*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 catal a, quæ habent in baliva sua, ita quod vicecomes respondeat domino regi de exitibus dicti hæredis, et quod habeat corpora eorum ad certum diem sibi præfigendum * coram justitiariis. Ita quod si ad diem illum non venerint, eat pars conquerens inde sine die, et averia sua, sive aliæ districtiones hac occasione factæ, deliberata remaneant, donec ipsi domini sectam illam recuperaverint* (11) *per considerationem curiæ regis, et 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, et 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 (12) *dominis [feodorum] sectas quas facere [debeant] et quas ante tempus prædictum transfretationis, et hactenus facere consueverunt, tunc per eandem justitiam, et celeritatem quo ad dies præfigend', et 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, et 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*

were attached, or do not keep the day given to them by essoin, then the sheriff shall be commanded to cause them to come at another day; at which day, if they come not, then he shall be commanded to distrain them by all their goods and chattles that they have in the shire, so that the sheriff shall answer to the king of the issues of the said inheritance; and that he have their bodies before our justices at a certain day limited. So that if they come not at that day, the party plaintiff shall go without day, and his beasts, or other distresses taken by that colour, shall remain delivered, until the same lords have recovered the same suit by award of the king's court; and in the mean time such distresses shall cease, saving to the lords of the court their right to recover those suits in form of law, when they will sue therefore.

And when the lords of the courts come in to answer the plaintiffs of such trespasses, and be convict thereupon; then, by award of the king's court, the plaintiffs shall recover against them the damages that they have sustained by occasion of the said distress. Likewise if the tenants, after this act, withdraw from their lord such suits as they were wont to do, and which they did before the time of the said voyage, and hitherto used to do; then by like speediness of justice, as be to limiting of days, and awarding of distresses, the lords of the court shall obtain justice to recover their suits, with their damages, in like manner as the tenants should recover theirs: and this recovering of damages must be understood of withdrawing from themselves, and not of withdrawing from their ancestors. Nevertheless, the lords of the court shall not recover seisin of such suits against their tenants by default, as they were wont to do. And touching suits withdrawn before the time aforementioned,

lex communis (13), *sicut prius currere consuevit.*

mentioned, let the common law run as it was wont before time.

Regist. 176. F. N. B. 159. 45 E. 3. 23. (6 Rep. 1. Stat. Hiberniæ. 14 H. 3. par. 7. Partition 1. Fitz. Avowry, 15 42. 48. 51. 60. 66. 68. 89. 99. Fitz. Avowry, 86. 92.)

This chapter hath nine branches. The first is,

Regist. 176. F.N.B. 159. 45 E. 3. 23.

(1) *De sectis.*] This is understood of suit service to courts baron, hundreds, and the like, and not to suit reall in respect of resiance, nor to suit to the mill, for the words be, *de sectis fac' ad curiam, &c.*

Mag. cart. c. 10.

(2) *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.*

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. ‡ [118] ✻ Fleta, lib. 3. c. 14. F.N.B. 162, 163.

At the common law, before the making of this statute, if the lord had made a feoffment by deed, and reserved certaine services, as for example, fealtie, and 2 s. rent, or 2 s. rent generally, which had implyed fealtie; 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 onely the tenant and his heires, but his ‡ assignes also, or any other tenant of the land might have rebutted the lord, his heires, or assignes, by the deed, and this doth hold betweene partie and partie, privie and privie, privie and estranger, and estranger and estranger. ✻ But this act giveth the tenant or his heires a more speedy remedy, for hereby is given to the tenant against the lord and his heires a writ of *contra formam feoffamenti*, wherein six things are worthy of observation.

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 bailiffes, and reciteth this act, the forme whereof you may reade 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. avowrie*, 243, that upon a confirmation a writ of *contra formam feoffamenti* doth lie, and by that book it should seeme, that a writ of *contra formam feoffamenti* did lie at the common law before this statute, which was made in 52 H. 3. To this it is answered, that the said case is mis-printed, for where it is Mich. 16 H. 3. it should be 56 H. 3. when the case was so resolved, and in which terme, *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 reall no distresse 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. 47 E. 3. 92.

2. Where the statute saith, *contra formam feoffamenti*, yet if the lord confirme the estate of the tenant to hold by certaine services, upon this confirmation he shall have a *contra formam feoffamenti*, for that it is within one and the same reason.

3. *Pro*

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 certaine service contained in the feoffment or gift, and therefore out of this act, but he may rebut.

4 E. 3. avow. 201. 15 E. 3. confir. 8. F.N.B. 163. g. P. 10 E. 3. per Parning.

4. If the lord distreine either for suite, 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.*

F.N.B. 163. f.

5. The statute saith, *contra formam feoffamenti*; hereupon exposition hath been made, that this writ lyeth onely betweene privies, *viz.* by the tenant and his heires, against the lord and his heires, for they be included in privitie of the feoffment, but so are not the assignes on either side.

14 H. 4, 5. 22 H. 6. 50. 30 H. 6, 7. 10 H. 7. 11. F.N.B. 163. c. Li. 4. fo. 121. Bustards case. Ibid. fo. 11. Bevils case. Li. 9. fo. 34. Bucknals case.

* If the feoffment be without deed, the feoffee is driven to his writ of *Ne injuste vexes.*

* Mag. Car. c. 10.

(3) *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 yeare of his raigne, this act doth give reliefe against any seisin since his first going over into Britaine, which was in the 14 yeare of his raigne, but the seisin before that time, when the times were regular and peaceable, this act doth except.

2. *Branch.*

How, and in what manner seisins by incroachments shall be avoided, you may reade in Bevills case, in Bucknalls case, *ubi supra*, and in the first part of the Institutes, sect.

Li. 4. fo. 11. Bevills case. Lib. 9. fo. 34. Bucknals case.

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(4) *Similiter nullus feoffatus à 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 deed; in the next branch with feoffments by deed, wherein is to be observed the great antiquity of feoffments by deed or without deed of ancient time before the conquest.

3. *Branch.* Fleta, li. 2. cap. 60.

Secondly, the reason in those troublesome times, since the first going over of the king (as hath been said) is not allowed of, but a seisin is required before that time, when times were regular and peaceable.

(5) *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*

(6) *Et si hæreditas aliqua,* &c.] For parceners, see the first part of the Institutes, sect. 241, & le Custumier de Norm. cap. 30, fol. 46. tenure per parage, i. per coparcenarie, & cap. 36. fo. 55.

5. *Branch.*

(7) *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 doe suit as well after partition as before, and so shall their severall feoffees, for this act

24 E. 3. 34, 73. 14 H. 3. Stat. de Hibernia. Vet. Mag. Char. fo. 110.

F.N.B. 159. extendeth not to the king, for the words be, *ad curiam magnatum, &c.*

If the eldest after partition will not doe the suit, in the case of a common person the lord may distreine 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 compell her to do the suit, and if the eldest doth the suit, and the residue refuse to contribute to her charge, she shal have upon this act a writ *De contributione facienda* to compell them to contribute.

Regist. 174. F.N.B. 160.

F.N.B. 159.

Qui habet enitiam.] And yet this act extendeth to the feoffee of him that hath *enitiam partem*, and so it is of the tenant by the curtesie.

Note, a woman may be a free suiter to the courts of the lord, but though it be generally said, that the free suiters be judges in these courts, it is intended of men, and not of women.

6. *Branch.*

(8) *Et si plures feoffati fuerint de haereditate 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 certaine; 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 hawke, 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 feoffees make a feoffment in fee, the feoffee shall doe a severall suit, and the rest of the joynt feoffees shall doe but one. And if one of the severall feoffees doth the suit, if the other feoffees 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 beene observed) what actions are grounded upon this and other the like statutes, though no mention be made of them in the acts, all which appeare in the Register.

F.N.B. 159. Regist. 174. 176, 177. Li. 6. fo. 1. Bruertons case. F.N.B. 162. d. Bruertons case ubi sup.

Regist. 174. 176, 177.

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If parcell 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.

40 E. 3. 5. 34 ass. 15. 24 E. 3. 73. Bruertons case *ubi supra.*

7. *Branch.* For warranty & acquitall, see the 1. part of the Instit. sect. 142.

(9) *Et si feoffati illi warrantum, vel medium non habeant.*] That is to say, if they have neither one to warrant by speciall graunt, nor any mesne by tenure which ought to acquit them, *tunc omnes illi feoffati pro portione sua contribuant, &c.* This clause is to be understood of severall tenants, as hath been said before: and no provision is made by this act concerning contribution; where the parties are provided for by graunt or tenure.

8. *Branch.*

(10) *Si autem contingat quod domini, &c.*] Here is a remedy given to the tenant against the lord, if he distraine contrary to this statute.

7 E. 4. 14. 9 H. 7. 12 H. 7. 15.

(11) *Donec domini sectam suam recuperaverint, &c.*] Nota, the suit that is past cannot be recovered, but damages for the same.

9. *Branch.*

(12) *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.

(13) *Currat lex communis.*] See before, cap. 7.

CAP.

CAP. X.

De tournis vicec' (1) *provisum est, quod necesse non habeant* (2) *ibi venire archiepiscopi, episcopi, abbates, priores, comites, barones, nec aliqui viri religiosi* (3), *seu mulieres, nisi eorum præsentia ob aliquam causam specialiter exigatur sed teneatur tournus, sicut temporibus prædecessorum domini regis teneri consuevit* (4). *Et qui in* [*diversis*] *hund' habeant tenementa, non habeant necesse ad hujusmodi tournos* (6) *venire, nisi in balivis* (7) *ubi fuerint conversantes* (5). *Et teneantur tourni secundum formam Magnæ Chartæ, et sicut temporibus regum Richardi et Johannis teneri consueverunt.* Vide Mag. Char. cap. 35.

FOR the turns of sheriffs, it is provided, that archbishops, bishops, abbots, priors, earls, barons, nor any religious men or women, shall not need to come thither, except their appearance be especially required thereat for some other cause; but the turn shall be kept as it hath been used in the times of the king's noble progenitors. And they that have hundreds of their own to be kept, shall not be bound to appear at any such turns, but in the bailiwicks, where they be dwelling. And the turns shall be kept after the form of the great charter, and as they were used in the times of king Richard and king John.

(Regist. 174, 175.)

De tournis vicecomitis provisum est quod necesse non habent ibi venire archiepiscopi, episcopi, abbates, priores, comites, barones, nec aliqui viri religiosi, seu mulieres, nisi eorum præsentia ob aliquam causam specialiter exigatur.]

Mirror, cap. 1. § 16. F. N. B. 160. c. Mag Cart. c. 35. & hic ca. 18. 24.

This is the first branch of this chapter.

Before the making of this statute, the sheriffe in his tourne, and the lords of leets did use to amerce archbishops, priors, earles, barons, religious men, and women, if they came not to the tournes, or to the leets of others, because for suite reall no distresse 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 need to come to tournes, &c. therefore for their not coming they cannot bee amercied.

8 H. 4. 15. 12 H. 7. 15.

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First, heare what the Mirror saith of this matter: *Abusion est de suffer ascun deins le realme ouster 40 jours, que il soit del age de xiij. ans, insuis Anglois ou alien, sil ne soit jure al roy per serement del fealti & 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 xiij. 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 performe 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*

Regist. 175, 176. F.N.B. 160.

tione terrarum et 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 generall custome of the realme; but other clerks (that be no parsons of churches with cure) under which name all ecclesiasticall 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. 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. ulagar. 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 personall comming to the tourne and leet, and many other persons never tooke 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 corporall oath, is but an outward declaration of the same.

In the chapter next before, provision was made for doing of suite service, now in this chapter a law is made concerning suite reall, by reason of resiancie.

Mag. Chart. c. 35. F.N.B. 159, 160, 161. Regist 175, 176.

(1) *De tournis vicecom'.*] This tourne of the sheriffe 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.

(2) *Necesse non habeant.*] That is, they are not compellable to come, but left to their owne liberty, *nisi eorum præsentia ob aliquam causam specialiter exigatur,* as to be a witnesse or the like.

See the first part of the Institutes, sect. 133.

(3) *Nec aliqui viri religiosi.*] *Religiosi* in the proper sense are taken for those that be regulars; but ecclesiasticall persons, that be seculars are also within this act, and that doth notably appeare 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 ecclesiasticall persons secular, are in *consimili casu* with them that be *religiosi,* and consequently within this act.

In consimili casu.

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Mag. Chart. c. 35.

(4) *Sed teneatur tournus sicut in temporibus prædecessorum domini regis teneri consueverunt, et teneantur tourni secundum formam Magnæ Chartæ et sicut temporibus regis Richardi et Johannis teneri consueverunt.*] In this 52 yeare of H. 3. so long it was by effluxion of time since the raigne 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.

F.N.B. 160. Mag. Chart. c. 35.

(5) *Et qui in diversis hundredis habeant tenementa, non habeant necesse ad hujusmodi tournos venire nisi in balivis 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

he is converſant, and hundreds here are named, becauſe ſheriffes (as hath been ſaid) kept their tournes in every hundred.

(6) *Ad hujuſmodi tournos.*] Here *tournus* is taken not only for the kings view of frankpledge, but for the views of frankpledge of other lords.

(7) *In balivis.*] Here *baliva* is taken for the tourn or leet where he is converſant.

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.

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 doe his ſuit to the tourne or leete where his perſon is commorant.

33 H. 6. fol. 9. 19 H. 6. fol. 1. a.

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.

Mag. Chart. c. 35. & hic, cap. 9. Regiſt. 174, 175. F.N.B. 160, 161. d. 36 E. 3. cap.

CAP. XI.

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' (1), *neque* [*pro eo*] *quod non occaſionentur* (2). *Et ſciendum eſt, quod per iſtam conſtitutionem non tolluntur fines certi* (3), *ſeu præſtationes arrentatæ à tempore quo dominus rex primum transfretavit in Britanniam uſque nunc.*

IT is provided alſo, that from henceforth neither in the circuit of juſticers, nor in counties, hundreds, and court barons, any fines ſhall be taken of any man for fair-pleading, nor ſo that any occaſion ſhall be. And it is to be known, that by this act fines certain, or loans aſſeſſed ſince the time that our lord the king firſt paſſed into Britain, are not taken away.

W. 1. ca. 8. 1 E. 3. cap. 8. ſtat. 2. Britton, fol. 32. Fleta, li. 2. ca. 60. (1 Ed. 3. ſtat. 2. c. 8. 3 Ed. 1. c. 6. Regiſt. 179.)

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 plaintiſe, tenant or demandant, and not upon the councell learned for vicious pleading; and the reaſon thereof was, for that it was in delay of juſtice, and ſo a contempt to 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.

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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 yeare of his raigne, are not taken away by this ſtatute.

(1) *Pro pulchre placitando.*] In truth it was, as hath been ſaid, as

as well in respect of the vicious pleading, as of the faire 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 foure here named, for in the higher courts there were faire and good pleadings; whereof the English poet (speaking of the serjant at law) saith,

Chaucer.

Thereto he could indite and make a thing,
There was no wight could pinch at his writing,

(2) *Neque pro eo quod non occasionentur.*] That is, that for that cause they should not be occasioned or troubled.

Regist. 179. F.N.B. 270. 13 E. 1. Attachment 8.

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.

(3) *Non tolluntur fines certi.*] And the reason of this was, for that fines certaine grew by consent, and therefore this act tooke them not away, for *omnis consensus tollit errorem*; and I have seene, and doe know in divers court barons, &c. fines certain for *beaupleder* paid to this day.

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CAP. XII.

IN placito vero dotis, quod dicitur unde nihil habet (1), *dentur de cætero quatuor dies per annum ad minus, et plures si commodè fieri poterit, ita quod habeant quinque vel sex dies ad minus per annum. In assisis* [*autem*] *ultimæ præsentationis, et in placito quare impedit* (2) *de ecclesiis vacantibus, dentur dies de quinden' in quinden'* (3), *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* (5), *non venerit* (4), *nec essonium miserit impeditor, tunc attachietur ad alium diem, quo die si non venerit, nec essonium miserit* (6), *distringatur per magnam districtionem superius datam. Et si tunc non venerit per ejus defaltam scribatur episcopo illius loci quod reclamatio impeditoris illa vice conquerenti* (8) *non obsistat* (7), *salvo impeditori alias jure suo, cum inde loqui voluerit. Eadem lex * de attachiamentis* (9) *faciendis in omnibus brevibus ubi attachiamenta jacent de cætero (quoad districtiones faciendas) firmiter observetur:*

IN a plea of dower, that is called unde nihil habet, from henceforth four days shall be given in the year at the least, and more if conveniently it may be, so that they shall have five or six days at the least in the year. In assises of darraine presentment, and in a plea of quare impedit, of churches vacant, days shall be given from fifteen to fifteen, or from three weeks to three weeks, as the place shall hap to be near, or far. And in a plea of quare impedit, if the disturber come not at the first day that he is summoned, nor cast no essoin, then he shall be attached at another day; at which day if he come not, nor cast no essoin, he shall be distrained by the great distress above given; and if he come not then, by his default a writ shall go to the bishop of the same place, that the claim of the disturber for that time shall not be prejudicial to the plaintiff; saving to the disturber of his right at another time, when he will sue therefore. The same law, as to the making of attachments, shall from henceforth be observed

obſervetur: ita tamen quod ſecundum attachiamentum fiat per meliores plegios, et poſtmodum ultima diſtrictio. [Vide artic' ſuper chartas cap. 15.]

obſerved in all writs where attachments lie, as in making diſtreſſes, ſo that the ſecond attachment ſhall be made by better pledges, and afterwards the laſt diſtreſs.

Vide 51 H. 3. Dies Communes in Banco, in placito dotis. (32 H. 8. c. 21. Fitz. Jour. 18, 19. 32. 11 H. 6. 4. 33 H. 6. 1. Fitz. Brief, al. Eveſque, 14. 21, 22. 27. 32 H. 8. c. 21.)

The miſchiefe before this act was, that in a writ of dower, *unde nihil habet,* there were dayes of common retourn, as in other reall actions, which was miſchievous to the woman, in reſpect of the long delay, ſhe claiming but an eſtate for her life, which miſchiefe this ſtatute, as by the letter thereof appeareth, doth remedy.

And this ſtatute in favour of dower is alſo extended againſt the vouchee, for this act ſaith, *in placito dotis,* and the vouchee is in *placito dotis.*

(1) *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,* unleſſe it be *unde nihil habet,* but the ſaid act of 32 H. 8. extends to every writ of dower.

32 H. 8. cap. 21.

(2) *In aſſiſis ultimæ præſentat' et in placito quare impedit.*] This act extendeth not to a writ of *quare non admiſit,* nor to an *incumbravit,* but onely to the aſſiſe of *darrein preſentment,* and *quare impedit,* and the reaſon thereof is, for feare of the laps.

26 E. 3. 75.
17 E. 3. 21.
18 E. 3. jour 19.

(3) *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.

11 H. 6. 23.

And it is to be obſerved, that by the common law great delayes bee diſallowed in foure kindes 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.

44 E. 3. 5.
39 H. 6. 40.
Artic. ſuper Chartas, cap. 15.

(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 proces was ſummons, attachment, and diſtreſſe infinite, which was miſchievous in reſpect of the laps, now it is provided that if he appeare not at the graund diſtreſſe, judgement ſhall be given for the plaintife, and a writ to the biſhop awarded.

Bract. l. 4. fo. 246, 247.
Fleta, lib. 5. c. 16.
Brit. 233.
11 H. 6. 4.

(5) *Summonitus fuerit.*] Put the caſe that upon the ſummons, the defendant is retourned *nihil,* and at the attachment and diſtreſſe, *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 miſchiefes at the common law, and the leſſer is provided for by expreſſe words, the greater ſhall be included within the ſame remedy; this caſe when *nihil* is returned is the greater miſchiefe, 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 appeare then loſe iſſues.

14 E. 3. Default 17.
11 H. 6. 4. 5.
21 H. 6. 56.
Lib. 5. fol. 41.
* *Regula.*

A *quare impedit* is brought againſt two, upon the diſtreſſe one doth appeare, and the other makes default; in 7 E. 3. it was reſolved that the plaintife ſhould not preſently have a writ to the biſhop againſt him that makes default, for that it might be, that the

7 E. 3. 4.

the other that appeares ſhall have againſt the plaintife a writ to the biſhop; and it was there ſaid, that it was not reaſonable, that upon one originall the plaintife ſhould have one writ to the biſhop for him, and another againſt him; but this notwithſtanding the plaintife 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 barre the plaintiſe, for him to have a writ to the biſhop againſt the plaintiſe by the common law, and ſo bee the later bookes, and common experience at this day.

14 H. 7. 19 b. F.N.B. 39. b. 13 E. 3. bre. al Eveſque 21. 8 H. 4. 2. 10 H. 6. 4. Vide hic c. 2. & 13. Glanv. li. 1. c. 10, 11, &c. Bract. l. 5. fo. 334, 335, &c. Brit. cap. 122, 123, &c. Fleta, lib. 6 ca. 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. W. 2. cap. 17.

(6) *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 legall underſtanding is an excuſe of a default by reaſon of ſome impediment, or diſturbance, and is as well for the plaintiſe as the defendant, and is all one with that which the civilians call *excuſatio.* * Of eſſoines, there have been (as we reade in our bookes) five kindes, *viz.* 1. *De ſervitio regis.* 2. *In terram ſanctam.* 3. *Ultra mare.* 4. *De malo lecti*, in our old bookes called *eſſonium de reſeantiſa.* 5. *Et de malo veniendi*, and this laſt is the common eſſoine, which is intended in this act.

In a *quare impedit*, or *darrein preſentment*, an eſſoine *de ſervice le roy, ad terram ſanctam*, or *ultra mare* lyeth not for doubt of the laps, but a common eſſoine lieth, 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 finde, not in Glanvill any eſſoines, but in reall and mixt actions, but before the making of this act, eſſoines were allowed in perſonall actions.

Mirror ubi ſupra.

Mirror ubi ſupra.

Non jacet eſſonium, quia ſummonitio teſtificata non eſt, vel par non attachiatur, eo quod vicecomes mandavit quod non eſt inventus.

Vide 12 E. 2. Stat. de eſſonio calumniando. 34 H. 6. 28. 2 H. 4. 1. b. 22 H. 6. 45. 33 H. 6. 1. a. F.N.B. 38. n.

(7) *Per ejus defaltam ſcribatur epiſcopo quod reclamatio impeditoris illa vice conquerenti non obſiſtat.*] Upon theſe words of this act the plaintife ſhall have a writ to the biſhop without making of any title.

2 H. 4. 1. 24 E. 3 37. 38 E. 3. 12.

The ſtatute ſaith only, *Scribatur epiſcopo*, and yet the plaintife ſhall have both a writ to the biſhop, and beſides a writ to enquire of damages; if the biſhop be out of the realme, a writ to the biſhop may be awarded to his vicar generall, for he is in place of the biſhop.

13 E. 3. bre. al Eveſque 19.

If the defendant appeare at the grand diſtreſſe, 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 diſtreſſe ſhall be awarded.

24 E. 3.

(8) *Conquerenti.*] The king ſhall take the benefit of this ſtatute.

(9) *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.

ET sciendum est [quod] postquam aliquis posuerit se in inquisitionem aliquam (1), quæ emerserit, vel emergere poterit in hujusmodi brevibus, non habebit nisi unicum essonium (2), vel unicam defaltam (3), ita quod si ad diem sibi datum per essonium suum non venerit, aut secundo die defaltam fecerit, tunc inquisitio illa per ejus defaltam capiantur, secundum inquisitionem illam ad judicium procedatur. Si vero inquisitio illa capta fuerit in comitatu (4) 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 et alius dies, secundum discretionem justiciariorum, et 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.

AND it is to be known, after that a man hath put himself upon any enqueſt, the which hath or muſt paſs in ſuch manner of writs, he ſhall have but one eſſoin, or one default; ſo that if he come not at the day given to him by the eſſoin, or make default the ſecond day, then the enqueſt ſhall be taken by his default, and according to the ſame enqueſt they ſhall proceed to judgement. And if ſuch enqueſt be taken in the county, before the ſheriff or coroners, it ſhall be returned unto the king's juſtices at a certain day; and if the party defendant come not at that day, then, upon his default, another day ſhall be aſſigned to him after the diſcretion of the juſtices; and it ſhall be commanded to the ſheriff, that he cauſe him to come to hear the judgement, if he will, according to the enqueſt; at which day, if he come not, upon his default they ſhall proceed to judgement. In like manner it ſhall be done, if he come not at the day given unto him by his eſſoin.

Dier, 5 Eliz. 224. 15 Eliz. 324. (Fitz. Eſſoin, 21. 33, 34. 38. 100. 130. 159. Godbolt 236. Pl. 327. Salk. 216.)

The miſchiefe before this ſtatute was for the great delay that might come to the plaintife in any perſonall action. — 2 R. 2, Eſſo. 159.

(1) *In inquiſitionem aliquam.*] That is, when iſſue is joyned, and the defendant *ponit ſe ſuper patriam, et prædict' querens ſimiliter.*

This ſtatute extendeth not to a demurrer in law.

In an action of debt *un cuſtome de London fuit alledge & denie per le pl':* this iſſue ſhall not be tryed by inqueſt, but by the certificate of the maior 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 tryall was not *per patriam.* — 21 E. 4. 74, 78.

(2) *Niſi unicum eſſonium.* Here *eſſonium* is taken for a common eſſoine, and extendeth not the eſſoine *de ſervitio regis, &c.* — 19 E. 3. eſſoine 21.

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, *et ſic de ſimilibus.* — 19 H. 6. 51. 25 E. 3. 8.

2 E. 4. 19.

But if there be divers tenants in a *præcipe*, or divers defendants in a personall 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.
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(3) *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 plaintife, because the defendant maketh default, and on the plaintifes side it is called a nonsuit: also the enquest is awarded by the default of the defendant. And lastly, the mischiefe was for the delay of the plaintife by the defendant, and therefore the delay which the plaintife maketh himselfe is out of the mischiefe, and remains at the common law.

14 H. 6. 19.
9 H. 5. 12, 13.
Dier, ubi sup.

The second conclusion is, that this act is to be understood in an action personall, for that no enquest in any action reall can be taken by default.

(4) *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, et libertatis (1), *ne ponantur impetrantes in assisis, juratis, vel recognitionibus aliquibus: provisum est, quod si adeo necessarium sit eorum juramentum, quod sine eis justitia exhiberi non poterit (veluti in magnis assisis, et in perambulationibus, et in chartis vel scriptis conventionum, uti fuerunt testes nominati* (2), *aut in attinctis, vel aliis consimilibus) jurar' cogantur, salva sibi alias libertate, et exemptione sua prædicta* (3).

Concerning charters of exemption and liberties, that the purchaser shall not be impannelled in assises, juries, and enquests; it is provided, that if their oaths be so requisite, that without them justice cannot be ministred, as in great assises, perambulations, and in deeds or writings of covenants, (where they be named for witnesses) or in attaints, and in other cases like, they shall be compelled to swear; saving to them at another time their foresaid liberty and exemption.

W. 2. cap. 28. 29 H. 6. c. 3. (34 H. 6. 25. 18 H. 8. 5.)

34 H. 6. 25. per Moyle.
21 E. 4. 47. b.

(1) *De chartis vero exemptionis et 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.

39 E. 3. 15.
12 E. 4. 17.
35 H. 6. 42.
Broke exempt 6.

In this act there be foure examples set downe, *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.

Rationabilibus

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 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 usq. Manlesbened, & sic versus occidentem per altam viam usq. Swalnspotleche, & sic de Swalnspotleche versus austrum usque Rysdenburne, & sic de Rysdenburne versus boream ascendendo usq. Redeford prædict' sicut illas exigit: ven' recogn' in forma prædict. per Willielmum de Haulton, Robertum de Insula, Nicholaum de Punchardon, Iohannem de Oggeill, Iohannem de Eslington, Richardum de Horsele, Hugonem Gobion, Walterum de Egloythenebam, David de Coupland, Franconem Tyeys, Henricum de Dytheend, & Robertum du Maner, & modo veniunt prædict' Simon & Prior per attorn' suos: 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. 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 usq. Rysdenburne ubi Swalnespotleche & Rysdenburne conjungunt, & sic ascendendo per Rysdenburne versus boream usq. Aldewylumwey, & sic adhuc per Rysdenburne versus boream usque le Redeford ubi alta via transit versus novum Castrum super Tynam, quietè de prædicto Priore & successoribus suis, et ecclesia sua de Typemuwe imperpetuum, & Prior in misericordia, &c.*

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.
Veredictum.
Judicium.
* [128]
Finale.

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 Richardi in Hoghton, sicut esse debent & solent, et unde idem Richardus, qui tenens est posuit se in magnā assisam illam, et petit recogn' fieri, utrum ipse majus jus habet in medietate decem acrarum moræ, viginti acrarum terræ, et sexaginta acrarum bosci, cum pertin' in Hoghton, per metas et divisas subscriptas, videl. incipiendo ex parte boreali de le Thwertonerdike, et sic versus boream usq. ad cursum aquæ quæ currit inter le Strother de Hoghton, et le Strother de Rucestre, et sic sicut cursus illius aquæ se extendit versus occidentem usque Redeford, et sic descendendo versus austrum usq. le Holleford, et sic del Holleford descendendo versus austrum usq. Rysdenburne, usque ad terram arabilem de Wylum, et sic per fossatum ejusdem terræ usque lel Longhing quod venit de bosco de Wylum, et sic descendendo versus austrum sicut Sygpethway se extendit inter boscum de Hoghton, et boscum de Wylum, et usq. Wylum Halugh, et sic per fossatum quod se extendit versus orientem inter Wylum Halugh et boscum de Hoghton usq. Alberystrother in parte occidentali, et sic per partem occidentalem de Alberystrother versus austrum usque les Pullys per partem

Pasch. 18 E. 1. in Banco. rot. 72. Northumb. Mich. 18 E. 1. in Banc. rot. 76. Northumb.

partem occidentalem, et sic de les Pullys versus occidentem per quoddam fossatum usq. quoddam Run quod se extendit usque aquam de Tyne salva communia pasturæ eidem Priori et successoribus suis in prædicta mora de Hoghton usque le Thwertonerdike per partem occidentalem, et sic per partem occidentalem de le Br-hill, et de Hyndeschawe, et sic versus austrum descendendo per le Greneleghe, et sic usque Sygpethway sicut ea tenet, an prædictus Prior per metas et divisas subscriptas, videlicet incipiendo in parte boreali in Wylummore descendendo versus austrum per le Thwertonerdike usque Thornrawe, et sic de Thornrawe usque Martinpol versus austrum, et sic de Martinpol usque Aldehewey et sic descendendo per le Haldebeyway versus austrum ultra Ravenesburne, et sic de Ravenesburne versus austrum et iterum ultra Ravenesburne, et sic de Ravenesburne versus austrum usq. Standandestan, et sic de Standandestan versus austrum usq. le Fisherewey usq. aquam de Tyne sicut illum exigit. Venit recogn' in forma prædicta per Willielmum de Hauleton Robertum de Insula, Nichol' de Punchardon, Iohannem de Oggill, Iohannem 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 atturnatos suos, & prædicti milites super sacrum suum dicunt quod prædictus Richardus majus jus habeat tenendi medietat' prædictorum ten' per easdem metas & divisas, 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.

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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. fo. 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 battaile, and the graund assise lieth, and judgement finall shall be given: in this writ the view and voucher is to be graunted, and esples 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 onely.

4. This is common to them both for a division to be made between severall townes or hamlets.

5. If it be for a division between two counties, for the better directions of sheriffes, coroners, and other the kings officers, and ministers, it must be done by the kings commission under the great seale, but the division hereby made shall not estoppe or conclude the parties interessed in the land.

Upon

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 been said: but all charters tending to the failer of justice, are void by the common law, without any aide of this act: as if there be not sufficient hundreders, besides those that have charters of exemption, for triall 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 graunt an exemption to all the freeholders in one county, and to all the citizens in a city, this is void.

(2) *In chartis, &c. ubi testes fuerint nominati.*] Hereby it appeareth, that by the common law, the witnesses named in the deed should joyne with the enquest, or else the charter of exemption, *De assisis juratis et recognitionibus aliquibus,* should not have freed them. Vide the first part of the Institutes, and see before cap. 6.

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1 Part of the Institutes, sect. 1.

In attinctis.] Hereby appeareth that the writ of attaint, which by our old books and auncient records is called *breve de convictione*, was given by the common law, and the forme of the writ is set downe in our auncient authors at the suite of the party grieved: and it appeareth by the Register that no writ of attaint reciteth any statute, and the judgement in the writ of attaint is fearfull and penall, 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 bookes and auncient records, that by the common law, it lay as well in plea reall as personall. Vide Regist. 122. Mirror, cap. 3. De Attaints. & cap. 2. § 4. De Loiers. Glanville, lib. 2. cap. 19. Bracton, lib. 4. fol. 289. Fleta, lib. 5. cap. 21. 34. Britton, cap. 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, ca. 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 dificulty (because he had other remedy to try it in an action of higher nature) and therefore the statutes were made. See the statute of W 1. cap. 38. and the exposition thereupon, and a judgement given. Mich. 5 E. 1. Of an attaint heare what the Mirror saith, *En temps le roy Henry le primer estoit ordein & communement assentu que jurors in enquests, &c. in attaints, et 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 auncient 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 plaintife may have upon them the penall and severe judgement given by the common law. Vide 40. Ass. 23.

See W. 1. cap. 38.

40 Ass. 23.

If a man have a charter of exemption, and sheweth it to the sheriffe, yet notwithstanding he may retourne him, for the sheriffe 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 sheriffe, and shew

F.N.B. 165, 166 Act D. 39 E. 3. 15. 40 E. 3. 30. 18 H. 8. 5.

ſhew his charter to him, and then if the ſheriffe retourne him, he may have his action upon his caſe againſt the ſheriffe, and ſo muſt our old and other books be intended.

18 H. 8. 5.

After the ſheriffe hath retourned him, if a full jury doe appeare, then he may ſhew forth his charter, and if the plaintiffe confeſſe it, he ſhall be diſcharged, but if the plaintiffe 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 doe appeare, for if any anſwer bee made thereunto the jury muſt try it.

41 E. 3. exemption 4.
42 Aſſ. 25.
25 H. 6. exemption 5.

Such generall charters of exemption *in aſſiſis, juratis, et recognitionibus*, as in this act are mentioned, ſhall not be allowed where the king is either ſole party, or where the ſuite 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 et 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.

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CAP. XV.

NULLI de cætero liceat (1) *ex quacunque cauſa diſtrictiones facere* (3) *extra feodum ſuum, nec in via regia, aut in communi ſtrata* (2) *niſi domino regi et miniſtris ſuis* (4) *ſpecialem authoritatem ad hoc habentibus.*

IT ſhall be lawful for no man from henceforth, for any manner of cauſe, to take diſtreſſes out of his fee, nor in the king's high-way, nor in the common ſtreet, but only to the king or his officers having ſpecial authority to do the ſame.

Fleta, lib. 2. ca. 41. W. 1. c. 16. Artic. Cleri, cap. 9. Artic. ſuper Cart. ca. 12. 51 H. 3. Diſt. de Scaccar. (8 Rep. 60. 7 H. 7. 1. 22 Ed. 4. 49. Fitz. Bar. 281. Fitz. Treſpaſs, 188. Fitz. Bar. 511, 842. Fitz. Avowry, 87, 232. Raſt. 226. Regiſt. 98. 183. 9 Ed. 2. ſtat. 1. c. 9. 2 Inſt. 131. Cro. El. 710.

13 E. 4. 6.

The miſchiefe 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 owne actuall poſſeſſion, though they were out of his fee, and ſeigniory, divers lords tooke upon them alſo to diſtrein out of their fee, which was wrong and oppreſſion: and whereas all the kings ſubjects ought to have free paſſage in *via regia, et communi ſtrata,* as well to faires and markets, as about their other affairs, the lords uſed to diſtrein in the high-wayes, both which miſchiefs this ſtatute doth remedy.

(1) *Non liceat.*] This is divided into three branches: the firſt branch is, *Non liceat ex quacunque cauſa diſtrictiones facere extra feodum.*

34 E. 1. Avowry 232.
41 E. 3. 26.
2 H. 4. 24.

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 leet.

2. This

2. This branch is but in affirmance of the common law, for regularly no ſubject can diſtrein out of his fee and ſeigniory, and therefore if the lord doe diſtrein out of his fee, the tenant may either have an action of treſpaſſe at the common law, or an action upon this ſtatute, but in ſome ſpeciall caſe the lord by the common law may diſtrein out of his fee and ſeigniory, as if the lord come to diſtrein, and the tenant, or any other ſeeing the lord come to diſtrein them, drive them to a place out of the fee of the lord, yet in this caſe the lord may diſtrein them out of his fee, becauſe the lord had a view of them within his owne fee, by reaſon whereof the lord ſhall be adjudged in a kinde of poſſeſſion of them; but if the beaſts goe 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 fee, 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,

(2) *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.

This law had the foundation of the auncient law of England before the conqueſt, *Alia, s. immunitas, quam habent quatuor chemini (i. viæ regiæ) Watlingſtreet, Foſſe, Hilkenildſtreet, et Erminſtreet, quorum duo in longitudinem, alii duo in latitudinem deſcendunt.*

In this branch, *non liceat* ſhall be taken not *ſimpliciter*, to make it utterly unlawfull, as to take advantage thereof in barre to an avowry, but *ſecundum quid*, that is to this purpoſe, that if the lord diſtrein in the high ſtreet, 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 been often obſerved. Now if the tenant ſhould plead it in barre of the avowry, the king ſhould loſe his fine; for in that nature of ſuite hee cannot bee fined, and therefore the tenant is to take * his remedy by action upon the ſtatute, wherein the king ſhall have his fine, &c.

First part of the Inſtitutes, ſect. 69. F.N.B. 173, 174. Inter leges Edw. Regis. Lamb. fol. 129. Flet. l. 2. cap. 42. Artic. Cler. cap. 42. Regiſt. fol. 97. 19 E. 2. bre. 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. fol. 60. Bechers caſe.

(3) *Diſtrictiones facere.*] A heriot cuſtome the lord may ſeiſe in the high-way, for that is no diſtreſſe but a ſeiſure, but he cannot diſtrein for a heriot ſervice there.

11 R. 2. Avow. 87.

If the lord come to diſtrein, and ſee the beaſts within his fee, and before he can diſtrein them, the tenant enchaſe them into the high-way, the lord may, as hath beene ſaid, diſtrein them there, for the cauſe above expreſſed.

* [132]

The writ upon this ſtatute ſhall be *contra pacem*, and not *vi et armis*.

17 E. 3. 1.

The third branch:

(4) *Niſi domino regi et miniſtris ſuis*, &c.] Here is an exception of the kings prerogative (which by this act appears to be auncient) as well to diſtreine for his rent, or ſervice out of his fee, and ſeigniory, as in the high-way, or common ſtreet. But where it is ſaid that the king may diſtrein out of his fee, that is, in the other lands of his tenant; it muſt be underſtood in ſuch other lands as his tenant hath in his owne actuall poſſeſſion, and manured with his own beaſts, and not in the poſſeſſion of his leſſee for life, yeares, or at will, for their beaſts are not ſubject to ſuch diſtreſſe.

44 Aſſ. 32. 5 E. 3. 6. 13 E. 4. 6.

There

Artic. ſuper Cart. cap. 12.

There was a ſtatute made in a parliament holden at Weſtminſter in 51 H. 3. the yeare 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. ca. 12. 27 l. Aſſ. 52. 28 Aſſ. p. 50. 29 E. 3. 23. 8 H. 4. 16. 11 H. 4. 2. Lib. 11. fo. 44. Godfreyes caſe. Flores Hiſtor. Polyd. Virg. 22. b. Regiſt. Lucubr. Ockham.

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.

This law had his foundation of the auncient 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 ſicquidem ſumma quæ requiritur exurgit, nec arantibus parcendum eſt.*

Bracton, lib. 4. fo. 217. Fleta, li. 2. c. 42.

Bracton treateth of both theſe branches notably, and hee divideth *animalia* into *laborioſa et otioſa*, and ſaith, *Fit diſtrictio injurioſa ordine non obſervat', ſi fiat diſtrictio per oves, et 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 et animalia otioſa quæ ſufficiant ad diſtrictionem; item ſi ſubſit cauſa et obſervetur ordo, adhuc poteſt eſſe injurioſa, ſi fuerit nimia, et 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 et non nimis graves. See before Chapter 4.

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Brit. fo. 35. & 133. b.

29 aſſ. pl. 49.

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 la ou auter diſtres poet trover ſufficientment et hors de meaſon.* And in another place he ſaith, *Si aſcun diſtreine auter per que gainage eſt diſturbe, &c.*

Lege Executores & Auten.

And this agreeth with the civill law, *Executio fieri non poteſt in boves, aratra, aliáve inſtrumenta ruſticorum quatenus alia bona habent.*

W. 2. cap. 18. Fleta, lib. 2. c. 55.

The ſtatute of W. 2. which giveth the *elegit,* doth abſolutely except the beaſts of the plough in theſe words, *Exceptis bobus et affris carucæ.*

Regiſt. 97. temps E. 1. avowry 230. 18 E. 2. acc' ſur leſtat. 35. 4 E. 3. 1. 29 E. 3. 16, 17. P. 17 H. 6. Rot. 93, in com. banco. F.N.B. 174. b. 14 El. Dy. 312.

This ſtatute doth not extend onely to diſtreſſes betweene 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 aforeſaid.

And an action upon this ſtatute doth lie, as well after deliverance, as before, for the cauſe of the diſtreining may be lawfull, and yet notwithſtanding if he take the beaſts of the plough where he might

might find others, the diſtreſſe is wrongfull. And albeit the tenant after ſuch a diſtres taken pay the rent, and thereby affirme the cauſe of diſtres lawfull, 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 cattell ſufficient, and it is not materiall what was before or after.

29 E. 3. 17.
4 H. 7. 8. b.

The writ upon this ſtatute alſo ſhall be *contra pacem, et non vi et armis*.

17 E. 3. 1.

Now where the ſtatute ſpeaks of the beaſts of the plough, and not of the plough itſelfe: by the common law alwayes 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 concerne 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 Mirrour, 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 mort goods, a covenable diſtreſſe is not of armour, or veſſell, or apparell, or jewels, ſo long as there are other ſufficient or covenable; nor of ſheep, ſaddle horſe, beaſts of the plough, poultry, fiſh, or ſalvagne, *ut ſupra*.

Mirror cap. 2. § 16.
Vee de Name.

CAP. XVI.

*[134]

*SI hæres aliquis poſt mortem anteceſſoris (1) ſui infra ætatem extiterit, et dominus ſuus cuſtodiam terrarum, et 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 à tempore quo fuit legitimæ ætatis. Et ſi hæres aliquis tempore mortis anteceſſoris ſui plenæ ætatis fuerit (2), et ille hæres apparens, et pro hærede cognitus et 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 (3). Et ſi capitalis dominus hujuſmodi hæredem (4) extra ſeiſinam malitioſe teneat, propter quod breve mortis anteceſſoris, vel conſanguinitatis*

IF any heir after the death of his anceſtor be within age, and his lord have the ward of his lands and tenements, if the lord will not render unto the heir his land (when he cometh to his full age) without plea, the heir ſhall recover his land by aſſiſe of mortdaunceſtor, with the damages that he hath ſuſtained by ſuch withholding, ſince the time that he was of full age. And if an heir at the time of his anceſtor's death be of full age, and he is heir apparent, and known for heir, and be found in the inheritance, the chief lord ſhall not put him out, nor take, nor remove any thing there, but ſhall take only ſimple ſeiſin therefore for the recognition of his ſeigniory, that he may be known for lord. And if the chief lord do put ſuch an heir out of the poſſeſſion maliciouſly, whereby he is driven to purchaſe a writ of mortdaunceſtor, or of couſenage,

sanguinitatis oporteat ipsum impetrare, tunc dampna sua recuperet sicut in assisa novæ disseisinæ. De hæredibus autem, qui de domino rege tenent in capite (5), *si observandum est, ut dominus rex primam inde habeat seisinam, sicut prius inde habere consuevit* (6). *Nec hæres nec aliquis alius in hæreditatem illam se intrudat, priusquam illam de manibus domini regis recipiat* (7), *prout hujusmodi hæreditas de manibus ipsius et antecessorum suorum recipi consueverit temporibus elapsis. Et hoc intelligatur de terris et feodis, quæ ratione servitii militaris* (8), *vel serjantiæ, sive juris patronatus in manibus domini regis esse consueverunt.* Vide Prærogativa cap. 3. Et Glanvil. lib. 7. cap. 9. fol. 4.

senage, then he shall recover his damages as in assise of novel disseisin. Touching heirs, which hold of our lord the king in chief, this order shall be observed, that our lord the king shall have the first seisin of their lands, like as he was wont to have before time: neither shall the heir, nor any other, intrude into the same inheritance, before he hath received it out of the king's hands, as the same inheritance was wont to be taken out of his hands and his ancestors in times past. And this must be understood of lands and fees, the which were accustomed to be in the king's hands by reason of knights service, or serjeanty, or right of patronage.

(17 Ed. 2. stat. 1. c. 3. 12 Car. 2. c. 24.)

Abridg. ass. 120, b. F.N.B. 196. f. Glanv. li. 7. c. 9. Bract. li. 4. fo. 252, 253. Brit. fo. 178. b. Fleta, li. 5. ca. 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 fo. 20.

(1) *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 chivalrie 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 so resolved in our books, wherein this diversitie is to be observed, that where a man commeth to a particular estate by the act of the partie, there if he hold over, he is a tenant at sufferance; but where he commeth 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.

And yet for the benefit of the heire to some purpose, the possession of the gardein is the actuall seisin of the heire, 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 heire shall have an assise of *mord'* at his full age at the common law, notwithstanding the possession of the gardein.

(2) *Et si hæres aliquis tempore mortis antecessoris plenæ ætatis fuerit.*] This is the second clause of this chapter, and is also a rehearsall of the common law.

Glanvil, Bracton, Britton, Fleta — ubi supra.

(3) *Simplicem seisinam habeat pro recognitione dominii sui, ut pro domino cognoscatur.*] This is understood of the payment of reliefe, whereby he putteth the lord in seisin, and doth acknowledge him for his lord, so as of ancient time, and in ancient books, reliefe is called *simplex seisina*.

(4) *Et si capitalis dominus hujusmodi hæredis.*] This is the third clause, and is evident.

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(5) *De hæreditatibus autem quæ de domino rege tenentur in cap. &c.*] This is the fourth clause of this chapter, and is also a rehearsall

hearsall of the common law, in which clause are these words, *Sicut prius inde habere consuevit*, and these words, *prout hujusmodi hæreditas de manibus ipsius et antecessorum suorum recipi consueverit.*

(6) *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 heire of full age, he saith not that he shall have *simplicem seisinam*, but *primam liberam seisinam*, whereof you may reade at large in Stamford Prerog. 11. b.

(7) *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 auncester, whereof you may reade at large in Stamford, *ubi supra*.

(8) *Et hoc intelligatur de terris et 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 (1), 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 (2) de exit' dictæ hæreditatis, per legalem computationem, salvis ipsis custodibus rationabilibus misis suis. Nec etiam possunt dicti custodes maritagium dicti hæredis dare (3) vel vendere, nisi ad commodum dicti hæredis: sed parentes dicti hæredis propinquiores, qui hujusmodi custodiam habuerint, à toto tempore illo à quo brevia non conceduntur implacitandi, hujusmodi custodias habeant ad commodum hæredum, ut prædictum est, sine vasto, vel exilio, vel destructione facienda.

IT is provided, that if land holden in socage be in the custody of the friends of the heir, because the heir is within age, the guardians shall make no waste, nor sale, nor any destruction of the same inheritance; but safely shall keep it to the use of the said heir, so that when he cometh to his lawful age, they shall answer to him for the issues of the said inheritance by a lawful accompt, saving to the same guardians their reasonable costs. Neither shall the said guardians give or sell the marriage of such an heir, but to the advantage of the foresaid heir; but the next friends which had the ward, for all that time that writs of impleading did not lie, shall have such wardship unto the advantage of the heir, as is said before, without waste, sale, or destruction making.

(Fitz. Wast. 1. 9. 100. 107. Fitz. Present. 10. Fitz. Brief, 847. Fitz. Gard. 159. 166. Plowd. 293. Fitz. Accompt. 35. 59, 60. 77. 107. 1 Inst. 87. a. Lib. Ent. 47. Rast. 21.)

(1) *Vastum facere non possunt.*] The heire 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) *Cum ad legitimam ætatem pervenerit, sibi respondeat.*] This second

2 E. 2. Wast. 1. 16 E. 3. Wast. 100. 28 H. 6. Wast. 9. F.N.B. 59, g.

Vide Mag. Ch. c. 4. & Glouc. c. 5
See the first part of the Institutes, sect. 124.

second clause is a declaration of the common law: the lawfull age of * the heire of a tenant in focage is the age of 14 yeares, and at that age he shall have an action of account against his gardein; all which you may reade at large in the first part of the Institutes, sect. 104. See also there the severall ages of men and women.

(3) *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. XVIII.

NULLUS escactor, vel inquisitor (1), aut justiciar' ad assisas aliquas specialiter capiendas assignatus, vel ad querelas aliquas audiendum et terminandum, de cætero habeant potestatem aliquam amerciandi pro defalta communis summonitionis, nisi capitales justiciarii, vel justic' itinerantes (2) in itineribus suis.

NO escheator, commissioner, or justicer specially assigned to take assises, or to hear and determine matters, from henceforth shall have power to amerce for default of common summons, but the chief justices, or the justices in eyre in their circuits.

Glanv. li. 9. c. 10. Fleta, li. 1. cap. 43.

(1) *Inquisitor.*] Enquiror, that is to say, sheriffe, coroner *super visum corporis*, or the like, that have power to enquire in certaine cases.

Britton, fo. 4.

The mischiefe before this statute was, that the eschaetor, sheriffe, coroner, speciall justices of assise, and justices of oier and terminer, in speciall 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.*

Vide hic c. 24.
Brit. fol. 4.
Glanv. li. 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 sheriffes in their tournes, nor to stewards in leets, notwithstanding that they be inquirors, for that they deale with common nusances, or matters concerning the publique, and not in private causes, and therefore are not restrained by this statute.

(2) *Nisi capitales justiciarii, vel justiciarii itinerantes.*] That is, justices of general assises, whose authority increasing by divers acts of parliament, and comming twice every yeare where the justices in eire came but from seaven years to seaven years, the authority of justices in eire 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 speciall justices of assise were named before) they may amerce upon such defaults, but the eschcator dealing *virtute officii*, did after this statute certifie the defaults into the exchequer, and there was the amerciament imposed; which is worthy of observation.

Britton, fo. 1. cap. 4.
Fleta, l. 1. c. 43.

And this exposition agreeth with Britton, who wrote soone after this statute, (*et contemporanea expositio est fortissima in lege*) and saith,

Et

Et ceux que avoient estre summons, et ne viendront a cels enquests des coroners, volons q. 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 enquirers, ne eient poer de nulluy amercier pur nul defaute.

CAP. XIX.

DE essoniis (1) *autem provisum est, quod in comitatu, hundred', aut in curia baronis, vel aliis curiis* (2), *nullus habeat necesse jurare pro essonio suo warrantizando* (3). Vide Glanv. lib. 1. cap. 12. fol. 4.

TOUCHING essoins, it is provided, that in counties, hundreds, or in courts barons, or in other courts, none shall need to swear to warrant his essoin.

Fleta, lib. 6. ca. 10. (Fitz. Essoin, 119. Rast. 297.)

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 sworne, that the cause thereof was just and true, and this held in all the five essoines before mentioned, cap. 12. and this appeareth in Glanvill, *Essoniator probabit quodlibet essonium jure jurando propria et unica manu, &c.* But yet at the common law an oath was not alwayes required in that case; *Non autem omnes essoniatores ad diem recipiend. affidabunt, sed illi tantum qui sunt baronibus inferiores, barones vero et baronissæ et eorum superiores, sicut comites et eorum attornat' non affidabunt, sed plegios invenient, &c. Ratio vero hujus diversitatis talis esse potest, quod ita nobiles et dignæ personæ in warrantizatione essonii non per se jurabunt, sed per procuratores, scilicet plegios suos, &c.* And herewith agreeth other auncient authors.

Vide hic. ca. 12. & 13. Glan. l. 1. ca. 12. Bract. li. 5. fol. 351, 352. Fleta, li. 6. c. 10. Britton, fo. 282. cap. 122.

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

(1) *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 be still sworne; and this law hath beene thus interpreted for two reasons. 1. For that in the essoine *de service le roy*, and the rest, the delay is great, *viz.* a yeare and a day, &c. and therefore those essoines ought to be more precisely proved. 2. *Ad ea quæ frequentius accidunt jura adaptantur:* in those dayes those other essoines were very rare, and therefore the judges of the law, that ever hated delayes, 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. c. 8.

(2) *Vel in aliis curiis.*] These generall 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 generall words should be void, for it cannot according to the generall rule extend to inferiour courts; for none be more inferiour or lower than these, that be particularly named, and so note a just exception out of the generall rule.

12 H. 4. 24. per Hankford. Fleta, lib. 6. cap. 10.

Lib. 2. fol. 46. Levesque de Cant. case. Vide hic ca. 28. W. 1. c. 3. 15, 26.

(3) *Warrantizando.*]

Bracton, li. 4. fo. 352. 12 H. 4. 15, 24.

(3) *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.

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CAP. XX.

NULLUS de cætero (excepto domino rege) teneat placitum in curia sua de falso judicio facto in curia tenentium suorum; qui hujusmodi placita specialiter spectant ad coronam et dignitatem domini regis.

NONE from henceforth (except our lord the king) shall hold in his court any plea of false judgement, given in the court of his tenants; for such plea specially belongeth to the crown and dignity of our lord the king.

(Fitz. Faux Judgement, 7, 8, 10. 14. 1 Ed. 3. stat. 1. c. 4. Regist. 15. Rast. 342. Co. Ent. 305.)

Before the making of this statute, if a false judgement had been given in a court baron, this should have been redressed in the court baron of the lord next above him, and so upward of the lords paramount, which both was an occasion of long delayes, and the king had also many times prejudice thereby, for that those base courts could assesse no fine or amerciament to the king; which is so to be understood, that if the next immediate mesne had no court baron, the false judgement could not be redressed in the court of the lord next above, for default of privity, but then the false judgement was to be redressed in the court of common pleas, or before the justices in eyre: hereby shall appeare, 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 judgement in the court of his tenants.

Hereby is implied that by the common law, the false judgement 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 crowne 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 crowne 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 judgement were to be amercied to the king, which the inferiour court could not doe.

Dier, 9 Eliz. 263.

And for that at the common law, for default of courts of superiour lords, the false judgement was to be redressed in the court of

of common pleas, therefore though the words be *excepto domino rege*, and *hujusmodi placita spectant ad coronam et 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 soone after this statute, grounding himselfe upon this act, notably expresse in these words:

Et si faux judgement, ou faux proces soit trove in le record, et la parol soit in counte, de ceo ne voilons nous my que le visc' ne les suiters eient conusans: mes plein foy, que greve se sentira, & face vener le proces & le record devant nous justices in banke, & illonques soit redresse le error si poent issint trove. — Britton, fol. 59.

And the rule in the Register is, — Regist. fol. 15.

Si faux judgement 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 bre. de recorder la parole devant justices in banke ou in eire. Et cest rule extend auxi bien in autre bre. come in bre. de droit, et la ou la parole est per bre. ou sans bre.

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And now the justices in eyre being (as hath been said) worn out, the originall writ of false judgement is retournable, *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, et injuste detineantur, vicecomes post querimoniam inde sibi factam (1), ea sine impedimento (3) vel contradictione ejus qui dicta averia ceperit, deliberare possit, si extra libertates capta fuerint. Et si infra libertates capta fuerint hujusmodi averia, et balivi libertatis ea deliberare noluerint (2), tunc vicecom' pro defectu ipsorum balivorum ea faciat deliberari.

IT is provided also, that if the beasts of any man be taken, and wrongfully withholden, the sheriffe, after complaint made to him thereof, may deliver them without let or gainsaying of him that took the beasts, if they were taken out of liberties. And if the beasts were taken within any liberties, and the bailiffs of the liberty will not deliver them, then the sheriff, for default of those bailiffs, shall cause them to be delivered.

Glanv. li. 12. c. 12. 15. Mirror, c. 2. § 16. Fleta, lib. 2. ca. 39. 1 E. 3. 11. b. Vide W. 1. c. 17. (Dyer, f. 245. Bro. Riots, 2, 3. Bro. Parliament, 108. Fitz. Retorn. de Viscont. 17. 1 Inst. 145. b. 13 Rep. 31. 3 Ed. 1. c. 17. Regist. 82, &c.)

The mischiefes 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 losse 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 retourn of writs, the sheriffe was driven to make a warrant to the baylie of the liberty to — 29 E. 3. 23. F.N.B. 58. b.

make deliverance, and that wrought a longer delay, for at the common law he could not enter into the liberty in that case.

A third mischiefe was when the distresse was taken out of the liberty, and impounded within: Now this statute doth apply cures to all these three mischiefes.

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.

(1) *Post querimoniam inde sibi fact,'* &c.] That is, the sheriffe upon a pleint made unto him without writ may either by paroll, or by precept, command his bayly to deliver them, that is to make replevin of them, and by these words *post querimoniam sibi fact'*, the sheriffe 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 to the next county court, which is holden from moneth to moneth.

And in a replevin by pleint, the sheriffe 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.

30 E. 3. 23.

The usage of the county of Northampton is, that in the absence of the sheriffes baylie the frankpledge may make deliverance; note this.

Regist. 81. b.

If J. S. be sheriffe, and the distresse was taken by him, the writ or pleint shall be in common forme, naming the sheriffe by his christen name and sirname, *quæ* J. S. *cepit*, and not *quæ tu ipse cepisti*, and the sheriffe in that case ought to make deliverance.

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(2) *Et si infra libertates, &c. balivi libertatis ea deliberare noluerint.*] Hereby it appeareth that when the distresse is taken and impounded within a liberty that hath retourne of writs, whether the matter be before the sheriffe by writ or by pleint, the sheriffe ought to make a warrant to the baylife of the liberty to make deliverance; whereunto if he make no answer, or retourn that he will make no deliverance, or the like, the sheriffe 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 balivus. Regist. 82.

Et si balivus alicujus habentis libertatem retorn' brevium postquam viceccom' sibi præcept' reg', vel aliud mandatum ex officio suo dependens averia, ut prædictum est, detenta non deliberet, vicecom' extunc habet ingressum, et faciat quod suum est, &c. Et eodem modo fiat deliberatio licet sine brevi suscepta securitate de prosequendo, &c.

And if the distresse be taken without the franchise, and impounded within, the sheriffe may upon pleint made, presently enter and make deliverance (without any precept to the bayly of the liberty) for the statute provideth that he shall replevy, *Si extra libertates capta fuer,' et si infra libertates capta fuerint hujusmodi averia, &c.* So as there is no precept to be directed to the bayly of the liberty, but where the distresse was taken within the liberty; and where the distresse was taken out of the liberty, there by the expresse words of the statute the sheriffe may enter and make deliverance presently.

31 E. 3. gager deliverance. 15.

(3) *Sine impedimento,* &c.] A man by deed makes a lease for yeares, reserving a rent with a clause of distresse, and to detaine the distresse against gages and pledges untill gree be made, yet the sheriffe, or bayly of the liberty, as the case requires, ought to make deliverance of such a distresse.

Note

Note the original writ of *repleg'* is in nature of a *justicies*, and is not retournable; 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 is it no court of record, for of a judgement therein there lieth a writ of false judgement, and not a writ of error: also if the sheriffe should graunt 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.

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 auncient 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 distresse, and *vetitum* is forbidden, and properly it signifieth when the bayly of the lord distreineth beasts or goods, and the lord forbiddeth his bayly to deliver them when the sheriffe comes to replevy them, and to that end to drive them to places unknowne, or to take such a course as they should not be replevied: but it is also called a distresse, that is forbidden *vetitum namiū*, 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.

F.N.B. 73. b. Reg. Orig. 12 H. 7. 8, 9.

See W. 2. ca. 2. F.N.B. 73.

Now by this it appeareth how they erre, 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 unlawfull, for whether the distresse were lawfully taken or no, yet the forbidding of them against gages and pledges to be replevied, out of question is unlawfull. 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 predict' B. averia predict' A. cepit, et in comit' tuo ea fugavit, &c. per quod ea eidem A. replegiari non potuisti, nos malitiæ ipsius B. obviare volentes in hac parte tibi præcipimus quod averia prædict' B. in baliva tua cap' in withernam, et ea detineas donec eidem A. averia sua prædict' secundum legem et consuetudinem regni nostri replegiar' possis, &c.* So as the taking in withernam is a lawfull 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 bookes. Hereof Bracton saith, *Si autem averia capiantur per servientem domini (sine judicio curiæ) et postea petita fuerint ab ipso domino, cum præsens fuerit, et ipse ea vetuerit per vadium et plegium, uterque tenebitur, ut videtur, unus de captione, et alter de vetito namio; et licet dominus ipse advocaverit captionem servientis, servientem non liberat sed onerat seipsum, et uterque tenetur de facto servientis, serviens quia cepit, et dominus dupliciter, quia advocat factum servientis, et 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.*

Bracton, lib. 3. fol. 155. b.

Regist. 82, 83. 79, 80. F.N.B. 73.

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Bract. li. 3. 158. 155. b. 157. a. sect. 6. Withernā.

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.

Mirror, ca. 2. § 16. De vee de naam.

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.

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 *nemmen*, or *nammen*, to take hold on, or distrein, whereof comes *namium*, *i. captio*, and so *vetitum namium* signifieth in law a distresse, or taking forbidden to be replevied.

Now seeing withernam hath been mentioned, you shall finde that the true sense of the word is a proofe 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 reprisall 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 lawfull.

Lambard verbo Withernam.

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.*

F.N.B. 89. u. Regist. Vide Bract. ubi supra.

And albeit the distresse were lawfull, yet by matter, *ex post facto*, it may be called *vetitum namium*, a wrongfull taking: for when (for example) he that distreineth them eloigneth them, so as they cannot be replevied, the owner shall have an action of tresspasse, *quare vi et armis, averia ipsius A. cepit et ea ad loca ignota fugavit ita quod averia illa eidem A. secundum legem et consuetudinem regni nostri replegiand. inveniri non poterit*: whereby it appeareth, that by the matter subsequent, the first distresse is in this sense, and to this effect, termed unlawfull.

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CAP. XXII.

NULLUS de cætero possit distringere libere tenentes suos ad respondendum de libero tenemento suo, nec de aliquibus ad liberum tenementum suum spectantibus (1), nec jurare faciat libere tenentes (2) suos contra voluntatem suam, quia hoc nullus facere potest sine præcepto domini regis.

NONE from henceforth may distrain his freeholders to answer for their freeholds, nor for any things touching their freehold, without the king's writ: nor shall cause his freeholders to swear against their wills; for no man may do that without the king's commandment.

15 R. 2. cap. 2. 16 R. 2. cap. 2. (15 R. 2. c. 12.)

Rot. claus. 23 H. 3. m. 10. in Havering.

This act is confirmed and enlarged by the statute of 15 and 16 R. 2.

Before this statute, lords would distraine their free tenants to come and shew the deeds, specially the originall deed, whereby they might know by what rent and services the tenancie 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

the free-hold it selfe. Another mischiefe was, that the lords of court barons, hundreds, &c. where the suitors were judges, would constraine them to sweare betweene partie and partie, both which mischiefes are taken away by two severall branches of this act.

(1) *Ad liberum tenementum suum spectantibus.*] By these words are intended the charters or tenure of their lands, for they doe properly belong to the free-hold; 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.*

And it appeareth by the Register, that this act doth bind the king, for there is a writ directed to the kings bailiffes of his mannor 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 bailiffe doth not obey this writ, the tenant shall have an attachment against him, which also appeares in the Register.

Regist. 171.

(2) *Nec jurare facit libere tenentes.*] This is to be understood betweene partie and partie; but to enquire for the lord of all the articles belonging to the court baron or hundred, they may be sworne, and so are the books to be understood. Hereof you may reade a notable record in 14 E. 1. in Banco, &c.

27 ass. p. 6. 20. 39 E. 3. 20. 12 H. 4. 8. b. F.N.B. 75. c.

*Gilbertus de Pincebek & Richardus filius Guilielmi de Spalding implacitaver' Priorem de Spalding pro eo quod cum sint liberi homines, & terras & tenementa sua tenent liberè, 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 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. Considerat' est, quod Prior sine die, & hab' returna' averiorum, & ipsi Guilielmi & Richardi in misericordia.*

M. 14. E. 1. rot. 19. Lincoln.

* That is this statute.

A freeholder refuse to present for the lord.

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The custome of the court.

But in the leet or tourne, the suitors may be compelled to be sworne as well for the king, as betweene partie and partie; for they are not *liberè tenentes*, as this statute speaketh, in respect of tenure, but doe their suit in respect of resiance; also the leets and tournes 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 custome and prescription; as the lord of a manour 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 jurie. And this branch

12 H. 7, 8, 9.

Regist. 171. b.

 doth

doth binde the king in his court baron, hundred or countie court.

Bract. li. 3. fo. 106.

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.*

Glanv. li. 12. c. 2, 3. &c. Bract. li. 5. fo. 328. Brit. cap. 120. Fleta. li. 6. c. 3. Regist. fo. 1. F.N.B. fo. 1.

In a writ of right patent directed to the lord of the manour, 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 reade plentifully in our old books, and it properly belongeth to another treatise. And note these words in our act, *Sine præcepto domini regis*, doe refer to both clauses.

CAP. XXIII.

PROVISUM est etiam, quod si balivi (1), qui compotum suum dominis suis reddere tenentur, se subtraxerint, et terras vel tenementa non habuerint (2), per quæ distringi possunt, tunc per eorum corpora attachientur, ita quod vicecomes in cujus baliva inveniantur, eos venire faciat ad compotum suum reddend'.

IT is provided also, that if bailiffs, which ought to make account to their lords, do withdraw themselves, and have no lands nor tenements whereby they may be distrained; then they shall be attached by their bodies, so that the sheriff, in whose bailiwick they be found, shall cause them to come to make their account.

(Fitz. Brief, 791, 806. Fitz. Process, 203. Fitz. Exigent, 12. 1 Roll. 182.)

The mischiefe before this statute was, as it appeareth by the letter thereof, that the last proces 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 foreine counties, and had no lands or tenements whereby they might be distrained, so as the lords were in a manner remedilesse.

Regist. 72. 136. F.N.B. 117. b. Fleta, li. 2. c. 64. Brit. fo. 163. b. Mirr. c. 2. § 17. de contractis, & c. 5. § 3.

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 reade in the Register, in Fleta, and other ancient books and records, and lyeth in any county where the accountant may be found.

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Britton ubi sup. [illegible] E. 2. Proc. [illegible] 18 E. 2. [illegible] w. 220. 17 E. 3. 59. Regist. 137.

(1) *Balivi.*] This statute extends not onely to bailiffes according to the letter, but to gardeins in socage, receivers, and other accountants: but the statute of W. 2. c. 11. extends only to bailifes 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 proces of utlagary in an action of account, hath taken away either the effect or the use of this act, the contrary appeareth in that

that case, and in other cases in our books, as hereafter shall appeare.

(2) *Et terras et 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 terme of life at the least, and so is this act to bee understood.

For proof whereof; after this statute, and after the said statute of W. 2. cap. 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 foure points were resolved. 1. That our statute extendeth to a receiver as well as to a bailife. 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 sufficiencie 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 beene 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 stat. of W. 2. cap. 11. And herewith agreeth Fleta, which wrote soone after the statute of W. 2. and that statute doth confirme this act, *Et si diffugerit, et gratis compotum reddere noluerit, sicut in aliis statutis alibi continetur:* by which words this statute is meant.

4 E. 2. breve 791.

6 E. 2. breve 806. 17 E. 2. Proc. 203. 17 E. 3. 59. F N.B. 118. Flet. li. 2. c. 64. Britton ubi sup.

And good use may be made of this writ of *monstravit de compoto,* if the plaintife can learne in what place or countie he lurketh, but he cannot have this writ *sed per fidem, quam præstare debet in cancellaria, &c.*

F.N.B. 118. Regist. 136, 137.

But if any sue out this writ of *monstravit de compoto,* and attache 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 reliefe, which appeareth in the Register.

Regist. 137.

CAP. XXIV.

ITEM firmarii (1) tempore firmarum suarum vastum, venditionem, vel exilium (2) non facient (3) de domibus, boscis, vel hominibus, nec de aliquibus ad tenementa quæ ad firmam habent spectantibus (4), nisi specialem inde habuerint concessionem (5), per scriptum conventionis mentionem faciens quod hoc facere possunt. Quod si fecerint,

ALSO fermors, during their terms, shall not make waste, sale, nor exile of house, woods, and men, nor of any thing belonging to the tenements that they have to ferm, without special licence had by writing of covenant, making mention, that they may do it; which thing if they do, and thereof be convict, they shall

rint, et ſuper hoc convincantur, dampna plena reſtituant, et per miſericordiam graviter puniantur (6).	ſhall yield full damage, and ſhall be puniſhed by amerciament grievouſly.

See the ſtatute of Glouc' c. 8. (Mirror, 320. 5 Rep. 18. Dyer, f. 281. Fitz. Waſt. 12. 22. 30. 32. 37. 42, 43. 46, 47, 48. 53. 68, 69. 76. 78. 82. 88. 4 Rep. 63. Raſt. 689. 6 Ed. 1. ſtat. 1. c, 5.)

The miſchiefe before this ſtatute was, that againſt leſſees 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 ſeeing waſte and deſtruction is hurtfull to the common-wealth, this act provideth remedy for waſte done by leſſee for life, or leſſee for yeares, 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 ſpeciall law, as againſt tenant for life, tenant for yeares, and tenant by the courteſie.

Regiſt. 72. Bract. li. 4. fo. 355, 356, 357.

(1) *Firmarii.*] For the word *firma,* whereof *firmarius* commeth, ſee the firſt part of the Inſtitutes, ſect. 1.

Here *firmarii* doe comprehend all ſuch as hold by leaſe for life, or lives, or for yeares, by deed or without deed: *large ſe habet hæc dictio firmarius ad terminum vitæ, et ad terminum annorum*; and ſo much Fleta ſaith, *de termino.*

Fleta, lib. 5. ca. 34.

Albeit the Regiſter ſaith, *Sciend',* that *per ſtatutum de Marlebridge, 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 extended not to tenant by the courteſie, for he is not a farmer, but if a leaſe be made for life or yeares, he is a farmer, though no rent be reſerved.

Regiſt. 72.

(2) *Vaſtum, venditionem, vel exilium.*] Of theſe you ſhall reade in the firſt part of the Inſtitutes. But a reaſon is required, that ſeeing 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 curteſie, as the tenant 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 doe homage alone in the life of his wife, which proveth a larger eſtate; and ſeeing at the creation of his eſtate he might doe 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 originall eſtate was not puniſhable of waſte.

Firſt part of the Inſt. ſect. 67.

(3) *Non faciant.*] To doe or make waſte, in legall 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 downe timber trees, 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

Dier 11 Eliz. 281. b.

of

of passive, as active waste, for he that suffereth a house to decay, which he ought to repaire, doth the waste: and therefore if a man maketh a lease for yeares by indenture of a house and lands, upon condition, that if it happen the lessee to doe any waste, that the lessor shall reenter, in this case if the lessee suffer the houses to be wasted, the lessor shall re-enter, so as this word *facere,* hath not onely this signification in a penall statute, but in a condition also.

This act prohibiteth that farmers shall not doe waste, and yet if they suffer a stranger to doe waste, they shall be charged with it, for it is presumed 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 lessee, and the lessee his action of trespasse against him that did the waste, and so the losse, as reason requireth, in the end shall lie upon the wrong doer, and if the lessor should not have his action of waste, hee should bee without remedy.

21 H. 7. 37. a.

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First part Inst. sect. 67.

(4) *Nec de aliquibus ad tenementa quæ habent ad firmam spectantibus.*] There were before particularly named *de domibus, boscis, et hominibus*; these words doe comprehend lands and meadowes belonging to the farme.

Also these generall words have a further signification, and therefore if there had been a farmer for life, or yeares 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 speciall matter.

(5) *Nisi habeant specialem concessionem.*] This graunt ought to be by deed, for all waste tendeth to the dis-inheritance of the lessor, and therefore no man can claime to be dispunishable of waste without deed.

3 E. 3. fol. 34. 24 E. 3. 37.

[a] In Lewis Bowles case you may reade plentifully of this matter. This speciall graunt is intended to be *absque impetitione vasti,* without impeachment of waste. Impeachment commeth 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 to say, as without impeachment, that is, without any demand or challenge for doing of waste; but if the clause be either *sine impedimento,* or *impeditione vasti,* it amounteth in judgement of law to as much as *sine impetitione vasti.*

(6) [c] *Damna plena restituant et 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 lessee for life, and lessee for yeares.

This statute of Glouc'. cap. 5. gave treble damages, and the place wasted against lessee for life, lessee for yeares, and tenant by the courtesie, &c.

[a] Lib. 11. fo. 82, 83. Vide lib. 4. fo. 63. lib. 9. fol. 9.
[b] Vide l. 11. fo. 82. b. Lewys 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] Fleta, li. 1. ca. 11.
[d] Regist. 72.

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*

W. 2. cap. 14.

hujusmodi

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.

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CAP. XXV.

JUSTICIARII itinerantes de cætero non amercient villatas in itinere suo, pro eo quod singuli xii. annorum (1) *non venerint coram vicecomitibus et coronatoribus, ad inquisitiones de roberiis* (2), *incendiis domorum* (3), *vel aliis ad coronam spectantibus* (4) *faciend'. Dum tamen de villatis illis veniant sufficientes* (5), *per quos inquisitiones hujusmodi plene fieri possunt, exceptis inquisitionibus de morte hominis* (6) *faciend', ubi omnes xii. annorum, venire debent, nisi rationabilem causam habeant absentiæ suæ.*

THE justices in eyre from henceforth shall not amerce townships in their circuits, because all being twelve years old came not afore the sheriffs and coroners, to make inquiry of robberies, burnings of houses, or other things pertaining to the crown; so that there come sufficient out of those towns, by whom such enquests may be made full: except enquests for the death of man, whereat all being twelve years of age, ought to appear, unless they have reasonable cause of absence.

Magna Chart. ca. 35. Hic. ca. 10. & S. (Fitz. Wast. 11. 39. 53. 66. 72, 73. 101. 103. 120.)

Two mischiefes were before the making of this statute.

First, that if the sheriffe did present before the justices in eyre, that those of the age of twelve yeares came not to the tourn, that the townships where they dwelt should be amercied, for that every one above twelve years appeared not at their tourns, where they should be sworne, (as hath been said) amongst other things, that they should doe 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 to discover felonies, if any they knew, according to their oath.

Another mischiefe, that when any robbery, burning of houses, homicide, or other felony was done, the sheriffe, 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 amercied, albeit many times a sufficient number to make enquiry did appeare. Now this statute provideth remedy, that when there commeth 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 mischiefes.

(1) *Singuli*

(1) *Singulii xii. annorum.*] Where old bookes 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 yeares, and so it is provided by this act.

Mag. Chart. c. 35.

(2) *De roberiis.*] See for this word in the first part of the Institutes, sect. 501.

Vide W. 1. c. 15.

(3) *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 onely of a dwelling house, but of the barne 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, beast, ou autres chateux de lour felony in temps de peace pur haine, ou vengeance.*

Mirror, c. 1. § 8. de Ardours et § 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 q. 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, et en le dit meason mist fewe, &c. feloniousment, &c.

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And Fleta saith, *Si quis ædes alienas nequiter ob inimicitiam vel prædæ causa tempore pacis combusserit, et inde convict' fuer' per appellum vel sine, capitali debet sententia puniri.* But this belongeth to another treatise.

Fleta ubi supra.

(4) *Vel aliis ad coronam spectantibus.*] Here is meant other felonies at the common law, which are called *placita coronæ*, either enquirable before the sheriffe in his tourne, or the coroner, of whom the statute here speaketh.

(5) *Dum tamen de villatis illis veniunt sufficientes.*] But if there appeare not sufficient, as if there appeare under 12, then all that were summoned shall be amercied, and this doth follow the reason of the common law, for where for triall of any issue, there shall be summoned 24, if there 12 onely appeare, and are sworne, the others that made default shall not be amercied; but if any of them that doe appeare be challenged and tried out, so that 12 remain not to try the issue, then all the rest shall be amercied, as 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.

(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 appeare (to the end the truth may be found out and punished, and the horrible crime of murder detected) unlesse they have a reasonable excuse to the contrary.

Britton, ca. 6.

CAP.

CAP. XXVI.

MURDRUM (1) *de cætero non adjudicetur coram justiciariis, ubi infortunium tantummodo adjudicatum est, sed locum habeat murdrum de interfectis per feloniam* (2) *tantum, et non aliter.*

MURTHER from henceforth shall not be judged before our justices, where it is found misfortune only, but it shall take place in such as are slain by felony, and not otherwise.

Bracton, lib. 1. fol. 120, 121. Britton, cap. 6. Fleta, lib. 1. cap. 23. (Keyling, 123. Co. Ent. 354. 2 Roll, 120.)

Britton, cap. 7. 2 E. 3. Coron. 354. 3 E. 3. ibid. 322.

The mischiefe 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 judiciall 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.

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See the statute of Glouc' c. 9. 2 H. 4. 18. 11 H. 7. 23. 3 E. 3. coron. 307.

This statute doth remedy both points, for the latter clause is generall, 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 towne shall be amercied, &c. is also a mark of the common law.

(1) *Murdrum.*] For this word, see the 1 part of the Instit. sect. 500. To speak of the parts of homicide, doth belong to another treatise; this onely shall suffice for the understanding of this act.

See the first part of the Inst. sect. 745.

(2) *Per feloniam.*] For this word, and the signification thereof, see the first part of the Institutes at large.

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

IT is provided, that none, being vouched to warranty before our justices in eyre, in plea of land or tenement, shall be amerced from henceforth, because he was not present when he was vouched to warranty, except the

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' et legem communem.*

the first day of the coming of the justices: but if the party vouched be within the shire, then the sheriff shall be commanded to cause him to come within the third or fourth day, according to the distance of the place, as it was wont to be done in the circuit of the justices. And if he dwell without the shire, then he shall have reasonable summons of fifteen days at the least, after the discretion of the justices, and the common law.

Bract. l. 3. fo. 115, 116. Brit. c. 2. fo. 7. Fleta, li. 1. cap. 9. Mirror, cap. 4. cap. Itineris.

By the common law, all the men of the county ought to appeare before the justices in eire *per breve de generali summonitione vic' direct', quod præmoneat omnes de com' quod sint coram talibus justiciariis ad certum diem et 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 heare and learne the lawes and customes of the realme, under which they lived. Now the mischiefe was, that if the * vouchee appeared not at the first day, he was amercied, for that he ought to be present. Now this statute enacteth, that he shall not be amercied at the first day, but proces shall be awarded against him, as by this act is limited; and if he come not then, he shall be amercied: 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 reade old bookes.

* For this word Vouchee, see the first part of the Inst. § 145. verb. Et il vouche, &c. Custumier de Norm. cap. 50. fo. 64. b.

CAP. XXVIII.

Si clericus aliquis (2) *pro crimine aliquo, vel retto, quod ad coronam pertineat* (3), *arrestatus fuerit, et postmodum per præceptum domini regis in ballium traditus* fuerit *vel replegiatus extiterit* (1), *ita quod hii, quibus traditus fuerit in ballium, eum habeant coram justiciariis, 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.*

If a clerk, for any crime or offence touching the crown, be arrested, and after, by the king's commandment, let to bail, or replevied, so that they, to whom he was let to bail, have him before our justices; the sureties from henceforth, nor they to whom he was let to bail, shall not be amerced (if they have his body before our justices) although he will not answer before them, by reason of a clerk's privilege, nor cannot by reason of his ordinary.

(Bro. Coron. 111. 28 H. 8. c. 1. 32 H. 8. c. 3.)

(1) *In*

Vide W. 1. c. 15. Stam. pl. cor. 72. Regist. 77.

(1) *In ballium traditus fuerit, vel replegiatus extiterit.*] Here note a difference betweene baile, and replevie; for the one is by the higher courts at Westminster, and the other, viz. replevie, by the sheriffe, by force of the writ of *homine replegiando.*

For the understanding of this act, it is to be knowne, that at the common law when any man was appealed or indicted of felony, if he were bayled, the bayle was, that he should appeare at a certaine day before such justices to answer to the felony. Now the mischiefe was, that if a man were bailed, or delivered by plevin, albeit he did appeare, yet if he claimed the benefit of his clergie, the persons that bailed him, or his pledges were amercied, because he refused to answer to the felony, but tooke himselfe to his clergie; this statute doth provide, that if in that case the clerk doth appeare before the kings justices, his baile or pledges shall not be amercied, although he will not answer before them by reason of his clerks priviledge.

(2) *Si clericus aliquis.*] If he were no clerk at the time of the baile, or deliverie by plevin, but learned to reade before his appearance, yet he was within this statute, and yet a clerk was not bailed nor delivered by plevin.

(3) *De aliquo crimine vel retto quod ad coronam pertineat.*] [a] Where it is printed *rectum*, it must be amended after the originall, and made *rettum:* this is derived of an old word *rette*, or *reatte, à reatu*, and signifieth in our legall 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 offence he can have his clergie, or the priviledge of a clerk. But *in crimine læsæ majestatis* he was not to have his clergie, and therefore this act extendeth not to persons let to baile for high treason, and so it is in case of sacriledge, and the like.

And thus is this dark statute cleerly expounded.

[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 clergie, and where he is barred thereof by act of parliament, doe belong to another treatise: in the meane time somewhat you shall reade of clergie in Alex. Powlters case, *ubi supra*, and lib. 4. fo. 44, 45, 46.

[a] W. 2. cap. 2. Regist. in homine replegiand. F.N.B. fo. 66.

[b] Al. Powlters case, li. 11. 29, 30. Art. cler. cap. 14. Mich. 31 E. 3. coram rege rot. 158. 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.

[c] Mirror, c. 3. de except. de Clergy. Bract. li. 3. 123, 124. Flet. l. 1. c. 28. Brit. ca. 4. fo. 11. lib. 6. cap. 36.

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CAP. XXIX.

PROVISUM est, quod si deprædationes, vel rapinæ aliquæ fiant abbatibus, prioribus, vel aliis prælatis ecclesiasticis (1), *et ipsi jus suum de hujusmodi deprædationibus prosequentes morte præveniantur* (2), *antequam judicium inde fuerint assequuti, successores eorum habeant actiones ad bona* (4) *ecclesiæ suæ*

IT is provided, that if any wrongs or trespasses be done to abbots, or other prelates of the church, and they have sued their right for such wrongs, and be prevented with death before judgement given therein; their successors shall have actions to demand the goods of their church out of the hands

suæ (5) *de manibus hujusmodi transgressoris repetend'* (3). *Similem insuper habeant actionem successores de hiis quæ domui suæ et ecclesiæ* [*recenter*] *ante obitum* (6) *prædecessorum suorum per hujusmodi violentiam fuerint subtracta, licet prædicti prædecessores sui jus suum prosecuti non fuerint in vita sua. Si autem in terris et 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', et adjudicetur eis dampna sua* (7), *sicut in nova disseisina adjudicari consuevit.*

hands of such trespassers. Moreover, the successors shall have like action for such things as were lately withdrawn by such violence from their house and church, before the death of their predecessors, though their said predecessors did not pursue their right during their lives. And if any intrude into the lands or tenements of such religious persons in the time of vacation, of which lands their predecessors died seised as in the right of their church, the successors shall have a writ to recover their seisin. And damages shall be awarded them, as in assise of novel disseisin is wont to be.

(Fitz. Trespass, 205. 211. 237. 242. Fitz. Brief, 176. 296. 359. 623. 828. 2 H. 4. 4. Regist. 72. 125. F. N. B. 112.)

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, or prior, or other regular or religious soveraigne, 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.

(1) *Abbatibus, prioribus, vel aliis prælatis ecclesiasticis.*] This act extendeth onely to abbots, priors, and other prelats that be religious and regular, and not to bishops and other persons ecclesiasticall being secular: for in the second clause of this act, *hujusmodi religiosorum* is mentioned for the distinction betweene religious and secular. See the first part of the Institutes, sect. 133. And the reason of this diversitie is, that the abbots, priors, and other religious and regular persons are dead persons in law, and have capacity to have lands and goods onely 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 predecessour, 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 ecclesiasticall 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. Hic c. 19. W. 1. c. 3. 15. 26.

Also the bishop is of an higher degree then the abbots and priors with which this act begins.

(2) *Morte præveniant'.*] So it is if an abbot or prior be deposed, the successor shall have an action upon this act, although the predecessour be alive, as well as if he had died, for as to that house he is *civiliter mortuus.*

Temps E. 1. trns. 242.

(3) *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 selfe is to be recovered, but *de manibus hujusmodi transgressoris* make it evident, that it must be intended of a trespasse *quare vi et armis*, for thereof was the doubt at the common law: for it is holden, that for goods taken from the predecessour 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 divested. But an action of account, debt, detinue, replevin, and the like action, which affirmes 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. 3 E. 3. 31. 4 E. 4. 8. 18 E. 4. 16. 7 H. 4. 5. 11 H. 4. 55. semble.

(4) *Bona.*] 1. If an obligation be taken from the predecessour, it is within this statute. 2. The successor shall have by the equitie of this statute an action of trespasse of cutting downe of trees, and carrying them away: wherein it is to be observed, that acts that give remedy for wrongs done, shall be taken by equitie.

7 E. 4. 15. a. 9 E. 4. 33. 9 H. 6. 25, 26. Regist. 96.

(5) *Ecclesiæ suæ.*] The action that the successor shall bring upon this statute, shall be *bona et catalla domus et ecclesiæ suæ tempore I. prædecessoris sui*, which without question a bishop, deane, or other ecclesiasticall secular cannot say.

16 E. 3. trans 211.

(6) *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 trespasse by this statute.

(7) *Si autem in terris et tenementis hujusmodi religiosorum, &c. aliqui se intrudant tempore vacationis, &c. breve habeant de seisina sua, et adjudicentur eis damna.*] This branch is also taken by equitie, for by these words, the successor of an abbot, prior, or any other religious soveraigne shall have an action of trespasse for trees cut downe and carryed away in the time of vacation.

18 E. 2. trans 237. 2 H. 4. ubi sup. 18 E. 4. 16. F. N. B. 89. i.

But a bishop shall not have an action of trespasse 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 and terminer to be granted to heare 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 marginall 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 lyeth 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 (1) *illæ, de quibus breve de ingressu* (2) *dari consuevit, per tot gradus fiant* (3), *per quot breve illud in forma prius usitata fieri non possit, habeant conquerentes breve ad recuperandum seisinam suam, sine mentione graduum* (4), *ad cujuscunque manus per hujusmodi alienationes res illa devenerit* (5), *per breve originale, et per commune consilium domini regis inde providendum* (6), *&c.*

IT is provided also, that if those alienations (whereupon a writ of entry was wont to be granted) hap to be made in so many degrees, that by reason thereof the same writ cannot be made in the form beforetimes used, the plaintiffs shall have a writ to recover their seisin, without making mention of the degrees, into whose hands soever the same thing shall happen to come by such alienations, and that by an original writ to be provided therefore by the council of our lord the king.

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. (Fitz. Cui in vita 23. Fitz. Entre, 9. 11. 49. 56. Fitz. Brief, 438. 469. 693. 812. 1 Inst. 238. b. 239. a. Regist. 228. F. N.B. 191. D. K. 192. 201. 203. Rast. 283.)

It is to be observed, that the common law provided for the quietnesse of mens freehold and inheritance, and that they should not be disturbed from manurance of their grounds; in so much as he that right had could not enter upon him that came in by descent or lawfull 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 et cui*, the demandant (to the end that suits might have an end) was driven to his writ of right, a long and finall 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 1. 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, judgement, 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 judgement, yet is she in the [*per*] by her husband, and if the second alienee be disseised, and he recover in a reall action, yet lieth the writ against him in the *per et 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.

(1) *Si alienationes*, &c.] Hereby it appeareth that this act extendeth where the lands were aliened from one to another, either by lawfull conveyance, or by descent; and by construction this act extendeth as well to alienations, &c. made before the statute as after,

5 E. 2. Cui in vita 23.
7 E. 3. 12.

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.

10 H. 6. 17. 21 H. 6. 8. 9 E. 4. 16. 1 H. 6. 1.

(2) *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.*

(3) *Per tot gradus fiant.*] *Gradus dicitur à 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 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.

[154] 50 E. 3. 21.

* And these alienations that make degrees ought (as hath been said) to be so lawfull, as the alienee may be in by title; and therefore a feoffement by a garden in chivalry, socage, or by nurtur, a termer for yeares, tenant at will, or bayliffe, or tenant in villenage doe 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 lawfull alienations, such as by the auncient law should have taken away an entry.

* [illegible] H. [illegible] 8. 20 H. [illegible] Ass. 432. 19 E. 2. Ass. 450. 4 E. 2. bre. [illegible] 8 E. 3. 62. 8 Ass. 28. [illegible] E. 3. 69. 50 E. 3. 22. 43 Ass. [illegible] 8 E. 4. 17. 10 E. 4. 18 W. 2. cap. 25. [illegible] fo. 318. [illegible] 324. 326. Bract. cap. 11. [illegible] 11. [illegible] 7 E. 3. 25. 11 E. 3. bre. 472. [illegible] E. 3. 1 [illegible] 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.

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 vowchers, 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 et cui;* b as if I may have a writ of entry in the *per et 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 et cui* or in the *post,* but *prima facie,* the writ of entry in the *per et cui* is more beneficiall, because the tenant in the writ of entry in the *post* may vowch at large, and so he cannot doe in the other writ, but onely within the degrees.

b 31 E. 1. bre. 8[illegible]5. 39 E. 3. 33.

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 heire of B.

4[illegible] E. 3. 45. 9 E. 4. 47. 5 H. 7. 6. 21 H. 6. 8. Br. tit. Entry 19. [illegible] E. 3. 31. [illegible] H. 6. 38. 7 H. 4. 17. 7 E. 3. 53.

A woman seised of a rent taketh husband, the husband purchaseth the land where out, &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.)

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 et 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 et cui* as to the other.

Howbeit

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 assignement, and therefore meerely in the *post*.

30 E. 1. bre. 884. 4 E. 3. fo. 24 E. 3. 32. 36 H. 6. Dower 30. Vide first part of the Inst. sect. 393.

(4) *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 et cui*, of those words in the writ, *in quod idem A. non habet ingressum nisi per C. cui D. illud dimisit, qui inde injuste, et sine judicio disseisivit, &c.*

But for as much as the law is never knowne untill the reason thereof be apprehended; wherefore should not the successors of a bishop, deane, abbot, prior, &c. be as well in the *per*, as the heire by descent? And the reason thereof is, for that the heire commeth in by his auncester, and therefore a descent shall take away an entry, and the warranty of the auncester shall barre the heir, but in case of succession, a dying seised taketh not away an entry, nor the warranty of the predecessour doth binde 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; et videtur quod non, magis quam in computatione descensus, quia etsi alternatur persona, non propter hoc alternatur dignitas, sed semper manet.*

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Regist. 230. See the first part of the Institutes, § 386. 534. 5 Ed. 3. 13.

(5) *Res illa devenerit.*] This is intended of lands, tenements, rents, and other things whereof a præcipe doth lie.

(6) *Per consilium domini regis inde providendum.*] Which was done accordingly, and the writ set downe in the Register.

Regist. 130.

STATUTUM DE WESTMINSTER PRIMER.

Editum anno 3 Edw. I.

CEUX ſont les eſtabliſhments (1) *le roy Edward fits le roy H. faits a Weſtminſt. a ſon primer parliament general* (2) *apres ſon coronement* (3), *lendemaine de la cluſe de Paſche* (4), *lan de ſon raigne* 3. (5), *per ſon counſell* (6), *et per laſſentments des archieveſques, eveſques, abbes, priors, countes, barons, et tout le comminalty de la terre illonques ſummones* (7) : *pur ceo que noſtre ſeignior le roy ad graund voiunt et deſire del eſtate de ſon realme redreſſer en les choſes ou meſtier eſt damendment, et ceo pur le commun profit de ſaint eſgliſe, et de* ſon *realme, et pur ceo que leſtate de ſon realme, et de ſaint eſgliſe ad eſte malement garde, et les prelates et religious de la terre en mults des manners grieves, et le people auterment treit que eſtre duiſt, et la peace meines garde, et les leyes meins uſes, et les misfeſants meins punies, que eſtre duiſſent, per quoy les gents de la terra doubteront meins a misfaire: cy ad le roy ordeine et eſtablie les choſes ſouthſcripts, les queux il entende deſtre profitables et covenables a tout le realme.*

THESE be the acts of king Edward, ſon to king Henry, made at Weſtminſter at his firſt parliament general after his coronation, on the Monday of Eaſter Utas, the third year of his reign, by his council, and by the aſſent of archbiſhops, biſhops, abbots, priors, earls, barons, and all the commonalty of the realm being thither ſummoned, becauſe our lord the king had great zeal and deſire to redreſs the ſtate of the realm in ſuch things as required amendment, for the common profit of holy church, and of the realm: and becauſe the ſtate of the holy church had been evil kept, and the prelates and religious perſons of the land grieved many ways, and the people otherwiſe intreated than they ought to be, and the peace leſs kept, and the laws leſs uſed, and the offenders leſs puniſhed than they ought to be, by reaſon whereof the people of the land feared the leſs to offend; the king hath ordained and eſtabliſhed theſe acts under-written, which he intendeth to be neceſſary and profitable unto the whole realm.

The preface of the ſtatute of W. 1.

(1) *Ceux ſont les eſtabliſhments.*] *Stabilimina*, or *ſtabilimenta*, eſtabliſhments. or aſſurances comming of *ſtabilis*, and that againe *à ſtando*, of ſtanding; and juſtly may not onely theſe chapters challenge that name, but all other the ſtatutes made in the raigne of this king may be ſtyled by the name of eſtabliſhments, becauſe they are more conſtant, ſtanding, and durable laws, then have been made ever ſince: ſo as king E. 1. who (as ſir William Herle chiefe juſtice of the court of common pleas, that lived in his time, ſaid, *Fuit le pluis ſage roy que unques fuit*) may well bee called our Juſtinian.

5 E. 3. 14.

(2) *A ſon parliament generall.*] So called, becauſe all the laws then

then made were generall, and that great and honourable assembly were not entangled with private matters, but with such onely, as were for the generall 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.*

(3) *Apres son coronement.*] He began his raigne the 16 day of November, *anno Dom.* 1272. he then being in the land of Palestine; and after his returne into England, was crowned the 19 day of August, in the 2 yeare of his raigne (and not the 9 day of December, in the 1 yeare of his raigne, as some have mistaken) as evidently appeareth by this preface, and by ancient records hereafter remembred.

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Vet. Mag. Chart. fo. 144.

(4) *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 eighth, *viz.* the eighth day after, including Easter day it-selfe for one.

Glanv. li. 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 untill the morrow after the utas of Easter to be holden at Westminster. And the number of eight was much respected in the ancient lawes, as amongst the lawes 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.

(5) *L'an de son raigne* 3.] This proveth that he was crowned in *anno* 2. for if he had been crowned in *anno* 1. of his raigne, then this parliament should have been holden in the 2 yeare: and this is proved by other matter of record. But the truth is, that the 19 day of December, in *anno* 1. of his raigne, he was not returned into England.

Vide vet. Mag. Char. 1 part, fo. 144. b.

Rex venerabili in Christo patri, Roberto Cant' archiepiscopo, totius Angliæ primati, salutem. Quia generale parliamentum nostrum, quod cum prælatis et 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 et ordinandum una cum prælatis et magnatibus regni nostri de negotiis ejusdem regni, et 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, et consiliariorum suorum consilio, et communitatis regni sui ibidem convocat' consensu, ad honorem Dei, &c. ordinavit et 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. 10 E. 1.

(6) *Per son counsell.*] This proveth that this king and other kings before him had a privie councell, 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.

(7) *Per lassentments des archevesques, evesques, abbes, priors, countes, et barons, et tout la comminaltie de la terre illonq; summones.*] Here is a compleat parliament for the making or enacting of

 lawes,

lawes, the king, the lords spirituall and temporall, and the commons: for if an act be made by the king, and the lords spirituall and temporall, 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 lawes consisteth of the king, the lords spirituall and temporall, and the commons; and it is no act of parliament, unlesse it be made by the king, the * lords and commons. And where it is said, by all the commonalty, all the commons of the realme 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.

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The purpose of this parliament is to redresse the state of the church and of the realme in those things that need amendment. The end is twofold, *Pur le common profit de saint esglise, & de son realme.*

There were five things that needed amendment.

1. For that the state of the realme and of holy church (which are ever like Hipocrates twins) had been ill governed.

2. That the prelates and other men of the church many wayes had been grieved, and the people otherwise entreated then they ought to have been.

3. The peace had not been well kept, which was against a maine maxime of law, *Inprimis interest reipublicæ, ut pax in regno conservetur, et quæcunq; paci adversentur, providè declinentur:* which maxime hath been repeated and affirmed by authority of parliament.

3 E. 6 cap. 12.
1 Mar. cap. 12.

4. That the lawes had not been put in execution against another principle of the common law, *Nihil infra regnum subditos magis conservat in tranquilitate et concordia, quàm debita legum administratio.* Affirmed also in parliament.

32 H. 8. cap. 9.

5. Offendors seldome punished, *Et impunitas continuum affectum tribuit delinquendi*; for this statute saith, By reason whereof the people of the land feare lesse 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 see 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.*

2. The writ is, *Pro quibusdam arduis et urgentibus negotiis nos, statum et defensionem regni nostri Angliæ concernentibus:* and it is expressed in this act, *Que nostre seigniour le roy ad graunt volunt, et 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 gard, &c.*

And here it is to be observed, that this noble and wise king E. 1. was contented in a free and generall parliament to heare of the misgovernment of the state of the realme and of the church, and never sought to cover those irregular proceedings, either in his fathers time, or his owne; 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 wholsome rules and lawes, then to cover them, lest it should be vainly feared they should reflect upon his fathers, or his owne misgovernment, where in truth all the fault should rest upon great counsellors, and officers, and ministers

Rot. Parl. 50 E. 3. nu. 10. 15, 16, 17, 18, &c. Rot. Parl. 5 H 4. nu. 8. 7 H. 4. nu. 30, 31. 9 H 4. indemnitie des Seigniors, &c. 1 H. 5. nu. 8. &c.

ministers of justice, and other the kings officers and ministers; and so it hath falne out in divers other kings times. This preamble to all the statutes is worthy of due and deliberate consideration.

Of this worthy king we have spoken in other places; this we will adde 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 excellencie.

CAP. I.

[159]

EN primes voit le roy et commaunde, que la peace de saint esglise, et de la terre, soit bien garde et mainteign' en touts points, et que common droiture soit fait a touts, auxybien as povers, come as riches, sans regard de nulluy (1). *Et pur ceo que les abbies, et les measons de religion de la terre, ont este surcharges et greves malement, per le venue des graundes gents et dauters, que lour biens ne suffisont a eux mesmes, per que les religious sont ci abates et 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* (2) *dauter avowson, que de la laine, al costages de la meason, si ne soit prie et 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* (3), *ne que les avowes des measons lez puissent per lour sovent venues surcharger ne destruer* (4). *Purview est ensement, que nul graund ne petit, per colour de parent', ou despecialtie, ou per auter affiance, ne per auter enchelon, ne courge en auter parke, ne peshe en auter viver* (5), *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,*

FIRST the king willeth and commandeth, that the peace of holy church and of the land, be well kept and maintained in all points, and that common right be done to all, as well poor as rich, without respect of persons. And because that abbeys and houses of religion of the land have been overcharged, and sore grieved, by the resort of great men and other, so that their goods have not been sufficient for themselves, whereby they have been greatly hindred and impoverished, that they cannot maintain themselves, nor such charity as they have been accustomed to do; it is provided, that none shall come to eat or lodge in any house of religion of any other's foundation than of his own, at the costs of the house, unless he be required by the governor of the house before his coming thither. And that none, at his own costs, shall enter and come to lie there against the will of them that be of the house. And by this statute the king intended not, that the grace of hospitality should be withdrawn from such as need, nor that the founders of such monasteries should overcharge, or grieve them by their often coming. It is provided also, that none high nor low, by colour of kindred, affinity, or alliance, or by any other occasion, shall course in any park, nor fish in any pond, nor come to eat or lodge in the house or manor

ſeignior, ou le bailiſe, 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 bailiſe nul ſurure, 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 (6), ne nul maner de vitaile, ne les auter biens, de nulluy prelate, home de religion, ne de auter, ne de clerke, ne de lay, per colour de achate, ne auterment encounter la [bone] volunt, et le conge de celuy, a que la choſe ferra, ou de gardein, deins ville merchandiſe, ou dehors. Et que nul preigne chivals, boſes, chares, ne charets, neefes, ne bateux, ne auter choſes affaire cariage (7), 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 encounter les eſtabliſhments avantdits, et de ceo ſoient attaints (8), ſoient adjudges a la priſon le roy, et dillonques ſoient rentes, et punies ſolonque la quantity et le maner du treſpas, et ſolonque ceo que le roy en ſa court veier que bien ſoit. Et ſoit aſſaver, que ſi ceux a que le treſpaſſe fuit fait, voillent ſuer les damages, que ils avera reſceux, leur ſerra agarde et 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 encounter ſon defence, et encounter ſa peace. Et le roy ſerra 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 et 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 auterfeits de recheſſe diſtreigne per meſme diſtr', de vener a un auter jour, que conteigne le ſpace de vi. ſemaignes. Et ſi ceux adonques ne veignent, ſoient* * [160] *adjudges*

manor of a prelate, or any other religious perſon, againſt the will or leave of the lord, or his bailiff, neither at the coſt of the lord, nor at his own. And if he come in, or enter with the good-will, or againſt the will of the lord or his bailiff, he ſhall cauſe no door, lock, nor window, nor nothing that is ſhut, to be opened or broken, by himſelf, nor any other, nor no manner of victual, nor other thing, ſhall take by colour of buying, nor otherwiſe; and that none ſhall threſh corn, nor take corn, nor any manner of victual, nor other goods of a prelate, man of religion, nor any other clerk, or lay-perſon, by colour of buying, or otherwiſe, againſt the will and licence of him to whom the thing belongeth, or of the keeper, be it within market-town, or without. And that none ſhall take horſes, oxen, ploughs, carts, ſhips, nor barges, to make carriage, without the aſſent of him to whom ſuch things belong; and if he do it by the aſſent of the party, then incontinent he ſhall pay according to the covenant made between them. And they that offend againſt theſe acts, and thereof be attainted, ſhall be committed to the king's priſon, and after ſhall make fine, and be puniſhed according to the quantity and manner of the treſpaſs, and after as the king in his court ſhall think convenient. And it is to be known, that if they to whom ſuch treſpaſs was done, will ſue for damages, they ſhall be thereto received, and the ſame ſhall be awarded and reſtored to the double; and they that have done the treſpaſs, ſhall be likewiſe puniſhed in the manner abovesaid; and if none will ſue, the king ſhall have the ſuit, as for a thing committed againſt his commandment, and againſt his peace: and the king ſhall make enquiry from year to year, what perſons do ſuch treſpaſſes, after as he ſhall think neceſſary and convenient; and they that be indicted by ſuch inqueſts ſhall be attached and diſtrained by the great

*adjudges come attaints, et rendent le double (per le ſuit del roy) a ceux queux le dammages averont reſceux, et ſoient grevement rentes, ſolonque le maner del treſpas. Et le roy defende et commande, que nul deſormes ne face male (9), damm', ne grevance a nul home de religion, perſon de ſaint eſglis, ne a auter, per encheſon de ceo que ils eyent deny lhoſtelie, ou le manger a nulluy, ou per encheſon de ceo que aſcun ſoy pleint en court, de ceo que il ſoit greve des aſcuns choſes avantdits, et ſi aſcun le face, et de ceo ſoit attaint, ſoit incurre le peine avantdit. Et eſt purview que ces points avantdits lient auxibien nous counſellors, juſtices del foreſt, et auter nous juſtices, come auters gents (10): et que les points avantdits ſoient maintignes (11), gardes, et tenus. Cy defende le roy ſur ſa grieve forfeiture, que nul prelate, abbe, prior, home de religion, ou bailiffe daſcun de eux, ou del auter, ne reſceive nul home encounter la forme avantdit. Et que nul envoy au meaſon (12), 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 encounter le * defence et le commandement le roy, il ſerra puniſh grevement. Uncore eſt purview, que les vic' ne herbergent ove nulluy (13), oveſque plus que v. ou vi. chivaix, ne que ils ne grevevent la gentes de religion, ne auter per lour ſovent vener, ou giſer a lour meaſons, ne a lour manors.*

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great diſtreſs, to come at a certain day, containing the ſpace of a month, into the king's court, or where it ſhall pleaſe the king; and if they come not at that day, they ſhall be diſtrained again of new by the ſame diſtreſs, for to come at another day, containing the ſpace of ſix weeks at the leaſt; and if they come not then, they ſhall be judged as attainted, and ſhall yield double damages (at the king's ſuit) to ſuch as have taken hurt or damage, and ſhall make grievous fine after the manner of the treſpaſs. And the king forbiddeth and commandeth, that none from henceforth do hurt, damage, or grievance to any religious man, or perſon of the church, or any other, becauſe they have denied meat or lodging unto them, or becauſe that any complaineth in the king's court that he hath been grieved in any of the things above mentioned; and if any do, and thereof be attainted, he ſhall incur the pain aforeſaid. And it is further provided, that the points aforeſaid ſhall as well bind our counſellors, juſticers of foreſts, and other our juſtices, as any other perſons; and that the aforeſaid points be maintained, obſerved, and kept. Likewiſe the king forbiddeth upon grievous forfeitures, that no prelate, abbot, man of religion, or bailiff of any of them, or of other, receive any man contrary to the form aforeſaid. And that none ſhall ſend to the houſe or manor of a man of religion, or of any other perſon, his men, horſe, or dogs, to ſojourn, nor none ſhall them receive; and he that doth (ſeeing the king hath commanded the contrary) ſhall be grievouſly puniſhed. Yet it is further provided, that the ſheriff from henceforth ſhall not lodge with any perſon, with any more than five or ſix horſes; and that they ſhall not grieve religious men, nor other, by often coming and lodging, neither at their houſes nor their manors.

n (14 Ed. 3. ſtat. 2. & 3. c. 1. 18 Ed. 3. ſtat. 3. & 4. c. 4. 1 R. 2. c. 3. Regiſt. 98. 9 Ed. 2. ſtat. 1. c. 11.

This

This chapter doth ſpread itſelfe into thirteen branches.

1. Branch.

(1) *En primes voet le roy, et commaund, que le peace de ſaint egliſe, et de la terre ſoit bien gard, et mainteine en touts points, et que common droiture ſoit fait a touts, auxibien as poures, come as riches, ſans regard de nulluy,* &c.]

Obſerve well this law.

Imprimis rex vult, et præcipit, quod pax ſacroſanctæ eccleſiæ, et regni ſolide cuſtodiatur, et conſervetur in omnibus, quodque juſticia ſingulis tam pauperibus, quam divitibus adminiſtretur, nulla habita perſonarum ratione.

Inter leges Edgari Regis.

This is an auncient maxime of the common law repeated and affirmed amongſt the lawes of king Edgar: *Primum eccleſia Dei jura et immunitates ſuas omnes habeto, publici juris beneficio quiſque fruitor, cique ex æquo et bono (ſive is dives, ſive inops fuerit) jus redditor.*

Fleta, lib. 1. c. 29.

Fleta reciteth this fundamentall law in few words, *Quod pax eccleſiæ, et terræ inviolabiliter obſervetur, ita quod communis juſticia ſingulis pariter exhibeatur.*

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.

And this law hath been explained and affirmed by divers other acts of parliament.

Britton, fol. 1. ſaith, *Peace ne poet my bien eſtre ſans ley*; therefore this law as a meane, 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 auncient law had great need at this time to be rehearſed, and commanded to be put in execution, for that by reaſon of the often inſurrections, tumults, and inteſtine warres in the raigne 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 warres the poet ſaid truly,

Nulla fides pietaſve viris, qui caſtra ſequuntur.

And of theſe ſeditious ſubjects, another in the perſon of the poore ploughman in the like caſe ſaid;

Virgill.

Impius hæc tam culta novalia miles habebit?
Barbarus has ſegetes? en quo diſcordia cives
Perduxit miſeros!

Another miſchiefe was, that during theſe tumults and inteſtine warres, 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, *quòd ex malis moribus bonæ leges oriuntur.*

2. Branch.

Vide leſtatute de Carlile, anno 35 E. 1. Lib. 8. fo. 130. the caſe of Thetford ſchole.

(2) *Purviewv eſt que nul ne veigne manger, herberger, ne giſer al meaſon de religion,* &c.] The miſchiefe is at large ſet downe in this act, wherein it is to be obſerved, that over and above their owne competent maintenance, the reſidue ought to be expended in works of charity.

Fleta, li. 3. c. 5.
Britton, fol. 37.

Hereof Fleta ſaith, *Et ne religioſi per onerationes indebitas ſupervenientium depauperentur, per quod eleemoſynas et 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.*

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