

C A P. V.

ET dauter part le roy voit que le chauncellor et les justices de son bank (1) luy suivent, issint que il eyt tous jours pres de luy ascun sages de la ley, que sachent les besoignes (2), que veignent a la court ducement deliverer a tous les foits que mestier serra.

AND on the other party, the king will, that the chancellor and the justices of his bench shall follow him, so that he may have at all times near unto him some sages of the law, which be able duly to order all such matters as shall come unto the court at all times, when need shall require.

The true causes wherefore the chancellour followed the kings court were first, that the great seale is *clavis regni*, and in the custody of the chancellour, and meet it was, that the king should have the key of his kingdome about him.

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2. That *curia cancellariæ*, was *officina justiciæ*; for in those dayes not only originall writs *in regist' cancellariæ*, but all commandements upon any occasion for the safety of the realme, or the good government thereof were by writs, and passed under the great seale: and therefore necessary in those dayes, that the chancellour, having the custody of the great seale, should be about the king at all times; and this is the cause that the court of chancery cannot be adjourned.

3. The stile of the court of chancery is *coram domino rege in cancellaria*. But where some hath supposed, that at the making of this statute the chancellour held a court of equity, and that the judges in this act named attended on the king to decide matter of law, and the chancellour attended on him to decide matter of equity, it is mainly opposed, that at this time the chancellour had no court of equity, but onely a court of record of ordinary jurisdiction, according to the course of the common law. Master Lambert that was a master of the chancery, and had the keeping of the records of the Tower, and had abridged many of the principall of them (which I have seen) and was well learned, and besides a great searcher of antiquities, in his treatise of the jurisdiction of courts saith, that he could not find that the chancellour held any court of equity, nor that any causes were drawne before the chancellour for help in equitie before the time of Hen. 4. in whose dayes, by reason of the intestine troubles, feoffments to uses did first begin, as some think, or else did first grow common and familiar, as all men must agree: so he. And he that advisedly reads our ancient authors, which speak of the court of chancery, they all speak of the ordinary jurisdiction of the chancellour, but none of them of any court of equity.

Also the booke called the *Diversitie of Courts*, written in the reigne of Ed. 3. treateth of the jurisdiction of the chancellour according to his ordinary power, but nothing of that which he holdeth in causes of equitie. Neither shall you find in any booke case, or reports of the law, any mention made of any court of equity before or in the reigne of H. 5. and yet all of them speake of the ordinary power

Glavile, Braet. Brit. fol. 12. Flet. lib. 2. cap. 12, 13. Mirr. cap. 2. § 13. & cap. 4. de ordinance, de judgement & jurisdiction. 2 E. 3. 20. 10 E. 3. 59, 60. 13 E. 3. prohibit. 1. 24 E. 3. 65.

26 E. 3. 61. 42
 aff. 5. 43 aff.
 35.
 * 31 H. 6. sub
 pœna, 19. & 23.
 35 H. 6. ibid.
 22. 37 H. 6. 35.
 5 E. 4. 7. 7 E.
 4. 24, 29.
 16 E. 4. 4.
 22 E. 4. 6.
 7 H. 7. 2. 14 H.
 8. 7, 9. 2+. b.

power or jurisdiction of the chancellor. But in the reigne of H. 6. and E. 4. cases have been reported where the chancellor hath heard some few causes in equity by English bill, and most of them concerning uses of lands. It is true, that the chancellor said in 2 E. 3. in the court of chancery at Westminster, in Theoband de Verons case, in a case that concerned livery, which belonged to his ordinary power, that the court of chancery is a court of equity, where we grant a writ to every man that comes to demand his heritage, according to that which is found by office, &c. So he. And in that extent of equity, all the courts at Westminster are courts of equity, viz. to administer justice according to the common law; and thereupon it is said in 10 E. 3. that the chancery and the kings bench is one place or court; but here it is to be noted, that at this time, and before, the court of chancery was a settled court in a certaine place, to the great benefit and ease of the subject.

Sir Robert Parning, that was lord chancellor in 14 E. 3. and had been chiefe justice of the common pleas, would in the terme time come and sit in the court of common pleas to heare matters in law debated and resolved, when he was lord chancellor, and speak to them himselfe, as it appeareth, Hillar. 17 E. 3. fol. 14. b. & Trin. 17 E. 3. 37. b. and in both these termes Sir John de Stonore knight was chiefe justice of the court of common pleas.

And Sir Robert de Thorpe knight, being chiefe justice of the common pleas, was made chancellor 26 Martii, 45 E. 3. and yet in Michaelmas terme following he sate in the court of common pleas, and spake to matters in law, Mich. 45 E. 3. fol. 12. b. Trin. 45 E. 3. 19, 22, 23, b. 24, 25, 26, 27, 28. William de Finchden then being chiefe justice of the court of common pleas.

So Sir Knivet knight, being chiefe justice of the kings bench, was made chancellor of England, 5 Julii, 46 E. 3. and in 47 E. 3. fol. 13. b. Finchden chiefe justice of the common pleas in a matter of law depending in that court said, that he would conferre with the chancellor and the justices of the kings bench, and in the end judgement was given by the advice of the chancellor (viz. Knivet) and all the judges of the realme. In 49 E. 3. 4. b. Knivet chancellor argueth a matter in law, and giveth judgement.

Also peruse all the acts of parliament printed and not printed, and you shall find none that giveth him power to hold any court of equity, where some have thought, that the statute of 36 E. 3. cap. 9. doth give the chancellor power to draw men before him for reliefe in equity, but that statute without question referreth to his ordinary power; for thereby it is provided, that if any man, that finds himselfe grieved contrary to the articles above written, or others contained in divers statutes, will come into the chancery, or any for him, and thereof make his complaint, he shall presently there have remedy by force of the said articles and statutes, without pursuing elsewhere to have remedy; that is, the party grieved shall have an originall writ in the chancery grounded upon these statutes for his reliefe, although no certaine remedy be expressed in the statutes without pursuit in parliament, which act is but a declaration of the common law, as oftentimes hath been observed before, and giveth no shadow to the chancellor of any absolute power.

Vide Rot. parliament, 45 E. 3. nu. 8.

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If you look into the parliament rolls: the first decree in chancery that I find made by the chancellor was in 17 R. 2. John de Wyndesfor complaineth in parliament against Sir Ri. le Scrope, and requireth to be restored to the manors of Rampton, Cotenham, and Westwike in Cambridgeshire, the which were adjudged and ordered to him by the kings award, then being in the possession of Sir John Lisley, and now withholden by Sir Richard le Scrope, who by champerty bought the same: briefly, the case, as in the parliament roll it appeareth, was this: upon the petition of John de Wyndesfor against Sir John Lisley for the said manors, they compromitted the matter to the kings order and award; the king committed the same to the councell, they hearing the same, doe order and adjudge the matter in controversie for Sir John de Wyndesfor under the privie seale, and sent a warrant to Arundell archbishop of Canterbury, then chancellor of England, to confirme the kings award made by advice of his councell, who forthwith without more adoe confirmed it by his decree, and granted an injunction under the great seal against Sir John Lisley. After Sir John Lisley by petition to the king requireth that his title to the said manors might be tried and determined as it ought by the common law, notwithstanding any former matter; the king by privie seale giveth warrant to the chancellor to make a superedeas, which the chancellor without any sticking at it did by privie seale: after which Sir Richard le Scrope purchased the said manors: upon the deliberate hearing of the whole matter by the lords of parliament, it was resolved, that the purchase of the said manors was no champerty, and it was adjudged, that Sir John de Wyndesfor should take nothing by his sute, but stand to the common law, and that Sir Richard le Scrope should goe without day.

Rot. parliament.
17 R. 2. nu. 10.

It is thought, that this court of equity began under Henry Beauford, sonne of John of Gaunt, that great bishop of Winchester, afterwards cardinall in the reigne of Hen. 5. and in the beginning of H. 6. and increased while John Kemp, bishop of York and cardinall was lord chancellor in the 28 yeare of H. 6. But it increased most of all, when Cardinall Wolsey was lord chancellor of England, *anno* 8 H. 8. and continued untill the 21 year of the same king: of whom the old saying was verified, that great men in judiciall places will never want authority. But the jurisdiction of this court belongeth to another treatise; and therefore thus much, which was pertinent to the understanding of this branch of this act, upon this just occasion shall suffice: only thus much for the honour and antiquity of that court, you reade, that in the time of king Alfred (who began to reigne *anno Domini*, 872. and reigned 29 yeares and six moneths) he gave a pardon to Wolston, and that it was inrolled in the court of chancery, which record Wolston vouched.

Mirror, c. 5. § 1.
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(1) *Et les justices de son bank.*] The causes of their attendance on the king are afterwards in this chapter set downe; therefore we purposely omit to speak of this high and honourable court, but referre the same to the treatise of the jurisdiction of courts, onely this may be observed, that albeit this court and the chancery became to have certaine and settled places about one time, yet the returne of writs *coram rege* are still *coram nobis ubicunque fuerimus in Anglia*.

Flet. lib. 2. cap. 2.

See more before
in this chapter
concerning the
chancery.
20 E. 3. 59, 60.

Flet. ubi supra.
17 E. 1. coram
rege.

(2) *Issint que il eyt tous jours pres de luy ascun sages de la ley, que sachent les besoignes, &c.*] This clause referreth to the judges of the kings bench, who are termed *sages de la ley*, and which could decide the businesse which came to the court, and duly deliver justice to all when need should be. This proveth also, that at this time the chancellour held no court of equity; for the sages of the law (the judges of the kings bench) were duly to deliver justice to all: and hereunto may be applyed the said booke in 10 E. 3. that the court of chancery and of the kings bench was but one place (that is) to be guided by one and the same law.

At the making of this act John Langton bishop of Chichester was lord chancellour of England; and at this time Sir Roger Brabazon knight, a man excellently learned in the lawes of the realme, was chiefe justice of the kings bench, and three other learned judges, here called *sages de la ley*, were his companions: these in Fleta and ancient records are called, *locum tenentes regis*.

C A P. VI.

DESOUTH le petit seale (1), ne
issera desormes nul briefe que
touche le common ley.

THERE shall no writ from hence-
forth, that toucheth the com-
mon law, go forth under any of the
petty seals.

The print that saith [*de tous les privie seales*] is not according to the record.

For the better understanding of this act, it is to be understood, that at the making of this statute, the king had three seales: first, *magnum sigillum*, the great seale; 2. *parvum sigillum*, the little or petit seale; 3. *signettum*, the signet.

2 E. 3. cap. 8.
rot. parliam.
50 E. 3. nu. 10.
11 R. 2. cap. 11.
12 R. 2. cap. 2.
cap. 11. Flet.
lio. 2. ca. 13.

The great seale is in the custody of the lord chancellour or lord keeper of the great seale; and there is a speciall officer in the court of chancery, called *sigillator*, who hath the sealing of writs, and other things that passe the great seale. *Parvum sigillum*, the little or petit seale, after this time called the privie seale: this seale is in the custody of the clerke of the privie seale, sometime called keeper of the privie seale, after called lord privie seale, of whom Fleta saith thus, *Custodi sigilli privati associantur clerici honesti, et circumsperti domino regi jurati, qui in legibus et consuetudinibus Anglicanis noticiam habeant plenam, quorum officium sit supplicationes et querelas conquerentium audire et examinare, et eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per breviam regis*. By this ancient writer three things are to be observed:

1. That the clerkes, associates to the keeper of the privie seale, are those that we now call the masters of requests, *magistri à libellis supplicum*, whose office is here lively purtrayed out, *viz. quorum officium sit supplicationes et querelas conquerentium audire et examinare*.

2. Of what quality ought these masters of the requests to be? They must have three qualities: 1. they must be *honesti et circumspēcti*: 2. *domino regi jurati*: 3. *qui in legibus et consuetudinibus Anglicanis notitiam habeant pleniorē.*

3. To what end did they heare and examine the matters contained in these petitions? *Ut eis (id est) conquerentibus super qualitatibus injuriarum ostensarum debitum remedium exhibere per breve regis.* So as their office was, that being learned in the law, they should direct such as petitioned to the king, to take their remedy by the kings writ, that is, by originall writ in the chancery. And hereby it appeareth, that this act is but in affirmance of the common law; for no writ before this act could have been sealed by the privie seale.

Sigillum regis generally spoken is the great seale; and so is Bracton to be understood, where he saith, *si aliquis accusatus fuerit vel convictus, quod sigillum domini regis falsaverit, consignando inde chartas, vel brevia, &c. pro voluntate regis judicium sustinebit.*

Bract. lib. 3. fol. 119.
Brit. fo. 10. b. acc.

And the Mirror yet more plainly, *Inter les exceptions al poer del judge; si le commission (i. le briefe) ne soit seale le roy de sa chancery, cor al privie seale le roy, &c. ne auter forsque solement al seale, que est assigne dēe conue de la cominaltie del people, et nosmement en jurisdiccions et breves originals, nestoit a nul obeyer, &c.* And in another place he saith, *Et issint ordeineront nous auncients un seale, et un chancellour pur le garder, et pur doner briefes remediels a tous sauns danger, &c. per cel seale solement est jurisdiction assignable a tous pleintifes sans difficulte, &c.*

Mirr. cap. 3. cap. Except al poier de le judge. cap. 4. Ordinance de judgement.

There are foure clerkes of the privie seale, who give their attendance on the lord privie seale: the principall office and charge of the lord privie seale and of his clerkes is about such things as passe by bill signed, and are to goe to the great seale: of this you may reade in the statute of 27 H. 8. cap. 11. & lib. 8. fol. 18. *in casu principis.*

(1) *Desouth le petit seale.*] This act saith not, that all writs which concerne the common law shall passe under the great seale; but no writ shall passe under the privie seale which touch the common law: for it is to be knowne, that the courts of the kings bench and the common pleas had at the making of this statute severall seales, whereby they sealed judiciall writs: as the seale belonging to the court of kings bench is in the custody of the chief justice; and so likewise the seale belonging to the court of common pleas is in the custody of the chiefe justice of that court; and the seale belonging to the court of exchequer is in the custody of the chancellour of that court. *Ad cancellarium scaccarii pertinet custodia sigilli regis. Officium cancellarii est sigillum regis custodire, simul cum controrotulis suis pro proficuo regni.* And these seales are incidents inseparable to the said courts for the sealing of all judiciall writs, &c. which, for administration of justice distributive to all men, are respectively under the said seales, and without which the courts cannot administer justice: and therefore the profits coming of these seales have been letten and demised of ancient and later times, but the seales themselves were never demised, or letten, nor could be, nor any other keeper appointed to be keeper of them, then hath been time out of mind.

Lib. 2. fol. 17.
Lanes case. Occam. cap. de officio cancellarii.
Flet. li. 2. c. 25.
Rot. pat. an. 24.
E. 3. part. 2. m. 12. ibid. 30 E. 3. part 3. m. 12.

No *essoine de servitio regis* can be warranted by the king under his privie seale, nor protection granted under the privie seale, but

34 H. 6. 1.
35 H. 6. 2.
Lib. 11. fo. 92.
in le countee de Devons case.

4 E. 4. 16. 32.
40. 46 E. 3.
petit. 19. 48 E.
3. 30 F.N.B. 85.
Pl. com. fol. 20.
Duer, 5 Mar.
101. b. 7 El.
232. b.

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both of them under the great seale, because they tend to the great delay of justice, if they be not duly obtained: and therefore the law doth require the great seale in these cases. But a warrant of the king under the privie seale to issue out mony out of his coffers is sufficient; because it concerneth but a chattell in possession. And in matters of small moment, and which can work no delay to the subject, the privie seale is sufficient; as to grant a *superfedeas* of a proccesse in the kings owne case, or to grant a *nisi prius* where the king is party, or to allow a plea against the king, to cancell a recognizance made to the king, to discharge a debt, or the like.

At the making of this statute the king had another seale, and that is called *signettum*, his signet. This seale is ever in the custody of the principall secretary. And there be foure clerkes of the signet, called *clerici signetti* attending on him. The reason wherefore it is in the secretaries custodie, is, for that the kings private letters are signed therewith. Also the duty of the clerk of the signet is to write out such grants or letters patents as passe by bill signed (that is, a bill subscribed with the signature, or signe manuell, or royall hand of the king) to the privie seale, which bill being transcribed and sealed with the signet is a warrant to the privie seale, and the privie seale is a warrant to the great seale. Such was the wisdom of prudent antiquity, that whatsoever should passe the great seale should come through so many hands, to the end that nothing should passe that great seale, that is so highly esteemed and accounted of in law, that was against law, or inconvenient; or that any thing should passe from the king any wayes, which he intended not, by undue or surreptitious meanes.

F.N.B. fol. 85.

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Hilli. 1 E. 4.
rot. 14. indorf.
in Scaccari,
Petilian case.
Lib. 11. fol. 92.
in le countee de
Devons case.
Vid. 42 E. 3.
ca. 3.

And of the signet the law in some cases taketh notice; for a *ne exeat regnum* may be by the kings writ under the great seale, or by commandement under the privie seale, or under the signet; for in this case the subject ought to take notice as well of the privie seale and signet, as of the great seale: for this is but a signification of the kings commandement, and nothing passeth from him. But a warrant under the privie signet to issue any treasure is not sufficient, but there it ought to be either under the great or privie seale. The mischief before this act was not concerning writs under the signet; for that was not attempted, but under the petit or privie seale, which this act ousteth as a thing done against *Magna Charta*, cap. 29. where it is said, *nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terræ*. And to grant writs under the privie or petit seale was *contra legem terræ*.

C A P. VII.

LE constable du chastle de Dover (1) ne plede desormes a la port de chastle nul plee forreine du countie, que ne touche la gard du chastle. Et le dit constable ne distreiner (2) les gents du cinque ports, a pleader ailours ne en auter manner que ils devoient, selonque la forme des charters que ils eunt des royes, de leur franchises anciens affirmes per le grand charter.

THE constable of the castle of Dover shall not from henceforth hold any plea of a foreign county within the castle gate, except it touch the keeping of the castle. Nor shall the said constable distrain the inhabitants of the cinque ports to plead any otherwhere, nor otherwise, than they ought after the form of their charter obtained of the king for their old franchises confirmed by the great charter.

(Regist. 135.)

(1) *Constable du chastle de Dover.*] It is to be knowne, that he that is the constable, or lieftenant, or keeper of the castle of Dover, is also the warden of the cinque ports. And the kings writs directed to him, are directed, *Rex, &c. B. constabulario castri sui de Dover, et custodi quinque portuum suorum.* But he is commonly called lord warden of the cinque ports. The cinque ports be, Hastings, Dover, Hithe, Runney, and Sandwich, whereunto Winchelsey and Rye (as most of note) and other townes be adjoyned.

F.N.B. 240. b.
Regist. fol. 132.
F.N.B. 240.

The constable of Dover and lord warden hath two jurisdictions, *viz.* 1. the authority of an admirall; and the speciall charge is committed to one that is not onely of great prowesse, wisdom, and experience in military knowledge, and specially in sea-service; but also of approved trust and loyalty, because, in regard of their situation, they require the vigilant care of their particular admirall, and his residence thereupon, in respect of the danger of the invasion of enemies by reason of the narrownesse of the sea there, and that this realme was never conquered by any enemy, but landing at one of these five ports; as by the Roman at _____ by the Saxon at _____ and by the Norman at Hastings. But with this jurisdiction our statute dealeth not withall,

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2. This constable of the castle of Dover mentioned in our act hath a jurisdiction to hold plea by bill concerning the guard of the castle, &c. according to the course of the common law, and of this jurisdiction doth our statute speak.

Braet. lib. 5. fol. 411. b. Flet. lib. 6. cap. 36. 49 E. 3. 24. 12 E. 4. 17, 18. 1 E. 3. 1. b. 30 H. 6. 5. 1 E. 4. 10. 21 E. 3. 49. F.N.B. 132. 33 E. 3. Jurisd. 60. 11 R. 2. brev. 636.

And it is to be knowne, that of such things, whereof the constable of Dover and lord warden hath jurisdiction, he is the immediate officer to the court, and, as it hath been said, writs shall be directed to him, as in all reall actions &c. for land within the cinque ports. And true it is, that they of the cinque ports have great liberties and priviledges, in respect of their necessary attendance in the ports for the defence and safety of the realme: but yet the cinque ports are not exempted out of the county, for divers causes:

1. The

Trin. 42 Eliz.
coram rege in
appeale.
19 H. 6. 1, 2.

Vide a notable
Record, Pasch'
30 E. 1. coram
rege, Kane'.

50 E. 3. 5.

6 H. 7. 12.
33 H. 6. 33.
30 H. 6. 21.
12 E. 4. 16.
45 E. 3. jurif.
53. 40 E. 3. 24.
49 E. 3. 24.
50 E. 3. 5.
14 H. 4. 20.
Braet. lib. 5. fol.
411. Flet. 1. b. 6.
cap. 36. Dyer,
23 El. 376.
30 H. 6. 6.
49 E. 3. 24.
33 E. 3. jurifd.
60. diversity de
courts. cap.
5. Ports.
Brook, Cinque
ports 25.
30 H. 6. 6.
Pl. com. 37. b.

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See the termes
of the law, verb.
Cinque ports.

1. The constable of Dover hath no generall jurisdiction within the cinque ports, but it is limited; for example, if a man be murdered in any of the cinque ports, the wife shall have an appeale against the murderer directed to the sherife of the county, and he shall execute the writ within the cinque ports, for the constable hath no jurisdiction to hold plea thereof, as it was resolved, Trin. 42 Eliz. in an appeale brought by Dorothy Waes against Baynes, for the murder of her husband at Feversham in the county of Kent. And so it is, if he be *in custodia marescalli*, the appeale may be brought by bill against him for murder in any of the cinque ports. Also if the constable of Dover hold plea of a forraine plea, contrary to the purport of this statute, an action upon the statute doth lye against him, and the writ may be directed to the sherife of the county, and he may serve it within the cinque ports.

2. If a stranger doth trespasse, &c. in the cinque ports, &c. the suit shall be by writ, lest the trespasse should be unpunishable.

3. If a *præcipe* be brought against one for land within the cinque ports, and he appeare and plead to it, and judgement be given against him in the court of common pleas, this judgement shall bind him for ever; for the land is not exempted out of the county, and the tenant may wave the benefit of his priviledge.

4. The priviledge extendeth not but to certaine particulartownes, whereof the kings courts cannot judicially take notice.

But otherwise it is of a judgment given in the common pleas in a *præcipe* of lands that lye in any of the county palatines of Chester, Lancaster, and Durham; for they are exempted from the jurisdiction of the kings courts, and within them are *jura regalia*, and plenary jurisdiction, and so knowne to the kings courts: for they take notice of all the counties of England, because they be immediate to them for direction of writs: and therefore although the tenant doth admit the jurisdiction of the court in those cases, the judgement against him for many of such lands is void. And thus are the doubts in some books in this and other like cases fully resolved.

It is further to be understood, that the maior and jurats of the severall cinque ports have power to hold pleas, &c. and upon their judgement no writ of error out of the chancery doth lye returnable in the kings bench, nor writ of false judgement returnable into the court of common pleas: but by the franchise and custome of the cinque ports such an erroneous judgement shall be by bill, in the nature of a writ of error, examined *coram domino custode seu gardiano quinque portuum, apud curiam suam de Shipway*. And if the judgement be erroneous, it shall be reversed by the warden of the cinque ports, and the maior and jurats shall be fined, and the maior removed from his place, and yet the court is a court of record.

And this kind of jurisdiction could not begin by letters patents, but by parliament. And I find in the book of Domesday of the liberties and franchises granted to the cinque ports, as granted in the reigne of king Edward the Confessour.

And this manner of reversing of a judgement, and the judgement thereupon, is the onely phenix of the law for three respects:

First, that a judgement in a court of record shall be reversed or affirmed without the kings writ purchased out of the chancery.

Secondly,

Secondly, that they being judges of record shall be fined, where in a writ of false judgement the suiters shall be but amerced.

And thirdly, that the maior that gave the judgement shall be removed from his place. But our act extends only to courts holden before the constable in our act mentioned, and not to the court holden before the maior and jurats. Rot. cart. 1 Johan. part. 2. m. 12. 2. Johan. m. 51. Rot. clauf. 8 H. 3. & 10 H. 3. in dorf. m. 18. Pasch. 9 E. 1. *coram rege* Kanc' Rot. 35. Rot. Parliam. 18 E. 1. fol. 6. Hill. 21 E. 1. rot. 4. Pasch. 21 E. 1. fol. 4. Rot. Vasc. an. 22 E. 1. nu. 2, 3, 7. 13. Rot. clauf. 23 E. 1. Rot. pat. 34 E. 1. m. 25. Rot. parliam. 13 E. 3. nu. 11. Pat. 33 E. 3. m. 6. Rot. brevium, 1 E. 3. part. 1. Rot. clauf. 10 R. 2. bis. Rot. clauf. 8 H. 6. m. 15.

He that desires to reade more of the liberties and priviledges of the cinque ports, he may reade the records (amongst many others) next before cited.

(2) *Et le dit constable ne distreinerà, &c.*] This branch is evident; and therefore without further exposition, with one record of parliament I will conclude this chapter.

The commons of the county of Kent complained against the officers of the castle of Dover, for arresting them by their catchpoles to answer before them, whereunto they were not bound. The answer hereunto was, that the officers should have no jurisdiction out of the fee of the honour and castle of Dover, nor should make no proceffe by *capias* out of the liberties of the cinque ports.

Rot. parliament.
nu. 135.

C A P. VIII.

LE roy ad grant a son people, que ils eyent election de leur viscount en chescun countie, ou viscount nest my de fee, sils voilont.

THE king hath granted unto his people, that they shall have election of their sberiff in every shire (where the shirivalty is not of fee) if they list.

(9 Ed. 2. stat. 2. 14 Ed. 3. stat. 1. c. 7.)

Of ancient time before the making of this act such officers or ministers as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county, and they had a great interest in just and due exercises of their severall places, were by force of the kings writ in every severall county chosen in full or open county by the freeholders of that county: as before the institution of justices of peace there were *conservatores pacis* in every county, whose office (according to their names) was to conserve the kings peace, and to protect the obedient and innocent subjects from force and violence. These conservators by the ancient common law were by force of the kings writ chosen in full and open county *de probioribus et potentioribus comitatus, &c.* by the freeholders of the county; after which election so made and returned, then in that case the king directed

Vid. inter leges
Sancti Edwardi,
Lamb. fol. 136.
Hovenden annal.
cap. 35.
F.N.B. 163. k.

Rot. pat. an.
5 E. 1.

This Bretun was lord of the manor of Wichingham in No: ff.

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Regist. 177.
F.N.B. 163 k.
4 ff. 4 41.
F.N.B. 164. c.
Regist.

3 E. 2. Linc. de
Vicomitibus 14 E.
3. cap. 7. 23 H.
6. ca. 8. 12 R. 2.
ca. 3. Fortescue,
ca. 24. & 26.
W. 1. cap. 5.

directed a writ to the party so elected. *Edwardus Dei gratia rex Angliæ, dominus Hiberniæ, et dux Aquitaniæ, dilecto et fideli Johanni de Bretun salutem. Cum vicecomes noster Norff. et Comitatus ejusdem comitatus elegerunt vos in custodem pacis nostræ ibidem, vobis mandamus quod ad hoc diligenter intendatis, prout idem vicecomes vobis scribi faciet ex parte nostra, donec aliud inde præceperimus. In cuius rei, &c. datum, &c. apud Cestr'. 2. die Sept. anno regni nostri 5.* And so it was then; and yet is of coroners to be chosen in full and open county by the freeholders of the county by force of the kings writ: and though the words of this writ be *de assensu comitatus*, and of the other, *per communitatem ejusdem comitatus*, and by this act, by the people, yet ought the election to be by the freeholders of the county: and so it was then, and yet is of the knights of the shires for the parliament, and of the verderors of a forest.

And likewise it was of ancient time of the sherife of the county, and restored by this act to the freeholders of the county; but this is altered by divers acts of parliament, *viz.* the act of 9 E. 2. *Lincoln de vicomitibus*, 14 E. 3. 12 R. 2. and 23 H. 6. The knights and burgeses of parliament were then, and yet are eligible as daily experience teacheth. Now because that these and others were eligible, the statute of W. 1. provideth, that elections should be freely and duly made without any disturbance, as by that act appeareth. See hereafter cap. 13.

But I could not let passe a resolution of all the judges of England in 34 H. 6. which grew upon this occasion upon a reference by the kings privie councill to Sir John Fortescue, and Sir John Prisot chiefe justices, and to the rest of the justices concerning a sherife constituted by the king himselfe, it is thus in the councill booke recorded, 3 Martii anno 34 Hen. 6. as followeth in these words:

Sherife.

Upon a demaund that my lord chancelor made to the chiefe juges, and to the remnant of the juges, howe that the kings lawes, neyther justice might not be executed in Lincolnshire, bycause there was no sherrieffe there, and that the kinge by his letters patents under his great seale had deputed certaine men for to have be sherriefes there? what them seemed should be doon in this behalfe. So that the kings lawes and justice might ben executed in that shire, as it is executed in other shires of England.

The ij chiefe justices the same day came unto my lords of the kings counsil in the sterred chamber, and upon the abovesaid demaund sayde, that them seemed, and so it seemed unto the remnant of the juges, that the king did an errour, when that he made another person sherrieffe of Lincolnshire then was chosen and presented unto his highnes after the effect of the statut in such behalfe made.

And though that he that so was made sherrief wolde not take it vpon him, ought not to be so punished, and to make also great a fine for his disobeissance, as that yif he had be one of the iij. persons that were chosen to be sherriefs after the teneur of the statute.

And furthermore them seemed, that the king should have recours to the three persons that were chosen after the teneur of the statut, and make one of hem sherrief by letters patents beringe date ether at the day of thelection of hem, or els at Michelmas.

And

And though that sithence the said election any of hem have gete him an exemption, that he should not be made sherrieffe, yet them semeth that he should be charged to take the said office vpon him.

And furthermore them semeth, that yif none of the said iij. persons chofen be made, that then some other thrifty man dwelling in a foreine shire be entreted to occupie the said office for this yeare. And the next yeare, that in eschuing of such inconveniences, that the order of thestatut in such behalfe made be observed and kept.

To the king our souereigne lord, and to the lords spirituall and temporell of his most noble counsaill.

Besechith mekely your humble liegeman John Tempest knight, to graunt your letters under your privity seale to be made in forme following, and he shall pray to God for your most noble estate.

Henry, &c. To the tresorer and barons of our eschequer. Forasmuch as our trusty and welbeloued John Tempest knight, by us ordeyned and deputed to be sheriefe of Lincolnshire for this yere, hath for certaine causes for him alledged vtterly refused to take vpon him the charge of the said office, without that it like vs so to puruei for him, that he take no losse in the said office, like as we haue doon nowe in late yeres for othir that haue ben sheriefs of the said shire. We considering the hurts and manifold inconveniences that should ensue not only to us, but also to our subgites, namely, in letting of their suites at commune law, if the said shire should long stand destitute of a sheriefe; wol and by thadvice of our counsaill haue graunted to the said John, that he shall occupie the said office by approwment, and so accompte for this yere. And therefore we charge you, that in his accompt that he shalbe to yeilde unto us bycause of his said office, ye charge him not with the hoolle extent of the said shire, that is to say, of thees twoo fermes called *de reman' firmæ com' post terras dat'* and *firma com' numero*. And also of thees particular prouffites, called *de firmis balliuorum, auxilium vic' francipleg' certi fines*, issues, prouffites, nor none othir things by him to be reised by vertue of the sommons of the pipe, or of the grenewex in the said shire, saue onely of such parcelles as he with his true diligence shall arrere and gader. And that of all the remenant that shall come and grow vnto us of the said shire, ye vtterly and clerely discharge and acquite the said John Tempest knight sheriefe aforesaid by his othe, or by th'othe of his deputy sufficient accompting for him, withouten any issue, tryall, or auerrement betwix vs, and him to be had therein. Yeuen, &c.

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T. Cant'.

W. Ebor.

T. London.

J. Lincoln.

R. Salisbury.

R. York.

R. Sancti Johannis.

Stourton,

W. Faucomberge.

XIX. die Novembris, an. 34. apud Westm' in camera stellata rex Indorsament.
de avijamento consilii voluit, et mandavit, quod custos privati sigilli
sui literas sub eodem sigillo fieri faceret secundum tenorem infra scriptum
dominis se subscribentibus, ut patet attent' ut Henricus Ratford
† qui

qui fuit vicecomes anno præterito ejusdem com', et nonnulli alii vicecomites retroactis temporibus eodem modo habuerunt, et occupaverunt.

T. Kent.

Which abovesaid unanimous opinion, being the advised resolution of two such famous chiefe justices, and of all the judges of England, and finding it in the councill book, I thought fit to be published in such words, as it is there set downe, as a sure and just exposition of the statutes concerning the making of sherifes.

C A P. IX.

LE roy voet et commaund, que nul viscount, ne bailife, ne mitte en enquests, ne in juries plus des gents, ne auters ne en auter manner que il nest ordeine per estatute (1), et que ils mettent en tiels enquests (2) et juries le plus procheines (3), le plus suffisants, et meynes suspicious. Et que auterment le ferra, et de ceo soit attaint, rend' al plairtife ses damages au double (4), et soit en la greve mercie le roy.

THE king willeth and commandeth, that no sheriff nor bailiff shall impanel in inquests nor in juries over many persons, nor otherwise than it is ordained by statute; and that they shall put in those inquests and juries such as be next neighbours, most sufficient, and least suspicious. And he that otherwise doth, and is attainted thereupon, shall pay unto the plaintiff his damages double, and shall be grievously amerced unto the king.

(1 Inst. 158. a. 34 Ed. 3. c. 4. 42 Ed. 3. c. 11. Regist. 178, 179, 180. 13 Ed. 1. stat. 1. c. 38.)

r. part Institut.
sect. 234.

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Of the antiquity and right institution of the tryall by 12, and of the number of 12, &c. See the first part of the Institutes.

(1) *Ordeine per lestatute.*] That is, by the statute of W. 2. cap. 38. See the statute of 21 E. 1. *Vet. Magna Charta* 87. and see before in the exposition of the statute of W. 2. cap. 38.

(2) *Enquests.*] This act doth extend to all enquests *ex officio*, or for tryall of an issue between the king and the subject, or between party and party, also to all suits or proceedings, either criminall or civill, reall, personall, or mixt, publike or private, grand or petit, assises or enquests.

Vid. 7 E. 3. 26.
ois. 8 E. 3. 30.
Regist. 178, 179.
180. Fortescue,
cap. 27. F.N.B.
165. a and 166. d.
lib. 8. fol. 118.
Lonhams case.
See the first part
of the Institutes,
sect. 234. W. 2.
cap. 38. Magna
Charta, cap. 29.
Regist. 186. &
187.

(3) *Le plus procheine, &c.*] If the purview of this act were well executed, then were the right institution of tryall by juries observed; for then every juror must have two mosts, and one least, *viz.* most neere, most sufficient, and least suspicious. See the Register, and F. N. B. how the party griev'd may have remedy upon this statute, and that in writs of assise, attaints, and other actions, where there be juries at the first day, or when a *venire fac'* is awarded to the sherife to returne a jury, the demandant or plaintiff, the tenant or defendant may have a writ to the sherife to returne jurors according to this act, and if he doth not accordingly, an attachment lyeth against him. And where the party plead to issue,

issue, and suffer the jury to be sworne, or challengeth them, and tried indifferent, and passe against him; it is said, that he hath no remedy, but first to reverse the judgement by writ of attain, and then to take his remedy upon this statute. But see the statutes of 20 E. 3. cap. 6. and 34 E. 3. cap. 4. 42 E. 3. cap. 11. & 4 E. 3. cap. 11. & 5 E. 3. cap. 10.

(4) *Ses damages au double.*] That is double the value of the land, debt, damages, or other thing that he lost, or was barred of by reason of that verdict.

C A P. X.

EN droit des conspirators (1), faux enformers (2), et malveyes procurers (3) des douzeins (4), enquests, assises, et juries, le roy ad ordeine remede as plaintiffes per briefes de chancellerie. Et jademains voet le roy, que les justices de lune bank et de lautre, et justices d'assises prend' assignes, quant ils veignent en pais a faire leur office, de ceo facent leur enquests a chescun pleint sans briefe, et sans delay facent droit as pleintifes.

IN right of conspirators, false informers, and evil procurers of dozens, assises, inquests, and juries, the king hath provided remedy for the plaintiffs by a writ out of the chancery. And notwithstanding, he willeth that his justices of the one bench and of the other, and justices assigned to take assises, when they come into the country to do their office, shall, upon every plaint made unto them, award inquests thereupon without writ, and shall do right unto the plaintiffs without delay.

(Kel. 81. Regist. 188. Raft. 123, &c.)

(1) *Conspiratours.*] These are described by the statute of 33 E. 1.

Definitio de conspirat. 33 E. 2. Vet. Mag. Chart. 90. b.

(2) *Faux enformers.*] These are to be understood of imbracers, and under-hand instructers, and leaders of jurors returned, and albeit the matter which he enformeth be true, yet is he a false informer, because he doth it in an undue and unjust manner.

(3) *Malveys procurors.*] That is understood of such as use to packe juries by nomination, or other practice, or procurement.

(4) *Douzeins, duodene in leetis, &c.*] Note here this law beginneth with the inferiour, as douzeins in leets, and therefore the makers of the act doe particularize the rest, viz. inquisitions, assises, and juries.

F.N.B. 116. a.

(5) *Le roy ad ordeine remede per briefe de chancellerie.*] The ordinance here mentioned, whereby a writ is given against conspirators (which writ was framed *per Gilbertum de Rowberie clericum de concilio domini regis*, and allowed by authority of parliament) was enacted at the parliament holden an. 21 E. 1. Rot. 2. which ordinance you may reade in *Vet. Magna Charta*. But there it is set downe to be made in 33 E. 1. where in truth it was made in 21 E. 1. which errour there, and the mistaking of Richard Tottell the printer, in quoting 33 E. 1. to this branch (as if the makers of this act had been indued with a propheticall spirit) would in the next impression be amended.

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This Gilbert de Rowberie was one of the kings justices of his bench, as hereafter shall appeare. Vet. Mag. Chart. 111.

This

Regist.
F.N.B. 114,
115. &c. Stamford.
pl. cor. 172. &c.

27 aff. p. 59.
24 E. 3. 34.

43 E. 3. consp. 11.
4 H. 5. judgem.
220. Stamford. pl.
cor. 115. 198.
lib. 9. fol. 56.
Poulter's case.
5 E. 3. p. 10.
34 E. 3. cap. 8.
38 E. 3. cap. 12.
41 E. 3. 15.
Coram rege apud
Linc. Hill. 29 E.
1. rot. 19.
Secundum ordi-
nationem regis,
i. 21 E. 1. ubi
supra.

Gilbert de Row-
bery.
F.N.B. fol. 116.
k. 3 E. 3. 19.
8 E. 3. 18.
11 H. 4. 2.
22 R. 2. bre' 88.
18 E. 4. 1.
24 E. 3. 34.
Vid. 22 E. 3. 1.

This ordinance was but in affirmance of the common law; for the writ of conspiracy was maintainable both in cases criminall concerning life, and civill, as it appeareth in the Register and F.N.B. and plentifully in our bookes: and in cases concerning life, if the conspirators be indited and convicted at the kings suit, judgement villanous shall be given against him, but not at the suit of the party, which judgement is by the common law; for it is given by no statute.

(6) *Et admaines voit le roy que les justices de lun bank et lauter, &c.]* See the statutes of 5 E. 3. 34 E. 3. 38 E. 3. &c. by the which this statute is enlarged as to the justices. And a notable case in 41 E. 3. in expounding of these statutes, and upon like reason this act concerning the proceeding by bill, according to the words of this branch, *sans briefe, et sans delay.*

In the next yeare after the making of this act, which was in the 29 yeare of E. 1. William de Welbye brought an action by originall writ of conspiracy, returnable in the kings bench against William of Hemswell, parson of the church of Newton, and John of Malden, parson of the church of Askerbye, *secundum ordinationem regis*; for that they *per conspirationem et confederationem inter eos malelitiose fact' apud Groham, &c. anno regni domini regis nunc 29, procuraverunt et fecerunt prefatum Willum de Welbye citari coram Nicholas de Whitechurch archidiacono episc' Lincoln' ad respondendum prefat' Will' &c.* for a trespassse, whereof he had been acquitted in the kings court. Hemswel pleaded not guilty. Malden the other parson pleaded that he was *communis advocatus, et pro suo dando, &c.* and justified as an attorney, and denied that he conspired, &c. Whereupon issues being joyned, it was found before Gilbert de Rowberie, that Malden the parson of Askerbye was *communis advocatus*, and was not guilty of the conspiracy, &c. and the other was found guilty, and judgement was given against him; for in this and the like a conspiracy will lye against one: otherwise it is in case of felony. By this record it appeareth, that a writ of conspiracy doth lye upon the said act of 21 E. 1. (for the conspiracy was alledged before our statute) for a conspiracy between two for the one of them to sue the plaintife in the spirituall court: and note the record faith, *contra ordinationem domini regis.* And note, it did lye for conspiracy in a suit in the ecclesiastical court.

C A P. XI.

DE rechiese pur ceo que le roy avoit avant ordeine per lestatute, que nul de ses ministers ne prist nul plee a champertie; et per cel estatute auters ministers nestaient pas avant ces heures a ceo lies: voit le roy, que nul minister, ne nul auter, pur part avoier des choses que sont en plee' (1), enpreigne les besoignes que sont en plee. Ne nul sur

AND further, because the king hath heretofore ordained by statute, that none of his ministers shall take no plea for maintenance, by which statute other officers were not bounden before this time; the king will, that no officer nor any other (for to have part of the thing in plea) shall not take upon him the business that

sur tiel covenant (4) son droit ne lessé a auter. Et si ul le face, et de ceo soit attainé, soit forfait, et encurr' devers le roy des biens, et des terres le par-nour, a la value de tant (2) come sa part de son purchase per tiel emprise amouter'. Et a ceo attend', soit rescue celuy que suer voudr' pur le roy devant les justices, devant queux (3) le plee vera este, et per eux soit lagard' fait. Mes en ceo case nest mye a entendre, que home ne poit aver counsaile des countours, et des sages gents (5) pur son donant, ne de ses procheine amies (6).

that is in suit; nor none upon any such covenant shall give up his right to another; and if any do, and he be attained thereof, the taker shall forfeit unto the king so much of his lands and goods as doth amount to the value of the part that he hath purchased for such maintenance. And for this atteindre, whosoever will, shall be received to sue for the king before the justices, before whom the plea hangeth, and the judgement shall be given by them. But it may not be understood hereby, that any person shall be prohibit to have counsel of pleaders, or of learned men in the law for his fee, or of his parents and next friends.

(3 Ed. 1. c. 25. 13 Ed. 1. stat. 1. c. 49. 13 II. 4. f. 17. Fitz. Champerty. 3, 4. 6 12. 14, 15. 2 Inst. 118. 1 Ed. 3. stat. 2. c. 14. 1 R. 2. c. 4. 32 H. 8. c. 9. 21 Ed. 3. f. 52. Bro. Champerty, 11. Rast. 119. 427, &c.

The cause of the making of this statute was, that where the statutes of W. 1. 11 E. 1. and W. 2. of champerty were particular, and extended only to the kings ministers, the chancellor, the treasurer, justices, the kings counsellors, clerks of the chancery, of the exchequer, and of justices, and to those of the kings household, clerke or lay. Now this act is generall, and doth extend to all persons; for the words are generall, *nul minister, ne nul auter*.

W. 1. cap. 25.
W. 2. cap. 29.
Stat. de Champertie, an. 11 E. 1. Vet. Mag. Chart. fo. 80. b.

(1) *Pur part aver des choses que sont in plea.*] If A. bargain with B. owner of the manor of D. B. is impleaded, B. enfeoffed A. hanging the suit according to the bargain, though this be within the letter of the law, yet is it not within the meaning. On the other side, it is adjudged champerty, if he maintaine any party hanging the plea to have part, though he purchase not, nor take any state. And this act extendeth to all actions, as well personall, reall, and mixt. If the tenant hanging the plea grant a rent out of the land, this is champerty, and yet it is no part of the thing in demand, but it is within the same mischief. In an assise brought against the disseisor, and the tenant maintaine the plea upon covenant or promise after recovery to have part; although the disseisor hath nothing in the land, yet shall he have an action of champerty, because he may be charged with damages, and the tenant shall have his action also.

19 R. 2. champert. 15. Pl. com. 465. 30. ass. p. 15. 8 E. 4. 13.

47 E. 3. 9.
F.N.B. 172. k.

47 E. 3. 9.
F.N.B. 172.

If the husband and wife be impleaded, and one doth maintaine for champertie, the husband onely may have the action, or the husband and wife may joyne.

47 E. 3. 9.

And this action may be brought hanging the principall plea before judgement; and if the demandant be non-suit, yet may he have an action of champerty.

47 E. 3. 9.
33 E. 3 main-ten. 26.

If two be impleaded in a reall action, and one doth maintaine the demandant to have part, the tenants bring a writ of champerty, the non-suit of one is not the non-suit of the other, because the

47 E. 3. 6.
Lib. 6. fol. 25.

action of champerty being but accessory, doth follow the nature of the principall action.

If the tenant make a feoffment in fee hanging the writ, if one doth maintaine the demandant to have part, the feoffor shall have the action of champerty; for he remaines tenant to the demandant.

8 E. 4. 13.

(2) *A la value de tant, &c.*] That is to say, the value of the land.

See the statute of 32 H. 8. cap. 9.

(3) *Devant les justices devant queux.*] See the statute of 4 E. 3. cap. 11.

Regist. 183.
22 H. 6. 7.

Note, the party grieved may upon this statute either have a writ directed to the sherife, or a writ directed to the justices before whom the principall action dependeth.

F.N.B. 172. I.

(4) *Ne nul sur tiel covenant.*] Here it is taken for a promise or contract by parol, as well as by deed.

See the statutes of 1 E. 3. 1 R. 2. and 32 H. 8.

1 E. 3. c. 14.
1 R. 2. c. 4.
32 H. 8. c. 9.

(5) *Mes en ceo case nest my a entendre, que home ne poet aver counsell de ses countours, ne des sages gents.*] *Counsell, consilium*, is taken for advice and direction in law, and that is to be had of three persons, viz. 1. of serjeants at law, *servientes ad legem*, expressed here under the name of *countours*: 2. of apprentices of law, *apprenticii legis*, in pleading called *homines consiliarii, et in lege periti*, expressed here under this word *sages*. And these have *officium ingenii*: 3. Attornies of law, that have *officium laboris*, in following the advice of the learned, and dispatching of matters of course and experience, and they are under these words, *sages gents*. *Consilium* is also taken for assistance, maintenance, and comfort in their suits. And so it is taken here.

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(6) *De ses prochein amyces.*] That is, of their next of blood, who are or ought to be their surest assistants, aiders, and comforters; for *naturæ vis maxima*, and as some say, *natura bis maxima*.

And according to this diversity of signification, if the serjeant at law, apprentice, or attorney doe take a feoffment hanging the plea, or the like to maintaine the tenant, though it be *pro suo dando*, in lieu of his fee, yet is this champerty within the purview of this statute; for their counsell, that is, their advice and direction in their profession of law is excepted: but to take any estate in the land, hanging the writ, for maintenance, is to become a party, and in no sort allowed to them by this act.

6 E. 3. fo. 33.
20 H. 6. 12.
Pl. com. 305.
F.N.B. 172. b.
Li. 7. fo. 13, 14.
Calvins case.
21 H. 6. 16. b.
29 H. 6. mainte-
nance 12.
19 E. 4. 3. b.
31 H. 6. 26.
39 H. 6. 5.
6 E. 4. 5.
9 E. 4. 32.
14 H. 7. 2, &c.

But if a father be impleaded, he may infeoffe his son for his assistance, maintenance, and comfort; for that is nature's profession for the son *assistere, manutenerere, et consolari, et e converso, et sic de similibus: et sic alia est professio legis, et alia naturæ*.

So it is, that the son may of his owne mony, and in his owne name give fees to his fathers counsell, or attorney, without any expectation of repayment, and so may the father to his sons counsell; for he is *procheine amyce*, but so cannot the serjeant nor apprentice, for that their counsell, advice, and direction in law is only saved to them. But the attorney may in his masters name lay out his owne mony to his counsell, to be repaid to him by his master againe.

In like manner, and by the like reason, if the father be demandant in a *præcipe*, he may promise and contract with the son to assure him

him the land after the recovery, and is not any champerty within this act, and so of any other ancestor and his heire apparant: but so it is not of the serjeant, apprentice, or attorney; for they cannot contract to have any part of the thing in demand after the recovery, *et sic de similibus*. And therefore Penros case maketh not against this, nor any thing that hath been said: for there the case (as Hanckford imperfectly citeth it) was, that in a writ of champerty brought against Penros, for that he had parcell of the land recovered against him at another mans suit, Penros said that he was of counsell with the party which recovered, and had that land for his wages: but let us take the ford as we find it (though Fitzherb. in abridging this case, not knowing what to make of it, omitted it) the taking of the state for his wages after the recovery could be no champerty, unlesse there had been a covenant or promise hanging the plea on the demandants part, to make the same after the recovery, which was not alledged but only the taking of the state: neither doth it appeare what became of Penros plea: and we are of opinion, that it shall remaine for ever a blemish to his reputation, as often as it is cited; for, *quamvis aliquid ex se non sit malum, tamen si sit mali exempli, non est faciendum*.

13 H. 4. 19.

F. tit. Mainten.
23.

(6) *De ses prochein amyces, &c.*] Of *prochein amyces* you have heard before, this is to be added, that there be not onely *prochein amyces* in bloud, but in estate also: and therefore as the next of bloud is *prochein amy*, in respect of the expectancie of a discent (and yet it may be it shall never descend to him: for *solus deus facit hæredes, non homo*) so they that have reversions, or remainders expectant upon estates in taile, life or lives, are *prochein amyces* in estate, and are excepted out of this law, and yet it may be the land shall never come in possession to them: and therefore if a *præcipe* be brought against a tenant for life, and he surrender to him in the reversion or remainder, hanging the writ, for maintenance, this is no champerty within this act, no more then it is when the tenant infeoffeth his heire apparent: and so it is if tenant in taile, hanging the writ, conveyeth the land to him in reversion or remainder, this is no champerty for the cause aforesaid within this act.

17 E. 3. cham-
perty 14. per les
Justices 19 E. 4.
3. b. F.N.B.

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For the word *prochein amy*, *proximus amicus*, or *amicus propinquus*, see Littl. W. 1. and W. 2. &c.

Littl. sect. 123.
W. 1. ca. 48.
W. 2. ca. 15.

C A P. XII.

DE rechiefe voet le roy que distresses, que sont a faire pur sa dett, ne soyent faits per bestes des charues, tanque come home poet auter trover, solonque ceo que est ordeine ailours per estatute (1), ove la paine, &c. Et ne voet que trope greve distresse soit prise pur sa dett, ne trope loigne mesne (2). Et si le dettour poet trover suffisant, et convenable suretie (3), jesq; a un jour deins

FROM henceforth the king will, that such distresses as are to be taken for his debts shall not be made upon beasts of the plough, so long as a man may find any other, upon the same pain that is elsewhere ordained by statute, &c. And he will not that overgreat distresses shall be taken for his debts, nor driven too far; and if the debtor can find able and convenient surety

deins le jour al viscount, dedeins le quel home puisse purchaser remedie a faire grace de la demaund, soit la distres releffe endementiers, et que auterment le fra soit grevement punie.

surety until a day before the day limited to the sheriff, within which a man may purchase remedy to agree for the demand, the distress shall be released in the mean time; and he that otherwise doth, shall be grievously punished.

(4 H. 7. f. S. 51 H. 3. stat. 4. 52 H. 3. c. 4. Regist. 97. 185. Rast. pla. 226.)

51 H. 3. Vet. N.
B. fo. 89. b.
Regist. 97. b.
Rast. pl. 118.
393. 450.

(1) *Per statute.*] This is intended of the statute intituled, *statutum de distinctionibus scaccarii, editi an. 51 H. 3.* which by mistaking is in the abridgement of statutes, tit. Distresses 10. supposed to be in *anno 21 E. 1.* which should be made 51 Hen. 3. the words of that act (amongst other things) are, *Que nul home de religion, ne auter soit distrein per les bestes, queux gaingnont sa terre, ne per les barbités pur la det le roy, ne pur le dett dauter home, ne pur auter encheson per les baillies le roy, ne per auters homes tanque come un trove auter distres, ou auters chateux suffisantes, dont ils poient lever le det, ou que suffist la demande, &c.* But hereof sufficient hath been said in the exposition of the statute of Marlebridge.

F.N.B. 174.
Regist. 97. 185.
Maribridge, c. 15.

F.N.B. 174.
Regist. 97.

(2) *Et ne voit que trope greve distres soit prise, ne trope loigne mesne.*] This is also provided for by the said act of 51 H. 3, and sufficient also hath hereof been said in the exposition of the said statute of Marlebridge, cap. 15. and these acts were made to take away the abuse of the sherifes, bailifes, and other ministers.

Act of grace.
Vid Mag. Chart.
cap. 5, &c.
Reg. 185, 186.
F.N.B. 174. b.
36 E. 3. ca. 9.

(3) *Et si le dettor poet trover suffisant et covenable suertie, &c.*] This is an act of grace, and upon this act there lyeth a writ directed to the sherife, commanding him to receive surety according to this act, which if he refuse, an attachment lyeth against him, or the party offering suretie according to this act, if it be refused, may have an action against the sherife, &c.

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C A P. XIII.

ET pur ceo que le roy ad grant (1) *le cleetion des viscounts a ceux des counties, voit le roy que ils eslient tiels viscounts, que ne les charge my: et ne mittent nul minister en bailie pur lever, ne pur don. Et que tiels ne se herbergent trope sovent en un lieu, ne sur les povers, ne sur les religious.*

AND forasmuch as the king hath granted the election of sheriffs to the commons of the shire; the king will, that they shall chuse such sheriffs that shall not charge them, and that they shall not put any officer in authority for rewards or bribes; and such as shall not lodge too oft in one place, nor with poor persons, or men of religion.

(1) *Ad grant.*] This grant was made before at this parliament, cap. 8.

By this act five things are to be observed by the sherife: first, that he be not chargeable to the county: 2. that he shall put no minister

minister in office under him for hire, gift, or bribe: 3. that they shall not too often lodge or harbour in one place: 4. that they shall not lodge or harbour at all with those that are poore: 5. nor with religious men.

And albeit the manner of making of sherifes be altered, as before in the exposition of the eighth chapter doth appeare, yet the said articles are to be observed by him: for they follow the office of the sherife without respect of the maner of his making: and therefore if any sherife take any hire, gift, or bribe of any undersherife, baylife, keeper of the gaole, or other minister for his office or place, he may be indited, and fined, and imprisoned.

See other statutes against sale of offices, &c. 12 R. 2. 11 H. 4. 5. E. 6. And in like manner touching the rest of the articles prohibited by this chapter, see the next chapter.

12 R. 2. cap. 2.
11 H. 4. Rot.
parl. nu. 23.
5 E. 6. ca. 16.

C A P. XIV.

DE rechiese voit le roy, que les bailifes et les hund' du roy, ne les auters grand seigniors de la terre ne soient lesses a trope grand summe a ferme, per quoy le peuple soit greve, ne charge per contribution faire a tiels fermes.

FROM henceforth the king will, that the bailiwicks and hundreds of the king, nor of other great lords of the land, be not let to ferm at over great sums, wherby the people are over-charged by making contribution to such fermes.

This act was made for avoiding of extortion and oppression; for they that buy deare, must sell deare. For addition to this law it was enacted, that sherifes should not let their hundreds and wapentakes but for the old rent, and not above.

4 E. 3. ca. 15.

After by another act neither sherife, nor bailifes, or hundredors in fee should let any hundreds, &c. but for the ancient ferme, without any thing increasing.

14 E. 3. ca. 9.

And by another statute it was provided, that he should not let his bailwicke at all to any man, and that it should be parcell of his oath. Upon which act some doubt was conceived, whether if he let not his whole bailwicke, it was within that law; and besides, there was no penalty inflicted by that act; therefore by another law it is enacted, that no sherife shall let to ferme in any manner his county, nor any of his bailwicks, hundreds, or wapentakes, upon paine of forfeiture of xl. li.

4 H. 4. ca. 5.

23 H. 6. ca. 10.
20 H. 7. 12. &
21 H. 7. 36. Pl.
com. 87. & 124.
Vid. Mag. Chart.
cap. 8, &c.

And this act, as to the king, is a bill of grace.

C A P. XV.

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EN summons (1) et attachments (2) en plea de terre (3), desormes conteigne la summons ou lattachment le terme de xv. jours a tout la meyns (4), solongue

IN summons and attachments in plea of land, the summons and attachments from henceforth shall contain the term of fifteen days full at the least

solonque la common ley, sil ne soit en attachment des assises prendre en presence le roy (5), ou devant les justices del common bank, ou des plees devant justices en eire, durant le eire.

least according to the common law, if it be not in attachment of assises taken in the king's presence, or of pleas before justices in eyre during the eyre.

See Marlbridge, cap. 12. & 26. (Fitz. Jour. 16, 17. 36. Bro. Attach. 3, 4. 6, 7, 8, 9, 10. 13. 15, 16, 17.)

F.N.B. 177. d. c.
11 ass. p. 30.
22 ass. p. 79.
30 ass. 26. & 44.

The printed bookes leave out (*ou devant les justices del common bank*) which ought to be added.

* 12 E. 4. 11.
Glan. li. 1. ca. 7.
Braet. li. 4. fo.
255. & 182.
Brit. fol. 279. b.
Flet. li. 6. ca. 6.

This statute was made in affirmance of the common law, as by the expresse words of the statute it appeareth, contrary to a sudden and misconceived opinion in our * bookes: for Glanvile saith, *Summo- nebitur per intervallum quindecim dierum ad minus*: and therewith agreeth Braetton and Britton, *Et si ascun soit resonablement summon, il doit aver space de xv. jours au meynes, de soy garner de son respons.* And Fleta saith, *Nec etiam sufficit quod summonitio fiat ad statim respondendum, sed decet quod quilibet habet tempus xv. dierum ante diem litis, et si summonitio minus spacium, pro illegitima debet reputari, nisi in causis specialibus; ut sunt causæ mercatorum, et cruce signatorum, et hujusmodi que instantiam desiderant et celeritatem, &c.* And all these authors wrote before the making of our act: and the author of the Mirror that wrote of the ancient lawes of this realme, speaking of the time of summons, saith, *Et reasonable respit al meyns de xv. jours de purveire respons, et de parer en judgement.* And the cause wherefore the common law set downe the certaine time of 15 dayes was, for that a dayes journey is accounted in law 20 miles, *rationabilis dieta constat ex viginti miliaribus*: for *dieta* both in the common and civill law signifieth a dayes journey, *continet legalis dieta viginti miliaria*. And therefore 15 dayes was accounted by the common law a reasonable time of summons or attachment, within which time wheresoever the court of justice sate in England, the party summoned or attached, wheretoever he dwelt in England, afore the kings writ did come, might *per prædicias dietas computatas*, by the said account of dayes journies appeare in court, &c.

Mirr. c. 2. § 19.

Braet. lib. 4. fo.
235. b. 19 H. 7.
ca. 1. the like
account is made.
Lib. intr. tit.
Journies ac-
counts, f. 382.
li. 6. f. 10. & 11.
Spencers case.
18 E. 3. 42.
32 E. 3.
Journies acc' 16.
Custumere, c. 61.
fol. 76, 77.
12 E. 4. 11.

(1) *En summons.*] In a writ of pone, to remove a replevin at the suit of the defendant, the writ saith, *et dic præfato querenti, quod sit coram justiciariis nostris apud Westm' tali die*, there ought to be a warning by 15 dayes, for that this (*dic querenti*) is in nature of a summons, and so the writ of *venire fac'* for returning of a jury is in nature of a summons: but this statute extends not to a writ of errour, nor to dayes of prefixion, as upon a forreine voucher in London, and the like.

1 E. 5. 2. b.
Braet. lib. 4.
fol. 255.

This act speaketh of a summons, and so it is in a resummons.

1 E. 5. 2. b.
Dyer 8 El. 252.
9 E. 4. 18.

(2) *Et attachments.*] And so it is in a re-attachment.

(3) *En plea de terre.*] Upon an originall writ in any reall action the tenant must be summoned by 15 dayes, as is aforesaid; but if the originall writ be returned *tarde*, the *sumoneas sicut alias* must have nine retournes between the *teste* and the retorne: for albeit the *sumoneas sicut alias* be in lieu of the summons in the originall, yet being a judiciall processe in a reall action, there must be nine retournes, &c. and the summons thereupon ought to be made by 15 dayes, or more, before the retorne.

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24 E. 3. 35. 46.
22 E. 3. 7.
31 H. 6. 13.
27 H. 6. 2.

(4) *Le terme de 15 jours a tout le meynes.*] These 15 dayes or more must be before the day of the retorne of the writ, and the day of the retorne must be accounted none of them.

(5) *Si*

(5) *Si ne soit en assises prender en presence del roy, &c.] En presence del roy, that is, in the kings bench, for there all pleas be coram rege. It was accorded in 7 E. 2. by Sir Guiliam Inge chiefe justice of the kings bench, and the justices, that in writs of attaints upon an assise of novel disseisin taken in the kings bench, there shall be a certaine day given as in the assise; for example, the Monday, or the morrow, or in the *utis* or *quinden*' of Easter: but it behoveth that the tenant hath garnishment by 15 dayes in the attainnt, for this statute of *articuli super chartas* doth not give any lesse terme, but only in an assise of *novel disseisin* in the kings bench, common pleas, or in eire.*

Regist. 204. a.
7 E. 2. per les
Justices.
F.N.B. 109. a.

This branch, as to the kings bench, seemeth to be in affirmance of the common law; for in criminall causes, which concerne the life of man, if a man be indited of treason or felony in the county where the kings bench doth sit, the *venire fac*' for the returning of the jury need not have 15 dayes between the *teste* and the returne, nay the entry may be *ideo immediate venit inde jurata, &c.* But if the inditement be taken in any other county, and removed into the kings bench, there ought to be 15 dayes between the *teste* of the *venire fac*' and the returne.

Li. 9. f. 118. b.
Seignior Zan-
chars case.

* Commissioners of oire and terminer may in case of treason, felony, misprision, trespassse, &c. trie the prisoner the same day they award the *venire fac*', as by divers presidents ancient and late doe appeare; but the commissioners must make a precept in parchment under their seales for the returning of a jury immediately the same day, if they will, or any day after, and likewise justices of gaole delivery, or justices of peace may trie the prisoner the same day, or any day after, but need not make any particular precept: for the justices of gaole delivery, and justices of the peace make a generall precept in parchment under their seales for the sommons of the sessions, and for returne of juries, &c. and therefore any particular precept is not requisite.

* Hil. 2. H. 4.
rot. 4. Thomas
Marks evesq' de
Carlile, treason.
Lunze post
festum Mich.
an. 1. H. 8.
Sir Richard
Empson, treason.
10 Decem. 3 E. 6.
Thomas Bon-
ham, before
Portman chiefe
justice, and
other justices,
treason.
2 Decem. 3 E. 6.
before Lyster,
Mountague
Cholmeley, &c.
Robert Bell,
treason.
4 August. 10 El.
John Felton, &c.

There was a generall sommons made 40 dayes before the sitting of the justices in eire.

* We have the rather spoken somewhat hereof, because there is a report of the resolution of the judges, that commissioners of oire and terminer, or justices of peace cannot trie a prisoner that pleads not guilty the same day that he pleads, &c. But herein at this day not onely *jurisperiti*, but *usuperiti* also doe agree.

London, treason. Hill. 36. El. Doct. Lopes in London, &c. treason.

* 4 H. 5. tit. enquest 55.

Pasch' 9 H. 8. Kelwey. Holl. Chronic. 8 H. 8. fol. 843. 22 E. 4. tit. coron. 44.

C A P. XVI.

SOIT fait de ceux que font faux re-
tornes des briefes al maundement le
roy, per quoy droiture est delay, auxy
come ordeine est en le second estatute de
Westminster ove la peine.

THAT shall be done with them
that make false returns (whereby
right is deferred) as it is ordained in
the second statute of Westminster,
with like pain.

(13 Ed. 1. stat. 1. c. 39.)

This is an act of confirmation, whereby the statute of W. 2. cap. 39. touching false returnes, is confirmed.

3 N 4

CAP.

C A P. XVII.

ET pur ceo que mults misfeasors sont en la terre plus que ne solent, et robberies, arsons, e homicides faits sans number, et la peace meynes bien garde, pur ceo que le statute, que le roy fist faire nadgaires passes a Winchester, nad pas este tenu: voit le roy que cel statute soit de novel envoy en chescun countie, et soit lie et publie 4 foits per an (1), auxy bien come les deux graund charters (2), et fermement gardes en chescun point, sur les paines que la cyens sont assesses. Et a cel statute garder et maintenir, soient charges les trois chevaliers (3), que sont assignes per mye les counties pur redresser les choses faits encouter les grand charters, et de ceo eyent garrantie.

AND forasmuch as there be more malefactors in the realm, than had wont to be, and that robberies, burnings, and man-slaughters are committed out of measure, and the peace little observed, by reason that the statute which the king not long past caused to be made at Winchester is not observed; the king will, that the same statute be sent again into every county, to be read and published four times in the year, and kept in every point as straitly as the two great charters, upon the pains therein limited. And for the observing and maintenance of this statute, the three knights that be assigned in the shires for to redress things done against the said great charters, shall be charged, and shall have their warrant therefore.

(13 Ed. 1. stat. 2. c. 1.)

Vid. Flet. lib. 1. cap. 24. this statute of Winchester recited.

Vid. li. 7. f. 6, 7. cases sur cest, statute.
3 E. 3. coron. 293.

28 E. 3. ca. 11.
27 Eliz. ca. 13.

Dyer 23. El. 37c.
Brit. f. 20. 32. b.
& 263. 160.
Elegit.

The effect of the statute of Winchester made at a parliament holden in 13 E. 1. is this, that from thenceforth every country should be so well kept, that immediately upon such robberies and felonies committed, fresh suit should be made, &c.

The letter of this statute is generall; and first, concerning the place: if a man be robbed in his house, it is not within the meaning of this statute. Secondly, the time: if a man travell in the night, and be robbed, he shall not take the benefit of this act, as you may reade at large, lib. 7. *ubi supra*.

See the statutes of 28 E. 3. and 27 Eliz. which have in some points altered, in some explained, and added divers articles to this statute of Winchester.

Britton maketh mention of the statute of Winchester in these words, *solonque nostre ordinance de nous statutes de Winchester*, and of the statute of W. 2. an. 13 E. 1. So as he wrote not his book in 5 E. 1. as Prisot supposed: neither died he in 3 E. 1. anno Dom. 1272. as Bale, fol. 111. hath mistaken; but certainly he wrote his booke after 13 E. 1.

And it appeareth by Fleta, *ubi supra*, that the time given to the country by the statute of Winchester is not within 40 dayes, as the booke of statutes lately printed mistakes it, but *infra dimid' anni*, and so is the printed booke of statutes by Berthelet; and therefore it would be reformed accordingly. True it is, that the statute of

28 E.

28 E. 3. doth expressly set downe 40 dayes; but yet the words of the statute of Winchester must remaine as they were. 28 E. 3. ca. 11.

For actions brought upon the statute of Winchester, see Hil. 4 H. 8. rot. 525. Pasch. 4 H. 8. rot. 310. Mich. 6 H. 8. rot. 1. Pasch. 12 & 13 Hen. 8. rot. 4 Eliz. rot. 508. &c. which were before the statute of 27 Eliz. Lib. intr' Raft. 580. Lib. 7. fo. 6. ubi supra.

See Trin. 28 Eliz. rot. 75. Ashpoles case, and Trin. 29 El. rot. 1027. Milborns case. Lib. intr' Co. fol. 348.

Which precedents I have added, because they serve both for exposition of the said statutes, and for direction to the party grieved to attaine to the benefit of the same. Lib. 7. fol. 6. ubi supra.

If any desire to see some precedent neerer the making of the statute of Winchester, let them see the record of that notable case of Ellice Caller in 2 E. 3. and they shall perceive, that actions grounded upon this statute were not subject to such captious and curious exceptions, as now they be. There the case was, that Ellice Caller was robbed in the hundred of H. in the confines of two counties, &c. and brought his action upon this statute, and had judgement, and sued execution to the sherife of Stafford, who returned, that he had levied x. marks of the men of the bishop of Coventry and Litchfield of the hundred of H. the bishop came and said, that the hundred of H. was of the right of his church of Saint Cadde of Litchfield, and shewed forth to the court the charter of king Richard the first, by the which he granted to E. then bishop of Coventry and Lichfield, and to his men, that they should be quit of murder and larceny, that is, to be quit and discharged of every thing that lyeth in charge of his men, by reason of murder or felony; as of amerciaments and of presentments of murder and felony. But the authority of the booke is, that the bishops men ought not to be discharged, and Shard that giveth the rule, giveth also two reasons thereof. Hill. 2 E. 3. fo. 6. & 7.

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First, that the charter of Rich. 1. could not discharge this action, for that at the time of that charter an action against the inhabitants, by reason of robbery, &c. was not granted, but it was granted long after, that is to say, *in anno* 13 E. 1. and we doe not entend, that by reason of the charter, being more ancient then the statute of Winchester, you may barre or discharge the execution.

Secondly, albeit the king by his charter may grant, that a man may be acquitted against him and his successors, yet thereby the action or right of the party cannot be taken away.

The burgeses of the towne of Tewksbury in the county of Gloucester brought an action of debt upon the statute of 8 H. 6. which hath reference to this statute of Winchester, if satisfaction be not made for the robbery therein mentioned within 15 dayes after proclamation, and the action is given against the comminalties of the forest of Deane, which are adjacent to the river of Severn, and of the hundreds of Bledstow and Westbury, and the writ was, *Præcipe communitati forestæ de Deane, et hundredis de B. & W.* and exception was taken to the writ, for that the writ ought to have been, *Præcipe communitati forestæ de Deane, et hundredorum de B. et W.* according to the words of the statute of 8 H. 6. as one entire comminalty; and yet the writ was awarded good, for that it was the same in effect, though it had been the better, if it had accorded with the words of the itatute. 11 H. 6. fo. 47. a. 8 H. 6. ca. 27.

It is said, that one that took upon him the profession of the law, made a motion, that all the superfluous cases of the law reported in our bookes might be rejected, and left out of the next impression, and

and principally those that Fitzherbert had not vouchsafed to abridge. But indeed the motion was superfluous and smokie, and therefore vanished; for there is no case reported in our bookes, but is worthy of observation; for thereof great use may be made at one time or other, if it be well understood and remembered, and we should have been right sorry, if these two excellent cases, amongst many others, had been rejected.

(1) *Et soit lye et public 4 foits per ann'.*] This is evident.

(2) *Auxybien come les deux grand charters.*] Here it is to be observed, that *Magna Charta*, and *Charta de foresta* are called, *les deux grand charters*.

By the first chapter of the acts of this parliament it is provided, that these two charters shal be read foure times every yeare before the people in full countie, that is to say, in the next county after the feast of Saint Michael, and after the feast of the nativity of our Saviour, after Easter, and after the nativity of Saint John Baptist, and so oft, and at those times, ought the statute of Winchester to be read and published.

(3) *Soit charge les trois chevaliers.*] These three knights are authorized before cap. 1.

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CAP. XVIII.

EN droit des wastes et destruccions faits en gards per escheators et subescheators (1) de measons, bois, parkes, viuers (2); et de tous autres choses, que eschient en les maynes le roy (3): voit le roy, que celui que aver' le dam' rescere, eit briefe de wast (4) en la chancery vers lescheator de son fait, ou subescheator de son fait, sil eyt de quoy responder, et sil nad de quoy, ci respond' son souveraigne (5) per autiel peine, quant as damages, come' darreine ordeine est per estatute (6) sur ceux que font wast en gardes.

FOR redress of wastes, and destruccions done by escheators or subescheators in the lands of wards, as of houses, woods, parks, warrens, and of all other things that fall into the king's hands; the king will, that he which hath sustained damage, shall have a writ of waste out of the chancery against the escheator for his act, or the subescheator for his act (if he have whereof to answer) and if he have not, his master shall answer by like pain concerning the damages, as is ordained by the statute for them that do waste in wardships.

(6 Ed. 1. stat. 1. c. 5. 14 Ed. 3. stat. 1. c. 13. 36 Ed. 3. c. 13. Regist. 72. Rast. 693. 12 Car. 2. c. 24.)

36 E. 3. ca. 13.
& Magna Chart.
cap. 5.

Where some have thought that the escheator and underescheator are not within the statute of Magna Charta; and therefore in this point the title of *confirmatio chartarum* is not apt as to this chapter, let them reade the statute of 36 E. 3. and they will be satisfied.

* Regist. 301.
cap. Escheatrie.
Mirr. ca. 1. § 5.
Statut. de Scacc.
51 H. 3.

(1) *Per escheators et subescheators.*] Of their * names, and whence they are derived, of their antiquity and office, of their number in ancient time, and what alteration hath been by acts of parliament

liament of later times, you may reade in the first part of the Institutes.

(2) *Parkes, viuers.*] Here *vivers, vivaria*, are taken for fish-ponds and warrens, as heretofore we have observed.

(3) *Et de tous autres choses, que eschient en le maynes le roy.*] That is, of all other things which casually fall, or escheat, or come into the kings hands.

(4) *Eyt briefe de waste.*] ^b For the action of wast against the escheator, see the Register, F.N.B. &c.

(5) *Respond' son souveraigne.*] *Respondeat superior*, that is, the escheator shall answer for the deputy escheator, or under-escheator.

(6) *Per estatute.*] That is, by the statute of Glocester, *anno* 6 E. 1. cap. 5. and W. 2. *anno* 13 E. 1. cap. 21.

And it is to be observed (that we may note it once for all that in this and other ancient acts of parliament that have relation or reference to any former, there is not any mention made of the yeare or chapter of the former statute, but the generall reference was then thought the surest, and the more parliamentary way.

Brit. fol. 33, 34.
Flet. lib. 1. ca. 6.
Rot. Pari.
18 E. 1. fol. 7. &
21 E. 1. rot. 1.
28 E. 1. cap. 18.
29 E. 1. de
escheat. 14 E. 3.
cap. 8. 1 H. 8.
c. 8. F.N.B. 100.
Stamf. pr. 81.
1. part of the In-
stitutes, sect. 4.
^a See the first
part of the Insti-
tutes, ubi supra.
^b Regist. 72.
F.N.B. 59. b.
Vet. N. B. fo. 36.
Stamf. prer. 81.
14 E. 3. ca. 13.
36 E. 3. ca. 13.

C A P. XIX.

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DE rechiese la ou lescheator, ou le viscount seissent en la mayne le roy (1) autres terres, la ou il nad reason de seister : et puis quant trove est la non reason, les issues du mesne temps ont estre ceo en arere retenus, et nemy rendus, quant le roy ad la mayne ouste : voit le roy que desormes, la ou terres sont issint seistes, et puis la mayne ouste pur ceo que il nad reason de seister, ne ceo tener, soient les issues pleinement rendus a celui a que la terre demurt, et avera le damage resceivre.

FROM henceforth, where the escheator or the sberiff shall seise other mens lands into the king's hands (where there is no cause of seiser) and after, when it is found no cause, the profits taken in the mean time have been still retained, and not restored, when the king hath removed his hand ; the king will, that if hereafter any lands be so seised, and after it be removed out of his hands by reason that he hath no cause to seise nor to hold it, the issues shall be fully restored to him to whom the land ought to remain, and which hath sustained the damage.

Vide W. 1. cap. 24. (Regist. 314. Rast. 604.)

See the statute of 29 E. 1. *de eschaetoribus*, commonly called the statute of Lincoln, made the yeare after this law ; and upon these two statutes ten points are to be observed ;

1. That by the common law, although the seisure was not lawfull, yet for the mesne profits upon the livery, or *ouster le mayne*, the party grieved was not restored to the mesne profits, which mischief is remedied by these two statutes.

2. Issues are intended rents and things leviabie by the escheator, which may be restored, though the escheator hath accounted for them,

24 E. 3. 28, 29.
59. 5 E. 3. 6.

them, and not paid; but the mony, being once in the kings cofers, shall not be restored.

3. That though both these statutes speake onely of an *ouster le mayne*, yet being both beneficiall lawes for restitution to be made to the party grieved, by equity they extend to liveries.

4. Where the words seem to extend onely to seifures before office, and after by the office that is found the king is not intituled, yet by construction the same extend onely to seifures after office found. See hercafter *verbo Seifent*.

5. These statutes extend by equity to *ouster le mayne*, and *amoveas manus* upon petitions, and *monstrans de droits*, not only in cafes concerning wardship, but freehold and inheritance.

6. These statutes extend also by like equity to *ouster le maynes* upon traverses, although traverses were not in use at the time of the making of these statutes.

7. By the said statute of 29 E. 1. if any former office or record be found after livery, or *ouster le mayne*, that maintaineth the title, by reason whereof the king is seifed, the king upon that record shall not reseise *maintenant*, but thereupon sue out a *scire facias*, &c.

8. But if an office be found, which doth entitle the king to the land by a title growne to him since the livery, or *ouster le mayne*, neither of these statutes restraine the king, but that he may reseise without a *scire facias*.

9. * There is a diversity, when the party hath a livery or *ouster le mayne* upon an insufficient office, or by erroneous proceffe, there though the party hath right, yet the king shall reseise without *scire fac'*: for a livery mis-sued is as it had been never sued, and the statute of 29 E. 1. is to be understood of a livery or *ouster le mayne*, duely and lawfully sued for that which is insufficient is nothing in law: but when the party sueth out his livery or *ouster le mayne* duely and according to law, where in truth he hath no right, but the king, if he had been apprised of his title appearing of record, no livery or *ouster le mayne* ought to have been granted, yet there upon that record the king cannot reseise without a *scire facias*.

10. Some have holden, that at the common law he that was in possession of the land, &c. by judgement, as in case of an *ouster le mayne*, livery, or *amoveas manum*, that no reseifure could be made for the king without a *scire facias*, and therein to avoid the former record by matter of as high nature: for the generall rules of law be, *Nihil tam conveniens est naturali æquitati, unumquodque dissolvi eo ligamine, quo ligatum est: et judicia sunt tanquam juris dicta, et pro veritate accipiuntur.*

(1) *Seifent en la mayne le roy.*] This seifure is intended after office: for before office lands or tenements cannot be seifed into the kings hands, and so is the common experience at this day.

See the statute of W. 1. cap. 24.

That we passe over nothing that the statute of 29 E. 1. giveth us occasion to remember which is worthy of observation: it is there said, that the statute was commanded to be observed *de concilio venerabilis patris Walteri de Langton, Coventr' et Lichfield episc', tunc ejusdem regis thesaurarii, et Johannis de Langton cancellarii*, who then had the dealing with wards, &c. we will speak somewhat of both these great officers.

24 E. 3. 33.
9 E. 4. 52. Kel-
way, 1 H. 8.
156.

28 H. 6. fo. 9. b.
5 H. 5. 2. 30 aff.
28. F. N. B. 260.
4 H. 7. 5. Dyer,
8 El. 248, 249.
21 E. 3. 1. 21 aff.
15. 12 R. 2. li-
very 28. 40 aff.
* 21 E. 3. 1.
21 aff. 15. 40 aff.
36. 9 E. 4.
51, 52.
* 18 E. 3. liver.
3. 24 E. 3. 65.
Darcies case.
44 E. 3. 12.
Stamf. pr. fol.
11. & 80, 81.
Brok. reseif. 13.
24 E. 3. 33.

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5 E. 6. tit. Of-
fice. Br. 55. Lib.
8 fol. 169. Paris
Stoughton case.

This Walter de Langton, a gentleman of an ancient and faire descended family, was made lord treasurer of England in the 23 yeare of king Edward the first; he was a grave and a wise man, and was much favoured by the king, and in great authority under him, the rather, for that he with great discretion and moderation did wisely dissuade prince Edward (who after was king by the name of Edward the second) from such dishonourable and dissolute courses as he took, and was the principall motive that Pierce Gaveston, the wicked corrupter of the princes youth, was banished the realme. The prince in requitall hereof, on a time amongst other injuries, gave the treasurer foule and disgracefull words, whereof the noble king understanding, deemed the offence done unto himselfe; for so I find it of record in the same kings time, which record speaketh in these termes: *Et hoc expressè nuper apparuit, cum idem rex filium suum primogenitum, et charissimum principem Walliæ, pro eo quod quædam verba grossa et acerba cuidam ministro suo dixerat, ab hospitio suo fere per dimid' an' amovit, nec ipsum filium suum in conspectu suo venire permisit, quousque dicto ministro de præd' transgressione satisfecerat: quia, sicut honor et reverentia qui ministris domini regis ratione officii sunt, ipso regi attribuuntur: sic dedecus et contemptus ministris ipsius domini regis fact' eidem domino regi inferuntur.* But we are sorry to remember, that the favour of a king, and the height of prosperity, which rightly used are the blessings of God, should make him presume to defile his hands with corrupt and fordid bribery, and to beguile himselfe to thinke that no man should dare to bring him in question. True it is, that he was judicially convicted in the first yeare of king Edward the second, but it was before foure of the principall judges of the realme and in effect upon his owne confession.

Coram rege
Mich. 33 E. 1.
Rot. 75.

All these briberies you may reade in a bundle of the records remaining in the treasury, intituled *Placita apud Winsor coram Roberto de Brabazon, Will' de Bereford, Rogero de Heigham, et Will' Inge justiciariis, &c. assignatis in cro' Sancti Andree apostoli, anno regni regis E. filii regis E. primo, rot. 3. 8. 14. &c. Servile est expilationis crimen, sola innocentia libera.* Histories may safely be beleevd, when there is a record to warrant them.

John Langton named also in the act of 29 E. 1. was then bishop of Chichester, and lord chancellour of England, he was of a great spirit, and feared not the face of great men in that dangerous time to doe that which he ought: for whereas Thomas the noble earle of Lancaster had lawfully married Alice onely daughter and heire of Henry Lacie earle of Lincoln, son and heire of William de Longa Spatha earle of Salisbury; and John earle Warren and of Surrey had to wife the kings niece, that is, Joan daughter of Henry earle of Barre, and of Elinor his wife daughter of king Edward the first, yet the saide earle Warren by great force and strong hand (*ut dicebatur assensu regio*) caused the saide Alice countesse of Lancaster to be fetched from the earle of Lancasters house in Canford in Dorsetshire, and in great pomp and bravery (in despite of the earle of Lancaster) to be brought to him to his castle of Ryegate in Surrey, where they lived in open advoutry. This worthy bishop looking neither above him nor about him, but according to his office and duty called the saide earle Warren in question for the saide shamefull and open adultery, and by ecclesiasticall censures excommunicated him for the same, as he well deserved:

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Vid. Pasch'
8 E. 2. rot. 111.
Coram rege.

An. Dom. 1317.
& 10 E. 2.

deserved: in revenge whereof the earle, adding a new offence to the old, came with many of his followers weaponed for the purpose towards the bishop, to lay violent hands on him: but the bishop himselfe being a man of great courage, and being well attended with gentlemen and other his household servants, understanding thereof, they addressed themselves, and having put themselves in good order, issued out, and encountred with the earle and his men, and not onely manfully defended themselves against that barbarous attempt, but valiantly overcame the earle and his followers, and took them into their possession, and laid the earle and his gallants fast in prison by the bishops commandement.

Armaque in armatos sumere jura sinunt.

But, fearing that one of Virgils verses should be applied to us,

Virg. 5. Æneid.

Sed jam age, carpe viam, susceptum perface munus,

We will returne to our statute.

C A P. XX.

ORDEIGNE est que nul orfeure d'Angleterre ne ailors de la seignorie le roy, ne ouere, ne face de ci en avant nul maner de vessel, ne joialx, ne auter chose dore ne d'argent, que ne soit de bone et veray allay, cestassavoir, ore de certaine touche (1), et argent del allay del esterling (2), ou de melior allay, selonque le volunt de celuy, a que les ouerers sont. Et que nul ouer peyor argent que money (3). Et que nul maner de vessel d'argent ne depart hors des maines des ouerours, tanquel el soit assay per les gardeins de la mister' (4) et auxy que el soit sign' dun teste dun leopard (5). Et que nul ne ouere peyor ore que de touche de Paris (6). Et que les gardeins du misterie allent de shope en shope enter les orfeours, assaiants que lore soit tiel come la touche avantdit. Et s'ils trouvent ul peyor que la touche, que leur soit forfait al roy. Et que nul ne face auneux, croix, ne firmaux (7). Et nul ne mett' pire en ore, si il ne soit naturel (8). Et que taillours des aimans et des seales, rendant a chescun son poyz d'argent et dore auxy avant come ils le purront scaver sur leur foialtie. Et les joyaux dore, que

IT is ordained, that no goldsmith of England, nor none otherwhere within the king's dominion, shall from henceforth make, or cause to be made, any manner of vessel, jewel, or any other thing of gold or silver, except it be of good and true allay, that is to say, gold of a certain touch, and silver of the sterling allay, or of better, at the pleasure of him to whom the work belongeth; and that none work worse silver than money. And that no manner of vessel of silver depart out of the hands of the workers, until it be essayed by the wardens of the craft; and further, that it be marked with the leopard's head; and that they work no worse gold than of the touch of Paris. And that the wardens of the craft shall go from shop to shop among the goldsmiths, to essay if their gold be of the same touch that is spoken of before; and if they finde any other than of the touch aforesaid, the gold shall be forfeit to the king. And that none shall make rings, crosses, nor locks, and that none shall set any stone in gold, except it be natural. And that
gravers

que ils ont entermaines de veil ouere, que ils seu deliveront a plus toft que ils purront. Et sils * achatent desor en avaunt de mesme cell' oueraige, que ils lachatent pur defere, et nemy pur revender. Et touts les bones villes Dengleterre, la ou il y ad orfeures, que ils facent per mesme lestatute, come ceux de Londres font. Et que un veigne de chescun ville pur touts, a Londres, de quer' lour certaine touche. Et si ull' orfeure soit attaint que auterment le face que desuis nest ordeine, soit punie per prison, et per ransome a la volunt le roy. Et en touts les choses desuis dits, et chescun de els voit le roy, et tenend' il et son councel, et touts ceux que a cest ordeinment fuerent, que le droit et la seignorie de la corone saves luy soient per touts, &c. (9)

gravers or cutters of stones and of seals shall give to each their weight of silver and gold (as near as they can) upon their fidelity; and the jewels of base gold which they have in their hands, they shall utter as fast as they can; and from henceforth, if they buy any of the same work, they shall buy it to work upon, and not to sell again; and that all the good towns of England, where any goldsmiths be dwelling, shall be ordered according to this estatute as they of London be; and that one shall come from every good town for all the residue that be dwelling in the same, unto London, for to be ascertained of their touch. And if any goldsmith be attainted hereafter, because that he hath done otherwise than before is ordained, he shall be punished by imprisonment, and by ransom at the king's pleasure. And notwithstanding all these things before-mentioned, or any point of them, both the king and his council, and all they that were present at the making of this ordinance, will and intend that the right and prerogative of his crown shall be saved to him in all things.

(Altered by 8 & 9 W. 3. c. 8. f. 9. and 6 G. 1. c. 11. f. 41. 21 Jac. 1. c. 28. 37 E. 3. c. 7. 2 H. 6. c. 14. 17 E. 4. c. 1. 4 H. 7. c. 2. 18 El. c. 15.)

(1) *Ore de certaine touche.*] The pound of gold and silver containeth 12 ounces: 12 graines of fine gold make a caret, 24 carets of fine gold make an ounce, 12 ounces make a pound of fine gold of the touch of Paris; but by the statute of 18 Eliz. 22 carets fine make an ounce. See hereafter in this chapter. 18 Eliz. cap. 15.

(2) *Et argent del allay de esterling.*] In our law it is called *sterlingum*. For the name of esterling or sterling money there be divers opinions. 37 E. 3. cap. 7.

Our historians thinke it is so called, *ab effigie sturni, aviculæ, quæ in altera parte nummi impressa fuit, nam sturnus anglicè sterling dicitur, &c. vel quod numulus in altera parte haberet notam stellæ, quam Angli ster vocant.* Polid. Virg. fol. 304, &c.

And with the conceit of the sterling agreeth * Linwood the civilian in his glosse upon the provinciall constitutions. * Tit. de testamentis cap. Item quia verbo centum solid. Master Skene.

The Scots thinke it should take his name of a towne in Scotland, called Striveling, *alias* Sterling.

But

The name.
Hovend. parte
poster. anna-
lium. fol. 377. b.
20 E. 1. Vet.
Mag. Chart. 167.
The time.
Dier, 7 El.
fol. 82.
The value.

But the esterling or sterling peny tooke the name of the workmen, being Esterlings, that both coined it, and gave it the allay as the florence of gold is called of the Florentines, and the portagues of the Portugals, &c.

And the esterling penny was first coined by the Esterlings in the reigne of Henry the second; and now money of that allay is counted the lawfull money of England.

20 pence of silver made an ounce, and twelve ounces made a pound of fine silver, and eleven ounces of fine silver, and one ounce of allay maketh a pound weight of sterling silver intended by this act.

By the statute of 18 Eliz. plate of silver ought to be of the fines of xi. ounces two peny weight.

Allay is the mixture of a baser metall then silver or gold, called in our bookes false metall.

And if more allay be put into the money then is limited to them by the indenture between the king and them, or make it of lesse weight, it is treason, and herewith agreeth Britton, treating of treason, where he saith, *Auxy le fesors de nostre money counterfeit, ou plus de allay mys en nostre money que mister ne serra solonque le forme et usage de nostre realme*, and hereunto accordeth Fleta.

The ancient currant silver was the penny: for so I find in the Register in an action of account against a receiver, the plaintife supposed the defendant to be *receptor denariorum*: and when a man wargeth his law in an action of debt, the entry is, *quod non debet prefato quarenti 4. libras nec aliquem denarium inde*. And at the making of this statute in 28 E. 1. the peny was the currant money of England: it is called in Latine *denarius*, and very aptly to be derived à *numero denario*, as it is taken by us; *quilibet enim denarius argenti valebat 10. denarios æris: denarii dicti, quia denos ære valebant; quilibet denarius puri auri valebat 10. denarios puri argenti*.

Penny in English cometh of the Saxon word pennýg.

In 13 H. 3. there was found by a plowman in tilling the earth money in vessels so ancient, as it was not knowne; the record saith, *De veteri moneta ignota in doliis arando reperta, &c.*

The richest king of England of treasure, that I have read of, was king Henry the seventh, who left at his death in ready mony fifty and three hundred thousand pounds, most of it in foraine coine.

(3) *Et que nul oure, peior argent que mouie.*] The sense hereof is, that none shall gild worse silver then of the fines of sterling; for such ought the mony to be, and all silver vessell ought to be of the allay of good sterling: for the plate of England is both for the honour, and riches of the realme.

(4) *Tanque il soit assaie per les gardens del misteric.*] This is evident of itselpe.

(5) *Auxy que soit signe dun teste de leopard.*] This is observed to this day: the statute of 37 E. 3. added, that every goldsmith should have his private marke, &c. to the end it may be knowne who made it; besides the surveyors must set their marke; and then an alphabeticall letter must be also set unto it, so as it must have foure markes.

For these matters see the statutes of 2 H. 6. ca. 14. 17 E. 4. ca. 1. 4 H. 7. ca. 2. 18 Eliz. cap. 14.

(6) E2

9 H. 5. stat. 2.
cap. 4. & 6.
3 H. 7. 10. a. b.
3 H. 7. ubi supr.

Brit. fol. 10. b.
Flet. li. 1. c. 22.

What kind of
coine.
Regist. 135.
F.N.B. S2. Stat.
de 31 E. 1. de
ord. mensur. lib.
intrat.

Denarius unde.
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Rot. clauf an.
13 H. 3.

Rot. clauf an.
5 H. 8.

37 E. 3. cap. 7.
2 H. 5. ca. 4.
Sta. 2. 2 H. 6.
cap. 14.

37 E. 3. cap. 7.

(6) *Et que nul ne oure peyor ore que de touche de Paris.*] Of this sufficient hath been said before.

(7) *Et que nul ne fac' auneux, croix, ne firmeaux.*] This branch is repealed by 21 *Jacobi regis, cap. 28. versus finem.*

(8) *Et nul mett' pier en ore, si il ne soit naturel.*] Counterfeit stones should not be set in gold, to the end that the subject should not be deceived thereby.

(9) *Que le droit et le seignorie de la corone saves luy soient per tous.*] Here is offered just occasion to speake what prerogative the king hath in silver and gold, and first and principally in making of money curreant within the realme.

It is said by those that were of councell with the king in the case of the mines, that it doth pertain to the king onely to put a value to the coine, and to make the price of the quantity, and to put a print to it; which being done, the coine is curreant for so much as the king hath limited. Before we speak to this, let us see what our ancient authors and acts of parliament have holden and enacted concerning the monies of England *in genere*, and then shall we the better conceive of this opinion.

The Mirror treating, *Des articles per quels roys ordeins*, saith thus, *Ordein fuit que nul roy de cest realme ne poet changer sa money, ne im- pairer, ne amender, ne auter money faire, que de ore ou d'argent sans las- sent de tous ses counties*, that is, without assent of parliament.

For the better understanding hereof, and of that which shall be said hereafter, it is to be understood, *quod metallorum sunt septem species, viz. aurum, argentum, æs, sive cuprum (sic dictum, quia pri- mo inventum fuit in Cypro) stannum, ferrum, plumbum, et aurichalchum.* Now as to the making of coine these metals by the law of Eng- land are subdivided *in metallum legale, sive verum, et metallum illegi- timum sive falsum.* And this subdiviſion appeareth both by act of parliament, and by our bookes.

Quicumque in emptionibus et venditionibus obulum seu quadrantem le- galis metalli, et debitam habentem formam recusare præsumpserit, tan- quam regie majestatis contemptor capiatur, et in carcerem detrudatur. By this act it appeareth, that no subject can be enforced to take in buying or selling, or other payment, any money made, but onely of lawfull metall, that is, of silver or gold, as the Mirror hath told you, and by this it is proved, that having respect to money, there is an unlawfull metall, and these be the other five.

The mony of England is the treasure of England, and nothing is said to be treasure trove but gold and silver. See the third part of the Institutes, cap. *Treasure trove.* And this is the reason that the law doth give to the king mines of gold and silver, thereof to make money, and not any other metall which a subject may have, because thereof money cannot be made. And hereof there is great reason, for the value of money being the measure of all contracts, &c. is in effect the value of every man. And herewith agreeth the booke in 3 H. 7. *Quod ille qui facit monetam contra or- dinationem, &c. allaiatam, viz. alcamino, vel alio falso metallo, pro- ditio est*, where all the said five base metals (as to be put in coine) are deemed false metals. Bracton calleth money made of them *monetam reprobam, et monetam falsam.*

To omit many things that might be said to the same intent, and to confirme this point with an act of parliament made in the 25

Plo. com. 316.

Mirror, cap. 1. § 3.

Euclides, lib. 1. cap. 1. Geo. agricol. lib. 10, cap. 1.

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Statutum de di- missione denari- orum, an. 20 E. 1. Vet. Mag. Chart. fol. 167.

Pl. com. 316. the point adjudged. In nummis tria requiruntur, me- tallum legale, pondus, & forma. 311 7 ubi supra. 9 E. 3. cap. 2. Glanv. lib. 14. cap. 7. Bract. lib. 3. fol. 118. Flet. lib. 1. c. 22.

25 E. 3. cap. 13.
9 H. 5. stat. 2.
ca. 6.

See the third part
of the Institutes,
cap. Felony, by
bringing in of
certaine coine,
&c.

Rot. Parl.
17 E. 3. nu. 15.

Rot. fin. an.
28 E. 1.
Holl. pag. 309. a.
Walf. an.
28 E. 1.

See Matth.
Paris. 31 H. 2.

Inter leges H. 1.
cap. 11. de jure
regis.

Inter leges
Ethelstani regis,
cap. 14. & Ed-
gari, cap. 8. &
Canuti regis,
cap. 8.
7 E. 2. cap. 12.

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25 E. 3. cap. 20.

yeare of the reigne of that wise and victorious king Edward the third, in these words: "*Item*, it is accorded, that the mony of gold and silver which now is currant, shall not be impaired in weight, or allay, but as soon as a good way may be found, that the same be put in the ancient state, as in the sterling."

By this act three things are to be observed: 1. That the money of England must either be of gold or silver: 2. That the currant money of England cannot be impaired either in weight or in allay: 3. That the allay of the sterling was the ancient currant mony of England. And herewith agreeth the statute of 9 H. 5.

By an act made, not in print, it is enacted, that silver shall be coined according to the old esterling in poize, and allay, to be currant amongst the subjects, and not to be carried over, on paine of death. And if the Flemings shall coine their silver accordingly, that the same be currant amongst merchants. And that the sterling mony was the ancient currant money of England. That in the raign of E. 1. there were divers white monies called pollards, crocards, staldings, eagles, leonines, and steepings artificially made of silver, copper, and sulphur, and yet currant within the realme; and for that two pieces of those monies were but of the value of one sterling, king E. 1. by his proclamation utterly forbad the same. And yet to look somewhat higher, Matth. Paris 33 H. 3. pag. *Denarius Angliæ qui nominatur sterlingus rotundus sine tonsura ponderabit 12 grana frumenti in medio spicæ, et 20 denarii faciunt unciam, et 12 uncia faciunt libram, &c.*

And yet to ascend to former times, *Hæc sunt jura quæ rex Angliæ solus et super omnes habet in terra sua, &c. viz. murdrum, falsaria monetae suæ, incendium, hamsockna, forstall, firdinga, flemen firmæ, præmeditat' assultus, roberia, &c.*

But I will desire the studious reader to cast his eyes upon the lawes before the conquest.

Si quis nummum corripuerit, ei manus scelere violata præciditor, eamque prece vel pretio redimi nefas esto, &c.

In dimensione et pondere nihil esto iniquum, ab iniquitate deinceps quique temperat, &c.

And melting of the good monies of the realme, and altering the same into base coine was deemed in parliament amongst the rest of the calamities that then fell upon this realme. And that the law is this, it is best for the king; for by the impairing of the coine of England either in weight or in allay, the king hath the greatest losse both in his owne revenues, forfeitures, and subsidies, and also in the disvaluation of his subjects: for the king can never be rich, or his kingdomes safe, when his subjects be poore, and the fineness and goodnesse of his coine is *inter magnalia et regalia coronæ.*

At the aforesaid parliament of 25 Ed. 3. another excellent law was made in these words: "*Item*, it is accorded and assented, that the moniers, and other wardens and ministers of the money shall receive plate of gold and silver by the weight, and not by number, and in the same manner shall deliver the mony, when it shall be made, by weight, and not by number, without delay.

Queen Elizabeth (*Angliæ amor*) finding in the beginning of her raigne some copper money, and all too much, and against law allayed, amongst many others, reformed the same, as upon her tombe in Westminster it appeareth, *Religio reformatâ, pax fundata, monita*

ad suum valorem reduēta, classis instructissima apparatus, gloria navalis restituta, rebellio extincta, Anglia totos 40 annos prudentissimè administrata, ditata, et munita, Scotia à Gallis liberata, Gallia sublevata, Belgia sustentata, Hispania coercita, Hibernia pacata, orbisque terrarum semel atque iterum circumvagatus.

Now for the kings prerogative in the mines or veines of gold and silver (for he hath no prerogative in any other metall) you may reade at large in the case of the mines. If you desire to reade other authorities not cited there *de aurifodinis, argenti fodinis, et aliis mineris*, you may reade Bracton, Fleta, the Register, and other ancient authors, records, and book-cases. And to this you may adde a record which we lately found out.

* *Patrius del Gile* & xxvi. *alii minetarij apud Aldeneston implacitantur per Henr' de Whiteby, & Joannam uxorem ejus pro eo quod succiderunt arbores suas apud Aldeneston vi & armis, & eas asportaverunt ad valentiam lx.li. &c.* Ipsi dicunt quod tenent mineram de Aldeneston ad firmam de dom' rege, & dicunt quod talis est libertas mineræ prædictæ, quòd minetarii ejusdem mineræ possunt capere boscum, cujuscunque fuerit, propinquiorem & utiliore[m] venæ argenteæ prædictæ mineræ, quam invenire contigerit. Et quod iidem minetarii possint capere pro voluntate sua boscum illum ad mineram illam ardendam & fundendam. Et licitum est eis capere boscum illum ad ædificandum, & ardendum, & claudendum. Et quod licitum est eis boscum illum dare ministris mineræ prædictæ pro stipendiis suis. Et etiam licitum est divitibus ejusdem mineræ dare pauperibus de bosco illo ad sustentationem suam quantum voluerint. Et dicunt, quòd, quia prædictus boscus fuit propinquior & utilior cuidam venæ quam ipsi invenerunt, ipsi succiderunt boscum prædictum ad comburendam, & fundendam mineram prædictam, & ad ædificandum, claudendum, & ad dandum pauperibus & ministris ejusdem mineræ pro stipendiis suis, sicut prædictum est. Dicunt etiam, quod non est licitum aliquibus dominis boscorum postquam op' minetarii inceperint succidere in boscis illis ad mineram prædictam, sicut prædictum est, aliquid de boscis illis vendere, nec dare, nisi tantum inde capere rationabilia estoveria sua. Et dicunt quòd ipsi & anteces. sui, nomine domini regis in boscis vicinis quorumcunque fuerint ad mineram tali libertate usi sunt à tempore quo non extat memoria, unde bene advo- cant quod ipsi succiderunt prædictum boscum ratione ejusdem libertatis, & non contra pacem, &c. Et Henr' & Joan' bene cognoscunt quod licitum est minetariis prædictis capere de propinquantibus & utilioribus boscis ad mineram regis ardendam & fundendam, set dicunt, quod, ultra necessaria sufficientia ad mineram illam ardendam & fundendam, vi & armis boscum suum ad valentiam xl. li. succiderunt, vendiderunt, et asportaverunt, de quo nihil proficui ad mineram regis devenit, nec ad ejusdem mineræ promotionem. Et quod ita sit, petunt quod inquiretur; unde si boscus ille et alii de partibus illis destruantur, & ad aliqua alia inde facienda, quam ad mineram prædictam comburend' & fundend', hoc erit ad dampnum domini regis; pet' judic' si minetarii prædicti ad præmissa quæ allegant, cum in manifestum dampnum domini regis redundant, admitti debeant, &c. cum destructis boscis illis cessabit mineræ illius proficuum, &c. dies dat' est in tres Pasch', &c.

Modo reddit Oxenford lx.li. ad numerum de 20 in ora, (i.) ad numerum de xx. d. in uncia, sic interpretatur in lib. abbatiæ de Burton in com' Staff.

Pl. com. in the case of the mines, fol. 314, &c. Bract. lib. 2. fol. 122. b. Flet. lib. 4. cap. 19. Glanvil. lib. 14. cap. 2. Mich. 33 E. 1. rot. 126. coram rege, Derby. Rot. Parl. 3 R. 2. nu. 43. Regist. 165. 21 E. 3. fol. 60. 27 aff. 19. 43 E. 3. 35, &c. * Mich. 13 E. 1. in banco rot. 139. Cumberl. Minera argent. de Aldeneston. Libertates mineræ.

[579]

Domesday Ox- enford. & ibi sæpe. Mich. 37 H. 3. rot 4. a Duce horæ quæ valent 32. d.

* Moneta unde.
 Isidor. lib. 16.
 Ethic. cap. 17.
 b Pecunia unde.
 c Unde æs, vide
 Cæsar Com-
 men.
 d Argentea pe-
 cunia quando.
 e Aurea quando.
 f Nummus unde.

* *Moneta appellata est, quia nos monet ne qua fraus in metallo vel pondere fiat: b Pecunia à pecudibus est appellata, sicut à juvando jumenta dicta sunt, quia in pecudibus universa antiquorum substantia constabat: antiquissimi non dum auro et argento invento, c ære utebantur, nam prius ærea pecunia in usu fuit, postea d argentea, deinde e aurea subsequenta. Sed ab ea quæ incepit nomen retinuit, unde ærarium dicitur, quòd prius æs fuit in usu. Hæc Isidorus.*

f *Νέμισμα ἀπὸ τῆς νόμῃ, hoc est, à lege o in o commutato, quia cum antea permutatione mercium homines uti solerent lege, lege usus nummi introductus est. Some deriveth it, à Numa Romanorum rege, quia ipse primus imaginibus notavit, et titulo nominis sui præscripsit. Others imagine, quòd dicitur nummus, eò quòd nominibus effigieque signatur.*

Ferlingus unde,
 Stat. de 51 H. 3.
 Assisa panis, &c.

Panis Wasstelli de Ferlingo, (i.) quadrantis, derivatur à verbo Saxonico feopðling, per contractionem ferling.

Jobi, ca. 28.
 ver. 1. & ver. 5.

Where you reade *de auri fodinis* and *argenti fodinis*, it is affirmed by merchants that have travelled for gold, that there are silver mines, that is, there is oare or foile of silver digged out of the earth, and out of that by art is silver tried, but there is no oare or foile of gold, but it is gold originally in smaller pieces as it were dust, which being washed downe to the shoare, it is found by the yellowesse of the water. And this is confirmed by Job; for he saith, *Habet argentum venarum suarum principia, et auro locus est in quo conflatur*: surely, there is a veine for the silver, and a place for gold where they finde it. And soon after, *locus sapphiri lapides ejus, et glebe illius aurum*: the stones of it are a place of sapphires, and the dust of it is gold. And yet for distinction sake it is called *aurifodina*.

Diodorus Sicu-
 lus, lib. 5. ca. 8.
 fol. 142. b.
 Polibius, lib. 3.

For *stannum*, tinne, England hath of ancient time furnished other countries, both farre and neare, as you may reade in Diodorus Siculus, who lived in Augustus time. But Polibius, who wrote about two hundred yeares before him, affirmed this island to be abundantly store with tinne; and we have taken the greater liberty herein (to delight, if we could, the reader) for that herewith we conclude this last chapter of this excellent parliament.

[580]

STATUTUM DE ASPORTATIS RELIGIOSORUM,

Editum Anno 35 Edw. I. apud Carliolen.

NUPER ad notitiam domini regis ex gravi querela magnatum, procerum, et aliorum nobilium regni (1) sui pervenit; quod cum monasteria, prioratus, et domus religiosæ (2) ad laudem et honorem Dei, et ad exaltationem sanctæ ecclesiæ per regem et progenitores

OF late it came to the knowledge of our lord the king, by the grievous complaint of the honourable persons, lords, and other noblemen of his realm, that whereas monasteries, priories, and other religious houses were founded to the honour and glory of

progenitores ſuos, et per dictos mag-
nates, nobiles, et eorum antecēſſores
fundata fuiſſent, et terræ et tenementa
quæ plurima eſſent data per ipſos dictis
monaſteriis, prioratibus, et domibus, ac
viris religioſis in eiſdem Deo ſervien-
tibus, ut in huiusmodi monaſteriis,
prioratibus, et domibus religioſis, tam
clerici quam laici admitterentur, ſe-
cundum ſuarum ſufficientiam facultat-
um; et infirmi ac debiles ſuſtenta-
rentur, hospitalitates, eleemoſynarum
largitiones, et alia pietatis opera ex-
ercerentur; et pro animabus funda-
torum prædictorum, et hæredum ſuo-
rum fierent in eiſdem: abbates, priores,
et cuſtodes eorumdem domorum, et qui-
dam eorum superiores alienigenæ (3),
utpote abbates, et priores Clunacen', et
Præmonſtraten', et ſanctorum Auguſtini
et Benediſti ordinum, et cæteri qui
plures alterius religionis et ordinis no-
viter per ſingula monaſteria, et domos
eis ſubjecta in Anglia, Hibernia,
Scotia, et Wallia (4) diverſa tallagia,
census, et impoſitiones inſolitas graves,
et importabiles (5), domino regi et
magnatibus ſuis inconfultis, fieri ſta-
tuerunt, et pro ſuo libito ordinaverunt,
contra leges et conſuetudines dicti regni
(6). Ex quo fit, ut numerus religio-
ſorum et aliorum ſervitorum in huius-
modi domibus et locis religioſis per tal-
lagia huiusmodi, census, et impoſitiones
oppreſſis, minuitur cultus divinus (7),
et eleemoſynæ pauperibus, infirmis, et
debilibus ſubtrahuntur, et ſalutes vi-
vorum, et animæ mortuorum miſera-
biliter defraudantur: hospitalitates,
eleemoſynarum largitiones, ac cætera
ceſſant opera pietatis, ſicque quod olim
in uſus pios, et ad divini cultus aug-
mentum charitati vè fuerat erogatum,
jam in cenſum reprobum eſt converſum
(8). Unde præterea, quæ
[581] prætermittentur, ſcandalum
non modicum creſcit in po-
pulo, et damna innumera, et exhæreda-
tionem fundatorum prædictorum, et
hæredum ſuorum, procul dubio per-
veniffe

of God, and the advancement of the
holy church, by the king and his
progenitors, and by the ſaid noble-
men and their ancestors, and a very
great portion of lands and tenements
have been given by them to the ſaid
monasteries, priories, and houſes, and
the religious men ſerving God in
them, to the intent that clerks and
laymen might be admitted in ſuch
monasteries, priories, and religious
houſes, according to their ſufficient
ability, and that ſick and feeble men
might be maintained, hospitality,
alms-giving, and other charitable deeds
might be done, and that in them
prayers might be ſaid for the ſouls of
the ſaid founders and their heirs; the
abbots, priors, and governours of the
ſaid houſes, and certain aliens their
ſuperiours, as the abbots and priors
of Ceſterciensens, and Premonſtra-
tensens, and of the order of St. Au-
guſtine, and St. Benediſt, and many
more of other religion and order, have
at their own pleaſures ſet divers un-
wonted, heavy and importable tal-
lages, payments, and impoſitions upon
every of the ſaid monasteries and
houſes in ſubjection unto them in
England, Ireland, Scotland, and
Wales, without the privity of our
lord the king and his nobility, con-
trary to the laws and cuſtoms of the
ſaid realm; and thereby the number
of religious perſons, and other ſer-
vants in the ſaid houſes and religious
places being oppreſſed by ſuch tal-
lages, payments, and impoſitions, the
ſervice of God is diminished, alms
being not given to the poor, the ſick,
and feeble, the healths of the living
and the ſouls of the dead be miſerably
defrauded, hospitality, alms-giving, and
other godly deeds do ceaſe; and ſo
that which in times paſt was chari-
tably given to godly uſes, and to the
increaſe of the ſervice of God, is now
converted to an evil end; by per-
miſſion whereof there groweth great
ſcandal

venisse noscuntur: et adhuc verifimiliter præsumuntur pervenire, nisi tantis et tam gravibus detrimentis celeri et salubri remedio obvietur. Considerans igitur præfatus dominus rex sibi et populo suo valde fore damnosum, si tam grandes jaécturas et insolentias sustineret diutius sub dissimulatione transire.

Volensque idcirco monasteria, prioratus, et alias domos religiosas, et loca in regno et terris dominio suo subjéctis constituta secundùm voluntatem et pia vota fundatorum ipsorum manutenere et defendere, et contra hujusmodi oppressiones de congruo remedio providere de cætero, ut tenetur de consilio comitum, baronum, magnatum, procerum, et aliorum nobilium, et regni sui comitatum in parlamento suo (9) apud Westmonast' die dominica proxim' post festum Sancti Matthiæ apostoli anno regni sui 33. habito ordinavit et statuit, ne quis abbas, prior, magister, custos, seu quivis alius religiosus, cujuscunque conditionis, aut status seu religionis exstat sub potestate et jurisdictione sua constitutus, censum aliquem per superiores (10) suos abbates, priores, magistros, custodes religiosarum domorum, vel locorum impositum, vel inter se ipsos aliqualiter ordinatum extra regnum et dominium suum sub nomine redditus, tallagii, apporti seu impositionis cujuscunque, vel alias nomine excambii, venditionis mutui, vel alterius contractus quocunque nomine censatur, per se vel mercatores, aut alios clam vel palam, arte vel ingenio defer' vel transmittat, seu deferri faciat quoquo modo, nec etiam ad partes externas se divertat causa visitationis, aut alio colore quæsito, ut sic bona monasteriorum et domorum suarum extra regnum et dominium prædictum abducatur. Et si quis contra præsens statutum venire præsumpserit, considerata qualitate delicti, et regni prohibitionis
pensato

scandal to the people, and infinite losses and disheritances are like to ensue to the founders of the said houses and their heirs, unless speedy and sufficient remedy be provided to redress so many and grievous detriments. Wherefore our foresaid lord the king, considering that it would be very prejudicial to him and his people if he should any longer suffer so great losses and injuries to be winked at,

And therefore being willing to maintain and defend the monasteries, priories, and other religious houses erected in his kingdom, and in all lands subject to his dominion, and from henceforth to provide sufficient remedy to reform such oppressions, as he is bound by the counsel of his earls, barons, great men, and other nobles of his kingdom in his parliament holden at Westminster, in the five and thirtieth year of his reign, hath ordained and enacted, that no abbot, prior, master, warden, or other religious person, of whatsoever condition, state, or religion he be, being under the king's power or jurisdiction, shall by himself, or by merchants or others, secretly or openly, by any device or means, carry or send, or by any means cause to be sent, any tax imposed by the abbots, priors, masters or wardens of religious houses their superiors, or assessed amongst themselves, out of his kingdom and his dominion, under the name of a rent, tallage, or any kind of imposition, or otherwise by the way of exchange, mutual sale, or other contract howsoever it may be termed; neither shall depart into any other country for visitation, or upon any other colour, by that means to carry the goods of their monasteries and houses out of the kingdom and dominion aforesaid. And if any will presume to offend this present statute, he shall be grievously punished according to the quality of his offence,
and

pensato contemptu, graviter puniatur (11).

Præterea inhibet præfatus dominus rex omnibus et singulis abbatibus, prioribus, magistris, et custodibus religiosarum domorum et locorum, alienigenis quorum potestati, subjectioni, et obedientiæ domus eorumden ordinum in regno et dominio suo existentes, subdunt, ne de cætero tallagia (12), census, impositiones, apporta, seu alia quæcunque onera aliquibus [582] monasteriis, prioratibus, seu aliis domibus religiosis eis (ut prædicitur) sic subiectis imponant, seu faciant aliquo modo assidere, et hoc sub foris factura omnium, quæ in potestate sua obtinent, et foris facere poterunt in futurum (13).

Et insuper ordinavit dominus rex et statuit, quod abbates Cisterciensium, et Præmonstratensium ordinum (14) aliorum religiosorum, quorum sigillum in custodia abbatis, et non conventus, prius residere tantummodo consuevit, de cætero habeant sigillum commune, et illud in custodia prioris monasterii seu domus et quatuor de dignioribus, et discretioribus ejusdem loci conventus, sub privato sigillo abbatis ipsius loci custodia deponend. Ita quod abbas, seu prior domus cui præest, per se contra aliquem seu oblig. nullatenus possit firmari, sicut hactenus fieri consuevit. Et si forsan aliqua scripta oblig. donationum, emptionum, venditionum, alienationum, seu aliorum quorumcunque contract. alio sigillo, quam tali sigillo communi, sicut præmittitur custodito, inveniuntur à modo sigillata, pro nullis penitus habeantur, omnique careant firmitate. Cæterum intentionis domini regis non existit (15) abbates, priores, et alios religiosos alienigenas per ordinationes et statuta expressa superius ab officio visitationis in regno et in dominio suo exercendo excludere, quin per se ipsos vel alios, monasteria et alia loca eis in regno et in dominio suis prædictis subiecta, juxta officii sui debitum in his duntaxat

and according to his contempt of the king's prohibition.

Moreover, our foresaid lord the king doth inhibit all and singular abbots, priors, masters and governors of religious houses and places, being aliens, to whose authority, subjection, and obedience the houses of the same orders in his kingdom and dominion be subject, that they do not at any time hereafter impose, or by any means assess any tallages, payments, charges, or other burdens whatsoever, upon the monasteries, priories, or other religious houses in subjection unto them (as is aforesaid) and that upon pain of all that they have or may forfeit.

And further, our lord the king hath ordained and established, that the abbots of the orders of Cisterciensium and Premonstratensium, and other religious orders, whose seal hath heretofore been used to remain only in the custody of the abbot, and not of the covent, shall hereafter have a common seal, and that shall remain in the custody of the prior of the monastery or house, and four of the most worthy and discreet men of the covent of the same house, to be laid up in safe keeping under the private seal of the abbot of the same house; so that the abbot or prior, which doth govern the house, shall be able of himself to establish nothing, though heretofore it hath been otherwise used. And if it fortune hereafter, that writings of obligations, donations, purchases, sales, alienations, or of any other contracts, be sealed with any other seal than such a common seal, kept as is aforesaid, they shall be adjudged void and of no force in law. But it is not the meaning of our lord the king to exclude the abbots, priors, and other religious aliens, by the ordinances and statutes aforesaid, from executing their office of visitation in his

duntaxat quæ ad obſervantiam regularem, et ordinis ſui diſciplinam pertinent, libere valeant viſitare. Proviſo quod illi qui officium huiusmodi viſitationis exercuerint, nihil de bonis aut rebus huiusmodi monaſteriorum, prioratum, et domorum extra præſatum regnum et dominium, præter rationabiles et moderatas eorum expenſas, deferant, vel deferri procurant.

Et licet ordinationum et ſtatutorum præſcriptorum pronunciatio et publicatio à parlamento proximo præterito (16) uſq; ad præſens parlamentum apud Carliolum in octabis Sancti Hillarii, anno regni ejuſdem regis Edwardi 35. certis ex cauſis, et ut cum maiore deliberatione et maturitate procederent (17), remanſerit in ſuſpenſo, dominus rex poſt deliberationem plenariam et tractatum cum comitibus, baronibus, proceribus, et aliis nobilibus et comitibus regni ſui habitum in præmiſſis, de conſenſu eorum unanimi et concordia ordinavit et ſtatuit, ut ordinationes et ſtatuta prædicta

[583] *ſub forma modis et conditionibus ſupra contentis à primo die Maii prox' futur' in antea inviolabiliter obſerventur perpetuis temporibus valitura: quodque transgreſſores ipſorum pænis extunc ſubjaceant annotatis.*

(25 Ed. 3. ſtat. 6. Hob. 148. 3 Bulſtr. 45. 5 Ed. 3. c. 3. 4 Ed. 3. c. 6. 8 Rep. 118.)

The reaſon wherefore this parliament was holden at Carlisle, appeareth by the writ of parliament directed to the lords, *viz. Quia ſuper ordinationem et ſtabilimentum terræ noſtræ Scotiæ, necnon et aliis negotiis nos, et ſtatum regni noſtri ſpecialiter tangentibus, apud Carliolum in octab' ſancti Hillarii proxim' futur' parlamentum tenere, &c.*

There were two miſchiefs before the making of this act, but both of them tended to one end, *viz.* the grievous oppreſſion of churches

his kingdom and dominion; but they may viſit at their pleaſures, by themſelves or others, the monaſteries and other places in his kingdom and dominion in ſubjection unto them, according to the duty of their office, in thoſe things only that belong to regular obſervation, and the diſcipline of their order. Provided, that they which ſhall execute this office of viſitation, ſhall carry, or cauſe to be carried out of his kingdom and dominion, none of the goods or things of ſuch monaſteries, priories, and houſes, ſaving only their reaſonable and competent charges.

And though the publication and open notice of the ordinances and ſtatutes aforeſaid was ſtayed in ſuſpence for certain cauſes ſithence the laſt parliament, until this preſent parliament holden at Carlisle in the octaves of Saint Hilary, in the five and thirtieth year of the reign of the ſame king Edward, to the intent they might proceed with greater deliberation and advice; our lord the king, after full conference and debate had with his earls, barons, nobles, and other great men of his kingdom, touching the premiſſes, by their whole conſent and agreement hath ordained and enacted, that the ordinances and ſtatutes aforeſaid, under the manner, form, and conditions aforeſaid, from the firſt day of May next enſuing, ſhall be inviolably obſerved for ever, and the offenders of them ſhall be puniſhed as is aforeſaid.

churches and monasteries; the one from the pope, the other mentioned in the preamble.

For the first, *In hoc parlamento per majores graves depositæ fuerunt querimonie de oppressionibus ecclesiarum, et monasteriorum multiplicibus, et extortionibus pecuniarum per clericum domini papæ, magistrum Wil^l testa noviter in regno induc^tum: præceptum est eidem clerico de assensu comitum et baronum, ne de cætero talia exequatur*; for the king and the lords adjudged it unjust, that the pope should take any profit of the houses of their foundation: and therefore this act dealeth not herewith, but the lords prohibited his collector, and left the party grieved to his remedy by prohibition, or other remedy by law, as had been before, and after was used, as by the records and authorities quoted in the margent (amongst many others) which are worthy your reading, more at large appeareth: and so much for that first mischief. The other mischief appeareth at large in the preamble, wherein the pope, having so great power over the abbots and priors aliens, had a hand for his owne benefit.

* The commons complaine against provisions coming from Rome, whereby strangers were enabled within this realme to enjoy ecclesiasticall dignities, &c. by meanes whereof daily almes was decayed, the treasure of the realm transported, the secrets of the realme discovered, and the clerkes within the realm impoverished; and that the pope had in most covert wise granted to two new cardinals sundry ecclesiasticall livings within the realm, and namely, to cardinall Paragots above 10,000 marks yearly tax: they therefore require of the king and lords some remedy, for that they neither could, nor would any longer beare those strange oppressions, or else to help them to expell out of this realm the popes power by force. The answer of the king was, that he understood well these mischieses, and willeth, that between the lords and commons some remedy might be found, whereunto he might assent: hereupon the lords and commons sent for this act of 35 E. 1. upon the like complaint, thereby forbidding, that any thing should be attempted, or brought into the realme, which should tend to the blemishment of the kings prerogative, or in prejudice of his lords or commons, and so at that time, upon consideration had of this act of 35 E. 1. and for further remedy, an act of provision was made.

Also the statute of 25 E. 3. made against provisions, reservations, &c. reciteth this statute of 35 E. 1. and grounded that act upon the same. So as this act (as you may perceiv) hath been of very great and high account. And now let us peruse the words thereof.

(1) *Ex gravi querela magnatum, procerum, et aliorum nobilium regni.*] It is recited by the said act of 25 E. 3. that this act of 35 E. 1. was made at the petition of the comminalty of the realme, and here it is said, *ex gravi querela magnatum, &c.* and yet both stand well together; for knights of the thire, and other gentlemen of the house of commons are included under these words, *aliorum nobilium*: for *nobilitas est duplex, superior et inferior*; superior belongeth to the lords of parliament, and *inferior* to knights and gentlemen of name and bloud, who are in this act termed *nobiles*.

(2) † *Quod cum monasteria, prioratus, et domus religiosæ, &c.*] Here is rehearsed the end of the erection of religious houses, *viz. ad laudem et honorem Dei, et exaltationem sanctæ ecclesiæ per regem, et progenitores*

Rot. clauf.
17 H. 3. m. 37.
Rot. Franc'
16 H. 3. Rex,
&c. Justic' suis
de banco.
29 H. 3. tit. 3. à
tergo. 39 E. 3.
tit. 22. à tergo.
48 E. 3. tit. 33.
Braçt. lib. 4.
fol. 250. b. Rot.
Parl. 50 E. 3.
nu. 64, &c. to
the 117. 51 E. 3.
nu. 78. Rot.
Parl. 13 R. 2.
nu. 43. 2 H. 2.
fol. 10, &c.
4 H. 4. rot.
clauf. m. 11.
* Rot. Parl.
17 E. 3. nu. 59.

25 E. 3. stat.
unic.
* 25 E. 3. de
provisor' per las-
sent des counts,
barons, & auters
nobles.
9 E. 3. cap. 2.
27 E. 3. stat.
stat. per les pre-
lates, counts,
barons, & auters
grandees des
counties, &c.
Vid. 9 E. 2. stat.
of shriefes.
7 E. 1. de Re-
ligiosis. W. 2. in
the preamble.

† [584]

genitores suos, et per dictos magnates, et nobiles, et eorum antecessores fundata fuissent, &c.

4 R. 2. nu. 13.

Rot. Parl.

1 R. 2. nu.

& 13 R. 2. nu.

19. 10. parl. an.

4 H. 4. nu. 23.

& 48. 1 H. 5.

cap. 7. & Rot.

Parl. 1 H. 5. nu.

38. 22 E. 4. 44.

38 H. 6. 34.

21 H. 7. fol. 1.

&c. 13 E. 3.

264. 14 E. 3. 21.

20 E. 3. annuity

24. 40 E. 3. 10.

27 aff. 48.

14 H. 4. 37.

22 E. 4. 44.

21 H. 7. 7.

7 R. 2. cap. 12.

13 R. 2. cap.

1 H. 5. ca. 7.

(3) *Quidam eorum superiores alienigenæ.*] It appeareth in a parliament roll, that the clergy, (whereof priors aliens were part) had a third part of the possessions of the realme. These abbots, priors, and prioresses aliens were justly complained of, as by this act appeareth, and many times upon like complaints faire promises were made for reformation, but no amendment could be had, till they were taken away, and their possessions given to the king by act of parliament. See the parliament rolls of 4 H. 4. and 1 H. 5.

Note, these priors, and prioresses aliens were Normans, and French men, and in time of warre with France, the king by the common law might and did seise the possessions of the priors aliens within this realm into his hands, without any office, &c. See the statutes of 7 R. 2. 13 R. 2. 1 H. 5. against Frenchmen and aliens, to receive or have any benefice in England.

(4) *In Anglia, Hibernia, Scotia, et Wallia.*] For Scotland, &c. see divers records and authorities in law, Rot. Parl. Pasch. 21 E. 1. rot. 1. & rot. 2. *magnum placitum inter regem de Norwey, et regem Scotiæ.* Rot. Vasc. 22 E. 1. m. 23. Trin' 25 E. 1. coram rege, rot. 6. Norff. Robertus de Tony, &c. Mich. 33 E. 1. coram rege, rot. 127. Scotia. 28 E. 1. the letters of all the nobility of England in the name of themselves, and of the whole comminalty in parliament assembled to the pope, a duplicat whereof under the seales remaine in the exchequer, which we have seen, and a copy whereof we have. In the same yeare reade also the kings letters to the pope, which Walsingham rehearseth, pag. 49. and the lords letters, pag. 54. Reade also Walsing. pag. 17. &c. where many more authors be cited, and pag. 31, 32. 121. 138. & Matth. Westm' pag. 420. 428. 443. 452, &c. Holl. fol. 116, 117. Policron. lib. 7. cap. 39. Stow, 303. Fox, 269. 341. Rot. Parl. 14 E. 3. nu. 13. Stat. 2. & 42 E. 3. nu. 7. See in the parliament rolls, in every parliament *petitiones Scotiæ.* Rot. pat. 10 E. 3. 2. part comes Arundel, &c. Brit. fol. 25. a. b. 6 E. 3. 18. 1 E. 3. 17. per Cant' 8 R. 2. cont' claim 13. 7 H. 4. corody 7. 13 H. 4. 4. & 5. 8 H. 5. 4. 7 E. 4. 27. Fortescue, fol. 17. Pl. com. 126. Dier, 13 El. in manuscript.

(5) *Diversa tallagia, census, et impositiones insolitas, graves et importabiles, &c.*] See the exposition upon the statute of Magna Charta, cap. 30. when the king began to use the word of imposition; but here is the first statute that we remember, wherein this word imposition was used; and observe well from whom it came; and therefore here these impositions be called *insolitas*, and this word *noviter, &c.* expresseth so much; and because they were unaccustomed and newly imposed, they were *graves* and *importabiles*, and against the lawes and customes of the realme.

12 H. 7. cap. 6.
accord.

(6) *Contra leges et consuetudines dicti regni.*] Here it appeareth, that tallages, assessments, or impositions, set by any superiour, fo-reiner, or other, ecclesiasticall or temporall, upon his inferiour, or any other, though they have never so faire pretexts, as to recover the holy land, &c. are against the law and custome of the kingdome of England.

Rot. parl.

17 E. 3. ubi

101. ca. nu. 59.

And here it is to be observed, how this act hath since the 17 yeare of E. 3. been dealt withall; for at that yeare a branch of this statute was recited, that forbade that any thing should be attempted or brought

brought into the realme, which should tend to the blemishment of the kings prerogative, or in prejudice of his lords and commons, which now is wholly omitted,

*Accipe nunc horum insidias, et crimine ab uno
Disce omnes*————

(7) *Minuitur cultus divinus, &c.*] That acts of parliament have been made at the petition sometime of the nobles, many times of the commons, and of the lords and commons in causes ecclesiasticall for the honour of God, for advancement of divine worship, for the instruction of Gods people, and maintenance of workes of piety, and the like, appeareth in this act, and in many other acts of parliament: for *reges qui serviunt Christo, faciunt leges pro Christo*. To omit the ancient statutes made in parliament before the conquest of malter Lamberts edition, we will recite some few which shall suffice in a matter so frequent and evident, W. 2. 13 E. 1. cap. 43. 21 E. 3. fol. 60. the bishop of Norwich his case, 25 E. 3. cap. 22. 25 E. 3. *stat. de provisoribus*, 27 E. 3. cap. 1. 36 E. 3. cap. 8. 38 E. 3. stat. 2. cap. 1. & cap. 4. 45 E. 3. cap. 3. Rot. parl. 51 E. 3. nu. 13. 3 R. 2. ca. 3. 7 R. 2. cap. 12. 12 R. 2. ca. 15. 13 R. 2. stat. 2. cap. 2. & 3. 16 R. 2. cap. 5. 2 H. 4. cap. 3. & 4. 4 H. 4. cap. 12. & 13. 6 H. 4. cap. 1. 7 H. 4. cap. 6. & 8. 9 H. 4. cap. 8. 1 H. 5. cap. 5. 3 H. 5. cap. 4. 2 H. 5. cap. 3. 2 H. 5. stat. 2. ca. 2. 4 H. 5. ca. 6. 3 H. 7. cap. 6. 11 H. 7. cap. 8. and generally, all statutes that take away priviledge and benefit of clergy and sanctuary.

(8) *Sic quod olim in usus pios, et ad divini cultus augmentum charitativè fuerat erogatum, nunc in censum reprobum est conversum.*] If it be observed of whom they are spoken, these words are sharp and bitter: for, as a reprobate is *abjectus et creatus diabolo*, so a reprobate sense is an abject and damned sense, and the like is frequent in parliaments, when any thing is attempted or done against the honour of God, the prerogative and dignity of the king, the lawes of the realme or the common-wealth.

* The pope, for divers usurpations, is called the common enemy to the king and the realme.

^a By brocage and unlawfull meanes the pope receiveth so much of ecclesiasticall dignities in this realme, as is more then the kings warres, who then was, and of long time had been in an open and chargeable warre with France.

^b Note, in the roll of parliament of the statute of provisors, there are more sharp and biting words against the pope, then in the print, a mysterie often in use, but not to be knowne of all men.

^c That the brocars of the sinfull city of Rome for money promote many caitifes, being altogether unlearned, and unworthy, to a thousand markes livings yearly, where the learned and worthy can hardiy obtaine twenty markes, whereby learning decayeth.

(9) *De concilio comitum, baronum, magnatum, procerum, et aliorum nobilium, et regni sui comitatum in parlamento suo, &c.*] Here the prelates are omitted, and this statute was made by the king, the nobles, and the comminalty; and it is objected, that therefore this is no act of parliament, and for authority of the roll of parliament in 21 R. 2. is cited, where it is said, that divers judgements were heretofore undone, for that the clergy were not present. To this some have

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Lib. 11. f. 73. b.
Magd. Coll. case.

Rot. Parl.

* 18 E. 3. stat. 1.
nu. 38. Vid.

17 E. 3. nu. 59.

^a 25 E. 3. nu. 13.

^b 38 E. 3. ca. 1,
2, 3, 4.

^c Rot. parl.

50 E. 3. nu. 96.

Rot. parl. 18 E.

3. nu. 32. stat. 2.

Rot. parl. 51 E. 3.

nu. 13. 3 R. 2.

c. 3. & Rot. parl.

nu. 37. 6 H. 4.

c. 1. of the hor-

rrible mischiefes

and damnable

customs intro-

duct of new into

the court of

Rome, &c.

3 H. 5. nu. 11.

have answered, that a parliament may be holden by the king, the nobles, and commons, and never call the prelates to it: but we hold the contrary to both these, and shall make it manifest by records of parliament, wherein for the better understanding hereof, we will observe this order: first, that the bishops ought to be called to parliament: secondly, where acts of parliament are good without them: and lastly, that this act of 35 E. 1. is an act of parliament.

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To the first, every bishop hath a barony, in respect whereof, *secundum legem et consuetudinem parliamenti*, he ought to be summoned to the parliament as well as any of the nobles of the realme: and likewise 26 abbots, and two priors had baronies, and thereby were also lords of parliament; and when the monasteries were dissolved, the lords house lost so many members that had voices in parliament. But seeing it was done by authority of parliament, it was no impeachment to the proceedings in parliament.

To the second. if they voluntarily absent themselves, then may the king, the nobles and commons make an act of parliament without them, as where any offender is to be attainted of high treason, or felony, and the bishops absent themselves, and the act proceed, the act is good and perfect.

Likewise if they be present, and refuse to give any voices, and the act proceed, the act of parliament is good without them.

Also where the voices in parliament ought to be absolute, either in the affirmative or negative, and they give their voices with limitation or condition, and the act proceeds, the act is good; for their conditionall voices are no voices.

Of every of these we will produce examples out of the records and rolls of parliament.

Dors claus. an.
15 E. 2. m. 25.

See Vet. Magn.
Chart. 2. part
fol. 56.

Dors claus. 15 E.
2. m. 13. in
schedula.

1 E. 3. ca. 1.

3 R. 2. Stat. 2. c. 3.
where the statute
is made.

At a parliament holden *à die natiuitatis Sancti Iohannis Baptistæ, in 3 septimanas anno 15 h. 2.* the prelates, countes, barons, and commons of the realme charge Sir Hugh Spencer the father earle of Winchester, and Hugh his sonne earle of Gloucester with many high and hainous offences, as the act called *exilium Hugonis Lespencer patris et filii*; the earles and barons, peeres of the realme, in the presence of the king pronounce judgement against them, as by the act appeareth: and after at a parliament holden at York, *à die Pasch' in 3 septimanas*, the said judgement and attainder against them (by the kings exorbitant favour towards them, whose favourites they were) was adnulled; and one of the causes was, for that the said judgement was given without the prelates, whereas the same being an act of parliament, and entered into the parliament roll, as other acts at that parliament were, and the consent of the bishops doth manifestly appeare, for that they were parties to the charge, and after it was adjudged by authority of parliament, that the said judgement against them was good, and confirmed the same; so as they that beheld but on the outside of the adnullation, and looked not into all parts of the former act, and knew not the act of 1 E. 3. might say, as the commons said, as is aforesaid, in 21 R. 2.

At the parliament holden in the third yeare of king Richard the second, a bill was exhibited against the clergy with many bitter words, for the ill disposing of the dignities, offices, parsonages, canonries, prebends, and other benefices, whercof they were patrons, and were in their gift, whercof many inconveniences followed; the bishops and other prelates taking great offence at this bill, ab-

sent. d

presented themselves, whereupon the king, upon the complaint of his commons, by the advice and common assent of all the lords temporall, passed the bill.

In the same parliament great complaint was made of the extorsions committed by the bishops and their officers; and thereupon a bill was framed, that justices of peace might enquire thereof, and a forme of a commission desired to be enacted; the prelates and clergy made their protestation expressly against the said bill to heare extorsions, &c. tending to the blemishing of the liberty of the church, &c. whereunto it was replied for the king, that neither for their said protestation, nor other words in their behalfe, the king would not say to grant to his justices in that case, and all other cases, as was used to be done in times past, and was bound to doe by vertue of his oath done at his coronation, whereupon the act and forme of a commission passed as was desired.

Rot. parl. 3. R. 2.
nu. 38. & 40.
See 7 R. 2. c. 12.

At the parliament holden in the 11 yeare of Richard the second, in the beginning of the parliament holden in that yeare, the archbishop of Canterbury made openly in the parliament a solemne protestation for himselfe, and the whole clergy of his province, which he desired might be entred, and so it was: the effect whereof was, that albeit they might lawfully be present in all parliaments, yet for that in this parliament matters of treason were to be entreated of, whereat by the canonically law they ought not to be present; they therefore absented themselves, saving their liberties therein otherwise: the like protestation did the bishop of Duresme and Carlisle make. At which parliaments divers statutes were made, nothing concerning life or member, as the 7 chapter concerning merchants, the 8 chapter touching annuities, the 9 chapter against new impositions, the 11 concerning keeping of assises, &c. all which were good and perfect statutes, and yet the prelates absented not to them.

Rot. parl. 11 R.
2. nu. 9, 10.

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At the parliament holden in the 13 yeare of Richard the second, when the two bill were read, the one intituled a confirmation of the statute of provisors, and the forfeiture of him that accepteth a benefice against that statute; the other intituled the penalty of him that bringeth in a summons or sentence of excommunication of the pope against any person upon the statute of provisors, and of a prelate executing it, both which bills tended to restraine the popes authority, which he claimed in disposing of ecclesiasticall promotions within this realme. The archbishops of Canterbury and Yorke for the whole clergy of their provinces made their solemne protestations in open parliament, that they in no wise meant or would assent to any statute or law in restraint of the popes authority, but utterly withstood the same, the which their protestations at their requests were inrolled, and yet both bills passed by the king, lords, and commons, which are in print.

13 R. 2. ca. 2.
13 R. 2. ca. 3.
Vid. 1 H. 5. c. 7.

Rot. Parl. 13 R.
2. nu. 24.

See the statute of 16 R. 2. and many others.

16 R. 2. ca. 5.
Rot. Parliament. 6 H. 6. nu.
27.

It is enacted by the king, lords temporall, and commons, that no man should contract or marry himselfe to any queen of England, without the speciall licence and assent of the king, on paine to lose all his goods and lands.

The bishops and clergy being present, assented to this bill, as farre forth as the same swerved not from the law of God, and of the church, and so as the same imported no deadly sinne, this was holden no assent; and therefore it was enacted by the king,

king, lords temporall, and commons, and so specially entred, omitting the prelates.

And thus much as concerning the second article shall suffice.

Rot. Patent.

7 E. 2. 1. part
m. 6. 4 E. 3. c. 6.

5 E. 3. ca. 3.

25 E. 3. stat. unic.

and by the re-

cord of parlia-

ment in 17 E. 3.

ubi supra.

20 E. 3. Abb. 14.

27 H. 6. annui-

tie 41.

As to the third point, when an act is specially entred, that it was enacted by the king, the lords temporall, and commons, it must be intended, that the bishops absented themselves, or if they were present, protested against it, or gave such voices as were *contra legem et consuetudinem parliamenti*. And for this act of 35 E. 1. in letters patents made within 8 yeares after this statute, it is affirmed to be an act of parliament; by foure acts of parliament in the 4 and 5 and 25 yeare of E. 3. the same is holden for an act of parliament, and so it is in 13 R. 2. cap. 2. stat. 2.

(10) *Censum aliquem per superiores, &c.*] This branch is plaine, and needeth no exposition.

(11) *Considerata qualitate delicti, et regie prohibitionis pensato contemptu, graviter puniatur.*] That is, by fine and imprisonment, according to the quality of the offence.

(12) *Ne de cætero tallagia, &c.*] Hereby are all such tallages forbidden.

Vid. stat. de mo-

neta mag. ca. 3.

Vet. Mag. Chart.

fo. 38. 20 E. 3.

cap. 1.

(13) *Et hoc sub forisfactura omnium, quæ in potestate sua obtinent, et forisfacere poterunt in futuro.*] This is the like forfeiture as is given by other statutes in case of *præmunire*, viz. the forfeiture of his lands, which he may forfeit, and of his goods, and to be imprisoned at the will of the king.

(14) *Quod abbates Cisterc' et Præmonstr' ordinum, &c.*] This branch (as it hath been resolved) is impossible, and inconvenient to be observed: impossible, because it is hereby enacted that the common seale, &c. should be in the custody of the prior, and of foure of the worthiest and discreetest of the covent, sealed up with the private seale of the abbot, &c. and if any writing, &c. should be sealed with any other seale then with the said common seale so (as is aforesaid) kept in custody, it should be void, &c. for if it be kept in custody under the seale of the abbot, then no writing can be sealed by the abbot, and if the abbot taketh it out, and seale, &c. then is it not kept in custody under his private seale; and therefore it was resolved by the whole court of the common pleas, that this branch, being impossible to be observed, is void; the court also resolved, that it was inconvenient: for they said, that if the statute should be observed, every deed that passed under the common seale might be undone by a simple surmise, &c.

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27 H. 6. annui-

tie 41.

Lib. 8. fo. 118.

Doct. Bonhams

case.

Bract. li. 1. ca.

Bracton saith, that *lex est sanctio justa, jubens honesta, et prohibens contraria*; so as every law must have three qualities: 1. it must be *justa*: 2. *jubens honesta*: 3. *prohibens contraria*. And if it be *justa*, it must have five properties: 1. it must be *possibilis*, 2. *necessaria*, 3. *conveniens*, 4. *manifesta*, 5. *nullo privato commodo, sed communi utilitati edita*. And this is grounded upon holy writ, *Legum conditores justa decernunt. Væ qui condunt leges iniquas, et scribentes injustitiam scripserunt.*

Prov. ca. 8.

ver. 15.

Esa. c. 10. ver. 1.

(15) *Cæterum intentio domini regis non existit, &c.*] By this branch the power of visitation is reserved with three restrictions or limitations: 1. *juxta officii sui debitum*, 2. *in his duntaxat, quæ ad observantiam regularem, et ordinis sui disciplinam pertinent*: 3. *proviso quod, &c. nihil, &c. extra præfatum regnum, &c. deferant.*

(16) *Et licet ordinationum et statutorum, &c. à parlamento proximo præterito.*] That is, at a parliament holden at Westminster, die

die dominica prox' post festum Sancti Mathæi apostoli, in the 33 yeare of E. 1.

(17) *Cum majore deliberatione et maturitate procederent.*] According to the ancient rule, *deliberandum est diu, quod statuendum est semel.*

STATUTUM DE FRANGENTIBUS PRISONAM.

Editum anno 1 Edw. II.

[589]

DE prisonariis prisonam frangentibus, dominus rex vult et præcipit, quod nullus de cætero, qui prisonam fregerit (1), subeat judicium vitæ vel membrorum (2) pro fractione prisonæ tantum, nisi causa (3), pro qua captus et imprisonatus fuerit, tale judicium requirat, si de illa secundum legem et consuetudinem terræ fuisset convictus, licet temporibus præteritis aliter fieri consuevit.

CONCERNING prisoners which break prison, our lord the king willeth and commandeth, that none from henceforth that breaketh prison shall have judgement of life or member for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgement, if he had been convict thereupon according to the law and custom of the realm, albeit in times past it hath been used otherwise.

(3 Inst. 69, 70. Kel. 87. Fitz. Coron. 134.)

At a parliament holden at Westminster in cro' assumptionis beatæ Mariæ, anno regni E. 1. 23. the like act of parliament was made with the like title as this is, *totidem verbis*; and therefore it may be, that it was recited and affirmed at the parliament holden in 1 Ed. 2. which onely is mentioned in our printed bookes.

Inter placita & mem. coram domino rege, anno 23 E. 1.

It appeareth by our ancient authors of the law, that if a prisoner, whatsoever the cause was for which he was committed, had broken the kings prison, and escaped out, it was felony; because, *interest reip. ut carceres sint in tuto*: but yet it must have been an actuall breaking of the prison; for if the doore had been open, and he had gone out, or if others without his privity had broken open the prison doore, &c. and he goeth out, and escapeth, or if the gaoler himselfe had let him out; in these cases it had been no felony, because the prisoners did not actually breake the prison. And so it is of a felon that is under custody of the kings officer (which is an imprisonment in law) and divers men doe rescue or take him by force out of the custody of the kings officer, this is felony in them all by the common law. And so doth Hussey chiefe justice report the case, that in the raigne of Ed. 4. when he was attorney, it was resolved by Billing chiefe justice, Choke, and the judges, that the rescous of a felon, to take him out of custody and prison, was alwaies felony by

Bract. li. 2. fol. Brit. fol. 17. Flet. li. 1. c. 26. Stanf. pl. cor. 30. b.

i H. 7. fo. 6. 2.

by the common law, but of the prisoner himselfe it was not, &c: which must of necessity be intended, when other men did rescue him, or brake open the prison without his privity, and these words in the report (*tanque lestatute fuit fait de frangentibus prisonam*) ought to be omitted.

Forasmuch as every man desireth to be at naturall liberty, the Mirror complaines of the common law in this point, and saith, *abusio est a tener escape de prisoner, ou de bruserie del gaole pur peche mortell, car cel usage nest garrant per nul ley, ne in nul part est use forsque in cest realme, et en France, eius est leu garrantie de cco faire per la ley de nature. Hoc ille.*

Mirr. ca. 5. § 1.

^a 1. aff. p. 6.

1 E. 3. 17.

3 E. 3. coron. 312.

22 E. 3. ib. 251.

^b 11 E. 2. det.

172. 13 E. 3.

barr. 153. 27 aff.

27. 8 H. 4. 18.

20 E. 4. 5.

Brit. 72. 5 H.

4. cap. 10.

* 22 E. 3. coron.

250. 8 E. 2. ibid.

419. 23 H. 8. ca.

11. 1 E. 6. c. 12.

† [590]

1. aff. p. 6. 3 E. 3.

coron. 333. Fitz.

Justice of Peace,

fol. 23.

15 H. 7. 1, 2.

Pl. com. fo. 13.

(1) *Nullus de cætero qui prisonam fregerit.*] *Nota,* ^a he that is in the stockes, or under lawfull arrest, is said to be in prison, although he be not *infra parietes carceris*: and therefore this branch extendeth as well to a prison in law, as to a prison in deed. ^b Albeit divers lords of liberties have custody of the prisons, and some in fee, yet the prison it selfe is the kings *pro bono publico*: and therefore it is to be repaired at the common charge: for no subject can have the prison it selfe, but the king only: and therefore Britton, *ubi supra*, speaking of the kings prison, doth include all prisons. * For that which was called the bishops † prison, see the statutes of 23 H. 8. and 1 E. 6. This (*fregerit*) is intended an actuall breaking of prison as hath been said.

If the sherife have a *capias* upon an inditement of felony against A. and coming to arrest him, is so disturbed, that he cannot arrest him, this is no felony; for A. was never in prison: and therefore prison in that case could not be broken.

In some cases it is lawfull for the prisoner to break prison both at the common law, and notwithstanding this statute: as if the prison be set on fire, either by lightning or otherwise, unlesse it be by the privity of the prisoner, he may break prison for safeguard of his life. *Et sic in similibus.* For, *quodcunque aliquis ob tutelam corporis sui fecerit, jure id fecisse videtur.* But it must be, *inevitabilis necessitas.*

(2) *Subeat iudicium vite vel membrorum.*] These words at the making of this act extended as well to treason as to felony. In 2 H. 6. it was enacted to continue till the next parliament, that if any be indited, appealed, or taken for suspicion of high treason, and breake the same prison, it should be high treason. And the reason of that act was, because that by the statute of 25 Ed. 3. *de proditionibus*, no other offence then is therein mentioned can be adjudged high treason, untill it be declared by act of parliament; and therefore that act of parliament being in the negative, if a man be indited or appealed for high treason, and breake the prison, this breaking of prison is not high treason, till it be so declared by parliament because such offence is not mentioned in the act of 25 E. 3. and therefore according to the act of 25 E. 3. it is so declared by the act of 2 H. 6. And yet the resolution of the judges in 1 H. 6. is good law: for there the case is, that a man outlawed of felony was in prison in the kings bench, in which prison he knew that certaine persons were there committed for high treason, and brake prison, and carried and led out the prisoners that were there in gaole for treason; and seeing there be no accessaries in high treason, this was an abetting and aiding of them for their escape, he knowing them to be imprisoned for high treason; and thereof he was indited, and arraigned.

1 H. 6. 5. 9 E. 4.

20. See W. 2.

ca. 34. Ret. parl.

an. 2 H. 6. nu.

60. Vid. 14. El.

ca. 2.

Ret. parl. 2 H. 6.

nu. 18. Sir John

Montimers case

declared in par-

liament to be

treason.

2 H. 6. ca. ult.

in print.

Stanf. pl. coron.

32. f.

arraigned, and pleaded not guilty, and was found guilty. And it was adjudged by all the justices, that hee was a traitor, and was drawne and hanged, which are the words of the booke. And the principall end of this case was to prove, that a man attainted of felony might be indited, arraigned, tried, and adjudged for high treason, for the benefit of the king, and the odioufnesse of the offence, and the scope and end of the case is ever to be observed; for in that case it must be also intended, that the treason was committed before the felony. And it is to be remembered, that the statute of 1. Mar. doth not onely repeale all treasons, but all declarations of treason made by any act of parliament, since the said act of 25 E. 3. A man imprisoned for petit larceny, or for killing of a man, *se defendendo*, or by misfortune, and breake prison, it is no felony, because he shall not for the first offence *subire iudicium vite vel membri. Et sic de similibus.*

Vid. Stanf. pl. coron. 107. b.

1. Mar. the first statute.

(3) *Nisi causa, &c.*] This act speaking of a cause, is to be intended of a lawfull cause; and therefore false imprisonment is not within this act,

Imprisonment is a restraint of a mans liberty under the custody of another, by lawfull warrant in deed or in law. Lawfull warrant is, when the offence appeareth by matter of record, or when it doth not appeare by matter of record. By matter of record, as when the party is taken upon an inditement at the suit of the king, or upon an appeale at the suit of the party. When it doth not appeare by matter of record, as when a felony is done, and the offender by a lawfull *mittimus* is committed to the gaole for the same. But between these two cases there is a great diversity: for in the first case, whether any felony were committed, or no, if the offender be taken by force of a *capias*, the warrant is lawfull; and if hee break prison it is felony, albeit no felony were committed. But in the other case, if no felony be done at all, and yet he is committed to prison for a supposed felony, and breake prison, this is no felony, for there is no cause; and the words of this act are, *nisi causa, pro qua captus fuerit, tale iudicium requirit.* So as the cause must be iust, and not feigned; for things feigned require no judgement.

See Mag. Chart. cap. 29.

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If A. give B. a mortall wound, for which A. is committed to prison, and breaketh prison, B. dyeth of the wound within the yeare, this death hath relation to the stroke; but because relations are but fictions in law, and fictions are not here intended, this escape is no felony, 11 H. 4. 11. Plowd. com. 401. Coles case.

Seeing the weight of this businesse touching this point, to make the escape either in the party, or in the gaoler felony, dependeth upon the lawfulnessse of the *mittimus*, it shall be necessary to say somewhat hereof: first, it must be in writing in the name, and under the seale of him that makes the same, expressing his office, place, and authority, by force whereof he maketh the *mittimus* and is to be directed to the gaoler, or keeper of the gaole or prison. 2. It must containe the cause (as it expressely appeareth by this act, *nisi causa pro qua captus, &c.*) but not so certainly, as an inditement ought, and yet with such convenient certainty, as it may appeare judicially, that the offence *tale iudicium requirit* as *pro alta proditione, viz. in personam domini regis, or pro contrafractura magni sigilli domini regis, &c. or pro contrafractura monetæ domini regis, or pro parva proditione, viz. pro morte (talis) magistri sui, or pro feloniam, viz. pro morte talis,*

25 E. 3. 42. b.
coron. 134.
32 E. 3. coron.
243. 9 E. 4. 52.

Ec. or *pro burglary*, or *robberia*, *Ec.* or *pro feloniam*, *viz.* for stealing of a horse, &c. or the like, so as it may in such a generality appeare judicially, that the offence *tale iudicium requirit*. And this is proved both by reason and authority. By reason, first, for that it is in case of felony, *quæ inducit ultimum supplicium*; and therefore ought to have convenient certainty, as is aforesaid. 2. Also it must have convenient certainty, for that a voluntary escape is felony in the gaoler. 3. If the *mittimus* should be good generally *pro feloniam*, then as the old rule is, *ignorantia iudicis foret calamitas innocentis*; for the truth of the case may be, that he did steale charters of land, or wood growing, or the like, which in law are no felonies; and therefore in reason in a case of so high nature concerning the life of man, the convenient certainty ought to be shewed.

By authority. The constant forme of the inditement in that case for escape either by the party, or voluntarily suffered by the gaoler is, that he was arrested *pro suspitione cujusdam feloniam*, *viz.* *pro morte cujusdam M.N. felonice interfecti*, or the like; for the inditement must rehearse the effect of the *mittimus*, which directly proveth, that the cause in such a generall certainty ought to be shewed. *Vid.* 25 E. 3. fol. 42.

25 E. 3. fo. 42.

Also if a man be indited of treason, or indited or appealed for felony, the *capias* thereupon, whereby the party is to be arrested, comprehendeth the cause. *A fortiori* the *mittimus*, whereby the party is to be arrested, having no such ground of record as the *capias* hath, must, pursuing the effect of the *capias*, comprehend the cause in convenient certainty. 25 E. 3. fol. 42. pl. 32. there ought to be a certaine cause: and in the same lease, pl. 35. in case of breaking of prison, the cause of the imprisonment ought to be shewed.

9 E. 4. 26. 41 aff.

5. 22 E. 3. coron.

242, 243. 248.

43 E. 3. ib. 424.

3 E. 3. ibid. 312.

328. 333. 345.

346. 2 E. 3. 1. 1.

25 aff. 51. 22 E.

3. 13. 27 aff. 42.

27 aff. p. 116.

15 E. 2. coron. 38.

9 H. 4. 1. 10 H.

4. 7. 11 H. 4. 11.

4 F. 2. coron. 422.

430. 431. 27 H.

6. 7. 39 H. 6. 23.

1 R. 3. ca. 3.

2 H. 5. ca. 7.

21 H. 7. 17.

If a man be indited, *quod felonice fregit prifonam*, *Ec.* generally, it is not good; for the inditement ought to rehearse the specialty of the matter according to the statute, that he being imprisoned for felony, &c. *fregit prifonam*. We have quoted many other books, which though they be not so certainly reported, as might have been wished, yet the judicious reader will gather fruit of them. But see before the exposition of *Magna Charta*, cap. 29. *verbo*, *Aut per legem terræ*, and observe well the words of the writ of *habeas corpus*, for a direct prooffe that the cause ought to be shewed.

Lastly, see hereafter in the exposition of the statute of *articuli clerici*, the resolution of all the judges of England, the answer to the 21 and 22 objections, which we will in no sort abridge for the excellency thereof, but referre you to the fountaines themselves.

Hereupon it appeareth, that the common warrant or *mittimus* to answer to such things as shall be objected against him, is utterly against law.

Now as the *mittimus* must containe the cause, so the conclusion must be according to law, *viz.* the prisoner safely to keep, untill he be delivered by due order of law, and not untill he that made it shall give other order, or the like.

And if the warrant be not lawfull, if the gaoler suffer such a prisoner to escape voluntarily, it is no felony in him. But admit the warrant be lawfull, and in particular for felony, and the gaoler suffer him willingly to escape, untill the prisoner be attainted, the gaoler shall not answer to the escape, though the prisoner be indited; for the

4 E. 3. 17.

1 H. 7. 6.

the felony of the prisoner shall not be tryed between the king and the gaoler, because the prisoner is a stranger thereunto. But if the warrant be lawfull, and there is a felony done, and one is lawfully committed for the same, if he breake prison he may be indited for that escape before he be attainted of the offence, because he is party. And albeit the gaoler be *de facto, et non de jure*, yet shall he be charged for the escape.

And certainly this law of *nisi causa, &c.* agreeth with that judiciall saying of Felix in the holy history, *sine ratione mihi videtur mittere vinculum, et causas ejus non significare.* And whatsoever Felix was, yet according to that old rule, *Veritas à quocunque dicitur à Deo est.*

(4) *Tale iudicium requirit.*] If a man be committed by lawfull warrant for suspicion of felony done, if he breake prison, he may be indited for that escape, albeit the commitment be for suspicion of felony, and yet no judgement can be given against him for suspicion, but for the felony it selfe, whereof he is suspected; and so be many presidents.

And albeit the words be in the present time, yet if a felony be made after by parliament, it is within the provision of this statute.

For other matters concerning escapes, you may reade the learned treatise of justice Stanford, pl. coron. fol. 30, 31. &c. which need not here to be inserted.

39 H. 6. 33.

Act. Apost. c. 25.
ver. 27.43 E. 3. cor. 454
44 ill. 12.
Rot. Parl. 2 H. 5.
nu. 18. Sir John
Mortimers case.
1 H. 6. 5.
1 Mar. Dyer 99.

STATUTUM DE MILITIBUS,

[593]

Editum Anno primo Edw. II.

THIS writ king Edward the second granted in the time of the parliament, and caused it to be entred of record; and therefore is here stiled by the name of a statute or ordinance, and the very frame of the writ doth prove it to be no act of parliament: but let us take the ford as we find it, and peruse the words thereof.

Cap. 1. **DOMINUS** rex concessit, quod omnes illi qui milites esse debent, et non sunt (1), et districti fuerint ad arma militaria suscipienda infra festum natalis Domini, habeant responsum ad prædicta arma militaria suscipienda usque in octab' sancti Hillarii sine actione: et extunc distringantur, nisi interveniant.

2. Item

OUR soveraigne lord the king hath graunted that all such as ought to be knightes, and bee not, and have beene distrained to take upon them the order of a knight within the feast of the nativitie of our Lord, shall have respite to take the foresaid armes of a knight, untill the utas of Saint Hillarie without occasion, and after that

3 P 2

2. *Item concessit quod si aliquis questus fuerit in cancellaria, quod districtus fuerit, &c. et non habeat xx. li. terræ in feodo, vel ad terminum vitæ suæ, et hoc velit verificare per patriam, tunc discretis et legalibus militibus de comit' ad prædictam inquisitionem capiendam scribatur. Et si per illam inquisitionem ita fuisse constiterit, fiat ei remedium, et cesset districtio.*

3. *Item si aliquis implacitatus fuerit de tota terra sua, vel etiam de parte ejusdem, ita quod residuum non sufficiat ad valentiam xx. li. et hoc possit verificare, tunc cesset districtio, donec placitum illud terminetur.*

4. *Item si quis eorum teneatur in certis debitis atterminatis ad seaccarium, ad certam summam inde percipiendam per annum, et residuum terrarum suarum ultra prædictam summam valorem xx. li. annuarum non attingat, cesset districtio donec prædictum debitum fuerit solutum.*

5. *Et nullus distringatur ad arma militaria suscipienda antequam venerit ad ætatem 21 annorum.*

6. *Item nullus ratione terræ suæ, quam tenet in maneriis, quæ nunc sunt de antiquo dominico coron', et tanquam sokemannus, et quæ terra dabit tallagium, quando dominica regis talliantur, distringatur ad arma militaria suscipienda.*

7. *Item de illis qui terras suas tenent in socagio de aliis maneriis quam de maneriis eorundem, et nullum faciunt servicium*

that they shall bee distrained except they make some other meane.

Also hee hath graunted that if any will complaine in the chauncerie, because hee was distrained, &c. and hath not xx.li. yeerely in fee, or for terme of life, and will prove that by the countrey, then it shall bee written unto the more discreette and sage knightes of the shire, to take the sayd inquisition, and if it fortune to bee tryed so by the same inquest, hee shall have remedie and the distresse shall cease.

Also if any bee impleaded for all his land or for part of the same, so that the residue bee not sufficient to the value of xx. li. and can prove the same, then the distresse shall cease untill the same plea be determined.

Also if any of them bee bounden in certaine debtes awarded in the eschequer for a certaine summe to be received yeerely out of his lands, so that the residue thereof doth not amount to the yeerely value of xx. li. besides the same summe: the distresse shall cease untill the foresaid debte be cleerely paide.

And none shall be distrained to take upon him the order of a knight before that he come unto the age of xxi. yerres.

Also none by reason of any land that he holdeth in manors which be now in auncient demeane of the crowne as a sockeman, and which lands must also give tallage when the kings demeanes are tayed, shall be distrained to take upon him the order of a knight.

Also of them that hold their lands in socage of other manors then of the manors of the king, doing no forreine service, the rolles of the chauncerie shall