

some other of those great philosophers, that with great alacrity dived into the secrets of all kinds of learning, would have found them out, and made some mention of them. But besides the said discovery, such predictions by the Gentiles and heathen persons are <sup>b</sup> against the word of God.

Also predictions either of the time or end of the world, or that it is at hand, is not lawfull. For the first, <sup>c</sup> see the first of the Acts. It is not for us to know the times and seasons which the Father hath put in his own power, &c. For the second, see the second epistle to the Thessalonians. I beseech you brethren, &c. that you be not shaken in mind, or troubled, &c. as though the day of Christ were at hand, let no man deceive you by any means.

We have the rather said hereof thus much, for that we have heard divers men boldly and confidently upon their numerall calculation to have erred herein.

<sup>a</sup> Casaubon  
Exercit. 1. ad ap-  
paratum Anna-  
lium, cap. 10.  
<sup>b</sup> Ephef. c. 3.  
v. 9. Col. cap. 1.  
v. 26. Rom.  
ca. 16. v. 25.

[ 129 ]

<sup>c</sup> Acts ca. 1. v. 7.  
Mat. 24. 36.  
Mark 13. 32.  
<sup>2</sup> Thess. c. 2.  
v. 1, 2.

## C A P. LVI.

## O F A P P R O V E R.

**A**P P R O V E R, or approver, in Latin *probator*, is a person indicted of treason or felony in prison for the same, and not disabled to accuse: he may <sup>a</sup> upon his arraignment, before any plea pleaded and before competent judges <sup>b</sup> confesse the indictment, and take a corporall oath to reveale all treasons and felonies, that he knows, and pray a coroner, before whom he is to enter his appeale or accusation against all those that are *participes criminis*, or of his society in committing of treason or felony contained in the indictment, those partners being within the realme: and if upon his appeale <sup>c</sup> all those partners be convicted, the king *ex merito justitie*, is to pardon him. But it is in the discretion of the court, either to suffer him to be an approver, or after his approvement to respite judgement and execution, untill he hath convicted all his partners.

*A prover.* <sup>a</sup> He is by Bracton called *probator*, by Britton, *prover*, by the Mirror *prover* and *approver*: and his name putteth him in minde of his duty, viz, to prove and approve his accusation or appeale in every point, for <sup>e</sup> any fayler of truth disableth him *in omnibus*. And as he must affirme the truth, and the whole truth, before the coroner in his appeale: so in the rehearfall of the appeale before the justices, it must agree with the appeale, 26 Aff. p. 19. and Bracton *ubi supra*. <sup>f</sup> In one record I finde him called *appellator*.

*Person.* <sup>g</sup> This extendeth not to a peer or a lord of parliament, for it is against Magna Carta, cap. 29. for him to pray a coroner.

<sup>h</sup> A man attainted of treason or felony cannot become an approver, because (as the book saith) he is *hors de la ley*. Also though he be indicted, yet if he be out of prison, he cannot approve.

Parl. 28. E. 1. ca.  
Nota, for con-  
fronting.  
<sup>a</sup> 9 H. 5. cor.  
440. 21 E. 3. 13.  
19 H. 6. 47.  
<sup>b</sup> 2 H. 7. 3.  
12 E. 4. 10.  
3 H. 6. 50, 51.  
<sup>c</sup> 1 H. 5. cor.  
441. 3 H. 6. 50,  
51. in bank le  
roy. Pasch. 2.  
H. 4. coram  
rege pl. 6.  
<sup>d</sup> 21 H. 6. 29.  
b. & 34. b.  
<sup>e</sup> Bract. lib. 3.  
fo. 122. b. &  
152, &c.  
Britton. fo. 7.  
11. 17. 48.  
Mir. cap. 1. §  
13. cap. 3. exec.  
al provors,  
cap. 5.  
<sup>f</sup> 25 E. 3. 42.  
21 H. 6. 34.  
22. E. 3. cor.  
460. 26. Aff.  
p. 19.  
<sup>g</sup> Pasch. 2 H. 4.  
coram rege. 6.  
8 11 Aff. pl. 17.  
21 E. 3. 13.

19 E. 2. cor. 387. 19 E. 3. ibid. 443. 17 E. 3. 13.

<sup>b</sup> Mir. ca. 1. §  
13. Stanf. pl.  
cor. 140. d.

<sup>1</sup> 40 Aff. 39.  
<sup>15</sup> E. 3. cor. 113.  
<sup>11</sup> H. 7. 5.

<sup>2</sup> 25 E. 3. 39.

<sup>1</sup> 8 H. 5. cor.  
442.

<sup>m</sup> 19 H. 6. 4.  
<sup>12</sup> E. 4. 10.  
<sup>6</sup> H. 6. cor. 131.  
<sup>19</sup> E. 2. cor.  
387.

<sup>\*</sup> [ 120 ]  
<sup>a</sup> 6 H. 6. ubi sup.  
<sup>21</sup> E. 3. fo. 18.  
<sup>V.</sup> 3 H. 6.

<sup>51.</sup> 52.  
<sup>R</sup> Bract. ubi sup.  
<sup>9</sup> H. 4. 1.  
<sup>2</sup> H. 4. 19.  
<sup>44</sup> E. 3. 44.  
<sup>Lib.</sup> 10. fo.  
76. b.

<sup>12</sup> E. 4. 10.  
<sup>21</sup> H. 6. 34, 35.

<sup>40</sup> Aff. 39.  
<sup>10</sup> E. 4. 14.  
<sup>1</sup> E. 3. 17.  
<sup>1</sup> Aff. p. 2.

<sup>25</sup> Aff. 19.  
<sup>8</sup> H. 5. cor. 459.  
<sup>21</sup> H. 6. 34.  
<sup>12</sup> E. 4. 10.

<sup>Mich.</sup> 39 E. 3.  
coram rege Rot.  
97. Suff.

<sup>7</sup> E. 3. 7.  
<sup>11</sup> H. 4. 91. b.  
Of battell see  
more here, cap.  
Single combat,  
and the second  
part of the Instit-  
utes, Westm. 1.  
cap. 40.

<sup>\*</sup> 47 E. 3. 5.

<sup>b</sup> The Mirror saith, that women, infants, idiots, lepers, or professors in order of religion, or clerks, or persons attainted of felony, or *non compos mentis*, cannot be approvers: and Stanford added men above the age of 70, or maymed: because some of them cannot take an oath, and none of them can wage battell.

*Indicted.*] <sup>1</sup> For in any appeale either by writ or bill the defendant shall not become an approver: and before indictment, no person can approve, because if his approvement be false, no judgement (whatsoever he confessed) can be given against him, unlesse he be indicted, <sup>\*</sup> and no judgement can be given against him if his appeale be false, but of the offence contained in the indictment, and so are the books to be understood.

<sup>1</sup> If one be indicted and approve, if after an appeale be sued against him, the approvement ceaseth.

*Of treason or felony.*] And that is only of that treason or felony that is contained in the indictment, as hath bin said. <sup>m</sup> See Trin. 3 H. 4. Rot. 19. coram rege Hertford. *Probator in duello devicit appellat', de alta prodicione, \* pro quo devictus suspenditur, decapitatur, et quarteria sua dividuntur, et simile ibid. Anglia.*

*In prison.*] <sup>\*</sup> Albeit he be indicted, yet if he be at large, and not in prison, he cannot approve as before is said.

*Competent judge.*] <sup>b</sup> As justices of the kings bench, justices of oier and terminer, and of gaole delivery, but not justices of peace, because they have no authority by their commission to assigne a coroner. And by the same reason the lord high steward of England cannot assigne a coroner in case of treason or felony.

*Corporall oath.*] Though the oath be generall of all treasons and felonies, yet in course of law no approvement can be, but of the offence contained in the indictment as hath been said. And this oath and the accusation of himself make his appeale or accusation of another of the same crime, to amount in law to an indictment.

*Particeps criminis.*] For it cannot be of another treason or felony then is contained in the indictment.

*Within the realme.*] For if it be out of the realme, it wanteth triall, and therefore the accusation or appeale not to be allowed.

*Ex merito justitie.*] And the reason is, for that he riddeth the countrey of wicked and hurtfull misdoers: whereby the kings peace is kept, and the subject enjoyeth his own quiet. And therefore the king doth in the meane time give him wages.

A man became an approver and appealed five, and every of them joyned battell with him. *Ei duellum percussum fuit cum omnibus, et probator devicit omnes quinque in duello, quoru quatuor suspendebantur, et quintus clamabat esse clericum, et allocatur; et probator perdonatur:* so as the approver did and ought to fight in that case with all the appellees. But if there be two or more approvers against one man of one felony, and he joyne battell with them all, and vanquish the first, he is acquitted against the other. Concerning the proces upon an approvement and other incidents, you may reade in Mr. justice Stanford, which need not here to be rehearsed.

<sup>\*</sup> If the appellee joyne battell, or plead not guilty, and after the

the king pardoneth the approver, the appellee shall be discharged, and shall not be arraigned at the suit of the king.

*Convicted.*] The appellee may choofe either to wage battell with the approver, or to put himself upon the countrey; and if the appellee be found guilty by verdict, it serveth as well for the approver, as if he had been overcome by battell. And therefore the book in 19 H. 6. 35. is misprinted, or misreported: and the note of Fitzh. in abridging the case, tit. Coron. pl. 6. in the end, is against law. *Vid.* Rot. Parl. 17 E. 3. nu. 36. Stanf. pl. cor. 142.  
19 H. 6. 35. a.  
Rot. Parl. 17 E.  
3. nu. 36.

## C A P. LVII.

[ 131 ]

## OF APPEALS.

OF appeals we have spoken in the first and second parts of the Institutes, and you may read thereof in my reports, lib. 4. fo. 40, 41, 42, &c. lib. 5. fo. 105. 111. lib. 6. fo. 44. 80. lib. 7. fo. 13. 30. lib. 9. fo. 13. 119. Whereunto we will adde a case which was adjudged in an appeal, where the case, as touching the point of the appeal, was thus. Thomas Burghe, brother and heire of Henry Burghe brought an appeale of murder against Thomas Holcroft, of the death of the said Henry: the defendant pleaded, that before the coroner he was indicted of manslaughter, and before commissioners of oier and terminer, he was upon that indictment arraigned, and confessed the indictment, and prayed his clergie, and thereupon was entred *curia advocare vult*, and concluded, and demanded judgement, if that appeal the plaintife against him ought to maintain: whereupon the plaintife demurred in law. And in this case three points were adjudged by sir Christopher Wray, sir Thomas Gawdie and the whole court. First, that the matter of the barre had been a good barre of the appeale by the common law, as well as if the clergie had been allowed: for that the defendant upon his confession of the indictment had prayed his clergie, which the court ought to have granted, and the deferring of the court to be advifed, ought not to prejudice the party defendant, albeit the appeale was commenced before the allowance of it.

The second point adjudged was, that this case was out of the statute of 3 H. 7. for that the words of that act are.

If it fortune that the same felons and murderers, and accessories so arraigned, or any of them to be acquitted, or the principall of the said felony, or any of them to be attainted, the wife or next heire of him so slaine, &c. may have their appeal of the same death and murder against the persons so acquitted, or against the said principals so attainted, if they be alive, and that the benefit of his clergie thereof before be not bad. 3 H. 7. cap. 1.

And

And in this case the defendant Holcroft, was neither acquitted nor attainted, but convicted by confession, and the benefit of clergy prayed, as is aforesaid. So as the statute being penall concerning the life of man, and made in restraint of the common law, was not to be taken by equity, but is *casus omisus*, and left to the common law.

As to the third it was objected, that every plea ought to have an apt conclusion, and that the conclusion in this case ought to have been, *Et petit iudicium si prædict. Thomas Holcroft iterum de eadem morte, de qua semel convictus fuit, respondere compelli debeat*. But it was adjudged that either of both conclusions was sufficient in law: and therefore that exception was disallowed by the rule of the court.

*Nota*, the ancient law was, that when a man had judgement to be hanged in an appeal of death, that the wife, and all the blood of the party slaine should draw the defendant to execution, and Gascoigne said, *Istius fuit in diebus nostris*.

*Richardus de Crek appellat quingue pro feloniam, et offert disatiocinare per corpus suum contra quemlibet eorum separatim. Ipsi petunt se allocari, quod ubi appellans dicit in appello suo, quod ipsi fregerunt ostium Bracini, et non specificat ex parte domus illius prædictum ostium scitum fuit, et petunt iudicium. Et Joh. Wanton unus defendens defendit feloniam, et totum, et paratus est defendere per corpus suum sicut curia consideraverit. Ricus dicit quod non potest pugnare contra prædictum Johannem eo quod ipse mahematus est in humero suo dextro. Et prædictus Johannes petit iudicium desicut prædictus Ricus appellando ipsum optulit disationare prædictum Robertum versus ipsum tanquam felonem prout curia considerat per corpus suum, et nullam fecit mentionem de aliquo mahemio, unde petit iudicium de appello isto. Et ideo considerat est tam ad calumpniam prædicti Henr. et aliorum, quàm prædicti Johannis, quod appellum ejus nullum. Set pro rege inquiratur rei veritas, &c.*

• There lay an appeal of high treason by the common law either in parliament before the statute of 1 H. 4. ca. 14. or in such of the kings courts as have jurisdiction thereof triable by battail or verdict: and this appeareth by all our ancient authors, and divers records, and see in Bracton, fo. 119. a. What pleas the defendant in the appeal of treason may have, to disable the plaintiff to maintain his appeal, see Fleta ubi supra, and Britton ubi supra.

8 & 29. Fleta lib. 1. ca. 27. The Mirror cap. 2. § 11. Pat. 25 E. 3. part. 1. m. 4. coram rege Rot. 22. &c. 8 H. 6. ca. 10. F. N. B. 115. Lib. Intrat. Rast.

11 H. 4. 11.  
Pl. com. 306. b.

Trin. 10 E. 1.  
in Banco, Rot.  
30. Norff.

[ 132 ]

*Nota* how the conclusion of the appeal of felony ought to be when the plaintiff is mayhemed and cannot make tryall by battail.  
• See before c. 7. high treason, fo. 6. 1 H. 4. ca. 14.  
Glanv. li. 14. c. 1. Bracton, lib. 3. fo. 118, 119. Britton cap. 16 Mich. 4 H. fol. 122.

## C A P. LVIII.

## OF TREASURE TROVE.

*Thesaurus inventus.*

**T**REASURE trove is when any gold or silver, in coin, plate, or bullion hath been of ancient time hidden, whereforever it be found, whereof no person can prove any property, it doth belong to the king, or to some lord or other by the king's grant, or prescription.

The reason wherefore it belongeth to the king, is a rule of the common law; that such goods whereof no person can claim property belong to the king, as wrecks, strays, &c. *Quod non capit Christus, capit fiscus.* It is anciently called \* *synderinga*, of finding the treasure. And now let us peruse this description.

*Gold or silver.*] For if it be of any other metall, it is no treasure; and if it be no treasure, it belongs not to the king, for it must be treasure trove.

It is to be observed, that veins of gold and silver in the grounds of subjects belong to the king by his prerogative, for they are royall mines, but not of any other metall whatsoever in subjects grounds.

*Whereforever.*] \* Whether it be of ancient time hidden in the ground, or in the roof, or walls, or other part of a castle, <sup>b</sup> house, building, ruines, or elsewhere, so as the owner cannot be known.

*Whereof no person can prove any property.*] For it is a certain rule, \* *Quod thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum.*

*Of ancient time hidden.*] \* *Est autem thesaurus vetus depositio pecuniarum, &c. cujus non extat modo memoria, adeo ut jam dominum non habeat.*

*Belong to the king.*] \* Where of ancient time it belonged to the finder, \* as by the said ancient authors it appeareth. And yet I find that before the conquest, *Thesauri de terra domini regis sunt, nisi in ecclesia, vel cœmeterio inveniuntur; et licet ibi inventatur aurum, regis est, et medietas argenti est medietas ecclesiæ, ubi inventum fuerit, quæcunque ipsa fuerit, vel dives, vel pauper.*

*By the king's grant or prescription.*] 21 H. 6. tit. Prescription. 4. 22 E. 3. cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Stanf. pl. cor. 39. b. lib. 5. fo. 109. b.

*The punishment of him that concealeth, &c. it.*] It appeareth by Glanvill, and Bracton also, that *occultatio thesauri inventi fraudulosa* was such an offence, as was punished by death. But it hath been resolved, that the punishment for concealment of treasure trove, is by fine and imprisonment, and not \* of life and member.

\* authors agree thereunto. \* Glanv. li. 1. c. 1. li. 14. ca. 2. 3 E. 2. Cor. 436. 22 Glanvill, ubi sup. Bracton and the other authors ubi supra. \* 22 Aff. p. 99.

Custom. de Nor. ca. 18.

\* Inter leges H. 1. ca. 11.

Pl. Com. in cal. de Mines per totum. Vid. Bract. li. 2. fo. 222. Aus. fodina, et argenti fodina. Fleta, lib. 4. c. 19. Rot. Parl. R. 2. nu. 42. 27 Aff. p. 19. \* Bract. li. 1. c. 10. li. 3. 120. Britton, fo. 3. l. 7. b. 26. b. 71. l. Mir. ca. 1. § 3 & § 13. ca. 3. §. isto. Glanv. 1. ca. 1. li. 14. ca. 2.

\* [133] b In bundell in quist. 32 E. 3. in Abbathia Sanctæ Mariæ Eborum. Bract ubi supra. Non refert in quoloe hujusmodi thesaurus invenitur.

\* 22 H. 6. Cor. 446.

\* Bract. ubi supra, and the other ancient E. 3. ibid. 24

The ancient  
authors ubi su-  
pra, agree here-  
unto.

*To whom the charge thereof belongeth.]* It belongeth to the co-  
roner, as appeareth by the statute *de officio coronatoris*, anno 4 E. 1.

## C A P. LIX.

## OF WRECK.

SEE the second part of the Institutes W. 1. cap. 2. and the ex-  
position upon the same.

## C A P. LX.

Of False Tokens, or Letters in other Mens  
Names.

23 H. 8. ca. 1.

**I**F any person falsly and deceitfully obtain into his hands any  
moneys, goods, chattels, jewels, or other things of any  
person or persons, by colour or means of any false or privy  
tokens, or counterfeit letters made in any other mans name,  
&c. he shall suffer such correction by punishment of his body,  
setting upon the pillory, or other corporall pain (except pains  
of death) as shall be to him adjudged by the person and  
persons before whom he shall be convicted, with a saving  
to the party grieved by such deceit, such remedy by way  
of action, or otherwise, as he might have had by the common  
law.

Here it is to observed, that upon this statute, for this offence the  
offender cannot be fined, but corporall pain only inflicted.

[ 134 ]

## C A P. LXI.

## OF THEFTBOTE.

Stat. Wall. anno  
12 E. 1. Vet.  
Mag. Cart. pt. 2.  
fo. 6.

**T**HEFTBOTE (described by act of parliament) *est emenda furti*  
*capta sine consideratione curie domini regis*: and so much the word  
signifieth, *bote* being taken for amends; *theftbote*, that is, amends  
for theft.

See Rot. clauf.  
an. 1 E. 1. m. 7.  
42 Aff. p. 5.

This offence is more then misprision of felony, for that is not a  
concealment of his bare knowledge only: but theftbote is when the  
owner

## Cap. 62. Of Indictments.

134

owner not only knowes of the felony, but taketh of the thief his goods again, or amends for the same to favour or maintain him, that is, not to prosecute him, to the intent he may escape: but in that case, if he receive the thief himself, and aid and maintain him in his felony, then is he accessary to the felony. And so note a diversity, *quando proprietarius recipit latrocinium, et quando latronem*, But if a man take his goods again that were stolen, it is no offence, unlesse he favour the thief, as is aforesaid.

Mir. ca. 2. § 12.  
3 E. 3. Cor. 353.  
Stanf. pl. coron.  
40. b.  
42 Aff. ubi supra.

The punishment of theftbote is ranfome and imprisonment: and seeing the punishment of theftbote, which is greater then concealment of felony, is but ranfome and imprisonment, it standeth with reason, that the punishment of \* misprision of felony should be but fine and imprisonment. Theftbote is sometimes taken *pro ipso latrocinio*, for the thing itself stolen from you.

3 E. 3. Cor. 353.

You shall read in ancient authors of redoubbers, addoubors, derived of the French word *addoubeur*, they are in law patchers, botchers, or menders of apparell, that take \* theftbote of cloth (and change it into another fashion) and are dwelling out of burghs and cities; because in those days burghs and cities were so well governed, as such offenders were soon discovered: for they were not then commended, for that they were populous, but for that the governors were provident in preventing of offences.

\* See before in the chapter of Misprision of Treason, ca. 3.  
Mir. ca. 1. §. 17.  
Britton, fo. 33.  
\* That is, steale cloth.

## C A P. LXII.

### OF INDICTMENTS.

**C**ONCERNING Indictments we have spoken somewhat in the first part of the Institutes. Sect. 194. 208. And you may read in my Reports many resolutions concerning indictments, viz. lib. 4. fo. 40, 41, 42. &c. lib. 5. fo. 120, 121, 122, 123. li. 7. fo. 5, 6. 10. li. 8. fo. 57. 36, 37. li. 9. fo. 62, 63. 116. 118.

See the 1 pt. of the Institutes, sect. 194, 195.

We will add one point adjudged in the case between Burgh and Holcroft before mentioned in the chapter of Appeals, which was, that where it is provided by the statute *de Artic super Cartas*, cap. 3. *En case de mort del home (deins le verge) ou office del coroner appent as vieus, et enquests de ceo faire, soit maunde al coroner del pais que ensemblement ove le coroner del hostel le roy face l'office que appent*, &c. And in that case one man was coroner both of the kings house, and of the county, and the indictment of manslaughter was taken before him as coroner both of the kings house, and of the county. And it was adjudged that the indictment was good, because the mischief expressed in the statute was remedied, as well when both offices was in one person, as when they were in divers: and therefore in this case the rule did hold, *Quando duo jura concurrunt in una persona, æquum est, ac si esset in diversis*.

Holcroft case.  
Artic. super  
Cart. ca. 10.  
The same was again resolved in Wrots case, ubi supra.

Richard Weston, yeoman, late servant of Sir Gervase Elwys, lieutenant of the Tower, and under the lieutenant, keeper of Sir Thomas Overbury then prisoner in the Tower, was indicted: for that he the said Richard the 9 day of May an. 11. *Ja. regis*, in

[ 135 ]  
Sir Tho. Overburies case.  
Mich. 13 Jac.  
See before, ca. 7.  
Of murder more of this case.

the Tower of London, gave to the said Sir Tho. Overbury poyson called roseacre in broth, which he the said Sir Thomas received. *Et ut idē Rich. Weston præfatum Tho. Overbury magis celeriter interficeret et morderet, 1. Junii anno 11. Ja. regis supradicti, gave to him another poyson called white arsenick, &c. and that 10. Julii anni 11. suprad. gave to him a poyson called mercury sublimat' in tarts, ut prædict' Tho. Overbury magis celeriter interficeret et morderet:* and that a person unknown in the presence of the said Richard Weston, and by his commandment and procurement, the 14. of Septemb. anno 11. supradicti, gave to the said Sir Thomas a glyster mixt with poyson called mercury sublimat', *ut prædictum Thomam magis celeriter interficeret et morderet. Et prædictus Thomas Overbury de sepe-ralibus venenis prædictis et operationibus inde, à prædictis sepe-ralibus temporibus, &c. graviter languebat usque ad 15. diem Septembris anno 11. supradicti, quo die dictus Thomas de prædictis sepe-ralibus venenis obiit venenatus, &c.* And albeit it did not appear of which of the said poysons he died, yet it was resolved by all the judges of the kings bench, that the indictment was good; for the substance of the indictment was, whether he was poysoned or no. And upon the evidence it appeared, that Weston within the time aforesaid had given unto Sir Thomas Overbury divers other poysons, as namely the powder of diamonds, cantharides, lapis causticus, and powder of spiders, and aqua fortis in a glyster. And it was resolved by all the said judges, that albeit these said poysons were not contained in the indictment, yet the evidence of giving them was sufficient to maintain the indictment: for the substance of the indictment was (as before is said) whether he were poysoned or no. But when the cause of the murder is laid in the indictment to be by poyson, no evidence can be given of another cause, as by weapon, burning, drowning, or other cause, because they be distinct and several causes: but if the murder be laid by one kind of weapon, as by a sword, either dagger, styletto, or other like weapon is sufficient evidence, because they be al under one classis or cause. And afterwards, Ann Turner, Sir Gervase Helwys, and Richard Franklyn a physician, (purveyor of the poysons) were indicted as accessories before the fact done: And it was resolved by all the said judges, that either the proofs of the poysons contained in the indictment, or of any other poyson were sufficient to prove them accessories: for the substance of the indictment of them as accessories was, whether they did procure Weston to poyson Sir Thomas Overbury: and because that not only Ann Turner, and Richard Franklyn, but some of the degree of nobility were indicted as accessories in another county, viz. in the county of Midd. divers notable points were resolved upon the statute of 2 E. 6. First, if the accessory be in the county of Midd. where the kings bench is, and the principall did the felony, &c. in another county, that the court of the kings bench is within the words of that act, viz. (and that the justices of gaol-delivery, or oier and terminer, or two of them, &c.) for the causes and reasons given in the lord Zanchers case, lib. 9. fo. 117, 118. &c. Secondly, if the indictment be taken in the kings bench, then the justices shall not write in their own names, *quia placita sunt coram rege.* Thirdly, divers presidents were shewed where the accessory was in the county of Midd. where the kings bench sat, and the principall was attainted in another county, that the

Vid. li. 9. fo. 67.  
Mackallies case  
acc.

2 E. 6. cap. 24.



the justices of the kings bench have removed the record of the attainder of the principall before them by *certiorari*, and so it was done in the lord Zanchers case, *ubi supra*. The like president was shewed in a case where the principall was attainted in the county of Oxon, and the accessory was in Midd. and the kings bench sitting there, the justices of the same court removed the attainder before them by *certiorari*. Fourthly, it was resolved, that the lord steward of England, who is a judge in case of high treason, or felony committed by any of the peers of the realm, is within these words, justices of gaol-delivery, or oier and terminer, because he is a justice of oier and terminer, for his authority is by commission, and the words of his commission be after divers recitals, *Et superinde, audiend, examinand, et respondere compellend, et sine debiti terminand.*: so as he hath power to heare and determine. And where the words be [or any two of them] that is to be intended, where there be two or more justices, and yet where there is but one, it extendeth to him. As the statute of Merton, cap. 3. power being given to the sheriffe in case of redisseisin, the words be, *assumptis tecum coronatoribus placitorum corone, &c.* in the plurall number. And yet where there is but one coroner in the county the statute extends thereunto, and the sheriffe shall take that one. Also the words of the statute are further, That then the justices of gaol-delivery or oier and terminer, or other there authorized: within which words, [or other there authorized] the lord steward is included. Fifthly, if the record of the attainder were by writ of *certiorari* removed out of London into the kings bench, then there arose another doubt upon the said statute, if afterward any proceeding should be had against any peer, for that the words of the statute be, The justices, &c. shall write to the *custos rotulorum* or keeper of the record where such principall shall hereafter be attainted; and the attainder in this case was in London, and the kings bench was in Middlesex: so as if the record should be removed into the kings bench in Middlesex, the record should not be where the attainder was had; and consequently, the lord steward could not write to the kings bench. And therefore to prevent all questions, it was resolved, that in this case of the lord steward, no *certiorari* should be granted, but a special writ should be directed according to the words of the said act to the commissioners of oier and terminer in London, to certifie whether the principall was convicted or acquitted: and they made a particular certificate accordingly, so as the record of the attainder of the principall, did notwithstanding that certificat, remain with the commissioners of oier and terminer in London: so as if any further proceeding should be had, the lord steward might write to them, as after he did in the case of R. earl of S. and F. his wife.

And it is to be observed, that the ancient wall of London (a mention whereof doth yet remain) extended through the Tower of London; and all that which is on the west part of the wall, is within the city of London, viz. in the parish of All Saints Barking, in the ward of the Tower of London: and all that is on the east part of the wall is in the county of Middlesex; and the chamber of Sir Thomas Overbury was within the Tower on the west part of the said wall, and therefore Weston was tried within the city of London.

And

[ 136 ]

39 H. 6. 42.  
23 Aff. p. 7.

<sup>a</sup> Mag. Cart. ca. 29. 5 E. 3. ca. 9. 25 E. 3. c. 4. stat. 5. 28 E. 3. ca. 3. 37 E. 3. cap. 18. 38 E. 3. cap. 9. 42 E. 3. cap. 3. <sup>b</sup> Rot. clauf. 18 H. 3. m. Rot. Parl. 15 E. 3. nu. 9. 10. & 15. 42 E. 3. nu. 29. Sir John A Lees case. 17 R. 2. nu. 37. 2 H. 4. nu. 60. <sup>c</sup> 7 E. 3. fo. 26. 50. Vide 6 E. 3. fo. 33. & 8 E. 3. 30. 26 E. 3. 74. tit. Rescous 21. 43 E. 3. 32. per Knivet. 2 E. 3. fo. 7. John de Britains case, 3 E. 3. 19. 45 E. 3. Decies tantum 12. <sup>d</sup> 5 E. 2. Quar. Imp. 167. 33 E. 3. Bre. 916. <sup>e</sup> 17 E. 3. 50. 74. F. N. B. 48. f. 13 E. 3. Jurisd. 23. <sup>f</sup> 42 E. 3. 26. F. N. B. 107. D. <sup>g</sup> 19 H. 6. 47. 34 H. 6. 3. &c. <sup>h</sup> 19 H. 6. 26. 1 H. 4. 1. 15 E. 3. Corody 4. <sup>i</sup> Regist. fo. 165. 2. F. N. B. fo. 7. b. 21 H. 3. Bre. 882. Britton fo. 28. b. cap. 18. <sup>k</sup> 16 E. 3. Bre. 651.

And where it is often said in many <sup>a</sup> acts of parliament, <sup>b</sup> records, and <sup>c</sup> book cases, that the king cannot put any man to answer, but he must be apprised by indictment, presentment, or other matter of record. True it is, in pleas of the crown or other common offences, nuisances, &c. principally concerning others, or the publick, there the king by law must be apprised by indictment, presentment, or other matter of record: but the king may have an action for such wrong as is done to himselfe, and whereof none other can have any action but the king, without being apprised by indictment, presentment, or other matter of record, as a <sup>d</sup> *quare impedit*, <sup>e</sup> *quare incumbravit*, a writ of <sup>f</sup> attain, <sup>g</sup> of debt, <sup>h</sup> detinue of ward, <sup>i</sup> escheat, <sup>k</sup> *scire fac. pur repealer patent*, &c.

[ 137 ]

C A P. LXIII.

## Of Councill learned in Pleas of the Crowne.

See before cap. 2. Petit Treason. fo. 19. 34. 9 E. 4. 22. Stanf. pl. cor. 151. b. otherwise it is in an appeale which is the suit of the party.

**W**HERE any person is indicted of treason or felony, and pleadeth to the treason or felony, not guilty, which goeth to the fact best known to the party; it is holden that the party in that case shall have no councill to give in evidence, or alleage any matter for him: but for as much as *ex facto jus oritur* it is necessary to be explained, what matters upon his arraignment, or after not guilty pleaded, he may alleage for his defence, and pray councill learned to utter the same in forme of law.

1. And first upon the arraignment what advantage he may take in case of high treason by the common law. If it be for compassing the death of the king, he may alleage, that in the indictment there is no such overt or open act set down in particular, as is sufficient in law or the like. For it is to be observed, that in no case the party arraigned of treason or felony, can pray councill learned generally, but must shew some cause.

2. Secondly, in case of high treason by force of any statute, he may alleage, that the indictment being grounded upon a statute, the statute is either mistaken or not pursued.

3. Thirdly, of what matters he may take advantage equally concerning them both. He may alleage, that there was not at the time of the indictment of high treason, two lawfull accusers, that is, two lawfull witnesses.

4. Fourthly, of what matters he may generally take advantage in all cases of treason and felony. He may alleage, that the offence is not certainly alleaged in respect of the matter, time, and place, or that he

he is not rightly named, or have not a right addition, or that the offences were done before the last generall pardon.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence: he may alleage, that he ought to have two lawfull witneses in case of high treason to prove the fact against him.

Sixthly, he may take advantage in arrest of judgement, if the verdict be found against him, that the triall came not out of the right place: as it fell out in Arundels case, convicted by a jury of wilfull murder; he informed the court that the jury that tried him came out of a wrong place, and thereupon he had counsell learned assigned him; who indeed found, that the *venne facias* was misawarded, and the court thereof by the counsell being informed, judgement was stayed. And that the prisoner may alleage these or the like matters, it is evident, because for every matter in law rising upon the fact, the prisoner shall have counsell learned assigned him. Also it is lawfull for any man that is in court, to informe the court of any of these matters, lest the court should erre, and the prisoner unjustly for his life proceeded with. And the reason wherefore regularly in case of treason and felony, when the party pleads not guilty, he was to have no counsell, was for two causes. First, for that in case of life, the evidence to convince him should be so manifest, as it could not be contradicted. Secondly, the court ought to see, that the indictment, triall, and other proceedings be good and sufficient in law; otherwise they should by their erroneous judgement attaint the prisoner unjustly.

Robert Chirford counselled the prior of the priory of Bingham in Norfolk, that John of Leicester the kings serjeant at armes, coming to the priory with the kings writ of privie seale, should not be admitted to the priory: for which counsell he was indicted in the kings bench, and depending the proces upon the indictment, the king doth pardon him: and in the pardon is contained a *superfedeas* to the justices, commanding them to proceed no further.

5.  
6.  
Lib. 6. fo 14.  
Arundels case.

9 E. 4. 22.

Stanf. ubi sup.  
7 H. 4. 34. &c.  
See before fo. 19.

Rot. clauf.  
14 E. 2. 17.  
27 Octob.

C A P. LXIV.

[ 138 ]

Of Principall and Accessory.

**A**LBEIT justice Stanford hath well collected the books concerning principall and accessory, yet *diversa desiderantur*: and necessary it is, that some things touching the same should be added, which are very necessary to be knowne.

It is a sure rule in law, that *in alta proditione nullus potest esse accessorius, sed principalis solummodo*. This rule being well understood, will open the reason of divers cases, which yet are involved in darknesse.

High treason is either by the common law, or by act of parliament: we will set downe examples (which ever do illustrate) of both.

III. Inst.

M

A. doth

Mich. 12 & 13  
Eliz. 296. Dier.  
Conyers case.

A. doth counterfeit the kings coine, viz. shillings, and C. knowing the same doth receive A. and comfort and aide him: this counterfeiting is high treason by the common law in A, as hath been said: and yet it hath beene holden that in this case C. hath not committed treason: for say they, in case of felony, a receiver of a felon after the felony done, knowing him to be a felon, is no principall, but an accessory: and for that there is no accessory in treason, therefore C. in the case before committeth no treason; for then in judgement of law he must be a counterfeiter of the kings coine within our statute of 25 E. 3. which he is not: and therefore they say, this is *casus omisus*, and not within any of the classes or heads of the said act of 25 E. 3. But all agree, that procurors of such treason to be done before the fact done, if after the fact be done accordingly, in case of treason, are principals, for that they are *participes criminis* in the very act of counterfeiting.

\* But saving reformation we hold, that if any man committeth high treason, and thereby becommeth a traytor, if any other man knowing him to be a traytor, doth receive, comfort, and aide him, he is guilty of treason, for that there be no accessories in high treason.

And so it was resolved in the case of Abingdon, who received, comforted, and aided Henry Garnet superior of the jesuits, knowing him to be guilty of the powder treason, and accordingly Abingdon was indicted and attainted of high treason.

And where it is said, that the said offence in Conyers case was misprision of treason, that cannot be, because there was a consent, and not a concealment only: otherwise, high treason being the highest offence, should have more favour, then felony: for the receiver and comforter in case of felony is punished by death, and so is not he that committeth misprision of treason. And lastly, this is no new treason, but a partaking and a maintaining of the old.

In case of felony there are principals and accessories, and accessories be of two sorts, either before the offence be committed, or after. See the second part of the Institutes, W. 1. cap. 14. And concerning this, there be also certaine rules, *Nullus dicitur felo principalis, nisi actor, aut qui praesens est abettans, aut auxilians auctorem ad feloniam faciendam.* But this rule hath his exception: for \* in case of poysoning, if one layeth poyson for one, or infuse it into broth, or the like, albeit he be not present when the same is taken; and either the party intended, or any other is poysoned, yet is he a principall: and in that case, both the principall and procurer, or accessory may be absent. See the bookes aforesaid for accessories before the felony committed, and where and in what manner the procurement shall be said in law to be pursued: the learning whereof is so plainly set downe, as the same need not herein to be repeated. *Nullus dicitur accessorius post feloniam, sed ille qui novis principalem feloniam fecisse, et illum recepit, et confortavit.* \* And therefore if a man write letters for his deliverance, or in favour of him, or the like; he is no accessory, for that he received not the felon.

\* A vicar, which instructed an approver which could not reade, whilst he was in prison, to reade, whereby he escaped, was adjudged no accessory to the felony.

Catlyn

\* 19 H. 6. 47.  
3 H. 7. 10.  
Stat. 6. 3. See  
before cap. Tra-  
son. Verb. Si  
home counter-  
face le grand  
seale.

\* Pasch. 4. Jac.  
Abingdons case.  
resolved by the  
justices.

\* M. 12 & 13 El.  
ubi supra.  
See before ca. 3.  
Of Misprision of  
Treason.

\* 7 H. 4. 27.  
21 E. 4. 71.  
13 H. 7. 10.  
Pl. com.

Lib. 4. fo. 42. in  
Heydons case.  
Lib. 9. fo. 67.  
Mackallies case.

\* Lib. 11. fo. 5.  
Lib. 4. fo. 44.  
Vauxes case.  
Pl. com. fo. 474.

Saunders case.  
Lib. 9. 81. Ag-  
nes Gores case.  
See Pasch. 32.

E. 3. coram  
rege rot. 62. Ph.

Clistons case.  
25 E. 3. 39. b.

cor. 126.  
26 Aff. 47.

9 H. 4. 1.  
7 H. 6. 42.

\* [ 139 ]

\* 26 Aff. ubi  
sup.

\* Mic. 7 R. 2.  
coram rege rot.

23. Cant.  
5 H. 4. 27.

Catlyn and Browne justices of affise in the county of Suffolke put this case to all the judges. <sup>a</sup> A man committed felony in the county of Suffolke, for which he was committed to the gaule; and R. an attorney advised the friends of the felon to perswade the witnesses not to appeare to give evidence against him, which was done accordingly. And it was resolved, that neither the friends nor the attorney were accessaries to the felony, but that it was a great contempt and misprifion, for which they might be fined and imprisoned.

<sup>c</sup> Mic. 11 & 12 Et. the case of Roberts the attorney.

<sup>d</sup> The accessory cannot be guilty of petit treason, where the principall is guilty but of murder. For *accessorius sequitur naturam sui principalis*.

<sup>d</sup> See before cap. Petit Treason.

<sup>e</sup> If divers commit any murder, or other felony, one man may be both principall and accessory to the other.

<sup>e</sup> 7 H. 4. 27.

See before cap. Clergie, that if the principall before attainer hath his clergie, the accessory is discharged. And note generally, where the principall before attainer is pardoned, or his life otherwise saved, the accessory is discharged.

<sup>f</sup> 2 H. 4. 16.

## C A P. LXV.

### Of Misprifions divers and severall: and first of Misprifion of Felony, &c.

**O**F misprifion of treason we have already spoken, and of the etymologie of the word: It remaineth now that we speak of other misprifions.

Misprifion is twofold: one is *crimen omissionis*, of omission, as in concealment, or not discovery of treason or felony: another is *crimen commissionis*, of commission, as in committing some heynous offence under the degree of felony.

Or misprifion is of two sorts, viz. passive and active: passive is of the nature of concealment, whereof some be by the common law, and some by statute. By the common law, as passive misprifion, that is concealment of high treason whereof we have spoken; and passive misprifion, that is concealment of felony, whereof we are now in this chapter to speak. Some by statute: as if any be moved to make commotion or unlawfull assembly, and do not within twenty four houres declare the same to a justice of peace, sheriffe, maior, or bailiffe, &c: concealment by juries, 3 H. 7. cd. 1. 33 H. 8. ca. 6, &c.

1 Mar. 1. Parl. ca. 12.

1 Eliz. cap. 17. See the second part of the Institutes. W. 1. cap. 9.

Now we speak of concealment or not discovery of felony. As in case of high treason, whether the treason be by the common law, or statute, the concealment of it is misprifion of treason. So in case of felony, whether the felony be by the common law, or by statute, the concealment of it is misprifion of felony.

If any be present when a man is slaine, and omit to apprehend the slayer, it is a misprifion, and shall be punished by fine and imprisonment.

8 E. 2. cor. 395.

And as the concealment of high treason is higher by many degrees then the concealment of felony, so the punishment for the concealment of the greater is heavier then of the lesser, and yet

W. 1. ca. 9. See the exposition thereof, ubi sup.

the concealment of felonies in sheriffs, or bailiffs of liberties is more severely punished then in others, viz. by imprisonment by one year, and ranfome at the will of the king. From which punishment \* if any will save himself he must follow the advice of Bracton, to discover it to the king, or to some judge or magistrate, that for administration of justice supplieth his place, with all speed that he can.

Bract. lib. 3. fo. 118. 2.

*Non enim debet morari in uno loco per duas noctes, vel per duos dies, nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei ut retrospiciat.*

And this is intended of a concealment, or not discovery of his meer knowledge: for if in case of high treason, he that knoweth it, before it be done, and assenteth to it, is *particeps criminis*, and guilty of treason: and in case of felony, he that receiveth the thief, and assenteth to it, is accessory.

See before the chart. of Misprision of Treason, fo. 36. and of Principall and Accessory, fo. 138.

\* Ecclesiastic. ca. 10. v. 20.

\* See the second part of the Institutes, W. 1. ca. 33. 25 E. 3. ca. 1. It is high treason to kill any of them in their places.

b. 22 E. 3. 13. 19 E. 3. Judgment 174. Mich. 6 E. 3. coram rege Rot. 55. Eborum.

41 E. 3. cor. 280. Note the forfeiture of his lands: but during his life.

41 E. 3. 25.

Int. leges Al. yeredj, cap. 14. 3 Fl. Dier, 188. 2 Ja. Bellingsham case coram rege with his elbow and shoulder.

\* 33 H. 2. ca. 12.

See before in the chapter of misprision of treason, that every treason and felony doth include in it misprision of treason and felony. See the statute of 23 El. ca. 1. of misprision, that is, *crimen commissionis*.

Compassings, or imaginations against the king, by word, without an overt act, is an high misprision, as before is said. \* *In cogitatione tua ne detrahas regi, &c. quia aves caeli portabunt vocem tuam, et qui habet pernas annuntiabit sententiam.*

\* If any man in Westminster hall, or in any other place, sitting the courts of chancery, the exchequer, the kings bench, the common bench, or before justices of assise, or justices of oier and terminer, (which courts are mentioned in the statute of 25 E. 3. *De prodicionibus*) shall draw a weapon upon any judge, or justice, though he strike not; this is a great misprision, for the which he shall lose his right hand, and forfeit his lands and goods, and his body to perpetuall imprisonment: the reason hereof is, because it tendeth *ad impedimentum legis terræ*. \* So it is, if in Westminster hall or any other place, sitting the said courts there, or before justices of assise, or oier and terminer, and within the view of the same, a man doth strike a juror, or any other with weapon, hand, shoulder, elbow, or foot, he shall have the like punishment; but in that case, if he make an assault, and strike not, the offender shall not have the like punishment.

\* If any strike in the kings palace, where the kings royall person resideth, he shall not lose his right hand, unless he draw blood; but if he draw blood, then his right hand shall be stricken off, he perpetually imprisoned, and fined and ranfomed.

Note the law makes a great difference between a stroke or blow, in or before any of the said courts of justice, where the king is representatively present, and the kings court, where his royall person resideth. For in the kings house (as hath been said) blood must be drawne, which needeth not in or before the courts of justice, but a stroke only sufficeth. Again, the punishment is more severe in the one case, then in the other: such honour the law attributeth to courts of justice, when the judges or justices are doing of that which to justice appertaineth: and the reason is, *Quia iustitia firmatur solium*.

But note that by the ancient laws of this realm, striking only in the kings court was punished by death. *Vide Lambard inter leges Inca. 6. Si quis in regia pugnarit, rebus suis omnibus multator, et sine morte etiam plectendus, regis arbitrium et jus esto. Inter leges Ca-*

*nult, cap. 56. Si quis in regia dimicavit, capitale esto, &c. Inter leges Alveredi, cap. 7. Qui in regia dimicavit, ferrumve distrinxerit, capitor, et regem penes arbitrium vite necisque ejus esto, &c.*

\* Peter Burchet prisoner in the tower, stroke within the tower John Longworth his keeper (who stood in a window reading of the Bible) with a billet on the head behind, whereby blood was shed, and death instantly ensued: this being without any provocation was adjudged murder, for which he was attainted, and before his execution (which was in the Strand over against Somerset house) his right hand was first stricken off, by force of the statute of 33 H. 8: for that the tower was one of the queens standing houses or palaces.

The kings palace at Westminster hath this liberty and priviledge, viz. *Nullæ citationes, aut summonitiones, liceant fieri cuicumque infra palatium regis Westm.*

Like priviledge hath Westminster hall, or other place, where the kings justices, &c. sit, as by these following records appeareth.

\* *Quia bedellus universitatis citari fecit Wil. de Wroelingham infra ostium aulae Westm. justiciariis sedentibus, ad comparend' coram cancellario, &c. pro quo se posuit in gratiam regis, committitur gaolæ, et Henricus de Harwood, ad cujus sectam persecutus fuit, committitur marischal. et finem fecit 40. s.*

\* *Matilda de Nyerford, filia Willielmi de Nyerford militis defuncti, did libell' against John earl of Warren, and \* Johan de Barro countes of Warren the kings niece (in camitina dominæ reginæ consortis domini regis) in a cause of matrimony and divorce, and the same Johan de Barro was cited in the kings palace at Westminster, &c. It was upon full examination of the cause, adjudged in parliament in these words, Quod prædictum palacium domini regis est locus exemptus ab omni jurisdictione ordinaria, tam regie dignitatis et coronæ suæ, quam libertatis ecclesiæ Westm', et maxime in præsentia ipsius domini regis tempore parliamenti sui ibidem: ita quod nullus summonitiones, seu citationes ibidem faciat, et præciud' illis, qui sunt de sanguine domini regis, quibus major reverentia, quam aliis fieri debet, &c. Consideratum est, quod officiar' committatur turri London, et ibidem custodiatur ad voluntatem domini regis.*

Here two things are principally to be observed: first, that this royall priviledge is not only appropriated to the palace of Westminster, but to all the kings palaces, where his royall person resides. Secondly, that this priviledge is to be exempted from all ecclesiasticall jurisdiction, *regiæ dignitatis et coronæ suæ ratione, &c.*

If any doe rescue a prisoner in or before any of the abovesaid courts committed by any of the aforesaid justices, it is a great misprision, for which he and the prisoner assenting to it, shall forfeit their lands and goods, and their bodies to perpetuall imprisonment, but shall not lose his hand, because no stroke or blow was given.

But it was resolved by all the judges, that where Thomas Oldfield, sitting in the court of the dutchy of Lancaster, with a knife stabbed one Ferror a justice of peace in the view of the said court, that the court of the dutchy was none of the courts to make it a misprision to lose his right hand, &c. but the offender was to be indicted, and grievously fined.

And in 9 El. one Guirling stroke another in the Whitehall, sitting

\* Mich. 15 El. in the case of Peter Burchet esquire of the Middle Temple.

Pasch. 8. E. 2. Coram rege Rot. 28 Norff.

[ 141 ]

\* Mich. 12 E. 3. Coram rege Rot. 101. Cant.

b Placita coram domino rege in parlamento suo apud Westm' in præsentia domini regis, 21. E. 1.

\* Eleanor daughter of E. 1. married with William earl of Barry alias Barro in France, and had issue the said Johan who married John earl Warren.

22 E. 3. 13.

Trin. 8 Jac. regis Oldfields case.

Pasch. 9 Eliz. Guirlings case.

sitting the masters of requests, and it was then resolved by the court of kings bench, that it was not any misprision, for the which he should lose his right hand, &c. but he was indicted and fined.

Hil. 13 E. 3.  
Coram rege Rot.  
104. Suff.

*Quia Thomas de Holbroke manus violentas imposuit super Johannem de Louham, &c. ad sessionem suam sedentem apud Gipevicum, et eum demeritus est, committitur in parlamento turri London, et finitur 20. li. et invenit sex milites manucaptors pro bono gestu suo.*

And where some of the books abovesaid say, that the offender shall forfeit his lands, and some that he shall be disinherited, yet the forfeiture of his lands is only for term of his life, (as before is said :) for being no felony, the blood is not corrupted, nor the heir disinhabled to inherit. And this severe punishment is at the suit of the king, and the party may have his action, and it shall be tried by the officers and criers. And for such a stroke Thomas of Whitesley recovered five hundred pounds, Trin. 9 E. 3. Rot. 154. Midd.

Trin. 9 E. 3.  
Rot. 154. Midd.

Brit. ca. 25. fo.

47.  
\* Nota for the  
dignity of  
knights.

Britton saith, *Ascuns trespasses sont nequedent plus punissable, si come trespass fait en temps de peace a chivaliers, ou auters gentz honorables per ribawis, ou auters viles persons; en quel case nous volons, que si ribawis soit attraint al suit de chescun chivalier, que il eyt ferue per felony sans desfort del chivalier que le ribawe perd son pone dont il trespassa: so great a respect in those days was had of honour and order.* Ribawe is taken here for a rascal ruffian. There is a great misprision when any revenge is fought against a judge, justice, officer, juror, serjeant, counsellor, minister, or clerk, for that, which they doe in discharge of their severall duties, offices, and places, concerning the administration of justice.

[ 142 ]

Mich. 33 & 34  
E. 1. Coram re-  
ge, Rot. 75.

Roger de Hegham and others being justices of oier and terminer, and sitting in the exchequer chamber, gave judgement for Mary late the wife of William Brewse plaintiff, against William le Brewse defendant, which judgement was pronounced by Roger de Hegham. William de Brewse demanded of Roger de Hegham if he would avow the judgement, and said, Roger, Roger, now thou hast thy will which of long time thou hast fought: of whom Roger de Hegham demanded, What is that? to whom William de Brewse said, My shame, and my losse, and this I will reward or recompence, or I will think of it. Whereof he being indicted and arraigned, and confessing the offence, the record saith, *Et quia sicut honor, et reverentia, qui ministris domini regis ratione officii sui faciuntur, ipso regi attribuuntur; sic dedecus et contemptus ministris suis facti eidem domino regi inferuntur; consideratum est quod præd. Willielmus de Brewse, discinctus in corpore, capite nudo, tena deposita, eat e banco domini regis ubi placita teneritur in aula Westm', per medium aule prædiæ, cum curia plena fuerit, usque ad scaccarium (ubi deliquit) et ibidem penam petiit a præfato Rogero, &c. et postea committitur turri London, ibidem moratur, ad voluntatem regis.*

Nota,

Bract. lib. 2.  
105. These  
words were given  
to the treasurer  
of England by  
the procurement  
of Pierce of  
Cavekon.

Note this exemplary judgement against a gentleman of a great and honourable family. *Quelibet pena corporalis, quamvis minima, major est qualibet pena pecuniaria.* And in that record it is said, *Quod dominus rex filium suum primogenitum, et charissimum Edwardum principem Wallie, pro eo quod quædam verba grossa cuidam ministro suo dixerat, ab hospitio suo sepe per dimidium anni amovit, nec ipsum filium suum in conspectu suo venire permisit, quousque dicto ministro de dicta transgressionem satisfecerat.*

Quia



## Cap. 66. Of Conspiracie.

142

*Quia Petrus de Scales minatus fuit Ricūm de Worlingworth, qui fuit de consilio Johannis de Meten, de vita et membris, dictus Petrus invenit plegios de bono gestu suo.* Hil. 20 E. 3. Coram rege Rot. 160.

There be many records for abusing of jurors, viz. Pasch. 10 E. 3. Coram rege, rot. 87. Gilbertus Twist. Pasch. 26 E. 3. ibidem, rot. 22. Essex, Tho. Hubberd, Hil. 7 H. 5. ibidem, rot. 24. Ricūs Cheddre. Mich. 17 E. 2. Coram rege rot. 63.

*Percussio clerici curie in veniendo versus curiam, &c.* Trin. 11 E. 2. Coram rege, rot. 42. London. Not only these particular revenges above said, but all other of what kind soever are great misprisions.

Also when any revenge is sought against any man for complaining in any of the kings courts, *super gravaminibus, &c.* for grievances, &c. *Quia deterret homines a querelis super gravaminibus in forma juris. De hiis qui vindictam fecerint, eo quod aliquo modo super prædictis gravaminibus in curia domini regis conquesti fuerunt.*

Cap. Idineis §. ultimo.

*Iusticiarii taxaverunt damna 2 marc' super Willielmum Botesford, eo quod minabatur quandam Hawisiam de vita et membris, eo quod ipsa prosequeretur ipsum in placito transgressionis.*

Pasc. 10 E. 3. Coram rege Rot. 86. Linc.

We will conclude this point for private revenge with an ancient law before the conquest. *Si quis privato consilio illatam sibi injuriam vindicavit, antequam jus æquum sibi dari postulaverit, quod nomine vindictæ eripuit reddito, integrum rei pretium præstato, et 30 solidos de- pendito.*

Inter leges Inæ, cap. 9. Lamb. See the 4. part of the Instit. cap. Chancery. Artic. vet. Cardinal Woolley. Art. 4. 5. 6. 11. 41.

See in the fourth part of the Institutes, cap. Of the chancery, in the articles against Cardinall Woolley. Artic. 4. 5. 6. 11. 41.

[ 143 ]

## C A P. LXVI.

## OF CONSPIRACIE.

**C**ONSPIRACIE is a consultation and agreement between two or more, to appeale, or indict an innocent falsely, and maliciously of felony, whom accordingly they cause to be indicted or appealed; and afterward the party is lawfully acquitted by the verdict of twelve men: the party grieved may be relieved, and the offender punished two wayes. First, by a writ of conspiracy, which is a civill or common action at the suit of the party, wherein the plaintife shall recover damages, and the defendant shall be imprisoned. Secondly, by indictment at the suit of the king, the judgement whereof is criminall: of which we are now to speak.

Upon this suit of the king, if the offenders be convicted, the judgement is grievous and terrible, viz. That they shal lose the freedom or franchise of the law, to the intent that he shall not be put or had upon any jury or assise, or in any other testimony of truth: and if they have any thing to do in the kings courts, they shall come *per solem, id est*, by broad day, and make their attorney, and

Vide statut. de conspiratoribus, anno 21 E. 1. vet. Mag. Cart. part 1. fo. 111. & definition conspir. 33 E. 1. ibid. fo. 90. b. Artic. sup. Cart. cap. 10. F. N. B. 114, 115. Stanf. pl. cor. 172. &c. Lib. 4. fo. 45. Lib. 9. fo. 16, 56, 57. 78. b. 24 E. 3. 45. 27. ass. 43 E. 3. Conspiracy, 11. 59. 4 H. 5. Judg. Sect.

ment 120. the like judgement as in attainit. See the first part of the Institutes. Trin. 18 E. 3. Coram rege, Rot. 148. Pasch. 32 E. 3. Coram rege. Rot. 58.

M 4

forth-

forthwith return by broad day: and their houses, lands, and goods, shall be seized into the kings hands, and their houses and lands stripped and wasted, their trees rooted up and cutted, and their bodies to prison: all things retrograde, and against order and nature, in destroying all things that have pleased or nourished them; for that by falsehood, malice, and perjury, they sought to attain and overthrow the innocent. Which judgement in our books is called, a villanous judgement. First, in respect of the villainy, and shame, which the party hath which receiveth it. Secondly, for that by the judgement he loseth the freedom and franchise of the law, and therefore undergoeth a kinde of bondage and villany. And the reason of this heavy and terrible judgement is: 1. For that the offenders have conspired and plotted the death and shedding of the blood of an innocent. 2. That they do it under faire pretence of justice and by course of law, which was instituted for the protection and defence of the innocent. 3. That if they had attained the innocent, he should have lost his life, (by an infamous death) his lands, his goods, and his posterity: for his blood thereby should have been corrupted, &c. 4. All this falsehood, malice, and perjury is committed *in placito corone*, in a suit for the king, which aggravateth and increaseth the offence; for that the king is the head of justice, and a protector of the innocent: and therefore at the kings suit, and not at the suit of the party, this villanous judgement shall be given. So as the law hath excellently distributed the remedies; the private action of the party to give him damages, &c. and the suit of the king for exemplary punishment. And it is to be observed, that this villanous judgement is given by the common law, (as in the case of attain) and not by force of any statute.

17 Lib. 1st. p. 12.

King E. 3. demanded of his justices and serjeants, whether divers men being indicted of conspiracy for the indicting of R. of felony, were mainpernable or no? and they answered the king expressly, that they were not, in respect of the odiousness of the offence.

[ 144 ]

## C A P. LXVII.

### Of Pensions, &c. received by Subjects, of Foraine Kings, &c.

See the fourth  
part of the In-  
stitutes, cap. the  
Chancery Artic.  
against Caronall  
Wopsey, art. 27.  
Vide p. 11. 7  
R. 2. nu. 16.  
Mat. 26.  
v. 24.  
*Nemo potest dua-  
bus dominis ser-  
vire: aut enim  
aunum esse habet.*

IT is not lawfull for any subject of the king of England to take a pension, &c. of any foraine king, prince, or state (without the kings license) albeit they be in league with the king of England; both, for that they may become enemies, and for that also it is mischievous and dangerous to the king himself and his state, as it appeareth by this distichon,

*Principe ab externo veniunt lethalia dona,  
Quæ studii specie, fata, necemque ferunt.*

And this was (say they) the case of the lord Hastings chamber-  
laine to king E. 4. who in the fifteenth year of his reign, received  
a pension

a pension of two thousand crowns yearly from the French king: who being informed by just. Catesbye his inward friend, and others learned in the law, that the receiving hereof was an offence against law, being desired by Pierce Clerett a Frenchman (who paid the pension) to make him an acquittance for receipt thereof for his discharge, utterly refused the same. This report I do the rather hold to be true, for that all our English historians, (who for the most part rehearse but the carkasse or outside of any point in law) give great credit hereunto. And what ill consequence this and other like pensions, and others of the councill of king E. 4. had, you may reade in our histories.

See the case in 7 R. 2. of \* Spencer bishop of Norwich; and there also the case of \* Pierce Cressingham, and others: and of \* sir William Ellingham and others, punished for receiving of money, &c. of the French king, which drew them without the kings license, to yeeld up castles and forts in France committed to their custody, punished by fine and imprisonment.

See the fourth part of the Institutes, cap. of the Chancery, artic. 27. against Cardinal Woolsey.

*bit, et alterum diligit, aut unum sustinebit, et alterum contemnet.*

4 Regum, ca. 5. v. 26, &c. Ge. hest. See 3 Jac. ca. 5. concerning the service of a subject as a souldier or captain to a forain prince, hereafter cap. Fugitives. Polydor. Hall. Hollingshed. Stowe, &c.

\* Rot. Parl. 7 R. 2. nu. 15. 18. 20. 21, 22, 23. b Ibid. nu. 17. c Ibid. nu. 24.

C A P. LXVIII.

[ 145 ]

Of Bribery, Extortion, Exaction, &c.

And first of Bribery.

**B**RIBERY is a great misprision (1), when any man in judicial place (2) takes any fee or pension, robe, or livery, gift, reward (3) or brocage (4) of any person, that hath to do before him any way (5), for doing his office, or by colour of his office, but of the king only, unlesse it be of meat and drink, and that of small value, upon divers, and grievous punishments.

Fortescue, ca. 52.

This word [bribery] commeth of the French word *briber*, which signifieth to devoure, or eat greedily, applyed to the devouring of a corrupt judge, of whom the Psalmist speaking in the person of God, saith, *Qui devorat plebem meam sicut escam panis. Qui cognoscit faciem in judicio, non bene facit: iste pro buccella panis deserit veritatem.*

Psalms 13. 4. Prov. 28. 21.

But let us peruse the branches of this description.

(1) *A great misprision.* But it may be objected, that bribery in a judge was sometime adjudged a higher offence. For whereas at the assizes holden at Lincolne in the 23 yeare of E. 3. an exigent was to have been awarded against Richard Saltley, Hildebrand Boreward, Guilbert Holliland, Thomas Derby, and Robert Dalderby, who formerly had been indicted of divers felonies before sir William Thorpe, chiefe justice of the kings bench, and one of the justices of assize of the said county of Lincolne, he the said sir William

Rot. Pat. anno 24 E. 3. part 3. m. 2. and Rot. Pat. anno 25 E. 3. part 1. m. 17. Rot. Parl. 25 E. 3. nu. 10. 23 E. 3.

Anno 14 E. 3.

The oath of the  
justices anno  
18 E. 3.

20 E. 3. cap. 1.

Anno 35 E. 1.  
the stat. of Car-  
lisle.

20 E. 3. cap. 4.

2 R. 3. fo. 11.

See 8 R. 2.  
cap. 3. Rot.  
Parl. 10 R. 2.  
no. 24.

William Thorpe, to stay the said writ of exigent against them, *cepit munera contra juramentum suum*, viz. of Richard Saltly, 10 li. of Hildebrand, 20 li. of Holliland, 40 li. of Derby, 10 li. and of Daldarby, 10 li. King Edward the third appointed the earles of Arundell, Warwick, and Huntingdon, and two lords, the lord Grey and the lord Burghers' to examine this matter. Before whom sir William Thorpe being charged with the said bribery, *Non petuit dedicere, &c.* Now the record saith, *Consideratum est per dictos justiciarios assignatos ad judicand. secundum voluntatem domini regis, et secundum regale posse suum, quod quia predictus Willielmus de Thorpe, qui sacramentum domini regis, quod erga populum suum habuit custodiendum, fregit maliciose, false, et rebelliter in quantum in ipso fuit, et ex causis supradictis per ipsum Willielmum, ut predictum est, expresse cognitis, suspendatur, et quod omnia trax. et tenta., bona et catalla sua remaneant forisfacta.* This sentence seemeth to have his foundation as well upon the oath of the judges, (for the record saith) *contra juramentum suum*, and the conclusion of the oath, and in case ye be found in any default in any of the points aforesaid, ye shall be *ad voluntatem regis*, of body, lands, and goods, thereof to be done as pleaseth him; as also for that this last clause is enacted by authority of parliament (as they say) in anno 20 E. 3. And hereupon they the said lords were appointed to judge *secundum voluntatem domini regis, et regale posse suum*, according to the words of the oath and act of parliament. And this judgement was repeated in anno 25. to the lords, and affirmed by them.

[ 146 ]

This president is not to be followed at this day for divers causes. First, it seemeth by the violation of the kings oath, and of this word [*rebelliter*] and by the forfeiture of all his lands and tenements to the king, that this offence should be treason against the king, and then it being either high treason, or petit treason, it is taken away by the statute of 25 E. 3. *De prodicionibus*, the same being none of them, that are there expressed. And in all the records this word [*felonice*] is not to be found, as it ought to have been, if it had been felony.

Neither by the words of the oath, or of the supposed act of 20 E. 3. can the judgement (*quod suspendatur*) be warranted: for these words [to be at the kings will for body, &c.] cannot be extended to losse of life, no more then the statute of Carlisle (*sub satisfaciura omnium, quæ in potestate sua obtinet*) extendeth not to forfeiture of life, but to imprisonment, &c. viz losse of liberty, &c.

But at this parliament, viz. in anno 20 E. 3. taking in hand of quarrels, other then their own, and maintenance of them is prohibited upon the paines aforesaid, viz. the paines contained in the said supposed act of 20 E. 3. cap. 1. upon paine to be at our will, body, lands, and goods, to do thereof as shall please us: which without question was never extended to losse of life, &c. but to imprisonment, as common experience daily teacheth. For *hæc est voluntas regis, viz. per justiciarios suos et per legem, &c.* Therefore as by the record appeareth, sir William Thorpe was pardoned and restored to all his lands. And we were desirous to see the record of the act of 20 E. 3. cap. 1. but there is no record of any such act in the parliament roll. And the very frame and composition of it seemeth to be but a rehearfall of a commandment from the king: for the letter of it beginneth. First, we have commanded all our

justices

justices, that they shall from thenceforth do equall law, &c. and therefore justly omitted out of the parliament roll of acts of parliaments: and yet the imprinting of it necessary, for that the fourth chapter of this parliament hath reference to the paynes contained in it.

It is enacted by Parliament anno 11 H. 4. in these words.

Vid. 1 H. 4. nu. 99. & Nota.

Item, *Que nul chancelor, tresorer, garden del privie seal counseler le roy, sernts. a counsell del roy, ne nul auter officer, judge ne minister le roy, pernants fees ou gages de roy pur leur ditz offices ou services, preigne en nul manner en temps a venter ascun manner de done ou brocage de ulluy pur leur ditz offices et services a faire, sur peine de responder au roy de la treble que issint preignent, et de satisfaire la partie, et punys al volunt le roy, et soit discharges de son office, service, et counsell pur tous jours, et que chescun que voiera pursuer en la dit matter, eyt la suite cibien pur le roy, come pur luy mesme, et eit la tierce part del somme, de que la partie est dueement convict,*

Rot. Parl. anno 11 H. 4. nu. 23. never imprinted.

By this act of parliament, which is the judgement of the whole parliament, it appeareth, that, if that which is imprinted as the first chapter of 20 E. 3. had been an act of parliament, then this statute of 11 H. 4. would never have inflicted this kinde of punishment, which is other, and farre lesse, then that which is mentioned in 20 E. 3. and where it is said in this act of 11 H. 4. (*et punis al volunt le roy*) that is, by fine and imprisonment by the court where the conviction shall be; for, as hath been said, *hæc est voluntas regis, viz. per justiciarios suos, et legem suam, et non per dominum regem in camera sua, vel aliter.*

2 R. 3. 11. 2.

So as by warrant of this act of parliament we have said, that bribery is a misprision; for that it is neither treason, nor felony; and it is a great misprision, for that it is ever accompanied with perjury.

\* True it is, that sir Thomas Weyland, chief justice of the court of common pleas, was attainted of felony, but it was not for bribery, but being guilty of † being accessory to murder, for the which by the common law he was abjured the realm.

\* Plac. de parl. apud Atherugg in Cro. Ep. anno 19 E. 1. Et Hollingsh. Chron. pag. 284, 285. he confessed felony, and abjured.

Likewise Adam de Stratton chief baron of the Exchequer a man of great possessions and riches was attainted of felony by him committed, all which I collect upon records of parliament the surest guides. For in the parliament holden in 18 E. 1. in the same year when he was attainted, I find two petitions, one preferred by himself in these words, *Adam de Stratton petit gratiam regis, quod restitatur ad aliquam partem terrarum suarum, et de bonis suis quæ habuit tempore quo fuit.\* viz. 26000 li.*

[ 147 ]  
Rot. Parl. 18 E. 1. fo. 5. nu. 61.  
\* There is a space left in the record.

The other by Margaret de Boteler in these words, *Margarita quæ fuit uxor Joh. de Boteler, de qua Adam de Stratton tenuit 12 li. 10. s. in London, clamat habere ut eschaet. Respons. Rex non concessit; quia in civitate nulla est eschaeta nisi regis.* And at the same parliament, fo. 3. it is resolved, *non sunt nisi tres formæ brevis de eschaeta;*

Et ibid. nu. 69.

*escheta; quia utlagatus, vel suspensus, vel abjuravit regnum.* And by consequence Adam de Stratton seeing his lands escheated, must have the judgement of one of these three. Which we have added to answer secret objections that might be made out of the mistakings of our Chronicles.

Rot. Parl. 20  
E. 1. fol. 5.

The rest of the justices were removed, fined, and imprisoned, saving Johannes de Mettingham, and Elias de Beckingham, who to their eternall memory and honour were found upright, and free from all bribery and corruption.

10 R. 2. no. 24.

It was petitioned in parliament, that the statutes whereby the justices of the one bench or the other should take no reward, ne be of any mans fee, may be observed. The kings answer was, [the king hath and will charge such justices to minister right, and will punish the contrary, and therefore willett that all statutes made touching them and the barons of the exchequer, be made void.

(2) *When any man in judiciall place, &c.* For the difference between bribery and extortion is, that bribery is only committed by him, that hath a judiciall place, and extortion may be committed both by him that hath a judiciall place, or by him that hath a ministeriall office.

Deut. 16. 19.

And this offence of bribery may be committed by any that hath any judiciall place either ecclesiasticall or temporall. *Non accipies personam nec munera,* (and the reason is expressed by the Holy Ghost) *quia munera excæcant oculos sapientum, et mutant verba iustorum.*

If bribery hath so great force, as to blinde the eyes of the wise judge, and to change the words of the just, *Beatus ille, qui excutit manus suas ab omni munere. Iudex debet habere duos sales; salem sapientie, ne sit insipidus, et salem conscientie, ne sit diabolus.*

Pasch. 17 E. 3.  
Coram rege.  
Rot. 139. Essex.  
John Berners  
case.  
Rot. Parl. 7 R.  
2. no. 12, 13.

Though the bribe be small, yet the fault is great: and this appeareth by a record in the reign of E. 3. *Quia diversi iusticiarii ad audiendum et terminandum assignati ceperunt de Johanne Berners qui indicatus fuit, 4. li. pro favore habendo die deliberationis sue, finem fecerunt domine regi per iiii M. marcas,* so as they paid for every pound a thousand marks. See before sir William Thorps case. Rot. Parl. 7 R. 2. the chancellour was accused of a bribe of ten pound, and his man four pound and certain fish, which, though the things were small, yet it had been punished, if it had been proved.

Anno 18 E. 3.

(3) *Take any fee, robe, gift, or reward.* This is warranted by the oath above said.

\* Since these Institutes so was it resolved in the Star-chamber, Trin. 6 Car. Reg. in an information against Bonham Norton and others.

But admit the party \* offereth a bribe to the judge, meaning to corrupt him in the cause depending before him, and the judge taketh it not, yet this is an offence punishable by law in the party that doth offer it.

(4) *Brocage.* There is good warrant for this word by the said act of 11 H. 4.

(5) *Of any person that hath to doe before him any way.* This hath his ground upon the oath aforesaid, so as bribery may be committed not only when a suit dependeth *in foro contentioso* (as it was in the case of sir Fr. Bacon lo. of S. Alban lo. chancellour of England, who for many exorbitant and sordid briberies was sentenced by the lords of parliament, which you may reade Rot. Parl. anno 19 Jacobis regis) but also when any in judiciall place doth any thing *virtute ex colore officii*, though there be no suit at all. For example, if

the lord treasurer for any gift or brocage, shall make any customer, controller, or any officer or minister of the king, this is bribery, for he ought to take nothing in that case by the statute of 12 R. 2. but that he make all such officers and ministers of the best, and most lawfull men, and sufficient for their estimation and knowledge. (An excellent law tending greatly to his majesties advantage, to the good usage and encouragement of merchants, &c. and generally to the advancement of commerce, trade, and traffique, the life of this island.) Reade this statute, for it is of a large extent, and the statute of 5 E. 6. for they are laws made *contra ambitum*, and worthy to be put in execution, for they prevent bribery and extortion; for they that buy will sell.

2 R. 2. ca. 2.  
See the statute of  
5 E. 6. ca. 16.

*Vendit Alexander claves, altaria sacra :  
Vendere jure potest, emerat ille prius.*

And that the statute of 5 E. 6. doth extend as well to ecclesiastical offices, as temporall, which concern the administration and execution of justice. And it was resolved in the case of doctor Trever chancellor of a bishop in Wales, that both the office of chancellor and register of the bishop are within that statute, because they concern the administration of justice.

Hil. 8. Ja. in  
communi banco  
D. Trevers case.  
See hereafter ca.  
of Simony, and  
the 1. part. of  
the Instit. sect.  
378. fo. 234.  
\* Rot. Parl. 21  
Ja. regis.

\* L. Earl of M. lord treasurer of England took *colore officii* divers bribes, &c. And namely where the farmers of the customes exhibited a petition to have certain just allowances, which his majesty referred to the said lord treasurer, who long delayed the petitioners, until they gave him severall bribes, and then he gave way to relieve them. For this, and other his briberies, extortions, oppressions, and other grievous misdemeanours in his severall offices of the lord treasurer, and master of the court of wards (no suit being in any of those cases depending) upon complaint, and charge of the commons in this parliament, and after evident proof and often hearing of the cause, the lords of parliament (the lord treasurer being brought to the bar by the gentleman usher and serjeant at arms, and kneeling till he was commanded to stand up) upon the petition of the commons by the speaker gave this judgment against him by the mouth of the lord keeper in these words. This high court of parliament doth adjudge. First, that you L. Earl of M. now lord Treasurer of England shall lose all your offices which you hold in this kingdom. 2. And shall be for ever incapable of any office, place, or employment in this state and common-wealth. 3. And that you shall be imprisoned in the tower of London during the kings pleasure. 4. And that you shall pay to our soveraign the king the fine of 50000. li. 5. And that you shall never sit in parliament any more. 6. And that you shall never come within the verge of the kings court, as by the said roll of the parliament appeareth, which is worthy of your reading at large.

In anno 21 H. 8. by articles under the hands of all the lords of the privy counsell, (whereof sir Thomas Moor then lord chancellor was one) and of the principall judges of the realm, which I have seene, cardinall Woolsey was charged with divers briberies, namely in the eighteenth article, in these words. Also the said lord cardinall constrained all ordinaries in England, yearly to compound with him, or else he would usurp half, or the whole of their jurisdiction by prevention, not for good order of the dioceses, but to extort treasure: for there is never a poor archdeacon in

Anno 21 H. 8.  
Artic. 18.

in England but that he paid to him a yearly portion of his living.

21 H. 8. ca. 5.  
Vide 2 R. 2.  
Rot. Parl.  
nu. 46.

If any ordinary, &c. having power by the act of 21 H. 8. to grant the administration of the goods of him that dieth intestate, or as intestate, to the widow or next of kin, &c. take any reward for preferring of any person, before another, to the administration, it is bribery.

[ 149 ]

The law before  
the conquest.  
Inter leges Ca-  
nuti, cap. 13.

*Si quis contra fas et leges administravit, vel pro odio, quod in alium habuerit, judicavit perperam, aut denique nummarium se judicem præbuerit, proprii capitis estimatione Anglorum jure regi damnatur, nisi quisdem legum id accidisse inscitia, &c.*

## C A P. LXIX.

## Of Extortion, Exaction, &amp;c.

\* Lib. 10. fo.  
101. & 102.  
Beawfages case.  
See the 1. part  
of the Institutes  
sect. 701. verb.  
[Extortioners]  
2. part of the In-  
stit. W. 1. ca.  
26. The 4. part  
of the Institutes.  
ca. Chancery in  
the articles  
against Cardinal  
Woolsey, art. 3.  
† Trin. 28 E. 3.  
Coram rege.  
Rot. 37 Eborum.  
‡ Hil. 20 E. 3.  
Coram rege.  
Rot. 159. Norff.  
§ Ibidem in the  
same roll.  
¶ 1 E. 3. stat. 2.  
ca. 15.  
¶ Nota.

**T**HIS is another great \* misprision because it is accompanied with perjury. Hereof you may read in the first part of the Institutes, sect. 701. See also in the second part of the Institutes, W. 1. cap. 26. and cap. 10. And in the fourth part of the Institutes, cap. Chancery, in the articles against cardinal Woolsey, article 3. Extortion of Ordinaries. <sup>b</sup> *Ranustiores hominum, extortio- natores hominum*: a rancunier, an extortioner of men.

<sup>c</sup> The collectors of the fifteens were committed to prison, for that they took of every town eighteen pence for an acquit- tance.

<sup>d</sup> A coroner was committed to prison, because he would not take the view of the dead body, before he had received for himself six shillings eight pence, and for his clerk two shillings, and was fined at forty shillings.

<sup>e</sup> If any of the kings counsell or his ministers doe exact a bond of any of his subjects, to come to the king with force and arms, &c. when they should be sent for, such writings are to the kings disho- nour; for that every man is bound to do to the king as to his liege lord, <sup>f</sup> al that appertaineth to him, without any manner of writing; (note the generality hereof) and such writings are to be cancelled, as by the act appeareth.

Hereupon (by authority of this parliament) these conclusions doe follow. First, whatsoever any subject is bound to doe to the king, as to his liege lord, no bond or writing is to be exacted of the subject for doing thereof. Secondly, whatsoever bonds or writ- ings are to the kings dishonour, are against law. Thirdly, whether such bonds or writings be made to the king or any other, the bonds or writings be void.

<sup>g</sup> If a bishop or other ecclesiasticall judge, or minister, doth exact a bond or oath of any person in any case ecclesiasticall, not war- rantable by law, the bond is void, and this exaction is punishable by fine, &c. the record is very long, but worthy to be read. See Rot. Parl. anno 8 H. 4. nu. 15, 16, 17, 18, 19, 20. excellent matter

\* Int. Inquisit.  
apud Lanceson  
Coram Rogero  
Loveday, and  
Waltero de  
Wynburn, an.  
6 E. 1. Cornub.



matter concerning fees in courts of justice, and in the kings household.

<sup>b</sup> *Officialis indistatus de citando, et affligendo plurimos, non potest dicere, et petit quod admittatur ad finem.*

<sup>i</sup> *Contra sequestratores, commissarios, et alios offic' episcoporum pro captione feodorum, priusquam debent pro testamentis probandis.*

\* The extortion of the clergy, and of their ministers to be enquired of by justices of peace.

Resolutions upon the statute of 21 H. 8. ca. 5.

<sup>1</sup> If a man makes his testament in paper, and dieth possessed of goods and chattels above the value of forty pound, and the executor causeth the testament to be transcribed in parchment, and bringeth both to the ordinary, &c. to be proved: it is at the election of the ordinary whether he will put the seal and probate to the originall in paper, or to the transcript in parchment: but whether he put them to the one or the other, there can be taken of the executor, &c. in the whole but five shillings, and not above, viz. two shillings six pence to the ordinary, &c. and his ministers, and two shillings six pence to the scribe for \* registering the same: or else the said scribe to be at his liberty, to refuse those two shillings and six pence, and to have for writing every ten lines of the same testament, whereof every line to contain ten inches, one penny.

If the executor desire that the testament in paper may be transcribed in parchment, he must agree with the party for the transcribing; but the ordinary, &c. can take nothing for it, nor for the examination of the transcript with the originall, but only two shillings six pence for the whole duty belonging to him. Where the goods of the dead doe not exceed an hundred shillings, the ordinary, &c. shall take nothing, and the scribe to have only for writing of the probate six pence, so the said testament be exhibited in writing with wax thereunto affixed ready to be sealed. Where the goods of the dead doe amount to above the value of an hundred shillings, and doe not exceed the summe of forty pound, there shall be taken for the whole but three shillings six pence, whereof to the ordinary, &c. two shillings six pence, and twelve pence to the scribe for registering the same. Where by custome lesse hath been taken in any of the cases aforesaid, there lesse is to be taken. And where any person requires a copy, or copies of the testament so proved, or inventory so made, the ordinary, &c. shall take for the search, and making of the copy of the testament or inventory, if the goods exceed not an hundred shillings, six pence, and if the goods exceed an hundred shillings, and exceed not forty pound, twelve pence. And if the goods exceed forty pound, two shillings six pence, or to take for every ten lines thereof of the proportion before rehearsed, a penny.

When the party dies intestate, the ordinary may dispose somewhat in pious uses, notwithstanding the said act of 31 E. 3. but with these cautions, 1. That it be after the administration granted, and inventory made, so as the state of the intestate may be known, and thereby the sum may appear to be competent. 2. The administrator must be called to it. 3. The use must be publique and godly. 4. It must be expressed in particular. And, 5. There must be a decree made of it, and entred of record: so in case of

commutation

<sup>b</sup> Mich. 22 E. 3. Coram rege

Rot. 181. Eborum.

<sup>i</sup> Hil. 23 E. 3. Coram rege.

<sup>k</sup> Rot. Parl.

3 R. 2. nu. 38, 39. 1 H. 5. nu. 23, 24.

<sup>1</sup> Mich. 6. Jacobi Rot. 1301 in comuni banco. int. Edm. Neale informer, &c. et Jacobus Rowse official' infra Archidiaconat' de Hundington defendant per le chief justice Walmesly, Warburton, Daniell, and Foster.

\* [ 150 ] For punishment of ecclesiasticall judges for extortion. See Rot. de Inquisit. in Cam. Eborum, Somerset, &c. anno 4 E. 1. in Thesaur. De iudiciibus ecclesiasticis dicunt, &c. Rot. Parl. 8 E. 3. nu. 9. The statute of 31 E. 3. cap. 4. Pasch. 32 E. 3. Coram rege. Rot. 27. Rot. Parl. 50 E. 3. nu. 9. 1 R. 2. nu. 109. 2 R. 2. nu. 40. 13 R. 2. nu. 38, 39. 7 R. 2. nu. 53. The statute of 3 H. 5. ca. 4. Mich. 20 Jacobi in Camera Stellata, in Sir Jo. Bennets case.

commutation of penance; it must be after sentence, and *mutatis mutandis, ut supra.*

2 H. 4. ca. 10.

Whereas twenty, forty, or an hundred be indicted of one felony, or one trespass, and all plead to an issue, as not guilty, the clerk of the crown of the kings bench, ought not to take for the *venire facias*, or for the entering of the plea, above two shillings, but the said clerk did take for every such name by extortion two shillings. It is ordained and established, that the said clerk of the crown, shall take no more then hath been duly used of old time. And moreover our sovereign lord the king hath charged the said justices of the kings bench, that no extortion be done in this behalf in the bench aforesaid.

2 H. 4. ca. 8.

The chirographer of the king in the common bench for making and writing of every fine levied four shillings, and no more, upon pain (if he take more) to lose his office, be expelled the court, one years imprisonment, and to pay to the party grieved his treble damages.

2 H. 4. ca. 23.

The fees to the marshall of the marshalsea of the kings house, you may read in the statute of 2 H. 4. Vide 9 R. 2. cap. 5.

33 H. 8. ca. 39.

If any auditor of the exchequer, dutchy of Lanc', or court of wards take more then three shillings four pence, for the enrolment of any letters patents, decree, grant, or indenture of lease, he shall forfeit, for every penny so taken, six shillings eight pence.

*Munerā ne capias, uncus latet hamus in esca :*

*Nulla carent visco munera, virus habent.*

[ 151 ]

C A P. LXX.

## OF USURY.

37 H. 8. ca. 9.  
13 Eliz. ca. 8.

**U**SURY is a contract upon the loan of money, or giving dayes for forbearing of money, debt, or duty, by way of loan, chivifance, shifts, sales of wares, or other doings whatsoever. *Usura dicitur ab usu et ære, quia datur pro usu æris: or usura dicitur, quasi ignis ærens.*

Deut. cap. 22.  
Exo. 22. Levit.  
25. Ezech. 2.  
Psal. 15.

And first, usury is directly against the law of God: And the reason wherefore it was permitted by the law of God for an Hebrew to an infidell, was; because it was a mean either to exterminate, or to depauperate them, as they should not be able to invade, or injure Gods people.

13 Eliz. cap. 8.  
2 Jac. cap. 17.

And it is adjudged by authority of parliament, that all usury being forbidden by the law of God, is sinne, and detestable: And it is also enacted by parliament, that all usury is unlawfull, that is to say, against the lawes of the realme. Let us therefore see what former laws have provided herein.

See the Cust. de  
Norm. cap. 20.  
Int. leges S.  
Edw.  
Glauvill. lib. 7.  
cap. 16.

*Siquis de usura convictus fuerit, omnes res suas amittat.*

*Usurarii omnes res, sive testatus, sive intestatus decesserit, domini regis sunt: vivus autem non solet aliquis de crimine usuræ appellari, nec convinci, sed inter cæteras regias inquisitiones solet inquiri, et probari aliquē in tali crimine decessisse per 12 legales homines de viceneto et per*

*coram*

eorum sacramentum. Quo probato in curia, omnes res mobiles, et omnia catalla, quæ fuerunt ipsius usurarii mortui, ad usum domini regis capiuntur, penes quemcumque inveniantur res illæ. Hæres quoque ipsius, hac eadem de causa exheredatur secundum jus regni; et ad dominum, vel dominos revertetur hæreditas. Sciendum tamen, quod si quis aliquo tempore usurarius fuerit in vita sua, et super hoc in patria publice defamatus, si tamen à delicto ipso ante mortem suam destiterit, et penitentiam egerit, post mortem ipsius, ille, vel res ejus lege usurarii minime censentur. Oportet ergo constare quidam usurarius decesserit aliquis ad hoc, ut de eo tanquam de usurario post mortem ipsius judicetur, et de rebus ipsius, tanquam de rebus usurarii disponatur.

Vide lestatute de Merton, cap. 5. et Fleta, lib. 2. ca. 50. <sup>f</sup> Mānifestus usurarius est intestabilis.

<sup>g</sup> Et inter les constitutions ordains p. les viels royes Alfred, &c. ordeine fuit que les chattels des usurers fussent al roy, et que les heritages des usurers remeissent escheats al seigniors des fees, et ne sert interre in sanctuary.

<sup>h</sup> Item, atrox injuria est, quæ omnium mobilium amissionem confert et legem liberam aufert, quæ locum habet in usurariis Christianis.

<sup>i</sup> Ad 16 Artic. de usuris respondetur: quod licet episcopis pro peccato illo penitentiam usurario injungere salutarem. Sed quia committendo usuram, usurarius furum committit, et super hoc est convictus, catalla et tre' usurarii, sicut catalla juris, sunt regis, et si qui sequi voluerint contra hujusmodi usurarium, restituantur eis bona sua, quæ ipsi usurarii per usuram extorserunt.

<sup>k</sup> And it appeareth by Bracton, that it was an article of the charge of inquiry by justices in eire de usurariis Christianis mortuis, qui fuerunt, et quæ catalla habuerunt, et quis ea habuerit. Et quid nullus recipiet usuram ante vel ingenio. And divers were indicted for taking of usury before justices in eire, and some were pardoned by the king, and others not.

In ancient time a great revenue by reason of the usury of the Jewes came to the crown: for between the 50 year of H. 3. and the 2 yeare of E. 1. which was not above seven yeares compleat, there was paid into the kings coffers four hundred and twenty thousand pounds of and for the usury of the Jewes. And yet that excellent king for divers weighty seasons worthy to be written in letters of gold, did by authority of parliament utterly prohibit the same, in these words. Forasmuch as the king hath perceived that many evils and disherisons of the good men of his land had come to passe by the usuries which the Jewes have done in times past, and that many sins and offences have risen thereupon: albeit he and his auncesters have had great profit thereby of the Jewes; notwithstanding for the honour of God, and for the common profit of his people, the king hath ordained, and established, that no Jew shall take usury, &c. Before this time Jewes were divers times banished this realm, but still they returned again. But this wise and worthy king by authority of parliament banishing their usury, put the Jewes into perpetuall exile into forain countries, where usury was tolerated. By which act it appeareth that the suppression of usury tendeth to the honour of God, and the common profit of the people.

By which authorities and records, and by many others that might be remembered, it appeareth that by the ancient laws of this realm usury was unlawfull, and punishable, although the punishment

Merton cap. 5.

<sup>f</sup> Fleta, lib. 2.

cap. 50.

<sup>g</sup> Mirror, cap. 1.

§ 3. & cap. 5. §.

1. Parl. 50 E. 3.

nu. 58.

<sup>h</sup> Fleta, lib. 2.

c. 1.

<sup>i</sup> Rot. Parliam.

51 H. 3. Peti-

tiones cleri.

<sup>k</sup> Bract. lib. 3.

fo. 116; 117.

Fleta, lib. 2. ca.

1. Cap. itineris.

vet. Mag. Cart.

par. 1. fo. 151.

Rot. pat. 3 E. 1.

m. 10. 19. 20.

21. 22. 36 Rot.

claus. 2 E. 1.

m. 1.

<sup>l</sup> Rot. pat. 3 E.

1. nu. 14. 17. 26.

Willielm. Mid-

dleton reddit

comptum.

[ 152 ]

Vec. Mag. Cart.

2. part. fo. 58.

59. Stat. de Ju-

daismo. See the

2. part. of the In-

stitutes, stat. de

Judaismo and

the Exposition-

upon the same.

15 E. 3. ca. 5.

ment was not always one, but sometime greater, and sometime lesser: and therefore at the parliament holden in the fifteenth year of E. 3. It was enacted, and declared, according as it had been sometime holden, that the king and his heirs should have conuſance of uſurers after their death, and that the ordinary of holy church should have conuſance of uſurers alive, for as much as to them it appertains, to compell them by the cenſures of holy church, for the ſin, to make reſtitution of uſuries taken againſt the law of holy church. But this ſtatute was afterward repealed, as hereafter ſhall appear.

Hil. 6 E. 3.  
Coram rege rot.  
130. Norff.  
Vide 26 E. 3.  
fo. 71. Moignes  
caſe.

*Johannes Hopd conuiſtus per juratores pro uſura capiend' 11 r. 8 d. pro 20 s. præſtand', et ſic de ſimilibus.*

Rot. Parl. 30 E.  
3. nu. 158.  
Vide Rot. Parl.  
6 R. 2. nu. 57.  
14 R. 2. nu. 24.

Many of the citizens of London giving over trade and traffick (which is the life of the common-wealth, and ſpecially of an iſland) and betaking themſelves to live upon uſury, Sir William Walworth being lord maior, by the advice of the aldermen his brethren, took ſuch good and ſtrict order for the execution of laws, and for ſuppreſſion of uſury within the city of London, as the commons in parliament put up a petition to the king in theſe words, [That the order that was made in London againſt the horrible vice of uſury, might be obſerved throughout the whole realm] whereunto the king answered; that the old law ſhould continue.

Rot. Parl. 14  
R. 2. nu. 14.

After this Sir John Northampton, maior of the city of London, by the advice of the aldermen his brethren, took more ſtrict order for the ſuppreſſion of unlawfull uſury within the city of London; which had ſo good ſucceſſe, as the commons in parliament petitioned the king in theſe words. The commons pray, that againſt the horrible vice of uſury (then tearmed ſcheſes) and practiſed as well by the clergy as laity, the order made by John Northampton late maior of London, may be executed through the realm. Whereunto the king answered, The king willeth thoſe ordinances to be viewed, and if they be found to be neceſſary, that the ſame be then affirmed. And here it is to be obſerved, that of ancient time the notable merchants of London deteſted uſury, and dry exchange.

3 H. 7. ca. 5. 6.  
11 H. 7. ca. 8.  
Vide 5 E. 6.  
c. 20.

By the ſtatutes of 3 H. 7. and 11 H. 7. all uſury is damned and prohibited, and there it is called dry exchange. So as uſury is not only againſt the law of God, and the laws of the realm, but againſt the law of nature: *Uſura contra naturam eſt, quia uſura ſua natura eſt ſterilis, nec fructum habet.*

27 H. 8. ca. 9.  
13 Eliz. ca. 8.  
21 Jac. ca. 17.

But now by the ſtatutes of 37 H. 8. and 13 Eliz. all former acts, ſtatutes, and laws ordained and made, for the avoïding or puniſhment of uſury are made void, and of none effect. So as at this day, neither the common law, nor any ſtatute is in force, but only the ſtatutes of 37 H. 8. 13 Eliz. and 21 Jac. And the eccleſiaſtical jurisdiction is ſaved by the ſaid ſtatute of 13 Eliz. as thereby it appeareth. For the expoſition of which ſtatutes of 37 H. 8. and 13 El. ſee in my Reports, viz. 4b. 3. fo. 80, 81. lib. 5. fo. 69, 70. lib. 9. 26.

## C A P. LXXI.

## Of Simony and corrupt Presentations.

**SIMONY.** *Simonia est vox ecclesiastica, à Simone illo Mago deducta, qui donum spiritus sancti pecuniis emi putavit.*

Against simony, &c. the statute of 31 Eliz. is made in these words.

Be it enacted that if any person or persons, bodies politique or corporate, shall or doe for any summe of money, reward, gift, profit or benefit, directly, or indirectly, or for, or by reason of any promise, agreement, grant, bond, covenant, or other assurance, of or for any summe of money, reward, gift, profit or benefit whatsoever, directly, or indirectly, present, or collate (1) any person to any benefice with cure of soules, dignity, prebend, or living ecclesiasticall; or give, or bestow the same for, or in respect of any such cause or consideration: \* That then every such presentment, collation, gift, and bestowing, and every admission, institution, investiture, and induction thereupon shall bee utterly voyde, frustrate, and of none effect (2) in law; and that it shall, and may be lawful to and for the queenes majestie, her heires and successors, to present, collate unto, or give, or bestow every such benefice, dignity, prebend and living ecclesiasticall for that one time, or turne onely, and that all and every person and persons, bodies politique and corporate, that shall give or take any such summe of money, reward, &c. shall forfeit and lose the double value of one yeares profit (3) of every such benefice, dignity, prebend and living ecclesiasticall. And the person so corruptly taking, procuring, seeking, or accepting any such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth be adjudged a disabled person in law (4) to have, or enjoy the same benefice, dignity, prebend, or living ecclesiasticall.

vill or canon law; whereof the judges of the common law in these cases

This is the text of this part of the act, now let us proceed to the exposition hereof, being a necessary law to be put in execution.

(1) *Present or collate.*] This is not onely intended, where the person presenting or collating hath right to present, or collate; but also where any person or persons, bodies politique and corporate, doe usury, and have no title to present or collate. And so it was adjudged in case where the usurpation was to a church of the king.

N 2

Simony described by the act following.

Stat. de 31 Eliz. cap. 6.

See the 2. part of the Instit. in the exposition of the said act of 31 El. *Injunctum est illa vendere quæ gratis distribui debent.*

vide Matth. ca. 10. ver. 8.

\* Note, the statute doth not make the bond, promise, covenant, or other assurance void, but the presentment, &c. and so it was adjudged, Pasch. 40

Eliz. Rot. 1745, in commun banco, between Gregory plaintiff and Oldbury defendant. Note differentium inter malum in se against the common law, et malum prohibitum by statute law; et malum in se against the common law, and malum prohibitum by the statute by the statute take no notice.

Mic. 13. Ja. in quare impedit betweene the

See

king and the b.  
of Norwich.  
Tho. Cole and  
Robert Secker,  
which began  
Pasch. 13 Jac.  
Rot. 21. for the  
vicarage of Ha-  
verellin Suffolk.

[ 154 ]

Mich. 13 Jac.  
ubi supra.

Mich. 41 & 42  
El. in Communi  
banco between  
Baker and  
Rogers.

24 E. 3. fo. 35.  
38 E. 3. 3.  
7 Eliz. Dier 257.

5 E. 3. 29.  
11 H. 4. 76.  
2 H. 7. 6. 11 H.  
7. 11. 13 H. 7.

*Sed quando presentatio et jus patronatus sunt temporalia, quaeritur quomodo fit simonia per donum pecunie pro illis: respondendum est quod jus patronatus et presentatio dicuntur spiritualia, respectu rei, ad quam presentatur, quae spiritualis est. Vide Linwood cap. de Jurejurando, fo. 80.*

(2) *Shall be utterly void and of none effect.*] But here is to be observed a diversity between a presentation, or collation made by a rightfull patron, and an usurper. For in case of a rightfull patron, which doth corruptly present, or collate, by the expresse letter of this act the king shall present: but where one doth usurp, and corruptly present or collate, there the king shall not present, but the rightfull patron: for the branch that gives the king power to present, is only intended, where the rightfull patron is in fault, but where the rightfull patron is in no fault, there the corrupt act, and wrong of the usurper maketh the benefice, &c. void, but taketh not away the lawfull title to present from the rightfull patron, and so it was adjudged in the case abovesaid.

Also upon these words, [If any patron without the notice of the person so presented, or collated, doth take reward, &c.] yet by the expresse letter of this branch the church, &c. is void, for both the letter and intention of this act is to make the admission, institution, and induction of any presentee, that commeth in by a corrupt patron void. And so was it resolved in the case abovesaid, as it hath been formerly adjudged in the common place. But where the presentee is not privy, nor consenting to any such corrupt contract, as is prohibited by this act, because it is no simony in him, there the presentee shall not be adjudged a disabled person within this act: for the words of that branch be, And the person so corruptly giving, &c. so as he shall not be disabled, unless he be privy to the corrupt contract: and upon the severall penning of these several branches, the diversity abovesaid was resolved Mich. 13 Jac. *ubi supra*.

(3) *Shall forfeit and lose the double value of one years profit.*] This double value shall be accounted according to the very, or true value, as the same may be letten, and shall be tryed by a jury, and not according to the extent, or taxation of the church: whereof one was made both of the spiritualities and temporalities in 20 E. 1. 1292. in the time of pope Nicholas: of that *vide* 11 H. 4. fo. 35. F. N. B. 176. and Polichron, lib. 7. cap. 38. Rot. Parl. 18 E. 3. nu. 44. sta. 2. 1 R. 2. nu. 102. 8 H. 6. nu. 15. And the other taxation was made in 26 H. 8.

(4) *Be adjudged a disabled person in law.*] It was resolved in the case of Mich. 13 Jac. *ubi supra*, that the king could not dispense with this disability by a *non obstante*: for when an act of parliament is made that disableth any person, or maketh any thing void, or tortious for the good of the church, or common-wealth, in this law all the kings subjects have an interest, and therefore the king cannot dispence therewith no more then with the common law: but where a statute prohibiteth any thing upon a penalty, and giveth the penalty to the king, or to the king and informer, there the king may dispense with the penalty, and this diversity is warranted by our books.

8. b. 27 H. 3. F. N. B. 211. b. Placita com. 502.

King

\* King James referred this case unto Sir Thomas Egerton lord chancellor of England, and to the chiefe justice of the kings bench. Sir Robert Vernon being coferer of the kings house, by reason of which office, he hath the receipt and payment of 40,000 li. of the kings treasure yearly, and payeth the wages beneath the stayres, &c. did bargaine and sell the said office for a great summe of money, and for certaine annuities to be paid, to Sir Arthur Ingram knight. The first question was whether the said office were void by force of the statute of 5 E. 6. ca. 16. The second was, seeing the words of this act be [shall be adjudged a disabled person in law, to all intents and purposes to have and occupy any such office, &c.] whether the king might dispense with that [disabled] and upon mature deliberation and hearing of counsell learned, they resolved, and so certified the king, that the said office was void by the said bargaine and sale, and that the king could not dispense with the said disability, for the reason and cause above said; and thereupon Sir Marmaduke Darrell was preferred to that office.

\* Anno 12 Jac. regis Sir Arthur Ingrams case upon the statute of 5 E. 6. cap. 16.

Likewise by the statute of 5 Eliz. every person which shall be elected a knight, citizen, burges, or baron of the cinque ports for any parliament, before he shall enter into the parliament house, shall take the oath of supremacy appointed by the act of 1 Eliz. and that he that entreth into the parliament without taking the said oath, shall be deemed no knight, citizen, burges, or baron, nor shall have any voice, but shall be, as if he had been never returned, or elected. Here be words that amount to a disability, and therefore that according to the former resolutions the king cannot dispense with the same.

5 Eliz. cap. 1.

It is further enacted, that if any person shall for any sum of money, reward, &c. (*ut supra*) other then for usuall fees, admit, institute, install, induct, invest, or place any person in or to any benefice with cure of souls, dignity, prebend, or other living ecclesiasticall: that then every person so offending shall forfeit and lose double value, *ut supra*; and that thereupon immediately from and after the inveisting, installation, or induction thereof had, the same benefice, &c. shall be estfoons meereley void, &c.

[ 155 ]

The reason of this clause (for I was of this parliament, and observed the proceedings therein) was to avoid hasty and precipitate admissions, institutions, &c. to the prejudice of them that had right to present, by putting them to a *quane impedit*, and no such hast or precipitation is used, but for reward, &c. as it is to be presumed.

There be two great enemies to justice and right, viz. *præcipitatio*, et *morosa cunctatio*.

And albeit the church is full by the institution, &c. against all, but the king, yet the church becommeth not void by this branch of this act, untill after induction.

And that the patron, &c. shall and may present, &c.] This is intended of the rightfull patron, or of him that hath right to present.

Vid. 14 H. 4.  
19.

And be it further enacted, that if any incumbent of any benefice with cure of soules shall corruptly resigne, or exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, sum of mony, or benefit whatsoever: That then as well the giver as the taker, &c. shall lose double the value of the money so given, and double the value of one years profit,

By another branch of this act it is provided,

That if any person or persons shall or doe receive, or take any money, reward, &c. *ut supra*, (ordinary and lawfull fees only excepted) for or to procure the ordaining or making of any minister, or giving any orders, or licence to preach, shall for every offence forfeit and lose the summe of forty pound, and the party so corruptly made minister, shall forfeit and lose the sum of ten pound, and if at any time within seven years after such corrupt entring into the ministry, he shall accept or take any benefice, living, or promotion ecclesiasticall, that then immediately, from and after the induction, inycsting, or installation thereof, or thereunto had, the same benefice, living, and promotion ecclesiasticall shall be voids meerly void, &c.

33 E. 1. tit. An-  
nuity 51.  
Vic. Canon 40.  
1 Jacobi 1603.  
the oath against  
simony, &c.  
\* 9 E. 3. 22.  
10 E. 3. 1.  
29 E. 3. 44.  
Regist. 58.  
21 H. 8. ca. 13.  
verbi. finem.

*Take a benefice.*] This word *beneficium ecclesiasticum* extendeth not only to benefices of churches parochiall; but to dignities and other ecclesiasticall promotions; as to deaneries, archdeaconries, prebends, &c. And it appeareth in our \* books that deaneries, archdeaconries, prebends, &c. are benefices with cure of souls; but they are not comprehended under the name of benefices with cure of souls within the statute of 21 H. 8. by reason of a speciall proviso; which they had been, if no such proviso had been added, viz. deans, archdeacons, chancellours, treasurers, chanters, prebend, or a parson where there is a vicar indowed.

[ 156 ]

If any person or persons, bodies politique or corporate, which have election, nomination, voice, or assent in the choice, election, presentation, or nomination of any scholar, fellow or any other person to have room, or place in any church collegiat or cathedrall, colleges, schools, hospitals, halls, or societies, shall take or receive any money, fee, or reward, &c. the place, room, office, &c. of the offender shall be void, &c.

Like cases in Pl.  
cum. 176. upon  
the statute of  
31 H. 8. of  
Cond. Dier. 20  
Eliz. upon the  
statute of 27 H.  
8. Of Utes.

*Which have election, presentation, &c.*] This act being a law perpetuall, these words extend not only to such person and persons, &c. as at that time had election, presentation, &c. but to all and every person and persons, that at any time hereafter should have election, presentation, &c. otherwise the law should be but temporary, which should be directly against the meaning of the makers of the act. And by the same reason this act extendeth not only to churches,



churches, colleges, schools, hospitals, hals, and societies founded at the time of the making of the act, but to all such as should be erected or founded after.

And if any fellow, officer, or scholar in any of the churches, colleges, &c. *ut supra*, contract or agree for any money, reward, &c. for the leaving, or resigning up of the same his room or place to any other, &c. shall forfeit and lose double the sum of money, &c. so received, and every person by whom or for whom any money, &c. shall be given, &c. shall be incapable of that place or room for that time or turn, &c. And it is further enacted, that at the time of every such election, presentation or nomination, as well this present act, as the orders, and statutes of the same places concerning such election, presentation or nomination shall then and there be publicly read, upon pain to forfeit and lose the sum of forty pound, &c. whereof, the one moiety to him that will sue, and the other moiety to the church, college, &c.

I have read ancient verses concerning simony, and other corrupt entries into churches, which are not unnecessary, in detestation of them, to remember.

*Quatuor ecclesias portis intratur in omnes,  
Cæsaris et simonis, sanguinis, atque Dei.  
Prima patet magnis, nummo patet altera, charis  
Tertia, sed paucis quarta patere solet.*

Four doors hath every church, and all but one forbod,  
(Whereof unseen some may be peradventure.)  
Of Cæsar, simonie, of kindred, and of God:  
And each church-man by one of these doth enter.  
Great men's command doth open wide the first,  
At next by money enter many one,  
The third to weak allies, but (for the church the worst),  
Gods-dore doth open to a few or none,

To conclude this chapter with this, that simony is odious in the eye of the common law: for a garden in focage of a mannor, whereunto an advowson is appendant, shall not present to the church, because he can take nothing for the presentation, for the which he may account to the heir; and therefore the heir in that case shall present of what age soever. And if an heir of tenant *in capite*, hath livery *cum exitibus*, yet shall the heir not present to an advowson, because no issues or profit can be taken thereof.

\* *Latro est qui aurum ex religione sectatur.*

And the common law would have the patron so far from simony, as it denied him to recover damages in a *quare impedit*, or assise of *darrein presentment*, before the statute of W. 2. cap. 5.

\* Simony is the more odious, because it is ever accompanied with perjury, for the presentee, &c. is sworn to commit no simony.

7 E. 3. 39. a.  
27 E. 3. 89.  
29 E. 3. Present.  
al eglise. Fitz.  
17. 8 E. 2. Present.  
10. Fitz.  
N B. 33. S.  
24 E. 3. 29.  
\* *Jerome.*  
3 H. 6. tit. Damages.  
17 ad-judge. See the 2. pt. of the Instit.  
W. 2. ca. 5. Lib. 6. fo. 50. & 51.  
Lib. 5. 53. 59.  
Speculat.  
\* Vid. Linwood ubi supra.

## C A P. LXXII.

## Of Monomachia, Single Combate, Duell, Affrays, and Challenges, and of Private Revenge.

Deut. 32. 35.  
Rom. 12. 19.  
Ecclesiasticus  
28. 1.  
Gen. 34. ver. 25.  
& 30. of Simeon  
and Levi.

**T**HIS single combat between any of the kings subjects, of their own heads, and for private malice, or displeasure is prohibited by the laws of this realm: for in a settled state governed by law, no man for any injury whatsoever, ought to use private revenge; for revenge belongeth to the magistrate, who is Gods lieutenant. And the law herein is grounded upon the law of God. *Vindicta est mihi, et ego retribuam, dicit Dominus.* Vengeance is mine, and I will repay it, saith the Lord. *Qui vindicari vult, inveniet vindictam à domino, et peccata illius servans servabit.* He that will revenge, shall finde vengeance from the lord, and he will surely keep his sins in remembrance.

It is also against the law of nature and of nations, for a man to be judge in his own proper cause, *judex in propria causa*, especially in duello, where fury, wrath, malice, and revenge are the rulers of the judgement. See more of private revenge, cap. Misprision, in [*crimen commissionis.*]

*Object.*

But it is objected, that this single combat may be undertaken for revenge, and preservation of the honour of the party grieved.

*Respons.*

1. The honour or estimation of the party may more justly and notoriously be revenged, and repaired by the magistrate in publique, then by the party in private. 2. There is nothing honourable, that is against the laws of his country, and the law of nature and nations. 3. Whatsoever is against the law of God is impious and dishonourable. 4. The eminent danger of the parties seeking private revenge. First, concerning the soules of both of them, as well of him that killeth (who is *vir sanguinis*) as of him that is slain, and dieth in his malice: and as to the world, he that slayeth is in worse case, then he that is slain. For the murderer loseth not only his lands and goods, but his life also and his honour, which he so much respected: for by his attainder his blood shall be corrupted, and if he were noble, or gentle before, he thereby becomes ignoble and base, and he that is slain by law loseth none of them: so as hereof it is truly said, *Infelix pugna, ubi majus periculum incumbit victori, quam victo.* 5. Not only the soul of man, but the body also, was originally made to the image of God, *Quicumque effuderit humanum sanguinem, fundetur sanguis illius, ad imaginem quippe Dñe factus est homo.* Who so sheddeth mans blood, by man shall his blood be shed, for in the image of God made he man. *Solus Deus, qui vitam dat, vita est dominus; nec potest quisquam eam juste auferre nisi Deus, vel gerens auctoritatem Dei, ut judex.* And this was the reason, that amongst Christians it was not lawfull for the lord to kill his villain.

Gen. 9. 6.

In ancient time so much the law did respect honour, and order, as hear what Britton saith, *Si trespas soit fait en temps de peace a chivaliers, ou a auters gents honorables per ribaudes ou auters viles persons, si le ferue soit per felony, &c. sauns desert del chivalier, que le ribaute perdra son poigne dount il trespassa.*

And many ordinances, laws, and acts of parliament, which doe prohibit the pardon of wilfull murder, are also grounded upon the law of God, to the end none should offend in hope of pardon.

\* *Non accipies precium ab eo qui reus est sanguinis, statim enim et ipse morietur. Ne polluat is terram habitationis vestrae, quæ cruore maculatur; nec aliter expiari potest, nisi per ejus sanguinem, qui alterius sanguinem effuderit.* Ye shall take no satisfaction for the life of a murtherer, which is guilty of death, but he shall be surely put to death: so ye shall not pollute the land wherein you are, for blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him, that shed it.

And this law is confirmed by Christ himself in the Gospel, and by the last book of holy scripture. *Omnes qui acceperint gladium gladio peribunt. Qui in gladio occiderit, oportet eum gladio occidi.*

But albeit upon the single combate no death ensue nor blood drawn, yet the very combate for revenge is an affray, and a great breach of the kings peace, an affright and terrour to the kings subjects, and is to be punished by fine and imprisonment, and to find sureties for their good behaviour; for it is *vi et armis, et contra pacem domini regis, &c.* and in respect of incroachment upon royall authority for revenge, it is *contra coronam et dignitatem.*

An affray is a publique offence to the terrour of the kings subjects, and is an English word, and so called, because it affrighteth and maketh men affraid, and is enquirable in a leet as a common nufans. See the statute of 2 E. 3. c. 3. where it is; (*en effraier de la pais,*) and the writ grounded upon that statute saith, *In quorundam de populo terrorem,* as it appeareth in F. N. B. fo. 249. f. and the Register agreeth with the originall, and therefore the printed book (*en affray de la peace*) must be amended.

And if any subject by word, writing, or message challenge another to fight with him, this is also an offence before any combate be performed, and punishable by law, and it is *contra pacem, coronam, et dignitatem.* For *quando aliquid prohibetur, prohibetur et omne, per quod devenitur ad illud.* Or such offenders may be punished in the star-chamber, whereof there be many presidents. Now when an affray is made by single combat, any stander by, that is no officer, may endeavour to part them, and prevent further danger, and the law doth incourage them hereunto; for if they receive any harm by the affrayours, they shall have their remedy by law against them, and if the affrayours receive hurt by the endeavouring only to part them, the standers by may justifie the same, and the affrayours have no remedy by law. But if either of the parties be slain, or wounded, or so stricken, as he falleth down for dead, in that case the standers by ought to apprehend the party so slaying, wounding, or striking, or to endeavour the same by hue and cry, or else for his escape they shall be fined and imprisoned. But if the sherif, justice of peace, constable, or other conservatour of the peace doe not part the affrayers for the preservation of the kings peace, and apprehend them being within his view, or doe not his uttermost endeavour

Brit. c. 25. f. 49. b.

Glouc. 6 E. 1. c. 9. 2 E. 3. ca. 2. 4 E. 3. ca. 13. 14 E. 3. cap. 15. 13 R. 2. St. 2. c. 1. Read these stat.

[158]

\* Num. 35. 31.

33. See before in chapter of murder.

Mat. 26. 52. Apocal. 13. 10.

Affray. Trin. 10 E. 3. Coram rege, Rot. 87. North.

4 H. 6. fo. 10. 8 E. 4. fo. 5.

Regula.

8 E. 2. cor. 295. 22 Aff. pl. 56.

3 H. 7. 10 b.  
Bedingfield's  
case.

Fleta, li. 1. c.  
32. §. Duellum.  
2. pt. of the In-  
stit. W. 1. c. 40.  
Fleta ubi supra.

11 H. 3. tit.  
Droit. Fitz. 57.

[ 159 ]

1 Regum, c. 17.  
ver. 4. 5. &c.

\* Rot. Francim  
7 R. 2. m. 34.  
The offer of R.  
2. to king  
Charles of  
France.  
1. A single com-  
bat between the  
two kings.  
2. Or a combat  
between the two  
kings and three  
of their uncles  
on either side.  
3. Or that a fit  
day and place  
might be assign-  
ed when under  
the universall  
conflict of both  
their armies, an  
end might be  
put to the war.

endeavour to part and apprehend them, they may be fined and imprisoned for their neglect thereof; for they may command others to assist them, and therefore the rule holdeth in them, *idem est facere, et nolle prohibere cum possis: et qui non prohibet, cum prohibere possit, in culpa est*. And if any be commanded to assist them therein, and refuse or neglect the same, it is a contempt in them: to be punished by fine and imprisonment.

There is a *duellum* allowed by law depending a suit for the trial of truth, whereof we have spoken in another place, and as here it appeareth, there is a *duellum* against law: of both these an ancient authour saith thus, and first of the lawful: *Duellum est singularis pugna inter duos ad probandum veritatem litis, et qui vicerit probasse intelligitur, et quamvis iudicium Dei expectetur ibidem, quicumque tamen monomachiam, i. e. singularem pugnam sponte susceperit vel optulerit, homicida est, et contrahit mortale peccatum. Et eodem modo iudex qui auctoritate desert, vel prestat, omnesque accessores, et consules, faventes et auxilantes, nec non et sacerdos qui dat benedictionem.*

In a writ of right, if the tenant wage battail by his champion, and if the champion after become blind by infirmity, and not *ex stultitia*, he shall be discharged of the battail. And if a man be appealed of felony, and gage battaile, and after become blind, *ut supra*, he shall be discharged of the battail, because he becommeth so by the act of God. And if the appellant after battail waged become blinde upon any occasion, the appellee *in favorem vite* shall goe quit. When issue is joyned to be tried by battail, and the trial by battail is become impossible by the act of God, or by the default of the appellant, the appellee goeth free.

And this kind of battail, in case of appeals and writ of right, is by publique authority and course of law, whereunto all the people by an implied consent are parties; and (as some hold) hath his warrant by the word of God by the single battail between David and Goliath, which was stricken by publique authority.

King E. 3. in the sixteenth year of his reign, having war with the French king for his right to the kingdome of France, out of the greatnesse of his minde, for love of his subjects, the saving of christian blood, and a speedy tryall of the right, offered the single combat with the French king, but he refused it.

Afterwards also, after long and chargeable wars between the crowns of England and France, for the right of the kingdome of France, it was an honourable offer which king R. 2. made to Charles the French king for saving of Christians guiltlesse blood, and to put an end to that bloudy and lingring war, which we will rehearse in the very words of the record it self.

\* *Rex dedit potem. Johanni duci Lancast' avunculo suo de certis re-questis seu oblationibus Carolo regi Franc' faciend'; viz. quod negotium bellicum inter predictos reges finiatyr. 1. Per certamen personarum suarum. 2. Vel aliter inter personas suas cum tribus patris ipsorum ipsi utrinque adjunctis. 3. Aut alioquin quod dies congruus assignaretur et locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat.* The duke of Lanc' according to his commission made these offers from the king of England to king Charles of France, but he was *auditus, sed non exauditus*; for king Charles liked none of these offers.

And

# Cap. 73. Against going or riding armed.

159

And in anno Domini 1196. anno regni Ricardi primi octavo, Philip king of France sent this challenge to Richard the first, that king R. would choofe five for his part and he the king of France would appoint five for his part, which might fight in lifts for triall of all matters in controverſie between them for the avoiding of ſhedding of more guiltleſſe blood. King Richard accepted the offer, with condition that either king might be of the number, but this condition would not be granted.

These, and the like offers, as they proceeded from high courage and greatnes of mind, ſo had they been lawfull, if they had been warranted by publique authority.

<sup>b</sup> N. Trivet.

<sup>c</sup> See the 2. part of the Institutes W. 1. ca. 20.

## C A P. LXXIII.

### Against going or riding armed.

[ 160 ]

**Item,** It is enacted, that no man, great or ſmall, of what condition ſoever he be, (except the kings ſervants in his preſence and his miniſters in executing *des mandements le roy*, or of their office, and ſuch as be in their company aſſiſting them, and alſo upon a cry made for armes to keep the peace, and the ſame in ſuch places where ſuch things happen) be ſo hardy to come before the kings juſtices, or other the kings miniſters doing their office, with force and armes, nor bring force in affray of the people, nor to goe nor ride armed by night nor by day, &c. before the kings juſtices, or in any place whatſoever, upon paine to forfeit their armor to the king, and their bodies to priſon at the kings pleaſure, and to make fine, and ranſome to the king, &c.

2 E. 3. cap. 3.  
Paſch. 18 E. 3.  
Coram rege. Rot.  
146. Midd.  
8 R. 2. cap. 13.  
the printed book  
is 7. but it ought  
to be 8. and ſo  
rectified in 20 R.  
2. ca. 1. Lib. 5.  
fo. 72. St. Johns  
caſe.

20 R. 2. cap. 1.

Upon this ſtatute two things fall into conſideration. Firſt, what the common law was before the making of this ſtatute. Secondly, the true ſenſe and expoſition of this act. For it appeareth by a record in 29 E. 1. *quod non liceat torneare, bordeare, juſtas facere, aventuras guerare, ſeu ad arma præſumere, ſine licentia regis*. See Britton, fo. 29. b. It was called *turneamentum decurſus*, of turning and winding, in reſpect of the agility, as well of the horſe, as of the man. For in thoſe daies this deed of chivalry was at random, whereupon great perill enſued. Therefore in the reign of E. 3. for ſafety the tilt was deviſed. See the ſtatute of 7 E. 2. *De deſenſione portandi arma*, and the ſtatute of W. 1. cap. 9. & cap. 17. W. 2. cap. 39. and the expoſitions upon the ſame.

Paſch. 29 E. 1.  
coram rege.  
Rot. 101. Eſſex.  
Paſch. 18 E. 1.  
coram rege.  
Rot. 31. Glouc.

Vet. Mag. Cart.  
2. part. fo. 40. b.  
Rot. Parl. 6 E.  
3. nu. 2. & 3.  
13 E. 3. nu. 2.  
14 E. 3. nu. 2.  
15 E. 3. nu. 2.  
17 E. 3. nu. 2.  
18 E. 3. nu. 2.  
25 E. 3. nu. 50.  
Parl. 1 & 25 E.  
3. Parl. 2. nu. 5.

It is *lex et conſuetudo parliamenti*, that whereſoever the parliament is holden proclamation ſhould be made forbidding wearing of armor, and exerciſe of playes and games of men, women, or children, in or about the city, or place where the parliament is holden, leſt the proceedings in the high court of parliament *pro bono publico*, ſhould thereby be hindered or diſturbed.

If

<sup>a</sup> 11 H. 7. fo. 23.  
vide before cap.  
*Homicide*. Brook  
Coxon 229. See  
24 H. 8. cap. 13.  
Juits, Turnics,  
Barriers, &c.  
<sup>b</sup> Pasch. 18 E.  
3. Coram rege  
Rot. 146. Nota  
bene.

<sup>c</sup> 25 E. 3. cap. 2.

<sup>a</sup> If any by mutual assent, do use juits or turneaments, or to play at sword and buckler, or any other deeds of armes, and the one killeth the other, this is felony, for that it is not lawfull to use them without the kings licence; which agreeth with the record above said, of 29 E. 1.

<sup>b</sup> *Willus Jordan inventus fuit vagans armatus de platis, attachiatus, &c. compertum est per juratores, quod minatus fuit per quosdam ignotos, et quoddam pro salvatione vite sue, platas predictas opposuit super corpus suum, tamen invenit securitatem pro bono gestu suo.*

<sup>c</sup> The clause of the statute of 25 E. 3. concerning this matter, we have reserved to this place, viz.

<sup>d</sup> See before cap.  
*High treason*.  
verb. *On si bone*  
*levy guerris*. fo. 9.

<sup>d</sup> And if per case any man of this realm ride armed covertly or secretly, with men of arms, against any other to slay him, or rob him, or to take and keepe him, till he hath made fine or ranfome, it shall not be adjudged treason, but it shall be judged felony or trespassse, according to the lawes of the realme of old time used, and according, as the case requires. And if in such case, or other like, before this time any justices have judged treason, and for this cause the lands and tenements have come into the kings hands as forfeit, the chiefe lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the kings hands, or in others, by gift, or in other manner. Saving alwayes to our lord the king, the yeare, and the wast, and the forfeitures of chattels, which pertain to him in the cases above-named. And that writs of *scire facias* be granted in such case against the land tenants without other originall, and without allowing any protection in the said suit. And that of the lands which be in the kings hands, writs be granted to the sherifs of the counties, where the lands be, to deliver them out of the kings hands without delay.

[161]

Concerning the point of felony, it must be observed, that at the making of that statute, and by the lawes of the realme of old time used in such case, when any purposed to slay, and declare it by such overt act, *voluntas reputabatur pro facto*, as hath been said before; and so is this branch concerning that point to be understood.

*And that writs of scire fac. be granted.*] Here it may appeare what speedy remedy by *scire fac.* the makers of this law gave for restitution to be made, where any of the justices had in any of the cases mentioned in this branch judged it treason, which is declared by this law to be against law.

Now let us peruse the words of the said act of 2 E. 3.

*His ministers in executing.*] By the order of the common law and statutes of the realme, the sherif, or other minister of the king in execution of the kings writs, or proces of law, might after resistance take *posse comitatus*. For, *sequi debet potentia legem et not antecedere*.

*Des mandements le roy.*] That is, of the kings writs, and proces of law, *secundam legem et consuetudinem Angliæ*. Though in this act there

Vide cap. High  
treason, verb.  
*Fait compasser*,  
fo. 6.

*Scire fac.*

Note for restitu-  
tion. See here-  
after cap. Resti-  
tution.

W. 1. ca. 9. &  
17. W. 2. cap.  
39. 18 E. 2. exe-  
cution, 251.  
19 E. 2. *ibid.*  
247. 3 H. 7. fo.  
1 et 10. b. 14.  
H. 7. 8. Lib. 5.  
fo. 91. Semaynes  
case.

## Cap. 73. Against going or riding armed.

161

there be three special exceptions, yet the law doth make another exception, and that is, to assemble force to defend his house, as hereafter shall be said.

To come before the kings justices, or other the kings ministers doing their office, with force and armes.] Bracton doth notably write of the diversity of forces, viz. that there is *vis expulsiva, perturbativa, inquietiva, ablativa, compulsiva*, &c. which you may read in him. And then (which is pertinent to our purpose) he saith: *Est etiam vis armata, (armis dejectum dico qualitercunque fuerit vis armata) non solum si quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent cum quo nocere possunt. Telorum autem appellatione omnia, in quibus singuli homines nocere possunt, accipiuntur: sed si quis venerit sine armis, et ipsa concertatione ligna sumpserit, fustes, et lapides, talis dicitur vis armata; si quis autem venerit cum armis, armis tamen ad de-ficiendum non usus fuerit, et deiecerit, vis armata dicitur esse facta; suf-ficit enim terror armorum ut videatur armis deiectis.* Agreeing with that of the poet,

*Janque faces et saxa volant, furor arma ministrat.*

Bracton, lib. 4.  
fo. 162.

Britton saith, *Nous volons, que tous gentis plus usent judgement, que force.*

Virgil.

Britton, 116. 2.

Nor to bring force in affray of the (pays, i.) country.] This act is notably expounded by the writ in the Register, and F. N. B. for by that writ it appeareth, that if any doth enter into, or detain with force any houses, lands, or tenements, the party grieved may have a writ upon this statute, directed to the sheriff, by force of which writ, if the sheriff find the force, then if any after proclamation made, (which proclamation is by reasonable construction to be made for avoiding of bloodshed) shall disobey, or if it be found by inquisition, the sheriff is to seize their armes and weapons, and to arrest and take the offenders and commit them to prison, &c. But note the sheriff cannot restore the party grieved upon this writ to his possession, \* no more then he can upon the writ *de vi laica, removenda*, but restitution must be made by force of the statutes of 8 H. 6. and 21 Jac. <sup>b</sup> And yet in some case a man may not onely use force and armes, but assemble company also. As any may assemble his friends and neighbours, to keep his house against those that come to rob, or kill him, or to offer him violence in it, and is by construction excepted out of this act: and the sheriff, &c. ought not to deal with him upon this act; for a mans house is his castle, *et domus sua cuique est tutissimum refugium*; for where shall a man be safe, if it be not in his house? and in this sense it is truly said,

*Armaque in armatos sumere jura sinunt.*

But he cannot assemble force, though he be extremely threatened, to goe with him to church, or market, or any other place, but that is prohibited by this act.

Nor to goe armed by night, or by day, &c. before the kings justices in any place whatsoever.] Sir Thomas Figett knight went armed under his garments, as well in the palace, as before the justice of the kings bench: for both which upon complaint made, he was arrested by sir William Shardshill chiefe justice of the kings bench, and being charged therewith, he said that there had been debate between him and sir John Trevel knight in the same week, at Pauls

See the chapter  
next before.  
verb. *Affraye*.  
Registrum.  
F. N. B. 249. c.  
Nota.  
Vide lib. 5. fo.  
9. Semayne case  
F. N. B. 54.

\* 8 H. 6. cap. 9.  
21 Jac. cap. 25.  
b3. E. 1. cor. 303.  
305.  
26 Aff. p. 22.  
21 H. 7. 39.

[ 162 ]

21 H. 7. 39.  
Lib. 5. fo. 91. b.  
Semayne case.

24 E. 1. fo. 31.

in

in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, he went so armed. Notwithstanding the court upon their view awarded, that the armes were forfeited, and thereupon the same were seized, and he commanded to ward in the Marshalsea during the kings pleasure. Sir Thomas prayed to find mainprize, which was denied, untill the pleasure of the king was known, because he was imprisoned during the kings pleasure, according to this statute.

24 E. 3. ubi. supra. Vide the 4. part of the Institutes, cap. 20 R. 2. cap. 1. Vid. indorff. claus. 2 E. 3. 19. 22.

*Upon paine to forfeit their armor, &c.*] It appeareth before by the case of sir Thomas Figett, that the offender was to bee punished according to this act, but by forfeiture of the armor and imprisonment; but the statute of 20 R. 2. cap. 1. doth add fine; and imprisonment.

*And that the kings justices, in their presence, &c.*] So did sir William Shardisill, as is abovesaid.

*And other ministers in their balivickets, &c.*] That is to say, sheriffs, bailiffs of liberties, &c.

*Lords of franchises.*] And their bailiffs, maiors, and bailiffs of cities, and borowes within the same cities and borowes, and borowholders, constables, and wardens of the peace within their wards shall have power to execute this act. And the justices assigned at their coming down shall inquire how such officers, and lords have exercised their offices in this case, and to punish them whom they find that have not done that which pertaineth to their office. See 12 R. 2. cap. 6.

Registrum. F. N. B. 249. f. 24 B. 3. fo. 33.

It is to be observed, that upon this statute by the resolution of the judges a writ was framed, and inserted into the Register, when any with force and armes enter any lands and tenements, or detain the same with force and armes, directed to the sheriff, reciting the force, and our act, (and saith) *Nos statum prædictum. inviolabiliter observari, et idem infringentes juxta vim et effectum ejusdem statuti castigare facere volentes et punire, tibi præcipimus, &c. publice proclamari facias, &c.* as in the writ. And here is a secret in law, that upon any statute made for the common peace, or good of the realm, a writ may be devised for the better execution of the same, according to the force and effect of the act.

Vide 36 E. 3. ca. 9. simile.

Note, proclamations are of great force, which are grounded upon the laws of the realme.

### Of Perjury and Subornation of Perjury, and incidently of Oaths.

5 El. ca. 9.

**E**VERY person which shall unlawfully and corruptly procure any witnesse to commit any wilfull, and corrupt perjury in any matter or cause depending in suit, and variance, by any writ, action, bill, complaint, or information in any of the kings courts of chancery, star-chamber, or in any of the



the queens majesties courts of record, or in any leet, view of frankpledge, ancient demesne court, hundred court, court baron, or of the stannary; or elsewhere within any of the kings dominions of England or Wales, or the marches of the same: or shall unlawfully, and corruptly procure and suborn any witness to testify in *perpetuam rei memoriam*. That then every such offender shall forfeit the summe of forty pound, &c. And if any person either by subornation, or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilfull perjury by their deposition in any of the courts above-mentioned, or being examined *ad perpetuam rei memoriam*; then every person so offending shall lose and forfeit twenty pound, and to have imprisonment by the space of six moneths without bail or mainprize, &c. the one moiety of all which forfeitures to be to the queen, and the other moiety to such person or persons as shall be grieved; &c.

Albeit by the common law tryall of matters of fact are by the verdict of twelve men, &c. and deposition of witnesses is but evidence to them: yet, for that most commonly juries are led by deposition of witnesses, perjury of witnesses was severely punished by the ancient laws of this realm; perjury itself being forbidden by the law of God, *\* Non perjurabis in nomine meo, nec pollues nomen Dei tui.* And again, *Non perjurabis, reddes domino juramenta tua.*

A false witness is called *perjurus, quia perperam jurat.* *b* Perjury before the conquest was punished sometime by death, sometime by banishment, and sometime by corporall punishment, &c.

*\* Afcuns font punies per coroper de langues, come felloit estre de faux teftimoignes.* But too severe laws are never duly executed. Afterwards it came to be more milde, for *d* Fleta saith, *Atrax injuria est quæ omnium mobilium amissionem confert, &c. de perjurio convictis.*

Afterwards it came to fine and ranfome, and never to bear testimony.

*Et queux se voillent perjurere par lower, ou par aſſen doute de aſſen, et ceux font reints a noſtre volunt, et mes ne ſoient crus per nul ſoement.* And it appeareth in 7 H. 6. that he that is perjured shall be fined and imprisoned.

*Thomas Vignus, et duo alii sunt culpabiles, &c. perjurati pro fractione corbellerum Johanne de Huntingfield in ſepavali piſcavia ſua in aqua de Haſſfeld.*

*Qui teſtes de perjurio convincere ſatagit, multo illis plures, producere neceſſe habet.*

The punishment of perjury in jurors for a false verdict was so severe by the common law, as few or no juries were upon just cause convicted, for the judgement *\* against them was,* 1. *Quod amodo amittant liberam legem imperpetuum.* 2. *Non trahantur in testimonium veritatis.* 3. *Bona et catalla ſua forſificent regi.* 4. *Terræ et tenementa ſua capiantur in manus regis.* 5. *Quod uxores et liberi ſui amodo amoveantur.* 6. *Quod terræ et tenementa ſua extirpentur, &c.*

*245. 8 E. 2. Judgement. 196. 16 E. 3. ibidem 109. Mich. 3 H. 5. Coram 2. 49. Fortescue ca. 29.*

*\* Exod. 20. 13.*

*Levit. 19. 11.*

*Mat. 5. 34.*

*b Leges Edw. c.*

*3. Ethelſt. c. 10.*

*25 Edm. c. 6.*

*Canuti, ca. 6.*

*& 35. &c.*

*Edw. and Gru.*

*c. 11.*

*c Mir. ca. 4. §*

*de paines.*

*Int. Leg. Ca-*

*nuti, c. 15. Con-*

*viciator lingua*

*exciditor.*

*d Fleta, li. 2. ca.*

*1. § Item Atrox,*

*&c.*

*Britton, fo. 38.*

*237, 238.*

*7 H. 6. fo. 25.*

*Hil. 8 E. 1. in*

*Communi banco*

*Rot. 38. Eſſex.*

*Fortescue, ca.*

*32.*

*\* [ 164 ]*

*Vide 1. pt. of*

*the Institutes.*

*Verb. Attaint.*

*Seſſ. 514. Gian-*

*vill, lib. 2. ca.*

*19. 6 H. 3. At-*

*taint. 72. Braſt.*

*li. 4. fo. 292. b.*

*Fleta, lib. 5. cap.*

*21. Britton, fo.*

*rege Rot. 14.*

7. *Quod capiantur, et in gaolam detrudantur.* Which sheweth how odious perjury was in the eye of the law: and this law doth yet remain in force; but a milder punishment is set down by the statute of 23 H. 8. wherein the party grieved hath election to ground his writ of attain upon this statute, or to take his remedy at the common law.

23 H. 8. ca. 3.

2 H. 4. 10.  
11 H. 4. 88.  
20 E. 4. 10. b.  
22 E. 4.  
13 El. Dier, 302.  
Mich. 7 & 8 El.  
Dier, 242, 243.

Mich. 10. J.  
Rowl. Ap Eli-  
zaes case, in  
eam. stellat.  
See hereafter  
Verb. Informa-  
tion.

Mich. 40 & 41  
El. Lib. 5. fo. 99.  
in Flowers case.

The case of  
Rowland ap Eli-  
za in the star-  
chamber ubi su-  
pra.

For perjury concerning any temporall act, the ecclesiasticall court hath no jurisdiction; and if it be concerning a spirituall matter, the party grieved may sue for the same in the star-chamber. See the statutes of 3 H. 7. ca. 1. 11 H. 7. ca. 25. 32 H. 8. ca. 9. And when you have read the case in Mich. 7 & 8 Eliz. Dier 242, 243. you will confesse how necessary the reading of ancient authors and records is, and the continuall experience in the star chamber is against the opinion conceived there.

And Mich. 10. Jac. in the star-chamber in the case of Rowland Ap Eliza, it was resolved, that perjury in a witnes was punishable by the common law, as hereafter shall be shewed more at large. But now let us peruse the words of the statute.

*By any writ, action, bill, complaint, or information.*] Out of these words are perjury, and subornation of perjury upon an indictment for the king (for example of riot) as it was resolved in Flowers case, because that perjury upon an indictment is not within the statute. But seeing perjury was an offence punishable by the common law, though the indictment of Flower grounded upon this statute was overthrown, yet is such perjury upon an indictment punishable, and most commonly punished in the star-chamber.

*Information.*] By this it appeareth, that perjury committed in an information exhibited by the kings attorney, or any other for the king, by any witnes produced on the behalf of the king, is punishable either by this act or by the common law. And so it was resolved in the said case of Rowl. Ap Eliza, which was this. The kings attorney preferred an information in the exchequer against Hugh Nanny esquire the father, and Hugh Nanpy the son, and others for intrusion and cutting down a great number of trees, &c. in Penrose in the county of Merioneth. The defendant pleaded not guilty, and the tryall being at the bar, Rowl. Ap Eliza was a witnesse produced for the king, who deposed upon his oath to the jury, that Hugh the father and Hugh the son joyned in sale of the said trees, and commanded the vendees to cut them down: upon which testimony the jury found for the king, and assessed great damages, and thereupon judgement and execution was had. Hugh Nanny the father exhibited his bill in the star-chamber at the common law, and charged Rowland Ap Eliza with perjury, and assigned the perjury, in that he the said Hugh the father never joined in sale, nor commanded the vendees to cut down the trees, &c. And it was resolved, first, that perjury in a witnesse was punishable by the common law. Secondly, that perjury in a witnesse for the king was punishable by the common law, either upon an indictment, or in an information, or by this act in an information. And the said Rowland Ap Eliza was by the sentence of the court convicted of wilfull and corrupt perjury.

But for our more orderly proceeding, let us define, or describe what perjury is in legall understanding; both upon this statute, and at the common law.

Perjury

Perjury is a crime committed, when a lawfull oath is miniftered by any that hath authority, to any perfon, in any judiciall proceeding, who fwareth abfolutely, and falſly in a matter materiall to the iſſue, or cauſe in queſtion, by their own act, or by the ſubornation of others. Now let us peruſe the branches of this deſcription.

Perjury de-  
ſcribed.

*A lawfull oath.*] This word oath is derived of the Saxon word *coth*; and is expreſſed by three ſeverall names, viz. 1. *Sacramentum*, *à ſacra, et mente*, becauſe it ought to be performed with a ſacred and religious mind. *Quia jurare, eſt Deum in teſtem vocare, et eſt cultus divini cultus.* 2. *Juramentum à jure*, which ſignifieth law and right, becauſe both are required and meant, or becauſe it muſt be done with a juſt and rightfull mind. 3. *Jurjurandum*, compounded of two words, *à jure, et jurando*. In the common law *ſacramentum* is moſt commonly uſed: in our books and ancient ſtatutes publiſhed in French, *ſerement*, of the French word *ſerment*, is uſed.

[ 165 ]

An oath is an affirmation or deniall by any Chriſtian of any thing lawfull and honeſt, before one or more, that have authority to give the ſame for advancement of truth and right, calling Almighty God to witneſſe, that his teſtimony is true. And it is twofold, either *aſſertorium ut de præterito, ſicut teſtes, &c. ſeu promiſſorium de futuro, ſicut iudices, juſticiarii, officarii, &c.* So as an oath is ſo ſacred, and ſo deeply concerneth the conſciences of Chriſtian men, as the ſame cannot be miniſtered to any, unleſſe the ſame be allowed by the common law, or by ſome act of parliament; neither can any oath allowed by the common law or by act of parliament be altered; but by act of parliament. It is called a corporall oath, becauſe he toucheth with his hand ſome part of the holy ſcripture.

Serment or ſar-  
ment. i. ſacra-  
ment. i. ſacra-  
mentum.  
Fleta, li. 5. ca.  
2. Brit. c. 97.  
fo. 237. 8. b. 19.  
74. 134. 165.  
236. b. Fleta, li.  
5. ca. 21.

So reſolved an.  
26 El. in the  
caſe of the un-  
der ſherif.

The oath of the kings privy counsell, the juſtices, the ſherif, &c. was thought fit to be altered and enlarged, but that was done by authority of parliament. For further proof whereof, and of the matters abovesaid, ſee the ſtatutes here quoted, and it ſhall evidently appear, that no old oath can be altered, or new oath raiſed without an act of parliament, or any oath miniſtered by any that have not allowance by the common law, or by an act of parliament.

Magna Cart. c.  
6. Stanf. Pr. 17.  
F. N. B. 264.  
W. 1. 3 E. 1. c.  
40. 18 E. 3.  
ubi ſup. 5 R. 2.  
cap. 12.  
6 R. 2. ca. 12.  
4 H. 4. ca. 18.  
ca. 2. 23 H. 8.

2 H. 5. ca. 7. 8 E. 4. cap. 2. 1 R. 3. cap. 6. & 15. 19 H. 7. cap. 14. 14 H. 8. cap. 5. 32 H. 8. cap. 46. 2 E. 6. ca. 13. 27 El. cap. 12. See 3 Jac. c. 4.

43 Eliz. ca. 12.

And to conclude this point, it was reſolved in parliament holden in anno 43 Eliz. that the commiſſioners concerning policies of aſſurances could not examine upon oath, becauſe they had no warrant either by the common law, or by any act of parliament: and therefore it was enacted at that parliament, that it ſhould be lawfull for the ſaid commiſſioners to examine upon oath any witneſſe, &c. At this parliament I attended, being then attorney generall. And oaths that have no warrant by law, are rather *nova tormenta, quam ſacramenta*, and it is an high contempt to miniſter an oath without warrant of law, to be puniſhed by fine and imprifonment. And therefore commiſſioners (that ſet by force of any commiſſion that is not allowed by the common law, nor warranted by authority of parliament) that miniſter any oath whatſoever, are guilty of an

III. INSR.

O

high

## \* Commissions.

Regist. 1, 2, 3.  
125, 126, 88.  
128, 138, 161.  
F. N. B. 110,  
111, 2 E. 3, 26.  
Pasch. 44 E. 3.  
Coram rege. Rot. 2, 24 E. 3. Com. Br. 3, 29 E. 3, 30, 31. 18 E. 3. ca. 1. & 4. 18 E. 3. Stat. 2.  
ca. 6. Rot. Parl. 18 E. 3. nu. 47. 28 E. 3. ca. 19. Rot. Parl. 50 E. 3. nu. 56, 61. 1 H. 4. nu. 22.  
optime. 4 H. 4. ca. 9. Rot. Parl. 9 H. 4. nu. 36. 42 Aff. p. 5. 12. 42 E. 3. ca. 3. Dier. 1 Eliz.  
106. Scrogs case.

high contempt, and for the same are to be fined and imprisoned:  
\* For commissions are legall, and are like the kings writs, and none  
are lawfull but such as are allowed by the common law, or war-  
ranted by some act of parliament: and therefore commissions of  
new inquiries or of novell invention, are against law, and ought  
not to be put in execution.

And albeit divers of the kings courts in England proceed not  
according to the course of the common law, yet are their pro-  
ceedings allowed either by the common law or by some act of  
parliament.

## Dorff. clauf. an.

19 R. 2. nu. 17.

## \* Exod. 20. 4.

Deut. 5. 6.

Psalme 86. 11.

96. 7. 115. 4.

Levit. 26. 1. &c.

Esay 44. 9. &c.

Jeremy 10. 3.

&c. Sapient. 13.

10. &c. August.

Epist. 110. ad

Jan. ca. 11. idem de fide & symbolo, ca. 7. idem in Psal. 113. con. 2. Gregor. lib. 9. Epist. 9.

† [ 166 ]

Bracton, lib. 4.

fol. 186.

Jer. 4. 2.

Trin. 13 Ja. Li.

17. f. 98. Bag-

ges case.

*By any having authority.]* For where the court hath no authority  
to hold plea of the cause, but it is *coram non iudice*, there perjury  
cannot be committed. For as Bracton saith, *Sacramentum habet in*  
*se tres comites, veritatem, iustitiam et iudicium: veritas habenda est in*  
*jurato; iustitia et iudicium in iudice.*

And all this is grounded upon the law of God, *Jurabis vivit do-*  
*minus, in veritate, et iudicio, et in iustitia.*

*In any judiciall proceeding.]* For though an oath be given by him  
that hath lawfull authority, and the same is broken, yet if it be not  
in a judiciall proceeding, it is not perjury punishable either by the  
common law, or by this act, because they are generall and extra-  
judiciall, but serve for aggravation of the offence, as generall oathes  
given to officers or ministers of justice, citizens, burgeses, or the  
like, or for the breach of the oath of fealty or allegiance, &c. they  
shall not be charged in any court judiciall for the breach of them  
afterwards. As if an officer commit extortion, he is in truth per-  
jured, because it is against his generall oath: and when he is  
charged with extortion, the breach of his oath may serve for aggra-  
vation.

If a man calleth another perjured man, he may have his action  
upon his case, because it must be intended contrary to his oath in  
a judiciall proceeding: and so it is termed in our statute of 5 Eliz.  
but for calling him a forsworne man, no action doth lye: because  
the forswearing may be extrajudiciall. If the defendant perjureth  
himself in his answer in the chancery, exchequer chamber, &c. he

is not punishable by this statute, for it extendeth but to witnesses, but he may be punished in the star-chamber, &c.

*Who sweareth absolutely.*] For the deposition must be direct and absolute, and not *ut putat*, nor *sicut meminit*, nor *ut credit*, &c.

*And falsely.*] Herein the law taketh a diversity between falsehood in expresse words, and that is only within this statute, and falsehood in knowledge or minde, which may be punished though the words be true. For example, damages were awarded to the plaintife in the star-chamber according to the value of his goods riotously taken away by the defendant: the plaintife caused two men to sweare the value of his goods, that never saw nor knew them; and though that which they sware was true, yet because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the star-chamber.

For (as Fleta saith) *Ad rectum juramentum exiguntur tria, veritas, conscientia, et iudicium*: truth and conscience in the witnesse, and judgement in the judge. And herewith agreeth Bracton, that a man may sweare the truth, and yet be perjured. *Dicunt quidam verum, et mentiuntur, et pejerant, eo quod contra mentem vadunt. Ut si Judeus juraverit Christum natum ex virgine, perjurium committit, quia contra mentem vadit, quia non credit ita esse ut jurat.*

By the ancient law of England in all oathes equivocation is utterly condemned; for Britton saith, *Serement est honest, et leall, quant sa conscience demesne accord a chescun point a la bouche ne plus, ne meins, et sil ad discord, doncs est perillous.* And this is grounded upon the law of God: *Nunquid Deus indiget mendacio vestro, ut pro illo loquamini dolor, aut decipitur ut homo vestris fraudulentis?* Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. If equivocation should be permitted tending to the subversion of truth, it would shake the foundation of justice.

*In a matter materiall to the issue, or cause in question.*] For if it be not materiall, then though it be false, yet it is no perjury, because it concerneth not the point in suit, and therefore in effect it is extrajudiciall. Also this act giveth remedy to the party grieved, and if the deposition be not materiall, he cannot be grieved thereby. And Bracton saith, *si autem sacramentum factum fuerit, licet falsum, tamen non committit perjurium.*

*By their own act, &c.*] This clause of the statute, although it be more generall then the clause of procurement, yet seeing the first clause concerning procurement, extendeth not to perjury upon an indictment: this clause by construction shall extend no further than the former. See Lib. Intr. Coke, fo. 164, 165, 362.

*Or by the subornation of other.*] Subornation is derived of *sub* and *orno*, and *ornare* in one of his significations is to prepare, so as *subornare* is as much to say, as to prepare secretly, or underhand. *Est autem subornare quasi subter in aure ipsum male ornare, unde subornatio dicitur de falsi expressione, aut de veri suppressione.* And here is to be noted, that in the judgement of the parliament *pius peccat author quam actor*; for the suborner forfeits 40 li. and he that is suborned but 20 li. Fleta saith, *Si servus cogatur scienter a domino perjurare, uterque est perjurus; qui autem provocat cum ad jurandum quem scit falsum*

Bract. lib. 4.  
fol. 289.  
Fleta, lib. 5.  
ca. 21.

Gurneis case in  
the star-chamber,  
Mic. 9 Jac.

Fleta, ubi supra.

Bracton, lib. 4.  
fo. 289.

Equivocation.  
Britton, fo. 237.

Job 13. 7.

[ 167 ]

Bracton, lib. 4.  
188. Fleta, lib.  
5. ca. 21. accord.

Flowers case.  
ubi supra.

Fleta, lib. 5.  
ca. 21.

*falsum jurare, vel exigit, vel recipit juramentum, talis vincit homicidam, quia homicida solum corpus occidit, iste vero animam suam et alterius: et peccat, qui alium audit falsum jurare, scit, et tacet.*

Mic 29 & 30  
Eliz. coram rege.

In an action of perjury brought upon this statute, the plaintiffe counted, that the defendant *falso dixit et deposuit, &c.* and in what action, upon what issue, and in what court, &c. and concluded, *et sic commisit voluntarium et corruptum perjurium.* And it was ruled by the whole court, that the count was vicious and insufficient for two causes. First, for that in this act of 5 Eliz. as here it appeareth, there be two distinct clauses, one if he be perjured of his own proper act; the other if he be perjured by subornation, &c. and the plaintiffe ought to declare in certainty, within which of them the defendant is perjured. The second cause was, where the act saith [wilfully and corruptly commit any wilfull perjury, &c.] and the words of the count be *falso dixit et deposuit*: and saith not, *voluntarie et corrupte*; and the said clause, *et sic commisit voluntarium et corruptum perjurium*, salvethe not the former insufficiency, because it is but a conclusion upon the former matter.

27 Eliz. Mellers  
case.

Dier, 12 El. 288.

And the like judgement was given in this court, as to this latter point anno 27 Eliz. in the case of one Mellers of Lincolnshire.

*That as well the judge and judges of every such of the said courts.* If the perjury be committed by any witnesse deposed in the chancery, &c. and the party grieved commenceth his suit there upon this act, the same and all the proceedings thereupon must be in Latin according to the course of the common law, and the defendant shall not be sworn to his answer, nor examined upon interrogatories (unlesse the court of chancery had before this act used to examine perjuries, and to examine the defendant upon oath upon interrogatories before this act, for then such jurisdiction had been saved by a proviso in this act) and when issue is joined, it shall be tried in the kings bench, as by law it ought, *et sic de similibus.*

25 E. 3. 42. b.  
cor. 131.

If a man be taken for a suspect, and he is not indicted, nor is there any certaine cause to arraign him, the court may give him the oath of allegiance, viz. *Que il serra foial et loyal, &c.* Vide 45 E. 3. 27. b. simile devant, cap. 7. De Conjuracion, &c. in fine. 22 E. 4. 36. 20 H. 6. 37. Attorney abjure.

See more of Perjury and of Witnesses in the fourth part of the Institutes, cap. Commissioners for examination of witnesses. See 21 Jac. cap. 20. a good act to prevent and reforme profane swearing.

## C A P. LXXV.

## Of Forging of Deeds, &amp;c.

**I**F any person or persons upon his or their own head or imagination, or by false conspiracy or fraud with others, shall wittingly, subtilly, and falsely forge (1), or make (2), or subtilly cause or wittingly assent (3) to be forged or made any false deed, charter (4), or writing sealed (5), court roll, or the will of any person or persons, in writing (6), to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, tenements, or hereditaments free-hold or copyhold, or the right, title, or interest of any person or persons of, in, or to the same (8), or any of them, shall or may be molested, troubled, defeated, recovered, or charged, &c. (7) Or shall pronounce, publish, or shew forth in evidence any such false and forged deed, charter, writing, court-roll, or will, as true (9), knowing the same to be false and forged (10), as is aforesaid, to the intent above remembered, and shall be thereof convicted, either upon action or actions of forger of false deeds to be founded upon this statute, at the suit of the party grieved, or otherwise according to the order and due course of the lawes of this realme, or upon bill, or information, to be exhibited into the court of star-chamber, &c. shall pay to the party grieved his double costs and damages, &c. (11) And be it further enacted, that if any person or persons, upon his or their owne head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly, and falsely forge or make, or wittingly, subtilly, and falsely cause or assent to be made or forged, any false charter, deed (12), or writing, to the intent that any person, or persons, shall or may have or claime any estate or interest for terme of yeares (13) of, in, or to any mannors, lands, tenements, or hereditaments, not being copyhold (14), or any annuitie (15) in fee-simple, fee-taile, or for term of life, lives, or years, or shall make or forge, as is aforesaid, any obligation, or bill obligatory (16), acquittance, release, or discharge (18), of any debt, account, action, suit, demand, or other thing personall, or shall pronounce, &c. *ut supra*. That then he shall pay, &c. (19)

5 Eliz. cap. 14.

And be it further enacted, that if any person or persons being hereafter convicted or condemned of any of the offences aforesaid, &c. shall after any such his or their conviction or condemnation escape or commit or perpetrate any of the said of-

fences (20) in forme aforeſaid, that then everyſuch ſecond offence, or offences ſhall be adjudged felony, &c.

We have ſpoken of forgery or counterſeiting of the great ſeale of the kings coin, &c. which are declared by the ſtatute of 25 E. 3. to be high treaſon: now we are to treat of forgeries of deeds, charters, and writings ſealed, &c. in the caſe of ſubjects. And firſt, after our accuſtomed manner how theſe offences were puniſhed of ancient time.

Mir. cap. 4.  
§ Des paines.  
Et cap. 5. § 1.

F [ 169 ]  
Britton, fo. 16.  
a. & b.

The Mirror ſaith, *Aſcuns peches ſont punies p. pte. de poulce, come oſt de faux noteires, &c. peccans membrum puniebatur. (Car pur faulx de ſeale ne ſer judgement mortel.)*

Britton ſaith, *Judgement d'ice treyne, et de ſuffer mort doit encount' ceux coore, q. p. ap. eales de felony ſont atteints, q. ilz eyent le ſeale leur ſeignieur, qui main'aſt ils ſont, ou q. homes p. homage counterſait, ou autrement faulx, &c. Et ſi tiels manners des faits ſoient atteints a noſtre ſuit, ſi ſoient pur le ſeale faulx juges a judgement de pillory, ou de perdre le oraille ſi le fait ſoit ſimple: et ſi le fait ſoit grand et leyde, ſicome touchant diſheriſon, ou perpetuall damage, ſi ſoient juges a la mort.*

Fleta, lib. 1.  
ca. 12.

Fleta ſaith, *Crimen falſi dicitur, cum quis accusatus fuerit vel appellatus quod ſigillum regis, vel domini ſui de cujus familia fuerat, falſaverit, et brevia inde conſignaverit; vel cartam aliquam vel literam ad exheredationem domini, &c. ſigillaverit; in quibus cauſis ſi quis convictus fuerit, detractari meruit et ſuſpendi. Et quod de hujusmodi falſariis dicitur, de ſi illa adulterina cartis et literis opponentibus dicatur idem. And in another place he ſaith, *Eſt etiam atrox injuria que perpetuam inducit infamiam cum poena pillorari vel tumbrelli, que quandoque fit per falſarios ſigillorum (idem tamen non regis nec domini ſui de cujus fuerit familia.)**

Fleta, lib. 2.  
ca. 1.

We have the more willingly repeated theſe ancient puniſhments, to ſhew how in part, (viz. concerning the eares and pillory,) this act for the firſt offence concurrerh with the ancient puniſhment.

(1) *Forge.* To forge is metaphorically taken from the ſmith, who beateth upon his anvill, and forgerh what faſhion or ſhape he will: the offence (as it appeareth before) is called *crimen falſi*, and the offender *falſarius*, and the Latin word to forge is *falſare* or *fabricare*. And this is properly taken when the act is done in the name of another perſon.

26 H. 6. forger  
§. 27 H. 6. 3.

The ſtatute of 1 H. 5. hath theſe words [forge of new any falſe deed.] And yet if A make a feoffment by deed to B, of certayne land, and after A maketh a feoffment by deed to C of the ſame land with an antedate before the feoffment to B; this was adjudged to be a forgery within that ſtatute, and by like reaſon within this ſtatute alſo: and the rather in reſpect of the words ſubſequent, [or make, &c.]

(2) *Or make, &c.* Theſe be larger words then to forge: for one may make a falſe writing within this act, though it be not forged in the name of another, nor his ſeale nor hand counterſeited. As if A make a true deed of feoffment under his hand and ſeale of the manner of Dale unto B, and B or ſome other rafe out D the firſt letter of Dale, and put in S, and then where the true deed was of the mannor of Dale, now it is falſely altered and made



the mannor of Sale. This is a false writing under seale within the purview of this statute. And so it is if a rent charge of one hundred pounds by the year be granted out of land in fee or for life, &c. and the grantee or any other rase out one, and in stead thereof writeth two; this is a false writing within the danger of this statute.

(3) *Or subtilly cause, or wittingly assent.*] To cause, is to procure or counsell one to forge, &c. To assent, is to give his assent or agreement afterwards to the procurement or counsell of another: to consent, is to agree at the time of the procurement or counsell, and he in law is a procurer.

(4) *Deed, charter, or writing sealed.*] It is required, that the deed, charter, or writing must be sealed; that is, have some impression upon the wax, for *sigillum est cera impressa, quia cera sine impressione non est sigillum*; and no deed, charter, or writing, can have the force of a deed without a seale.

(5) *Writing sealed.*] These are large words: for the making of a false customary of a mannor in writing under seale, containing divers false customes tending to the disherison of the lord of the mannor, and that the same had been allowed and permitted by the lords of the mannor, &c. which was also false, was resolved to be within these words, [a false writing sealed.]

(6) *Court roll, or the will of any person or persons in writing.*] Here be two kind of muniments that need not be sealed, because they may take effect without any seal, for that they be deeds; as court rolls concerning grants, surrenders, admittances, &c. of copy or customary lands: and the last will in writing. If any person which writeth the will of a sick man inserteth a clause in his last will, concerning the devise of any lands or tenements, which he had in fee-simple, falsly without any warrant, or direction of the divisor: albeit he did not forge, or falsly make the whole will, yet is he punishable by this statute, as it hath been often holden in the star-chamber against the opinion reported by my lord Dier.

(7) *To the intent that the state of freehold or inheritance, of or in any lands, tenements, or hereditaments, freehold or copyhold, shall or may be molested, troubled, defeated, recovered, or charged*] The great doubt upon this branch, and of the branch hereafter ensuing, was, for that it is not expressed by this act, what estate, or interest should be mentioned to passe by the deed, charter, &c. whereby the estate of the freehold or inheritance should or might be molested, &c. or charged; whether if one did forge, &c. a deed, charter, &c. of an interest, or term of a hundred or a thousand years, &c. of lands, which are the freehold or inheritance of another, whereby the same shall or may be molested, &c. And the same question of a rent charge for years in the like case: and the doubt was the greater in respect of the clause hereafter ensuing, which is, *To the intent that any person or persons shall or may have or claim any estate or interest for term of years of in or to any mannors, &c.* And it was resolved, that a lease or charge for years of any lands being the freehold or inheritance of any person, was within this branch, for the clause is generall, not mentioning any estate or interest, &c. whereby the molestation, &c. should grow: and it was requisite it should extend to leases or charges for years, for otherwise mens estates of freehold or inheritance, &c. might be of little or no value:

Pasch. 15 Eliz.  
Dier. 322 James  
Taverners case.  
In camera stela-  
lata.

[ 170 ]

Dier 12. El. f.  
283. Sir James  
Marvyns case.

Pasch. 38 Eliz.  
in camera stel-  
lata the lady  
Greshams case.

and accordingly it was resolved, Pasch. 38 Eliz. in the star-chamber between the lady Gresham plaintiff, and Roger Booth scrivener of London, Markham and others defendants, for the forging of a grant of a rent charge, by deed bearing date *anno* 21 Eliz. for ninety nine years to the said Markham out of all sir Thomas Greshams lands of inheritance, and for publication thereof; and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

And the said branch after ensuing, is to be understood when the forgery, &c. is to the molestation of a termor. As if A. be possessed of a lease of lands for years, and B. in his name doth forge an assignment to C. of his term, this is directly within the letter and meaning of this branch, and the rather in respect of those things that be joynd therewith under the same punishment.

Wile 4 H. 6. 25.  
8 H. 6. 33.  
20 H. 6.  
33 H. 6. 23.  
15 E. 4. 24.  
Pl. com. 88.

(8) *Or the right, title, or interest of any person or persons in or to the same.*] These words were added, for that the statute of 1 H. 5. being to undoe, and trouble the possession and title (in the conjunctive) of the said kings liege people: doubt was made whether a forgery to bar one that had but a bare right or title, and no possession, was within that statute: and therefore this clause of 5 Eliz. added this clause in the disjunctive, as here it appeareth. But now by a speciall branch of this act the statute of 1 H. 5. cap. 3. being doubtfully penned, is repealed by a clause in this act, and greater punishment inflicted by this statute.

[171]

(9) *Or shall pronounce, publish, or shew forth in evidence any such false and forged deed, &c. as true knowing the same to be forged.*] Here be two things to be explained: first, what it is to pronounce, or publish as true. Secondly, what knowledge is sufficient.

To pronounce or publish is, when one by words or writing pronounceth or publisheth the deed, &c. to any other as true.

(10) *Knowing the same to be forged.*] This knowledge may come by two means, either of his own knowledge, or by the relation of another. As if A. telleth B. that such deed is false and forged, and yet B. will after pronounce or publish this to be a true deed, and afterwards it falleth out by proof that the relation of A. was true, and the deed in truth was forged, B. is in the danger of this statute: and so was it resolved in the abovesaid case of the lady Gresham, against Roger Booth, &c. *ubi supra*, and sentence given accordingly.

Dier 15 Eliz.  
Taverners case,  
*ubi supra*.

(11) *And that the defendant shall suffer upon the pillory the corporall penance, &c.*] And there is a clause that the plaintiff should not release nor discontinue the punishment, &c. but only costs and damages: and yet it was resolved that the queen might pardon the corporall punishment, which trencheth to common example.

Pasch. 34 E. 3.  
Oram regis  
Rot. 30. Kane  
the case of Godi-  
tha Waldish.  
Dier 7 El. 231.

And upon the statute of W. 2. ca. 25. which giveth two years imprisonment in the ravishment of ward, the king may pardon the said corporall punishment of imprisonment. And the punishment of finding of surety, and forjuring the realm, &c. upon the statute of W. 2. cap. 28. *De malefactoribus in parciis* may be pardoned by the king.

(12) *Any false charter or deed.*] This must be intended to be sealed according to the former clause, though it be not here specified.

Pl. com. 36. b.

(13) *To the intent that any person or persons shall or may have or claim any*

*any estate or interest for term of years.*] This branch hath been explained before in the former part of this statute

(14) *Not being copy hold.*] This needeth no explication.

(15) *Or annuity.*] This is evident.

(16) *Any obligation, or bill obligatory.*] These must be intended to be sealed: if a man forge a statute staple, or a recognisance in the nature of a statute staple, that is, acknowledge them, or either of them in the name of another; these are obligations within this act, for each of them hath the seal of the party. But otherwise it is of a statute merchant, or of a recognisance, because they have not the seal of the consor.

F. N. B. 96. b.  
c. & 10. a.

15 H. 7. 15. &c.

(17) *Or writing.*] This extends to a testament in writing, whereby the term for years or goods and chattels be devised, and the former branch extendeth to a will in writing, concerning freehold and inheritance.

Dier, 13 Eliz.  
302. b.

(18) *Acquittance, release or discharge.*] Lodowick Grevil esquire was bound by recognisance of two hundred pound, to Rowland Hinde of the Inner Temple, for payment of one hundred pound. Hinde wrote a letter to Grevil, and writ his name in the lowest part of the letter; (as many use when they write to men of great calling) Grevil caused the letter to be cut off, and a generall release in few words to be written above Hindes name, and took off Hindes seal, and fixed it under the release: so there was Hindes hand and seal to this release. Hinde being not paid his hundred pound, brought a *scire fac* upon the recognisance, whereunto Grevill pleaded this release, Hinde pleaded *non est factum*, and tried his deed, whereupon judgement was given against him, whereby Hinde was barred of his debt. For this forged release Grevil was sentenced in the star-chamber upon this statute.

Mich. 13 & 14  
El. in camera  
stellata inter  
Hinde and  
Grevill.

[ 172 ]

(19) *Shall pay to the party grieved, his double damages.*] Upon these words in the case aforesaid, between Hinde and Grevill, the question was, whether Hinde should have double damages in respect of the penalty, viz. the two hundred pound, or of the hundred pound, the due debt appearing in the condition of the recognisance. And it was resolved, that damages should be assessed by the court to double the penalty, for the penalty should be recovered by law if the forged release had not been: and this was reported by the lord Dier, and imprinted, and since omitted out of the print.

(20) *Being hereafter convicted or condemned of any of the offences aforesaid, shall, &c. esforce commit, &c. any of the said offences.*] Here be four kind of offences; the first concerning molestation, &c. of freehold and inheritance. Secondly, the publication of the same knowing, &c. The third concerning a term for years, annuities, and demands personals. Fourthly, the publication thereof.

Now the question upon this branch concerning felony, was, that whereas the said Roger Booth was convicted in the star-chamber for the publishing of the forged grant by deed of a rent charge of a hundred pound *per annum*, as is aforesaid; afterwards the said Roger and others were charged in the star-chamber with the forging of a deed of feoffment in the name of sir Thomas Gresham bearing date 20 Eliz. but forged long after: whether this second forgery was felony, or no, within this branch; and the doubt did arise upon the said words [*esforce*] commit any of the said offences. And it

Pasch. 7 Ja. In-  
ter sir Will.  
Reade pl. and  
Rogerum Booth  
et alios def. in  
camera stellata.

Cicero, lib. 1.  
de Invent.

was objected, that by reason of this word [*estfoons*] *iterum*, the second offence must be of the same nature as the first offence was; as the first offence being for publication of a forged deed, &c. the second offence must be for the publication of another forged deed, &c. and upon that branch whereupon the first offence was grounded, or else it was said, it was not *iterum*, which word was in signification *quasi iter unum*, that is to say, *per idem iter*, and it is so taken for the second time. *Primo quidem decipi, incommodum est, iterum scilicet, tertio turpe* which doubt was referred to the considerations of the two chief justices, and chief baron, who upon hearing of counsell learned of both sides, and upon conference, and consideration had of this act, resolved, that the second offence was felony within the words, and meaning of this act, for the words be expressly, being condemned of any of the said offences, *estfoons* commit any of the said offences. So as by reason of these words, any of the said offences, this word [*estfoons*] is well satisfied, if he commit the second time any of them: and so these words any of the said offences extend to any of the said four offences before mentioned. And it was also resolved by them, that by reason of this word [*estfoons*] the second forgery, &c. must be committed after the first conviction, or else it is no felony.

Provided always, &c. that if any person, &c. hath of his own head, &c. forged or made, &c. or if any person, &c. hath heretofore published or shewed forth any false deed, &c.

Trin. 11 El.  
Dier in a manuscript not printed.

[ 173 ]

Hanford before this statute forged a lease for years of the land of the lord Williams of Tame, which lease after by Weynman (which hath married one of the daughters and heirs of the said lord Williams) was impeached, but not as forged, and by composition for two hundred pound was redeemed by Weynman, and the lease was cancelled. And after Weynman perceiving the lease to be forged, sued Hanford in the chancery to have restitution of the two hundred pound, and there Hanford after this statute of 5 Eliz. maintained the lease as good and true: whereupon Weynman sued Hanford in the star-chamber, where by the opinion of the chief justices it was holden, that it was not within this statute, because that the deed was cancelled, and Hanford made no title to the interest of the term.

Provided always, &c. that this act or any thing therein contained, shall not extend to any person that shall plead or shew forth any deed or writing exemplified under the great seal of England, or under the seal of any other authentique court of this realm, nor shall extend to any judge or justice, or other person that shall cause any seal of any court to be set to such deed, charter or writing enrolled, not knowing the same to be false or forged.

Mich. 10 Jacobi  
regis in common banco in a prohibition between Tho. Read pl. and Avis Hide, and Rich. Hide defendants.

This must be intended of a deed or writing, which by law may be exemplified: for the knowledge whereof we will report a resolution of the whole court of the common pleas. The issue between the said parties to be tried at the bar was, whether the last abbot of Abbingdon, and all his predecessors, &c. held certain lands in the parish

parish of Saint Ellens, &c. discharged of the payment of tithes: and the plaintiff offered to shew in evidence to prove the said land to be discharged of payment of tithes, a *vidimus*, or *innoteſcimus* under the great seal in these words: *Vidimus quendam antiquum librum in pergamento intitulatum volumen de copiis munimentorum seu diversorum gestorum, et actuum monasterii de Abbingdon.* In which book was a copy of a bull of the pope, for the discharge of the said land for payment of tithes, which was but part (amongst other things) of the said book. And by the opinion of the whole court, hearing of the counsell of both parties, it was resolved that the said exemplification ought not to be given in evidence to the jury for these causes: first, because that which was exemplified, was not of record; for neither deed, charter, or other writing, either sealed, or without seal, ought to be exemplified under the great seal, or any other seal in court of record, for seals of courts of record ought not to exemplify any thing but that which is of record, because records be publique, whereunto every subject may have recourse to confer the exemplification with the record itself, and records be in the custody of sworn officers, and therefore no inconvenience can follow upon the exemplification of them. But a deed, charter, and other writings are private, and remain in the custody of the party, and may be rased, interlined, or corrupted in points materiall, and if they should be exemplified, the rasure, interlineation, and corruption shall not appear therein. Also the deed, charter, or other writing may be forged, and if they should be exemplified, then the exemplification might ever be shewed in evidence, and not the deed, &c. it self, and so the forgery, and falsity should never upon the view of the deed, or of the seal, or other things rising upon the view, be discovered. Moreover if a forged deed should be exemplified, then the effect of this statute concerning publication should be taken away; for then the forged deed, &c. it self might never be published, or given in evidence, but the exemplification, and so this statute in that point deduced: and therefore where this statute, or any other statute or book speaks of an exemplification, *vidimus* or *innoteſcimus* of a deed, &c. it must be intended of a deed inrolled, viz. the exemplification, *vidimus*, or *innoteſcimus* of the inrolment thereof, which is of record. It was further resolved that no record, or inrolment of any record, may be exemplified under the great seal, but of a record of the court of chancery, or other record duly removed thither by *certiorari*, &c. Furthermore it was resolved, that no exemplification ought to be of any part of a letters patents, or of any other record, or of the inrolment thereof, but the whole record or the inrolment thereof ought to be exemplified, so that the whole truth may appear, and not of such part, as makes for the one party and nothing that make against him, or that manifesteth the truth. Lastly, in the case at the barre, the said book was intituled, *Volumen de copiis munimentorum, et diversorum gestorum.* So as seeing the bull it selfe (being no matter of record) could not be exemplified; *a fortiori*, no exemplification could be had of the copie of the same. And if bulls, &c. might be exemplified, then there might be an evasion to make the statute of 28 H. 8. cap. 16. of small force, which prohibiteth pleading, or alledging of bulls, &c. under paine of a premunire, as by that act appeareth.

Mich. 29 & 30  
Eliz. lib. 5. fo.  
54. in Pages  
case.

[ 174 ]

28 H. 8. cap.  
16. 1 & 2 Ph.  
& Mar. cap. 8.  
1 Eliz. cap. 1.

C A P.

## C A P. LXXVI.

## Of Libels and Libellers.

Mich. 10 E. 3.  
coram rege.  
Rot. 92. Ebo-  
rum.

**W**HAT a libell is, how many kindes of libels there be, who are to be punished for the same, and in what manner, you may read in my reports, viz. Lib. 5. fo. 124, 125. Lib. 9. fo. 59. To these you may add two notable records. By the one it appeareth, that Adam de Ravensworth was indicted in the kings bench for the making of a libel in writing, in the French tongue, against Richard of Snowshall, calling him therein, *Roy de Ravensers*, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the record appeareth. So as a libeller, or a publisher of a libell committeth a publick offence, and may be indicted therefore at the common law.

Mich. 18 E. 3.  
coram rege  
Rot. 151.  
Libellum.

John de Northampton an attorney of the kings bench, wrote a letter to John Ferrers one of the kings counsell, that neither Sir William Scot chiefe justice, nor his fellowes the kings justices, nor their clerks, any great thing would do by the commandement of our lord the king, nor of queen Philip, in that place, more then of any other of the realme; which said John being called, confessed the said letter by him to be written with his own proper hand. *Judicium Curie. Et quia predictus Johannes cognovit dictam literam per se scriptam Roberto de Ferrers, qui est de concilio regis, quæ litera continet in se nullam veritatem: pretextu cujus dominus rex erga curiam et justiciarios suos hic in casu habere posset indignationem, quod esset in scandalum justicie et curie. Ideo dictus Johannes committitur marces et postea invenit 6 manucaptos pro bono gestu.*

[ 175 ]

## C A P. LXXVII.

## Of Champerty, Imbracery, Maintenance, &amp;c.

**S**EE the first part of the Instit. sect. 701. verb. Maintenance. And the second part of the Institutes, W. 1. cap. 8. 32. & W. 2. cap. 49. and the exposition upon the same. See also the statute of 32 H. 8. cap. 9. in the first part of the Institutes, *ubi supra*. Rot. Parl. 17 R. 2. nu. 10. John de Winstons case. And the fourth part of the Institutes, cap. Chancery. Whereunto you may adde, that where by the statute of 6 H. 6. cap. 2. it is recited, that divers in times past have been disherited, because that in speciall assises the tenant and defendant might not have knowledge nor copie of the pannel of them that be impannelled to passe in the said assises, to inform them of their right and title before the day of the session that the assises shall be demanded; which is a rehearfall of the common

mon law, but so to be understood, that both parties plaintiff and tenant, &c. be present, when such information is given, and consenting thereunto: otherwise, if one of them informeth in the absence of another, it is unlawfull, and a good cause of challenge of such of the jury as shall be so on the one part informed: for every jury must be indifferent, as he stand unsworne.

C A P. LXXVIII.

Of Barretry.

SEE the first part of the Institutes, sect. 701. verb. Barretors. See the statute of Ragman, temps E. 1. whereby the commission of Trailebaston is raised. It is thus provided. *Et pur ceo q. en tiels maners de querels doit le court le roy et favorable, voet le roy, et enjoin' les justices q. nul enquerelant, ne respaignant ne soit surpris nucheson per hocketours, ou barretours, pou. que le veritie ne soit ensue.*

Vet. Mag. Cart. cap. 28. 2 part.

*Hocketors* or *hocketours* is an ancient French word for a knight of the post, (worthy to be knit to a post) a decayed man, a basket-carrier.

For barretors, see the first part of the Institutes, *ubi supra*.

C A P. LXXIX.

[ 176 ]

Of Riots, Routs, Unlawful Assemblies, Forces, &c.

**R**IOTUM commeth of the French word, *rioter*, *i. rixari*: and in the common law signifieth, when three or more doe any unlawfull act, as to beat any man, or to hunt in his park, chase, or warren, or to enter or take possession of another mans land, or to cut or destroy his corne, grasse, or other profit, &c.

\* *Routa* is derived of the French word *rout*, and properly in law signifieth, when three or more do any unlawfull act for their own, or the common quarrell, &c. As when commoners break down hedges or pales, or cast down ditches, or inhabitants for a way claimed by them, or the like.

An unlawfull assembly is when three or more assemble themselves together to commit a riot or rout, and doe it not. *Prædones autem nominamus usq; numerum septem virorum; deinde (quousq; numerus 35 coaluerit) \* turmam (Saxonice hloth) dicimus; numerus si excreverit, exercitum vocamus, hlothbota*, to be quit of unlawfull assemblies.

One may commit a force. But of this, that I may not unprofitably repeat, you may reade at large Fitzherbert, and those others that have written of this argument.

\* Latine Turba. — comes est discordia vulgi; Namq; a turbando nomen sibi turba recepit. Lamb. int. Leg. Inq. ca. 13, 14, 15. Vide Alve-red. cap. 26. \* Turma quæ tordena.

Interest

Regula.

*Interest regi habere subditos pacatos. Vis legibus est inimica.* See Lib. 5. fo. 91. 115. Lib. 11. fo. 82. See the first part of the Institutes, sect. 431. 440. Custom. de Norm. cap. 52. fo. 66, 67.

## C A P. LXXX.

## Of Quarrelling, Chiding, or Brawling by Words in Church or Church-yard.

5 E. 6. cap. 4.

**T**HE offender being a lay-man, is to be suspended by the ordinary *ab ingressu ecclesiæ*, and being a clerk from the ministration of his office, so long as the ordinary thinks meet according to the fault.

## C A P. LXXXI.

[ 172 ]

## Of Smiting, or laying violent Hands upon another in Church or Churchyard.

5 E. 6. ubi supra.  
V. lib. 6. fo. 29.  
h. Greats case,  
8m.

**T**HE offender shall be deemed *ipso facto* excommunicat, and excluded from the company of Christs congregation.

## C A P. LXXXII.

## Of malicious striking with any Weapon, or drawing of any Weapon in Church or Church-yard, to the intent to strike another, &amp;c.

5 E. 6. ubi sup.  
\* Note the dis-  
junctive.  
Inc. leg. Inc.  
ca. 6. Qui in  
templo pugna-  
verit 120 sol'dis  
noxiam facito.  
Dier 23 Eliz.  
177. case ultim.

**T**HE offender being convict by the oath of twelve men, or by his own confession, \* or by two lawfull witnesses, before justices of assise, justices of oier and terminer, or justices of peace in their sessions, shall lose one of his eares: and if he hath no eares, to be marked in the cheek with a hot iron with the letter F, and *ipso facto* be excommunicat.



## C A P. LXXXIII.

For striking, &c. in any of the Kings Courts of Justice: and for striking, &c. in any of the Kings Houses, &c.

SEE before in the sixty fifth chapter of Misprision, that is, *crimen commissionis*.

## C A P. LXXXIV.

[ 178 ]

Against Fugitives, or such as depart out of the Realme without License, and such as are beyond Sea, and returne not upon Command.

*Omne solum fons patria est, ut piscibus æquor,  
Et volueri, vacuo quicquid in orbe patet.*

Ovidius.

IT is first to be seen of acts in parliament published in print, which of them are abrogated and repealed, and which of them stand in force. The statute of 5 R. 2. cap. 2. is repealed by the statute of 4 Jac. cap. 1. And the statutes of 13 Eliz. cap. 3. & 14 Eliz. cap. 6. are expired. The statute of 12 R. 2. such as passe the sea, or send out of the realme to provide or purchase any benefice of holy church, with cure or without cure, are in danger of a premunire. No person resiant within any of the kings dominions, shall depart out of any of those dominions, to any visitation, congregation, or assembly for religion.

12 R. 2. ca. 15.

25 H. 8. cap. 19.  
1 Eliz. c. 1.  
revive.

*Anno* 1 Jac. cap. 4. and 3 Jac. cap. 5. Against going or sending of children to any seminary beyond sea, and against the departure out of the realme (without license) of any children not being souldiers, mariners, merchants, or other apprentices, or factors, for any cause whatsoever. And *anno* 3 Ja. ca. 4. against imposing felony upon any subject that shall depart this realme, to serve any prince, state, or potentate: or shall passe over the seas, and there shall voluntarily serve any such foraine prince, state, or potentate; not having before his or their going or passing, taken the oath mentioned in that act. And likewise imposing felony upon any gentleman or person of higher degree, or any person which hath borne or shall beare any office, or place of captaine, lieutenant, or any ether place, charge, or office in campe, army, or company of souldiers, or conductor of souldiers, that shall goe, or passe voluntarily out of this realme, to serve any such foraine prince, state, or potentate,

1 Jac. cap. 4.  
3 Jac. cap. 5.

or

or shall voluntarily serve any such foraine prince, state, or potentate, before he be bound by obligation with two sureties, as in that act is prescribed. But it is provided that upon the attainder of any such felony, no forfeiture of dower or corruption of blood shall ensue. Reade over these statutes, for they are so plainly penned, as they need no exposition.

Next unto this, two things fall into consideration, first, what acts of parliament not published in print in our books of statutes do prohibit men to passe the seas without license. And secondly, what may be done therein by the common law of England.

At the parliament holden at Clarendon, anno 10 H. 2. called the assise of Clarendon, *Facta est recognitio cujusdam partis consuetudinum et libertatum antecessorum regis, et ca. 4. sic recognitum est. Archiepiscopus, episcopis, et personis regni non licet exire regnum absque licentia domini regis, et si exierint, si regi placuerit, securum eum facient, quod nec in eundo nec in rediendo, nec moram faciendo perquirent malum seu damnum domino regi vel regno.*

Regist. fo. 89,  
90. F.N.B. 85.

[ 179 ]

Vide simile Reg-  
gist. 61, &c. Ad  
jura regia.  
Regist. fo. 193.  
De licentia  
transfretandi  
pro religiosis.

This appeareth in it selfe to be but a recognition, or declaration of the common law: and this is manifestly proved by the writ in the Register at the common law, pursuing in effect the very words of the said act of 10 H. 2. *Breve de securitate inveniunda, quod se non divertat ad partes externas sine licentia regis.*

And hereupon there ariseth a diversity between one of the clergy, and one of the laity: for a man of the church may be compelled to put in surety, that he should not depart the realme without the kings license, nor shall there attempt any thing in contempt or prejudice of the king or of his people. And this writ is directed to the sheriffe, and saith, *Quia datum est nobis intelligi, quod A. B. clericus versus partes externas ad quam plura nobis et quam pluribus de populo nostro præjudicialia et damnosa ibid. prosequend., &c.* Whereby it appeareth, that this writ lyeth only in the case of an ecclesiasticall person, or a man of the church, and that for three reasons. First, for that they had the cure of soules, and therefore ought to be resident. Secondly, for that they, maintaining foraine authority, impugned many of the kings lawes, to the great prejudice of the laity. Thirdly, they had no temporall lands, therefore they found sureties.

<sup>a</sup> Regist. 89. 90.  
F. N. B. fo. 85.  
<sup>b</sup> So as neither  
this writ, nor a  
proclamation in  
nature of this  
writ ought to  
be granted, but  
where the party  
intends to de-  
part the realme  
for these ends.  
<sup>c</sup> F. N. B. fo. 85.  
<sup>d</sup> Vide Dier  
1 Eliz. 165. b.

There is another writ in the <sup>a</sup> Register, and that is to be directed to the party himselfe, viz. either to the clerk, or to the layman, wherein the king reciting, *Quod datum est nobis intelligi, quod tu vers. partes externas absque licentia nostra clandestine te divertere, et quamplurima nobis et coronæ nostræ præjudicialia ibid. prosequi intendas, &c. sub periculo quod incumbit prohibemus, ne vers. partes externas absque licentia nostra speciali aliquantulum te divertas, nec quicquam ibid. prosequi, &c.* And upon this writ the party is not to finde any surety, for there is no word of surety in this writ. And if the <sup>c</sup> subject cannot be found, the king may make a proclamation under the great seale, to the effect of the writ last mentioned.

Now let us peruse such authorities as we finde in records or books of law in *serie temporis*, taking some few examples for many that might be cited.

<sup>d</sup> Rot. Finlum  
6 H. 3.  
Et Rot. claus.  
7 H. 3. m. 5.

<sup>d</sup> *Willielmus Marmion clericus profectus est ad regem Franciæ sine licentia d. mini regis, et propterea finem fecit, &c.* Note the going over without any prohibition precedent unlawfull.

Nul

<sup>a</sup> *Nul grand seignior ou chevalier de nostra realm ne doit prender chr-  
min: (daler hors de realm) sans nostre conge, car issint purreit le realm re-  
main disgarne de fort gents.* And the nobles and peers of the  
realm are of the kings great council.

By this it appeareth, that these are prohibited to goe beyond sea  
without licence: but others of the inferiour laity may go without  
licence, if they travell not to the abovesaid prohibited ends. But  
those of the laity and men of the church also being beyond sea,  
may be commanded by the kings writ, either under the great seale,  
or privie seale, *in fide et ligeantia, &c.* to returne into the kingdome  
(though he be not there to any of the abovesaid prohibited ends;) and if he returne not, for his contempt his lands and goods shall  
be seised, *quousque, &c.* <sup>b</sup> Commandement was given to an eccle-  
siasticall person residing at Rome to returne into England.

<sup>c</sup> *Quamplurima litera domini regis missa Romæ, ad revocand' di-  
versos clericos ibid. commorantes, qui quamplurima attemptarunt in de-  
decus regni, præcipiend' etiam, quod red ant ad festum eis appunctuatum:  
et pro eo quod non venerunt, præceptum fuit vicecomiti quod eos capiat.  
Et Rogerus de Holme præbendarius in ecclesia Sancti Pauli London cap-  
tus per vic' London, et ar'natus, examinatus, et corvictus mittitur prisonæ  
turris London ibid. moraturus, &c.*

<sup>d</sup> *Rex proclamari fecit in omnibus comitatibus Angliæ, quod ne quis  
comes, baro, miles, religiosus, sagittarius, aut operarius, &c. extra reg-  
num se transferat, sub pænâ arrestationis, et incarcerationis.*

Herein it is to be observed, that seeing by law, no earle, baron,  
or knight (as Britton saith) nor religious, &c. ought to goe out of  
the realme, a generall proclamation declarative will serve to aggra-  
vate their offence: but otherwise it is of those, that are not pro-  
hibited by law, they must have such a particular writ or proclama-  
tion as is abovesaid.

<sup>e</sup> Sir Matthew Gourny knight was prohibited by the kings writ  
to depart the realm, and to serve in wars expressly inhibited by the  
king: which notwithstanding he did. Now the record saith, *Quia  
Mathæus Gourny miles contra defensionem regis transfretavit, et se guer-  
ris sibi per regem inhibitis immiscuit, tam in corpore, quam in bonis  
forisfecit regi manerium de Corimallet simul cum una carucat' terræ, &c.*

<sup>f</sup> *Rex licentiam dedit abbati de E. quod proficisci possit ultra mare ad  
visitandum caput Sancti Johannis Baptistæ Ambiani, corpora trium regum  
Colonie, feretrum Sancti Francisci in et Sanctum Jacobum in Ga-  
licia, ita quod non prosequetur, aut procurabit quicquam in præjudicium  
regis, aut legum suarum, sicut idem abbas in præsentia cancellarii regis  
per juramentum promissit.*

Note that ecclesiasticall persons could not goe beyond sea on  
pilgrimage without licence, nor to doe any thing in prejudice of the  
king, or his laws.

<sup>g</sup> And it is to be observed that the king may grant licence to  
travail beyond the seas, either under the great seal, privy seal, or  
privy signet, but he cannot recall one that is beyond sea, but by  
the great seale, or privy seal.

But for avoiding of tediousnesse, and heaping many to one end,  
let us descend to later times.

<sup>h</sup> The letters under the great seal, or privy seal to recall any from  
beyond sea, ought to be served by some <sup>i</sup> messenger, who upon his  
oath is to make a certificate thereof in the chancery, and from  
thence

III. INST.

P

<sup>a</sup> Britton tempa  
E. 1. fo. 282,  
283. Vide testa-  
tut. de 5 R. 2.  
ca. 2. Seigniors  
except out of  
that statute.

<sup>f</sup> See the first  
part of the in-  
stit. sect. 164.

<sup>g</sup> 110. a. 27

August 5 H. 4.

De son grand

council.

<sup>h</sup> An. 19 E. 2.

in Scac.

<sup>i</sup> 2 & 3 Ph. &

Mar. Dier, 128.

pl. 67. Will. de

Britaine countee

de Richmonds

case.

<sup>j</sup> Rot. clauf.

<sup>k</sup> 4 E. 3. m. 38.

<sup>l</sup> H. 1. 24 E. 3.

coram rege,

Rot. 13.

<sup>m</sup> Durs. clauf.

25 E. 3. m. 18.

<sup>n</sup> Mic. 39 E. 3.

coram rege.

Rot. 97. Somers.

Rot. Vase.

<sup>o</sup> 10 E. 3. m. 29.

<sup>p</sup> By seizure and

imprisonment.

<sup>q</sup> Rot. pat.

<sup>r</sup> 40 E. pt. 1. nu.

40. Mich. 41 E. 3.

Coram rege

Rot. 34. Prio-

rissa Sancti

Barth, et de

novi castro quod

mare non tran-

sibit, &c.

<sup>s</sup> [ 180 ]

<sup>t</sup> Nota (legum

suarum) ut

supra.

<sup>u</sup> F. N. B. 85. f.

<sup>v</sup> Dier. Hill.

<sup>w</sup> 2 Eliz. 176. the

case of Barteu

and the churches

of Suffolk.

<sup>x</sup> See to H. 4. 5.

Englefields case.

Lio. 7. fo. 11.

See the 1. partes

the Institutes

sect. 102.

thence a *mittimus* to be sent into the exchequer, and thereupon a commission to be granted to seise the lands and goods of the delinquent.

\* Mich. 12 &  
13 El. Dier. fo.  
206. & Pasch. 23  
Eliz. fo. 375.

\* Mich. 12 & 13 Eliz. It was resolved by all the justices (except two) that a merchant of London departing the realm, to the intent to live freely from the penalty of the law, and out of his due obedience to the queen, and not for any merchandise, that it was no contempt to the queen, for merchants were excepted out of the said statute of 5 R. 2. cap. 2. and by the common law merchants might passe the sea without licence, though it were not to merchandize.

It is holden, and so it hath been resolved, that divided kingdomes under severall kings in league one with another are sanctuaries for servants or subjects flying for safety from one kingdome to another, and upon demand made by them, are not by the laws and liberties of kingdomes to be delivered: and this (some hold) is grounded upon the law in Deuteronomy. *Non trades servum domino suo, qui ad te confugerit.*

Deut. c. 23.  
v. 15.

When queen Elizabeths ambassadour lieger in France, anno 34 of her reign, demanded of the French king Morgan and others of her subjects, that had committed treason against her; the answer of the French king to the queens ambassadour is truly related in these words. *Si quid in Gallia machinarentur, regem ex jure in illos animadversurum; sin in Anglia quid machinati fuerint, regem non posse de eisdem cognoscere, et ex jure agere. Omnia regna profugis esse libera, regum interesse, ut sui quisque regni libertates teneatur. Immo Elizabetham non ita pridem in suum regnum Montgomerium, principem Condrem, et alios e gente Gallica admisisse, &c.* and so it rested.

Camden Elizab.  
p. 355.

King H. 8. in the 28 year of his reign being in league with the French king, and in enmity with the pope, who was in league with the French king, sent Cardinall Pool ambassadour to the French king, of whom king H. 8. demanded the said Cardinall being his subject and attainted of treason, and to that end caused a treatise to be made (which I have seen) that so it ought to be done *jure gentium*: *sed non prevaluit.* But Ferdinando king of Spain upon request made by H. 7. to have Edmond de la Pool earl of Suffolk attainted of high treason by parliament, anno 19 H. 7. at the first intending to observe the privilege and liberty of kings, to protect such as came to him for succour, and protection, delivered him not, yet in the end upon the earnest request of H. 7. and promise that he would not put him to death, caused the said earl to be delivered unto him, who kept him in prison, and construing his promise to be personall to himself, commanded his son Henry after his decease to execute him, who in the fifth year of his reign upon cold blood performed the same.

An. 21 H. 7.  
Rot. parl. 19  
H. 7.

[ 181 ]

We could add more examples of this kind, but (to speak once for all) having purposed to give some taste of every thing pertinent, or incident to such things, as we have undertaken to treat of, these shall suffice.

3 Car. ca. 2.  
\* Mich. 10 H. 4.  
Coram rege  
Rot. 59. Hert-  
ford.

See the statute of 3 Car. an act to restrain the passing and sending of any to be popishly bred beyond the seas.

\* *Flemenesfreme, five flemenesfreme, interpretatur, catalla fugitivorum.*

## C A P. LXXXV.

## Against Monopolists, Propounders, and Projectors.

IT appeareth \* by the preamble of this act (as a judgement in parliament) that all grants of monopolies are against the ancient and fundamentall laws of this kingdom, and therefore it is necessary to define what a monopoly is.

<sup>b</sup> A monopoly is an institution, or allowance by the king by his grant, commission, or otherwise to any person or persons, bodies politique, or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politique, or corporate, are sought to be restrained of any freedome, or liberty that they had before, or hindred in their lawfull trade.

<sup>c</sup> For the word monopoly, *dicitur, ἐκ τῆς λέξεως, i. solo, καὶ πω-  
λάσαι, i. vendere, quod est, cum unus solus aliquod genus mercaturæ  
universum vendit, ut solus vendat, pretium ad suum libitum statuens:*  
hereof you may read more at large in that case. And the law  
of the realm in this point is grounded upon the law of God,  
which saith, *Non accipies loco pignoris inferiorem et superiorem molam,  
quia animam suam apposuit tibi.* Thou shalt not take the nether or  
upper millstone to pledge, for he taketh a mans life to pledge:  
whereby it appeareth that a mans trade is accounted his life, be-  
cause it maintaineth his life; and therefore the monopolist that  
taketh away a mans trade, taketh away his life, and therefore is so  
much the more odious, because he is *vir sanguinis*. Against these in-  
venters and propounders of evill things, the Holy Ghost hath  
spoken, *inventores malorum, &c. digni sunt morte.*

That monopolies are against the ancient and fundamentall laws  
of the realm (as it is declared by this act) and that the monopolist  
was in times past, and is much more now punishable, for obtain-  
ing and procuring of them, we will demonstrate it by reason, and  
prove it by authority.

Whatsoever offence is contrary to the ancient and fundamentall  
laws of the realm, is punishable by law: but the use of a mono-  
poly is contrary to the ancient and fundamentall laws of the realme,  
therefore the use of a monopoly is punishable by law.

That offence which is contrary to the ancient and fundamentall  
laws is *malum in se*. The minor is proved by this declaration in  
parliament.

The liberty that the subject hath to<sup>goe</sup> to any clerk in the  
kings court cannot be restrained but by parliament.

In 50 E. 3. John Peachie of London was severely punished for  
procuring a licence under the great seal, that he only might sell  
sweet wines in London,

See in the preambles of 9 E. 3. cap. 1. 25 E. 3. cap. 2. 27 E. 3.  
& 28 E. 3. Stat. Stap. 2 R. 2. ca. 1. See the statute of Magna  
Cart. ca. 3. 31 E. 3. cap. 10. 7 H. 4. cap. 9. and 12 H. 7. ca. 6.

P 2

\* The statute of  
21 Jac. ca. 3.  
Rom. 1. 30. In-  
ventores ma-  
lorum.

<sup>b</sup> A monopoly  
described.  
See the expofi-  
tion upon Mag-  
na Carta, c. 29.  
& 30. in the  
second pt. of the  
Instit.

<sup>c</sup> Trin. 44 Eliz.  
lib. 11. f. 84, 85.  
le case de Mo-  
nopolies.

Deut. ca. 24.  
v. 6.

Rom. 1. 30.

*Commercium jure  
gentium commune  
esse debet, et non  
in monopolium, et  
privatum paucu-  
lorum questum  
convertendum.*

*Iniquum est alios  
permittere, alios  
inhibere merca-  
turam.*

11 H. 7. 11.

W. 1. cap. 27.

Rot. par. 50 E. 3.  
nu. 33.

1 &amp;

Rot. Parl.  
28 H. 6. nu. 30.

1 & 2 Ph. & Mar. ca. 14. Rot. Parl. 1 R. 2. nu. 20. 4 R. 2. nu. 39. 5 R. 2. nu. 89. Fortescue, cap. 35, 36. One of the articles wherewith William de la Pool duke of Suffolk was charged, was for procuring of divers liberties in derogation of the common law, and hindrance of justice: note this is an offence punishable.

[182]  
Mich. 4 & 5 El.  
Dier manuscript  
not printed.

King Philip and queen Mary by their letters patents granted to the maior, bailiffs and burgessees of Southampton and their successors, (for that king Philip first landed there) that no wines called malmesies, brought into this realm from the parts beyond the seas by any liege man or alien, should be discharged or landed in any other place of the realm, but only at the said town and port of Southampton, with a prohibition, that no person or persons shall doe otherwise, upon paine to pay treble custome: and it was resolved by all the judges of England that this grant made in restraint of the landing of the same wines was against the laws and statutes of this realme, viz. Magna Carta, 29. 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. ca. 2. 27 & 28 E. 3. statute of the staple. 2 R. 2. cap. 1. and others: and also that the assessment of treble custome was against law, and meerly void. And after at the parliament holden in anno 5 Eliz. the patent, as to aliens, was by a private act confirmed by parliament, and not for English.

Stat. de 5 Eliz.

Trin. 41 Eliz. coram rege, rot. 92. int. Davenant and Hurdys in trespassse. Trin. 44 Eliz. in Lib. 11. fo. 84, 85, &c. Edward Darcies case. Hil. 7 Jacobi in Lib. 8. fo. 121, 122. &c. the case of the City of London.

The judgement in the said case of monopolies cited before, Trin. 44 Eliz. was the principall motive of the publishing of the kings book mentioned in the preamble of this act, and that book was a great motive of obtaining the royall assent to this act of parliament, whereof we are now to speak. This act moved from the house of commons: the act is long and in print, and need not here to be rehearsed: yet will we peruse and explain the words in the severall branches of the act.

*By his grant, commission, or otherwise.* These words [or otherwise] are of a large extent, and are well warranted by this act, the words whereof extend not only to all proclamations, inhibitions, restraints, and warrants of assistance of the king, but all inhibitions, restraints and warrants of assistance of all or any of the privy counsell or any other: and all other matters or things whatsoever either of the king, or of all or any of his privy counsell to the instituting, erecting, strengthening, furthering, or countenancing of the sole buying, selling, &c. or any of them, are declared to be altogether contrary to the laws of this realm, &c. *ut in statuto.* This act herein, and in the residue thereof, is forcibly and vehemently penned for the suppression of all monopolies: for monopolies in times past were ever without law, but never without friends.

*Sole.* This word [sole] is to be applied to five severall things, viz. buying, selling, making, working, and using; four of which are speciall, and the last, viz. (sole using) is to generall, as no monopoly can be raised, but shall be within the reach of this statute, and yet for more surety these words [or of any other monopolies]

are

are added : and by reason of these words [sole using] divers provisions are made by this act, as hereafter shall appear.

*Of any thing.*] As the words before were generall, so these words [of any thing] are of a large extent. *Res enim generalem habet significationem, quia tam corporea, quam incorporea, cujuscunque sunt generis, naturæ, sive speciei, comprehendit :* and this word cauiet some exceptions hereafter to be made, whereof we shall speak in their proper place.

*Whereby any person or persons, &c.*] For this see the statute of Magna Carta, *ubi supra* : and this clause is impliedly warranted by these words [or of any other monopolies] in the first clause of the purvien.

*Shall be for ever hereafter examined, heard, tried, and determined by and according to the common laws of this realm, and not otherwise.*] This act having declared all monopolies, &c. to be void by the common law, hath provided by this clause, that they shall be examined, heard, tried, and determined in the courts of the common law according to the common law, and not at the councill table, star-chamber, chancery, exchequer chamber, or any other court of like nature, but only according to the common laws of this realm, with words negative, and not otherwise : for such boldnesse the monopolists took, that often at the councill table, star-chamber, chancery, and exchequer chamber, petitions, informations, and bills were preferred in the star-chamber, &c. pretending a contempt for not obeying the commandements and clauses of the said grants of monopolies, and of the proclamations, &c. concerning the same : for the preventing of which mischief this branch was added.

*That all person and persons, bodies politique, and corporate whatsoever, which now are, or hereafter shall be, shall stand, and be disabled, and incapable, &c.*] This branch for further extirpation of all monopolies, disableth all men, &c. to have, that is, to take any monopoly, or to use, exercise, or put in ure any monopoly, &c. whereby the wish and desire of the poet is granted.

*Funditus extirpa monopolas et nomopolas ;  
Hic labor, hoc opus est ; Hercule major erit.  
Paucorum nocuit scelerata licentia multis,  
Argento mutat dum monopola piper.*

*If any person or persons after the end of forty dayes next after the end of this present session of parliament shall be hindred, grieved, disturbed, or disquieted, &c.*]

By this branch six things are provided and enacted. 1. Remedy is given to the party grieved at the common law by action or actions to be grounded upon this statute. 2. This remedy may be had in the court of the kings bench, common pleas, and exchequer, or any of them, at the election of the party grieved. 3. The party grieved shall recover treble damages, and double costs. 4. No essoin, protection, wager of law, aid prayer, priviledge, injunction, or order of restraint to be allowed in any such action. By (aid prayer) is intended as well the writ *de domino rege inconsulto*, as the usuall form of aid prayer, for both are to one end, and (order of restraint) was added, for the councill table, star-chamber, chancery, exchequer chamber, and the like.

5. If any person or persons shall after notice given, &c. cause

or procure any such action to be stayed or delayed before judgement, by colour or means of any order, warrant, power or authority, save onely of the court wherein such action shall be brought and depending, the person or persons so offending shall incur the danger of premunire, &c.

This clause extends to the privy counsell, star-chamber, chancery, exchequer chamber, and the like, and likewise to those that shall procure any warrant, &c. from the king, &c. and so it was resolved by a committee of both houses before this bill passed; but it extendeth not to the judges of the court before whom any such action shall be brought, for before judgements, days must be given by orders of court, &c.

6 Or after judgement had upon such action shall cause or procure execution of or upon any such judgement, to be stayed by colour or means of any order, warrant, power or authority, save only by writ of error and attain, the person or persons so offending shall incur the danger of premunire, &c.

This clause is more generall then the former, being the fifth clause, for this extendeth also to the judges of the court where the action is brought or depending, if any stay or delay be used by them after judgement, and so it was resolved as is aforesaid.

[ 184 ]

Concerning new  
manufactures  
and heretofore  
granted, &c.

Pasch. 15 Eliz.  
in the exchequer  
chamber Bircots  
case.

Rot. parl. 22 E.  
4. no. 29.  
22 E. 4. ca. 5.  
7 E. 6. ca. 6.  
1 Jacobi, ca. 5.

There be in this act concerning monopolies or sole buying, &c. many provisos. The first is, that this act shall not extend to any letters patents or grants of priviledge heretofore made of the sole working or making of any manner of new manufacture: but that new manufacture must have seven properties. First, it must be for twenty one years or under. Secondly, it must be granted to the first and true inventor. Thirdly, it must be of such manufactures, which any other at the making of such letters patents did not use: for albeit it were newly invented, yet if any other did use it at the making of the letters patents, or grant of the priviledge, it is declared and enacted to be void by this act. Fourthly, the priviledge must not be contrary to law: such a priviledge, as is consonant to law, must be substantially and essentially newly invented; but if the substance was in *esse* before, and a new addition thereunto, though that addition make the former more profitable, yet is it not a new manufacture in law: and so was it resolved in the exchequer chamber, Pasch. 15 Eliz. in Bircots case for a priviledge concerning the preparing and melting, &c. of lead ore: for there it was said, that that was to put but a new button to an old coat: and it is much easier to adde then to invent. And there it was also resolved, that if the new manufacture be substantially invented according to law, yet no old manufacture in use before can be prohibited. Fifthly, nor mischievous to the state by raising of prices of commodities at home. In every such new manufacture that deserves a priviledge, there must be *urgens necessitas*, and *evidens utilitas*. Sixthly, nor to the hurt of trade. This is very materiall and evident. Seventhly, nor generally inconvenient. There was a new invention found out heretofore, that bonnets and caps might be thickned in a fulling mill, by which means more might be thickned and fulled in one day then by the labours of fourscore men, who got their livings by it. It was ordained that bonnets and caps should be thickned and fulled by the strength of men, and not in a fulling mill, for it was holden in



inconvenient to turn so many labouring men to idleness. If any of these seven qualities fail, the privilege is declared and enacted to be void by this act: and yet this act, if they have all these properties, set them in no better case, then they were before this act.

The second proviso concerneth the privilege of new manufactures hereafter to be granted: and this also must have seven properties, first it must be for the term of fourteen years or under: the other six properties must be such as are aforesaid, and yet this act maketh them no better, then they should have been, if this act had never been made, but only except and exempt them out of the purview, and penalty of this law.

Concerning new manufactures hereafter to be granted, &c.

The cause wherefore the privileges of new manufactures either before this act granted, or which after this act should be granted, having these seven properties, were not declared to be good, was, for that the reason wherefore such a privilege is good in law is, because the inventor bringeth to and for the common wealth a new manufacture by his invention, cost and charges, and therefore it is reason, that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time: but it was thought that the times limited by this act were too long for the private, before the common wealth should be partaker thereof, and such as served such privileged persons by the space of seven years in making or working of the new manufacture (which is the time limited by law of apprenticeship) must be apprentices or servants still during the residue of the privilege, by means whereof such numbers of men would not apply themselves thereunto, as should be requisite for the common wealth, after the privilege ended. And this was the true cause wherefore both for the time passed, and for the time to come, they were left of such force, as they were before the making of this act.

The third proviso is, that this act shall not extend or be prejudicial to any grant or privilege, power or authority heretofore made, granted, allowed, or confirmed by any act of parliament now in force, so long as the same shall so continue in force. This was added for that the city of London and other cities and boroughs, &c. have some privileges for buying, selling, &c. by acts of parliament. For example, the statute of 1 & 2 Ph. and Mar. giveth a privilege to cities, boroughs, towns corporate, and market towns, for the sale by retale of certain wares and merchandizes, and some other acts of parliament in like case: all which do prove, that such privilege could not be granted by letters patents. But specially this clause was added in respect of the generality of these words [sole using].

[ 185 ]

1 & 2 Ph. and Mar. cap. 7.

The fourth proviso. Provided also, and it is hereby further intended, declared, and enacted, that this act, &c. shall not in any wise extend, or be prejudicial unto the city of London, &c.

By this proviso, not only the grants, charters, and letters patents to any city or towne corporate, &c. but also the customes used within the same, are excepted out of this act: which seemeth to be more than need, because the first clause of the purview of this act doth extend but to commissions, grants, licences, charters, and letters patents.

The fifth proviso doth except out of the purview and penalty of

this statute four things, but leaveth them of the like force and effect, and no other, as this act had never been made. First, the priviledge concerning printing made, or hereafter to be made. Secondly, commissions, grants, and letters patents made or hereafter to be made for or concerning the digging, making, or compounding of salt-petre or gunpowder. Thirdly, or the casting or making of ordnance, or shot for ordnance. Fourthly, grants and letters patents heretofore made, or hereafter to be made of any office or offices heretofore erected, made, or ordained, and now in being, and put in execution, (other then such offices as have been decreed by any h<sup>s</sup> majesties proclamations.) So as to the thing by this branch excepted, four things are required. First that it be an office. This extendeth only to lawfull offices for divers causes. 1. It was necessary to except lawfull offices in respect of these words [sole using.] 2. Offices are duties, so called, to put the officer in minde of his duty. 3. That which is voide and against law, is no duty, unlesse it be not to use them. 4. Such as are erected against law, are monopolies and oppressions of the people, and no offices. 5. In acts of parliament lawfull offices are intended, as in like cases hath been often adjudged: therefore unlawfull offices are all taken away by this act, and lawfull offices remain and continue.

Lit. 282. 732.  
Pl. com. 246. b.  
21 H. 4. 80.  
4 E. 4. 31. pl. 2.

Secondly, that it be an office heretofore erected. By this act the erection of all new offices, which were not erected before this act, are wholly taken away.

Thirdly, that it be now in being, and put in execution. Though the office were erected before this act, yet if it were not in being and put in execution the 19 day of February in the 21 year of the reigne of king James (at what time this parliament began) it is clearly taken away by this act.

See the proclamation bearing date 10 July, an. 19 J<sup>c</sup>. regis, and another proclamation bearing date, 20 Martii an. 19 J<sup>a</sup>. regis.

Fourthly, that it be such an office, as hath not been decreed (for so is the record of parliament, and not [decreed] as it is in the printed book) by any of his majesties proclamations: for all such offices as be decreed, that is, either forbidden, or prohibited by any of his majesties proclamations, or where the party grieved is left to his remedy at the common law by any proclamation, they be also decreed; for being contrary to the lawes of this realme, as it is declared and enacted by this act, they are also decreed with a witnesse, and can never be granted hereafter.

The fifth proviso concerning the making of allom, or allome-wines, needed not, for they belong to the subject in whose ground soever the oare is: and therefore any priviledge thereof cannot be granted, but in the kings owne ground.

The sixth proviso concerns the hostmen of Newcastle, &c. This clause was inserted in respect of these words [sole using].

The rest of the provisoe concerne particular persons, and do exempt and except certaine supposed priviledges out of the purview and penalty of this law, but leaveth them of like force and effect, as they were before the making of it.

But it is to be observed, that all the provisoes after the sixth, extend only to the supposed priviledges therein particularly mentioned, already granted, and not to any to be granted hereafter.

## C A P. LXXXVI.

Against those that obtaine Power to dispense with penall Lawes, and Forfeitures thereof.

**I**T appeareth by the preamble of this act, that all grants of the benefit of any penall law, or of power to dispence with the law, or to compound for the forfeiture, are contrary to the ancient fundamental lawes of this realme.

It was one of the articles wherefore the Spencers in the reigne of King E. 2. were sentenced, that they procured the king to make many dispensations: *Per leur malveis counsell defesant ceo q. le roy ad grant p. parliament p. bone advice.*

In 50 E. 3. Richard Lions a merchant of London, and the Lo. Latimer, were severally sentenced in parliament for procuring of licences and dispensations to transport wools, &c.

It is declared and enacted, that all commissions, grants, licences, charters, and letters patents, heretofore made or granted, to any person or persons, bodies politick, or corporate, of any power, liberty, or faculty, to dispence with any others, or to give license or toleration to doe, use, or exercise any thing against the tenure or purport of any law or statute, or to give, or make any warrant for any such dispensation, license or toleration to be had, or made, or to agree, or compound with any others for any penaltie or forfeitures limited by any statute, or of any grant or promise of the benefit, profit, or commoditie of any forfeiture, penalty or summe of money, that is or shall be due by any statute before judgement thereupon had, and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them, are altogether contrary to the lawes of this realme, in no wise to be put in execution.

And shall be for ever hereafter examined, heard, tried, and determined, by and according to the common lawes of this realme; and not otherwise, &c.

Provided also, that this act shall not extend to any warrant or privie seale made or directed, or to be made or directed by his majestie, his heirs or successors to the justices of the courts of kings bench, common pleas, barons of the exchequer, &c. and other justices for the time being, having power to heare and determine, &c. to compound, &c.

The statute of 21 Jac. cap. 3.

In Exilio Hugonit.

Rot. parliam.

50 E. 3. nu. 17. & 28.

See 23 H. 6. nu. 30. before.

The purvien of the act of 21 Ja. cap. 3.

The offence described.

This

This act moved from the house of commons. Now let us peruse, first, the words of the purvien of this act, and secondly, of this proviso.

Hil. 2 Jac. lib. 7.  
fo. 36. b. the case  
of penall statutes.

[ 187 ]

In and by the purvien five things are declared and enacted to be void, and contrary to the ancient fundamentall lawes of this realme. First, all commissions, licenses, charters, and letters patents of any power, liberty, or faculty, or to give license or toleration to do, use, or exercise any thing against any law or statute. The reason hereof is notably expressed by the resolution of all the judges of England, in the case of penall statutes, whereunto we refer you,

2. Or to give or make any warrant for any such dispensation, license, or toleration.] For this branch also, see the said case of penall statutes, *ut supra*.

3. Or to agree or compound with any others for any penalty or forfeitures limited by any statute.] By this branch, all commissions to agree or compound with any others for any penalty or forfeiture limited by any statute, are declared to be void, and against the ancient fundamentall lawes of the realme. The great inconvenience hereof appeared in the proceedings of Empson and Dudley, in the reigne of king H. 7. who had the office of masters of the forfeitures; and by colour of their commission and office, did most intolerably and unlawfully oppresse, burden, and depauperate the subjects. Let them which follow their steps be afraid of their fearful end: *Qui eorum vestigia sequuntur, eorum exitus perhorrescant*. The like oppression was used by certain commissioners for compositions to be made for offences committed against penall statutes, in the reigne of queen Mary. This branch hath stricken at the root, and prevented this mischief for ever hereafter.

4. Or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute before judgement thereupon had.] This branch declareth not only the grant to be void, and against the lawes of this realme, (for the which, see the resolution of all the judges in the said case of penall statutes, *ubi supra*;) but the promise thereof also. And the reason that the judges yeeld there, is notable in these words. For that in our experience it maketh the more violent and undue proceeding against the subject to the scandall of justice, and offence of many. So as the grant or promise of any forfeiture before judgement, is both against law, and inconvenient. And if it be so in case of a forfeiture or penalty; much more in case of life and death, for the forfeiture, &c. of any man to be begged, before he be duly and lawfully attainted. For, as the judges say, there is the more violent and undue proceeding against the subject to the scandall of justice, and the offence of many; and therefore such beggers are offenders worthy of severe punishment.

Micah 7. 2.

Against these hunters for blood the prophet speaketh thus, *Peccati sanctus de terra, et rectus in hominibus non est, omnes in sanguine insidiantur, vir fratrem suum ad mortem venatur*. There is not a godly man upon earth, there is not one righteous amongst men, they all lye in wait for blood, and every man hunteth his brother to death.

5. And all proclamations, inhibitions, restraints, warrants of assistance, and all other matters or things any way tending to the institut-

*ing, erecting, strengthening, &c.*] This is the like clause, and is so to be expounded, as before hath been in the chapter of Monopolies.

Concerning the said proviso, the judges before whom the cause dependeth, and that have power to hear and determine the same, who are presumed to be indifferent between the king and the subject, may by warrant or privie seale, &c. compound, &c. for the king only, after plea pleaded by the defendant.

There is another proviso concerning letters patents, or commissions for licensing of keeping of any tavern, or selling, &c. of wines, &c. or for the making of any compositions for such licenses, so as the benefit of such compositions be reserved, and applied to or for the use of his majestie, his heirs or successors and not for the private use of any other person or persons.

The report of the said case of penall statutes was a principall motive of the kings book, mentioned in the preamble of this act: and that book amongst other just and weighty causes moved the king to give his royall assent to this act of parliament, &c. whereof we have spoken.

C A P. LXXXVII.

[ 188 ]

Against Concealours (*turbidum Hominum Genus*)  
and all Pretences of Concealements whatsoever.

**T**HAT the kings majestie, his heirs, or successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politick, or corporate, &c. Statut. de anno  
21 Jac. cap. 2.

The act is long, and need not here be rehearsed. Yet will we peruse and explain the severall branches and parts of the act.

Before the making of this statute, in respect of that ancient prerogative of the crowne, that *nullum tempus occurrit regi*, the titles of the king were not restrained to any limitation of time: for that no statute of limitation that ever was made, did ever limit the title of the king to any manors, lands, tenements, or hereditaments, to any certaine time. And where many records and other muniments, making good the estate and interest of the subject, either by abuse or negligence of officers by devouring time were not to be found; by means whereof, certain indigne and indigent persons prying into many ancient titles of the crown, and into some of later time concerning the possessions of divers and fundry bishopricks, dean and chapters, and the late monasteries, chauntries, &c. of persons attainted, and the like, have passed surreptitiously in letters patents, oftentimes under obscure and generall words, the manors, lands, tenements, and hereditaments of long time enjoyed by the subjects of this realm, as well ecclesiasticall as temporall;

now

now to limit the crown to some certaine time, to the end, that all the subjects of this realme, their heirs and successors, may quietly have, hold, and enjoy, all and singular mannors, lands, tenements, and hereditaments, which they, their ancestors, or predecessors, or any other, by, from, or under whom they claime, have of long time enjoyed; this act was made and moved from the house of commons, the body whereof consisteth of three parts. First, that part which above is in part rehearsed, consisteth on three branches.

The first part.

*First*, That the king, his heirs or successors, shall not at any time hereafter, sue, impeach, question, or implead any person or persons, bodies politick or corporate, for, or in any wise concerning any mannors, &c. *Secondly*, Or for or concerning the revenues, issues, or profits thereof. *Thirdly*, Or make any title, claime, challenge, or demand, &c.

This part is exclusive and negative: and herein six things are to be observed.

Rot. Par. 22 H.  
4. nu. 27. not  
imprinted.

[ 189 ]

1. This clause extendeth to all maner of suits, &c. either in law, or in equity. 2. To all manner of courts whatsoever. 3. It extendeth not only to all manner of suits, but to all impeachments, questionings, impleadings, making of title, claimes, challenges, or demands. 4. Under these words [right, and title] not only bare rights and titles are comprehended, but reall estates also. 5. Not only suits, &c. for or concerning any mannors, &c. but for or concerning the revenues, issues, or profits, &c. and this extendeth to the ancient demesnes of the crowne, which are mentioned to be restrained by an act of 11 H. 4. 6. So as all writs of *scire fac'* or other proces upon any record; all informations of intrusion, or charging any man as bayliffe: all finding of offices, either of intitling the king, or of information, are restrained, not only within these words [impeach or question] but also within these words [or make any title, claime, challenge, or demand] which are large and beneficial words, and all other suits, &c. of what kind or nature soever. But this negative clause must have four incidents. 1. The kings right and title must accrew unto him above threescore years past before the nineteenth day of February, in the 21 year of king James, which was the day of the beginning of this parliament. The reason hereof was, that if any title of escheat, forfeiture, &c. accrewed within threescore years, then it should be out of this act; for generally the time of limitation to bar the king was threescore years, but such right or title must now be *in esse*. 2. Unless the king or his progenitors, &c. or any under whom he or they claim, have been answered by force and vertue of any such right or title to the same, the repts, revenues, issues, or profits thereof within threescore years, &c. In this branch these words [by force and vertue of any such right or title] were materially added, for otherwise if the king had been answered the rents, revenues, &c. by reason or pretext of wardship, primer seison, extent, or the like, it might have made a doubt whether such an answering of the revenues, &c. had been within this act; which doubt is cleared, that it must be by force or vertue of any such right or title, whereby the king impeacheth the state of the subject. 3. Or that

that the same have been duly in charge to his majesty, or to the late queen Elizabeth within the space of threescore years. Duly in charge in judgement of law, is the roll of the pipe: for although a note before the auditor or any other may be a mean to bring it in question, and to be put in charge, yet that is not in judgement of law said to be duly in charge, unless it be in charge in the pipe.

4. Or have stood in super of record within the said space of threescore years. It cannot stand in super, unless the thing in question were before duly in charge.

But there is a good proviso added towards the end of this act, viz. that no putting in charge, or super, or answering of the farm rents, revenues, or profits, &c. in four cases shall be within this act, viz. by force, colour or pretext of any letters patents of concealments: they were called letters patents of concealments, because either they had a clause before the *habendum*: *quæ quidem maneria nuper fuerunt à nobis concealata, subtrahita, vel injuste detenta*, or to the like effect; or else a proviso after the *habendum* to the like effect. Letters patents of concealment were granted in queen Maries time; and the first that I find, were granted to Sir George Howard: and in all succeeding acts of parliament of confirmation of letters patents, letters patents of concealments are excepted.

2. Or defective title. By letters patents passed by the warrant of certain commissioners under the great seal for compositions of defective titles, pretending the same to be for the kings benefit, and safety of the subject, in which letters patents no words of concealment, &c. are mentioned, but yet upon the matter, they were supposed to be concealed, &c. from the crown.

3. Or of lands tenements or hereditaments out of charge. This was a new device to have a certificate, that they were not in charge, and then to take a grant from the king, for a very small composition, &c. And these were but inventions and subtil devices to deceive the king, to rob him of his tenures, and to the infinite vexation and trouble of the subject, all which mischiefs are now remedied by this act.

4. Or by force, colour or pretext of any commission or other authority to find out concealments, defective titles, or land, &c. out of charge. This was a necessary clause to be added, for of this kind there were infinite numbers.

Out of this first part all liberties and franchises be excepted.

And that every person and persons, bodies politique and corporate, their heirs and successors, and all claiming from, by, or under them, or any of them, for and according to their severall estates and interests, which they have, or claim to have in the same respectively, shall hereafter quietly and freely have, hold and enjoy against his majesty, his heirs and successors, &c.

The second part.

This is the second part of the body of the act, and as the first part is negative and exclusive of the right and title of the king, so this part is affirmative, and establishing the estate of the subject.

[ 190 ]

The

The mischief before this statute was in two sorts, viz. either when the king had any estate vested, or continued in him; or where the king had but a bare right. For example, the kings tenant seised of lands, &c. in fee is attainted of felony, and dieth, the king hath a real estate in him: but if before the felony the kings tenant were disseised, and after is attainted, and dieth, now hath the king but a bare right. In both these cases, *et sic in similibus*, the subject is provided for by this act, both by the first part, and by this also: for where in this part it is said, according to their and every of their several estates and interests which they have or claim. If they have an estate, and the king but a bare right or title, then are they within these words [which they have] and if the king hath a real estate in him, then are they within these words [or claim] so as the remedy is applied to both the mischiefs. Again, the words in this part are further, have held, or enjoyed. That is, where the subject hath an estate, and the king but a bare right or title.

*Or taken the rents, issues, revenues, or profits thereof.* These words extend to all cases where the real estate is in the king: hereby is understood the actual taking of the rents, issues, revenues, or profits by one that claims an interest in the land: for albeit the king may in law charge him as bailif, yet without question, *de facto*, he did take the rents, issues, revenues and profits, and that sufficeth to answer the letter and meaning of this act.

Moreover, the words of this part are, [Against him, his heirs or successors.] So admit in the case put before, the kings tenant being disseised, as is aforesaid, before his attainder of felony, that that disseisor had been disseised, or had mortgaged the land before this statute, this act in this case barreth the king of his right and title, and to that end worketh upon the estate of the disseisor or mortgagee: but yet the first disseisor or the mortgagee for the condition performed or broken may re-enter; for the words of this part be [against the king, his heirs, and successors] so as the bar is only against them: and every subject shall take benefit of this act, for the kings right and title is thereby utterly barred: and there is a saving hereafter in this act to all persons, &c. other then the king, &c. all such right, &c. as they ought to have had before this act.

This part extendeth not to liberties and franchises.

Now followeth the third part of the purview of this act.

The third part.

And furthermore, that every person and persons, bodies politique and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such manners, &c. as they now have, claim, and enjoy, &c. against all and every person and persons, their heirs and assigns having, claiming, or pretending to have any estate, right, title, interest, claim or demand whatsoever, &c. by reason, or colour of any letters patents, or grants upon suggestion of concealment, or wrongfull detaining, or not being in charge, or defective titles, or by, from, or under any patentees, &c. of or for which manners, &c. no verdict, &c.

This



This part secures the subject against the subject, viz. against patentees and grantees of concealments, defective titles, or lands not in charge, and all claiming under them. A beneficial law both for the church and common wealth, in respect of the multitude of letters patents and grants of these natures and qualities, and many of them of large extents and in generall words, and had passed through the hands of many indigent and needy persons, &c.

This part extendeth to liberties and franchises, which the former two parts did not.

The two first provisos are plain, and in effect are included in the body of the act. The second proviso was necessary to preserve tenures: the saving needeth no explanation. The third proviso is particular and evident. The fourth proviso, Provided also, and be it enacted, that where any fee farm rent, &c. This was added for the preserving of the kings fee farms and rents out of such mannors, &c, which are established and made sure by this act. For example: king E. 6. did grant the mannor of D. which came to him by the statute of Chanteries, to I. S. and his heirs, reserving a fee farm, or any other rent, which grant for some imperfection was insufficient in law to passe the said mannor, and yet is established and made sure by this act. This proviso maketh good the fee farm or rent to the king, if he hath been answered the same by the greater part of sixty years last past.

The last proviso is particular and evident.

Of the benefit of this act the poor doe participate, as well as the rich, for hereby (amongst other things) above an hundred lay hospitals having had priests within them in those days to pray and sing for souls, &c. (if need were) are established against all vexations, and preterices of concealments.

See an excellent act made against these harpyes or heluones, that under obscure words endeavoured surreptitiously in a patent of concealment to have swallowed up the greatest part of the possessions of that ancient and famous bishoprick of Norwich, which by the industry and prosecution of the then attorney generall was overthrown, and yet for more surety in a matter of so great weight preferred a bill in parliament for establishing of the bishoprick, which in the end passed as a law, anno 39 El. *ubi supra*.

See 39 El. ca. 22. which is worthy to be read. See this case at large in the fourth part of the Institutes cap. Consistory Courts, &c.

[ 191 ]

*Tristius haud illis monstrum, nec saevior ulla  
Pestis et ira Dei stygiis sese extulit undis:  
Virginis volucrum vultus, fœdissima ventris  
Proluvies, unæque manus, et pallida semper  
Ora fame.*

## C A P. LXXXVIII.

## Against Vexatious Relators, Informers, and Promooters upon Penall Statutes.

Statutum de  
21 Jac. reg. c. 4.

**T**HAT all offences hereafter to be committed against any penall statute, for which any common informer or promooter may lawfully ground any popular action, bill, plaint, suit or information, &c. shall be commenced, sued, prosecuted, &c. before the justices of assise, justices of nisi prius, &c. in the counties where the offences were committed, and not elsewhere.

18 El. ca. 5.

28 El. ca. 5.  
31 El. ca. 10.

Whereas a good and profitable law was made in the 18 year of queen El. for the ease and quiet of the subject, and for the regulating of informers upon penall statutes, inflicting corporall punishments in certain cases upon them. And whereas two other good laws were made for the same ends, the one in the 28 year, and the other in the 31 year of the said late queens reign, which yet stand and remain in force: yet these acts did not meet with all the mischiefs and grievances offered to the subject by the relators, informers and promooters, (*turbidum hominum genus*) but these four mischiefs and grievances remained still.

[ 192 ]

First, many penall laws obsolete, and in time grown apparently impossible, or inconvenient to be performed, remained as snares, whereupon the relator, informer or promooter did vex and entangle the subject: such as were the statutes made anno 37 E. 3. cap. 3. concerning the prices of poultry, and 34 E. 3. ca. 20. concerning transportation of corn, and 3 E. 4. cap. 2. concerning corn not to be brought into the realm, and 4 H. 7. ca. 9. concerning the prices of hats and caps, and 14 R. 2. cap. 7. concerning the passing of tyn out of the realm, and 15 R. 2. cap. 8. concerning the carriage of tyn to Calys, and 4 H. 5. cap. 3. concerning making of pattens of asp, and 4 H. 7. ca. 8. concerning the prices of broadcloath, &c. and 11 H. 7. cap. 2. concerning vagabonds, unlawful games, and alehouses, &c. and one other statute in the 19 year of H. 7. ca. 12. concerning those matters, and 11 H. 6. ca. 12. concerning waxchandlers, and the price of candles, and 34 H. 8. cap. 7. concerning the sale of wines, and 28 H. 8. cap. 14. concerning the prices of wines, and 27 H. 8. stat. *de monasteriis*, concerning keeping of house and households upon scites of monasteries, &c. and 4 H. 7. cap. 19. concerning houses of husbandry and tillage, and 7 H. 8. ca. 1. concerning letting down of towns, and 27 H. 8. cap. 22. concerning decay of houses and inclosures, and 5 E. 6. ca. 5. for the maintenance of tillage, &c. and 5 Eliz. cap. 2. for maintenance and increase of tillage, and 14 R. 2. ca. 4. 8 H. 6. ca. 23. and 5 E. 6. cap. 7. concerning the buying of wooll, woollen yarn, &c. and 33 H. 8. cap. 5. concerning the keeping

keeping of great horses, the statute of Winchester in the time of E. 1. concerning harness and arms, Artic. super Cart. ca. 20. concerning making of rings, crosses, and locks, and 37 E. 3. cap. 7. that makers of white vessel should not guild, and 2 H. 5. ca. 4. stat. 2. that goldsmiths should not take more than forty-six shillings eight pence for a pound of troy silver gilt, and 2 H. 6. ca. 14. that no silver shall be bought for more than thirty shillings the pound of troy, and 2 H. 4. ca. 6. against the bringing in of coin of Flanders, Scotland, and other forain coin, and 13 R. 2. ca. 8. and 4 H. 4. cap. 25. concerning the prices of hay and oats sold by hostlers, and 4 & 5 Ph. and Mar. ca. 5. concerning the putting to sale of coloured cloth: and another part of the same statute concerning the mystery of making, weaving, or rowing of woollen cloth, &c. and 18 El. ca. 16. for toleration of certain clothiers to dwell out of towns corporate, and many other unnecessary statutes, unfit for this time, about the number of threescore are repealed by an act made at this parliament in the 21 year of the reign of king James, as by that act appeareth: and many like acts are not continued, as by the conference between that act and other former acts of continuance may appear: so as these snares that might have lien heavy upon the subject, by this and other former statutes either are repealed, or not continued.

The second mischief was, that common informers, and many times the kings attorney drew all informations for any offence, in any place within the realm of England against any penall law to some of the kings courts at Westminster, to the intolerable charge, vexation, and trouble of the subject; and it was feared that Westminster hall would labour of an apoplexy by drawing up all suits unto it, as the naturall body doth *tabesce*, when the humours of the body are drawn up unto the head, which in the end (if it be not prevented) turneth to an apoplexy.

The third mischief was, that in informations, &c. the offence supposed to be against the penall law, and to be committed in one county, was at the pleasure of the informer, &c. alledged in any county where he would, where neither party nor witness was known, against the right institution of the law, that the jury (for their better notice) should come *de vicinis* of the place where the fact was committed.

The fourth mischief was, that in divers cases the party defendant in informations or actions upon the statute, were driven to plead specially, which was both chargeable and dangerous to him, if his plea were not both substantiall and formall also.

These three mischiefs last mentioned are expressly and absolutely provided for by this act, which moved from the house of commons. And so did the act of continuing and reviving of divers statutes, and repeale of divers others.

The first part of the purview beginning thus. For remedy whereof be it enacted by the authority of this present parliament, that all offences, &c.

This clause consisteth upon three parts. First, affirmative: and this is divided into two branches. 1. For the informations, &c. It is enacted, that where a common informer might before this act have informed upon any penall statute before justices of assise, justices of *nisi prius*, or justices of gaole-delivery, justices of oier and terminer,

13 E. 1. Stat. de Winton.

[ 193 ]  
21 Jac. cap. 28.

The first part of the act.

miner, or justices of peace in their generall or quarter sessions; there a common informer may informe, &c. 2. Before what judges; this act appoints no new judges, but such as former penall lawes appointed, viz. the justices before mentioned, or any of them according to the former act.

The second part is restrictive, restraining any information, &c. to be commenced, sued, &c. either by the attorney generall, or by any officer, common informer, or any other person whatsoever, in any of the kings courts at Westminster. So as the kings bench, star-chamber, chancery, common-pleas, exchequer, or exchequer-chamber, cannot receive or hold plea of any information, &c. upon any penall statute, either by the kings attorney, any common informer, or any other person whatsoever: but the matter shall be heard and determined before such justices as are foresaid in the proper county where the offence was committed.

The third part giveth the like proces upon every popular action, bill, plaint, information, or suit to be commenced or prosecuted by force, of, or according to the purport of this act, as in an action of trespass, *vi et armis*, at the common law: but upon no other popular action, bill, &c. which is not sued, &c. by force of this act.

The second part  
of the act.

The second part of this act doth meet with the second of the said three mischiefs, and standeth upon three branches.

First, that in all informations, exhibited, &c. either for the king or any other, &c. the offence shall be layed and alledged, &c. in the said county where such offence was in truth committed, and not elsewhere.

The second branch is, that if the defendant pleadeth the generall issue, the plaintiffe or informer upon evidence to the jury must prove two things: first, the offence laid in the information, &c. Secondly, that the offence was committed in that county, otherwise the defendant shall be found not guilty.

The third branch is, that for more surety that the offence shall be alledged truly in the proper county where in truth it was committed, no information, &c. shall be received, filed, or entred of record, untill the informer, or relator hath first taken a corporall oath before some of the judges of that court, which consisteth on two parts: first, that the offence or offences laid in such information, &c. were not committed in any other county, then where the same are alledged in the information, &c. Secondly that he believeth in his conscience, that the offence was committed within a year before the information or suit. And this oath is to be entred of record. And all this is to be done before the information be received, filed, or entred of record.

The third part  
of the act.

The third part of this act meeteth with the last mischief: for by this part the defendant may plead the generall issue, and give any speciall matter in evidence to the jury: which matter being pleaded, had been a good and sufficient matter in law, to have discharged the defendant, &c.

27 H. 8. f. 21,  
&c.

This is a very beneficiall clause, and cleereth many questions at the common law. And where it may be objected, that for want of sufficient clerks, the proceeding according to this statute will be erroneous, and to be reversed by writ of error, so as it will deter informers to informe, &c. and in effect, lay asleep all penall lawes

To

## Cap. 88. Against Vexatious Informers.

\*194

To this it may be answered, First, that it shall be the fault of the informer himselfe; for if he informe before justices of assise or *nisi prius*, they \* have sufficient clerks. Secondly, I persuade my selfe, that the other justices will in discharge of their conscience and duty, provide sufficient clerks. And lastly, that few or no errors shall fall out in respect of the generall pleading.

The last clause of this act is this, Provided alwayes that this act or any thing therein contained, shall not extend to any information, &c.

By this clause this act extends not to penall statutes of these sorts: concerning 1. Popish recusants for not coming to church. 2. Maintenance, champerty, or buying of titles. 3. The subsidie of tonnage and poundage, wooll, &c. 4. The defrauding the king of any custome, tonnage, poundage, subsidie, impost, or prisage. 5. Transportation of gold, silver, powder, shot, munition of all sorts, wooll, woollfells, or leather, but that every of these offences may be layed or alledged to be in any county at the pleasure of any informer. But yet the informer cannot informe, &c. for any of these offences in any of the courts at Westminster, but before the justices appointed by this act: for this clause extendeth only for the laying or alledging of any of these offences in any county that he will.

Inter Widelston and Clark maior of Nottingham, the case was this. Widelston being arrested in Nottingham by precept in the nature of a *capias*, he was imprisoned in the custody of the maior being keeper of the gaol within the same towne, and before the returne of the precept Widelston offered to the maior sufficient surety to appeare, &c. and he refused to accept the same: whereupon Widelston brought his action by bill upon the statute of 23 H. 6. cap. 10. whereunto the defendant pleaded the generall issue; and it is found by verdict against the defendant. In arrest of judgement it was shewed, that by the said statute of 18 Eliz. cap. 5. it is provided, that none shall be admitted or received to pursue against any person upon any penall statute, but by way of information or originall action, and not otherwise: in respect of the said negative words it was adjudged, that, for that the said action was brought by bill, and not by information or originall, *quod querens nihil capiat per billam*. See the rest of the statute of 18 Eliz. concerning informers.

Mic. 29. &  
30 El. coram  
rege.

18 Eliz. cap. 5.  
Vi. lib. 6. fo. 19.  
b. Gregories  
case.

You have heard of four viperous vermin, which endeavoured to have eaten out the sides of the church and common-wealth: three whereof, viz. the monopolist, the dispencer with public and profitable penall lawes for a private, and the concealers are blowne up, and exterminated: and the fourth, viz. the vexatious informer well regulated and restrained, who under the reverend mantle of law and justice instituted for protection of the innocent, and the good of the common-wealth, did vex and depauperize the subject, and commonly the poorer sort, for malice or private ends, and never for love of justice. And these are worthily placed amongst the pleas of the crowne, because it is for the honour and benefit of the crowne, when the church and common-wealth doe flourish in peace and plenty: for the king can never be poore, when his subjects are rich.

Q2

George

Hil. 36 Eliz.  
Rot. 135. int.  
plac. regis, co-  
ram rege. Ha-  
monde case.

Trin. 31 Eliz.  
coram reg.  
Strettons case.

See hereafter,  
cap. 105. of  
Pardons  
37 H. 6. fo. 4.  
5 E. 4. 3.  
2 R. 3. fo. 12.  
1 H. 7. 3.

[195]

George Hamond informed upon a penall statute concerning slipping of cloth in the name of another. *Qui tam, &c.* against Edw. Griffith defendant. Hamond the informer died and upon motion made by the attorney generall, it was the opinion of the whole court, that he the attorney generall might proceed for the queens moiety after the death of the informer.

Between Stretton; *Qui tam, &c.* and Tayler defendant, that after a popular action commenced, although the attorney generall will enter an *ulterius non vult prosequi*; or if the defendant plead a special plea, although the use be, that the attorney (to the end that there may be no juggling or covin between the informer and the defendant) reply only; notwithstanding, if the attorney generall will not reply, the informer may proceed, and prosecute for his part; for the informer by his suit commenced hath made of a popular action his private, which the king cannot for the part of the informer pardon or release. And notwithstanding in all these cases before any action or information commenced by the informer, but the suit remaining popular wherein the king only, and no subject hath any interest, the king may pardon and release the same: for after that pardon, no informer can informe *tam pro domino rege, quam pro seipso*, according to the statute, &c. and for himselfe only in a popular action he cannot informe.

## C A P. LXXXIX.

## Of Forestalling, Ingrossing, &amp;c.

See the first part  
of the Institutes,  
sect. 240.

Domesday.  
Chent. Dover.  
ter.

Worcester.  
Sciropcir  
Civitas.

Fleta, lib. 1.  
ca. 42.

Forestall, &  
lib. 4. cap. 11.

Britton, fo. 33.  
a. 77. 2.

VI. Vet. M. C.  
part. 2. 24. b.

34 E. 1. de Pis-  
tor. Braciatori-

bus et aliis Vic-  
tuariis, et de

Forestallariis,  
hic infra.

51 H. 3. Raft.  
weights and

measures. 4.  
25 E. 3. c. 3.

stat. 3. 27 E. 3.  
cap. 11. stat. Stap.

28 E. 3. cap. 13.  
5 E. 6. cap. 14.

5 Eliz. cap. 12.  
13 Eliz. cap. 25.

**F**ORISTEL<sup>a</sup>, *faristel*<sup>b</sup>, *foristellum*, et *foristellarius*, derived of two Saxon words, viz. *far* or *fare* (*via* or *iter*) *unde fare* for a passage and farewell, to go or proceed well: we have turned *far*, to *for* and *stall*, which we retain still, and signifieth interceptionem, or *impedimentum transitus*, hindrance or interception. And the offender is called *foristellarius*. See of this offender in the ancient statute: <sup>d</sup> *Nullus foristellarius in villa patiatur morari, qui pauperum sit depressor manifeste, et totius communitatis, et patrie publicus inimicus, qui bladum, pisces, allee, vel res quascunque venales per terram, vel per aquam venientes, quandoque per terram, quandoque per aquam obviando præ cæteris festinat, lucrum sitiens vitiosum, pauperes opprimens, ditiores decipiens, qui sic minus iuste illo qui eos apportaverit multo magis vendere machinatur. Qui mercatores exterraneos venalibus venientibus circumvenit, offerens se venditioni rerum suarum, et suggerit, quod bona sua carius vendere poterunt, quam vendere proponebant, et sic arte, vel ingenio villam seducit et patriam. Primo convictus graviter amercietur, secundo subeat iudicium pilloviæ, tertio incarcerationetur, et redimatur, quarto abiuret villam. Et hoc iudicium fiet de foristallariis universis, et similiter de his qui \* consilium aut auxilium eisdem præstiterint vel favorem, &c.* And his description see in a latter act. See before in the chapter of Monopolists.

*Ingrossator* or *engrossator*, of the English and French word, *gros*, that is, great or whole, *unde* merchant-grossier, a merchant that sel-

leth

leth by great or whole-sale. We remember not that we have read of this word [ingrosse] in any act of parliament, book-case, or record, but \* rarely, before the said act of 5 E. 6. And there is an ingrosser by the common lawes, who is hereafter described. And there is an ingrosser by act of parliament, and he is described by the statute of 5 E. 6. And by that act a † regrator is also described, who is a kinde of ingrosser. Regrator is derived of the French word *regrement*, for huckstery. But in ancient time both the ingrosser and regrator were comprehended under foreftaller.

It was \* resolved by the justices and barons of the exchequer upon conference betwixt them, that salt is a victuall, and the buying and selling thereof was within the statute of 5 E. 6. for it was not only of necessity of it selfe for the food and health of man, but it seasoneth and maketh wholesome berse, pork, &c. butter, cheefe, &c. and other viands. And Peryam justice said, <sup>b</sup> Hil. 26 Eliz. in communi banco, that so it had been lately adjudged.

<sup>1</sup> Mich. 6 Jac. in *scaccario*, in an information by Baron against Boy, upon the statute of 5 E. 6. cap. 14. of ingrossers for buying and selling of apples; the defendant pleaded not guilty, and was found guilty. But the barons gave judgement against the informer, and caused an entry to be made in the margent of the record, that the judgement was given upon matter apparent to them, that apples were not within the said act, for that the act is to be intended of victuall necessary for the food of man, the words of the act being [corne, graine, butter, cheefe, fish, or other dead victuall] which is as much as to say, (of other dead victuall of like quality: *id est*, of like necessary and common use.) And therefore apples being rather of pleasure then necessity, are not within the said statute no more then plumbs, cherries, or other fruit; and no information hath ever been exhibited for ingrossing of apples, plumbs, cherries, or other fruit: but the statute of 2 E. 6. cap. 15. doth forbid conspiracy of colstermongers and fruterers, and maketh such conspiracie unlawfull. And the said judgement of the barons was affirmed in a writ of error in the exchequer chamber.

*Venditio trasei non est venditio victualium, nec debet puniri sicut venditio panis, vini, et cervisie, et hujusmodi, contra formam statuti.* But the act of 5 E. 6. hath made corne, graine, &c. to be victuall within that act. *Vide* Vet. N. B. 2. part 23. b. stat. de pistor., braceator., et aliis victelariis. 34 E. 1.

It was upon conference and mature deliberation resolved by all the justices, that any merchant, subject, or stranger, bringing victuals or merchandize into this realme, may sell them in grosse; but that vendee cannot sell them againe in grosse, for then he is an \* ingrosser according to the nature of the word, for that he buy ingrosse, and sell ingrosse, and may be indicted thereof at the common law, as for an offence that is *malum in se*. 2. That no merchant or any other may buy within the realme any victuall or other merchandize in grosse, and sell the same in grosse againe, for then he is an ingrosser, and punishable, *ut supra*: for by this means the prices of victuals and other merchandize shall be inhaunced, to the grievance of the subject; for the more hands they passe through, the dearer they grow, for every one thirtieth after gaine, *vitiolum finium-lucrum*. And if these things were lawfull, a riche man might ingrosse into his hands all a commodity, and sell the same at what

Q 3

<sup>c</sup> For the word [Ingrosser,] see 27 E. 3. c. 5. stat. 1. 37 E. 3. cap. 5.

<sup>†</sup> For this word [Regrator,] see 51 H. 3. weights and measures.

<sup>4</sup> Rastall. 14 R. 2. ca. 4. 8 H. 6. cap. 5. Regrators or choppers, and in some countries called jobbers.

<sup>5</sup> M. 44 & 45 El. at Serjeants lene in Fleetstreet.

<sup>b</sup> Hil. 26 Eliz. judgement cited p. Peryam justice.

<sup>1</sup> M. 6. Jac. in *Scac. Int. Baron and Boy*.

[ 196 ]

P. 18 E. 2. Coram rege Rot. 76. South.

Mich. 39 & 40. El. Resolution de tous les justices.

\* Dardanarius. An ingrosser by the common law described.

—Lucrumq; acquirit cundo, Nivis ut exiguus crescit cundo globus.

3 E. 2. Action  
furlebat. F.N.B.  
250. 4.

4. Aff. p. 38.  
tit. Aff. 354.

Nota, the abate-  
ment by undue  
means of the  
price of our na-  
tive commodi-  
ties, is punish-  
able by fine and  
ransome.  
See 23 E. 3. ca.  
6. 13 R. 2. cap.  
8. Inter leges  
Ethelstani.  
cap. 12.

Inter leges Will.  
Conquest. fo.  
125.

[ 197 ]

Hil. 25 E. 3.  
coram rege. Rot.  
13. Buck. Had-  
hams case.  
\* Of the French  
word *Taser*, to  
heape in goves  
or stacks.  
See 5 E. 6. ca.  
14. He is an in-  
grosser that boyes  
(other then by  
grant or lease of  
land or tithe)  
any corne grow-  
ing in the fields,  
&c.

price he will. And every practise or device by act, conspiracy, words or newes, to inhaunce the price of victuals or other merchandize, was punishable by law; and they relied much upon the statute aforesaid, *nullus forstallarius, &c.* which see before in this chapter: and that the name of an ingrosser in the reigne of H. 3. and E. 1. was not known, but comprehended within this word [*forstallarius*] *lucrum sitiens vitiosum*; and ingrossing is a branch of forestalling. And for that *forstallarius* was *pauperum depressor, et totius communitatis et patrie publicus inimicus*, he was punishable by the common law. They had also in consideration the book in 43 Aff. where it was presented, that a Lombard did procure to promote and inhaunce the price of merchandize, and shewed how: the Lombard demanded judgement of the presentment for two causes, 1. That it did not sound in forestalling. 2. That of his endeavour or attempt by words, no evill was put in ure, (that is) no price was inhaunced, *et non allocatur*, and thereupon he pleaded not guilty: whereby it appeareth, that the attempt by words to inhaunce the price of merchandize was punishable by law, and did sound in forestallment: and it appeareth by the book that the punishment was by fine and ransome. And in that case Knivet reported, that certaine people (and named their names) came to Cotefwold in Herefordshire, and said in deceit of the people, that there were such wars beyond the seas, as no wooll could passe or be carried beyond sea, whereby the price of wools was abated: and upon presentment hereof made, they appeared; and upon their confession they were put to fine and ransome. See the statute of 25 H. 8. cap. 2. whereby the lords of the counsell, justices, &c. or any seven of them, &c. have power to set prices on victuals, and the same to be proclaimed under the great seale.

For preventing of all ingrossing and forestalling, it was the ancient law before the conquest, *Decrevimus porro, ne quis extra oppidum quicquam 20 denariis carius aestimatum emat, verum intra portum presentis oppidi praefecto, aliove viro fidele, aut ipso denique praeposito regio, in celebri plebis concursu, et hominum oculis quisque mercator.*

*Interdicimus etiam ut nullae pecudes emantur nisi infra civitates, et hoc ante tres fideles testes nec alia necessaria sine fideiussore et warranto, &c. Item, nullum mercatum vel feria sit, nec fieri permittatur, nisi in civitatibus regni nostri, et in burgis, &c.*

*Commissio facta fuit Roberto Hadham ad vendend' blada et alia bona diversarum abbathiarum alienigenarum, qui venit et cognovit, quod vendidit blada prioris de Tickford in garbis in duabus \* tassis existent' pro 10 li. quae venditio facta fuit contra legem et consuetudinem regni Angliae, vendend' in garbis, priusquam tritural' fuerunt, quod fieri debuisset per mensuram post eorum triturationem: ideo committitur prisonae, et adjudicatur, quod ab omni officio domini regis amoveatur, et quod finem faciat cum domino rege.*

Observe well this judgement, that it is against the common law of England to sell corne in sheaves before it is threshed and measured, and the reason thereof seemeth to be, for that by such sale the market in effect is forestalled.



C A P. XC.

AGAINST ROBERDSMEN.

**I**T is an English proverb; That many men talk of Robin Hood, that never ſhot in his bow: and becauſe the ſtatutes and records hereafter mentioned cannot well be underſtood, unleſſe it be known what this Robin Hood was that hath raiſed a name to theſe kinde of men called Roberdſmen, his followers, we will deſcribe him.

This Robert Hood lived in the reigne of king R. 1. in the borders of England and Scotland, in woods and deſerts, by robbery, burning of houſes, felony, waſte and ſpoile, and principally by and with vagabonds, idle wanderers, night-walkers, and draw-latches: ſo as this notable thiefe gave not only a name to theſe kinde of men, but there is a bay, called Robin Hoods Bay, in the river of in Yorkſhire. And albeit he lived in Yorkſhire, yet men of his quality took their denomination of him, and were called Roberdſmen throughout all England.

Againſt theſe men was the ſtatute of Wincheſter made in 13 E. 1. for preventing of robbery, murders, burning of houſes, &c. Alſo the ſtatute of 5 E. 3. which reciting the ſtatute of Wincheſter, and that there had been divers manſlaughters, felonies, and robberies done in times paſt, by people that he called roberdſmen, waſters, and drawlatches, and remedy provided by that act for the arreſting of them.

At the parliament holden 50 E. 3. it was petitioned to the king that ribaids and ſturdy beggers might be baniſhed out of every towne. The answer of the king in parliament was touching ribaids: the ſtatute of Wincheſter and the declaration of the ſame with other \* ſtatutes of roberdſmen, and for ſuch as make themſelves gentlemen, and men of armes, and archers, if they cannot ſo prove their ſelves, let them be driven to their occupation or ſervice, or to the place from whence they came.

It is provided by the ſtatute of 7 R. 2. that the ſtatutes made in the time of king Edward, grandfather of the king, of roberdſmen, and drawlatches, be firmly holden and kept, and further proviſion againſt vagabonds wandring from place to place. See a law made in the ſixth parliament of queen Mary, *anno Dom.* 1555 in Scotland againſt Robert Hood, Little John, &c.

He was, ſaith  
Maſter Scores,  
prædono prin-  
cipe et prædo  
mitiffimus.

13 E. 1. Statut.  
de Wincheſt. ca.  
1. 4. 5 H. 7.  
fo. 5. 5 E. 3.  
cap. 14.

Rot. parl. 50 E.  
3. nu. 61.

\* 5 E. 3. cap. 14.  
2 H. 5. cap. 9.  
3 H. 6. cap. 14.  
Vid. 39 Eliz.  
ca. 4.  
7 R. 2. cap. 5.  
Vid. 39 Eliz.  
ca. 4.

C A P. XCI.  
OF BANKRUPTS,

V I D E in the fourth part of the Institutes, cap. The Court of  
the Commissioners of Bankrupts.

C A P. XCII.  
OF RECUSANTS.

1. Eliz. cap. 2.  
23 Eliz. cap. 1.  
28 Eliz. cap. 6.  
35 Eliz. cap. 1, 2.  
3 Jac. cap. 4.  
7 Jac. cap. 6.  
Lib. 10. 54. the  
chancelour of  
Oxford's case.  
Lib. 11. 56, 57,  
&c. Dr. Fosters  
case.  
Lib. 5. fo. 1.  
Caudries case.  
Dier 3 Eliz. fo.  
203.

F I R S T, the acts of parliament that are made against them are  
1 Eliz. cap. 2. 23 Eliz. cap. 1. 28 Eliz. cap. 6. 35 Eliz.  
cap. 1, & 2. 3 Jac. cap. 4. 7 Jac. ca. 6. These acts of  
parliament are interpreted and expounded by divers judgements and  
resolutions heretofore given. Lib. 10. fo. 54. &c. Le case de  
Chancelour, &c. de Oxford, an exposition of the statute of 3 Jac.  
ca. 4. et lib. 11. fo. 56, 57, &c. Doctor Fosters case, an exposi-  
tion of all the said statutes. See lib. 5. fo. 1. &c. Caudries case.  
See Dier, 3 Eliz. fo. 203. an exposition of the said act of 1 El, con-  
cerning hearing of masse.

C A P. XCIII.

Of Newes, Rumours, &c.

Tacitus.

Int. leg. Alve-  
redi, cap. 28.

S E E the second part of the Institutes, W. 1. cap. 34. Newes.  
See also in the fourth part of the Institutes, cap. Chancery, in  
the articles against cardinall Woolsey, artic. 32. *Convicia, si  
irascaris, tua divulgas, secreta exolescunt*; if you seek to revenge slanders,  
you publish them as your own: if you despise them, they vanish.  
The law before the conquest was, that the author and spreader  
of false rumours amongst the people had his tongue cut out, if he  
redeemed it not by the estimation of his head.

## C A P. XCIV.

## Of Weights and Measures.

SEE the second part of the Institutes, W. 1. cap. 4. and the exposition upon the same.

## C A P. XCV.

[ 199 ]

## OF APPARELL.

DIVERSE acts of parliament have been made against the excess of apparell in the reign of E. 3. as 11 E. 3. cap. 2. & 4. 37 E. 3. ca. 8, 9, 10, 11, 12, 13, 14. 38 E. 3. 3. cap. 2. In the reign of E. 4. 3 E. 4. cap. 5. 22 E. 4. cap. 1. In the reign of H. 8. 1 H. 8. cap. 14. 6 H. 8. ca. 1. 7 H. 8. cap. 7. 24 H. 8. cap. 13. 33 H. 8. cap. 5. 37 H. 8. ca. 7. 1 & 2 Ph. and Mar. ca. 2. 4 & 5 Ph. and Mar. c. 2. 5 El. ca. 6. 8 El. ca. 11. 13 El. ca. 19. Some of them fighting with, and cuffing one another, some of them expired. But forasmuch as those that stood in force were obsolete, and remained but as snares to catch or vex men at the pleasure of the promooter; at the parliament holden anno 1 Ja. all acts of parliament before that time made concerning apparell are repealed and abrogated, and since that time no act hath been made concerning apparell. and so standeth the law at this day. Three costly things there are that doe much impoverish the subjects of England, viz. costly apparell, costly diet, and costly building. The best mean to repress costly apparell, and the excess thereof, is by example: for if it would please great men to shew good example, and to weare apparell of the cloth and other commodities wrought within the realm, it would best cure this vain, and continuing ill, which is a branch of prodigality, and herewith few wisemen are taken. If you will looke into the parliament roll of 2 H. 6. you shall see what plain and frugall apparell that renowned king H. 5. after he was king did wear, his gown of lesse value then 40 s.

1 Jac. R. ca. 25.

Excesse of apparell is best cured, exemplo et vituperio.

Rot. pari. 2. H. 6 nu. 30.

*Magna corporis cura, magna animi incuria.*

*Non induitur mulier veste virili, nec vir induitur veste feminea: abominabilis apud Deum, qui facit hoc.*

Deut. 22. 5.

## C A P. XCVI.

## OF DIET.

\* Rot. clauf.  
 9 E. 2. m. 26 in  
 doct. intitled  
*Ordinatio fuper  
 menfuratione fer-  
 culorum.*  
 2 E. 6. cap. 19.  
 5 E. 6. ca. 3.  
 5 El. ca. 5.  
 27 El. ca. 11.  
 35 El. ca. 17.  
 \* Lent 2. Saxon  
*Quinrefima.*  
*Quadragefima.*  
 \* Hereof fee the  
 4. part of the In-  
 ftitutes, cap.  
 The Court of  
 Audience, &c.  
 and Faculties.  
 \* Vide Britton  
 cap. 53. and  
 other books  
 make mention  
 of thefe.

<sup>d</sup> Luc. c. 21. v.  
 34. Rom. ca. 13.  
 v. 13. Ecclefia-  
 fticus, ca. 37. v.  
 36. 37.  
<sup>e</sup> Ecclefiafticus  
 31. 20.

<sup>f</sup> Cicero.

Horace, 2. Ser. 2.

**T**H E R E was \* an ordinance made by king E. 2. by advice of his counsell against the exceffe of diet, but becaufe it had not the ftrength of an act of parliament, it wrought no effect.

<sup>b</sup> It is provided by ftatutes made in the reigns of E. 6. and queen Elizabeth, that no flefh fhall be eaten on fifh-days, viz. Friday, Saturday, embring days and vigils; and the time of \* Lent; <sup>c</sup> and for licences to eat flefh on fifh-days, &c. See the preambule of the ftatute of 2 E. 6. ca. 19.

Embring days, fo called becaufe in former times when they fafted they put afhes or embers on their heads. Job 2. 12. Jer. 6. 26. 2 Sam. 13. 19. And as the naturall conversion of the flefh of the body is to duft, fo the fins of the foul (unrepented) are turned to fire, and this was shadowed under embers that ever keep fire.

\* Thefe embring days are the week next before Quadragefima, fo called, for that it is the fortieth day before Eaſter, and is the firſt Sunday in Lent. So Quinquagefima the Sunday fifty days before Eaſter, Sexagefima fixty days before Eaſter, and Septuagefima feventy days before Eaſter.

Before theſe late acts the eating of flefh on Fridays was puniſhable in the eccleſiaſtical court, as yet it is, the jurifdiction being ſaved by the ſaid acts.

But there is no act of parliament againſt exceſſe of diet, for it is known to be ſo hurtfull for mans body, and ſo obſcureth the faculties of the mind, as the underſtanding, memory, &c. as to men, ſpecially to Chriſtian men, there needeth no law at all to be made, ever being mindfull of that caveat, <sup>d</sup> *Attende autem vobis, ne forte graventur corda veſtra in crapula, et ebrietate, &c.*

<sup>e</sup> *Vigilia, et cholera, et tortura viro infrunito; ſomnus ſanitatſ homini parvo, dormiet uſque in mane, et anima illius cum ipſo delectabitur.* The morall heathen men by the light of nature agree hereunto. <sup>f</sup> *Tantum cibi et potus adhibendum eſt, ut reficiantur vires, non opprimantur.*

*Accipe tu, victus tenuis quæ, quantaque ſecum  
 Afferat, imprimis valeas bene: nam variæ res  
 Ut noceant homini, credas, memor illius eſcæ,  
 Quæ ſimplex olim tibi ſederit: at ſinuſ aſſis  
 Miſcueris elixa: ſimul conchyliæ turdis:  
 Dulcia ſe in bilem vertent, ſtomachoque tumultum  
 Lenta feret pituita: vides, ut pallidus omnis  
 Cæna deſurgat dubia?*

*Ex plenitudine generantur morbi, qui ſuperant medicorum artem.*

King

King Edgar permitting many of the Danes to inhabite here (\* who first brought into this realm excessive drinking) was in the end constrained to make a law against this excesse (which never cometh alone) driving certain nails into the sides of their cups, as limits, and bounds, which no man upon great pain should be so hardy as to transgresse.

William of Malmesbury, comparing Englishmen and Normans together, saith, that in his time, the English manner was to sit bibbing whole houres after dinner, <sup>b</sup> and that the Norman fashion was to walk the streets with great troops, with idle and loose serving-men following them, both which were causes of many disorders and outrages.

<sup>a</sup> If the excesse of drinking extend to the loathsome and odious vice of drunkennesse, it is punishable by act of parliament. And to say the truth the ancient Britains were free from this crime.

*Ecco Britannorum mos est laudabilis iste,  
Ut bibat arbitrio pocula quisque suo.*

And the laws against drunkennesse are very new.

Nothing is here said against that great peacemaker, and branch of liberality, orderly hospitality, but against the dainty and disorderly excesse of meats and drinks, which is a species of prodigality: for it is provided by act of parliament that the grace of hospitality shall not be withdrawn from the needy.

See the statute of 37 E. 3. ca. 8. against excessive apparell and diet: but it was repealed in the next parliament, 38 E. 3. ca. 2.

<sup>a</sup> From whence excesse of drinking in England came.

<sup>b</sup> From whence troops of idle serving men came into England.

<sup>14</sup> Jacobi, c. 5. See 1 Ja. ca. 9.

7 Ja. ca. 10.

21 Ja. c. 7. an excellent law.

*Una salus sanie nullam potare salutem.*

[ 201 ]

W. 1. 3 E. 1. ca. 1.

## C A P. XCVII.

### OF BUILDINGS.

**W**E have not read of any act of parliament now in force made against the excesse of building, or touching the order or manner of building: but it is a wasting evill, whereunto some wise men are subject.

But the common law doth prohibit any subject to build any castle, or house of strength imbatteled, &c. without the kings licence, for the danger that might ensue. <sup>a</sup> Also the common law prohibiteth the building of any edifice to a common nuisance, or to the nuisance of any man in his house, as the stopping up of his light, or to any other prejudice or annoyance of him. *Ædificare in tuo proprio solo non licet, quod alteri noceat.*

<sup>b</sup> In Deuteronomy it is said, *Cum ædificaveris domum novam, facies tibi murum testi per circuitum, ne effundatur sanguis in domo tua, et sis reus, labente alio, et in præceptis vultu.*

<sup>c</sup> I like well the counsell to a nobleman, whosoever gave it. *Si vis (ait ille) ædificare domum, inducat te necessitas, non voluptas; cupiditas ædificandi ædificando non tollitur; nimia et inordinata cupiditas ædificandi expectat ædificii venditionem; turris completa, et arca evacuata faciunt tarde hominem sapientem.*

*Ædificare*

See the 1 part of the Institutes, sect. 1. fo. 5. 2. Vet. Mag. Cart.

1. part, fo. 162. cap. Eichaetry, &c. 14 H. 6. nu. 7. licence to the D. of Gloc. to imbatell Greenwich.

<sup>a</sup> Li. 9. f. 54 & 58. Lib. 5. fo. 101. &c.

<sup>b</sup> Deut. 22. 8.

<sup>c</sup> Battlements.

This was for safety only.

<sup>d</sup> Bernhard. consilium.

Euripides trans-  
lated by Sir  
Th. Moor.

*Ædificare domos multas, et pascere multos,  
Est ad pauperiem semita laxa nimis.*

To build many houses, and many to feed,  
To poverty that way doth readily lead.

Of these three it hath been truly said: *Vestium, conviviorum,  
et ædificiorum luxuria ægre civitatis sunt indicia, et species prodigali-  
tatis.*

Vide the like in  
the Regist. 36.  
b. Prohib. de de-  
cimis seperatis.  
In Epist. decret.  
Ivanocent. 3. l.  
10. pag. 228.

Tr. 20 E. 1.  
Rot. 13 in banco  
Rich. de Turnys  
case. Eborum.

[ 202 ]

\* Lib. 10. fo. 27.  
Le case de Sut-  
tons hospitall.  
See the Statute  
of 39 El. cap. 4.  
whereby autho-  
rity is given to  
justices of peace  
to build and e-  
rect houses of  
correction, &c.  
a 39 El. ca. 5.  
3 Car. ca. 1.  
b Tumba, tumu-  
lus, sepulchrum.

c 9 E. 4. 14. the  
La Wiche case,  
wife of Sir Hugh  
Wiche.  
Mich. 10. Ja. in  
communi banco  
int' Corven &  
Pym.

But by the common law, and generall custome of the realm, it was lawfull for bishops, earls, and barons to build churches, or chappels within their fees: and hereof king John informed pope Innocentius the Third (naming only, *honoris causa*, the bishops and baronage of England, albeit this liberty extended to all) with request that this liberty to the baronage might be confirmed. To these letters the pope made this answer, *Quod enim de consuetudine regni Anglorum procedere regia serenitas per suas literas intimavit, ut liceat tam episcopis, quam comitibus, et baronibus ecclesias in feudo suo fundare, laicis quidem principibus id licere nullatenus denegamus, dummodo diocesani episcopi eis suffragetur assensus, et per novam structuram veterum ecclesiarum iustitia non lædatur.* Whereas the baronage had absolute liberty before, now the pope addeth the consent of the bishop: but that addition bound not, seeing it was against the liberty of the baronage warranted by the common law: and we would not have rehearsed this epistle, but that it is a proof what the generall custome of the realm was concerning the building of churches by the baronage of England. And albeit they might build churches without the kings licence, yet could they not erect a spirituall politique body to continue in succession, and capable of indowment without the kings licence: but by the common law before the statutes of mortmain, they might have indowed this spirituall body once incorporated; *perpetuis futuris temporibus*, without any licence from the king, or any other.

And as the law is in cases of devotion and religion, so it is in cases of charity: any man may erect and build a house for an \* hospitall, school, workinghouse, or house of correction, or the like, without any licence, for that is but a preparation, and may be done as owner of the soyl; but by the common law could not incorporate any of them without licence, but now he may, and indow them with lands in certain cases, a by the statutes of 39 Eliz. cap. 5. and 3 Car. ca. 1. as in the second part of the Institutes in the exposition of those statutes it appeareth.

Concerning the building or erecting of b tombs, sepulchers or monuments for the deceased in church, chancell, common chappell, or churchyard in convenient manner, it is lawfull, for it is the last work of charity that can be done for the deceased, who whiles he lived was a lively temple of the Holy Ghost, with a reverend regard, and Christian hope of a joyfull resurrection. And the defacing of them is punishable by the common law, as it appeareth in c the book of 9 E. 4. 14. a. And so was it agreed by the whole court, Mich. 10 Jac. in the common place, between Corven and Pym. And for the defacing thereof, they that build or erect the same shall have the action during their lives, (as the lady Wiche had in the case of 9 E. 4.) and after their deceases, the heir of the deceased shall have the action. But the building, or erecting of

of the sepulcher, tomb, or other monument ought not to be to the hinderance of the celebration of divine service. And in that case of Corven it was resolved, that albeit the freehold of the church be in the parson, yet if a lord of a mannor, or any other, that hath an house within the town or parish, and that he, and all those whose estate he hath in the mansion house of the mannor, or other house, hath had a seat in an isle of the church, for him and his family only, and have repaired it at his proper charges, it shall be intended that some of his auncestors, or of the parties whose estate he hath, did build and erect that isle for him and his family only; and therefore if the ordinary endeavour to remove him, or place any other there, he may have a prohibition. <sup>d</sup> It was further resolved, that if any man hath a house in a town or parish, and that he and those whose estate he hath in the house, hath had time out of mind a certain pew, or seat in the church maintained by him and them, the ordinary cannot remove him, (for prescription maketh certainty, the mother of quietnesse) and if he doe, a prohibition lyeth against him. <sup>e</sup> But where there is no prescription, there the ordinary that hath the cure, and charge of souls may for avoiding of contention in the church or chappell, and the more quiet, and better service of God, and placing of men according to their qualities and degrees, take order for the placing of the parishioners in the church or chappell publique, which is dedicate and consecrate to the service of God.

Nota, funerall expences according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever, for that is *opus pium*, or *charitativum*.

Amongst the people of Almighty God, as it appeareth in the holy history, sepulture was ever had in great reverence, not only of kings; but of other men; as (amongst many others) good old Barzillai, when he had excused himself for not going with the king to Jerusalem, he concluded, *Obsecro ut revertar servus tuus, et moriar in civitate mea, et sepeliar juxta sepulchrum patris mei, et matris mee, &c.*

And also the morall heathens had building and erecting of sepulchers, or monuments in great account, as it doth appear by the seven wonders of the world, which for memory may be expressed in these few verses.

1. *Pyramides Memphis,* 2. *Babylonis mœnia celsæ,*  
3. *Templum ingens Ephesi virgo Diana tuum,*  
4. *Mausoli Cariae monumentum,* 5. *Raraque Pharo*  
*Turris,* 6. *Olympiaci splendida imago Jovis,*  
7. *Denique apud Rhodios splendentis statua Phœbi:*  
*Hæc septem mundus mira, viator, habet.*

Besides the religious, and Christian regard abovesaid, these monuments do serve for four good uses and ends. First, for evidence, and proof of descents, and pedegrees. Secondly, what time he that is there buried deceased. Thirdly, for example, to follow the good, or to eschew the evill. Fourthly, to put the living in mind of their end, for all the sons of Adam must die. *Statutum est hominibus semel mori.*

*Monumentum*

Barth. Castaneus  
fo. 13. Conclus.  
29. Actio datur,  
uis arma in  
aliquo loco po-  
sita delevit, seu  
abrasit, &c.

d 8 H. 7. 12. 2.  
per Hussy accord.  
Pasch. 10 Jac.  
in curia Cam.  
Stellatus, inter  
Hussy plaintiff.  
& Kath. Layton,  
& al' Defendants  
issent resolve per  
le court.  
e 8 H. 7. 12. 2.  
acc. 12 H. 7.  
12. per Hussy.

12/15/15  
Hussy

2 Sam. 19. 37.

[ 203 ]

*Monumentum servat alicujus rei memoriam aliter interituram, eamque nobis repræsentat: and therefore a monument is called a memoriall.*

*Monumentum dicitur à monendo; quicquid enim nos monet est munimentum, ut sepulchrum, quod nos sumus mortales.*

*Cum tumulum cernis, tum tu mortalia spernis:  
Esto memor mortis, sisque ad cœlestia fortis.*

It is to be observed, that in every sepulcher, that hath a monument, two things are to be considered, viz. the monument, and the sepulture or buriall of the dead, \* The buriall of the cadaver (that is *caro data vermibus*) is nullius in bonis, and belongs to ecclesiasticall cognisance, but as to the monument, action is given (as hath been said) at the common law for defacing thereof.

\* Britton, fo.  
24. b.

Stow in his Survey of London, fo. 19.  
\* For so is the truth.  
Ro. Hovenden anno Dom. 1177.  
Holl. eodem an. fo. 101. b. 20.

In the year of our Lord 1586, and in the 28 year of the reign of that glorious queen Elizabeth, was the old gate called Ludgate in the city of London (as Stow saith) taken down to be new builded: there was found couched within the old wall thereof a stone, wherein was graven in the Hebrew tongue and characters, \* an epitaph, signifying in English: This is the tomb of Rabbi Moses son of the illustrious Rabbi Isaac: which certainly was before the 23 year of the reign of H. 2. anno Domini 1177, for before that time all the Jews in England were buried within the city of London, and in that year, saith Hovenden, *Dominus rex pater dedit licentiam Judæis terræ suæ habendi cœmeterium in qualibet civitate Angliæ, extra muros civitatum, ubi possunt rationabiliter, et in competenti loco emere, ad sepeliend' mortuos suos: prius enim omnes Judæi mortui Londoniâ ferebantur sepeliendi.*

2 H. 6. 32. 37.

And albeit churches or chappels may be built by any of the kings subjects, (as hath been said) without licence, yet before the law take knowledge of them to be churches or chappels, the bishop is to consecrate or dedicate the same: and this is the reason, that a church or not a church, a chappel, or not a chappel, shall be tryed, and certified by the bishop.

See for this dedication or consecration the 43 chapter of Ezechiel, the 23 chapter of Genesis, the 90 Psalm, the 24, 26, 27, 34, and 134 Psalms, the 2 of Samuel 6. 10 of Saint John, vers. 22. to the end.

*Vide inter leges Edwardi Confessoris, cap. 3. Similiter ad dedicationes, ad synodos, et ad capitula venientibus, &c. in eundo, et redeundo sit summa pax.*

De subterraneis, substructionibus, et cryptis.

We find in ancient times that vaults, hollow places, or substructions under the ground were made by men for receipts, or receptacles for keeping of their wives, children, money, and goods secret, to avoide violence, and rapine in time of hostility or rebellion, and we find no law against them.

Tacitus.

These kind of buildings we find from the Germans, as we find it in Tacitus, who treating of the old Germans saith, *Solent et subterraneos specus arrire, et si quando hostis advenit, aperta populatur, abdita autem et defossa aut ignorantur, aut eo ipso fallunt, quod quaerenda sunt.* They use to build vaults under the earth, and if the enemy come, he destroyeth all open and above ground, but such things as lie hidden in the cave, either they lie unknown, or at least they deceive him, in that he is enforced to find them out.

Neither



Neither have we found any licence of the king to make them, nor punishment of any that made them without licence, and yet many have been made by many subjects, some whereof \* we have seen.

<sup>a</sup> We read of Alexander bishop of Lincoln, in the reigns of H. 1. and king Stephen, a Norman born, who was, *infamis substructionibus ad infamiam delectatus*.

<sup>b</sup> No person can build or erect light-houses, pharos, sea-marks or beacons without lawfull warrant and authority.

*Lumina noctivagæ tollit pharus æmula lunæ.*

In light-house top is rear'd the light,  
As high as the moon that walkes by night.

<sup>c</sup> Provision was made by authority of parliament for building and erecting blockhouses, bulwarks, piles, and the like, for without parliament subjects cannot be charged with building<sup>d</sup> or erecting of them, and that act is expired.

<sup>e</sup> The lord of the soil may build a windmill, sheepcote, dairy enlarging of a court necessary, or a curtilage in grounds, where men have common of pasture.

<sup>f</sup> A man cannot erect any building upon his own ground in the kings forest, but it is a purpresture, and may either be demolished or arremented to the kings use, &c. at a justice seat.

Concerning houses of husbandry and tillage, the statutes of 4 H. 7. cap. 19. 7 H. 8. ca. 1. 27 H. 8. ca. 22. 5 E. 6. ca. 5. 5 El. cap. 2. are repealed by the statute of 21 Jac. cap. 28. and the statutes of 39 El. ca. 1. & 2. are expired, for that they were so like labyrinthes, with such intricate windings and turnings, as little or no fruit proceeded of them.

<sup>g</sup> No man can erect an house or building to the nuisance of any other.

<sup>h</sup> See where a man hath any house or mill, &c. and having any privilege or thing appurtenant thereunto, and pull it down and build a new, where the privilege or appurtenant remain and where not.

<sup>i</sup> Concerning the erecting, &c. of cotages, see the statute of 31 El. ca. 7. which could not be restrained in such sort as they are, but by authority of parliament.

There was a statute made anno 35 El. (when I was speaker) against buildings in the cities of London or Westminster, or within three miles of the gates of the city of London, and against the dividing and converting of any dwelling house or building into divers habitations, and against inmates, but that endured but for seven years, and until the end of the next session of parliament, which act, being holden dangerous, was not continued at the session of parliament holden in 43 Eliz. being the next session after the seven years, and therefore expired with the same. In the mean time there was a law made against new buildings, &c. which then was a warrant, and since hath been a colour for divers proceedings in courts of justice, not observing the expiration of that law; but now that law hath long since lost his force, and the ancient and fundamentall common law is to be followed.

*Sylliva*, or *fulliva* is a word derived from the Saxon *fulla*, and signifieth a poste, or plate fixed in the ground: the Saxon word

\* In the manner of Minster Lovel in com' Oxon' &c.

<sup>a</sup> Camden Line. pag. 4. 6.

<sup>b</sup> See the statute of 8 El. ca. 13. and the letters patents of the Lord Admirall.

<sup>c</sup> 4 H. 8. ca. 1.

<sup>d</sup> De propugnaculis, munitis, munitoris, &c. of bulwarks, bar-bicans, block-houses, piles, &c.

<sup>e</sup> 13 E. 1. ca. 46. 32 Ass. 5.

<sup>f</sup> 7 H. 4. 39.

<sup>g</sup> 7 El. Dier 240.

<sup>h</sup> See the 2. part of the Institutes. W. 2. ca. 24. lib. 5. fo. 101. lib. 8. fo. 46. lib. 9. fo. 54. 5<sup>o</sup>.

<sup>i</sup> See lib. 4. f. 84. Lutterels case, and the authorities there cited.

<sup>j</sup> 31 Eliz. ca. 7.

Lamb. perambulation of Kent. These words, you shall read in records concerning privileges.

word is not yet out of use, for every man knows what a ground-fille is.

*Pera*, a peer, derived from the Latin word *petra*: *plance*, of the English word, planks, for boords or tables, in use also at this day.

Having spoken of erecting of houses and buildings, &c. we will tell you what we find in our books and records of dilapidation, and decay of buildings.

\* Dilapidation of ecclesiastical palaces, houses, and buildings is a good cause of deprivation.

† It appeareth by the statute of 4 H. 4. cap. 2. that *depopulatores agrorum* were great offenders by the ancient law, and that the appeal or indictment thereof ought not to be generall, but in special manner; and provides, that the offenders therein might have their clergy. They are called *depopulatores agrorum*, for that by prostrating or decaying of the houses of habitation of the kings people, they depopulate, that is, dispeople the towns.

*Prohibitio regis quod incolae de villa de Southampton non prosterment domos suas in alias migraturi regiones.*

*Simile pro magna Fermenutha.*

That which may lawfully be prohibited before it be done, may be justly punished after it be done.

And herewith we will close up this chapter: that the law doth favour the supportation of houses of habitation, and use for mankind.

\* 29 E. 3. 16.  
2 H. 4. f. 3.  
9 E. 4. 34.  
14 H. 4. ca. 2.  
lib. 11. fo. 29.  
Alex. Poultern  
case.

[ 205 ]  
Dorf. Claus.  
an. 43 E. 3.  
m. 23.  
Rot. Claus.  
anno 21 R. 2.  
m. 15.  
First part of the  
Institutes, f. 54.  
b. 56. b.

## C A P. XCVIII.

*De Lupanaribus et Fornicibus, &c.*

## Brothel-houses, Estuis, Bordelloes.

\* Numb. 25. 9.  
Deut. 23. 18.  
Ezek. 16. 24. 31.  
39. Joel 3. 3.  
2. Mach. 4. 12.  
Hospes meretricum  
Lena. Leno-  
cinium.

THE keeping of them is against the law of God, on which the common law of England in that case is grounded. \* *Non offeres mercedem prostibuli, nec precium canis in domo Dei tui, &c. Quia abominatio est utrumque apud dominum Deum tuum.*

And the keeper, he or she, of such houses is punishable by indictment at the common law by fine and imprisonment: for although adultery and fornication be punishable by the ecclesiastical law, yet the keeping of a house of bawdrie or stews, or brothel-house, being as it were a common nuisance, is punishable by the common law, and is the cause of many mischiefs, not only to the overthrow of the bodies, and wasting of their livelihoods, but to the indangering of their soules. For the mischiefs ensuing hereupon, see 11 H. 6. cap. 1. 1 H. 7. fo. 6. 12. 13 H. 7. 6. 27 H. 8. Rot. Parl. 14 R. 2. nu. 32.

King H. 8. suppressed all the stews or brothel-houses, which long had continued on the Bankside in Southwark, for that they were (as hath been said) prohibited by the law of God, and by the law of this land. And those infamous women were not buried in Christian

By proclamation  
under the  
great seal 30  
Martii. 37 H. 8.

Christian buriall when they were dead, nor permitted to receive the rites of the church whilst they lived.

The word *stews* or *stewer* is French, we having no English word for it.

Before the reigne of H. 7. there were eighteen of these infamous houses, and H. 7. for a time forbad them: but afterwards twelve only were permitted, and had signes painted on their wals; as a Boares Head, the Crofs Keyes, the Gun, the Castle, the Crane, the Cardinals Hat, the Bell, the Swan, &c.

Many wicked and common women had seated themselves in a lane called Water-lane, next to the house of the friers Carmelites in Fleet-street: this being an open and known wickednesse, king E. 3. to the end these friars might performe their vowes, one of which was, to live in perpetuall chastity, took order for removing of these women. The record saith, *Rex præcipit majori civitatis London quod amoveri faciat omnes mulieres meretrices in venella prope fratres Carmelitarum in Fleetstreet inhabitantes.*

Read 3 Regum cap. 14. verse 24. eodem lib. cap. 15. verse 12. & 4 Regum cap. 23. verse 7.

And by the common law it appertaineth to the marshall of the kings house to free, or protect the court from *femes puteus*, which is more particularly explained by Fleta, who saith, *Marſchalli interſſ dirigatam à meretricibus omnib' protegere et deliberare, et habet marſchallus ex consuetudine pro qualibet meretrice coi. infra metas hospitii inventa, 4<sup>o</sup> primo die; quæ si iterum in baliva sua inveniat, capiatur et coram ſeneſchallo inſubeatur ei hospitium regis, reginæ, et liberorum ſuorum, ne iterum ingreditur, et nomina earum imbreventur: quæ si iterum inventæ fuerint hospic' ſequitricæ, tunc aut remaneant in prifona in vinculis, aut ſponte prædic' hospicia abjurentur; quæ si autem tertio inventæ fuerint, confiderabitur quod amputetur eis treſſoria, et tondcantur; quæ quidem si quarto inveniantur, amputentur eis ſuperlabia, ne de cætero concupiſcantur ad libidinem.*

14 R. 2. It is enacted that no estews or brothel-houses should be kept in Southwark, but in the common places therefore appointed.

So odious and so dangerous was this infamous vice (the fairest end whereof is beggery) that men in making of leases of their houses, did adde an expresse condition, that the lessee, &c. should not suffer, harbour, or keep any *feme puteine* within the said houses, &c.

See the case of 1 H. 7. the custome of London for entring into an house, and arresting of an advowtr, and carrying her to prison. In ancient times adultery and fornication were punished by fine and imprisonment, and inquirable in turnes and leets by the name of Letherwite. We find in Domesday *De adulterio vero per totum Chent, habet rex hominem, (i. amerciamantum hominis) et archiepiscopus mulierem, (i. amerciamantum mulieris) &c.*

*Vidua, si alicui se non legitime commisceat. 20 s. emendabit, puella vero 10 s. pro consimili causa.*

*Adulterium faciens 8 s. & 4 d. emendabit homo, et fœmina tantundem. Rex habet hominem adulterum, archiepiscopus fœminam.*

But now these offences belong to the ecclesiasticall court.

*Legrewita, or logrewita, legergeld, or logergeld, of logre or logre for*

III. INST.

R

a bed,

Fabian Chron.  
Scowe.

In Dorf. Clauf.  
21 E. 3. part 1.  
m. 6.

Fratres beatæ  
Mariæ de Monte  
Carmeli, called  
White Fryers.

7 E. 3. fo. 23, 24.  
Fleta lib. 2.  
cap. 5. lib. 10.  
Le case de Mar-  
shalſea, fo. 77.

[ 206 ]

Rot. par. 14 R. 2.  
nu. 32.

35 H. 6. Barre  
162.

1 H. 7. fo. 6:  
&c.

Domesday.  
Chent. Dover.  
Ibid. Caſtre ci-  
vitas.  
Ibid. Sudſex  
Lewes.

Domesday.  
Huntſheſc.  
Braſſon.  
Fleta.

Raſtall term.  
leg. Stat. de ex-  
poſit. vocab.

a bed, and wite *amerciament*, by common speech *litherwite*, or *lairewite*, *lierwite*, *litherwite*.

*Childewite* is for the lord to take a fine for his bondwoman defiled and begotten with childe.

*Bawdry*, *lenocinium*, unde *ribawdry* et *ribaude*. i. *Impudicus vocabula*. See *parliam.* 50 E. 3. nu. 61. of *ribaude* and *robertsmen*.

[207]

C A P. XCIX.

### De Assentatione, Fucologia, Pseudologia, Flattery.

Int. leges Canuti, fo. 106. c. 7. Lam. Fatalis magnarum potestatum pestis, adulationis. Semper assentor id, quod is ad cuius voluntatem dicitur, esse magnum; ut in Terentio: magnas vero agere gratias mihi, &c. satis erat respondisse magnas, inquit.

WE find a law before the conquest against flatterers in these words, *Licceþar 7 Leogorþa neþeþar 7 neaparaþ goðeþ graman habban*, &c. which Dr. Lambard translateth thus, *Assentatores, mendaces, prædones, et rapaces offensorem Dei gravissimum incurrant*, &c.

The ancient manuscript translateth it thus, *Seduciores, mendaces, rapaces et raptores Dei gravamen habeant*. And both translations do in effect agree, for a flatterer is a seducer for some private end, by fained praise and humouring of another, whereby he hath an *oultre* guidance of himselfe, his state, and actions, *isti ducunt et seducunt*.

The occasion of making this law was, that king Canutus had been seduced by flatterers, who had shewed him his face and state in a false glasse, making too great a shew of his own parts, actions, and state, to the end to make him conceit himselfe to be better and greater then he was, and his adversaries lesse, then in truth they were. Nay, this king by wicked flatterers assumed to him divine power and honour: for coming from sea, he set his feet on the sea strand, as the sea was flowing, and commanded the sea not to rise to wet his lordly and majestick feet nor clothes: the sea keeping on his accustomed course, both wet his feet and thighs also: whereat being fore amazed repented his presumption (which he had undertaken by wicked flattery.)

And well is the flatterer marshalled in this law with lyers, thieves, and raveners; for the divine described flatterers to be those, *Qui colunt aliquem, et auferunt ab eo aliquid temporarii boni*. So as it is *peccatum viscatum*, it getteth away much and giveth smoke.

And the Holy Ghost hath styled flattery *oleum peccatoris*, that is, the oile of the sinner, *καὶ ἰξὼν*, that is, of him that exceedeth others in sinne, and doth affect greatnesse, that is the head, making it greater and more prosperous then it is, as you may reade in the prophet David: *Corripiet me iustus in misericordia, et increpabit me, oleum autem peccatoris non impinguet caput meum*. Whereby he being both a king and a prophet, preferreth the reproofe, nay the sharpe rebuke of the just and vertuous, before the smooth humouring of the

the flatterer (*per nomen*) of the sinner. This *oleum peccatoris* is *mel venenatum, et venenum mellitum*, and commonly affecteth greatnesse, and is called lordbane.

And againe, David speaking of the flatterer saith, his words are smooother then oile, and yet are they very swords. *Hæc dicit Dominus Deus, Væ qui consunt pulvillo sub omni cubito manus, et faciunt cervicalia sub capite universæ ætatis ad capiend' animas, &c.* Thus saith the Lord God, Woe to them that sow pillowes under all armes, and put kerchifes upon the heads of every age to hunt soules. They make the king glad with their wickednesse, and the princes with their lyes. *In malitiâ sua lætificaverunt regem, et in mendaciis suis principes.*

The flattering mouth worketh ruine. And more kings and kingdomes have been overthrowen by the means of flattery, then by publick hostility. And this is the cause that we have mentioned the said ancient law for their punishment, they be lawfully banished from princes courts, and subjects houses.

*Ut videat, cæco fit finia præda leoni:  
Rex cæcus cernit, cum scycophanta perit.*

What fearfull ends flattering favourites, corruptors of their soveraigne liege lords, abusing their favours in subversion of their lawes, have had, appeareth in our parliament rolls, records, and histories.

<sup>a</sup> King H. 3. had Hubert de Burgo chiefe justice and earle of Kent, and many others: but this was his safety, that upon just occasion without any great grief he could forgoe a favourite. See in the preface to the second part of the Institutes, his counsell to H. 3. to burne Magna Carta.

E. 2. had <sup>b</sup> Pierce de Gaveston, the <sup>c</sup> Spencers, &c. and the Spencers proceedings against *le grand charter* by name (amongst other things) tending to the subversion of law, &c.

R. 2. had <sup>d</sup> sir Robert Tresilian chiefe justice, &c. and Robert earle of Oxford and duke of Ireland, &c.

H. 6. had <sup>e</sup> William de la Pole duke of Suffolk, &c. who endeavoured to have brought in the civill lawes, which was the occasion that the chiefe justice Fortescue wrote in the commendation of the lawes of England, preferring them for the government of this land before the civill lawes. This duke with others plotted the death and destruction of Humfrey the good duke of Glouc. who ever stood in his way.

E. 4. had <sup>f</sup> William lord Hastings the kings chamberlaine, and captaine of Callice. All these came to fearfull and untimely ends.

R. 3. had <sup>g</sup> Sir John Catesby one of the justices of the common place, and Henry duke of Buck. &c. privy plotters and counsellors with R. 3. for the most execrable murder of his nephews E. 5. and Richard duke of York. What a miserable end the duke had, you know: and justice Catesby in his journey to London, in the kings high way had *subitanam et improvisam mortem*.

H. 7. had <sup>h</sup> Sir Richard Empson, Edmond Dudley, &c. Sir <sup>i</sup> H. 7. 10. <sup>j</sup> Coram rege an. 1 H. 8. In information vers. D. Peter & alios. absent against Edw. Dudley.

R 2

Richard

Psal. 55. 22.  
Ezech. 13. 18.

Ofce 7. 3.

Prov. 26. 28.  
Qu. Curtius.

[ 208 ]

Nota, enemies to lawes punished by the lawes.

<sup>a</sup> Rot. par. anno 17 H. 3. Nos integre et firmiter tenebimus judicium de Huberto de Burgo, per barones datum. Speed 18 H. 3. 520.

<sup>b</sup> Rot. par. 7 E. 2. Ne quis occasione per mortem Pet. de Gaveston. Hil. 318. a. & ibid. 321. a.

<sup>c</sup> Vet. Mag. Cart. 2 part 44. lib. 50. exilium Hugonis, & 54. Ne quis occasione prosecutionis in prosecutione d' Spencer patris & filii.

<sup>d</sup> Rot. par. 11 R. 2. nu. 8. &c.

<sup>e</sup> Rot. par. 28 H. 6. nu. 19. until 47.

<sup>f</sup> Hollensh. 713. a. 30.

<sup>g</sup> Hollensh. 722. 748. 767. a.

The like indictment

Richard Emypson was indicted, *Quod ipse consiliarius excellentissimi principis Henrici nuper regis Angliæ septimi Deum præ oculis non habens, sed ut filius diabolicus subtiliter imaginans honorem, dignitatem, et prosperitatem dicti nuper regis, ac posteritatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper regis adhibere, unde magnas fieri potuisset, ac totum regnum Angliæ secundum ejus voluntatem gubernare, falso, deceptivo, et proditorie legem Angliæ subvertens, diversos ligeos ipsius nuper regis, ex sua falsa covina, et subtili ingenio, contra communem legem regni Angliæ de diversis felonis, &c. indictari fecit, &c. per quod plures et diversi populi dicti nuper regis hiis gravaminibus, et indebitis exactionibus multipliciter torquebantur, in tantum quod populi dicti nuper regis versus ipsum nuper regem multipliciter murmurabant, et malignabant, in magnum periculum ipsius nuper regis regni sui Angliæ, ac subversionem legum et consuetudinum ejusdem regni, &c.* And the like indictment was against Dudley.

Tr. 23 H. 8.  
coram rege.  
Rot. 14.

H. 8. had Thomas Woolsey cardinall. *Ipse intendens finaliter antiquissimas Angliæ leges penitus subvertere, et enervare, universumque hoc regnum Angliæ et ejusdem regni populum legibus imperialibus, vulgo dictis, legibus civilibus, et earundem legum canonibus subjugare et subducere, &c.*

We will for some causes descend no lower. *Qui eorum vestigiis insistant, eorum exitus perhorrescant.*

But that right be done to him, who was a faithfull favorite and counsellor to this king, we have seen a manuscript that relateth, that Charles Brandon duke of Suffolk a wife and warlike person, was for many years before his decease the greatest favourite the king had, upon whom he chiefly relied in all his weightiest affairs. This noble duke deceased in August in the 37 year of the reign of king H. 8. After whose death the next time the king sat with his counsell, and missing the good duke, grievously lamented for him, and said, that when I was offended with any (as often I was) and acquainted him therewith, that he ever endeavoured to mitigate my displeasure, and never spake to me evill of any of them. And the king looking upon the lords of his counsell one after another, said, and I (my lord) cannot you say, perusing them all throughout. A royall commendation of this great Duke, and a great argument of his piety and honour, that no subject had ever the indignation or displeasure of his sovereign, by any private whispering of his.

[ 209 ]

Anno 5 R. 2.  
Th. Wals.  
p. 281.

Read the story,  
and see the most  
lamentable  
estate of those  
times. Note  
these three PPP.

We will conclude this chapter with one of our own histories. *Generaliter cunctorum habitatorum terræ peccatis inclusive ordines sumendo mendicantium ad cumulandum causas malorum, &c. isti possessionis invidentes, procerum crimina approbantes, commune vulgus in errore ferventes, et utrorumque peccata comedentes, pro possessionibus acquirendis, qui possessiones renunciaverant pro pecuniis congregandis: qui in paupertate perseverare juraverant, dicunt bonum malum, et malum bonum, seducentes principes adulationibus, plebem mendaciis, et utrosque secum in devium pertrahentes, &c.* Note what is said, that the full heap of the causes of Gods vengeance in those days, was made up by those flattering preaching friars. But parliaments, palaces of princes and pulpits should be free from adulation and flattery.

## C A P. C.

## Of false Imprisonment.

SEE the second part of the Institutes, the statute *de 1 E. 2. de frangentibus prisonam*, and the exposition upon the same.

See the Petition of Right 3 Car. regis, and Mag. Cart. ca. 29. And it is to be observed that before the conquest it was thus provided. *Qui hominem poganum innocentem vinculis constrinxerit, 10 solidis noxiam facit; cum si verberibus effecerit, 20 solidorum panna esto; si suspensum in sublimine rapuerit, 30 solidis culpa pensatur; si contumeliose capillum ejus morionis in morem totonderit, 10 solidi præstato; si caput in morem sacerdotis raserit, nec ipsum ligaverit, 30 solidos numerato; si barbam illi refecerit, 20 solidorum compensatio sequitur; si denique ei vinculis confrixerit capillos in morem sacerdotum abraferit, 60 solidos pendito.* Int. leges Alfre-  
redi cap. 31.

By way of addition, here it is necessary to be known, how and by what means one that is in prison may be discharged. Every man that is in prison, either is imprisoned without lawfull *mittimus* (whereof we have spoken before *ubi supra*, and how he may be freed from imprisonment in that case) or with lawfull *mittimus*. He, that is lawfully imprisoned, is either imprisoned by lawfull commandment, and order or warrant, or by the kings writ: by commandment and order of any court of record; and this commandment, warrant or writ is either for causes not being treason or felony, misprision of the same, nor other publique offence or cause, or inferiour causes to these; as contempts, private actions or suits. If any court of record commit a man for a contempt done in court, they may discharge him by like order at their pleasure: but if they having authority, doe commit him for treason, felony, or other crime, or for suspicion of the same, they cannot discharge him, untill he be inquired of, and either indicted and acquitted, or an *ignoramus* found, and delivered by proclamation. \* And so it is if any be taken and imprisoned by lawfull warrant, or the kings writ for treason, felony, or other crime, &c. he cannot be discharged by any without legall proceeding (but by the king only.)

<sup>b</sup> If a vagrant, refusing to serve, had been committed to prison upon the statute of 23 E. 3. of labourers by the lord of the town, or justice of peace, they might have discharged him, even as the chancellor, &c. may commit a man for a contempt before him in court, and discharge him again at his pleasure.

<sup>c</sup> If a man be taken by the kings writ in an action of debt or another private action, the plaintiff may discharge the gaoler of him, and set him at liberty, though he be in execution: but if he be taken in an appeal of death, robbery, rape, \* &c. the plaintiff cannot discharge him, because it is a publique offence, wherein the king hath an interest, and he may after nonsuit by the plaintiff be arraigned at the kings suit.

There are two great adversaries to the due execution of these laws

R 3

\* For bailment See the Statute of Mag. Cart. ca. 29. W. 2. ca. 15. and the exposition thereof.

1 & 2 Ph. and Mar. ca. 13.

2 & 3 Ph. and Ma. cap. 10.

<sup>b</sup> 14 H. 6. 8.

F. N. B. 167. b.

See 12 H. 5. 3.

<sup>c</sup> Mich. 13 Jac.

in *banke le Roy*

Int. Withers &

Herly, adjudge

accord.

27 H. 8. 28. b.

1 R. 2. ca. 12.

10 H. 7. 3. 2.

per Vavasor.

13 E. 3. Bar.

253.

\* [ 210 ]

Partesoue es. 53.  
10. 127. b.

(as before hath been touched) especially in criminall causes, viz. *precipitatio, et morosa cunctatio*. Precipitation; as a man or woman to be committed to prison, and within so short a time to be indicted and arraigned, as it is not possible for them to send for, or procure their witnesses; this certainly is precipitation; for the law both in reall and personall actions doth give the party tenant or defendant a convenient time without respect of persons to answer, &c. much more it ought to be in case of life, *Nec unquam in iudiciis tantum eminet periculum, quantum parit processus festinatus*; and again, *crebro in deliberationibus iudicia maturescunt. in accelerato processu nunquam*, and specially in case of life. As for *morosa cunctatio*, froward or weyward delay; see the second part of the Institutes, Glouc. ca. 2. 9. And we will conclude this chapter with the rule of law, *Quod in criminalibus, probationes debent esse luce clariores*.

## C A P. CI.

## Of Judgements and Execution.

**JUDICIUM** is derived *à jure, et dicto, et est quasi juris dictum* and therefore if the judgement be erroneous, both the judgement and execution thereupon, and all the former proceedings shall be reversed by writ of error; but if the former proceeding and judgement be good, if the execution be erroneous, the execution shall only be reversed: and because the judgement is the guide and direction of the execution, we shall treat principally of the judgement, and incidently of execution.

Of judgements, some be by the common law, and some by statute law, and some by custome.

Of judgements by the common law, some be in criminall causes, or pleas of the crown, concerning the life of man (whereof we are principally to intreat,) and of these some be expressed, and some implied. Other judgements at the common law be in actions reall and mixt, of which, some be *judicia interlocutoria*, and some *ultima seu principalia*; and again, *de principalibus, quædam sunt finalia, et quædam non sunt finalia*. Of judgements by statutes, some be in criminall causes, and some in common pleas: but judgements by custome are only in common pleas.

All pleas of the crown, concerning the life of man, are divided into treason and felony; and treason, into high treason, and petit treason; and felony into all the severall branches abovesaid. And as in the case of high treason, (as it hath before appeared) some be far more horrible and odious then other, yet (one case excepted, as before hath appeared) one and the same judgement is given for all. So in cases of petit treason, one judgement is given in all, nay in all the severall cases of felony, though some be far more hainous then other, yet all being but felony, one and the same judgement is given. See the judgement and forfeiture in cases of treason, felony, &c. in the severall titles thereof, these we will adde.

6 Pl. Dier 230.  
See before in the  
chapter of Treason.

*Judgement*



Judgement in High Treason.

*Et super hoc visis, et per curiam hic intellectis omnibus et singulis præmissis, \* consideratum est, quod prædictus R. usque furcas de T. 1 trahatur, et 2 ibidem suspendatur per collum, et vivus ad terram prosternatur, et 3 interiora sua extra ventrem & supra capiantur, 4 ipsoque vivente comburantur, et 5 caput suum amputetur, quodque 6 corpus suum in quatuor partes dividatur, ac 7 quod caput et quarteria illa penantur, ubi dominus rex ea assignare vult.*

li. 3. fo. 118. b. *Crimen læse majest. ut si contra personam ipsius regis sit præsumptum, quod quidem crimen omnia alia crimina excedit quoad poenam.* Idem. l. 3. f. 104. b. maketh mention of execution, laques et securi, parliam. 21 R. 2. inter placita coron. nu. 50.

Pl. Com. 387. b.  
See Stanford  
182. d. e. lib.  
1st. Co. 361.  
\* See the book  
of Judges cap. 19.  
ver. ult. Confi-  
der, consult, and  
give sentence.  
19 H. 6. 47.  
Trahe, pendre, et  
disclose. Bract.  
† [ 211 ]  
35 H. 8. Br.  
Forfeiture. 99.

Implied in this judgement is, first, the forfeiture of all his manors, lands, tenements, and hereditaments in fee-simple, or fee-tail of whomsoever they be holden. Secondly, his wife to lose her dower. Thirdly, he shall lose his children (for they become base and ignoble.) Fourthly, he shall lose his posterity, for his blood is stained and corrupted, and they cannot inherit to him or any other auncellor. Fifthly, all his goods and chattels, &c. And reason is, that his body, lands, goods, posterity, &c. shall be torn, pulled asunder, and destroyed, that intended to tear, and destroy the majesty of government. And all these severall punishments are found for treason in holy scripture.

1 Reg. 2. 28. &c. *Joah trahatur, &c.*

Esther, 2. 22, 23. *Biathan suspensus, &c.*

Acts, 1. 18. *Judas suspensus crepuit medius, et diffusa sunt viscera ejus.*

2 Sam. 18. 14, 15. *Infixit tres lanceas in corde Absolon cum adhuc palpitaret, &c.*

2 Sam. 20. 22. *Abseissum caput Sheba filii Bichri.*

2 Sam. 4. 11, 12. *Interfecerunt Baanan et Rechab, et suspenderunt manus et pedes eorum super piscinam in Hebron.*

Corruption of blood, and that the children of a traitor should not inherit, appeareth also by holy scripture.

Psal. 109. 9, 10, 11, 12, 13. *Mutantes transferantur filii ejus, et mendicent, et ejiciantur de habitationibus suis, et diripient alieni labores ejus, et dispareat de terra memoria ejus.*

\* The judgement of a woman for high treason is to be drawn and burnt.

\* Sir Andrew Harkley earl of Carlisle, convicted, degraded and attainted of treason.

Drawing.

Hanging.

Bowelling.

The heart, &c.  
while he lived.

Beheaded.

Quarters hang  
up.

Damnation me-  
morie.

\* 25 E. 3. 42.  
Coron. 130.  
Edw. co. 8. f.  
16. b. record.  
b Degradation.  
Hil. 18 R. 2.  
Coram rege re  
34, 35. Wal-  
ling. p. 118.

Judgement in Petit Treason, where he is convicted thereof by Verdict or Confession.

*Super hoc visis, &c. ut supra, consideratum est, quod prædictus R. usque furcas de T. trahatur, et ibidem suspendatur per collum, quousque mortuus fuerit.*

But a woman is to have judgement to be drawn and burnt, as well in case of petit treason as high treason, and ought not to be beheaded,

R 4

19 H. 6. 47.  
Com. Celar.  
ante Christum  
natum 1600  
nis, what th  
judgement w  
for petit trea  
1 R. 3. f. 4  
25 E. 3. 42.  
12 Aff. 30.

beheaded, or hanged. *De morte mariti si compertum est uxorem, &c. igne Britanni interficiunt.*

Bracton, li. 3. fo. 105. a. *Ignem concremantur qui salutem dominorum suorum infidiaverint*, idem fo. 104. b.

*Judgement in Felony, where he is convicted thereof by Verdict or Confession.*

6 E. 4. 4. a. & b.  
See the Preface  
to the sixth part  
of Reports, what  
the law was be-  
fore the conquest  
anno domino  
995. in case of  
felony.

\* Patch. 20 R. 2.  
coram rege,  
rot. 1. Lincoln.

See before cap.  
Murder.

[ 212 ]

*Et super hoc visis, &c. ut supra, consideratum est quod predictus R. suspendatur per collum, quousque mortuus fuerit.* Bracton, lib. 3 fo. 104. b. speaketh, *de laqueo.*

And it is a maxime in law, that execution must be according to the judgement, *Et quæ in curia nostra rite acta sunt, debent executioni demandari debent*: \* and for expresse authority, *non licet felonem pro feloniam decollare*; and yet some examples are to the contrary.

True it is that the lord of Hungerford of Heytesbury was in 32 H. 8. attainted of buggery, and had judgement to be hanged by the neck, untill he was dead; and yet on the twenty eight day of July in the same year was beheaded at the Tower Hill. But as true it is, that Thomas Fines lord Dacres of the South, in anno 33 H. 8. was attainted of murder, and had judgement to be hanged by the neck, untill he was dead, and according to the judgement was hanged at Tiborn the twenty eight of June in the same year. And true it is, that Edward duke of Somerset was attainted of felony in anno 5 E. 6. and had judgement to be hanged by the neck untill he was dead, and on the twenty second of February in the same year was beheaded at the Tower Hill. And as true it is, that 3 & 4 Ph. and Mar. the lord Stourton was attainted of murder, and had judgement to be hanged by the neck untill he were dead, and according to the judgement, the sixth of March in the same year was hanged.

In case of high treason, beheading is part of the judgement, and therefore the king may pardon all the rest saving beheading, as is usually done in case of nobility. But if a man being attainted of felony, be beheaded, it is no execution of the judgement, because the judgement is, that he be hanged, untill he be dead. In this case the judgement doth belong to the judge, and he cannot alter it, the execution belongs to the sheriff, &c. and he cannot alter it. And if the execution might be altered in this case, from hanging to beheading, by the same reason it might be altered to burning, stoning to death, &c. To conclude this point, *Judicandum est legibus, non exemplis, and judicium est juris dictum, et executio est executio juris secundum judicium.*

The forfeiture in case of petit treason and felony (which is implied in the judgement) is all one, which you may read in the first part of the Institutes, sect. 747.

*Quando peccaverit homo, quod morte plectendus est, et adjudicatus morti appensus fuerit in patibulo, non permanebit ejus cadaver in ligno, sed in eadem die sepelietur.* And the reason that divines yeeld hereof is, for that by the execution of the judgement by death, the law is satisfied, and abhorreth cruelty, and in that case, *mors dicitur ultimum supplicium.*

And herein this is observable, that in treason and felony, the judgement

Deut. 2. 13.  
vide Hil.  
H. 5. Reg.  
idons case.

ment is only of the fatall and corporall punishment, and nothing of the forfeiture, which is implied, but in common pleas the judgements are more particular.

*Judgement in Appeal, when the Defendant joyning Battail is vanquished in the Field, &c.*

If the defendant in appeal be vanquished in the field, the record reciteth the vanquishing in the field. *Ideo consideratum est, quod* *sus. per col.* and so it is when the defendant is vanquished and slain in the field, yet the judgement is *ut supra*. Otherwise there should be no escheat: see the second part of the Institutes, W. 1. ca. 14.

3 E. 3. Judgement, 225.

*Judgement in Treason or Felony, wherein neither any corporall Punishment or Forfeiture is expressed.*

In case of treason or felony, if any person be outlawed, the judgement upon the exigent at the first county court upon default of the party is, *Ideo, &c. per judicium coronatoris domini regis comitatus predicti, utlagatus est.* Which writ being duly returned of record by the sheriff, the party shall have the like corporall punishment, and shall lose and forfeit as much as if he had appeared, &c. and judgement had been given against him in case of treason or felony respectively. And note that in these words (*ideo, utlagatur*) both the corporall punishments and forfeiture also are implied: and if the proceeding therein, or the judgement be erroneous, and upon his appearance upon the *capias utlagatum*, if it appear to the court (whereof any man, as *amicus curie*, may inform the court) that the party may either avoid the outlawry against him by writ of error, or by plea, the court ought not to award execution against the party, but assign him or her counsell learned, and require him or her by their advice, either to bring a writ of error or plead: but if the party refuse to bring his writ of error or plead after convenient time be given, if the outlawry be erroneous and not void, the court may award execution. And so it was resolved, *termino Hil. anno 3 Jacobi regis*, by the whole court in the kings bench, and divers presidents thereof shewed in the reigns of H. 6. E. 4. and one in the reign of queen Eliz. which we saw; for as long as the attainder by outlawry standeth in force, the party outlawed cannot be drawn in question by any new indictment or appeal for the treason, or felony, for the which he was outlawed: for *auterfoitz attain* for the same offence is a good plea to free him from answer in that cause, albeit the record be erroneous. But if the attainder or outlawry be void against him, then may he be either arraigned upon the former indictment, or appeal, or newly indicted, &c. if there be cause. And therefore the judges are to take due consideration of the whole record of the attainder or outlawry, that they may be truly informed of the true state of the cause, before they award execution of death against him upon the outlawry. Read Bracton, lib. 3. tract. 2. cap. 14. and Britton, cap. 13. fo. 20, 21. excellently treating hereof, and Fleta, lib. 1. cap. 27.

Regist. 164. b. Fecit feloniam pro qua utlagatus fuit.

19 H. 6. 2. 2. Error Fi. 26. 28 E. 3. 91. 2. 6 H. 4. 6. 9 H. 7. 19. b.

Hil. 3. Ja. coram rege per curiam.

*Auterfoitz attain de mesme le offence.*

[ 213 ] Vide 6 E. 3. 55. in Aiel. 12 E. 2. Esch. 14. 19 E. 2. Cor. 387.

Bract. li. 3. f. 131. Britton, fo. 20, 21. Fleta li. 1. ca. 27.

And by the common law *auterfoitz attain*, &c. of the same felony was a good plea as well in an indictment as in appeal by the common

mon law. See the statute of 3 H. 7. cap. 1. concerning appeal of death: so as in an appeal of death, at the suit of the party, *auterfoitz attain de mesme le mort*, is no plea at this day, but in case of an indictment of death at the suit of the king, *auterfoitz attain de mesme le mort* in appeal is a good plea. *Auterfoitz attain de murder* is a good plea to an indictment, &c. of petit treason of the same death, for in effect it hath the same judgement, and the self same forfeiture. So likewise if a man be attainted of manslaughter, it is a good bar to an indictment of murder of the same death, *et de converso*.

*Auterfoitz attain d'un autre offence.*

28 E. 3. 90. b.

Dier 4 Eliz.

Stones case.

6 H. 4. 6.

30 H. 4. coron.

237. 6 E. 3.

cor. 394. 21 E. 3.

cor. 471. Stanf.

f. 107, 108.

See 44 E. 3. 44.

7 H. 4. 31.

4 E. 4. 11.

\* 1 H. 6. fo. 5.

Rot. Par. 3 R. 2.

nu. 18. Jo. Imperials case.

By the common law if a man were attainted of a felony done by him, and admitting he were after pardoned, he cannot at the suit of the king be impeached for any felony whatsoever before his said attainder by him committed, for by the attainder he was *mort in ley*; and in that case he had the judgement due for felony, viz. *sus. per col.* But the party may have his appeal of robbery, for a robbery done before the felony, whereof he was attainted, because in the appeal he is to have restitution of his goods, besides judgement of death. \* And if the party attainted of felony had committed high treason before his attainder, he shall answer to the treason notwithstanding his attainder of felony, because the king by the treason was intitled to have the forfeiture of all his lands, of whomsoever they were holden. Also for high treason there is another judgement being an offence of an higher nature: but being attainted of felony, if he commit treason afterwards, he shall answer thereunto, because it is of higher nature then the felony, but it shall not devest the right of escheat, which lawfully was by the felony vested in the lords, contrary to the opinion of justice Stanford in that case, for the act and offence of the party shall not devest the lawfull escheat of the lords: but if a man be attainted of treason, he cannot be after attainted of a former treason, *causa qua supra*.

Where a little before it is said, that a felon by his attainder is *mort in ley*, it is to be understood of such former offences as require *penam mortis*: for notwithstanding the attainder, his body remains subject to arrests and execution for debts, &c. *Vide hic paulo post*, Trussels and Prestals case *in margine*. Albeit for felony a man be adjudged to his penance, *pain fort et jure*, yet he may be impeached for any former felony, because, the judgement is not given for the felony, but for his contumacy.

If a man be attainted of petit larceny, he may be after attainted of a felony, for the which he shall have judgement of death, because it is an higher offence, and is to have an other judgement.

#### *Auterfoitz acquite, and the Judgement thereupon.*

See Stanf. 105. a.  
& b. &c.

But *auterfoitz acquite*, must be of the same felony, and albeit he be acquit of the latter felony, yet may he be arraigned of any former felony: and so it is in case of treason, *auterfoitz acquite* of treason must be of the same treason, for it acquiteth no other, because he ever remained a person able.

And albeit at this day in an appeal of death, *auterfoitz acquite*, upon an indictment of the same death is no bar, yet in an indictment

3 H. 7. ca. 1.  
15 E. 3. tit.  
Coron. 116.  
15 Aff. p. 7.

## Cap. 101. Of Judgements and Execution.

214

ment of death, *auterfoitz attain de mesme le mort* in an appeal is a good bar.

In an indictment or appeal of death, if it be found that he killed him in his \* own defence, he is acquitted of the felony for ever.

It appeareth in Vauxes case, that if a man be erroneously acquitted of felony by verdict and judgement thereupon given, yet if the indictment, &c. be insufficient, he may be indicted againe for the reasons and causes in that case reported, which you may reade there at large, and need not here be repeated: and thereunto this we will adde, that the reason, wherefore upon an erroneous judgement of condemnation, the party as hath been said) is driven to his writ of error; and in the case of an erroneous judgement of acquittall, that no writ of error needeth to be brought by the king, but the offender may be newly indicted, &c. is this, that in the case of condemnation the judgement is, *Quod suspendatur, &c.* which is the judgement of law due for the offence, and ought to be given therefore, and can have no other intendment: but in the case of acquittall the judgement is, *Quod eat sine die, &c.* which may be given as well for the insufficiency of the indictment, as for the parties innocency, or not guiltiness of the offence. And the judges of the cause ought before judgement to look into the whole record, and upon due consideration thereof to cause it to be entred, *Ideo consideratum est quod eat sine die*; which upon that report, and this addition implied therein, we hold may satisfie the studious reader.

Lib. 4. fo. 44. 45.

And so it was adjudged Mich. 33 & 34 Eliz. coram rege, in an appeale of death between Katherine Wrote and Tho. Wigges. Vid. 19 E. 3. Barre 444.

Vi. 3 H. 4. fo. 3. 11.

### *Auter foitz conviēt de mesme le Felony devant Judgement.*

For this division see Holcrofts case before in the chapter of Murder, and Lib. 4. fo. 45, 46. where the statute of 3 H. 7. cap. 1. is well expounded; and the second part of the Institutes artic. super Cart. cap. 3. & Lib. Intr. Co. fo. 53, 54, &c. and Lib. 4. fo. 40. Wetherels case. And Stanford, Lib. 2. cap. 37. in pl. coron.

\* Before the statutes of 8 Eliz. cap. 4. and 18 Eliz. ca. 6. If a man had committed divers felonies, if he had been indicted of the last, and had benefit of his clergy, he could not have been impeached for any of the former felonies, albeit for the same he could not have had his clergy: by that act it is provided, that notwithstanding the allowance of such clergy, he may be impeached for any former offence, for which he could not have had his clergy.

Lib. 4. fo. 45, 46. Holcrofts case. Second part of the Institutes, artic. super cart. cap. 3. Lib. Intr. Co. 53, 54, &c.

Lib. fo. 40. Wetherels case. Stanf. lib. 2. ca. 37.

\* *Auter foitz conviēt dun auter felony.* 25 E. 3. cap. 5. pro Clero.

### *Judgement to reverse an Outlawry for Treason or Felony.*

The judgement to reverse an outlawry of A. B. in case of treason or felony in a writ of error is: *Ideo consideratum est quod utlagaria prædicta ob errorem prædicti et alios in recordo et processu prædicti. conperit, revocetur, annulletur, et penitus pro nullo habeatur, et quod prædicti A. B. ad communem legem, et omnia quæ occasione utlagariæ prædicti. amisit, restituatur, &c. et quod ipse eat sine die.*

If the outlawrie be avoided by plea, then the judgement is, *Ideo conf-*

Vid. Paste. 39 E. 3. 101. 95. Scire fac. Dominis mediatis & immediatis

*consideratum est quod prædictus A. B. de utlagaria prædicta exoneretur, et quod ipse ad communem legem, et omnia, quæ occasione utlagariæ prædictæ amittit, restituatur, et ea occasione non molestetur in aliquo, nec gravetur, sed sit, et eat inde quietus.*

If A. B. be indicted of treason or felony in the kings bench, or if he be indicted before commissioners of oier and terminer, or any other, and the indictment of treason or felony is removed into the kings bench: and by proces out of the kings bench he is erroneously outlawed and so returned, a writ of error may be brought in the kings bench for reversal thereof.

Stanf. pl. cor. 18. k. 1.

33 H. 8. cap. 20.

† Nota, this act extends only to attainders of treasons before the act of 28 El. where the party hath been executed, and not to attainders of treasons afterwards.

† [ 215 ]

\* What interest the king hath in the body of the attainted before execution.

‡ 35 H. 6. 63.

§ See Britton, ca. 122. Fleta,

lib. 6. cap. 6. 7.

¶ Mich. 38 & 39

Eliz. in com-

muni banco int.

Banister and

Truffel attaind

de felony.

Vide Mich. 33

& 34 Eliz. co-

ram Rege rot.

532. int. Ognel

and Truffel.

Mich. 32 Eliz.

inter Wade

plaintife, and

Prestal defen-

dant attaind de

haut treason, co-

ram rege. Vid.

sup.

‡ See the first

part of the In-

stitutes, sect. 1.

§ Cur. si home

purchase.

¶ Ibid. sect. 199.

‡ 200. mort in ley

† First part Inst.

sect. 405.

‡ 45 E. 3. 5. 2.

18 E. 4. 25.

‡ 5 E. 4. 5. 2.

&c. Lit.

And where it is holden by some, that if any person be attainted of high treason by the common law, that no writ of error should be brought for the reversal of that attainder by reason of these words of the statute of 33 H. 8. cap. 20. viz. And if any person or persons shall be attainted of high treason by the common law, &c. that every such attainder by the common law shall be of as good strength, value, force, and effect, as if it had been done by authority of parliament. But the contrary hereof was resolved at a parliament holden anno 28 Eliz. that a writ of error should be maintained for the reversal of erroneous attainders of high treason by the common law: for that statute of 33 † H. 8. is to be intended of lawfull attainders by the due courie of the common law, and not of erroneous or void attainders. And thereupon at that parliament holden anno 28 Eliz. an act was made, That no record of attainder of any person or persons, of or for any high treason, where the party so attainted ‡ is or hath been executed for the same treason, shall be, &c. in any wise hereafter reversed, undone, avoided, or impeached by any plea, or for any error whatsoever.

\* And albeit judgement be given against a man in case of treason or felony, yet his body is not forfeited to the king, but untill execution remains his own. And therefore before execution, \* if he be slain without authority of law, his wife shall have an appeal; for notwithstanding the attainder he remained her husband. And after such attainder his body may at the suit of a subject be taken in execution upon a judgement or statute, &c. And he may be executed for treason or felony, notwithstanding such execution had against him. And in an action of debt, or other action brought against a person attainted, he cannot plead the attainder, and demand judgement, if during the attainder he shall be put to answer: † for upon consideration had of the books in 11 Aff. 27. 2 E. 4. 1. 4 E. 4. 8. 6 E. 4. 4. 6 H. 4. 6. 8 Eliz. Dier 245, &c. ‡ it was adjudged that the person attainted should not plead the said plea, but should be put to answer. And there is a great diversity between an attainder of treason or felony, and an entry into religion; for he that is attainted of treason or felony hath capacity, and † may purchase lands to him and his heirs, \* but so cannot he that is entred into religion. And it is against a rule in law, that any man of full age should be received in any plea by the † law to disable his own person, ‡ or take advantage of his own wrong. And if the person attainted be beaten or maimed, or a woman attainted be ravished, after pardon, they shall have an action of battery, appeale of mayme, or rape. See Lib. Intr. Co. 247, 248.

In

<sup>a</sup> In antient time a man indicted or appealed of life or member, or imprisoned, &c. should not be compelled to answer at other mens suits, but (as before it appeareth) these opinions have been justly changed.

<sup>1</sup> There was a notable case adjudged in the kings bench Mic. 26 & 27 Eliz. wherewith I was well acquainted concerning the matters of outlawry and errors before spoken of, which was in effect as followeth.

*Ninianus Mervile nuper de Stedwich in com' Dunelm. ar' anno 1 & 2 Ph. and Mar. was indicted in the kings bench of high treason, and upon proces he was outlawed, and so returned, and his daughter and heire brought a writ of error in the kings bench, wherein two errors were assigned. 1. That before the exigent the 2 capias with a proclamation was awarded to the sheriffe of the county palatine of Durham, where it ought to have been directed to the chancelour of that county. 2. For that point 30 H. 6. 6. 36 H. 6. 35. 1 E. 4. 10. the book of entries Raft. fo. 52. Stanf. pl. cor. 68, 69. & 70. Vid. 19 H. 6. 2. 31 H. 6. 11. but the court gave no opinion concerning this error. The other error that was assigned, was that the sheriffe returned upon the said capias, that at his court holden at the city of Durham the eight day of July in the second and third yeares of the reigne of king Philip and queen Mary he made the proclamation, &c. and there were no such years: for queen Mary began her reigne the 6 day of July, and the 25 day of July in the 2 year of her reign she married king Philip: so as between the 2 day of July, and the 25 day of July, the queen wrote two years before the king. And therefore there could be no such years as 8 July anno 2 & 3, but should have been 2 & 4. And so was the clear opinion of the whole court. But then it was objected, that by the said act of 35 H. 8. and Stanfords opinion thereupon, that the attainder by outlawry being an attainder by the common law, it could not be reversed by writ of error, for that the said act of 35 H. 8. was to be intended of lawfull attainders: and after great deliberation the outlawry of treason was reversed. And I take it, it shall not be altogether impertinent, sure I am it shall not be unprofitable, to report the consequent of this reversal. In the next terme, sc. term. Hil. anno 27 Eliz. for that queen Eliz. had the lands whereof the said Ninian was seised in fee: his wife by petition of right, which comprehended the title of the wife, and the title of the queen, claimed her dower, which in effect was this: that her husband was seised of certain lands in fee, and took her to wife; and before his treason committed anno 1 Maria levied a fine with proclamation to another, whose estate the queen had by lawfull conveyance therein expressed; and that afterward her said husband was attainted of high treason by outlawry, *ut supra*, and died in anno 4 Eliz. which outlawry was the last terme reversed in a writ of error, as is above-said: which petition being indorsed by the queen, *Soit droit fait al partie*, and delivered into the chancery, Sir Thomas Bromley a man of great gravity and judgement in law, then being lord chancellor of England, by advice of all the judges resolved these four points following. First, that the petitioner need not to have any office to finde her title, because her title standeth with the title of the queen, and the queen is not intitled by office (which she might*

<sup>b</sup> Brit. ca. 122.  
<sup>a</sup> § Encusment  
de crime.  
Fleta, lib. 6. c.  
6, 7. &c.

<sup>1</sup> Mic. 26 & 27  
El. Ninian Mel-  
vins case in the  
kings bench  
in bre. de errore.

<sup>\*</sup> See the stat. of  
8 H. 6. cap. 18.

Hil. 27 Eliz. in  
filiciis cancel-  
larie.

[ 216 ]

traverse,

Vide Lib. 2. fo. 93. Bingham's case. See the first part of the Institutes. sect. 55.

4 H. 7. cap. 24. the first saving.

<sup>a</sup> 26 E. 3. 75.

4 H. 7. fo. 22. & 11, 12.

38 H. 6. 4 &

12. 21 E. 4.

23. Dier 29

H. 8. fo. 32. pl.

8. idem.

6 Eliz. 238. pl.

45. 3 Eliz. fo.

188. pl. 8. a.

Lib. 8. fo. 42.

43. b. Dr.

Druryes case.

<sup>b</sup> 34 H. 6. fo. 2.

\* Nota.

<sup>c</sup> 26 H. 8. cap. 13. 5 E. 6. cap.

11. These sta-

tutes not only

extend to all

treasons by the

statute of 25 E.

3. by the com-

mon law, but by

any other statute.

Vi. Dier 12

Eliz. fo. 287.

accord. First

part of Insti-

tutes, sect. 479.

traverse, or confesse and avoid) but by conveyance, which she affirmeth. Secondly, that a fine with proclamations, and five years past after the death of the husband doth bar the wife of her dower, and that the confessee shall take advantage thereof, and of the attainder also. Thirdly, that albeit five years and many more in this case were past since the death of her husband, yet the said fine with proclamations did not bar her; because as long as the said attainder of treason stood in force, she was barred of her dower; and could not have any remedy, or pursue her title, untill the outlawry were reversed, and then her title of dower did first grow due unto her, and therefore she might within five years after the reversal of the said outlawry, pursue her title by the expresse words of the saving of the act of 4 H. 7. Fourthly, albeit an attainder reversed by a writ of error, is as concerning restitution to the party by relation from the beginning become of no force, <sup>a</sup> and the record so annihilated thereby, as *nulla tiel record* may be pleaded thereunto: yet this relation shall never work a bar, and consequently a wrong to a stranger, but that the truth of the matter may be shewed, viz. the record, and the reversal of the same: and the rather (as some said) because the wife could not have any writ of error to reverse the outlawry, <sup>b</sup> so as she had no mean to pursue her right so long as the outlawry remained in force, which it did, untill it was reversed by error. But admit the wife had been (in a remote degree of consanguinity) heir to her husband, so as she might within five years after the death of her husband have had her writ of error after the death of her husband to reverse the outlawry, and to enable herselfe to pursue for her dower, and reverse the outlawry within the five years: I hold in this case that she shall have five years after this reversal, and that within the said saving of the statute of 4 H. 7. for then did her title of dower (as hath been said) first grow unto her, <sup>c</sup> and it was not in her power to reverse the outlawry when she would. And in this term of S. Hillary, Popham attorney generall, according to the said resolution of the lord chancellor and judges, confessed the petition to be true; and thereupon judgement was given, that she should be indowed, and was indowed accordingly.

<sup>c</sup> By the statute of 26 H. 8. and 5 E. 6. it is enacted, that all proces of outlawry against any offenders in treason, being out of the realm, or beyond the seas, at the time of the outlawry pronounced, shall be as good and effectuell as if the offenders had been within the realme at the time of the outlawry pronounced. See the said statute of 5 E. 6. cap. 11. that, if the party outlawed shall within one year after the outlawry pronounced, yeild himselfe to the chief justice in England, and traverse the said indictment, &c. and thereupon be found not guilty by verdict, he shall be clearly discharged of the said outlawry.

### *Judgement in case of Abjuration for Felony, whiles it was of Force.*

After the flying of a felon for any kinde of felony whatsoever, sacrlledge excepted, (but in case of high treason or petit treason a man could never abjure, because the coroner is not allowed by law



law to be a judge of those heinous crimes) into a church, &c. for safeguard of his life: and upon his prayer of a coroner <sup>a</sup>, \* and his voluntary and particular confession of the felony before the coroner, naming the certain time, the judgement was, *Idem A. petit de prefato coronatore regnum dom. regis Angliæ abjurare: super quo tradito ei libro p. prefat' coronatorē, idem A. regnum prædict' cora' præfato coronatore prædict' die, &c. in ecclesia prædicta abjuravit, in idem regnum nunquam rediturus absque speciali licentia, et reconciliatione regis Angliæ, et assignatus est eidem A. pro transitu suo extra regnum prædictum portus de Yarmouth<sup>c</sup> cruce in manu sua dextra posita, prout lex Angliæ est et consuetudo*. Nothing is expressed in this judgement but *abjuravit regnum*, but therein is implied, that all his lands, which he had at the time of the felony committed, <sup>d</sup> (and therefore the time of the felony was set down in his confession particularly) or at any time after, escheated to the lords of the fees, and forfeited to the king all his goods which he had at the time of his attainder, <sup>e</sup> the time whereof also was expressed certainly, and his blood corrupted, and other incidents, as in other attainders of felony, only by his voluntary and particular confession. In this case for the offence of felony, he saved his life so long as he kept himself *extra regnum*, but if he returned, then under this word [*abjuravit*] is implied *sus. per nullum*. Mich. 1 R. 2. rot. 1. Bedf. *redit et suspend.* See the first part of the Institutes, sect. 200. fo. 132, 133. and the second part of the Institutes, W. 1. ca. 20. verbo, <sup>f</sup> *Fore jure le realm.* artic. Cler. cap. 10. and 15. And the law was so favourable for the preservation of sanctuary, that if the felon had been in prison for the felony; and before attainder or conviction, <sup>g</sup> had escaped and taken sanctuary in church or church-yard, &c. and the gaolers or others had pursued him, and brought him again to prison, upon his arraignment he might have pleaded the same, and should have been restored again to the sanctuary: see more concerning abjuration, Mic. 9 E. 3. coram rege rot. 84. *extra legem positus, &c.* To conclude this judgment of abjuration, we take it, that for felony <sup>h</sup> abjuration is utterly taken away. For abjuration of recusants and of hunters in parks, &c. we have given but a light touch, because they belong not to our treatise of the pleas of the crown, nor have we spoken any thing of abjuration in case of heresy, *quia spectat ad aliud forum*.

Thus have we spoken of judgments, and attainders in cases of high treason; upon verdict, confession, or *nihil dicit*, and by outlawry: in case of petit treason, upon verdict, confession, or by outlawry: and in case of felony, upon verdict, or confession, or by outlawry, or by abjuration; for none can be attainted of petit treason or felony upon a *nihil dicit*, or refusal to answer, but in that case the delinquent is to have his punishment of *peine fort et dure*, which next falleth to be handled.

rot. 115. Buck. William Attewells case. <sup>b</sup> For all sanctuaries are taken away by 21 Jac. ca. 28. Note a sanctuary in the statute of 1 H. 7. cap. 13. is called a hidel or hydle, because it hideth and protecteth the party, &c. Vide Deut. cap. 19. 3. 9. 10. Numb. 35. 13. Joshua 20. 8. See 2. part of the Institutes, Glouc. ca.

<sup>a</sup> 6 E. 3. 33. in Ajell Malloms case.

<sup>12</sup> E. 2. esche. 14. Tr. 21 E. 1.

coram rege 42. simile.

<sup>b</sup> Hereupon he was called abjuration, because he was sworn to depart the kingdom.

See the Oath Vet. Mag. Cart. 1. pte. 167. 168.

<sup>c</sup> That he might be known to be an abjured person, and not be let, or hindered in his journey. Et crox fuit signum servatæ viatæ per ecclesiam, and is sometimes called vexillum sanctæ ecclesiæ. Hil. 26. E. 3. coram rege rot. 20.

<sup>d</sup> Pl. com. f. 262. a. in Dams Hales case. Reg. gister. fo. 164. b. Fecit feloniam pro qua regnum nostrum abjuravit.

<sup>e</sup> Stanf. pl. cor. 117. E.

<sup>f</sup> 6 E. 3. 55. in Ajell Malloms case. 12 E. 2. Esch. 14. 6 E. 2. Forf. Br. 121. 6 H. 4. 6.

<sup>g</sup> Forejore in French is taken for abjure, in Latin abjurare.

<sup>h</sup> 1 E. 3. 17. lib. intr. Rast. fo. 246. b. pl. 6.

<sup>i</sup> Lib. int. Rast. 532. b. sanct. 2.

Hil. 43 E. 3.

<sup>1</sup> First part of the Instit. sect. 545. verb. staint. 2 part of the Instit. W. 1. c. 12. Dier 3 El. 205. a. 13 El. 300. b. See before in the chap. of Treason. See after in the next chapter of Forfeiture fo. when the party arraigned chal- lengeth peremp- torily above the number of 36. viz. three whole juries. <sup>2</sup> 35 H. 6. 57. 58. Vide li. 9. fo. 124. the lord Zanchers case.

[ 218 ]

Bracton. lib. 3. fo. 151. b. Britton. fo. 24. a. Fleta. li. 1. c. 36. Bracton, lib. 3. fo. 104. b. maketh mention of punishment, verberibus et virgis. <sup>3</sup> 18 Aff. p. 13. 8 E. Cor. 130. 41 E. 3. Cor. 451.

*Peyne fort et dure.*

In case of petit treason or felony, <sup>1</sup> when the offender standeth mute, and refuseth to be tried by the common law of the land; See *Paine fort et dure* in the second part of the Institutes, W. 1. ca. 2. but this holdeth but in case of petit treason and felony. In case of high treason, upon standing mute, or a *nihil dicit*, the judgement aforesaid shall be given against him, as if he had been convicted.

And in doing of execution, both in treason and felony, two things are to be observed. First, that it be done by the right officer, as the sheriff, or marshall, for if any other execute the offender, it is felony. Secondly, execution must be made by him that is the right officer according to the judgement: for example, <sup>2</sup> where the judgement is, that the offender shall be hanged, he cannot behead him, &c. as before is said. Bracton, lib. 3. fo. 104. b. *Non alio modo puniatur quis, quam se habeat condemnatio.* P. 20 R. 2. coram rege rot. 58. Lincoln. *Non licet felonem pro feloniam decollari.*

*Judgement in case of Petit Larceny.*

The judgement herein was in ancient time referred to the discretion of the judge, as in Bractons time, *Per fustigationem, et sic castigatus dimittitur.* In Brittons time, sometime by the pillory, sometime by the losse of the ear: and Fleta saith, *Est enim furtum de re magna et parva, pro minimo tamen latrocinio 12 denariorum et infra, nullus morti condemnatur; pro hujusmodi modicis delictis inventa fuerunt judicialia pilloria, et deformitates corporum, ut scissio auricularum.*

<sup>3</sup> But in and since the reign of E. 3. no person lost any member for petit larceny, but were sometime punished by imprisonment, and sometime by other penance, as whipping, &c. If the delinquent flyeth for petit larceny, and so be found by the jury, he forfeiteth his goods.

*Judgement in case of Misprision of High Treason.*

That the offender by the common law shall for this concealment forfeit all his goods; and the profits of his lands during his life, and suffer imprisonment during his life. Vide Stanford pl. coron. fo. 38. 1 et 2 Mar. cap. 10.

*Judgement for striking in Westminster Hall, &c. sitting the Courts.*

That the offender shall be imprisoned during his life, forfeit all his lands, tenements, goods and chattels, *et quod manus sua dextra amputaretur (apud talem locum)* and this judgement is given by the common law. Bracton, lib. 3. 104. b. *Pœnarum quedam adimunt membrum, et corporis coercionem, sc. imprisonmentem, vel ad tempus, vel imperpetuum.*

Judgement

Tr. 4 E. 4. coram rege rot. 3. 19 E. 3. Judgement. 174. 39 Aff. p. 1. 41 Aff. 25. 22 E. 3. 13. a. 41 E. 3. coron. 280. 42 Aff. 18. Stanf. pl. cor. 38. c. 3 Eliz. Dier 188.

*Judgement for striking and drawing Blood in the Kings Court, &c.*

The offender shall have his right hand stricken off, be imprisoned during his life, and be fined and ransomed at the kings will: and this judgement is given by the statute of 33 H. 8. cap. 12. 33 H. 8. Paine Br. 16.

We cannot omit to touch by the way an act made in 1 & 2 Ph. and Mar. intituled, an act against seditious words and rumours, by a branch of which act, he that should send forth any booke, ryme, ballad, letter or writing containing any false, matter, clause or sentence of slander or reproach, and dishonour of the king and queens majesty, or either of them, &c. should have his or their right hand stricken off; which act being but a probationer, at the parliament in 4 & 5 Ph. and Mar. was continued untill the end of the next parliament. And by the act of 1 Eliz. (which was the next parliament) the said act of 1 & 2 Ph. and Mar. was enacted to extend to queen Elizabeth, and to the heirs of her body kings and queens of this realm, so as by the demise of queen Eliz. that act hath lost his force, as it was well worthy, being a dangerous act as some had felt in anno 23 Eliz.

1 & 2 Ph. and  
Ma. ca. 3. ob-  
truncatio manus  
dextrae.

1 El. c. 6.

*Judgement in a Premunire at the Suit of the King.]*

If the defendant be in prison, *Quod prædictus R. sit extra protectionem domini regis, et terras, et tenementa, bona et catalla domino regi forisfaciat, et quod corpus ejus remaneat in prisona ad voluntatem regis,* as in the book of entries, Raft. Judgement 465. And this judgement is given by the statutes of 25 E. 3. ca. 22. 25 E. 3. de Provisforibus. 27 E. 3. ca. 1. 16 R. 2. ca. 5. and if he be not in prison, *Quod præd. R. sit extra protectionem domini regis, et terras et tenementa, bona et catalla domino regi forisfaciat, et quod capiatur.*

See the 1. pt. of  
the Instit. §. 159.

44 E. 3. 36.

*Judgement in case of Theftbote.*

That the offender be fined: and it is to be observed that whenever the delinquent, or defendant is to be fined, the judgement is *quod capiatur*, that is, to be imprisoned untill he doth pay his fine: but when the defendant is to be amerced, and not fined, then the defendant is in *misericordia*, whereof you may read at large. Lib. 8. fo. 38, 39. &c. et 59, 60. et 120. lib. 11. 43, 44.

5[E. 3 Cor. 353.  
29 E. 3. 9.  
27 Aff. 69.  
42 Aff. pl. 5.  
Stanf. fo. 40. b.

[ 219 ]

*Pillory.*

Pillory is a French word, and it is derived of the French word *pilastre* a pillar, *columna*. *Et est lignea columna, in qua collum insertum premitur*, and thereupon in law it is called *collistrigium*, *quia in eo collum hominum constringitur*: this punishment is very ancient, for the Saxons called it *healsfang*, so called for straining the neck: Britton, fo. 24. saith, that those that have been adjudged to the pillory, or tumbrell, are so infamous, *Come ilz ne sont*  
III. INST. S receiv-

Saxonicæ *heals-*  
*fang*. Or *haif-*  
*fang*, *hals col-*  
*lum, fang pressio*.  
It is also called  
an amercia-  
ment for com-  
mutation of such  
a punishment.  
51 H. 3. Judi-  
cium collistri-  
gii. Et pillorii,

Vet. N. B. 1. receivables al soremēt faire in juries, enquests ou en testimoignants; parte. 116, 117. and herewith agreeth Braſton. Vet. Mag. Cart. 2. parte, fo. 23, Britton, fo. 24. 24. 45.  
 Mirror, cap. 4.  
 6. De paines en divers maners. Kelway temp. E. 3. 145. b. Fleta, li. 2. cap. 8. By the statute of 51 H. 3. & 31 E. 1. Vet. Mag. Cart. 2. parte, fo. 23, 24. 45.

Braſton, lib. 3. fo. 104. b. 129. b. 151. b. 138. Mirror ubi ſupra. Temp. E. 3. Kelway 139, 140. b. 149. b. 152. Fleta, 2. ca. 11. 6. Item ſi d'nus h. Intr. Raſt. 494. a. in Quo warr. 7 E. 2. in codem 260. b.

## Tumbrell.

Tumbrell is a word in uſe at this day for a dungcart. Braſton calleth it *tymberalem*.

*Inſigitur pœna corporalis, ſc. pilloralis vel tumberalis cum infamia. Secundum regni ſtatuta*, it is called tumberellum, there being no proper Latin word for a dungcart.

*Furca pillor et tumbrel append al view de franchpledge* And every one that hath a leet or market ought to have a pillory and tumbrell, &c. to puniſh offenders, as brewers, bakers, foreſtallers, &c.

## Trebuchet.

Stat. de 51 H. 3. ubi ſupra. Vet. Mag. Cart. part 2. fol. 44. 45. Stat. de pace & cerviſia.

Or caſtigatory, named in the ſtatute of 51 H. 3. ſignifieth a cucking ſtool, and trebuchet properly is a pitfall or downfall; and in law ſignifieth a ſtool, that falleth down into a pit of water, for the puniſhment of the party in it. And *cuck*, or *guck* in the Saxon tongue, ſignifieth to ſcould or brawl, (taken from the cuckhaw, or guckhaw, a bird, *qui odioſe jurgat et rixatur*) and *inge* in that language [water] becauſe ſhe was for her puniſhment ſowled in the water, and others fetch it from cuckquean, i. *pellex*.

Judgements to be given by juſtices of aſſiſe, of oier and terminer, of gaol-delivery, of juſtices of peace.

Now for that the judgement to the pillory or tumbrell (as it hath appeared before) doth make the delinquent infamous, and that the rule of law is, *Judicium de majore pœna quam quod legibus ſtatutum eſt non infamum facit, ſed per breve de errore adnullare poteſt*, and again, *pœna gravior ultra legem poſita eſtimationem conſervat*, that the juſtices of aſſiſe, oier and terminer, gaol-delivery, and juſtices of peace, would be well adviſed before they give judgment of any perſon to the pillory or tumbrell, unleſſe they have good warrant for their judgment therein. Fine and imprifonment for offences finable by the juſtices abovesaid, is a fair and ſure way.

\* Vet. Mag. Cart. parte 2. fo. 24, 25.

And it is to be obſerved that thoſe kinds of puniſhments of pillory, &c. have been given by acts of parliament in caſes of enormous and exorbitant offences, as by the ſtatutes of 51 H. 3. 31 E. 1. De piſtoribus, &c. 31 E. 1. De foreſtallariis. 11 H. 7. ca. 4. 33 H. 8. ca. 1. 1 & 2 Ph. and Mar. cap. 10. 2 E. 6. ca. 15. 5 E. 6. ca. 6. & 14. 7 E. 6. ca. 7. 1 El. c. 7. 5 El. ca. 9. 16. 18 El. cap. And therefore the ſafeſt way for them is to follow thoſe acts of parliament in caſes provided by the ſame: but of the court of the kings bench, (the higheſt court of ordinary juſtice) in reſpect of the multitude of the judicial preſidents (which we have ſeen) we ſay with the poet. *Hæc nec metas rerum, nec tempora pœne*, (for judicial preſidents of grave and reverend judges, are good

good guides to direct men in the right way) we will enumerate some of them.

21 E. 1. coram reg. rot. 2. Eustachius de Porles Castel, for slandering of justice Berisford, imprisonment in the tower, *ad voluntatem regis*.

Exemplary punishments adjudged in the kings bench.

Mich. 33 E. 1. coram reg. Rot. 75. William Brewces case, for slandering, &c. of Roger Hingham justice. Tr. 3 E. 2. int. mem. scaccarij for slandering of Foxley, a baron of the exchequer. Mich. 18 E. 3. coram reg. Rot. 151. for slandering of the justices of the kings bench, by a letter of Tho. Bulbroke a clerk of the same court. 30 Ass. p. 5. 19. 19 Ass. 1. Pasch. 10 E. 3. Rot. 87. *Thom. Twice Hazarder cois' ludens ad falsos talos adjudicatur quod per sex dies in diversis locis ponatur super colli frigidum*. Mich. 10 E. 3. Rot. 92. coram reg. Adam de Rayensworth. Mich. 21 E. 3. coram reg. Warw. Vers. Attornat' apparent' sine warranto. Hil. 25 E. 3. coram reg. Rot. 13. *versus Robert. Hadham commissarium pro venditione bladi in garbis adjudicatur prisona, et quod ab omni officio domini regis amoveatur et finem faciat*. Tr. 2. H. 4. coram reg. Rot. 10. Suffex. Mich. 4 & 5 Eliz. coram reg. Hugh Bakers case, for a libell against certain of the inhabitants of Chersie, punished by imprisonment, pillory, and good behaviour, &c.

[ 220 ]

See the fourth part of the Institutes, cap. Star-Chamber, for punishment by pillory, &c. for enormous and exorbitant offences, which require more exemplary punishment then an ordinary course of the laws of the realm do inflict. *Nobiles magis plectuntur pecunia, plebei vero in corpore*; which is observable in all the said statutes. And Bracton saith, *Qualibet pena corporalis, quamvis minima, major est quamlibet pena pecuniaria. Carcer ad continendos, non ad puniendos haberi debet, &c. Pena potius mollienda, quam exasperanda sunt. Respicendum est iudicanti, ne quid aut durius, aut remissius constitutur, quam causa deposcit; nec enim aut severitatis, aut clementiae gloria affectanda est. Aliiter puniuntur ex eisdem factionibus servi, quam liberi: et aliter qui quidem aliquid in dominum, parentemve commiserit, quam in extraneum; in magistratum, quam in privatum*.

Ancient rules of law in corporall punishments. Bracton, lib. 3. fo. 105. 2. Ibid.

Ibid.

### Death of a man per infortunium.

Of this mischance there is no expresse judgement to be given, but the offender is to sue out his pardon of course, as it appeareth in the second part of the Institutes, Gloc. cap. 9. And hereof Bracton saith, *Casu, cum per infortunium, ut si aliquis venando per telum in seipsum missum, hominem interfecerit, et similia perpetraverit, &c.* But albeit there be no expresse judgement given upon such a verdict, yet the law giveth a judgement thereupon, viz. that he shall forfeit all his goods and chattels, debts and duties whatsoever, as in the second part of the Institutes, *ubi supra*, it appeareth.

Marbr. cap. 25.

Bracton ubi sup.

Judgement implied, or in law. 24 H. 8. cap. 5.

### Of Death of a Man, se defendendo.

Upon such a verdict given the court giveth no expresse judgement, for he is also to be pardoned of course: but the law hath given a judgement, that he shall forfeit all his goods and chattels, debts and duties, as in the second part of the Institutes, *ubi supra*, it appeareth.

Judgement implied, or in law. See ca. 7 fo. 95. b. 43. Ass. p. 31. Rot. parl. 3 R. 2. no. 18. John Imperials case.

appeareth. But the jury cannot finde that the party killed him generally *se defendendo*: but they ought to finde the case specially, so as the court may judge whether in law it be *se defendendo*, or no. See Stanf. fol. 15.

*Of the Death of a Man that offereth to rob, &c.*

If it be found by verdict, that the party (indicted or appealed for the death of A) A attempted to have murdered or <sup>a</sup> robbed him in or nigh any common high way, cart-way, horse-way, or foot-way, or in his <sup>b</sup> mansion or dwelling house; or for the killing of him which attempteth burglary to break his dwelling house in the night; the judgement upon such a verdict shall be, that he shall be acquitted of the death of such a person paying his fees, and he shall forfeit nothing. And so it is <sup>c</sup> declared and enacted by the statute of 24 H. 8.

And if all the circumstances be proved to the jury in evidence required by this act in these cases, the jury may finde a generall verdict of not guilty. And where it is rehearsed in the said act of 24 H. 8. that before that act it was a question and ambiguity whether evill disposed persons so attempting, *ut supra*, should forfeit their goods and chattels: the reason of that question and ambiguity was in none <sup>d</sup> of those cases mentioned in that act, no robbery, murder, or burglary was done, but an attempt only to do it. But it was no question at the common law, that if a robbery, murder, burglary, or other felony was done, and pursuit made after the offender, who either by resistance or flight could not be apprehended without killing of him by inevitable necessity, the party so pursuing and killing should not forfeit his goods or chattels; for in those cases every man may arrest the felon by a warrant in law. But there is a diversity between a warrant in deed, and a warrant in law, in this, that if a man be indicted of murder, robbery, burglary, or other felony, and the sheriffe by vertue of a *capias* offer to arrest him, and he resisteth and fye, *ut supra*, the sheriffe may kill him, if otherwise he cannot arrest him, although in truth the party be not guilty, nor any felony done. But in the case of the abovesaid warrant in law, there must be a felony done, and this diversity appeareth in our books. <sup>e</sup> And so it is, if after arrest for felony the party arrested resisteth or flyeth, and in pursuit is slaine by inevitable necessity, they so killing him forfeit nothing.

An approver that kills the party accused in battell, or a champion that killeth the other champion in a writ of right, or the plaintife or defendant in an appeale that killeth the other *in duello*, according to the common law, or in combat awarded by the <sup>f</sup> constable and marshall in the court of chivalry, the party killing shall forfeit nothing; for these combats or duels are such trials as the law appoints in such cases. For faith Fleta, *Duellum est singularis pugna inter duos ad probandum veritatem litis; et qui vicerit probasse intelligitur: et quomvis judicium Dei expectatur ibid. quicumque tamen monnachiam, i. singularem pugnam sponte suscepit, aut obtulerit, homicida est, et mortale contrahit peccatum.* But before we leave these champions, it is to be observed that whosoever taketh upon him to be a champion for another (the forme and <sup>g</sup> oath whereof you may reade in the second part of the Institutes, W. 1. cap. 40. and

<sup>a</sup> See in the cha. of Hue and Cry.

<sup>b</sup> Rot. pat.

<sup>c</sup> H. 4. part. 2. Duellum percussum.

<sup>d</sup> H. 4. 4.

<sup>e</sup> H. 6. 10, 21.

See before in the chapter of Approver. Fleta,

lib. 1. ca. 32.

<sup>f</sup> 4 E. 3. 41.

<sup>g</sup> 30 E. 3. 20.

29 E. 3. 12.

13 Eliz. Dier.

301. Mirror, cap.

1. § Combat, &c.

§ Juramentum

duelli, & § Or-

dinatio pugnan-

tium.

Glanvil. lib. 2. cap. 3.) if he become recreant, that is, a crying coward or craven, he shall for his perjury lose *liberam legem*. Craven is derived from the Greek word κραυνη, à vociferatione: others nearer home, of crying and craving of mercy and forgiveness. And *recreantia* is derived of the French word *recreance*, of giving back or cowardize. And sometime it is called *creantia* per antiphrasin, because he that useth it is not faithfull, but breaketh his oath. And so if the appellant joyne battell, and cry craven, he shall also lose *liberam legem* for the cause aforesaid, but if the appellee cry craven he shall be hanged: \* but if they combat untill night come, and starres appear, the defendant in the appeal goeth quit, and the plaintife in that case loseth not *liberam legem*. Amittere *liberam legem* is to become infamous and of no credit, never to be witness, or juror: for when he is of fame and credit, he is called *liber* et *legalis homo*: and such men ought to be of juries and witnesses, because they do enjoy *liberam legem*. \* And a champion ought to be *liber homo*, and so is the entry, *per corpus liberi hominis. Et quam infamiam victus incurrit*, see Glanvil, lib. 2. cap. 3. & lib. 14. cap. 1. And he further saith, *Talis debet campio petentis esse, qui sit, et esse possit inde testis idoneus*. So as no man by the ancient common law could be a champion, but he that knew the right, and was a witness thereof: and therewith agreeth the statute of W. 1. cap. 40. wherein observe what the oath was by the common law. *Aliquando patria stat pro campione et aliquando in bre. de recto campio stat pro patria*. Campio is derived à campo, because it is publicly stroken in the field, and is called camp-fight: and is taken in the common law for one that striketh a legal camp-fight or combat in another mans quarrel: in Latin he is called \* pugil à pugna. But the defendant in an appeal that is to combat, is not called a champion, because he fighteth for himselfe. And these combats in cases whereof the conuance belongs to the common law, are to be directed by the judges of the common law *secundum legem et consuetudinem Angliæ*, and not by the constable and marshall by the civill law, as all our ancient authors and bookes abovesaid do agree, which also is apparant by the statute of 13 R. 2. ca. 2.

\* Judgement in law against a recreant and craven champion is, perdere *liberam legem*. See a notable record hereof R. 2. ca. 3. lib. 14. cap. 1. d Mirror cap. 3. § Ordinatio pugnantium, L'horrible more de craven. \* 41 E. 3. cor. 98. recreant for recreant. Bract, lib. 3. f. 141. Brit. fo. 42. 81. Fleta lib. 1. ca. 32. 19 H. 6. fo. 35. 21 H. 6. 34. \* Mir. c. 3. §. ubi su. f Glanvil, lib. 2. cap. 19. Legem terre amittentes perpetuam infamiam notam inde merito incurunt. See the first part of the Intr. Sect. 514. 27 Aff. 59. liberam legem, qui, &c. 81 H. 6. 8. 3 H. 6. 55. See the oath in appeal, Bract on,

lib. 3. fo. 141. b. Britton, fo. 42. Fleta, lib. 1. ca. 32. Glanvil, lib. 2. c. 3. lib. 9. cap. 1. Et lib. 14. ca. 1. 9 H. 4. 3. 17 aff. 34 17 E. 3. 2. 9 E. 4. 25. Fleta ubi sup. lib. Int. Co. fo. 182. 55 H. 3. ubi sup.

Judgement in an Indictment of Conspiracie, &c. where the Party indicted is legitimo modo acquietatus.

[ 222 ]

Nota, the judgement in this case is, as in case of attainr against a jury, (whereof we shall speak hereafter), viz. *Quod committantur gaolæ domini regis, et quod omnia terræ et reuementa præd. R. & C. capiantur in manum domini regis, et devastentur, et extirpentur, et uxores et liberi eorum amoveantur, et omnia bona et catalia eorundem R. & C. forisfaciant domino regi, et amodo amittant liberam legem imperpetuum*.

Nota in this judgement five severe punishments. 1. That their bodies shall be imprisoned in the common gaole. 2. Their wives and children amoved out of their house. 3. That all their houses

4 H. 5. Indict. 220. Tr. 18 E. 3. coram 1020 Rot. 148. Wilt judicium reddit. contr. Conspiratores. Patch. 32 E. 3. Rot. 58 Somers. 27 Aff. 59. 24 E. 3. 34. 43 E. 3. 33. b. Vid. Artic. super cart. cap. 10.

and lands shall be seized into the kings hands, and the houses wasted and the trees extirpated. 4. All their goods and chattels forfeited to the king. 5. That they for ever shall lose the freedom and franchise of the law. That is, first, they shall never be of any jury or recognitors of assise. Secondly, nor ever be received for a witness in any case. Thirdly, that they shall never come into any of the kings courts, but make attornies, if they have any thing to do there. And this is called a \* villanous judgement, because of the villany and infamy which they deserve against whom it is given: And all is inflicted by the common law, for that the offenders by false conspiracy under the pretext of law, by indictment of treason or felony and legall proceeding thereupon, sought to do the greatest injustice by false conspiracy to shed his blood, who afterwards is thereof *legitimo modo acquiescat*.

But in a writ of conspiracy at the suit of the party grieved, the judgement is, damages to the party, fine to the king, and imprisonment. And the reason thereof is, first, for that when they are indicted at the suit of the king, the judgement is so severe, for that they falsely conspired in the kings name, and at the kings suit by indictment, &c. to do so horrible injustice: therefore at the kings suit they shall be heavily punished. Secondly, for that as it is said in 15 E. 2. *De exilio Hugonis, &c.* the law which was instituted for the maintenance of peace and of good men, and the punishment of the evil, is turned to the disheritance of the great men, and destruction of the people. Thirdly, for that the judgement at the kings suit is by the common law, and the action of the party is given by statute, which giveth no such punishment: but the party in his action, in respect of the danger of his life, is to recover answerable damages. Of conspiracy see the Register, fol. 134. a & b. & 188. F. N. B. 114, 115, &c. Stanf. pl. cor. fol. 172, 173, 174, 175, &c. and in the new Book of Entries, fol. 109. a president of a conspiracy upon an indictment of felony.

It is enacted, that such as be attainted of confederacy or conspiracy, shall have no office of the grant of the king, queen, or other noble, neither shall be sheriffe or escheator.

### Judgement in an Attaint.

Lib. Intr. Rastal.  
fo. 92. a.  
9 E. 4. 51.  
4 H. 5. ubi sup.  
15 Aff. 2. Kel-  
way 130. b.  
Glanvil. lib. 2.  
cap. 19.  
Bracon. lib. 4.  
fo. 129.  
Brit. fo. 237.  
238. Mirror.  
ca. 3. § de attaint.  
Flat. lib. 5.  
ca. 21. Apod.  
Northalverton  
in com. Eborum  
first part of the  
enattaint. Kanc.

1. That the plaintife shall be restored, &c. and the defendant party to the record shall be fined in respect the false verdict was given for him (*cui bono*) by the common law.

The judgement against the petit jury is, as it is in case of conspiracy at the suit of the king, as is abovesaid, and in no other, but in those two cases, that villanous judgement is given. See 8 E. 2. Aff. 396. and 42 E. 3. 26 b. judgements given in attaint, *et nota bene*. 16 E. 3. tit. Judgement, 109. 21 H. 7. 83: Kelway. a good president of a judgement given in an attaint. Fortescue, cap. 26. Concerning Attaints, see the second part of the Institutes, Matibr. cap. 14. W. 1. cap. 37, &c.

coram Hen. de Guildesford & aliis just. assignatis an. 35 E. 1. attincta. See the Institutes; sed. 574. verb. [en attaint.] Vide Mich. 3 H. 4. Rot. 149. Judgement

But



## Cap. 161. Of Judgements and Execution.

\*223

But now by the statute of 23 H. 8. cap. 3. the severity of the punishment is moderated, \* if the writ of attainr be grounded upon that statute: but the party grieved may at his election either bring his writ of attainr at the common law, or upon that statute: but all attainrs, either at the common law or upon the statute are to be taken before the king in his bench, or before the justices of the common pleas, and in no other courts.

This act of 23 H. 8. provideth for divers mischiefs which were at the common law, and giveth to those of the petty jury divers pleas, which they could not have at the common law, and hath been well expounded. 7 E. 6. Dier, 81. b. Sir John Aillis case. 3 & 4 Ph. and Mar. 129. b. Heydons case. 3 Eliz. 201. Clovils case. 3 Eliz. 282. Austens case. 7 Eliz. 23. b. Stephens case. See the record thereof upon the statute of 23 H. 8. for it is an excellent president.

And generally of attainrs, see Lib. fo. 111. 112. Lib. 3. fo. 4. Lib. 6. fo. 4. 14. 25. 26. 44. 80. Lib. 8. fo. 60. Lib. 9. fo. 12. Lib. 10. fo. 119. Lib. 11. fo. 6. 43. 62. See also the new book of Entries, 63. 66. 68. 70. 73. 76. 77. 81. 83. 85. 86, &c.

### *Judicium de corrupto Judice.*

We could not passe over a strange judgement of *suspendatur*, &c. as in case of felony (which we have touched before in the chapter of Bribery given against Sir William Thorpe, lately before chief justice of England, which we finde of record in these words. *Proceffus factus an. 24 E. 3. contra Willielmum Thorp chivalier nuper capitalem justiciarium coram Rico. comite Arundel. T. de Bellacampo comite Warw. Willielmo de Clinton comite de Hunt. Joh. de Gray de Ruthersfield seneschallo hospitii regis, et Barthol. de Burgerf. camerar. regis: pro eo quod idem Willielmus Thorp nuper capitalis justiciarius domini regis ad placitum coram ipso rege tenenda, dum fletis in officio, cepit munera contra juramentum suum, viz. de Ricard. Saltley 10 li. de Hildebrando Boreward 20 li. de Guillerto Hollyland 40 li. de Tho. Darby Sancti Botulphi, et de Roberto Dalderby 10 li. qui pro diversis felonis, falsitatibus, et transgressionibus coram ipso Willielmo in sessione sua apud Lincoln anno 23 fuerint indictati, et per ipsum Willielmum bre. de exigendo vers. eis respectu fuit: quæ omnia et singula dedicere non potuit: ideo adjudicatum fuit prout sequitur, viz. Consideratum est per dictos justiciarios assignatos ad judicandum a secundum voluntatem domini regis, et secundum regale posse suum, quod quia prædictus Willielmus de Thorpe qui sacramentum domini regis quod erga populum habuit custodiendum fregit maliciose, false, et rebelliter in quantum in ipso fuit, et ex causis supradictis per ipsum Willielmum, ut prædictum est, expresse cognitis, suspendatur. Et quod omnia terræ et tenementa, bona et catalla sua domino regi remaneant forisfacta. Et postea dominus rex mandavit bre. suum sub privato sigillo, all in French, and there entred de verbo in verbum. Ideo consideratum est quod executio iudicii prædicti de suspensione ejusdem Willielmi omnino cesset et ei pardonetur. Et quod idem Willielmus remittatur prisonæ turris prædictæ ad gratiam domini regis expectandam, &c. Et non est intentio domini regis quod hujusmodi iudicium in consimili casu versus quemcunque alium ex quacunque causa se*

Rot. pat. anno 24 E. 3. pass 3. m. 2. in dori. & Rot. pat. anno 25 E. 3. part 1. m. 27.

In toto 80 li.

a The effect of the words of the oath hereafter mentioned.

b Nota, here is neither sentence, nor prædictum in this indictment, but rebellion.

c According to the said oath, for otherwise the king had no colour to have the forfeiture of all his lands for felony, but every lord of whom they were respectively holden, &c.

<sup>d</sup> Nota prædic-  
tum sacramen-  
tum.

<sup>e</sup> Rot. Parl. in  
Ost. Pur. an.  
25 E. 3. nu. 10.

*teneat vel extendat, sed solummodo versus eos qui prædictum<sup>d</sup> sacramen-  
tum fecerunt, et fecerunt, et fregerunt et habent leges regales Angliæ ad  
custodiend<sup>e</sup>.*

<sup>e</sup> We have also found, that at a parliament holden at Westmin-  
ster in octabis purificationis beate Mariæ, anno 25 E. 3. holden be-  
fore Lionel duke of Clarence by force of the kings commission,  
&c. commandement was given, that the record of the said judge-  
ment against the said Sir William Thorp should be brought into  
the parliament, and there to be openly read before the nobles of  
the parliament to hear every of their advices, which was done ac-  
cordingly, and there the nobles affirmed the judgement.

And these words in the said judgement, *Ad iudicandum secun-  
dum voluntatem domini regis, et secundum regale posse suum*, and that  
his lands should be forfeit to the king, *et prædict. sacramentum*, were  
grounded upon the oath of the kings justices in anno 18 E. 3. the  
conclusion of which oath is, [upon pain to be at the kings will, body,  
lands, and goods, thereof to be done as pleaseth him.] We de-  
sireous to satisfie our self herein, searched for the record of this  
oath, and albeit there is a parliament roll of this parliament, and  
other acts, then passed by authority of parliament, be entred into  
the said roll, yet this is not; for that it had not the warrant of an  
act of parliament. It ought to have been printed amongst the  
statutes of the realm, and the title of them is, Here followeth the  
oath of the justices made in the same eighteenth year, but saith not  
at the parliament; &c. but after it became to be printed: and that  
which is printed in anno 20 E. 3. ca. 1. is but a recitall made by the  
king alone, and no act of parliament: for it appeareth by that  
which precedeth, and by the oath it self, that it was the act only and  
commandement of the king, for it beginneth: first, we have com-  
manded all our justices, &c. which former part was but a recitall of  
some precedent act: and then followeth, we have ordained and  
caused our said justices to be sworn, &c. so as the oath was de-  
vised by the king, and the justices sworn before this parliament.  
Lastly, it is there said and concludeth: and for this cause we have  
increased the fees of our said justices, &c. which the king of him-  
self did before this act also.

And we have an ancient manuscript of the acts of parliament in  
ann. 18 E. 3. and the oath is not within it.

Fleta, li. 1. ca.  
17. § Cum Igi-  
tur non sit, &c.

Vet. Mag. Cart.  
1. parte fo. 165.  
Vide Bract. li. 3.  
fo. 209. Sacra-  
ment<sup>e</sup> Justic<sup>e</sup> iu-  
ner<sup>e</sup> and that  
then was the ef-  
fect, de sacra-  
ment<sup>e</sup> Justic<sup>e</sup>  
residentium.  
Vid. Flet. 1. 2.  
c. 7. § Item  
atrox est inju-  
ria, &c.

And it appeareth by Fleta, that the punishment of a corrupt  
judge, that receiveth gift or reward was, *Si inde convictus fuerit,  
quod imperpetuum à concilio regis excludatur; terrasque, res, redditus,  
et proventus bonorum suorum amittat per unum annum: qui, si proventus  
non habuerit, puniatur per discretionem regni et consiliariorum regis.*  
And that which Fleta calleth *sacramentum justic<sup>e</sup>*; in Vet. Magna  
Carta, is named, *juramentum consiliariorum regis*; for the judges of  
England are of the kings counsell (as elsewhere hath appeared)  
for, in, and concerning the laws of the realm, in which oath also  
the said fatall clause is omitted.

See the Mirrour cap. 4. §. *de faux judges*, and ca. 5. §. 1. of the  
law in the time of king Alfred, how many justices were in one  
year hanged, as homicides, for their false judgements: but that law  
hath been long since delect and antiquated, and yet may serve for a  
memoriall of the time past.

The offence of bribery was punished by fine, and ranfome, and  
loss<sup>e</sup>

losse in the reign of E. 1. as in the chapter of Extortion and Bribery before appears: only Sir Thomas Weyland chief justice of the common pleas, took sanctuary, and before a coroner confessed himself guilty of murder, and according to the course of the common law abjured the realm, so as indeed he was attainted of felony, (which case had been vehemently urged) but it was not for bribery, but for murder, as any other man might have been.

But to wind up the thread of this discourse, with three acts of parliament. First, with the statute of 8 R. 2. wherein it is recited, that whereas in the time of king E. 3. it was ordained, that justices as long as they should be in office, should not take gift or reward, and so forth, as in Veteri Magna Carta (without the said fatall clause) that act provideth, that the oath without that fatall clause should extend as well to the barons of the exchequer, as to the justices, and expressed the penalty of all to be (according to the common law) viz. losse of office, fine and ranfome. But at the next parliament, viz. 9 R. 2. the said act of 8 R. 2. for that it was <sup>a</sup> very hard, and needed declaration, was made of no force till it be declared in parliament. <sup>b</sup> Afterwards at the parliament holden 11 H. 4. it was debated what punishment great officers there named counsellors of the king, and judges, &c. should have, which should take any gift, reward, or brocage for doing of their offices or fervices: in the end it was declared and enacted by authority of parliament, in these words following. *Item que nul chancelor, treasorer, garden del privy seal, counsellier du roy servientes a counsell du roy, no nul autre officer, \* juge ne minister du roy pernonnt fees ou gages de roy pur leur dites offices ou service, preigne en nul manner, en temps avenir aucun manner de <sup>c</sup> done ou brocage de nulluy pur leur ditz offices et services affaire, sur peine de 1. responder a roy de la treble de cco, que 1. issi preignent, 2. et de satisfaire la party, 3. et punis al volunt le roy, et 4. soit discharges de son office, service, et counsell pur tous jours, et que chescun que verra pursuer en la dit matier eit la sute sibien pur le roy come pur luy mesme, et eit la tierce part del summe de que la partie soit duement convict. Responf. Le roy le voet.*

<sup>a</sup> This act being by authority of parliament, hath limited the punishment (amongst others) of corrupt judges, of whom now we entreat, so as the former example of Sir William Thorp is not now to be followed, which we affirm not in favour of sordid bribery, (which we hate, as in the proper chapter thereof before appeareth) but in advancement of justice and right, which is the end of our labour in this and other of our works; <sup>b</sup> and therefore have caused that good act that hath lived so long in obscurity, for the better notice and observation thereof, to be put to the presse, which never was yet printed; and the cause thereof was, for that in the margin of the parliament roll of this act, it is written, *respectuatur per dominum principem et concilium*: a strange presumption without warrant of the king his father, and of the parliament, to cause such a *respectuatur* to be made to an act of parliament.

The like he did to another act in the same parliament, nu. 63. concerning attorneys, the like whereof was never done in any former or latter parliaments. <sup>c</sup> This was that prince Henry, who keeping ill company, and led by ill counsell, about this time assaulted (some say) and stroke Gascoign chief justice sitting in the kings bench, for that the prince endeavouring with strong hand to rescue

8 R. 2. ca. 3.  
Vide Ver. Mag.  
Cart. fo. 165. a.  
ubi supra.

9 R. 2. cap. 7.  
<sup>a</sup> In respect of  
the recitall.

<sup>b</sup> Ro. Par.

11 H. 4. nu. 28.  
not heretofore  
printed. Vid.

1 H. 4. nu. 99.

<sup>c</sup> Nota.

<sup>c</sup> This is agreeable to the law of God, Deut. 16. 19. Non accipies personam, nec munera, quia munera excæcant oculos sapientum, et mutant verba iustorum.

Exodus 23. 8.

+ [ 225 ]

Nota four punishments.

1. By the court of justice where the matter shall depend (as hath been often observed) by fine and imprisonment.

<sup>a</sup> In the oath of the justices in Wales, that fearful clause is omitted, neither is it in the oath of the barons of the exchequer of England.

<sup>b</sup> Veritas nihil veretur nisi abscondi.

<sup>c</sup> See Sir Tho. Elliot in his Governour, &c. Holl. Chron. 543. a.

rescue a prisoner, one of his unthrifty minions indicted and arraigned at the kings bench bar for felony, was prevented of his purpose by the perswasion and commandement of the chief justice, for which the chief justice committed the prince to the kings bench, whereof some of his followers instantly complained to the king his father: who informing himself of the true state of the case, gave God infinite thanks, that he had given him such a judge, as feared not to minister justice, and such a son, as could suffer seembly and obey justice. And this is that prince, who abandoning his former company and counsell, and following the advice of grave, wise, and expert men, whom he made choice of to be of his counsel, became a victorious and vertuous king, and prosperous in all that he took in hand, at home and abroad.

For the duty of judges, it is truly said (as before hath been said) that *judex debet habere duos sales, viz. saltem scientiæ, ne sit insipidus, et saltem conscientiæ, ne sit diabolus*. And what persons should be judges, see Bracton, lib. 1. cap. 2. & lib. 3. fo. 106. & Fleta, lib. 1. cap. 17. § Caveat, and the Mirror, ca. 2. §. 2. de judges, and Rot. Parl. 17 E. 3. nu. 3. 10.

To these we will add, that upon the conclusion of a marriage then to be had between Philip the son of the emperor, and prince of Spain, it was nobly and wisely provided by the queen, the lords spirituall and temporall, and the commons by authority of parliament (amongst many other excellent provisions worthy of observation) that the said prince should not promote, admit, or receive to any office, administration or benefice in the realm of England, and the dominions thereunto belonging, any stranger, or persons not born under the dominion and subjection of the most noble queen of England: and that the said most noble prince should doe nothing whereby any thing might be innovated in the state or right, either publique or private, or in the lawes and customes of England, or the dominions thereunto belonging, but shall contrariwise confirm and keep, to all estates and orders, their rights and priviledges.

And it is there further provided for the future, &c. that if the said prince should have issue male or female, the order of succession is there declared, but with this proviso. Provided nevertheless, and expressly reserved in all and singular the above declared cases of succession, that whatsoever he or she be, that shall succeed in them, they shall leave to every of the said realms, lands and dominions whole and entire their priviledges, rights, and customes, and the same realms and dominions shall administer, and cause to be administered by the naturall born of the said realms, dominions, and lands.

By this, Philip (after king of Spain) could not prefer any stranger born to any office of judicature, &c. within the realm of England, or dominions of the same, nor all the time he was within this realm, ever attempted the same.

And in the articles, *De matrimonio prælocuto inter reginam Elizabetham et ducem de Alonson*, amongst others it was expressly provided, *Quod dux nullum extraneum ad aliquod officium in Anglia prouovebit, et nihil in jure mutabit, &c.*

Anno 8. Mar.  
Stat. 2. ca. 2. in  
print. See the  
Articles of Con-  
cord, 21. Mail  
anno Dom. 1420.  
et anno 8. H. 5.  
between king  
H. 5. and Charles  
the French king,  
whereby the  
crown of France  
after the death  
of the said  
Charles, was  
established to  
H. 5. and his  
heirs. Artic. 7.  
8, &c.

[ 226 ]

Vide Camden.  
El. 322. Artic.  
inter reginam  
Eliz. et Francis-  
cum ducem  
Alonson anno  
23. El. populo super importune ut nuberet suadente in comitiis.

Also

\* Also king James wisely provided by authority of parliament, by the advice of the lords spirituall and temporall, and commons in that parliament assembled, that whereas in regard of some difference and inequality of the laws, trials, and proceedings \* in case of life, between the justice of the realm of England, and that of the realm of Scotland, it appeareth to be most convenient for the contentment and satisfaction of all his majesties subjects to proceed (with all possible severity) against such offenders in their own country according to the laws of the same, whereunto they are born and inheritable, and by and before the naturall born subjects of the same realm, if they be there apprehended. And by the next clause it is provided, that felonies committed by Englishmen in Scotland, shall be enquired of, heard, and determined before justices of assise, or commissioners of oier and terminer, and gaol-delivery, being naturall born subjects within the realm of England, and none other. And the like in another clause with an addition of justices of peace to be naturall born subjects within England; and God blessed and prospered this act with happy and desired successe.

\* 4 Ja. regis, ca. 1, about the middle.

\* That case being then in question.

But contrariwise, *Petrus de Rapibus*, or of the Rocks, being a Gascoign born, preferred to be bishop of Winchester by king John, and being a principall counsellor about king H. 2. both in his young years, did after in his riper age prefer to offices about the king, such Gascoigns as were of his blood or alliance, (whereof one of his kindred, some say his son, *Peter de Orival* treasurer of England) to the great grief and discontentment of the nobility of England to have a Gascoign born in place above them. And what heavy event ensued thereupon, let historians inform you, for it is grievous to me to remember it.

Math. Par. pag. 363. 380. 383. &c. Hol. Chron. pag. 231. & 1071. 2. b.

If you desire to see somewhat concerning ecclesiasticall offices, promotions, and benefices, first what petitions have been made in parliament against aliens or strangers; look in the parliament rolls of 50 E. 3. nu. 96, 97. 120. 13 E. 3. nu. 23. 17 E. 3. nu. 59, 60. 18 E. 3. nu. 38. 2 R. 2. nu. 6 H. 4. nu. 48. 4 H. 6. nu. 29, &c. And what laws have been made that aliens or strangers should not be advanced to the same; *Vide* 35 E. 1. Statut. de Carillie. 3 R. 2. ca. 3. 7 R. 2. ca. 12. Rot. Parl. 13 R. 2. not in print. 1 H. 5. ca. 7. 4 & 5 Ph. and Mar. ca. 6.

*Vide* 30 E. 3. nu. 165. for the keeping of the castle of Nottingham. *Vide* 18 E. 1. Rot. Parl. nu. Solomon de Rolles case.

C A P. CII.

[ 227 ]

Forfeiture, Confiscation, &c.

**N**O T A *confiscare et forisfacere* are synonyma, and *bona confiscata* are *bona forisfacta*: *Fiscus* properly signifieth a panier or hamper of oiers, wherein the Romanes kept their treasure, and by the figure of *metonymia continens pro contento*, it is taken for the treasure it self, *unde confiscave*, and *bona confiscata*, and thereupon it is said, *Quod non capit Christus, capit fiscus*.

For the derivation of *forisfacere*, see the first part of the Institutes, sect. 74. fo. 59. 2. 3 E. 3. forfeit 24.

Of forfeiture of lands and tenelements, and other hereditaments for

\* See before cap. High treason, verbo [De crimes et tenements, &c.] fol. 18. & 19. Et cap. de Petit treason. Verb. [Et de tiel man-ner de treason,] &c. fo. 21.

\* See the 1 part of the In-stitutes, of both these branches.

\* See the 1 part of the Institutes, ubi supra, both the former and the latter sort.

\* 3 E. 3. Cor. 290. 312.

\* 29 E. 3. 29, 45 E. 3. Cor. 100.

3 E. 2. Cor. 367, 368.

3 H. 7. 12.

22 H. 8. c. 14.  
32 H. 8. ca. 3.  
See before *Peine fort et dure* in the next preceding chapter.  
See before in the chapter of Petit treason, fo. 26.

[ 228 ]

for high treason, petit treason, felony, misprision of treason, pre-munire, and in some cases of misprision, \* and what hereditaments which be not holden shall be forfeited for high treason, and shall not escheat for petit treason or felony, we have spoken before in their severall chapters, &c. now let us speak of forfeiture of goods and chattels in these and some other cases.

\* Of these the forfeiture of some of them must appear, or be found of record, and therefore these cannot be claimed by pro-scription; of other some the forfeiture need not appear, or be found of record, and therefore these may be gained by prescrip-tion.

\* Of the former sort be *bona et catalla proditorum, felonum, utla-gat', in exigend' positorum, fugitivorum, deodand' annus, dies, et vastum, &c.* and all other forfeitures which must appear or be found of re-cord.

Of the latter sort be treasure trove, *bona et catalla wariat', extra-hur' wreckum maris, &c'*

\* If a traitor or felon either rescue himself, or will not submit him to be arrested, but resisteth, and in resistance is slain; upon presentment hereof he forfeiteth all his goods and chattels.

\* If a felon in pursuit wave his own goods, they are forfeited, yet are they not *bona wariata*.

If in appeal of robbery the plaintiff omit any of the goods stolen, they are forfeit to the king for the favour, which the law presum-eth, the plaintiff beareth to the felon: and for that he cannot have restitution for more then is in his appeal.

In appeal of robbery of goods, if the jury find that the defen-dant found them in the high way, in this case the plaintiff for his false appeal, in seeking the blood of the innocent, shall forfeit his goods to the king.

If one arraigned for treason or petit treason, challengeth peremp-torily above thirty five, he forfeiteth his goods, and judgement of *paine fort et jure* shall be given against him, as one that refuseth the triall of law, by challenging three full juries, and like unto one that stands mute and will not put himself upon the triall of the law.

By the statute of 22 H. 8. it was provided that no person ar-raigned for any petit treason, murder or felony, shall be admitted to any peremptory challenge above the number of twenty: but at this day in case of high treason, notwithstanding the statute of 33 H. 8. cap. 22, 23. and petit treason notwithstanding the act of 22 H. 8. he may challenge thirty five according to the common law, for it is enacted by the statute of 1 & 2 Ph. and Mar. cap. 10. that all trials hereafter to be awarded, or made for any treason, shall be had and used only according to the due order and course of the common law, so as to petit treason the act of 22 H. 8. is abrogated, but in cases of murder and felony he cannot challenge peremptorily above the number of twenty, and if he challenge above twenty, and under thirty six, he forfeiteth not his goods and chattels, for no law giveth forfeiture for challenging above twenty; but the court ought to over-rule the challenge: neither is he convicted by the challenging above twenty, as he was by the common law by challenge of three juries, for the act of 22 H. 8. extendeth not to any conviction, but to the challenge only.

If

If the party defendant be attached or distreyned by process out of any court of record, county, by force of a justices, &c. hundred court, or other court baron, and make default, the goods or issues are forfeited, and upon the attachment the sheriff or other officer may take the goods with them: and this is the reason that upon the attachment the sheriff or other officer ought to return the certainty of the goods and the value, and it is not sufficient to return that he hath attached or distrained the defendant by goods to such a value, and so upon the distress the issues must be returned in certain, because they are upon default to be forfeited.

What a person convict of felony before attainder shall forfeit: see the first part of the Institutes, sect. 745. verb. Attaint, fo. 391.

See *supra* in the chapter of Deodands, and in the chapter of Wreck, *vid.* Stanford Pl. Cor. fo. 183, 184. &c.

8 E. 2. Forfeit.  
17. 23 E. contumac. 17.  
7 H. 6. 9.  
26 H. 6. Attachment 4.  
28 H. 6. 9.  
34 H. 6. 29. 49.  
32 H. 6. ibidem  
9 H. 7. 6. Broke tit. Forfeit. 4.  
3 El. Dier, 199.  
p48. 54.  
1. part of the Institutes. § 745.

### C A P. CIII.

#### Of the Seifure of Goods, &c. for Offences, &c. before Conviction.

**R**EGULARLY the goods, &c. of any delinquent cannot be taken and seised to the kings use, before the same be forfeited.

The same cannot be inventoried, and the town charged therewith, before the owner be indicted of record.

It is to be observed, that there is two manner of seifures, one verball without taking, removing, or carrying away, only to make an inventory, and to charge the town: and the other an actuall seifure, and taking away the same.

As to the first, the same is manifest by Bracton, and all our ancient authors: and let Bracton speak for them all.

*Prisones imprisonati, antequam convicti fuerint, de terris suis disseisiri non debent, nec de rebus suis quibuscunque spoliari; sed dum fuerint in prisona debent de proprio in omnibus sustentari, donec per iudicium de liberati fuerint vel condemnati, &c.* And fo. 136. b. he saith thus, *Qui pro crimine vel feloniam magna, sicut pro morte hominis, captus fuerit et imprisonatus, vel sub custodia detentus, non debet spoliari bonis suis, nec de terris suis disseisiri, sed debet inde sustentari donec de crimine sibi imposito se defenderit, vel convictus fuerit, quia ante convictionem nihil spoliatur; et si quis contra hoc fecerit, fiat vicecom' tale bre. rex vic' salutem. Scias quod propius est in curia nostra coram nobis, quod nullus homo captus pro morte hominis, vel pro alia feloniam pro qua debeat imprisonari, disseisietur de terris, tenementis vel catallis suis, quousque convictus fuerit de feloniam de qua reclatus est, sed quam cito*

1.  
Vide 25 E. 3. ca. 14.

2.

3.

26 Aff. p. 32.  
43 E. 3. fo. 24.  
44 Aff. p. 14.  
7 H. 4. fo. ultimo.  
Lib. 8. fo. 171.  
See the 1 part of the Institutes, sect. 745. f. 391.  
a. Bract. l. 3. f. 123. Brit.  
fo. 4 b. Fleta, li. 1. c. 25. 26.  
\* Nota the generality of these words. Hil.  
29 E. 1. Coram rege in Aff. Campions case.  
b In this word treason is comprehended.

\* Nota, Mort del home est feloniam magna. \* Note this reason extends as well to treason, as to felony. \* This writ is in the Regist. † That is, by Magna Cart. cap. 29. and that act extends to treason as well as to felony, 5 E. 3. cap. 9. Fleta, li. 2. c. 26. accord. & id est, indictatus, for before indictment no verball seifure can be made, or inventory taken. Stat. de 4 E. 1. de offic. coronatoris, et aliquis culpabilis inveniat, &c. Britton, f. 4. b. accord.

captus

<sup>b</sup> So it was in  
Braffons time,  
but afterwards  
the township was  
charged and an-  
swerable for the  
same. Britton,  
fo. 18. Mir-  
ror, c. 2. § 13.  
Fleta, li. 1. c. 25.  
26. 43 E. 3. 18. 4.  
<sup>a</sup> Note the ge-  
nerality of these  
words.  
<sup>b</sup> Mic. 18 E. 1.  
Coram rege. Ro.  
34. North. Nisi  
quis appellatus  
indictatus vel  
cum manu opere  
captus fuerit,  
non competit  
regi secta contra  
ipsum.  
Begging of lands  
and goods before  
conviction, &c.  
unlawfull.

*captus fuerit per visum custodum placitorum coronæ nostræ, et per visum  
tuum et legalium hominum apprecientur caralla ipsius capiti, et imbre-  
viantur, et salvo custodiuntur per <sup>b</sup> balivos ipsius qui capitur, et qui  
bonam inveniant securitatem \* de respondendo coram justiciariis nostris cum  
ab eis exigantur: salvo tamen eidem capto et familie sue necessariiæ,  
quandiu fuerit in prisona, rationabili estoverio suo, &c. i. rationabili  
victu et vestitu. 3 E. 3. Coron. 366. 13 H. 4. 13.*

By the statute of 1 R. 3. cap. 3. it is enacted and declared, That  
neither sheriff, escheator, bailife of franchise, <sup>a</sup> nor other person  
take or seise the goods of any person arrested, or imprisoned,  
before he be convicted or attaind of the felony, <sup>b</sup> according to the  
law of England, or before the goods be otherwise lawfully for-  
feited, upon pain to forfeit double the value of the goods so taken,  
to the party grieved.

So as (*super toto materia*) these two conclusions are manifestly  
proved. First, that before indictment, the goods or other things  
of any offender cannot be searched, inventoried, or in any sort  
seised; nor after indictment seised, and removed, or taken away  
before conviction or attainder. Secondly, that the begging of the  
goods or state of any delinquent accused or indicted of any trea-  
son, felony, or other offence before he be convicted and attaind,  
is utterly unlawfull, because before conviction and attainder, as  
hath been said, nothing is forfeited to the king, nor grantable by  
him. And besides it either maketh the prosecution against the  
delinquent more precipitate, violent, and undue, then the quiet  
and equall proceeding of law and justice would permit, or else by  
some underhand composition and agreement stop or hinder the due  
course of justice for exemplary punishment of the offender. And  
lastly, when the delinquent is begged, it discourageth both judge,  
juror, and witnesse to doe their duty.

Cap. Itineris.

It was an article of inquiry, *de hiis qui aliquid agunt per quod ve-  
ritas et justitia suffocantur.*

See Lib. 7. f. 36, & 37. the case of penall statutes, *et nota bene*:  
see also the statute of 21 Jac. ca. 3. *à fortiori* in case of life. *Placi-  
tum coronæ* ought not to become in effect *placitum privatum*. And  
if it fall out that the party accused be *legitimo modo acquietatus*, let  
such as begge him and prosecute against him be terrified by the  
villanous judgment against conspiratours, which you may read be-  
fore cap. Judgements and Execution.

## C A P. CIV.

Syers case, anno  
32 Eliz.

**A**T twelfe sessions of the peace holden at Norwich for the  
county of Norfolk, anno 32 Eliz. one Syer was indicted of  
burglary, supposed to be committed 1 Augusti anno 31 Eliz.  
whereunto Syer pleaded not guilty. And upon the evidence it ap-  
peared that the burglary was committed 1 Septemb. anno 31 Eliz.  
so as at the time alledged in the indictment there was no burglary  
done;



done: and it was conceived that the very true day in the indictment was necessary to be set down in the indictment, for that the judgement doth relate to the day in the indictment, and so avoid feoffments, leases, &c. for that as it was also conceived) the feoffee, lessee, &c. when the attainder is upon a verdict, should not falsifie in the time of the felony: and thereupon the jury found Syer not guilty. And at the same sessions Syer was again indicted for the same burglary done *1 Septembris anno 31 Eliz.* when in truth it was done. And he that gave the charge at that sessions doubted, whether upon this matter Syer might plead *auter foitza acquite* for the same burglary, (for seeing the offender is allowed no counsell, the court ought to do him justice and assigne him counsell *in favorem vite*, though he demand it not, to plead any matter in law appearing to the court for his discharge;) and thereupon he stayed the proceeding against him, and the assises being at hand he acquainted the justices of assize, Wray chief justice, and justice Peryam with this case, and with the doubts conceived thereupon; who answered him, that the like case had then been lately propounded by justice Peryam to all the justices of England; and by them three points were resolved. 1. That the crown was not bound to set down the very day when the treason, felony, &c. was done, but the day set down in the indictment being before or after the offence done, the jury ought to finde him guilty, if the truth of the case be so; and if it be alledged before the offence done, to finde the day when it was done in *rei veritate*, for they are sworn *ad veritatem dicendam*, and then the forfeiture shall relate but to the day in the verdict, which was the day of the offence done, and not to the day in the indictment. 2. That if the triers finde the offender guilty generally, yet the feoffee or lessee, &c. if the offence be alledged in the indictment before it was done to their prejudice, may falsifie in the time, but not for the offence. For seeing the crown is not bound to set down the very just day when the treason or felony, &c. is done, and that the triers have chief regard and respect of the offence it selfe, God forbid, but that the subject might falsifie as concerning the time of the offence. 3. If the offender be found not guilty, he in that case might plead upon a new indictment, *auter foitza acquite*: and so Syer in the case aforesaid did, and was thereupon discharged according to the said resolutions. Note three notable points resolved, that never were resolved in any book that we have read, and remember.

If a man infeoffeth another of his land, and after is indicted of a felony supposed to be committed before the feoffment, and thereupon he is outlawed; the party himself is bound hereby, and cannot traverse the felony, but the feoffee, &c. may; because he is an estranger thereunto: for a false indictment without any tryall by verdict shall not binde the feoffee, &c. but that he may falsifie, either by traverse of the felony it selfe, or of the time of the feoffment.

And so it is if a man maketh a feoffment of his land, and after taketh sanctuary, and confesse the felony before the coroner by him to be done before the feoffment, and abjureth the realm; the feoffee shall falsifie the attainder by traversing of the felony. And so it is if a man be indicted of felony, and is attainted by his own confession, the feoffee shall falsifie the attainder by denying the felony.

At the assises in Lent, 32 Eliz. in com. Norff.

Note, The resolution of all the Judges.

49 E. 3. 11.  
7 E. 4. 2, 2.

[ 231 ]

11 H. 4. 94.  
2 H. 5. Elop. 91.  
7 E. 4. 1. 2.  
Vid. Rot. Parl.  
23 H. 6. nu. 32.

felony. But otherwise it is if he be attainted upon a verdict given by twelve men; for then the feoffee shall not falsifie by traversing of the offence, but of the time only.

Pl. com. f. 390.  
Le Countee de  
Leic. case.

<sup>a</sup> Tri. 3 El.  
<sup>b</sup> V. for this  
point 22 Aff.  
p. 64. 39 E. 3.  
33. 34. 41 Aff.  
p. ult. 27 Aff.  
p. 55. 39 Aff.  
p. 6. 7 H. 4.  
3. 9 H. 4. 1.  
10 H. 6. 13.  
36 H. 6. 32.  
31 H. 6. 10.  
4 H. 6. 24.  
22 E. 4. 31. Co-  
lyns case.  
2 H. 3. 10.  
4 H. 7. 18.  
2 H. 7. 30.  
Vide Rot. Parl.  
18 E. 1. Rot. 11.  
Mountgom. Bo-  
go de Knovil,  
&c.  
<sup>c</sup> See this case  
temps E. 1. tit.  
Mordant. 46.  
but not fully  
there reported.  
Vid. lib. 9.  
fo. 119. Lord  
Zanckers case.  
<sup>d</sup> Where the an-  
cestor of the ac-  
cessory was law-  
fully and in due  
form attainted  
of felony and  
yet the heire  
shall inherit by  
matter *ex post  
facto*.  
<sup>e</sup> Vi. li. 5. fo.  
119. b.  
Lo. Zanckers  
case. Debiti fon-  
damento fallit  
opus. 2 R. 3.  
fo. 12.  
<sup>f</sup> 26 E. 3. 57.  
7 H. 6. 44.  
43 E. 3. 3.  
4 E. 3. 36.  
11 H. 4. 6.  
9 H. 6. 38. b.  
8 H. 4. 4.  
10 H. 6. 6.  
6 E. 4. 8.  
8 H. 7. 10.  
13 E. 4. 4.

Where the case in effect is; that 15 *Januarii anno 1 Mariae*, a commission of oier and terminer in Loudon was directed to Sir Thomas White the lord maior of London, and to divers others, reciting; that where Sir Robert Dudley knight, 9 *Januarii anno 1 Mariae* was indicted of high treason before Thomas duke of Norff. and 14 others commissioners of oier and terminer in the county of Norff. (where in truth that commission was directed to so many, but the indictment was taken but before 8 of them only) granting to them or any four of them, authority to receive the indictment taken before 15 commissioners, and to proceed thereupon as speciall iustices of oier and terminer, &c. By pretext whereof they proceeded; and upon the confession of the said Sir Robert Dudley, gave judgement against him in case of high treason. \* In this case it was adjudged, that Sir Robert Dudley, then earl of Leic. might falsifie the said attainer by plea, because it was void, and *coram non iudice*: for that the said latter commissioners <sup>b</sup> had no power to proceed upon an indictment taken before 8, but before 15, and so the judgement was void, and *coram non iudice*: for wheresoever the judgement is void or *coram non iudice*, the party is not driven to his writ of error, but may falsifie the attainer by plea, shewing the speciall matter which proveth it void, or *coram non iudice*. In which case the party forfeiteth neither lands nor goods. By which case it appeareth how necessary it is for judges, especially in cases of treason and felony, to look into the whole record, and the proceedings thereupon, before they give judgement, lest they give an unlawfull and unjust judgement, by means whereof the party may lose his life, &c.

\* A and B were indicted, A as principall of felony, and B a accessory for receiving him. A fled and was attainted of the felony by outlawry. B the accessory (being seised of lands in fee holden of C) was arraigned upon the indictment and found guilty by verdict, and had judgement, and was hanged: C the lord entreth as lord by escheat: A the principall reverseth the outlawry, and to the felony pleaded not guilty, and by verdict was found not guilty, and thereupon was by judgement acquitted. The heir of B, brought an assise of mordancestor against C the lord by escheat, who pleaded the outlawry of the principall, and the attainer of the accessory, his feason in fee, and the execution, and his entry as lord by escheat. <sup>a</sup> The plaintife shewed the reversall of the outlawry by the principall, and his acquittall by verdict and judgement, whereupon the lord demurred in judgement. And it was adjudged that the plaintife in the writ of mordancestor, should recover against the lord by escheat. Upon which judgement we observe these five conclusions. <sup>1.</sup> \* That the attainer of the accessory hath a kinde of dependancy upon the attainer of the principall. For it is a maxime in law, that the accessory ought not to be put to answer before the principall be attainted; and by the reversall and acquittall of the principall, the dependant judgement against the accessory cannot stand. <sup>2.</sup> <sup>f</sup> That this attainer of the accessory may be falsified and avoided by the heir by plea, and is not driven to his writ of error; for that the attainer of the accessory is by matter in law avoided by record of as high nature as the

the attainder of the principall was. For in this case it is impossible that there should be an accessory where there was no principall, of the same felony. 3. That the escheat of the land lawfully once vested shall by this matter *ex post facto*, be devested. 4. Though there were no immediate descent to the heir, yet upon the judgement of the acquittal of the principall the writ of mordancestor was maintainable. Lastly, that albeit the attainder of the accessory is avoided by judgement of law, yet the lord by escheat remain tenant of the land, until it be evicted from him by action or entry. And so it is if the principall be attainted of felony, and after the accessory is also attainted, if the principall reverseth his attainder by writ of error, the attainder of the accessory dependant thereupon is reversed.

[ 232 ]

18 E. 4. 9. b.

A man commits treason; or felony, and is thereof attainted in due form of law, and after this treason or felony is pardoned by a generall pardon; hereby the foundation it self, viz. the treason or felony being by authority of parliament discharged and pardoned, the attainder (being builded thereupon) cannot stand, but may be falsified and avoided by plea, for he hath no other remedy by writ of error or otherwise.

Dier 20 Eliz.  
135. lib. 6. fo.  
13, 14. in Arundels case.

In the county of Warwick there were two brethren, the one having issue a daughter, and being seised of lands in fee devised the government of his daughter and his lands, untill she came to her age of sixteen years, to his brother, and died. The uncle brought up his niece very well both at her book and needle, &c. and she was about eight or nine years of age: her uncle for some offence correcting her, she was heard to say, Oh good uncle kill me not. After which time the childe after much inquiry, could not be heard of: whereupon the uncle being suspected of the murder of her, the rather for that he was her next heir, was upon examination *anno 8 Jac. regis* committed to the gaol for suspicion of murder, and was admonished by the justices of assise to find out the childe, and thereupon bailed him untill the next assises. Against which time, for that he could not finde her, and fearing what would fall out against him, took another childe as like unto her both in person and years as he could find, and apparelled her like unto the true child, and brought her to the next assises, but upon view and examination, she was found not to be the true child; and upon these presumptions he was indicted and found guilty, had judgement, and was hanged. But the truth of the case was, that the child being beaten over night, the next morning when she should go to schoole, ran away into the next county: and being well educated was received and entertained of a stranger: and when she was sixteen years old, at what time she should come to her land, she came to demand it, and was directly proved to be the true child. Which case we have reported for a double caveat: first to judges, that they in case of life judge not too hastily upon bare presumption: and secondly, to the innocent and true man, that he never seek to excuse himself by false or undue means, lest thereby he offending God (the author of truth) overthrow himself, as the uncle did.

*Falsifying concerning Goods.*

Bract. lib. 3. f.  
128, 129. a.  
Brit. ca. 12.  
fol. 20.  
3 E. 3. Forfeit  
25. 22. Aff. 96.  
13 H. 4. 13.  
4 H. 7. 18.

3 E. 3. cor.  
296. & 344.

47 E. 3. 16.  
13 E. 4. fo. 8. a.  
Travers de chat-  
tell al common  
ley.

27 Aff. p. 50.  
41 Aff. p. 13.  
44 Aff. p. 16.  
Lib. 5. fo. 121.  
Fozleyes case.

Bract. lib. 3. f.  
129. a. 43 E. 3.  
18. 7 E. 4. 17.  
a. per Cheke. 45  
Aff. p. 9. Stanf.  
pl. cor. 284. d.  
30 H. 6. tit. for-  
feit. 31. 19 E. 3.  
ibid. 19. 223.

45 E. 3. Aff. 9.  
\*[ 233 ]

8 E. 2. cor. 406.

If A be indicted before the coroner for the death of another, and that A fled for the same; hereby are all the goods and chattels of A forfeited which he had at the time of the verdict given; and this cannot be falsified by traverse. For if the party be arraigned upon the same indictment before justices of gaole delivery, and is by verdict acquitted of the felony, and that he did not flee for the same; yet he shall forfeit his goods and chattels, but yet, <sup>a</sup> such a *fugam fecit* may be falsified by matter in law; for if the indictment be void or insufficient, there is no forfeiture. <sup>b</sup> But if a man be indicted before justices of oier and terminer, and is acquitted by verdict, and they finde further that he fled for the same, his goods are forfeited which he had at the time of the verdict given; <sup>c</sup> and it being also found in particular what goods he then had, that may be traversed by any that had property in those goods.

There is also a *fugam fecit* in law. <sup>d</sup> As if a man be indicted or appealed of felony and proces continued against him, upon his default of appearance, and an exigent awarded against him, whereupon he appeareth, albeit he be after acquitted of the felony, yet all his goods and chattels are forfeited by the awarding of the exigent upon this *fugam fecit* in law. <sup>e</sup> But this may be falsified by matter in law: for if the indictment or writ of appeal be insufficient, or error be in the proces or exigent the same may be avoided by exception, and no forfeiture of goods. And there is no book to warrant the opinion of justice Stanford <sup>f</sup> in this case: for in 43 E. 3. the original writ was good, *quod adnoto, non ut arguam, sed ne ipse arguar.* And also by matter in deed or record he may excuse his absence, as if he were in prison or beyond the sea, at the time of the exigent awarded, or if the king before the exigent doth pardon him.

A is indicted of petit larceny, and upon his triall is found not guilty, and that he did flye for the same, he shall forfeit his goods. And so it is if an exigent be upon such an indictment awarded against him: but he may falsifie the same to free him of the forfeiture of his goods by such means as is aforesaid. See the first part of the Institutes, sect. 745. fol. 391. a.

*Hæ leges vitam vestram (generosa juvenus)*

*Instituunt, quæ sunt fugienda, sequendaq; monstrant.*

## C A P. CV.

## OF PARDONS.

WE have spoken of the royall and establishing vertue of justice: royall and establishing I say, because *justitia firmatur solium*, by justice the royall throne is established. We are now to speak of his mercy: for the same Holy Spirit saith, *Misericordia et veritas custodiunt regem, et roboratur clementia thronus ejus*. Mercy and truth preserve the king, and by clemency is his throne strengthened. And hereupon is the law of England grounded. *Non solum sapiens debet esse rex, sed et misericors, ut cum sapientia misericorditer sit justus, &c.* *Quibus tamen et qualiter est miserendum, doceant cum merita vel inmerita personarum, &c.* Of this royall vertue we shall speak the more willingly, for that (as it hath appeared before in the chapter of Sanctuary) all sanctuaries and places of refuge for safegard of life are taken away. And where Bracton in the same place speaking of the kings mercy saith, *Nihil tam proprium est imperii quam legibus vivere*, it is to be observed, that the lawes of this realm have in some sort limited and bounded the kings mercy, as shall appear hereafter. And for as much as his mercy is conveyed unto his subjects by his pardons, we shall now speak thereof, being led thereunto by the book in 9 E. 4. where it is holden *a chescun roy appent per raison de son office a faire justice et grace; justice in execution des loyes, &c. et grace de grantier pardons, &c.*

Prov. 16. 12.

Prov. 20. 28.

Bract. lib. 2. fo.

9 E. 4. 2. a.

\* Seneca, lib. de Clementia, ca. 24. Remissius imperanti melius paretor.

b See the first part of the Inst. sect. 1. fo. 8. and sect. 646, 647. See after cap. Restitution.

\* Rot. par. 17 R. 2. nu. 11. &c.

c 27 H. 8. cap. 4. Hil. 29 E. 1. coram rege Heres. Jo. fil. Philippi Perpoint. 1 H. 4. fo. 37. 17 H. 6. protect. 57.

[ 234 ]

\* A pardon is a work of mercy, whereby the king either before attainder, sentence, or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt or duty, temporall or ecclesiasticall: b all that is forfeited to the king by any attainder, &c. he may restore by his charter: but if by the attainder the blood be corrupted, that must be restored by authority of parliament.

We call it in Latin *perdonatio*, and derive it à *per et dono*: *per* is a preposition, and in the Saxon tongue is *for*, or *vor*: as to forgive is throughly to remit, and \* forethink is to repent, and forbear is to bear with patience, as it is said, *leve est ferre, perferre grave*.

\* All pardons of treason or felony are to be made by the king, and in his name only, and are either generall or speciall. All pardons either generall or speciall, are either by act of parliament (whereof the court in some cases shall take notice) or by the charter of the king, (which must always be pleaded.) And these againe are either absolute, or under condition, exception, or qualification: for some of those pardons last mentioned the party may have a writ of allowance, or take an averment in certain cases, in others the party may be aided by averment only, where no writ of allowance doth lie.

And first of generall pardons. Generall pardons are by act of parliament, if any of these pardons be generall and absolute, the court

11 H. 4. fo. 41.  
28 H. 8. Dier.  
28. 3 Mar. ibid.  
200. 26 H. 8.

fo. 7. There is a very general and absolute pardon. Ro. par. 15 H. 6. nu. 31. 33 H. 6. nu. 29. &c.

\* This is put but for an example, but care must be taken, that what general pardon never be pleaded the first clause of the pardon of discharge, &c. be truly alleged. For the exposition of general words, see L. 5. fo. 47. Littletons case. Ibid. fo. 46. Franklyn's case. Ibid. fo. 48. Drywoods case. Ibidem 49. b. Wirralls case. Li. 6. fo. 79. 80. Sir Edw. Fittons case. Li. 6. f. 13. b. Li. Keylw. 8 H. 8. 187. Ibid. 10 H. 8. fo. 198. a. ter.

\* These averments (as you perceive) may be taken without any writ of allowance. 9 E. 4. 3. 4 H. 7. 8. Li. S. fo. 68. Trollops case. Vid. L. 6. fo. 13. 14. in Arundels case. A case of Burton.

Hil. 29 El. the resolution of all the justices.

court must take notice of them, though the party plead it not, but would wave the same. But in these dayes the general pardons have so many qualifications and exceptions of offences and things, and of persons also, that the court cannot take notice of them, neither can the party take benefit or advantage thereof, unless he plead it: and for that it may concern the safety and quiet of many a subject, we have expressed the form of the pleading of a general pardon, and have it set down here in Latin: but if the offence be objected in the star-chamber, or any other English court, then it must be pleaded in English.

*Et præd. A. per B. attorney suum venit, &c. (or in propria persona) et dicit quod dominus Jacobus rex nunc ipsum A. occasione præmissa impetere seu occasionare non debet: quia dicit, quod per quendam actum in parlamento dicti domini regis nunc tenet apud Westm' in com' Midd' nono die Februarii anno regni sui septimo, inter alia, inactitat' et stabilitum existit autoritate ejusdem parlamenti, \* quod omnes et singuli subditi dicti domini regis tam spirituales, quam temporales hujus regni Angliæ, Walliæ, insularum Jersey, et Garnsey, et villæ Barwic, hæredes, successores, executores, et administratores sui, et eorum quilibet, ac omnia et singula corpora aliquo modo corporata, civitat', burgi, comitat', riding, hundred, lath, rape, wapentag', vil', villat', hamlet' et tithing, et eorum quilibet, ac successor, et successores eorum, et cujuslibet eorum autoritate ejusdem parlamenti acquiescerentur, perdonarentur, relaxarentur, et exonerarentur versus dictum dominum regem, hæredes et successores suos et quemlibet eorum de omnibus prodictionibus, felonis, offensis, contempt', transgress', intrationibus, injuriis, deceptionibus, malegesturis, forisfacturis, penalitatibus, et summis pecuniæ, pænis mortis, pænis corporalibus, et pecuniariis, et generaliter de omnibus aliis rebus, causis, querelis, sectis, judiciis et executionibus in prædicto actu non exceptis, neque forpris', quæ per ipsum dominum regem aliquo modo, seu per aliquem modum perdonari potuerunt ante et usque nonum diem Novembris tunc ultim' præterit' ante editionem actus prædicti, cuilibet, aut alicui suorum subditorum, corporum corporat', civitat', burgorum, comitat', riding, hundred, lath, raparum, wapentag', villæ, villat', et tithing, vel aliquorum aliorum prout in actu prædicto plenius continetur. Et idem A. dicit quod \* offensa prædicta versus ipsum in forma prædicta objecta non est in actu prædicto excepta, neque forprisata. Et quod ipse est et tempore editionis actus prædicti fuit subditus et ligens dicti domini regis nunc natus sub obedientia sua, videlicet apud Westm' prædict', quodque ipse non est aliqua persona in actu prædict' except' neque forprisat'. Et hoc paratus est verificare, unde non intendit quod dictus dominus rex nunc ipsum A. occasione præmissa impetere seu occasionare velit, unde petit judicium. Et quod ipse de præmissis prædict' exoneraretur, et quod generalis pardonatio prædicta ei allocatur, &c. See before cap. of Falsifying of Attainders.*

By the general pardon of 28 El. all felonies are pardoned, burglary excepted. Hil. 29 El. it was resolved by all the justices, that a man being attainted of burglary was excepted, for the burglary remains, and is made more apparant by the attainder, and the offence of burglary is the foundation.

The most beneficial general pardons for the subject were those of the first, and thirteenth years of the reign of queen Elizabeth, as by comparison of those with others, will to the judicious reader easily appear. The best general pardon in all king James time, was that of the 21 year of his reign, as by comparison of that with

with any of his former, will evidently appear, and were too long here to be rehearsed.

And now of particular pardons. No particular pardon, be it at the coronation, or any other, of any offence or offences whatsoever, that is absolute without any \* condition, &c. need any writ of allowance, but when the pardon is conditional by force of the act of 10 E. 3. cap. 2. there a writ of allowance out of the chancery testifying that the condition is performed; viz. surety found according to that act may be had, or the party may plead the finding of surety, &c. and vouch the record.

The most large and beneficial pardons by letters patents, that we have read, and doe remember, were that to William Wickham bishop of Winchester (for good men will never refuse God and the kings pardon, because every man doth often offend both of them) and that other to Thomas Woolsey cardinall, which are learnedly and largely penned.

But let us turn our eye to ancient charters of pardon, and consider well of them.

*Edwardus Dei gratia rex Angliæ, dominus Hiberniæ, et dux Aquitanie, omnibus balivis et fidelibus suis, ad quos presentes literæ pervenerint, salutem. Sciatis quod pro bono servitio quod Johannes Chaumprona de Thornton in Pickeringis, in partibus Scotiæ nobis impendit, perdonavimus ei sectam pacis nostræ, quæ ad nos pertinet \* pro morte Isabellæ, quondam uxoris suæ, unde indictatus est, et firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto, si quis versus eum inde loqui voluerit. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Roukesburge, nono die Febr. anno regni nostri tricesimo.*

*Edwardus Dei gratia rex Angliæ, dominus Hiberniæ, et dux Aquitanie, omnibus balivis et fidelibus suis, ad quos presentes literæ pervenerint, salutem. Sciatis quod pro bono servitio quod Galf. filius Warnum in partibus Scotiæ impendit, perdonavimus eidem Galfro. sectam pacis nostræ quæ ad nos pertinet, de homicidiis, roberiis, latrocinis, fractionibus domorum, felonis et aliis transgressionibus contra pacem nostram. in regno nostro, factis, unde indictatus est, et similiter transgressionem quam fecit ab ecclesia de Watford, in qua aliquandiu pro timore inimicorum suorum se tenuit fugiendo, et se secundum legem et consuetudinem regni nostri iusticiar non permittendo, et etiam utlegariam, si qua in ipsum ea occasione fuerit promulgata, et firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto in curia nostra, si quis versus eum loqui voluerit de homicidiis, roberiis, latrocinis, fractionibus, felonis et transgressionibus prædictis. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Lincolne vicesimo secundo die Januarii anno regni nostri tricesimo, per breve de privato sigillo.*

It appeareth by this record, that the said Jeffry was indicted for the death of a man, and of divers burglaries and felonies, and being thereupon arraigned prayed his clergy, *sed salvo sibi privilegio clericali posuit se super patriam*, and was found not guilty, &c. in the proceeding whereof there was manifest error, and obtained the said pardon. Herein divers things are observable: first, that the pardon is *de* \* *homicidiis*, and not *de* *murdris*, neither have we seen any pardon of murder by any king of England by expresse name. Secondly, by these ancient words the king doth pardon *sectam pacis nostræ, quæ ad nos pertinet de homicidiis, &c. et firmam pacem nostram*

T 3

Hil. 26 E. 3.  
Coram rege rot.  
21. Wiltes.  
3 H. 7. 7. a.  
this statute expounded, and this act extend to felony, and not to treason.  
Rot. pat. 21 Julii anno 1 R. 2.  
Rot. pat. 12 Feb. 21 H. 8. great offences need great pardons, little offences are soon forgiven.  
Hil. 29 E. 1.  
Coram rege Hereford.  
Johannes fil. Ph. Perpoint, &c.

\* It appeareth by the record that he killed her per infortunium.

Delib. gaolæ de Windeffore, coram Hugone de Braund, et Johanne Neprunt die Jovis proximi post claus. Pasc. anno 25 E. 1.

\* For this word homicide, see in the chapter of Murder. See Hil. 31 E. 3. Coram rege rot. 7. Northumb. 9 E. 4. 28.

8 H. 4. fo. 22.  
Li. 6. fo. 13. b.

34 H. 6. 3. 2.  
35 H. 6. 1. 2.  
11 H. 7. 10.  
Li. 6. f. 79. l.  
8. 68. Lib.  
Keylw. 8 H. 8.  
fo. 187. 2 R. 2.  
4. b. simile.

## [ 236 ]

\* Pl. com. f.  
461. Coles case.  
37 H. 6. fo. 21.  
Quatermains  
case. Li. 5. fo.  
49. Vaughans  
case. Li. 6. fo.  
13. Cases de  
pardon.  
20 H. 6. Dier 135.  
Exod. 21. 12.  
13, 14. Deut. 19.  
13. Non misere-  
beris ejus, &c.  
2 E. 3. c. 2.  
14 E. 3. ca. 14.  
10 E. 3. ca. 2.  
2 E. 3. c. 2.  
4 E. 3. ca. 13.  
Rot. Par. 13 E. 3.  
nu. 10.  
27 E. 3. c. 2.  
Trib. 30 E. 1.  
Rot. 2. coram  
rege London,  
anno 29 E. 1. A  
pardon of death,  
ad instantiam  
Johan. Bute-  
court. Mich.  
33 E. 1. coram  
rege Ro. 65. a  
pardon ad requi-  
sitionem H. de  
Bohun, count.  
Heref. & Essex.  
13 R. 2. sta. 2.  
c. 1. 16 R. 2.  
ca. 6. 9 E. 4.  
fo. 26. b.  
1 E. 3. f. 24.  
8 H. 6. 20.  
4 E. 4. fo. 10.  
2 Li. 6. fo. 15.  
9 E. 4. 26. b.  
per Billing chief  
justice.

*ei inde concedimus.* This *secta pacis* is by indictment, which is the kings suit, and, as it were, his declaration. Thirdly, that the king of ancient time did not pardon *homicidium*, &c. but *sectam pacis nostrae quae ad nos pertinet de homicidiis*, &c. yet when he pardoned, and released the suit or mean, viz. *sectam pacis*, &c. the offender was discharged of the homicide it self, in *diebus illis*, but at this day the offence it self is pardoned, which is the surest way.

The king brought an action of debt upon an obligation, the defendant pleaded *non est factum*, and at a *nisi prius* it was found the deed of the defendant; and before the day in bank, the king pardoned the defendant all debts, querels, &c. and after the king had judgement, and sued out execution, and the defendant came and pleaded the pardon, and it was adjudged that in the kings case, he might plead the same, though he had no day in court, because he could not have an *audita querela*, or a *scire fac'* against the king, and therefore if he could not plead it, he should be without remedy, but against a common person he could not plead it, because he ought to have an *audita querela*, or a *scire fac'*. And in this case it is observable, that albeit by the judgement a new title to the said debt is accrewed to the king of record after the pardon, the obligation at the time of the pardon being but a matter in fact, yet for that the obligation was the \* foundation of the debt, and the matter whereupon judgement was given, and by the pardon the debt due by the obligation was extinct, the judgement thereupon cannot bind, but is to be avoided by pleading the pardon.

What things the king may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

\* In case of death of man, robberies, and felonies against the peace, divers acts of parliament have restrained the power of granting charters of pardons. First, that no such charters shall be granted but in case where the king may doe it by his oath. <sup>b</sup> Secondly, that no man shall obtain charters out of parliament, and accordingly in a parliament roll it is said; [for the peace of the land it would much help, if good justices were appointed in every county, if such be let to mainprise doe put in good sureties, as esquires or gent. and that no pardon were granted but by parliament.] Thirdly, for that the king hath granted pardons of felonies upon false suggestions, <sup>c</sup> it is provided, that every charter of felony which shall be granted at the suggestion of any, the name of him that maketh the suggestion shall be comprised in the charter, and if the suggestion be found untrue, the charter shall be disallowed. And the like provision is made by the statute of 5 H. 4. cap. 2. for the pardon of an approver.

<sup>d</sup> Fourthly, it is provided that no charter of pardon for murder, treason, or rape, shall be allowed, &c. if they be not specified in the same charter.

Before this statute of 13 R. 2. by the pardon <sup>e</sup> of all felonies, treason was pardoned, and so was murder, &c. <sup>f</sup> At this day by the pardon of all felonies, the death of man is not pardoned. These be excellent laws for direction, and for the peace of the realm. <sup>g</sup> But it hath been conceived, (which we will not question) that the king may dispense with these laws by a *non obstante*, be it generall or speciall, (albeit we find not any such clauses of *non obstante*, to dispense with any of these statutes, but of late times) these



these statutes are excellent instructions for a religious and prudent king to follow, for in these cases, *ut summa potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit*. Hereof you may read more in justice Stanford, lib. 2. cap. 35. in divers places of that chapter, of his grave advice in that behalf. Most certain it is, that the word of God hath set down this undisputable generall rule, <sup>a</sup> *Quia non profertur cito contra multos sententia, filii h. minum sine timore ullo perpetrant mala*. And thereupon the rule of law is grounded. <sup>i</sup> *Spēs impunitatis continuum affectum tribuit delinquendi. Et veniæ facilitas incentivum est delinquendi*. This is to be added, that the intention of the said act of 13 R. 2. was not that the king should grant a pardon of murder by expresse name in the charter, but because the whole parliament conceived, that he would never pardon murder by speciall name for the causes aforesaid, therefore was that provision made, which was (as in other cases I have observed) grounded upon the law of God, *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; et imāginem quippe Dei creatus est homo. Nec aliter expiari potest, nisi per ejus sanguinem, qui alterius sanguinem effuderit*. And the words of every pardon is after the recitall of the offence, *Nos pietate moti, &c.* See before in the chapter of Murder, and in the second part of the Institutes, stat. de Glouc. ca. 9. and the Register, fo. 309. pardon of the king, *de morte per infortunium, se defendendo, vel per henaticum, vel per furiosum*.

<sup>a</sup> Eccles. 8. 11.

<sup>i</sup> Regulm.  
Maledictus est  
qui peccat sub  
spe.

Genes. 9. 6.  
Num. 35. 33.

By the ancient and constant rule of law, *Non potuerit rex gratiam facere cum injuria et damno aliorum; quod autem alienum est, dare non potest per suam gratiam*. <sup>Bract. l. 3. f. 132.</sup>

In an appeal of death, robbery, rape, &c. the king cannot pardon the defendant, for the appeal is the suit of the party, to have revenge by death: and whether the defendant be attainted by judgment, &c. or by outlawry, the pardon of the king shall not discharge the defendant. \* In an appeal, the defendant wages battle, the plaintiff counterpleads, for that the defendant brake prison, if the king pardon the breaking of prison, the counterplea fails: note the breaking prison is a collateral act: and yet in divers cases at the only suit of the party, when the defendant either by the common law, or by any statute (besides the restitution, or dammage of the plaintiff) is thereby also to have an exemplary punishment, the king may pardon the same. For example, in an attainder by A. against the party, and the petit jury; against the party to have restitution, this the king cannot pardon: against the petit jury, by the common law that they should lose *liberam legem*, their wives and children cast out of their houses, their houses wasted, their trees prostrated, their meadows ploughed up, their goods and chattels seised, and their bodies taken, this the king may pardon, because it is a punishment exemplary to deter others, and tendeth not to the restitution or satisfaction of the plaintiff.

<sup>Bract. l. 3. f. 132.</sup>

[ 237 ]

<sup>11 R. 2. Chre.  
17. 2 R. 3. fo. 2.  
Sec 4 Martie  
Dier 133.  
\* 2 E. 3. Cor.  
134.</sup>

<sup>13 E. 4. 5. 2.</sup>

Now to take an example upon a statute: *De pueris masculis seu famellis (quorum maritadium ad aliquem pertinet) raptis et abductis, si ille qui rapuit non habens jus in maritagio, licet postmodum restituat puerum non maritatum, vel de maritagio, satisfecerit, puniatur tamen pro transgressione per prisonam duorum annorum*. In this case the party being satisfied, the king may pardon the imprisonment by two

<sup>W. 2. ca. 35.  
anno 13 E. 1.</sup>

years,

Pafch. 34 E. 1.  
Coram rege Rot.  
20 Kanc. in  
Ravishment de  
gard.

See the first part  
of the Institutes.  
W. 2. ca. 35.

\* Nota de eo  
quod ad regem  
pertinet.

Anno 1 E. 2.

Trin. 40 El.  
Coram rege in  
appeal de mur-  
dro. Inter  
Shugborough &  
Buggins.  
Li. 5. fo. 50. &  
110. b. 15 H. 7.  
9. 4 H. 7. ca. 13.

3 E. 3. Aff. 445.  
16 E. 3. Grant.  
53. 35 H. 6. 29.  
per Fortescue.  
37 H. 6. 4. b.  
Pl. com. 487. in  
Nichols case.

[ 238 ]

4 E. 4. fo. 4. 12.

11 H. 4. 43.  
37 H. 6. 4. b.  
1 H. 7. 10. b.

1 H. 7. 3.  
37 H. 6. 4.  
See before ca. 32.  
Against vexa-  
tious relators,  
&c. in fine.  
\* 3 H. 8. c. 12.  
&c.

years, for that was added as a punishment exemplary, *punitur*, &c. And this doth notably appear by a charter of pardon which king E. 2. made after this statute: *Rex de gratia sua speciali perdonavit Godithæ, quæ fuit uxor Roberti de Waldifch, id quod ad ipsum pertinet, de transgressionem quam ipsa Goditha fecit Agathæ, quæ fuit uxor Johannis de Waldifch de Ellam, rapiendo et abducendo Johannem fil' et hæredem Johannis de Waldifch infra ætatem existentem, cujus maritag' ad ipsam Agatham pertinet, unde ipsa Goditha coram domino E. quondam rege Angliæ patre ipsius regis convicta fuit, et per considerationem cur' dicti patris prisonæ adjudicata per biennium ibidem moratura, et etiam tempus imprisonment quod adhuc restat de biennio prædicto. Ideo vult idem rex quod præfata Goditha \* de eo quod ad ipsum pertinet pro transgressionem prædicta sit quæta, et quod à prisonæ prædicta, si pro eo quod ad ipsum regem inde pertinet, et non alia de causa detineatur in eadem, deliberetur. Teste rege apud Westm' 8. die Maii anno regni sui primo. Ideo ipsa Goditha inde quæta quoad hoc, quod ad dominum regem inde pertinet, &c.*

See more of this matter, 3 El. Dier 201, 202. 9 El. Dier 261, Musgraves case. 16 El. Dier 323, Taverners case.

The defendant in an appeal of murder upon not guilty pleaded, was found guilty of manslaughter; and it was resolved by the justices upon conference between them, that the queen might pardon the burning of the hand, for that is no part of the judgement at the suit of the party plaintiff in the appeal, but it is a collateral, and exemplary punishment inflicted by the statute of 4 H. 7. cap. 13.

In some actions wherein the subject is sole party (as appeareth by that which hath been said) some things the king may pardon: so on the other side, where the king is sole party, yet some things there be, that he cannot pardon. As for example; for all common nuisances, as for not repairing of bridges, high-ways, &c. the suit (for avoiding of multiplicity of suits, which the laws abhorre; and that *nulli magis tueri rempublicam creditum est quam regi*) is given to the king only; for redresse, and reformation thereof, but the king cannot pardon, or discharge either the nuisance, or the suit for the same; for, as Bracton saith, *Non poterit rex gratiam facere cum injuria et damno aliorum*. See Glanvill li. 7. cap. 17. vers. finem.

The customer albeit the bond and surety be made to him for the importing of bullion according to the statute of 14 E. 3. cap. 1. yet cannot he release it, *quia pro bono publico*. If one be bound in a recognisance, &c. to the king to keep the peace against another by name, and generally all other lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognisance, although it be made onely to him, because it is for the benefit and safety of his subjects.

After an action popular be brought, *tam pro domino rege, quam pro seipso*, according to any statute, the king cannot discharge but his own part, and cannot discharge the informers part, because by the bringing of the action he hath an interest therein: but before action brought, the king may discharge the whole, (\* unless it be provided to the contrary by the act) because the informer cannot bring an action or information originally for his part only, but must pursue

suæ

sue the statute: and if the action be given to the party grieved, the king cannot discharge the same.

All suits in the star-chamber, though exhibited by the party, are informations for the king, and the king may pardon them, but after judgement (and damages, if any be given) and costs taxed, the king cannot pardon them.

<sup>a</sup> And that party which informeth not the king truly, is not worthy of his grace and forgiveness, and therefore either *suppressio veri*, or *expressio falsi* doth avoid the pardon.

<sup>b</sup> A man commits felony, and is attainted thereof, or is abjured for the same, the king pardoneth him the felony without any mention of the attainder, or abjuration, the pardon is void. <sup>c</sup> But if a man be attainted of burglary, and by the generall pardon all felonies, &c. are pardoned (except all burglaries) the attainder and burglary be excepted, as before is said.

The king pardoneth to A. a felony whereof he standeth indicted, or indicted and attainted, &c. and in truth he is not indicted, nor attainted, &c. this is *expressio falsi*, and maketh the pardon void. A is outlawed, and the king pardons him the outlawry, and all his goods; it is void for the goods, for he must have a grant of them.

If a man be indicted of felony, and the king reciteth the same, and pardoneth the felony contained in the indictment, and all outlawries thereupon, if any be, this is a good pardon of the outlawry, though it be doubtfully alledged, and the king not certainly informed.

The king may pardon one convict of heresie, or of any other offence punishable by the ecclesiasticall law. In all proceedings in the ecclesiasticall court *ex officio*, the king may pardon the offence. The king may also pardon piracy upon the sea; but by what word, and in what manner, see before in the chapter of piracy.

All the justices of England being assembled at Serjeants Inne in Fleetstreet, when I served queen Eliz. as her attorney generall, I moved this case unto them. A man seised in fee of two mannors, the one holden of the queen by knight service *in capite*, and the other holden of a common person, alieneth both, and the aliene sueth out a pardon for both, in which pardon the words are, *quæ de nobis tenentur in capite per servic' militare, ut dicitur*, and after this pardon being transcribed into the exchequer, proccesse goeth out against the alienee, who pleadeth the pardon, beginning his plea thus, *Quibus lectis et auditis idem A. queritur se colore præmissorum graviter vexatum et iniquitat' fore, et hoc minus juste: quia dicit quod eadem domina regina per literas suas patentes, &c.* and plead the letters patents of pardon, as they be with the said clause of *ut dicitur*, and after he alieneth the manor which *in rei veritate*, was not holden: the question was, whether the second alienee may plead the truth of the matter or ought to be concluded by the pardon and plea of the first alienee. And first the justices had consideration of the books in 29 Aff. pl. 38. 46 E. 3. 33. Pl. com. 398. 7 E. 6. tit. Estoppel. Br. 222. And in the end it was resolved by all the justices, that the pleading of the pardon or of a license, as it is, is no conclusion for no more then the pardon or license being not positive or affirmative, but (*ut dicitur*) is a conclusion; no more is the

Lib. 5. fo. 50.  
Buggins case.  
Eodem li. fo. 51.  
Hals case.

<sup>a</sup> Prov. 20. 28.  
Misericordia et  
veritas custodi-  
unt regem.

<sup>b</sup> 9 E. 4. 28.  
19 E. 3. Cor.  
124. 6 E. 4. 4.  
per Cheke.

11 H. 4. 16.  
<sup>c</sup> Lib. 6. fo. 13.

F. N. B. 225. c.

9 H. 5. 14. 15.

F. N. B. 269.  
20 El. Dier, 135.  
Li. 6. to. 13, 14.  
Li. 5. fo. 51.  
Hals case.  
Regist. 67.  
Mic. 37 & 40  
El. Resolution  
of the justices  
concerning par-  
dons and licences  
of alienation  
and the pleading  
of them, &c.

29 Aff. pl. 38.  
46 E. 3. 33.  
Pl. com. 398.  
7 E. 6. tit. Estop.  
Br. 222.

the pleading of them with the clause of (*ut dicitur*) any conclusion. And conclusions shall not be wrought by inference or implication of a thing that is not directly alledged. But if the pardon or license had been affirmative and direct without the clause, *ut dicitur*, it had been a conclusion, and so had the pleading thereof been also. Lastly, it was resolved, that in case of the pardon or license with the clause, *ut dicitur*; if the party confesse the tenure that plead the same: as to say, *bene et verum est*, that the land is holden by knights service *in capite*, and plead the pardon or license, this shall conclude: and some of the barons said, that according to these resolutions it hath been used in the exchequer, and many presidents be there accordingly: and by these resolutions the books above said shall the better be understood.

34 H. 6. 3.  
21 E. 4. 46.  
2 R. 3. 4. lib. 5.  
fo. 60.

If the king release to A all debts, and in truth A and B be indebted, this shall not discharge B: but otherwise it is in the case of a subject, for in that case the release to one dischargeth both.

If one be indebted to the king, if the king pardon or release the debt, the action and suit for the debt is discharged, and if he pardon or release the action and suit, the debt is discharged: and so it is in both these cases in the case of a subject.

22 Aff. pl. 37.

A man is indicted of trespass and outlawed at the suit of the king. *Rex pardonavit utlagariam in eum promulgat*, et *quicquid ad eum pertinet*, and notwithstanding the defendant shall make fine, for it seemeth that these words, *quicquid ad eum pertinet*, without any reference, are too generall to dispense with the fine.

Pasch. 4 E. 3.  
Coram rege.  
rot. 38.

We finde also a discharge of further proceeding directed to the judges of the court, &c. (not by any pardon of the offence) but by the kings acknowledgement under the great seale of the parties innocency, with commandement to the judges, that in the former proceedings and proces, &c. they shall altogether surcease: whereupon the court will award that the party shall go *sine die*, and that there shall be no further proceeding against him: as taking one example for many. William de Melton archbishop of York was accused in the kings bench *coram rege et concilio suo*, in anno 3 E. 3. for adherency to Edmond earle of Kent in his treasons, whereunto the archbishop pleaded not guilty; and after two writs of *venire fac*. awarded, the king directed his writ under the great seal to the judges of the kings bench, to this effect. *Licet venerabilis pater Willielmus archiepiscopus Eborum, et Stephanus London episcopus, per diversa brev'ia nostra coram nobis ad sectam nostram implacitentur de eo quod ipsi Edmundo nuper comiti Kantie adhæsisse debuerant: quia tamen prædicti archiepiscopus et episcopus de adhæsione prædicti omnino immunes reputamus: vobis mandamus, quod placitis prædictis coram nobis ulterius tenen' omnino supercedeatis. Teste me ipso apud Westm. 12 die Decembr. anno regni nostri 4.* The award of the court that is given thereupon, is very observable, *Itz. Cujus brevis prætextu, consideratum est, quod prædicti archiepiscopus eat inde sine die, &c. Et ulterius non procedatur versus eum.*

Pasch. 4 E. 3.  
Coram rege.  
rot. 53.

Stephen Gravesend bishop of London was charged with the same offence in parliament, anno 3 E. 3. whence by order of parliament the matter was referred to the kings bench to be tried, where he pleaded not guilty, and after was discharged *ut supra*, by the same writ. These men (it may be) thought that the taking of the pardon should

should be an implied confession of the fault, and therefore went a new way: but no man that is wise and well advised will refuse God and the kings pardon how often so ever he may have it; for there is no man but offendeth God and the king almost every day, and the pardon is the safest and surest way.

If a man be indicted of felony, and found guilty, and being in prison the king may under the great seale reciting the offence, &c. retain him to serve in his wars on this side or beyond the seas: this charter he may plead, and the court ought to allow it. As for example: *Quidam indictatus de feloniam, et inde culp. dicit quod rex eum conduxit, et inde producit cartam, quod rex eum conduxit in vase. in exercitu, et dicta carta allocata fuit per curiam.* But a protection lyeth not in that case: because a protection is a formed writ, and cannot have such a recitall of the truth of the case: and a writs of protection lyeth not in case of felony, nor is it to be allowed to any that is prisoner to the court.

<sup>b</sup> One indicted of felony, without any learned counsell, shewed forth a charter of pardon which was discordant to the indictment, and also to his name; and because the court perceived that it was the kings meaning he should be pardoned, he was remanded to get a better pardon.

<sup>c</sup> What things be requisite to a pardon of outlawry, see the statute of 5 E. 3. cap. 12.

<sup>d</sup> When the parties defendants appeared to the court to be poore, and were to be amerced or fined, the entry of ancient time was, *perdonantur per justit' quia pauperes.*

<sup>e</sup> It is observed that repeals by parliament of pardons lawfully and duly obtained, have been seeds of great discontentment, and of evill event.

<sup>f</sup> Generall pardons have been often granted at the petition of the commons, for they know best, where the shooe wringeth them, and wherein, and how they are to be eased.

So odious was perjury, that by the law of God it was not to be pardoned: *Non misereberis ejus, &c.*

Pasch. 22 E. 3.  
tit. cor. 239. Co-  
ram regē.

[ 240 ]

<sup>a</sup> 7 E. 4. 29. a  
ecc' 30 H. 6. 3.  
See the first part  
of the Institutes.

sect. 199.

<sup>b</sup> 26 Ass. p. 46.

<sup>c</sup> 5 E. 3. cap. 12.

<sup>d</sup> Pasch. 8 E. 1.

in banco Rot. 79.

Abbas de Bur-

ton, &c.

<sup>e</sup> Vid. Rot. Parl.

21 R. 2. nu. 12,

13, &c.

<sup>f</sup> 36 E. 3. ca. ult.

4 R. 2. nu. 30,

31, 32.

1 H. 4. ca. 20.

2 H. 4. ca. 13.

5 H. 4. ca. 15.

4 H. 5. cap. 8.

a short and effect-

tuall pardon,

and many others.

Deut. 9. 21.

## C A P. CVI.

### OF RESTITUTIONS.

**T**H E R E is another work of grace and mercy, that is, when any man or woman being attainted of high treason, petit treason, or felony, (whereby the blood is corrupted, &c.) or his or her heir is restored.

And seeing we have formerly spoken how far, and to what intent in those cases, the king of his grace may by his charter of pardon restore the party: we shall now treat of the restitution of the delinquent, or of his or her heirs by parliament. Attainders ought to be had upon plain and direct evidence, (as before is said) for if the party be executed, restitution may be had of his lands, &c.

See the first part  
of the Institutes,  
sect. 1. fo 8. a.  
& 646, 647. 745.  
Vid. cap. Par-  
don. fol. 233.

\* Gen. 40. 13.  
Job 12. 23. 42.  
10. Restitutio  
secundum quid,  
seu in partem.  
Restitutio in in-  
tegrum.

Rrit. ca. 13.  
fo. 23. 10 Eliz.  
Dier 274.

\* [ 241 ]  
3 E. 6. tit. Resti-  
tution. Br. 37.  
See the first part  
of the Institutes.  
sect. 646, 647.  
745. fo. 392.  
verb. *Le sank est*  
*corrupt, &c.*  
a See 10 El.  
Dier ubi sup.  
41 E. 3. 5. b.  
27 Aff. p. 48.  
17 E. 3. 40.  
5 E. 3. 66.  
29 E. 3. 7.  
20 Eliz. Dier  
360; Pl. Com.  
252. a. 16 E. 3.  
Livery 30.  
44 E. 3. 45.  
18 E. 3. 21, 22.  
24 E. 3. 29.  
40 E. 3. grant 50.  
Mich. 8 E. 1.  
in Banco. Rot.  
62. Norff.  
Rot. Par. anno  
4 E. 3. nu. 18.  
on the backside  
of the roll.

\* An example  
of restitution in  
blood only,  
11 H. 4. nu. 42.  
13 H. 4. nu. 19,  
20.

&c. but not of his life. Generally, *Restituere nihil aliud est, quam  
\* in pristinum statum reducere.*

Of restitutions by parliament some be in blood only, (that is to  
make his resort as heir in blood to the party attainted and other his  
ancestors, and not to any dignity, inheritance of lands, &c.) and  
this is a restitution *secundum quid*, or in part. And some be gene-  
rall restitutions, to blood, honours, dignities, inheritance, and all  
that was lost by the attainer: and that is *restitutio in integrum*, with  
an addition sometimes, that it shall be lawfull for the party restored  
and his heirs, to enter, &c. Of the first you may reade in Dier  
10 Eliz. fo. 274. in Petition: and Rot. Par. 23 Eliz. of the earl of  
Arundel, &c. Of the second you may reade 15 E. 3. tit. Peti-  
tion 2. 3 H. 7. fo. 15. a. 10 H. 7. 22, 23. pl. com. fo. 175.  
Rot. Par. 13 H. 4. nu. 20, &c. Of both of them you may  
reade plentifully in our books, and parliament rolls, and in di-  
vers of them with addition of entry. See 1 H. 8. Kelw. 154.  
Sir William Oldehalls case, 4 H. 7. 7. Lo. Ormonds case. Rot.  
Parl. 11 H. 4. nu. 42. Rich. de Hastings case, and Rot. Par.  
14 E. 4. nu. 4. Sir Joh. Fortescues case, attainted of treason in  
1 E. 4. &c.

And the reason wherefore the king may by his charter pardon  
the execution, and restore the party or his heirs to the lands for-  
feited by the attainer, and remaining in the crown is, for that  
no person hath thereby any prejudice; but to make \* restitution of  
his blood he cannot do it, but by act of parliament, because it  
should be to the prejudice of others.

*In cartis benigna facienda est interpretatio, in fundationibus domuum  
religiosarum, hospitalium, et aliorum operum charitatis benignior, in  
testamentis magis benigna, in restitutionibus benignissima.* \* For it is  
holden in our books, that in restitutions the king himself hath no  
favour, nor his prerogative any exemption, but the party restored is  
favoured.

king H. 3. was intituled, &c. to the lands of William de Albo  
Monasterio by his attainer, and granted the same to Robert de  
Mares and his heirs, *donec eas reddiderit rellis heredibus per volunta-  
tem suam, vel per pacem.* And albeit at the making of this grant  
William de Albo Monasterio (being dead) could have in re-  
spect of the attainer and corruption of blood no right heir; yet  
because it was to make restitution, it had a most benigne interpre-  
tation.

William Lo. Zouche of Mortimer and Elianor his wife prayed  
to be restored to their land of Glannor and Morgannon in Wales,  
the mannor of Haveley in the county of Worcester, the mannor of  
Teukebury in the county of Gloucester, being the inheritance of  
the said Elianor: who by the extort means of Roger late earle of  
March, were inforced to passe the same to the king by fine, in con-  
sideration of ten thousand pounds the king restored them thereto as  
in their former estate.

\* Henry Courtney marquisse of Exeter and earl of Devon, hav-  
ing issue Edward Courtney, his only sonne, was attainted of high  
treason by the course of the common law in anno 31 H. 8. and in  
the same year was also attainted by act of parliament. Queen Mary  
by her letters patents bearing date 18th Sept. anno 1. regni sui grant-  
ed the mannors of P and O, &c. in the county of Devon, &c. to  
the

the said Edward Courtney and his heirs: and afterwards 5 *Octobris* in the same year, at a parliament then holden, the said Edward and his heires were from thenceforth by authority of that act restored and inabled only in blood, as well as sonne and heir of the said lord marquisse his father, as to all and every other collaterall and lineall ancestor and ancestors of the said Edward. And that the severall attainders against the said lord marquisse for the attainder of the said lord marquisse be not in any wise prejudiciall or hurtfull to the said Edward or his heirs for the corruption of the blood only of the said Edward, but that the severall attainders and either of them be against him and his heirs for the corruption of blood only, utterly void. Provided always that the said act, ne any thing therein contained, should not in any wise extend to give any benefit or advantage to the said Edward, ne to his heirs, to demand, claime, or challenge any honors, castles, &c. ne any other hereditaments whatsoever whereunto H. 8. and E. 6. or either of them was entitled; or ought to have and enjoy by reason of the said severall attainders of the said late lord marquisse, or of either of them. Edward Courtney died seised of the said mannors without issue, 18 Septemb. annis 3 and 4 Ph. & Mar. and Reinold Mohun, Alexander Arundell, John Vianian the younger, John Trelawny Esq. and Margaret Buller widow, were his collateral cousins and heirs: and whether the said restitution extended to the heirs collaterall of the said Edward, was by the queens commandment referred to the consideration of the two chief justices Popham and Anderson, Peryain chief baron, and to Egerton attorney, and to the solicitor generall. And it was resolved, that by reason of the attainder of the lord marquisse, if there had been no act of restitution, the heirs collaterall of the said Edward could not have inherited to the said Edward, in respect of the corruption of the blood wrought by the said attainder only: hereupon it was objected, that when it was enacted by the said act of restitution, that the said Edward and his heirs should be restored and inabled in blood only as sonne and heir to his said father, as all his ancestors lineall and collaterall, that the said restitution extended only to his heirs lineall, for other heirs he could not have as long as the said attainders of the marquisse stood in force, and the words of the act of restitution to Edward and his heirs, might be satisfied with the heirs lineall. And upon due consideration had of the case, it was (*una voce*) resolved by them all, that corruption of blood is a distinct penalty inflicted by law; and that the said act of restitution did extend to the heirs collaterall of the said Edward, (having no heirs lineall) as to the cleering and restoring of the blood, and avoiding of the corruption thereof: and that it had been sufficient if the act had restored and enabled him in blood only as heir to his father, thereby he and his heirs, as well collaterall as lineall, might make their descent or resort from the marquisse (for there was the stop and corruption) and from all other the ancestors of the said Edward, lineall or collaterall, and *ex abundanti* the other clause also is added, for the more manifestation hereof.

Mic. 35 & 36 El.

[ 242 ]

Margaret Plantagenet was daughter to George duke of Clarence attainted of high treason by act of parliament 17 E. 4. and sister of Edward earl of Warwick, only sonne of the said George, and Isabel eldest daughter of Richard Nevil earl of Warwick and Salisbury: which

Statute de 5 H. 8.  
not in print.

14 R. 2. nu. 36.

\* Rot. par.  
18 E. 1. nu. 11.  
of Liberties.  
Stanf. pl. cor.  
fo. 165, 166,  
167. 186. 66.  
105. 107.  
F. N. B. 66. a.  
b. 21 H. 8. cap.  
11. 22 E. 3.  
cor. 460.

Stanf. 167. a. b.  
Lib. 4. fo. 210.  
Lib. 6. fo. 80.

F. N. B. 66. a.  
8 E. 2. tit. For-  
feiture 34.  
3 E. 3. cor. 365.  
Vid. 40 E. 3.  
42. lib. 5. fo. 110.  
Holtens case.  
c. 8 H. 6. cap. 9.  
See the second  
part of the Instit.  
cap. 8. H. 6.  
cap. 9.  
d. 31 Eliz. cap. 11.  
Vide 4 Marise,

\* Dier 141.

21 Jac. cap. 15.  
By the statute of  
8 H. 6. cap. 9.

[ 243 ]

which Edward was attainted of high treason in anno 15 H. 7. before John Earle of Oxford then being high steward of England. The said Margaret was by act of parliament anno 5 H. 8. restored to the style, state, name, title, honour, and dignity of the countesse of Salisbury, (she was the last of the surname of Plantagenet) which act is very well penned, and worthy the reading for many respects, and the preamble thereof, *inter alia*.

Bills of restitution may begin in the parliament, either in the house of commons, or in the lords house.

\* There be also other kinds of restitutions to be treated of amongst the pleas of the crown, as restitution of goods upon an appeal, whereof you shall reade in Stanford with this addition. Vide lib. 5. fo. 110. a. 21 E. 4. 10.

b And by the statute of 21 H. 8. cap. 11. restitution is to be granted upon an indictment, &c. For by the common law the party should not be restored to his goods upon an indictment (because it is the suit of the king) albeit the enquest found that the party had made fresh suit. But restitution was to be made upon an appeal which is the suit of the party.

See Stanford also fo. 167. a. b. whereunto you may adde Lib. 5. fo. 110. a. & Lib. 6. fo. 80. where you shall finde, that though this statute of 21 H. 8. speak only of the party robbed, yet his executors are within the statute, and so are his administrators. For it is a beneficial law, and giveth a more speedy remedy to the party robbed, &c. then the common law gave by way of appeale, and therefore ought to be construed beneficially.

Vide the Register, 68. b. that in some cases when the king ought *ex merito justitie* to make restitution to the party: yet for the honour of the king the writ saith, *Sine dilatione, restituatur de gratia nostra speciali*, which derogate nothing from the right of the subject, when right is accompanied with grace.

Lastly, there are other lawes concerning restitutions of another kind. \* As by the statute of 8 H. 6. restitution is to be made, when he that hath any estate of inheritance or freehold is disseised by forcible entry or forcible deteyner. d By the statute of 31 Eliz. there shall be no restitution by the statute of 8 H. 6. upon an indictment of forcible entry or forcible deteyner, where the defendant hath been three whole years together before the day of such indictment \* in quiet possession, and his estate not ended, according to the true meaning of a proviso in the said statute of 8 H. 6. as it is declared by the said act of 31 Elizabeth.

By the statute of 21 Jac. regis, such judges, justices, or justice, as are enabled to give restitution of possession unto tenants of any estate \* of freehold, &c. shall by reason of this act of 21 Jac. have the like and the same authority upon indictment of such forcible entries or forcible with-holdings before them duly found, to give like possession unto tenant for years, tenant by copie of court roll, guardians by knights service, tenants by elegit, statute merchant, or by statute staple.

And for as much (as it hath been said) no restitution ought to be made where the defendant or party indicted in case of freehold hath been in possession by the space of three whole years, &c. they having the like and same authority in case of tenant for years, tenant by copie of court roll, and other the tenants above named, cannot



cannot give restitution or possession, where the party indicted hath been in quiet possession by the space of three whole years. *Nota*, this act of 21 Jac. extends not to a garden in soccage, nor to a garden or keeper of a park: neither (as some hold) doth it extend to him, that by a last will hath an interest in lands or tenements untill debts and legacies be paid, because certain tenants be particularly nominated, and this is *casus omiffus*. But this being a beneficial law to restore him, that right hath, to his possession of lands, &c. whereof he was wrongfully by force dispossessed, or by force withholden, &c. and being in like case in equall mischief, others do hold, that this act extendeth to this case of such a devisee, &c. and so it is for a tenant for a year, or for an halfe, or three quarters of a year.

See the statute of 32 H. 8. cap. 3. where the particular tenant charged with more then the land is worth, may after his term expired hold over untill he be satisfied, &c. in equall case with such a devisee.

\* *Nota*, there be divers presidents in the chancery for restitution by writ to be made after execution upon a statute staple.

*Anno* 25 H. 6. Execution was sued upon a statute staple, and for that no certificat of the statute, &c. appeared of record, the conusor had a writ of *superfedeas* out of the chancery with restitution to be made; and the forme of this writ appeareth in a Register M. S. in the chancery.

In the case of Sir Robert Gardner in the time of Sir Thomas Bromley lord chancellor, after a *superfedeas* granted, execution was done upon a statute staple, whereupon a *superfedeas* was granted with restitution reciting the speciall matter.

There is another president in 33 Eliz. in the case of one Carrant, (but there the writ recited no speciall cause, but *pro diversis causis et considerationibus*;) a *superfedeas* with restitution was awarded.

\* Restitution of another kinde, whereof we remember no book case.

## THE EPILOGUE.

**T**HUS have we by the great goodnesse of Almighty God, *per varios casus, per the discrimina rerum*, brought this work concerning high treason, and other pleas of the crowne, or criminall causes, and of pardons, and restitutions, to a conclusion: wherein (as we are verily perswaded) we have made it apparent from the lively voice of the lawes themselves, that no country in the Christian world have in criminall cases, of highest nature, laws of such expresse and defined certainty, and so equall between the king and all his subjects, as this famous kingdome of England hath, being rightly understood, and duly executed, to the great honour of the king, and of the laws, and the happy safety of all his loving and loyall subjects.

Now seeing *justitia est duplex, viz. severè puniens, et verè praeveniens*; that is, justice severely punishing, whereof we have spoken, and  
Justice divided.  
truly

## The Epilogue.

truly preventing, or preventing justice, (*quæ adhuc desideratur*) for we have spoken onely of the former; wee will therefore at this place (for a conclusion) point at the other with a direction how it may be effected.

True it is, that we have found by wofull experience, that it is not frequent and often punishment that doth prevent like offences, *Melior est enim iustitia verè præveniens, quam severè puniens*, agreeing with the rule of the physitian for the safety of the body, *Præstat cautela, quam medela*: and it is a certain rule, that *Videbis ea sæpe committi quæ sæpe vindicantur*; those offences are often committed, that are often punished: for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians, that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace, or charity in him, it would make his heart to bleed for pity and compassion. (But here I leave to divines to inform the inward man, who being well informed, *verbo informante*, the outward man will be the easilier reformed, *virga reformante*.)

This preventing justice consisteth in three things. First, in the good education of youth, and that both by good instruction of them in the grounds of the true religion of Almighty God, and by learning some knowledge or trade in their tender years, so as there should not be an idle person, or a \* begger, but that every childe, male or female, whose parents are poor, might at the age of seaven years earn their own living: for *ars fit quod à teneris primum conjungitur annis*: and this, for the time to come, would undoubtedly by preventing justice avoid idleness in all, (one of the foul and fatall channels that lead into *mare mortuum*) and by honest trades cause them to become good members in the common-wealth.

Secondly, in the execution of good laws: True it is that there be good laws already to punish idleness, but none of sufficient force or effect to set youth, or the idle on work.

Thirdly, that forasmuch as many doe offend in hope of pardon, that pardons be very rarely granted, for the reasons in the chapter of pardons expressed.

But the consideration of this preventing justice were worthy of the wisdom of a parliament, and in the mean time expert and wise men to make preparation for the same, as the text saith, *ut benedicat eis dominus*. Blessed shall he be that layeth the first stone of this building, more blessed that proceeds in it, most of all that finisheth it, to the glory of God, and the honour of our king and nation.

*Regula.*

*Sic, pariter,  
plora.*

*Seneca li. 1. De  
Clem. cap. 24.*

*Non minus prin-  
cipi turpia sunt  
multa supplicia,  
quam medico mul-  
ta funera.*

*Regula.*

*Non morbus pla-  
risque, sed morbi  
neglecti curatio  
corpus interficit.*

*\* Deut. 15. 4.*

*Non erit omnino  
indigens & men-  
dicus inter vos,  
ut benedicat tibi  
Dominus.*

*Otius nihil cogi-  
tat nisi de ventre,  
et venere.*

*See before ca. of  
Pardons fo. 236.*

*Psal. 58. 11.*

*Miseriordia do-  
mini præveniet  
me. 1 Maccab.*

*6. 27. Nisi præ-  
venieris illis, ma-  
jora quam hæc  
facient et non po-  
teris eos obtinere.*

*3 & 4 E. 6. ca. 5. in the preamble. Imprimis interest reipublicæ, ut pax in regno con-  
servetur, & quæcunque paci adversentur, provide declinentur. 1 Mar. cap. 12. 32 H. 8. ca. 9. See  
the fourth part of the Institutes, fo. 312. b.*

*Et pergrata Deus nobis hæc omnia fecit,  
Optimus est patriæ jura referre labor.*

*Deo gloria, & gratia.*

F I N I S.

# A T A B L E

TO THE

## Third Part of the Institutes of the Laws of England.

### Ability and Disability.

**W**HERE no man of full age shall be received in any Plea to disable himself. *fo. 215*

### Abjuration and Sanctuary.

The description of it. *215*  
 Sanctuary the ground of Abjuration. *ibid.*  
 What kind of Abjuration remains at this day. *ibid.*  
 In what cases a man may abjure, and in what not. *216, 217*  
 The judgement in case of Abjuration, and what is implied in it. *217*  
 Where a felon that escapes out of Prison may take Sanctuary. *ib.*  
 Where it shall be Felony in Recusants that refuse to abjure. How they may discharge themselves, and what they forfeit. *102*  
 Where none ought to be exiled to a Country of Infidels. *115*

### Accessory. *vide* Principal.

### Adjournment.

Where a Commission, *Hac Vice* may be adjourned. *31*

### Affrays.

The definition of an Affray. *158*  
 Affrays inquirable in Leets. *ib.*  
 What persons are bound to part Affrays. *ib.*  
 The punishment of those that shall refuse to part Affrays. *ib.*

### Aliens.

What Aliens may commit treason, and what not. *4, 5*

### Amercements.

The judgment where the party is fined, and where he is amerced. *218.*  
 Where a town shall be amerced for a Murder committed in it, and where not. *53*

*Annum, Diem & Vastum.* *111*

### Apparel.

How the Law stands now concerning Apparel. *199*  
 How excess of Apparel is best cured. *ib.*  
 III. *inst.*

### Appeal.

Appeals anciently of High Treason. *5, 132*  
 No Appeal of Treason can be brought in Parliament. *31*  
 Appeals of Rape. *60*  
 Where Appellees shall not have their Clergy. *114*  
 Where a conviction of Man-slaughter and Clergy prayed shall be good Bar in an Appeal. *131*  
 The ancient execution in an Appeal. *ib.*  
 What the conclusion shall be in an Appeal where the Plaintiff is maimed and cannot join Battel. *132*  
 The judgment in an Appeal where the Defendant is slain or vanquished. *212*  
 Where a man attainted is slain, the wife may have an Appeal. *215*  
 Where the King cannot pardon an Appellee. *237*

### Approver.

The description of him. *129*  
 Who may be Approvers and who not. *ib.*  
 Where none can be an Approver upon an Appeal, and where an Approverment shall cease upon an Appeal brought. *ib.*  
 Of what offences an Approverment may be. *130*  
 Where the Appellees may join Battel with the Approver, and he ought to combat with them all, but not *a contra*. *ib.*  
 Where the Approver is pardoned the Appellee shall be discharged. *ib.*  
 Where an Approver refusing the combat shall have judgment, as in case of Petit treason. *21*  
 No Justice of Peace, nor the Lord High Steward of England can assign a Coroner to an Approver. *ib.*

### Armour and armed.

An exposition upon the statute of 2 E. 3. *cap. 3.* concerning riding armed. *160*  
 The punishment of those that ride or go armed before this Act and since. *114, 160, 162*  
 Who may punish those that go armed contrary to this statute. *162*  
 No Armour is to be worn where the Parliament is holden. *160*

### U

### Arrest.

## THE TABLE.

|   |  |  |
|---|--|--|
| <b>Arrest.</b>  |  | Where after issue joyned the trial by Battel is become impossible by the act of God, the Appellee shall be discharged. 159 |
| Where the Arrest of a man shall be lawful upon a suspicion, and where not. 118  |  | The punishment of an Appellant or an Appellee that is vanquished. 221  |
| <b>Assent.</b>  |  | Where an Appellant and an Appellee combat until Night, the Appellee shall go free. 16.                                     |
| The difference between an Assenter and a Conserter. 169   |  |  |
| <b>Attainder.</b>   |  | <b>Beggars.</b>  |
| Where a man commits treason, and dies before Attainder, he forfeits nothing. 12   |  | Five kinds of Beggars: the Alchymist, Concealer, Monopolist, Informer and Poet. 75   |
| Where Attainders for treason may be reversed, and where not. 31, 214, 215   |  | <b>Benefices.</b>  |
| Where <i>Auterfoix Attain</i> for the same offence is a good Plea, and where not. 213   |  | Where Ecclesiastical Dignities shall be accounted Benefices, and where not. 155  |
| Where <i>Auterfoix Attain</i> for another offence is a good Plea, and where not. 16.  |  | <b>Bonds.</b>  |
| Where a man attainted shall be liable to Arrests and executions for Debts. 213, 215   |  | Where a Subject is bound to do any thing to the King as his liege Lord, no Bond is to be exacted of him. 149               |
| Where an Attainder is no Plea in an Action of Debt or any other Action. 215   |  | All Bonds and writings made to the Kings dishonour are against Law, and void. 16.  |
| Where a man attainted is slain, his wife may have her Appeal. 16.   |  | Where a Bond exacted by an Ecclesiastical Judge not warrantable by Law shall be void. 16.                                  |
| Where a man attainted may purchase land to him and his heirs. 16.   |  | <b>Bribery.</b>  |
| Where a person attainted may have an Action of Battery, or an Appeal of Maihem or Rape. 16.                                       |  | The definition and derivation of the word. 145   |
| Where an offence is excepted out of any general Pardon, an Attainder for that offence is also excepted. 234, 238                  |  | The difference between Bribery and Extortion. 147  |
| <b>Attaint. <i>vide</i> Jurors.</b>   |  | Who may commit Bribery. 147, 148   |
| <b>Authority.</b>   |  | Where bribery may be committed although no suit dependeth. 148   |
| Where a Statute gives authority to divers or any two of them, one shall suffice to execute the Authority if there be no more. 136 |  | He that offers a Bribe to a Judge is punishable. 174   |
| <b>Bailment.</b>  |  | What offices are within the statute of 5 E. 6. cap. 16. made for prevention of Bribery. 148                                |
| WHEN a man shall be said to have goods in his possession, and when in his charge. 108   |  | A severe judgment given against a Judge for Bribery. 145   |
| <b>Battel.</b>  |  | A Lord Chancellor and a Lord Treasurer of England sentenced lately in Parliament for Bribery. 148                          |
| In what cases trial by Battel shall be. 159   |  | The punishment anciently and at this day for Bribery. 149, 224, 225  |
| <i>Champio</i> , the Etymology of the word, what a Champion signifies, and who may be a Champion. 221                             |  | <b>Brothels.</b>   |
| Where the Judges of the Common Law ought to direct the Combat, and where not. 16.   |  | Brothel-houses against the Law of God and the Nation, and how punished. 203  |
| Where a Champion that kills another forfeits nothing. 16.   |  | Brothel-houses anciently suffered, and when first prohibited. 205, 206   |
| Where a Champion becomes Craven or Recreant, what he forfeits. 16.  |  | The punishment of Harlots found within the verge of the Court. 205, 206  |
| <i>Craven &amp; Recreantia, unde derivantur.</i> 16.  |  | The custom of London for entering into a house and carrying a Harlot to Prison, good. 206                                  |
| Where Battel is joyned, and the Champion becomes blind, he shall be discharged. 158   |  | Adultery anciently punish'd at the common law. 16.   |
|   |  | <b>Buggery.</b>  |

## THE TABLE

### Buggery.

- The nature, definition and derivation of it. 58
- The several ancient punishments of it. *ib.*
- How much is requisite to make a Buggery. 59
- How the Indictment of it runs. *ib.*
- Where in Buggery it shall be felony in the agent only. *ib.*

### Buildings.

- What castles and houses are prohibited subjects to build. 201
- The building of Vaults lawful, and whence used. 203
- The building of Light-houses, Sea-marks or Beacons unlawful. 204
- Where none may erect any building upon his own ground within the Kings Forest. *ib.*
- Where none can be charged with building but by Act of Parliament. *ib.*
- What things the Lord of the soil may build where others have Common or Pasture. *ib.*
- Excess of Building very prejudicial. 201

### Bulls.

- Where it shall be Felony to bring in any Bulls of excommunication from foreign powers, and how anciently punished. 100, 101

### Burglary.

- The definition and derivation of the word. 63
- How anciently called. 65
- What shall be said an Entry into and breaking of a house to make it Burglary. 64
- What shall be said a Mansion house, the breaking whereof makes it Burglary. 64, 65
- Where it shall be Burglary in all, although but one enter. 64
- Where a man may commit Burglary though he break not the house. *ib.*
- To break an house with an intent to beat another, no Burglary. 65
- When Clergy was taken away from Burglars, and from what sort of Burglars. *ib.*

### Burning of Houses.

- Ancient opinions concerning burning of houses. 66
- What shall be said a burning of a house to make it Felony. *ib.*
- Where the burning of a house without an intent to do it, shall be Felony, and where not. 67
- What houses it shall be Felony to burn, and what not. *ib.*
- Where Clergy shall be allowed for burning of a barn, and where not.

### Challenge.

- WHERE peremptory Challenge shall be allowed. 27
- The punishment of him that challenges peremptorily above 35 Jurors. 227
- In what cases a man may challenge peremptorily but 20 Jurors, and what he forfeits that does. 228

### Chancery and Chancellour.

- In what cases the Chancery is a Court of Record, and in what not. 71
- Where the Lord Keeper shall be comprehended under the word Lord Chancellour. 113
- Where no Court of Equity under the penalty of a Premunire can proceed after judgment at the common law. 123, &c.
- No Injunction after Verdict. 123, 124

### Childwite, *quid?* 206

### Church.

- The punishment of those that quarrel or strike in Church or Church-yard. 176, 177
- Who hath liberty to build Churches by the Common Law. 201
- Where a man may prescribe to have an Isle in a Church for him and his family. So of a Pew or Seat. 202
- Whether a Church or no Church, how it shall be tried. 203
- Consecration necessary to a Church or Chapel. *ib.*

### Clergy.

- What offenders may have their Clergy. 39
- When the benefit of Clergy was first taken away. 73
- By whom, of whom, and at what time Clergy may be demanded. 114
- The difference between a Clerk convict, and a Clerk attain. *ib.*
- Where the King may pardon the burning of the hand. *ib.*
- None ought to make purgation at this day. *ib.*
- Where the ordinary may allow Clergy or disallow it. *ib.*
- Where Clergy shall be denied upon a trial in a foreign County, and where not. 114, 115
- Where Appellees shall not have their Clergy. 114
- No Clergy allowed anciently to them that rid armed. *ib.*

### Commissions.

- Where a Commission *hac Vice* may be adjourned. 31
- What Commissions are legal, and what not. 165

## T H E T A B L E.

### Common of Pasture.

What things the Lord of the soil may build where others have Common of Pasture. 204

### Concealors and Concealments.

An Exposition upon the Statute of 21 *Jac.* cap. 2. concerning Concealors. 188, &c.

In what time, and in what cases the King shall be barred by a concealment. 189, 190

In what time, and in what cases the Patentee of the King shall be barred by a concealment. 190, 191

Where the King shall have his fee-farm rent out of concealed lands. 191

### Conclusions or Estoppels.

No conclusions shall be wrought by inferences. 239

Where the pleading of a pardon of alienation shall be a conclusion to the Alliance in the Tenure, and where not. *ib.*

### Conspiracy.

The description of it. 143

How the party grieved may be relieved against a conspiracy. *ib.*

The judgment in case of conspiracy at the suit of the King, and at the suit of the party. 143, 222

Conspirators not bailable. 143

### Constable and Marshall.

The Constable and Marshall have no jurisdiction to hold Plea of any thing triable at the common Law. 26

### Conviction.

Where none can be convicted by verdict but the offences must be found by 24 at the least. 30

The difference between a Clerk convicted and a Clerk attaint. 114

### Coroner.

Where one is a Coroner both of the Kings house and County, an Indictment taken before him alone is good. 134

### Corporation.

None can erect a spiritual politick body, without the Kings licence. 202

### Coverture.

Where a feme Covert may commit Larceny, and where not. 108

Where a man may be accessory to the wife, but not the wife to the husband. *ib.*

Where the wife cannot steal the goods of her husband. 110

### Council.

Several sorts of Councils that the King hath. 129

What advantages a Prisoner may take in case of Treason or Felony to have Council assigned him. 137

Where no man arraigned for Treason or Felony can pray Council without shewing some cause. *ib.*

Where in criminal causes there arises any matter of Law, the Court *ex officio* ought to assign the Prisoner Council though he requires it not. 230

The reasons why a man indicted of Treason or Felony may not have Council to plead for him. 137

### Deodands.

WHAT they are. 57

Where there shall be a Deodand when the party slain is within the age of discretion, and where not. *ib.*

Where the sword of a stranger shall be a Deodand. 58

Where a ship, boat or vessel shall be a Deodand, and where not. *ib.*

### Depopulations.

Depopulators punished at the Common law. 204

*Depopulatores agrorum*, why so called. *ib.*

How the Indictment or Appeal against Depopulators shall be special and not general. *ib.*

Where Depopulation may be prohibited before it be done. 205

### Dies.

The division of a natural Day. 63

*Inter Canem & Lupum, id est, Crepusculum.* *ib.*

### Dilapidations.

Dilapidation a good cause of deprivation. 204

### Dispensations.

In exposition upon the statute of 21 *Jac.* cap. 3. concerning Dispensations with Penal Laws. 186

Dispensations with Penal Laws were against the Common Law. 186, 187, &c.

All promises made of Dispensations or forfeitures are void. 187

Who may compound or dispense with a forfeiture. *ib.*

The end of *Empson* and *Dulley* Masters of the forfeitures. *ib.*

### Divorce.

## THE TABLE.

| Divorce.  | Error.   |
|---|--|
| What shall cause a Divorce <i>a vinculo Matrimonii</i> , and what a <i>Menſa &amp; Thoro</i> . 89             | Where an Error in the judgement may reverse the execution, but an Error in the execution cannot reverse the judgement. 210   |
| <i>Donus Mansionalis.</i>   | The judgment to reverse or avoid an Outlawry in case of Treason or Felony. 214   |
| The division of it. 64  | Where a man is erroneously outlawed by Process out of the Kings Bench, a writ of Error lies in the same Court. <i>ib.</i>  |
| Dower.  | Where a writ of Error lies to reverse an Attainder of High Treason, and where not. 214, 215  |
| Where an heir shall inherit, the wife shall be endowed against him. 90  | Escape.  |
| Where a Fine with Proclamations and 5 Years past shall bar the wife of her Dower, and where not. 216          | Where a voluntary Escape shall be Felony in the Gaoler, and where not. 70  |
| Drunkennes.   | Escheat.   |
| King Edgar's Law against drinking. 200  | Where treason committed by a man attainted of felony shall not deſtroy the Escheats formerly vested in the Lord. 213   |
| When drunkennes came first into England. <i>ib.</i>   | Where an Escheat of land lawfully vested may afterwards be deſtroyed. 232  |
| Duels.  | Exaction. <i>vide</i> Extortion.   |
| Duels against the Law of God, Nature, and the Realm. 157  | Execution.   |
| The punishment of Duellists though no blood be shed. 158  | Where the King cannot alter Execution otherwise than the judgment of Law doth direct. 52   |
| How challenges are punished. <i>ib.</i>   | Where the same Execution shall be done upon an implied judgment, as upon an express. <i>ib.</i>  |
| What Duels are lawful, and what not. <i>ib.</i>   | Where Execution ought to be according to the judgment, and that none for Felony ought to be beheaded, though some examples there be to the contrary. 211, 212, 217 |
| Where Kings of England have offered to try their title by single combat. 159                                  | Where Execution ought to be done by the right Officer. 217   |
| The difference <i>inter Duellum &amp; Manumachiam</i> . 221   | Where Execution shall be respited to a woman quick with child once in the case of High Treason as well as Felony. 17, 18   |
| Diet.   | Where Execution was done upon a man for the death of a child, the child being then alive. 232  |
| The punishment for eating flesh on fasting days. 200  | Executor.  |
| Ecclesiastical.   | Where moderate funeral expences are to be allowed to an Executor, before any debt or duty whatsoever. 202  |
| Ecclesiastical Persons pleading exemption from Secular jurisdiction. 24                                       | Exemplifications.  |
| Where Judges of the Common Law may take cognisance of a Statute made concerning matter merely spiritual. 43   | What deeds or records may be exemplified under the great Seal, and what not. 173   |
| Egyptians.  | Where a part of a Record ought not to be exemplified, but the whole Record itself. <i>ib.</i>  |
| Where it shall be Felony for Egyptians to stay within the Kingdom. 102  | Exigent.   |
| Embring.  |  |
| Embring days, when so called, and when they are. 200  |  |
| Endowments.   |  |
| Who may erect Hospitals, Schools, or other works of charity, and endow them without license, and who not. 202 |  |

## THE TABLE.

|  |     |
|--|-----|
| <b>Exigent,</b>  |     |
| What a man that is put in Exigent shall forfeit.         | 232 |
| How a man that is put in Exigent may excuse his absence. | 233 |

|  |     |
|--|-----|
| <b>Extortion and Exaction.</b>                                   |     |
| The difference between Bribery and Extortion.                    | 147 |
| Where several Officers were punished for Extortion and Exaction. | 149 |
| The fees of certain officers appointed by statute.               | 150 |

|  |          |
|--|----------|
| <b>Falsifying of Attainders.</b>   |          |
| WHERE a stranger shall falsifie an Attainder by traversing the offence, and where by traversing the time of the offence. | 230, 231 |
| Where an Attainder may be falsified by the plea of the party himself.  | 231, 232 |
| Where an heir may falsifie an Attainder by plea.   | 231      |
| Where a <i>Fugam fecit</i> may be falsified by traverse, and where by matter of Law.                                     | 232      |

|   |        |
|---|--------|
| <b>Felo de se.</b>  |        |
| The description of him.   | 54     |
| Where a man shall be said <i>Felo de se</i> , and where not.  | ib.    |
| Where the Executors or Administrators of <i>Felo de se</i> may traverse the inquisition taken, and where not. | 54, 55 |
| How a <i>Felo de se</i> shall be enquired of where the body cannot be found.                                  | 55     |
| What <i>Felo de se</i> shall forfeit.   | ib.    |
| Where a joynt-tenant becoming <i>Felo de se</i> shall forfeit but part and where the whole.                   | ib.    |

|  |        |
|--|--------|
| <b>Felony.</b>   |        |
| Where in Felony <i>voluntas</i> anciently <i>reputabatur pro facto</i> .   | 5, 161 |
| All Treason implies a Felony.  | 15     |
| Who shall be said a Felon for conspiring the death of any great person within the statute of 3 H. 7. c. 14. and who those persons are, and who have power to enquire of it, and to try it. | 38     |
| Where it shall be Felony to kill another at a Just or Turnament, and where not.  | 56     |
| Where it shall be Felony by the statute of 3 H. 7. c. 2. for carrying away a woman against her will.   | 61     |
| What woman that statute extendeth to, and what not.  | ib.    |

|  |             |
|--|-------------|
| Where it shall be Felony by the statute of 5. H. 4. c. 5. for cutting out the tongues, or putting out the eyes of any man. | 62          |
| The cutting off of a mans privities anciently Felony, now Mayhem.  | 62, 63, 118 |
| The cutting off of Ears no Felony.   | 63          |
| Where breakers of Prison shall be Felons.  | 69          |
| Where a relation shall never make a man a Felon.   | 70          |
| Where it shall be Felony by the statute of 8 H. 6. cap. 12, &c. to embesfil Records.                                       | 70, 71. &c. |
| Where Multiplication shall be Felony by the statute of 5 H. 4. cap. 4.   | 74          |
| Where hunting with Vizors shall be Felony by the statute of 1 H. 7. cap. 1.  | 75, 76      |
| Where embesfeling the Kings armour by the statute of 21 El. cap. 4. shall be Felony.                                       | 78          |
| Where the serving of foreign Princes shall be Felony by the statute of 3 Jac. cap. 4.                                      | 80, 81      |
| Where the offence against this statute shall be tri'd.   | 80          |
| Where it shall be Felony in the Gaoler by dures of imprisonment to make a man become an Approver against his will.         | 91          |
| Where it shall be Felony to conceal and deny goods though he found them, and where not.                                    | 98, 108     |
| How a Felon that is in prison may be retained to serve the King in his wars.   | 239         |
| The judgement in case of Felony.   | 211         |
| What things are implied in the Judgement of Felony.  | 47          |

|  |     |
|--|-----|
| <b>Fines.</b>  |     |
| Where a Fine with Proclamations and 5 years past shall bar the wife of her dower, and where not. | 216 |

|   |     |
|---|-----|
| <b>Fines. vide Amercements.</b>                         |     |
| <b>Flattery.</b>  |     |
| The description of a Flatterer.                         | 209 |
| An ancient Law against Flatterers.                      | ib. |
| The sentence of Holy Writ against Flatterers.           | ib. |
| The miserable ends of divers Flatterers and Favourites. | 208 |
| ■ <b>Flemensfreme, quid?</b>                            | 181 |

|   |          |
|---|----------|
| <b>Force, and Forcible Entry.</b>                                 |          |
| Diversity of Forces.  | 161      |
| Where the Sheriff may remove a Force, but not restore possession. | ib.      |
| Where a man may gather Forces, and where not.                     | 161, 162 |
| The   |          |



## THE TABLE.

|   |            |  |            |
|---|------------|--|------------|
| The writ to remove a Force grounded upon the statute of 2 E. 3. <i>cap.</i> 3.  | 162        | Where a man that pronounceth and publishes a deed to be true which he hath been told to be false, shall be punished within this statute. | 171        |
| Where and in what cases a man shall be restored to his possession upon a forcible entry.  | 242, 243   | What Statutes and Recognizances are within this Law, and what not.   | ib.        |
| <b>Forefallers.</b>   |            |  |            |
| The Etymology of the word.  | 195        | Where a Forgery before this statute is not punishable by it.   | 172        |
| What a Forefaller is, and his punishment.   | ib.        | Where Forgery shall be Felony, and where not, and its forfeiture.  | 103, 172   |
| Forefallers punishable at the Common Law.   | 196        | How Forgery anciently was punished.  | 168        |
| Where an attempt by words to enhance the price of Merchandize is punishable.  | ib.        | Forgery whence so called.  | 169        |
| Where a deceit to abate the price of wares is punishable.   | ib.        | Where the ante-dating of a Deed shall be adjudged Forgery.   | ib.        |
| The policy of former times to prevent forefalling.  | ib.        | Where a false Deed shall be as penal as a forged.  | ib.        |
| <b>Forfeiture.</b>  |            |  |            |
| What things a man attainted of Treason shall forfeit, and what not.   | 18, 19, 21 | The making of a false Customary adjudged Forgery.  | 169, 170   |
| Things that lie not in Tenure are not forfeitable for Felony, but shall extinguish.   | 21         | <b>Forein Plea.</b>  |            |
| The forfeiture of a man convict of Heresie.   | 43         | Where upon an indictment, a man may plead a Forein Plea, and where not.  | 27         |
| What an offender that is killed in resisting an Officer shall forfeit.  | 56, 227    | <b>Forests.</b>  |            |
| <i>Confiscare, unde?</i>  | 227        | An exposition upon the statute of 1 H. 7. <i>cap.</i> 1, concerning hunting with vizors.   | 75, 76     |
| Where goods forfeited ought to appear upon Record, and where not.   | ib.        | What shall be said Forests, Parks, and Warrens within this statute.  | 76         |
| Where a Felon waves his own goods they are forfeited, though they be not properly <i>Bona Waviana</i> .   | ib.        | What shall be said a Concealment within this statute.  | 77, 78     |
| In an Appeal of robbery, if the Plaintiff omit any of the goods stolen, they are forfeited.   | ib.        | Where none may erect any building upon his own ground within the Kings Forest.   | 204        |
| Where the Plaintiff for a false Appeal shall forfeit his goods.   | ib.        | <b>Franchises.</b>   |            |
| Where the goods and issues that are attached or distrain'd by process out of any Court shall be forfeited, and what the Sheriffs Return shall be thereon. | 228        | What the Franchises <i>de Furca &amp; Fossa</i> be.  | 58         |
| Where none may seize the goods of any person before conviction, and the punishment of them that do it.  | 228, 229   | <b>Fugam Fecit.</b>  |            |
| The begging of the estate of a man before Attainder or conviction altogether unlawful.  | 229        | Where a <i>Fugam fecit</i> may be falsified by traverse, and where by matter of Law.   | 232        |
| No goods of an Offender ought to be searched or inventoried before Indictment, nor removed before conviction.   | ib.        | <b>Fugitives.</b>  |            |
| <b>Forgery.</b>   |            |  |            |
| An exposition upon the statute of 5 E. 3. <i>cap.</i> 14. concerning Forgery.   | 168        | What statutes have been made and are now in force against Fugitives.   | 178        |
| Where the inserting of a clause into a Will without direction of the deviser shall be a Forgery within this Statute.                                      | 170        | Where and how the Common Law prohibited men to pass beyond the Seas without the Kings license.   | 178, &c.   |
| Where the Forgery of a Lease or a Rent for years is within this statute.  | ib.        | What persons may go beyond Sea without license, and what not.  | 179, 180   |
|   |            | The punishment of such as go beyond Sea without License, or return not at the Kings command.   | ibid.      |
|   |            | By what Seals the King may give License to travel, and by what Seals he may command back again.  | 180        |
|   |            | Where a Subject of one Kingdom flies into another, he ought not by the Law of Nations to be sent back again.                             | ib.        |
|   |            | U 4  | Gentlemen. |

## T H E T A B L E.

### Gentlemen.

**T**HE ancient punishment of a Russian striking a Gentleman. 141, 157

### Gaoler and Prisoner.

How Prisoners ought to be used. 34, 35  
Where a Prisoner by dures of the Gaoler comes to an untimely end, it is murder in the Gaoler. 52, 91  
Where it shall be Felony in a Gaoler by dures of imprisonment to make a man become an Approver against his will. 91  
Where the Coroner ought to sit upon the Body of every Prisoner that dies in Prison. 52, 91  
Where it shall be Felony in the Northern Counties to imprison or detain another against their will. 106  
How a man that is imprisoned must be discharged. 209  
Where a Judge or Justice may discharge a man out of Prison, and where not. *ib.*  
Where the Plaintiff may discharge the Defendant out of Prison, and where not. 209, 210

### Guns.

Ordinance, whence so called. 79  
No Guns ought to be transported. 57

### Habiliment.

**W**HAT it signifies. 9

### Hawks.

An exposition upon the statute of 37 E. 3. cap. 19, concerning stealing of Hawks. 97  
What Hawks it shall be Felony to steal by this Law, and what not. 97, 98  
The punishment anciently for taking away and concealing a Hawk. 97  
In what Hawks a man may have a property. 98, 99  
How the party that finds a Hawk ought to demean himself. 97, &c.

### Heir.

*Natus Hæres viventis.*

### Heresie.

Who are Judges of Heresie. 39, 40, 42  
What shall be accounted Heresie. 40, 42  
Lollards formerly indicted for Heresie. 41  
The punishment of an Heretick. 43, 44  
At what time an Heretick may abjure his opinion. 43

The forfeiture of one convict of Heresie. 43  
Words may make an Heretick, but no Traitor. 14

*Hobelarius*; quid? 79

*Hockettors* or *Hocquetours*; quid? 175

### Homicide.

How many sorts of Homicides there are. 54  
What Homicides are Felony, and what not. 54, 55  
The description of Homicide. 55  
What Homicide *se defendendo* is, and what he shall forfeit. 56  
Where a man ought to give back to prevent Homicide, and where not. *ib.*  
What Homicide *per Infortunium* is, and what he forfeits. 56, 57  
The definition and derivation of Chancesmedly. 57  
Where the Jury cannot find generally that the party killed him *se defendendo*, but the case ought to be specially. 220  
Where an Officer may kill an Offender that resists or flies away, and where not. 221

### Hue and Cry.

From whence it is derived, and how divided. 116  
The description of Hue and Cry at the Common Law. *ibid.*  
The punishment of them that shall not levy or pursue an Hue and Cry. 117  
5 Cases wherein Hue and Cry shall be by statute. *ib.*  
A difference between the prosecution of a Hue and Cry at the Common Law, and of an Hue and Cry by the statute. *ib.*  
The punishment of him that levies a Hue and Cry upon a fained cause. 118  
Where the City of London was taken into the Kings hands for not levying a Hue and Cry. *ib.*

### Indictment.

**T**HE form of an Indictment for Treason. 12

*Proditorie* necessarily to be used in all Indictments for Treason. 4, 15  
The Indictments of Treason and Felony against *Edward Duke of Somerset*. 12, 13  
Where a general Indictment shall be good without expressing any particular. 16  
Where an Indictment of a Peer shall be by Freeholders. 26  
Where upon an Indictment a man may plead a foreign plea, and where not. 27  
The

## THE TABLE.

|   |  |
|---|--|
| The Indictment of <i>Wefton</i> for poisoning Sir <i>Thomas Overbury</i> , and the proceedings against him and his Accessories. 49, 50, 135 |  |
| The difference between the Indictment for Burglary, and burning of houses. 67   |  |
| An Indictment, <i>Quare bona Capella in Custodia, &amp;c.</i> is good. 110  |  |
| Where one man is Coroner both of the Kings house and County, an Indictment taken before him alone is good. 134                              |  |
| Where the substance of an Indictment is proved, no matter for circumstances. 135  |  |
| Where a man is indicted for poisoning another, no other cause of his death can be given in evidence. <i>ib.</i>                             |  |
| Where a Murder is laid in an Indictment to be by one kind of weapon, any other kind of weapon may be given in evidence. <i>ib.</i>          |  |
| The Indictments against <i>Empton</i> and <i>Dudley</i> . 208   |  |
| Where upon an insufficient Indictment, the party may be indicted anew, and where not. 214   |  |
| Where the very day of a Felony committed is not necessary in an Indictment. 230   |  |

### Infant.

|   |  |
|---|--|
| Where an Infant is capable of committing Treason, and where not. 4, 5 |  |
|---|--|

### Informers.

|   |  |
|---|--|
| An exposition upon the statute of 21 <i>Jac.</i> cap. 4. concerning Informers. 191  |  |
| Where and before whom an Information upon a penal statute shall be tried by this Law. 193   |  |
| Where an Information is laid in a foreign County, the Defendant shall be found not guilty. <i>ib.</i>   |  |
| Where the Informer shall take an Oath that he believes the offence was committed within a year before the Information brought, and in no other County. <i>ib.</i> |  |
| Where in Informations upon Penal Laws, the Defendant may plead the general issue. <i>ib.</i>  |  |
| Where an Action upon a Penal Statute must be brought by Information or Original, and not by Bill. 194   |  |
| Where the Kings Attorney may proceed for the King after the death of the Informer. <i>ib.</i>   |  |
| Where an Informer may proceed for his part although the Kings Attorney enter a <i>Non vult prosequi</i> for the King. <i>ib.</i>                                  |  |
| Where an Informer may proceed upon a Popular Action, notwithstanding the Kings Pardon of the offence, and where not. 194, 195                                     |  |

### Ingrosser.

|   |  |
|---|--|
| From whence derived. 195  |  |
| Salt, a victual within the statute of 5 <i>E. 6.</i> cap. 14. that may be ingrossed. <i>ib.</i> |  |
| Where the Ingrossing of Apples is not punishable by that statute. <i>ib.</i>                    |  |
| Where a Merchant that sells in gross shall be termed an Ingrosser, and where not. 196           |  |

### Institution.

|  |  |
|--|--|
| Where a Church shall be said full by Institution, and where not. 155 |  |
|--|--|

### Joint-tenant.

|   |  |
|---|--|
| Where a Joint-tenant becoming <i>Felo de se</i> shall forfeit but part, and where the whole. 55 |  |
| Where a release to one joynt-debtor shall enure to both, and where not. 239                     |  |

### Ireland.

|  |  |
|--|--|
| Where <i>Ireland</i> shall be said out of the Realm, and where not. 11, 18   |  |
| Where a writ of Error shall be maintainable here in the Kings Bench, upon a judgment given in the Kings Bench in <i>Ireland</i> . 18 |  |

### Judges and Justices.

|  |  |
|--|--|
| Where Judges in criminal causes ought not to deliver their opinions before-hand. 29  |  |
| Where Justices of Peace are not included under the name of Justices of <i>Oyer</i> and <i>Terminer</i> . 103   |  |
| The punishment of those that seek revenge against a Judge, or any other, for doing any thing in discharge of their office, or for complaining in any Court of Justice. 142 |  |
| The attainder of certain Judges. 146, 147  |  |
| The properties of a Judge, and how he ought to be qualified. 147, 225  |  |
| Certain provisions made against strangers executing any judicial offices. 225, 226   |  |
| The oath of the Kings Justices in <i>Anno</i> 18 <i>E. 3.</i> printed amongst the statutes, no Act of Parliament. 223, 224   |  |
| Judgement given against a corrupt Judge. 223   |  |

### Judgement.

|  |  |
|--|--|
| <i>Unde derivatur</i> . 210  |  |
| How many sorts of Judgements there are. <i>ib.</i>   |  |
| The Judgement in case of High Treason how warranted by Scripture, and what is implied in it. 20, 211 |  |
| The  |  |

## THE TABLE.

|   |          |  |          |
|---|----------|--|----------|
| The Judgement in case of Petit Treason.   | 20, 211  | Where in an Attise the Jury is informed but on one side, there is good cause of Challenge.                                       | 175      |
| The Judgement in case of Felony.  | 211      | Where Attaints shall be brought.   | 223      |
| The Judgement in case of an Appeal where the Defendant is slain or vanquished.  | 212      | The judgement in an Attaint.   | 222      |
| The Judgement to reverse or avoid an Outlawry in case of Treason or Felony.   | 214      | Where the party grieved may have an Attaint at the Common Law, or grounded upon the Statute of 23 H. 8. cap. 3, at his election. | 223      |
| The Judgement in case of abjuration, and what is implied in it.   | 217      | <b>Larceny.</b>  |          |
| The Judgement in case of Petit Larceny.   | 218      | THE description and derivation of it.  | 107      |
| The Judgement in case of Misprision of Treason.   | ib.      | Where there must be a felonious taking as well as a felonious carrying away, to make a Larceny.                                  | ib.      |
| The Judgement for striking in Westminster Hall sitting the Court.   | ib.      | What shall be said a felonious taking, to make a Larceny.  | 107, 108 |
| The Judgement for striking and drawing blood in the Kings Court.  | ib.      | What shall be said a felonious carrying away, to make a Larceny.   | 108, 109 |
| The Judgement in case of a Premunire.   | ib.      | Of what things Larceny may be committed.   | 109, 110 |
| The Judgement in case of Theftbote.   | ib.      | The judgement and punishment of Petit Larceny.   | 109, 218 |
| The Judgement where the party is fined, and where amerced.  | ib.      | Where a man may have a property in some things, and yet no Larceny can be committed of them.                                     | 109      |
| The Judgement given for the death of a man <i>per Infortunium</i> .   | 220      | Where a Larceny may be committed of things <i>contra naturam</i> , and where not.  | 109, 110 |
| The Judgement given for the death of a man <i>se defendendo</i> .   | ib.      | The punishment of such as steal the eggs of any Bird or Fowl.  | 110      |
| The Judgement given for the death of a man that was slain attempting to rob another.  | ib.      | Where it is Larceny to steal the sheets from the dead.   | ib.      |
| The Judgement in case of Conspiracy at the suit of the King, and at the suit of a party.  | 222      | Where a man may steal his own goods.   | ib.      |
| The Judgement given in an Attaint.  | ib.      | Where the wife cannot steal the goods of her husband.  | ib.      |
| A Judgement given against a corrupt Judge.  | 223      | Where an Attainder of Petit Larceny shall be no plea to another Felony.  | 213      |
| Where a man that stands mute upon an Indictment of Treason shall receive the same Judgement as if he were convicted by Verdict or Confession. | 24       | Where a man flies, or is put in Exigent for Petit Larceny, he forfeits his goods.  | 218      |
| Where an Approver refusing the Combate shall have Judgement as in case of Petit Treason.  | 21       | <b>Law.</b>  |          |
| What things are implied in the Judgement against a Felon.   | 47       | How our Law is a Law of it self divided from all others.   | 100      |
| Where a saving that is repugnant to the express Judgement shall be void.  | ib.      | Where the Law shall give no benefit to any thing that is done in <i>fraudem Legis</i> .  | 64, 108  |
| When the certain judgement for Felony came in.  | 53       | What <i>amittit liberam Legem</i> signifies.   | 221, 222 |
| Where no Court of Equity under penalty of a Premunire can proceed after judgement at the Common Law.  | 123, &c. | <b>Letherwite, quid?</b>   | 206      |
| <b>Jurors.</b>  |          | <b>Libels.</b>   |          |
| What men grand Jurors ought to be.  | 32, 33   | A Libel punished at the Common Law.  | 374      |
| The punishment of a grand Juror for declaring publickly who is indicted.  | 106, 107 | A French Libel punishable.   | ib.      |
| The punishment of those that shall abuse Jurors.  | 142      | <b>London.</b>   |          |
| Perjury in Jurors how anciently, and how now punished.  | 163      | Where the Mayor of London shall be principal in Commissions in London by the Charter of the City, and where not.                 | 73       |
|   |          | What   |          |

## THE TABLE.

|  |              |   |               |
|--|--------------|---|---------------|
| What part of the Tower is within London, and what within Middlesex.  | 136          | Where it shall be Felony to bring in, pay, or coin foreign Monies.                                  | 92            |
| The custom of London for entering into a house, and carrying a Harlot to prison, good.                               | 206          | Where the transportation of silver, and the importation of evil Money shall be Felony, and in whom. | 92, 93        |
| <b>Machecarii.</b>   |              | <b>Monopoly.</b>  |               |
| ITS description and derivation.  | 110          | The definition and Etymology of it.   | 181           |
| <b>Maihem.</b>   |              | All Monopolies against the fundamental Laws of the Land, and punished by them.                      | <i>ib.</i>    |
| The ancient punishment of it.  | 118          | An exposition upon the Statute of 21 Jac. cap. 3. concerning Monopolies.                            | 181, 182, &c. |
| Where <i>filonice Maihemavit</i> ought to be in all Appeals and indictments of Maihem.                               | <i>ib.</i>   | What offices and other priviledges are excepted out of this Statute.                                | 185           |
| Where the cutting off of a mans privities was anciently Felony, now Maihem only.                                     | 62, 63, 118  | Where and how Monopolies shall be tried, and the penalty of such as delay the Actions.              | 182, 183      |
| <b>Marriage.</b>   |              | Where new Manufactures shall be a Monopoly, and where not.  | 184           |
| Where a man may disagree to a Marriage, though he were of the age of consent at the time of the marriage solemnized. | 89           | <b>Monuments.</b>   |               |
| The ancient punishment for a Christian marrying with a Jew.  | <i>ib.</i>   | The punishment of those that shall deface any tomb or Monument.                                     | 202           |
| <b>Marshall, vide Constable.</b>   |              | Where the erecting of a tomb shall be lawful, and where not.  | <i>ib.</i>    |
| <b>Medietas Linguae. vide Trial.</b>   |              | The reverence to be given to Monuments, and the use of them.  | 202, 203      |
| <b>Metall.</b>   |              | <i>Monumentum, unde?</i>  | 203           |
| Six sorts of them; what they are.  | 74           | Where our law takes no cognisance of the burials of the dead.                                       | <i>ib.</i>    |
| <b>Mines.</b>  |              | <i>Cadaver, unde?</i>   | <i>ib.</i>    |
| What Mines belong to the King, and what to the Subject.  | 132          | Where the Jews anciently had their Burial.  | <i>ibid.</i>  |
| <b>Misprision.</b>   |              | <b>Mordancestor.</b>  |               |
| The derivation of the word, and the definition or signification of it.   | 35           | Where a writ of Mordancestor is maintainable, though there be no immediate descent to the heir.     | 231           |
| Several sorts of Misprisions, and their punishments.   | 36, 139, 140 | <b>Multiplication.</b>  |               |
| Where words without an overt Act are as punishable as Misprision of Treason.   | 14           | An Exposition upon the Statute of 5 H. 4. cap. 4. concerning Multiplication.                        | 74            |
| Where forging or counterfeiting of foreign Money is Misprision of Treason.   | 17, 36       | Licences granted by the King to certain persons to use the Art of Multiplication.                   | <i>ib.</i>    |
| Every Treason and Felony includes in it a Misprision.  | 140          | <b>Murder.</b>  |               |
| Where to strike in Westminster Hall or the Kings Palace is a great Misprision, and the punishment of it.             | <i>ib.</i>   | The derivation and Etymology of it.   | 47, 48        |
| Where it shall be a Misprision to rescue a Prisoner, and what he shall forfeit.                                      | 142          | Poisoning the worst of Murders.   | 48            |
| What Courts it shall be a Misprision to strike in, and in what not.  | <i>ib.</i>   | How many waies a man may be poisoned.   | 52            |
| The judgement in case of Misprision of Treason.  | 218          | What persons are capable of being murdered.   | 50            |
| <b>Money.</b>  |              | The drowning of certain Jews adjudged Murder.   | <i>ib.</i>    |
| No Money is to be imposed upon the Subject but of gold and silver.   | 17           | Where it is no Murder to kill an Infant in <i>Fœtus in Matre.</i>                                   | <i>ib.</i>    |
|  |              | What  |               |

## T H E T A B L E.

What shall be said malice prepenced to make a Murder. 51  
 Where a mistake in the Principal shall make the Accessory guilty of Murder, and where not. *ib.*  
 Where there ought to be a continued malice to make it Murder, and where not. *ib.*  
 How many kinds there be of malice implied. *ib.*  
 What Officers it is Murder to kill. 52  
 Where to kill another without provocation is malice implied. *ib.*  
 Where a prisoner by duress of the Gaoler comes to an untimely end, it is Murder in the Gaoler. 52, 91  
 Where a Sheriff or other Officer executes an offender contrary to the judgement, it is Murder in them. 52  
 Where it is Murder for any one to execute another by Martial Law in time of Peace. *ib.*  
 How the year and day in case of Murder shall be counted. 53  
 Where the killing of another by misfortune shall be Murder, and where not. 56, 57  
 Several Laws made to prohibit pardons of wilful Murder. 157  
 Murder never pardoned by express name. 235

### News.

THE ancient punishment to those that spread false news. 198

### *Non compos mentis.*

Where a man *non compos mentis* may commit Treason, and where not. 4, 6  
 Where a man *non compos mentis* shall not answer for a Felony or a Treason by him committed, nor shall suffer execution for them. *ib.*

### *Non obstante.*

Where the King by a *Non obstante* may dispense with a penal Law, and where not. 154  
 Where the King by a *Non obstante* may dispense with the Statutes concerning pardons. 236

### Nuisance.

Where none ought to erect any building to anothers Nuisance. 201, 202

### Oath.

THE definition and derivation of it. 165  
 How many sorts of Oaths there are. *ib.*

*Sacramentum, Jusamentum, & Juramentum unde?* 167

An Oath not to be imposed or altered but by Authority of Parliament. *ib.*  
 The punishment of such as shall administer an Oath without authority of Law. *ib.*  
 What things are requisite to a true Oath. 166  
 Where a Court may administer the Oath of Allegiance to a suspicious person. 167

### Office.

Where no Office is requisite to find a title which stands with the title of the King. 216

### Ordinance. *vide* Guns.

#### Ordinary.

The fees of the Ordinary for *Probate, &c.* 149, 150  
 Where, and how the Ordinary may dispose of some goods of an Intestate to pious uses. 150

#### Outlawry.

Where a man out of the Realm at the time of an Outlawry pronounced may reverse it, and where not. 32  
 Where a man out of the Realm may be Outlawed for Treason, and how he may discharge himself of it. 216  
 Where the Court may award execution upon one that is taken upon a *Capias Utile-gatum* for Felony, and where not. 212  
 By a pardon of an Outlawry the goods are not restored. 238

### Pagans.

AN ancient Law against the abuse of Pagans. 209

### *Pain fort & dure.*

In what cases a man that stands mute shall have judgement of *Pain fort & dure*, and in what not. 217  
 Where the judgement of *Pain fort & dure* shall be no plea to a former Felony. 213

### Pardon.

The description and Etymology of it. 233  
 How many sorts of Pardons there are. *ib.*  
 Where a Pardon granted by a King *de jure* shall be void. 7  
 Where a Pardon of Felonies shall be no Pardon of Treason at this day. 15  
 What the King can restore by a Pardon, and what not. 233

What

## T H E T A B L E.

|  |  |
|--|--|
| What Pardons the Court ought to take notice of without pleading. 234   | Parliament.  |
| The form of pleading a general Pardon. <i>ib.</i>  | Names appropriated to certain Parliaments. 2   |
| Where an offence is excepted out of any general Pardon, an Attainder for that offence is also excepted. 234, 238   | The use of proclaiming Acts of Parliament. 41  |
| Where a Writ of allowance is necessary to a Pardon, and where not. 234, 235  | How dangerous it is to bring new words into Acts of Parliament. 126  |
| Forms of ancient Pardons. 235  | No Armour is to be worn, no plays or games used where the Parliament is holden. 160  |
| Where the King pardons <i>Señam pacis de boni-<br/>didiis</i> , he pardons the offence itself. <i>ib.</i>  | The King and one House of Parliament alone, or both houses of Parliament without the King, cannot declare a Treason within the Statute of 25 E. 3. 22  |
| Where the foundation of a debt is pardoned, the debt itself is pardoned. 236   | Peers.   |
| What, and how the King may pardon, and what not. 236, 237  | Where the Indictment of a Peer is by Freeholders. 26   |
| How far a pardon of all Felonies extends. 236  | How the Trial of a Peer and a common person differs, and the form of his Trial. 28, 29   |
| Where the King may dispense with the Statutes concerning Pardons with a <i>Non obstante</i> . <i>ib.</i>   | Where a Peer cannot waive his Trial by Peers. 30   |
| Where the King cannot pardon an Appellee. 237  | No Bishop, Abbot, &c. shall be tried by Peers. <i>ib.</i>  |
| Where the King may pardon a collateral Act in an Appellee. <i>ib.</i>  | In what cases a Peer shall be tried by Peers, and in what not. <i>ib.</i>  |
| Where the King may pardon an exemplary punishment that tends not to the damage of the Plaintiff. <i>ib.</i>  | What Lords shall be tried by Peers, and what not. <i>ib.</i>   |
| Where the King may pardon a corporal punishment which tendeth to common example. 171   | How Lords Spiritual ought to withdraw at all Trials of Peers in Parliament, but they may make their Proxies. 31  |
| Where in some Actions the King may pardon some things though a Subject be sole party, and in other actions the King can pardon nothing though himself be sole party. 237 | How a Peer shall be outlawed. <i>ibid.</i>   |
| Where a Bond is made to a Subject or to the King <i>pro bono publico</i> , the Subject can neither release it, nor the King pardon it. 238                               | Pensions.  |
| What actions popular the King may pardon, and what not. <i>ibid.</i>   | Where it is not lawful to receive a Pension from any Foreign State. 144  |
| What suits in the Star-chamber the King may pardon, and what not. <i>ib.</i>   | <i>Pera, quid?</i> 204   |
| Where <i>Suppresso veri</i> , or <i>expressio falsi</i> shall avoid a Pardon. <i>ib.</i>   | Perjury.   |
| Where an Outlawry shall be pardoned, though the King be not certainly informed. <i>ib.</i>   | An Exposition upon the Statute of 5 El. cap. 9. concerning Perjury. 163, 164   |
| Where the King may pardon Heresie, and any other offence punishable in the Ecclesiastical Court. <i>ib.</i>  | Where in an Action brought upon this Statute, the Plaintiff ought to declare in certainty whether the Defendant was perjured by his own proper act, or by subornation. 167                               |
| Where the King pardons the Debt, the Action is discharged; so if he pardons the Action, the Debt is discharged. 239  | Where in an Action brought upon the Statute, it shall not be enough to say that the Defendant <i>falso dixit &amp; deposuit</i> , but he must say likewise <i>voluntarie &amp; corrupte</i> . <i>ib.</i> |
| Where the King may pardon the Outlawry, and yet the fine remain. <i>ib.</i>  | The ancient punishment of Perjury. 163   |
| Where the King under the Great Seal may command all process and proceedings in criminal causes to cease. <i>ib.</i>  | Perjury, whence so called. <i>ib.</i>  |
| Where a <i>Superfedeas</i> was sent to the Judges to proceed no further against one that had obtained his pardon. 137  | Perjury in Jurors how anciently, and how now punished. <i>ib.</i>  |
|  | Perjury in a witness punished at the Common Law. 164   |
|  | Where Perjury shall be punished in the Ecclesiastical Court, and where not. <i>ib.</i>   |
|  | Where Perjury upon an information is punishable, and not upon an indictment. <i>ib.</i>  |
|  | The  |

## THE TABLE.

|  |            |  |            |
|--|------------|--|------------|
| The definition of Perjury.   | 164        | Where <i>auterfois attainé</i> for another offence is a good Plea, and where not.  | 213        |
| Where a false oath shall be Perjury, and where not.  | 166        | Where the judgement of <i>Pain fort &amp; dure</i> shall be no Plea to a former Felony.  | <i>ib.</i> |
| Where Perjury ought to be in a Judicial proceeding.  | <i>ib.</i> | Where an Attainder of Petit Larceny shall be no Plea to another Felony.  | <i>ib.</i> |
| Where to call another perjurd man, will bear an Action, and foreforn man, none.  | <i>ib.</i> | Where <i>auterfois acquite</i> is a good Plea, and where not.  | <i>ib.</i> |
| How Perjury may answer in the Chancery, Exchequer chamber, &c. shall be punished.  | <i>ib.</i> | Where upon an Indictment or Appeal for the death of a man, it is found that he killed him in his own defence, he shall be acquit for ever. | 213, 214   |
| Where an oath ought to be absolute to make it perjury.   | <i>ib.</i> | Where <i>auterfois convict devant judgement</i> is a good Plea, and where not.   | 214        |
| How a man that swears falsely, and yet swears the truth, shall be punished.  | <i>ib.</i> | Where an Attainder is no Plea in an Action of Debt, or any other Action.   | 215        |
| Where Perjury ought to be in a point material.   | 167        | Where a Defendant may plead without having a day in Court, and where not.  | 214, 236   |
| Subornation; <i>unde derivatur</i> ?   |            | <i>ib.</i>   |            |
| What a Suborner of witnesses shall forfeit.  |            | <i>ib.</i>   |            |
| Where an Action lies in the Chancery for Perjury committed there.  |            | <i>ib.</i>   |            |
| Pillory and Tumbrel.   |            |  |            |
| The derivation and signification of them.  |            | 219  |            |
| What the punishments of them be.   |            | <i>ib.</i>   |            |
| A Pillory and Tumbrel ought to be in every Leet and Market.  |            | <i>ib.</i>   |            |
| The Pillory and Tumbrel were ordained for great offences only.   |            | <i>ib.</i>   |            |
| Piracy.  |            |  |            |
| The Etymology of the word.   |            | 112  |            |
| An exposition upon the statute of 28 H. 3. cap. 15. concerning Piracy.   |            | 111  |            |
| How Piracy was punished before this Act.   |            | 112  |            |
| Where a Pardon of all Felonies shall not extend to Piracy.   |            | <i>ib.</i>   |            |
| Where there shall be no corruption of blood in case of Piracy.   |            | <i>ib.</i>   |            |
| No Accessories to Piracy.  |            | <i>ib.</i>   |            |
| Where Piracy was anciently Treason, and where not.   |            | 8, 113   |            |
| Where Piracy may be committed between the high-water and low-water mark.   |            | 113  |            |
| The punishment of a Pirate standing mute.  |            | 114  |            |
| Plague.  |            |  |            |
| An Exposition upon the statute of 1 Jac. cap. 31. concerning Plague-fores.   |            | 90   |            |
| Plea.  |            |  |            |
| Where <i>auter fois attainé</i> for the same offence is a good Plea, and where not.  |            | 213  |            |
| Where <i>auterfois attainé</i> for another offence is a good Plea, and where not.  |            | 213  |            |
| Where the judgement of <i>Pain fort &amp; dure</i> shall be no Plea to a former Felony.  |            | <i>ib.</i>   |            |
| Where an Attainder of Petit Larceny shall be no Plea to another Felony.  |            | <i>ib.</i>   |            |
| Where <i>auterfois acquite</i> is a good Plea, and where not.  |            | <i>ib.</i>   |            |
| Where upon an Indictment or Appeal for the death of a man, it is found that he killed him in his own defence, he shall be acquit for ever. |            | 213, 214   |            |
| Where <i>auterfois convict devant judgement</i> is a good Plea, and where not.   |            | 214  |            |
| Where an Attainder is no Plea in an Action of Debt, or any other Action.   |            | 215  |            |
| Where a Defendant may plead without having a day in Court, and where not.  |            | 214, 236   |            |
| Polygamy.  |            |  |            |
| The definition of it, and how it differs from Bigamy.  |            | 88   |            |
| An Exposition upon the Statute of 1 Jac. cap. 11. concerning Polygamy.   |            | <i>ib.</i>   |            |
| At what age a man or woman may be guilty of Polygamy.  |            | <i>ib.</i>   |            |
| Where a Marriage <i>de facto</i> , and not <i>de jure</i> , may make a man guilty of Polygamy.   |            | <i>ib.</i>   |            |
| Where notice of a Husbands life is material to make a wife guilty of Polygamy, and where not.  |            | <i>ib.</i>   |            |
| Where, and what divorces shall save a man from being guilty of Polygamy.   |            | 89   |            |
| Powdike.   |            |  |            |
| Where it shall be Felony to cut down the Powdike in Marshland in Norfolk.  |            | 106  |            |
| Priests.   |            |  |            |
| Where it shall be Felony to receive a Jesuit or Priest.  |            | 101  |            |
| Premunire.   |            |  |            |
| Whence so called.  |            | 120  |            |
| An Exposition upon the Statute of 27 E. 3. cap. 1. and other Statutes concerning Premunires.   |            | 119, 120, &c.  |            |
| Where suits in the Ecclesiastical Courts concerning temporal causes shall incur a Premunire.   |            | 120, 121, 122  |            |
| What Courts it shall incur a Premunire to sue in.  |            | 120, 121   |            |
| The Bishop of Norwich attainted in a Premunire, for holding plea of a temporal cause.  |            | 121  |            |
| Where no Court of Equity under penalty of a Premunire can proceed after judgement at the Common Law.                                       |            | 123, &c.   |            |
|  |            | Where  |            |



### THE TABLE.

|  |          |  |          |
|--|----------|--|----------|
| Where the Defendant in a Premunire ought to appear in person, and not by Attorney.                           | 125      | Where the Accessory cannot be guilty of a greater offence than the Principal.              | 139      |
| Where he that procures another to sue in the Ecclesiastical Court may be made a Principal in a Premunire.    | ib.      | Where a man may be both Principal and Accessory.   | ib.      |
| The punishment of a Premunire.   | 126      | Where the Attainder of an Accessory depends upon the Attainder of the Principal.           | 231, 232 |
| What lands and hereditaments a man convict of a Premunire shall forfeit.                                     | ib.      | Prisoners. <i>vide</i> Gaoler.   |          |
| How largely the word [ <i>Fauxer</i> ] in the statute of 16 R. 2. c. 5. concerning Premunires was construed. | ib.      | Priviledges.   |          |
| What statutes have been made, and are now in force concerning Premunires.                                    | 126, 127 | Westminster Hall, and the Kings Palaces, priviledged places from all Summons or Citations. | 140, 141 |
| The form of a renunciation in case of a Premunire.   | 127      | Where an ancient Privilege shall remain to a new erection, and where not.                  | 204      |
| The judgement in case of a Premunire.  | 213      |  |          |

### Presentation.

Where a Garden in Socage shall not present  
to an Advowson, nor an heir of Tenant in  
Capite that hath livery *cum exitibus.* 156

Prince.

The Prince committed to prison by the  
Chief Justice of the Kings Bench. 225

### Principal and Accessory.

In what Treasons all are Principals, and in what not. 9, 16, 21, 138

Where an Accessory cannot be guilty of Petit Treason when the Principal is guilty of Felony only. 20

Where there may be Accessories after a Witchcraft committed as well as before. 45

How the trial shall be where the Felony is done in one County, and the Accessory is guilty in another. 49, 135

Where a mistake in the Principal shall make the Accessory guilty of Murder, and where not. 51

Where the Common Law or Statute Law makes a Felony, Accessories are still included. 59, 72

Where the being present, and abetting an offence, makes all Principals, though the offence be personal. 59, 64

Where a man may be Accessory to his wife, but not the wife to the husband. 108

Where the Accessory shall not be tried if the Principal hath his Clergy, or be pardoned. 114, 139

Where a man may be Accessory to the stealing of his own goods. 134

Who shall be said a Principal, and who an Accessory. 138

Where a man may be Principal, though he be not present at the act. 141

Prisoners. *vide* Gaoler.

### Privileges.

Westminster Hall, and the Kings Palaces,  
priviledged places from all Summons or  
Citations. 140, 141  
Where an ancient Priviledge shall remain to  
a new erection, and where not. 204

### Proclamations.

Where Proclamations are of great force. 162

## Prophecies.

The punishment of Prophefying. 123  
The vanity and uncertainty of predictions. *ib.*

### Protections.

Where no Protection lies for a Felon, nor  
any that is Prisoner to the Court. 240

### Provifers.

An exposition upon the statute of 13 R. 2. c.  
3. concerning Provisors. 100  
All provisions against the Common Law. *ib.*

### Punishments.

|   |          |
|---|----------|
| Exemplary Punishments adjudged in the<br>Kings Bench. | 219, 220 |
| Ancient Rules of Law in Corporal punish-<br>ment.     | 220      |

**Purveyors.**

Wherein Purveyors may commit Felony. 82  
An Exposition upon the Statutes of Purvey-  
ors. *ib.*  
Where a Purveyor shall observe a discharge  
of Purveyance, and where not. *ib.*  
Where a Purveyor shall have his remedy at  
the Common Law, and not by a Privy  
Seal. *ib.*  
A Commission granted for the taking up of  
Boies for the King's Chappel. *ib.*  
How and in what manner the King shall have  
purveyance of Salt-petre. 82, 83, &c.

*Zyare*

## THE TABLE.

*Quare Impedit.*  
**N**O damages in a *Quare Impedit* or Darraine presentment at the Common Law. 156

**Rack.** *vide* Torture.

**Rape.**

**W**HAT Rape is, and the punishment of it at the Common Law. 60  
 What makes a Rape, and what not. 59, 60  
 The heinousness of the offence. 60  
 Appeals of Rape. *ib.*

**Records.**

An Exposition upon the Statute of 3 H. 6. *cap.* 12. concerning embezzling of Records. 70, 71, &c.  
 The punishment of this offence before this Statute. 71  
 What Records it shall be Felony to embezzle within this Statute. 72  
 Where this Statute shall be a sufficient Commission to the Justices of either Bench to enquire of this Felony, and where not. 73  
 The definition and derivation of a Record. 71  
 A Record is proved by itself, and ought to be common to all. *ib.*  
 In what cases the Chancery is a Court of Record, and in what not. *ib.*  
 A Judge fined for razing a Record. 72

**Redoubbons and Addoubbons.**

The description of them. 134

**Regrator; unde?** 195

**Relation.**

Where a Relation shall never make a man a Felon. 70  
 Where a Relation shall never work a bar, nor a wrong to a stranger. 216

**Religion.**

Where a man that is entred into Religion cannot be a purchaser to him and to his heirs. 215

**Restitution.**

What it is, and how divided. 240  
 Several sorts of Restitutions. 242  
 What Restitution the King may make, and what not. 240  
 Where Restitution is much favoured in Law, and several cases of it. 241, 242  
 Where Restitution shall be of goods stolen, and to whom. 242

Where, and in what cases a man shall be restored to his possession upon a forcible entry. 241, 242

Where Restitution may be granted by writ after execution upon a Statute Staple. 243

**Riots, Routs, and unlawful Assemblies.**

The description of them and their derivation. 176  
 The difference between levying of war, and committing of a great Riot. 9, 10

**Roberdsmen.**

Whence so called. 197  
 Several Statutes made against them. *ib.*  
 The description of *Robin Hood*. *ib.*

**Robbery.**

The definition and derivation of it. 68  
 The difference between a Robber and a Cutpurse. *ib.*  
 The punishment now and anciently of Cutpurses. *ib.*  
 What shall be said a taking in case of Robbery, and what shall be said a taking from his person. 68, 69

**Rogues.**

Where it shall be Felony in dangerous Rogues to beg or wander. 103

**Roy.**

Where a pardon granted by a King *de Jure* shall be void. 7  
 Where a King is King before Coronation. *ib.*  
 Where the King may put a man to answer without Indictment or Presentment. 136  
 Where a man shall lose his right hand for striking in the King's Palace, and where not, and how anciently it was punished. 140  
 The Kings Palace a privileged place from all Summons or Citations. 140, 141  
 What shall be said the Kings Will. 146  
 Where a Subject is bound to do any thing to the King as his Liege Lord, no bond is to be exacted of him to do it. 149  
 All bonds or writings made to the Kings dishonour, are against Law, and void. *ib.*

**Sacriledge.**

**T**HE Etymology of it. 64

**Sakebere.**

What it signifies, and from whence it is derived. 69

**Saving.**

# THE TABLE

|  |            |   |            |
|--|------------|---|------------|
| Saving.  |            | The ancient punishment of Souldiers that depart without License.                                    | <i>ib.</i> |
| Where a saving is repugnant to the express judgement, it shall be void.  | 47         | Statutes.   |            |
| Seal.  |            | Where a Statute is made contrary to <i>Magna Charta</i> , it shall be holden for none.              | 111        |
| Sigillum, quid?  | 169        | An Exposition upon these Statutes following.  |            |
| Servants.  |            | 2 <i>E. 3. cap. 3.</i> concerning riding armed.   | 160        |
| Where it shall be Felony in servants to embesfil their Masters goods after their death.  | 104        | 25 <i>E. 3. cap. 2.</i> of Treasons.  | 1, &c.     |
| Where it shall be Felony in Servants to embesfil their Masters goods committed to their trust.   | 105        | 37 <i>E. 3. cap. 1.</i> concerning Premunires.  | 119        |
| What Servants this Felony shall extend to, and to what goods.  | <i>ib.</i> | 27 <i>E. 3. cap. 3. Statutum Stapule.</i>   | 95         |
| Sheep.   |            | 37 <i>E. 3. cap. 19.</i> concerning stealing of Hawks.  | 97         |
| The penalty of conveying sheep alive out of the Realm.   | 104        | 13 <i>R. 2. cap. 13.</i> concerning Provivors.  | 100        |
| Sheriff.   |            | 5 <i>H. 4. cap. 4.</i> concerning Multiplication.   | 74         |
| Where the Sheriff may raise the <i>Poffe Comitatus</i> , and where not.  | 161        | 5 <i>H. 4. cap. 5.</i> concerning cutting out of Tongues.   | 62         |
| Simony.  |            | 11 <i>H. 4. cap. 9.</i> concerning Trials.  | 32         |
| Whence so called.  | 153        | 8 <i>H. 6. cap. 12.</i> concerning embesfiling of Records.  | 70         |
| An Exposition upon the Statute of 31 <i>El. cap. 6.</i> concerning Simony.   | <i>ib.</i> | 1 <i>H. 7. cap. 7.</i> concerning hunting with Vifors.  | 75         |
| Where an Usurper may commit Simony.  | <i>ib.</i> | 3 <i>H. 7. cap. 2.</i> concerning the carrying of women away against their will.                    | 61         |
| Where the Simony of an Usurper shall not prejudice the rightful Patron.  | <i>ib.</i> | 3 <i>H. 7. cap. 14.</i> of Felony for conspiring the death of the King, or of any Privy Counsellor. | 37         |
| In what the Simony of the Patron only shall prejudice the Incumbent, and in what not.  | 154        | 3 <i>H. 8. cap. 12.</i> concerning Trials.  | 33         |
| What a Simonist shall forfeit.   | <i>ib.</i> | 28 <i>H. 8. cap. 15.</i> concerning Piracy.   | 111        |
| The punishment of those that shall take or give any reward for Resignations, admissions to Churches, or any other Ecclesiastical promotions. | 155, 156   | 28 <i>H. 8. cap. 1.</i> concerning false Tokens.  | 133        |
| Simony and perjury go together.  | 156        | 35 <i>H. 8. cap. 2.</i> concerning Trials of Foreign Treasons.                                      | 11         |
| Souldiers,   |            | 1 <i>E. 6. cap. 2.</i> concerning witnesses in case of Treason.                                     | 24         |
| An Exposition upon the Statute of 39 <i>El. cap. 17.</i> concerning wand'ring Souldiers.   | 85         | 2 <i>E. 6. cap. 24.</i> concerning Trials.  | 43         |
| How Souldiers anciently were retained.   | 86         | 5 <i>E. 6. cap. 11.</i> concerning Treasons.  | 24         |
| Where a Souldier was fined for refusing to re-deliver his armour.  | 79         | 1 <i>Mur. cap. 1.</i> concerning Treasons.  | 23         |
| An Exposition upon the Statutes concerning Souldiers departing without License.  | <i>ib.</i> | 1 & 2 <i>Phil. &amp; Mar. cap. 10.</i> concerning Treasons.   | 24         |
| How a Souldier that departs without license shall be proceeded against, though he be never taken.  | 87         | 5 <i>El. cap. 9.</i> concerning Perjury.  | 163, 164   |
| Where a Souldier that departs without License shall have his Clergy, and where not.  | <i>ib.</i> | 5 <i>El. cap. 14.</i> concerning Forgery.   | 163        |
| III. INST.   |            | 21 <i>El. cap. 4.</i> against embesfiling of the Kings Armour.                                      | 78         |
|  |            | 31 <i>El. cap. 6.</i> concerning Simony.  | 153        |
|  |            | 39 <i>El. cap. 17.</i> concerning wandering Souldiers.  | 85         |
|  |            | 1 <i>Jac. cap. 11.</i> concerning Polygamy.   | 88         |
|  |            | 1 <i>Jac. cap. 12.</i> concerning Witchcraft.   | 45, 46     |
|  |            | 1 <i>Jac. cap. 31.</i> concerning Plague-soars.   | 90         |
|  |            | 3 <i>Jac. cap. 4.</i> concerning the serving of Foreign Princes.                                    | 80, 81     |
|  |            | 25 <i>Jac. cap. 2.</i> concerning Concealors.   | 188, &c.   |
|  |            | 21 <i>Jac. cap. 3.</i> concerning Monopolies and Dispensations.                                     | 181, 186   |
|  |            | 21 <i>Jac. cap. 4.</i> concerning Informers.  | 191        |

# THE TABLE.

|   |  |   |
|---|--|---|
| <i>Superfedas.</i>  |  | <i>Proditoris</i> necessarily to be used in all Indictments of Treason. 4, 15   |
| Where a <i>Superfedas</i> was sent to the Judges to proceed no further against one that had obtained his pardon. 137                                |  | Where a man <i>non compos mentis</i> , nor an Infant is capable of committing Treason at this day. 4, 6                       |
| Sylliva or Sulliva; <i>quid?</i> 204  |  | What Aliens may commit Treason. 4, 5  |
| <i>Theftbote.</i>   |  | Where anciently in Treason <i>voluntas reputabatur pro facto</i> . 5, 161   |
| THE definition and Etymology of it. 134   |  | Appeals anciently of High Treason. 5, 132   |
| The punishment of it. <i>ib.</i>  |  | Where the compassing the death of the King was Treason at the Common Law. 5   |
| What shall be said Theftbote, and what not. <i>ib.</i>  |  | Where the death of the King <i>per infortunium</i> shall be no Treason. 6   |
| The judgement in case of Theftbote. 213   |  | Where to set a Figure to know how long the King shall reign or live, is no Treason. <i>ib.</i>                                |
| <i>Tort.</i>  |  | Where to practice to depose the King, to imprison him, or to take him into their power, shall be Treason. <i>ib.</i>          |
| No man shall take advantage of his own Tort. 215  |  | Where to compass the death of the Father of the King, or of the Kings Uncle, anciently was Treason. 7                         |
| <i>Torture.</i>   |  | Where to leave the King in <i>periculo Hostium</i> was anciently Treason. <i>ib.</i>  |
| No Torture to be used by our Law. 35  |  | Where Piracy was anciently Treason. 8   |
| By whom the Rack was first brought in. <i>ib.</i>   |  | Where it shall be Treason for the Husband of a Queen Regnant to compass the death of his wife, so on the contrary. <i>ib.</i> |
| <i>Treason.</i>   |  | Where the killing of an Ambassador was adjudged Treason. <i>ib.</i>   |
| An Exposition upon the statute of 25 E. 3. cap. 2. de <i>Proditionibus</i> . 1, 2, &c.  |  | Where the killing or the violating of a Queen Dowager shall be no Treason. 8, 9   |
| What are Treasons by the said statute. 3  |  | Where the killing of a Collateral Heir apparent shall be no Treason. 9  |
| What King is within this statute. 6, 7  |  | Where the compassing or conspiring to levy war without levying of it, shall be no Treason. 9, 10, 14                          |
| What shall be said a levying of war within this statute to make a Treason. 9, 10, 12  |  | In High Treason all are Principals, but not in Petit Treason. 9, 16, 21, 138  |
| What shall be said an adhering to the Kings enemies to make a Treason, within this statute. 10  |  | The difference between levying of a war, and committing of a great Riot. 9, 10  |
| What shall be said a counterfeiting of the Great Seal to make a Treason within this Law. 15, 16   |  | What gathering of forces shall be counted High Treason. 10, 12  |
| What shall be said a counterfeiting of the Kings Money to make a Treason within this Law. 16, 17, 18.   |  | Where aiding of the Kings enemies <i>pro tempore Mortis</i> shall be no Treason. 10   |
| What shall be said a bringing in of counterfeit Money into this Realm to make it Treason within this Law. 18  |  | Who shall be said Enemies, and who Traitors. 11   |
| Where the Judges may not construe this statute a <i>Simili</i> , or, a <i>minore ad majus</i> . 22  |  | The form of an Indictment for Treason. 12   |
| The King and one House of Parliament alone, or both Houses of Parliament without the King, cannot declare a Treason within this statute. <i>ib.</i> |  | Where Conspiracy with a Foreign Prince shall be Treason, and where not. 14  |
| An Exposition upon the statute of 1 Mar. cap. 1. concerning Treasons. 23, 24, &c.   |  | Where words may make an Heretick, but no Traitor. <i>ib.</i>  |
| Where declarations of Treason may have limitations. 24  |  | Where words set down in writing may amount to Treason. <i>ib.</i>   |
| Treason its derivation, and how divided. 4  |  | All Treason implies a Felony, but a pardon of all Felonies is no pardon of Treason at this day. 15                            |
|   |  | Where he that counterfeits the Kings Coin shall have punishment but in case of Petit Treason,                                 |

## THE TABLE

Treason, otherwise if he had diminished it. 17  
Where a man may be imprisoned upon suspicion for having clipt false money. 18  
Where it is no Treason to kill any of the Lords or commons in parliament, but wilful murder only. *ib.*  
What things a man attainted of Treason shall forfeit, and what not. 18, 19, 21  
No Treason for an Indictor to discover the Kings Council. 22  
What witnesses or accusers are requisite in Indictments and trials of Treason or Mifprifion of Treason. 24, 25, 26  
No Appeal of Treason can be brought in Parliament. 31  
Treason severely punished. 35  
Where the receiving and comforting a Traitor knowing him to be a Traitor is Treason. 138  
The judgement in case of High Treason, how warranted by Scripture, and what is implied in it. 210, 211  
Where a writ of Error lies to reverse an Attainder of High Treason, and where not. 214, 215  
Three sorts of Petit Treasons. 19, 20  
The judgement of a woman for Petit Treason. 20  
Parricide no Petit Treason. *ib.*  
What was Petit Treason, at the Common Law, and what at this day. *ib.*  
The judgement in case of Petit Treason. 211

Treasure and Treafury.  
What, and where the Kings Treasure and Treafury is. 71, 72

Treasure Trove.  
The description of it. 132  
Why Treasure Trove belongs to the King. *ib.*  
What Metal Treasure Trove must be of. *ib.*  
To whom anciently Treasure Trove belonged. *ib.*  
The punishment for concealing of Treasure Trove. 133

Trebuchet.  
Trebuchet or Castigatory, *quid?* and the punishment of it. 219  
Cucking-stole, *unde derivatur?* *ib.*

Trials.  
How a foreign Treason shall be tried. 11, 34

Where a Commission without the Kings hand shall be a sufficient assignment within the Statute of 35 H. 8. *cap.* 2. to try a foreign Treason. 11  
Where Treasons committed upon the Sea shall be tried. *ib.*  
How trials of Treasons shall be, and where. 24, 34, 49  
What witnesses or accusers are requisite in Indictments and Trials of Treason or Mifprifion of Treason. 24, 25, 26  
Where an Alien shall be tried *per medietatem lingue;* and where not. 27  
Where Trials may be in foreign Counties. *ib.*  
Where a Trial may be in the County where the Kings Bench sits during the Term. *ib.*  
How the Trial of a Peer and a common person differs, and the form of the Trial. 28, 29  
In what cases a Peer shall be tried by Peers, and in what not. 30  
What Lords shall be tried by Peers, and what not. *ib.*  
In what cases a man must be tried by a Jury of that County in which the Indictment was taken, and in what not. 34  
How a Murder committed out of the Realm shall be tried. 48  
How a Murder shall be tried where the blow was given out of the Realm, or upon the Sea, and the party died within the Kingdom. *ib.*  
How a Murder shall be tried when the stroke is in one County, and the Death is in another. *ib.*  
How the Trial shall be where the Felony is done in one County, and the Accessory is in another. 49, 135  
Where Criminal Causes shall receive their Trial. 80  
How the Lord Steward may proceed upon the Statute of 2 E. 6. *cap.* 24. to try an Accessory in another County. 136  
Where a Blow is given in any Court, (*sedente Curia;*) how the Trial shall be. 141

Tumbrel. *vide* Pillory.

Turncements.  
*Turnementum*, unde? 160  
None ought to Turney without the Kings license. *ib.*  
Where it shall be Felony to kill another at a Just or Turnement; and where not. 56, 160

Value

## T H E T A B L E.

|  |   |            |
|--|---|------------|
|  | The punishment of Witches, Impostors, or the like.  | 46         |
| Value.   |   |            |
| HOW the Value of any thing shall be construed.                                   |   | 105        |
| Verdict.   | Witnesses.  |            |
| No privy Verdict can be given in case of Felony or Treason.                      | Where Witnesses or Accusers are requisite in Indictments and Trials of Treason, or Misprision of Treason.   | 24, 25, 26 |
|  | No Witnesses or Accuser by hear-say in case of Treason.   | 25         |
| Usury.   | Where Witnesses shall be examined upon oath against the King in Criminal Causes.                            | 79         |
| The Definition and Derivation of it.   |   | 151        |
| Usury against the Law of God, and the Laws of the Realm.                         |   | 151, 152   |
| Why Usury was permitted for an Hebrew to an Infidel.                             |   | 151        |
| The ancient punishment of Usury.   |   | 151, 152   |
| Vast sums that the Kings in former times received of the Jews for Usury.         |   | 151        |
| Witchcraft.  | Women.  |            |
| WHEN Witchcraft was made Felony, and how anciently it was punished.              | An Exposition upon the statute of 3-H. 7. cap. 2. concerning the carrying away of Women against their will. | 61         |
| The description of a Conjuror, a Witch, an Enchanter, and a Sorcerer.            | To what women this Statute extendeth, and to what not.  | ib.        |
| An Exposition upon the Statute of 1 Jac. cap. 12. concerning Witchcraft.         | Wooll.  |            |
| Where there may be Accessories after the Witchcraft committed as well as before. | Where it shall be Felony to transport Wooll.  | 95         |
|  | What a Sack, Pochet, Sarpler, Weigh, Wrapper, Todd and Stone of Wooll signifie.                             | 96         |
|  | Writs.  |            |
|  | The Writ <i>ad iura Regia</i> , where it lies.  | 100        |
|  | Where a Writ may be devised for the better execution of a Statute.  | 162        |

F I N I S.