of this branch of this Act, in the expoſition of the ſtatute of W.2. cap.5. verſus finem, and the ſtatute of circumſpecte agatis, &c.
Vid.Regiſtr.48.&c.

¶ Item, ſi Prælatus imponat pœnam pecuniariam alicui pro peccato, &c.] For the underſtanding hereof, we refer the Reader to the expoſition upon the ſtatute of Circumſpecte agatis, where ſufficient hath bẽn ſaid of this matter.

CAP. III.

INſuper, ſi aliquis violentas manus injecerit in Clericum, pro violentia facta debet emendari coram Rege: Pro excommunicatione vero, coram Prælato, ubi imponatur pœnitentia corporalis; quod ſi reus velit ſponte per pecuniam redimere, dand' Prælato vel læſo, poteſt repeti coram Prælato: nec in talibus regia prohibitio locum habet.

For this matter, we refer the Reader to the ſtatute of Circumſpecte agatis: to that we add the reſolution of all the Judges of England touching this matter, ad Artic' 6. & 11. in Articulis Cleri 3 Jacob. which you may read before, ſince we began with this Statute.
And here it is to be noted, that where the Article of the Clergy, Cap.1. de violenta manuum injectione in Clericum vel Converſum, anſwer is made to the Clerk, but no anſwer is made at all to the Convert.

CAP. IV.

IN diffamationibus etiam corrigant Prælati ſupradicto modo, regia prohibitione non obſtante, primo injungendo pœnam corporalem: quam ſi reus velit redimere libere, percipiat Prælatus pecuniam, licet regia prohibitio porrigatur.

Hereof alſo ſufficient hath bẽn ſaid in the expoſition upon the Statute of Circumſpecte agatis.

CAP.

CAP. V.

ITem, ſi aliquis in fundo ſuo molendinum erexit de novo, & poſtea a rectore loci exigatur decima de eodem, exhibetur regia prohibitio ſub hac forma, Quia de tali molendino hactenus decimæ non fuerunt ſolutæ, prohibemus, &c. & ſententiam excommunicationis, ſi quam hac occaſione promulgaveritis, revocetis omnino. Reſponſio: In tali caſu nunquam exivit regia prohibitio de principis voluntate, qui & decernit talem perpetuo non exire.

See hereafter the expoſition of the ſtatute of 2 E.6. ca.17. verb.by the laws of the Realm. Vid. inter leges Edwardi regis, cap.8.fol.128.

The form of this prohibition is juſtly condemned, for that the ſubſtance of it was a non decimando, becauſe the Mill was newly erected, but yet hereby, and by our Books it appeareth, that ſome tith or other is due for a Mill, be it new, or old.

But this is (as ſome do hold) a perſonal [a] tith, coming from the gain of the Miller, by his induſtry and labour: as of a Fiſherman of the tith of his gain by fiſhing, called Decimæ de piſcationibus, or the like.

The words are general, Molendinum erexit, and do extend to all kind of Mills, as private Mills, and to publick, as to Fulling Mills, Paper Mills, &c. whereof there is no tith to be paid, but perſonal, if any be; which is a good proof (ſay they) that ſo it ought to be of corn Mills; and if the Parſon ſhould have the tenth toll-diſh, then ſhould he have not only tith corn, but alſo tith of the ſame corn ground at the Mill, and ſo a double tith, which he ſhall not have of a Fulling Mill, Paper Mill, &c. No tith ſhall be demanded of the rawyn, or after-paſture, or of ſtubble, becauſe the Parſon ſhall not have a double tith of one and the ſame thing in one year. If the Parſon hath tith of fruit that groweth on fruit-trees, and in the ſame year the owner fell down the fruit-trees, and make billets or fagots of them, he ſhall have no tith of them, as it was holden Hill.8 Jacob.Rot.1109. in communi banco, inter Baxter & Hopes.

[b] Every perſon exerciſing Merchandizes, bargaining and ſelling, clothing, handicraft, or other art or faculty, being ſuch kind of perſons, and in ſuch places, as heretofore, within 40 years, before the Statute of 2 E. 6. have accuſtomably uſed to pay ſuch perſonal tithes, or of right ought to pay, other then ſuch as be common day-labourers, ſhall yearly, before the Feaſt of Eaſter, pay for his perſonal tithes the tenth part of his clear gains, his charges and expences, according to his eſtate, condition, or degree, to be therein abated, allowed, or deducted, &c. And the Ordinary hath power to call the parties before him, and to examine them by all lawful and reaſonable means, other then upon oath, concerning the true payment of perſonal tithes.

Nota, in this deſcription of perſonal tithes, the words be, clothing, handicraft, or other art and faculty; within which general words, the Millers of Fulling Mills, Rape Mills, Corn Mills, and other Mills be included; for a Miller is of an art and faculty.

See 2 E.6.ca.13. every perſon ſhall juſtly, &c. ſet out, yield, and pay all predial tithes in their proper kind, as they riſe, and happen, &c. which (ſay they) cannot be applied to the taking of the toll-diſh. Regiſtr.48.b. F.N.B.51.h.

[a] Rot.clauſ. 7 E.2. Decimæ de molendino Ewell. Mich.8 & 9 H.3. coram rege, rot.6.

See Linwood, tit. de Decimis, fol. 141,142. Mich. 9 & 10 H. 3. coram Rege, rot.15. Jo. Fitzroberts caſe.

[b] 2 E.6. cap.13.

¶ Exigatur decima.] Some do hold, that the Parſon ſhall have the tenth toll-diſh, as a predial tithe.

* He that deſireth to read more concerning this matter, let him ſearch for two records of Prohibitions in the Court of Common Pleas, in the raign of the late Queen Elizabeth.

* Mich.25 & 26 El.rot.2617. in communi banco. Mich. 29 & 30 Eliz.rot.254. Nicholas Muſſels caſe. ibid. Vid.lib. 11 fol.48,49,& 81.

Note, that in many caſes the Common Law and the Canon Law differ concerning the payment of tithes; the Common Law adjudging many things not tithable, which by the Canon Law ought to pay tithes: and this caſe of tithes of Mills was never (that I know) judicially determined.

See

See the exposition of the Statute of Circumspecte agatis, verbo Consuet'.

¶ De Principis (i. *Regis*) voluntate.] i. curiæ Regis, in qua Rex sive Princeps repræsentatur.

CAP. VI.

ITem, si aliqua causa, vel negotium, cujus cognitio spectat ad forum Ecclesiasticum, & coram Ecclesiastico Judice fuerit sententialiter terminatum, & transierit in rem judicatam, nec per appellationem fuerit suspensum, & postmodum coram Judice seculari, super eadem re inter easdem personas quæstio moveatur, & probetur per testes vel instrumenta, talis exceptio in foro seculari non admittatur. Responsio: Quando eadem causa diversis rationibus coram Judicibus Ecclesiasticis & Secularibus ventilatur, ut supra patet de injectione violentarum manuum in Clericum, dicunt quod (non obstante Ecclesiastico judicio) curia Regis ipsum tractat negotium, ut sibi expedire videtur.

Art' Cleri 3 Jac. ad artic' 21.

¶ Fuerit sententialiter terminatum, & transierit in rem judicatam, &c.] The like Article was preferred 3 Jac. and answered and resolved by all the Judges of England, which you may read there, and need not here to be rehearsed.

¶ Diversis rationibus.] For the spiritual Judges procedings are for the correction of the spiritual inner man, and, pro salute animæ, to injoin him penance; and the Judges of the Common Law proceed to give damages and recompence for the wrong and injury done: As if one lay violent hands of a Clerk, the spiritual Judge, pro salute animæ, shall injoin him penance, and the Clerk may have his action of battery, and recover damages for the injury done to him; and so in the case of usury, and the like: So as this Act saith well, that eadem causa diversis rationibus coram Judicibus Ecclesiasticis & Secularibus ventilatur; and therefore this Article of the Clergy was deservedly rejected.

CAP. VII.

ITem, litera regia Ordinariis dirigitur, qui aliquos suos subditos excommunicationis vinculo innodarunt, quod eos absolvant infra certum diem; alioquin quod compareant responsur quare eos excommunicaverunt. Responsio: Rex decernit, quod talis litera nunquam in posterum exire permittatur, nisi in casu quo possit inveniri, lædi per excommunicationem regiam libertatem.

Here was a mistaking in the Article of the Clergy; for never was any writ of the King here called litera Regis, granted in case of excommunication, but in certain

certain cases, as, When a man is justly excommunicated, and taken by force of the Kings writ de excommunicato cap. if the Bishop, upon the Kings writ de cautione admittenda, &c. do not deliver him, then shall a writ out of the Chancery go to the Sheriff, upon the refusal of the Bishop to deliver him; or if the excommunication be unjust, that is, if the party be excommunicated for a matter which belongs not to Ecclesiastical conusance, and taken by force of the Kings writ, then the party grieved shall have a writ out of the Chancery to the Sheriff, to deliver him out of prison. And this appeareth by our ancient Books written before this Act, and by ancient Records and Book-cases in all succession of ages ever since; and in both the cases abovesaid, Regia libertas læsa fuit, and thereupon the subject had relief by the Kings writ; and therefore the answer to this Article was very pertinent, Nisi in casu quo possit inveniri, lædi per excommunicationem regiam libertatem. And the contempt of the Bishop in those cases is the greater, for that breve Regis de excommunicato cap. de gratia Regis procedit. And so it is if a man be excommunicated, and offer to obey and perform the sentence, and the Bishop refuseth to accept it and to assoil him, he shall have a writ to the Bishop, requiring him, upon performance of the sentence, to assoil him, &c. and the reason thereof is, for that by the excommunication, the party is disabled to sue any action, or to have any remedy for any wrong done unto him, so long as he shall remain excommunicate. And also the party grieved may have his action upon his case against the Bishop, in like manner as he may when the Bishop doth excommunicate him for a matter which belongeth not to Ecclesiastical conusance. Also the Bishop in those cases may be indicted at the suit of the King, as by many notable Records may appear: Mich. 7 E. 1. coram Rege, Rot.33. Robertus Sprot, Hill.7 E.1. coram Rege, Rot.8. Magister R. de Petchford, Pasch.32 E.1. coram Rege, Rot.33. Walterus de Wilton, Hill.35 Ed.1. coram Rege, Rot.52. Gloc' Prior de Glocesters case, Mich.19 E.2. coram Rege, Rot.53. Linc' Philip Whites case, Trin. 20 E.3. coram Rege, Rot.46.289. Fresiles case.

Regist.65,66,67, 70. Bract.lib.5.fol. 408,409,427,443. Flet.lib.6.cap.43. 5 E.3.8. 8 E.3.9. 14 H.4.14,15. 3 H.4.4. Doctor & Stud.lib.2. cap.32. Vet.N.B.33,35. F.N.B.62. &c. Dorf.claus. 21 R.2. m.10. Hill. 22 E.1. apudSandw. coram Rege, rot.2. William de Valences case. Raym? 225 —

And it is to be observed that at the common Law a certificate of the Bishop, whereupon a significavit, that is, a writ de excommunicato capiendo was to be granted, ought to express the cause, and the suit against him specially in the Certificate.

28 E.3 97. 14 H.4. 14. 3 H.4.4. 22 E. 4.20.b. 9 H.7.22. Fitz.N.B.6.f.

See more the Statute of 5 El.cap.23. concerning the awarding and returning the writ de excommunicato capiendo.

5 El.cap.23.

See the first part of the Institutes, sect.201. concerning this matter.

CAP. VIII.

ITem, Barones de Scaccario Domini Regis, vendicantes sibi ex privilegio, quod non debent extra illum locum conquerenti cuicunque respondere, extendunt illud privilegium ad Clericos commorantes ibidem, vocatos ad ordines, seu ad residentiam; & Diocesanis inhibeant, ne aliquo modo aliquave ex causa, dum sint in Scaccario, & in servitio Domini Regis, trahant ad judicium quovismodo. Responsio: Placet Domino Regi, ut Clerici suis obsequiis intendentes, si delinquant per Ordinarios (ut cæteri) corrigantur: sed tempore quo occupantur circa Scaccarium, ad residentiam in suis faciendam Ecclesiis non teneantur. Hic additur de novo, per Concilium Domini Regis: Rex & Antecessores sui, a tempore cujus contrarii memoria non existit, usi sunt, quod Clerici suis immorantes obsequiis, dum obse-

quiis

quiis illis intenderint, ad reſidentiam in ſuis Beneficiis faciendam minime compellantur; nec debet dici tendere in præjudicium Eccleſiaſticæ libertatis, quod pro Rege & Republica neceſſarium invenitur.

¶ De Privilegio, &c.] The Court of the Exchequer may grant a prohibition to the Ordinary, for any that ought to have the priviledge of the Exchequer, where the Court may give the party remedy, or where a ſute dependeth in the Court of Exchequer for the ſame cauſe, or where the Kings ſervice, which is the cauſe of the priviledge, is hindered by the ſuit before the Ordinary: as for non-reſidence, &c. during that time that he gave his neceſſary attendance in the Exchequer for the Kings ſervice.

¶ Si delinquant.] This extendeth only ad delicta, i. crimina, whereof the Eccleſiaſtical Court hath conuſance, as hereſie, adultery, and the like, which the Ordinary may correct; and not unto civil actions.

Regiſt. 58. b. F.N.B. 44. g. ¶ Ad reſidentiam.] There is an ancient writ, called de non reſidentia Clerici Regis, the words of which writ be, Cum Clerici noſtri ad faciend' in Beneficiis ſuis reſidentiam perſonalem, dum in noſtris immorantur obſequiis compelli, aut alias ſuper hoc moleſtari, ſeu inquietari non debeant: Noſque ac Progenitores noſtri quondam Reges Angliæ, hujuſmodi libertate & privilegio pro Clericis noſtris a tempore quo non extat memoria ſemper hactenus uſi ſumus: Vobis mandamus, quod dilectum Clericum noſtrum A. Parſonam Eccleſiæ de B. veſtræ Diœceſ. qui in Cancellaria noſtra, noſtris jugiter intendit obſequiis, ad perſonalem reſidentiam in Beneficio ſuo prædict' faciendam, dum in eiſdem obſequiis noſtris immoretur, nullatenus compellatis. Et ſequeſtrum ſi quod in fructibus, aut aliis bonis Eccleſiæ ſuæ prædictæ ea occaſione per vos, aut veſtros fuerit appoſitum, ſine dilatione relaxari faciatis. Teſte, &c.

¶ Per Concilium Domini Regis.] Here Concilium Domini Regis is taken for commune concilium regni, as it is termed in original writs, and in other legal records, and ſo it is taken in other Acts of Parliament, and in the Preamble of this Act alſo, where it is ſaid, Ac nuper in Parliamento noſtro apud Lincoln', &c. coram Concilio noſtro, &c.

This branch is general (and not limited, as the former is, to the priviledge of the Exchequer) but extendeth to any other ſervice of the King for the Common-wealth: as if he be imployed as an Embaſſadour into any forrain Nation, or the like ſervice of the King, which is pro Republica, for the Common-wealth, as hereafter it is ſaid, which ever muſt be preferred before the private.

¶ Nec debet dici tendere in præjudicium Eccleſiaſticæ libertatis, quod pro Rege & Republica neceſſarium invenitur.] The Clergy in this Parliament inveighing vehemently againſt this anſwer, and that it tended to the breach of the Eccleſiaſtical liberty, which was granted to them by Magna Charta, and often confirmed by other Acts of Parliament, Quod Eccleſia Anglicana libera ſit, &c. To which it was anſwered, that the words ſubſequent explained thoſe words, Et habeat omnia jura ſua & libertates ſuas illæſas; ſo as the Clergy cannot claim any right, but jus ſuum, nor any liberty, but libertates ſuas: and the point here in queſtion, viz. to proceed againſt a Clerk for non-reſidence, whiles he was in the Kings ſervice, for the Common-wealth was neither jus ſuum, nor libertas ſua, but libertas Regis: and therefore the Parliament thought it fit to declare, that the King and his Anceſtors had uſed this liberty or prerogative time out of mind, And where it was ſaid, that this tended in præjudicium Eccleſiaſticæ libertatis, the Parliament thereunto anſwered (which is worthy

Regiſtr. 58. b.

worthy to be witten in letters of gold) Nec debet dici in præjudicium Eccleſiaſticæ libertatis, quod pro Rege & Republica neceſſarium invenitur.

Regularly, perſonal reſidence is required of Eccleſiaſtical perſons upon their Cures; and to that end, by the common Law, if he that hath a Benefice with Cure, be choſen to an office, as to an office of Bailiff, or Bedle, or the like ſecular office, he may have the Kings writ, Quod non eligatur in officium, &c. Quia non eſt conſonum, quod is, qui pro ſalubri ſtatu animarum eleemoſynis, & aliis piis operibus, infra, &c manutenendis & ſuſtentandis continue deſervit, extra, &c. in ſecularibus negotiis compellatur. Vobis præcipimus, quod diſtrictioni & compulſioni, ſi quas, &c. eidem &c. ad officium Ballivi, Bedelli, &c. in manerio, &c. aſſumend' feceritis, omnino ſuperſedeatis, & eas ſine dilatione relaxetis, & denarios, ſi quos per amerciamenta, vel alio modo ex cauſa præd' ab eo levaveritis, eidem &c. reſtitui faciatis immediate, ſub periculo quod incumbit. Teſte, &c.

And this Writ of ancient time was granted at the petition of the Clergy, and grounded upon holy writ, Nemo militans Deo implicat ſe negotiis ſecularibus, ut ei placeat cui ſe probavit. 2 Tim. 2. ver. 4. And the opinion of Sir John Priſot, chief Juſtice of the common Pleas, is notable; To thoſe laws which holy Church hath out of the Scripture, we ought to yield credit; for that (ſaith he) is the Common Law, upon which all laws are founded: And the intendment of the Common Law is, that a Parſon, &c. is reſident upon his Cure; for in an action of debt brought againſt J.S. Rectorem de D. the Defendant pleaded, that he was demurrant, and converſant at B. in another County: And the rule of the Book is, that ſeeing the Defendant denied not that he was Rector of the Church of D. he ſhall be deemed by law to be demurrant and converſant there for the cure of ſouls; and therefore the plea was over-ruled. 34 H. 6. 40. a. 10 H. 6. fol. 8. a.

We could not over-paſs an ancient and an excellent Record concerning non-reſidence, in the 48 year of King Henry the third, for it is worthy of rehearſal for many purpoſes: At that time one Peter Egneblanke a ſtranger, born in Savoy, was Biſhop of Hereford: this Biſhop then was, and long before had been, a non-reſident, an unfaithful Steward, and altogether careleſs of his Paſtoral charge: The King travelling (for the defence and ſafety of the Marches) came to the city of Hereford, where, finding the Biſhop abſent, the people neither informed nor reformed per verbum ſalutis, & virgam correctionis, divine ſervice neglected, and all things out of order, as by the writ following appeareth, which we hold worthy to be rehearſed de verbo in verbum, as it is of record.

Rex Epiſcopo Hereford' ſalutem. Paſtores gregibus præponuntur, ut, diei noctiſque vigilias exercendo, oves famelicas in fertilitatis paſcua introducant: Errantes vero per verbum ſalutis, & virgam correctionis in unius ovilis conſervare ſtudeant indiſſolubilem unitatem: Sed ſunt nonnulli qui hanc doctrinam damnabiliter contempnentes, & ſua ab aliis pecora diſtinguere neſcientes, lac & lanam tollunt, qualiter dominicus grex alatur non curantes, temporalia rapiunt, & quis in Parochia fame pereat, aut periclitetur in moribus, non attendunt; qui non paſtores, ſed mercenarii potius dici promerentur: Hoc ſiquidem, dum hiis diebus ad diſponendum de regni noſtri præſidiis in partes Marchiæ nos transferremus, in Eccleſia veſtra Hereff. (dolenter referimus) nos inveniſſe quam adeo invenimus paſtoris ſolatio deſtitutam, ut nedum Epiſcopum, ſed nec Officialem haberet, Vicariam, aut Decanum, qui quicquam ſpiritualitatis exercere poſſit in eadem. Sed Eccleſia ipſa, quæ olim deliciis affluere conſuevit, & canonicis qui ibidem nocturnis & diurnis officiis vacare, & opera charitatis exercere deberent, eam deſerentibus & longe degentibus in remotis, ſtola jocunditatis exuta cecidit in terram, viduitatis ſuæ detrimenta deplorans, nec eſt qui conſoletur eam ex omnibus caris ejus: Sane, dum hæc vidimus &

conſideramus diligenter, pietatis aculeus viſcera noſtra commovit, & compaſſionis gladius intima cordis noſtri acrius vulneravit, ut tantam Eccleſiæ matris noſtræ injuriam ulterius diſſimulare non poſſimus, nec pertranſire incorrectam. Quapropter vobis mandamus firmiter injungentes, quatenus ad Eccleſiam veſtram prædictam, occaſionibus quibuſcunque poſtpoſitis, cum ea qua poteritis celeritate vos transferre curetis, commiſſum vobis in eadem cura paſtorali officium perſonaliter executur', &c. Alioqui ſcire vos volumus pro conſtanti, quod ſi iſtuc facere non curaveritis, bona temporalia, & omnia quæ ad baroniam ipſius Eccleſiæ pertinent, quæ donatione conſtat eidem fuiſſe collata, & quæ hactenus colligi, & ſalvo cuſtodiri præcipimus in commodum & utilitatem ipſius Eccleſiæ convertenda, ceſſante jam cauſa in manu noſtra totaliter capiemus, nec ulterius ſuſtinebimus, quod temporalia metat, qui ſpiritualia ad quæ ex officii ſui debito tenetur, irreverenter ſubtrahere non formidat, aut quod emolumenta percipiat, qui incumbentia ejuſdem onera ſubire recuſat. Teſt' R. apud Hereff. primo die Junii anno regni ſui xlviii.

By this writ the King telleth the Biſhop what his Paſtoral office and duty was, rehearſeth the damnable and damned events of non-reſidency, commandeth him to be perſonally reſident, and repreſenteth to him the danger, if he doth it not. And this writ, commanding reſidence, ought to have bëen put into the Regiſter of writs, rather then the writ de non reſidentia Clerici Regis: Hoc non omittendum, illud faciendum.

* Rot. Parl. 35 E.1. leſtatute de Carlile. 18 E.3.nu.32. Rot.Parl.3 R.2. nu.38. 3 R.2. ſtat.2. cap.2. 7 R.2.nu.35. 17 R.2.nu.43. 1 H.4.nu.50. 2 H.4 nu.26. 6 H.4.nu.48. 7 H.4.nu.114. 11 H.4.nu.70. 3 H.6.nu.38. 4 H.6.nu.31.&c.

The Engliſhman hath ever bëen deſirous to be taught and directed in the way of his ſalvation; and therefore hath often complained in *Parliament againſt non-reſidents, unlearned Paſtors, and pluralities, which you may read in the fountains themſelves.

Mich. 21 H.8. coram Rege.

After that Thomas Woolſey in the ſeventh year of Henry the eight was made Cardinal, and grew into the height of his authority and favour with the King, he hated both Parliaments, and the common Laws (the principal means to këep greatneſs in order, and due ſubjection) as it is contained in his indictment, which he confeſſed of record, that he intended (that I may uſe the very words of the Record) Antiquiſſimas Angliæ leges penitus ſubvertere, & enervare, univerſumque hoc regnum Angliæ, & ejuſdem regni populum legibus imperialibus, vulgo dictis legibus civilibus, & earundem legum Canonibus imperpetuum ſubjugare & ſubducere, &c. And for execution of his intended plot, he was the mean that but one Parliament was holden in fourtëen years, viz. from the ſeventh year, till the one and twentieth year of Henry the eight, and that one was principally holden for the attainder by Parliament of Edward the good Duke of Buckingham, whom he hated, and the confiſcation of all that he had. Now the Cardinal, being a great protector of non-reſidents, was no ſooner attainted by that law (which he ſought to alter) but at the Parliament holden in 21 H.8. a law was made againſt non-reſidence, which was excellent for that time, but now had nëed of ſome alterations and additions.

21 H.8.cap.13. Vid.33 H.8. ca.28.

CAP. IX.

ITem, miniſtri Domini Regis, ut Vicecomites, & alii, ingrediuntur feoda Eccleſiæ ad faciendum diſtrictiones, & aliquando capiunt animalia Rectorum in via regia, quando non habent niſi terram pertinentem ad Eccleſiam. Reſponſio: Placet Domino Regi quod de cætero diſtrictiones fiant hujuſmodi, nec in via regia, nec in feodis, quibus olim Eccleſiæ ſunt dotatæ; vult tamen diſtrictiones fieri in poſſeſſionibus de novo a perſonis Eccleſiaſticis acquiſitis.

¶ Ingrediuntur feoda Eccleſiæ.] See the expoſition upon the Statute of Marlebridge: This is to be added, that the Statute of Marlebridge was conſtrued to extend only to lay men, and this Statute to men of the Church: and this appeareth by the Regiſter; for if a lay man bring an action upon the Statute for diſtraining in the Kings high-way, he reciteth the Statute of Marlbridge: and if a Parſon bring an action for diſtraining in the high-way, he groundeth it upon this Statute. Marlbridge, ca. 15. Regiſt. 187, 188. F.N.B. 173. e. f.

¶ Rectorum.] Here Parſons be named but for example; for this law extended to Abbots, Priors, and the like; for afterwards the words be Perſonæ Eccleſiaſticæ: but this law bindeth not the King, when he is party, for any debt, or duty due unto him, becauſe the diſtreſs or other proceſs for the King is not expreſly named in the Act, but diſtrictiones generally: and this appeareth by a book-caſe: A Prior brought a Bill of treſpaſs againſt J. for entring into his Sanctuary, that is, within the circuit of the ſcite of his Priory, and took away his beaſts: J. ſaid, that he was Sheriff, and that the Prior loſt iſſues in the Court of Common Pleas, and a writ iſſued to him to levy the iſſues, and that he entred into the Sanctuary, &c. becauſe he could not find a diſtreſs without; whereupon the plaintiff demurred, and judgment was given againſt the Plaintiff, which proveth, that the Sheriff in that caſe could not have returned upon the proceſs to him directed, Clericus beneficiatus nullum habens laïcum feodum. 27 aſſ. p. 66.

¶ Nec in feodis quibus olim Eccleſiæ ſunt dotatæ.] Here dotatæ is taken in a large ſenſe; for here the fées that they have ratione fundationis, or ratione dotationis are included; and here is alſo to be noted, that the poſſeſſions of the Church are the indowment of the Church, and they accounted as tenants in dower, as in another place hath been obſerved.

¶ Olim.] This word is well expounded afterwards in this Act, to be thoſe that are not de novo acquiſita.

Concerning taſks, tenths, and fifteens granted by Parliament to the King, the poſſeſſions of Eccleſiaſtical perſons, which they acquired ſince 20 E. 1. either by purchaſe or act in law, as by others, &c. were chargable thereunto; but thoſe which they had at that time were not charged therewith; and the reaſon thereof was this, The Pope (after the example of the high Prieſt among the Jews, who had of the Levites decimam partem decimæ) claimed by pretext thereof a yearly tenth part of the value of all Eccleſiaſtical livings: This portion or tribute was by ordinance yielded to the Pope in 20 E. 1. and a valuation then made of the Eccleſiaſtical livings within this Realm, to the end the Pope might know, and be anſwered of that yearly revenue, ſo as the Eccleſiaſtical livings chargeable with that tenth (which was called ſpiritual) to the Pope, were not chargeable with the Temporal tenths or fifteens granted to the King in Parliament, 17 E. 3. 44. b. 27 E. 3. 28. b. 11 H. 4. 35. Numeri, cap. 18. ver. 26. Rot. Parl. 18 E. 3. nu. 44. never printed.

leſt they ſhould be doubly charged, but their poſſeſſions acquired after that taxation were liable to the Temporal tenths or fiftéens, becauſe they were not charged to the other; and ſo it was declared by Act of Parliament in 18 E.3. which never was printed; ſo as the tenths of Eccleſiaſtical livings were not yielded to the Pope de jure, after the example of the high Prieſt among the Jews; for then he ſhould have had the tenths of all Eccleſiaſtical livings whenſoever they were acquired; but he contented himſelf with what he had got, and never claimed more: and that he might the better keep and enjoy that which he had got, the Popes did often after grant the ſame for certain terms to divers of the Kings of England, as by our Hiſtories appear. And albeit theſe yearly tenths are perpetually annexed to the Crown of England by Act of Parliament, yet hereby the Student ſhall better underſtand the Books of Law that treat hereof.

26 H.8. cap.3. 1 Eliz cap.1.

CAP. X.

ITem, quandocunque aliqui confugientes ad Eccleſiam abjurant terram, ſecundum regni conſuetudinem, & proſequuntur laici eos, vel inimici eorum, & a publica ſtrata abſtrahuntur, & ſuſpenduntur, vel ſtatim decapitantur, & dum ſint in Eccleſia cuſtodiuntur per armatos infra cœmiterium, quandoque infra Eccleſiam ita arcte, quod non poſſunt exire locum ſacrum cauſa ſuperflui ponderis deponendi, nec permittitur eis neceſſaria ad victus miniſtrari. Reſponſio: Qui terram abjuraverint, dum ſint in ſtrata publica, ſint in pace Domini Regis, nec debent ab aliquo moleſtari: & dum ſint in Eccleſia, cuſtodes eorum non debent morari infra cœmeterium, niſi neceſſitas, vel evaſionis periculum hoc requirat: nec arctentur confugere, dum ſint in Eccleſia, quin poſſint habere vitæ neceſſaria: & exire libere pro obſceno pondere deponendo. Placet etiam Domino Regi, ut latrones vel appellatores, quandocunque voluerint, poſſint Sacerdotibus ſua facinora confiteri: ſed caveant confeſſores, ne erronice hujuſmodi appellatores informent.

Bract.lib.2.fol. 135.&c. Brit.fol. 24.&c. Flet.lib.1. cap.29. Stamf. pl. coro.fo.116.f.&c. 21 Jacobi Regis, cap.

¶ Abjurant regnum.] Concerning abjuration you may pleutifully read in our ancient Authors, and other Books of the Laws, and ſpecially in Stamford pl.coron.fol.116.&c. wherein we are the more brief, becauſe it is enacted by the Statute of 21 Jac.Regis, that no Sanctuary, or priviledge of Sanctuary, after that Statute be admitted or allowed in any caſe; and if the offender be barred of the priviledge of Sanctuary to be allowed to him, then can he not flée to any Church, as to a Sanctuary, for the tuition of his life, and conſequently, abjuration is taken away.

¶ Decapitantur.] This was miſtaken in the petition: for no man can be beheaded but for treaſon; and no man could abjure for treaſon, becauſe the Coroner had no power to take any confeſſion for treaſon, albeit the Coroner had a ſpecial commiſſion from the King to do it.

See 1 Jacobi Regis, cap.25.

¶ Quin

¶ Quin poſſint habere vitæ neceſſaria.] This is thus to be underſtood, that he ſhall have neceſſaria vitæ ſo long as he behaves himſelf according to the Law, and the priviledge of the place; but if he had continued 40 days, and would not abjure, then vitæ neceſſaria ſhall be denied unto him, and they ſhould be puniſhed that miniſtred the ſame unto him. Bract. lib. 2. fol. 135 &c. Brit. fo. 24, 25. Flet. lib. 1. cap. 29. 3 E. 3. coron. 313. Stamf. ubi ſupra.

Placet etiam Domino Regi, ut latrones, vel appellatores, quandocunque voluerint, poſſint Sacerdotibus ſua facinora confiteri, ſed caveant confeſſores, ne erronice hujuſmodi appellatores informent.

¶ Latrones vel appellatores.] This branch extendeth only to thieves and approvers indicted of felony, but extended not to high treaſons; for if high treaſon be diſcovered to the Confeſſor, he ought to diſcover it, for the danger that thereupon dependeth to the King and the whole Realm; therefore this branch declareth the common law, that the priviledge of confeſſion extendeth only to felonies: And albeit, if a man indicted of felony becometh an approver, he is ſworn to diſcover all felonies and treaſons, yet is he not in degrée of an approver in law, but only of the offence whereof he is indicted; and for the reſt, it is for the benefit of the King, to move him to mercy: So as this branch beginneth with thieves, extendeth only to approvers of thievery or felony, and not to appeals of treaſon; for by the common law, a man indicted of high treaſon could not have the benefit of Clergy (as it was holden in the Kings time, when this Act was made) nor any Clergy-man priviledge of confeſſion to conceal high treaſon: and ſo it was reſolved in * 7 Hen. 5. whereupon Frier John Randolph the Quéen Dowagers Confeſſor, accuſed her of treaſon, for compaſſing of the death of the King: And ſo was it reſolved in the caſe of Henry Garnet, ſuperiour of the Jeſuites in England, who would have ſhadowed his treaſon under the priviledge of confeſſion, although in déed he was not only conſenting, but abetting the principal conſpirators of the Powder-Treaſon, as by the record of his attainder appeareth; and albeit this Act extendeth to felonies only, as hath béen ſaid, yet the caveat given to the Confeſſors is obſervable, ne erronice informent. 12 E. 4. 10. b. 19 E. 2. cor. 387. 6 H. 6. coron. 231. 19 H. 6. 47. See W. 2. cap. 41. §. Si Abbates, &c. lib. 2. fol. 46. Leveſque de Cant' caſe, &c. 20 E. 2. coron. pl. 283. 19 H. 6. 47. * Rot. Parl. anno 7 H. 5. nu. 13. Hill. 3 Jac.

CAP. XI.

ITem petitur, quod Dominus Rex, & regni Magnates non onerent domos religioſas, vel Eccleſiaſticas perſonas pro corodiis, penſionibus, vel perhendinationibns faciendis in domibus religioſis, & aliis locis Eccleſiaſticis, carectis & equis ſibi mittendis, cum per hoc prædictæ domus depauperentur cultuſque divinus in hac parte diminuatur, & propter hujuſmodi onera compelluntur ſæpiſſime Presbyteri, & alii Miniſtri Eccleſiaſtici divinis officiis deputati a locis recedere ſupradict'. Reſponſio: Placet Domino Regi, quod ſuper contentis in petitione, de cætero indebite non onerentur. Et ſi per Magnates, aut alios contra fiat, habeant inde remedium juxta formam Statutorum tempore Dom̃ E. Regis Patris Domini Regis nunc editorum: & fiat conſimile remedium de corodiis, & penſionibus per coertionem exactis, de quibus non fit mentio in Statutis.

¶ Pro

¶ Pro corodiis & penſionibus.] See hereafter in the end of this Chapter, to whom, and in what caſes corodies and penſions be due.

¶ Perhendinationibus.] See hereof W. 1. cap. 1.

Raſt.pl.fol.373. ¶ Juxta formam Statutorum.] That is to ſay, of W. 1. anno 3 E. 1. cap. 1.

Regiſt.fol.F.N.B. 230.b. 14 H.6.11. 2 E.2. cui in vita 18. 6 E.2. ibid.25. Bract.lib.3.fo.221. 14 E.3.corody 5. 15 E.3. ib.4.11 aſſ. 22. 24 E.3.fol.33. 38 aſſ. 22. 44 E.3. 24. 50 aſſ.6. 10 H. 4.33. 14 H. 6.11. 39 H.6.28. 1 E.4. 10. 8 H.7.12. F.N. B.231. Vid.rot. clauſ.in dorſ.8 H.4 m.13.& 9H.4.m.33 34. penc' coram rege Nich.32 E.1. Northampton.

¶ Conſimile remedium de corodiis & penſionibus.] Albeit Corodium is derived a con & rodere, i. ſimul comedere; yet to a corody belong not only victus, but veſtitus, & alia vitæ neceſſaria, which is called ſuſtentatio congrua, as much as a Monk of the ſame houſe hath; and a penſion is a yearly annuity to be granted to one of the Kings Chapleins. The King ſhall have a corody for his Vadelet, and a penſion for his Chaplein, out of all the religious and eccleſiaſtical houſes of his foundation (unleſs the tenure be in frankalmoigne) but by reaſon of dotation, if he be not founder, he ſhall have none, unleſs it be by ſpecial grant. A common perſon ſhall have no corody, nor penſion, &c. though he be founder, unleſs it be by ſpecial grant. The Abbot, &c. ſhall not be charged with a new penſion, though the Chaplein dye, during the life of the King; but if the Abbot, &c. dye, his ſucceſſor ſhall be charged, ratione creationis, with a penſion. If the Vadelet dye, another ſhall have the corody during the Kings life; but if the Abbot, &c. dye, no new corody during the life of the former Vadelet.

CAP. XII.

ITem, ſi aliqui de tenura Domini Regis vocantur coram Ordinariis, extra Parochiam in qua degunt, ſi propter ſuam contumaciam manifeſtam excommunicentur, ac poſt quadraginta dies pro eorum captione ſcribatur, prætendunt ſe privilegiatos, quod extra Villam ſeu Parochiam ſuam non debent vocari, & ſic denegetur breve regium pro captione eorundem. Reſponſio: Nunquam fuit negatum, nec negabitur in futurum.

The writ de excommunicato capiendo, commonly called a Significavit, was never denied; for this cauſe, that he that held of the King had ſuch a privilege, that they ſhould not be called out of the Town or Pariſh where they lived; and therefore the anſwer (which muſt ever be conform to the petition) ought of neceſſity to be taken, that for that cauſe the Kings writ was never, nor ſhould be denied.

8 Kal. Febr. anno 11 H.2. apud Clarendon, commonly called Aſſiſa de Clarendon, Bract. lib.3.fol.136. See cap.15.

But for the better underſtanding hereof, at the Parliament holden at Clarendon, in the eleventh year of Henry the ſecond, Facta eſt recognitio, ſeu recordatio cujuſdam partis conſuetudinum Anteceſſorum Regis, viz. Henrici (primi) avi ſui, quæ obſervari debebant in regno, & ab omnibus teneri propter diſſenſiones & diſcordias ſæpe emergentes inter Clerum & Juſticiarios Domini Regis, & Magnatum regni. Among the reſt, this was agnized and declared in theſe words: Nullus qui de Rege tenet in capite, nec aliquis dominicorum miniſtrorum ejus excommunicetur, nec alicujus eorum terræ ſub interdicto ponantur, niſi prius Dominus Rex, ſiin

ſi in regno fuerit, conveniatur, vel Juſticiarius ejus, ſi fuer' extra regnum, ut rectum de eo faciat, ut quod pertinebat ad Regis Curiam, ibi terminetur, & de eo quod ſpectat ad Curiam Eccleſiaſticam ad eandem mittatur, & ibidem terminetur. And the reaſon of this Law was, for that the tenures by grand Serjeantie, and Knights ſervice in capite were for the honour and defence of the Realm; and concerning thoſe that ſerved the King in his houſhold, their continual ſervice and attendance upon the Royal perſon of the King was neceſſary.

Of this Law the Clergy here complained not, and other then this concerning tenure, &c. in the petition mentioned, we remember not any; ſo as we may conclude this point, that this writ de excommunicato capiendo (as hath been ſaid) procedit de gratia Regis.

Vid. cap. 7. before Rot. clauſ. in dorſ. 17 R. 2. m. 10.

CAP. XIII.

ITem petitur quod perſonæ Eccleſiaſticæ, quas Dominus Rex ad Beneficia præſentet Eccleſiaſtica, ſi Epiſcopus eas non admittat, ut puta proter defectum ſcientiæ, vel aliam cauſam rationabilem, non ſubeant examinationem laicarum perſonarum in caſibus antedictis, prout his temporibus attentatur de facto, contra Canoicas ſanctiones: ſed adeant Judicem Eccleſiaſticum, ad quem de jure pertinet pro remedio, prout juſtum fuerit, conſequendo. Reſponſio: De idonietate perſonæ præſentatæ ad Beneficium Eccleſiaſticum pertinet examinatio ad Judicem Eccleſiaſticum: & ita eſt hactenus uſitatum, & fiat in futurum.

¶ De idonietate perſonæ.] It is required by Law, that the perſon preſented be idonea perſona; for ſo be the words of the Kings writ, Præſentare idoneam perſonam. And this idonietas conſiſteth in divers exceptions againſt perſons preſented: Firſt, concerning the perſon, as baſtardy, villenage, outlawry, excommunication, a lay-man, under age, and the like: Secondly, concerning his converſation, as if he be criminoſus, &c. Thirdly, concerning his inability to diſcharge his paſtoral duty, as if he be unlearned, and not able to feed his flock with ſpiritual food, &c. And the examnation of the ability and ſufficiency of the perſon preſented belongs to the Biſhop, who is the Eccleſiaſtical Judge, and in this examination he is a Judge, and not a Miniſter, and may and ought to refuſe the perſon preſented, if he be not idonea perſona. And if the cauſe of refuſal be for default of learning, or that he is an Heretick, Schiſmatick, or the like, belonging to the knowledge of Eccleſiaſtical Law, there he muſt give notice thereof to the Patron; but if the cauſe be Temporal, as a felon, or homicide, or other Temporal crime; or if the diſability grow by any Act of Parliament, or other Temporal Law, there no notice ought to be given, unleſs notice be preſcribed to be given thereby. But in a Quare impedit brought againſt the Biſhop, for refuſal of the Clerk, he muſt ſhew the cauſe of his refuſal ſpecially and directly (for whether the cauſe thereof be Spiritual or Temporal, the examination of the Biſhop concludes not the Plaintiff) to the intent the Court, being Judges of the principal cauſe, may conſult with learned men in that profeſſion, and reſolve whether the cauſe be juſt or no; or the party may deny the ſame, and then the Court ſhall write to the Metropolitane to certifie the ſame; or if the cauſe be Temporal, and ſufficient in Law (which the Court muſt decide) the ſame may be traverſed, and an iſſue thereupon joyned, and tried by the County. And yet in

Regiſtr. 53. b. 38 E. 3. 2. 29 E. 3 44. 5 R. 2. trial 54 11 H. 4. 34 H. 6. 40. per Priſot, 5 H. 7. 19. 11 H. 7. 7. 37. 15 H. 7. 7. 9 El. Dier 154. 13 El. Dier 332. lib. 5. fo. 57. Specots caſe.

in ſome caſes, notwithſtanding this ſtatute, idonietas perſonæ ſhall be tried by the Country, or elſe there ſhould be a failer of juſtice (which the Law will never ſuffer) as if the inability or inſufficiency be alledged in a man that is dead, this caſe is out of this Statute: for the Biſhop cannot examine him, and the words of this Act be, De idonietate perſonæ præſentatæ ad beneficium Eccleſ. pertinet examinatio, &c. And conſequently, though the matter be Spiritual, yet ſhall it be tried by a Jury, and the Court, being aſſiſted by learned men in that profeſſion, may inſtruct the Jury as well of the Eccleſiaſtical Law in that caſe, as they uſually doe of the Common Law.

39 E. 3. 2. 40 E. 3. 25.

¶ Et ita eſt hactenus uſitatum.] So as this Act is a declaration of the Common Law and cuſtome of the Realm.

CAP. XIV.

ITem, ſi vacet aliqua dignitas, ubi electio eſt facienda, petitur quod electores libere poſſint eligere, abſque incuſſione timoris a quacunque poteſtate ſeculari: & quod ceſſent preces, & oppreſſiones in hac parte. Reſponſio: Fiant libere, juxta formam ſtatuorum & ordinationum.

W. 1. cap. 5.

The Clergy either remembred not the Statute of W. 1. or if they did they doubted wether it extended to Eccleſiaſtical elections, although without queſtion it did, and ſo it is declared by this Act, and it is an excellent Law, and worthy to be put in execution.

See more hereof before in the expoſition upon the ſtatute of W. 1.

CAP.

CAP. XV.

ITem, licet Clericus coram ſeculari Judice judicari non debeat, nec aliquid contra ipſum fieri, per quod ad periculum mortis, vel ad mutilationem membrorum valeat perveniri: ſeculares tamen Judices Clericos ad Eccleſiam confugientes, & reatus ſuos forte confitentes faciunt abjurare regnum, & eorum abjurationes admittunt ex illa cauſa, quanquam eorum Judices ſuper hiis non exiſtant: ſicque datur laicis indirecte poteſtas hujuſmodi Clericos cruciandi, ſi ipſos poſt hujuſmodi abjurationem in regno contigerit inveniri: ſuper quo petunt Prælati, & Cler' tale remedium adhiberi, ut immunitas Eccleſiæ, & perſonarum Eccleſiaſticarum conſervetur illæſa. Reſponſio: Clericus ad Eccleſiam confugiens pro felonia, pro immunitate Eccleſiaſtica obtinenda, ſi aſſerit ſe eſſe Clericum, regnum non compellatur abjurare, ſed legi regni ſe reddens gaudebit Eccleſiaſtica libertate, juxta laudabilem conſuetudinem regni hactenus uſitatam. Cuſtumier de Norm. cap. 85.

Here the claim of the Clergy is general, that Clericus coram ſeculari Judice judiciari non debeat, nec aliquid contra ipſum fieri, per quod ad periculum mortis, vel mutilationem membrorum valeat perveniri: Let us ſee what privilege the Clergy had allowed unto them in criminal caſes: Firſt, Let us obſerve what our ancient Authors have holden in that caſe: Secondly, What Records of Parliament, and other Records have delivered to us: Thirdly, What Acts of Parliament have eſtabliſhed in theſe caſes: Fourthly, What have the judgements and reſolutions been of Judges in our Books and reports. And laſtly, From what rot this privilege of Clergy ſprang, to exempt them from the common juſtice of the Realm.

Bracton ſaith, Cum Clericus cujuſcunque ordinis vel dignitatis captus fuerit pro morte hominis, vel alio crimine, & impriſonatus, & de eo petatur Curia Chriſtianitatis ab Ordinario loci, &c. impriſonatus ſtatim ei deliberetur, &c. donec à crimine ſibi impoſito ſe purgaverit competenter, vel in purgatione defecerit, propter quod debet degradari, &c. cum autem Clericus ſic de crimine convictus degradetur, non ſequitur alia pœna pro uno delicto, vel pluribus, ante degradationem perpetratis. Here three things are to be noted: Firſt, That he beginneth with the greateſt felony, that is, the death of man: Secondly, That albeit he were found guilty, and could not purge himſelf before the Ordinary, yet all that the Ordinary could do was to degrade him. Thirdly, That he could have no other puniſhment for that felony, or any other formerly done, but degradation. Cuſtumier ubi ſupra. See the Statute of 23 H. 8. c. 11. & 31. 1 E. 6. c. 10. &c. Bract. l. 3. f. 123. b.

Britton alſo ſpeaketh only of felony: Et ſi le Clerke encoupe de felonie alledge Clergie, & ſoit tiel trove, & per Ordinarie demand, ſi ſoit enquiſe coment il eſt meſcru, & ſil ſoit nient meſcru, &c. ſoit arge tout quits, & ſil ſoit meſcrue, ſi ſoient ſes chateux taxes, & ſes terres priſes in nre maine, & ſon cors deliv' al Ordinarie. Brit. fol. 11. Stamf. pl. cor. 123. c. 8 E. 2. coron. 417. 17 E. 2 ib. 386. 3 H. 7. 12

According to Britton, when one of the Clergy was indited of felony, &c. and the Ordinary demanded him, yet to the end (ſaith the * Record) ut ſciatur qualis deliberaretur Ordinario, an enqueſt was charged by the Court to enquire, whether he were guilty, or no. And though he was found guilty by this enqueſt of office, yet was he delivered to the Ordinary, and his chattels ſeiſed, and his lands taken into the Kings hands, as Britton ſaith. * Mirr. c. 3. del exception de Clergie accord.

Flet. lib. 6. cap. 36

Fleta ſaith, Si criminaliter agatur verſus Clericum, quamvis Clericus reſpondere voluerit in foro ſeculari, Judex tamen Eccleſiaſticus cognitionem habere non poterit, nec regiam auferre juriſdictionem: In cauſa enim ſanguinis non poterit Eccleſiaſticus Judex cognoſcere, neque judicare, niſi irregularitatem committat. Et quamvis neminem valeat morti condemnare, degradare tamen poterit criminum convictos, vel perpetua carceris incluſione cuſtodire.

Mirr. ubi ſupra.

The Mirror hath general words, Leſgliſe & cy enfranchiſe que nul lay Judge ne poet aver conuſans de Clarke, tout le voiloit le Clarke conuſtre pur ſon judge, &c.

Two of theſe ancient Authors have ſpoken of felony, and ſo are the other two to be intended; for the privilege of the Church did not extend to high treaſon, crimen læſæ Majeſtatis, as by divers judicial records and authorities in Law ſhall appear.

Rot. Parl. anno 21 E. 1. Rot. 9.

Walter de Berton Clerk counterfeited the great Seal, which was high treaſon, crimen læſæ Majeſtatis, whereof he was indited and convicted: for ſo the record ſaith, Qui convictus fuit pro falſificatione Sigilli Domini Regis, quod tradadatur Epiſcopo Sarum, qui eum petiit ut Clericum ſuum, ſub pœna & forma qua decet, quia videtur Concilio, quod in tali caſu non eſt admittenda purgatio.

This delivery to the Ordinary was by ordinance of Parliament de gratia, & non de jure: for it was reſolved, that he could not make his purgation; and therefore he was delivered to him ſub pœna, &c. In the reign of Ed. 3. it was taken for a general rule, Quod privilegium Clericale non competit ſeditioſo equitanti cum armis, platis & cotearmuris, ſecundum leges Angliæ.

Trin. 21 E. 3. coram Rege, rot. 173 Hertford.

17 E. 2. rot. Rom. m. 6.

In 17 E. 2. in the time of the Parliament, Adam de Orleton, Biſhop of Hereford, was indited of high treaſon, for being party and privy, aiding and abetting of Roger Mortimer Earl of March with horſe and arms in his open rebellion; and becauſe he could not have any privilege of Clergy by the Common Law, the Archbiſhop of Canterbury, York, and Dublin, and their Suffragan Biſhops, came to the Bar (in that diſordered time) and with force took him from the Bar: all which was done by pretext and colour of the Canons of the Church, which you may read in Linwood.

Henricus Elanford

Linwood tit. De foro compet' cap. Contingit.

But, omitting many other things that might be here rehearſed, let us ſee what Acts of Parliament have ordained in this caſe; for the Clergy never thought themſelves ſure of this privilege, till it was confirmed to them by authority of Parliament. By the Statute of W. 1. it is provided, Que quant Clerke eſt priſe pur ret de felonie, & ſoit demand per Lordinarie, a luy ſoit liver ſolonque le privilege de ſaint Eſgliſe, in tiel perill come ils appent, ſolonque le cuſtome avant ces heures uſe, &c. where note, this Act extendeth but to felony.

W. 1. cap. 2. Se Marlbridge, cap. 27. See hereafter, c. 5.

See the expoſition of the Statute of W. 1. in this point, and the charge as is given to Ordinaries, that none be delivered without due purgation: but it is worthy our pains to read the Statutes of 4 H. 4. and 23 H. 8.

4 H. 4. c. 3. 23 H. 8. cap. 1.

Pl. coram Domino Rege apud Sandwicum in cro' Hilarii, an. 22 E. 1. Rot. 15. Kanc'.

After this Statute, and in this Kings time, Guinandus de Briland, Parſon of Snodiland in the County of Kent (in which Town Solomon de Rolfe, one of the Kings Juſtices in Eir, and one that puniſhed the extortions and other crimes of the Clergy, dwelt) came to dine with Solomon de Rolfe, and brought poyſon with him of his malice prepenſed, to murder by poyſon the ſaid Solomon; and the record of his inditement ſaith, Cum eo comedit, & poſuit venenum in cibo & in potu ipſius Solomonis, & ipſum impoiſonavit, per quod, poſt quindecim dies ſequentes inde obiit: And albeit of all felonies, murder is the worſt, and of all murders, murder by poyſon is the moſt unavoidable and deteſtable, and Guinand being indited and arraigned upon the ſaid inditement, Et quæſitus qualiter ſe vellet acquietate, dicit, quod Clericus eſt, & non poteſt hic inde reſpondere, & ſuper hoc venit frater Thomas Epiſcopus Roffenſis, & petit ipſum tanquam Clericum, &c. Et ut ſciatur qualis deliberare debet, inquiratur rei veritas per patriam; & Juraſ &c. dicunt ſuper ſacramentum ſuum, quod prædict' Guinandus dedit prædict' Solomoni venenum unde impoiſonatus fuit, & inde obiit, ut prædictum eſt. Put in the end he was delivered to the Ordinary, as by the record

it

it appeareth, and thereby, for any thing that we find in that or any other record, he escaped the sentence of death, which was due for his offence by the Law of God, and by the Common Law of the Realm grounded upon the same, Quicunque effuderit humanum sanguinem, fundetur sanguis illius ad imaginem quippe Dei factus est homo. And again, in the Book of Numbers, Hæc sempiterna erunt & legitima in cunctis, homicida sub testibus punietur, &c. non accipies pretium ab eo, qui reus est sanguinis, statim & ipse morietur, ne polluatis terram habitationis vestræ quæ insontium cruore maculatur, nec aliter expiari potest, nisi per ejus sanguinem, qui alterius sanguinem fuderit. Gen. c. 9. vers. 6. Num. c. 35. ver 29 30, 31, 33.

In 8 E 2. a Clerk convict for felony, and delivered to the Ordinary, murdered his Keeper, and fled, & non obstante clerimonia sua, he was hanged. And the like was done in 22 E. 3. 8 E. 2. coron. 419

The abuse of delivery of Clerks to the Ordinary grew so intolerable, as in the end it was taken away; as hereafter shall be shewed. 22 E. 3. ibid. 248.

See the Statute of 18 E. 3. cap. 2. concerning this matter.

At the Parliament holden in anno 25 E. 3. the Clergy did complain, that one Hanketun Honby a Knight, and one of the Clergy, had judgment given against him for high treason to be hanged, drawn, and quartered: Also for a judgment given against a Priest at Nottingham, for killing of his Master Sir Thomas Cibethorp, a Clerk of the Chancery, one of the Kings Justices. Rot. Parl. 25 E. 3. nu. 68. &c.

And lastly, for hanging of divers Monks of Combe for felony. Thereupon at this Parliament an Act of Parliament was made, wherein it is recited, that the Prelates had grievously complained, praying thereof remedy, for that secular Clerks, as well Chapleins, as other Monks, and other people of religion had been drawn, and hanged by award of the secular Justices, in prejudice of the franchises of holy Church, &c. It is accorded and granted by the King, that all manner of Clerks, as well secular as religious, which should be convict before secular Justices for any treasons or felonies touching other persons, then the King himself or his royal Majesty, should freely have and enjoy the priviledge of holy Church, &c. Hereby two things are to be observed: First, That he shall not be delivered to the Ordinary before he be convicted: Secondly, That the priviledge of the Church extendeth not to high treason touching the King, crimen læsæ Majestatis, but to petit treasons and felonies touching other persons. 25 E. 3. cap. 4. & 5 4 H. 4. cap. 3.

About six years after this Act, the Abbot of Missenden in the County of Buckingham, was adjudged to be drawn and hanged for high treason, viz. for contrafactione, & resectione legalis monetæ. Coram Rege Mic. 31 E. 3. Rot. 55. Buck.

At the Parliament holden in the first year of H. 4. on the first Thursday after the Bishop of Canterbury had willed the Lords, that in no wise they should disclose any thing that should be there spoken, the Earl of Northumberland demanded of the Lords what were best to be done for the life of King Richard the 2d; thus far are the words of the Roll of the Parliament: At this time spake that worthy Prelate John Merkes Bishop of Carlisle, and said, That they ought not to proceed to any judgment against King Richard for four causes: First, That the Lords had no power to give judgment upon him that was their superior, and the Lords annointed: Secondly, That they obeyed him for their Soveraign Lord and King 22 years or more: Thirdly, If they had power to give judgement against him, they ought in justice to call him to his answer; for that (said he) is granted to the cruellest murderer, or arrantest thief in ordinary Courts of justice: Fourthly, That the Duke of Lancaster had done more trespass to King Richard and his Realm, then King Richard had done to him or them, &c. and desired, that if they would proceed against him, that the names of them that so would proceed might be entred into the Parliament Roll. It is true, that the Parliament Roll omitteth this speech of the Bishop, but it appeareth by the Parliament Roll, that the Lords proceeded against K. Richard, and adjudged him to perpetual prison, whose life they would by all means to be saved, as the Roll reporteth. The names of the Bishops, and Lords, and Knights that assented, are set down, as the Roll of the Parliament reports; so as it seemeth, that the Rot. Parl. 1 H. 4. nu. 73.

ſtout and reſolute ſpæch of the worthy Biſhop wrought ſome effect: For this ſpæch he was arreſted by the Earl Marſhal, and being for a ſmall time committed to the cuſtody of the Abbot of Saint Albons was ſoon delivered: againſt him never any judicial procæding was had for this ſpæch in Parliament: but this Biſhop, tranſported with exceſs of zeal, and affectionate deſire of the enlargement and reſtitution of King Richard, was party and privy to the conſpiracy of Thomas Holland Earl of Kent, John Holland Earl of Huntingdon, John Montacute Earl of Salisbury, Edward Earl of Rutland, Thomas Lord Spencer, and others, to kill the King, under colour of Jouſting and Paſtimes in the Chriſtmaſs time, at the Caſtle of Windeſor, where the King lay in the firſt year of his Reign: for this he was indited of high treaſon, arraigned, tried, and had judgment as in caſe of high treaſon. But cor Regis in manu Domini, the King pardoned him, and ſet him at liberty. Many more preſidents might to this end be produced, but we will conclude this point with a reſolution of all the Judges in 24 H. 8. A Prieſt was attainted by verdict at the Gaol-delivery at Newgate, for clipping of the Kings coin, viz. George Nobles, and by advice of all the Judges judgment was given againſt him to be drawn and hanged, as another lay perſon, becauſe it was high treaſon, and without degradation he was executed at Tiborn.

Vid. Rot. Parl. an. 2 H. 4. nu. 30. See the Record of his attainder, Hill. 2 H. 4. coram Rege, Rot. 6.

Trin. 24 H. 8. Juſtice Spilmans report.

Now for Murder, Burglary, Robbery, Sodomy, Rape, Burning of houſes, and many other Felonies, the benefit and privilege of Clergy is taken away by divers Acts of Parliament, whereunto the Biſhops were party, whereof you may read lib. 11. Alexander Poulters caſe, and where the benefit and privilege of Clergy remaineth, the party that takes the benefit of it ſhall not be delivered to the Ordinary, nor make any purgation (which had bæn much abuſed) but forthwith be enlarged and delivered out of priſon by the Juſtices, by whom ſuch Clergy is allowed, as by another Act of Parliament, whereunto the Biſhops were party appeareth.

Lib. 11. f. 29. Alexander Poulters caſe. 23 H. 8. c. 1. 25 H. 8. c. 3. 28 H. 8 c. 1. 32 H. 8. c. 3. 1 E. 6. c. 12. 5 E. 6 c. 9. 8 El. cap. 4. 39 El. c. 9 & 15. 18 El. cap. 7.

* Amongſt the ancient cuſtoms and liberties of England recognized and declared in the Parliament before mentioned, holden in the eleventh year of Henry the ſecond, this was one, Cleri accuſati de quacunque re, ſummoniti à Juſticiario Regis, veniant in Curiam ipſi reſponſuri ibidem de hoc, unde videbitur Curiæ Regis quod ibi ſit reſpondendum, & in Curia Eccleſiaſtica, unde videbitur quod ibi ſit reſpondendum, ita quod Regis Juſticiarius mittet in Curiam ſanctæ Eccleſiæ, ad videndum quomodo res ibi tractabitur, & ſi Clericus convictus, vel confeſſus fuerit, non debet eum de cætero Eccleſia tueri. So as in effect the ancient Law and cuſtom of England in that caſe is reſtored.

* 11 H. 2. apud Clarendon, ubi ſup. cap. 12.

Laſtly, Out of what root this privilege ſprang? It took his root from a Conſtitution of the Pope, that no man ſhould accuſe the Prieſts of holy Church before a ſecular Judge, which being contrary to the Crown and Dignity of the King, and the Common Law bound not here, till it was confirmed by Parliament, and the rather, for that the Church had no power to puniſh the offence; but where their claim was general, the Parliament of Edw. 1. and cuſtom of the Realm reſtrained it only to felony, ſo as they were to anſwer to high treaſon, and all offences under felony.

Polichro. l. 4. c. 24 Gaius Pope.

¶ Clericus ad Eccleſiam confugiens, &c.] By this Law, if any that was infra ſacros ordines committed felony, and for his tuition fled to a Church, if he claimed the privilege of his Clergy, he ſhould not be compelled to abjure, but ſubmitting himſelf to the Law of the Kingdom, he ſhould enjoy the privilege of his Clergy. See more of this matter in the next § Secundum laudabilem.

Vid. Stamf. pl. cor. 122, 123, &c.

¶ Secundum laudabilem conſuetudinem Regni.] So as this privilege of the Clergy took not his vigor or ſtrength by force of any forrain Counſel or Canon, but by authority of Parliament, and by the laudable Law and cuſtom of the Kingdom, a point worthy of obſervation, the anſwer being ſo cauſelouſly penned in thoſe days, leſt any thing in the petition ſhould countenance any

Vid. W. 1. cap. 2. ſolonque le cuſtome avant ces heures uſe.

any foraign jurisdiction: But so far as lex & consuetudo Regni have allowed of the privilege of the Clergy, so far, and no further it is to be allowed; and yet with this limitation, so as the Clerk would submit himself (as hath bèn said) to take it by the Law of the Kingdom expressed in these words, Sed legi Regni se reddens, &c.

He that is within orders hath a privilege, that albeit he have had the privilege of his Clergy for a felony, he may have his Clergy afterwards again, and so cannot a lay-man: and he that is within orders, and hath his Clergy allowed, shall not be branded in the hand. But these privileges are given by Act of Parliament. 4 H.7. cap.13.

CAP. XVI.

ITem, quanquam confessio coram illo qui non est Judex confitentis, locum non teneat, nec sufficiat ad faciend' processum, vel sententiam proferendam: quidam tamen seculares Judices Clericos, qui de foro suo in hac parte non existunt, reatus proprios, & enormes, ut puta furta, roberias, homicidia, coram eis confitentes, admittunt accusationem illorum, quam ipsi communiter vocant appellum, ipsos sic confitentes, & accusantes, seu appellum, facientes, non liberant Prælatis eorum post præmissa, quanquam super his fuerint sufficienter requisit', licet coram eis etiam per confessionem propriam judicari vel condemnari nequeant, absque violatione Ecclesiasticæ libertatis. Responsio: Appellatori informa debita, tanquam Clerico, per Ordinarium petito libertatis Ecclesiasticæ beneficio, non negabitur. Nos desiderantes statui Ecclesiæ Anglicanæ, & tranquillitati, & quieti Prælatorum, & Cleri prædictorum (quatenus de jure poterimus) providere, ad honorem Dei, & emendationem status dictæ Ecclesiæ, & Prælatorum, & Cleri prædictorum, omnes & singulas responsiones prædictas, ac omnia & singula in eisdem responsionibus content' ratificantes & approbantes, ea pro nobis & hæredibus nostris concedimus, & præcipimus in perpetuum inviolabiliter observari: volentes, & concedentes pro nobis & hæredibus nostris, quod prædicti Prælati, & Clerus, & eorum successores in perpetuum in præmissis jurisdictionem Ecclesiasticam exerceant, juxta tenorem responsionum prædictarum, absque occasione, inquietatione, vel impedimento nostri, vel nostrorum hæredum, seu ministrorum quoruncunque. In cujus, &c. Test. &c.

We have bèn the longer in exposition of the former Chapter, because we should be the shorter in this which somewhat concerneth the same matter.

¶ Appellatori, i. *Probatori.*] Albeit the Clergy here pretended, that the confession of a Clerk (when he was indited of felony, and confessed the felony, and became an approver) was coram non Judice; yet the continual opinion and resolution of the Judges were against this: for they resolved, that such a Clerk as confessed the felony before a secular Judge, could not make his purgation, and consequently, the confession did bind him: and therefore Shard in 25 E.3. spake in the person of a Prelate. And when the Clerk was delivered to the Ordinary, 10 E.3. cor.247. 27 H.6. fol.7. 13 E.4.3. 3 H.7.2. 25 E.3.coron.128. Vid. 12 R.2. coron. 109. & 247. 8 E.2. coron.417.

Ordinary, without any purgation to be made, he ought to have degraded him; but commonly, if the offender were a Monk, he delivered him to his Abbot to remain in the Abbey perpetually: and if he were secular, he remained in the Bishops prison, &c. in a very favourable manner; which abuses grew so odious and insufferable in encouragement of malefactors in their wickedness, as they were justly taken away, as is aforesaid.

24 E. 3. 73. a. 22 E 3. cor. 276. 11. f. 77. Magd. Colledge case.

An appeal of robbery was brought against J. de B. Monk of L. who pleaded not guilty, and put himself upon the trial of the Country, who found him not guilty, whereupon the Abbot of L. and the said Monk, brought a Writ of conspiracy against divers, which procured and abetted the said appeal; and recovered a 1000 Marks in damages, which could not have bèn recovered, unless the Monk had bèn legitimo moduo acquietatus, before a competent Judge: and hereby it appeareth, that a Clerk might wave the priviledge of his Clergy, if he would, and be tried by the course of the Common Law. And note, when he knew himself frè and innocent, then he would be tried by the Common Law; but when he found himself foul and guilty, then would he shelter himself under the priviledge of his Clergy: and though they committed Temporal crimes, yet would they not be tried by the Temporal Laws, which was the more against reason, because no other Law within this Realm could punish them for the same, but the Temporal Laws only.

The

The Expoſition of 18 Edw. 3. Cap. 7.

Of Tithes.

ITem que per la ou Briefes de Scire fac' eient eſtre grantes a garner Prelates religious & auters Clerkes, a reſpondre des Diſmes a nře Chancerie, & a monſtrer ſils eient riens pur enſachent riens dire pur quoi tiels Diſmes a les Demandants ne deinent eſtre reſtitus, & a reſponder auxibien aux nous, come a partie de tieux Diſmes. * Que tieux Briefes deſere en avant ne ſoient grantes, & que les proceſſes pendants ſur tieux Briefes ſoient anientes & repeales, & que les parties diſmiſes devant ſecular Juges de tiels manners de pleas: ſaves a nous noſtre droit tiel come nous & nous Anceſtres avouns eit, & ſoloins avoir de reaſon. En teſtimoinance de quele choſe, a le requeſt des dites Prelates a ceſtes preſentes lettres avons fait metre noz ſeale. Done a Londres le 8 jour de July lan de noſtre reigne Engleterre Diſoitiſme, & France Quints.

Le Preamble.

* Le Act.

Before we enter into the expoſition of this Act, we will clear it of an objection againſt the life of it, viz. That it ſhould be no Act of Parliament, but an ordinance made by the King only at the requeſt of the Prelates: And that the King to theſe letters had put his ſeal, and Teſte and date as done by the King only; all which, ſay they, appear in the Parliament Roll, and that the clauſe of En teſtimoniance de quel choſe, &c. is left out of the print.

But hereunto we anſwer, that by the ſaid clauſe En teſtimoniance de quel &c. is to be underſtood, that this Act was ſo plauſible to the Prelates, that they requeſted the King, that it might be exemplified under the great Seal for the better preſervation thereof, which the King granted. This Parliament began the Munday after the Octab. Trinitatis, which was 16 Junii; and this exemplification was 8 Julii after this Act was paſſed, there being but ſeven Acts paſſed at this Parliament. And En teſtimoniance de quel, and the whole clauſe following, are words of an exemplification.

Vide Rot. Parl. 18 E. 3. nu. 31.

Now that this ordinance before the clauſe of the exemplification is an Act of Parliament, Firſt, is proved by divers reaſons, viz. The title of the Parliament is, Incipit Statutum Regis Edwardi anno Regni ſui decimo octavo. Secondly, it is entred in the Parliament Roll. Thirdly, it was by force of the Kings Writ, (as the uſage then was) proclaimed as an Act of Parliament, which Writ in French we think good to tranſcribe in theſe words: Edward per le grace de Dieu Roy dangleterre & de France, & Seignieur dirland a noſtre Viſcount de Nottingham, ſalus. Saches que a noſtre Parliament tenus a Weſtm' le Lundye procheine apres les Octaves de la Trinity procheine paſſes entre autre choſes monſtres, aſſentus, & accordes en dit Parliament, ſi furent monſtres, aſſentus & accordes les choſes ſous eſcrites. And after a rehearſal of all the Statutes, whereof this ſeventh Chapter is one, the concluſion is, Et pur ceo vous mandous, que touts les Statutes faces crier & publier, & fermement tener per mye voſtre Baillie ſolonque la forme & tenur dicelle. Et ceo ne leſſes en aſcun mannere, &c.

And F. N. B. 30 E. taketh it for a Statute, and ſo it hath ever been by the general conſent from time to time of learned men. And if it ſhould not be a

Statute,

Statute, it would work great trouble and diſquiet in the Realm. Now that we have cleared this objection, let us peruſe the words of the Act.

¶ Ou briefes de Scire facias eient eſtre grantes, &c.] This rehearſal in this Statute is true; for we have found, that upon divers matters of record, that is to ſay, enrolled, returned, or removed into the Chancery: Firſt, Upon tithes granted by the Kings Letters Patents, which are inrolled in the Chancery, Writs of Scire fac' were brought in that Court; as taking one example for many: In 17 E. 3. a Scire fac' was brought by the King, and the Dean and Canons of the Kings free Chappel of Saint Martins London, upon Letters Patents of Mawd, quondam Reginæ Angliæ of tithes, &c. againſt the Abbot of Saint Johns of Colcheſter, who took the ſame after ſeverance, whereunto the Abbot pleaded, &c. worthy to be ſeen.

In bundello brevium, an. 17 E. 3. part 1 & 3 in turri London, vic. Eſſex.

¶ A garner Prelates religious & auters Clerks, &c.] Note, this Scire fac' was not brought againſt the poſſeſſors of the land for ſubſtraction of tithes, but againſt the Prelates, or other Clerks, which took the tithes after they were ſevered. See 6 E. 1. in bundello petitionum in turri London, where the petition was for ſubſtraction of tithes, to be put in poſſeſſion: the anſwer was in Parliament anno 6 E. 1. Rex non intromittit ſe de hiis quæ taliter ſpectant ad forum Eccleſiaſticum, proſequatur jus ſuum verſus Clericum coram Ordinario. Herewith agreeth Bracton, lib. 5. fol. 403. & 407.

Commiſſions out of the Chancery were directed to certain perſons, giving them authority to enquire, whether ſuch a ſpiritual perſon ought to have tithes of ſuch lands, whereupon Inquiſitions were taken and returned; and if it were found for the ſpiritual perſon, upon this record he might have a * Scire fac' againſt any Prelate religious, or other Clerk that took them after ſeverance.

* See 22 Aſſ. pl. 75

a Compertum eſt per inquiſitionem Rectorum, & Vicariorum vicinorum de Ewel, quod Vicarius Eccleſiæ ibidem percipere debet minutas decimas omnium animalium ibidem, & molend' aquatic' ibidem. But no Scire fac' was ſued hereupon, for that the Vicar was to ſue for ſubſtraction of theſe tithes againſt the owner of the land in the Spiritual Court.

a Rot. clauſ. 7 E. 2.

b Alſo upon a fine executory of tithes before this Act, the tenor whereof was removed into Chancery, a Scire fac' did lye therefore againſt the ſpiritual perſon that perned the ſame after they were ſevered.

b In fin. Term. Trin. 10 Regis Johannis.

¶ Savant a nous noſtre droit, &c.] By force of this *c* ſaving not only the King himſelf, but the Provoſt of C. being the Kings Patentee of tithes of the new aſſarts in the Forreſt of Rockingham in the County of Northampton, brought a Scire fac' in the Chancery after this Statute, againſt certain perſons of holy *d* Church, who had taken the tithes granted to him, to have execution of the ſaid tithes, according to the Kings Letters Patents. The *e* Defendant pleaded to the juriſdiction of the Court, that the conuſance of this cauſe for tithes appertained to Court Chriſtian, and not to the Chancery, whereunto it was anſwered by the Court, that that was to be underſtood, where the ſuit was taken againſt them that ought to pay the tithes (that is to ſay) for ſubſtraction of tithes, and not when it was brought againſt them, that were wrongful takers of the tithes. And all this is well warranted by the book, whereupon the Defendants pleaded to iſſue, and the record delivered over to be tried in the Kings Bench. See Hill. 32 E. 1. coram Rege Wigorn' the Prior of Worceſters caſe reſolved by the Chancellor, Treaſurer, and all the Judges and Barons, that appropriation of tithes is no Mortmain, *f* Quia decimæ ſunt meræ ſpirituales, quarum cognitio ad Curiam Chriſtianitatis pertinet, & non ad Curiam iſtam.

c 22 Aſſ. pl. 75. 38 Aſſ. pl. 20. Bro. tit. Diſmes 10 Pla. Parl. Hill. & Paſch. 18 E. 1. the Biſhop of Carliſles caſe, to whoſe predeceſſors Hen. Rex vetus conceſſit omnes decimas in Foreſta de Englewe. 14 H. 4 17.

d Note, this Act of 18 E. 3. is not mentioned in this book of 22 Aſſ. becauſe the caſe was taken to be within the Saving.

e Note, albeit this book was after the Statute, yet doth it open the true ſenſe and reaſon of the Common Law before this Statute of 18 E. 3.

f Paſch. 20 E. 1. in banco Regis, Rot. 135. Buk. F. N. B. 30 E.

And yet the inference that Fitzherbert maketh, that before this Statute of 18 E. 3. the right of tithes was tried in the Kings Court was true: for upon a Scire facias by a ſpiritual perſon againſt a ſpiritual perſon, and for tithes,

tithes which were Spiritual, the right of tithes was tried in the Scire fac' before this Statute, albeit the tithes were severed, which is now taken away in case of the Scire fac' by this Statute.

And at this day, albeit in case of tithes, the parties by pleading admit the Jurisdiction of the Court, yet if it be betwéen Spiritual persons, and the right of tithes come to be tried, albeit it be after the tithes severed, the Court Ex officio shall ouste the Court of Jurisdiction, which we hold, where the right of patronage was not drawn in question, was wrought by the construction and consequent of the said Statute of 18 E.3. for before that Statute right of Tithes, after severance was tried in a Scire fac' by the Common Law in certain cases. But when the right of Tithes trench to the dissolution or diminution of the Advowson, &c. in certain cases, the right of Tithes at this day (as hath bẽn said) shall be tried in brevi de recto advocat' decimarum, and in the Indicavit: but neither of these Writs give any jurisdiction to the Kings Court, to hold plea for subtraction of tithes, but that is sent to the Ecclesiastical Court to determine.

28 E.3. f.6,8. a.b. 22 E.4.23,24 20 H.6.17. 31 H.6 11. 35 H.6. 39.47. 38 H.6.12. 6 E.4.3 Trin. 5 E.1. in Banco 29. Norff. Pasch. 12 E.1.Rot. 28. Norff. Abb.de Selbies Case. Pasch. 19 E. 1. in Banco Rot. 45. Pasch. 7 E. 1. in Banco Rot. 78. Gloc'. Eliz. Penbreges Case. Mich. 9 E.1. in Banco

Rot. 88. Salop. Bract. l. 5. 402. Placita de advocat. Eccl. spectant ad Coronam. Fleta l.6. c.36. Glanv.l.4.c.13.acc'. 18 E.2. br'e 825. 4 E.3.27. Rot. pat. 27 E.3.1. pars. nu.18. F.N.B. 44.k. 45.b.c.d. 50. q. r. 51. c. 1.30. e. g. 37. c. Vid. br'e de Indicav. Vid.Regist.29.b. de rect. advocat. decim. Regist.36.b. prohibition de decimis reparatis. W.2. c.5. 4 E.3.27. per Parning. 7 E.3.42. 8 E.3.49. 38 E. 3. 13. 16 E.3. Quare Impedit 147. 31 H.6.13. 38 H. 6. 20. 12 E.4.13. 2 H.7.12. Doct. & Stud. Lib.2. c.25. f.108.

Nullus pro decimis quæ sunt spirituales de aliqua reparatione pontis seu aliquibus oneribus temporalibus onerari debet. But at this day if tithes be in the hands of Temporal men, they are by reason of them contributory to temporal charges.

Hil. 35 E.3.coram Reg.Rot.72. Mid. Vid. 32 H.8. ca.7 Dier 7 E.6.83.l.11 f 25. b. in Henry Harpers Case.

Where it is said in some of our Books, that of ancient time before the Councel of Lateran, any man might have given his tithes to what Spiritual person he would, and that at that Councel it was provided that tithes in one Parish should be given to the Rector or Parson of the same Parish, that he that gave the Spiritual food, should reap Temporal, &c. The truth is, that I have perused the Councels holden at Lateran, and specially that holden under Pope Alexander the third, Anno Domini 1179. Anno 25 H. 2. and cannot find any such Decræ: But Pope Innocent the third, in a decretal Epistle, in or about the year of our Lord † 1200. and the first year of King John dated at Lateran, directed to the Archbishop of Canterbury, Ut Ecclesiis parochialibus juste decimæ persolvantur, hath these words, Pervenit ad audientiam nostram, quod multi in Dioceſi tua decimas suas integras vel duas partes ipsarum non illis Ecclesiis in quarum parochiis habitant, vel ubi prædia habent, & à quibus Ecclesiastica percipiunt sacramenta, persolvunt, sed eas aliis pro sua distribuunt voluntate. Cum igitur inconveniens esse videatur, & à ratione dissimile, ut Ecclesiæ, quæ spiritualia seminant, metere non debeant à suis parochianis temporalia, & habere; fraternitati tuæ authoritate præsentium indulgemus, ut liceat tibi super hoc, non obstante contradictione vel appellatione cujuslibet, seu consuetudine hactenus observata, quod canonicum fuerit ordinare & facere quod statueris per censuram Ecclesiasticam firmiter observari, nulli ergo, &c. confirmationis, &c. Dat. Lateran. Nonas Julii. And (that I may speak once for all) this Epistle Decretal bound not the Subjects of this Realm, but the same being just and reasonable they allowed the same, and so became Lex terræ.

10 H.7. f.18.a. per Brian. 44 E. 3.5. Doct. & Stud. l. 2. cap.55. 7 E. 6. Dier fol. 84. & F.N.B. 54.b. lib.2 f.44. in Levesque de Winchesters case. But Parning in 7 E.3. f.5. pl.8. who not long after was Lord Treasurer, and after Lord Chancellor, voucheth it truly, for he saith that of ancient time before a new constitution made by the Pope, the Patron of one Church might grant his tithes to another Parish, that is by the constitutions made by Pope Innocent

the third, Anno Dom. 1200. in his decretal Epistle, which you shall find in his 6. Epistle. Decret. lib.1. p.452 Edit. Colon. See the Statutes of 18 E.3. cap. 7. 1 R.2. cap. 14. 5 H. 4. cap. 1. 27 H. 8. c.20. 32 H. 8. cap.7 2 E. 6. cap. 13. Regist. 179, 180. † Anno 2. Regis Johannis. In Bundello peritionum Parliam. Anno 6 E. 1. in Turri.

Sir Linwood Cap. de locato & conducto, fol. 117. verbo portiones, where he saith, Quod ante consilium Lateranense, Anno Domini 1179. bene potuerunt laici decimas in feudum retinere, & eas alteri Ecclesiæ dare, non tamen post dicti consilii, &c. And thus began portions of tithes, that the Parson of one

Pariſh hath in another. Vide concilium Lateran', Anno Domini 1215. 17 Joh. Regis.

Albeit the parochial right of tithes is now eſtabliſhed by divers Acts of Parliament as before it appeareth, (a matter tending to the exceeding benefit and quiet of the Clergy) yet he that is deſirous to know what the ancient Laws of England were concerning the payment of tithes before the Conqueſt, let him read Fœdus Edwardi & Guthruni Regum, cap. 6. & inter leges Ethelſtani, cap. 1. Inter leges Edmundi Regis, cap. 2. Leges Edgari Regis, cap. 2. & 3. Leges Canuti Regis, cap. 8, 10, 11, 12. & leges Edvardi Regis, * cap. 8, 10. Quas Willielmus conqueſtor recitavit, & confirmavit. All which Laws M. Lambard hath well tranſlated out of the Saxon into the Latine tongue, which was faithfully, but not ſo accurately, done before him, which we have.

Having ſpoken of Tithes, it is ſaid, * *Hæc prædicavit beatus Auguſtinus, & conceſſa ſunt a Rege Baronibus, & populo, &c.* Lamb. 128. Vide inter leges Edwardi Regis, * Cap. 8. ubi ſupra. de boſco.

There hath bæn great controverſie heretofore concerning the tithes of wood, as appeareth by divers petitions in Parliament, which petitions together with the anſwers we will recite, and incidently will ſhew, how that controverſie is quieted, and ended.

Rot. Parl. anno 17 E.3. nu. 51.

That no man be impleaded for tithes of wood, or underwood, but in places accuſtomed. The Anſwer was, As heretofore the ſame ſhall be. Item pria le commen, que come * conſtitution ſoit fait per les Prelats a prender diſmes de chef-cun maner de boyes, quel choſe ne fuit unques uſee, & que niefs, & femes poent faire teſtaments, que eſt contre reaſon, que pleſe per luy, & per ſon bon counſeil ordeiner remedie, & que ſon people demoerge en meſme leſtate quilz ſoloient eſtre en temps de touts ſes progenitors, & que prohibitions ſoient grantes a touts ceux que ſont impledes de diſmes de bois ſans avoir conſultation. Whereunto the anſwer of the King was, The King willeth that Law and reaſon be done.

Rot. Parl. 18 E.3 Artic. 9. * This conſtitution was made in An. 17 E.3. Anno Dom. 1343. Vide Linwood. Note the aſſeveration of the whole body of the Realm in this petition, concerning the payment of Tithe wood. Rot. Parl. 21 E.3. Artic. 48. Note alſo theſe aſſeverations.

Item monſtre la commune come nadgaires Lercheveſque de Canterbury, & les auters Prelates ordeinerent une conſtitution a doner diſmes de ſubbois vendus tantſolement la ou avant ſes heures nulles diſmes furent dones, ore les gents de Seint Eſgliſe per force de la conſtitution pernent & demandent les diſmes auxibien de gros bois, come de ſubbois vendus & nient vendus, econtre ce qui is ont uſes puis temps de memorie a la grand damage de la commune de quoi ilz priont remedie, de lun point & del autre.

Whereunto the anſwer is, The Archbiſhop of Canterbury, and the other Biſhops have anſwered that ſuch tithe is not demanded by reaſon of the ſaid conſtitution, but of underwood. But the Subject being ſtill moleſted for woods not tithable complained again in Anno 25 E. 3. all which were preparatives to a good Law made in Anno 45 E.3. cap.3. De groſſe boyes dages de vint ans, ou de greinder age nul diſmes ſerra demands in noſme de ceſt parol ſylva cædua, eſt ordeine & eſtablie que prohibition en ceo caſe, ſoit grant, & ſur ceo attachment come ad eſtre uſe avant ceux heures.

Rot. Parl. 25 E.3. nu. 37. Rot. Parl. 45 E.3. nu. and in the print, cap.3.

It appeareth before that all the Biſhops claimed only tithes de ſubbois, of underwood, under the name of ſilva cædua, ſo as of hautboyes, of great wood no tithes were claimed; but herein reſted two doubts; 1. What ſhould be ſaid high or great wood. 2. Of what age the ſame ſhould be, becauſe it is parcel of the inheritance.

As to the firſt, this Act, which is declaratory of the Common Law, as it appeareth by the Book in 50 E. 3. fol. 10. b. 9 Hen. 6. fol. 56. Pl. Com. fol. 471. and this Act it ſelf proveth it, for it concludeth, Come ad eſtre uſe devant ceux heures; and this is confirmed by divers judgments hereafter cited.

Li. Intrat. R. fo. Regiſt. fo. 44. See the old Book of Entries, fol. 34. b. & 34. a. premunire, printed Anno Dom. 1546. 50 E.3. 10. 9 H.6. 56. Pl. Com. 47. Lib. 11. fol. 48. b. Liſords Caſe.

And it is to be underſtood that this Act uſeth theſe words groſſe boyes, and not haut boyes, or graund boyes, which word is alſo uſed in the Books of 50 E. 3. and 9 H. 6. And in this Act this word [groſſe] ſignifieth ſpecially ſuch wood as hath bæn, or is either by the Common Law or Cuſtom of the Country timber, for this Act extends not to other woods, that have not bæn, or will not ſerve for timber, though they be of the greatneſs or bigneſs of timber. And it is to be

be obſerved, that the Prohibition in 50 E. 3. for ſuing for Tithes in Court Chriſtian of groſs boys, was grounded upon the Common Law, without mentioning of this Act.

Here it is to be demanded, To what kind of wood groſs boys do extend? And the anſwer is, that Oak, Aſh, and Elm, are included within theſe words; and ſo is Beech, Horsbeech, and Hornbeam, becauſe they ſerve for building, or reparation of Houſes, Mills, Cottages, &c. againſt the opinion in Plowd. Comment. fol. 470. in Molyns caſe, holden without Argument, which opinion the whole Court upon deliberate advice held to be no Law.

a It was reſolved by the whole Court, that Aſp is alſo comprehended within groſs boys, becauſe it may ſerve for building, or reparation, ut ſupra. But otherwiſe it is of Birch, (as it was ſaid) it was adjudged in the Caſe of Lennard cuſtos brevium, becauſe that kind of wood ſerveth not for building.

b If a Timber tree be arida, ſicca, & non portans folia nec fructus in æſtate, nec exiſtens maeremium, and the owner cut it down, and convert it to fuel, &c. no Tithe ſhall be paid thereof for the inheritance which was once in it.

c So for the bark of Oaks, being Timber trees, no Tithes ſhall be paid, becauſe it is parcel of the tree, and renueth not de anno in annum. *d* But for Acorns Tithe ſhall be paid, becauſe they renue yearly.

As to the ſecond doubt, of what age thoſe groſs or Timber trees, whereof no Tithes ſhould be had, ſhould be; The Statute reſolveth this doubt in theſe words, Groſſe boys del age de 20 ans, ou griender. Which point was alſo declaratory of the Common Law, as by the concluſion of this Act, and the authorities aforeſaid appeareth: for this groſſe boys thus deſcribed, it appeareth by the Act, that Parſons and Vicars ſued for Tithes of them, en noſme de ceſt parol, ſylva cædua.

See the firſt part of the Inſtitutes, f. 3. waſt in Beech. So it was adjudged coram Rege Paſch. 2 Jac. Reg's Rot. 292. between Henry Hall, and Dorrothy Fettiplace. Banc.

a Pl. Com. fol. 470 Molyns caſe. Tr. 26 El. coram Rege.

b Hil. 2 Jac. in Com. Banc. Rot. 229. int. Brook & Rogers.

c Lib. 11. fol. 49. Lifords caſe. Doct. & Stud. fol. 174, 175.

d Regiſt. fol. 49. lib. 11. fol. 49.

50 E. 3. 10. b. 44 E. 3. 32. a. meriſme.

¶ Del age de 20 ans.] This is the age, as to bar all ſuits in Court Chriſtian for Tithes. And theſe words are to be underſtood of groſs trees, which may ſerve for Timber, and grow out of the own ſtubs: for if a man uſually top or lop Timber trees, Tithes ſhall not be paid, though they be under the age of 20 years. For as the Law priviledgeth the body of the tree, being parcel of the inheritance, ſo it doth priviledge the branches alſo.

Pl. Com. 470. b. Doct. & Stud. fol. 175. Br. diſmes 14. lib. 11. fol. 49. Lifords caſe.

So if a man cut down Timber trees, Tithe ſhall not be paid for the germins or branches, which grow out of the roots, of what age ſoever; for that the root is parcel of the inheritance.

Pl. Com. 470. So reſolved Paſch. 29 El. coram Rege Lib. 11. f. 49. Lifords caſe.

The Biſhops, and others of the Clergy taking upon them to interpret this Statute, which belonged not unto them, gave out and publiſhed that this Ordinance did not reſtrain their ancient Juriſdiction, and that this Ordinance was never affirmed for a Statute: and thereupon the Subject was ſtill vexed in Court Chriſtian, both contrary to the Common Law, and the ſaid Statute: And thereupon a Bill was exhibited in the next Parliament following, holden in the 47 year of E. 3. reciting the Statute of 45 E. 3. and then ſhewing that the perſons of holy Church intending that this Ordinance did not reſtrain their ancient incroachments; and ſurmiſing, that this was not affirmed for a Statute, held plea in Court Chriſtian to the contrary of the Ordinance aforeſaid, to the great damage of the people. Wherefore may it pleaſe our Soveraign Lord the King to affirm the ſaid Ordinance for a Statute to indure for all times to come; and that a ſpecial Prohibition upon the ſame Statute thereupon be made in the Chancery, prohibiting that they ſhould not hold plea in Court Chriſtian of Tithes of wood of the age aforeſaid. Whereunto the anſwer was, that ſuch Prohibition be granted, as hath been uſed of ancient time. Which anſwer being compared with the concluſion of the Act of 45 E. 3. hath given ſuch an end to both theſe points, as no queſtion hath been made thereof at any time ſince. And to ſay the truth, that the ſurmiſe that this Act of 45 E. 3. was but an

Ordinance, and no Statute, was but a meer cavil, without any colour of probability: For 1. It is entred in the Parliament Roll amongſt the other Statutes made at that Parliament. 2. It is under the title in that Roll of Statut. E.3. de Anno Regni ſui 45. 3. It was proclaimed by the Sheriffs (as the uſage in thoſe days was) amongſt the reſt of the Statutes of that Parliament. 4. It hath the phraſe of an Act of Parliament, [Ordeine eſt & eſtablie] agreeing therein in effect with the other Acts in that Parliament. 5. It hath the conſent of the Lords and Commons (who joyn in the Petition in the Preamble) and of the King. 6. Infinite Prohibitions upon this Statute, as taking ſome few Precedents, whereof we have the number Roll, of ſuch as be not in print.

Regiſt. 34. the ſame prohibition. & 50 E.3.10.

Coram Rege Tr. 27 E. 1. Rot. 28. Linc. Magiſter Willielmus Perſona Eccleſiæ de Epworth attachiatus fuit ad reſpondend' Stephano de Rodnes de Gener laco, & Willielmo Stel de Cottingham de placito quare ſecutus fuit placitum in curia Chriſtianitatis, de catallis & debitis quæ non ſunt de teſtamento, vel matrimonio contra prohibitionem Regis, &c. Et unde queruntur, quod cum prædictus Magiſter Willielmus ſecutus fuit placitum verſus eos in curia Chriſtianitatis coram Offic' Epiſcopi Lincol' de catallis & debitis laicis, viz. de quercubus & aliis arboribus per ipſos empt' de quodam Rogero Mubey. Et idem Stephanus & Willielmus ſuper hoc protuliſſent prohibitionem Domini Regis coram prædict' Officiariis in Eccleſia omnium Sanctorum de Northt̄ die Martis prox' poſt feſtum Sancti Nicholai, anno Regni Regis nunc 25. & ei inhibuiſſent ne placitum illud contra prohibitionem prædictam ulterius ſequeretur in præſentia Rogeri de Waldebye, Gened' de Cave, Willielmi de Clere, & Thomæ de Redneſſe tunc ibidem præſentium, idem tamen Magiſter Willielmus non obſtante prohibitione prædicta placitum præd' ulterius ſecutus fuit quouſque ipſi per ſectam ſuam prædictam excommunicati fuerunt: unde dicunt quod deteriorati ſunt & dampnum habent ad valentiam Cl. & in contempt̄ Domini Regis mille libr̄, &c.

De quercubus & arboribus. Vide Paſch. 15 E.1. in banco Rot.52. Linc. mille quercus, &c.

The Law at this day, and long after was holden, that in this caſe he might wage his Law. 18 E.3 4. 24 E.3 39. ſo adjudged, 32 E.3. tit. Ley. 62. But in 44 E.3 fol.32. It is otherwiſe ruled, becauſe it is not in a Writ of Contempt; and ſo hath the Law been taken ever ſince.

Et prædictus Magiſter Willielmus venit & defendit, &c. & dicit quod nullum placitum de bonis & catallis laicis ſecutus fuit in curia Chriſtianitatis contra prohibitionem Domini Regis ſicut ei imponunt, & vadiavit eis inde legem ſe 12 manu, &c. And had a day to make his Law, at which he came; and Incepit (ſaith the Record) jurare, & poſt quartum juratum defecit de lege, Ideo conſideratum eſt, quod prædict' Stephanus & Willielmus recuperarent damna ſua prædicta centum librarum, & fecit finem cum Rege ad 40 l.

It is to be noted, that the Parſon ſtood not upon his right to have Tithes of Oak and other trees; but the colour he had to wage his Law, was in reſpect of theſe words, De bonis & catallis laicis, and Tithes are not Lay-chattels: but he durſt not in that caſe ſtand to it to make his Law, but upon failing therein, Judgment was given againſt him of the damages, as the Plaintifs had counted.

Prohibitions coram Rege tempore H.8.

Sée Lib. Intrat. Raſt. fol. 448.b. nu.2. 449. a prohibition ſur leſtatute de 45 E.3. circa 14 H.7. The old Book of Entries, fol.34.b.

Hil. 33 H.8. Rot. 78. Inter Stelling & Spooner.
Ibidem Rot. 103. Inter Peiers & Dixon.
Mich. 34 H.8. Rot. 116. Inter Felton & Glover.
Paſch. 36 H.8. Rot. 116. Inter Smy & Ap. Richard.
Mich. 36 H.8. Rot. 1. conſimilis prohibitio.
Hil. 36 H.8. Rot. 1. conſimilis prohibitio.
Paſch. 38 H.8. Rot. 1. conſimilis prohibitio.
Mich. 38 H.8. Rot. 1. conſimilis prohibitio.
Trin. 1 E. 6. Rot. 94. conſimilis prohibitio. Inter Herne & Croft.

Coram Rege tempore E. 6.

Mich. 2 E. 6. Rot. 97. Inter Heford & Howe.
Mich. 3 E. 6. Rot. 1. conſimilis prohibitio.
Paſch. 4 E. 6. Rot. 1. conſimilis prohibitio.
Hil. 5 E. 6. Rot. 2. conſimilis prohibitio.
Trin. 6 E. 6. Rot. 1. conſimilis prohibitio.

Mich.

Mich. 1. Ph. & Mar. Rot. 159. Inter Gray & Philpot, conſimilis prohibitio. Coram Rege tempore Mariæ.
Paſch. 1 Mar. Rot. 1. conſimilis prohibitio.
Hil. 1 & 2 Ph. & Mar. Rot. 1. conſimilis prohibitio.
Paſch. 1 & 2 Ph. & Mar. Rot. 3. conſimilis prohibitio.
Trin. 1 & 2 Ph. & Mar. Rot. 10. conſimilis prohibitio.
Mich. 2 & 3 Ph. & Mar. Rot. 4. conſimilis prohibitio.
2 & 3 Ph. & Mar. Rot. 1. conſimilis prohibitio.
3 & 4 Ph. & Mar. Rot. 2. conſimilis prohibitio.
Hil. 4 & 5 Ph. & Mar. Rot. 1. conſimilis prohibitio.
Mich. 4 & 5 Ph. & Mar. Rot. 1. conſimilis prohibitio.

We could cite a world of other examples of this kind, out of the Kings Bench, Chancery, and Common place, but in a caſe whereof never any learned man made any doubt, theſe ſhall ſuffice.

But this is againſt the Provincial Conſtitution of Simon Mepham, An. Dom. 1332. An. 6 E. 3. **and the Expoſition of** Linwood **thereupon.**

There is a Conſultation de ſylva cædua, **where the prohibition was,** De catallis & decimis quæ non ſunt de teſtamento & matrimonio; **and yet in the Conſultation there is a reſtraint (according to the Common Law, and the ſaid Act of** 45 E. 3.) Dummodo tamen de groſſis arboribus in hac parte non agatur, &c. Regiſt. 44. a. b. See the old book of Entries, f. 34. a. the like Prohibition. The latter book of Entries, R. 449. a. b. Old book of Entries, 34. a. 31 H. 8. tit. prohib. Brook 17 Regiſt. 49. a.

If any ſue in Court Chriſtian for Tithes de groſſis arboribus ultra ætatem 20 annorum, **he incurs the danger of a** Præmunire, **if ſo it be contained in the Libel.**

In the Regiſter it is ſaid by Herlaſton, Concordatum fuit coram concilio Regis in Parliamento apud Sarum, quod conſultationes fieri debent de ſylva cædua, eo non obſtante, quod non renovatur per annum; & ſuper hoc facta fuit quædam conſultatio pro Abbate de Notley, de ſylva cædua.

Great queſtion hath been made, when this Parliament at Salisbury **was holden, but we ſhall make it evident, that it was holden the** Friday **next after the Feaſt of Saint** Mark **the Evangeliſt, in the ſeventh year of** R. 2. **which appeareth by** William de Herlaſton **here named, who was a Clerk of the Chancery, and as here it appeareth, inſerted this into the Regiſter.**

This Herlaſton **lived at the time of the holding of this Parliament at** Saliſbury; **for afterward in the ſame Regiſter,** fol. 80. b. **it is ſaid,** Nota que nul home ſerra priſe, ne impriſon, pur vert ne pur veniſon, ſi il ne ſoit trove ove le mayneur, ou ſi il ne ſoite indite, &c. Et vide inde Statute R. 2. de Anno 7. cap. 4. Quando quis taliter fuerit indictatus, & virtute indictamenti illius eſt convictus, ita quod non ponet ſe ſuper patriam, & ſic fiet de illis, qui indictati ſunt de receptamento, ac ſi eſſent principales tranſgreſſores per Herlaſton. Regiſt. fol. 80. b. 7 R. 2. cap. 4.

And in the Regiſter, fol. 261. a. **you ſhall find this Note,** Hoc breve conceſſum fuit pro hominibus de Odiham, & conceſſum fuit pro omnibus aliis antiquis dominicis per Cancellarium Leſcrope, & W. de Herlaſton. **Now this** Leſcrope **Lord of** Bolton **was Chancellor in** annis 2 & 5 R. 2. **as we find of Record.**

Thus have we diſcovered the Clerk that inſerted into the Regiſter the ſaid Concordatum **in the Parliament at** Salisbury: **But loking diligently into that Parliament Roll, no ſuch** Concordatum **as** Herlaſton **inſerted into the Regiſter can be found, and therefore you muſt take it upon the truſt and credit of this Clerk. But admitting that any ſuch** Concordatum **had been, as in the Regiſter it is ſet down, it may well ſtand with Law: For in the Regiſter,** fol. 44. **there is a Conſultation** (as before hath been ſaid) De ſylva cædua, **and is conſonant to Law, having ſuch a reſtraint in the ſame Writ, as is aforeſaid.**

A Country may preſcribe to be quit of Tithes of wood, or any other Tithe, ſo there be ſufficient maintenance and ſuſtentation of the Incumbent beſides: but a Town cannot ſo ſubſcribe. Doct. & Stud. 147 b. Br. Diſmes 14.

Rex tali Judici ſalutem. Monſtravit nobis venerabilis pater H. Lincoln' Epiſcopus, quod cum J. præcentor Eccleſiæ beatæ Mariæ Lincoln' teneat de dono ſuo omnes Regiſt. 36. b.

omnes decimas dominicarum terrarum ſuarum vel dominici ſui de N. quas idem Epiſcopus & prædeceſſores ſui Epiſcopi loci prædicti libere conferre conſueverunt: Prior beatæ Catherinæ extra Lincoln. clamans decimas illas pertinere ad Eccleſiam ſuam de B. trahit eum inde in placitum, &c. Et quia placitum prædictum tangit coronam & dignitatem noſtram, præſertim cum collatio earundem decimarum ad nos poſſit devolvi ratione cuſtodiæ vel eſcaetæ, quia etiam conſimiles decimas conferimus in quibuſdam dominicis, & ſimiliter quamplures magnates Regni noſtri in dominicis ſuis: Vobis prohibemus ne placitum illud teneatis in curia Chriſtianitatis, nec aliquid quod in derogationem Regiæ dignitatis noſtræ cedere valeat in hac parte attentetis, ſeu per alios attentari faciatis, quoviſmodo. T. &c.

Opus eſt interprete, Therefore we will peruſe the words of this Writ in ſuch order as they do lye in the ſame.

This was S. Hugh Biſhop of Lincoln, as we conceive it.

¶ Venerabilis pater H. Lincoln. Epiſcopus.] Is intended as I take it of Hugh Biſhop of Lincoln, who deceaſed ſoon after: And hereby it appeareth, that this Writ was in uſe before the ſaid conſtitution of Pope Innocent the third, as alſo is proved by latter words of this Writ, which we ſhall obſerve when we come to it.

¶ Quod cum præcentor Eccleſiæ Beatæ MARIÆ *Lincoln.* de dono ſuo teneat omnes decimas dominici de N. &c. Prior Beatæ Katherinæ extra Lincoln. clamans decimas illas ad Eccleſiam ſuam de B. trahit eum inde in placitum, &c.] Here it may be demanded that ſeeing the ſuit is betweén ſpiritual perſons, and for Tithes which are ſpiritual things, wherefore they ſhould be prohibited. Hereof three reaſons are rendred in this Writ.

First, Quia placitum prædictum tangit coronam & dignitatem noſtram. For all Advowſons are lay fée, and pleas of them do belong to the Kings Law, and ſeeing the whole benefit of the patron of this Advowſon conſiſteth in conferring of theſe tithes to any of his Chaplains, &c. And if the tithes be recovered, the Advowſon vaniſheth as a thing without fruit or benefit, and therefore the Eccleſiaſtical Court cannot hold plea of them. Quia tangit, &c. See the Writ of Indicavit, & breve de recto de advocatione decimarum, before in this ſecond part of the Inſtitutes W. 2. cap. 2. verſus finem, & Articuli cleri cap. 2. And if the ſuit in the Eccleſiaſtical Court were for ſubſtraction of Tithes, after the right of the Advowſon be tried for the patron of the perſon thath ſueth, he ſhall proceed in the Eccleſiaſtical Court.

Br'e de Indicavit Br'e de recto advoc. decimarum. Regiſt. 29. b. Artic. cleri c. 2. 12 E. 4. 13. b. 4 E. 3. 2. Glanv. lib. 4. c. 13 Bract. lib. 5. f. 402 403. Fleta lib. 6. c. 36. Fitz. N. B. 30. g. Vet. N. B. 24. a. Vide Mich. 2 E. 1 in communi banco. Rot. 52. leic. the Prior of S. Mary de pratis caſe. indicavit br'e de indicavit ſuper 4. partem.

2. The ſecond reaſon yielded in this Writ is, Præſertim cum collatio earundem decimarum ad nos poſſit devolvi ratione cuſtodiæ, &c. And if the Tithes ſhould be recovered, as hath béen ſaid, the Advowſon ſhould vaniſh, &c.

3. Quia etiam conſimiles decimas conferimus in quibuſdam dominicis, & ſimiliter quamplures magnates noſtri in dominicis ſuis, &c.

By this it is probable, that the King ſpeaking in this Writ for himſelf and the Grandees of the Realm in the preſent time, that this Writ was in uſe before the conſtitution that confined Tithes to pariſhes, and hereby it is proved that at this time the King, and the Nobles of the Realm might give their Tithes to what ſpiritual perſon they would. Laſtly albeit the King and the Nobles be for honour ſake named in the Writ, yet the liberty of granting of Tithes extendeth at this time to all the Kings ſubjects.

The marginal note in the Regiſter is de decimis ſeparatis, ſo called becauſe they had been granted to ſome ſpiritual perſon, and not annexed to any Pariſh Church.

Extravagant tit. de Decimis cap. 13 quoniam.

For the better underſtanding of the opinion of Sir William Herle in the ſaid Book of 7 E. 3. which is, Ore ne poet home ſes diſmes que ſont hors de pariſh, grant a que il voudra, car leveſque del lieu les avera. He grounded his opinion

opinion in this caſe upon the Canon Law, which is, that the Biſhop is to have all Tithes growing in lands not aſſigned to any Pariſh within his Dioceſs. Yet this Canon being againſt the Law of the Land, never had allowance within this Realm, for in ſuch part of Foreſts as are out of any Pariſhes, the King ſhall have them. See a notable Record, Term' Mich. An. 5 E.3. Coram Rege, Rot. 168. Cumbria; adjudged for the King againſt the Canon, and the opinion of Herle. And this had been formerly reſolved in Parliament. Inter placita coram ipſo Domino Rege & ejus Conſilio ad Parliamentũ ſua poſt feſtum Sancti Hilarii, & etiam poſt feſtum Paſch', Anno 18 E. 1. fol. 8. Inẽ Epiſcopum Carliſle, & Priorem ejuſdem de decimis aſſartorum vocat̃ Linthwait & Kirkethwait in foreſta de Englewood. The words of which Record are, Quod decimæ prædictæ pertinent ad Regem, & non ad alium, quia ſunt infra bundas Foreſtæ de Englewood, & quod Rex in Foreſta ſua prædicta poteſt villas ædificare, Eccleſias conſtruere, terras aſſertare, & Eccleſias illas cum decimis terrarum illarum pro voluntate ſua cuicunque voluerit conferre, &c. And E. 1. granted tithes coming of land within the Foreſt of Deane, as were not within any Pariſh, to the Biſhop of Landaffe, and his Succeſſors.

Mich. 5 E. 3. cor. Rege. Rot. 168. Cumbr. 22 Aſſ. p.75. 38 Aſſ. p.2. 14 H.4. fol.17.Br. diſmes 10. Acc'. Rot. Parl. 18 E.1. fol.8. Lib.5. fol.15 in Caudries caſe. Lib.2. fol. 44. in Leveſque de Wincheſters Caſe.

Rot. Parl. anno 8 E. 2. nu. 17. in dorſ.

An

AN EXPOSITION UPON THE STATUTE

ENTITULED,

An Act for the true payment of Tithes.

Anno 2 E. 6. cap. 13.

THE noise of the dissolution of Monasteries in the Parliament holden in the 27 year of H.8. (Laymen taking small occasions to withdraw their tithes) was the occasion of the making of the Statute of 27 H.8. cap. 20. The principal cause of the making of the Statute of 32 H. 8. cap. 7. was to inable Laymen, that had estates or interests in Parsonages, or Vicarages impropriate, or otherwise in tithes, to sue for subtraction of tithes in the Ecclesiastical Courts, and to provide that no Parson should be sued, or compelled to pay any manner of tithes for any Mannors, Lands, Tenements, or Hereditaments, which by the Laws or Statutes of this Realm were discharged, or not chargeable for payment of any such tithes.

27 H.8. c.20. acc'. Vid. 31 H.8. c.10. vers. finem.

This Act of 2 E.6. is an Act of Addition, as by the words thereof hereafter following appear.

Where in the Parliament holden at *Westminster* the fourth day of *February*, *Anno* 27 *H.* 8. there was one Act made concerning payment of Tithes predial, and personal: And also in another Parliament holden at *Westminster*, 24 *July*, 32 *H.*8. another Act was made concerning true payment of Tithes, and Offerings: In which several Acts, many and divers things be omitted and left out, which were convenient and very necessary to be added to the same. In consideration whereof, and to the intent the said Tithes may be hereafter truly paid, according to the mind of the makers of the said Act: Be it ordained and enacted, &c. that not only the said Acts made in the said 27 and 32 year of *H.* 8. concerning true payment of Tithes, and every Article, and Branch therein contained shall abide and stand in their full strength and vertue: But also be it further enacted by the Authority of this present Parliament, that every of the Kings Subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yield, and pay all manner of their predial Tithes, in their proper kind, as they arise and happen, in such

27 H.8. cap.20.

32 H.8. cap.7.

manner

manner and form, as hath been of right yielded and paid within 40 years next before the making of this Act, or of right or cuſtom ought to have been paid. And that no perſon ſhall from henceforth take or carry away any ſuch or like tithes, which have been yielded or paid within the ſaid 40 years or of right ought to have been paid in the place or places tithable of the ſame, before he hath juſtly divided or ſet forth for the tithe thereof, the tenth part of the ſame, or otherwiſe agreed for the ſame tithes with the Parſon, Vicar, or other owner, proprietory or Farmer of the ſame tithes, under the pain of forfeiture of treble value of the tithes ſo taken or carried away.

¶ Predial tithes.] This branch extends only to predial tithes.

Paſch. 1 Ja. Rot. 1119. in Communi banco. Int. Booth & Southraie in debt upon this Statute by the Parſon of the Church, pro non extrapoſitione decimarum pro caſeo, vitulis, agnis, ceralis, volemis & pyris to have the treble value, &c. The Defendant pleaded nihil debet per patriam, and it was found againſt him. And it was moved in arreſt of Judgment that the ſaid tithes of Chæſe, or Calfs, and Lambs were no predial tithes, and therefore not within this branch of the Statute; and this Act is penal, and ſhall not be taken by equity, quod fuit conceſſum per totam curiam. And it was reſolved, quod decimarum tres ſunt ſpecies, quædam perſonales, quæ debentur ex opere perſonali, ut artificio, ſcientia, militia, negotiatione, &c. Quædam prædiales, quæ proveniunt ex prædiis, i. e. ex fructibus prædiorum, ut blada, vinum, fenum, linum, canabum, &c. ſeu ex fructibus arborum, ut poma, pyra, pruna, volema, ceraſa, & fructus hortorum, &c. Quædam mixtæ, ut de caſeo, lacte, &c. aut ex fœtibus animalium, quæ ſunt in paſcuis, & gregatim paſcuntur, ut in agnis, vitulis, hœdis, capreolis, pullis, &c. Ex prædialibus ſunt quædam majores, quædam minutæ. Majores, ut frumentum, ſigilo, zizania, &c. fenum, &c. minores ſive minutæ, quidam dicunt, ſunt quæ proveniunt ex menta, aneto, oleribus, & ſimilibus juxta illud dictum Domini, *Luk.* 11. *verſ.* 42. Væ, qui decimatis mentam & rutum & omne olus, & præteritis judicium & charitatem Dei; hæc autem oportuit facere, illa non omittere. Alii dicunt quod in Anglia conſiſtunt decimæ minutæ in lino quæ ſunt prædiales, & lana, lacte, caſeis, & in decimis animalium, agnis, pullis, & ovibus, decimæ etiam mellis & ceræ numerantur inter minutas, quæ ſunt mixtæ. Vide *Linwood cap.* de decimis *cap.* Quoniam *fol.* 140. *verb.* talibus decimis.

And the Levite (to whom tithes were aſſigned) ſhall come, and the ſtranger, the fatherleſs, and the widow which are within thy gates ſhall eat and be filled. Deu. 4. verſ. 29. Here is ſhewed the true uſe whereto tithes ſhould be imployed.

¶ Henceforth truly and juſtly without fraud or guile divide, &c.] Trin. 44 Eliz. coram Rege. In a Prohibition betwæn Walter Heale and John Sprat, the caſe was, Walter Heale ſet out his predial tithes, and divided them juſtly from the nine parts, and ſon after carried the ſame away. Sprat ſued for ſubſtraction of the ſame in the Eccleſiaſtical Court, Heale pleaded that he had ſet them out ut ſupra, whereunto Sprat ſaid, that preſently after his ſetting out, &c. he carried them away in fraudem legis. Adjudged that this was fraud and guile within this Act, albeit he did juſtly divide the ſame within the letter of this Law. It was further reſolved, that if the owner of the corn before ſeverance grant the ſame to another of intent that the grantee ſhould take away the ſame to the end to defraud the Parſon, &c. of his tithe, this is fraud and guile within this Statute. *The firſt Addition.* Simile in the ſame Term in the caſe of Webb Parſon of Frettenden in Kent.

¶ Within forty years.] This time of 40 years is here ſet down becauſe it is the uſual time for the proof de modo decimandi. Lib. Int. Coke 384.

¶ Or of right or cuſtom ought to have been yielded, &c.] The ſenſe of theſe words [as hath bẽn of right yielded] is of tithes to be yielded in ſpecie within 40 years, and the ſenſe of the words [or of right or cuſtom] is, or by rightful cuſtom de modo decimandi ought to have bẽn paid.

The ſecond Addition.

¶ And that no perſon from henceforth, &c.] Albeit this branch doth not give the forfeiture to any perſon in certain, and therefore it was pretended that the forfeiture ſhould be given to the King. And thereupon, upon this branch, the Attourny general, Hil. 29 Eliz. did exhibit an Information in the Exchequer againſt Wood of Cambridgeſhire for this treble forfeiture for carrying away his tithes before they were juſtly divided. The Defendant pleaded not guilty, and by a Jury at the bar he was found guilty, and in arreſt of judgment it was moved that in this caſe the forfeiture was not given to the King, for that the words of the Act be, under the pain of the forfeiture of the treble value of the tithes ſo taken away. And whenſoever a forfeiture is given againſt him that doth diſpoſſeſs, &c. the owner of his property as here he doth of his tithes, there the forfeiture is given to the party grieved or diſpoſſeſſed, and the rather for that this is an additional Law, as hath bẽn ſaid, and made for the benefit of the propriator of the tithes. And ſo it was adjudged by Sir Roger Manwood and the whole Court of the Exchequer Paſch. 29 Eliz. And this was the firſt leading caſe, that was adjudged upon this point, and ever ſince it hath bẽn received for Law, and the party intereſſed in the tithes doth in an action of debt recover the treble value. And ſo it was alſo adjudged Hil. 40 Eliz. Rot. 699. where Rob. Bedell and Sarah his wife in the right of his wife joyned in an action of debt for the treble forfeiture. A record well examined and adjudged, and worthy to be a precedent. In which caſe it was reſolved that the general allegation in the Count, that the Defendant Anno 38 Eliz. grano ſeminavit 20 acras terræ, &c. & quod decimæ inde attingunt ad valorem 150 l. without ſhewing what kind of grain was good.

The third Addition

And be it alſo enacted by the authority aforeſaid, that at all times whenſoever, and as often, as the ſaid predial tithes ſhall be due at the tithing time of the ſame, it to be lawful to every party to whom any of the ſaid tithes ought to be paid, or his deputy or ſervant to view and ſee their ſaid tithes to be juſtly and truly ſet forth and ſevered from the nine parts, and the ſame quietly to take and carry away. And if any perſon carry away his corn, or hay, or his other predial tithes before the tithe thereof be ſet forth, or willingly withdraw his tithes of the ſame, &c. that then upon due proof thereof made before the ſpiritual Judge, or any other Judge, to whom heretofore he might have made complaint, the party ſo carrying away, withdrawing, letting, or ſtopping ſhall pay the double value of the tenth, or tithe ſo taken, loſt, withdrawn, or carried away, over and beſides the coſts, charges, and expences of the ſuit in the ſame, the ſame to be recovered before the Eccleſiaſtical Judge, according to the Kings Eccleſiaſtical Laws.

Mich. 9 E. 2. f. 61. in libro meo. Labbe de Oſneis caſe. 19 R. 2. action ſur le caſe, 52. 17 H. 6. Iuriſdiction, 58. So reſolved by all the Judges of England, Paſc. 4. Jac.

¶ That at all times whenſoever, and as often, &c.] The firſt part of this branch is declaratory of the Common Law, becauſe for the ſtopping of his way, &c. an action of the caſe did lye at the Common Law.

¶ Shall pay the double value, &c.] The reaſon why the double value, &c. is by this branch to be recovered in the Eccleſiaſtical Court, where by the former branch, the Parſon, &c. at the Common Law ſhall recover the treble,

is,

is, for that in the Eccleſiaſtical Court he ſhall recover the tithes themſelves, and therefore the value recovered in the Eccleſiaſtical Court is equivalent with the treble forfeiture at the Common Law. Vide Artic. cleri 4 Jac. Artic. 16.

¶ Beſides the coſts, charges, and expences, &c.] So as the ſuit in the Eccleſiaſtical Court is more advantagious then the ſuit for the treble forfeiture at the Common Law: For at the Common Law he ſhall recover no coſts, but he ſhall recover in the Eccleſiaſtical Court coſts and expences. But then it is demanded, whether in an Action of debt for the treble value at the Common Law, if the Plaintiff be nonſuite, or if the verdict paſs for the Defendant, the Defendant ſhall recover his coſts by the Statute of 23 H. 6. c. 15. And the anſwer is, that in that caſe he ſhall recover no coſts, and ſo it was adjudged Trin. 43 Eliz. in communi banco, inter Dounton Plaintiff in debt upon this Statute, and S. Moile Finch Defendant, that this action of debt is no action of debt within the Statute of 23 H. 8. becauſe it is neither upon a ſpecialty or by Contract; neither is this action upon this Statute any action for wrong perſonal immediately done to the Plaintiff, for it is a non-feſance, viz. a not-ſetting out of the tithes, Trin. 42 Eliz. in communi banco adjudged in an action of debt for the treble value upon this Statute, not guilty, or nihil debet are good uſes, and ſo upon the Statute of 5 Eliz. upon perjury.

The fourth Addition

And be it further enacted, &c. That all and every perſon which hath or ſhall have any beaſts or other cattel tithable, going, feeding, or depaſturing in any waſt or common ground, whereof the pariſh is not certainly known, ſhall pay their tithes for the increaſe of the ſaid cattel ſo going in the ſaid waſt or common to the Parſon, Vicar, proprietory, portionary, owner or other their Farmors or Deputies, of the ſaid Pariſh, Hamlet, Town, or other place, where the owner of the ſaid cattel inhabiteth, or dwelleth.

¶ All and every perſon which hath or ſhall have any beaſts or other cattel tithable, &c.] Where the King ought to have the tithes within the waſts or commons in his forefts, which are not within any Pariſh, this branch giveth the tithes of the increaſe of cattle to the Parſon of the Pariſh where the owner dwelleth. Rot. Parl. 18 E. 1. fol. 8. Int. Epiſcopum Carliel. & decan. 22 Aſſ. p. 75

Provided, &c. that no perſon ſhall be ſued, or otherwiſe compelled to yield, give, or pay, any manner of tithes for any mannors, lands, tenements, or hereditaments, which by the Laws, and Statutes of this Realm, or by any priviledge or preſcription are not chargeable with the payment of any ſuch tithes, or that be diſcharged by any compoſition real.

The fifth Addition.

¶ By the Laws of the Realm, &c.] (and ſo ſpeaks the Statute of 32 H. 8. cap. 7.) That is, by the Common Laws and Cuſtoms of the Realm, terræ ſunt indecimabiles; Hereof you may read divers examples lib. 8. fol. 48, 49, 81.

Note, that tithes ſhall not be paid of any thing that is of the ſubſtance of the earth and are not annual, as of quarries of ſtone, turf, flags, tyn, lead, brick, tyle, lyme, marle, coals, chalk, pots of earth, and the like, nor of beaſts that be feræ naturæ, as deer, &c. nor of agiſtment of ſuch beaſts, as the Parſon hath tithe of, nor of cattle that manure the ground; but of barren beaſts he ſhall have tithe for agiſtment, or herbage of them, unleſs they be nouriſhed for the pale or plough, and ſo imployed. Mich. 41 & 42 Eliz. coram Rege in So reſolved; Mic. 21 & 22 El. coram Rege per Wray chief Juſtice & totam curiam. F. N. B. 53. g. Regiſt. 54. b. Rot. Parl. 51 E. 3. nu 57. 7 H. 12 H. 8. 4. b. 4. n. 105

Prohibition Int Greene & Hull. & Mich. 37 & 38 Eliz. Inter Griſman & Lewes in communi banco. Nor of Rakings left without Covin, nor of after paſture. No tithes ſhall be paid for ſylva cædua imployed to hedging or for fewel, for maintenance of the plough or pale. Nor for the herbage of meres, bawks, nor fearn, locks of wool, or ſtubble, &c. but are freed thereof by the Common Law and cuſtom of the Realm. Vide Hill. 8 Jac. coram Rege Tho. Baxters caſe. And in that caſe it was reſolved and adjudged, that a Parſon ſhall not have two tithes of one land in one year, as of corn, and of the ſtubble or herbage, of hay, and of the after-paſture, & ſic in ſimilibus. But if the ſoil of an Orchard be ſown with any kind of grain, the Parſon ſhall have tithe of the fruit trees and of the grain, for they be of ſeveral and diſtinct kinds. But if he pay tithe for the fruit of the trees, and after cut down the trees, and ſell them in Billet, or Faggot, he ſhall pay no tithe, for they be not of ſeveral kinds.

If a man pay tithe for his corn, and after grindeth the ſame corn at a Mill within the ſame Pariſh, no tithe meal ſhall be paid therefore. Vide Artic. cleri, cap. 2.

Deut. 14. v. 22,23. Decimam partem ſeparabis de cunctis fructibus quæ naſcuntur in terra per annos ſingulos &c. Decimam frumenti tui, & vini, &c. Thou ſhalt tithe all the increaſe of thy ſeed that the field bringeth forth year by year, as of Corn, Wine, &c.

Regiſter 54. b. F. N. B. 53. E. Brook Diſmes 16.

25 H.8. cap. 19. All Canons and Conſtitutions made againſt the Laws &c. of the Realm are made void.

¶ By the Statutes, &c.] Viz. 27 H.8. cap. 20. 31 H. 8. cap. 13. 32 H.8. cap. 7.

¶ By preſcription.] The orders of Ciſtercienſes, Templarii, & Hoſpitularii decimas prædiorum ſuorum, quæ propriis manibus aut ſumptibus excolunt, non tenentur ſolvere, &c. Vide Dier. 10 Eliz. fol. 277, 278. & 2 H.4.5. cap. 14.

This privilege to theſe three orders of Religion was granted to them by the Council of Lateran, Anno Domini 1215. & anno 17 Johannis Regis, and was allowed by the general conſent of the Realm, but this privilege extendeth only to the lands which they had before that general Council.

Innocent the 3 in Epiſt. decretali lib. 1. pag. 262. Vid. 38 E.3.6. a. Pope Innocent the third by his Bull diſcharged thoſe of the order of Premonſtratenſes of the payment of tithes of ſuch lands as were of their own manurance, or other improvement. Note, about the year of our Lord 1150. moſt of all religious Orders were exempt from payment of tithes out of their poſſeſſions kept in their own hands. Which Pope Adrian the fourth about that time reſtrained to Ciſtercienſes, Templarii, & Hoſpitularii, and that all other orders ſhould pay tithes, &c.

2 H.4. cap.4. By the Statute of 2 H. 4. not only the Ciſtercienſes, but all other religious and ſeculars which put any Bulls in execution for diſcharge of tithes of their lands in the hands of their Farmors ſhould be in danger of a Præmunire.

28 H.8. cap. 16. Vid. 25 H.8. c.21. By the Statute of 28 H.8. it is enacted that all bulls, briefs, faculties, diſpenſations, of what names, natures, or qualities whatſoever they be of, heretofore had or obtained of the Biſhop of Rome, or of any of his predeceſſors, or by authority of the See of Rome, by or to any ſubjects, reſiants, or bodies politique or corporate of or in this Realm, or of or in other the Kings dominions, ſhould from thenceforth be clearly void, and of no value, force, ſtrength, nor vertue, and ſhould never after that Act be uſed, admitted, allowed, pleaded, or alledged in any places or Courts of this Realm or any other the Kings dominions, upon pain contained in the Statute of Præmunire, &c. This is a general Law, and plenarily and ſtrictly penned againſt all bulls, &c. True it is, that there are ſome exceptions or qualifications in the Act, which you may read there; but there is no exception or qualification therein for any diſpenſation or diſcharge of not payment of tithes by any bull

Vid. 11 H.4.76. 12 H 8.5,6. Præmunire.

of

of the Pope. And we are of opinion, that the Pope by his bull could not discharge any ſubject of this Realm of payment of tithes, for it ſhould be againſt the liberty of the ſubject, when he had liberty to grant his tithes to what ſpiritual perſon he would, and againſt the right of the perſons, &c. of Pariſhes, after Parochial rights were eſtabliſhed.

This Act of 28 H. 8. extendeth not to general Councels, but leave them as they were before, but all Canons (as elſewhere hath bæn ſaid) which are againſt the Prerogative of the King, the Common Law or Cuſtom of the Realm, are of no force. Let not therefore only Serjants, Apprentices, and Attournies, but the parties themſelves be well adviſed how they plead or alledge any bull, brief, faculty, or diſpenſation from Rome, &c. which is not warranted by this Act, the puniſhment being ſo penal as a Premunire, if they plead or alledge any Bull, &c. againſt that Act. Vid. Dier. 10 El. 277, 278. Vid. 25 H. 8. c. 19 Vid. 18 El. Dier. fol. 347. Weſtons caſe.

And in ſome caſes, this maketh for the Clergy. By the Common Law Pariſh Churches are to be repaired by the Parſons of the Pariſh, but the cuſtom of this Realm being that the Pariſh Churches are to be repaired by the Pariſhioners or Inhabitants of the pariſhes, this Canon bound not the Clergy. Extr. tit. de Eccl. ædific. cap. 4. De his Lindwood fol. 39. verb. reparat.

Alſo by another Canon, neither Archbiſhop nor any other of the Clergy could by their Teſtament bequeath any thing wherein he had property in the right of his Church; but this being contrary to the cuſtom of the Realm originally obtained by the Biſhops of this Realm for themſelves and their whole Clergy, for which at this day a recompence is given to the King, as elſewhere we have ſhewed. Extr. tit. de offic. judicis ordinar. cap. 4. cum vos. Lindwood fol. 121 verb. legitima. Rot. Clauſ. 30 H. 3 m. 4 in turri Lond. Par. 13 E. 1. m. 11. ib. de monitura Epiſcopi Hil. 2 E. 2 in mem. Scaccarii. Tr. 36 E. 3. ib. proces veri. Epiſcopum, Ceſtr' Hill. 5 E. 4. int. communia Rot. 47. Larcheveque de Yorks caſe.

¶ *a* Preſcription.] As modus decimandi, lands given in ſatisfaction, &c. *b* And a country may preſcribe to be quit of tithes, or in non decimando. But for the better underſtanding both of this Statute, and of our books, it is good to be known what the time of preſcription for tithes is by the Canon Law, and by what Authority. And the time for preſcription in that caſe is forty years, by which time of preſcription a ſpiritual perſon may gain by the Canon Law a right of tithes in another Pariſh, &c. *c* And this preſcription hath this ground and warrant by a decretal Epiſtle of Pope Alexander the third, Anno Domini 1180. But this Canon being againſt the Common Law which alloweth no preſcription unleſs it be time out of mind of man, never had allowance in England. *d* Of preſcription according to the Common Law, you may read in the firſt part of the Inſtitutes Sect. 170. at large. And the Epiſtle decretal of Pope Alexander we have thought good to recite in hæc verba, Alexander Mauricio Epiſcopo: Ad aures noſtras te ſignificante pervenit, duas Eccleſias ſæpius ſub examine tuo litigare ſuper decimis, quas una Eccleſiarum in alterius parochia 40 annis poſſedit, ac per hoc petit ejus actionem extentam, Altera vero volens eas jure parochiali evincere præſcriptionem non debere ſibi obeſſe proponit; ideo quid juris ſit in hoc caſu tua nos duxit fraternitas conſulendos. Tuæ itaque fraternitati literis præſentibus innoteſcat, quod jure *e* divino & humano melior eſt conditio poſſidentis, quoniam *f* quadragenalis præſcriptio omnem prorſus actionem ſecludit. *a* Regiſt. 38. F.N.B. 41. g. 8 E. 4 24. 18 H. 6. 14. *b* Dott. & Stud. 174 *c* 20 H. 6. fol. 17. ac preſcription per le ley de St. Egliſe eſt 40 ans, & en noſtre ley neſt vailent. preſcrip. per C. ans, 2 E. 4. 15. 6 E. 4. 3 *d* 1. part Inſtitut. Sect. 170. *e* Jure Canonico. *f* This is le ley de St. Egliſe mentioned in 20 H. 6.

* Mich. 43 & 44 Eliz. In a Prohibition betwæn Nowell and Hicks Vicar of Edmonton in Midd. the Plaintiff in the Prohibition alledged a cuſtom within the ſaid Pariſh of Edmonton time out of mind of man to pay for every Lamb a penny, &c. And iſſue was taken upon the cuſtom, and the Jury found, &c. before twenty years laſt paſt time out of mind, that there was within the ſaid Pariſh ſuch a cuſtom, and modus decimandi; but for twenty years laſt paſt by reaſon of ſuits and troubles, the Inhabitants of the ſaid Pariſh had paid tithe Lambs in kind. And in this caſe theſe two points were adjudged. Firſt, When a cuſtom doth create an inheritance, this cannot be waved or annulled by payment or other matter in Paiis. 2. Albeit that the modus decimandi had not bæn yielded or paid by twenty years, yet the preſcription may be general, * Mic. 43 & 44 El. coram Rege.

ral, for that the cuſtom once eſtabliſhed doth continue. As if a man hath a common of paſture, &c. and taketh a leaſe of the land, &c. for many years, yet after the years ended he may preſcribe generally; for the inheritance of the common continued: and if the Law ſhould be otherwiſe, it were dangerous for the parties that do preſcribe for one year, and ten or twenty years, &c. is all one in judgment of Law. And ſo herewith do agrée the books in 15 E. 3. tit. judgment 133. in a Writ of meſne. 14 E. 3. ibidem 155.

Mich. 13 E. 1. in banco Rot. 119. Salop. Free chaſe appendant al mannor. Iſſue, non fuit ſeiſitus. Verdict.

Edmundus de mortuo mari attachiatus fuit ad reſpondendum Johanni de Segrave & Chriſtianæ uxori ejus, quare impedit eos habere liberam chaceam in boſco ſuo de Kinkeſwood pertinen' ad manerium ſuum de Stoteſden quod tenent de Rege in capite, & quod habent ex feoffamento Hugonis le Pleſſye quondam Domini dicti manerii. Edmundus dicit quod Rogerus pater ſuus obiit ſeiſitus inde tenend' in ſuo ſeperali, & quod prædictus Hugo tempore quo feoffavit prædictos Johannem & Chriſtianam de dicto manerio, non fuit ſeiſitus de dicta Chacea. Et de hoc ponit ſe ſuper patriam, & prædict' Johannes & Chriſtiana ſimiliter. Jur' dicunt quod Johannes de Pleſſye pater prædicti Hugonis de Pleſſye fuit ſeiſitus de prædicta chacea dum fuit Dominus dicti manerii, & dicunt quod dictus Hugo voluit ibidem fugaſſe, poſtquam prædictum manerium pervenit ad manum ſuam, ſet Rogerus de mortuo mari ipſum impedivit & non permiſit. Et dicunt quod Hamo le Strange, & Hugo de Turbervile parentes uxoris ipſius Hugonis ex rogatu ipſius Hugonis venerunt ad manerium de Stoteſden, & prædictam chaceam ſimul cum prædicto Hugone intraverunt nomine ipſius Hugonis cum equis & armis, & in ea cum equis & armis per tres dies fugaverunt abſque impedimento prædicti Rogeri de mortuo mari aut hominum ſuorum. Et queſit̄ Jur̄ &c. dicunt quod illud fecerunt tempore pacis, & abſque impedimento prædicti Rogeri aut hominum ſuorum eo quod dictus Rogerus neſcivit quod ibi fugaverunt, & quod ab eo tempore dictus Hugo nunquam fugavit ibi; quia quotieſcunque fugare ibidem voluit, dictus Rogerus ipſum impedivit. Poſtea Term' Trin' anno 20 venerunt partes, & petierunt Judicium ſuum per Attornatos ſuos. Judicium redditum, quod quia Johannes de Pleſſye fuit de chacea ſeiſitus tanquam pertinen', &c. Et poſtea dictus Hugo per tres dies continue tempore pacis ſeiſinam ſuam obtinuit abſque impedimento Rogeri de mortuo mari, aut alicujus parent̄ ſuorum, per quod videtur cur̄ quod ſeiſina illa eſt ſufficiens, bona, & pacifica in hoc caſu; Conſideratum eſt, quod Edmundus injuſte impedivit dictos Johannem & Chriſtianam de prædicta chacea, & ipſi re' chaceam illam & dampn' 100 s.

Multiplex interruptio non tollit præſcriptionem ſemel obtentam. Note an interruption to chace is no diſſeiſin thereof, but at the will of the owner. Judgment. Seſina bona debet eſſe pacifica. Mich. 2 E. 2. coram rege. Warw. in monſtraverunt.

The mannor of Brimſgreen and Norton was ancient demeſn, and in the Kings hands, and William of Brimingham and his anceſtors time out of mind and before the Conqueſt had taken toll alwel of the tenants of the ſaid mannor as of others, whereupon judgment was given, as it appeareth in the Record in theſe words: Et quia manifeſte conſtat, &c. quod manerium de Brymmeſgreen & Norton eſt de antiquo dominico coronæ Angliæ, & à tempore quo non extat memoria, extitit in ſeiſina progenitorum Reg' quondam Regum Angliæ, & adhuc in ſeiſina Domini Regis nunc exiſtit. Et homines de eodem manerio ſicut & cæteri homines de antiquis dominicis coronæ Domini Reg' quieti eſſe debeant à præſtatione theolonii per totum regnum Angliæ, ut prædictum eſt, &c. Et ſuper hoc viſo & lecto recordo placiti prædicti manifeſte patet quod prædict' Willielmus de Brimingham recognovit quod ipſe & anteceſſores ſui habuerunt mercatum in prædicta villa de Brimingham, & theolonium de omnibus mercandiſis in eadem villa, de quibus theolonium præſtari deberet, perceperunt & habuerunt, & etiam de hominibus de Bremeſgreen & Norton, quam de aliis ibidem vendentibus & ementibus ante Conqueſtum, & ſine temporis interruptione, & quod ipſe ſtatum eorundem anteceſſorum continuavit diſtringendo & percipiendo ab eiſdem hominibus theolonium, tam pro minutis, ut pro victualibus & aliis neceſſariis ſuis, quam de aliis quibuſcunque mercandiſis ſicut de aliis mercatoriis. Conſideratum eſt quod prædicti Richardus, Robertus, Johannes, & omnes alii

Nota, ante Conqueſtum. Note a poſſeſſion beyond time of memory ſhall not ſtand, but give place to Law. Conſuetudo licet ſit magnæ authoritatis, nunquam tamen præjudicat veritati.

alii de manerio prædicto, quieti ſint imperpetuum à præſtatione Theolonii in villa prædicta præſtandi ſecundum legem & conſuetudinem in regno uſitat', & quod recuperent damna, quæ taxantur per diſcretionem Juſticiarior' ad vigint Mare'. Et prædictus Willielmus pro injuſta continuatione, uſurpatione anteceſſorum ſuorum in miſericordia. Et inhibitum eſt eidem Willielmo ne homines de manerio prædicto de cætero diſtring' ad Theolonium in dicta villa de Brimingham præſtand' contra legem & conſuetudinem prædictas, &c.

Abbas de Sancto Edmundo implacitat Rogerum de Bigod com' Norff. mareſc. Angl', & duos alios pro captione duorum leporariorum ſuorum in villa de magna Thorpe. Comes dicit, quod dicta villa eſt infra præcinctum dimid' hundredi ſui de Erſham quod tenet ingarennatum prout Rogerus avunculus ſuus, cujus hæres ipſe eſt, illud tenuit, & quia invenit prædictum Abbatem ibidem fugantem, ipſe cepit, &c. Abbas dicit quod ratione terrarum ſuarum ibidem ad ipſum pertinet fugare, prout omnes prædeceſſores ſui ibidem fecerunt, &c. Ideo ven' Jur' qui per ſpeciale veredictum dicunt, quod Abbas & prædeceſſores ſui ſolebant ante bellum de Lewes ibidem ſemper fugare, &c. Et dicunt quod tam Rogerus comes, quam Rogerus nunc ipſum Abbatem & homines ſuos ſæpe impedivit ibidem fugare, & leporarios ſuos furripuerunt.

Trin. 18 E. 1. in banco rot. 50. Norff.
Nota pro leporariis.
Ingarennatum.
Pertinet fugare.
Verdict ſpecial.
Bellum de Lewes 48 H. 3. anno Domini, 1264.

¶ Not chargeable by payment of tithes, &c.] As by unity of poſſeſſion. Lib. 2. fol. 46, 47, 48, 49. Lib. 11. fol. 10, 11, 14, 16.

¶ Diſcharged by any compoſition real, &c.] Either before time of memory, or within time of memory, that is by Parſon, Patron, and Ordinary. Vide 8 H. 6. 22, 23. 9 H. 6. 17. 41 E. 3. 27. 17 E. 3. 11. 38 E. 3. 6, 8. 12 H. 4. 13. 19 H. 6. 75. 32 H. 6. 4. 34 H. 6. 36. 31 H. 6. 28. 35 H. 6. 5. a. 37 H. 6. 25. 1 E. 4. 6. 8 E. 4. 14. 18. 14 H. 7. 3. 26 H. 8. 7. 27 H. 8. 20. 21.

Concordia facta inter Willielmum Mallet & Rectorem Eccleſiæ de Aure heiton Bathon, & Willen' dioceſ' ex una parte, & * nobilem virum Johannem de Acton mil' ex altera parte, de * modo decimandi omnia infra parochiam de Aure per conſenſum Epiſcopi & Capitul' Bathon' unde placitat' fuit prius in curia Cantuar'. Nota.

Mich. 9 E. 1. in banco rot. 63. Somerſet.
* Miles eſt nobilis.
* Modus decimandi per realem compoſitionem.

Provided, &c. that all ſuch barren, heath, or waſt ground, other then ſuch, as be diſcharged for the payment of tithes by Act of Parliament, which before this time have lien barren and paid no tithes by reaſon of the ſame barrenneſs, and now be or hereafter ſhall be improved and converted into arable ground or meadow, ſhall from henceforth, after the end and term of ſeven years, next after ſuch improvement fully ended and determined, pay tithe for the corn and hay growing upon the ſame, any thing in this Act to the contrary in any wiſe notwithſtanding.

The fifth Addition. With a Proviſo.

¶ Barren.] Terra ſterilis ex vi termini eſt terra infœcunda, nullum ferens fructum. *Virgil.*

Infelix lolium, & ſteriles dominantur avenæ.

But it is not only ſo ſtrictly taken in this Act, but hath alſo a more reſtrained ſenſe. For albeit it doth yield ſome fruit, yet if it be barren land, quoad agriculturam, as to tillage, which this branch meant to advance, it is within this Act, for albeit barren ground (as to tillage) doth pay tithe wool and lamb, yet is it within this Act, and this appears by the next proviſo in this Act for the payment

Dier 2 Eliz. f. 170, 171. lib. Int. Cok. 462, 463.

payment of ſuch tithe as during the ſeven years before the improvement was paid. But yet if the ground be not apt for tillage, yet if it be not ſuapte natura barren, it is not within this Act. As if a wood be ſtubbed and grubbed, and made fit for the plough, and imployed thereunto, yet ſhall it pay tithes preſently, for wood ground is terra fertilis, & fœcunda.

6 E. 6. ex libro Bendloes.

Virgil. Æneid.

Devenere locos lætos, & amæna vireta.
Fortunatorum nemorum, ſedeſque beatas.

And ſo was it reſolved Hil. 9. Jac. Reg. upon the motion of Serjant Houghton by the whole Court of Common Pleas.

In a Prohibition betwéen Sharington and Fleetwood for tithes in Orwell in the County of Lancaſter, it was reſolved, that if marſh meadow, or other land for not cleanſing of the trenches or ſewers, or by ſuddain accident, or inundation of waters be ſurrounded; or by ill husbandry or unprofitable negligence any land become overrun with buſhes, furs, whins, and bryers, yet are not they or any of them ſaid to be barren land within this Statue, becauſe of their own nature they are fruitful, and the Parſon, &c. ſhall not by this Act be barred of his tithes by the ill husbandry or negligence of the owner or poſſeſſor.

Hil. 38 Eliz. coram Rege.

¶ Heath.] In French it is called bruyere; In legal Latin bruera, Regiſt. 2. In domeſday it is called bruaria; Latinè erix, erica an unprofitable kind of ground, but wholly barren, for thereon ſheep and beaſts will bruiſe, and ſome poor people the flags and turfs thereof do apply to fewel; and this heath cannot without great skill, charge and induſtry be converted to tillage. It ſendeth forth a flower in Autumn (when all others ceaſe) which bées do exceédingly covet, as it is ſaid, this is within this Act. Some ſay, eſt quoddam genus myricæ, a kind of wild tamerisk, and in Lincoln-ſhire a little religious houſe was called Temple bruer, becauſe it was ſeated in the heath.

Lib. Intr. Coke ubi ſupra.

¶ Waſt.] It is called vaſtus fundus, waſt ground, becauſe it lieth as waſt with little or no profit to the Lord of the Mannor, and is ſo called to diſtinguiſh it from the reſidue of the demeſnes in the Lords hands, and cannot without great charge and induſtry be improved or converted to tillage being ſuapte natura unprofitable, and being converted to tillage it ſhall pay no tithes by the ſpace of ſeven years.

Lib. Intr. Coke ubi ſupra.

¶ Shall after the end and term of ſeven years next after ſuch improvement pay tithe.

Note, here are no expreſs words of diſcharge of the tithes during the ſeven years, but by reaſonable conſtruction it doth impliedly amount to a diſcharge during the ſeven years, and the ſeven years are to be accounted next after the improvement.

Dier. 2 El. 170. b.

The ſixth Addition. With the Proviſo.

And be it enacted, &c. that every perſon exerciſing merchandizes, bargaining, and ſelling, clothing, handicraft, or other art or faculty, being ſuch kind of perſons as heretofore within theſe forty years have accuſtomably uſed to pay ſuch perſonal tithes, or of right ought to pay, (other then ſuch as be common day-labourers) ſhall yearly, &c. pay for his perſonal tithes, the tenth part of his clear gains, his charges, &c. deducted; and where handicrafts men have uſed to pay their tithes within this forty years, the ſame cuſtom of payment of tithes to be obſerved. And if any perſon refuſe to pay his perſonal tithes,

tithes, &c. it ſhall be lawful to the Ordinary of the ſame Dioceſs, &c. to call the ſame party before him, and by his diſcretion to examine him by all lawful and reaſonable means, other then by the parties own corporal oath, concerning the true payment of the ſaid perſonal tithes.

¶ Pay for his perſonal tithes the full tenth part of his clear gains, &c.] Of perſonal tithes we have ſpoken before. Vid. 37 H.8. cap.12. Vid. Linwood, tit. de Decimis, fol.141, 142.

¶ Cuſtom of payment of tithes.] Nota, there may be modus decimandi for perſonal tithes.

¶ By all lawful and reaſonable means, other then by the parties own corporal oath.] Here is juſt occaſion offered to ſpeak de juramento calumniæ, wherein we will endeavour to find out three things: Firſt, the beginning of the bringing in of this oath: Secondly, how the Law hath ſtood therein in former ages: and thirdly, what the right is at this day.

By a Conſtitution Domini Othonis Diaconi Cardinalis Sancti Nich. Apoſt. ſedis Legati, at a Provincial Councel, holden Octab' Sancti Martini in Eccleſia Sancti Pauli London, an. Dom. 1236. anno 21 H. 3. it was ordained in theſe words: Juſ-jurandum calumniæ in cauſis Eccleſiaſticis & civilibus de veritate dicenda in ſpiritualibus, quout veritas facilius aperiatur, & cauſæ celerius terminentur, ſtatuimus præſtari de cætero in regno Angliæ, ſecundum Canonicas & legitimas ſanctiones obtenta, conſuetudine in contrarium non obſtante. By this it appeareth, that by the cuſtom of the Realm of England, juramentum calumniæ was not to be miniſtred: but to confeſs the truth, the cuſtom was not ſo general, as in this Canon is alledged; for lay-men were free by the cuſtom of the Realm for taking of that oath, unleſs it were in cauſis matrimonialibus & teſtamentariis: and in thoſe two caſes the Eccleſiaſtical Judge might examine the parties upon their oath, becauſe contracts of matrimony were often made in private, and legitimation of children depended thereupon. And in cauſes teſtamentary many things conſiſt in ſecrecy, and the truth therein is to be drawn out by oath, & intereſt reipublicæ teſtamenta hominum rata haberi. And this appeareth by a * Prohibition by authority of Parliament directed to the Sheriffs, &c. Quod non permittant quod aliqui laici in baliva ſua in aliquibus locis conveniant ad aliquas recognitiones per ſacramenta ſua facere, niſi in cauſis matrimonialibus & teſtamentariis. But this cuſtom extended not to them of the Clergy, but to lay-people only, for that they of the Clergy being preſumed to be learned men, were better able to take juramentum calumniæ: for concerning the teſtimony of witneſſes in the Eccleſiaſtical Court, that Act, or the cuſtom of the Realm extends not unto. 1.

* Prohib. format' ſuper Artic' Cleri, tit. Prohib. Raſtall 4. vet. Mag. Chart. 2. part. fol.70.a. Vid. aſſ. de Clarendon, 10 H. 2. Brit. fol.35.b. acc'. Hill. 7 E. 3. Rot. 285. in communi banc. Hill. 7 H.6. Rot. 135. ibid. Trin. 3 H. 6. Rot. 41. ibid. 19 E.4.10. per Brian, that it is a Statute, 20 E. 4. 3. b. *a* Regiſt. fol. 36. b. F.N.B. 53. d. A Prohibition, and thereupon an attachment, contra conſuetudinem regni, but there is a conſultation for witneſſes. Fitzh. Juſtice of Peace 72. Lamb. Juſtice of Peace 338.

But if in a penal Law the juriſdiction of the Ordinary be ſaved, as by 1 Eliz. *b* for hearing of Maſſes, or by 13 Eliz. *c* for uſury, or the like, neither Clerk nor lay-man ſhall be compelled to take juramentum calumniæ, becauſe it may be an evidence againſt him at the Common Law upon the penal Statute.

b Dyer manuſcr. pt. propria manu, Trin. 9 Eliz. in communi banco, Leighs caſe, Habeas corpus.

c 18 Eliz. Dyer 175. in margine, Hindes caſe, Habeas corpus.

But it is objected, that this oath hath long continued in the Eccleſiaſtical Court. To this it is anſwered, Firſt, that it had the warrant of an Act of Parliament (as it was holden) in 2 Hen.4. cap.15. whereby it was enacted, Quod Dioceſanus per ſe, vel Commiſſarios ſuos contra hujuſmodi perſonas, &c. ad 2.

omnem juris effectum publice, & judicialiter procedat, & negotium hujuſmodi terminet juxta Canonicas ſanctiones. By this Statute, and the ſaid Provincial Conſtitution, and other the Canons of the Church, the Dioceſans, &c. miniſtred the ſaid oath, even in the caſe of hereſie, &c. This Statute of 2 H.4. was repealed by the Act of 25 H. 8. (which Act is partly declaratory of the ancient Law of the Realm) in theſe words: 'It ſtandeth not with the right order of ju-'ſtice, nor good equity, that any perſon ſhould be convict, and put to loſs of life, 'good name, or goods, unleſs it were by due acculation and witneſs, or by pre-'ſentment, verdict, confeſſion, or proceſs of outlawry, &c. And that it is not 'reaſonable, that any Ordinary, upon any ſuſpicion conceived of his own fanta-'ſie, without due acculation or preſentment, ſhould put any ſubject of this 'Realm in any infamy and ſlander of hereſie, to the peril of life, or loſs of name, 'or goods. And in a former clauſe of the ſaid Act it is ſaid, 'That the moſt ex-'pert and beſt learned man of this your Realm, diligently lying in wait upon 'himſelf, can eſchew and avoid the penalties and dangers, &c. if he ſhould be ex-'amined upon ſuch captious interrogatories, as is, and hath been accuſtomed to 'be miniſtred by the Ordinaries of this Realm, in caſes where they will ſuſpect 'any man of hereſie, &c.

25 H.8. cap.14. & 1 E.6. cap.12. This Statute of 2 H.4. was revived in An. 1 & 2 Phil. & Mar. cap.6. and repealed again An. 1 Eliz. 1. and ſo remaineth.

Secondly, The words of the ſaid Act of Parliament are contra voluntatem eorum, and of the Regiſter, ipſis invitis; ſo as ſuch as willingly have taken it, ſerveth for no poſſeſſion againſt the Law.

3. But now laſtly it is to be ſeen, how the right ſtandeth touching this oath at this day. It is confeſſed, as before it appeareth, as well by the ſaid Provincial Conſtitution of Otho, as by the Regiſter, that the ſaid Conſtitution was contra conſuetudinem regni, whereupon it followeth, that no cuſtom of the Realm can be taken away by a Canon of the Church, but only by Act of Parliament, and ſpecially in caſe of an oath, which is ſo ſacred a thing, and which generally concerneth all the Nobility, Gentry, and Cominalty of the Realm of both ſexes. And by the Statute of * 25 H.8. cap.19. no Canon againſt the Kings Prerogative, the Law, Statutes, or Cuſtom of the Realm, is of force, which is but declaratory of the Common Law.

Vid. the third part of the Inſtitutes, cap. Perjury. * 25 H.8. cap.19. Rot. pat. an. 15 E. 2. part. 1. m.8. 19 E.3. quare non admiſit. 7. 10 H.7. fol. 6. per Brian. See the fourth part of the Inſtitutes, cap. The Court of Convocation.

d We have read over what Doctor Coſin hath in his book ſpoken for the maintenance of this oath, and certainly, he toucheth not the ſtate of the queſtion, as will appear to the learned Reader.

d Doct. Coſin in his book intitled, An Apology, &c. cap. 13.

To conclude, This branch of 2 Ed.6. giveth no life to any forceleſs Canon, which is againſt any Law or cuſtom of the Realm, but, according to the Law and cuſtom of this Kingdom prohibiteth the Ordinary in caſe of perſonal tithes to examine the party upon his corporal oath; for the Parliament did take that to be no lawful and reaſonable means (whereof it ſpeaketh); for a Parliament would never have prohibited any thing that was lawful and reaſonable; and yet the clear gains of Merchants, Clothiers, or Handicraft men do lye in great ſecrecy, and hardly to be proved by witneſſes. And before, in the clauſe concerning the ſecond Addition, for recovery of predial tithes, it is ſaid; Upon due proof thereof, made before the Spiritual Judge, &c. for that they are open, viſible, and eaſie to be proved by witneſſes: and at this time the Statute of 2 H.4. ſtood repealed.

L 18. F. de pœna Cogitationis pœnam nemo meretur.

No perſon Eccleſiaſtical or Temporal ought in any Eccleſiaſtical Court to be examined upon the cogitation of his heart, or what he thinketh, &c. as it was holden by the Judges in the Parliament holden 4 Jac. and as it was after holden in the Court of Common Pleas, Mic. 6 Jac. in Dr. Wolſtons caſe in a Prohibition.

The 7. Addition.

Provided, &c. that all and every perſon and perſons, which by the Laws or cuſtoms of this Realm ought to make or pay their offerings, ſhall yearly from henceforth well and truly content and pay his or their offerings to the Parſon, &c. of the Pariſh or Pariſhes, where it ſhall fortune or happen him or them to dwell or abide, &c.

[Offerings.] Offerings or oblations, oblationes, theſe are of two ſorts, viz. free or voluntary, and conſuet; or by cuſtom, as here it appeareth. Offerings and obventions are in London the profits of the Church, and not in corn, or other manner.

A Writ of right of Advowſon brought of the fourth part of the tithes and offerings of the Church of Saint Dunſtan in the Weſt in Fleetſtreet London, and adjudged to be good. 30 E. 3. 1. in account. 38 E. 3. 15. per Finch. acc'.

See lib. 11. fol. 16. Doctor Grants caſe. Vid. there for obventions, 38 E. 3. 13. & 16 E. 3. ubi ſup. and ſee here the 10 Addition. Vid. the next Addition. 16 E. 3. quare Imped. 147.

Provided, &c. That this Act, or any thing therein contained, ſhall not extend to any Pariſh, which ſtands upon and towards the Sea coaſts, the commodities, and occupying whereof conſiſteth chiefly in fiſhing, and have by reaſon thereof uſed to ſatisfie their tithes by fiſh, but that all and every ſuch Pariſh and Pariſhes ſhall hereafter pay their tithes, according to the laudable cuſtoms, as they have heretofore of ancient time within theſe 40 years uſed and accuſtomed, and ſhall pay theſe offerings, as is aforeſaid. *The eighth Addition.*

Provided that this Act, &c. ſhall not extend in any wiſe to the inhabitants of the City of *London* and *Canterbury*, and the Suburbs of the ſame, ne to any other Town or place, that hath uſed to pay their tithes by their houſes, otherwiſe then they ought or ſhould have done before the making of this Act, any thing in this Act to the contrary in any wiſe notwithſtanding. *The ninth Addition*

Mich. 5 Jac. in communi banco, between John Skidmore and Robert Eire Plaintifs in a Prohibition againſt John Bell Parſon of Saint Michael Quenhithe in London: The caſe upon the ſaid Statute of 37 H. 8. and the decree thereupon was this: The ſaid Parſon libelled before the Chancellor of London for the tithes of an houſe, called the Boyes head in Breadſtreet in the ſaid Pariſh, by force of the ſaid Act and Decree, the ancient farm rent whereof was five pounds, at the time of the ſaid Decree, and after, and that of late a new Leaſe was made of the ſaid houſe, rendring the rent of five pounds per annum, and over that a great income or fine, which was covenanted and agreed to be paid yearly at the ſame day; that the rent was paid as a ſum in groſs, and that ſo much rent might have been reſerved for the ſaid houſe, as the rent reſerved, and the ſum in groſs amounted unto; which reſervation and covenant, &c. were made to defraud the ſaid Parſon of the tithes of the true rent of the ſaid houſe, which to him did appertain by the purport and true intention of the ſaid Decree. And in this caſe four points were reſolved by the whole Court.

Firſt, if ſo much rent be reſerved as was accuſtomed to be paid at the making of the ſaid Decree in 37 H. 8. (whatſoever fine or income be paid) that the Parſon can aver no covin; for the words of the Decree be: Where any Leaſe is or ſhall be made of any dwelling houſe, &c. by fraud or covin in reſerving leſs rent then hath been accuſtomed, or is paid, &c. So as if the accuſtomed rent be reſerved, no fraud can be alledged; for the fraud by the Decree is, when leſſer rent then was then accuſtomed to be paid, is reſerved; or if no rent at all be reſerved, &c. for then tithe ſhall be paid according to the rent, that then was laſt before reſerved to be paid. The words of the Decree are: Or that any Leaſe ſhall be made without any rent reſerved upon the ſame by reaſon of any fine or income, then the Fermor ſhall pay for his tithes after the rate aforeſaid, according to the quantity of ſuch rent, as the houſe was laſtly letten for, without fraud or covin, before the making of ſuch Leaſe. So as the Decree conſiſteth upon four points, viz. Firſt, Where the accuſtomed rent, &c. was reſerved. Secondly,

Secondly, where the rent was increaſed, there the tithes ſhould be paid according to the whole rent. Thirdly, where leſſer rent was reſerved. Fourthly, where no rent was reſerved, but had been formerly reſerved. And this Act and Decree were very beneficial for the Clergy of London, in reſpect of that which they had before: And the Defendant in his libel confeſſeth, that the accuſtomed rent &c. was reſerved: and therefore no cauſe of ſuit.

Secondly, it was reſolved, that ſuch houſes as were never letten to farm, but inhabited by the owner, this is caſus omiſſus, and ſhall pay no tithes by force of the Decree.

Thirdly, it was reſolved, that where the Decree ſaith, Where no rent is reſerved by reaſon of any fine or in-come paid before-hand, albeit no fine or in-come be paid in that caſe, yet if no rent be reſerved, the Parſon ſhall have his tithes according to the Decree, for that is put but for an example or cauſe, why no rent is reſerved, and whether any fine or in-come were paid, or no, is not material, as to the Parſon.

Fourthly, it was reſolved, that the Parſon could not ſue for the ſaid tithes in the Eccleſiaſtical Court, for that the Act and Decree that raiſed and gave theſe kind of tithes, did limit and appoint how, and before whom the ſame ſhould be ſhewed forth, viz. That if a controverſie were moved in the City for not payment of thoſe tithes, or concerning the true rent or tithes, that then upon complaint made by the party grieved to the Lord Mayor of London, he by advice of his aſſiſtants ſhould make a final end, with coſts to be awarded by his diſcretion. And if the Mayor doth not make an end of it within two moneths, or if any of the parties find themſelves grieved, that then the Lord Chancellor within three moneths ſhall make an end thereof with coſts, according to the true intention of the ſaid Decree: therefore as the Decree gave a new and ſpecial kind of tithings; ſo it did appoint new and ſpecial Judges to hear and determine the ſame. And in the end it was awarded, that the Prohibition ſhould ſtand. Vid. for tithes in London, 27 H.8. cap.20. & 32 H.8. cap.7.

See lib. 5. fol. 73. the caſe of Orphanage, in London.

The 10 *Addition.*

And be it further enacted, &c. that if any perſon do ſubſtract or withdraw any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrary to the true meaning of this Act, or of any other Act heretofore made, that then the party ſo ſubſtracting or withdrawing the ſame, may or ſhall be convented and ſued in the Kings Eccleſiaſtical Court by the party from whom the ſame ſhall be ſubſtracted or withdrawn, to the intent the Kings Judge Eccleſiaſtical ſhall and may then and there hear and determine the ſame, according to the Kings Eccleſiaſtical Laws. And that it ſhall not be lawful unto the Parſon, Vicar, Proprietary, Owner, or other their Fermors or Deputies, contrary to this Act to convent or ſue ſuch with-holder of tithes, obventions, or other duties aforeſaid, before any other Judge then Eccleſiaſtical. And if any Archbiſhop, Biſhop, Chancellor, or other Judge Eccleſiaſtical give any ſentence in the aforeſaid cauſes of tithes, &c. and (no appeal ne Prohibition hanging) and the party condemned do not obey the ſaid ſentence; that then it ſhall be lawful for every ſuch Judge Eccleſiaſtical to excommunicate the ſaid party ſo, as aforeſaid, condemned and diſobeying: In the which ſentence of excommunication, if the ſaid party excommunicate, wilfully ſtand and endure ſtill excommunicate by the ſpace of 40 days next after, upon denunciation, and publication thereof in the Pariſh Church, or the place or Pariſh, where the party ſo excommunicate is dwelling, or moſt abiding, the ſaid Judge Eccleſiaſtical may then at his pleaſure ſignifie unto the King into his Court of Chancery of the

ſtate

ſtate and condition of the ſaid party ſo excommunicate, and thereupon to require proceſs *de excommunicato capiendo*, to be awarded againſt every ſuch perſon as hath been ſo excommunicate.

¶ Obventions.] Obventions aforeſaid are offerings.

That the juriſdictions of tithes belong to the Eccleſiaſtical Court, it appeareth by the Acts of Parliament, viz. of Circumſpecte agatis, an. 13 E.1. Artic. Cleri anno 9 E.2. 18 E.3. cap.7. 1 R.2. cap.13. 27 H.8. cap.20. 32 H.8. cap.7. and this Act.

Of ancient they were determined in the Sheriffs Turn, as it appeareth in lib. rubro inter leges H.1. cap. 8. After by Scire fac' at the Common Law before the Statute of 18 E.3. Vid. Rot. clauſ. 21 H. 3. m.3. & Rot. Eſchaet' 8 E.1.n.67. Regiſt. fol. 165. a Writ of covenant to levy a fine de decimis garbarum, &c. 38 H. 6. 20. F. N. B. 30. e.f. 4 E. 3. 27, 29. 7 E.3. fol.5. per Parning. 8 E.3.49. Bracton, lib. 5. fol. 401. Britton, cap. 4. fol. 11. omitted tithes, &c. Fleta, lib. 6. cap.36. 28 E.3.97. Vid. Mic. 7 E.1. coram Rege. Rot. 21.

At this day a Writ of right of Advowſon lieth de advocatione decimarum Eccleſiæ, &c. for the tithe is the profit of the Church; and if the tithes be taken away, the advowſon is of none effect, and the eſplées in a Writ of right of advowſon (which is the fruit of the Advowſon) are alledged in the Parſon, in taking of the great and ſmall tithes by the preſentment of the Patron. See 16 Ed. 3. tit. Quare Imped. 147. 30 E.3. fol.1. 38 E.3.13. 45 E.3.12. Brit. cap.4. and the Writ of Indicavit, whereof you may read at large before in the expoſition of the Statute of W.2. cap.5. 4 E. 3. 27. per Shard & per Stoner, &c. 26 H.8.3. F. N. B. 30. c. F.N.B.30.e. Vet. N.B.31. 4 E.3.27. 8 E.3.49. 31 H.6. 16. 12 E.4. 13. 13 H.7.16. 31 H.8 prohib.17.

This 10 Addition for the eſtabliſhment of Eccleſiaſtical juriſdiction for tithes was made, but by the generality thereof (which obſerve well) it ſhould have been doubted, whether the Writ of right of advowſon of tithes, and of Indicavit had been taken away; but to clear the doubt, there is hereafter a ſpecial proviſion therefore, as hereafter ſhall be ſhewed. See the 12 Addition.

¶ Proceſſe de excommunicato capiendo.] See the Statute of 5 El. cap.23. for divers notable things concerning this matter; but none of the penalties of that Statute do extend to the proceeding upon cauſe of tithes, but only upon nine cauſes belonging to Eccleſiaſtical juriſdiction particularly expreſſed in that Act.

The 11 Addition.

Be it further enacted, &c. that if any party at any time hereafter, for any matter or cauſe before rehearſed, limited, or appointed by this Act to be ſued or determined in the Kings Eccleſiaſtical Court, or before the Eccleſiaſtical Judge, do ſue for any Prohibition in any of the Kings Courts, where Prohibitions before this time have been uſed to be granted: that then in every ſuch caſe the ſame party, before any Prohibition ſhall be granted to him or them, ſhall bring and deliver to the hands of ſome of the Juſtices or Judges of the ſame Court, where ſuch party demanded Prohibition, the very true copy of the libel depending in the Eccleſiaſtical Court concerning the matter, wherefore the party demandeth Prohibition, ſubſcribed, or marked with the hand of the ſame party; and under the copy of the ſaid libel ſhall be written the ſuggeſtion, wherefore the party ſo demandeth the ſaid Prohibition. And in caſe the ſaid ſuggeſtion by two honeſt and ſufficient witneſſes at the leaſt, be not proved true in the Court where the ſaid Prohibition ſhall be ſo granted within ſix moneths next following after the ſaid Prohibition ſhall be ſo granted and awarded, that then the

the party that is letted or hindered of his or their ſuit in the Eccleſiaſtical Court by ſuch Prohibition, ſhall upon his or their requeſt and ſuit, without delay, have a conſultation granted in the ſame caſe in the Court, where the ſaid Prohibition was granted, and ſhall alſo recover double coſts and damages againſt the party that ſo purſued the ſaid Prohibition, the ſaid coſts and damages to be aſſigned or aſſeſſed by the Court, where the ſaid conſultation ſhall be ſo granted; for which coſts and damages the party to whom they ſhall be awarded may have an action of debt by bill, plaint, or information in any of the Kings Courts of Record, wherein the Defendant ſhall not wage his or their Law, nor have any eſſoin or protection allowed or admitted.

¶ Rehearſed.] This word is very material, for this additional Act of 2 E. 6. extendeth only to prædial and perſonal tithes, but in as much as this Act doth rehearſe the Statutes of 27 H. 8. c. 20. and 32 H. 8. c. 7. both which Statutes extend unto all kind of tithes, viz. prædial, perſonal, and mixt, and to offerings alſo; therefore this branch extendeth to them all. And it is to be obſerved, that this branch reſpecteth the cauſe of ſuit, viz. for tithes or offerings, and not the cauſe of the Prohibition. Vid. Dyer 2 Eliz. fol. 170.

¶ And in caſe the ſaid ſuggeſtion, &c. be not proved true in the Court, &c.] This clauſe was made in favour of the Clergy for proof by witneſſes, which they had not at the Common Law.

If the ſuggeſtion be in the negative, as if the proprietary of a Parſonage impropriate ſue for tithes, and the cauſe of the ſuggeſtion be, that the Parſonage is not impropriate; or if the Parſon of Dale ſue for tithes of lands in that Pariſh, and the party ſue a Prohibition, for that the land lieth not in that Pariſh, or that the Parſon that ſueth for tithes was not inducted, &c. or any the like cauſe in the negative of any matter of fact, he ſhall not produce any witneſs by force of this branch, becauſe a negative cannot be proved: and therefore a Prohibition upon cauſes in the negative remains at the Common Law.

If a man plead a deed in bar, wherein witneſſes be, and iſſue is joyned, non eſt factum, and proceſs is awarded againſt the witneſſes, who are joyned to the Jury, and it is found non eſt factum, notwithſtanding this joynder, the party grieved ſhall have an attaint; for it is a maxim in Law, That witneſſes cannot teſtifie in the negative, but in the affirmative: otherwiſe it is, if they found it to be the deed of the party in the affirmative, there no attaint doth lye. Vid. 11 Aſſ. p. 19. 22 Aſſ. p. 15. 23 Aſſ. p. 11. 40 Aſſ. p. 23. 12 H. 6. 6. F. N. B. 106. h. So it is, if the ſuggeſtion be grounded upon any matter in Law, for that the ſuit for tithes in that kind are not due by Law. As if the libel be in the Eccleſiaſtical Court, for the tithe of tiles, turfes, or the like, there need no witneſſes to be produced; for that matters in Law are to be decided by the Judges, and not to be proved by witneſſes: and quod conſtat Curiæ, opere teſtium non indiget, and the cauſe of this Prohibition, or the like, appeareth in the libel it ſelf. See before Artic' Cleri 3. Regis Jacobi, Artic' 18.

A proviſo touching the 11 Addition.

Provided always, and be it enacted by the authority aforeſaid, that this Act, or any thing therein contained, ſhall not extend to give any Miniſter or Judge Eccleſiaſtical any juriſdiction to hold plea of any matter, cauſe, or thing, being contrary or repugnant to, or againſt the effect, intent, or meaning of the Statute of *Weſt.* 2. the fifth Chapter, the Statutes of *Articuli Cleri*, *Circumſpecte agatis*, *Sylva cædua*, the Treatiſe *de Regia prohibitione*, ne againſt the Statute of *Anno primo Edwardi tertii* the tenth Chapter, or any of them, ne yet hold plea in any matter,

ter, wherof the Kings Court of right ought to have juriſdiction: any thing therein contained to the contrary in any wiſe notwithſtanding.

¶ Statute of W. 2. cap. 5.] Hereby, if néed were, the Writ of Indicavit, and the Writ of right of the fourth part of tithes, and all dependances thereupon are ſaved. See before in the expoſition of this Act of W. 2. c. 5. anno 13 E. 1.

¶ Articuli Cleri.] Theſe Articles were eſtabliſhed by Act of Parliament an. 9 E. 2. See before in the expoſition upon theſe Articles. By this Act alſo cap. 2. the Writs of Indicavit, and of right of advowſon of tithes are ſaved.

¶ Circumſpecte agatis.] This Act is (as here it appeareth) a Statute, and enacted an. 13 E. 1. See before the expoſition hereof. 10 H. 4. 1. b.

¶ Silva cædua.] Here is intended the Statute of 45 E 3. cap. 3. concerning tithes de Silva cædua, and not of great wood above 20 years growth.

¶ The Treatiſe de regia prohibitione.] Herein ſome difference is in our Books; for in Hill. 7 H. 4. it is ſaid, that the Statute de Re Regia prohibitione doth rehearſe how per venditiones ſpirituales fiunt temporales, which clauſe is in Artic' Cleri, cap. 1. in fine. Alſo in 31 H. 6. it is ſaid, that the Statute de Regia Prohibitione, and recite the effect of the ſecond Chapter of Artic' Cleri. So as by theſe Books the Statute de Regia prohibitione is the Statute of Artic' Cleri: but it cannot be ſo conceived in this Act, becauſe herein they are diſtinguiſhed as two ſeveral Statutes, and ſo in truth in the intendment of this Act they are: and the Treatiſe de Regia prohibitione intended by this Act is that Treatiſe de Regia prohibitione, intitled Prohibitio formata ſuper Artic'. Vide Vet. Mag. Chart. part 2. fol. 7. Raſtal Abridg Stat. tit. prohib. pl. 6. Hill. 7 H. 4. pl. 2. 31 H. 6. 13, 14.

¶ Statute of 1 E. 3. cap. 10.] This is miſ-printed; for the Act is 1 E. 3. Stat. 2. cap. 11. that if any ſuit be in the Spiritual Court againſt inditers, a prohibition doth lye. This Act is in affirmance of the Common Law. Vide Regiſt. fol. 39. lib. intr. R. 447. b. tit. Defamation. 21 E. 3. 29. a. Concerning lay fee, &c. this is affirmed to be a Statute.

¶ Ne yet hold plea in any matter where the Kings Court of right ought to have juriſdiction.] So provident the makers of this Statute were to keep both juriſdictions within their proper bounds, a great means to make both Church and Common-wealth flouriſh. And this is a large and a general ſaving of the juriſdiction of the Kings Courts of the Common Law.

Provided nevertheleſs, where heretofore ſuch a cuſtom hath been in many parts of *Wales*, that of ſuch cattel and other goods as have been given with marriage of any perſon, their tithes have been exacted and levied by the Parſons and Curats in thoſe parts; which cuſtom being diſſonant from any part of this Realm, as it ſeemeth, when the country of *Wales* was through civil diſſention unculted for want of other ſufficient profits, that might otherwiſe grow to the Curats and Miniſters there, to have been for that time tolerable; ſo now the country being now well manured and husbanded, and the tithe is duly paid there of corn, hay, wool, and cheeſe, and of other increaſe of all manner of cattel, as it is commonly in all other parts of this Realm, the ſame cuſtom ſeems to be grievous and unreaſonable, ſpecially where the Benefices are elſe ſufficient for the finding of the ſaid Miniſters and Curats: that it be therefore enacted by the authority aforeſaid, that The 13 and laſt Addition.

that from and after the firſt day of *May* next coming no ſuch tithes of marriage goods be exacted or required of any perſon within the ſaid dominion of *Wales*, or Marches of the ſame: any thing in this Act contained, or any other Act, Cuſtom, Preſcription had or made to the contrary hereof notwithſtanding.

¶ To have been for that time tolerable.] Here is firſt to be noted, that a cuſtom once reaſonable and tolerable, if after it become grievous, and not anſwerable to the reaſon, whereupon it was grounded, yet is to be (as here it appeareth) taken away by Act of Parliament; for an inheritance once fixed cannot be taken away, but by Parliament. Secondly, here is to be noted, that by cuſtom a Parſon, &c. may have tithes of ſuch things, as are not tithable of common right.

The

An Expoſition upon the Statute of 1 H.5. Cap. 5.

Of Additions.

ORdeines eſt & eſtablies, que en cheſcun briefe original des actions perſonels, appeales, & indictments, & en queux exigends ſerr' agard', que aux noſmes des Defendants en tiels briefes originals, appeales & indictments ſoient faits addition de lour eſtate, ou degree, ou de meſtier, & les villes ou hamlets, lieux, & les counties de queux ils fueront ou ſont, ou en queux ils ſont ou fueront converſantes. Et ſi per proces ſur les dits briefes originals, appeales, ou indictments, en queux les dits Additions ſoient enterleſſes aſcuns utlagaries ſoient pronouncies, que ils ſoient voides, irrites, & tenus pur nul. Et que avant les utlagaries pronouncies les dits briefes & endictments ſoient abatus per exception du partie, per la ou en icell' les dits Additions ſoient enterleſſes. Purview touts foits, que meſque les dits briefes dactions perſonels ne ſoient accordants as recordes, & faits per le ſurpluſage de Additions ſuiſdits, que pur cel cauſe ils ne ſoient abatus. Et que les Clerkes del Chancellarie, ſouth que noſmes tiels briefes iſſeront eſcriptes ne enterleſſent, ne facent omiſſion des dits Additions, come deſuis eſt dit, ſur peine deſtre punis, & faire fine al Roy per diſcretion de le Chancellor. Et commencera ceſt ordinance a tener lieu al ſuit de partie, de la Feaſt de Saint Michael prochein enſuant.

We ſhall, in expounding the words of this Act, ſhew what was the Common Law before the making hereof.

¶ En briefe originall.] Though it be in Writ original, yet if the plea be not holden upon the original, this Act extendeth not to it; as in a Recordare to remove a plaint of Replevin into the Common place, becauſe the plea is holden upon the plaint, this Act extends not to it. *So in a return of Reſcous, though there lieth proceſs of outlawry, yet this Statute extends not to it, becauſe this Act ſpeaketh only of Writs original. 3 H.6.30. 14 H. 6. 21. 35 H. 6. 30. 10 E.4.16. a. 18 E.4.9. * 10 E. 4. 16. 10 H. 7. 21. 13 H. 7. 21.

¶ Des perſonels actions, &c. en queux exigends ſerr' agard'.] In an Aſſiſe of Novel diſſeiſin, if the Diſſeiſin be found with force and arms, a Capias pro fine and exigent do lie for the King: yet the Defendant ſhall have no addition within this Statute, for that the original Writ is in the realty, and this Act extendeth only to perſonal actions. 9 Aſſ. pl.1. 9 E.3. Aſſ.449. 7 H.4.39.

¶ Aux noſmes des Defendants.] *Regularly by the Common Law every natural man, having no name of dignity, ought to be named in all originals, and other ſuits by his Chriſtian name and ſirname, and that before this Act ſuffiſed; but if he had a name of inferior dignity (as Knight, or Banneret) he ought to be named by his Chriſtian name and ſirname, and by the addition of his name of dignity by the Common Law, which is implied in theſe words: Aux noſmes des Defendants. * 17 E. 3. 44. b. 11 H. 6. 11. in maintenance. 27 H.6.3. 10 E.4. 16. 10 E.4.12. 35 H.6.12.

If there be a Corporation of one ſole perſon that hath a fee-ſimple, and may have a Writ of right, he may be named in originals, &c. by the Common Law by his Chriſtian name, without any ſirname; for the name of his Corporation 27 H.6.9. 10 H.6.1. 7 E.4. br'e. 163. 18 E.4.21. 8 E.3. 247.

24 E.3.31. 39 E.3 17. 35 H.6.12. 32 E.3. bre. 291. 32 H.6. 28, 29. * 12 E. 4. 10. 18 E.4.9. 21 E.4. 158.

is in lieu of his ſirname (ſome ſay both Chriſtian name and ſirname) as John Abbot of D. &c. John Biſhop of N. but otherwiſe it is of a Parſon: for he muſt be named by his Chriſtian name and ſirname.

* If it be a Corporation aggregate of many able perſons; as Major and Comminalty, Dean and Chapter, Maſter of an Hoſpital and confreres, &c. the Major, Dean, or Maſter need not be named by his Chriſtian name, becauſe that ſuch a Corporation ſtandeth in lieu both of the Chriſtian name and ſirname.

2 H.6.29. 7 E.3.26 25 E.3.39,40. 7 E.4. brev. 163. 5 E.3. 28.99. 22 Aſſ. 24. Nota, Nobility in a manner incorporated.

If a man be created by Letters Patents Duke, Marquels, Earl, Viſcount, or Baron, the dignity is ſo incorporated to him, according to the ſtate given unto him by thoſe Letters Patents, as the Duke, &c. by the Common Law might be named by his Chriſtian name, and by the name of his dignity, which ſtandeth in lieu of his ſirname: as Præcipe Johanni Duci Lancaſtriæ. And the reaſon thereof is, for that the King by thoſe Letters Patents creates him to the ſtate, honor, and degrée of Duke, & imponit ei ſtilum & titulum Ducis Lanc' &c. habend' &c. & ſic in ſimilibus. And albeit a creation by Writ hath not the ſame words, yet it hath the ſame effect.

And it is to be obſerved, that ſurnoſme is derived of ſur (id eſt) ſuper, and noſme (that is) nomen, quaſi ſuper nomen, becauſe it is ſuperadded to the Chriſtian name, which legally is prænomen, in Latine cognomen, quia conjunctum nomen.

¶ Soient faits addition de lour eſtate, ou degree, ou de meſtier.] Eſtate, Status à ſtando, the condition wherein any ſubject ſtandeth. Degrée, Gradus à gradiendo, the degrée wherein any ſubject ſtandeth. So as in legal underſtanding theſe two words are of * one ſignification, and do extend to perſons of nobility, of dignity, and under the degrée of nobility and dignity; as Yeoman, &c. and do extend as well to the Clergy as to the Temporalty, and to graduates and degrées in Univerſities in any kind of profeſſion.

* 37 E.3. cap.8. 22 E.4. c.1. 8 E.4 c.2. 13 R.2. ſtat.2. cap.1.

22 E.4.c.1. 37 E.3 cap.10.

State of a Lord, 3 E.4. cap.5. ſæpe.

Under the eſtate of a Knight, & c.14. of the eſtate of Carriers, Plowmen, &c. and the eſtate of a Groom attending to husbandry, c.13. degrée and eſtate of Clerks.

3 E.4. c.5. 16 R.2 c.4. 20 R.2. cap.2 24 H.8. cap.13. 8 Eliz. cap.11.

Degrées applied to all, as well women as men.

No Yeoman, nor lower eſtate then an Eſquire.

Under the degrée of a Knight or Lords ſon.

Under the degree of a Barons ſon, or Knight.

* Forteſc. cap. 50 14 H.6.15. Brit. Addition 44.

So as in legal underſtanding, ſtatus and gradus ſunt ſynonyma. And ſo in the ancient Writ of the call of a Serjeant, * ad ſtatum & gradum ſervientis ad legem.

* Marchiones. 26 H.6. bre. 100.

The eſtates and degrees againſt whom original Writs may be brought, are the Queen, Conſort of the King, the Prince of Wales, Dukes, * Marqueſſes, Earls, Viſcounts, and Barons. Theſe are of the greater Nobility.

b Rot. pat. 29 E.3 part 1. m. 29. Armigeri, Scutiferi, unde Scutagium, Generoſi. * 14 H.6.14. Camb. Brit. p. 24.

Knights of Saint George, Knights Bannerets, Knights of the Bathe, Knights of the Chamber, *b* milites cameræ, Knight Batchelors, Baronets, Eſquires, Gentlemen. Theſe are of the leſſer Nobility.

Cives Burgenſes, and Yeomen, which are of the loweſt eſtates or degrees.

There is another diviſion made in our * Books of leſſer Nobility, viz. ſome be names of dignities, as all the Knights abovelaid, and Baronets; and ſome of worſhip, as Eſquires and Gentlemen.

* Rot.Parl. 2 R.2. nu.13.14. 13 R.2. ſtat.2. cap.1. 14 R.2. cap.11. 16 R.2. cap.6.

Baronets were firſt raiſed and created by King James, of an eſtate to them and the heirs males of their bodies: and where in ſome * Statutes and Records Baronets are named, it is vitium impreſſoris, ſeu ſcriptoris, and ſhould be Bannerets, who were not of inheritance, for that they were Knights, which dignity was not deſcendible, nor yet is. Bannerets rightly named. Rot. Parl. 46 E.3. nu.10. 50 E.3. nu.40. 1 H.4. nu.53. &c. In Letters Patents, Rot. Pat. anno 13 E.3. m.13. Will. de la Pool ſtatum & honorem Baneretti, part 2. 15 E.3. m.22,23. & Rot. Pat. anno 7 R.2. 8 Octab. Thomas Camois Banerettus, &c.

22 E.3, fol.18. a Banner, quia nomen habet à vexillo, of the Banner, &c. Corruptly Baronet, in 35 H. 6. 46. for Baron. But let us proceed to some more profitable matter. Vid. Camd. ubi sup.

There have been within this Realm since the Conquest divers names of dignities, which are grown to disuse, and in a manner lost: as, Vicedomini, Vidams. Vavasores, viri (as Bracton saith) magnæ dignitatis. Vavasor enim nihil melius dici poterit quam vas fortitum ad valetudinem: unde Vavasoria in divers ancient Records. Camden Brit. 123. Vavasores sive valvasores proxime post Barones locum olim tenuerunt. See Chaucer our English Poet in the Franklyns Prologue. Lib. rubr. 8. Bract. lib.1. cap.8

Some do hold, that it had been more fit to have revived some of the ancient dignities, then to have created any of a new invention.

We have spoken of all the names of Dignity, let us now speak of the names of Worship.

¶ Esquier, Armiger, Scutifer, &c.] In legal understanding he is derived ab armis, quæ in clypeis Gentiliciis honoris insignia gestant. In Spanish Escudero, ab escudo, id est, scuto.

In this sense, as a name of estate and degrée, it was used in divers Acts of Parliament before the making of this Act, and * after this Act also. Et Rot. Parl. an. 1 E. 4. John Lord Audeley, an ancient and a noble Baron, was named Johannes Audeley Armiger, for that all the rest of the Barons that appeared at that Parliament were Knights; and all Dukes, Marquesses, Earls, Viscounts, and Barons of other Nations, or which are not Lords of the Parliaments of England, are named Armigeri, if they be no Knights; and if Knights, then are they named Milites. 37 E.3.c.10. 1 R.2 c.7. 16 R.2. cap.4. 20 R.2. c.2. 7 H.4 7. 28 H.6.8. 32 H.6 28,29. * 3 E.4. c.5. Rot. Parl. anno 1 E. 4.

The sons of all the Pèers and Lords of Parliament in the life of their fathers, are in Law Esquires; and so to be named. By this Statute the eldest son of a Knight is an Esquire.

¶ Gentleman, Generosus, Gentil home.] This is also a good addition. And every Gentleman must be arma gerens, and the best trial of a Gentleman in blood (which is the lowest degree of Nobility) is by bearing of arms. For as in ancient time the Statutes or Images of their ancestors were proofs of their Nobility, which was a solemn and honorable, but yet a cumbersom trial, whereof, and how in time they decayed, the Poet speaketh, See before Stat. de Militibus, anno 1 E.2.

Stemmata quid faciunt? Quid prodest Pontice longo
Sanguine censeri, pictosque ostendere vultus
Majorum, & stantes in curribus Æmylianos,
Et Curios jam dimidios, nasumque minorem
Corvini, & Galbam auriculis nasoque carentem? &c.
Tota licet veteres exornent undique ceræ
Atria: nobilitas sola est atque unica virtus. Juvenal. sat.8.

Flavia gens obscura quidem, & sine imaginibus
Nobiles sunt qui imagines generis sui proferre possunt. Cicero. Cicero.

So of later times Coat-armes came in lieu of those Statutes or Images, and are the most certain proofs and evidence of Nobility and Gentry. So as in these days the rule is, Nobiles sunt qui insignia Gentilicia generis sui proferre possunt.

There is small difference betwèn an Esquire and a Gentleman; for every Esquire is a Gentleman, and every Gentleman is arma gerens. 21 E.4.15. Lib.int. Rast.108. 10 E.4. 16. 28 H.6. 3,4. 7 E.6. Dyer fol.88 lib.int. f.107.n.9.

And Generosus and Generosa are good additions: and if a Gentlewoman be named Spinster in any original Writ, &c. appeal, or inditement, she may abate and quash the same; for she hath as good right to that addition, as Baroness, Viscountess, Marchioness or Dutchess have to theirs. de gradu hominis generosi, & non de gradu hominis vocat' a Yeoman.

a 28 H.6. fol. 4. 4. 5 E.4. 33. acc. 14 H 6.15. * 20 H.6.30 b.

A man may have an addition of Gentleman within this Statute, if he be a Gentleman by office (though he be not by birth) as many of the Kings houſhold, and of other Lords, be; and * Clerks, being officers in the Kings Courts of record: and if they be out of their office, they are but Yeomen: and yet as long as they continue in their office, they ought to be named Gentlemen, as their due addition.

b Reputatio eſt vulgaris opinio, ubi non eſt veritas *c* Lib.6. f.67. Hill. 25 El. in communi banco, Caters caſe. Lib. int. R. f.107. nu. 8. Vid.lib.int. f.107. nu. 7. a fellow of Clements Inn, &c. *d* Rot. pat. 13 R.2 part 1. * Nota, the creation of a Gentleman *e* 21 H.6. br'e. 89. 28 H.6.8. 7 H. 4.7 16 H.6.28. * 35 H.6.55.b.

A Gentleman by *b* reputation, that is, neither gentle by birth, nor by office nor by creation, but commonly called Gentleman, and known by that name, is a ſufficient addition within this Act. And ſo was it adjudged in *c* Caters caſe, Hill. 25 Eliz. in communi banco, but if he be named Yeoman, he cannot abate the Writ.

A French Knight challenged *d* John Kingſton Yeoman, the Kings ſubject, at certain points and deeds of arms, &c. unde Rex (ſaith the Record) ut dictus Johannes honorabilius in præmiſſis accipiatur, ipſum Johannem in ordinem * Generoſorum adoptavit, & Armigerum conſtituit, & cætera honoris inſignia conceſſit. And ſuch a Gentleman or Eſquire ſo created, is an addition within this Statute.

e Since the making of this Statute, Eſquire and Gentleman were more frequently by force of this Act uſed, as additions in originals, &c. and afterwards were commonly uſed in deeds and other ſpecialties. * He that hath taken any degree in either Univerſity, may be named by that degree without queſtion, being within the direct letter and meaning of this Act; and if he hath taken any degree in Divinity, he may have the addition of Clerke.

f Lib.6. fol.67. *g* See the firſt part of the Inſtitutes, Sect.464. 2H.5.c.3 See the firſt part the Inſtit. Sect.95 *h* Forteſc. c.25. & cap.29. *i* 10.E.4.16. 1 H.4 c.7. 2 H.4. c.21. * 27 H. 6.4. 4 E.4 10. 5 E. 4.142. 1 H.5.3. 35 H.6.12

¶ *f* Yeoman *or* Yeman.] This is a Saxon word ȝeuen gemen, the G being turned in common ſpeech (as is uſual in like caſes) into a Y. In *g* legal underſtanding a Yeoman is a free-holder, that may diſpend 40 ſhillings, anciently 5 nobles per annum: And he is called probus & legalis homo.

And as of ancient time the *h* Gentleman held per ſervitium Scuti, by Knights-ſervice, ſo the Yeoman held per ſervitium Socæ, by Socage. Of this degree ſee Forteſcue, cap.25 & 29.

i This degree is a good addition within this Statute, and is applied only to the man, and not the woman.

We have omitted * Citizens and Burgeſſes (albeit they are ſuch as are called to Parliament) yet becauſe they are no ſufficient additions (being too general) within this Act, we have omitted them.

k 22 E.4.1. 2 R.3 2. 9 H.6.65. 35 H. 6.55.4 H.6.26.5 E. 4.33. 3 H.6.31. 11 H.6. 11. *l* 7 E.4.10. 9 E.4. 50. 28 H.6.4. *m* 5 E.4.32.

¶ *k* Miſtier.] i. ars, ſeu artificium, Latinè dicitur, Myſterium, Anglicè Myſtery. Miſtier derivatur à maiſtre, Latinè Magiſterium, becauſe no man ought to exerciſe it, but he that is a maſter of it. Miſtier is a large word, and includeth all lawful Arts, Trades, and Occupations, as Taylor, Merchant, Mercer, Husbandman, Labourer, and the like. But *l* Servant, Groom, or Fermor are no additions within this Act, becauſe they are not of any myſtery. And *m* Chamberer, Butler, Pantler, or the like, are additions of offices, and not of any Myſtery or Occupation.

Neither doth this Act extend to unlawful practices, as Extortioner, Maintainer, Abetter, Heretick, &c.

Trade dicitur à tradendo, quia tradit nobis neceſſaria: The Saxon word is Cpœft, Cræft, hodie Craft, id eſt, Trade.

14 H.6.15. 5 E.4 33.

If a man have divers Arts, Trades, or Occupations, he may be named by any of them, but if a Gentleman by birth be a Mercer (as many younger ſons of Gentlemen be bound prentices to Arts and Trades in London, and elſewhere) if he in an original, &c. be named Mercer, or of any other Trade, whereof he is in truth, he may abate the Writ, &c. for he ought to be named by the degree of a Gentleman, becauſe it is worthier then the addition of any myſtery,

27 H.6.4. 4 E.4.10 5 E.4.142. 35 H.6. 12.

And ſo it is, if one man be a Duke, a Marquels, Earl, Viſcount, and Baron, all theſe dignities ſtand diſtinctly in him, and the greater drowneth not the leſſer,

yet

yet ſhall he be named in original Writs, &c. by the worthier dignity, viz. by the name of a Duke only within this Act.

Having diligently obſerved the order of this Act, we find, that in ſome caſes the order thereof is obſerved, and in others not. In appeals and inditements of treaſon or felony, &c. againſt the greater Nobility, as Dukes, Marqueſſes, the order of the Statute is purſued, viz. For, 1. the eſtate and degrée (for example) of a Duke, &c. is named, and after the Town and County. Edwardus Dux Buckingham nuper de N. in com' Glouc'. And ſo it is when one is named of a City, which is a County of it ſelf, the like order is obſerved: as J. S. pannarius de London in com' Civitatis London.

But in caſe of the leſſer Nobility, and all other under them, the Town and County are named before the addition; as, Th. C. nuper de D. in com' M. miles. Jo. C. nuper de D. in com' M. Armiger. N. C. nuper de D. in com' M. Merchant, &c.

¶ Et les Villes, ou Hamlets, ou Lieus, & les Counties.] Villes. For theſe ſée the firſt part of the Inſtitutes, Sect. 171. And if there be D. major, and D. minor, and not D. tantum, he cannot be named of D. for there is no ſuch Town. 7 H.6.39. 22 H.6. 29. 21 E.4.51.

¶ Hamlets.] Sée the firſt part of the Inſtitutes, ubi ſup. And it is at the election of the party to name him of the Hamlet or Town.

¶ Lieus.] Theſe be underſtood of places known out of any Town or Hamlet. 14 H.6.24. 35 H.6.30. 21 Ed. 4. 89. 4 E. 3. 129. 19 Ed.3. br'e. 467. 7 H.6.24,37. 20 H.6.30. 7 H.4.27. 17 E.3.56. 43 E.3.5.

By the ancient Common Law of England, ſecundum antiquam conſuetudinem dici poterit de familia alicujus, qui hoſpitatus fuerit cum alio per tres noctes, & vocatur Hoghenehyne. Bract. lib.3. f.124 b. 19 H.6.1.

¶ Counties.] Sée the firſt part of the Inſtitutes, Sect. 61. & 248.

But ſéeing that ancient Boroughs were firſt Towns, and Cities were formerly Boroughs, if a City be a County of it ſelf, wherein are divers Pariſhes, yet the addition de London, or nuper de London, is ſufficient within this Statute. See the firſt part of the Inſtitutes, Sect.171. 7 H.6.1. 27 H.6.4 4 E.4.10. 5 E. 4. 142. 21 E.4 15.

* The addition of a Pariſh, if there be two or more Towns within it, is not good, but if there be one Town, the addition of Pariſh is good within this Statute: and it ſhall not be intended (if it be not pleaded) that there be more Towns then one in the Pariſh; for non præſumitur pluralitas. * 22 H.6.47. 35 H. 6 30. 4 E. 4.41. 5 E.4.20. 22 E.4.2 1 E.3.8. lib.4.f.14 Arundell.

This Statute extends not to ſome caſes, though the Defendant be not named of any Town, Hamlet, or place. *a* As in an action of debt, the Writ is, Præcipe R. G. Rectori Eccleſiæ de T. without alledging in what Town, Hamlet, or place he is dwelling. So if the Præcipe in an action of debt be, Præc' Tho. Caſe cancellario Univerſitatis Oxon', without ſaying de Oxonia. So in a Writ brought againſt the husband and his wife, or the Abbot and his Commoigne, the Plaintif need not ſhew in what Town, &c. the wife or Commoigne dwell; for the Law ſhall intend (which ever intendeth the beſt) that the Parſon is reſident upon his rectory, the Chancellor upon his office, the wife with her husband, and the Monk with his Soveraign. *a* 7 H.6.1. 10 H.6 8. 8 H.6.38. 3 H.6 31.

b The addition as well of the eſtate, degrée, or myſtery, as the Town, Hamlet, or place, ought by force of this Act to be alledged in primo nomine; for the proper uſe of an Alias dict' is, to agrée with the record, or ſpecialty whereupon the Writ is grounded, and is not traverſable. *b* Alias dict' 30 H. 6. 5. & 6. 32 H.6 33. 36 H.6.28. 4 E.4.10. 21 E.4. 15,18. 33 H. 8. Dyer 50. b. 1 E.4. 1. 5 E. 4.141.

The addition of the eſtate, degrée, or myſtery ought to be by force of this Act, as the Defendant was of at the day of the Writ purchaſed, and not with a nuper, as nuper Armiger, nuper Monachus, aut nuper Comes de D. &c. but a nuper may be of the Town, &c. becauſe men do often remove their habitation. And 26 H.6. br'e. 100 28 H.6.9. 9 E.4.2. 21 H.6.3. b. 2 H.6.4. 32 H.6 20,29. 5 E.3.28.

this

this diſtinction appeareth by the Act it ſelf, by reaſon of theſe words in the Act, relating to the Towns Hamlets, &c. Ou ils fuer', ou ſont.

The end of the purview of this Act was, that the perſon of the Defendant in originals, &c. where proceſs of outlawry did lye, ſhould be ſo deſcribed by certain additions, as one man might not be troubled for another. See other Statutes made to the ſame end. 8 H.6. cap. 10. * 6 H.8. cap.4. 5 E.6. cap.26. 31 El. cap. 3. & 9.

* Dyer 4 El. 213, 214.

¶ Aſcuns utlagaries ſont pronounce, que ils ſoient voides, &c.] This being a judgment in Law is interpreted to be made void by a Writ of error, or by the plea of the party coming in upon a Cap. utlegat, according to the courſe of the Common Law: for though the words of the Statute be voides, yet it is but voidable by a Writ of error, or plea; which is worthy of obſervation. 19 H.6. f.1. 8 H.6.. c.10. pl. com.137.b. 7 H.6.27,39. 10 H.6.8. 11 H.6.19, 67. 19 H.6.58. &c. 20 H.6.20. 21 H.6.23,55. 37 H.6.1. 38 H.6.1. 22 H.6.18. & 23,36. 30 H.6.1. 21 E.4.94.73. 1 E.4.2. 2 E.4.10. 4 E.4.10,41,42. 22 E.4.37. 10 E.4.13. 5 H.7.16. 11 H.7.5. 21 H.7.13. 3 El.192.b. 4 El. Dyer 213,214.

7 H.6.37. 35 H.6. 12. 5 E.4. Vid. Br. tit. error 69.

¶ Per exception du partie.] But if the Defendant, albeit he hath not ſuch addition as this Act requireth, yet if he appeareth upon proceſs, and plead, taking no advantage thereof by exception, he hath loſt the benefit of this Act.

3 H.6.24,35. 28 H. 6.9. 21 E.4.95.

¶ Ne ſoient accordant al records & faits, &c.] Abundans cautela non nocet; but if the addition preſcribed by this Act had varied from the record or deed, yet being injoyned by Act of Parliament to be contained in the Writ, &c ſuch variance ſhould not have abated the Writ, albeit this clauſe had been omitted; but yet an Act of Parliament cannot be made too plain.

Fleta, lib.2. ca.12 14 & 15 H.8.cap.8

¶ Et que les Clerkes del Chancery.] *i. e.* les Courſetours. Clerici de curſu, that make out original Writs. Of theſe there be in the Chancery twenty in number. To every of theſe are appointed certain Counties, and are a Corporation of themſelves.

¶ Deſtre punies, & faire fine per le diſcretion del Chancellor.] This extendeth to the Lord Keeper of the great Seal, as often elſewhere hath been obſerved.

¶ Et commencera ceſt ordinance a tener lieu al ſuit de partie de la Feaſt de S. Michael prochein enſuant.] This Parliament began 15 Paſc. 1 H.5. And this Statute was made, when Acts of Parliament were not printed, but were by the Sheriffs proclaimed in every County (as elſewhere hath been ſhewed:) And therefore to the end the ſubject might take notice thereof, day was given by this Act until the Feaſt of Saint Michael the Archangel following; but at the Kings ſuit this Act began preſently, for that the Kings learned Councel were attendants in Parliament, and had ſufficient notice of this Act.

An Expoſition upon the Statute of 27 H.8. cap. 16. *intitled, An Act concerning Inrolments of bargains, and Contracts of lands and tenements.*

BE it enacted by the authority of this preſent Parliament, that from the laſt day of *July*, which ſhall be in the year of our Lord God 1536. no mannors, lands, tenements, or other hereditaments ſhall paſs, alter or change from one to another, whereby any ſtate of inheritance or freehold ſhall be made, or take effect in any perſon or perſons, or any uſe thereof to be made, by reaſon only of any bargain and ſale thereof, except the ſame bargain and ſale be made by writing indented, ſealed and inrolled in one of the Kings Courts of record at *Weſtminſter*, or elſe within the ſame County or Counties where the ſame mannors, lands, or tenements ſo bargained and ſold, lye or be, before the *Cuſtos Rotulorum*, and two Juſtices of the Peace, and the Clerk of the peace of the ſame County or Counties, or two of them at the leaſt, whereof the Clerk of the peace to be one: And the ſame Inrolment to be had and made within ſix moneths next after the date of the ſame writings indented, the ſame *Cuſtos Rotulorum*, or Juſtices of the Peace, and Clerk, taking for the Inrolment of every ſuch writing indented before them, where the land compriſed in the ſame writing exceed not the yearly value of 40 ſhillings, 2 ſhill. that is to ſay, 12 d. to the Juſtices, and 12 d. to the Clerk, and for the Inrolment of every ſuch writing indented before them, wherein the land compriſed exceed the ſum of 40 ſhillings yearly value 5 s. that is to ſay, 2 s. 6 d. to the ſaid Juſtices, and 2 s. 6 d. to the ſaid Clerk for the inrolling of the ſame. And that the Clerk of the peace for the time being, within every ſuch County, ſhall ſufficiently inrol and ingroſs in parchment the ſame deeds or writings indented, as is aforeſaid, and the rolls thereof, at the end of every year ſhall deliver unto the *Cuſtos Rotulorum* of the ſame County for the time being, there to remain in the cuſtody of the ſaid *Cuſtos Rotulorum* for the time being, amongſt other records of every of the ſame Counties, where any ſuch Inrolments ſhall be ſo made, to the intent that every party that hath to do therewith may reſort and ſee the effect and tenor of every ſuch writing ſo inrolled.

¶ Of inheritance, or freehold ſhall be made, &c.] After the Statute of 27 H.8. cap.10. of transferring uſes into poſſeſſion. If a man by his deed had bargained, and ſold for valuable conſideration, any lands, &c. of any eſtate of inheritance, free-hold, or for years, the ſame had been executed by the ſaid Act of 27 H.8. cap.10. Now this Act of Inrolments reſtrains only eſtates of inheritance and free-hold: and therefore bargains and ſales for years, for what number ſoever, are not reſtrained by this Act, though it be not by deed indented nor inrolled. Lib.2. fol.36. Sir Rowl. Heywards caſe. Lib.8.94. Foxes caſe.

¶ By reaſon only of any bargain, &c.] If a man for valuable conſideration by deed indented do bargain and ſell lands to another and his heirs, and before

before the deed be inrolled he levieth a fine, or maketh a feoffment to the bargainée and his heirs of the same lands, and after, and within the six moneths the deed is inrolled, the bargainée shall be in by the fine or feoffment, and not by the bargain and sale, both by reason of this word Only, &c. and that the estate by Common Law vested shall be preferred.

Trin. 33 Eliz. in communi banco, Int' Ric. Libbear. Plaintife en waste, & Eliz. Hynd Defendant, l. 5. f. 71 Hynds case.

¶ Of any bargain and sale thereof.] First, what is a bargain and sale? &c. A bargain and sale is a real contract * upon valuable consideration for passing of mannors, lands, tenements, or hereditaments by deed indented and inrolled within six moneths after the date of it, without livery of seisin, or attornment of tenants.

* Pl. com. 307. a. 30 H. 8. tit. attornement, Br. 29.

If the bargainor be in possession, this is a facile and ready assurance, but the feoffment reduceth and restoreth the possession to the feoffor and passeth the land to the feoffée, though the feoffor had been disseised, &c. and the inrolment is not pleadable as the feoffment is.

19 H. 6. 6.

Secondly, Whether these words of [bargain and sale] only, or equipollent words may be used, &c. to take effect by force of this Statute? Though it be good to use those words mentioned in this Act, yet are they not of necessity to be used; for whatsoever word upon valuable consideration would have raised an use of any lands, tenements, or hereditaments at the Common Law, the same do amount to a bargain and sale within this Statute: As if a man by deed indented and inrolled according to this Act doth covenant for valuable consideration to stand seised of lands to the use of another, &c. this is in nature of a bargain and sale within this Act.

Lib. 8. fol. 93, 94. Foxes case.

Lib. 7. fol. 40. Bedles case.

Lib. 8. fol. 93, 94. Foxes case.

Lib. Int. Co. 116. a. b.

A. seised of certain lands in fée, demised the same to C. for life, the remainder for life reserving a rent at the Feast of Saint Michael, and of the Annuntiation; A. by indenture, in consideration of 50 l. doth demise, grant, set, and to farm let the same lands to B. for 99 years, reserving a rent at the same Feasts presently, and C. the lessée for life did not attorn; and it was adjudged, that the said demise and grant upon the consideration of 50 pounds amounted to a bargain and sale for the said term. So if a man for valuable consideration doth by deed indented and inrolled alien or grant the land to a man and his heirs, &c. this is a bargain within this Statute, & sic de similibus. But inasmuch as the intention of the parties is the principal foundation of the creation of uses, if by any clause in the deed it appeareth, that the intention of the parties was to pass it in possession by the Common Law, there no use shall be raised: and therefore if any letter of attorney be in the deed, or a covenant to make livery, or the like, there nothing shall pass by way of use, but according to the intention of the parties possession by the Common Law. And albeit no valuable consideration be expressed in the Indenture, yet if any were given, the same may be averred, and the land doth sufficiently pass.

Lib. 8. fol. 93, 94. Foxes case. Vid. lib. 2. fol. 35. Sir Rowland Heywards case.

4 Mar. Dyer f. 146 Villiers case. Lib. 11. fol. 25. a. Harpers case.

A. by deed indented and inrolled in consideration of 100 pounds paid by B. bargaineth and selleth the land to B. C. and D. parties to the Indentures: In this case the land passeth to them all; for although the valuable consideration be expressed to be paid by one, yet it must be intended, that it was paid for them all, to the end, that the land may pass to them all, according to the meaning of all the parties, and a consideration given by one of the parties, is sufficient to convey the land to them all.

Lib. 1. fol. 176. Mildmayes case.

¶ Except the same bargain and sale be made by writing.] First, it must be by writing, and not by print or stamp.

* Lib. 5. fol. 29. b. Stiles case.

Secondly, It must be * written in parchment or paper, and not upon wood, stone, lead, or other material.

See Stiles case, ubi supra.

¶ Indented.] If the deed begin, Hæc Indentura, or, This Indenture, yet if the deed be not indented, it is no Indenture; but if the deed be indented, though the deed doth begin, This deed made, without mentioning the word of Indenture, yet is it a writing indented within this Statute.

In

In an action of debt betwéen Scudamore and other Plaintifs, and Vandenſtene Defendant, upon an Indenture of Charter party the caſe was this: The Indenture of Charter party was made betwéen Scudamore and others owners of the good Ship, called B. whereof Robert Pitman was Maſter, on the one party, and Vandenſtene on the other party. In which Indenture the Plaintif did covenant with the ſaid Vandenſtene and Robert Pitman, and alſo Vandenſtene covenanted with the Plaintif and Robert Pitman, and bound themſelves to the Plaintif, and Robert Pitman, for performance of covenants in 600 pounds. And the concluſion of the ſaid Indenture was, In witneſs whereof the parties aboveſaid to theſe preſent Indentures have put to their ſeals. And the ſaid Robert Pitman to the ſaid Indenture put his hand and ſeal, and delivered the ſame. The Defendant in bar of the ſaid action pleaded the releaſe of Pitman, &c. whereupon the Plaintif demurred. And it was adjudged, that the releaſe of Pitman did not bar the Plaintif, becauſe he was no party to the Indenture. And the diverſity was taken and agréd betwéen an Indenture reciprocal betwéen parties on the one ſide, and parties on the other ſide, as this was; for there no bond, covenant, or grant can be made to or with any that is not party to the déed. But where the déed indented is not reciprocal, but is without a Between, &c. as, Omnibus Chriſti fidelibus, &c. there a bond, covenant, or grant may be made to divers ſeveral perſons.

Trin. 29 El. in the Kings Bench.

See the firſt part of the Inſtitutes, Sect. 66. fol. 52. Vid. 4 E. 2. tit. Obligation 16. 39 E. 3. 39. 40 E. 3 5.

¶ And inrolled.] Albeit the Indenture (as hath béen ſaid) may be either of parchment or paper, yet the inrolment muſt be in parchment only; and ſo it is expreſſed in the clauſe of inrolment by the Clerk of the peace, viz. That he ſhall ſufficiently inrol and ingroſs *in parchment the ſame. And ſo much is implied, when the inrolment is in any of the Kings Courts of record at Weſtminſter; and ſo was it adjudged, as M. Plowden cited it before the Lords in Parliament, anno 23 Eliz. in the great caſe betwéen Herbert and Vernon, which I heard, and obſerved.

* Nota.

A déed knowledged by the husband and wife ſhall by the Common Law be inrolled only for the husband, and not for the wife, by reaſon of the covertuze; and though it be inrolled for both, it bindeth her not. Otherwiſe it is by cuſtom, and none hath power to examine a feme covert without Writ. 29 H. 8. tit. Faits inroll' Br. 14. 7 E. 4. 5. Vid. 34 H. 8. c. 22. 18 E. 3. 29. 45 Aſſ. 8. 14 E. 3. execution 73. 19 R. 2. eſtoppel 281. 21 E. 3. 43. 24 E. 3. 64. 21 Eliz. Dyer fol. 363. Kelwey 12 H. 7. f. 4, & 12 H. 4. 12. 29 H. 8. faits inrol Br. 15. lib. 10. Mary Portingtons caſe, fol. 42.

If an infant acknowledgeth a Recognizance, Statute Merchant, Statute Staple, or Obligation in the nature of a Statute Staple, or inrol an Obligation, in all theſe caſes he muſt avoid it in an audita querela, during his minority; for it muſt be tried by Inſpection, and theſe concern but perſonal duties. But if an infant bargain and ſell lands which are in the realty by déed indented and inrolled, he may avoid it when he will; for the déed was of no effect to raiſe an uſe: and this Statute is to be intended of lawful and effectual bargains and ſales, and ſuch as would have raiſed uſes at the Common Law, and doth only reſtrain the execution of them that be of effect, except the déed be inrolled. And this ſtandeth with the reaſon of the Common Law, that none but effectual déeds ought to be inrolled; and therefore a deed of feoffment ought not to be inrolled before livery. But in caſe of a fine the infant muſt reverſe it during his minority: for the conuſance is taken by force of the Kings Writ before a Judge, and is voidable by the Common Law.

Vid. Regiſt. f. 150 F.N.B. 104. k. Dyer 7 El. 132. b. Harriſons caſe. 7 E. 4. 5 13 E. 3. audit. querela 26. 17 E. 3. 76 10 E. 3. enfant 61 28 E. 3. audita quer. 27. 8 H. 6. 30 15 E. 4. 51. 1 H. 7 15. 11 H. 7. 5. 48 E. 3. 33. 16 H. 7 5. 44 E. 3. 7. b.

That upon a bargain and ſale by deed indented and inrolled, a rent may be reſerved, for the uſe and poſſeſſion paſſeth tanquam uno flatu. See lib. 2. f. 54. in Sir Hugh Cholmleys caſe.

¶ In any of the Kings Courts of record at *Weſtminſter.*] That is, in

the Kings Bench, the Chancery, the Common Pleas and the Exchequer. And though the words be, at Weſtminſter, for that at the time of the making of this Act, theſe Courts were there; yet if theſe be adjourned into another place, the inrolment may be in any of theſe Courts; for the inrolment is confined to the Courts, whereſoever they be holden.

¶ Or elſe in the ſame County, &c. before the *Cuſtos Rotulorum*, and two Juſtices of peace, and the Clerk of the peace, &c.

37 H.8. c.1. 3 E.6 c.1.

¶ Cuſtos Rot.] This Officer is a Juſtice of Peace, and is of the gift of the Lord Chancellor, or Lord Keeper, and he may exerciſe his office by deputy. He hath the keeping of all bargains and ſales by deed indented and inrolled, and of all the records and rolls of the Seſſions of peace,* and of the commiſſion of peace it ſelf, and thereof he taketh the name of his office, to put him in mind of his duty. He hath the gift of the Clerkſhip of the peace, to exerciſe by himſelf or his deputy, but he continueth no longer in his place, then the Cuſtos Rotulorum doth.

* 9 E.4.2. 10 H.7 7.

Dyer 5 El. 218. Paſch' 4 El. Ror. 812. adjudge ſur demurrer, Pophams caſe. Lib. int. Coke f.596. Lib.5. fol.1. b. Claytons caſe.

¶ The ſame inrolment to be had within ſix moneths next after the date of the ſame writing indented.] The ſix moneths ſhall be accounted after the computation of 28 days to the moneth. After the date, and after the day of the date upon this Act is all one; ſo as the date it ſelf is taken excluſive. And yet in the report of Juſtice Daliſon it is ſaid, that it was holden anno 4 Eliz. that if it be inrolled the ſame day it bears date, it is ſufficient; but the ſafer way is to inrol it after the day of the date. And yet where it hath a date, and is delivered after, it ſhall take effect to paſs from the bargainor from the delivery; for then it became his deed, and not from the date: but the deed muſt be inrolled within ſix moneths after the date.

Lib.5. fol. 1. b. Claytons caſe, ubi ſup. adjudge Trin. 21 Eliz. in communi banco. 6 E.6. faits inrol. Br.9. per les Juſtices.

Every deed ſhall be intended to be delivered on the ſame day that it bears date, unleſs the contrary be proved. And it is the beſt courſe (according to the intendment of Law) to deliver it the ſame day that it bears date. But if the deed indented hath no date, then the day of the delivery is the day of the date of that deed, and may be inrolled within ſix moneths after the delivery. And when the deed is inrolled within the ſix moneths, then it paſſeth from the delivery of the deed. And albeit after the delivery and acknowledgment, either the bargainor or the bargainee dye before inrolment, yet the land paſſeth by this Act; for the words thereof be: No mannors, lands, tenements, or hereditaments ſhall paſs of any eſtate of inheritance or freehold, * except the deed be inrolled. So as by the Common Law and the Statute of 27 Hen.8. of uſes, it ſhould have paſſed. And by the words of this Statute, when the deed is inrolled, it paſſeth ab initio.

* Nota, Except is more then Unleſs.

Trin. 42 El. Ror. 1037. in communi banco in repl.

Between Andrew Mallery Plaintif, and Jennings and others Defendants, the caſe was this: One Sewſter was ſeiſed of certain lands in fee, and knowledged a Recognizance to Turner, whoſe Executrix brought a Scire fac' upon the Recognizance bearing date the 9 day of November, an. 41 Eliz. againſt Sewſter, and alledged him to be ſeiſed of the ſaid lands in dominico ſuo, ut de feodo, the day of the Scire fac' brought, which was traverſed by the other party. And the truth of the caſe, being by long pleading diſcloſed to the Court, was this: Sewſter 7. die Novem. before the Recognizance knowledged, by deed indented for money, had bargained and ſold the ſaid land to another, and the deed was inrolled 20 Nov. following. The queſtion was, Whether Sewſter was upon the whole matter ſeiſed in fee the 9 day of November, the deed being not inrolled until the twentieth of the ſame November. And it was adjudged una voce, that Sewſter was not ſeiſed in fee of the land the 9 day of November, for that when the deed was inrolled, the bargainee was in judgment of Law ſeiſed of that land, from the delivery of the deed. And it was reſolved, that neither the death of the bargainor

gainor, nor of the bargainée before inrolment, ſhall hinder the paſſing of the eſtate. And that a releaſe of a ſtranger to the bargainee before inrolment is good. So as it hold not by relation between the parties by fiction of Law; but in point of ſtate as well to them as to ſtrangers alſo. And that a recovery ſuffered againſt the bargainee before inrolment (the deed indented being after within the ſix moneths inrolled) is good, for that the bargainee was tenant of the freehold in judgment of Law at the time of the recovery. And non refert, when the deed indented is knowledged, ſo it be inrolled within the ſix moneths. And all this was afterwards affirmed for good Law by the Court of Common Pleas Trin. 3 Jac. Regis, upon a ſpecial verdict given in an ejectione firmæ between Lellingham Plaintif of the demiſe of Thomas Fitzherbert Eſquire, and Alſop Defendant: And further, it was there reſolved, that if the bargainee of land after the bargain and ſale, and before the inrolment doth bargain and ſell the ſame by deed indented and inrolled to another; and after the firſt deed is inrolled within the ſix moneths, the bargain and ſale by the bargainee is good: but there in the principal caſe, in reſpect of the ſpecial manner of the penning of the mean bargain and ſale, the Court being divided, viz. three Judges againſt two, judgment was given againſt it.

Trin. 3 Jac. in communi banco in eject. firmæ between Lellingham Plaintif, and Alſop Defendant.

The day of the moneth, and the year of our Lord and Saviour Chriſt, and the year of the Kings raign are the uſual dates of deeds. And the day of the moneth by the Nones, Ides, or Kalends is ſufficient.

¶ The *Cuſtos Rotulorum*, or Juſtices of the Peace, and Clerk, taking for the inrolment of every ſuch writing, &c. two ſhillings, &c.] A good preſident, when Parliaments appoint new labours, &c. that they would alſo limit and ſet down in certain what fees ſhall be taken for the ſame, as here it is done.

¶ The Clerk of the peace ſhall ſufficiently inrol in parchment, &c. Of this ſomewhat hath been ſaid before.

¶ Shall deliver them to the *Cuſtos Rotulorum*.] For (as hath been ſaid) he is the keeper of the Records and Rolls of the Seſſions of the peace of that County.

Provided always that this Act, nor any thing therein contained, extend not to any mannor, lands, tenements, or hereditaments, lying or being within any City, Borough, or Town corporate within this Realm, wherein the Mayors, Recorders, Chamberlains, Bailifs, or other Officer or Officers have authority, or have lawfully uſed to inrol any evidences, deeds, or other writings within their precinct or limits: Any thing in this Act contained to the contrary notwithſtanding.

¶ In any City, Borough, or Town corporate, wherein the Mayors, &c. have authority to inrol evidences, &c.] Reſolved by the opinion of the Juſtices of both Benches, that a bargain and ſale for valuable conſideration of houſes, or lands in London, &c. by word only is ſufficient to paſs the ſame; for that houſes and lands in any City, &c. are exempted out of this Act: and at the Common Law ſuch a bargain and ſale by word only raiſed an uſe. And the Statute of 27 H.8. cap. 10. doth transfer the uſe into poſſeſſion.

6 El. Dyer 229. in Chilberns caſe.

When the makers of this Act had appropriated the inrolment of all Indentures of bargain and ſale to the Kings four Courts aforeſaid, it was neceſſary to make a proviſion for Cities, &c. which had authority to inrol, and that there ſuch bargains and ſales ſhould be inrolled. Sed deſunt verba: for by the words, the Mannors, Lands, Tenements, and Hereditaments are exempted out of the ſaid Act, without any proviſion for inrolment within thoſe Cities, &c.

Hill. 20 E. 1. in banco Rot. 100. Somerſet.

If a deed be ſhewed in Court, or in the cuſtody of the Court, and by miſchance the ſeal is broken off, the Court ſhall inrol the deed in Court for the avail of the party.

An Expoſition upon the Statute of 32 H.8. Cap. 5.

Of Executions.

WHereas before this time divers and ſundry perſons have ſued executions, as well upon judgments for them given of their debts or damages, as upon ſuch Statutes Merchants, Statutes of the Staple, or Recognizances, as have been to them before made, recognized, and knowledged; and thereupon ſuch lands, tenements, and other hereditaments, as were liable to the ſame execution, have been by reaſonable extent to them delivered in execution for the ſatisfaction of their ſaid debts and damages, according to the Laws of this Realm. Nevertheleſs, it hath been oftentimes ſeen, that ſuch lands, tenements, and hereditaments ſo delivered, and had in execution, have been recovered, or lawfully deveſted, taken away or evicted from the poſſeſſion of the ſaid recoverers, obligees or recognizees, their executors or aſſigns, before ſuch time as they have been fully ſatisfied and payed of their debts and damages, without any manner fraud, deceit, covin, colluſion, or other default in the ſaid recoverers, obligees, or recogniſees, their executors and aſſigns, by reaſon whereof the ſaid recoverers, obligees and recogniſees have been thereby ſet cleerly without remedy, by any manner ſuit of the Law, to recover or come by any ſuch part or parcel of their ſaid debts and damages as was behind, and not by them levied or received, before ſuch time as the ſaid lands, tenements, and other hereditaments ſo by them had in execution, were recovered, lawfully deveſted, taken or evicted out of, and from their poſſeſſions, as is aforeſaid, to their great hurt and loſs, and much ſeeming to be againſt equal juſtice and good conſcience.

For reformation whereof, be it enacted by authority of this preſent Parliament, that if hereafter any ſuch lands, tenements, or hereditaments, as be, or ſhall be had and delivered to any perſon or perſons in execution, as is aforeſaid, upon any juſt and lawful title, matter, condition, or cauſe wherewithal the ſaid lands, tenements, and hereditaments were liable, tied, and bound, at ſuch time as they were delivered and taken into execution, ſhall happen to be recovered, lawfully deveſted, taken, or evicted out of, and from the poſſeſſion of any ſuch perſon and perſons as now have and hold, or hereafter ſhall have and hold the ſame in execution, as is aforeſaid, without any fraud, deceit, covin, colluſion, or other default of the ſaid tenant or tenants by execution, before ſuch time as the ſaid tenants by execution their executors or aſſigns, ſhall have fully and wholly levied or received the ſaid whole debt and damages, for the which the ſaid lands, tenements, and other hereditaments were delivered and taken in execution, as is aforeſaid: then every ſuch recoverer, obligee, and recognizee ſhall and may have and purſue a Writ of *Scire facias* out of the ſame Court, from whence the ſaid former Writ of execution did proceed againſt ſuch perſon

perſon or perſons, as the ſaid Writ of execution was firſt purſued, their heirs, executors or aſſigns of ſuch lands, tenements, or hereditaments, as were or been then liable or charged to the ſaid execution, retornable into the ſame Court at a certain day, being full forty days after the date of the ſame Writ.

At which day if the Defendant, being lawfully warned, make default, or appear and do not ſhew and plead a ſufficient matter or cauſe, other then the acceptance of the ſaid lands, tenements, and hereditaments, by the ſaid former Writ of execution, to bar, avoid, or diſcharge the ſaid ſuit for the reſidue of the ſaid debt and damages remaining unlevied, or unreceived by the ſaid former execution: then the Lord Chancellor, or other ſuch Juſtice or Juſtices, before whom ſuch Writ of *Scire facias* ſhall be retornable, ſhall make eftſoons a new Writ or Writs out of the ſaid former record of judgment, Statute Merchant, Statute Staple, or recognizance of like nature and effect, as the ſaid former Writ of execution was, for the levying of the reſidue of all ſuch debt and damage, as then ſhall appear to be unlevied, unſatisfied, or unpaid of the whole ſum or ſums in the ſaid former Writ of execution contained: Any Law, Cuſtom, or other thing to the contrary hereof, heretofore uſed, in any wiſe notwithſtanding.

See before the Statute of W.2. c.18. and the expoſition upon the ſame.

¶ That if hereafter any ſuch lands, tenements, or hereditaments, as be or ſhall be had and delivered to any perſon in execution, &c.

To what executions this Act extendeth unto.

¶ Such lands.] This hath relation to the Preamble, where there are rehearſed four kinds of executions of thoſe lands, &c. Firſt, Upon Judgments: 2. Upon Statutes Merchant: 3. Statutes of the Staple: 4. Recognizances. Theſe Recognizances be of two ſorts; one, uſual Recognizances taken in any of the Kings Courts of record at Weſtminſter: another, in nature of a Statute Staple, by the Statute of 23 H.8. c.6. This Conuſee of the Statute Staple hereafter in this Statute is called Obligee, becauſe in them both the ſeal of the party is put, and the *a* tenant by Elegit upon Judgments and Recognizances ſhall hold the land, &c. until he be anſwered his debt without miles, coſts, &c. But *b* tenant by Statute Merchant, *c* tenant by Statute Staple, or by Recognizance *d* in nature of a Statute Staple ſhall hold the land, &c. until his debt be paid together with miles, coſts, &c. Vid. Regiſt. 151, 152. 289. F.N.B. 131. Flet. lib. 2. cap. 57. lib. intr' Co. 236. Raſt' pl. 542. Dyer 2 Eliz. 180. b. 37 H. 6. 6. 36 H. 6. 2. 2 R. 3. 8, 17. 15 H. 7. 40 E. 3. 28.

a By the Stat. of W. 2. cap. 8. for Judgments, and cap. 45. for Recognizances.
b By the Stat. of Acton Burnel, 11 E. 1. & 13 E. 1 de mercat. 5 H. 4. cap. 12.
c By the Stat. of 27 E. 3. c. 9. & 22.
d By the Stat. of 23 H. 8. cap 6.

¶ So had and delivered.] Had, is by Elegit upon Judgments or Recognizances, to have the moity in execution.

Delivered, is by Liberate upon the other thirds of the whole land, &c. of the Conuſor; but after the extent in thoſe thirds (of the Statutes, or recognizances in nature of a Statute) returned, the Conuſee may enter without any delivery by the Sheriff by force of the Liberate: and he that ſo entreth without any delivery is within the aid and benefit of this Act, which ſpeaketh of delivery.

Lib. 4. fol. 67. Fulwoods caſe.

¶ Upon any juſt and lawful title, matter, condition, or cauſe.] That is, upon ſome former juſt and lawful title, &c. before the Judgments, Statutes, or Recognizances.

¶ Shall happen to be recovered, deveſted, taken or evicted.] By the contexte of this Law, the whole land, &c. had in execution, and the whole intereſt of the land in execution muſt be recovered, deveſted, or evicted for the reaſons and cauſes there expreſſed.

Lib. 4. fol. 66. Fulwoods caſe.

Executi-

Execution of a Recognizance by Elegit of lands, &c. of Thomas Camoys was had by two Merchants; and afterwards by a former Statute the ſame lands were out of the hands of the ſaid Merchants delivered to the former Conuſée, whereupon the two Merchants deſired to have execution of other lands of the ſaid Thomas Camoys, & conceditur. *Hill.* 11 E.3. coram Rege, Rot. 93. Norff.

A man maketh a leaſe for years, rendring a rent, the leſſor ouſteth the leſſée, and bindeth himſelf in a Statute, the land is extended, and delivered to the Conuſée, the leſſée re-enters, this is no eviction within this Statute: for it appeareth by the Preamble, that the Conuſée muſt be clearly without remedy, &c. but here the Conuſée ſhall have the rent reſerved, and the reverſion. So was it holden Paſch' 12 El. in communi banco.

¶ Before ſuch time, as the ſaid tenants by execution their executors or aſſigns, &c.] Here are Adminiſtrators, and ſo through the whole Act underſtood, becauſe they are in equal miſchief. And likewiſe and for the ſame reaſon, albeit aſſignées be named in this branch, yet are they implied throughout this Act in branches neceſſary, where they are not named.

The aſſignée of parcel is not within this Act, as appeareth by that which hath been ſaid; but if there be ſeveral aſſignées, and the land is evicted from them all, they are within the letter and remedy of this Act, becauſe the whole is evicted from them, and they may have a re-extent for the whole debt, according to the words and meaning of this Act. Vid. 46. lib. Aſſ. tit. Scire fac' 134.

Which caſe in 46 lib. Aſſ. becauſe it hath been often miſtaken, and miſ-applied by many, we will truly put the ſame. A. ſeiſed of black acre, and white acre in fée, acknowledgeth a Statute Merchant to J. and infeoffeth B. of white acre, J. ſueth execution of black acre out of the poſſeſſion of A. the Conuſor, and of white acre out of the poſſeſſion of B. A. conveyeth black acre to C. in fée, J. tenant by Statute Merchant aſſigneth his intereſt to D. C. the aſſignée of A. ſueth a Scire fac' againſt D. aſſignée of J. and tenders the money that is behind, D. the Defendant pleadeth to the Writ, for that C. tenant of the freehold of white acre, whereof execution was alſo ſued of record, is not named in the Writ, to whom this ſuit was as well given, as to the Plaintif, Judgment of the Writ, & non allocatur; whereby it appeareth by the rule of the Court, that any one feoffée may have a Scire fac', and tender * the whole money to the tenant by Statute Merchant, or to his aſſignée. Another exception was taken to the Writ, for that every Scire fac' ought to be warranted or grounded upon a record, and this Scire fac' is not grounded upon the record, but maintained upon a ſuggeſtion of tendring of the money, in which caſe he ought to have a Venire fac', and not this Writ of Scire fac', & non allocatur; whereby it appeareth, that partly upon a record, and partly upon a ſuggeſtion (no Scire facias being granted without ſome ſuggeſtion) the Scire fac' upon this certainty of the tender was maintainable. Laſtly, It was excepted againſt the Writ, that it appeared to the Court, that the Scire fac' was brought by the aſſignee of black acre, againſt the aſſignee of tenant by Statute Merchant, ſo as each of them, as well of the one part as of the other, Plaintif and Defendant, were ſtrangers to the record, & non allocatur, for that it had been often ſeen, that this Writ did lye as well between ſtrangers, as privies, and the Writ of Venire fac' alſo to make the Conuſee, &c. to account, &c. Then doth Belknap of counſel with the Defendant put a caſe upon the Statute of Gloc. cap 3. It is given by Statute (ſaith he) that if the father alien the right of the mother, that the ſon and heir of the mother ſhall not be barred, if he hath not aſſets by diſcent, &c. and other lands may after deſcend to him from his father, that the alienee of the father ſhall have recovery againſt him by Scire fac': but if lands deſcend to him afterwards from his father, and he alieneth the lands, which he recovered as heir to his mother, the alienee of the father ſhall not

See the Stat. de Mercat. 13 E. 1. Solent liuers al Merchant touts les biens del dettor, & touts ſes terres per reaſonable extent a tener jeſque a tant que le dett ſerr' levie pleinment. Notwithſtanding by good conſtruction the Conuſor ſhall have a Scire fac' upon tender of the debt, with miſes and coſtages; for the land was delivered in nature of a gage, though 17 E.3.43. b. and 18 E.3.11. ſeem to the contrary, but in 21 E. 3. tit. Scire facias 109. & 47 E.3.11. a Scire facias was granted: 32 E.3. Scire fac' 101. the aſſignee of the Conuſor ſhall have the Scire fac' 6 E.3.53. acc'.

* Nota, Hereby the land of the other feoffee ſhall be diſcharged, when the whole debt is paid. 2 R.3.17. 15 H.7. 15.

Vid. 17 E.3.43. b. 21 E.3. Scire fac' 109. 47 E.3.11.

Gloc. 6 E.1. c.3.

See the Stat. de Mercat. 13 E.1. ubi ſup.

not have a Scire fac' againſt the alienee of the heir; which opinion is grounded upon theſe words in the Statute, Donques avera le tenant, (id eſt, the alienee of the father) recovery vers luy (id eſt, the ſon and heir of the mother) de la ſeiſin ſon mere, &c. And therefore Belknap concludeth, that no Scire fac' lieth againſt the alienee in that caſe, no more here. Whereunto Thorp chief Juſtice anſwereth, Although it be ſo in the caſe put by Belknap, it is given by the Statute, &c. Wherefore, (ſaith Thorp) will you receive the money, or no? Belknap, Yes, if he will tender the miles and coſtages. Kirton, the miles and coſtages ſhall be taxed by the Court. Thorp, they ſhall not; for we cannot know them: and after he tendred a demy Mark for miles and coſtages, and the other ſaid they were not ſufficient, and the Court held them ſufficient. Thorp demanded, if he would receive the money, or no, for miles and coſtages, as he tendred, otherwiſe we will (ſaith he) re-bail to the party his mony. And afterwards he received the ſame, and the Plaintif had execution.

Theſe things are neceſſary to be known, for the better underſtanding of this Statute of 32 H.8.

Vid. lib. 4. f. 67. in Fulwoods caſe. 2 R. 3. 8, 17. 15 H. 7 47 E. 3. f. 11, 12. 44 E. 3. 14, 16.

¶ Shall have fully and wholly levied or received the ſaid whole debt.] Although the Conuſee have received the whole debt by execution upon the Statute Merchant, Statute Staple, or Recognizance in the nature of a Statute Staple, yet cannot the Conuſor enter; for he muſt hold the land until he be ſatisfied, not only of his debt, but of his coſts, damages, labours, and expences: otherwiſe it is in caſe of Elegit, as hath been ſaid, for there after the debt ſatisfied, the Conuſor may enter: for tenant by Elegit holdeth the land but until the debt be ſatisfied.

¶ For which the ſaid lands were delivered, &c.] Theſe words are not to be taken literally, but according to the meaning of the makers of this Law, and ever ſuch conſtruction is to be made, as the party grieved, and in equal miſchief may be relieved: And therefore if a Seigniory conſiſting of fealty and rent be delivered in execution, and after the rent become ſecke by ſurpluſage, and after is evicted, he ſhall have the remedy of this Statute; but if a villain be delivered in execution, and the villain purchaſe land in fee, and the tenant by execution enter into the perquiſite of the villain, and after it is evicted, he ſhall have no remedy by this Statute, the cauſe is apparent.

¶ Then every ſuch recoverer, obligee, and recogniſee ſhall and may have a Writ of *Scire fac'* out of the ſame Court.] If judgment and execution be awarded in the Court of Common Pleas, and in a Writ of error the judgment is affirmed in the Kings Bench, the tenant by execution may upon eviction have a Scire fac' out of the Kings Bench; for it is the ſame Court in equal miſchief to the party grieved.

An Expoſition upon the latter part of the Statute of 32 H.8.cap.28. *concerning Diſcontinuances, &c.*

AND moreover, for certain conſiderations, be it enacted, by authority aforeſaid that no fine, feoffment, or other act or acts hereafter to be made, ſuffred, or done by the husband only, of any mannors lands, tenements, or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, ſhall in any wiſe be, or make any diſcontinuance thereof, or be prejudicial or hurtful to the ſaid wife, or to her heirs, or to ſuch as ſhall have right, title, or intereſt to the ſame, by the death of ſuch wife or wives. But that the ſame wife or her heirs, and ſuch other to whom ſuch right ſhall appertain, after her deceaſe, ſhall and may then lawfully enter into all ſuch mannors, lands, tenements, and hereditaments, according to their rights and titles therein: any ſuch fine, feoffment, or other act to the contrary notwithſtanding: fines levied by the husband and wife (whereunto the ſaid wife is party and privy) only except.

See lib.8. fol.71,72, &c. Grenelies caſe, Dier 4 & 5 Ph & Mar.162. 2 El.191.b. Hawtries caſe. 21 El. 363.b.

We will add hereunto a notable and a leading caſe upon this part of the Act vulgarly and commonly cited by the name of Beaumonts caſe; the truth of which was, that Humfrey Foſter ſeiſed in fæ of the ſite of the monaſtery of Gracedieu int' alia, gave them to John Beaumont Eſquire, and Eliz. his wife, and to the heirs of their two bodies begotten, the remainder in fæ to the ſaid J.Beaumont. An. 6 E.6. Joh. Beaumont levied a fine thereof, with proclamation come ceo, &c. to King Ed.6. his heirs and ſucceſſors: King Ed. 6. anno Regni ſui 7. granted the ſaid ſite &c. by his letters patents to Francis Earl of Huntingdon and his heirs in fee farm; afterwards John Beaumont died, after whoſe death, and within five years Eliz. entred, inclaiming her eſtate; the fee farm rent was behind: Henry Earl of Huntingdon, ſon and heir of Francis, having the inheritance of Gracedieu &c. was called into the Exchequer for the arrerages of the ſaid fee farm, where all the ſaid caſe being diſcloſed in pleading, at the laſt upon open argument, great deliberation and conference, five points were reſolved and adjudged:

Mich. 4 & 5 El. in Scaccario.

Juſtice Dalyſon 5 Eliz.

First, Albeit the King is not named in the Act, yet he is bound by the Act, becauſe it is made to ſuppreſs a wrong, and to give her &c. that right had a more ſpeedy remedy, viz. by entry, where, by the Common Law, ſhe &c. was driven to a real action, and every *a* diſcontinuance worketh a wrong, and the King being Gods Lieutenant *b* cannot do wrong, and therefore that the entry of Eliz. was lawful, &c.

a Vid.lib.11.f.72.a Magd. Colledge caſe. Pl.com. 246. Seignior Berklyes caſe acc'.

b 13 E.4.8. lib.1. fol. 44. Alten Woods caſe acc'.

Secondly, Albeit the words of this Act be [being the inheritance or freehold of the wife:] and in this caſe the lands were as well the freehold and inheritance of the husband as of the wife, yet for that it was a beneficial Law to ſuppreſs a wrong, and to give the party wronged a ſpeedy remedy, and that it was in equal miſchief, it was adjudged to be within this Statute: and this point hath been commonly cited in arguments in Weſtminſter-hall, and at Nwts, &c. by the name of Beaumonts caſe.

c Juſt. Dalyſon an. 5 El. Dier 18 El. 351. acc'. Dier 16 El.362. ſimil. lib.9. fol. 139. Beaumonts caſe. 5 H.7.32. by Brian

c Thirdly, That the fine with Proclamations levied by the husband only, was a bar by the Statute of 4 H.7. becauſe the iſſue in tail muſt claim as heir to both of them.

Lib. 9. fol. 139. ubi ſupr.

7 H. 4. 16. lib. 9. fol. 139. ubi ſup.

Otherwiſe it is in the caſe of a common perſon, for he ſhall be exonerated of the rent during the ſtate evicted, becauſe the rent was reſerved out of the whole eſtate.

Fourthly, That the ſtate of the wife was changed to an eſtate for life diſpuniſhable of waſte, for that the iſſue in tail by the fine was diſabled to inherit; as if the donees had been divorced cauſa conſanguinitatis, &c. whereby the iſſue was diſabled to inherit, the donees ſhould have had but an eſtate for life: but in that caſe they ſhall be puniſhable for waſte, becauſe the eſtate in tail was never perfect, but defeaſible by divorce ab initio.

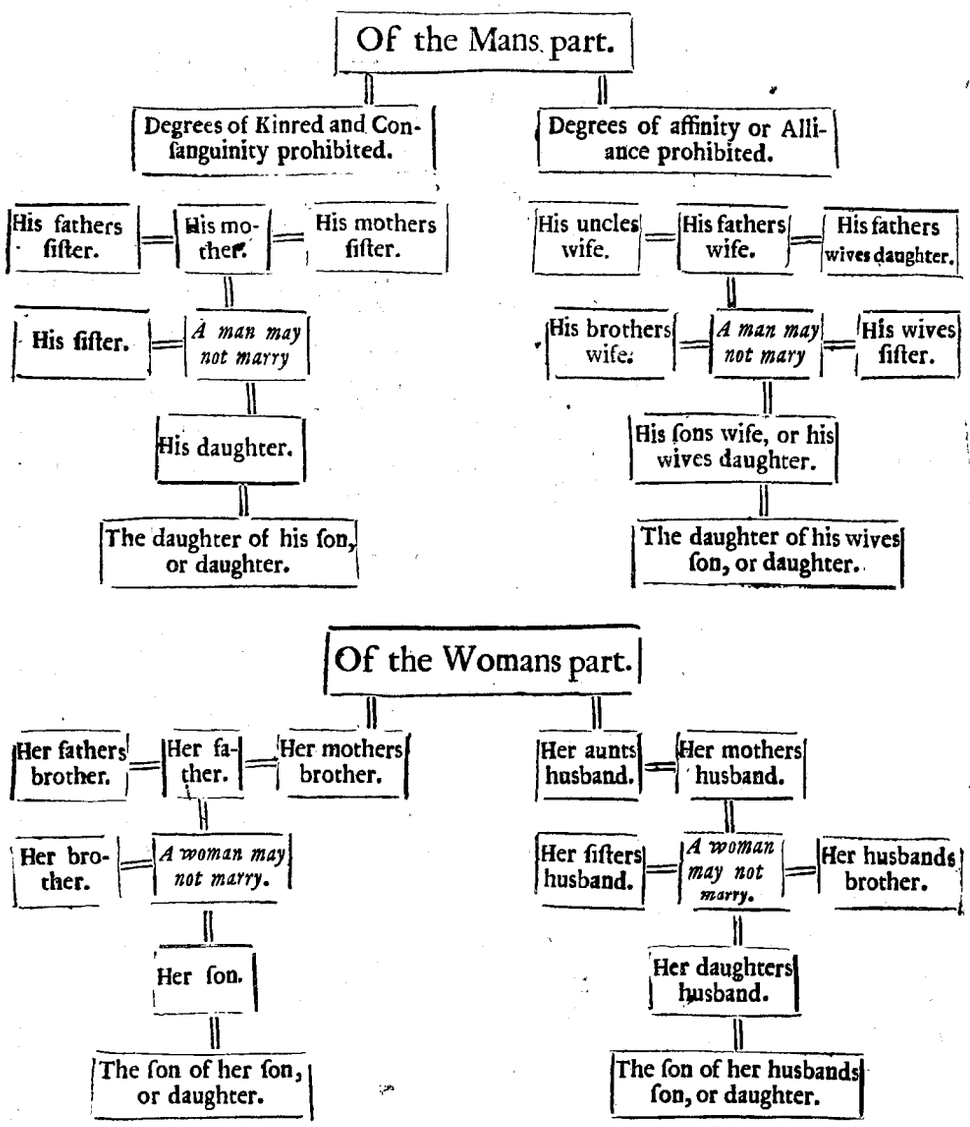
Fifthly, That when Eliz. entred upon Earl Henry into Gracedieu, &c. and defeated the fee farm during her eſtate, yet the Earl having an eſtate of inheritance remaining in him, the fee farm rent, which was reſerved preſently by the Kings prerogative, was leviable upon his other lands during the eſtate of Elizabeth; for now upon the matter it is as much in the Kings caſe, as if Elizabeth, being in ſeiſon of her eſtate, the King had granted the inheritance after her eſtate ended to the Earl and his heirs, reſerving the rent preſently: But Queen Elizabeth, being acquainted with the equity of the caſe, was pleaſed by Letters Patents under the great Seal, which we have ſeen, to exonerate Earl Henry of the arrerages, and of the fee farm it ſelf, during the continuance of the eſtate of the ſaid Eliz. that had evicted the land from him: which caſe we have reported the more at large, for that in the collections of my Lord Dyer, written with his own hand, which we have ſeen, reporteth this caſe, and maketh a queſtion in theſe words: Si lentre la feme ſoit congeable per leſtatute, eo que le Roy neſt ly per leſtatute, which was juſtly omitted out of the print, for that the judgment, as is aforeſaid, was given againſt that private opinion. And it hath been very many times ſince adjudged in the Exchequer, in pleading for the diſcharge of the debts of Henry Earl of Huntingdon, that the entry of the ſaid Eliz. was lawful, divers whereof we have ſeen.

An Expoſition upon the Statute of 32 H.8. Cap.38. *concerning what marriages be lawful, and what not.*

SEE the firſt part of the Inſtitutes, Sect. 380. fol. 235. a. Parſons caſe upon this Act of 32 H.8.

For the better underſtanding whereof, and of this Statute, the Levitical degrees are neceſſary to be ſet down in certain.

It is to be underſtood, that by the 18 Chapter of Leviticus, not only degrees of kinred and conſanguinity, but degrees of affinity and alliance do let matrimony, which may beſt be illuſtrated and expreſſed in this manner:



See theſe degrees truly ſet down in the Statute of 25 H.8. cap.22. & 28 H.8. cap.7.

These be the Levitical degrées, which extend as well to the woman as to the man. And herein note, that albeit the marriage of the nephew cum amita & matertera is forbidden by the ſaid 18 Chapter of Leviticus, and by expreſs words the marriage of the uncle with the niece is not thereby prohibited, yet is

the ſame prohibited, Quia eandem habent rationem propinquitatis cum eis qui nominatim prohibentur, & ſic de ſimilibus.

By the Preamble of this Statute it appeareth, That by other prohibitions then Gods Law admitted for their lucre by that Court invented, the diſpenſation whereof they always reſerved to themſelves (where there are expreſſed theſe examples:) Firſt, As in kinred and affinity between *a* Couſins germans, and ſo to the fourth degree. Secondly, *b* Carnal knowledge of any of the ſame kin or affinity before in ſuch outward degrees. But now by this Act all perſons are declared to be lawful to contract matrimony, that be not prohibited by Gods Law to marry, and that no reſervation or prohibition (Gods Law excepted) ſhall trouble or impeach any marriage without the Levitical degrees. So as without queſtion, the ſon of the father, by another wife, and the daughter of the mother, by another husband, and è converſo, may marry. And now at this day men need not to be at that charge and ſuit that Roger Donington was, who for that he had committed fornication before marriage, with one that was of kin to his wife in the fourth degree, was driven to ſue for a legitimation of his marriage.

a 18 E.4.28,29. 11 H.4.76.

b 24 H.8. baſtard Br.44. Vid. 28 H.8 c.7. Paſch. 30 E.1 coram rege, Chadworths caſe in the 1. part Inſtit. ubi ſupra.

See the Statute of 1 & 2 Phil. & Mar. c. 8. a divorce propter impedimentum publicæ honeſtatis & juſtitiæ.

Neither after this Statute can the husband be afraid to loſe his wife, or the wife her husband, nor the heir of them to be baſtarded, for that the husband before marriage had been godfather either at Baptiſm, or Confirmation to the Couſin of his wife, or that ſhe had been godmother before the marriage to the Couſin of her husband, for the divorces cauſa * compaternitatis & commaternitatis (which in the Act of 1 & 2 Phil. & Mar. is called cognatio ſpiritualis) are by this Act taken away; and the divorce cauſa profeſſionis alſo, and ſo is the divorce cauſa cognationis legalis, that is to ſay, jure adoptionis, & ſic de ſimilibus.

Vid. Conc. Trid. ſeſſ.24. cap.2. de reform. Bract. lib.4 298. b. an. 39 E.3 fol.31, 2.in aſſiſe. Vid. 10 E.3.34.35 * Bract. ubi ſup. 1 & 2 Phil. & M. cap. 8. 47 E. 3. fol.27. 21 H.7.

Alice de Stirchley took to husband William de Chaddeworth, and after, at her ſuit, was divorced from him, and the cauſe of the divorce is expreſſed in the record, Et fuit cauſa divortii, eo quod dictus Willielmus de Chaddeworth carnaliter cognoverat quandam filiam dictæ Aliciæ Stircheley, antequam ipſam deponſavit.

Paſch. 32 E. 1. coram rege, rot. 83 Nott.

By the Levitical degrees it is prohibited, that a man ſhall not uncover the nakedneſs of his wife, and of her daughter, and ſo it is of the reſt of the degrees there prohibited.

Levit. cap. 18. ver. 17.

By this Act of 32 H.8. the divorce cauſa præcontractus was taken away, where the marriage was conſummate by carnal copulation, &c. but that is repealed, and the divorce allowed by the Statute of 2 E.6. cap.23. and 1 El. cap.1.

The reſidue of the Act of 32 H.8. was repealed by 1 & 2 Phil. & Mar. cap. 8. and revived 1 Eliz. cap.1.

Lib.4. fol.29. a. Charles Buntings caſe, lib.6. fol.66. Bracton, l.4.f.298. b.

But our chief aim and endeavour being to ſet down in all the parts of the Inſtitutes, how the Law at this day ſtandeth, notwithſtanding the change and alteration of many Statutes, and the repeals of divers, and after repeals of thoſe repeals, and the reviving of Statutes repealed, &c. and having mentioned the divorce cauſa profeſſionis, it ſhall be neceſſary in this place to declare what the Law is at this day concerning the marriage of Eccleſiaſtical perſons. And to that end we will report a caſe reſolved, which concerneth not only the point in queſtion, but another matter of great conſequence, which, becauſe the rule and diſcuſſing of both points ſtand in effect upon the ſame ground of reaſon, we will relate the whole caſe:

At the Seſſion of Parliament holden anno 4 Regis Jacobi, upon a branch of an Act made at the firſt Seſſion in the firſt year of his Majeſties reign, for continuance and reviving of divers Statutes, it was enacted, That an Act made in the firſt year of Queen Mary, Stat.2. cap.2. entituled, An Act for the repeal of certain Statutes made in the time of King Edw.6. ſhould ſtand repealed and void, two doubts were moved: the firſt concerning the Biſhops, the ſecond touching the lawfulneſs of Eccleſiaſtical perſons marriages; the firſt was divided into

two

two queſtions: the one, Whether any Biſhop, made eſpecially ſince the firſt day of that firſt Seſſion of Parliament, were lawful or no; the other, Whether the proceedings in the Biſhops, or other Eccleſiaſtical Courts, being made under the name, ſtile and ſeal of the Biſhops, were warranted by Law. And the reaſon and cauſe of theſe two doubts was this: By the Statute of anno 1 Ed.6. cap.2. it was enacted, That Biſhops ſhould not be elective, as before that time they had been, but donative by the Kings Letters Patent. Secondly, By the ſaid Act it is provided, That all ſummons, citations, and proceſs in Eccleſiaſtical Courts ſhould be made in the name and ſtile of the King, and that their proceſs ſhould be ſealed with a ſeal of the Kings arms, &c. And it was ſtrongly urged and enforced, that this Act of 1 Ed. 6. was now in force, and conſequently, all Biſhops made (at the leaſt ſince it became of force) by election, &c. and not by donation, according to the ſaid Act of 1 Edw. 6. are unlawful, and all their proceſs, proceedings, being in their own names, ſtiles and ſeals (where by the ſaid Act they ought to have been in the Kings name, and under the Kings ſeal) were all unlawful, and void. And to prove, that the ſaid Act of anno 1 Edw. 6. was now in force, they alledged, that this Act of 1 Edw. 6. was repealed by the ſaid Act of 1 Mar. above mentioned, which Act of repeal, being repealed by the ſaid branch of primo regis Jacobi, conſequently the ſaid Act of 1 Edw.6. was thereby revived: for when an Act of repeal is repealed, the firſt Act that was repealed is revived, remoto impedimento reviviſcit ſtatutum, and herewith agreeth the book caſe in 15 Ed.3. tit' Petition, placit' 2. And this is true, and cannot be denied.

The King having underſtanding hereof, and being informed of the conſequents thereof, being matters tending not only to the infinite prejudice of his ſubjects in caſes of great importance (eſpecially, if any Dioceſs had no lawful Biſhop or Ordinary) but to the ſcandal and impeachment of his Majeſties juſtice not only in thoſe proceedings, but alſo in adminiſtration of juſtice in certain caſes in his Courts of Common Law at Weſtminſter, commanded his two chief Juſtices to conſider of the ſaid objections, and to inform him of the true ſtate thereof, that either the ſcruple conceived might be cleared and ſatisfied, or the inconvenience (if any were) timely provided for and prevented; who upon diligent conſideration had of the ſaid objection, agreed the Law to be (as the caſe was put) as it had been taken. But upon further ſearch and conſideration had, other manifeſt and direct matters were found to ſatisfie and clear the ſaid ſcruple and queſtion, which afterwards was agreed and reſolved accordingly by the chief Baron and other Judges then attending in the upper houſe of Parliament. For the underſtanding whereof it is to be obſerved, that the ſaid Act of 1 Edw.6. was repealed by three ſeveral Acts of Parliament, viz. by the ſaid Statute of anno 1 Mar. in the whole. 2. By the Act of 1 & 2 Phil. & Mar. c.8. by ſufficient words, as concerning the name, ſtile, and ſeal of their proceſs, &c. And laſtly, By the Statute of 1 El. c.1. the whole Act of 1 Edw.6. is alſo repealed: for, Leges poſteriores priores contrarias abrogant. And as a man that is ſtrongly bounden with three cords or ligaments, albeit one or two of them be united or cut aſunder, remains bound, notwithſtanding by and with the ſecond or third, which remain firm and untouched; ſo a Statute repealed by force of three ſeveral Acts remains repealed, ſo long as any of them remain in force, albeit one or two of them be made void: and therefore although the Act of 1 Mar. be repealed by 1. regis Jacobi, yet the other two Acts remaining in force, the Act of anno 1 E.6. remain repealed.

First therefore, as to the name, ſtile, and ſeal, &c. in Eccleſiaſtical Courts, it is enacted by 1 & 2 Phil. & Mar. cap.8. in theſe words: 1.

And the Eccleſiaſtical juriſdiction of the Archbiſhops, Biſhops, and Ordinaries to be in the ſame ſtate for proceſs of ſutes, puniſhment of crimes, and execution of cenſures of the Church, with knowledge of cauſes belonging to the ſame, and as large in thoſe points as the ſaid juriſdiction was *in anno* 20 Hen. 8.

By which clauſe, if the Act of repeal of 1 Mar. (now repealed) had never been made, the Act of 1 Ed.6. as to the name, ſtile, and ſeal in Eccleſiaſtical proceedings had been repealed by this latter Act of 1 & 2 Phil. & Mar.

2. But it was objected, that the ſaid Act of 1 & 2 Phil. & Mar. (which is the ſecond cord or ligament) is repealed by the Act of 1 El. c.1. To this it was anſwered and reſolved, that this ſecond cord or ligament remains in force: for true it is, that the Act of 1 Eliz. repeals the Act of 1 & 2 Phil. & Mar. ſecundum quid, but not ſimpliciter; for the Act of 1 El. doth repeal every branch and article of 1 & 2 Phil. & Mar. other then for ſuch branches as therein be excepted. And afterwards, by another branch of the ſaid Act of 1 El. it is enacted, That all other Laws and Statutes repealed and made void by the ſaid Act of 1 & 2 Ph. & Mar. and not in that Act ſpecially mentioned and revived, ſhould ſtand, remain, and be repealed and void, as the ſame were before the making of that Act. But the Act of 1 Ed.6. (as it hath been often ſaid) is ſufficiently repealed by the Act of 1 & 2 Phil. & Mar. as to the name, ſtile, and ſeal, &c. and the Act of 1 Ed.6. is not ſpecially mentioned and revived by the Act of 1 El. ſo the ſame remain repealed by the Act of 1 & 2 Phil. & Mar.

3. The third Act which clearly repeals and annuls the Act of 1 E.6. as well for the making and conſtituting of Biſhops, as for the name, ſtile, and ſeal of proceſs, is the Act of 1 Eliz. c.1. for that Act doth revive the Act of 25 H.8. c.20. and further enacteth, that the ſame ſhall ſtand in full force and effect to all intents conſtructions, and purpoſes. By which Act of 25 H.8. it is enacted as followeth:

And that at every avoidance of any Archbiſhoprick, or Biſhoprick, the King, his heirs and ſucceſſors may grant to the Prior and Covent, or to the Dean and Chapter a licence under the great Seal, as of old time hath been accuſtomed to proceed to an election of an Archbiſhop or Biſhop, with a letter miſſive, containing the name of the perſon which they ſhall elect and chooſe, &c. And according to this Statute revived by anno 1 Eliz. all Archbiſhops and Biſhops at this day be made, and if they were made according to the Act of 1 E.6. they were unlawful.

And further it is enacted by the ſaid Act of 25 H.8. That every perſon choſen, elected, inveſted, and conſecrated Archbiſhop or Biſhop, according to the form and effect of this Act, &c. ſhall do and execute in every thing and things touching the ſame, as any Archbiſhop or Biſhop of this Realm, &c. might at any time heretofore do.

Which latter branch doth extend to all proceſs and procedings in Eccleſiaſtical Courts, and that the ſame ſhall be in ſuch ſort, as the ſame were before the Act of 25 H.8. and before that Act, the name, ſtile, and ſeal of their proceſs, &c. were as now they be.

And the ſaid Act of 1 Eliz. reviving the Act of 25 H.8. doth impliedly repeal the Act of 1 Ed.6. which had repealed 25 H.8. in both the ſaid points: for, as by repealing of a repeal, the firſt Act is revived; ſo by reviving of an Act repealed, the Act of repeal is made of no force.

As to the ſecond point, concerning the marriage of Eccleſiaſtical perſons, it is to be obſerved, that the intention of the Act of repeal of anno 1. regis Jacobi, was to repeal the Statutes of 2 Ed.6. cap.2. and 5 E.6. cap.12. concerning the marriage of Eccleſiaſtical perſons, by which Statute of 5 E.6. it is enacted, That the matrimony of all and every Prieſt, and other Eccleſiaſtical perſon, ſhall be adjudged, deemed, and taken for juſt, true, and lawful matrimony, to all intents, conſtructions, and purpoſes, and that all children born in any ſuch matrimony ſhall be deemed, and judged to all intents and purpoſes to be born in lawful matrimony, and legitimate, and hereditable to lands, tenements, and hereditaments, and that there ſhall be tenant by the curteſie, and tenant in dower, &c. But the Act of 1 Mar. repealing the ſaid Statutes of 1 E.6. concerning Biſhops, as of 2 E.6.c.21. and of 5 E.6. concerning marriages of Eccleſiaſtical perſons, and the Statute of 1. regis Jacobi repealing generally the Statute of 1 Mar. it followeth, that if no other Statute had repealed the ſaid Act of 1 E.6. concerning Biſhops, but the ſaid Act of 1 Mar. then all the ſaid three Statutes, and 5 E.6. had remained

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in force, when the Act of 1 Mar. was repealed; but other Acts repealing 1 Ed.6. as before hath appeared, and no other Act repealing the Acts of 2 & 5 E.6. concerning marriages, it followeth, that by the repeal of the ſaid Act of 1 Mar. the Acts of 2 & 5 E.6. are of force, and that if 1 E.6. remain repealed, and is not for the cauſes abovelaid revived by the Statute of 1 regis Jacobi.

And it is to be obſerved, that it appeareth in our books, that if a Deacon or ſecular Prieſt had taken wife, the marriage was not void, but voidable, cauſa profeſſionis, and if either party had died before divorce, their iſſue had been legitimate, and ſhould have inherited, for that Deacons and Prieſts within England were not votaries, that is, had not vowed chaſtity. But if a Monk or a Nun had married before the Statutes of 32 H.8. c.38. and of 2 E.6. c.21. and this Act of 5 E.6. the marriage had been (as it was then holden) meerly void, for that they had taken a vow of chaſtity, as it appeareth by our books in 5 E.2. tit. non habilit' 26. 19 H.7. tit. baſtard. 33. 21 H.7.39.b. for avoiding of which ſcruple, the ſaid Acts of 32 H.8. 2 E.6. and 5 E.6. were made.

See the Statute of 31 H.8. cap.6.

There be alſo other divorces which declare the marriage to be void, as a divorce cauſa *frigiditatis, where the party hath perpetuam impotentiam generationis, &c. And *a* cauſa metus, ſive duritiæ, alſo *b* cauſa impubertatis: theſe marriages are ſaid to be prohibited by Gods Law, otherwiſe the Statute of 32 H.8. would extend unto them.

Gen.2. v.24. Mat. 19.5. Epheſ. 5.31. 1 Corin.7.2. &c. Mar.10.7,8.

*Dyer 2 El.118.b. lib.5. fol.98. Buries caſe.

a 11 H.4.14. Rot. Parl. 17 H.6. nu.15. Iſabel Lady Butlers caſe. *b* 39 E.3.32,35

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An Expoſition upon the Statute of 2 E. 6. Cap. 8.

Of Offices.

WHere many and divers perſons holding, or that have holden lands, tenements, or hereditaments, ſome for term of years, and ſome by copy of Court roll, have been expulſed, and put out of their terms and holds by reaſon of Inquiſitions, or Offices founden before Eſchetors, Commiſſioners, and other, containing tenures of the King in *Capite*, intitling the King to the wardſhip or cuſtody of ſuch lands or tenements; and ſometime intitling the King to the ſame, upon attainders of treaſon, felony, or otherwiſe, by reaſon that ſuch leaſes for term of years, or intereſt by copy of Court roll of ſuch perſons, have not been found in ſuch inquiſitions or offices: after which expulſion or putting out, the ſaid perſons have been without remedy, for the obtaining of the ſaid ferms and holds, during the Kings poſſeſſion therein, and can have no *Traverſe*, *Monſtrance de droit*, nor other remedy for the ſame, becauſe their ſaid intereſt is but a chattel in the Law, or cuſtomary hold, and no eſtate of freehold. And alſo, where any perſon or perſons hath any rent, common, office, fee, or other profit apprender of any eſtate of freehold, or for years, or otherwiſe, out of ſuch lands or tenements, ſpecified in ſuch offices or inquiſitions, the ſaid rent, common, office, fee, or profit apprender, not found in the ſame office or offices, ſuch perſons are in like manner without remedy to obtain, or have the ſaid rent, common, office, fee, or profit apprender by any *Traverſe*, or other ſpeedy mean, without great and exceſs charges, during the Kings intereſt therein, by force of ſuch inquiſition or office.

Where and in what caſes before the Statutes of 34 Edw. 3. cap. 14. and 36 Edw. 3. cap. 13. and 8 H. 6. cap. 19. the party grieved by any office might have had his Traverſe, or Monſtrans de droit by the Common Law, and where he was driven to his petition, and how, and in what manner, and in what caſes the ſubject was relieved by thoſe Statutes. And where before this Statute of 2 E. 6. the party was put to his petition, you may read in lib. 4. fol. 54, 55. &c. 24 E. 3. 55. until the end of the caſe, adding thereunto, that Mich. 34 & 35 Eliz. it was reſolved in the Court of Wards by the two chief Juſtices, in the caſe of the Counteſs of Rutland, upon conſideration had of the ſaid Acts of 34 E. 3. 36 E. 3. & 8 H. 6. that he in the remainder expectant upon an eſtate tail or freehold, or that hath a drie reverſion expectant upon any eſtate of freehold, without any rent or profit, but only fealty, ſhall not traverſe a falſe office, finding the dying ſeiſed of ſuch a remainder or reverſion: for theſe Statutes give a Traverſe, when the lands are ſeiſed by the King, and the party ouſted thereof; and the ſeiſin of tenant for life is the ſeiſin of him in the remainder or reverſion. And the judgment cannot be given, Quod manus Domini Regis amoveantur. See Stamf. prerog. 13. he in the reverſion may ſue livery, &c. Dier 14 Eliz. 319. Stamf. prerog. 62. a. b.

Lib. 4. fol. 54, 55, &c. Br. travers 55 Stamf. prerog.

¶ Leaſes for term of years, or intereſt by copy of Court roll, &c.] Upon theſe words it hath been doubted, whether a tenant by Statute Merchant, by

See 37 Aſſ. p. 11. 4 E. 4. 21.

by Statute ſtaple, by Elegit, or Executors that have intereſt in lands by deviſe for payment of debts, and the like were within this Law, becauſe they are not leſſées for years; but the common opinion is, that theſe intereſts are within the purview of this act: for that they are not only within the ſame miſchief, being without remedy, but within the expreſs reaſon of this Law, viz. becauſe their ſaid intereſt is but a chattel real, and all the abovеſaid intereſts are but chattels reals, & ratio legis eſt anima legis. Lex beneficialis rei conſimili remedium præſtat. Quæcunque intra rationem legis inveniuntur, intra ipſam legem eſſe judicantur.

29 H.8. tit. Travers d' office 50. A termor could not traverſe an office by the Common Law, but if it were found in the office, he might have a Monſtrans de droit, and ſo of others that had but chattels reals, 13 E.4.8. 7 H.7.11. Vid. 9 H.6.21.

But nota, though there be a double matter of record to entitle the King to a chattel perſonal, as an attainder, and an office, that the perſon attainted was poſſeſſed of a horſe, the office may be traverſed, 34 H.6.51. 4 E.4.24. 47 E.3.26. 13 E.4 8. 1 H.7. fol. becauſe chattels perſonal are bona peritura, and cannot abide the delay of a petition. Vid. W.1. cap.4. that goods wrecked be in ſafety, and kept by the view of the Sheriffs, &c. and yet ſuch as be bona peritura the Sheriff, &c. may ſell them within the year.

By the words of the Writ of diem clauſit extremum, mandamus, &c. the Eſcheator might, according to the Common Law, ſeiſe, &c. before office: but by the Statute of Lincoln, anno 29 E. 1. de Eſcheatoribus, Vet. Mag. Chart. 108. and by Artic' ſuper Chart. anno 28 E. 1. cap.19. the Eſcheator, cannot ſeiſe before office, and yet the words of the Writs keep their old form. Here it appeareth, that the King is intitled by office.

For remedy whereof, be it enacted by authority of this preſent Parliament, that where any ſuch office or inquiſition is or ſhall be founden, omitting ſuch titles, intereſts, or matters, as aforeſaid, that in all ſuch caſes, every leſſee, tenant for term of years, or copiholder, and every ſuch perſon or perſons that have, or ſhall have any intereſt to any rent, common, or profit apprender, for term of years, life, or otherwiſe, out of any of the lands, tenements, or hereditaments contained in ſuch office or inquiſition, where the King, his heirs or ſucceſſors is, or ſhall be entituled, as is aforeſaid to any ſuch lands, tenements, or hereditaments, ſhall have, hold, enjoy, and perceive all and every their leaſes and intereſts for term of years, or by copy of Court roll, rents, commons, offices, fees, and profit apprender, in ſuch manner, form, ſtate, and condition, as they and every of them ſhould, or might have done, in caſe there had been no ſuch office or inquiſition found, and as they ſhould or lawfully might, or ought to have done, in caſe ſuch leaſe, intereſt by copy of Court roll, rent, common, office, fee, or profit apprender, had been founden in ſuch office or inquiſition: any Law, cuſtom, or uſage to the contrary heretofore uſed in ſuch caſes, in any wiſe notwithſtanding. And alſo, where it is or ſhall be founden for the King, his heirs or ſucceſſors, that the heir or heirs of his tenant or tenants, is, or ſhall be within age, where in deed ſuch heir or heirs is, or ſhall be at the ſame time of full age, or of a more or greater age, then is, or ſhall be contained within ſuch office. Note this firſt branch of this beneficial Law.

¶ Where any ſuch office or inquiſition is, or ſhall be found, &c.] This hath reference to the Preamble, and extendeth not only to offices in caſe of wardſhip by tenure in capite, but to offices upon attainders of treaſon, felony, or otherwiſe. Wherein the generality of theſe words [or otherwiſe] are to be obſerved.

The 2. branch.

Be it further enacted by the authority aforeſaid, that in every ſuch caſe, ſuch heir, and heirs, ſhall and may at his or their very full age, or after, proſecute a Writ of *Ætate probanda*, and ſue his or their Livery, or *Ouſter le maine*, as his or their caſes ſhall lye, and have the profits of his or their lands, tenements, or hereditaments, from the time of his or their very full age: any ſuch untrue office or inquiſition or any Law or cuſtom to the contrary in any wiſe notwithſtanding. Alſo where one perſon or moe is or ſhall be founden heir to the Kings tenant by office or inquiſition, where any other perſon is, or ſhall be heir; or if one perſon or moe be or ſhall be founden heir by office, or inquiſition in one County, and another perſon or perſons is or ſhall be founden heir to the ſame perſon in another County, or if any perſon be, or ſhall be untruly founden Lunatick, Ideot, or dead.

See 5 E.4.3. Stamf. Prer. 61. b. 21 R. 2. livery 4. 13 H. 4.6, 7. Caleſtens caſe. 1 H.7.3.14. & 28. Bro. tit. Office devant Eſcheator 27.40. & ibid. 50. Br. tit. Travers de office 47. Kelwey, 7 H.8. fol. 177.

¶ Or after ſue a Writ of *Ætate probanda*, &c.] Or a commiſſion in the nature of an Ætate probanda, F.N.B. 257. c. d. e. Regiſt. 294, 295, 296.

See a notable preſident of an Ætate probanda, together with the reaſons of the Jurors. Suff. Hill. 25 E.1. Rot.14. coram Rege, Benedict de Blakenhams caſe.

See Rot. Parl. 40 E.3. nu. 14,15. where the heir is found of full age, where in truth he is within age.

¶ Alſo where one perſon or more is, or ſhall be found heir to the Kings tenant by office or inquiſition, &c.] This act is general, and extendeth as well to offices found virtute officii (whereof there was * no interpleader by the Common Law, becauſe a general livery could not be ſued thereupon; but ſpecial liveries (now and long ſince in uſe) may be ſued upon ſuch an office found virtute officii) as to offices found virtute brevis aut commiſſionis.

* 30 Aſſ.28. Kelway. 10 H.8.f.198 b. Stamf.Prer.59.b 21 H.7. fol.35.

The reaſon wherefore no general livery could be ſued at the Common Law upon an office found virtute officii, was, Quia dormientibus, non vigilantibus jura ſubveniunt. And the office, whereupon livery is to be granted to the heir, is to be upon an office to be found by Writ or commiſſion at the ſuit of the heir, and the Eſcheator may return an office virtute officii into the Court.

Vid. 32 H.8. c.46. for the Court of Wards. F. N. B. 232,233. 29 Aſſ.43 16 E.3. livery 30. 32 E.3. travers 38 32 Aſſ.28. 50 Aſſ.2.

See the juriſdiction of Courts, cap. the Court of Wards.

The 3. branch.

Be it enacted by the authority aforeſaid, that every perſon and perſons grieved, or to be grieved by any ſuch office or inquiſition, ſhall and may have his or their traverſe to the ſame, immediatly, or after, at his or their pleaſure, and proceed to tryal therein, and have like remedy and advantage, as in other caſes of traverſe upon untrue inquiſitions or offices founden: any Law, uſage, or cuſtom to the contrary in any wiſe notwithſtanding.

See the Statute of Marlebridge, c.16. and the expoſition thereupon. 2 E.4.18. 5 E.4.3,4. F.N.B. 262. 12 E.4.18. 2 H.6.5. 8 H.7.118. 11 H. 7.3. Vide Dyer 5. Mar. 161,162. lib.7.45. in Kennes caſe, this Act doth not take away any incidents in Law: for if one heir traverſe the office of another, he firſt muſt have an office found for himſelf, as there it is reſolved. Vid. 36 E.3. tit. Travers 44. 12 H.6. Travers 45. 5 E.4.4. 1 H.7.14. 29 Aſſ.13. 43 Aſſ. p.20. 32 H.6. Travers 39. 16 E.4.4. F.N.B. 262. Stamf. Prer. 58. Kennes caſe, ubi ſupra, the cauſe of this word [immediately] to make it clear that before was vexata quæſtio, ſo as by this an interpleader, as the caſe ſhall require, ſhall be immediatly.

And

And where it is or ſhall be hereafter untruly founden by office or inquiſition, that any perſon or perſons attainted, or that ſhall be attainted of treaſon, felony, or premunire, is or ſhall be ſeiſed of any lands, tenements, or hereditaments, at any time of ſuch treaſon, felony, or offence committed or done, or any time after, whereunto any other perſon or perſons hath, or ſhall have any juſt title or intereſt of any eſtate of freehold, that then in every ſuch caſe, every perſon and perſons grieved thereby, ſhall have his or their traverſe, or *Monſtrans de droit* to the ſame, without being driven to any petition of right: And like remedy and reſtitution upon his or their title, found or judged for him or them therein, as hath been accuſtomed and uſed in other caſes of traverſe, although the Kings Majeſty, his heirs or ſucceſſors be, or ſhall be, in ſuch caſe intitled to any ſuch lands, tenements, or hereditaments, by double matter of Record: any Law, cuſtom, or uſage to the contrary in any wiſe notwithſtanding. The 4. branch.

Lib. 4. fol. 57. b. the reaſon is notably expreſſed, wherefore in theſe caſes at the Common Law the party grieved was put to his petition. See 49 Ed. 3. 11. 13 H. 4 7. 10 H. 6. 15. 4 E. 4. 25. 21 E. 4. 2, 3. 4 H. 7. fol. 7. Stamf. prer. 72, 73. 1 E. 5. 8. Pl. com. 486. Rot. Parl. 11 H. 6. nu. 29. John Earl of Somerſets caſe, Br. travers de office 51. Vid. 43 Aſſ. p. 28. 33 H. 8. petition Br. 35.

¶ Shall have his or their traverſe, or *Monſtrans de droit* to the ſame, &c.] Note, that the traverſe and Monſtrans de droit are here diſjunctively divided, and by the ninth branch of this act, the party that ſhall traverſe, muſt ſue out one Writ or ſeveral Writs of Scire facias, as the caſe ſhall require, and that there ſhall be two Writs of ſearch granted upon every traverſe, that ſhall be purſued by vertue or means of this Act. But nota, that Proviſo extends only to traverſes, and not to any Monſtrans de droit to be purſued by force of this Act, either for the ſuing out of Writs of Scire facias, or that therein Writs of ſearch ſhall be granted becauſe the Monſtrans de droit doth confeſs and avoid the title of the King, and the traverſe denieth it, 14 E. 4. 1, 7. Stamf. Prer. 70, 71. ſimile.

And further be it enacted by the authority aforeſaid, that where any inquiſition or office is or ſhall be founden by theſe words, or the like, *Quod de quo, vel de quibus tenementa prædicta tenentur, jurat' prædict' ignorant:* or elſe founden holden of the King, *Per quæ ſervitia ignorant*, or ſuch like; that in ſuch caſe, ſuch tenure ſo uncertainly founden, *De quo, vel de quibus tenementa prædicta tenentur, ignorant*, ſhall not be taken for any immediate tenure of the King; nor ſuch tenure ſo founden of the King, *Per quæ ſervitia ignorant*, ſhall not be taken any tenure *in capite*; but in ſuch caſes a *Melius inquirendum* to be awarded, as hath been accuſtomed in old time: any uſage of latter time to the contrary notwithſtanding. The 5. branch.

¶ That where any inquiſition or office is or ſhall be found, &c.] Upon an office found before the Eſcheator, virtute officii, there lay no Melius inquirendum before this Act; for the words of the Writ be, Per quandam inquiſitionem capt' coram A. Eſchaetore noſtro, &c. de mandato noſtro capt' F. N. B. 255. Regiſt. fol. but this Act is general, and giveth it when it is found, virtute officii. Vid. 8 H. 6. cap. 16. Kelwey 199.

¶ *Quod de quo vel de quibus, &c.*] Vide 10 H 4. 2. b. 13 H. 7. 4. 29 H. 8. Br. office 58. & 30 H. 8. ibid. 59.

¶ But in ſuch caſes a *Melius inquirendum* to be awarded, &c.] Vide Dyer 12 El. fol. 291. Si ſur le melius tenure eſt trove dun common perſon in certaine, ne beſoigne travers. Dyer 13 El. fol. 306. Si ignoramus ſoit trove ſur le melius, ceo ſerra priſe tenure in capite. Iſſint fuit reſolve Mich. 33 & 34 El. per les 2. chiefe Juſtices in le Court de Gardes. For this Act extends not to the ſecond inquiſition upon the Melius. And it was then reſolved, that he which ſhould traverſe ſuch an office, ſhould traverſe, that the land was not holden of the King in capite; for ſo much is implied in the office, Dyer 5. Mar. 161, 162.

Dyer 13 El. ubi ſupra, ſi ſur le melius ſoit trove tenure dun roigne ut de manerio, &c. ſed per quæ ſervitia ignorant. This is a tenure by Knights-ſervice, as of the Manor. Vide pur melius inquirend' lib. 8. fol. 168. Paris Stoughters caſe, & 5. Mar. Dyer 155. b. 156. that no melius inquirendum is grantable of any office found de quo vel de quibus, &c. before this Statute.

The 6. branch. And be it further enacted by the authority aforeſaid, that where it is or ſhall be found by any office or inquiſition, that any lands, tenements, or hereditaments, are, or ſhall be diſcended, remained, or common to any heir within age, and in the Kings ward, or that ought to be in the Kings ward, and that ſuch lands, tenements, or hereditaments are holden of the King immediately, where in deed the ſame are, or ſhall be holden of ſome other common perſon, and not of the King immediately: that in ſuch caſe, ſuch heir or heirs ſhall and may have their traverſe to the ſame within age, and like remedy and reſtitution upon his or their title founden or judged for him, or them therein, as hath been accuſtomed and uſed in other caſes of traverſes: any Law, uſage, or cuſtom to the contrary in any wiſe notwithſtanding.

¶ Where it is, or ſhall be found by any office or inquiſition, &c.] Note the generality of this clauſe.

¶ Shall be holden of ſome other common perſon, &c.] The Lord might traverſe by the Common Law. 5. Mar. Dyer 161, 162. but the heir could not before this Act. Vide 1 H. 7. 3.

The 7. branch. Alſo where the Kings Majeſty by his Prerogative ought to have as well ſuch lands and tenements as be holden of other perſons, as holden of himſelf immediately, whereof his tenant holding of him in chief, dieth ſeiſed, his heir being within age, until ſuch time as livery be ſued by ſuch heir, and that the mean Lords, of whom the ſaid other lands and tenements of ſuch heir be holden, uſed to ſpare the rents due to them for the ſame lands or tenements holden of them, during the Kings poſſeſſion. And when ſuch heir hath ſued his or their livery they uſe by diſtreſs, or otherwiſe to compel the ſaid heir to pay to them the arrerages of ſuch rents, for ſuch time as the ſaid lands, or tenements were in the Kings poſſeſſion by ſuch minority, where they ſhould have ſued by petition to the Kings Majeſty, to have obtained the ſame out of the Kings hands, if they would have the ſame which is to the great detriment, loſs, and hindrance of ſuch heir and heirs. For redreſs whereof, be it enacted by the authority of this preſent Parliament, that from henceforth ſuch mean Lords, during ſuch minority ſhall have, receive, and take the ſaid rents by the hands of ſuch of the Kings officers, as ſhall be appointed to have, receive, and

take

take the iſſues, revenues, and profits of the ſame lands and tenements ſo holden of ſuch mean Lords, during the minority and nonage of ſuch heir and heirs, and until ſuch heir and heirs ſue his or their livery, and that ſuch heir and heirs, until ſuch time as he or they ſhall have ſued their livery, or might conveniently have ſued their livery, ſhall be thereof clearly diſcharged. And that ſuch officer or officers, ſhall upon requeſt made, pay the ſame to ſuch mean Lords (they giving to ſuch officer and officers a ſufficient acquittance, or acquittances for the receipt of the ſame.) And that ſuch payment thereof made with acquittance, or acquittances thereof ſhewed, ſhall be to ſuch officers a ſufficient diſcharge againſt the Kings Majeſty and his heirs, upon his or their accompt in that behalf: Any Law, uſage, or cuſtom heretofore had, or uſed to the contrary hereof in any wiſe notwithſtanding.

¶ Until ſuch time as livery be ſued.] Nota, there be two ſorts of liveries, viz. liveries in deed, and liveries in Law. Of liveries in deed there be two kinds, viz. a general livery, and a ſpecial livery. For a general livery an office muſt be found in every County, an Ætate probanda found and returned in the Chancery; a Writ to the Lord privy Seal, that the heir is of full age: and thereupon a privy Seal to the Chamberlain of England to receive his homage, &c. which kind of livery is dangerous, tedious, and chargeable. Vide 44 E.3.12. 12 H.4. livery 4. 21 R.2. livery 5. 1 H.7.14. E.4.18. 7 H.8. Kelwey 176, 177.

There is alſo a ſpecial livery with a pardon much more ſafe, ſpeedy and beneficial for the party, and it may be had upon any office found in any one County, and all the reſt to come in by Certificate, as now the uſe is without Ætate probanda, &c. 7 H. 8. Kelwey 177. or without any office at all, and may be made to the heir within age, 21 E.3.40. 29 H.8. livery Br. 56.

By the Statute of 33 H.8. c.22. power is given to the Maſter of the Wards, Surveyor, Attorny, and Receiver, or three of them, whereof the Maſter or Surveyor to be one, to grant a general or ſpecial livery. Whereupon ſome have thought, that ſpecial liveries became commonly to be granted; but it appeareth by 7 H.8. ubi ſupra, that it was ſo commonly uſed by a good time then paſt. Dyer 23 Eliz. fol. 377. a ſpecial livery is not grantable at this day ex debito juſtitiæ.

If the office be traverſed, and the King, hanging the traverſe, grant livery, &c. the traverſe goeth to the ground. Kelw. 2 H.8.157. a.b. 1 H. 7.12.27. adjudged, See Dyer 23 El. ubi ſupra.

13 H.4.6,7. tit. Travers, An office is found, that A. died ſeiſed of the Manor of B. and held the ſame in capite by Knights-ſervice his heir within age; this office is traverſed, that A. infeoffed him that traverſeth in fee, and traverſe the dying ſeiſed: Whereupon the King taketh iſſue, and hanging the traverſe, it is found by another office, that the ſaid feoffment was by colluſion, and after the iſſue was found againſt the King; whereupon, by the rule of the Court, the party had judgment, and an Amoveas manum. For the office, found depending the traverſe, ſhall not grieve the party; for ſo he might be infinitely vexed: but in a Scire fac' by the King upon the latter office he ſhall anſwer, &c. an excellent caſe for the benefit and ſpeed of them that are driven to traverſe. Vide 11 H. 4. fol. 8. 13 H. 4. tit. Travers 16 & 13 H. 4. tit. Livery 21.

* There be alſo liveries in Law, as by pardons, either by Act of Parliament, or by Charter under the great Seal, to the heir of the Kings tenant in capite, be he within age, or of full age. But where ſome Books ſay, that a pardon of intruſions to ſuch an heir amounts in Law to a livery, it is ſo to be underſtood, that in the

* 23 H.8. Br. intruſion 19.21. 2 H.6. 57. Kelw. 10 H.8. 198. 13 H.4.3. See Dyer 12 El. 286. 46 E.3. grant 50. 34 H.8. Charter de pardon 54.

29 H.8. ibid.52. 16 E.4. fol.1. the pardon there be words alſo, that the heir may enter, &c. for a ſpecial livery is no other, but that the heir habeat licentiam ingrediendi, &c.

32 H.8. Br.62. Stamf.Prer.40.b. Note, upon every livery the King hath the value of the land for half a year, but upon an Ouſter le maine the Kings hands be amoved without any profit, &c.

¶ Uſed to ſpare the rents, &c.] Not only rents, but reliefs alſo were due by the Common Law, 26 H.8.8. 24 Ed.3.24. 29 Aſſ. p 5. 39 E.3. reliefe 1. Vide Br. tit. Arrerages, pl. 1. & 19. For though there be a kind of ſuſpenſion of rents, &c. by reaſon of the Kings poſſeſſion; yet the rents, &c. are due, becauſe the prerogative of the King doth no man wrong, 13 E.4.8. &c.

The 8. branch. Provided always, and it is enacted by the authority aforeſaid, that this act, or any thing therein contained, ſhall not in any wiſe extend to any inquiſition or office taken or founden, at any time before the twentieth day of *March* next coming; nor to hinder, prejudice, or take away the title, intereſt, or poſſeſſion of our Soveraign Lord the King, or of any other perſon or perſons grown, or common by vertue, mean, or occaſion of any inquiſition or office taken, or found before the ſame day; but that as well our ſaid Soveraign Lord the King, as all other perſon or perſons, having any title, intereſt, or poſſeſſion by vertue, mean, or occaſion of any inquiſition or office found before the ſame day, ſhall, and may have, hold, and enjoy the ſame in like manner and form, as though this Act had never been had or made: any thing in the ſame Act to the contrary in any wiſe notwithſtanding.

Vid. Dier 5. Mar. 155, 156.

The 9. branch. Provided alſo, and it is enacted by the authority aforeſaid, that in all ſuch caſes, as any perſon or perſons ſhall be enabled by this Act to have any traverſe, and ſhall purſue his or their traverſe, that then he or they that ſhall purſue ſuch traverſe, ſhall ſue one Writ, or ſeveral Writs of *Scire facias* (as the caſe ſhall require) againſt all and ſingular ſuch perſon and perſons, as ſhall have intereſt by the King, or by his Patentee or Patentees, in like manner and form as is requiſite upon traverſes, or petitions heretofore purſued. And that in every ſuch *Scire fac'* the Patentees, or other defendants ſhall have like plees and advantages, as they had in any *Scire fac'*, before this time awarded againſt any Patentee in any caſe of petition. And alſo, that upon every traverſe that ſhall be purſued by vertue or mean of this Act, in ſuch caſe as the party or parties that ſhall purſue any ſuch traverſe, ſhould, by the order of the Common Laws of this Realm, have been put to ſue by petition to the King, there ſhall be two Writs of ſearch granted in manner and form, as like Writs have been granted upon petitions made to the King.

¶ Shall be enabled by this Act, &c.] Hereof ſomewhat hath been ſpoken in the fourth branch. Vid. 5 E.4.3.

Nota, in many caſes two matters of record with neceſſary averrements ſhall amount to an office, but thereupon a Scire fac' is to be granted, wherein the party may traverſe any of the material averrements, &c. 21 Aſſ. p.36. 21 E.3. livery. 40 Aſſ.46. 50 Aſſ.2. 2 E.3.10.b. but becauſe ſuch records amounting are not within any branch of this Act, we will ſpeak no further of them.

The 10. branch. Provided alſo, and it is enacted by the authority aboveſaid, that if after any judgment ſhall be given upon any traverſe that ſhall be tendred, or ſued by vertue or mean of this act, it ſhall appear by any matter of record,

cord, that the King hath any other former title, right, or intereſt to the mannors, lands, tenements, or other hereditaments mentioned in the ſame traverſe, that then the ſame title, right, and intereſt ſhall be ſaved to the King, the ſaid traverſe and judgment thereupon given, in any wiſe notwithſtanding.

¶ Upon any traverſe.] This extendeth not to a Monſtrans de droit to be purſued upon this Statute.

This Proviſo was added (for that this Act gave a traverſe, where none was at the Common Law, and that it ſhould be judged for them, for whom it was found, &c.) leſt the judgment, being warranted by authority of Parliament, ſhould bind any former right the King had; and that appeareth alſo by the concluſion of this branch, viz. The ſaid traverſe and judgment thereupon given notwithſtanding: but it ſeemeth to be abundans cautela, for the judgment upon a traverſe is, Quod manus Domini Regis amoveantur, & poſſeſſio reſtituatur to him that traverſeth ſalvo jure, &c. Br. tit. Travers de office 54.

It is to be obſerved, that there be certain Records which intitle the King, that by Law are not traverſable; in which caſes, though the King be entituled but by ſingle matter of Record, yet the party grieved is put to his petition, and cannot be holpen by traverſe, or Monſtrans de droit. As taking one example for many: King Henry the fourth recovered in the Kings Bench in a Quare impedit againſt the Prior of T. the preſentation to a Church, and had a Writ to the Biſhop, and his Clerk received, &c. where in truth the Prior never knew of the ſuit, nor was ſummoned, attached, or diſtrained by the Sherif; and thereupon the Prior moved the Court of Kings Bench to grant a Writ, to cauſe to come before them the Summoners, the Pledges, and Mainpernors upon the diſtreſs to be examined in this matter. And in this caſe five points were reſolved by Gaſcoigne chief Juſtice, and the Court, viz. firſt, that the Prior was driven to his petition in nature of a Writ of deceit, albeit in this caſe the King recovered in auter droit. 2. That if a common perſon had recovered, the Defendant had bin driven to his original Writ out of the Chancery, and could not proceed upon any judicial proceſs out of this Court. 3. That if the concluſion of the petition be, that the King ſhould command the Court of Kings Bench to proceed to the examination, &c. then without any Writ out of the Chancery, the Court may proceed to the examination. 4. But if the petition doth conclude generally, that the King ſhould do right, then the Prior ſhould be driven to his original out of the Chancery. 5. That before ſuch Writ be granted, the Prior upon a commiſſion out of the Chancery, ought to have his right found by enqueſt. Mich. 10 H.4. tit. Travers 51. Fitz. N.B. 99. f. Stamf. Prer. 73.

But ſeeing our Statute extendeth to offices found by Writ, commiſſion, or ex officio, and not to other Records, we will ſpeak no further of them.

Mine advice to ſuch as ſhall traverſe by force of this Act, is, that in the inducement to the traverſe, they alledge their own title (which they ought to do; for no man ſhall have the lands out of the Kings hands, without making a title) juſtly and truly: For the Attorney general for the King may either take iſſue upon the traverſe, or by the Kings prerogative upon the title of the party, that traverſeth at his choice. 3 H.4.14. 13 E.4.8 46 E.3.travers 17.

It is a maxim in Law, that whenſoever any man is by any office traverſable amoved from his poſſeſſion, that he muſt traverſe the office in the Court, where the office is returned. Of houſes and lands, which do lye in livery, and whereof there is manual occupation, and profit preſently taken, the party by finding of the office is out of poſſeſſion; but of rents, villeins, commons, advowſons, and other inheritances incorporeal which lye in grant, the owner is not out of poſſeſſion (be they appendant, or in groſs) by the finding of an office: and therefore in any information or action brought by the King for the ſame, the party may traverſe the office in that Court, where information or action is brought for the King. 17 E.3.10. Henry Hills caſe. 20 E.4. 11.14. 21 E.4.1,2 Quare imped. 101 14 H.7.21.15H.7.6

And

29 Aſſ. p. 40.
32 Aſſ. p. 28.
50 Aſſ. 2. Stamf. Prer. 54. b.

And in all caſes, when the King is not in poſſeſſion by the office, and he obtain not poſſeſſion within the year after the office found, then cannot the King ſeize without a Scire facias.

We have taken this Statute of 2 E. 6. into our conſideration, the rather, for that Juſtice Stamford wrote his Treatiſe upon the prerogative (wherein he ſetteth forth the Common Law) before this Statute of 2 E. 6. by which Statute the ſubject is relieved in many things, which lay heavy upon him, when Juſtice Stamford wrote; our chiefeſt endeavour being, that it may be known how the Law ſtandeth at the Edition of this ſecond and other parts of the Inſtitutes.

An

An Expoſition upon the Statute of 22 H.8.Cap. 5. *concerning the repairing of decayed Bridges in High-ways, and by whom.*

BE it enacted by the King our Soveraign Lord, and the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by authority of the ſame, That the Juſtices of Peace in every Shire of this Realm, Franchiſe, City, or Borough, or four of them at the leaſt, whereof one to be of the *Quorum*, ſhall have power and authority to enquire, hear, and determine in the Kings general Seſſions of peace, of all manner of annoyances of Bridges broken in the high-ways, to the damage of the Kings liege people, and to make ſuch proceſs and pains upon every preſentment afore them for the reformation of the ſame, againſt ſuch as owen to be charged for the making or amending of ſuch Bridges, as the Kings Juſtices of his Bench uſe commonly to do, or as it ſhall ſeem by their diſcretions to be neceſſary and convenient for the ſpeedy amendment of ſuch Bridges.

And where in many parts of this Realm it cannot be known and proved what Hundred, Riding, Wapentake, City, Borough, Town, or Pariſh, nor what perſon certain, or body politick, ought of right to make ſuch Bridges decayed, by reaſon whereof ſuch decayed Bridges, for lack of knowledge of ſuch as owen to make them, for the moſt part, lye long without any amendment, to the great annoyance of the Kings ſubjects.

For the remedy thereof, be it enacted by authority aforeſaid, that in every ſuch caſe the ſaid Bridges, if they be without the City or Town corporate, ſhall be made by the inhabitants of the Shire or Riding, within the which the ſaid Bridge decayed ſhall happen to be: And if it be within any City or Town corporate, then by the inhabitants of every ſuch City, or Town corporate, wherein ſuch Bridges ſhall happen to be. And if part of any ſuch Bridges ſo decayed happen to be in one Shire, Riding, City, or Town corporate, and the other part thereof in another Shire, Riding, City, or Town corporate; or if part be within the limits of any City, or Town corporate, and part without; or part within one Riding, and part within another; that then in every ſuch caſe the inhabitants of the Shires, Ridings, Cities or Towns corporate ſhall be charged, and chargeable to amend, make, and repair ſuch part and portion of ſuch Bridges ſo decayed, as ſhall lye and be within the limits of the Shire, Riding, City, or Town corporate, wherein they be inhabited at the time of the ſame decaies.

And be it further enacted, that in every ſuch caſe, where it cannot be known and proved what perſons, lands, tenements, and bodies politick owen to make and repair ſuch Bridges, that for ſpeedy reformation and amending of ſuch Bridges, the Juſtices of Peace within the Shires or Ridings, wherein ſuch decayed Bridges been out of Cities and Towns corporate; and if it be within Cities or Towns corporate,

then the Juſtices of Peace within every ſuch City, or Town corporate, or four of the ſaid Juſtices at the leaſt, whereof one to be of the *Quorum*, ſhall have power and authority within the limits of their ſeveral commiſſions, and authorities, to call before them the Conſtables of every Town and Pariſh, being within the Shire, Riding, City, or Town corporate, as well within liberty, as without, wherein ſuch Bridges, or any parcel thereof ſhall happen to be, or elſe two of the moſt honeſt Inhabitants within every ſuch Town or Pariſh in the ſaid Shire, Riding, City, or Town corporate, by the diſcretion of the ſaid Juſtices of Peace, or four of them at the leaſt, whereof one to be of the *Quorum*: And at, and upon the appearances of ſuch Conſtables, or Inhabitants, the ſaid Juſtices of Peace, or four of them, whereof one to be of the *Quorum*, with the aſſent of the ſaid Conſtables, or Inhabitants, ſhall have power and authority to tax, and ſet every Inhabitant in any ſuch City, Town or Pariſh, within the limits of their commiſſions and authorities, to ſuch reaſonable aid, and ſum of money, as they ſhall think by their diſcretions convenient and ſufficient for the repairing, re-edifying, and amendment of ſuch bridges, and after ſuch taxation made, the ſaid Juſtices ſhall cauſe the names and ſums of every particular perſon ſo by them taxed, to be written in a roll indented. And ſhall alſo have power and authority to make two Collectors of every Hundred, for collection of all ſuch ſums of money, by them ſet and taxed, which Collectors receiving the one part of the ſaid roll indented under the ſeals of the ſaid Juſtices, ſhall have power and authority to collect and receive all the particular ſums of money therein contained, and to diſtrain every ſuch Inhabitant, as ſhall be taxed, and refuſe payment thereof, in his lands, goods, and chattels, and to ſell ſuch diſtreſs, and of the ſale thereof retain and perceive all the money taxed, and the reſidue (if the diſtreſs be better) to deliver to the owner thereof. And that the ſame Juſtices, or four of them, within the limits of their commiſſions and authorities, ſhall alſo have power and authority to name and appoint two Surveyors, which ſhall ſee every ſuch decayed bridge repaired, and amended from time to time, as often as need ſhall require, to whoſe hands the ſaid Collectors ſhall pay the ſaid ſums of money taxed, and by them received: And that the Collectors and Surveyors, and every of them, and their executors and adminiſtrators, and the executors and adminiſtrators of them, and every of them, from time to time ſhall make a true declaration and accompt to the Juſtices of Peace of the Shire, Riding, City, or Town corporate, wherein they ſhall be appointed Collectors or Surveyors, or to four of the ſame Juſtices, whereof one to be of the *Quorum*, of the receipts, payments, and expences of the ſaid ſums of money: And if they, or any of them refuſe that to do, that then the ſame Juſtices of Peace, or four of them, from time to time by their diſcretions, ſhall have power and authority to make proceſs againſt the ſaid Collectors or Surveyors, and every of them, their executors and adminiſtrators, and the executors and adminiſtrators of every of them, by attachments under their ſeals returnable at the general Seſſions of Peace: And if they appear, then to compel them to accompt, as is aforeſaid, or elſe if they, or any

any of them, refuſe that to do, then to commit ſuch of them, as ſhall refuſe, to ward, there to remain without bail or mainpriſe, till the ſaid declaration and accompt be truly made.

And where any Bridge or Bridges lien in one Shire or Riding, and ſuch perſons inhabitants, bodies politick, lands or tenements, which owen to be charged to the making and amending of ſuch Bridges, lien and abiding in another Shire or riding, or where ſuch Bridges been within any City, or Town corporate, and the perſons inhabitants, bodies politick, lands or tenements, that owen to make or repair any ſuch Bridges, lien and been out of the ſaid Cities and Towns corporate: Be it enacted, that in every ſuch caſe, the Juſtices of Peace of the Shire, City, or Town corporate, within the which ſuch decayed Bridges, or any part thereof ſhall happen to be, ſhall have power to enquire, hear, and determine all ſuch annoyances, being within the limits of their commiſſions or authorities. And if the annoyance be preſented, then to make proceſs into every Shire within this Realm againſt ſuch as owen to make, or amend any ſuch Bridges ſo preſented before them, to be decayed, to the annoyance and let of the paſſage of the Kings ſubjects, and to do further in every behalf in every ſuch caſe, as they mought do by authority of this Act, in caſe that the perſons or bodies politick, lands or tenements, which owen to be charged to the amending or making of ſuch Bridges, or any part thereof, were in the ſame Shire, Riding, City, or Town corporate, where ſuch annoyance ſhall happen to be. And that all Sheriffs and Bailiffs of Liberties and Franchiſes, ſhall truly ſerve and execute ſuch proceſs, as ſhall come to their hands from the ſaid Juſtices of Peace, afore whom any preſentment ſhall be had for any ſuch annoyance, according to the tenor and effect of the ſaid proceſs to them directed, without favour, affection or corruption, upon pain to make ſuch fine as ſhall be ſet upon them; or any of them, by the diſcretion of the ſaid Juſtices.

Provided alway, that this Act, nor any thing therein contained, be not prejudicial to the liberties of the five Ports, or members of the ſame, and for reformation of annoyance of Bridges within the ſaid ports and members.

Be it enacted by authority of this preſent Parliament, that the Warden, Mayors, and Bailiffs elected, and Jurats of the ſame Ports, and every of them, have power and authority to enquire hear and determine all manner of common annoyances of Bridges within the ſame Ports and members, and to make ſuch proceſs, pains, taxations, and all other things within the ſame Ports and members, as the Juſtices of Peace may do in other Shires, or places out of the ſame ports, by vertue and authority of this preſent Act in every behalf.

And be it further enacted by the authority aforeſaid, that the Juſtices of Peace, or four of them, ſhall have full power and authority to allow ſuch reaſonable coſts and charges to the ſaid Surveyors and Collectors, as by their diſcretions ſhall be thought convenient.

For as much that albeit Bridges decayed were amended and repaired, according to the tenor of this Act, yet nevertheleſs, if ſpeedy remedy for the amendment of the ways next adjoyning to every of the

ends of ſuch Bridges, ſhould not be had and made, the Kings ſubjects ſhould take little or none avail or commodity in any parts of this Realm by the making of the Bridges: In conſideration whereof, be it enacted by the King our Soveraign Lord, and the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the authority of the ſame, That ſuch part and portion of the high-ways in every part of this Realm, as well within Franchiſe, as without, as lye next adjoyning to any ends of any Bridges within this Realm, diſtant from any of the ſaid ends, by the ſpace of three hundred foot, be made, repaired, and amended as often as need ſhall require. And that the Juſtices of the Peace in every Shire of this Realm, Franchiſe, City, or Borough, or four of them at the leaſt, whereof one to be of the *Quorum*, within the limits of their commiſſions and authorities, ſhall have power and authority to enquire, hear, and determine in the Kings general Seſſions of Peace, all manner of annoyances of and in ſuch high-ways, ſo being and lying next adjoyning to any ends of Bridges within this Realm, diſtant from any of the ends of ſuch Bridges, three hundred foot, and to do in every thing and things concerning the making, repairing, and amending of ſuch high-ways, and every of them, in as large and ample manner as they might and may do, to and for the making, repairing, and amending of Bridges, by vertue and authority of this preſent Act.

Before we enter into the expoſition of this Act, we will take into conſideration, for a neceſſary introduction thereunto, what the Common Law was concerning the reparation of decayed * bridges in three points: 1. Who were to repair the ſame: 2. What was the remedy for the reparation thereof: 3. Before what Judges.

* Pons ſignificat omne quod ſuper aquas tranſimus, unde ponticulus. *Nil Tadcaſter habet muſis aut carmine dignum, Præter magnifice ſtructum ſine flumine pontem.* Vidit & ſcripſit poeta in æſtate.

As to the firſt, ſome perſons Spiritual or Temporal, incorporate, or not incorporate, are bound to repair bridges ratione tenuræ ſuæ terrarum, ſive tenementorum, &c. ſome ratione præſcriptionis tantum, ratione tenuræ, by reaſon that they and thoſe, whoſe eſtate they have in the lands or tenements, are bound in reſpect thereof to repair the ſame: *a* but they which have lands on the one ſide of the bridge, or on the other, or on both, are not bound of common right to repair the ſame.

44 E. 3. 31. 21 E. 4 fol. 46. 5 H. 7. 3.

a 8 H. 7. 5. b.

b If a man, which holdeth an hundred acres of land, ought to repair a bridge by the tenure of them, if he for example alien twenty acres of them to one, and ten to another, and after one of them is only upon a preſentment found thereof, diſtrained to repair this bridge, he ſhall have a ſpecial Writ de onerando pro rata portione, & ſic de ſimilibus.

b Regiſt. 268. a. F.N.B. 235. b.

Ratione præſcriptionis tantum, but herein there is a diverſity betwéen bodies politick or corporate, ſpiritual or temporal, and natural perſons: For *c* bodies politick or corporate, ſpiritual or temporal, may be bound by uſage and preſcription only, becauſe they are local, and have a ſucceſſion perpetual: but a natural perſon cannot be bound by act of his Anceſter, without a lien, or binding, and aſſets.

c 21 E. 4. 38. b. 46. 43 Aſſ. 37. 49 E. 3. 5. b. the Prior of Markiats caſe. 10 E. 4. 10. a. & b. in Scire fac' 19 H. 6. 75. a. b.

d Nota, if a Biſhop or Prior, &c. hath at once or twice of alms repaired a bridge, it bindeth not (and yet is evidence againſt him, until he prove the contrary) but if time out of mind, they and their predeceſſors have repaired it of alms, this ſhall bind them to it. * De pontibus & calcetis fractis in omnibus tranſitionibus quis ea reparare, & ſuſtentare debet.

d 10 E. 3. 28, 29. 27 Aſſ. pl. 8. 44 E. 3. 31.

* Cap. Ineris. M. 13 E. 3. f. 73, 74. in libro meo, the Abbot of S. Auſtins caſe.

e But

e But admit none at all were bounden to the reparation of the bridge, how then? And by whom should it be repaired by the Common Law? The answer is, That the whole County, that is, the Inhabitants of the County or Shire, wherein the bridge is, shall repair the same; for of common right the whole County must repair it, because it is for the common good, and ease of the whole County.

If a bridge be within a Franchise, those of the Franchise are to repair it. If the bridge be part within a Franchise, and part within the Gildable, so much as is within the Franchise shall be repaired by those of the Franchise; and so much as is within the Gildable, by those of the Gildable. *f* And so it is, if it be in two Counties, mutatis mutandis.

If a man make a bridge for the common good of all the subjects, he is not bound to repair it; for no particular man is bound to reparation of bridges by the Common Law, but ratione tenuræ, or præscriptionis.

As to the second the remedy was, if it were a private bridge: as to a Mill which A. was bound to maintain, over which B. had a passage, &c. if the bridge were in decay, B. might have his Writ de ponte reparando. But if the bridge were for the publick, &c. the remedy was by presentment at the suit of the King, for avoiding of multiplicity of suits.

As to the third, this presentment might be at the Common Law before the Justices of the *g* Kings Bench, or before *h* Justices in Eir, or *i* Commissioners of Oier and Terminer, or before the Sheriff by commission, or *k* Writ in nature of a commission. *l* But as to the Sheriff, his power to take Inditements, by force of any such Writ or commission in the nature of a commission, is taken away by the Statute of 28 E.3. c.9. But it may be presented in the *m* Turn or Leet.

See the second part of the Institutes, Mag. Chart cap. 15. Nulla villa nec liber homo distringatur facere pontes, &c. nisi qui ab antiquo & de jure facere consueverunt tempore Regis Henrici avi nostri.

For Pontage, Vid. the second part of the Institutes, Westm' 1. c.31. W.2. c.25. 3 E.3. Ass.445. 35 H.6.29. b. per Forteſcue, Pl. Com.334. 407. Vide 13 H. 4.17. F. N. B. 178. f. Flet. lib. 4. c.1. Vid. 1 H.8. c.9. 39 El. c.24.

Pontage is a toll or contribution for repair of bridges. See a reasonable taxation therefore 39 El. c.24. See also of Pontage, l.8.f.46.b. John Webs case.

It appeareth in our Books, that before bridges were made how often defaults were saved, and delays had per cretance del ewe, by encrease of waters.

None can be compelled to make new bridges, where never any were before, but by Act of Parliament.

n The Law before the Conquest was, Oppida pontesque posthac instaurantur. And again, Qui pensionem ad oppida pontesve reficiendos denegabit, militiamve subterfugerit, dabit is Regi (si Anglus fuerit) 26 solidos, &c.

Now having considered what the Common Law was concerning the reparation of bridges, we will perule the parts of this Act of 22 H.8. which may be divided into eight branches.

1. That *o* Justices of Peace, or any four or more of them, whereof one to be of the Quorum, at the Kings general Session of Peace, shall have power and authority (which consisteth in these four things) first to enquire, hear and determine.

2. Whereof? Of all manner nusances of bridges broken in the high-ways, to the damages of the Kings liege people. This extendeth only to common bridges in the Kings high-ways, where all the Kings liege people have, or may have passage, and not to private bridges to Mills, or the like. And therefore the Inditement upon this Statute saith, Quod *p* pons publicus & communis situs in alta Regia via super flumen, seu cursum aquæ, &c.

3. In what place? In every Shire of this Realm, Franchise, City, or Borough.

But this is to be understood, reddendo singula singulis, that is to say, 1. In every

e Pasch. 10 E.3.28, 29. in the Mast. of Leonards case. Vid. Regist. 192. 2 E.3 coron. 147. 14 E.3. Stat.1.c.4. where the whole County is amerced. 14 E.3. tit. Bar 276 the Bishop of Chesters case.

f Regist. 154. a. F.N.B. 127.e.

8 H.7.5.

Regist. 153, 154. F.N.B. 127. d.

g 21 E.3.54. 43 Ass. 37.

h 3 E.3. Ass.445.

i 27 Ass. p. 8. 33 Ass. p. 10. 38 Ass. p. 15. 22 E. 3. 1.

k 14 E.3. bar 276.

l Fitz. N.B. fol. 276. e.

m 29 E.3.21.

5 E.3.2. 7 H. 4.3. &c.

39 El. c.24. 43 El. c.16. 9 H. 5. c.12. H.6. c.28. 3 Jac. c.24.

n Inter leges Canuti Regis, cap.10 & 62.

The first branch.

o Justices of Peace have power to enquire of Nusances, &c. in high-ways, by the Statutes of 2 Mar.c.8. 5 Eliz. c.13. 18 El. cap.9.

p Pons a pendendo, quia tanquam in aere pendet.

every Shire or County where there be four or more Justices of Peace, whereof one or more is of the Quorum. 2. Franchise, where there be four or more Justices of the Peace, and one or more of the Quorum. 3. City, where be four or more Justices of the Peace, and one or more of the Quorum. 4. Or Borough, where there be four or more Justices of the Peace, and one or more of the Quorum, and where they kæp general Sessions of the Peace for such Franchises, Cities, or Boroughs; but for want thereof, the Justices of Peace of the County shall enquire. But if the Franchise, City, or Borough be a County of it self, and have not four or more Justices of Peace, whereof one or more is of the Quorum, no other Justices of Peace of any other Shire or County, have any power by this Act to enquire of, hear and determine the decay of bridges there, but such decay must be reformed by such remedies (before specified) as the Common Law did give; therefore it was necessary to be known what the Common Law was before the making of this Statute.

* This whole branch divided into these parts, extendeth only, where such as owen to be charged for making or amending of such bridges are known and presented.
a If the whole bridge be decayed, &c. it must be made again, and re-edified.
* The 2 and 3 branches.

4. Such process they are to make upon every presentment afore them, for reformation of the same, * against such as owen to be charged for the *a* making or amending of such bridges, as the Justices of his Majesties Bench use commonly to do, or it shall sæm by their discretions to be necessary and convenient for the spædy amendment of such bridges.

Having provided remedy against such as owen to be charged for the making or amending of such bridges, &c. * The second and third branches do provide more spædy remedy, where it cannot be known or proved what Hundred, Riding, Wapentake, City, Borough, Town or Parish, or what person certain, or body politick ought of right to make such bridges decayed, &c. how the same shall be repaired. And these branches do consist on thræ parts.

† This was added for Yorkshire, wherein there are Ridings.

1. That in every such case the said bridges (if they be without City or Town corporate) shall be made by the Inhabitants of the Shire or † Riding, within which the said bridges decayed shall happen to be.

2. And if they be within a City or Town corporate, then by the Inhabitants of every such City or Town corporate.

3. And if part of any bridges so decayed be within Shire, Riding, City, or Town corporate, or if part be within the limits of any City, or Town corporate, and part without, or part within one Riding, and part within another, that in every such case the Inhabitants of the Shires, Ridings, Cities, or Towns corporate shall be charged and chargeable to amend, make, and repair such part and portion of such bridges so decayed, as shall lye and be within the limits of the Shire, Riding, City, or Town corporate, wherein they be inhabited at the time of such decays. By this part the Law is declared by whom such decayed bridges in any Shire, Riding, City, or Town corporate ought to be repaired: A necessary claule to be added, for that such decayed bridges may not be within the remedy of the fourth branch; yet the Law (who are chargeable) being declared hereby, the remedy shall be by the course of the Common Law, which before hath bæn shewed.

See the Statute of 23 H.8. cap. 2. concerning making of Gaols.
* Vid. l.5. f.66,67 Jeffreyes case, ib. fol.64. in Clarks case. Vid. 3 Jac. cap. 23.

¶ That the Inhabitants of the said Shires, &c.] The persons to be charged by this Act are comprehended under this only word [Inhabitants;] which word is nædful to be explained, being the largest word of this kind.

First, Although a man be dwelling in an house in a forraign County, Riding, City, or Town corporate, yet if he hath lands or tenements in his own possession and manurance in the County, Riding, City, or Town corporate, where the decayed bridge is, he is an inhabitant, both where his person dwelleth, and where he hath lands or Tenements in his own possession within this Statute. Nota, Habitatio dicitur ab habendo, quia qui propriis manibus, & sumptibus possidet, & habet, ibi habitare dicitur.

2. If a man dwelleth in a forraign Shire, Riding, City, or Town corporate, and kæpeth a house and servants in another Shire, Riding, City, or Town corporate, he is an Inhabitant in each Shire, Riding, City, or Town corporate within this Statute.

3. Ex

3. Ex vi termini. Every perſon that dwelleth in any Shire, Riding, City, or Town corporate, though he hath but a perſonal reſidence, yet is he ſaid in Law to be an Inhabitant, or a dweller there, as ſervants, &c. But this Statute extendeth not to them, but to ſuch as be Houſholders. And this is gathered by the words of the fourth branch of this Act, that giveth the diſtreſs, viz. and to diſtrain every ſuch Inhabitant, &c. in his lands, goods, and chattels. And beſides, it were in a manner infinite and impoſſible, to tax by the next branch of this Act every Inhabitant, being no Houſholder.

4. Every corporation and body politick reſiding in any County, Riding, City, or Town corporate, or having lands or tenements in any Shire, Riding, City, or Town corporate, quæ propriis manibus & ſumptibus poſſident & habent, are ſaid to be Inhabitants there within the purview of this Statute.

5. An infant that hath houſe or lands by diſcent or purchaſe, is liable to this publick charge, and ſo is the husband of a feme Covert.

Now the Law being declared who were chargeable to repair decayed bridges, where no perſon, &c. were bound thereunto. The fourth branch, for a more ſpeedy reformation and remedy, provideth and enacteth theſe ſix things: The 4. branch.

1. That in every caſe, where it cannot be known and proved what perſons, lands, tenements, and bodies politick owen to make and repair ſuch bridges, for the ſpeedy reformation and amendment of ſuch bridges, the Juſtices of Peace within the Shires or Ridings, where ſuch bridges been (being out of Cities and Towns corporate) and if it be within Cities or Towns corporate, then the Juſtices of Peace in every ſuch City or Town corporate, or four of the ſaid * Juſtices at the leaſt, whereof one to be of the Quorum, ſhall have power and authority within the limits of their ſeveral commiſſions and *a* authorities, to *b* call before them the Conſtables of every Town or Pariſh, being within the Shire, Riding, City, or Town corporate, as well within liberty as without, where ſuch bridges, or any parcel therof ſhall happen to be, or elſe two of the next honeſt Inhabitants within every Town or Pariſh in the ſaid Shire, Riding, City, or Town corporate, by the diſcretion of the ſaid Juſtices, or four of them at the leaſt, whereof one to be of the Quorum. But it is good policy, that more then four Juſtices, &c. do take upon them the authority committed to them by any branch of this Act: for if there be but four, if any of them dieth, or be out of the commiſſion, the ſurviving three have no authority to proceed.

* Theſe words refer as well to the Juſtices of the Shires or Ridings, as of the Cities or Towns corporate.

a Juſtices of Peace in Shires and Ridings are by commiſſion, in Cities and Towns corporate for the moſt part by Charter; therefore this word [*Authorities*] is uſed.

b The firſt thing the Juſtices are to do when they are aſſembled, is to call, &c. If they be preſent (as commonly they are) at the general Seſſions of Peace, or elſe to make warrants to call, &c. before them at a certain day and place, and in thoſe warrants to ſignifie that it is for a taxation of the Inhabitants of the whole County, for reparation of ſuch a bridge.

¶ Where it cannot be known or proved, &c.] By the contexte and order of this Statute, firſt, for inquiry at the general Seſſions, who ought to repair ſuch decayed bridges: And ſecondly of this branch, where it cannot be known or proved (that is, at the general Seſſions who owen to repair it.) It hath been gravely *c* adviſed, that for the better warrant of theſe four Juſtices of Peace, inquiry ſhould be made by the great Inqueſt for the body of the County at the general Quarter Seſſions, who ought to repair it, and if that cannot appear upon any proof made, then a preſentment to be made, that the bridge is in decay. And to conclude, Et ulterius Juratores prædicti præſentant, quod prorſus neſcitur quæ perſonæ, quæ terræ, ſive tenementa, aut corpora politica eundem pontem, aut aliquam inde parcellam ex jure, aut antiqua conſuetudine reparare debent, aut conſueverunt. And by this means, the four or more Juſtices of Peace, being Judges of record, ſhall be informed of record, that it cannot be known or proved, &c. A ſafe way for theſe four or more of the Juſtices; for to charge the ſubject without juſt cauſe, and not warranted by this Act, is a great miſpriſion.

c Hereof we have ſeen a good preſident; and the like for the preſentment you may read in Lambards Juſtice of Peace.

2. At

2. At the appearance of ſuch Conſtables or Inhabitants, the ſaid Juſtices of Peace or four of them, whereof one to be of the Quorum, with the aſſent of the ſaid Conſtables or Inhabitants, ſhall have power and authority to tax, and ſet every Inhabitant in ſuch City, Town or Pariſh, &c. to ſuch reaſonable aid and ſum of money, as they ſhall think by their diſcretions convenient and ſufficient, for the repairing, *d* re-edifying, and amendment of ſuch bridges.

d Nota, for re-edifying, or new building.

It is not here mentioned by any expreſs words, that theſe four or more Juſtices muſt execute their authority of this Act in the general Seſſions of the Peace, as it was in the firſt branch. See for this in the laſt branch.

Firſt, By whom, and in what manner taxation ſhall be made.

¶ Juſtices of Peace, or four of them, &c.] That is, in ſuch Cities, or Towns corporate, where four Juſtices, &c. be: for if there be not four ſuch Juſtices, they are not within the remedy of this branch, but (as hath been ſaid) are left to the remedy at the Common Law.

¶ With the aſſent of the ſaid Conſtables or Inhabitants.] So as neither the Juſtices, without ſuch aſſent, nor the Conſtables or Inhabitants, without the Juſtices, can make any taxation by this Act.

¶ To tax and ſet every Inhabitant.] Unumquemque Inhabitantium, i. ſingulos inhabitantes, ſo as every one may be taxed by himſelf, and each one bear his own burthen. And the taxation cannot be ſet upon the Hundred, Pariſh, Town, &c. for then one or a few might be diſtrained for the whole. What Inhabitant is here meant, we have touched before.

See the ſecond part of the Inſtitutes, Mag. Chart. cap. 15.

By theſe words [every Inhabitant] all priviledges of exemptions or diſcharges whatſoever from contribution, for the reparation of decayed bridges (if any were) are taken away, although the exemption were by Act of Parliament.

How the money ſo taxed ſhall be collected.

¶ And after ſuch taxation made, the ſaid Juſtices ſhall cauſe the names and ſums of every particular perſon ſo by them taxed, to be written in a roll indented.

Note the names and ſums of every particular perſon, ſo as (as hath been ſaid) the taxation muſt be ſeveral and particular.

¶ In a roll indented.] This is intended of every ſeveral Hundred, and they muſt be inrolled in parchment, and ſealed by the ſaid Juſtices, and this to be done preſently after the taxation made.

3. ¶ And ſhall alſo have power and authority to make two Collectors of every Hundred, for collection of all ſuch ſums of money, by them ſet and taxed, which Collectors (*viz.* of every Hundred) receiving the one part of the ſaid roll indented, under the ſeals of the ſaid Juſtices, ſhall have power and authority, to collect and receive all the particular ſums of money* therein contained.

* By this it appeareth, that the ſeveral ingroſſements muſt be of the ſeveral ſums, &c. in every ſeveral Hundred, becauſe the Collectors be ſeveral of every ſeveral Hundred, and theſe rolls ingroſſed are their ſeveral warrants.

4. ¶ And to diſtrain every ſuch Inhabitant, as ſhall be taxed, and refuſe payment thereof, in his lands, goods, and chattels.] Here-

by

by four things are to be obſerved: Firſt, (as hath been ſaid) That the taxation muſt be ſeveral. 2. That the remedy for levying, is by diſtreſs in his lands, goods, and chattels in any place within that Hundred, and to ſell ſuch diſtreſs. And this the Collectors of that Hundred may do by force of this Act. 3. That if upon demand the ſum be not paid, albeit the Inhabitant do not expreſly refuſe, it is a refuſal in Law. 4. Albeit two Collectors be appointed, yet one of them, by the command and conſent of the other, may diſtrain and ſell; for this is the diſtreſs and ſale of them both.

¶ And if the diſtreſs be better, to deliver to the owner thereof.] That is, the ſurpluſage upon the ſale, above the ſum ſo diſtrained for, muſt be delivered to the owner Inhabitant. 5.

The reſidue of this branch, concerning the appointment of two Surveyors, and the account of them, and of the two Collectors, and other things depending on the ſame, are evident, and need no explanation. 6.

The 7. branch of this Act giveth power to the Juſtices to allow reaſonable coſts and charges to the Surveyors and Collectors.

* The effect of this branch is, that the ſaid Juſtices in every Shire, Riding, City, or Town corporate, ſhall make proceſs reſpectively into every Shire, and other place out of the Shire, Riding, City, or Town corporate. And that the Sheriff ſhall ſerve the proceſs, upon pain of ſuch fine as ſhall be aſſeſſed by ſuch Juſtices.

* The 5. branch.

The ſixth branch excepteth the five Ports, and provideth remedy, and giveth juriſdiction to the Warden, Mayors, and Bailiffs elect, and Jurats of the ſame Ports, to enquire, hear and determine all manner of annoyances of bridges. The 6. branch.

The ſeventh branch giveth power to the ſaid Juſtices of Peace, or four, or more of them, to allow reaſonable coſts and charges to the ſaid Surveyors and Collectors. The 7. branch.

The laſt branch containeth a Law for amendment of high-ways at the end of the bridges, and power given to four or more Juſtices of Peace, whereof one to be of the Quorum in every Shire, Franchiſe, or Borough, to enquire, hear, and determine in the * 'Kings general Seſſions of the Peace, all manner of 'annoyances of and in ſuch high-ways ſo being and lying, next adjoyning to 'any ends of bridges within this Realm, diſtant from any ends of ſuch bridges 'three hundred foot, and to do in every thing and things concerning the making, 'repairing, and amending of ſuch high-ways, and every of them, in as large 'and ample manner, as they might and may do to and for the making, repair-'ing, and amending of bridges, by vertue and authority of this preſent Act. The 8. branch.

* Nota.

¶ In the Kings general Seſſions of the Peace, &c.] Hereupon it is collected, that ſeeing the firſt branch referreth the proceeding concerning the decay of bridges to the general Seſſions of the Peace, and the ſecond branch concerning the calling of the Conſtables, &c. and this laſt branch referreth the proceeding for the amendment of high-ways at the end of bridges, to the general Seſſions of the Peace: It is the ſafeſt way, and neareſt to the meaning of the makers of this Law (all the parts thereof being conſidered) that the Juſtices of Peace, where no certain perſon, &c. is known, that ought to repair any decayed bridge, (and the Inhabitants of the whole County are generally to be charged) do proceed as well for the reparation of the bridges, as of the high-ways at the end of thoſe bridges at the general Seſſions of the Peace, one of them as it were depending upon the other.

The freehold as well of bridges, as of the high-ways, is in him that hath the freehold of the ſoil, but the freepaſſage is for all the Kings liege people.

See the Statutes of 13 El. ca. 18. 18 El. cap. 18 & 17. 23 El. cap. 11. 39 El. cap. 24. &c. concerning bridges.

See the *a* Statute of 23 Hen. 8. cap. 2. concerning the new erecting of Gaols, which cannot be done without Act of Parliament. That Act had little effect; for that the Juſtices of Peace did little or nothing within the time to them preſcribed

a 23 H. 8. c. 2. Parl. 51 E. 3. n. 68. it appeareth that Gaols were to be repaired at the Kings charge.

bed by that Act; yet read it, for it hath divers good provisions in it, and divers of them much like to our Act.

43 Eliz. cap. 4.

A right profitable Law was made, anno 43 Eliz. for Commissioners, to enquire for mis-imployment of lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money given, limited, appointed, or assigned to or for repair of bridges (inter alia) and by their orders to reform the same, which in some cases is a ready and speedy way, and have wrought good effect. And therefore we will in the next place enumerate and explain the parts and branches of that Act, for the better incouragement and instruction of the Commissioners in that behalf.

A speedy remedy in many cases.

An

An Expoſition upon the Statute of 43 Eliz. 8. Cap. 4. *concerning Commiſſioners authorized to enquire of miſ-imployment of lands or goods given to Hoſpitals, by their orders ſhall be reformed.*

WHereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtocks of money, have been heretofore given, limited, appointed and aſſigned, as well by the Queens moſt excellent Majeſty, and her moſt noble Progenitors, as by ſundry other well diſpoſed perſons; ſome for relief of aged, impotent, and poor people; ſome for maintenance of ſick and maimed Souldiers and Mariners, Schools of learning, free Schools, and Scholars of Univerſities; ſome for repair of Bridges, Ports, Havens, Cawſies, Churches, Sea-banks, and High-ways; ſome for education and preferment of Orphans, ſome for or towards relief, ſtock or maintenance for houſes of Correction; ſome for marriages of poor maids, ſome for ſupportation, aid, and help of young tradeſmen, handy-crafts-men, and perſons decayed, and others for relief or redemption of priſoners or captives, and for aid or eaſe of any poor inhabitants, concerning payment of fifteens, ſetting out of Souldiers, and other taxes: which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtocks of money, nevertheleſs have not been imployed according to the charitable intent of the givers and founders thereof, by reaſon of frauds, breaches of truſt, and negligence in thoſe that ſhould pay, deliver, and imploy the ſame. For redreſs and remedy whereof, be it enacted by authority of this preſent Parliament, That it ſhall and may be lawful to and for the Lord Chancellor, or Keeper of the great Seal of *England* for the time being, and for the Chancellor of the Duchy of *Lancaſter* for the time being, for lands within the County Palatine of *Lancaſter*, from time to time, to award Commiſſions under the great Seal of *England*, or the Seal of the County Palatine, as the caſe ſhall require into all or any part or parts of this Realm, reſpectively, according to their ſeveral Juriſdictions, as aforeſaid, to the Biſhop of every ſeveral Dioceſs and his Chancellor (in caſe there ſhall be any Biſhop of that Dioceſs, at the time of awarding of the ſame Commiſſions,) and to other perſons of good and ſound behaviour, authorizing them thereby, or any four or more of them, to enquire as well by the oaths of 12 lawful men or more of the County, as by all other good and lawful ways and means of all and ſingular ſuch gifts, limitations, aſſignments, and appointments aforeſaid, and of the abuſes, breaches of truſts, negligences, miſ-imployments, not imploying, concealing, defrauding, miſ-converting, or miſ-government of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, or ſtocks of money, heretofore given, limited, appointed, or aſſigned, or which hereafter ſhall be given, limited, appointed, or aſſigned, to or for any the charitable and godly uſes before re-

hearſed. And after the ſaid Commiſſioners, or any four or more of them (upon calling the parties intereſſed in any ſuch lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtocks of money) ſhall make enquiry by the oaths of twelve men or more of the ſaid County (whereunto the ſaid parties intereſſed ſhall and may have, and take their lawful challenge and challenges) and upon ſuch enquiry, hearing, and examining thereof, ſet down ſuch orders, judgments, and decrees, as the ſaid lands, tenements, rents, annuities, profits, goods, chattels, money, and ſtocks of money, may be duly and faithfully imployed, to and for ſuch of the charitable uſes and intents before rehearſed, reſpectively, for which they were given, limited, aſſigned, or appointed, by the donors and founders thereof. Which orders, judgments, and decrees, not being contrary or repugnant to the orders, Statutes, or decrees of the donors or founders, ſhall by the authority of this preſent Parliament ſtand firm and good, according to the tenor and purport thereof, and ſhall be executed accordingly, until the ſame ſhall be undone or altered by the Lord Chancellor of *England*, or Lord Keeper of the great Seal of *England*, or the Chancellor of the County Palatine of *Lancaſter*, reſpectively within their ſeveral juriſdictions, upon complaint by any party grieved to be made to them.

Provided always, that neither this Act, nor any thing therein contained, ſhall in any wiſe extend to any lands, tenements, rents, annuities, profits, goods, chattels, money, or ſtocks of money given, limited, appointed, or aſſigned, or which ſhall be given, limited, appointed or aſſigned to any Colledge, Hall, or Houſe of learning within the Univerſities of *Oxford* or *Cambridge*, or to the Colledges of *Weſtminſter*, *Eaton*, or *Wincheſter*, or any of them, or to any Cathedral or Collegiat Church within this Realm.

And provided alſo, that neither this Act, nor any thing therein, ſhall extend to any City, or Town corporate, or to any the lands or tenements given to the uſes aforeſaid, within any ſuch City, or Town corporate, where there is a ſpecial Governor or Governors appointed to govern or direct ſuch lands, tenements, or things diſpoſed to any the uſes aforeſaid, neither to any Colledge, Hoſpital, or free School, which have ſpecial Viſitors, or Governors, or Overſeers appointed them by their Founders.

Provided alſo, and be it enacted by the authority aforeſaid, that neither this Act, nor any thing therein contained, ſhall be any way prejudicial or hurtful to the juriſdiction of the Ordinary, or power of the Ordinary, but that he may lawfully in every cauſe execute and perform the ſame, as though this Act had never been had or made.

Provided alſo, and be it enacted, That no perſon or perſons that hath or ſhall have any of the ſaid lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, or ſtocks of money in his hands or poſſeſſion, or doth or ſhall pretend title thereunto, ſhall be named a Commiſſioner or a Juror for any the cauſes aforeſaid, or being named, ſhall execute or ſerve in the ſame.

And provided alſo, that no perſon or perſons, which hath purchaſed or obtained, or ſhall purchaſe or obtain upon valuable conſideration

of

of money or land, any eſtate or intereſt of, in, to, or out of any lands, tenements, rents, annuities, hereditaments, goods, or chattels that have been, or ſhall be given, limited, or appointed to any the charitable uſes above mentioned, without fraud or covin, having no notice of the ſame charitable uſes, ſhall not be impeached by decrees or orders of Commiſſioners above mentioned, for or concerning the ſame his eſtate or intereſt. And yet nevertheleſs, Be it enacted that the ſaid Commiſſioners, or any four or more of them, ſhall and may make decrees and orders for recompence to be made by any perſon or perſons, who being put in truſt, or having notice of the charitable uſes above mentioned, hath or ſhall break the ſame truſt, or defraud the ſame uſes by any conveyance, gift, grant, leaſe, demiſe, releaſe, or converſion whatſoever, and againſt the heirs, executors, and adminiſtrators of him, them, or any of them, having Aſſets in Law or equity, ſo far as the ſame Aſſets will extend.

Provided always, that this Act ſhall not extend to give power or authority to any Commiſſioners before mentioned, to make any orders, judgments or decrees for or concerning any mannors, lands, tenements, or other hereditaments, aſſured, conveyed, granted, or come unto the Queens Majeſty, to the late K. *Henry* the eighth, K. *Edward* the ſixth, or Queen *Mary*, by Act of Parliament, ſurrender, exchange, relinquiſhment, eſcheat, attainder, conveyance, or otherwiſe. And yet nevertheleſs, Be it enacted, that if any ſuch mannors, lands, tenements, or hereditaments, or any of them, or any eſtate, rent, or profit thereof, or out of the ſame, or any part thereof have, or hath been given, granted, limited, appointed, or aſſigned to or for any the charitable uſes before expreſſed at any time ſithence the beginning of her Majeſties reign, That then the ſaid Commiſſioners, or any four or more of them, ſhall and may as concerning the ſame lands, tenements, hereditaments, eſtate, rent, or profit ſo given, limited, appointed or aſſigned, proceed to enquire, and to make orders, judgments and decrees according to the purport and meaning of this Act, as before is mentioned: the ſaid laſt mentioned Proviſo notwithſtanding.

And be it further enacted, That all orders, judgments and decrees of the ſaid Commiſſioners, or of any four or more of them, ſhall be certified under the ſeals of the ſaid Commiſſioners, or any four or more of them, either into the Court of the Chancery of *England*, or into the Court of the Chancery within the County Palatine of *Lancaſter*, as the caſe ſhall require reſpectively, according to the ſeveral juriſdictions, within ſuch convenient time as ſhall be limited in the ſaid Commiſſions.

And that the ſaid Lord Chancellor, or Lord Keeper, and the ſaid Chancellor of the Dutchy, ſhall and may, within their ſaid ſeveral Juriſdictions, take ſuch order for the due execution of all or any of the ſaid Judgments, Decrees, and Orders, as to either of them ſhall ſeem fit and convenient.

And that if after any ſuch certificate or certificates made, any perſon or perſons ſhall find themſelves grieved with any of the ſaid Orders, Judgments, or Decrees, That then it ſhall and may be lawful to and for

for them, or any of them to complain in that behalf unto the ſaid Lord Chancellor, or Lord Keeper, or to the Chancellor of the ſaid Duchy of *Lancaſter*, according to their ſeveral Juriſdictions, for redreſs therein. And that upon ſuch complaint, the ſaid Lord Chancellor, or Lord Keeper, or the ſaid Chancellor of the Duchy, may according to their ſaid ſeveral Juriſdictions, by ſuch courſe as to their wiſdoms ſhall ſeem meeteſt, the circumſtances of the caſe conſidered, proceed to the examination, hearing and determining thereof: and upon hearing thereof, ſhall and may adnul, diminiſh, alter or enlarge the ſaid Orders, Judgments and Decrees of the ſaid Commiſſioners, or any four or more of them, as to either of them in their ſaid ſeveral Juriſdictions ſhall be thought to ſtand with equity and good conſcience, according to the true intent and meaning of the Donors and Founders thereof, and ſhall and may tax and award good coſts of ſuit by their diſcretions, againſt ſuch perſons as they ſhall find to complain unto them without juſt and ſufficient cauſe of the Orders, Judgments, and Decrees before mentioned, 39 *El.* 6. 43 *El.* 9.

Authority is given to the Lord Chancellor, or Lord Keeper, and to the Chancellor of the Dutchy reſpectively, to grant commiſſions under the ſeveral ſeals.

Concerning theſe commiſſions, theſe ſix things are to be obſerved:

Firſt, The number muſt be four, or more.

2. The Commiſſioners to be the Biſhop and Chancellor of that Dioceſs (if there be a Biſhop) and other perſons of good and ſound behaviour.

3. In that commiſſion any four of them do ſuffice to make orders and decrees, for therein none is of the Quorum.

4. None ſhall be Commiſſioners that have any part of the lands, &c. or goods, or chattels, money, or ſtocks in queſtion.

5. The commiſſion is to limit a certain time, within which the Commiſſoners are to order, decree, and certifie.

6. Their authority is to enquire as well by the oath of twelve lawful men, or more, as by all other good ways and means.

Concerning the Jurors, or Inqueſt of Inquiry, theſe two things are to be obſerved:

Firſt, The parties intereſted may have and take their lawful challenge and challenges.

2. None that pretend title to any of the lands, &c. goods, or chattels, money, or ſtocks in queſtion, ſhall be a Juror, &c.

They are to enquire of all and ſingular gifts, limitations, and appointments of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtocks of money, for 21 charitable uſes in relieving, maintaining, repairing, educating, preferring, marrying, ſupporting, aiding, helping, redeeming and eaſing.

1. For relief of aged, impotent, and poor people, 2. for maintenance of ſick and maimed ſouldiers, 3. Schools of learning, 4. Free Schools, 5. Scholars in Univerſities, 6. and houſes of Correction, 7. for repair of Bridges, 8. of Ports or Havens, 9. of Cauſies, 10. of Churches, 11. of Sea-banks, 12. and of High-ways, 13. for education and preferment of Orphans, 14. for marriage of poor maids, 15. for ſupportation, aid, and help of young tradeſ-men, 16. of handi-crafts-men, and 17. of perſons decayed, 18. for redemption or relief of priſoners or captives, 19. for eaſe and aid of any poor Inhabitants, concerning payment of Fifteens, 20. ſetting out of ſouldiers, 21. and other taxes.

And

And the Commiſſioners have power alſo to enquire of theſe nine things:

1. Of abuſes,
2. Breaches of truſt,
3. Negligences,
4. Miſ-imployments,
5. Not imploying,
6. Concealing,
7. Defrauding,
8. Miſ-converting,
9. Miſ-government.

of any lands, tenements, &c. rents, &c. goods, money, &c. given to any of the charitable uſes aforeſaid.

But this Act doth not extend to all lands, &c. nor to all goods and chattels, money, or ſtocks given to any of the charitable uſes aforeſaid; but certain are excepted in theſe eight ſeveral caſes, viz.

First, Of the Colledges, Halls, or Houſes of learning in either of the Univerſities.

2. Of the Colledge of Weſtminſter.

3. Of the Colledge of Eaton.

4. Of the Colledge of Wincheſter.

5. Of any City, or Town corporate, where there is a ſpecial Governor or Governors of ſuch lands, &c.

6. Of any Colledge, Hoſpital, or Free School, which have ſpecial Viſitors, or Governors, or Overſeers, appointed to them by their Founders.

7. Of Purchaſers, having theſe three qualities: First, For * valuable conſideration of money or land: 2. Without fraud or covin: 3. Having no notice of the ſame charitable uſe. But albeit the Commiſſioners cannot make any decree againſt any ſuch Purchaſers, yet may they make decrees for recompence to be made by any perſon or perſons, who being put in truſt, or having notice of the charitable uſes abovelaid, have or ſhall break the ſaid truſt, or defraud the ſame uſes by any conveyance, gift, grant, leaſe, releaſe or converſion, and againſt his or their heirs, executors and adminiſtrators, having aſſets in Law or * equity, ſo far as the ſame aſſets will extend.

* So as none but valuable conſideration, and no valuable conſideration, but for money or land, will ſerve the turn.

* Nota, Aſſets in equity, as truſts, confidences, and the like.

8. Of Purchaſers of lands, tenements, and hereditaments aſſured, conveyed, or come to Queen Elizabeth, H. 8. Ed. 6. or Queen Mary by Act of Parliament, ſurrender, exchange, relinquiſhment, eſcheat, attornment, conveyance, or otherwiſe. But if any ſuch manners, lands, &c. have ſince the beginning of Queen Elizabeths reign been given, &c. to any of the charitable uſes before expreſſed, then this Act doth extend to the ſame.

Concerning the certificate of the Commiſſioners, theſe four things are to be obſerved:

First, That they certifie their order and decree reſpectively, either into the Court of the Chancery of England, or into the Chancery of the County Palatine of Lancaſter, as the caſe ſhall require.

2. That it ought to be in parchment, under the hands and ſeals of the Commiſſioners.

3. It muſt be within the time limited in the Commiſſion.

4. That the Lord Chancellor, or Lord Keeper, and the ſaid Chancellor of the Duchy ſhall and may within their ſeveral Juriſdictions take ſuch order for the due execution of all or any of the ſaid judgments, decrees and orders ſo certified, as to either of them ſhall ſeem fit and convenient.

In the remedy for the party grieved with ſuch decree ſo certified, theſe five things are to be conſidered:

First, That he complain to the Lord Chancellor, or Lord Keeper, or to the Chancellor of the Duchy, according to their ſeveral Juriſdictions for redreſs thereof. And this complaint is to be by Bill.

2. Upon ſuch complaint, firſt, they ſhall reſpectively by ſuch courſe, as to their wiſdoms ſhall ſeem meeteſt, the circumſtance of the caſe conſidered, proceed to the examination, hearing, and determining thereof. 2. Upon hearing thereof

ſhall

ſhall or may admit the whole (which rarely is done) diminiſh (in part) or enlarge (that is, to confirm the former, and to enlarge the ſame by adding ſomething thereunto) the judgments and decrees ſo certified.

3. As ſhall be thought to ſtand with equity and good conſcience.

4. According to the true intent and meaning of the * Donors and Founders thereof.

* This is the *Lapis ductitius*, whereby the Commiſſioners and Chancellors muſt inſtitute their courſe.

5. And ſhall and may tax and award good coſts of ſuit by their diſcretions (reſpectively) againſt ſuch perſons as ſhall complain to them reſpectively, without juſt and ſufficient cauſe of the orders, judgments, and decrees before mentioned. But this order being given and limited by Act of Parliament, no coſts (if the order, judgment, or decree be adnulled, diminiſhed, or enlarged) ought to be given to the party complaining.

The

The Expoſition of the Statute of 31 Eliz. Cap. 12.

concerning Sellers of Horſes in ⋆ *Fairs and Markets, &c.*

⋆ Forum à ferendo (aut quod ſit foris) quia ibidem merces aſportari ſolent: Latinè, Feriæ, quia ibidem merces portantur. Unde *Feires*, or Fairs Anglicè, & *Foire* Gallicè. Nundinæ à nono die, &c. Mart is derived à Mercando, of buying and ſelling, and ſo is Mercatus alſo. Emporium, Græcè Ἐμπόριον, quia ibi conveniunt Ἔμποροι, i. Mercatores.

BEfore we enter into the expoſition of this Statute, we will conſider, firſt, What the Common Law was before the making of this Statute. 2. What any Acts of Parliament have wrought in this caſe, before this Act of 31 Eliz. 3. we will deſcend to the expoſition of our ſaid Act of 31 Eliz.

As to the firſt, the Common Law did hold it for a point of great policy, and behoveful for the Common-wealth, that Fairs and Markets overt ſhould be repleniſhed, and well furniſhed with all manner of commodities, vendible in Fairs and Markets, for the neceſſary ſuſtentation and uſe of the people. And to that end the common Law did ordain (to incourage men thereunto) that all ſales and contracts of any thing vendible in Fairs or Markets overt, ſhould not be good only betwæn the parties, but ſhould bind thoſe that right had thereunto. But this rule hath many exceptions.

First, It ſhall not bind the King for any of his goods ſold in Market overt by any perſon, but regularly the ſale by a ſtranger in Market overt bindeth an infant, a feme covert that hath right either in their own right, or as executor, or adminiſtrator, ideots, non compos mentis, men beyond Sea, and in priſon, that right have to the ſame. 35 H.6.29.Pl.Com. 243. Doct.& Stud. 39.b.

2. Although the Fairs or Markets be overt, yet the ſale muſt be made in a place that is overt and open, not in a back room, ware-houſe, &c. as you may read, lib.5. fol.83.b. Caſe de Market overt. Lib.5. fol.83. b. Lib. int. Raſt.327 2 & 3 Ph.& Mar. cap.7.

3. Although it be in an open place, yet Overt in this caſe implies apt and ſufficient, as not to ſell plate openly in a Scriveners ſhop, or the like, but openly in a Goldſmiths ſhop, &c. lib.5. fol.83. ubi ſupra. Lib.5. fol.83. b. 35 H.6.7. ſimile.

4. It muſt be a ſale, and not a free gift, without any valuable conſideration: for Fairs and Markets were not inſtituted for gifts, but for ſales; therefore gift in this Act is to be intended of a gift for valuable conſideration, and not a free gift. 12 E.4.12. b. and all the books. Doct.& Stud.64.b. 33 H.6.5. 12 H.8. 10. b.

5. *a* If the buyer doth know whoſe goods they were, and that the ſeller thereof hath at the moſt but a wrongful poſſeſſion, this ſhall not bind him that right hath. *a* 14 H. 8.8. Pl. Com. 46. 18 E.4. 24. lib.3. fol.78.b. in Fermors caſe, & 83. a. in Windhams caſe. Doct. & Stud. fol.39.

6. *b* If they be ſold by covin betwæn two of purpoſe to bar him that right hath, this barreth not. *b* Vid. the books to the 5.

7. *c* If a ſale be made of goods by a ſtranger in a Market overt, whereby the right of A. is bound yet if the ſeller acquireth the goods again, A. may take them again, becauſe he was the wrong doer, and he ſhall not take advantage of his own wrong. *c* 34 H.6. 10 & 11 7 E.4.15. 32 H.6.1 18 E.4.6. 24. 9 H.6.45.

8. There muſt be a ſale and contract; and therefore a ſale to a man of his own goods in Market overt, bindeth not; and likewiſe a ſale in market overt by an infant of ſuch tenderneſs of age, as it may appear to the buyer that he is within age, or by a *d* feme Covert, if the buyer know her to be a feme Covert (unleſs for ſuch things as ſhe uſually trades for, or by the conſent of her husband) bindeth not. Et ſic de ſimilibus. *d* 21 H.7.40.b. Fineux chief Juſtice. Alſo for the feme Covert, Vid. Mich. 22 & 23 Eliz. coram rege in action ſur le caſe, inter Guibſon & Thorpnell, Suff.

9. *e* The contract muſt be originally and wholly made in the Market overt, *e* Dier 1 Mar. fol.99.121.

and not to have the inception out of the Market, and the conſummation in the Market.

Vid. 9 H. 6. 45. 35 H. 6. 2 & 3 Ph. & Mar. c. 7. Doct. & Stu. 39. b.

10. By the Common Law the property was altered (though ſome opinions be to the contrary) by ſale in Market overt, albeit no toll was paid either in reſpect of the freedom of the Fair or Market, wherein no toll at all was to be paid, or for that many were diſcharged of payment of toll, as the King, and ſome of his ſubjects by Charter, and ſome by tenure, as ancient demeſne, &c. where toll of others was to be taken.

Lib. int' Raſt. 327 diviſione Feirs, &c.

11. The ſale muſt not be in the night, but between the riſing of the Sun, and the going down of the ſame: for he that hath a Fair or Market, either by grant or preſcription, hath power to hold it per unum diem, ſeu duos, vel tres dies, &c. where (dies) is taken for dies ſolaris; for if it ſhould be taken for dies naturalis, then might the ſale be made at midnight. And yet the ſale that is made in the night is good between the parties, but not to bind a ſtranger that right hath.

See Stamf. Pl. Cor. 365. b.

12. A commits a robbery or felony of the goods of B. the officer of the King doth ſeiſe the goods (in lawful manner) to the Kings uſe. B. purſueth his appeal freſhly, the Kings officer, or any other ſelleth the goods in Market overt; B. purſueth his appeal againſt A. until he hath convicted him of the felony, the King ſhall make him reſtitution of his goods, notwithſtanding the ſale in Market overt, becauſe of the freſh and diligent ſuit and purſuit of record, the goods were ſo protected thereby, and by the Kings ſeiſure, that the property of the ſame, being tanquam in cuſtodia legis, cannot be altered by ſale in Market overt. And by

21 H. 8. cap. 11. Nota hoc.

the Statute of 21 H. 8. cap. 11. It is enacted, that if any felon be of any money, goods, or chattels, and the ſaid felon be indited, and after arraigned of the ſame felony, and found guilty, or otherwiſe attainted, by reaſon of evidence given by the party ſo robbed, or owner, or by any other by their procurement, *a* that the party ſo robbed, or owner ſhall be reſtored to his ſaid money, goods, and chattels. And that the Juſtices, &c. have power by this preſent Act, to award from time to time writs of reſtitution, &c. in like manner, *b* as though any ſuch felon were attainted at the ſuit of the party in appeal.

a Note theſe abſolute words for reſtitution, upon the evidence given upon this Act, there needeth no freſh ſuit to be enquired of, as we know by experience.

b Theſe words refer only to the manner of the Writs of reſtitution.

So as in this caſe alſo the party robbed, or owner ſhall have reſtitution, notwithſtanding any ſale in Market overt. See the third part of the Inſtitutes, cap. Reſtitution. And the reaſon of the Law in this caſe of reſtitution is, to incourage the owners to purſue the felons, that they might be condignly puniſhed, ut pœna ad paucos, metus ad omnes perveniat. And although in this rare caſe it may be, that one may loſe the horſe which he came to bona fide in Market overt; yet ſpoliatus debet ante omnia reſtitui. And the the old rule, Caveat emptor, doth hold herein: and when two rights come together, the ancient right is to be preferred.

And it is to be obſerved, that none of theſe 12 exceptions are abrogated by any Act of Parliament, but yet remain in full force.

As to the ſecond, we are to conſider the Statute of 2 & 3 Ph. & Mar. c. 7. entituled, Sellers of horſes in Fairs, Markets, &c. which (becauſe horſe-ſtealers may flee far off in a ſhort ſpace) hath made void the ſale of horſes in Market overt in divers caſes. The tenor of which Act enſueth:

2 & 3 Phil. & Mar. cap. 7.

Foraſmuch as ſtollen horſes, mares, and geldings, by thieves and their confederates, be for the moſt part ſold, exchanged, given, or put away in houſes, ſtables, backſides, and other * ſecret and privy places of Markets and Fairs, and the toll alſo privily paid for the ſame, whereby the true owners thereof, being not able to try the falſhood and covin betwixt the buyer and ſeller of ſuch horſe, mare, or gelding, is by the Common Laws of this Realm without remedy:

* Hereby the vulgar people were deceived, but in Law this changed no property, as before it appeareth, l. 5. f. 83. ubi ſupra.

The 1. branch.

Be it therefore enacted by the authority of this preſent Parliament, that the owner, governor, ruler, fermor, ſteward, bailiff, or chief keeper of every Fair and Market overt within this Realm, and other the

the Queens dominions, ſhall before the Feaſt of *Eaſter* next, and ſo yearly appoint and limit out a certain and ſpecial open place within the Town, place, field, or circuit, where horſes, mares, geldings, and colts, have been and ſhall be uſed to be ſold in any Fair or Market overt, in which ſaid certain and open place, as is aforeſaid, there ſhall be by the ſaid ruler or keeper of the ſaid Fair or Market, put in and appointed one ſufficient perſon or more, to take toll, and keep the ſame place, from ten of the clock before noon, until Sun-ſet of every day of the foreſaid Fair or Market, upon pain to loſe and forfeit for every default forty ſhillings.

A certain and ſpecial place for the Horſe-Fair.

The 2. branch. A ſufficient perſon to take toll, and keep the Horſe-Fair from 10 of the clock before noon, till Sunſet.

And that every toll-gatherer his deputy or deputies, ſhall, during the time of every the ſaid Fairs and Markets, take their due and lawful tolls, for every ſuch horſe, mare, gelding, or colt, at the ſaid open place to be appointed, as is aforeſaid, and betwixt the hours of ten of the clock in the morning, and the Sun-ſet of the ſame day, if it be tendered, and not at any other time or place, and ſhall have preſently before him or them at the taking of the ſame toll the parties to the bargain, exchange, gift, contract, or putting away of every ſuch horſe, mare, gelding, or colt, and alſo the ſame horſe, mare, gelding, and colt ſo ſold, exchanged, or put away; and ſhall then write, or cauſe to be written in a book to be kept for that purpoſe, the names, ſirnames, and dwelling places of all the ſaid parties, and the colour, with one ſpecial mark at the leaſt of every ſuch horſe, mare, gelding, or colt, on pain to forfeit at and for every default contrary to the tenor hereof forty ſhillings.

The 3. branch. 1. The toll-gatherer to receive the toll between theſe hours. 2. And ſhall have preſently before him the parties to the bargain at the taking of the toll. 3. And the horſe, &c. 4. And ſhall write in a book the names, ſirnames, and dwelling places of the ſaid parties, and the colour, with one ſpecial mark at the leaſt of every ſuch horſe, &c.

* And the ſaid toll-gatherer, or keeper of the ſaid book, ſhall within one day next after every ſuch Fair or Market, bring and deliver his ſaid book to the owner, governor, ruler, ſteward, bailiff, or chief keeper of the ſaid Fair or Market, who ſhall then cauſe a note to be made of the true number of all horſes, mares, geldings, and colts ſold at the ſaid Market or Fair, and ſhall there ſubſcribe his name, or ſet his mark thereunto, upon pain to him that ſhall make default therein to loſe and forfeit for every default forty ſhillings, and alſo to anſwer the party grieved by reaſon of the ſame his negligence in every behalf.

* The 4. branch. The toll-gatherer to deliver the book to the owner, &c. of the Fair or Market.

And be it further enacted by the authority aforeſaid; that the ſale, gift, exchange, or putting away after the laſt day of *February* now next coming, in any Fair or Market overt, of any horſe, mare, gelding, or colt, that is, or ſhall be theeviſhly ſtollen, or felonioufly taken away from any perſon or perſons, ſhall not alter, take away, nor exchange the property of any perſon or perſons to, or from any ſuch horſe, mare, gelding, or colt, unleſs the ſame horſe, mare, gelding, or colt, ſhall be in the time of the ſaid Fair or Market, wherein the ſame ſhall be ſo ſold, given, exchanged, or put away, openly [1] ridden, led, walked, driven, or kept ſtanding, by the ſpace of one hour together at the leaſt, betwixt ten of the clock in the morning, and the Sun-ſetting, in the open place of the Fair or Market, wherein horſes are commonly uſed to be ſold, [2] and not within any houſe, yard, backſide, or other privy or ſecret place; [3] and unleſs all the parties to the bargain, contract, gift, or exchange, preſent in the ſaid Fair or Market, ſhall alſo come together,

The 5. branch. Six points to ſave the property of the right owner, &c. 1. The horſe ſtoln muſt be ridden, &c. openly in the Fair or Market, by the ſpace of an hour, between ten of the clock before noon, and Sun-ſetting, or elſe no property ſhall be altered or changed. This is in affirmance of the Common Law.

Which is added, for, as hath been aforeſaid, toll is not due nor payable by all perſons in Fairs and Markets, to the end that the book-keeper may be equivalent in thoſe caſes to the toll receivers.

and bring the horſe, mare, gelding, or colt ſo ſold, exchanged, given, or put away to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due, [4] and there enter, or cauſe to be entred their names and dwelling places in manner as is aforeſaid, [5] with the colour or colours, and one ſpecial mark at the leaſt of every the ſame horſes, mares, geldings, or colts in the toll-takers book, or in the keepers book for that purpoſe, whereunto toll is due, as is aforeſaid, [6] and alſo pay him their toll, if they ought to pay any, and if not, then the buyer to give one penny for the entry of their names, and executing the other circumſtances afore rehearſed, to him that ſhall write the ſame in the ſaid book.

The 7. branch. * This maketh void the ſale in Fair or Market overt, if the horſe be not uſed, &c. in all the ſaid points, according to the tenor and intent of this act. See for theſe points in the 3, 4, 5, & 6. branches.

And if any horſe, mare, gelding, or colt, that is, or ſhall be theeviſhly ſtollen, or taken away, ſhall after the ſaid laſt day of *February* next coming be ſold, given, exchanged, or put away in any Fair or Market, * and not uſed in all points, according to the tenor and intent of this eſtatute, that then the owner of every ſuch horſe, mare, gelding, or colt, ſhall and may by force of this eſtatute ſeiſe, or take again the ſaid horſe, mare, gelding, or colt, or have an action of *Detinue* or *Replevin* for the ſame, any ſale, gift, exchange, or putting away of any ſuch horſe, mare, gelding, or colt, other then according to this eſtatute in any wiſe notwithſtanding.

The 8. branch.

The penalty to be recovered before Juſtices of Peace, &c.

The one half of all which forfeitures to be to the King and Queens Majeſty, her heirs and ſucceſſors, and the other to him or them that will ſue for the ſame before the Juſtices of Peace, or in any of the King and Queens Majeſties ordinary Courts of record, by bill, plaint, action of debt, or information; in which ſuits no protection, eſſoin, or wager of Law ſhall be allowed.

The 9. branch. Juſtices of Peace to hear and determine all offences againſt this Statute.

And be it enacted by the authority aforeſaid, that the Juſtices of Peace of every place and County, as well within liberties, as without, ſhall have authority in their Seſſions within the limits of their authority and commiſſion, to enquire, hear, and determine all offences againſt this eſtatute, as they may do any other matter triable before them.

The 10. branch.

The book-keepers fee for his labour in writing the entry of the contract.

Provided always, that in every ſuch Fair and Market, where any toll is, nor ſhall be due, ne leviable by reaſon of the freedom, liberty, or priviledge of the ſaid Fair or Market, the keeper or keepers of the book touching the execution of this preſent Act, ſhall take nor exact but one penny upon and for every contract, for his labour in writing the entry, concerning the premiſſes, in manner and form, as is before declared.

But ſeeing neither the rules of the Common Law, nor the proviſions of this Act wrought ſo good effect as was expected, therefore a right profitable additional Law was made in anno 31 Reginæ Elizabethæ, **for the ſaving of the property of horſes, mares, geldings, colts, and fillies, to and for the right owners, which hereafter enſueth:**

The cauſes wherefore horſes, &c. are ſo commonly ſtoln.

Whereas through the Counties of this Realm, horſe-ſtealing is grown ſo common, as neither in paſtures or cloſes, nor hardly in ſtables the ſame are to be in ſafety from ſtealing, which enſueth by the ready buying of the ſame by horſe-courſers and others in ſome open Fairs

Fairs or Markets far diſtant from the owner, and with ſuch ſpeed as the owner cannot by purſuit poſſibly help the ſame: And * ſundry good ordinances have heretofore been made touching the manner of ſelling and tolling of horſes, mares, geldings, and colts in Fairs and Markets, which have not wrought ſo good effect for the repreſſing or avoiding of horſe-ſtealing, as was expected.

* 2 & 3 Phil. & Mar. cap. 7. See 2 E. 3. cap. 15 5 E. 3. cap. 3. 27 H. 6. cap. 5.

Now for a further remedy in that behalf, Be it enacted by the authority of this preſent Parliament, that no perſon after twenty days next after the end of this Seſſion of Parliament, ſhall in any Fair or Market, ſell, *a* give, exchange, or put away any horſe, mare, gelding, colt, or filly, unleſs [1] the toll-taker there, or (where no toll is paid) the book-keeper, bailiff, or chief officer of the ſame Fair or Market, ſhall and will take upon him perfect knowledge of the perſon that ſo ſhall ſell, or offer to ſell, give or exchange any horſe, mare, gelding, colt, or filly, and of his true Chriſten name, ſirname, and place of dwelling or reſiancy, [2] and ſhall enter all the ſame his knowledge into a book there kept for ſale of horſes, [3] or elſe that he ſo ſelling, or offering to ſell, give, or exchange, or put away any horſe, mare, gelding, colt, or filly, ſhall bring unto the toll-taker, or other officer aforeſaid of the ſame Fair or Market, one ſufficient or credible perſon, that can, ſhall, or will teſtifie and declare unto, and before ſuch toll-taker, book-keeper, or other officer, that he knoweth the party that ſo ſelleth, giveth, exchangeth, or putteth away ſuch horſe, mare, gelding, colt, or filly, and his true name, ſirname, myſtery, and dwelling place: [4] and there enter, or cauſe to be entred in the book of the ſaid toll-taker, or officer, as well the true Chriſten name, and ſirname, myſtery, and place of dwelling or reſiancy of him that ſo ſelleth, giveth, exchangeth, or putteth away ſuch horſe, mare, gelding, colt, or filly, as of him that ſo ſhall teſtifie or avouch his knowledge of the ſame perſon, [5] and ſhall alſo cauſe to be entred the very true price or value that he ſhall have for the ſame horſe, mare, gelding, colt, or filly ſo ſold.

Nota, for a further remedy, this is an Act of addition, conſiſting upon 6. points, for the ſaving of the property of the right owner.

a A gift, without valuable conſideration in Market overt, altereth no property, as before hath been ſaid. This Statute reſtraineth the very ſale, and maketh it void, if the act be not purſued, and this firſt branch is in the diſjunctive, unleſs either the toll-taker or book-keeper ſhall and will take upon him perfect knowledge, &c. or elſe that he ſo ſelling, or offering to ſell, &c. ſhall bring, &c. one ſufficient and credible perſon, &c. that ſhall avouch, &c. who vulgarly is called a Voucher: and this branch extendeth to all ſales of horſes in Market overt, whether the horſe, &c. be ſtoln, or not ſtoln.

The 2. branch. That he ſo ſelling, &c. cauſe to be entred the true Chriſten name, and ſirname, and place of dwelling, &c. and the very true price and value. See for the ſixth point in the ſeventh branch.

* And that no perſon ſhall take upon him to avouch, teſtifie, or declare, that he knoweth the party that ſo ſhall offer to ſell, give, exchange, or put away ſuch horſe, mare, gelding, colt, or filly, unleſs he do indeed truly know the ſame party, and ſhall truly declare to the toll-taker, or other officer aforeſaid, as well the Chriſten name, ſirname, myſtery, and place of dwelling and reſiancy of himſelf, as of him, of, and for whom he maketh ſuch teſtimony and avouchment.

* The 3. branch. No perſon take upon him to avouch, unleſs he do indeed truly know, &c.

And that no toll-taker, or other perſon, keeping any book of entry of ſales of horſes in Fairs or Markets, ſhall take or receive any toll, or make entry of any ſale, gift, exchange, or putting away of any horſe, mare, gelding, colt, or filly, unleſs he knoweth the party that ſo ſelleth, giveth, exchangeth, or putteth away any ſuch horſe, mare, gelding, colt, or filly, and his true Chriſten name, ſirname, myſtery, and place of his dwelling or reſiancy, or the party that ſhall and will teſtifie and avouch his knowledge of the ſame perſon ſo ſelling, giving, exchanging, or putting away ſuch horſe, mare, gelding, colt, or filly, and his

The 4. branch. No toll-taker, or book-keeper ſhall make any entry, but upon the diſjunctive in the firſt branch.

his true Chriſten name, ſirname, myſtery, and place of dwelling or reſiancy, and ſhall make a perfect entry into the ſaid book of ſuch his knowledge of the perſon, and of the name, ſirname, myſtery, and place of the dwelling or reſiancy of the ſame perſon, and alſo the true price, or value that ſhall be, *bona fide*, taken or had, for any ſuch horſe, mare, gelding, colt, or filly ſo ſold, given, exchanged, or put away, ſo far as he can underſtand the ſame, and then give to the party ſo buying, or taking by gift, exchange, or otherwiſe, ſuch horſe, mare, gelding, colt, or filly, requiring and paying two pence for the ſame, a true and perfect note in writing of all the full contents of the ſame, ſubſcribed with his hand, on * pain that every perſon that ſo ſhall ſell, give, exchange, or put away any horſe, mare, gelding, colt, or filly, without being known to the toll-taker, or other officer aforeſaid, or without bringing ſuch a voucher or witneſs, cauſing the ſame to be entred as aforeſaid, and every perſon making any untrue teſtimony or avouchment in the behalf aforeſaid, and every toll-taker, book-keeper, or other officer of Fair or Market aforeſaid, offending in the premiſſes contrary to the true meaning aforeſaid, ſhall forfeit for every ſuch default the ſum of five pounds; but alſo that every ſale, gift, exchange, or other putting away of any horſe, mare, gelding, colt, filly, in Fair or Market not uſed in all points according to the true meaning aforeſaid, ſhall be void: the one half of all which forfeitures to be to the Queens Majeſty, her heirs and ſucceſſors, and the other half to him or them that will ſue for the ſame before the Juſtices of Peace, or in any of her Majeſties ordinary Courts of record, by bill, plaint, action of debt, or information, in which no eſſoin or protection ſhall be allowed.

The 5. branch. To give to the party ſo buying, &c. a true and perfect note in writing, &c. requiring and paying two pence for the ſame

* On pain, &c.

To forfeit five pounds.

The penalties to be recovered before Juſtices of Peace, &c.

The 6. branch. Juſtices of Peace to enquire, hear, and determine.

And be it further enacted, that the Juſtices of Peace of every place and County, as well within liberties as without, ſhall have authority in their Seſſions within the limits of their authority and commiſſion, to enquire, hear, and determine all offences againſt this Statute, as they may do any other matter triable before them.

The 7. branch. Extendeth only to horſes, &c. that are ſtoln.

The ſixth point for the ſaving of the property of the right owner.

Albeit this Act be purſued in all points, yet the ſale in Market overt ſhall not take away the property, &c. if the owner, &c. claim within ſix moneths, &c.

And be it further enacted, that if any horſe, mare, gelding, colt, or filly, after twenty days next enſuing the end of this Seſſion of Parliament, ſhall be ſtollen, and after ſhall be ſold in open Fair or Market, and the ſame ſale ſhall be uſed in all points and circumſtances as aforeſaid: that yet nevertheleſs, the ſale of any ſuch horſe, mare, gelding, colt, or filly, within ſix moneths next after the felony done, ſhall not take away the property of the owner from whom the ſame was ſtollen, ſo as claim be made within ſix moneths by the party from whom the ſame was ſtollen, or by his executors or adminiſtrators, or by any other by any of their appointment, at, or in the Town or Pariſh where the ſame horſe, mare, gelding, colt, or filly ſhall be found, before the Mayor or other head officer of the ſame Town or Pariſh, if the ſame horſe, mare, gelding, colt, or filly ſhall happen to be found in any Town corporate, or market Town, or elſe before any Juſtice of Peace of that County near to the place where ſuch horſe, mare, gelding, colt, or filly ſhall be found, if it be out of Town corporate, or market Town, and ſo as proof be made within forty days then next enſuing, by two ſufficient witneſſes to be produced and depoſed before

Two ſufficient witneſſes.

ſuch

ſuch head officer or Juſtice, (* who by vertue of this Act ſhall have authority to miniſter an oath in that behalf) that the property of the ſame horſe, mare, gelding, colt, or filly ſo claimed, was in the party, by, or for whom ſuch claim is made, and was ſtollen from him within ſix moneths next before ſuch claim of any ſuch horſe, gelding, mare, colt, or filly, but that the party from whom the ſaid horſe, mare, gelding, colt, or filly was ſtollen, his executors or adminiſtrators, ſhall and may at all times after notwithſtanding any ſuch ſale or ſales in any Fair, or open Market thereof made, have property and power to have, take again, and enjoy the ſaid horſe, mare, gelding, colt, or filly, upon payment or readineſs, or offer to pay to the party that ſhall have the poſſeſſion and intereſt of the ſame horſe, mare, gelding, colt, or filly, if he will receive and accept it, ſo much money as the ſame party ſhall depoſe and ſwear before ſuch head officer, or Juſtice of Peace (* who, by vertue of this Act, ſhall have authority to miniſter and give an oath in that behalf) that he paid for the ſame *bona fide*, without fraud or colluſion, any Law, Statute, or other thing to the contrary thereof in any wiſe notwithſtanding.

* None can examine witneſſes in a new manner, without Act of Parliament.

Upon payment of ſo much money as was *bona fide* paied for the ſame.

* No man can give an oath in a new caſe, without Act of Parliament.

This Act is but an Act (as hath been ſaid) of addition to the Common Law, and to the Act of 2 & 3 Phil. & Mar. cap. 7. all ſtanding in force, and muſt be purſued.

And be it further enacted by the authority aforeſaid, that after twenty days after the end of this Seſſion of Parliament, not only all acceſſaries before ſuch felony done, but alſo all acceſſaries after ſuch felony, ſhall be deprived and put from all benefit of their Clergy, as the principal by Statute heretofore made, is, or ought to be.

The 8. branch. Clergy taken from acceſſaries, &c. after.

So as what by the 12 points of the Common Law, and what by the 12 points of additions by theſe two Statutes the property of horſes, &c. are ſo preſerved, as if the owner be of capacity to underſtand them (being collected together, and explained by our labours) and be vigilant and induſtrious to purſue the ſame, it is almoſt impoſſible that the property of the horſe, &c. either ſtoln, or not ſtoln, ſhould be altered by any ſale in Market overt by him that is malæ fidei poſſeſſor.

And let the owner or ruler of the Fair, the toll-taker, or book-keeper, and the avoucher take heed, that they perform the duty enjoyned to them by this Statute, otherwiſe it will be very penal to them. And hereby good direction is given to Courratiers, Horſe-courſers how they may ſafely deal.

Hippocomi, Mangones equorum.

The Expoſition of the Statutes of 39 Eliz. Cap. 5. *and* 21 Jac. Cap. 1. *concerning the erection of Hoſpitals and Houſes of Correction.*

39 Eliz. cap. 5.

BE it enacted by the authority of this preſent Parliament, that all and every perſon and perſons ſeiſed of an eſtate in fee-ſimple, their heirs, executors, or aſſigns, at his or their wills and pleaſures, ſhall have full power, ſtrength, licence, and lawful authority at any time during the ſpace of twenty years next enſuing, by deed inrolled in the high Court of Chancery, to erect, found and eſtabliſh one or more Hoſpitals, *Meaſons de dieu*, abiding places, or houſes of Correction, at his or their will and pleaſure, as well for the finding, ſuſtentation and relief of the maimed, poor, needy, or impotent people, as to ſet the poor to work, to have continuance for ever, and from time to time to place therein ſuch head and members, and ſuch number of poor, as to him, his heirs and aſſigns ſhall ſeem convenient: And that the ſame Hoſpitals or Houſes ſo founded, ſhall be incorporated, and have perpetual ſucceſſions for ever, in fact, deed, and name, and of ſuch head members, and numbers of poor, needy, maimed, or impotent people, as ſhall be appointed, aſſigned, limited, or named by the Founder or Founders, his or their heirs, executors or aſſigns, by any ſuch deed inrolled: And that ſuch Hoſpital, *Meaſon de dieu*, abiding place, or houſe of Correction, and the perſons therein placed, ſhall be incorporated, named, and called by ſuch name as the ſaid Founder or Founders, his heirs, executors or aſſigns ſhall ſo limit, aſſign, and appoint: And the ſame Hoſpital, *Meaſon de dieu*, abiding place, or houſe of Correction ſo incorporated and named, ſhall be a body corporate and politick, and ſhall by that name of incorporation have full power, authority, and lawful capacity and ability, to purchaſe, take, hold, receive, enjoy, and have to them and to their ſucceſſors for ever, as well goods and cattels, as mannors, lands, tenements, and hereditaments, being freehold of any perſon or perſons whatſoever. So that the ſame exceed not the yearly value of two hundred pounds above all charges and repriſes, to any one ſuch abiding houſe, Hoſpital, *Meaſon de dieu*, or houſe of correction: And ſo as the ſame, or any part thereof be not holden of our Soveraign Lady the Queen, her heirs or ſucceſſors, immediately in chief, or elſe of our ſaid Soveraign Lady the Queen, or any other perſon by Knights-ſervice, without licence or Writ of *Ad quod damnum*, or the Statute of Mortmain, or any other Statute or Law to the contrary notwithſtanding. And that the ſame Hoſpital, *Meaſon de dieu*, abiding place, or houſe of Correction, and the perſons ſo being incorporated, founded and named, ſhall have full power and lawful authority by the true name of the incorporation thereof, to ſue and to be ſued, implead and to be impleaded, to anſwer and to be anſwered unto, in all manner of Courts and places that now are, or hereafter ſhall be within this Realm, as well Temporal as Spiritual, in all manner

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of ſuits whatſoever, and of what nature and kind ſoever ſuch ſuits or actions be or ſhall be: And that the ſame Hoſpital, *Meaſon de dieu*, abiding place, or houſe of correction, ſhall have and enjoy for ever ſuch a common ſeal or ſeals, as by the ſaid Founder or Founders, his or their heirs, executors or aſſigns ſhall be in writing under his or their hand and ſeal aſſigned, named or appointed: whereby the ſame corporation ſhall or may ſeal any manner of Inſtrument touching the ſame incorporation, and the lands, tenements, hereditaments, goods, or other things thereto belonging, or in any wiſe touching or concerning the ſame. And further ſhall be ordered, directed, and viſited, placed, or upon juſt cauſe diſplaced by ſuch perſon or perſons, bodies politick or corporated, their heirs, ſucceſſors or aſſigns, as ſhall be nominated or aſſigned by the Founder or Founders thereof, their heirs or aſſigns, according to ſuch Rules, Statutes, and Ordinances, as ſhall be ſet forth, made, deviſed, or eſtabliſhed by the ſaid Founder or Founders, their heirs or aſſigns, in writing under his or their hand and ſeal, not being repugnant or contrary to the Laws and Statutes of this Realm, any Law, Statute, Cuſtom, Uſage, or other thing whatſoever to the contrary in any wiſe notwithſtanding. And that it ſhall be lawful unto the Founder or Founders, his and their heirs or aſſigns, upon the death or removing of any head or member of any ſuch corporation, to place one other in the room of him that dieth, or is removed ſucceſſively for ever.

Provided always, that all leaſes, grants, conveyances, or eſtates, to be made by any corporation ſo to be founded as aforeſaid, exceeding the number of one and twenty years, and that in poſſeſſion, and whereupon the accuſtomable yearly rent, or more, by the greater part of twenty years next before the making of ſuch leaſe, ſhall not be reſerved and yearly payable, ſhall be void: Saving to all perſons, bodies politick and corporate, their heirs and ſucceſſors (other then the Founders and Givers, their heirs and ſucceſſors) all ſuch right, title, claim, poſſeſſion, rents, ſervices, commons, demands, intereſt, and profits, which they or any of them ſhall have, or of right ought to have, of, in or to any the lands, tenements, or hereditaments, hereafter to be given, limited or aſſigned in form aforeſaid, in as ample manner, as if this Statute had never been had or made.

Provided alſo, that this Act, or any thing therein contained, ſhall not extend to enable any perſon or perſons, being within age, women covert without their husbands, or of *non ſane memorie*, to make any ſuch corporation, or to endow the ſame: any thing in this preſent Act to the contrary thereof in any wiſe notwithſtanding.

Provided always, that no ſuch Hoſpital, *Meaſon de dieu*, abiding place, or houſe of correction ſhall be erected, founded, or incorporated by force of this Act, unleſs upon the foundation or erection thereof, the ſame be endowed for ever with lands, tenements, or hereditaments of the clear yearly value of ten pounds by the year.

Provided alſo, and be it further enacted, that no ſuch incorporation to be founded by force of this Act, ſhall at any time hereafter do or ſuffer to be done any Act or thing, whereby, or by means whereof any

of the lands, tenements, hereditaments, ſtock, goods or chattels of ſuch incorporation, or any eſtate, intereſt, poſſeſſion or property, of, or in the ſame, or any of them ſhall be veſted or transferred in or to any other whatſoever, contrary to the true meaning of this Act: and that ſuch conſtruction ſhall be made upon this Act as ſhall be moſt beneficial and available for the maintenance of the poor, and for repreſſing and avoiding of all Acts and devices to be invented, or put in ure contrary to the true meaning of this Act, 21 *Jac.* 1. *made perpetual.*

¶ That all and every perſon and perſons.] Theſe words regularly do extend to any body politick or corporate, but not to ſuch as are reſtrained by any Act of Parliament to alien, &c. but doth extend to ſuch bodies politick and corporate as may alien: As Majors and Comminalties, Bailiffs and Burgeſſes, &c. and the like, and to all other perſons whatſoever.

See hereafter the proviſo to this effect.

This Act enables not perſons within age, or feme Coverts without their husbands, of non compos mentis, or any other perſons diſabled by Law, to found, &c.

See l. 6. fol. 62. b. 22 E. 3. coron. 276 Sed abundans cautela non nocet.

This is a very beneficial Law: for the charges of incorporation, and of the licence of Mortmain in theſe days grow ſo great by one means or other, as it hath diſcouraged many men to undertake theſe pious and charitable works, whereas in former times ſuch works of piety and charity for the poor did ever paſs in forma pauperis, and ſo we hope to ſee it again.

Whereof the Hoſpitals, &c. muſt be endowed.

¶ Seiſed of any eſtate in fee-ſimple, &c.] Firſt, The manors, lands, tenements, or hereditaments, whereof the indowment is made, muſt be of an eſtate in fee-ſimple, either abſolute, conditional, or qualified. 2. They muſt be free-hold. 3. They muſt be of the clear yearly value of 10 pounds by the year, or more, and not exceeding the yearly value of 200 pounds by the year above all charges and repriſes. 4. They, or any part thereof muſt not be holden of the King immediately in chief, or of the King, or of any other perſon by Knight-ſervice. But if the firſt indowment be of the yearly value of 10 pounds or more, and under the yearly value of 200 pounds, they may purchaſe (or any may give to them) manors, lands, tenements, or hereditaments, having the aforeſaid four qualities, until they have manors, lands, tenements, or hereditaments, to the yearly value of 200 pounds, above all charges and repriſes by force of this Act of Parliament, without any licence of Mortmain.

But if they be at the time of the foundation or indowment of the yearly value of 200 pounds, or under, and afterwards they become of greater value by good husbandry, riſing of prices, ſudden accidents, as by eſcheat, or otherwiſe, they ſhall continue good to be enjoyed by the Hoſpital, &c. albeit they be above the yearly value of 200 pounds: for the yearly value muſt be accounted within this Statute, as it was at the time of the indowment made. Alſo goods and chattels (real or perſonal) they may take of what value ſoever.

¶ Their heirs, executors, or aſſigns.] That is, when the tenant in fee-ſimple that hath not time to found himſelf, ſhall appoint his heirs, executors, or aſſigns to do the ſame; and yet if he make no appointment, his heirs or aſſigns may do it.

¶ During the ſpace of 20 years.] This Act is made perpetual by the Statute of 21 Jac. Regis, cap. 1. as more at large ſhall be ſhewed when we come to it.

¶ By deed inrolled in the high Court of Chancery to erect, &c.] It cannot be erected by any other inſtrument, conveyance, or aſſurance, but by deed inrolled in the Chancery This deed need not be inrolled in the Chancery within

within 6 moneths after the date, but at any time after (but the ſoner the ſafer.) And this déed néed not to be invented, but a déed poll ſufficeth. It is good, if the déed be in paper, but it muſt be inrolled in parchment.

¶ One or more Hoſpitals, *Meaſons de dieu*, abiding place, or houſes of Correction.] The firſt three are expreſſed to be for the finding, ſuſtentation and relief of the maimed, poor, néedy, or impotent people in the diſ-junctive. And the fourth, viz. the Houſes of Correction, to ſet the poor to work.

¶ To have continuance for ever.] The Founder cannot erect, &c. any of theſe for years, lives, or any other limited time, but for ever.

¶ And that the ſame Hoſpitals, or Houſes ſo founded, &c.] That is, founded by déed inrolled in the Chancery.

Fundare is not only fundamentum ponere, ſeu jacere, but alſo firmare, ſeu ſtabilire. Vid. in le caſe de Suttons Hoſpital, lib. 10. f. 23. &c.

¶ Shall be incorporated, and have perpetual ſucceſſion, &c.] And forasmuch as the Hoſpital, &c. is not properly incorporated, but the perſons therein placed &c. are to be incorporated; therefore it is in the next clauſe added, And that ſuch Hoſpital, *Meaſon de dieu*, abiding place or Houſe of Correction, *and the perſons therein placed ſhall be incorporated, named, and called by ſuch name as the ſaid Founder or Founders, his heirs, executors, or aſſigns ſhall ſo (that is, by any ſuch déed inrolled) limit, aſſign, and appoint. So as the perſons, to be by this Act incorporated, muſt be there placed and named, when the Founder giveth them their name of incorporation: for the Parliament incorporateth them, and the Founder giveth them only their name. *Note theſe words.

Now it is neceſſary, for the better furtherance of theſe godly and charitable works, to ſet down a preſident warrantable by the ſaid Acts. And forasmuch as by this Act it muſt be done by déed (which muſt have writing, ſealing, and delivery) and not by a writing only; it is the ſureſt way to have it by déed indented, betwéen the Founder of the one part, and A. B. &c. of the other part, which the Founder may ſeal and deliver to A. B. &c. acknowledge it, and cauſe it to be inrolled in the Chancery: for inrolled it cannot be in any other Court.

This Indenture made the firſt day of May, in the firſt year of the reign of our Soveraign Lord King Charles, by the grace of God, &c. betwéen A. B. of B. in the County of C. Eſq; of the one part, and C. D. E. F. &c. of the other part, Witneſſeth, that whereas the ſaid A. B. of his charitable affection and diſpoſition hath erected and founded certain buildings and edifices upon a parcel of ground in the Pariſh of F. in the ſaid County of C. lying betwéen the &c. to be an Hoſpital, for the finding, ſuſtentation, and relief of poor and impotent people, to have continuance for ever. And by theſe preſents the ſaid A B. doth found, erect, and eſtabliſh the ſame for an Hoſpital of poor and impotent people, to have continuance for ever. And according to the power and authority given to the ſaid A. B. by the Statute or Statutes in that caſe provided, the ſaid A. B. doth by theſe preſents limit, aſſign, and appoint, that the ſaid Hoſpital, and the poor and impotent perſons therein placed, viz. D. E. E. F. F. G. &c. to the number of A preſident of incorporation by force of this Statute. (and abbuttel the ſame.)

ſhall for ever hereafter be incorporated by the name of the Maſter and Brethren of the Hoſpital of the Holy and individed Trinity of F. in the ſaid County of C. And further, the ſaid A. B. doth by theſe preſents name and appoint the ſaid D. E. E. F. F. G. &c. to be preſent Brethren of the ſaid Hoſpital, and the ſaid D. E. to be preſent Maſter of the ſaid Hoſpital, and that by the name of the Maſter and Brethren, they ſhall have full power and authority, and lawful capacity and ability to purchaſe, take, hold, receive and enjoy, and have to them, and their ſucceſſors for ever, as well *goods and chattels, as mannors, lands, tenements, and hereditaments, being free-hold, of any perſon or perſons whatſoever, according to the form and effects of the Statutes in that caſe made * Nota, they may take, without any reſtraint, goods and chattels, as well real, perſonal and mixt, to what value ſoever.

and provided. And that the ſame Hoſpital, &c. and the perſons ſo being incorporated, founded and named, ſhall have full power and lawful authority by the ſaid name of Maſter and Brethren, &c. to ſue, and to be ſued, implead and be impleaded, to anſwer and to be anſwered unto in all manner of Courts and places within this Realm, as well Temporal as Spiritual, in all manner of ſuits whatſoever, and of what nature or kind whatſoever ſuch ſuits or actions be, or ſhall be. And the ſaid A.B. doth by theſe preſents aſſign, name and appoint, that the ſaid Maſter and Brethren, and their ſucceſſors for ever hereafter ſhall have a common ſeal, with a croſs graven therein, and in the circumference thereof, Sigillum Hoſpitalis ſanctæ Trinitatis de F. whereby the ſaid Maſter and Brethren, and their ſucceſſors, ſhall or may ſeal any manner of inſtruments touching the ſame incorporation, and the lands, tenements and hereditaments, goods or other things thereto belonging, or in any wiſe touching or concerning the ſame. And that it ſhall be lawful for the ſaid A. B. during his life, upon the death or removing of the ſaid Maſter, or any of the ſaid Brethren, to place one other in the room of him that dieth, or is removed. And after the death of the ſaid A. B. it ſhall be lawful for the Parſon of the ſaid Town of F. and the Church wardens of the ſame for the time being, ſucceſſively for ever after the deceaſe of the ſaid A. B. upon the death or removing of the Maſter, or any of the Brethren of the ſaid Hoſpital, to place one other in the room of him that died, or is removed, ſucceſſively for ever. In witneſs whereof, &c.

22 E. 4. fit. Grant 30. lib. 10. fol. 30. b. & 32. a. in le caſe de Suttons Hoſpital.

And albeit that the only eſſential point that the Founder is to do in this caſe is, to appoint and give a name to the Corporation, yet by way of illuſtration we have thought it fit to add ſo much as we have done, following the very words and effect of this Act. And although that at the Common Law a Corporation may be of an Hoſpital that is in poteſtate of certain perſons to be Governors of the Hoſpital, and not of the perſons placed therein, yet the ſafeſt and ſureſt way upon this Statute is, firſt to prepare the Hoſpital, and to place the poor therein, and to incorporate the perſons therein placed. And this we hold by reaſon of the ſaid words in this Act, viz. And that ſuch Hoſpital, &c. and the perſons therein placed ſhall be incorporated, &c.

¶ Such a common ſeal or ſeals, as by the Founder or Founders, &c. ſhall be aſſigned.] It is neceſſary to be known, who ſhall be ſaid to be Founder or Founders, for the better underſtanding of the clauſes ſubſequent in this Act.

38 Aſſ. p. 22. adjudge lib. 3. f. 74. a. in le caſe de Dean & Chap. de Norwich.

Such only are ſaid to be Founder or Founders within this Act, as are ſeiſed of an eſtate in fee-ſimple of any manors, lands, tenements, or hereditaments, having the four qualities aforeſaid, and giveth the ſame at the firſt foundation of the Hoſpital, &c. to the incorporation of the Hoſpital. For it is a ſure rule, that he or they that give the firſt poſſeſſions, is the Founder or Founders.

But then it is demanded, What if R. S. Citizen of London, by his laſt will and teſtament do deviſe, that his executors ſhall beſtow a thouſand pounds in purchaſe of lands, tenements, or hereditaments, and that an Hoſpital ſhall thereupon be builded and incorporated for the ſuſtentation and relief of poor and impotent people, and dieth: the executors purchaſe lands, tenements and hereditaments of the yearly value of three ſcore pounds, having the ſaid four qualities, and cauſe the eſtate to be taken to certain perſons and their heirs, and build thereupon an Hoſpital, and place therein poor and impotent people: In this and the like caſes the perſons that have the eſtate in fee-ſimple in the lands, tenements, and hereditaments, are by the purview of this Statute to be Founders, and to do all things that this Act doth appoint the Founder or Founders to do. But when they name the Corporation, it ſhall be well and worthily done to name the Corporation by the name of the Maſter and Brethren of the Hoſpital of the holy and undivided Trinity, founded in F. in the County of C. at the only coſts and charges of the ſaid R. S. or the like; ſo as the charitable intention of the ſaid R.S. may be had in remembrance, with ſome juſt recital in the beginning of the deed of foundation of the truth of the caſe. The

The next thing that is to be done after the incorporation, is to convey the lands, tenements and hereditaments to the ſaid incorporation, which may be done ſafely, with greater facility and leſs charge, by bargain and ſale by deed indented and inrolled (according to the Statute of 27 H. 8. cap. 16.) betwæn the Founder or Founders of the one part, and the Maſter and Brethren, &c. of the other part, in conſideration of five ſhillings in hand paid by the Maſter of the ſaid Hoſpital (for himſelf and for his Brethren) and of other five ſhillings in hand paid by the ſaid Maſter and Brethren, &c. whereof you may have a preſident in the tenth book of my Reports in the caſe of Suttons Hoſpital, fol. 17. b. & 34. a. reſpons al 9. objection, which judgment is after allowed and ratified by Act of Parliament, anno 4 Regis Caroli. And this bargain and ſale to be a day or two, or ſome ſhort time after the incorporation. But now let us return to our Act of Parliament.

27 H.8. cap. 16. See before the expoſition of this Statute.

Lib.10. f.17.& 34: in the caſe of Suttons Hoſpital.

¶ And further ſhall be ordered and viſited, placed, or upon juſt cauſe diſplaced, &c.] And forasmuch as nothing can proſper and continue, without good rule and government, the next thing to be done after the lands, &c. be conveyed unto them is, That the Founder or Founders ſhall ſet forth, make, deviſe and eſtabliſh in writing under his or their hand and ſeal (for ſo it muſt be by force of this Act) ſuch rules, local Statutes and Ordinances for the order, direction, viſitation, placing, or upon juſt cauſe diſplacing of ſuch Maſter and Brethren by ſuch perſon or perſons, bodies politick or corporate, their heirs, ſucceſſors or aſſigns, as ſhall be nominated or aſſigned by the * Founder or Founders, the ſaid rules, local Statutes and Ordinances being not repugnant or contrary to the Laws or Statutes of the Realm. And theſe orders, &c. to contain (amongſt many others) two eſpecial things, viz. daily prayer to Almighty God: And that the Maſter and Brethren be not idle, but that they and every of them exerciſe ſuch work meet for them, as the Parſon of the Pariſh, and the Church-wardens (or ſuch other as the Founder ſhall name) ſhall appoint or allow of, and to take a weekly account thereof. And theſe orders, &c. to bear date after the bargain and ſale, and it is good to have them inrolled.

* If the Founder limit not, who ſhall viſit? The Biſhop of the Dioceſſe. Vid. 2 H. 5. cap. 1. Stat. 1. Vid. 14 El. cap. 5. El. cap. 18 8 Aſſ. p. 29. 31. But if the Founder or Founders limit who ſhall viſit, ſuch viſitor or viſitors by force of this Act of Parliament, ſhall ſtand by the Statute of 21 Jac. See the Statute of 13 El. cap. 17.

¶ Provided alſo, and be it further enacted, that no ſuch corporation to be founded by force of this Act, ſhall at any time hereafter do, or ſuffer to be done, &c.] This clauſe of reſtraint in this Act is as forcible, and rather more then the reſtraint by the Statute of 13 Eliz. c. 10. And therefore hereby they are diſabled as well to make any conveyance to the King, as to any Subject, contrary to the true meaning of the Act.

Peruſe well the Statute in print, in 13 Eliz. c. 17. for the erection and foundation of an Hoſpital by Robert Earl of Leiceſter, which was the patern whereby this Act was framed. And ſee the orders and local Statutes made by him, for they were done by good advice, and have had good effect.

The Statute of 21 Jac. Regis, Cap. 1. *concerning Hoſpitals, and Houſes of Correction.*

WHereas in the Parliament held in the nine and thirtieth year of the reign of the late Queen *Elizabeth* of happy memory, a good Law was made, entituled, *An Act for erecting of Hoſpitals, or abiding and working houſes for the poor:* but the power, licence and authority given by the ſaid Statute, to erect, found, and eſtabliſh ſuch houſes and abiding places, as are therein mentioned, was confined to the ſpace of twenty years then next enſuing, which ſaid time is now expired.

Be it therefore enacted by the authority of this preſent Parliament, That the ſaid Act, and all things therein contained, ſhall from henceforth be revived, and made perpetual to have continuance for ever.

And be it alſo enacted, That all Hoſpitals, *Meaſons de dieu*, and abiding places for poor, lame, maimed and impotent people, or for Houſes of Correction, at any time ſince the ſaid twenty years expired, erected, founded or made, or at any time hereafter to be erected, founded or made, according to the purport of the ſaid Statute, ſhall be incorporated, and have perpetual ſucceſſion and capacity, to have, take and enjoy all other priviledges, benefits, and immunities, to all intents and purpoſes, according to the proviſions, tenor, purport and true meaning of the ſaid Act, as if the ſame had been made, founded, or endowed within the ſpace of twenty years next enſuing the ſaid Statute, *Stat.* 43 *El.* 4.

¶ That the ſaid Act, and all things therein contained, from henceforth be revived, and made perpetual to have continuance for ever.] These words [made perpetual, and have continuance for ever] have made the ſaid Act of 39 Eliz. and all things therein contained (at the making thereof but a probationer for 20 years long ſince expired) now by this Act perpetual, and to have continuance for ever.

Nota, *Hoſpitale* an Hoſpital, is the general word, and includes *Meaſons de dieu*, and abiding places for the poor, &c. alſo * Houſes of Correction, as here it appeareth. 13 El. cap. 7.

¶ That all Hoſpitals, *Meaſons de dieu* for the poor, &c. or for * Houſes of Correction, at any time ſince the ſaid 20 years expired, erected, &c.] Whereas ſome Hoſpitals, &c. or Houſes of Correction were founded after the ſaid twenty years expired, according to the ſaid Act, thoſe by this Act are incorporated, eſtabliſhed and confirmed.

And likewiſe all Hoſpitals, &c. and Houſes of Correction hereafter to be erected, &c. according to the purport of the ſaid Statute ſhall be incorporated, &c. And note, that this branch makes the Act of 39 Eliz. &c. a perpetual Law.

Vid. 13 Eliz. cap. 7. the moity of the forfeiture of Bankrupts given to the poor within Hoſpitals.

31 Eliz. cap. 6. None that have election, &c. to take reward, &c.

31 Eliz. cap. 6. if any which have election, nomination, voice, or aſſent thereunto of any perſon to have room or place in any Hoſpital, ſhall have or take any money, reward or profit, directly or indirectly, or promiſe of money, reward

or

or profit, that then ſuch room and place to be void, and another to be preferred to the place by thoſe that have authority to elect, &c.

In 43 Eliz. a right profitable Law was made, for Commiſſioners to enquire of miſ-imployment of lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and ſtocks of money given or appointed, ſome for relief of aged, impotent, and poor people, and ſome for relief of ſick and maimed ſouldiers and mariners, or for maintenance of Houſes of Correction (inter alia) and by their orders to reform the ſame, which Act hath wrought very good effect in many caſes. 43 Eliz. cap. 4. A ſpeedy remedy in many caſes.

An

An Expoſition of the Statute of 7 Jac. Regis Cap. 4. *concerning Houſes of Correction, and the government of them.*

MAny Statutes have been made for the puniſhment of Rogues, Vagabonds, and ſturdy Beggars, but very few to find them work, and to enforce them thereunto. The principal of that kind is the Statute of 39 Eliz. cap. 4. which doth enact, That from time to time it ſhall and may be lawful to and for the Juſtices of Peace of any County or City, aſſembled at any Quarter Seſſions of the Peace within the ſame County, City, Borough, or Town corporate, to ſet down order in three things: First, from time to time to erect, or cauſe to be erected one or more * Houſes of Correction within their ſeveral Counties or Cities. This firſt branch is a Law perpetual, and the Juſtices of Peace for the time being have power by this Act from time to time to erect as many Houſes of Correction, or Work-houſes, as they ſhall think convenient.

* Note, theſe are not only Houſes of Correction, but Work-houſes alſo, as hereafter appeareth. See 43 Eliz. cap. 2 & 7 Jac. cap. 4. in the 2. branch.

2. For the providing of ſtocks of money, and all other things neceſſary for the ſame. This alſo is a Law perpetual from time to time, &c.

3. For ruling and governing of the ſame.

4. For correction and puniſhment of *a* offenders thither to be committed. These two alſo are Laws perpetual, ut ſupra.

a Note, the generality of this word The life of this buſineſs conſiſteth in framing of theſe orders, and in due execution of the ſame.

5. For the better effecting whereof, they may make ſuch orders as they ſhall from time to time think convenient, &c. and from time to time to reform, take, and ſet down the ſame.

6. Which orders ſhall be of force (being warranted by authority of Parliament) and be duly performed, and put in execution.

We paſs over all the former Laws before this Act of 39 Eliz. for puniſhment of Rogues, Vagabonds, and ſturdy Beggars, many whereof were repealed by 1 E. 6. cap. 3. and all the reſt are repealed by this Act of 39 Eliz. and will come to the aboveſaid Act of 7 Jac. This Law conſiſteth upon a ſhort Preamble, and the body of the Act, which is divided into nine branches.

The Preamble.

Whereas heretofore divers good and neceſſary Laws and Statutes have been made and provided for the erection of Houſes of correction for the ſuppreſſing and puniſhing of Rogues Vagabonds, and other idle, vagrant, and diſorderly perſons, which Laws have not wrought ſo good effect as was expected, as well for that the ſaid Houſes of Correction have not been built according as was intended, as alſo for that the ſaid Statutes have not been duely and ſeverely put in execution, as by the ſaid Statutes were appointed.

In this Preamble are rehearſed two cauſes wherefore the former Law and ſtatute took not ſo good effect as was expected: First, for that Houſes of Correction were not built according as was intended, wherein no deficiency was in the Law, but in the Juſtices of Peace, which ſhould have ordered the ſame to be erected. For ſeeing education of youth, and ſetting of work of idle and diſorderly perſons, are ſuch eſſential parts of the well being of a Common-wealth; and the only mean to compel them to work (as the Law now ſtandeth) is by Houſes of Correction, ſeeing there hath been a default in the Juſtices of the Peace heretofore, and the miſchief ſo daily increaſing, we hope that the Juſtices of Peace, having yet power, will erect more Houſes of Correction (which are alſo called

See the third part of the Inſtitutes, cap. *Rogues*.

Work-

Work-houſes) ſo as we ſhall have neither Beggar (as the Law of God commandeth) nor idle perſon in the Common-wealth.

The ſecond cauſe (which is the cauſe of cauſes) is, for that the Statutes in that caſe made and provided were not put in execution, as by the ſaid Statutes was appointed.

And this excellent work is without queſtion feaſible: For upon the making of the Statute of 39 Eliz. and a good ſpace after, whileſt Juſtices of Peace and other Officers were diligent and induſtrious, there was not a Rogue to be ſeen in any part of England; but when Juſtices* and other Officers became tepidi, or trepidi, Rogues, &c. ſwarmed again. * 39 Eliz. cap 4.

For remedy whereof, Be it enacted and eſtabliſhed by our Soveraign Lord the Kings Majeſty, and by the Lords Spiritual and Temporal, and by the Commons in this preſent Parliament aſſembled, and by the authority of the ſame, That all Laws and Statutes now in force, made for erecting and building of Houſes of Correction, and for puniſhing of Rogues, Vagabonds, and other wandring and idle perſons, ſhall be put in due execution. The 1. branch.

The firſt branch of the body of this Act conſiſteth on two parts: First, That all Laws and Statutes made for erecting and building of Houſes of Correction now in force ſhould be put in due execution; which is ſo enacted, for the incitation and incouragement of Juſtices of Peace to do their duties in this ſo important a cauſe.

2. For puniſhing of Rogues, Vagabonds, and ſturdy Beggars (for thoſe are the words of the former Statute now in force) ſhall be likewiſe put in due execution. Execution is the end and life of the Law. 39 Eliz. ubi ſup.

And be it further enacted and eſtabliſhed by the authority aforeſaid, That before the Feaſt of Saint *Michael* the Archangel, which ſhall be in the year of our Lord God one thouſand ſix hundred and eleven, there ſhall be erected, built, or otherwiſe provided, within every County of this Realm of *England* and *Wales*, where there is not one Houſe of Correction already built, purchaſed, provided or continued, one or more fit and convenient Houſe or Houſes of Correction, with convenient Backſide thereunto adjoyning, together with Mills, Turns, Cards, and ſuch like neceſſary Implements, to ſet the ſaid Rogues, or ſuch other idle perſons on work: The ſame houſes to be built, erected or provided in ſome convenient place or Town in every County: Which houſes ſhall be purchaſed, conveyed, or aſſured unto ſuch perſon or perſons, as by the Juſtices of Peace, or the more part of them, in their Quarter Seſſions of the Peace, to be holden within every County of this Realm of *England* and *Wales*, upon truſt, to the intent the ſame ſhall be uſed and employed for the keeping, correcting, and ſetting to work of the ſaid Rogues, Vagabonds, or ſturdy Beggars, and other idle and diſorderly perſons. The 2. branch.

¶ That before the Feaſt of Saint *Michael*, &c.] This clauſe was to haſten, and upon penalty to inforce Juſtices of Peace to ſo neceſſary and charitable a work. * But this clauſe being in the affirmative, taketh not away the perpetuity of the Act of 39 Eliz. for the erection of Houſes of Correction and Work-houſes, from time to time, and at any time hereafter by Juſtices of Peace. * Nota.

¶ Shall be erected, built, or otherwiſe provided.] The Statute of 39 El. uſed only the word [erected,] but that included both the other words of this Act, viz. [built and provided.] For if they cauſed a houſe already builded, to be provided or purchaſed, and converted the ſame to a Houſe of Correction, this is an erection of a Houſe of Correction within the Statute of 39 Eliz. becauſe as to the Houſe of Correction it was newly erected.

Cicero ad Brutum. Erectior Senatus erat noſtris cohortationibus excitatus.

¶ With convenient backſide thereunto adjoyning, together with Mills, Turns, Cards, &c.] Theſe particulars, and all other neceſſary things appertaining thereunto, are included within the general words of 39 Eliz. viz. [for the providing of ſtocks, and all other things neceſſary for the ſame, &c.] which are general and large words, and do include all particulars neceſſary whatſoever.

¶ Which Houſes ſhall be purchaſed, and conveyed, or aſſured, &c.] This may be done by authority of this Act, without licence or offence of any former Law. And theſe may be incorporated by the Statute of 39 Eliz. c. 5. as in the expoſition of that Statute appeareth.

The houſe to be imployed to three purpoſes: 1. For the keeping, 2. For the correcting, 3. For the ſetting to work: So as it is not a Houſe of Correction alone, but of ſafe keeping, and ſetting on work.

¶ The ſaid Rogues, Vagabonds, or ſturdy Beggars, and other idle and diſorderly perſons.] The Statute of 39 El. by particular words did not extend to Rogues, Vagabonds, and ſturdy Beggars, but in general words, for the puniſhment of offenders thereunto committed. Which general words are both by the firſt branch of this Act explained to be wandring or idle perſons: and many other branches of this Act, to idle or diſorderly perſons, and ſpecially by the branch, whereby the authority of the Juſtices to commit to the Houſe of Correction is warranted. All idle or diſorderly perſons may be committed by them to the Houſe of Correction and work-houſe.

And where all the Judges of England did for the good of the Commonwealth, and the better inſtruction and direction of Juſtices of Peace, and for the due execution of the ſaid Act of 39 Eliz. amongſt other things reſolve, that ſuch perſons as be of any Pariſh, and have able bodies to work, and be no wanderers abroad out of the Pariſh, though they refuſe to work at ſuch wages as is taxed (or commonly given) in thoſe parts, are notwithſtanding not to be ſent to their place of birth, or laſt dwelling, by the ſpace of a year, but to the Houſe of Correction, upon conſideration had of both the Statutes of the Poor and Rogues. But if they that have any lawful means to live by, though they be of able bodies, and refuſe to work, yet are they not to be ſent to the Houſe of Correction.

But by this Statute of 7 Jac. enacted long after the reſolution of the Judges, though they have lawful means to live by, yet if they be idle or diſorderly perſons, the Juſtices of Peace have power to commit them to the Houſe of Correction, a general and large power given to them, without exception of any perſon. And their Mittimus to the Houſe of Correction may be more ſafely upon this Statute, Quia otioſa & inordinata perſona: for that he is an * idle and diſorderly perſon, or that he is an idle perſon, or that he is a diſorderly perſon, according to the words of this Act, then upon the Statute of 39 Eliz.

* The words in the 5. branch are in the diſ-junctive

The 3. branch. And be it further enacted by the authority aforeſaid, That if the ſaid houſe to be erected, purchaſed, or provided, ſhall not be erected, built, or otherwiſe provided, before the Feaſt of S. *Michael* the Archangel,

angel, which ſhall be in the year one thouſand ſix hundred and eleven, next enſuing the laſt day of this preſent Seſſion of Parliament, That then every Juſtice of Peace within every County of this Realm of *England* and *Wales*, where ſuch houſe and backſide ſhall not be erected or provided, ſhall forfeit for his ſaid neglect five pounds of lawful Engliſh money, the one moity thereof to be unto him or them that will ſue for the ſame by action of debt, bill, plaint, or information: In which ſuit, no protection, eſſoin, or wager of Law ſhall be admitted: And the other moity thereof to be employed and beſtowed towards the erecting, building, procuring or providing the ſaid houſe and backſide, and ſuch neceſſary implements, as aforeſaid.

The penalty of five pounds of every Juſtice of Peace, if the Houſe of Correction be not provided within the time of this Act of 7 Jac. And how the ſame penalty ſhall be recovered and imployed.

And be it further enacted and eſtabliſhed by the authority aforeſaid, That the Juſtices of Peace of every County within the Realm of *England* and *Wales*, at their Quarter Seſſions of the Peace, to be holden for their ſeveral Counties (next after the erecting, providing or building of the ſaid houſe or houſes, and ſo from time to time) or the moſt part of them ſhall elect, nominate and appoint, at their will and pleaſure, one or more honeſt fit perſon or perſons, to be Governor or Maſter of the ſaid houſe or houſes ſo to be purchaſed, erected, built or provided: which perſon and perſons ſo choſen by vertue of this preſent Act, ſhall have power and authority, to ſet ſuch Rogues, Vagabonds, idle and diſorderly perſons, as ſhall be brought or ſent unto the ſaid houſe to work and labour (being able) from time to time, for ſuch time, as they ſhall continue and be remaining in the ſaid Houſe of Correction, and to puniſh the ſaid Rogues, Vagabonds, idle and diſorderly perſons, by putting Fetters or Gives upon them, and by moderate whipping of them, and that the ſaid Rogues, Vagabonds, and idle perſons, during ſuch time as they ſhall continue and remain in the ſaid Houſe of Correction, ſhall in no ſort be chargeable to the Country for any allowance, either at their bringing in, or going forth, or during the time of their abode there, but ſhall have ſuch and ſo much allowance, as they ſhall deſerve by their own labour and work. The 4. branch.

By this branch it is enacted, that the Juſtices of Peace, &c. ſhall elect, &c. one or more fit perſon or perſons, to be Governor or Maſter of the ſaid Houſe or Houſes.

Herein alſo are added idle and diſorderly perſons, and power given to the Governor or Maſter to puniſh them, by putting Fetters or Gives upon them, and by moderate whipping of them.

Theſe idle and diſorderly perſons ſhall be in no ſort chargeable to the Country, &c. but ſhall have ſuch allowance as they ſhall deſerve by their own labour and work. Nota.

And be it further enacted by the authority aforeſaid, That the ſaid Juſtices of Peace of every County within every of their ſeveral Diviſions, The 5. branch.

ſions, twice in every year at the leaſt, and oftner, if there be occaſion, ſhall aſſemble and meet together for the better execution of this Statute, and that ſome four or five days before their aſſembly and meeting, the ſaid Juſtices or the more part of them, ſhall by their Warrant command the Conſtables and Tithingmen of every Hundred, Town, Pariſh, Village, and Hamlet within their ſaid ſeveral Diviſions, which ſhall be aſſiſted with ſufficient men of the ſame places, to make a general privy ſearch in one night within their ſaid Hundreds, Towns, Villages, and Hamlets, for the finding out and apprehending of the ſaid Rogues, Vagabonds, wandring and idle perſons, and that ſuch Rogues, Vagabonds, wandring and idle perſons, as they ſhall then find and apprehend in the ſaid ſearch, ſhall by them be brought before the ſaid Juſtices, at their ſaid aſſembly or meeting, there to be examined of their idle and wandring life, there to be puniſhed, or otherwiſe by their Warrant to be ſent or conveyed unto the ſaid Houſe or Houſes of Correction within the ſaid County, appointed and prefixed, there to be delivered unto the Maſter or Governor of the ſaid Houſe, or to his deputy or aſſignee, to be ſet to labour and work; at which days and times of aſſembly or meeting, ſo to be held by the ſaid Juſtices of Peace, the Conſtables and Tythingmen of every Hundred, Pariſh, Town, Village and Hamlet, ſhall then appear in every their ſeveral Diviſions, before the ſaid Juſtices of Peace, at the ſaid aſſemblies or meetings, and there ſhall give account and reckoning, upon oath in writing, and under the hand of the Miniſter of every Pariſh, what Rogues, Vagabonds, and wandring and diſorderly perſons they have apprehended both in the ſame ſearch, and alſo between every ſuch aſſemblies and meetings, and how many have been by them puniſhed, or otherwiſe ſent unto the Houſes of Correction: which if the ſaid Conſtables or Tythingmen ſhall neglect to perform, as alſo to convey ſafely all ſuch Rogues, with all other idle or diſorderly perſons at the charge of the Hundred, as by the Juſtices of Peace Warrants ſhall be ſent unto the Houſes of Correction in the ſame County, that then they ſhall forfeit ſuch further fines, pains, and penalties, as by the ſaid Juſtices of Peace, or the moſt part of them, ſhall be thought fit and convenient, not exceeding the ſum of forty ſhillings for every offence.

The Juſtices of Peace within their ſeveral Diviſions, twice every year at the leaſt, and oftener, if there be occaſion, ſhall aſſemble and meet together, &c.

General and privy ſearch ſhall be made in every Hundred, Town, &c.

The Conſtables account of idle or diſorderly perſons, &c. apprehended.

Note this. In this branch theſe words are ſpecially to be obſerved, viz. With all other idle or diſorderly perſons, at the charge of the Hundred, as by the Juſtices of Peace Warrants ſhall be ſent to the Houſes of Correction.

The 6. branch. And for that it is convenient, that the Maſters or Governors of the ſaid Houſes of Correction ſhould have ſome fit allowance and maintenance for their travel and care to be had in the ſaid ſervice, as alſo for the relieving of ſuch as ſhall happen to be weak and ſick in their cuſtody, and that the Subjects of this Realm ſhould in no ſort be overcharged, to raiſe up money for ſtocks to ſet ſuch on work as ſhall be committed to their cuſtody: Be it therefore enacted and eſtabliſhed by the

the authority of this preſent Parliament, That the Maſters or Governors of the ſaid Houſes of Correction, ſhall have ſuch ſum of money yearly, as ſhall be thought meet, by the moſt part of the Juſtices of Peace within the ſaid County, at the Quarter Seſſions of the Peace, the ſame to be paid quarterly before-hand by the Treaſurers, appointed by one Act made in the three and fortieth year of the late Queen *Elizabeth*, intituled, *An Act for the relief of the poor*, during the time they the ſaid Maſters or Governors ſhall be imployed in the ſaid ſervice, (the ſaid Maſter or Governor giving ſufficient ſecurity, for the continuance and performance of the ſaid ſervice) which if the ſaid Treaſurer ſhall neglect or refuſe to perform, that then the ſaid Maſter or Governor of the Houſe of Correction, ſhall have authority by this preſent Act, to levy the ſame, or ſo much thereof as ſhall be unpaid, upon the ſaid Treaſurers account, in ſuch manner and form as by the ſaid Statute they the ſaid Treaſurers are appointed and authorized to levy the weekly ſum or payment, being to them unpaid.

This branch provideth for fit allowance and maintenance to be made to the Maſters or Governors of the ſaid Houſes, &c. Dignus operarius mercede.

Treaſurers appointed by one Act made anno 43 Eliz. cap. 2. **intituled,** For the relief of the poor, (**and falſly intituled in the laſt printed book of Statutes,** Who ſhall be Overſeers for the poor, their office, duty and account) **which Act of** 43 El. **by the right title, being but a probationer, hath been, and yet is continued, as it appeareth by the Statute of** 4 Car. Regis cap. 4. 1 Jac. cap. 25. 21 Jac. cap. 28.

See 1 Jac. cap. 25. **an addition thereunto.**

And becauſe great charge ariſeth upon many places within this Realm, by reaſon of Baſtardy, beſides the great diſhonor of Almighty God, Be it therefore enacted by the authority aforeſaid, That every lewd woman, which after this preſent Seſſion of Parliament, ſhall have any Baſtard, which may be chargeable to the Pariſh, the Juſtices of Peace ſhall commit ſuch lewd woman unto the Houſe of Correction, there to be puniſhed, and ſet on work during the term of one whole year: And if ſhe ſhall eftſoons offend again, That then to be committed to the ſaid Houſe of Correction as aforeſaid, and there to remain until ſhe can put in good ſureties for her good behaviour, not to offend ſo again. The 7. branch.

The puniſhment of lewd women having Baſtards, &c. That every lewd woman, which ſhall have any Baſtard, which may be chargeable to the Pariſh, the Juſtices of Peace may commit her to the Houſe of Correction, &c. **So as if ſhe will diſcharge the Pariſh of the keeping of the Baſtard, ſhe cannot be puniſhed by this Statute, but by that of** 18 Eliz. cap. 3. See 18 Eliz. cap. 3 and continued to this day, 3 Jac. cap. 4.

And for that many wilful people, finding that they having children, have ſome hope to have relief from the Pariſh wherein they dwell, and being able to labour, and thereby to relieve themſelves and their families, do nevertheleſs run away out of their Pariſhes, and leave their families upon the Pariſh: For remedy whereof, Be it further enacted by this preſent Parliament, and the authority of the ſame, That all ſuch perſons ſo running away, ſhall be taken and deemed to be incorrigible The 8. branch.

corrigible Rogues, and endure the pains of incorrigible Rogues: And if either ſuch man or woman being able to work, and ſhall threaten to run away, and leave their families as aforeſaid, the ſame being proved by two ſufficient witneſſes upon oath before two Juſtices of Peace in that Diviſion, That then the ſaid perſon ſo threatning, ſhall by the ſaid Juſtices of Peace be ſent to the Houſes of Correction, (unleſs he or ſhe can put in ſufficient ſureties for the diſcharge of the Pariſh) there to be dealt with and detained as a ſturdy and wandring Rogue, and to be delivered at the ſaid aſſembly or meeting, or at the Quarter Seſſions, and not otherwiſe.

This branch conſiſteth upon two parts: First, if any man or woman having children, being able to labour, and thereby to relieve their families, do run away out of the Pariſhes, and leave their familes upon the Pariſh, he or ſhe is taken and deemed by authority of this Parliament an incorrigible Rogue.

2. If any ſuch man or woman, being able to work, ſhall threaten to run away, and leave their families, as aforeſaid, the ſame being proved by two ſufficient witneſſes before two Juſtices of Peace in that Diviſion, the ſame perſon ſo threatning, &c. ſhall be ſent to the Houſe of Correction, as a ſturdy and wandring Rogue, &c. unleſs ſufficient ſurety be found for the diſcharge of the Pariſh.

The 9. branch.

And becauſe there ſhall be the more care taken by all ſuch Maſters of the Houſes of Correction, that when the Country hath been at trouble and charge, to bring all ſuch diſorderly perſons as aforeſaid to their ſafe keeping, that then they ſhall perform their duties in that behalf, Be it therefore enacted by the authority aforeſaid, That if they ſhall not every Quarter Seſſions yield a true and lawful account unto the Juſtices of Peace, of all ſuch perſons as have been committed to their cuſtody: Or if the ſaid perſons committed to their cuſtody, or any of them, ſhall be troubleſome unto the Country, by going abroad, or otherwiſe, ſhall eſcape away from the ſaid Houſe of Correction, before they ſhall be from thence lawfully delivered, That then the ſaid Juſtices ſhall ſet down ſuch Fines and Penalties upon the ſaid Maſter or Governors, as the moſt part of them in their Quarter Seſſions ſhall think fit and convenient, and all Fines and Penalties not herein before limited, ſhall be paid unto the Treaſurer, and accounted for by the Treaſurer aforeſaid: This Act to have continuance for the ſpace of ſeven years, and from thence to the end of the next Seſſion of Parliament after the ſaid ſeven years. 3 *Car.* 4. *Continued until the end of the firſt Seſſion of the next Parliament.*

The Maſters of the Houſes of Correction ſhall yield a true and lawful account at every Quarter Seſſions of all ſuch diſorderly perſons as have been committed to their cuſtody.

This Act was but a probationer for a certain time, but it hath been continued: and laſtly, by the ſaid Statute of 4 Car. cap. 4.

Thus much have we written for the better and more ſpeedy execution of theſe excellent Statutes; and the rather, for that few or none are committed to the common Gaol amongſt ſo many malefactors, but they come out worſe then they went in. And few are committed to the Houſe of Correction, or Working Houſe, but they come out better.

And

And where ſome are of opinion, that in particular Towns a diſcreet and expert workman may ſet the young and idle people as voluntaries on work: Certainly, the youth on both ſexes hath (in the time of this great negligence) gotten ſuch a * trade of picking, thevery, ſtealing of wood, and the like, through idleneſs, as they will be never brought to work, unleſs they be thereunto compelled (and the rather, for that ſome of their Parents and Maſters have benefit by them) but compelled they may be, and this great work happily effected, if by the order of the Juſtices of Peace theſe Statutes be put in due execution. See the Statute of 43 Eliz. cap. 2.

* Morem fecerat uſus, *Ovid.* Ars fit quæ a teneris primum conjungitur annis, *Ovid.*

We have not gone about to ſpeak of the Statute of 39 Eliz. or other Statutes concerning Rogues, &c. or the Poor, &c. which all the Judges of England have upon due conſideration explained, and which are truly rehearſed and imprinted, and ought to be obſerved, other then ſuch as later Acts of Parliament have altered, whereof ſomewhat hath been ſaid.

Lamb. Juſtice of Peace, l. 2. p. 207.

An

An Expoſition of the Statute of 31 Eliz. Cap. 7. *concerning Cottages and Inmates.*

The 1. branch.

FOR the avoiding of the great inconveniences which are found by experience to grow by the erecting and building of great numbers and multitude of Cottages, which are daily more and more increaſed in many parts of this Realm: Be it enacted by the Queens moſt excellent Majeſty, and the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the authority of the ſame, That after the end of this Seſſion of Parliament, no perſon ſhall within this Realm of *England*, make, build, or erect, or cauſe to be made, builded, or erected any manner of Cottage for habitation or dwelling, nor convert or ordain any building or houſing, made, or hereafter to be made, to be uſed as a Cottage for habitation or dwelling, unleſs the ſame perſon do aſſign and lay to the ſame Cottage or Building four acres of ground at the leaſt, to be accounted according to the Statute or Ordinance *de terris menſurandis*, being his or her own free-hold and inheritance, lying near to the ſaid Cottage, to be continually occupied and manured therewith, ſo long as the ſame Cottage ſhall be inhabited, upon pain that every ſuch offendor ſhall forfeit to our Soveraign Lady the Queens Majeſty, her heirs and ſucceſſors, ten pounds of lawful money of *England*, for every ſuch offence.

4. part Ver. Mag. Chart. 128.

¶ Cottage.] Is derived from the Saxon word Cote, unde Coterelli for Cottagers, and Cottagium for a Cottage. Vide the firſt part of the Inſtitutes, Sect. 1. fol. 5. out of Domeſday. And the Statute entituled, Extenta manerii, anno 4 E. 1. Item inquirendum eſt de Coterellis, viz. qui Cottagia & Curtilagia teneant. And this ſignification it had by the Common Law.

¶ No perſon, &c.] This extends as well to perſons politick and incorporate, as to natural perſons whatſoever.

If an ancient Cottage had been wholly decayed before this Act, it is not lawful newly to erect the ſame after the end of our Act.

This firſt branch prohibiteth four things: First, The new erecting or building of any Cottage after the end of this Parliament, which was 29 Martii, anno 31 Eliz. anno Dom. 1589.

2. It prohibiteth the converſion or ordaining of any houſing or building, made, or hereafter to be made, to be uſed as a Cottage.

3. Albeit the houſe or building were made before this Act, yet if the converſion were after the 29 day of March 1589. it is prohibited by this Statute; for in point of converſion the words be (made, or hereafter to be made.)

4. Theſe things are prohibited in this branch, upon pain of forfeiture of ten pounds to the King for every ſuch offence.

The 2. branch.

And be it further enacted by the authority aforeſaid, that every perſon, which after the end of this Seſſion of Parliament, ſhall willingly uphold, maintain, and continue any ſuch Cottage hereafter to be erected, converted, or ordained for habitation or dwelling, whereunto four acres of ground, as is aforeſaid, ſhall not be aſſigned and laid to be uſed and occupied with the ſame, ſhall forfeit to our ſaid Soveraign Lady

Lady the Queens Majeſty, her heirs and ſucceſſors, forty ſhillings for every moneth that any ſuch Cottage ſhall be by him or them upholden, maintained, and continued.

This branch inflicteth puniſhment upon ſuch as ſhall willingly uphold, maintain, and continue any * ſuch Cottage after the end of this Parliament, either erected, or converted, or ordained, as is aforeſaid, for habitation, &c. upon the penalty of forty ſhillings to the King for every moneth that any ſuch Cottage ſhall be maintained.

Nota, this word [*ſuch*] referreth to the Cottages deſcribed to be erected or converted after the end of our Parliament.

So as a Cottage is two fold, either newly erected, or builded after our Statute, or of a houſe built before or after our Statute, and converted after our Statute to a Cottage.

But out of theſe two branches are five exceptions.

By the firſt branch of this Act any perſon may either erect a new Cottage, or convert an old or a new houſe to a Cottage, if he lay to it four acres of ground at the leaſt, which muſt have theſe four incidents: Firſt, Theſe acres muſt be accounted according to the Statute or ordinance de admenſuratione terræ, anno 35 E. 1. which is after ſixteen foot and an half to the pole. 2. Theſe four acres muſt be his or her freehold and inheritance (for neither grounds holden by copy, or for life or lives or for any number of years will ſerve,) and it muſt be freehold either in fee-ſimple, or fee-tail. 3. They muſt lye near the ſaid Cottage. 4. They muſt be continually occupied therewith, ſo long as the Cottage ſhall be inhabited.

The 1. exception.

This Statute is named in our Act, The Statute or ordinance de *terris admenſurandis*. Vid. 35 El. c. 6.

This Act extends not to Cottages erected, or houſes converted to Cottages before the 29 day of March 1589. The ſecond branch maketh this clear.

The 2. exception.

This Act ſhall not extend to any Cottage, which ſhall be ordained (that is, converted) or erected to or for habitation or dwelling in any City, Town corporate, ancient Borough, or Market Town.

The 3. exception.

Nor to any Cottages or Buildings erected or converted for the neceſſary habitation of any labourers in any Mineral works, Cole-mines, Quarries, or Delfs of ſtone or ſlate, or about making of brick, tile, lime, or coles; ſo as the ſame Cottages or Buildings be not above one mile diſtant from the Mineral, or other works.

The 4. exception

Nor to any Cottage to be made in three places, viz. 1. Within a mile of the Sea. 2. Upon the ſide of ſuch part of a navigable river, where the * Admiral ought to have juriſdiction, ſo long as a ſailer ſhall dwell there, or ſome perſon of manuel occupation, for the making, furniſhing, or victualling of any ſhip, &c. 3. In any Foreſt, Chaſe, Warren, or Park, ſo long as the under Keeper or Warrener dwell therein, &c.

The 5. exception.

* See for this the fourth part of the Inſtitutes, cap. of the Court of the Admiralty.

4. Nor to any Cottage † heretofore made, 1. For a common herdman, 2. For a common ſhepherd, &c. (of whom his cottage is called a ſheepcote) ſo long as a common herdman or ſhepherd ſhall therein dwell. 3. For a poor, lame, ſick, aged or impotent perſon.

† This fourth part needed not: for the body of the Act extended to Cottages hereafter; but *abundans cautela non nocet.*

Note, this exception extendeth only to Cottages erected or made before this Act, by reaſon of theſe words [heretofore made] but none of theſe three can be erected after this Statute for any of theſe three purpoſes, unleſs there be laid to it four acres of ground with the four incidents aboveſaid. Lambert Juſtice of Peace, pag. 476. miſtaketh this part, and for heretofore, ſaith hereafter. But by the Statute of 43 Eliz. cap. 2. either the Church-wardens and Over-ſeers, or the greateſt part of them, by the leave of the Lord of the waſte, &c. in writing, under the hand and ſeal of the Lord, or by order of the Juſtices of Peace at their general Quarter Seſſions, by the leave of the Lord, as is aforeſaid, may erect convenient houſes of habitation for poor impotent people, and alſo to place Inmates, or more families then one in one Cottage or Houſe. Firſt, note that this extendeth only to ſuch as be poor and impotent. It extendeth not to any common herdman or ſhepherd, as hath been likewiſe miſtaken.

Nor doth our Act extend to any Cottage to be made and decréd upon complaint made to Juſtices of Aſſiſe, or Juſtices of Peace in open Aſſiſes, or Quarter Seſſions of the Peace to continue for habitation, during the time only of ſuch decrée. This laſt branch extendeth only to Cottages made after our Statute.

The 3. branch.

Provided alſo, and be it enacted, That from and after the Feaſt of All-Saints next coming, there ſhall not be any Inmate, or more families or houſholds then one, dwelling or inhabiting in any one Cottage, made, or to be made or erected, upon pain that every owner or occupier of any ſuch Cottage, placing, or willingly ſuffering any ſuch Inmate, or other family then one, ſhall forfeit and loſe to the Lord of the Leet, within which ſuch Cottage ſhall be, the ſum of ten ſhillings of lawful money of *England*, for every moneth that any ſuch Inmate, or other family then one, ſhall dwell or inhabit in any one Cottage, as aforeſaid. And that all and every Lord and Lords of Leet and Leets, and their Stewards within the precinct of his and their Leet and Leets, ſhall have full power and authority within their ſeveral Leets, to enquire, and to take preſentment by the oath of Jurors of all and every offence and offences in this behalf, and upon ſuch preſentment had or made to levy by diſtreſs to the uſe of the Lord of the Leet, all ſuch ſums of money as ſo ſhall be forfeited: And moreover, that it ſhall be lawful for the Lord of every ſuch Leet where ſuch preſentment ſhall be made, to recover to his own uſe any ſuch forfeiture, by action of debt in any of the Queens Majeſties Courts of Record, wherein no eſſoin, protection, or wager of Law ſhall be allowed.

See the Statute of 43 El. cap. 2. ut ſup. concerning Inmates.

¶ There ſhall not be any Inmate or more families or houſholds then one, dwelling or inhabiting in any one Cottage, &c.] Inmate. In the Statute of 35 Eliz. cap. 6. it is ſaid Inmate, or Under-ſitter. It is here well explained by theſe words (or more families in any one Cottage.)

Inquilinus (derived of *in* & *colo*, to dwell within) is the proper word for an Inmate, or Under-ſitter.

Here ſeven things are to be obſerved:

1. That no Inmate or Under-ſitter can be within this Statute, but in a Cottage.

2. This branch concerning Inmates extendeth to Cottages as well made before this Statute, as after.

* Coke lib. Int. 165. b.

3. And as well to * Cottages having four acres of ground or more laid to them, as is aforeſaid, as others that have no ground at all.

4. Upon pain that every owner or occupier of any ſuch Cottage, placing, or willingly ſuffering any ſuch Inmate, or other family then one, ſhall forfeit and loſe to the Lord of the Leet, within which ſuch Cottage ſhall be, the ſum of ten ſhillings for every moneth, &c. This moneth is to be accounted according to the computation of 28 days.

3 H. 7. 4.

5. And upon ſuch preſentment had or made, to levy by diſtreſs, &c. that is, to ſell the diſtreſs which he ſhall take within the precinct of the Leet for ſuch forfeiture; and if there be a ſurpluſage over the value of the forfeiture, to deliver it to the owner.

6. This Act extendeth as well to Inmates in Cottages in any City, Town corporate, ancient Borough, or Market Town, as in any other Cottage whereſoever. Vide Hill. 8 Jacobi in communi banco, Rot. 2193. betwéen John Paſe Plaintife, and Robert Peat Defendant in Treſpaſs, Salop. A juſtification upon this Statute for the penalty for kéeping an Inmate.

7. Hereby the Act giveth election to the Lord to take his remedy by Action of debt in any of the Kings Courts of Record.

Be

Be it further enacted by the authority aforeſaid, That all Juſtices of Aſſiſes, and Juſtices of Peace in their open Seſſions, and every Lord within the precinct of his Leet, and none others, ſhall have full power and authority within their ſeveral limits and juriſdictions, to enquire of, hear and determine all offences contrary to this preſent Act, as well by Indictment, as otherwiſe by preſentment or information, and to award execution for the levying of the ſeveral forfeitures aforeſaid, by *Fieri facias*, *Elegit*, *Capias*, or otherwiſe, as the cauſe ſhall require. The 4. branch.

In this branch theſe four things are to be obſerved:

1. That theſe 3. viz. Juſtices of Aſſiſes, Juſtices of Peace, and Lords of Léets and no other Judges or Juſtices can enquire, &c. any of the offences againſt this Statute. And therefore the Sheriff in his Turn cannot enquire, &c. of any offence againſt this Statute committed within the Léet of any Lord thereof.

2. That they may enquire, hear, and determine all offences, &c. ſo as there is a concurrent power in every of theſe three, and the judgment, &c. of ſuch one of them, as do firſt enquire, hear, and determine the ſame, ſhall ſtand; and each of them may enquire of all and every of the offences againſt this Act.

3. As well by Inditement or otherwiſe by Preſentment or Information. The difference between an Inditement and Preſentment is this, that the Inditement is drawn and ingroſſed in parchment in form of Law, and delivered to the Jurors to be enquired of, &c. And a Preſentment is properly that which the Jurors find and preſent to the Court, without any former Inditement delivered to them, which afterward is reduced to a formed Inditement. Every Inditement which is found by the Jurors is preſented by them to the Court: for the Record ſaith, Juratores præſentant, &c. when they find an Inditement. And therefore every Inditement is a Preſentment, but every Preſentment is not an Inditement.

Offences found in Léets, Court-Barons, &c. are commonly called Preſentments; which was the reaſon that this Act, giving juriſdiction to a Léet, doth uſe this word (Preſentment) in this and the third branch.

4. To award execution by Fieri facias, Elegit, Capias, or otherwiſe: Hereby is greater juriſdiction given to the Léet, then it had at the Common Law; So as the Lord of the Léet hath by the third branch power to levy the forfeiture due to him by diſtreſs, or by action of debt by the Common Law; and by this fourth branch, by Fieri facias, Elegit or Capias. Co. li. Intrat' 665, 666.

Provided always, That this Statute, or any thing therein contained, ſhall not in any wiſe be extended to any Cottage, which ſhall be ordained or erected to, or for habitation or dwelling in any City, Town corporate, or ancient Borough, or Market Town within this Realm, nor to any Cottages or Buildings, which ſhall be erected, ordained, or converted to, and for the neceſſary and convenient habitation or dwelling of any workmen, or labourers in any mineral works, cole-mines, quarries, or delfs of ſtone, or ſlate, or in or about the making of brick, tile, lime or coles within this Realm: So as the ſame Cottages or Buildings be not above one mile diſtant from the place of the ſame mineral or other works, and ſhall be uſed only for the habitation and dwelling of the ſaid workmen, nor ſhall in any ſort prejudice, charge, or impeach any perſon or perſons, for the erecting, maintaining, or continuing of any ſuch Cottages, as are before in this Proviſo mentioned and ſpecified.

Provided always, That this Act ſhall not extend to any Cottage to be made within a mile of the Sea, or upon the ſide of ſuch part of any navigable River, where the Admiral ought to have juriſdiction, ſo long as no other perſon ſhall therein inhabit; but a Sailer or man of manual occupation, to or for making, furniſhing, or victualling of any Ship or Veſſel, uſed to ſerve on the Sea; nor to any Cottage to be made in any Forreſt, Chaſe, Warren, or Park, ſo long as no other perſon ſhall therein inhabit, but an Under-keeper or Warrener, for the good keeping of the Deer, or other game of Warren, nor to any Cottage heretofore made, ſo long as no other perſon ſhall therein inhabit, but a common Herdman or Shepherd, for keeping the Cattel or Sheep of the Town, or a poor lame, ſick, aged, or impotent perſon, nor to any Cottage to be made, which for any juſt reſpect upon complaint to the Juſtice of Aſſiſe at the Aſſiſes, or to the Juſtices of Peace at the Quarter-Seſſions, ſhall by their order entred in open Aſſiſes or Quarter-Seſſions, be decreed to continue for habitation, for and during ſo long time only, as by ſuch decree ſhall be tolerated and limited. *Stat.* 35 *Eliz.* 6. 43 *Eliz.* 2.

Of theſe Proviſo's ſufficient hath been ſpoken before in the ſecond branch of this Statute.

The inconveniences that grow by unlawful Cottages, and Inmates in Cottages againſt this Statute, as appear by the Preamble, are great, being neſts to hatch idleneſs, the mother of pickings, thæveries, ſtealing of wood, &c. tending alſo to the prejudice of lawful Commoners; for that new erected Cottages within the memory of man, though they have four acres of ground or more laid to them, according to this Act, ought not to common in the waſtes of the Lord; but the greateſt inconvenience of all is, the ill bræding and educating of youth, which inconveniences may be eaſily helped and remedied by the proviſions of this excellent Law, if Lords of Leets and their Stewards would lok to the execution of this Act, which we hold the readieſt means: for albeit the Cottage erected, or converted, cannot by any proviſion in this Statute be demoliſhed, or pulled down; yet the execution of the penalty of this Act will make it inhabitable, and work the deſired effect. And they may alſo be amerced for wrongful commoning in the Court Baron.

Caſa à caſu (id eſt) ruina, quia ruinæ eſt obnoxia,
Domuncula, tugurium à tegendo.

Pauperis & tuguri congeſtum ceſpite culmen.
Virg. 2. Eclog.

A Col-

A Collection and Expoſition upon the Statutes of Imployments, *viz.* 14 *R.* 2. cap. 1. & 2. 2 *H.* 4. cap. 5. 4 *H.* 4. cap. 15. 5 *H.* 4. cap. 9. 6 *H.* 4. cap. 4. 11 *H.* 4. cap. 8. 9 *H.* 5. cap. 9. Stat. 2. 8 *H.* 6. cap. 24. 27 *H.* 6. cap. 3. 17 *E.* 4. cap. 1. 1 *H.* 7. cap. 2. 3 *H.* 7. cap. 8.

With their ſeveral Alterations and Repeals, and Expirations of ſome of them; our principal aim ever being to ſet down how the Law ſtandeth at this day.

Before the making of any of theſe Statutes, we find that Merchant-ſtrangers found ſureties that they ſhould not carry out the Merchandizes which they brought in. Rot. Vaſcon. 18 E. 2. m. 21.

It was ever the policy of this Realm to entertain Merchant-ſtrangers fairly and freely, having reſpect how our Merchants were demeaned abroad. See Mag. Charta. c. 30. 5 H. 4. c. 7.

In the 18 year of E. 1. in the Parliament roll it is contained thus: Cives London petunt quod alienigenæ mercatores expellantur à Civitate, quia ditantur ad depauperationem civium, &c. Rot. Parliament. 18 E. 1. f. 4. n. 55.

Reſponſio. Rex intendit quod mercatores extranei ſunt idonei & utiles magnatibus, &c. & non habet conſilium eos expellendi.

There be two kinds of Statutes concerning imployments, the one where Merchandizes &c. are brought in, the other upon exchange. And firſt of the firſt.

The Statutes of 14 R. 2. cap. 1. and 2 H. 4. cap. 5. are altered by the Statute of 4 H. 4 c. 15. And therefore we will begin with it.

It is ordained and eſtabliſhed, That all Merchant * Aliens, ſtrangers, and denizens, which bring merchandizes into the Realm of *England*, and the ſame do ſell within the Realm, and receive Engliſh money for the ſame, ſhall beſtow the ſame money upon other merchandizes of *England*, without carrying of any gold or ſilver, in coin, plate or maſſe out of the ſaid Realm, upon pain of forfeiture of the ſame, ſaving always their reaſonable coſts.

* The Parliament Roll hath aliens, which of late hath been omitted. Vid. 17 E. 4. c. 1. This Act extendeth to the whole Merchandizes, and to the whole money, whereas the two former extended but to the half, 27 H. 6. c. 3. further proviſion was added, but that Statute is expired. This Act is confirmed by the Statute of 5 H 4. c. 9. vid. 17 E. 4. c. 1. & 3 H. 7. c. 8.

There were two notable cauſes of the making of this Act, as it is declared by the Statute of 5 H 4. cap. 9. viz. Firſt, for the better keeping of gold and ſilver within this Realm. Secondly, for the increaſe of the commodities of the ſame.

[a] Denizens.] Here denizens are taken for Merchant-ſtrangers which have obtained Letters Patents of denizations; And in this caſe they are derived from donaiſon, id eſt, donatio, becauſe his freedom is given to him by the King, and were inconvenient if it ſhould extend to natural born ſubjects; and the ſtranger made denizen is in equal [b] miſchief (if not in greater) with the meer ſtranger, and this Statute ſtandeth yet in force.

[a] The former two Statutes extended to ſtrangers only. Note, the Original is Merchant-aliens ſtrangers and denizens, which doth declare it. See the firſt Part of the Inſtitutes, §. 198. f. 129. for this word *Denizen*.

But the [c] Statute of 17 E. 4. c. 1. extends not to ſtrangers which are made denizens: and therefore ſuch as are ſo made denizens, are out of the penalty of that Statute, but within the penalty of this of 4 H 4. And that Act of 17 E. 4. hath altered this Act in another point, viz. that either he may imploy the money upon the merchandizes, whereunto 4 H. 4. only extended, or other commodities of the Realm, or he may put the ſame in payment to the Kings * liege people within this Realm.

[b] So reſolved 7 El. by the Barons. [c] This Act of 17 E. 4. is confirmed by 3 H. 7. cap. 8. * Nota, (Liege people) ſo as he cannot pay it to a ſtranger, or he that is made *Denizen*, for liege is as much as ſubject born.

Such

* 1 H. 7. cap. 2. 11 H. 7. c. 14.

Such as are made denizens * by Letters Patents, or by Parliament, or otherwise, ſhall pay for his merchandize like cuſtom and ſubſidy, as they ought or ſhould pay afore they were made denizens. See 11 H. 7. c. 14. and 22 H. 8. c. 8. See the Statute of 1 El. c. 11.

¶ Engliſh mony.] This is intended of all mony of gold or ſilver currant within the Realm of England, although it be not coined within England. By this Act he might have received Engliſh money either in ſilver or gold, but by the Statute of 8 H. 6. c. 24. he cannot receive any gold, nor ought to refuſe the payment in ſilver.

8 H. 6. cap. 24.

See a Caſe upon this Stat. in an information, &c. 10 H. 7. a. b. 9 H. 6. cap. 2.

By the ſaid Act of 8 H. 6. no Engliſh-man ſhould ſell within this Realm, &c. to any merchant alien, &c. any manner of merchandizes but only for ready payment in hand, or elſe in merchandizes for merchandizes, to be paid and contented in hand, upon pain of forfeiture of the ſame; but by the Statute of 9 H. 6. cap. 2. at the next Parliament liberty was given for Clothes only from ſix moneths to ſix moneths next enſuing after ſuch buyings made, without giving any further day of payment, upon pain of forfeiture of the ſame. This ordinance to endure as long as it ſhall pleaſe the King, but for all other merchandizes the Statute of 8 H. 6. ſtandeth in force.

10 H. 7. 7. b. Sir William Capels caſe. 5 E. 6. cap. 7.

¶ As long as it ſhall pleaſe the King.] This Statute ſtandeth until the King or ſome of his Succeſſors (for ſucceſſors are included under the name of King) ſhall annul or make the ſame void by Proclamation under the great Seal, which is the mean to make this Act void, and all others of like nature. Like Acts are in 6 H 6. c. 1. 8 H. 6. c. 8. 18 H. 6. c. 13. 5 Edw. 6. c. 7. &c.

The ſaid Act of 4 H. 4. c. 15. preſcribed no time for the imploying of the money, but the Statute of 5 H. 4. c. 9. doth bind them to imployment within a quarter of a year after their coming into this Realm: But at the next Parliament holden the next year, that branch only for the limitation to a quarter of the year is made void and annulled: but the two other branches, viz. for the taking of * ſureties by cuſtomers and controllers in all the parts of England for due imployment: And concerning money taken by exchange in this Realm (whereof more ſhall be ſaid hereafter) are not repealed by 6 H. 4.

6 H. 4. cap. 4.

* A neceſſary branch to be put in execution.

See the Reſolution of the Barons of the Exchequer Anno 7 Eliz. and entred in the Cuſtom-houſe concerning the Statutes of Imployments.

The Juſtices of Peace have power to hear and determine all defaults and forfeitures purviewed or inflicted by the Statute of 17 E. 4. cap. 1.

The ſecond part.

The other kind of Statutes concerning imployments upon exchange.

14 R. 2. cap. 2. It was altered by the Statute of 9 H. 5. cap. 9. Stat. 2. but that Statute is expired, and 14 R. 2. ſtandeth in force.

That for every exchange that ſhall be made by Merchants to the Court of *Rome*, or elſewhere (beyond the Seas) that the ſaid Merchants be firmly and ſurely bound in the Chancery, to buy within three moneths after the exchange made merchandizes of the ſtaple, as wool, leather, woolfels, lead or tin, butter or cheeſe, cloths or other commodities of the land, to the value of the ſum ſo exchanged, upon pain of forfeiture of the ſame.

This Statute extendeth to exchanges made by any merchant alien, denizen, or born ſubject to forrein parts.

5 H. 4. cap. 9.

And alſo that the money delivered by exchange in England be imployed upon the Commodities of this Realm within the ſame Realm, upon pain of forfeiture of the ſame money.

This Act extendeth to money delivered by way of exchange within the Realm; and this branch is not repealed by the Statute of 6 H. 8. c. 4.

Holl. Chron. an. 23 H. 8. pag. 297.

Anno 23 H. 8. a Proclamation was made for obſervation of the Statutes of Imployments.

An

An uſual thing when neceſſary Statutes have been (moſt commonly for private ends) for a time diſcontinued, to give all men notice thereof by Proclamation, that ſuch Statutes for the time to come ſhould be put in due execution.

This have we done upon conſideration of all the ſaid ſeveral Statutes for advancement of Trade and Traffick, eſpecially of our Native Commodities, the life of every Kingdom, and principally of Iſles.

The Statute of 25 H. 8. Cap. 15. *concerning Printers, and Binders of Books.*

BE it enacted, &c. that no perſon or perſons reſiant or inhabitant within this Realm, &c. ſhall buy or ſell again any printed books brought from any parts out of the Kings obeyſance, ready bound in boords, leather, or parchment, upon pain to loſe and forfeit for every book bound out of the Kings obeyſance, and brought into this Realm, and bought by any perſon or perſons within the ſame to ſell again contrary to this Act, ſix ſhillings eight pence.

And be it further enacted by the authority aforeſaid, that no perſon or perſons inhabitant or reſiant within this Realm, &c. ſhall buy within this Realm, of any ſtranger born out of the Kings obedience, other then of Denizens, any manner of printed books brought from any the parties beyond the Sea, except only by engroſs, and not by retail: upon pain of forfeiture of *6 s. 8 d.* for every book ſo bought by retail, contrary to the form and effect of this eſtatute, the ſaid forfeitures to be always levied of the buyers of any ſuch books, contrary to this Act: The one half of all the ſaid forfeitures to be to the uſe of our Soveraign Lord the King, and the other moity to be to the party that will ſeiſe or ſue for the ſame in any of the Kings Courts, be it by bill, plaint, or information, wherein the Defendant ſhall not be admitted to wage his Law, nor no protection, ne eſſoin ſhall be unto him allowed.

Provided alway, and be it enacted by the authority before ſaid, that if any of the ſaid Printers or Sellers of printed books, inhabited within this Realm, at any time hereafter happen in ſuch wiſe to enhance and encreaſe the prices of any ſuch printed books in ſale or binding, at too high and unreaſonable prices, in ſuch wiſe as complaint be made thereof unto the Kings Highneſs, or unto the Lord Chancellor, Lord Treaſurer, or any of the chief Juſtices of the one Bench or of the other: that then the ſame Lord Chancellor, Lord Treaſurer, and two chief Juſtices, or any two of them, ſhall have power and authority to enquire thereof, as well by the oaths of twelve honeſt and diſcreet perſons, as otherwiſe by due examination by their diſcretions. And after the ſame enhaunſing and encreaſing of the ſaid prices of the ſaid books and binding ſhall be ſo found by the ſaid twelve men, or otherwiſe by examination of the ſaid Lord Chancellor, Lord Treaſurer, and Juſtices, or two of them: that then the ſame Lord Chancellor, Lord Treaſurer, and Juſtices, or two of them at the leaſt, from time to time, ſhall have power and authority to reform, and redreſs ſuch enhaunſing of the prices of printed books, from time to time, by their diſcretions, and to limit prices as well of the books, as for the binding of them: and over that the offendor

offendor or offendors thereof, being convict by the examination of the ſame Lord Chancellor, Lord Treaſurer, and Juſtices, or two of them, or otherwiſe, ſhall loſe and forfeit for every book by them ſold, whereof the price ſhall be enhaunſed, for the book or binding thereof three ſhillings four pence, the one half thereof ſhall be to the Kings Highneſs, and the other half unto the parties grieved, that will complain upon the ſame, in manner and form before rehearſed.

To the end, that not only this ſecond part of the Inſtitutes, but all other bookes of what argument ſoever, may be ſold at reaſonable prices, and that the ſubjects of this Realm, being Printers, and Binders of Books, may be ſet on work, we have thought good in this Treatiſe of Statutes to conclude with this Statute of
25 H.8. cap.15. 25 H.8. cap.15. which conſiſteth on theſe three parts:

1. That no inhabitant or reſiant within this Realm ſhall buy to ſell again any printed books brought from any parts out of the Kings obeyſance ready bound in boords, leather, or parchment.

2. Nor ſhall buy within this Realm of any ſtranger born out of the Kings obedience, other then of Denizens, any manner of printed books brought from beyond the Seas, except only by ingroſs, and not by retail.

3. That the Lord Chancellor, Lord Treaſurer, and the two Chief Juſtices, or any two of them ſhall have power to enquire as well by the oath of twelve men, as otherwiſe by due examination by their diſcretion, of the enhaunſing and encreaſing of the prices of books, or binding of the ſame, and the ſame ſo found, they, or any two of them, from time to time have power to limit prices as well of the books, as for the binding of them, as by the ſaid Act appeareth.

Which we have thought good to add, to the end it might be known what the Law is in theſe caſes; and that if any enhaunſing or encreaſing of prices be either of the books, or the binding of them, that it may be known who may and ought to redreſs the ſame.

The Epilogue.

THus have we, by the merciful goodneſs of Almighty God, brought this Second Part of the *Inſtitutes* (a large and laborious Volume) containing an Expoſition of *Magna Charta*, and many other ancient and later Statutes, to an end; wherein we could not follow or be guided by any other, for that never any (that we have ſeen or heard of) have enterpriſed to publiſh the like in this kind: And therefore if the piercing eyes of the Learned ſhall find out errors herein, we are not without ſome kind of excuſe. And we deſire them to amend and correct thoſe errors, according to the true ſenſe of Law, for the which we ſhall not only give them thanks, but ſubſcribe to the truth, and take it as ſome recompence for thoſe our manifold and painful Labors herein, which we from the beginning have undertaken for the general good and profit of the whole Realm.

Poſt varios caſus, poſt tot diſcrimina rerum.

Nunc ſequitur concluſio.

DEO *gloria & gratia.*

Cic. lib.2. fin. *Jucunda eſt præteritorum laborum memoria.*

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