againſt him during thoſe two yeares, becauſe he holdeth not the land as gardien.

And for that cauſe if the lord tender to her a marriage, and ſhe within the two years marry her ſelfe elſewhere, there lieth no forfeiture of marriage againſt her. 35 H. 6. Gard. 71.

(7) *Et ſi els per malice ou malveis counſel ne ſoy voillent*, &c.] Here the act in hatred of contradiction and diſobedience, *in odium contradictionis et diſobedientiæ*, giveth to the lord her lands untill her age of 21, &c. but he holdeth not the ſame as gardien for the cauſe aforeſaid.

Of this whole act Fleta ſaith thus, *de fœmellis 14 annos habentibus, quibus domini ſui maritagium competens medio tempore non obtulerint, taliter provisum eſt, quod negligentia dominorum hujuſmodi talibus hæredibus, non ſit damnoſa, ſed retenta hæreditate per duos annos poſt 14 annos, eam hæredibus ſine contradictione reddere non contradicant; quod ſi infra ætatem competenter et palam contulerint, ipſæque maritari non conſenſerint, tunc uſque ad ætatem maſculinam hæreditatem talium impune poterint retinere ulterius quam per duos annos, pro fine maritagii, et in odium contradictionis et inobedientiæ.* Fleta, l. 1. c. 12.

(8) *Oſter jeſque ils eient priſes le value.*] Here the profits are accounted to goe in ſatisfaction of the value. *Vide le ſtatute de Merton* cap. 6.

If the lord grant over the wardſhip of the body onely, neither grauntor nor grauntee ſhall take the advantage of this branch.

CAP. XXIII.

PURVIEW eſt enſement, que en city, burgh, ville, faire, ne marche, ne ſoit nul home forein, que ſoit de cſt reaume (1), *diſtreine pur dette* (2), *dont il neſt dettour ou pledge, et que le ſra, ſerra grevouſement punie, et ſans delay ſoit le diſtreſſe deliver per les baillifes due lieu, ou per auter bailifes le roy ſi meſtier ſoit.*

IT is provided alſo, that in no city, borough, town, market, or fair, there be no foreign perſon (which is of this realm) diſtrained for any debt wherefore he is not debtor or pledge; and whoſoever doth it, ſhall be grievouſly puniſhed, and without delay the diſtreſs ſhall be delivered unto him by the bailiffs of the place, or by the king's bailiffs, if need be.

27 E. 3. Sta. 2. c. 17.

The miſchiefe before this ſtatute was, that divers cities, the cinque ports, boroughs, towns corporate, &c. within this realme, did claime ſuch a cuſtome, that if any of one city, ſociety, or merchant guild were indebted to any of another city, ſociety, or merchant guild, if any other of the ſame city, ſociety, or merchant guild that the debtor was of, came into the city, ſociety, or merchant guild whereof the creditor was, that he would charge ſuch a foreiner for the debt of the other; which cuſtomes are taken away by this ſtatute, whereof Fleta teacheth in theſe words; *ſolent plerique baillivi in feriis, mercatis, civitatibus, burgis, et feodis, et in juriſdictionibus ſuis aliquos tranſeuntes de feodis, vel juriſdictionibus ſuis nullatenus exiſtentes ad querimoniam alicujus invenientis plegios de proſequendo impedire,* Fleta, li. 2. c. 56. Cap. Itin' in Vet. Mag. Cart. fo. 155.

impedire, diſtringere et gravare pro alieno debito, cujus non fuerit plegius nec debitor, imponentes ei quod erat tali debitori affinis, ut de una ſocietate vel civitate, et hujuſmodi et impune: propter quod proviſum eſt, et inhibitum, ne quis aliquem forinſecum, dum plegius non fuerit nec debitor, pro aliquo debito alieno alicubi diſtringat, nec ad aliquam ſolutionem compellat, et qui fecerit graviter punictur.

Mirror, cap. 5. ſect. 4. And it ſeemeth by the Mirrour, treating of this chapter, that ſuch cuſtomes were againſt the common law, for there it is ſaid, *le point de tortiouſnes diſtreſſes duiſt conteine le paine de roberie.*

(1) *Que ſoit de ceſt realme.*] Theſe are materiall words: for if a merchant of England be either wrongfully impriſoned in the parts beyond the ſea, or have his merchandiſes or goods taken from him there wrongfully, he ſhall have the kings letter to the king, prince, or lord of that territorie, where the wrong is done, wherein the wrong is briefly recited, and requeſt made, *quod ſatisfactionem debitam ac juſtitiæ complementum fieri faciat, &c.* which letters of divers formes appeare in the Regiſter. Now if he be deſtitute of juſtice there, then may he either have the kings writ *de arreſto facto ſuper bonis mercatorum alienigen' pro tranſgreſſione facta mercatoribus Angliæ*, or elſe according to the law of marque, he ſhall have from the king letters of marque or repriſall under the great ſeale, whereby he may redreſſe himſelfe of the goods of any of the men of that territorie taken within this realme. And it is called the law of marque, of a Saxon word, which ſignifieth a limit or bound; becauſe ſeeing he cannot obtaine juſtice within the limits of the foreine country, he may be redreſſed of the men of that country within the limits of his owne: which appeareth by the ſtatute of 27 E. 3. in theſe words, "No merchant ſtranger be impleaded for anothers treſpaſſe, "or for anothers debt, whereof he is not debtor, pledge, nor main-"pernor. Provided alwayes, that if our liege people, merchants, "or other be endamaged by any lords of ſtrange lands, or their "ſubjects, and the ſaid lords (duly required) faile of right to our "ſaid ſubjects, we ſhall have the law of marque, and of taking "them againe, as hath beene uſed in times paſt, without fraud or "deceit." Wherein many things are worthy of obſervation; and (amongſt them) that this law of marque extends not onely to merchants, but to all other the kings ſubjects. And this law of marque in ſome records is called the kings right, *jus regium*, becauſe thereby he doth his ſubjects right: as taking one example for many, in the parliament holden in 11 H. 4. John Kowley of Bridgwater, in his petition prayed the king that he might take marque and repriſall of all French-mens goods, (having no ſafe conduct of the king) to a certaine value, for certaine his ſhips and other goods taken by the French in the time of the truce: the anſwer of the king was, that upon ſuit made to the king, he ſhould have ſuch letters repriſall as are needfull, and if the French king refuſe to doe him right, the king will then ſhew his right. This letter of marque or repriſall was anciently called *litera mercatoria*, (becauſe moſt commonly merchants obtained it) *litera mercatoria conceditur mercatoribus Anglis contra mercatores Heynon, Holland, Zealand, et Friſland.* So as if thoſe words [which is of this realme] had been omited, and the ſtatute had been generall in the negative, that no foreine perſons ſhould be diſtrained for any debt, wherefore he is not debtor or pledge, this had taken away the ancient law of marque or repriſall; and therefore neceſſarily were added the ſaid words [which is of this

27 E. 3. ubi ſup.

Rot. Parl. an. 11 H. 4.

Rot. Parl. 33 E. 1. Regiſt. 18.

Matt. Paris fo. 965 b.

this realme] whereby the law of marque or repriſall is implyed and ſaved.

(2) *Diſtreine pur dett.*] At this time a capias did not lie in an action of debt, but is given by the ſtatute of 25 E. 3, but yet this ſtatute doth extend to the capias, becauſe the capias commeth in lieu of the diſtres. 25 E. 3. cap. 7.

CAP. XXIV. [206]

PURVIEW eſt enſement, que nul eſchetor, viſcount, ne autre bailife le roy (1), *per colour de ſon office* (2), *ſans eſpeciall garrant* (3), *ou commandement* (4), *ou certaine authoritie que appent a ſon office* (5), *ne diſſeiſe nul home de ſon franktenement, ne de choſe que appent a ſon franktenement. Et ſi aſcun le fait, ſoit a le volunt le diſſeiſee, que le roy de ſon office le face amend' a ſon pleint, ou que il cit la common ley per briefe de* novel diſſeiſin (6). *Et celuy que ſerra de ceo attaint, rendr' les damages a double a meſme le plaintife, et ſerra en le grevous mercie le roy.*

IT is provided alſo, that no eſchea-tor, ſheriff, nor other bailiff of the king, by colour of his office, without ſpecial warrant, or commandment, or authority certain pertaining to his office, diſſeiſe any man of his freehold, nor of any thing belonging to his freehold; and if any do, it ſhall be at the election of the diſſeiſee, whether that the king by office ſhall cauſe it to be amended at his complaint, or that he will ſue at the common law by a writ of novel diſſeiſin; and he that is attainted thereof ſhall pay double damages to the plaintiff, and ſhall be grievouſly amerced unto the king.

(1 R. 2. c. 9.)

The miſchiefe before this ſtatute was, that eſchaetors, ſheriffes, and other of the kings bailiffes, would, *colore officii*, ſeiſe into the kings hands the freehold of the ſubject, and thereby diſſeiſe the partie, who thereupon to his intolerable vexation and delay, was put to his ſuit to the king by petition, for which this ſtatute provideth remedy.

(1) *Bailiffe le roy.*] Here by bailiffe is underſtood any other officer or miniſter of the kings.

(2) *Per colour de ſon office.*] *Colore officii* is ever taken *in malam partem*, as *virtute officii* is taken *in bonam*: and therefore this implyeth a ſeiſure unduly made againſt law. Pl. com.

And he may do it *colore officii* two manner of wayes: either when he hath no warrant at all, or when he hath a warrant, and doth not purſue it.

(3) *Eſpecial warrant.*] That is, to the eſchaetor, &c. a *diem clauſit extremum*, *mandamus*, or any other of the kings writs, and office thereupon found for the king.

Likewiſe to the ſheriffe the kings writ, as an *habere facias ſeiſinam*, or the like. 5 E. 6. Br. 55. tit. Office Li. 8. fo. 168. Paris Stoughtons caſe.

By this act no ſeiſure can be made of lands or tenements into the kings hands before office found, and ſo is the common experience at this day. See the ſtatute of *articuli ſuper cart, cap.* 19. & 29 *E.* 1. *leſter. de Lincolne.* Art. ſuper cart. ca. 19. 29 E. 1. Stat de Lincoln.

(4) *Ou*

(4) *Ou commandement.*] Under these words are comprehended not onely the king's commandements by his writs, as hath been said, but also the commandement of the justices of the kings courts of justice.

* A man was indicted before the sheriffe in his tourne of felonie, upon which indictment his lands and chattels were by the sheriffe seised for the king: afterward before justices assigned he was acquitted, and sued out a *certiorari* to remove the record into the kings bench; which being removed, he prayed there to have restitution of his lands and goods; and it was resolved that the sheriffe had not warrant to seise the lands, (before he were attainted) and therefore that he should sue his assise against the sheriffe upon this statute. It was further resolved, that if the sheriffe seise lands by the commandement of the justices, then is the sheriffe excused, though the justices therein did erre; and if he did it of his owne head, then had the party remedy by an assise; therefore * the partie was required to sue out a writ to the justices to certifie if the seisure were made by their commandement.

* 17 E. 2. aff. 371. 32 E. 1. ibid. 378 4 E 2. difficil. 10. 8 E. 2. coron. 390. 3 E 3. coron 347. & 300. 8 E. 3. 38. 15 E. 3 extent 17. 31 aff. 28. 10 E. 3. 47. 17 E. 3. 66. 22 aff. 96, 81. 44 aff. 14. 43 E. 3. 24. 26 aff pl. 32. 7 H. 4. 41. 13 H. 4. 13. Stamf. pl. cor. 192, 193. Pl. com. Morgans case, 12, 13 4 E. 1. officium coronat. 1 R. 3. cap. 3. Stam. prærog. regis, 83, 84.

* [207]

(5) *Ou certain autheritie que appent a son office.*] That is, *ex officio*, without any writ or commandement: for example, when the eschaetor taketh an office *virtute officii*, he may seise the land; for this, as our act saith, doth belong to his office; but if of his owne head (as hath beene said) he seiseth the land without any office, that seisure is *colore officii*, and therefore the assise upon this statute is maintainable against him in that case, *et sic de cæteris.*

(6) *Per briefe de novel disseisin.*] This is put for an example, for he may have any other writ, or action against him.

This statute is made in affirmance of that, which ought to have been done by the common law, and is the foundation as well of our book-cases above-said, as of the acts of parliament, that after have been made concerning undue seisures by escheators, sheriffes, and other bailifes, as coroners, and the rest.

Bract. lib. 3. fo. 121. b. Brit. fo. 3, 4. Flet. l. 1. c. 18. 25. Mir. ca. 1. § 5.

And if it doth appeare to the court, that the kings officer doth seise for the king any lands without warrant against the law, in an action brought against the officer, he ought not to have any aid of the king; neither doth the writ *de domino rege inconsulto* lie in that case, because that which is done by him is void; and where the cause of aid faileth, there no aid is to be granted. It were against reason, that the king, who is the head of justice, should aid him in his wrong; and therefore this act for doing of wrong in the kings name, doth give the party grieved an assise against him, wherein the plaintife shall recover his land, and double dammages, and besides the kings officer shall be in the grievous mercy of the king, for doing injury in his name to the subject.

28 E. 3. 94. Mortimers case. Rot. Parl. 8 R. 2. nu. 14. the Prior of Mountegues case adjudged in parliament. 4 H. 6. 29, 30.

Therefore in a reall action, if the eschaetor (of whom this statute speaketh) be examined, and upon his examination saith generally, that he hath seised the lands in demand into the kings hands; this is not good, and the action shall proceed, for he must shew the cause of the seisure, (as is implyed in this act) which cause, if it appeare to be against the law, the judges of the law ought to disallow the same.

9 H. 7. 10. 30 aff. p. 5.

CAP. XXV.

NUL miniſter le roy (1) *ne maintaine* (2) *per luy, ne per auter, les plees, parols, ou beſoignes queux ſont en la court* (3) *le roy* (4), *des terres, tenements, ou des auters choſes* (7), *pur aver part de ceo* (5), *ou auter profit* (6) *per covenant fait* (8). *Et que le fra, ſoit punie a le volunt le roy* (9). Vide Champertie 11 Ed. 1.

NO officer of the king by themſelves, nor by other, ſhall maintain pleas, ſuits, or matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof by covenant made between them; and he that doth, ſhall be puniſhed at the king's pleaſure.

(9 H. 7. 18. 15 H. 7. 2. Regiſt. 182. Raſt. 119. 13 Ed. 1. ſtat. 1. c. 49. 28 Ed. 1. c. 11. 33 Ed. 1. ſtat. 3.)

(1) *Nul miniſter le roy.*] Fleta in rehearſing this ſtatute, ſaith, *nullus miniſter regis cujuſcunque fuerit officii, &c.* and another ſtatute provideth againſt all others. *Miniſter regis* was taken in this kings time to extend to the judges of the realme; for in the caſe of juſtice Heigham for a ſcandall, and reproachfull words ſpoken unto him, the record ſaith, *ſicut honor * et reverentia, quæ miniſtris domini regis attribuuntur, ipſi regi attribuuntur; ita dedecus et infamia, quæ miniſtris domini regis inferuntur, ipſi regi inferuntur:* in which record and many other of that time [*miniſtri regis*] extend to the judges of the realme, as well as to them, that have miniſteriall offices.

Flet. li. 1. ca. 30. Brit. fo. 37. b. Art. ſuper cart. ca. 11. 20 H. 6. 30, 31. M. 33 & 34 E. 1. Cotā rege. See hereafter the 29. and 35 chapters.

* [208]

(2) *Ne mainteine, &c.*] Of maintenance ſhall be ſpoken in the expoſition upon the 28 and 29 chapters of this parliament.

(3) *Queux ſont en la court.*] By theſe words it is declared, that regularly champerty is *pendente placito*, and therefore a feoffement after judgement is not within this ſtatute.

Regiſt. 183. 30 Aſſ. p. 15. 19 R. 2. Champerty 15. 3 H. 6. 54. 8 E. 4. 13.

(4) *En la court le roy.*] That is, in ſome of the kings courts of record.

(5) *Pur aver part de ceo.*] Here is champerty forbidden by this act: firſt, therefore it is to be ſeene what champerty is; and ſecondly, whether it were not prohibited by the common law before this act; and laſtly, what was the cauſe of the making of the ſame.

Champerty is derived from two Latin words, *campa et parte*, and therefore champerty is a bargaine with the demandant or tenant, plaintife or defendant, to have part of the thing in ſuit, if he prevaile therein, for maintenance of him in that ſuit; it is called *campi pars*, becauſe he ſhall have a part of the field or land, &c. in demand, in the ſtatute called *diffinitio conſpirat'*, champertors are called *campi participes*, and are thus deſcribed, *campi participes ſunt, qui per ſe, vel per alios placita movent, vel moveri faciunt, et ea ſuis ſumptibus proſequuntur, ad campi partem vel pro parte lucri habend'.*

Flet. l. 2. ca. 30. Britton, fo. 37. 47 E. 3. 9. 31 H. 6. 9. F.N.B. 171. f. 33 E. 1. Vet. Mag. Char. fo. 9. & 111.

Every champerty is maintenance, but every maintenance is not champerty, for champerty is but a ſpecies of maintenance, which is the genus.

It

It was an offence against the common law; for the rule of law is, *culpa est se immiscere rei ad se non pertinenti.* And, *pendente lite nihil innovetur.*

Eract. l. 3. f. 117. Fleta. l. 1. c. 20. Brit. ubi supra. Cap. Ideneris. Vet. Mag. Chart. 152.

Bracton, who wrote before this statute, rehearsing the articles enquirable by the justices in eyre, saith, *de excessibus vic', et aliorum baliworum, si quam litem suscitaverint, occasione habendi terras vel custodias, vel perquirendi denarios, vel alios profectus, per quod justitia et veritas occultetur, vel dilationem capiat*; and Fleta agreeth with him, where it is said, *per quod justitia et veritas occultetur*; it appeareth that the end of champerty and maintenance is to suppresse justice and truth, or at least to work delay, and therefore it is *malum in se*, and against the common law.

Mirror, c. 1. § 5.

And the Mirror saith, *en perjurie chiont, &c. touts ceux ministers le roy, qui mainteinont faux actions, faux appeales, ou faux defences a escient.*

11 H. 6. fo. 11.

An action of maintenance did lie at the common law, and if maintenance *in genere* was against the common law, *à fortiori* champerty, for that of all maintenances is the worst.

8 H. 5. 8. 15 H. 7. 2. in Sub pœna.

And our act and other acts concerning champerty prohibite maintenance, and champerty *en le court le roy*, yet an action of maintenance in the nature of an action of trespasse doth lie in ancient demesne, and other base courts at the common law.

11 H. 6. ubi supra.

As it is said in our books, this act and other statutes concerning champerty and maintenance doe give a greater punishment against them, that offended in maintenance and champerty then was at the common law; by this act he shall be punished at the will of the king, i. by his justices, so as champerty is both *malum in se*, by the common law, and *malum prohibitum*, by this act.

[209]

And for that the kings ministers or officers within his courts, were in place to doe more mischiefe therein to the subverting of justice and truth then others, therefore this act provideth onely against the kings ministers and officers of his courts.

Regist. 182. 4 E. 2. Champerty 12. 21 E. 3. 10. 52. 22 E. 3. 10 30 ass. p. 15. 50 ass. 3. 32 E. 3. Champ. 6. 19 R. 2. ibid. 15. 12 H. 4 26. 13 H. 4 16, 17. 8 E. 4. 1. 9 H. 7. 18 F.N.B 172. Regist. Judic. 57 F.N.B. 172. k.

Note it is provided by this act that no minister of the king should maintain to have part, so that hereby it appeareth that it is no champerty unlesse the state, &c. be made for maintenance; note the words of the writ of champerty be *assumpsit manutenend.* or *manucepit, &c.* But see after the 29 chapter, some persons prohibited to purchase at all *pendente placito.*

F.N.B. 171. i.

(6) *Ou auter profit.*] * If the tenant in a reall action graunt a rent. common, or other profit apprender out of the land to maintaine, &c. this is champerty, and yet the rent, common, &c. is not in demand, but they are profits out of the land.

(7) *Ou axters choses.*] Within these words are included leases for yeares; and other goods and chattels, debts and duties.

(8) *Per covenant fait.*] That is, by agreement, either by word or writing; for albeit in the common sense a covenant is taken for an agreement by writing, yet *conventio* in his large sense is taken (as here it is) for an agreement by writing, or by word.

(9) *Il serra puny a la volunt le roy.*] See before cap. 4. 9, 20. and hereafter cap. 26, 29.

This act concerning champerty is the foundation of all the acts and book cases that ensued.

Vide

Vide Vet. Mag. Chart. 11 E. 1. *ſtat. de champerty. Artic. ſuper chart. cap.* 11. 33 E. 1. *Deſinitio conſpiratorum.* 1 E. 2. cap. 14. 20 E. 3. cap. 4. 1 R. 2. cap. 4. And thus much for the underſtanding of this firſt act which is enlarged by divers of the acts aboveſaid.

CAP. XXVI.

ET que nul viſcount, ne auter miniſter le roy (1) *ne preigne reward pur faire ſon office* (2) *mes ſont paies de ceo que ilz purnont del roy, et que le fra rendre le double al plaintife, et ſerra puny a la volunt le roy.*

AND that no ſheriff, nor other the king's officer, take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.

Cap. itineris Vet. Mag. Cha. fo. 155. Marlb. ca. 19. 28. W. 1. ca. 3. 15. (1 Inſt. 308. 23 H. 6. c. 10. 28 H. 6. c. 5.)

(1) *Miniſter le roy.*] Under theſe words, the law beginning with *nul viſcount*, are underſtood eſcheators, coroners, bailiffes, gaolers, the kings * clerk of the market, aulnager, and other inferiour miniſters and officers of the king, whoſe offices do any way concerne the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the kings ſervice; that none of the kings officers or miniſters doe take any reward for any matter touching their offices, but of the king. And ſome doe hold that the kings heraulds are within this act, for that they are the kings miniſters, and were long before this ſtatute.

Fleta, li. 2. c. 18. & 39. 27 Aſſ. p. 14. Stamf. Pl. Coron. 49. a.
* See the fourth part of the Inſt. Cap. Court of the Clerk of the Market.
Rot. Parl. 50 E. 3. nu. 11.

(2) *Ne preigne reward pur faire ſon office.*] See before cap. 10. *verſus finem*; and Fortеſcue ſaith, *Quod vicecomes jurabit ſuper ſancta Dei evangelia inter articulos alios quod bene, fideliter, et indifferenter exercebit, et faciet officium ſuum toto illo anno, neque aliquid recipiet colore, aut cauſa officii ſui ab aliquo alio, quam à rege*; and note it is not ſaid, that he ſhall take no reward generally, but no reward to doe his office. *Vide devant*, cap. 10.

W. 1. cap. 10. Fort. c. 24. f. 28.

The ſheriffe, or any other miniſter of the king cannot preſcribe to take a reward or fee for doing of his office: but the fee of 20. d. called barre fee time out of minde taken by the ſheriffe of every priſoner that is acquited, is not againſt this ſtatute or any other, for it is not taken for doing his office.

42 E. 3. fol. 5. 21 H. 7. 17.

This ſtatute is made in affirmance of a fundamentall maxime of the common law, which is *non capiant vicecomites, vel alii miniſtri regis præmium, vel mercedem, vel aliquid pro officio ſuo faciendo, ſed tantum de feodis ſuis à domino rege ſint contenti.*

Mag. Chart. c. 29. 28 E. 1. ca. 18. 36 E. 3. ca. 15.

It is a certain and true obſervation, that the alteration of any of thoſe maximes of the common law is moſt dangerous, whereof you ſhall elſewhere reade ſome inſtances; whereunto you may adde this ancient maxime affirmed by our act of parliament: for whiles ſheriffes, eſcheators, coroners, and other miniſters of the king, whoſe offices any way did concerne the adminiſtration or execution of juſtice, or the good of the common weale, could take no fee at all for

See the preface to the 4th part of my Reports, and the third part of the Inſtitutes, Cap. Of the high court of parliament. Verb. See here ca. 42.

for doing their office, but of the king, then had they no colour to exact any thing of the ſubject, who knew, that they ought to take nothing of them.

Vide 4 E. 3. c. 10. 27 E. 3. cap. 4. 8 Eliz cap. 12. 23 H. 6. ca. 10. 34 H. 8. cap. 28 Eliz. cap. 4. 3 H. 7. cap. 12. 1 H. 8. cap. 7. 11 H. 7. cap. 4. 12 H. 7. cap. 5. 8 H. 6. cap. 5. 13 R. 2. c. 4. &c. See before ca. 4. 9, &c.

But when ſome acts of parliament changing the rule of the common law, gave to the ſaid miniſters of the king fees in ſome particular caſes to be taken of the ſubject, whereas before without any taking at all their office was done, now no office at all was done without taking: but at this day they can take no more for doing their office, then have been ſince this act allowed to them by authority of parliament.

This ſtatute doth adde a greater penalty then the common law did give, for by this act the plaintiffe ſhall recover his double damages, and beſides they ſhall be puniſhed at the will of the king, that is, by the kings juſtices, before whom the cauſe depends.

CAP. XXVII.

ET que nul clerke de juſtice, deſchetor, ou denquiror (1), *nul rien ne preigne pur liverer chapiters* (2), *forpris ſolement clerks des juſtices errants en lour eyres, et ceo ii. s. et nient plus de cheſcun wapentake, hundred, ou ville, que reſpoigne per xii. ou per vi.* (3) *ſolonque ceo que auncientment fuit uſe. Et que autrement le fra, rendra le treble de ceo quel avera priſe* (4), *et perdra la ſervice de ſon ſeigniour per un an.*

AND that no clerk of any juſticer, eſcheator, or enquiror, ſhall take any thing for delivering chapiters, but only clerks of juſtices in their circuits, and that ii s. and no more, of every wapentake, hundred, or town, that anſwereth by twelve, or by ſix, according as it hath been uſed of old time; and he that doth contrary ſhall pay thrice ſo much as he hath taken, and ſhall loſe the ſervice of his maſter for one year.

Mirror, c. 4. des Artic. des Eires, Bract. l. 3. fo. 115, 116. Brit. ca. 2. fo. 9, 10. Flet. li. 1. c. 20. Mirror, cap. 2. & 13. See the fourth part of the Inſtitutes, cap. Juſtices in Eire.

For the better underſtanding of this act, the manner of the proceeding by the juſtices in eyre in their eyre is to be known. Firſt, they had their authority and power by writs, which writs were at their ſeſſions firſt read, *Quibus auditis, quidam major eorum et diſcretior publice coram omnibus propoſuit quæ ſit cauſa adventus eorum, quæ ſit utilitas itinerationis, et quæ commoditas, ſi pax obſervetur, &c.* The charge being given, then were the bayliffes of the hundreds * called, and their names enrolled, and every of them ſworn that out of every hundred they ſhould chooſe four knights, who forthwith ſhould come before the juſtices, and ſhould be ſworn, that they ſhould chooſe twelve knights, or free and lawfull men, if knights could not be found, &c. by whom the buſineſſe of the king the better, and with greater profit might be expedited; who being returned and ſworn, then ſhould be read to them the chapters or articles of their charge in writing indented, the one part whereof was delivered to them, and the other part remained with the juſtices: and commandement was given to them by the juſtices, that to every chapter or article they ſhould

anſwer in their verdict ſeverally and by it ſelfe, ſufficiently, diſtinctly, and openly.

Capitula verò quæ illis duodecim proponenda ſunt, quandoque variantur, ſecundum varietatem temporum et locorum, et quandoque augentur, quandoque minuuntur.

Bract. ubi ſupra. Brit. c. 3. fo. 10. Flet. li. 1 c. 20. Cap Itin' Mag. Chart. fo. 150.

But the ordinary chapters or articles, as it appeareth by *capitula itineris*, amounted to the number of 138, or thereabouts.

(1) *Enquiror.*] Preſently after the making of this ſtatute, there was added to the chapters of the eyre the effect of this act to be inquired of, viz. *De clericis juſticiariorum, eſchaetorum, vel aliorum miniſtrorum capientibus denarios pro capitulis deliberand. &c.* Where enquirors or inquiſitors are included under the name of *miniſtri*.

Before this ſtatute, not onely the clerks of the juſtices, but of eſcheators and other miniſters and officers, that followed the eyre, did uſe to write them, who would doe it readily, ſufficiently, and with leſſe charge, which was born by the twelve of every hundred. This liberty that the ſubject had, could not be reſtrained but by act of parliament, and therefore two things are hereby provided. 1. That no clerks, &c. but onely the clerks of the juſtices errants in their eyres, ſhould deliver the chapters. 2. When this act of parliament had drawn it to the hands of the clerks of the juſtices in eyre, it was neceſſary to ſet down in certain, what they ſhould take, and that was but 2. s. of every hundred, which they well deſerved, and the county thereby much eaſed.

(2) *Pur livrer chapters.*] *Capitula* are derived *à capite*, the higheſt and principall part of man, ſo when matters are diſtributed into principall articles, they are ſaid to be digeſted into heads, which thereupon are called *capitula*: what is intended here by chapters, is declared before.

Cap. Itin' ubi ſup.

(3) *Que reſponde per* 12. *ou per* 6.] For ſome hundreds were ſo decayed, as they uſed to anſwer to the chapters or articles by 6. as before time had been anciently uſed.

Now how this chapter could be underſtood without reading of the ancient authors and old records, let the indifferent reader judge.

(4) *Et que autrement le fra rendr' le treble value de ceo que il aver prise.*] That is to ſay, if any clerk, but the clerks of the juſtices in eyre, did for reward deliver the chapters, or if the clerks of the juſtices in eyre for the delivery of them did take above 2. s. they ſhould render to them of whom they tooke treble ſo much as they received, and beſides loſe the ſervice of their maſter for one yeare.

CAP. XXVIII. [212]

ET que nul clerk le roy ne des juſtices reſceive diſormes preſentment del eſgliſe, dont plea ou contcke ſoit en la court le roy, ſans ſpeciall conge le roy, et ceo defende le roy ſur paine de perdre leſgliſe

AND that none of the king's clerks, nor of any juſticer, from henceforth ſhall receive the preſentment of any church, for the which any plea or debate is in the king's court,

leſgliſe et ſon ſervice. Et que nul clerke de juſtice, ne de vicont (2), *ne mainteine parties* (1) *en quarels, ne beſoignes queux ſont en la court le roy, ne fraud ne face* (3) *pur common droiture delayer, ou diſturber* (4). *Et ſi ull' le fait, il ſerra punie per la paine procheinment avantdit, ou per pluis grievous, ſi le treſpaſſe le requiert.*

court, without ſpecial licence of the king; and that the king forbiddeth, upon pain to loſe the church, and his ſervice: and that no clerk of any juſticer, or ſheriff, take part in any quarrels of matters depending in the king's court, nor ſhall work any fraud, whereby common right may be delayed or diſturbed; and if any ſo do, he ſhall be puniſhed by the pain aforeſaid, or more grievouſly, if the treſpaſs do ſo require.

(Regiſt. 182. 189. Raſt. 119. 427, &c. 28 Ed. 1. c. 11. 1 Ed. 3. ſtat. 2. c. 14. 4 Ed. 3. c. 11. 20 Ed. 3. c. 4. 1 R. 2. c. 4.)

1. This act is divided into foure branches, firſt, that no clerk of the king, nor of any juſtice receive any preſentment to any church, whereof any plea was depending in the kings court; the miſchiefe before this act was, that depending a ſuit for a church in the kings court, the one party or the other would preſent the chaplain of the king, or of ſome of the judges, the more to countenance the one party, and diſcourage the other, and the miſchiefe was the greater for that at this time, *cum aliquis jus præſentandi non habens præſentaverit ad aliquam eccleſiam, cujus præſentatus ſit admiſſus (i. inſtitutus) ipſe qui verus eſt patronus per nullum aliud breve recuperare poterit advocationem ſuam quam per breve de recto.*

Brit. fo. 37. b. W. 2. 13 E. 1. c. 3. 45 E. 3. Quar. Imp. 139.

2. The ſecond branch containeth the puniſhment, viz. that if he doth it without the kings licenſe, he ſhall loſe the church, that is, that the church ſhall be void as unto him, and that he ſhall loſe his ſervice, that is, that he be not after chaplain to the king during one yeare. And at this time divers eccleſiaſticall perſons were not onely clerks in the chancery, and other the kings courts, but alſo ſtewards of houſhold to noble men, juſtices, and other great men.

Regiſt. fo. 58. F.N.B. 44. g.

3. The third branch is, that no clerk of any juſtice or ſheriffe ſhall maintain any party in any querels, or buſineſſe depending in the kings courts.

(1) *Ne mainteine parties, &c.*] *Ne manuteneas*, whereof commeth the word of art *manutenentia*, or *manutentio*, derived *à manu et tenere*: *manus* doth not onely ſignifie power or help by word or countenance, but *manus* is herein uſed, for that moſt uſually maintenance is done by the hand, either by delivery of money, or other reward, or by writing on the behalfe of one of the parties in a ſuit depending.

It is in the Regiſter thus coupled, *manutenuit et ſuſtentavit*, and *ſuſtentare* is properly to underprop any thing that is likely to fall.

Maintenance is an unlawfull upholding of the demandant or plaintife, tenant or defendant in a cauſe depending in ſuit, by word, writing, countenance, or deed.

This maintenance (as hath been ſaid) is *malum in ſe*, and againſt the common law, and that is notably proved by this act, for hereby

main enance

maintenance is branded with this quality that thereby common right is delaied, or diſturbed, and conſequently againſt the common law.

And it is to be underſtood, that *manutenentia eſt duplex*, that is to ſay, *curialis*, that is, in courts of juſtice, *pendente placito*, and of this the ſaid deſcription is given; and *ruralis*, that is, to ſtir up and maintaine querels, that is, complaints, ſuits, and parts in the country, other then their owne, though the ſame depend not in plea, and this is puniſhed with great ſeverity, as by the acts therefor provided appeareth. [213]

1 E. 3. c. 14. 4 E. 3. c. 11. 20 E. 3. ca. 4. 1 R. 2. ca. 4.

Manutenentia curialis is divided into lawfull, and unlawfull, and into generall and ſpeciall, as ſhall be ſhewed in his proper place, viz. in the expoſition of the act of 28 Ed. 1. *Art. ſuper cart'*.

Art. ſuper cart. cap. 11.

(2) *Nul clerke de juſtice nē de viſcount.*] Theſe were prohibited by this act, becauſe they were in place, as before hath been ſaid, to do more miſchiefe, that is, by their maintenance to diſturbe or delay common right.

See cap. 24.

(3) *Ne fraude ne face.*] This fraud is worthy of the puniſhment inflicted by this act, for that it tendeth to delay, or diſturbe common right, that is, the due proceeding of law.

(4) *Pur common droit delayer ou diſturber.*] Theſe words refer as well to maintenance, as to fraud.

4 The fourth branch is the puniſhment, which evidently appeareth by the act.

CAP. XXIX.

PURVIEW eſt enſement, que ſi ul ſerjeant, counter (1) *ou auter* (2) *face ul maner de diſceit* (3), *ou de colluſion en la court le roy, ou conſent de faire la, en diſceit de la court, pur engin'* (4) *le court, ou la partie, et de ceo ſoit attaint, lors puis eit la priſonment dun an et un jour, et ne ſoit oye en la court le roy a counter pur nulluy* (5). *Et ſi ceo ſoit auter que count', per meſme le maner eit la priſon dun an en dun jour a tout le meins. Et ſi le treſpas demande greinder paine, ſoit a volunt le roy* (6).

IT is provided alſo, that if any ſerjeant, pleader, or other, do any manner of deceit or colluſion in the king's court, or conſent unto it, in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he ſhall be impriſoned for a yeare and a day, and from thenceforth ſhall not be heard to plead in that court for any man; and if he be no pleader, he ſhall be impriſoned in like manner by the ſpace of a year and a day at leaſt; and if the treſpaſs require greater puniſhment, it ſhall be at the king's pleaſure.

(8 R. 2. c. 4. 10 H. 6. c. 4. 18 H. 6. c. 9. Raſt. 2. 11 Ed. 4. 3. b. Palmer, 288. Salk. 517.)

Before this ſtatute, in the irregular raigne of H. 3. ſerjeaunts, apprentices, attorneys, clerks of the kings courts, and others did practiſe and put in ure unlawfull ſhifts and deviſes ſo cunningly contrived (and ſpecially in the caſes of great men) in deceit of the kings courts, as oftentimes the judges of the ſame were by ſuch crafty and ſiniſter ſhifts and practiſes invegled and beguiled,

which was against the common law, and therefore this act was made in affirmance of the common law; onely it added a greater punishment: for heare what the Mirrour saith of the serjeant at law, what his office and duty was: *Chescun serjeaunt counter est chargeable per serement que il ne maintenera, ne defendera tort ne faixime a son scient, cins guerpera son client, a quel heure que il puit son tort a perceiver. Auxi que il ne mitter in court faux delaies, ne faux tesmoignes ne movera, ne profera, ne aux corruptions, deceits, mensonges, ne aux fauxes lies ne consentera, mes loialment maintenera le droit de son client, que il ne chiet per follie, negligence, ne default de luy, ne de resonne que a luy appendroit de pronouncer et per mesterie, leding, despiser, coup, polie, tenson, manace, noise, ne villanie, ne disturbera judge, party, serjeaunt, ne auter in court per quoy il disturbe droit ou audience.*

Mirr. c. 2. § 5. des counters.

[214]

In former times learned and grave apprentices of law came not to this state and degree *per ambitum*, but contrariwise when they were called thereunto, they assayed all means to avoid it, taking the degree of an apprentice to be the more permanent place: taking one example for many; in the 5 yeare of H. 5. John Martine, William Babington, William Pole, William Weltbury, John June, and Thomas Rolfe, six grave and famous apprentices, having writs delivered unto them to take the state and degree of serjeants retournable in Michaelmas terme, when all the meanes which they had used could not prevail, they at the returne thereof in chancery absolutely refused the same; whereupon they were called into the parliament then sitting, and there charged to take the state and degree upon them, which in the end they did, and divers of them afterwards did worthily serve the king in the principall offices of the law, as by our books appeareth.

Rot Parl. an. 5. H. 5.

(1) *Serjeaunt counter.*] Of his antiquity and calling *ad statum et gradum servientis ad legem*, I have spoken in another place. In ancient books he is called, *counter*, or *narrator* of the count or declaration, being grounded upon the original writ, the foundation of the suit: and serjeaunt being a generall word, *counter* is added to it, to restraine it to a serjeaunt at law. *Vide* ca. 30. And untill this day, when serjeaunts proceed, every of them counteth, that is, reciteth count in an action appointed to him by the judges before them.

1. part of the Instit. sect. Flet. li. 2. c. 21. Cust. de Norm. cap. 64. Mirr. ubi sup.

Mirr. ubi supra. The Mirrour saith, *Counters sont serjeaunts sachants le ley del realme, que servent al common del people a pronouncer & defender les actions en judgement, pur ceux que mitteront pur loier, &c.*

(2) *Ou auter.*] This extendeth to apprentices, attornies, clerks of courts, or any other.

For the better understanding of this act, it is necessary to set downe the oath of the serjeaunt at law.

This oath consisteth on foure parts.

The oath of the serjeaunt at law.

1. That he shall well and truly serve the kings people, as one of the serjeaunts of the law.

2. That he shall truly counsell them, that he shall be retained with, after his cunning.

3. That he shall not defer, tract, or delay their causes willingly, for covetousnesse of money, or other thing that may tend to his profit.

4. That he shall give due attendance accordingly.

This oath consisteth on six parts.

The oath of the kings serjeaunt at law.

1. That he shall well and truly serve the king and his people, as one of the kings serjeaunts at law.

2. That he ſhall truly counſell the king in his matters when hee ſhall be called.

3. And duely and truly miniſter the kings matters after the courſe of the law, to his cunning.

4. He ſhall take no wages or fee of any man for any matters, where the king is party, againſt the king.

5. He ſhall as duly, as haſtily ſpeed ſuch matters, as any man ſhall have to do againſt the king in the law, as he may lawfully doe, without delay, or tarrying the party of his lawfull proces in that belongeth to him.

6. He ſhall be attendant to the kings matters when hee ſhall be called thereto.

The apprentice at law is not ſworne.

[215]

Concerning attorneys, it is provided by the ſtatute of 4 H. 4. cap. 18. that they that be good and vertuous, learned, and of good fame, ſhall be received, and their names put into the roll, and ſhall be ſworne well and truly to ſerve in their offices, and ſpecially that they make no ſuit in a forein county. 4 H. 4. ca. 18. The Roll of Attorneys.

Newton, chiefe juſtice of the court of common pleas, gave judgement of an attourney of that court, that had ſued out a *capias* without an originall, that his name ſhould be drawne out of the roll of attorneys, and that he ſhould never be attorney in this court, nor in any other court of the king, and that he ſhould not meddle in them in the law; and to perform all this, he in thoſe days was ſworne on a book. And Newton ſaid to him, The king hereafter, when you ſhall have better grace, may pardon you by his letters patents, &c. and then you may be reſtored againe. 20 H. 6. fo. 37.

(3) *Face ul maner de diſceit.*] This muſt be a miſ-feſauns, and not a non-feſauns; for the words be doe, *i. faciat aliquam deceptionem ſeu colluſionem, &c.* And to illuſtrate this matter, it is good to put ſome examples.

A writ of *habere facias ſeiſinam* did falſly recite a recovery in a reall action (where in truth there was no recovery at all) by colour of which writ a man was put out of his freehold; [a] this was a colluſion in deceit of the court, and the delinquent was by this ſtatute awarded to priſon, &c.

[a] 17 E. 3. 51. F.N.B. 98. o. Hil. 16. E. 1. in Banc. 58. deceit, & colluſion fur recovery, &c. Radulphus Paymel, &c. Hil. 22 E. 1. Rot. 70. in com. Banc. Allan Prats caſe.

[b] So it is to ſue out a *capias* without an originall.

[b] 20 H. 6. 37.

[c] Alſo to bring a *præcipe* againſt a poore man, knowing that he hath nothing in the land, of purpoſe to get the poſſeſſion of the land againſt the tenant who is in poſſeſſion.

[c] 39 E. 3. fo. 15. 3 E. 3. 49, 50. ſemble. 4 E. 3. 37. F.N.B. 103. a.

[d] To procure an attourney to appeare for a man, and plead without warrant.

[d] 41 E. 3. 1. Dier 30 El. 361.

If a ſerjeaunt, or an apprentice of the law in pleading a matter of fact iſſuable for his client, alledge the ſame to be done at a towne in ſuch a county, where in deed he knoweth there is no ſuch towne, of purpoſe to delay juſtice, *et a enginer la court*, this is a deceit within this ſtatute, and ſo it hath beene holden.

[e] A. H. in execution in the counter of London, and becauſe that priſon is a ſtrait priſon, deviſed a ſhift (in deceit of the court) to be removed from thence to the Fleet, and his device was this: He made an obligation of xx. l. to S. and cauſed the obligation to be put in ſuite againſt himſelfe in the name of S. and judgement in the court of common pleas was given againſt him upon his confeſſion, and procured a *habeas corpus cum cauſa*, and thereupon he was brought into the court of common pleas, and there one in the

[e] Dier 8 El. 249.

name of S. prayed that he might be committed in execution to the Fleet; and the court being beguiled, and knowing nothing of this deceit, and ſubtill and falſe practiſe, committed him to the Fleet, where S. never had ſuch a debt, nor ever was privie to any of the ſaid proceedings, A. H. and his counſellors, &c. are within this ſtatute.

10 E. 4 9. b. F.N.B. 98. 1.

This act is alſo in affirmance of the common law, for fraud and falſhood is againſt the common law: and therefore if the client would have the attourney to plead a falſe plea, he ought not to doe it, for he may plead *quod non ſum veraciter informatus, et ideo nullum reſpondeo, &c.* and that ſhall be entred into the roll to ſave him from dammages in a writ of diſceit: and if an attorney ought not wittingly to plead a falſe plea, *á fortiori*, a ſerjeaunt or an apprentice ought not to doe the ſame.

(4) *Par enginer* (ou engingner) *le court ou la partie.*] That is, to beguile the court, or the partie, as by the examples before expreſſed have appeared.

And this artificiall deceit is of all other the worſt, for hereby the matter is ſo tricked, ſhadowed, and heightned by colour of painted art, as thereby the judges themſelves are abuſed and beguiled.

[216]

(5) *Et la priſonment dun an, & ne ſoit oye en la court le roy a counter pur nulley.*] This puniſhment extends as well to the apprentice, as to the ſerjeaunt.

(6) *Soit a volunt le roy.*] Theſe words are before expounded, cap. 4. &c.

Tr. 18 E. 1. in B. R. Rot. 168. warr'.

William de Walthill plaintiſe againſt Matthew of the exchequer, in an action of deceit, and declared, that where he had demiſed to the ſaid Matthew certain lands in Wyrlingſcote in the county of Worceſter, and Blakgreve in the county of Warwick for the terme of twelve yeares, and covenanted by fine to aſſure the ſame, the ſaid Matthew other lands in the ſaid fine fraudulently did inſert, to have and to hold to him in fee, to the diſheriſon of the plaintife, &c. This matter was treated of, and examined by all the judges of England, and the treaſurer and barons of the exchequer in the preſence (ſaith the record) of Henry de Lacy earle of Lincolne, maſter William de biſhop of Ely, and Robert of Tipetet, and others: and, to uſe the words of the record, *Super examinationem tam ipſius Matthæi quam recordorum, compertum eſt, quod hæc et alia perpetravit in deceptionem curiæ*: and thereupon judgement is given, *Quòd committatur gaolæ ibidem moratur' per unum annum et unum diem ſecundum* * *ſtatutum, et finis* † *caſſetur*. The quaſhing of the fine was by force of theſe words in this ſtatute, *Et ſi le treſpas demand greinder paine, ſoit a volunt le roy*, that is, of the kings court, where the plea dependeth.

* W. 1. ca. 29.
† Nota hoc.

Nota. Six judges in the court of Common Pleas. Mich 33 E. 1.

Hæc eſt finalis concordia facta in curia domini regis apud Weſtm' a die Sancti Michaelis in xv. dies, anno regni regis Edwardi filii regis Henrici tricesimo tertio, coram Radulpho de Hengham, Willielmo de Bereford, Elia de Bekingham, Petro Malore, Willielmo Howard, & Lamberto de Trykingham juſtic', & aliis dom ni regis fidelibus tunc ibi præſentibus, inter Rogerum de Gamages, & Cecilium uxorem ejus querentes, & Iohannem filium Iohann.s de Ballingham defore' de duabus meſuagiis, quinquaginta & duabus acris terræ, & una acra boſci, & dimid' un' acræ paſturæ, & medietate unius acræ prati, cum pertinentiis in Ballingham, unde placitum conventionis ſummonitum fuit inter

Placit' convent'.

eos in eadem curia, ſcilicet quod prædictus R. recogn' prædicta tenementa cum pertinentiis eſſe jus ipſius Iohannis. Et pro hac recognitione, fine & concordia, idem Iohannes conceſſit prædictis Rogero & Ceciliæ prædicta tenementa cum pertinentiis, & illa eis reddidit in eadem curia. Habend' & tenend' eiſdem Rogero et Ceciliæ, & hæredibus ipſius Ceciliæ de capitalibus domini feodi illius per ſervitia quæ ad tenementa pertinent imperpetuum. Et præterea idem Iohannes conceſſit pro ſe & hæredibus ſuis, quod ipſi warrant' eiſdem Rogero & Ceciliæ, & hæredibus ipſius Ceciliæ, prædicta tenementa cum pertinentiis contra omnes homines imperpetuum. Et pro hac recognitione, redditione, warrant', fine & concordia iidem Rogerus & Cecilia dederunt prædicto Iohanni viginti libr' ſterlingorum.

A render to Cecilie, which was not party to the conuſans.

This fine being removed *coram rege*; the heires of John Ballingham, *viz.* Cecilie the wife of Roger Burghull, and her huſband, and Sibyl and Cecilie daughters and heires of Margerie, brought a writ of deceit, &c. for the avoiding of the fine: *aſſerentes* (ſaith the record) *prædictum finem minus ritè eſſe levatum in deceptionem curiæ regis, et in exhæredationem hæredum prædict', eo quod prædicta tenementa in prædict' fine contenta ſunt de manerio de Ballingham, quod eſt de antiquo dominico coronæ Angliæ.* Afterwards Roger and Cecilie his wife upon their default were ſevered, and Sibill and Cecilie ſued forth, and prayed that the fine for the cauſe aforeſaid, *revocetur et penitus adnulletur*, and the court in this caſe reſolved thus, *Et quia videtur curiæ quod præd. Sibilla et Cecilia filiæ præd. Margeriæ ad breve ſuum præd. reſponder' non debent, eo quod prædict' Johannes filius Johannis anteceſſor earundem, &c. ſi modo vixiſſet ad præd. finem adnulland. admitti non debuit:* and yet the record proceedeth for the puniſhment of the deceit to the court in theſe words, *Quæſitum eſt à præfatis Rogero de Gamages, et Cecilia uxore ejus, quid reſpondeant ad deceptionem et colluſionem curiæ domini regis præd. &c. qui dicunt quod præd. tenementa in prædicto fine contenta ſunt ad communem legem placitabilia, et ſemper à tempore, quo non extat memoria hucuſque, &c. et non per breve clauſum de recto, &c. eo quod non ſunt de antiquo dominico, &c. et de hoc pon' ſe * ſuper patriam, &c. Ideo ven' inde jurata coram rege à die Paſchæ in quindecim dies ubicunque, &c.*

Hil. 7 E. 2. coram rege. rot. 93. Hereford.

[217]

Vide 17 E. 3. 31. 30 E. 3. 22. 8 Aſſ. 35. 8 H. 6 11. The writ of Deceit is to bee brought by the lord for the adnulling and revoking of the fine, but the court may puniſh the deceit to the court, at the ſuit of the party or his heires.
* 17 E. 3. 31.

There is a chapter added amongſt the acts made in W. 2. anno 13 E. 1. the laſt chapter ſaving one in theſe words, *chauncellor, treaſurer, juſtices, ne nul del councel le roy, ne clerk de la chauncery, ne del eſchequer, ne de juſtice, ne dauter miniſter, ne nul del hoſtle l' roy ne clerk, ne ley, ne puit receivver eſgliſe, ne advowſon de eſgliſe, ne t're ne tenement en fee per done, ne per achate, ne a farme, ne a champerty, ne en auter maner, tanque come le choſe eſt en plea devant nous, ou devant ul de nous miniſtres, ne nul lowver ent ſoit priſe, &c.*

It is certain that this chapter was not enacted in 13 E. 1. therefore it is to be ſeen when it was made a law.

First, Fleta coupleth the 25 chapter of this parliament of W. 1. and the ſaid chapter inſerted into W. 2. together; whereby it ſeemeth that it was made at this parliament.

Fleta ubi ſupra.

2. It is enacted in the French tongue, as this ſtatute of W. 1. is, and all the reſt of the ſtatute of W. 2. is in Latine.

3. It hath the ſame phraſe and manner of penning that the 25. 28. and 29. chapters of this act of W. 1. hath.

4. The ſtatute of champerty made in the 11 yeare of E. 1. (which was before the ſtatute of W. 2.) reciteth the effect of this chapter,

Stat. de Champ. anno 11 E. 1. Vet. Mag. Cha. fo. 80. b.

chapter, and the 29 chapter of the parliament of W. 1. for by the ſaid act of 11 E. 1. it is recited, *Come contenue ſoit in noſtre eſtatute, que nul de noſtre court preigne plea a champerty per art ne per engin*; which is a ſummary recitall of the ſaid act inſerted, as is aforeſaid, amongſt the ſtatutes of W. 2. for the chauncellor, treaſurer, juſticcs, &c. are all of the kings courts, and it was fitter to rehearſe them generally, then by particular names.

And further, the ſaid act of 11 E. 1. reciteth this 29 chapter concerning counters, attourneyes, and apprentices, and others, as Fleta doth, rather by way of explanation, then in the ſame words.

5. There is no one act in W. 1. ſo general as this rehearſall in the 11 E. 1. is, for the 25 chapter is *nul miniſter*, and this is *nul generalment* without limitation.

6. Mention is made in the recitall of the ſaid act of 11 E. 1. of officers *à hauts homes & auters de la terre*, and in no ſtatute before that, any mention is made *des hauts homes*, that is, of the chauncellor, treaſurer, the kings counſellors, &c. but onely in this act, which is inſerted amongſt the ſtatutes of W. 2.

7. And where by the 28 chapter, proviſion was made againſt the clerks of the king, and of the juſtices, and by the 29 chapter againſt ſerjeants, apprentices, attournies, and others, it had been a great omiſſion and defect in the makers of theſe laws, to have left out the great officers and juſtices themſelves of the kings courts, and others recited in this act inſerted in W. 2. againſt whom it was more neceſſary to provide, then againſt the other, becauſe they had more power to offend; and the law had not ſeemed equall, if proviſion had not been made as wel againſt the majorities, as the minorities, the great, as the ſmall.

[218] 8. The ſaid act inſerted into W. 2. inflicteth puniſhment *(a la volunt le roy)* the act of 11 E. 1. doth adde hereunto three years impriſonment, for *dignitas perſonæ auget pœnam*.

En fee.] That is, in fee ſimple.

Per done.] That is, by a gift in taile.

Ne per achate.] That is, by purchaſe for mony or other conſideration.

30 Aſſ. 15. 30 E. 3. 3. 3 E. 4. 13.

Ne a farme.] That is, by leaſe for life, or for yeares.

Ne a champerty.] This hath beene explained before, chap. 25.

Ne en auter manner.] Theſe be generall words, and forbid all purchaſes *pendente placito* by the perſons named in this act; which is worthy of obſervation, to make a diverſity between theſe perſons herein named, and others: ſee before cap. 25. and note well the books there quoted.

A volunt le roy.] This is explained before cap. 4. &c.

Vide W. 2. cap. 49. Stat. de. 33 E. 1. De conſpiracy, Vet. Mag. Gart. fo. 111. b.

Auxibien celuy que purchaſe come celuy que le fra.] Note the puniſhment lieth by this act equally, as well upon the giver as the taker.

CAP.

CAP. XXX.

ET pur ceo que multz des gents ſe pleignent des ſerjeants (1), *criours de fee* (2), *et les marſhals des juſtices* (3) *en eire, et* [*dauters juſtices*] *quelles pernent a tort deniers de ceux queux recoveront ſeiſin del terre, ou queux gaignont lour quereles, et de fine levie, et des jurors, villes, priſoners, et des auters attaches en plees de la corone, auterment que faire ne duiſſent, en mults des manners, et de ceo quil ad plus grand number de ceux que eſtre ne duiſt* (4), *per que le people eſt malement greve; le roy defende, que ceſtes choſes ne ſoient diſormes faits. Et ſi ull' ſerjeant de fee le face, office ſoit priſe en le maine le roy. Et ſi marſhals des juſtices le facent, ſoient punis grevement a la volunt le roy. Et a touts les plaintifes lun et lauter rendre le treble de ceo quels aver' priſe en cel maner.*

AND foraſmuch as many complain themſelves of officers, cryers of fee, and the marſhals of juſtices in eyre, taking money wrongfully of ſuch as recover ſeiſin of land, or of them that obtain their ſuits, and of fines levied, and of jurors, towns, priſoners, and of others attached upon pleas of the crown, otherwiſe than they ought to do, in divers manners; and foraſmuch as there is a greater number of them than there ought to be, whereby the people are ſore grieved; the king commandeth that ſuch things be no more done from henceforth; and if any officer of fee doth it, his office ſhall be taken into the king's hand; and if any of the juſtices marſhals do it, they ſhall be grievouſly puniſhed at the king's pleaſure; and as well the one as the other ſhall pay unto the complainants the treble value of that they have received in ſuch manner.

Vide Mirror, c. 5. § 4. Britton 37. b. (11 Ed. 4. 3. b. 4 Inſt. 101.)

(1) *Serjants.*] Fleta rendreth theſe words thus, *virgatores ſervientes*, they were called *virgatores à virgis*, of white rods, which they carried in their hands before the juſtices in eyre and other juſtices. Flet. li. 2. c. 32. de Virgatoribus.

(2) *Criors de fee.*] It appeareth by Fleta that theſe are comprehended under the generall name of *virgatores*, and therefore carried rods alſo, he rendreth theſe words *clamatores de feodo.* Fleta ubi ſupra.

(3) *Et les marſhals des juſtices.*] *Juſticiariorum mareſchalli.* Fleta ubi ſupra.

(4) *Et de ceo que il ad pluis nombre que eſtre ne duiſt.*] Hereby it appeareth, that the over-great number of theſe virgers, criers, and marſhals, was a meanes of extortion, or grievance of the people; and ſo it is in all other caſes of what profeſſion or place ſoever, *Multitudo imperatorum perdidit cariam:* beſides it taketh away the eſtimation and credit of the ſame.

CAP.

CAP. XXXI.

DE ceux queux parment outragious tolnet' (1), *enconter common uſage du realme en la ville merchandie* (2): *purview eſt, que ſi ull' le face en la ville le roy meſme, que ſoit bail' a fee farme, le roy prendra le franchiſe* (4) *del marche* (3) *en ſa maine. Et ſi ſoit auter ville, et ceo ſoit fait per le ſeignior de meſme la ville* (5), *le roy le fra per meſme le maner. Et ſil ſoit fait per le bailife ſans le commandement le ſeignior, il rendra al plaintife au tant pur le outragious priſe, come il avoit priſe de luy, ſil uſi import ſon tolne: et il avera priſon del xl. jours. Des citizens, et des burgeſſes a que le roy ou ſon pere ad grant murage pur lour villes encloſer* (6), *et que tiel murage parment auterment que lour eſt grante, et de ceo ſoient attaintes: purview eſt, que ils pardent cel grant de touts le temps* (6) *que ſerra a veier, et ſerront en le grievous mercy le roy.*

TOUCHING them that take outragious toll, contrary to the common cuſtom of the realm, in market-towns; it is provided, that if any do ſo in the king's town, which is let in fee-farm, the king ſhall ſeiſe into his own hand the franchiſe of the market; and if it be another's town, and the ſame be done by the lord of the town, the king ſhall do in like manner; and if it be done by a bailiff, or any mean officer, without the commandment of his lord, he ſhall reſtore to the plaintiff as much more for the outragious taking, as he had of him, if he had carried away his toll, and ſhall have forty days impriſonment. Touching citizens and burgeſſes, to whom the king or his father hath granted murage to encloſe their towns, which take ſuch murage otherwiſe than it was granted unto them, and thereof be attainted; it is provided, that they ſhall loſe their grant for ever, and ſhall be grievouſly amerced unto the king.

Mag. Chart. c. 30. W. 2. cap. 25.

In the troubleſome and irregular raigne of H. 3 outragious tols were taken and uſurped in cities, boroughs, towns, where faires and markets were kept, to the great oppreſſion of the kings ſubjects, by reaſon whereof very many did refraine from the comming to faires and markets, to the hindrance of the commonwealth; for it hath ever been the policy and wiſdome of this realm that faires and markets, and ſpecially the markets, be well furniſhed and frequented.

Lib. 8. fol. 46. Mag. Chart. ubi ſup. W. 2. ubi ſup.

(1) *Tolnet.*] Toll. For the generality of the word, ſee Jehu Webs caſe, lib. 8. Magna Charta, and W. 2. whereof, and of the ſeverall kinds thereof, more ſhall be ſaid in the expoſition of the ſtatute of W. 2. for that here it is reſtrained, as hereafter appeareth.

Vide ca. 36. for this word.

Outragious.] That is, either where a reaſonable toll is due, and exceſſive toll is taken, or where no toll at all is due, and yet toll is unjuſtly uſurped, for it is an outrage to doe ſuch a common injury and wrong; ſometime it is called *ſuperfluum, vel indebitum, vel injuſtum.*

Cap. Itin' Vet. Mag. Chart.

No

No toll is due either on the part of the lord, when he hath a faire or market, and not any toll; or on the part of the marketman, who ought to be diſcharged of toll, or of the thing ſold that is not tollable. Flet. li. 2. c. 43. & li. 1. ca. 20.

(2) *En la ville merchandie.*] That is, in a city, borough, or town of merchandize, where faires and open markets are kept, for merchandizing, and buying and ſelling. Bract. li. 2. 56, 57. *Forum, nundinæ, feria, mercatus, oppidum.*

This is intended of toll to the faire or market, whereof we will only ſpeak in this place.

Toll to the faire or market is a reaſonable ſumme of money due to the owner of the faire or market, upon ſale of things tollable within the fair or market, or for ſtallage, picage, or the like.

And this was at the firſt invented, that contracts might have good teſtimony, and be made openly; for of old time, privy or ſecret contracts were forbidden, and the Mirror ſaid truth, for the auncient law was, *Negotiator in vulgo ſi quid mercatus fuerit in eam rem teſtimonia habeto; nemo extra oppidum, niſi præſente præpoſito aliiſve fide dignis hominibus, quicquam emito.* And another, *Ne quis extra oppidum quid emat*; in theſe laws *oppidum* is taken for faire or market. Cap. 1. § 3. Inter leges Inæ regis. Inter leges Ethelſtani regis.

And again the ſame king, *Si quis teſtatò rem aliquam mercatus fuerit, quam alius deinceps quiſque ſuam eſſe contenderit, eam venditor præſtet, atque in ſe recipiat, ſive is ſervus ſive ingenuus fuerit: die autem dominico nemo mercaturam facito; id quod ſi quis egerit, et ipſa merce, et* 30. *præterea ſolidis mulctator.*

Here note by the way two things, firſt, the antiquity of the law for changing of property, according to theſe auncient laws, and therefore to this day it is called, *apertum forum*, or *apertus mercatus*, an open market, or market overt; and ſecondly, that no merchandizing ſhould be on the Lords day.

Bonorum (ſine fidejuſſione, et teſtimonio) emptio, aut permutatio non eſto. Inter leges Etheldredi regis.

Si quis teſtibus non adhibitis quicquam fuerit mercatus, idemque alter ſuum ipſius proprium vendicaret, emptori nulla ſiat advocandi poteſtas, verum is domino rem reddito, &c. Which I have recited for the confirmation of the Mirror, and for the honour of venerable antiquity. Inter leges Canuti regis.

Every one, that hath a faire or market, ought to have it by graunt or preſcription; if the king graunt to a man a faire or market, and graunt no toll, the patentee ſhall have no toll, for toll being a matter of private for the benefit of the lord is not incident to a faire or market ſo graunted without a ſpeciall graunt, as it was adjudged in the caſe of Northampton, for ſuch a faire or market is accounted a free faire or market; and there it was alſo reſolved, that after ſuch a graunt made the king cannot graunt a toll to ſuch a free faire or market without *quid pro quo*, ſome proportionable benefit to the ſubject. Laſtly, it was there reſolved, that if the toll graunted with the faire or market bee outragious or unreaſonable, the graunt of the toll is void, and that the ſame is a free market or faire. Mich. 39 & 40. Eliz. Cor. Rege.

But if the king graunt unto one a faire or market, he ſhall have without any graunt a court of record, called a court of pipowdres *, as incident thereunto, for that is for advancement and expedition of juſtice, and for the ſupporting and maintenance of the faire or

Bract. l. 5. c. 334. 17 E. 4. c. 2. 1 R. 3. c. 6. 7 E. 4. 23. 13 E. 4. 8.

7 H. 6. 18, 19. 13 H. 7. 19. b. Dier 3 Mar. 132, 133. * 9 H. 6. fo. 45. tit. toll 7.

or market; and ſo note a diverſity between the private and the publique.

* No toll for any thing tollable brought to the fair or market to be ſold, ſhall be paid to the owner of the faire or market before the ſale thereof, unleſſe it be by cuſtome time out of mind uſed, which cuſtome none can challenge that claime the faire or market by graunt within the time of memory, *viz.* ſince the raigne of king R. 1. which is a point worthy of obſervation for the ſuppreſſion of many outragious and unjuſt tolls incroached upon the ſubject to be puniſhed within the purview of this ſtatute. So note, it is better to have a faire by preſcription, then by graunt.

2 & 3 P. & M. c. 7. 31 Eliz. ca. 12. 9 H. 6. 45.

Alſo if the lord or owner of the faire or market doe take toll of the ſeller of horſes, &c. he is to be puniſhed within this ſtatute, for he ought to take it of the buyer onely. *Vide* 2 & 3 Ph. & Mar. & 31 Eliz. And ſo *de communi jure* no toll ſhall be paid for things brought to the faire or market, unleſſe they be ſold, and then toll to be taken of the buyer; but in ancient faires and markets toll may be paid for the ſtanding in the faire or market, though nothing be ſold.

Bract. li. 2. f. 57. 3 E. 3. aſſ. 445. 14 E. 3. Barr. 177. 16 E. 3. grant 53. 39 E. 3. 13. b. 41 E. 3. 24. 43 E. 3. 29. 44 E. 3. 20. F.N.B. 94. f. & 227.

If the king or any of his progenitors have granted to any to be diſcharged of this toll either generally or ſpecially, this grant is good to diſcharge him of all tolls to the kings owne faires or markets, and of the tolls, which together with any faire or market have been granted after ſuch grant of diſcharge, but cannot diſcharge tolls formerly due to ſubjects, either by graunt or preſcription.

Bract. fo. 56. a. & 57. b.

Hereof Bracton ſaid, *In omni libertate conceſſa, &c. erit prioritas præferenda.* And againe, *Eſſe enim poterit libertas, ut ſi quis teneatur ad dandum ex ſervitute, ſicut theolonium et conſuetudines, ex libertate defendi poterit ad non dandum, item ſi ex ſervitute teneatur quis ad non capiendum, ex libertate conceſſa capere poſſit conſuetudines et theolonia.*

7 H. 4. 4. 9 H. 6. 25. F.N.B. 228. d. Regist.

Tenants in ancient demeſne, for things comming of thoſe lands ſhall pay no toll, becauſe at the beginning by their tenure they applyed themſelves to the manurance and huſbandry of the kings demeans, and therefore for thoſe lands ſo holden, and all that came or renewed thereupon, they had the ſaid priviledge: but if ſuch a tenant be a common merchant for buying and ſelling of wares or merchandiſes, that riſe not upon the manurance or huſbandry of thoſe lands, he ſhall not have the priviledge for them, becauſe they are out of the reaſon of the priviledge of ancient demeſne, and the tenant in ancient demeſne ought rather to be a huſbandman then a merchant by his tenure, and ſo are the books to be intended. And herewith agreeth an ancient record, the effect whereof is,

Hil. 14 E. 1. coram rege rot. 41. Devon.

Quod hii qui clamant eſſe immunes de theolonio præſtando, ut tenentes in antiquo dominico, vel per chartas regum, non debent diſtringi pro aliquo theolonio pro merchandizis ad uſus ſuos proprios emptis; imo pro merchandizis qu' emerint vel vendiderint ut mercatores, debent ſolvere pro eis.

Rot. Parl. an. 18 E. 1. fo. 2. int. Abbatem loci ſancti Edw. & Balivos de Southampton.

King H. 3. did grant to the abbot of L. and his ſucceſſors, *Quod ipſi et homines ſui ſint quieti ab omni theolonio in omni foro et in omnibus nundinis, &c.* And there it is reſolved, that the abbot ſhould have this priviledge by force of this generall graunt in this manner, *Quod ipſi et homines ſui ſint quieti à præſtatione theolonii in venditionibus*

ditionibus et emptionibus pro ſuis neceſſariis, ut in victu, veſtitu, et ſimilibus, et hoc ad opus proprium ipſius abbatis et hominum ſuorum.

• The king ſhall not pay toll for any of his goods, and if any be taken, it is puniſhable within this ſtatute.

Mich. 2 E. 2. coram rege pro mercato de Brimmingham acc'.

(3) *Marche.*] This word doth here include as well a faire as a market; for *forum*, from whence faire is derived, ſignifieth both: and a mart is a great faire holden every yeare, derived *à merce*, becauſe merchandiſes and wares are thither abundantly brought: and *mercatus* is derived *à mercando*.

* 35 H. 6. 57.

(4) *Prendra le franchiſe.*] That is, ſhall ſeiſe the franchiſe of the faire or market untill it be redeemed by the owner: but this is intended upon an office to be found, for in ſtatutes incidents are ever ſupplyed by intendment.

[222]

(5) *Seignior de meſme la ville.*] That is, the owner of the faire or market.

Fleta collecteth the effect of this former part of the act in theſe words, *Inhibitum eſt ne quis in villis regis merchandiis, quæ dimiſſæ ſunt et commiſſæ ad feodi firmam, indebita et injuſta capiat theolonia; quod ſi quis fecerit, extunc eo ipſo capiet rex libertatem mercati in manum ſuam; eodem modo facit rex, licet in alterius villa præmiſſa fieri contigerit, ſi balivus hoc fecerit ſine voluntate domini ſui, reddet tantum querenti, quantum cepiſſet balivus ab eo, ſi tolnetum aſportaſſet, et nihilominus habeat priſonam 40. dierum.*

Flet. li. 2. c. 43. verſus finem.

Here I perſwade my ſelfe ſome would deſire to know, what is due for toll to the faire or market: to which I anſwer, that I can tell what was due of old, and what was ordained in times paſt by ancient kings to be paid: for the Mirrour ſaith, *Que faires et marketz ſe fiſſent per lieus, et que achators de blee, et beaſts donaſſent toll a les bailifes des ſeigniours de markets, ou de faires, ceſtaſcavoire maile de dixe ſoux de biens, et de meynes, meynes, et de pluis, pluis al afferant, iſſint que nul tol paſſaſt un denier de un maner de merchandize, et ceſt tolle fuit trove pur teſtmoigner les contracts, car chescun privie contract fuit defendue.* But at this day there is not one certaine toll to the market taken, but if that which is taken be not reaſonable, it is puniſhable by this ſtatute, and what ſhall be deemed in law to be reaſonable, ſhall be judged, all circumſtances conſidered, by the judges of the law, if it come judicially before them

Mirror, c. 1. § 3.

Cap. Itin. ubi ſup. 3 E. 3. aſſ. 445. 13 H. 4. 17. a. Rot. pat. 12 E. 3. 1. part. m. 30. Harwich. Rot. pat. 8 R. 2. 1. part. m. 35. Salop. m. 38. Yarmouth.

(6) *Murage pur lour villes incloſer.*] *Muragium, à muro*, as our act doth explaine it, to wall in, or incloſe with wall a towne, under which word is here included a city and burghe.

Murage is a reaſonable toll to be taken of every cart, wayne, horſe laden comming to that towne, for the incloſing of that towne with walls of defence, for the ſafegard of the people in time of war, inſurrection, tumults, or uprores, and is due either by grant or by preſcription.

But if a wall be made, which is not defenſible, nor for ſafegard of the people, then ought not this toll to be paid, for the end of the graunt or preſcription is not performed.

* He that hath burghbote granted to him, is diſcharged of murage granted afterwards: and although murage be here particularly named, yet are graunts of like nature within the purview of this ſtatute: as,

[a] Pontage.
[b] Paviage.
[c] Keyage, &c.

* Flet. li. 1. c. 42.
[a] 3 E. 3. & 13 H. 4. ubi ſup. Rot. pat. 1 E. 2. m. 17. de tranſeuntibus ſubtus pontem Londõ. Rot. pat. 12 H. 6. m. 18. 1. part. Reg. 259. F. N. B. 227.
[b] Rot. pat. 10 E. 3. m. 32. Henley 2. part. Rot. Pat. 1 E. 2. 1. part. m. 1. Cairſburgh. F N. B. 227. Regiſt. 259.
[c] Rot. Pat. 1 E. 3. m. 10.

(6.) *Pardent*

(6) *Pardent cel graunt de touts temps.*] Here the whole franchise is forfeited, and so note a diversity betweene *prendra la franchise, &c.* and *pardent cel graunt*, the one implying a seisure, as hath been said, and the other a forfeiture for ever, [d] for it is a misuser, or abuser: [e] and thereof Bracton saith, *Hujusmodi autem libertates, &c. statim quasi transferuntur, et quasi possidentur, &c. donec amiserit per abusum, vel non usum.*

[d] 22 ass. p. 34. 39 H. 6. 32. 20 E. 4 6. 2 H. 7. 11.
[e] Bract l. 2. f 56. Lib. 3. fo. 117. Flet. li. 1. c. 20. Ca. Itin. ubi sup.

It is to be observed, that *consuetudines* hath severall significations in law: for sometime it signifieth custome, which doth include all manner of tolls: and therefore Bracton saith, *De novis consuetudinibus levatis sive in terra, sive in aqua, quis eas levavit, et ubi:* so called, because they colour things so taken under pretext of prescription or custome, where there is none at all: and therefore here they are called *novæ consuetudines*, because they were new tolls or exactions, under the villard of antiquity.

[223]

Flet. li. 2. c. 43.

Fleta rendreth this last part of this chapter in these words: *Item qui muragium ad villam claudendam gravius ceperint, quam concessum fuerit per cartam regis, perdant extunc gratiam suæ concessionis, et graviter amercientur.*

And presently after the making of this act, the effect thereof for justices in eire to enquire of it, was inserted in the chapters or articles of the eire in these words: *Item de his qui ceperunt superflua vel indebita tolneta in civitatibus, burgis, vel alibi contra communem usum regni: item de civibus et burgensibus qui de muragio per dominum regem eis concesso, plus ceperunt quam facere deberent, secundum concessionem domini regis factam.*

Cap. Itin. ubi sup.

Mirr. c. 5. § 4.

The Mirrour saith, touching murage, thus: *Le point que veut que ceux que misusent murages les perdent ne fuit mistier daver estre, car ley veot que chescun perdra son franchise que misusera:* so as this statute was made in that point for two purposes, *viz.* to affirme the common law, and to adde a farther punishment, *viz.* to be grievously amercied.

CAP. XXXII.

DE ceux queux parment vitaile (1), ou nul riens al oeps le roy a creance, ou a garrison du chastell, ou ayllors, et quant ils ont resceive le payement al exchequer, ou en garderobe, ou ayllors, deteignont le payment des creancers, a grand dammage de eux, et en esclander du roy: purview est, de ceux queux ont terres ou tenements, que maintenant soit ceo leve de lour terres ou de lour chateux, et paies as creancers, ove les dammages queux ils averont eue, et soient rentes pur le trespas, et sils nient terres ne tenements, soient en le prison a la volunt le roy. De ceux que

OF such as take victual or other things to the king's use upon credence, or to the garrison of a castle, or otherwise, and when they have received their payment in the exchequer or in the wardrobe, or otherwhere, they with-hold it from the creditors, to their great damage, and slander of the king; it is provided, for such as have lands or tenements, that incontinent it shall be levied of their lands, or of their goods, and paid unto the creditors, with the damages they have sustained, and shall make fine for the trespass; and if they have no

que pernont (2) *part des dets le roy* (3), *ou auters louers pernent des creanſors le roy, pur faire le payment des meſmes celles dets: purview eſt, quils rendent le double, et ſoient punies grevement a la volunt le roy. Et de ceux queux parnont chivals* (4), *ou charettes a faire le cariage le roy, plus que meſtier ſerroit, et parnont louers pur* [*releſſer*] *ſes chivals, ou les charettes. Purview eſt, que ſi ul de la court le face, il ſerra grevement chaſtice per les mareſchals, et ſi ceo ſoit fait hors de la court,* [*per un del court*] *ou per auter que de la court, et il* [*ent*] *ſoit attaint, il rendra le treble, et ſerra en le priſon le roy per xl. jours.*

no lands nor goods, they ſhall be impriſoned at the king's will. And of ſuch as take part of the king's debts, or other rewards of the king's creditors for to make payment of the ſame debts; it is provided, that they ſhall pay the double thereof, and be grievouſly puniſhed at the king's pleaſure. And of ſuch as take horſe or carts for the king's carriage more than need, and take rewards to let ſuch horſe or carts go; it is provided, that if any of the court ſo do, he ſhall be grievouſly puniſhed by the marſhals; and if it be done out of the court, or by one that is not of the court, and be thereof attainted, he ſhall pay treble damages, and ſhall remain in the king's priſon forty days.

(28 Ed. 1. c. 2. 21 R. 2. c. 5. 28 H. 6. c. 2.)

(1) *De ceux queux parnent vitaile.*] Concerning this point of purveiance, we ſhall refer the reader to Magna Chart. cap. 21. and ſhall ſay no more concerning that matter for three cauſes: 1. For the text of this law is evident. 2. For that there have beene many excellent ſtatutes made concerning purveyours, and purvevance, in all to the number of 48. which are fully and plainly penned, one of them being a good expoſition and inlargement of another. 3. I find no book caſe, nor any report for the expoſition either of this or of any of the ſaid ſtatutes, which (to ſay the truth) had more need of execution then expoſition: and therefore either the purveyours have been ſo honeſt and juſt dealing men, as they ſeldome or never offended; or elſe they have had either ſo good friends, or ſo good hap, as their offences have beene covered, or not imputed to them.

[224]

(2) *De ceux queux parnent part des dets le roy.*] The miſchiefes before this ſtatute were, firſt, that in the raigne of king H. 3. the kings officers, that had charge of his treaſure and revenue, or their agents would, in reſpect of his troubles and expences, pretend to thoſe, to whom the king was indebted, that the kings coffers were empty, and thereupon paying part to the kings creditors, compounded for their whole debts, and took their acquitances for the whole, and converted the reſidue to their owne uſe.

The ſecond was, that ſometime they would craftily pay the whole, and take a great reward therefore, which was diſhonourable to the king, damage to the creditors, and corrupt dealing in thoſe officers, or their agents.

This act is generall againſt all thoſe that take part of the kings debts, or other reward of the kings creditors, for payment of the ſame debts. This law doth provide, that he that ſo doth, ſhall render double to the party grieved, and ſhall be puniſhed grievouſly at the kings will.

This act is in affirmance of the common law; onely it addeth a greater puniſhment.

Rot. Parl. 50 E. 3. nu. 17. Richard Lions merchant of London, and farmor of the kings cuſtomes and ſubſidies was adjudged in parliament for buying debts of divers men, due by the king, for ſmall values, and for taking of bribes, to pay to the kings creditors their due debts, to be impriſoned at the kings will, and all his lands, tenements, and goods to be ſeiſed to the kings uſe, which proveth it an offence or miſdemeanour againſt the common law, for the judgement was not given according to this act.

Rot. Parl. 50 E. 3. nu. 34. John Lord Nevill, while he was one of the kings privy councel, bought divers debts due by the king, namely, of the lady of Ravenſholme, and Simon Love merchant, far under the value: the lord Nevill being herewith charged in parliament, confeſſed that he received of the ſaid lady 95 l. which ſhe gave him of her own good will for the obtaining of her debt: for this (amongſt others) he had judgement of impriſonment at the kings will, and that his offices, lands and goods ſhould be ſeiſed into the kings hands, and to make reſtitution to the executors of the lady (who then was deceaſed) of the ſaid 95 l.

See for theſe words before, cap. 19. (3) *Detts le roy.*] See for the expoſition of theſe words before, ca. 19.

Cap. Itin. Vet. Mag. Char. 155. Cāp. Itineris doth render this clauſe thus: *Et ſimiliter de hiis qui partem ceperunt debitorum domini regis, vel alia munera, ut de reſiduo creditoribus ſatisfacerent.*

Mirr. c. 1. § 5. Cap. 5. § 4. To conclude this point, the Mirrour ſaith, *In perjurie vers le roy pechent ceux miniſters, queux rien de paierent des dets le roy, ſolcunq; ceo que enjoyne lour fuit a faire, ou rendant part pur ſatisfaction del entier, et ne rendant au roy le remnant.*

(4) *Et de ceux queux parnent chivals,* &c.] This article concerns purveyances, and purveyors; and therefore for the cauſes before rehearſed, no more ſhall be ſaid hereof in this place.

[225]

CAP. XXXIII.

PURVIEW eſt, que nul vicount ne ſuffer' barretors (1), *ne maintainours des parols en counties* (2), *ne ſeneſchalles des graundes ſeignieurs, ne des autres (que ne ſoit attorney ſon ſeignieur) a* [*la*] *ſuit faire, ne render les judgements des counties, ne pronouncer les judgements* [*ou aſſenter de faire les juſticements* (3)] *ſil ne ſoit eſpecialment pric et requiſe de touts les ſuitors, et les attornies des ſuitors, queux ſerront a la journe* (4). *Et ſi ul le face, le roy ſe prendra grievouſement al vicount, et a luy.*

IT is provided that no ſheriffe ſhall ſuffer any barretors or maintainers of quarrels in their ſhires, neither ſtewards of great lords, nor other (unleſs he be attorney for his lord) to make ſuit, nor to give judgements in the counties, nor to pronounce the judgements, if he be not ſpecially required and prayed of all the ſuitors, and attornies of the ſuitors, which ſhall be at the court, and if any do, the king ſhall puniſh grievouſly both the ſheriff and him that ſo doth.

Where

Where by the ſtatute of Merton it is provided, that every free ſuitor of the county, &c. might freely make his attourney to doe theſe ſuits for him.

Merton, ca. 10. See there the expoſition thereof.

Now by colour hereof two miſchiefes did ariſe.

1. That barretors and maintainers of querels were by the ſheriffe countenanced to be attorneys to make ſuit, and amongſt the ſuitors to give judgements in the counties, and ſometime pronounce judgement in the name of the ſuitors.

2. That ſtewards of great lords, and of others, who had no letters of attourney, according to the ſaid ſtatute of Merton would doe the like: This act doth remedy both theſe miſchiefes, as by the letter hereof appeareth.

(1) *Barretors.*] For the word and the ſenſe thereof, ſee lib. 8. fol. 36. in the caſe of barretry.

Li. 8. fo. 36. in the caſe of barretry. See the firſt part of the Inſt. 701. ſect.

(2) *En counties.*] That is, in the county court, for there the ſuitors be judges.

(3) *Juſticements.*] That is, all things belonging to juſtice.

(4) *A la journe.*] That is, at the court.

CAP. XXXIV.

PUR ceo que pluſors ſont ſovent troves in counte (1) *controvours* (2) *des novelles, dont diſcord* (3), *ou manner de diſcord* (4) *ad eſtre jovent enter le roy et ſon people, ou* [*aſcuns de*] *les hautes homes de ſon roialme: defendu eſt pur le damage que ad eſtre* (5), *et que uncore ent purra avenier, que deſormes nulle ne ſoit cy harde de dire, ne de counter nulles faux novelles, ou controvor* (6), *dont diſcord, ou manner de diſcord *, ou eſclaunder puit ſurdre entre le roy et ſon people, ou les hautes homes de ſon roialme* (7). *Et qui le fra ſoit pris, et detenus in priſon jeſques a tant que il eit trove en court celuy dont la parol ſerra move* (8). 2 R. 2. cap. 5.

FORASMUCH as there have been oftentimes found in the country deviſors of tales, whereby diſcord, or occaſion of diſcord, hath many times ariſen between the king and his people, or great men of this realm; for the damage that hath and may thereof enſue, it is commanded, that from henceforth none be ſo hardy to tell or publiſh any falſe news or tales, whereby diſcord, or occaſion of diſcord or ſlander may grow between the king and his people, or the great men of the realm; and he that doth ſo, ſhall be taken and kept in priſon, until he hath brought him into the court, which was the firſt author of the tale.

* [226]

(1 Leon. 287. Dyer 155. 12 Rep. 133. 1 Roll 444. 3 Bulſtr. 225. 2 R. 2. ſtat. 1. c. 5. 12 R. 2. c. 11. 1 & 2 Ph. & M. c. 3. 1 El. c. 6.)

The offences, *viz.* falſe reports and news puniſhable by this law are forbidden by the law of God:

Thou ſhalt not have to do with any falſe report, neither ſhalt thou put thy hand to the wicked to be an unrighteous witneſſe. Exodus 23. 1.

For they which gladly heare falſe reports and newes, will be alſo as ready to publiſh them.

Ep. Jude. ver. 8. ver. 10. Exod. 22. 28.

Againſt thoſe that deſpiſe rulers, and ſpeak evill of thoſe that be in authority, and againſt thoſe that ſpeake evill of thoſe things which they know not: *judicibus non detrahes, et principi populi non maledices:* thou ſhalt not raile of the judges, nor ſpeak evill of the ruler of the people.

Before this ſtatute, in the raigne of king H. 3. two kinde of perſons were authors of great diſcord and ſcandall in two ſeverall degrees; firſt, men that did raiſe and imagine, out of their own heads, falſe bruits and rumours, and others that reported and ſpread the ſame, whereby diſcord and ſcandall was oftentimes ſo kindled, ſometime between the king and his commons, and other times between the king and his nobles, the great men of the realm, as they wrought privy diſcontentment, that produced publique diſcord and ſcandall, whereof our act ſpeaketh; which ſcandall and diſcord appeared in many parliaments between the king and his commons, and between the king and his lords of parliament, and eſpecially in thoſe two parliaments, the one in 21 H. 3. when *Magna Charta* was confirmed, and the other in 42 H. 3. holden at Oxford, which in ſtory is called *inſanum parliamentum*; and this diſcord and ſcandall did oftentimes in the raigne of that king break out into fearfull and bloody warres and rebellions according to that old obſervation, *Improbi rumores diſſipati ſunt rebellionis prodromi*, which fully appear in our hiſtories warranted by good record, and is implied in this act in theſe words; "Foraſmuch as "there hath been oftentimes found deviſors and reporters of ru-"mors, &c. whereby diſcord hath many times ariſen between the "king (meaning H. 3.) and his people, or the great men of the "realm." And amongſt all thoſe rebellions in thoſe dayes, thoſe at Lewes in Suſſex and Eveſham in Worceſterſhire were moſt fearfull, bloody, and dangerous, for at Lewes, the king himſelf manfully fighting, *confoſſo ex utroque latere equo capitur cum Richardo rege Almanorum fratre ſuo, et Edovardo principe filio, &c.* And at Eveſham, Simon Mountford earle of Leiceſter (our Engliſh Cataline) *inſtruit aciem impedimentis ex acie remotis, ac in fronte aciei ponit Henricum regem, quem ſecum captivum ducebat, atque ſuis armis induit, ut ſi fortuna adverſa ſit, dum ille imperatoris perſonam gerens ab hoſte petitur, ipſe interim fuga ſaluti conſulere poſſit: inſtruuntur contra et hoſtes et animis et viribus ſuperiores: committitur utrinque pugna, quæ aliquandiu anceps ſtetit, Henricus inter primos hoſtium ictus non pugnat, ſed regem Henricum clamando indicat, quod ei ſaluti fuit, &c. Quod ubi Simon animadvertit, ſuos cohortans in medios hoſtes prorumpit, qui à multitudine circumventus præliando occiditur cum Henrico filio.*

Polydor Virgil. lib. 16. p. 312. anno Dom. 1264, 1265. 48 & 49 H. 3.

King E. 1. finding by dangerous experience the woefull effects of ſuch falſe rumors and reports, as is aboveſaid, and knowing that the ſtate of every king ſtood more aſſured by the hearty and inward love of the ſubject towards their ſoveraigne, then by the dread and feare of ſevere and rigorous laws, did therefore make this law for redreſſe both for the deviſing and ſpreading of ſuch falſe rumors and bruits in all mild and temperate manner, both for the ſtyle and the puniſhment, rather leaving the ſame to the cenſure of the common law (which all men willingly obey) then by inflicting any new deviſed puniſhment, which moderation of our king, leaving the puniſhment to fine and impriſonment, was the greater, for that the auncient law of England before the conqueſt was much

much more ſevere, and rigorous, as by a few examples ſhall appeare.

Qui falſi rumoris in vulgus ſparſi author fuiſſe deprehendetur, leviori aliqua pœna non mulctator, verum lingua ei præciditor, ni is eam integra capitis ſui æſtimatione data redemerit. Int' leges Aluredi regis, ca 28. Edgari, ca. 4.

Si quis alium rumoribus diſſipatis improba voce lacerarit, quam ob rem, aut corpori ejus damnū inferatura, aut de fortunis imminuatur aliquid, tum ſi alter auditiones tanquam falſas refellere et coarguere poterit, aut is linguam data capitis æſtimatione redimito, aut ei lingua præciditor. Inter leges Edgari regis, & inter leges Canuti regis.

(1) *En counte.*] That is, in the country or realme.

(2) *Controvors.*] That is, deviſors or inventors of their owne head.

(3) *Diſcord.*] *Diſcordia.* That is, *diſſenſio cordium*, diſſention of hearts; this grew (as hath been ſaid) to ſuch an height in the raign of H. 3. as that of the philoſophicall poet might well be applied to it: (which before is remembred.)

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

Diſcordes, quaſi duo habentes corda.

(4) *Ou maner de diſcord.*] That is, *latens odium*, privy hatred or diſcontentment, which is occaſion of diſcord, and whereby men become malecontents.

(5) *Defendu eſt pur le damage que ad eſtre.*] This damage or danger you have partly heard before.

(6) *De dire, de counter, ou controvor.*] Two manner of perſons are hereby prohibited, the firſt, thoſe that tell, ſpread or report falſe and feigned bruits and rumours under theſe words, *Dire ou counter*; and ſecondly, ſuch as deviſe or invent of their own head the ſame under this word *controvor*: now the perſons being deſcribed, this ſtatute doth ſet down generally what thoſe bruits and rumours ſhould be.

(7) *Faux novels, dont diſcord, ou maner de diſcord ou diſlaunder poet ſurder enter le roy, & ſon people ou les hauts homes de ſon realme.*] Of theſe falſe newes, that is, falſe bruits or rumours, there be five kindes within this act.

1. Firſt, if they be againſt the king, whereby diſcord or ſcandall may ariſe betweene the king and his commons, ſignified here by *people*.

2. Againſt the commons, whereby diſcord or ſcandall may be moved between them and the king.

3. Thirdly, againſt the king, whereby diſcord or ſcandall may grow between the king and the peeres, or lords and nobles of the realme, ſignified here by *les hauts homes de ſon realme*.

4. Fourthly, againſt the peeres, or lords, and nobles of the realme, whereby diſcord or ſlander may happen betweene them and the king.

5. Laſtly, whereby diſcord or ſcandall may ariſe between the king, his lords, and commons.

Quod narratores rumorum qui cedere poſſunt ad timorem, et tremorem populi, et in dedecus regis et regni, capiantur, et in carcere detineantur, &c. Tr. 19 E. 2. Rot. 15. Coram rege.

By this record it appeareth of what quality the rumors muſt be.

By commiſſions of oyer and terminer power is given to enquire, *De illicitis verborum propalationibus*; and to puniſh the ſame.

Britton, fo. 33. Britton ſpeaketh of both theſe kinds of offenders, *viz.* the devilor, and the reporter, in theſe words, *De ceux que trovont, et countent menſoynes del roy, &c.*

Fleta, li. 2. c. 1. And Fleta ſaith, *Sunt etiam quædam atroces injuriæ, quæ priſonam voluntariam inducunt, ſicut de inventoribus malorum rumorum, unde pax poſſit exterminari.*

5 R. 2. ca. 6. 1 E. 6. c. 12. 1 Mar. c. 17 R. 2. c. 8. 13 H. 4. ca 7. 5 Mar. Dier 155. Oldnoiles caſe. The ſtatute of 5 R. 2. puniſhed ſeditious rumors in an high degree, but that is repealed by 1 E. 6. & 1 Mar.

It was reſolved by all the juſtices, that horrible and ſlanderous words ſpoken of queen Mary, were within this ſtatute and puniſhable hereby, and not by the ſtatutes of 2 R. 2. cap. 5. nor 12 R. 2. cap. 11. for the king or queene is an exempt perſon, and not included within theſe words [*Les hauts, ou graund homes, ou nobles, &c.*]

Cicero pro Cluentio. Some ſay that *Rumores dicuntur à ruendo, quia inducunt ruinam*; and true it is that another ſaith, *Ut mare, quod ſua natura tranquillum eſt, ventorum vi agitatur; ſic populus ſua ſponte placatus, hominum ſeditioſorum vocibus, ut violentiſſimis tempeſtatibus, attollitur.*

Dier fo. 13 H. 7. Keylway 28, 29. F.N.B. 42. g. 2 R. 3 9. But it is to be underſtood, that albeit this ſtatute, and the ſaid act of 2 R. 2. be generall in the negative; yet doe they not extend to all manner of falſe newes, or horrible and falſe ſcandals and lies, &c. for they extend oneiy to extrajudiciall ſlanders, &c. And therefore if any man bring an appeale of murder, robbery, or other felony againſt any of the peeres or nobles of the realme, &c. and charge them with murder, robbery, or felony, albeit the charge be falſe, yet ſhall they have no action *de ſcandalis magnat'*, neither at the common law, nor upon either of theſe ſtatutes for the bringing of his action, nor for affirming the ſame to his councell, attourney, or curſiter for the framing of his writ, or for ſpeaking the ſame in evidence to a jury, or for uſing of thoſe words for the neceſſary commencement or proſecution of his action judicially; and ſo it is in an action of forger of falſe deeds, or any other action whatſoever: for it is a maxime in law, *Que home ne ſerra puny par ſuer des briefes en court le roy, ſoit il a droit ou a tort*; and the reaſon thereof is, that men ſhould not be deterred to take their remedy by due courſe of law; and therefore the ſtatutes never intended to prohibit the ſuing out of the kings writs, and the proceeding thereupon: and ſo it is, if in the ſtar-chamber a peere of the realme be charged with forgery, perjury, or the like; but if in the bill the plaintife chargeth him with felony, or any other offence not examinable in that court, that ſlander is within theſe ſtatutes, for that the plaintife purſueth not his charge in any judiciall courſe, ſeeing the court hath no juriſdiction of the ſame, and ſo hath it been adjudged.

F N.B. 41. g. 22 E 3. 15. 43 E. 3. 20. tit. faux jugement 10. 43 Aſſ 40. 2 R. 3 9 13 H. 7. Keylwey 28, 29.

(S) *Soit priſe & detenus in priſon jeſque a taunt que il eit trove en court celuy dont le parol ſerra move.*] It hath appeared before, that by the body of the act not onely the tellers and reporters of ſuch falſe news, but the deviſors and inventors thereof are prohibited: but no puniſhment is inflicted by this act upon the deviſor or inventor. for he is left to the common law to be puniſhed by fine and impriſonment according to the quality and quantity of the offence, which

which is aggravated in respect that it is prohibited by this act of parliament.

And the law is grounded upon the law of God in this point, *Non maledices principi populi.* Deuter. ca. 17.

Nay, in the kings case the secret cogitation of the heart is prohibited, *In cogitatione tua regi ne detrahas:* and the scandals of great men are likewise forbidden, *Et in secreto cubiculi tui ne maledixeris dititi, quia aves cæli portabunt vocem tuam, et qui habet pennas annunciabit sententiam*; that is, Almighty God will provide means, that such detraction and malediction shall come to light, and be discovered. Eccleſiastes, c. 10.

[229]

Onely this law inflicteth imprisonment upon the reporter, untill he hath found out, and brought into court the author of those false news.

7 E. 1. the king sent commissions to all the counties of England, to enquire *De sparsoribus rumorum, &c.* 25 E. 1. *Declaratio regis missa ad omnes com' Angliæ, de rege purgand' de certis rumoribus iniquis contra ipsum ortis, &c.* Rot. Pat. 7 E. 1. m. 13. Rot. Pat. 25 E. 1. pars 2. m. 7. & Franc. m. 4. Rot. claus. Vasc. anno 10 E. 3. m. 26. In dors. claus. anno 20 E 3. pt. 1. m. 18. & 26.

Rex mandavit maiori et vicecom' London' quod facta inquisitione de sparsoribus rumorum et sedic' in civitate ipsos caperet, et in prisona de Newgate detineret, &c.

Vide lib. Intrat. Coke, fo. 302, 303. in false imprisonment.

CAP. XXXV.

DES hautes homes, et de lour bailifes (1), et des auters (2) (forspris les ministers le roy, as queux speciall authoritie est done de ceo faire (3),) que a le pleint des ascuns, ou per lour authoritie demesne attachent auters ove lour biens trespassantes per lour poier a responder devant eux des contracts, covenants, ou de trespas faits hors de lour poier, et lour jurisdiction (4), la ou ils ne teignont riens de eux (5), ne deins le franchise (6) ou lour poier est, en prejudice du roy, et de sa corone, et a damage du people: purview est, que nul desormes ne le face. Et si ascun le face, il rendra a celuy, que per cel enchefon serra attache, son damage au double, et serra en le grieve mercy le roy.

OF great men and their bailiffs, and other (the king's officers only excepted unto whom especial authority is given) which at the complaint of some, or by their own authority, attach other passing through their jurisdiction with their goods, compelling them to answer afore them upon contracts, covenants, and trespasses, done out of their power and their jurisdiction, where indeed they hold nothing of them, nor within the franchise, where their power is, in prejudice of the king and his crown, and to the damage of the people; it is provided, that none from henceforth so do; and if any do, he shall pay to him, that by this occasion shall be attached his damages double, and shall be grievously amerced to the king.

(Lutw. 1026. F. N. B. 45, f.)

The miſchiefe before this ſtatute was, that great men and others that had particular juriſdiction and power to hold plea of contracts, covenants, and treſpaſſes made or done within a certaine precinct, as within a manour, citie, or borough, would attache others by their goods to anſwer in their courts of contracts, covenants, and treſpaſſes made or done out of their power or franchiſe, pretending the ſame to be tranſitorie, and ſuppoſe the ſame to be done within their power and franchiſe, which was to the prejudice of the king and his crown in loſing his fines in actions of debts and treſpaſſes *vi et armis*, and amerciaments, and other profits upon a falſe ſuppoſall, not like to the generall juriſdiction, and power of the kings juſtices of the court of common pleas, through the whole realme; for whereſoever the contract, covenant, treſpas, &c. were made, the matter being tranſitory, the plaintife may alledge it in what countie he will, and the king can loſe nothing; and ſo it is in the kings bench and exchequer againſt priviledged perſons in thoſe generall courts: and the ſtatute ſaith further, and to the damage of the party being attached and ſued, as he is paſſing and travailing within that particular precinct, upon a falſe ſuppoſall, where in truth he ought not. For this miſchiefe this act provideth remedy, as by the ſame ſhall appeare.

Mag. Chart. c. 28.

(1) *De lour bailifes.*] Here bailifes are taken for the judges of the court, as manifeſtly appeareth hereby.

[230]

(2) *Et des auters.*] That is, others that have particular juriſdictions and powers, as manifeſtly appeareth by the exception hereafter.

Regiſt. fol. 98. Flet. l. 2. c. 42. Cap. Itineris.

(3) *Forſprife les miniſters le roy, as queux eſpeciall authoritie eſt donè a ceo faire.*] Here is to be obſerved,

1. That all theſe words belong to the exception, as by the Regiſter appeareth.

2. That *miniſtri regis* are intended here the kings juſtices in his generall courts of juſtice, and ſo taken in this kings time, as it hath been touched before.

(4) *Des contracts, covenants, et treſpas faits hors de lour poier et lour juriſdiction.*] That is, out of the precinct of the manour, or ſuch like particular juriſdiction, &c. where by preſcription or grant they have power and juriſdiction to hold plea of contracts, covenants, and debts made or done within the manour, or ſuch other particular juriſdiction.

Bract. l. 2. f. 14. Lib. 2 fol. 56. Lib. 3. fo. 228. Li. 5. fo. 328 b.

(5) *La ou ils ne teignent riens de eux.*] This act beginneth, *Des hauts homes*: and Bracton ſaith, *Sunt qui barones, et alii libertatem habentes, ſcilicet, ſoc et ſac, &c. et iſti poſſint indicare, &c.* for *ſoc* is a power or juriſdiction to have a free court, to hold plea of contracts, covenants, and treſpaſſes of his men and tenants; therefore materially were theſe words added; that if a great man or others having *ſoc*, ſhould hold plea by force of that liberty of any that is not his tenant, it is *coram non judice*, and punishable within this ſtatute. It is diverſly written, *viz. ſoc, ſoca, ſock, ſoeke, ſoke, ſockne,* and *ſoknes*, and it is derived from the old Saxon word *ſoken, ſocher,* or *ſuchen, i.* to enquire or find out, that is, to enquire and find out the truth of the matter in plea before him, and to determine it accordingly, which is as much to ſay, as *ad inquirend', audiend', et terminand'.*

Mirr. c. 1. § 3. Lat' leges S. Ed. fo. 23. & 132.

Flet. li. 1. c. 42. And Fleta therewith agreeth, and ſaith, *Soke ſignificat libertatem curiæ*

curiæ tenentium, quam ſokam appellamus: and *curia* implyeth *ad audiendum et terminandum.*

The Mirrour ſaith, that *En temps le roy Alfred, perdront les ſuters de Doncaſter lour juriſdiction ouſter lauter paine, pur ceo que ils tiendront plea defendu per les uſages del realme aux judges ordinaries ſuters a tener*, which I rather vouch together with the derivation of the word *ſoc*, for the great antiquity of the law in this point. Mirr. c. 5. § 1.

(6) *Ne deins la franchiſe.*] That is, nor within any ſuch like particular power or juriſdiction, either by the graunt of the king, or preſcription.

For the reliefe of the ſubject upon this ſtatute, two originall writs are framed: the one in nature of a prohibition before the ſuit begun, commanding that the party ſhall not be arreſted contrary to the forme of this ſtatute. Regiſt. 98.

The other, after the ſuit begun, the party to recover the penalty of this act, *viz.* double dammages, and a command to deliver the goods attached or diſtrained; both which writs appeare in the Regiſter: but the party may waive the benefit of this ſtatute, and therefore if he plead to the action any barre, &c. he hath concluded himſelfe, and ſhall not have any action upon this ſtatute, therefore he muſt plead the ſpeciall matter, and by that meanes take benefit of this act.

Fleta rendreth this act in this manner: *De magnatibus et eorum baliuis et aliis (exceptis miniſtris regis, quibus ad hoc authoritas data eſt) qui ad querimoniam aliquorum, vel authoritate propria attachiant alios per bona ſua, qui per eandem poteſtatem et juriſdictionem veniunt ad reſpondendum coram eis de contractibus, conventionibus, et tranſgreſſ' extra eorum poteſtatem et juriſdictionem, ubi nihil tenent de eis, nec ſunt de libertate eorum aut juriſdictione: ſtatutum eſt, quod ſi quis de hujuſmodi convictus fuer', reddat querenti damna in duplo, ac etiam graviter amercietur.* Fleta, li. 2. c. 42. 18 E. 2. tit. Teſtament. f. 6.

And it is to be obſerved that at the making of this ſtatute, if a man had brought an action of debt, account, detinue, or covenant upon any contract by originall writ in the county of Norff. he might have declared of the contract in Suff. or any other county then where the originall was brought; for the rule was, that *debitum et contractus, &c. ſunt nullius loci*, and every duty is a duty in every county: but in caſe of account this diverſity is to be obſerved, that in account againſt a receiver the law was then as is aforeſaid, but if a man brought an action of account againſt one as bayly in one county, he could not charge him as bayliffe of a mannor in another county, for that is locall. 6 E. 3. 10 E. 3. 7. 12 E. 3. bre. 479. 14 E. 3. bre. 274. 30 E. 3. 26. 4 H. 6. 6. 15 E. 4. 20. 21 E. 4. li. 7. f. 3. Bulwers caſe.

But after this act it is provided by the ſtatute of 6 R. 2. cap. 2. that in pleas of debt, or account, or ſuch like, as detinue, or contract, it ſhall not be declared that the contract was made in any other county, then is contained in the originall writ. 6 R. 2. cap. 2. 13 R. 2. bre. 469.

But at the common law one that hath a particular juriſdiction to hold plea of debt, contract, detinue, covenant, or treſpaſſe within his mannor, or the like, could not hold plea of a debt, contract, account, detinue, covenant, or treſpaſſe alledged to be made out of the mannor, &c. becauſe albeit it was tranſitory, yet was it (being ſo alledged) not within his power or juriſdiction which he had by preſcription or by graunt; for all pleas holden there muſt be *infra juriſdictionem curiæ.* 3 H. 6. 30.

2 R. 3. Testam 4. 11 H. 7. 12. As if a lord hath probate of testaments made within the precinct of his mannor, he cannot prove a testament made out of the precinct of his mannor.

17 E. 4. c. 2. 1 R. 3. c. 6. lib. 6. fo. 20. Michelborns case. And likewise of the court pipowders of contracts, &c. made out of the faire or market. *Et sic de cæteris.*

Dier. 3 Mar. 132, 133. 7 E. 4. 19. 13 E. 4. 8. 7 H. 6. 18, 19. 13 H. 7. 19.

CAP. XXXVI.

PUR ceo que avant ceux heures ne fuit unques reasonable aid' a faire leigne fitz chivaler (1), *ne a leigne file marier* (2) *mise en certein, ne quant ceo devcroit estre prise, ne quel heure, per quoy les uns leverent outragious aide* (3), *et plus tost que ne sembleit mestier, dount la people se sentit greve: purvieu est, que desormes de fee de chivaler entier solement soient dones* 20. *s.* (4) *et de* 20. *l. de terre tenus per socage* 20. *s.* (5) *et de pluis, pluis, et de meins, meins, solonque lafferant. Et que nul ne puisse lever tiel aide a faire son fits chivaler, tanque que son fits soit del age de xv. ans* (6), *ne a sa file marier tanque que el soit del age de* 7. *ans* (7). *Et de ceo serra fait mention en le briefe le roy fourm' sur ceo quant home le voile demander. Et si aveigne que le pier, quant il avera tiel aide leve de les tenants, morust avant quil eit sa file marie* (8), *les executors le pier soient tenus a la file* (9), *en tant come le pier avera resceu pur cest aide. Et *si les biens le pier ne suffisent, son heire soit de ceo tenus a la file* (10).

* [232]

FOR as much as before this time, reasonable ayde to make ones sonne knight, or marrie his daughter was never put in certain, nor how much should be taken, nor at what time, whereby some leavied unreasonable aid, and more often then seemed necessary, whereby the people were sore grieved: it is provided, that from henceforth of an whole knights fee there be taken but xx. s. And of xx. pound land holden in socage xx. s. and of more, more, and of lesse, lesse; after the rate. And that none shall levie such ayde to make his sonne knight, untill his sonne be fifteene yeares of age, nor to marrie his daughter, untill she be of the age of seven yeares. And of that there shall be made mention in the kings writ, formed on the same, when any will demand it. And if it happen, that the father, after hee hath levied such ayde of his tenants, die before he hath married his daughter, the executors of the father shall be bound to the daughter, for so much as the father received for the aide. And if the father's goods be not sufficient, his heir shall be charged therewith unto the daughter. (*Rastell's Translation.*)

Fleta, lib. 2. c. 40. lib. 3. cap. 14. Brit. fo. 57. & 70. Custumier de Norm. cap. 35. fol. 53, 54. (13 Rep. 27, 28, 29. 1 Roll 157. 165. Regist. 87. F. N. B. 82. B. 122. G. 25 Ed. 3. stat. 5. c. 11. Repealed by 12 Car. 2. c. 24.)

By the common law to every tenure by knights service, and socage, there were three aides of money, called in law *auxilia*, incident and implied, without speciall reservation or mention, that is to say, reliefe when the heire was of full age, aide *pur faire fits chivalier*,

lier, and aide *pur file marier*; now the firſt aide, *viz.* reliefe by reaſon of a tenure by knights ſervice, was certain, becauſe he was to pay it, if he were of the age of 21 years at the death of his anceſtor, as hath been ſaid before, without regard of any circumſtance; and likewiſe the reliefe of an heire in ſocage being of the age of 14 at the death of his aunceſtor was ever certain, *viz.* to double his rent. But the aids *pur faire fits chivalier*, and *pur file marier* were incertain at the common law, for that the lords many times would pretend their eldeſt ſon, and eldeſt daughter to be hopefull and forward, and therefore would exact too great an aid, and before due time, whereas by the law they ought to have reaſonable aids, and in reaſonable time, which in a ſuit therefore ſhould be determined by the juſtices of that court before whom the ſuit depended. Now the tenants found themſelves grieved in three things:

5 E. 3. fo. 11. 40 E. 3. 21. 47. Mag. Char. c. 2.

Vid. Inſt. ſect. 127.

1. That the ſaid aids were outragious and exceſſive, *Et exceſſus in re qualibet jure reprobatur communi*, ſo as theſe outragious, and exceſſive aides were againſt law, whereof elſewhere you may reade at large.

Lib. 11. fo. 44. R. Godfreys caſe. See before cap.

2. The lords exacted thoſe fines at what time they pleaſed before reaſonable age apt for the paiment of thoſe aides.

3. That he could not avoid the ſame but by ſuit in law with his lord, wherein he found by experience thoſe old verſes true:

Cum pare luctari dubium, cum procere ſtultum,
Cum puero pœna, cum muliere pudor.

And our act ſaith, *Dont le people ſe ſentiſt greve.*

Theſe three miſchiefes are redreſſed by this act, and certainty the mother of quiet and concord eſtabliſhed therein.

But where it is ſaid that theſe aids are incidents, it is to be underſtood that they are incidents ſeparable, either by ſpeciall words at the creation of the tenure, or by diſcharge or releaſe by ſpeciall words, or ſpeciall rehearſall afterwards.

18 E. 3. fo. 16. 40 E. 3. 22. 47. 13 R. 2. Avowry 89. 14 H. 4. 8. 5 E. 4. 41.

But if the lord at the creation of the tenure had reſerved fealty, and 4 marks *per annum, pro omnibus ſervitiis, exactionibus et demandis quibuſcunque*; or if the lord after the ſeigniory created had releaſed to the tenant, *omnia ſervitia, exactiones et demanda quæcunque (except' fidelitate et reddit' iiij. mercarum per annum,)* yet ſhould the tenant pay reliefe, aid *pur faire fits chivalier*, and *file marier*, which is neceſſary to be knowne for the underſtanding of auncient deeds.

(1) *A faire leigne fits chivalier.*] Lord, grandfather, father, and two ſons, the father dieth, the lord ſhall not have aide for his eldeſt grandchild, for he is not his eldeſt ſon, much leſſe ſhall he have aide for his elder brother, or his eldeſt couſin and heire: but if a man hath iſſue two ſons, and the eldeſt die in the fathers life without iſſue, he ſhall have aide for the ſecond ſon, for he is now eldeſt, and the ſtatute ſaith eldeſt ſon, and not firſt-born; yet the writ grounded upon this ſtatute is *ad primogenitum filium ſuum maritandum*, but he is *primogenitus* then living. But if the lord had received aide for his eldeſt ſon, he ſhall not have aid again for the ſecond, for *unicum auxilium*, one aid is onely due to one and the ſame lord, to make his eldeſt ſon a knight: *Non tenetur quis de uno tenemento eidem domino plura dare auxilia ad filium ſuum militem faciend.*

Britton 57. b. F.N.B. 82. g. Regiſt. 87. in the rehearſall of this act it is ſaid, *primogenito filio et primogenitæ filiæ.*

Regiſt. ubi ſupra.

If

Mirror, ca. 1. § 3. Fleta ubi supra. F.N.B. 82.

If the lord hath issue two sonnes, the eldest son hath issue a daughter and dieth, the lord shall not have aide to make his second son a knight, for the second son is not his heir apparent (and in this case he ought to be his heire apparent) for at this time the state of all lands was fee-simple, and the lands of the lord should descend to the daughter, and therefore the law would not have the dignity of chivalry to be apparelled with poverty, and in respect thereof the son to be knighted was to be heire apparent. And this agreeth with the letter and meaning of this act, *a faire son eigne fits chivalier*, who by common intendment is heire apparent.

If the eldest son be made a knight before the age of fifteen, the lord can have no aide, because the words be a *faire leigne fits chivalier*; and none was ever due to the lord.

If the lord hath issue bastard eigne, and mulier puisne, he shall not have aide to make the bastard a knight, for he is not in judgement of law accounted his son, but he shall have it for the mulier puisne.

Vide cap. 10.

It was holden in auncient time, that the lord could not demaund aide *par faire fits chivalier*, unlesse he himselfe were a knight, *ne filius antecederet patrem*: but knights in auncient time grew so scarce, as esquires that were of ability to be knights, not onely in this case, but in many other, supplied the place of knights; *sufficiens honor est hominis, qui dignus honore est.*

Hereby it appeareth that by the policy of the law, the eldest son of a knight was not only trained up in his tender years in learning and knowledge of liberal arts to adorn the minde, but when he came to convenient yeares, did for the defence of the realme learne and exercise the deeds of armes and chivalry, that he might be able to serve his country both in time of peace, and of warre.

See 35 H. 6. 40.

(2) *Ne a leigne file marier.*] By this the policy of the law appeareth, that the eldest daughter might be timely preferred in maringe, for thereby come strength and good alliance to the family, and both these are given by law without any speciall reservation: and the observation of the auncients was, that marry the eldest daughter well, and all the rest will bee preferred the better; and to that end aide was graunted for the eldest daughter.

F.N.B. fol. 82. c. d.

Pasch. 17 E. 1. in Banc. Rot. 38. Northampt.

(3) *Outragious aide.*] Tenant *per a vaile* shall be contributory to the aide for the mariage of the kings daughter. See for this word before cap. 31.

Mag. Chart. c. 2.

(4) *De fee de chivalier entier solement soient dove* 20. s.] Here it is to be observed (as it hath been noted) that reliefe is the fourth part of a knights fee being then 20. l. is 5. l. and aide *par faire fits chivalier*, or *par file marier*, is the twentieth part of a knights fee, *viz*, 20. s. limited by this act.

See more hereof in the Commentary upon the statute of 1 E. 2. de militibus.

(5) *Et de 20. l. de terre tenus per socage.*] This summe is set downe because the value of a knights fee was then 20. l. (which then was sufficient to maintaine the dignity of knighthood) and so the statute maketh them equall in value; the king was not bound by this statute, but he might take such reliefe, and at such time as was due by the common law.

25 E. 3. c. 10.

But the statute of 25 E. 3. doth assesse the aides at such a rate as this statute doth, and that act doth well expound this statute,

ſtatute, that none ſhall pay theſe aides but the tenants of the land holding the ſame immediately in demeſne without any meſne.

Rot. Parliam. 29 E. 3. nu. 16.

For meſne lords ought to pay no aide implied in theſe words of our act, *De fee de chivalier, et de* 20. *l. terre*, and if the tenant *perauncle* by knights ſervice goeth with his lord, &c. he diſchargeth all the meſne lords. Note theſe words, *De fee de chivalier*, doth exclude grand ſerjeanty, for he that * holdeth by that tenure ſhall pay no aide to the lord either to make his ſon a knight, or to marry his daughter; for by this act it appeareth, that none ſhall pay any aide but tenants by knights ſervice, or tenant in ſocage, and no other tenure.

6 H. 3. Avowry 242. F.N.B. 83. k. 11 H. 4. 34. 10 H. 4 Avowry 267 10 H. 6. Aunc' demeſne 11 Rot. Par. 9 H. 6. nu. 15.

* [234]

(6) *Tanque le fits ſoit del age de* 15 *ans.*] Note no man ſhall be compelled to take knighthood upon him untill he be 21 yeares old, and have ſufficient land for maintenance of that degree, yet at the age of fifteen yeares he may begin to learn ſome things that belong to chivalry, but it is good for the lord to make what ſpeed he can after that age to recover the aide either by the writ *De auxilio ad filium' ſuum militem faciend'*, or by diſtreſſe: for if the ſon die, the lord loſeth the aide, for that by his death the finall cauſe ceaſeth, and ſo likewiſe if the father dieth, the aide is loſt, for that the duty and remedy is onely given to the father, who in reſpect of nature hath the wardſhip of his eldeſt ſon, and as a naturall father is to provide for his advancement; and ſo as a father by the law of nature is bound to provide a competent mariage for his daughter, which are therefore perſonall to the father: and ſo note the diverſity betweene reliefe, which is abſolutely due to the lord in reſpect of the ſeigniory meerly, and theſe aids, which are not abſolutely due to the lord, but for the performance of a duty of nature.

1 E. 2. ſtat. de militibus.

Jura naturalia. Inſt. ſect. 114. Lib 7. fo. 13 b. Calvins caſe. 1 E. 3. fo. 17. 33 H. 6. 57.

(7) *Tanque el (s. la file) ſoit de 7 ans.*] In auncient time gentlemen of good houſes, for knitting themſelves in greater bonds of amity and alliance, maried their children very young, which the law doth ſeeme to favour, for that it giveth her dower, if ſhe be of the age of nine yeares at the death of her huſband, whereof I have knowne ſome to have proſpered well, but more that have proved unfortunate.

(8) *Et moruſt avant que il avoit ſa file marie.*] Here our act giveth onely remedy to the daughter, and maketh no mention of the ſon in that caſe, and yet the ſon ſhall have the ſame remedy againſt the executors, that the daughter ſhall have, being in *æquali jure.*

F.N.B. 82. i. et 83. a.

Tenant for life, or tenant in dower ſhall not have aide *pur file marier, ou pur faire fits chivalier*, but the verie lord, to whom by poſſibility they might inherit, and whom the lord by nature is bound to preferre; but tenant for life, &c. ſhall have eſcuage, ward, mariage, and reliefe.

Hil. 9 E. 2. fo. 62, 63. in libro meo. Phil Leuteynes caſe.

If the father receive the aide, and after the ſon is knighted, or the daughter maried in the life of the father, neither ſon nor daughter ſhall have remedy for the aide, for the end of the law is performed But by the whole context of this act it appeareth, that ſmall portions preferred in mariage the daughters of good families, when vertue and good blood was more eſteemed then great portions.

3 E. 3. Debt 156.

(9) *Les executors ſon pier ſont tenus al file.*] Note, the father himſelf hath time to make his eldeſt ſon a knight after his age of 15, and

and to marry his daughter after her age of 7 yeares at any time during his life, and therefore though the father receive the aides, yet have they no remedy againſt him, but to depend upon his paternall care, and their remedy is againſt the executors, or adminiſtrators of the father, if they be not preferred in his life time, as it appeareth by this act.

(10) *Et ſi les biens le pier ne ſuffiſent, ſon heire de cco ſoit tenus a le file.*] And here it is to be obſerved, that if the perſonall eſtate of the lord be ſufficient to pay the aide, the heire (who is to maintaine the ſtate and countenance of his father) is not to bee charged therewith.

[235]

3 E. 3. Debt 157. In an action of debt brought by the eldeſt daughter againſt the heire for an C. s. which the father received of his tenants for reaſonable aide to mary her, and that ſhe was not maried in his life time, &c. and in her declaration made no mention that the executors had no aſſets, and yet the count was ruled to be good, for that is the ordinary count in an action of debt, which the ſtatute giveth, and if the executors have aſſets, the heire ſhall plead it in barre.

Although the ſtatute be, that his heire ſhall be bound to the daughter, it is underſtood, that he ſhall be bound, if he hath aſſets in fee-ſimple by deſcent from his father.

The daughter ſhall not recover part againſt the executors, and the reſidue againſt the heire, but either all againſt the executors, or all againſt the heire, as theſe words doe prove.

F.N.B. ubi ſupra. The eldeſt ſon muſt have his remedy onely againſt the executors, for he himſelfe is heire.

Mirr. c. 1. § 3. And theſe aides appeare by the Mirror to be very auncient, ordained by king Alfred, and other auncient kings, for he ſaith, *Et que eſcuage, reliefe et aides, ſe fiſſent per les tenants a lour ſeigniours de lour homage reliever, les heires les ſeigniours faire chivaliers, et de lour eigneſſes files marier.* It is to be obſerved how moderate the aids be by force of this act, and therefore it is to be collected that the fees of the heralds were then (and yet ought to be) moderate alſo.

CAP. XXXVII.

PURVIEW eſt et accorde enſement, que ſi home ſoit attaint de diſſeiſin fait en temps le roy que ore eſt (1), *oveſque robbery* (2), *de aſcun maner de chattel, ou de moveable* (3), *et ſoit trove vers luy per recogniſance de aſſiſe de novel diſſeiſin, le judgement ſoit tiel, que le plaintife recovera ſa ſeiſin et les damages, auxibien de chattel et de moveable avantdits, come de ſoile. Et le diſſeiſor ſoit rente* (4), *le quel que il ſoit preſent ou non, iſſint que* [*ſil ſoit preſent*] *primes ſoit agard a la priſon.*

IT is provided alſo and agreed, that if any man be attainted of diſſeiſin done in the time of the king that now is, with robbery of any manner of goods or moveables, and be found againſt him by recogniſance of aſſiſe of novel diſſeiſin, the judgement ſhall be ſuch; that the plaintiff ſhall recover his ſeiſin and his damages, as well of the goods and moveables aforeſaid, as for the freehold, and the diſſeiſor ſhall make fine, which, whether he be preſent or not ſo it be preſented) ſhall firſt

priſon. Et per meſme le maner ſoit fait de diſſeiſin fait a force et armes, tout ne face home robberv (5).

firſt be awarded to priſon. And in like manner it ſhall be done of diſſeiſin with force and arms, although there be no robbery.

See Marlb. ca. 14. verb. Attinct. the firſt part of the Inſt. ſect. 514. Verb. en Attaint. (Fitz. Damages, 10. 14 H. 7. 15.)

This ſtatute is made in affirmance of the common law, as appeareth by originall writs of aſſiſe, wherein the words be, *Facias tenemen' illud reſeiſiri de catallis quæ in ipſo capta fuerunt, et ipſum tenementum cum catallis eſſe in pace uſque ad primam aſſiſam*; which writ was at the common law before this ſtatute, as it appeareth by Glanvill, and by Bracton who wrote before this act. Glanv l. 3. ca. 33, 34, &c. Bract. l. 4. f. 179.

And the judges of the aſſiſe ought to enquire of the ſame, for if goods be taken away by the diſſeiſor, it is a diſſeiſin with force, and therefore *ex officio*, the judges ought to enquire thereof. 11 H. 4, 16, 17. 11 H. 4. 16, 17.

(1) *En temps le roy que ore eſt.*] Yet this act being in affirmance of the common law doth extend to all times after, which the judges in 4 E. 2. not obſerving, nor remembring the words of the writ of aſſiſe denied to enquire of the taking away of the goods. [236] 4 E. 2. damage 10.

(2) *Oveſque robbery.*] Here [robbery] is taken in a large ſenſe, for a wrongfull taking away of goods, as a wrong doer and treſpaſſer.

(3) *De aſcun manner de chattel, ou de moveable*, &c.] If a man be diſſeiſed, and hath goods, which he hath thereupon as executor or adminiſtrator, taken away, theſe are not accounted his goods within this ſtatute, becauſe he hath them, in *auter droit*, to the uſe of the dead, 8 E. 3. 3. 54.

A man ſeiſed of land in the right of his wife, or joyntly with his wife, and is diſſeiſed, and his goods taken away; in an aſſiſe brought by the huſband and wife, he and his wife ſhall recover ſeiſin of the land, and he alone upon that originall brought by him and his wife ſhall have damages, which is worthy of obſervation. 11 H. 4. 16. 7 H. 6. 30 b.

And ſo it is, if two joynt-tenants be diſſeiſed, and the goods of one of them taken away, both ſhall recover the land, and the one damages for his goods: theſe be the only caſes that I remember in the law, where one demandant or plaintiſe without any ſummons or ſeverance ſhall have judgement alone in one originall; for regularly the judgement ought to be given according to the originall writ: as if the huſband and wife bring an action of battery for the beating of himſelfe and his wife, the writ ſhall abate, becauſe the wife cannot joyne for the battery of her huſband, and the huſband cannot have judgement alone, becauſe his wife is joyned with him in the originall; *et ſic de ſimilibus.* 12 E 4. 6.

But the aſſiſe is a ſpeciall caſe, for the plaintife making his plaint to be diſſeiſed of his free hold in ſuch a towne with the appurtenances generally, yet ſhall he recover his goods, if the diſſeiſin be found with robbery of his goods, as the ſtatute ſpeaketh, and the goods are contained in the originall, and not in the pleint; and the aſſiſe of *novel diſſeiſin* was *feſtinum remedium*, and much favoured in law for the reliefe of the diſſeiſee, both for the regaining of his poſ-

ſeſſion

ſeſſion of the land, and of his ſtock of cattle, and goods thereupon: therefore where our act ſaith, that the plaintife ſhall recover his ſeiſin, and his damages, as well for the goods and moveables aforeſaid, as for the freehold, it is ſo to be underſtood *reddendo ſingula ſingulis*, according to that which hath been ſaid. William Burſheſter, and Margaret his wife were diſſeiſed of the land which he held in the right of his wife, and diſpoſſeſſed of his goods; in an aſſiſe brought by the huſband and wife, judgement was given for them both, *Damna pro diſſeiſina C. l. pro bonis C. marc'*: in a writ of error the judgement was reverſed for the C. marks, becauſe the wife had nothing in them.

Coram Reg. Tr. 4 H. 4. Rot. 24. Suſſ.

(4) *Et le diſſeiſor ſoit rente.*] And the diſſeiſor ſhall be fined, which is alſo in affirmance of the common law, for a diſſeiſin with taking away of goods is a diſſeiſin with force, and therefore finable.

(5) *Et per meſme le maner ſoit fait de diſſeiſin fait a force et armes, tout ne face home robbery.*] Note the writ of aſſiſe mentioneth not a diſſeiſin *vi et armis*, but the words thereof be *Injuſte et ſine judicio diſſeiſivit*, and therefore if the jurors finde a diſſeiſin, and no force, the judgement ſhall be *ideo in miſericordia*, and not *quod capiatur*, but as it hath been ſaid, the court *ex officio* ought to enquire of the force; but if they doe not, it is not error, as it hath been adjudged.

M. 25 & 26 El. Co Reg. in bre. de Error. int' Bartlet & Baxter in Aſſ. de freſh force in Ipſewich.

[237]

CAP. XXXVIII.

PUR ceo que aſcuns gentes de la terre doutent meins faux ſerement faire, que faire ne duiſſent, per que mults des gents ſon diſherities, et perdent lour droit: purvieu eſt, que le roy, de ſon office, deſormes donera attaints ſur les enqueſts en plea de terre, ou de franktenement, ou de choſe que touche franktenement, quant il ſemblera que beſoigne ſoit (1).

FORASMUCH as certain people of this realm doubt very little to make a falſe oath (which they ought not to do) whereby much people are diſherited, and loſe their right; it is provided, that the king, of his office, ſhall from henceforth grant attaints upon enqueſts in plea of land, or of freehold, or of any thing touching freehold, when it ſhall ſeem to him neceſſary.

(44 Ed. 3. 2. Regiſt. 122. Raſt. 84. 1 Ed. 3. ſtat. 1. c. 6. 5 Ed. 3. c. 6. & 7. 28 Ed. 3. c. 8. 34 Ed. 3. c. 7.)

Paſch. 32 E. 3. fo. 65. in libro meo. H. 3. graunted to the Burgeſſe of S. Albans, that none of them ſhould be impleaded of no freehold in attaint, &c. *& allocatur.*

The miſchiefe before this ſtatute (which was the firſt concerning attaints) was, that albeit (as the common opinion is) an attaint did lie upon a falſe verdict given in a plea of land, yet the king many times would not graunt it without ſuit made to him, which turned the party grieved, not onely to great delay, but to extreame trouble, attendance, and charges. And the reaſon that made the difference between the plea reall, and the plea perſonall, was, that in the plea perſonall the party grieved had no other remedy, but the attaint; but in the plea reall he had other remedy in an action of higher nature, and for that cauſe was not granted without difficulty. And

And ſome judges held, that in a plea reall an attaint did not lie, and therefore this act provideth that the king ſhall grant it * *ex officio*, that is, *ex merito juſtitiæ*. And this act is holden to be in affirmance of the common law, whereof you ſhall reade at large, Marlebr. cap. 14. And this is the common opinion agreeable with our old bookes, as there you may reade.

* De ſon office.

Marleb. ca. 14.

That perjury in jurors was puniſhed before this act hath been ſufficiently proved already: now the preamble of this act giveth occaſion to examine whether perjury alſo in witneſſes were punishable by the auncient lawes of England; *De pejerantibus præteritis ſtatutum eſt, ut ſi quis juſjurandum violarit, falſumve dixerit coram rege, fides ei in poſterum non habetor, verum is in ordalium adjudicetur.*

Int' leges Edw. Regis, 48. 3.

Si quis falſum juraſſe convictus fuerit, ei poſtea non modo non creditor, verumetiam ſacra ei etiam prohibetor ſepultura.

Inter leges Ethelſtani, 67. 25.

Si quis ſacra tenens pejeraſſe convictus fuerit, ei manus præciditor, &c.

Inter leges Canuti 113. 34.

Vide inter leges W. Conq. fol. 125. b.

And the Mirror ſaith, *Que ſolonque les auncient priviledges, et uſages aſcuns ſe font per perde del ponce, come eſt de faux notaries, et de ciſſers de barſes de meyns q. xii. d. et pluis que vi. d. que le roy R. 1. ſe chaungea a la parte de oriel, aſcuns per couper des langues, come ſoloit eſtre de faux teſtmoines.*

Mirror, c. 4. de paines. 10 H. 3. Coron. 434.

And in the ſame chapter treateth further of this matter, ſaying, *Perjury eſt graund peche, &c.* whereof you may reade there more at large. Britton ſaith that it was puniſhable, and to be enquired of *De ceux queux ſe voilont perjurer pur lower.*

Britton, fo. 38. Fleta, l. 5. c. 21. & li. 2. cap. 1. Bract. l. 4. f. 289.

Fleta deſcribeth perjury thus, *Perjurium eſt mendacium cum juramento firmatum*; and further ſaith, *Et tribus modis committitur; primo, cum quis ſcit, vel putat aliquid falſum eſſe falſum, et jurat eſſe verum; ſecundo, cum quis fallitur, et credit verum eſſe quod eſt falſum, et temere et indiſcrete jurat; tertio, ſi quis credit falſum eſſe verum, et jurat quod verum eſt.*

Where you may reade further of this matter. And of ſome it is called, *crimen læſæ conſcientiæ.*

Bract. fo. 292.

Thomas Vigras and two others were found guilty, &c. of perjury.

[238]

Hil. 8 E. 1. in Communi Banc. Rot. 38. Eſſex. John of Huntingfields caſe.

18 E. 3. 53. Once forſworne, and ever forlorne.

7 H. 6. 25. Perjury puniſhed.

Vide the ſtatutes of 3 H. 7. cap. 1. 11 H. 7. cap. 25. 32 H. 8. cap. 9. 5 Eliz.

Upon all that which hath been ſaid touching this point, you may obſerve how milde the late laws have been in puniſhing of perjury in reſpect of the auncient, wherein I have been the longer, for that ſome have given out, that perjury was not puniſhed by the auncient laws of England, wherein there ſhould have been a great defect, and an encouragement to ill diſpoſed men, if jurors ſhould by the common law have been puniſhed for perjury, and witneſſes, which are great motives to them of giving their verdict, ſhould be perjured, and not be puniſhed.

(1) *Quant il ſemble que beſoigne ſoit.*] See 5 E. 1. which was within two yeares after this act, an attaint was brought upon a falſe verdict given in aſſiſe before juſtices in eyre before the making of this ſtatute: and the record ſaith, *Quod non eſt intentio domini regis, nec extitit tempore confectionis ſtatuti prædicti, quod breve de attinctu iraſceret ſuper hujuſmodi inquiſitionibus ante ſtatutum captis, prout*

Mich. 5 E. 1. in Banco Rot. 63. Midd.

Johannes de Lovet recordatur, imò poſt ſtatutum conceſs' conſideratum eſt quod quærens nihil capiat per breve, &c. And this was the law taken then by colour of theſe words; but others hold, that theſe words are not to be ſo taken for the reaſon aforeſaid, for that the party grieved in this plea reall had remedy in an action of higher nature: but later ſtatutes quoted before in the margent have cleared this point.

CAP. XXXIX.

ET pur ceo que le temps eſt mult paſſe puis que les briefes deſouth noſmes furent auterfoits limittes: purvieu eſt, que en count countant de deſcent en briefe de droit, nul ne ſoit oſe de counter de la ſeiſin ſon anc' de plus longe ſeiſin que de temps le roy R. (1) *uncle le roy Henry, pier le roy que ore eſt. Et que le briefe de novel diſſeiſin, et de purparty, que eſt appelle nuper obiit, eyent le terme puis le primer paſſage le roy Henry, pier le roy, que ore eſt en Gaſcoigne* (2), *mes nemy avant. Et les briefes de mordane', de coſinage, de ayle, de entre, et briefe de neifrie, eiant le terme del coronement meſme le roy Henry* (3), *et nemy avant. Mes que touts les briefes ore a per meſme purchaſes, ou a purchaſer, entour cy et* [*la feaſt*] *S. John en un an, ſoient pledes de temps que avant ſolent eſtre pleades.*

AND foraſmuch as it is long time paſſed ſince the writs undernamed were limited; it is provided, that in conveighing a deſcent in a writ of right, none ſhall preſume to declare of the ſeiſin of his anceſtor further, or beyond the time of king Richard uncle to king Henry, father to the king that now is; and that a writ of novel diſſeiſin, of partition, which is called nuper obiit, have their limitation ſince the firſt voyage of king Henry, father to the king that now is, into Gaſcoin. And that writs of mortdanceſtor, of coſinage, of aiel, of entry, and of nativis, have their limitation from the coronation of the ſame king Henry, and not before. Nevertheleſs all writs purchaſed now by themſelves, or to be purchaſed between this and the feaſt of St. John, for one year compleat, ſhall be pleaded from as long time, as heretofore they have been uſed to be pleaded.

(1 Inſt. 114, 115. 20 H. 3. c. 8. 32 H. 8. c. 2. 21 Jac. 1. c. 16.)

1. Inſt. ſect. 170. (1) *De temps le roy R.*] That is by conſtruction from the firſt day of the raigne of king Richard the firſt, and ſo hath it been reſolved in parliament.

[239] This act doth limit within what time the ſeiſin ſhall be in a writ of right, and by conſtruction the time of preſcription is taken for this time.

34 H. 6. 36. Fitzh. abi ſupra.

(2) *Puis le premier paſſage le roy Henry, &c. in Gaſcoine.*] That was in *anno* 5 H. 3.

Vide Mag. Chart. 144.

(3) *Del coronement meſme le roy Henry.*] H. 3. was crowned 28 *Octobris, anno Dom.* 1217. *et regni ſui primo*; but others ſay he was crowned 16 *Junii, anno regni ſui primo.*

This king was crowned again in *anno* 5. of his raign, but this act intendeth his firſt coronation.

Theſe

Theſe limitations are altered by the ſtatute of 32 H. 8. as you may reade before in the expoſition upon the ſtatute of Merton, cap. 8. See the firſt part of the Inſtitutes, ſect. 170.

CAP. XL.

DUR ceo que mults des gents ſont delayes de lour droit, per fauxment voucher a garranty: purview eſt que en briefes de poſſ (1), *tout adeprimes come en briefe de mortdaunc', coſinage, del ayle, nuper obiit, de intrueſion, et auters briefes ſemblables, per les queux terres ou tenements ſont demands* (2), *queux devoient diſcender* (3), *reverter* (4), *remainder* (5), *ou eſchier* (6), *per mortdanc', ou dauter, que ſi le tenant vouche a garrant', et le demandant luy counterpled', et voile averrer per aſſiſe, ou per pays, ou en auter maner, ſicome le court le roy agarde, que le tenant* (9) *ouſon aunc'* (8) *que heire il eſt, fuit le primer que entra* (10) *apres la mort celuy de que ſeiſin il demand, ſoit le averrement del de demandant reſceve* (7), *ſi le tenant le voile attender, et ſi non, ſoit bote ouſter le auter reſpons* (11) *ſil neit ſon garrantor en preſent, que luy voile garranter de ſon gree* (12), *et maintainant enter en reſpons, ſalve al demandant ſes exceptions enconter luy, ſil voile voucher ouſter, come il avoit avant, enconter le primer tenant. De recheffe en touts maners des briefes dentre, queux font mention des degrees: purview* [*eſt*] *que nul deſormes vouche* (13) *hors de la line* (14). *Et en auters briefes dentrie, ou nul mention eſt fait de degrees* (15), *les queux briefes ne ſont ſuſtenus, forſque la ou les avantdits briefes de degrees ne poient giſer ne lieu tener. Et en briefe de droit* (16) *purview eſt; que ſi le tenant vouche a garranty, et le demandant le voile counterpleder, et ſoit priſt * de averrer per pays, que celuy que eſt vouche* (17) *a garranty,* [*ne nul*] *de ſes anceſters* (18) *ne unques avoient ſeiſin de la terre, ou del*

FORASMUCH as many people are delayed of their right by falſe vouching to warranty; it is provided, that in writs of poſſeſſion, firſt in writ of mortdaunceſter, of coſinage, of aiel, nuper obiit, of intruſion, and other like writs, whereby lands or tenements are demanded, which ought to deſcend, revert, remain, or eſcheat by the death of any anceſtor, or otherwiſe, if the tenant vouch to warranty, and the demandant counterpleadeth him, and will aver by aſſiſe, or by the country, or otherwiſe, as the court will award, that the tenant, or his anceſtor (whoſe heir he is) was the firſt that entered after the death of him, of whoſe ſeiſin he demandeth; the averment of the demandant ſhall be received, if the tenant will abide thereupon; and if not, he ſhall be further compelled to another anſwer, if he have not his warrantor preſent, that will warrant him freely, and incontinent enter into the warranty; ſaving unto the demandant his exceptions againſt him, if he will vouch further, as he had before againſt the firſt tenant. From henceforth in all manner of writs of entry, which make mention of degrees, none ſhall vouch out of the line: or in other writs of entry, where no mention is made of degrees, which writ ſhall not be maintained, but in caſes where the other writs of degrees cannot lie, nor hold place: and in a writ of rignt it is provided, that if the tenant vouch to warranty, and the demandant will counter-plead him, and be ready to aver by the country, that he that is vouched to warranty, nor his anceſtors, had never ſeiſin of the land

del tenement (19) *demande* (20), *ne fee, ne ſervice per la maine le tenant, ou* [*aſcun*] *de ſes auncеſtors* (21), *puis le temps celuy de que ſeiſin le demandant counte* (22) *jeſques al temps que le briefe fuit purchaſe et plee move* (23), *per que il poit le tenant ou ſes auncеſtors aver ſicoffe: adonques ſoit laverrement del demandant reſceive, ſi le tenant le voil' attender, et ſi non, ſoit le tenant bote oiſter a auter reſpons* (24), *ſil nait ſon garrantor en preſent, que luy voile garranter de ſon grec, et maintenant enter en reſpons, ſalve al demandant ſes exceptions enconter luy, ſicome il avoit avant encounter le primer tenant. Et lavantdit exception eit lieu en briefe de mortdaunceſtre, et en les auters briefes devant noſmes, auxibien come briefes queux touchent droit* (25). *Et ſi le tenant per cas eit charter de garranty de auter home de ceo choſe que ſoit oblige en nul des avantdits caſes* (26) *a le garranty de ſon eigne degree, ſalve luy ſoit ſon recoverer per briefe de garranty de charter de le chauncellor le roy, quant il le vondra purchaſer, mes que le plee ne ſoit pur ceo delay.*

land or tenement demanded, nor fee or ſervice by the hands of his tenant, or his anceſtors, ſince the time of him, on whoſe ſeiſin the demandant declareth, until the time that the writ was purchaſed, and the plea moved, whereby he might have infcoffed the tenant, or his anceſtors, then let the averment of the demandant be received, if the tenant will abide thereupon; if not, the tenant ſhall be further compelled unto another anſwer, if he be not preſent that will warrant him freely, and incontinent enter in anſwer, ſaving unto the demandant his exceptions againſt him, as he had afore againſt the firſt tenant. And the ſaid exception ſhall have place in a writ of mortdaunceſtor, and in the other writs before named, as well as in writs that concern right. And if percaſe the tenant have a deed, that compriſeth warranty of another man, which is bound in none of theſe caſes before mentioned to the warranty of an elder degree; his recovery, by a writ of warranty of charters out of the king's chancery, ſhall be ſaved to him at what time ſoever he will purchaſe it; howbeit the plea ſhall not be delayed therefore.

(Pro. Parl. 34. Fitz. Counterplea de Voucher, 78. 81, 82, 83. 89. 96. 98. 100. Fitz. Counterplea, &c. 3, 4, 5. 7, 8, 9, 10. 17, 18. 20. 23, 24. 27. 29, 30. 40, 41, 42. 44. 48, 49. 58, 59. 60. 63. 65. 85. 88. 94. 114. 126. Fitz. Execut. 122. Fitz. Gar. de Charters, 3, 4, 5. 7, 8, 9, 10, 11, 12, 13. 19, 20, 21, 22. 26. 28, 29, 30, 31. 20 Ed. 1. ſtat. 1. De Vouchers.)

13 E. 1. counterplea de voucher. 113. 16 E. 2. ibid. 110. 8 E. 3. 61.

The miſchiefe before this ſtatute was, that every tenant in a reall action was permitted to vouch any of the people, though he or any of his anceſtors had never any thing in the land whereof he might enfeoffe the tenant or any of his anceſtors; and againe that vowchee might vowch another in like manner, and upon every ſummons *ad warrantizandum*, there muſt be nine retourners, &c. ſo as the delay was in manner infinite, and all upon falſe vowchers; which matter being ſhewed in this parliament, *Fuit ad-viſe al roy que ceſt ley fuit mal-veis*, for it is a maxime in law, that *Lex dilationes ſumma exhorret*; whereupon this act of parliament for remedy was made.

22 H. 6. 40. per Markham.

Inſtit. ſect. 143. Glanv. l. 13 c. 9, 10. & alibi tepe. Bract. l. 5 f. 380. Britton, c. 75.

Vouchee a garranty.] For this word [vouchee] ſee Lit.
Vide Glanv. of this matter.
Vide Bracton, a whole tractate of vowching to warranty.
Vide Britton, a chapter of the ſame.

Fleta

Fleta ſaith, *Sunt autem nonnulli lites protrahere nitentes, minores falſo vocant ad warrant', et de quibus proviſum eſt* (ſumming up the principall part of this ſtatute in few words) *quod ſi petens replicando offerat verificare quod vocatus nec aliquis anteceſſorum vocati unquã ſeiſinam habuit de re petita, feodum nec ſervitium per manus tenentis vel alicujus anteceſſoris ejus à tempore ejus ex cujus ſeiſina petit uſque ad tempus impetrationis brevis et placiti moti, per quod potuit verificare tenentem vel ejus anteceſſores inde feoffatos fuiſſe, admittatur veriſicatio illa ſi tenens voluit hoc expectare, alioquin ulterius reſpondere compellatur, ſalvis petenti talibus replicationibus, quales verſus principalem tenentem obtineret: et ſi tenens chartam habuerit alicujus extraneæ perſonæ qui ſe ad warrantiam obligaverit, vel per anteceſſorem obligatus fuerit qui gratis warrantizare voluerit, tunc competit tenenti remedium per breve de warrantia chartæ, ſed propterea non capiat placitum jam antea dilationem.*

Fleta, lib. [241]

In ancient time it ſeemed ſtrange when the originall *præcipe* was brought againſt the tenant of the land, that the court upon that originall ſhould hold plea between the tenant and the vowchee, but it is more ſtrange to make a queſtion of that, which hath received an ancient, continuall, and conſtant allowance, and the vowchee commeth in *in loco tenentis*, and in judgement of law is a tenant to the demandant, and our act doth allow of true vowchers, but provideth againſt falſe vowchers, as our act ſpeaketh, for delay onely.

Mirror. 8 E. 3. 61.

(1) *En brieſs de poſſeſſion.*] So called, becauſe either the auncеſtor, of whoſe ſeiſin he demands, was in poſſeſſion the day he died, or the demandant himſelfe was in poſſeſſion, as *mortdaunc', ceſuage, aiel, nuper obiit, intruſion* and other like writs, as *beſaile*, &c.

8 E. 3. 57. b. 32 E. 3. Count. de vowcher 82. 21 E. 3. 11. 46 E. 3. 2.

The diverſity between the actions *auncеſtrel droiturel*, and the actions *auncеſtrel poſſeſſorie*, you ſhall reade at large in my reports in Markals caſe, and is neceſſary to be obſerved for the underſtanding of this act, which maketh the ſame diſtinction of actions.

Li. 6. fo. 34, 35, &c. Markals caſe.

(2) *Per les queux terres ou tenements ſont demaundes.*] In a writ of right of ward of body and land, the defendant vowched, and the plaintife counterpleaded the vowcher by this firſt branch of this act, that the defendant was the firſt that abated after the death of his tenant, and the ſame continued till the vowcher, and adjudged a good counterplea; for albeit it is named a writ of right, and ſo in letter is out of this branch, yet is it in nature of a writ of poſſeſſion, and the words are *per mort dauncеſter ou dauter*, and though no lands or tenements be demaunded, which regularly is intended of an eſtate of freehold, yet this caſe being within the ſame miſchiefe is taken within the remedy.

8 E. 3. 57. 61. 21 E. 3. 11. 22 E. 3. 6. 25 E. 3. 39. 32 E. 3. Count. de vow. 83.

In dower the tenant vowch T. coſine & heire; A. the demandant ſaid that her huſband died ſeiſed, and the vowchee was the firſt that abated; and a good counterplea within theſe words, *autres brieſes ſembles*, but that plea is not in caſe of the heire.

2 E. 3. 31. 22 E. 3. 3. 32 E. 3. 75. a. in libro meo.

(3) *Diſcender.*] A *formedon* in the deſcender is out of this branch, for it is a writ of right in his nature, and not a writ of poſſeſſion, and he demandeth not the land of the ſeiſin of his auncеſtor, as the ſtatute ſpeaketh, but of the gift.

4 E. 3. 56. 39 E. 3. 36. b.

32 E. 3. infra †.

(4) *Reverter.*] A *formedon* in the reverter is not within this branch, for that it is a writ of right in his nature.

4 E. 3. Count de vowcher. † See 32 E. 3. fol. 74, 75. in libro meo. Lopinion del Court al contrary. vide 32 E. 3. tit. counterplea de vowcher. 82. 4 E. 3. 33. 32 E. 3 count-de vow. 82.

(5) *Remainder.*] A *formedon* in the remainder is not within this branch, for it is no writ of poſſeſſion, but a writ of right in his nature, and the demandant doth not demand the land of the ſeiſin of his aunceſter, as the ſtatute ſpeaketh, but by the remainder.

(6) *Eſchier.*] This is in the Engliſh tranſlation turned to eſcheate, which ought not to be, but *eſchier* ſignifieth to fall, and a writ of eſcheat is not within this branch, for that it ſoundeth in the right, and reverter, remainder, or eſchier is to be intended after the death of his aunceſter, or tenant for life, tenant in dower, or by the curteſie.

3 E. 3. vowch. 199. 26 H. 6. tit. count. de vowcher 5. 21 H. 6. 50.

An aſſiſe of *novel diſſeiſin*, and in aſſiſe of *darrein preſentment* are within this branch, if the tenant vowch any named in the writ, and the demandant may counterplead the vowcher, as well when the tenant is preſent in court, as when he is abſent.

[242]

The firſt counterplea given by this act.

(7) *Que le tenant ou ſon aunceſter que heire il eſt ſuit le primier que entra apres la mort celuy de que ſeiſin il demaund, ſoit laverment del demaundant reſceive.*] A. dieth ſeiſed in fee, B. abateth, and maketh a leaſe for life, and graunteth the reverſion to C. in fee, and dieth, C. graunteth the reverſion to D. the heire of B. tenant for life is impleaded in a writ of coſinage, and makes default after default, D. is received and vowcheth to warranty C. the demandant counterplead the vowcher, for that B. was the firſt that abated after the death of his annceſter, of whoſe ſeiſin he makes his demand: and two objections were made, that this counterplea was not within this ſtatute. 1. That D. claimed the reverſion by purchaſe, and ſo B. was not his aunceſtor within this ſtatute, for he claimed not the land as heire. 2. That this ſtatute ſpeaketh of the tenant, which muſt be underſtood of the tenant for life, who is the tenant to the *præcipe* in deed, and not of the tenant by receit, who is tenant in law: as to the firſt it was anſwered and reſolved, that in as much as the abatement is confeſſed, albeit that divers ſtates be made, yet for that D. is heire to the abator, and B. his aunceſter within the letter of the ſtatute, and *injuria per circuitum non tollitur*, and ſo within the meaning. But if the ſtate of the abator had been avoided by a title paramount, and the heire of the abator had been enfeoffed, there the heire had not claimed under the abatement, and therefore although he were within the letter of this act, yet had he been out of the meaning.

4 E. 3. Count de Voucher 96.

40 Aſſ. 22.

(8) *Aunceſtre.*] And where it is ſaid here aunceſter, predeceſſor is taken by equity; for acts of parliament made for ſuppreſſion of falſhood practiſed for delay, as theſe falſe vouchers be, ſhall have a benigne interpretation.

(9) *Tenant.*] To the ſecond, albeit tenant by receit be but tenant in law, yet is he in lieu of the tenant, and ſo within this branch, for otherwiſe the abator may make a leaſe for life, and by his default after default be received, and ſo by covin between them make this branch of none effect, which ſhould be againſt reaſon, *et in fraudem legis*; and tenant in law by warranty is within this act, albeit he be not preſent in court.

Hil. 9. E. 2. fo. 63. in lib. meo. en Coſinage.

(10) *Primier que entra.*] A. and B. doe abate to the uſe of B. the whole ſtate is in B. if B. infeoffe A. this coadjutor is within this act, and yet he gained no freehold, but this ſtatute ſaith, *Le primer que*

que enter, and though he entred not at the firſt ſolie, yet is he within this ſtatute.

But if the abator maketh a feoffement in fee, and taketh back an eſtate to him and a ſtranger, and they both be impleaded in a writ of *aiel*, and vouch their feoffor for the benefit of the ſtranger (who is out of the ſtatute) the vowcher cannot be counterpleaded within this branch.

But if the ſtranger releaſe to the abator, and he be impleaded, and vowch, this vowcher may be counterpleaded by force of this branch.

(11) *Et ſi non, ſoit bote ouſter al auter reſpons.*] So as this clauſe giveth no benefit to the tenant unleſſe he giveth over his vowcher, and then he ſhall be received to anſwer, but if he ſtand to his vowcher, and demurre in law upon the counterplea, and it be adjourned to another terme, it is peremptory to the tenant in reſpect of the delay, in ſuch ſort, as if iſſue had been taken, and a triall had: By theſe words [*Soit bote a auter reſpons*] he may as well vowch as plead in chiefe. Note the words be, *Soit bote a auter reſpons, et ne dit en chiefe*, ſo as any anſwer ſufficeth, and therefore the vowchee may plead outlawry in the plaintife in an action of debt, after the laſt continuance. 45 E. 3. 16. 8 H. 7. 5. 40 E. 3. 14. Br. tit. Coun. de vouch 5. 21 E. 4. 54.

[243]

But if the counterplea be adjudged for the demandant in the ſame term, he may plead in bar, but he cannot vouch. 22 H. 6. 40. 11 H. 4. 22. 42 E. 3. 16. 10 H. 7. 22.

A demurrer in law upon a voucher adjourned to another term is peremptory; for the demurrer is in lieu of an anſwer, otherwiſe in caſe of counterplea the ſame term, as hath been ſaid.

(12) *Sil neit ſon garantor en preſent, que luy voille garrant' de ſon gree*, &c.] In a writ of right of ward, the defendant vouch, and for that the vouchee was preſent in court, and entred into warranty, the plaintife could not counterplead. Hil. 9 E. 2. fol. 63. in lib. mo en Coſinage. Temps. E. 1. Count. de Vouch. 116. See the ſtatute de Vocat. ad Warr. 20 E. 1.

(13) *Des recheife in touts maners des brieſes des entries queux font mention des degrees: purvieu eſt que nul diſormes vouchera hors del lien.*] A diſſeiſor makes a leaſe for life, the remainder in fee, the diſſeiſee brings a writ of entry *ſur diſſeiſin* in the *per* againſt the leſſee, who makes default after default; he in the remainder is received, he ſhall vouch out of the line, becauſe he is not within the degrees mentioned in the writ. The ſecond counterplea given by this act. 16 H. 7. 5. 9 E. 3. 16. ſimile.

And there is no ſuch miſchief in this caſe, as ſhould follow, if the law were ſo taken in the firſt branch, as before it appeareth.

But of the vouchee, in caſe of the *per et cui*, Fleta ſaith, *Fiat vocatio de perſona in perſonam, et de warranto in warrantum de perſonis in brevi nominatis uſque ad ipſum diſſeiſitorem*; and the reaſon may be, becauſe it appeareth that the vouchee is within the degrees mentioned in the writ: and the words of the ſtatute are generall, *Nul vouchera hors de lien*; in which words, the vouchee is included. Laſtly, it had been to little purpoſe, to reſtrain the tenant in the *per*, and to let the vouchee in the *cui* at large; ſo as this branch hath (as you ſee) his ſpeciall reaſon. Fleta, li. 5. c. 37.

If a writ of entry in the *per* be brought againſt the huſband and wife, and upon the default of the huſband the wife is received, ſhe ſhall not vouch out of the line, becauſe ſhe is party to the writ.

So it is, if a writ of entry in the *per* be brought againſt the tenant for

for life, and he pray in ayd of him in the reversion, and he joyn in ayd, he must joyn in plea with the tenant, and therefore shall not vouch out of the degrees.

(14) *Hors del lien.*] Lien is properly the binding of the vouchee by force of the warranty; for the vouchee saith, *Que a ses a vous a lier a garranty*; and then the tenant sheweth the *lien*, that is, the deed or fine, &c. that bindeth him to warranty: here it is taken for the degrees; of which you have heard before, in the exposition of the last chapter of Marlebridge.

12 E. 3. Count. de Vouch. 92. 27 H. 6. 1.

In a writ of entry in the *per* and *cui* against B. of the feoffment of A. A. dyeth, B. shall vouch the heir of A. for the heir is within the intention and meaning of this law, lest he should lose his warranty (so much favoured in law) by the act of God, *viz.* the death of A.

(15) *Et in autres briefes dentre en nul mention est fait de degrees.*] That is, writs of entry in the *post*; whereof, and of this whole clause, somewhat hath been spoken in exposition of the said statute of Marlebridge.

(16) *Et in briefe de droit.*] This is not onely understood of a writ of right right, but of all writs of right in his nature, or which touch the right, as this law hereafter speaketh, as the writ of escheat, writs of formdon in reverter, remainder, discender, &c.

[244]

(17) *Que celuy que est vouche.*] If the tenant vouch A. as assignee to B. the demandant may counterplead the seisin of B. within the meaning of this branch, for that overthrows the voucher, which is the end of this law.

The third counterplea given by this act. 12 E. 3. Count. de Voucher. 42.

[a] If an infant be vouched as heir to A. it is not sufficient to counterplead the seisin of A. the ancestor, for that the infant cannot make a feoffment; but he must counterplead the seisin of the infant and his ancestors, and the infancie shall come upon the lien.

[a] 21 E. 3. 9. 31 E. 3. Count de Vouch. 88. Dyer 12 El. 290.

(18) *Ne nul de ces aunceſters.*] [b] Here is implyed (whose heir he is) but yet this doth extend aswell to the speciall heir of the possession (as the heir in borough English, and in gavelkinde) as to the generall heire at the common law.

[b] 19 E. 3. 30. 38 E. 3. 3. 26. 38 E. 3. 22. 40 E. 3. 14. 23. 43 E. 3. 19. 27 H. 6. 1. 35 H. 6. 34. 22 E. 4. 10. 20 H. 7. ibid.

[c] Where a bishop or an abbot be vouched, the counterplea must not be of the bishop or abbot and his ancestors, according to the letter of the law; but of him and his predecessors, according to that capacitie whereby the land is demanded: and so it is of other bodies politique and corporate.

[c] 40 Ass. 22. 19 E. 2. Count. de Vouch. 114. 6 E. 2. Vieu. 162. Temps. E. 1. ib. 171.

[d] If a baron and feme be vouched, the seisin of the feme and her ancestors may be counterpleaded, unless speciall matter be shewed to the contrary: and so it is, if two others be vouched, it is a good counterplea to counterplead the seisin of one of them, for ousting of delay by essoine, protection, death, and his heir within age, &c.

[d] 22 Ass. 30. 48 E. 3. 28. 18 E. 3. 53, 54. 47. 30 E. 3. 30. 32. 16 H. 7. 13.

(19) *Ne unques avoient seisin de la terre out tenement, &c. per que il poet aver, &c. ſeoffe.*] [e] Yet if he hath but an estate for yeers, it is sufficient; for by the livery he gaineth seisin, and both the feoffments *de jure* and *de facto* are within this statute, but otherwise it is of an estate at will.

20 H. 7. ibid. [e] Temps. E. 1. tit. Count de Vouch. 126 50 E. 3. ibid. 124. 16 E. 3. Count de Garr. 36, 37. 18 E. 3. Issue 36. 40 E. 3.

If the vouchee hath but an estate for life, so as his feoffment should be a surrender, yet hath he such an estate, as is within this statute.

12, 13. 44 E. 3. 27. 13 E. 3. Count. de Vouch. 36. 8 H. 7. 5. 21 H. 6. Count. de Vouch. 3. 14 H. 6. 10. Husband

Huſband *ceſti que uſe* in the right of his wife, or ſeiſed in the right of his wife, hath a ſeiſin *dont il poet feoffment faire*, a feoffment for maintenance, though the ſtatute of 1 R. 2. make it void, yet ſeeing it is not void untill entry, it is a ſufficient ſeiſin to make a feoffment.

[f] One joyntenant cannot enfeoff another, yet hath he ſuch a ſeiſin as is within this act; for [*feoffment faire*] is ſpoken but for example; but a fine, releaſe, or any other conveyance which giveth an eſtate, is within this law.

If a vouchee or any of his anceſtors had any ſeiſin, though it were avoided or determined, it is ſufficient.

(20) *En demaunde.*] [g] If a rent be demanded, and the tenant vouch by reaſon of a feoffment of the land diſcharged of the rent with warranty, the demandant may counterplead the ſeiſin of the vouchee, &c. of the land, albeit the rent is onely in demand.

(21) *Ne fee, ne ſervice per la maine le tenant, ou aſcun de ſes auncеſtres, &c.*] [h] For in reſpect of ſome tenure and ſervice, the tenant may vouch to warranty; as frankalmoigne, homage, auncеſtrel, reverſion, &c.

(22) *Puis le tẽps celuy de que ſeiſin le demand' coũte.*] [i] Here [ſeiſin] is taken for the title of the demandant in his writ, for it is a maxime in counterpleas, that the demandant is not to counterplead any ſeiſin, but after the title of his writ; and where the ſeiſin is in the title, there the counterplea muſt be after that ſeiſin: as for example, in a writ of right, after the ſeiſin of him of whoſe ſeiſin he demand.

Here is implyed (and before the writ purchaſed) for if it be *pendente brevi*, it ought not to be allowed.

(23) *Iceſq; le temps que le briefe fuit purchaſe & plea move.*] * For no warranty, created after the purchaſe of the writ, ſhall delay the plaintiffe, unleſſe upon that conveyance the writ be made good; as if a *præcipe* be brought againſt A. of land whereof B. is ſeiſed, and B. infeoffe A. hanging the writ, he ſhall vouch by force of this warranty, otherwiſe not.

(24) *Soit le tenant bote cuſt' al aut' reſpons.*] Of this ſufficient hath been ſaid before.

(25) *Lavantdit exception eyt lieu en briefe de mordanc', & en les autres briefs devant nojmes auxy bien come in briefs queux touchant droit.*] By this clauſe, the demandants in writs of poſſeſſion, as the *mortdauncеſter, coſinage, aiel, nuper obiit, intruſion*, and the like, have a greater privilege and advantage, then demandants in actions which touch the right; for this act gives the demandants in writs of poſſeſſion, not onely the firſt counterplea, that is, that the tenant or his anceſtor was the firſt that entered, &c. but alſo the laſt counterplea, which is given in writs touching the right, *viz.* that neither the vouchee, nor any of his auncеſtors had ever any ſeiſin, &c.

(26) *Et ſi le tenant per caſe eyt charter de garrantie de auter home, que ſoit chiefe in nul des avantdits caſes*, &c.] If any man be ouſted of his voucher by this ſtatute, yet if he hath a charter of warranty, he may have his writ of *warrantia chartæ*; as if a man that never had any thing in the land, nor any of his anceſtors before him, releaſeth to the tenant of the land with warranty, if the tenant vouch him, and the demandant counterplead the voucher, by the laſt

[f] 44 E. 3. Count. de Vouch. 45 E. 3. 16. 14. 35 H. 6. 10. 9 H. 6. 49. 8 H. 7. 5. 50 E. 3. tit. Count. de Vouch. 124.

[g] 3 E. 3. 36. 5 E. 3. 16. 37. 10 E. 3. 20. 26 H. 6. Count de Vouch. 5. 12 R. 2. ibid. 34. 35 H. 6. 30. 21 E. 4. 26.

[h] Fleta, li. 6. c. 23. 13 E. 1. Count. de Vouch. 118. 47 H. 3. Vouch. 270, 271. 9 H. 3. ibid 277. 1. part. Inſtit. ſect. 143.

[i] 13 E. 3. Count. de Vouch. 118. 6 E. 3. 21. 38 E. 3. 28. 39 E. 3. 36. 41 E. 3. 15. 46 E. 3. 32. 48 E. 3. 2. 11 H. 4. 19. 22 H. 6. 42. 21 E. 4. 20. 21 E. 3. 20. 21 E. 4. 26. 12 H. 7. 2. * 8 E. 3. 40. 28 E. 3. 90. 41 E. 3. 5. 12 R. 2. Count. de Vouch. 33. 18 E. 4. 27. a ſimile. 12 H. 7. 2 b. per Wood & 3. per Brian.

Inſtit. 1. part. ſect. 743. More of this matter.

laſt branch of this act, *viz.* that the vouchee, nor any of his anceſtors had ever any ſeiſin, &c. and the vouchee is not there preſent, to enter into warranty; in that caſe the tenant ſhall be ouſted of his voucher, but may have his writ of *warr' chartæ*. So if a man after the death of my anceſtor abate, and make a feoffment in fee, and after purchaſe the land again with warranty, and after is impleaded in an aſſiſe of *mortdanceſter*, he ſhall be ouſted of his voucher by the firſt branch of this act, becauſe he was the firſt that entred, &c. but he may have his *warrantia chartæ*. So if a diſſeiſor make a feoffment in fee to A. who infeoffeth B. and after repurchaſeth the land of B. with warranty, againſt whom the diſſeiſee brings a writ of entry in the *per*, as he may do, he cannot vouch B. by the ſecond branch of this ſtatute, but the diſſeiſor onely, and is driven to his writ of *warrantia chartæ* againſt B.

It is to be known, that there are counterpleas to the voucher, and that this ſtatute giveth to the demandant, againſt the tenant in three caſes, as hath been ſaid.

And there is a counterplea to the warranty, or to the lien (which is all one) and that is between the tenant and vouchee, whereof there is no occaſion given to treat at this time; for this act deals not in any ſort with it.

There were at the common law divers counterpleas of the voucher, to prevent or to ouſt the demandants delay, whereof it is not impertinent to ſay ſomewhat.

7 E. 3. 27. 7 Aſſ. 4. 28 E. 3. 96. It was a good counterplea at the common law, to ſay, that there was *nul tiel*, as the vouchee; and that the ſtatute of 14 E. 3. cap. 18. was in affirmance of the common law.

* 14 H. 6. 10. 48 E. 3. 17. 14 E. 3. Count. de Vouch. 67. * So it is, if one be vouched as heir within age, and that the parol may demur, to ſay, that he is a baſtard; ſo it is, to ſay that the vouchee is villein to the demandant.

[246]

40 E. 3. 36. 25 E. 3. 43. 17 E. 3. 41. 21 E. 3. 36. 7 E. 3. 27. 5 E. 3. 35. It was a good counterplea at the common law, to ſay that the vouchee was dead, but upon this diſtinction, that the demandant ſhew the ſame before any proceſſe awarded; for after proceſſe awarded, it muſt come in by the retourn of the ſherife: and that the ſtatute of 14 E. 3. ca. 18. was made but in affirmance of the common law, for it was adjudged in 5 Edw. 3. a good counterplea.

39 E. 3. 32. And ſo it is, if two be vouched, it is a good counterplea, to ſay, that one of them is dead for preventing of delay.

18 E. 3. 55. In dower, it is a good counterplea, to ſay, that the tenant entred by her huſband.

5 E. 3. 38. 6 E. 3. 13 E. 3 Vouch. 7. 32 E. 3. ibid. 99. 7 H. 4. 11 H. 4. 21 22 H. 6. 19. It is a good counterplea of the voucher, to ſay, that the tenant hath formerly prayed in aid of him, in reſpect of the delay.

In all caſes, where one doth vouch out of common courſe, there the tenant ought to ſhew cauſe.

And whenſoever the tenant cannot be admitted to his voucher without ſhewing of cauſe, there by the common law the demandant may counterplead the cauſe.

21 E. 3. 37. 25 E. 3. 53. 40 E. 3. 14. 41 E. 3. 21. 44 E. 3. 38. 38 E. 3. 4. 29 E. 3. 29. 32 E. 3. Vouch. 96. 10 H. 7. 21, 22. 16 H. 7. 13. 43 E. 3. 19. When one voucheth himſelf, for ſaving of his eſtate tail; or when he voucheth himſelf as heir, and his brother as tenant in borough Engliſh, becauſe it is out of common courſe, the tenant muſt ſhew cauſe, and the demandant ſhall have a counterplea to the cauſe.

In a *præcipe*, the tenant vouched two brethren as one heir, and that the youngeſt was within age; and becauſe it was out of common

mon courſe, he was ruled to ſhew cauſe; and ſhewed, that the father was ſeiſed of lands in gavelkinde, and that the ſame deſcended to them, and the demandant counterpleaded the cauſe.

So it is, if a *præcipe* be brought by four, and two be ſummoned and ſevered, the tenant cannot vouch them that be ſummoned and ſevered, without ſhewing cauſe for the reaſon aforeſaid; and the cauſe being ſhewed, the demandant ſhall counterplead the ſame. 4 E. 3. 13. 11 H. 4. 16. 21. 48.

In a *præcipe* againſt two they cannot vouch ſeverally without ſhewing of cauſe, becauſe it is out of common courſe, that jointenants ſhould vouch ſeverally without ſhewing of cauſe: which cauſe the demandant ſhall counterplead by the common law: and ſo in all other caſes, whereof there are plentifull authorities in our books. 42 E. 3. 16. 3 E. 3. 8. 12 H. 7. 2, 3. 3 E. 3. 38. 8 E. 3. 61. 17 E. 3. 61, 62. 25 Aſſ. Pl. ult. 31 E. 3. Vouch. 24. 44 E. 3. 18. 14 H. 6. 10.

See more of this matter in the firſt part of the Inſtitutes, cap. Garrantie.

CAP. XLI.

DE ſerements des champions (1), *eſt iſſint purview: pur ceo que rarement avient que le champion le demandant ne ſoit perjure en ceo quil jure, que il ou ſon pier veiſt la ſeiſin ſon ſeigniour, ou de ſon auncеſtour, et que ſon pier luy commande a faire la darreign'* (2), *que deſormes ne ſoit le champion le demandant conſtreint a ceo jurer* (3), *mes ſoit le ſerement garde en touts ſes autres points.*

TOUCHING the oaths of champions, it is thus provided, becauſe it ſeldom happened, but that the champion of the defendant is forſworn, in that he ſweareth, that he or his father ſaw the ſeiſin of his lord, or his anceſtor, and that his father commanded him to dereign that right; that from henceforth the champion of the demandant ſhall not be compelled ſo to ſwear: nevertheleſs his oath ſhall be kept in all other points.

At the common law none could be a champion for the demandant, but ſuch an one, as either himſelf ſaw, or heard his father ſay, that he ſaw the ſeiſin of the demandant or his anceſtor, and that his father commanded him to teſtifie the right, and that this was true, he took a corporall oath: but oftentimes the demandants ſeiſin was ſo ancient, as ſeldome any man could take that oath, and yet in theſe caſes, champions in thoſe times took the oath, though they knew it not, either *ex viſu*, or *ex auditu*, *&c.* and therefore as this act ſaith, were perjured. Glan. li. 2 c. 3.

(1) *Des ſerements des champions.*] Champion, *campio dicitur à campo*, becauſe the combat was ſtrucken in the field, and therefore is called campfight, and he muſt be *liber homo*, a free man.

This triall by champion in a writ of right hath been anciently allowed by the common law, and the tenant in a writ of right hath election either to put himſelfe upon the grand aſſiſe, or upon the triall by combat by his champion with the champion of the demandant, which was inſtituted upon this reaſon, that in reſpect the tenant had loſt his evidences, or that the ſame were burnt or imbezeled, or that his witneſſes were dead, the law permitted him to try Bract. l. 5. f. 344. 9 H. 3. Flet. l. 6. cap. 9. in fine.

try it by combat between his champion, and the champion of the demandant, hoping that God would give victory to him that right had, and of whose party the victory fell out, for him was judgement finally given, for seldome death ensued hereupon (for their weapons were but batounes) victory only sufficed.

Brac. l. 3. f. 141. b. 4 E. 3. 41. 17 E. 3. 2. 29 E. 3. 12. 30 E. 3. 20. 9 H. 4. 3. 1 H. 6. 6. 9 E. 4. 35. 19 H. 6. 35. 21 H. 6. 4. 11 E. 4. 7. 13 El. Dier 301. See the first part of the Inst. sect. 489 & 514.

Now concerning the oath of the champions, and the solemne manner and order of proceeding therein, and between what parties triall by battell should be joyned, you may reade in the statute of W. 2. cap. 41. and at large in our books; and the oath of the champion, as well of the tenant as of the demandant continued since this statute, followeth in these words:

Heare this you judges, that I have this day, neither eate, drunke, nor have upon me either bone, stone, ne grasse, or any inchauntment, sorcery, or witchcraft, where through the power of the word of God might be * inleased or diminished, and the Devils power increased, and that my appeale is true, so helpe mee God and his Saints, and by this booke.

* Or the French word, enlarge, i. increased, or enhanced.

The law doth allow a triall by battell in another case, and that is in case of life in an appeale of felony, the defendant may choose either to put himselfe upon the country, or to try it by body to body, that is by combate between him and the plaintiffe, but there the parties themselves shall fight.

Bract. l. 3. f. 136. b. Mirror, c. 1. § 3. Flet. l. 1. c. 32. Bract. l. 3. f. 121, 142. Britt. 41. fo. Brita ubi supra. Mir. c. 3. ordinatio pugnantium.

And it appeareth by our auncient authors, *Quod si appellatus se defenderit contra appellantem tota die usque horam qua stellæ incipiunt apparere, tunc recedat appellatus quietus de appello.*

And in case of the writ of right, the champions are not bound to fight but untill the starres appeare, and if the champion of the tenant can defend himselfe untill the starres appeare, the tenant shall prevaile, for they shall combat but once, and it is sufficient for the tenant to defend being in possession.

Mirror, Britton, Britton, Brita } ubi supra.

The judges of the court of common pleas are judges of the battell in a writ of right, and the judges of the kings bench in an appeale of felony. But if the cause of appeale be not determinable by the common law, but before the constable and the marshall according to the civill law, there the constable and marshall are judges.

17 H. 6. 26. Rot Vasc. 9 H. 4. m. 14. 19 E. 2. Cor. 385. 13 R. 2. c. 2. 5 Mar. tit. Batt. Br. 15. Dier 13 El. ubi supra. * 20 E. 4. 6.

But this triall in an appeale at the common law of later times seldome come in use, for that the appellant procures the appellee to be indicted, and then he cannot try it by battell: * but if the indictment be insufficient, then the defendant may try it by battell.

Mirror, c. 3. ordinatio pugnantium.

Now the auncient law was, that the victory should be proclaimed, that he that was vanquished, should acknowledge his fault in the audience of the people, or pronounce the horrible word of *craven* in the name of recreantise, &c. and presently judgement was to be given, and after this the recreant should *amittere liberam legem*, that is, he should become infamous, and should not be accounted in that respect *liber et legalis homo*, and therefore could not be of any jury, nor give testimony as a witnesse in any case, because he is become infamous, and of no credit: and this doth notably appeare in an ancient record, where the case was, that battell being joyned in a writ of right of advowson, in *anno* 55 H. 3. before the justices in eyre in the county of Northampton, and the champions combating, Philip le Pugil champion for one of the parties was vanquished, and thereupon proclamation made accordingly:

Rot. Pat. anno 55 H. 3. m. 3. *Pugil* a champion.