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**English Liberties,**  
OR THE  
**Free-born Subject's Inheritance;**

CONTAINING

*Magna Charta, Charta de Foresta, The Statute De Tallagio non concedendo, The Habeas Corpus Act, and several other Statutes; with Comments on each of them.*

LIKEWISE,

The Proceedings in Appeals of Murder: Of Ship-Money; Of Tonnage and Poundage. Of Parliaments, and the Qualification and Choice of Members: Of the Three Estates, and of the Settlement of the Crown by Parliament. Together with a Short History of the Succession, not by any Hereditary Right: Also a Declaration of the Liberties of the Subject: And of the Oath of Allegiance and Supremacy. The Petition of Right; with a short but impartial Relation of the Difference between *Charles I.* and the Long Parliament, concerning the Prerogative of the King, the Liberties of the Subject, and the Rise of the Civil Wars. Of Trials by Juries, and of the Qualifications of Jurors; their Punishment for Misbehaviour, and of Challenges to them.

LASTLY,

Of Justices of the Peace, Coroners, Constables. Church-wardens, Overseers of the Poor, Surveyors of the Highways, &c. With many Law-Cases throughout the Whole.

Compiled first by *HENRY CARE*, and now continued, with Large Additions, by *W. N.* of the *Middle-Temple*, Esq;

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Printed by *Eliz. Nutt* and *R. Collins*, (Assigns of *Edward Sayer*, Esq;) for *Arthur Bettesworth* at the *Red Lyon* in *Pater-Noster-Row*, and *John Hooke* at the *Flower-de-Luce* against *St. Dunstan's Church* in *Fleet-street*.  
MDCCXIX.



### To the Reader,

have endeavour'd to subject both the one and the other ; and by what Degrees we have secured to ourselves the Enjoyment of both, till at length we are risen to such a Height of Prosperity under the auspicious Reign of our present August Monarch, that we are become the Envy of the neighbouring States, our Friends, and the Terrour of those that are our Enemies. Let us then by perusing this Treatise deeply imprint in our Minds the Laws and Rights that from Age to Age have been deliver'd down to us from our renown'd Forefathers, and which they so dearly bought and vindicated to themselves at the Expence of so much Blood and Treasure: In a Word, let them never perish in our Hands, but let us make our Lives happy in the Enjoyment of them, and piously transmit them to our Posterity ; being fully convinced of this Truth, that when Liberty is once gone, even Life itself grows insipid, and loses all its Relish.

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English Liberties.

THE Constitution of our *English* Government (the best in the World) is no Arbitrary Tyranny, like the *Turkish* Grand Seignior's or the *French* King's, whose Wills (or rather Lusts) dispose of the Lives and Fortunes of their unhappy Subjects: Nor an *Oligarchy*, where the great ones (like Fish in the Ocean) prey upon, and live by devouring the lesser at their Pleasure: Nor yet a *Democracy*, or Popular State; much less an *Anarchy*, where all confusedly are *hail fellow, well met*. But a most excellently mixt, or qualified Monarchy, where the King is vested with large Prerogatives sufficient to support Majesty; and restrain'd only from the Power of doing himself and his People Harm; which would be contrary to the very End of all Government, and is properly rather Weakness than Power: The Nobility adorn'd with Privileges to be a Screen to Majesty, and a refreshing Shade to their Inferiors, and the Commonalty too so guarded in their Persons and Properties by the Sense of Law, as renders them Free-men, not Slaves.

In *France*, and other Nations, the meer Will of the Prince is Law; his Word takes off any Man's Head, imposes Taxes, seizes any Man's Estate, when,

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how, and as often as he lists; and if one be accused, or to much as suspected of any Crime, he may either presently execute him, or banish, or imprison him at pleasure; or if he will be so gracious as to proceed by Form of their Laws, if any two Villains will but swear against the poor Party, his Life is gone. Nay, if there be no Witnesses, yet he may be put to the Rack, the Tortures whereof make many an innocent Person confess himself Guilty, and then with seeming Justice he is executed; or, if he prove so stout, as in Torments to deny the Fact, yet he comes off with disjointed Bones, and such Weakness as renders his Life a Burthen to him ever after.

But in England, the Law is both the Measure and the Bond of every Subject's Duty and Allegiance, each Man having a fixed fundamental Right born with him, as to Freedom of his Person, and Property in his Estate, which he cannot be deprived of, but either by his Consent, or some Crime, for which the Law has impos'd such a Penalty or Forfeiture. For all our Kings take a solemn Oath

- (1) See Book of Oaths, p. 1. & 3.
- (2) Baker's Chron. fol. 741.
- (3) Book of Oaths, p. 216.

Observe and cause all the Laws to be kept, which was done by our present most Gracious Sovereign: (2) Likewise all our Judges take an Oath, wherein, amongst other Points, they swear, (3) To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any Person of common Right for the Letters of the King, or of any other Person, or for any other Cause: But if any such Letters come to them, they shall proceed to do the Law, the same Letters notwithstanding: Therefore, saith Fortescue (who was first Chief Justice, and afterwards Lord Chan-

cellor

cellor to King Henry 6th.) in his Book *de Laudibus Legum Angliæ*, cap. 9. The King of England cannot alter nor change the Laws of his Realm at his Pleasure: For why, he governeth his People by Power, not only Royal, but also Politick: If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subjects with Tallage, and other Burthens, without their Consent; and such is the Dominion that the Civil Laws purport, when they cry, *Quod principi placuit legis habet vigorem*, The Prince's Pleasure has the force of a Law. But from this much differeth the Power of a King, whose Government over his People is Politick: For he can neither change Laws without the Consent of his Subjects, nor yet charge them with Impositions against their Wills: Wherefore his People do frankly and freely enjoy and occupy their own Goods, being ruled by such Laws as they themselves desire. Thus Fortescue, with whom accords Bracton, a Reverend Judge, and Law-Author, in the Reign of King Henry the third, saying, *The King in his Realm hath two Superiours, God and the Law*; for he is under the Directive, though not Coercive Power of Law; and on the same Score Judge Vaughan, speaking of our Fundamental Laws, which are coeval with the Government, sticks not to say, *The Laws of England were never the Dictates of any Conqueror's Sword, or the Placita, or Good Will and Pleasure of any King of this Nation, or, to speak impartially and freely, the Results of any Parliament that ever sate in this Land.* And the late cited Fortescue, in his 13 chap. has a very apt Similitude to illustrate and demonstrate this: *The Law* (says he, *taketh its Name, a Ligando, to bind; for thereby the Politick Body is knit and preserv'd together, as the Natural Body by the Bones, Sinews, and Members, which retain every one their proper Functions; And, as the Head of a Body Natural*

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cannot change his Sinews, nor cannot deny or withhold from his inferiour Members their peculiar Powers, and several Nourishments of Blood and Spirits; no more can a King, which is the Head of a Body Politick, change the Laws of that Body, nor withdraw from his People their proper Substance, against their Wills and Consents in that behalf.

'Tis true, the Law it self affirms, The King can do no Wrong; which proceeds not only from a Presumption, that so excellent a Person will do none, but also because he acts nothing but by Ministers, which (from the lowest to the highest) are answerable for their Doings; so that if a King in his Passion should command A. to kill B. without Process of Law, A. may yet be prosecuted by Indictment, or upon an Appeal, (where no Royal Pardon is allowable) and must for the same be executed, such Command notwithstanding.

This original happy Frame of Government is truly and properly call'd, an *English Man's Liberty*, a Privilege, not to exempt from the Law, but to be freed in Person and Estate from arbitrary Violence and Oppression; *A greater Inheritance* (saith Judge Coke) *is deriv'd to every one of us from our Laws, than from our Parents*; For, without the former, what would the latter signifie? And this Birth-right of Englishmen shines most conspicuously in two Things: 1. *Parliaments.* 2. *Juries.*

By the first the Subject has a Share by his chosen Representatives in the Legislative (or Law-making) Power; for no new Laws bind the People of *England*, but such as are by common Consent agreed on in that great Council.

By the second, he has a Share in the Executive Part of the Law; no Causes being tried, nor any Man adjudged to lose Life, Member, or Estate, but upon the Verdict of his Peers, (or Equals) his

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*English Liberties.*

Neighbours, and of his own Condition: These two Grand Pillars of *English Liberty*, are the Fundamental Privileges, whereby we have been, and are preserv'd more free and happy than any other People in the World; and (we trust) shall ever continue so: For whoever shall design to impair, pervert, or undermine either of these, do strike at the very Constitution of our Government, and ought to be prosecuted and punished with the utmost Zeal and Rigour. To cut down the Banks, and let in the Sea, or to poyson all the Springs and Rivers in the Kingdom, could not be a greater Mischief; for this would only affect the present Age, but the other will ruine and enslave all our Posterity.

But besides these general Privileges, which the *English* are estated in by the original Constitution of their Government, there are others more particularly declared and expressed in divers Acts of Parliament; of which several of the most remarkable and useful are here presented at large to the Reader, with some Notes thereupon, for his better understanding of the same.

And therefore, before I treat of these general Privileges (I mean of Parliaments and Juries) I shall begin with *Magna Charta*, or the great Charter made in the Reign of King *John*, but confirmed *Anno 9 H. 3. and 28. Ed. 1.*

'Tis true, the original Charter is not to be found amongst the Rolls in the *Tower*, there being nothing left of it on Record but the *Statute of Confirmation*, *Anno 28 Ed. 1.* but it was certainly inroll'd at the very time it was made, as well as every Grant made of Markets and Fairs in that King's Reign; for no Man can imagine that so much Care should be taken to inroll such Grants, and so little to record this Great Charter of our Liberties, tho'

through Design or Negligence in After-times it was not so carefully kept.

'Tis certain, that several Copies of this Charter are still extant in the antient Annals of several of the dissolved Monasteries, particularly in the Annals of *Burton-Abbey*, lately publish'd, in the 1 Vol. of *Antient English Writers* fol. 271, and witnessed by *Stephen Langston*, who was Archbishop of *Canterbury* at that time, and by many others; because after the Name of that Archbishop, there is an &c.

'Tis also recited in the *Chronicle of Walter Hemmingford*, printed at *Oxford*, Anno. 1687, and publish'd by the Learned Sir *Tho. Gale*, in his 2d. Vol. of *Antient English Historians*, only with this difference, that it hath not any Witnesses Names at the End of it, as that in the Annals of *Burton* hath; but 'tis witnessed by the King himself, (*viz.*) *Teste me ipso*; and both these Copies agree with four more very antient Manuscripts of it, one in the Reign of *H. 3.* when he was in his Minority, and which is now to be seen in the *Cotton Library*; a second was in the Possession of *Samuel Baldwin*, late Serjeant at Law; a third was in the Possession of *John Coke*, Esq; late one of the Prothonotaries of the Court of Common Pleas, and a fourth in the Hands of Mr. *Pettyl*, late of the *Inner Temple*, and Keeper of the Records in the *Tower*, in the Reign of King *William*.

But to put this Matter out of all Doubt, there is still extant a fair Original of this Charter of Confirmation, Anno. 9. *H. 3.* when he was of full Age, and 'tis under the Great Seal of *England*, supposed formerly to belong to *Battail Abbey*, and to be seen now in the hands Sir *Nath. Powell*, a Bencher of the *Inner Temple*.

And

And here I cannot but observe, that those People must be of a very base and slavish Temper, who object any thing against a Charter, which either grants or confirms their Liberties; and yet such there are who tell us that it was extorted by Force from King *John*, and defended by Rebellion.

But these Men do not consider that King *John* was not the first, who granted such a Charter, for those of *H. 1.* King *Stephen*, and *Henry 2.* confirm the Liberties of the People.

Besides, these are not properly the Concessions of Kings, but Affirmations of the Common Law, and ratified by the Suffrages of the People, who claimed them as their Rights and Privileges, and as their Birth-right: And they did not enter into War with that King, (I mean King *John*) because he would not grant them new Privileges, but because he abused them of those Rights to which they were entitled as well by the Common Law, as by the Grants of any former Kings.

This excellent Law holds the first place in our Statute Books; for though there were, no doubt, many Acts of Parliament long before this, yet they are not now extant: 'Tis called *Magna Charta*, or the Great Charter, not in respect of its Bulk, but in regard of the great Importance and Weight of the Matters therein contain'd; it is also styled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great Reason (saith *Coke* in his Proem) is it so called from the Effect, *Quia liberos facit*, because it makes and preserves the People free.

Though it run in the Style of the King as a Charter, yet (as my Lord *Coke* well observes on the 38th Chapter) it appears to have passed in Parliament; for there was then a Fifteenth granted to the King, by the Bishops, Earls, Barons, Free-

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tenants and People; which could not be but in Parliament; nor was it unusual in those times, to have Acts of Parliament in the Form of a Charter; as you may read in the Prince's Case, *Co. Rep. L. 8.*

Likewise, though it be said here, that the *King hath given and granted these Liberties*, yet they must not be understood as meer Emanations of Royal Favour, or new Bounties granted, which the People could not justly challenge, or had not a Right unto before; For the Lord *Coke*, at divers places, asserts, and all Lawyers know, that this Charter is, for the most part, only Declaratory of the principal Grounds of the Fundamental Laws and Liberties of *England*; no new Freedom is hereby granted, but a Restitution of such as lawfully they had before, and to free them of what had been usurped and incroached upon them by any Power whatsoever: And therefore you may see this Charter often mentions *Sua Jura*, their Rights, and *Libertates suas*, their Liberties, which shews they had them before, and that the same now were confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors, the *Saxons*, had with a most equal Poise and Temperament, very wisely contriv'd their Government, and made excellent Provisions for their Liberties, and to preserve the People from Oppression: And when *William the Norman* made himself Master of the Land, though he be commonly called the *Conqueror*, yet in truth he was not so; and I have known several Judges that would reprehend any Gentleman at the Bar, that casually gave him that Title; For though he killed *Harold* the Usurper, and routed his Army, yet he pretended a Right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the Laws and Customs.

But

But the Truth is, he did not perform that so as he ought to have done; and his Successors, *William Rufus*, King *Stephen*, *Henry* the First, and *Richard* likewise, made frequent Incroachments upon the Liberties of their People, but especially King *John* made Use of so many illegal Devices to drain them of Money, that, wearied with intollerable Oppressions, they resolved to oblige the King to grant them their Liberties, and to promise the same should be observ'd, which King *John* did in *Running-mead* between *Stains* and *Windsor*, by two Charters, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Math. Paris*, *Fol. 246.* and is in effect, the same with this here recited) the other the *Charter of the Forest*, Copies of which he sent into every County, and commanded the Sheriffs, &c. to see them fulfilled.

But by ill Counsel he quickly after began to violate them as much as ever, whereupon Disturbances and great Miseries arose, both to himself and the Realm.

The Son and Successor of this King *John* was *Henry* the Third, who in the 9th Year of his Reign, renewed and confirmed the said Charters, but within two Years after cancelled them, by the pernicious Advice of his Favorites, and particularly *Hubert de Burgh*, whom he had made Lord Chief Justice; one that in former times had been a great Lover of his Country, and a well-deserving Patriot, as well as learned in the Laws; but now, to make this a Step to his Ambition (which ever rideth without Reins) perswaded and humoured the King, that he might avoid the Charters of his Father King *John*, by *Duress*, and his own great Charter, and *Charta de Foresta* also, for that he was within Age when he granted the same; whereupon the King, in the eleventh Year of his

Reign,

Reign, being then of full Age, got one of the great Charters, and of the Forest, into his Hands; and by the Counsel principally of this *Hubert* his Chief Justice, at a Council holden at *Oxford*, unjustly cancelled both the said Charters, (notwithstanding the said *Hubert de Burgh* was the first Witness of all the Temporal Lords to both the said Charters) whereupon he became in high Favour with the King, insomuch that he was soon after (*viz.* the 10th of *December*, in the thirteenth Year of that King) created (to the highest Dignity that in those times a Subject had) to be an Earl, *viz.* of *Kent*. But soon after (for Flatterers and Humorists have no sure Foundation) he fell into the King's heavy Indignation, and after many fearful and miserable Troubles, he was justly, and according to Law, sentenc'd by his Peers in an open Parliament, and justly degraded of that Dignity which he unjustly had obtained by his Counsel, for Cancelling of *Magna Charta*, and *Charta de Foresta*.

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*MAGNA CHARTA*, or the Great Charter made in the Ninth Year of King *Henry* the Third, and Confirmed by King *Edward* the First, in the Eight and Twentieth Year of his Reign.

**E**Dward, *by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan: To all Arch-bishops, Bishops, &c. We have seen the great Charter of the Lord Henry, sometimes King of England, our Father, of the Liberties of England, in these Words.*

**H**enry, *by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou; To all Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Pro-*  
*vosts,*

*vosts, Officers, and to all Bailiffs, and other our Faithful Subjects, which shall see this present Charter, Greeting. Know you, that We, unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of England, to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free Will, have Given and Granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all Free-men of this our Realm, these Liberties following, to be kept in our Kingdom of England for ever.*

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## C H A P. I.

### *A Confirmation of Liberties*

**F**irst, We have granted to God, and by this our present Charter, have confirm'd for us and our Heirs for ever, That the Church of *England* shall be free, and shall have her whole Rights and Liberties inviolable. (2.) We have granted also, and given to all the Free-men of our Realm, for us and our Heirs for ever, these Liberties under-written, to have and to hold to them and their Heirs for ever.

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## C H A P. II.

### *The Relief of the King's Tenant of full Age.*

**I**F any of our Earls or Barons, or any other which hold of Us in Chief by *Knights Service*, die, and at the time of his Death, his Heir be of full Age, and oweth to Us *Relief*, he shall save his Inheritance by the *old Relief*, that is to say, the

the Heir or Heirs of an Earl, for a whole Earldom, by one hundred Pound : the Heir or Heirs of a Baron, for a whole Barony, by one hundred Marks : the Heir or Heirs of a Knight, for one whole Knight's Fee, one hundred Shillings at the most. And he that hath less, shall give less, according to the old Custom of Fees.

NOTES.

*Knight's Service* was a Tenure introduced here by *William* call'd the Conqueror, who granted several Lands to his Subjects, to be held of him to do him Service in his Wars. 'Tis now taken away by the Statute, 12 Car. 2. cap. 24. by which all such Tenures are turned into *Free Socage*.

When the Possessors of such Lands died, it was call'd *Hereditas caduca*. (i. e.) it was fallen to the King, or to other chief Lord, to whom the Heir was to pay a Sum of Money, and then he was said *relevare Hereditatem caducam*, out of his Hands; and the Money thus paid was call'd a *Relief*.

The *old Relief* was always paid in Utensils of War, as *Horses, Helmets, Shields, &c.* but such Tributes could not be exacted of the *English* immediately after the Conquest, for they were depriv'd of all manner of Arms by the *Normans*, and paid Money instead thereof; but by *Magna Charta*, the *old Relief* is restored.

CHAP. III.

*The Wardship of an Heir within Age :  
The Heir a Knight.*

**B**UT if the Heir of any such be within Age, his Lord not have the Ward of him, nor of his Land, before that he hath taken of him Homage. (2) And after that such an Heir hath been in Ward (when he is come to full Age) that is to say, to the Age

Age of one and twenty Years, he shall have his Inheritance without Relief, and without Fine; so that if such an Heir, being within Age, be made a Knight, yet nevertheless his Land shall remain in keeping of his Lord unto the Term aforesaid.

CHAP. IV.

*No Waste shall be made by a Guardian in Wards Lands.*

**T**HE Keeper of the Land of such an Heir being within Age, shall not take of the Lands of the Heir but reasonable Issues, reasonable Customs, and reasonable Services; and that without Destruction and Waste of his Men and Goods. And if we commit the Custody of any such Land to the Sheriff, or to any other, which is answerable unto us for the Issues of the same Land, and he make Destruction or Waste of those things which he hath in Custody, we will take of him Amends and Recompence therefore. (3.) And the Land shall be committed to two lawful and discreet Men of that Fee, which shall answer unto Us for the Issues of the same Land, or unto him whom we will assign. (4.) And if we give or sell to any Man the Custody of any such Land, and he therein do make Destruction or Waste, he shall lose the same Custody. And it shall be assigned to two lawful and discreet Men of that Fee, which also in like manner shall be answerable to Us, as afore is said.

CHAP.

## C H A P. V.

*Guardians shall maintain the Inheritance of their Wards, and of Bishopricks.*

**T**HE Keeper, so long as he hath the Custody of the Land of such an Heir, shall keep up the Houses, Parks, Warrens, Ponds, Mills, and other things pertaining to the same Land, with the Issues of the said Land: And he shall deliver to the Heir, when he cometh to his full Age, all his Land, stored with Ploughs and all other things, at the least, as he receiv'd it. All these things shall be observed in the Custody of the Archbishopricks, Bishopricks, Abbies, Priories, Churches and Dignities vacant, which appertain to Us: Except this, that such Custody shall not be sold.

## C H A P. VI.

*Heirs shall be married without Disparagement.*

**H**EIRS shall be married without Disparagement.

## N O T E S.

Where any Man died, holding Lands in *Knight's Service*, having an Heir an Infant, such Infant was to be in Ward of the King, or other Chief Lord, of whom the Lands were held; and he was to take care of the Marriage, so that it might be suitable to the Degree and Quality of the Infant, and that he or she might not be *Disparaged* by it.

C H A P.

## C H A P. VII.

*A Widow shall have her Marriage, Inheritance, and Quarentine. The King's Widow.*

**A** Widow, after the Death of her Husband, incontinent, and without any Difficulty, shall have her *Marriage*, and Inheritance. (2.) And shall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and she held the day of the Death of her Husband. (3.) And she shall tarry in the chief House of her Husband, by forty days after the Death of her Husband, within which days her Dower shall be assigned her, (if it were not assigned her before) or that the House be a Castle. (4.) And if she depart from the Castle, then a competent House shall be forthwith provided for her, in the which she may honestly dwell, until her Dower be to her assigned, as it is afore said; And she shall have in the mean time her reasonable Estovers of the Common. (5.) And for her Dower shall be assigned unto her the third part of all the Lands of her Husband, which were his during Coverture, except she were endowed of less at the Church door. (6.) No Widow shall be distrained to marry her self: Nevertheless she shall find Surety, that she shall not marry without our License and Assent (if she hold of Us) nor without the Assent of the Lord, if she hold of another.

## N O T E S.

A Widow shall have her *Marriage*, that is, the Goods which she brought to her Husband in Marriage, and likewise

wife her *Dower*, (*i.e.*) that portion of Lands or Tenements, which were settled on her by her Husband: And she had a special Privilege to stay in the chief House for forty days, which is call'd a *Quarentine*, unless such House was a Castle: And the Reason of this Exception was, because there were several Castles then in *England*, which were built for the Defence of the Kingdom, of which the Widow could not be endowed, neither could she continue in them after the Death of her Husband, as not being a proper Person to engage in any warlike Enterprize, and therefore the next Heir male was to have the Castle; and the Widow another House, and *Estovers*, that is Fuel to burn there, till her *Dower* was assigned to her by the Heir.

C H A P. VIII.

*How Sureties shall be charged to the King.*

**W**E, or our Bailiffs, shall not feize any Land or Rents for any Debt, as long as the personal Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfy therefore. (2.) Neither shall the Pledges of the Debtor be distrained, as long as the principal Debtor is sufficient for the Payment of the Debt. (3.) And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges shall answer for the Debt. (4.) And if they will, they shall have the Lands and Rents of the Debtor until they be satisfied of that which they before paid for him, except that the Debtor can shew himself to be acquitted against the said Sureties.

C H A P. IX.

*The Liberties of London, and other Cities and Towns confirmed.*

**T**HE City of *London* shall have all the old Liberties and Customs which it hath been used to have. Moreover, we Will and Grant, that all other Cities and Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their Liberties and free Customs.

C H A P. X.

*None shall distrain for more Service than is due.*

**N**O Man shall be distrained to do more Service for a Knight's Fee, nor for any Freehold, than therefore is due.

C H A P. XI.

*Common Pleas shall not follow the King's Court.*

**C**ommon Pleas shall not follow our Court, but shall be holden in some Place certain.

## C H A P. XII.

*Where, and before whom Assizes shall be taken.  
Adjournment for Difficulty.*

**A**ssizes of *Novel Disseisin* and of *Mordancestor*, shall not be taken but in the Shires, and after this manner; If we be out of this Realm, our Chief Justicers shall send out Justicers through every County once in the Year: Which, with the Knights of the Shire, shall take the said Assizes in those Counties: (2.) And those things that at the coming of our aforesaid Justicers, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in some other place in their Circuit. (3.) And those things which for difficulty of some Articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there shall be ended.

## C H A P. XIII.

*Assizes of Darrein Presentment.*

**A**ssizes of Darrein Presentment shall be always taken before our Justicers of the Bench, and there shall be determined.

*Notes on the Twelfth and Thirteenth C H A P.*

An Assize of *Novel Disseisin* is a real Action brought by a Tenant in Fee-simple, or in Fee-tail, or for Life, for Lands of which he was lately disseised.

Assize of *Mordancestor* is another real action, brought by the Heir, where his Ancestor died seised of Lands, and after his Death a Stranger enters and possesses it.

Assize

Assize of *Darrein Presentment* lies where my Ancestor presented to a Church, and upon the next Avoidance a Stranger presents to the same Church, and so disturbs me in my Right of Presentation.

These Actions are now disused, and Ejectments and *Quare impedit*, substituted in their Room: Those Assizes were instituted by H. 2. in the place of Duels, which were formerly used in doubtful Cases to decide Titles.

## C H A P. XIV.

*How Men of all sorts shall be amerced, and by whom.*

**A** Freeman shall not be amerced for a small Fault, but after the Manner of the Fault. And for a great Fault, after the Greatness thereof, saving to him his Contenement. (2.) And a Merchant likewise, saving to him his Merchandize. (3.) And any others Villain than ours shall be likewise amerced, saving his *Wainage*, if he fall into our Mercy. (4.) And none of the said Amerciaments shall be assessed, but by the Oath of honest and lawful Men of the Vicinage. (5.) Earls and Barons shall not be amerced, but by their Peers, after the Manner of their Offence. (6.) No Man of the Church shall be amerced after the Quantity of his Spiritual Benefice, but after his Lay Tenement, and after the Quantity of his Offence.

*Notes on the Fourteenth C H A P.*

An *Amerciament* is a Penalty assessed by those in equal Degree with the Offender, (*i. e.*) *per pares*, for which he puts himself upon the Mercy of the King, or Chief Lord; and 'tis usually for a small Fault: But if 'tis for a great Crime, the Penalty must be the greater, but yet with a saving of the *Contenement* of the Criminal, by which Word some are of Opinion, that the Credit or Reputation which the Man hath, by reason of his Freehold is intended; but that

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can never be the meaning of it in this place, but rather that which is necessary for his Support, according to his Condition or State of Life; so that tho' he might be amerced, yet something must be left for his Support; therefore the Husbandman was to have his *Wainage*, (i. e.) his *Wain*, *Plough* and *Utensils* of Husbandry, that he might till the Land: The Sheriff did usually by his Officers seise the Estates of those who were in Debt, and disposed the same to the payment of their Debts, what remained was for the Advancement of the Wife and Children, and if there were no such, then to the next of Kin, and this is proved by the close Roll 7 H. 3. Rot. 16. (viz.) *Bona intestatorum capi solebant in manus nostras, &c.*

But Mr. *Selden*, who had seen that Record, gives us another account of it, (viz.) that it was Customary in those days for the Sheriff or other Officer to seise the Goods of the Kings Tenants who died indebted to him, in order, in the first place to discharge that Debt, and that one *Fitz Dun* was indebted to the King, and his Goods seised after his Death, and that the Debt being paid, the King wrote to the Sheriff of *Lincoln* to deliver all the Goods *in manus nostras Capta*, to the Prior of *Lockton*, and other Executors, *ad faciend. Testamentum.*

## C H A P. XV.

*There shall be but one Measure throughout the Realm.*

ONE Measure of Wine shall be through our Realm, and one Measure of Ale, and Measure of Corn, that is to say, the Quarter of *London*. (2.) And one breadth of died Cloath, Ruffets, and Habergeets, that is to say, two Yards within the Lists. (3.) And it shall be of Weights as it is of Measures.

*Notes on the Fifteenth* C H A P.

These *Habergeets* were Cloaths made of Wool of a mix'd or medley Colour, and commonly worn by the meaner Sort of People.

## C H A P. XVI.

*Making of Bridges and Banks:*

NO Town nor Freeman shall be distrained to make Bridges nor Banks, but such as of old Time, and of Right have accustomed to make them in the time of King *Henry* our Grandfather.

## C H A P. XVII.

*Defending of Banks.*

NO Banks shall be defended from henceforth, but such as were in defence in the Time of King *Henry* our Grandfather, by the same places, and the same bounds as they were wont to be in his time.

## C H A P. XVIII.

*Holding Pleas of the Crown.*

NO Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs shall hold Pleas of our Crown.

## C H A P. XIX.

*The King's Debtor dying, the King shall be first paid.*

**I**F any that holdeth of Us Lay-fee do die, and our Sheriff or Bailiff do shew our Letters Patents of our Summons for Debt, which the Dead Man did owe to us: It shall be lawful to our Sheriff or Bailiff, to attach and inroll all the Goods and Chattels of the Dead, being found in the said Fee, to the value of the same Debt, by the Sight and Testimony of lawful Men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the Residue shall remain to the Executors, to perform the Testament of the Dead. (3.) And if nothing be owing to Us, all the Chattels shall go to the use of the Dead (saving to his Wife and Children the reasonable parts.)

*Notes on the Nineteenth* C H A P.

My Lord Coke tells us in *Henstoe's Case*, 9 Rep 38. that the King who is *parens patriæ*, was wont by his Officers to seise the Goods of the Intestate, to the End they might be preserved and disposed of for the Burial of the Deceased, for the Payment of his Debts, for the Advancement of his Wife and Children, if he had any; and if none, for those of his Blood.

## C H A P. XX.

*Purveyance for a Castle.*

**N**O Constable, nor his Bailiff shall take Corn or other Chattels of any Man, if the Man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the Will of the Seller was to respite the payment. (2.) And if he be of the same Town, the Price shall be paid unto him within forty days. C H A P.

## C H A P. XXI.

*Doing of Castle Ward.*

**N**O Constable shall distrain any Knight for to give Money for keeping of his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient Man, if he may not do it himself for a reasonable cause. (2.) And if we do lead or send him in an Army, he shall be free from *Castle-ward* for the time that he shall be with Us in Fee in our Host, for the which he hath done Service in the Wars. (*i. e.*) He shall pay nothing towards the Maintenance of those who watch and ward in the Castle.

## C H A P. XXII.

*Taking of Horses, Carts, and Woods.*

**N**O Sheriff nor Bayliff of ours, nor any other, shall take the Horses or Carts of any Man to make Carriage, except he pay the old price limited, that is to say, for Carriage with two Horses, 1d. a day. (2.) No demesne Cart of any spiritual Person or Knight, or any Lord, shall be taken by our Bailiffs. (3.) Nor we, nor our Bailiffs, nor any other shall take any Man's Wood for our Castle, or other our Necessaries to be done, but by the License of him whose the Wood is.

## C H A P. XXIII.

*How long Felons Lands shall be bolden by the King.*

**W**E will not hold the Lands of them that be convict of Felony but one Year and one Day, and then those Lands shall be delivered to the Lords of the Fee.

*Notes on the Thirteenth C H A P.*

'Tis the King's Prerogative to have the Profits of the Lands and Tenements for a Year and a Day, of those who were attainted of Treason or Felony, whosoever is Lord of the Manor of whom such Lands are held; and not only so, but at the Expiration of that Time he might commit what Waste he would, by destroying the Houses, rooting up the Woods, and Ploughing the Gardens, Pasture and Meadows, except the Lord of the Fee would agree with him to redeem the Waste which might be done.

## C H A P. XXIV.

*In what place Wears shall be put down.*

**A**LL Wears from henceforth shall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-coasts.

## C H A P. XXV.

*In what case a Præcipe in Capite, is not grantable.*

**T**HE Writ that is called *Præcipe in Capite*, shall be from henceforth granted to no Person of any Free-hold, whereby any Free-man may lose his Court.

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## N O T E S.

This *Præcipe in capite* was a Writ issuing out of the Court of Chancery, for a Tenant holding any Manors of the King in chief, as of his Crown, and not of him as of any Honour or Castles, &c. 'Tis now quite out of Use.

## C H A P. XXVI.

*Inquisition of Life and Member.*

**N**Othing from henceforth shall be given for a Writ of Inquisition, nor taken for him that prayeth Inquisition of Life or of Member, but it shall be granted freely, and not denied.

## C H A P. XXVII.

*Tenure of the King, in Socage, and of another by Knights Service. Petit Serjeanty.*

**I**F any do hold of Us by Fee-farm, or by Socage, or Burgage, and he holdeth Lands of another by Knights Service, we will not have the Custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-farm, Socage, or Burgage. (2.) Neither will we have the Custody of such Fee-farm, or Socage, or Burgage, except Knights Service be due unto Us out of the same Fee-farm. (3.) We will not have the Custody of the Heir, or of any Land, by occasion of any Petit Serjeanty that any Man holdeth of us by Service, to pay a Knife, an Arrow, or the like. These Tenures are all now taken away, by the Statute, 12 Car. 2.

C H A P.

## C H A P. XXVIII.

*Wager of Law shall not be without Witnesses.*

**N**O Bailiff, from henceforth, shall put any Man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

## C H A P. XXIX.

*None shall be condemned without Trial: Justice shall not be sold or deferred.*

**N**O Freeman shall be taken or imprisoned, or disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed, nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. We will sell to no Man, we will not deny or defer to any Man, either Justice or Right.

## N O T E S.

*No Freeman shall be taken, &c.* These Words deserve to be written in Letters of Gold, and I have often wondred that they are not inscribed in Capitals, in all our Courts of *Judicature, Town-halls,* and most Publick Edifices; they being so essential to our English Freedom and Liberties, and because my Lord Coke in the *second Part of his Institutes,* has many excellent Observations on this Chapter: I shall recite his very Words.

*ff.* This Chapter containeth nine several Branches.

(1.) That no Freeman shall be taken, or imprisoned, but by the Law of the Land, (i. e.) by the Common Law, or by the Statute

Statute Law; for the Liberty of a Man's Person is more dear to him than any Thing, and therefore if he be wronged in that Liberty, 'tis very reasonable he should be relieved.

(2.) *No Man shall be disseised,* (i. e.) put out of Seisin, or be dispossessed of his Freehold, (i. e.) of his Lands or Tenements, or Livelihood, or of his Liberties, or Free-Customs, which belong to him as his Birth-right, unless it be by *Lawful Judgment* (i. e.) by a Verdict of his Equals, or Men of his own Condition, or by the *Law of the Land,* (i. e.) to speak once for all, by the due Course and Process of Law,

(3.) *No Man shall be outlawed,* (i. e.) deprived of the Benefit of the Law, unless he is outlawed according to the Course of the Law of the Land.

(4.) *No Man shall be exiled,* (i. e.) banished out of his Country, unless it be by the same Law.

(5.) *No Man shall in any sort be destroyed,* unless it be by the Verdict of his Equals, &c.

(6.) *No Man shall be Condemned* at this King's Suit, in the Court of King's Bench, for so are the Words, (*nec supra eum ibimus*) to be understood; nor before any other Commissioner or Judge whatsoever, and that is implied by the Words *nec supra eum mittemus,* but by the Judgment of his Peers or Equals, or according to the Law of the Land.

7. *We shall sell to no Man Justice or Right.*

8. *We shall deny to no Man Justice or Right.*

9. *We shall defer to no Man Justice or Right.*

Each of these Branches we shall briefly explain:

1. *No Man shall be taken, &c.* (i. e.) restrained of his Liberty, by Petition, or Suggestion to the King or Council, unless it be by Indictment or Presentment, of good and lawful Men, living near the Place where such Deeds were done.

2. *No Man shall be disseised, &c.* Hereby is intended, that Lands, Tenements, Goods and Chattels, shall not be seized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Man shall be disseised of his Lands or Tenements, or dispossessed of his Goods or Chattels, contrary to the Law of the Land.

A Custom was alledged in the Town of C. that if the Tenant cease by two Years, that the Lord should enter into the Freehold of the Tenant, and hold the same up-  
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till he were satisfied of the Arrearages: It was adjudged a Custom against the Law of the Land, to enter into a Man's Freehold in that case, without Action or Answer.

King Henry VI. granted to the Corporation of Dyers within London, power to search, &c. And if they found any Cloth died with Log-wood, that the Cloth should be Forfeit: And it was adjudged, that this Charter concerning the Forfeiture, was against the Law of the Land and this Statute; for no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Answer.

3. No Man outlawed, that is, barred to have the Benefit of the Law. And note, to this Word Outlawed, these Words Unless by the Law of the Land, do refer. [Of his Liberties.] This Word hath three Significations:

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

2. It signifieth the Freedom the Subjects of England have. For Example, The Company of Merchant-Tailors of England, having power, by their Charter, to make Ordinances, made an Ordinance, that every Brother of the same Society, should put the one half of his Cloths to be dressed by some Cloth-Workers Free of the same Company, upon pain to Forfeit 10 s. &c. And it was adjudged, that this Ordinance was against Law, because it was against the Liberty of the Subject, for every Subject hath freedom to put his Cloths to be dressed by whom he will, & sic de similibus. And so it is, if such or the like Grant had been made by his Letters Patents.

3. Liberties signifie the Franchises and Privileges which the Subjects have of the Gift of the King, as the Goods and Chattels of Felons, Outlaws and the like; or which the Subject claims by Prescription, as Wreck, Waif, Stray, and the like.

So likewise, and for the same reason, if a Grant be made to any Man, to have the sole making of Cards, or the sole dealing with any other Trade, that Grant is against the Liberty and Freedom of the Subject, that before did or lawfully might have used that Trade, and consequently against this great Charter.

Generally all Monopolies are against this great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4. No Man exiled, that is, Banish'd, or forced to depart or stay out of England without his consent. By the Law of the Land, no Man can be Exiled or Banished out of his Native Country, but either by Authority of Parliament, or in Case of Abjuration for Felony by the Common Law: And so when our Books, or any Record, speak of Exile, or Banishment, other than in case of Abjuration, it is to be intended to be done by Authority of Parliament, as Belknap and other Judges, &c. banished into Ireland, in the Reign of Richard the II.

This is a Beneficial Law, and is construed benignly; and therefore the King cannot send any Subject of England against his Will, to serve him out of this Realm, for that should be an Exile, and he should perdere Patriam: No, he cannot be sent against his Will into Ireland, to serve the King or his Deputy there, because it is out of the Realm of England: For if the King might send him out of his Realm to any Place, then under pretence of Service, as Ambassador or the like, he might send him unto the farthest part of the World, which being an Exile, is prohibited by this Act.

5. No Man destroyed, that is, fore-judged of Life or Limb, or put to Torture, or Death, every Oppression against Law, by colour of any usurped Authority, is a kind of Destruction. And the Words Aliquo modo (any otheewise) are added to this Verb destroyed, and to no other Verb in this Chapter, and therefore all things, by any manner of means, tending to Destruction, are prohibited; as if a Man be accused or indicted of Treason or Felony, his Lands or Goods cannot be granted to any, no not so much as by Promise, nor any of his Lands or Goods seized into the King's Hands before he is attainted; for when a Subject obtaineth a Promise of the Forfeiture, many times undue Means, and more violent Prosecution is used for private Lucre, tending to Destruction, than the quiet and just Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.

6. By lawful Judgment of his Peers, that is, by Equals, Men of his own Rank and Condition. The general Division of Persons, by the Law of England, is either one that is Noble, and in respect of his Nobility of the Lords House of Parliament, or one of the Commons, and in respect thereof, of the House of Commons in Parliament. And as there be divers degrees in Nobility, as Dukes, Marquesses, Earls, Viscounts and Barons, and yet all of them are comprehended under this Word Peers, and are Peers of the Realm:

So of the Commons, there be Knights, Esquires, Gentlemen, Citizens and Yeomen, and yet all of them Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a several Degree; so it is of the Commons, and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch, as this Judgment by Peers is called *lawful*, it shews the Antiquity of this manner of Trial: it was the ancient, accustomed, legal Course, long before this Charter.

Or by the Law of the Land, that is, by due Process of Law, for so the Words are expressly expounded by the Statute of 37 Edw. 3. c. 8. And these Words are specially to be referred to those forgoing, to whom they relate. As none shall be condemned without a lawful Trial by his Peers, so none shall be taken, imprisoned, or put out of his Freehold, without due Process of the Law, that is, by the Indictment or Presentment of good and lawful Men of the Place, in due manner, or by Writ original of the Common Law.

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

1. That the Person or Persons who commit any, must have lawful Authority.

2. It is necessary that the Warrant, or *Mittimus*, be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for Treason, Felony, &c. Suspicion of Treason, or Felony, or the like particular Crime; for if it do not thus specify the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; nor is it in such Case, any Offence at all, if the Prisoner make his Escape; whereas if the *Mittimus* contain the Cause, the Escape would respectively be Treason or Felony, though in Truth he were not guilty of the first Offence. And this mentioning the Cause, is agreeable to Scripture, *Acts 5.*

4. The Warrant or *Mittimus*, containing a lawful Cause, ought to have a lawful Conclusion, &c. and him safely to keep until he be delivered by Law, &c. and not until the Party committing shall farther order.

If

If any Man, by colour of Authority where he hath not any in that particular case, shall presume to arrest or imprison any Man, or cause him to be arrested or imprisoned, this is against this Act, and it is most hateful, when it is done by countenance of Justice. King Edward VI. did incorporate the Town of St. Albans, and granted to them to make Ordinances, &c. they made a By-Law upon pain of imprisonment, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an Ordinance had been contained in the Patent it self.

*We will sell to no Man, deny to no man, &c.* This is spoken in the Person of the King, who in Judgment of the Law, in all his Courts of Justice, is present: And therefore every Subject of this Realm, for Injury done to him, in Person, Lands or Goods, by any other Subject, Ecclesiastical or Temporal, whatever he be, may take his Remedy by the Course of the Law, and have Justice and Right for the Injury done him, freely, without Sale; fully, without denial; and speedily without delay; for Justice must have three Qualities, it must be *Libera*, free; for nothing is more odious than Justice set to sale: *Plena*, full, for Justice ought not to limp, or be granted by piece-meal: And *Celeris*, speedy: *Quia Dilatio est quedam negatio*, Delay is a kind of denial: and when all these meet, it is both Justice and Right.

*We will not deny nor delay any Man, &c.* These Words have been excellently expounded by latter Acts of Parliament, that by no means common Right, or common Law, should be disturbed or delayed; no, though it be commanded under the Great Seal, or Privy Seal, Order, Writ, Letters, Message, or Commandment whatsoever, from the King, or any other; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them: All our Judges swear to this; for 'tis part of their Oaths; so that if any shall be found wresting the Law, to serve a Court-turn, they are Perjur'd as well as Unjust. The Common Laws of the Realm should by no means be delayed, for the Law is the surest Sanctuary that a Man can take, and the strongest Fortress to protect the weakest of all; *Lex est tutissima Cassis*, the Law is a most safe Head-piece, and *sub Clypeo legis Nemo decipitur*, no Man is deceived whilst the Law is his Buckler: But the King may stay his own Suit, as a *Capias pro fine*, for the King may respite his Fine, and the like.

All

All Protections that are not legal, which appear not in the Register, nor warranted in our Books, are expressly against this Branch, *nulli differemus*, we will not delay any Man: As a Protection under the Great Seal, granted to any Man, directed to the Sheriffs, &c. and commanding them that they shall not arrest him, during a certain time, at any other Man's Suit, which hath Words in it, *By our Prerogative, which we will not have disputed*: Yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As *Mich. 11. H. 7. Rot. 124.* a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies, &c. Resolved to be against Law, *Pasch. 7 H. 8. Rot. 66.* such a Protection disallowed, and the Sheriff amerced for not executing the Writ, *Mich. 13 and 14 Eliz. in Hitchcock's Case*, and many other of latter time: And there is a notable Record of ancient Time, in *22 E. 1. John de Marshal's Case*; *Non pertinet ad Vicecomitem de protectione Regis judicare, imo ad Curiam.*

*Justice or Right*, We shall not sell, deny or delay, Justice or Right; neither the end, which is Justice, nor the mean whereby we may attain to the end, and that is the Law: Right is taken here for Law, in the same Sense that Justice often is so called. 1. Because it is the right Line, whereby Justice distributive is guided and directed; and therefore all Commissioners of *Oyer and Terminer*, of Goal-delivery, of the Peace, &c. have this Clause, *Facturi quod ad Justitiam pertinet, secundum Legem & Consuetudinem Angliæ*; that is, to do Justice and Right, according to the Rule of the Law and Custom of *England*: And that which is called Common Right, in *2 E. 3.* is called Common Law in *14. E. 3. &c.* and in this Sense it is taken, where it is said, *Ita quod stat Rectus in Curia, id est, Legi in Curia.*

2. The Law is called *Rectum*, because it discovereth that which is crooked or wrong; for as Right signifieth Law, so crooked or wrong signifieth Injuries; and *Injuria est contra jus*, Injury is against Right: *Recta Linea est index sui & obliqui*, a right Line is both declaratory of it self and the oblique. Hereby the crooked Cord of that which is called *Discretion*, appeareth to be unlawful, unless you take it as it ought to be, *Discretio est discernere per Legem, quid sit Justum*, Discretion is to discern by the Law what is Just.

3. It is called Right, because it is the best Birth-right the Subject hath; for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour and Estimation, are protected from Injury and Wrong: *Major Hereditas venit unicuique nostrum a Jure & Legibus, quam a Parentibus*: A greater Inheritance descends to us from the Laws, than from our Progenitors.

Thus far the very words of that Oracle of our Law, the Sage and Learned *Coke*, which so fully and excellently explains this incomparable Law, that it will be superfluous to add any thing farther on this Chapter.

## C H A P. XXX.

*Merchants, Strangers, coming into this Realm shall be well used.*

ALL Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by Land as by Sea, to buy and sell without any manner of evil Tolls, by the old and rightful Customs except in time of War. (2.) And if they be of a Land making War against Us, and be found in our Realm at the Beginning of the Wars, they shall be attached without harm of Body and Goods, until it be known unto us, or our Chief Justice, how our Merchants be intreated there in the Land, making War against Us. (3.) And if our Merchants be well intreated there, theirs shall be likewise with Us.

## C H A P. XXXI.

*Tenure of a Barony, coming into the King's Hand by Escheat.*

**I**F any Man hold of any Escheat as of the Honour of *Wallingford, Nottingham, Boloin*, or of any other Escheats which be in our hand, and are Baronies, and die, his Heir shall give none other Relief, nor do none other Service to Us, than he should to the Baron, if it were in the Baron's Hand; (2.) and we in the same wise should hold it as the Baron held it: Neither shall we have, by occasion of any Barony or Escheat, any Escheat, or Keeping of any of our Men, unless he that held the Barony or Escheat, otherwise held of us in Chief.

## C H A P. XXXII.

*Lands shall not be alienated to the Prejudice of the Lord's Service.*

**N**O Free man, from henceforth, shall give or sell any more of his Land, but so, that of the Residue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to to the Fee.

C H A P.

## C H A P. XXXIII.

*Patrons of Abbies shall have the Custody of them in the time of Vacation.*

**A**LL Patrons of Abbies, which have the King's Charter of *England*, of Advowson, or have old Tenure or Possession in the same, shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared.

## C H A P. XXXIV.

*In what only Case a Woman shall have an Appeal of Death.*

**N**O Man shall be taken or imprisoned upon the Appeal of a Woman, for the Death of any other than of her Husband.

## C H A P. XXXV.

*At what time shall be kept a County-Court, Sheriff's Torn, and a Leet.*

**N**O County-Court, from henceforth, shall be holden but from Month to Month; and where greater Time hath been used, there shall be greater. (2.) Nor any Sheriff, or his Bailiff, shall keep his Torn in the Hundred, but twice in the Year; and no where but in due place, and accustomed, that is to say, once after *Easter*, and again after the Feast of *St. Michael*. (3.) And the View of Frank-pledge

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pledge shall be likewise at the Feast of St. Michael without occasion, so that every Man shall have his Liberties which he had, or used to have, in the time of King Henry our Grandfather, or which he hath purchased since: The View of Frank-pledge shall be so done, that our Peace may be kept, and that the Tithing be wholly kept as it hath been accustomed, and that the Sheriff seek not Occasions, and that he be content with so much as the Sheriff was wont to have for his View-making in the time of King Henry our Grandfather.

NOTES.

Before the Courts at Westminster were erected, the County-Courts were the chief of this Kingdom; in which Courts the Bishop and an Alderman did sit, the one to judge according to the Ecclesiastical Law, and the other according to the Common Law. This was the foundation of the united Power of the Bishop and Earl to sit and try Causes in one Court; the Conjunction of which Powers mutually to assist each other, is as antient as the English Government, it self; but these Powers were separated by William called the Conqueror, and afterwards all Spiritual Causes were brought into the Ecclesiastical Courts, and the Law-Business into the Courts at Westminster.

But during all the Norman Reigns, most Causes were tried in the County-Courts, which were held, as they are now, every Month, by the Sheriff; and he likewise held his *Torn* twice in every Year, (*viz.*) a Month after *Easter*, and *Michaelmas*: The County-Court is a Court of Record in all things proper to its Jurisdiction, and 'tis the King's Leet throughout the County, tho' the Sheriff is Judge of it; and therefore none are now exempted from appearing at this Court, but the Lords Spiritual and Temporal, and Clergymen and Women; and the reason is because all other Persons above the Age of 12 Years, were bound to take Oaths of Allegiance in this Court.

The View of Frank pledge shall be so done, that our Peace may be kept, &c. Now for the better understanding that Paragraph,

'tis to be known that every Man in this Kingdom, except Peers, the Clergy, and Knights, and their eldest Sons, were formerly associated in a Decennary (*i. e.*) in a Company of ten Families, who were pledged or bound for each other, to keep the Peace, and to observe the Laws; and if any Crime was done by one of them, in such case the other nine were to make Satisfaction, if the Criminal fled from Justice; but they had thirty Days allowed to apprehend him, and if he was not taken within that time, then, and not before, the other nine pledges gave Satisfaction for the Offence done. This Custom was so strictly observed both before and after the Conquest, that the Sheriffs at every County-Court did take the Oaths of those who were above fourteen Years of Age, that they were settled in some Decennary; whereupon this Branch of the Sheriff's Authority was called the View of Frank-pledge.

CHAP. XXXVI.

No Land shall be given in Mortmain.

IT shall not be lawful, from henceforth, to any one, to give his Lands to any Religious House, and to take the same Land again, to hold of the same House. Nor shall it be lawful to any House of Religion, to take Lands of any, and to lease the same to him of whom he received it: If any, from henceforth, give his Lands to any Religious House, and thereupon be convicted, the Gift shall be utterly void, and the Land shall accrue to the Lord of the Fee.

NOTES.

Lands shall not be given in *Mortmain*, (*i. e.*) into a dead Hand; for when they were given to a Religious House, they were different from all other Hereditaments whatsoever, they were never to revert to the Donor, or his Heirs, nor were subject to any temporal Use; so that the

Services which were formerly due for such Lands, were by this Gift utterly extinct, and therefore such Gifts were now prohibited without License of the King or Chief Lord.

C H A P. XXXVII.

*Subsidy in respect of this Charter, and the Charter of the Forest, granted to the King.*

**E**scuage from henceforth shall be taken like as it was wont to be in the time of King Henry our Grandfather, reserving to all Archbishops, Bishops, Abbots, Priors, Templers, Hospitallers, Earls, Barons, and all other Persons, as well Spiritual as Temporal, all their free Customs which they have had in time past, and all those Customs, and Liberties which we have granted to be holden in this our Realm, as much as appertaineth to us, and to our Heirs; and all Men of this our Realm, as well Spiritual as Temporal (as much as in them is) shall observe the same against all Persons in like wise: And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of the Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Free-holders, and other our Subjects, have given unto us the fifteenth part of all their Moveables. (5.) And we have granted unto them on the other part, that neither we nor our Heirs shall procure or do any thing, whereby the Liberties in this Charter contained, shall be infringed or broken. (6.) And if any thing be procured, by any Person, contrary to the Premises, it shall be had of no Force nor Effect. These being Witnesses, Lord B. Archbishop of Canterbury, E. Bishop of London, &c.

We

We, ratifying and approving these Gifts and Grants aforesaid, confirm and make strong all the same for Us and our Heirs perpetually; and by the Tenour of these Presents, do renew the same, Willing and Granting for Us and our Heirs, that this Charter, and all and singular its Articles for ever, shall be steadfastly, firmly and inviolably observed. And if any Article in the same Charter contained, yet hitherto peradventure hath not been kept, We will, and by our Authority Royal, command, from henceforth firmly they be observed. In Witness whereof we have caused these our Letters Patents to be made. T. Edward our Son at Westminster, the twenty eighth day of March in the twenty eighth Year of our Reign.

NOTES.

*Escuage, (i. e.)* the Service of the Shield: The Tenant holding by this Tenure, was bound to follow the King to the Wars at his own Charge, and if he did not, and provided no other in his place, then he was to pay a Sum of Money, which was called a *reasonable Aid* to the Lord; and this Sum or Duty being uncertain, therefore the King granted, that no more should be taken, than was wont in the Time of his Grandfather: But this is now taken away by the Statute 12 Car. 2 cap. 24. by which all Tenures by Knights Service, &c. and the *Fruits and Consequences thereof* (of which Escuage was one) are discharged.

*The CHARTER of the Forest.*

**T**HIS Charter was likewise confirmed in the same Year with *Magna Charta*, (viz.) Anno 9 H. 3. for before that time the People were grievously oppressed, by making Forests; for as by

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Law

40 The Charter of the Forest.

Law the King might enter on the Lands of his Subjects where Mines of Gold or Silver were found, so he claimed a Privilege to keep wild Beasts and Game to himself in any place which he should appoint for that purpose.

Canutus the Dane, who was King here Anno 1018, prohibited all People to enter his Forests, *ubique eas habere voluero*, (i. e.) where ever he pleased to make such Forests: And in After-Ages, when any King intended to do the like, a Commission issued out of the Court of Chancery under the Great Seal, directed to certain Persons, declaring his Will and Pleasure to make a Forest in such a place, commanding them to view the Ground, and to bound so much thereof, which they should think convenient to make a Forest for his Delight and Recreation; and by Vertue of this Commission, those Persons entered on the Lands of any Man whatsoever, and set out Marks and Boundaries, in order to make a Forest, without any Satisfaction to the Owner: And when they had made their Perambulation, and viewed the Ground, and bound it, and after they had returned their Commission into the Chancery, then the King was entituled to those Lands, now converted into a Forest, and that by matter of Record. Now this being a great Oppression, therefore by the first Paragraph of the Charter of the Forest 'tis thus declared.

CHAP. I.

ALL Forests which King Henry our Grandfather afforested and made, shall be viewed by good and lawful Men; and if he hath made a Forest

The Charter of the Forest. 41

rest of any other Wood, more than of his own Demesne, whereby the Owner of the Wood hath Hurt, we Will, that forthwith it be disforested: And if he hath made Forest of no Man's Wood but his own, then we Will that it remain Forest still, saving the Common of Herbage, and of other things in the same Forest to them, which before were accustomed to have the same.

NOTES.

All the Norman Kings, not only inclosed Forests in the manner as before mentioned, but punished those who hunted, and killed any of the Game with the greatest Severity.

John Brampton, who was Abbot of Joreval in Yorkshire, in the Reign of Ed. 2. procured an antient Chronicle, which he gave to that Abbey, beginning with the coming in of St. Augustin, Anno 588. and ending with the Death of H. 1st, in which he tells us that William, called the Conqueror, caused the Eyes of the Man to be pulled out, who took either a Buck or Doe in his Forests.

Henry Knighton, one of the Canons of Leicester, who lived some time after Brampton, and made a History of England, beginning at the Conquest, and ending about the latter end of the Reign of Ric. 2. tells us, that William Rufus would hang a Man for taking a Doe out of any of his Forests, and that he made one pay 20s. for killing a Hare, and another 10s. for killing a Cony in his Forest.

Eadmerus a Monk of Canterbury, who lived in the Twelfth Century, long before either of the before mentioned Historians, and who wrote the Lives of the two Williams and Henry the first (being a Work of unquestionable Authority) tells us in Lib. 2. fol. 48. that the same Rufus caused fifty rich Men to be apprehended, and accused them for killing and taking his Bucks in his Forest; which they denying, they were ordered to clear themselves by Fire Ordeal: And H. 1. made no Difference between one who killed a Man and a Buck; and punished those who destroyed the Game (tho' not in his Forests) either by Forfeiture of their Goods, or Loss of their Limbs, but H. 2. made it Imprisonment for a time.

His

His Son. H. 1. revived the old Laws for punishing those who were convicted for Hunting in his Forests (*viz.*) That they should be Gilt, and have their Eyes put out; but that King afterwards thought this Punishment to be very severe, and therefore he appointed that such Convicts should abjure the Realm, or be committed, or pay a Fine.

Edw. 1. appointed the same Punishment, but that the Offenders should be free both of Life and Limb.

The Historians of those times tell us, that *New-Forest* in *Hampshire*, was raised by the Destruction of Twenty two Parish-Churches, and many Chapels, Villages and Manors, for the space of thirty Miles; which was so displeasing to God, that several of those Princes came to untimely Ends, in that very Forest; and particularly that *Rufus* himself was shot there by one *Tyrrell*, and that before him, *Rich.* the Brother of H. 1. was killed there by a Soldier, and *Henry*, who was Nephew of *Robert* the eldest Son of the Conqueror, was hanged, like *Absalom*, in the Boughs of that Forest.

Besides this *New-Forest*, there were sixty-eight more at that time in *England*, in most of which those Orders or Laws aforesaid were executed with great Severity: This made the People stand up for their Liberties, which they recovered by the Grant of this Charter.

By the first Article of the Charter of the Forest it appeareth, That if the King had made a Forest of his own Lands, and not of any of his Subjects, then the same should remain a Forest still; but with a saving of the Common of Herbage to them who were accustomed to have it before it was a Forest: So that though it continued a Forest, yet no Man was prejudiced to have Common there, who had a Right before, but the same is reserved as it was at Common Law.

CHAP. II.

MEN that dwell out of the Forest, from henceforth shall not come before Justices of our Forest by common Summons, unless they be impleaded there, or be Sureties for some other that were attached for the Forest.

NOTES.

NOTES.

Before the making this Charter, all the Inhabitants of that County wherein the King had any Forest, were bound to appear before the Chief Justice in Eyre, or his Deputy, at a Court call'd the Justice-Seat, upon a *General Summons*; (*i. e.*) all those who had Lands or Tenements within the Boundaries of the Forest, or those who claimed any Liberties or Franchises, or free Customs therein.

And this *General Summons* was only a Precept directed by the *Chief Justice in Eyre*, to the Sheriff of the County, commanding him to summon the Lords Spiritual and Temporal, and the Knights of the Shire, Tenants, &c. and that he should make Proclamation throughout the County, both in Fairs and Markets, and all other publick Places, that all Persons claiming any Liberties within the Forest, should appear there at a certain Day to shew what manner of Liberties they claimed.

This was called the *General Summons*: But it being found very inconvenient for those who lived out of the Forest, to appear at this Court upon such a *General Summons*, therefore it was remedied by this Statute.

But the chief Reason of this Charter was, that King H. 2. having converted the Lands and Woods of several of his Subjects into Forests, to which he had no manner of Title, and those Lands, &c. being afterwards restored to the right Owners, or their Heirs, and quite disforested; therefore it was provided by this Charter, that the Owners of such Lands, who formerly had lived within the Forest, might not appear at the Justice-Seat, now their Lands were no longer any part of the Forest; but all Persons who had any thing to do within the Forest, as well Spiritual as Temporal, were bound to appear upon this *General Summons*; and for not appearing, &c. the Abbot of *Westminster* was amerced, and so was one *Jeffery Lucy*, a great Lord.

CHAP.

## C H A P. III.

**A**LL Woods which have been made Forests by King *Richard* our Uncle, unto our first Coronation, shall be forthwith disforested, unless it be our Demefne Woods.

## N O T E S.

Though the Lands and Woods of several People were converted and made parts of Forests without their Consent, yet the Freehold remained in them still; but the Lands were subject to the Laws of the Forest: So that a Man could not fell Timber growing on his own Lands, when once they were taken into a Forest, without View of the Forester, and a License from the Chief Justice in Eyre; for in such cases, the King had a Prerogative over the Woods of every Man within the Forest, in order to preserve the Game, which cannot be done without Woods and Coverts to defend them; and therefore they may not be felled, without the Leave of the Chief Justice in Eyre.

But by this Grant or Charter, all the Woods which were taken into Forest, from the beginning of the Reign of King *Richard* I. to the time of the Coronation of this King, were restored to the Owners.

## C H A P. IV.

**A**LL Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights and other our Freeholders, which have their Woods in Forests, shall have their Woods as they had them at the time of the first Coronation of King *Henry* our Grandfather; so that they shall be quit for ever, of all Purprestures, Wastes and Assarts made in those Woods after that time, until the beginning of the second Year of our Coronation; and those that do  
from

from henceforth make Purprestures without special License, or Waste and Assart, the same shall answer unto us, for the same Wastes, Purprestures and Assarts.

## N O T E S.

Upon the restoring of all Woods taken into Forests, to the right Owners, the King likewise in this Chapter granted, that they should be quit of all *Purprestures*, *Wastes* and *Assarts* made in those Woods, (*i. e.*) if any of them had encroached on the Crown Lands, which lay contiguous to those Woods, and enclosed the same, and laid it to their own Use, this is a *Purpresture*, and finable at the Discretion of the Chief Justice in Eyre; or if any of them had felled any Woods, or thick Coverts without License, &c. this by the Forest Law is *Waste*: Or if any of them had grubbed up any Woods or Coverts by the Roots, and converted the Land into Tillage, this is called *Assart* of the Forest; for though the Woods were restor'd to the lawful Proprietors, yet they were liable to be punished for all or any of those Offences which were committed, whilst they remained part of the Forest, if it had not been for this Charter.

## C H A P. V.

**O**UR Regarders shall go through the Forest to make their Regard as it hath been accustomed at the time of the first Coronation of King *Henry* our Grandfather, and no otherwise.

## N O T E S.

A *Regarder* is an Officer in the Forest, made either by a Grant from the King, or the Chief Justice in Eyre. In every Forest there are twelve in number, and their Business is to view and enquire into all Offences done in the Forest, either by the Foresters, or any other Person whatsoever, and to write the same fairly on a Roll, and bring it to the *Swainmote-Court*, certified under their Hands and Seals, &c.

This

This they ought to do once in three Years, and not oftener; but if they went through the Forest every Year, and made their Presentments, though the same were void, yet the Party could not discharge himself but by Plea, which was chargeable and troublesome to him.

Therefore by this Chapter, it was appointed, that they should make their *Regard* as it had been accustomed at the Coronation of King *H. 2.*, and that was but once in three Years; and then it was to be made but only within the boundaries of the Forests, which was not observed before the making this Charter.

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C H A P. VI.

**T**HE Enquiry or View for Lawing of Dogs being within our Forest, shall be made from henceforth when the *Regard* is made, that is to say, every Year; and then it shall be done by the View and Testimony of honest Men, and not otherwise; and he whose Dog is not then found expeditated, shall be amerced, and shall pay for the same three Shillings; and from henceforth, no Ox shall be taken for Lawing of Dogs, and such Lawing shall be done by the *Affise* commonly used, that is to say, that three Claws of the Fore-feet shall be cut off by the Skin: But from henceforth such Lawing of Dogs shall not be done, but in the Places where it hath been accustomed, from the time of the first Coronation of the said King *Henry* our Grandfather.

N O T E S.

By the first and third Chapters of this Charter, all Woods of other Men which had been taken into the Forests against their Consent, either by King *H. 2.* or *R. 1.* were to be viewed by good and lawful Men, and restored to the right Proprietors; and though the Inheritance still continued in them after such Woods were made part of the Forests, yet (as it hath been observed) they were subject to the Laws of

the Forest, of which *Expeditating Dogs* was one, (*i. e.*) every Man who dwelt in the Forest, was to cut off three Claws of the Fore-foot of his Dog next to the Skin, that he might be disabled to hunt the Deer; and not the Ball of the Fore-foot as formerly; and if this was not done, then upon an Inquisition taken by the *Regarders*, and certified by them who it was that owned the Dog, and presented upon Oath to the *Verderors*; the Court in such Case issued Process against him, to levy three Shillings for his neglect in not cutting off his Dog's Claws.

Now all the new Forests which were made by *H. 2. R. 1.* or King *John*, being by this Charter to be disforested, therefore it was necessary to exempt the Proprietors of those Lands, which were once part of the Forest, from this Forfeiture, which was done by these Words, (*viz.*) *From henceforth no Dogs shall be expeditated, but in the Places where it hath been accustomed, from the time of the first Coronation of the said King H. our Grandfather, (i. e.) in the ancient Forests, and which remain so still, after the Lands of the new Forests were disforested and restored to the right Owners.*

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C H A P. VII.

**N**O Forester or Beadle from henceforth shall make *Scotale*, or gather Garb or Oats, or any Corn, or Lamb or Pigs, nor shall make any gathering, but upon the Sight, and upon the Oath of the twelve *Regarders*, when they shall make *Regard*: So many Foresters shall be assigned to the keeping the Forests, as reasonably shall seem sufficient for keeping the same.

N O T E S.

Before the making this Charter it was a general Complaint, that the Officers of the Forest did very much oppress the People who dwelt there, or who had any Lands adjoining; and this was by Extortion, and by a multitude of unnecessary Officers, by whom the same were exacted.

Now as the Mischief was two-fold, so was the Remedy, (viz.) The first is a general Prohibition by this Chapter, for avoiding all manner of Extortion; the second is likewise a Prohibition to avoid all surcharging the Forests with too many Foresters and Walkers, and other under Officers, so that there should be no more than what were sufficient to look after the Wild Beasts; and by diminishing the number of such Officers, their Extortions would of consequence be diminished.

Now the Extortions which were committed by those Officers was by Scotale, (i. e.) by keeping Ale-houses in the Forest, and causing Men to come thither to spend their Money for fear of their Displeasure; this was an Offence to be enquired into at the Swainmote, and at the general Sessions of the Forest, by a Jury of twelve Men; and the Forester who was convicted of such Offence, was to be fined, and put out of his Office.

So if a Forester, or any other Officer of the Forest, by Colour of his Office, did oppose those who had any Right of coming there, by compelling them in a clandestine manner, to give him Hay, Oats, or any other Corn, or Lambs or Pigs, or make any manner of Collection of Money or other thing, that they might enjoy their Common quietly, this is Extortion, and prohibited by this Charter.

'Tis likewise to be observed, that before this Charter, the Foresters and all other Persons who had Bailiwicks in Fee, did appoint more Walkers and Under-keepers than were necessary; so that the People were oppressed by the Extortions of a multitude of Officers, of which there was no manner of occasion; and these were executed by them in the Forests for the Maintenance of their Families, they having no Wages nor any Subsistence, but what they got by Extortion; therefore 'tis provided by this Chapter, that there shall be no more Foresters than what shall be reasonably sufficient for keeping the Forest, (i. e.) no more than the Regarders shall think convenient when they make their Regard; for if they find there are more than are necessary, or more than have been accustomed in ancient times, then upon their Presentment thereof before the Justices of the Forest, they shall be removed, and the Offenders shall be fined and imprisoned.

So that the number of the Foresters and other Officers of the Forest, is to be established by the Discretion and Oath of the Regarders, and that must be according to the Quantity of the Ground in the Forest, for if there are several Walks

Walks and Bailiwick, there ought to be one Forester at the least in every Walk.

CH A P. VIII.

NO Swainmote from henceforth shall be kept within this Realm but thrice in the Year; First, the 15th Day afore St. Michael, when our Giftakers of our Woods come together to take Agiftment in our Demefne Woods, and about the Feast of St. Martin in Winter, when that our Giftakers shall receive our Pannage; and to these two Swainmotes shall come our Foresters, Verderors, Giftakers, and none other, by Distress. The third Swainmote shall be kept at the beginning of fifteen days before the Feast of St John the Baptist, when that our Giftakers do meet to fawn our Deer; and at this Swainmote shall meet our Foresters and Verderors, and none other, by Distress. Moreover every forty Days throughout the Year, our Foresters and Verderors shall meet to see the Attachments of the Forest, as well for green Hue as for Hunting, by the Presentment of the Foresters, and afore them attached; and the said Swainmotes shall not be kept, but within the Counties in which they have been used to be kept.

NOTES.

Swainmote, or Swanimote, is a Court as incident to a Forest, as a Court of Piepowder's to a Fair; and it is so called, because the Swains (i. e.) the Freeholders of Lands in the Forest, met at this Court, to which they all owed Suit and Service.

Before the making this Charter, there was no certain time limited for holding this Court, and therefore the chief Wardens and Foresters kept such Courts as often as they pleased, and compelled those who dwelt within the Forest to attend,

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till at last this became another great Oppression; for those Courts were so frequently kept, that the People could not constantly attend, and thereupon several Fees were exacted from them to excuse their Appearance.

To remedy which Oppression, it was provided by this Charter, that this Court should be held but thrice in a Year, (*viz.*) once in the beginning of fifteen Days before the Feast of *St. John the Baptist*; and this time was once appointed, because care might be taken throughout the Forest, to preserve the Wild Beasts in the time of fawning, which is usually fifteen Days before *Midsummer*, and fifteen Days after; and this is called the *Fence-month*; and about this time also the Agistors do begin to take in all commonable Cattle into the Forests to eat the Herbage in the King's own Woods or Lands, and this continueth till *Holy-Rood Day*, which is fifteen days before *Michaelmas*, and then the next Court of Swainmote is to be held; at which Court the Agistors are to receive the Money due for the Herbage in the Presence of the Foresters and Verderors, that they may record it in their Rolls.

And at this Court the Agistors, take in Cattle not commonable, and those are to feed on the Mast, as Hogs, &c. And at the next Court afterwards, which is held on the Feast of *St. Martin*, then they receive the Money for the same in manner as before mentioned for the Herbage, and this is called Pannage.

Now notwithstanding the negative Words in this Chapter, *viz.* That the Foresters and Verderors and none other shall be compelled to attend these Courts, yet by the Stat. 1 Ed. 3. cap. 8. it appears that the Freeholders and other good and lawful Men of the Forest shall appear at these Courts, to make Inquests and Juries; and the Woodwardes and all other Officers of the Forest must likewise attend, and shall be amerced if they do not; which Amercements must be estreated to the chief Warden of the Forest, that the same may be levied by Distress.

By this Chapter 'tis provided, That every forty Days the Foresters and Verderors shall meet to see the Attachments of the Forest, as well for green Hue as for Hunting by the Presentment of the Foresters, and afore them attached; and by this means another Oppression was prevented, for before the making this Charter, there was no time limited for holding this Court, *viz.* the Court of Attachments, which formerly was called the Woodmote, and since that time the forty Days Court; but the same was held very of-

ten,

ten, and at the Will and Pleasure of the chief Officers of the Forest.

To this Court the Foresters brought their Attachments, (*i. e.*) what Offenders they had attached, either by their Goods or Chattles, or by their Bodies, for committing any Hurt or Injury in the green Hue, otherwise called Vert, (*i. e.*) every Tree growing in the Forest and bearing green Leaves, which may cover or feed the Deer; and for this reason it is called the Court of Attachments.

This was only a Court of Enquest, and the Verderors, who were Judges thereof, could not intermeddle with any thing but what was injurious to the Vert or Venison, and the Foresters were to bring in their Attachments, as well of the one, as the other, which the Verderors were to receive and inroll.

## C H A P. IX.

EVERY Freeman may take Agistments in his own Woods within our Forests at his Pleasure, and shall take his Pannage: And also we do grant, that every Freeman may drive his Swine freely, and without Impediment, through our Demesne Woods, for to agist them in their own Woods, or else where they will; and if their Swine tarry one Night, and lie within our Forest, there shall be no occasion taken thereof, whereby he may leese any of his own.

## N O T E S.

He who had Woods or Lands within the Forest, either in own Right or the Right of his Wife, might by himself or Servants, or Tenants agist the same, which he could not do before the making this Charter; and afterwards he could not agist Goats or Sheep there, though they were his own, without a special License for that Purpose; because Goats tainted all the Herbage where they fed; so that the Beasts of the Forest would not depasture there; and Sheep eat it so near the Earth, that they left little or nothing for the Dees in those Places where they depastured.

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C H A P.

## C H A P. X.

**N**O Man from henceforth shall lose neither Life nor Member, for killing our Deer, but if any Man be taken therewith, and convict for taking our Venison, he shall make grievous Fine, if he hath any thing whereof to make Fine; and if he hath nothing to leese, he shall be imprisoned a Year and a Day, and after the Year and Day is expired (if he can find Sureties) he shall be delivered; and if not, he shall abjure the Realm.

## N O T E S.

Before the making this Charter there was no certain Law to punish those who hunted and killed any Deer in the King's Forests, but such Offenders were punished in such manner as the King thought fit, which was by Loss of Eyes or Limbs, and sometimes by Death; for so it was in the time of *Ed. the Confessor*, and many Years afterwards, and these Punishments were inflicted with the greatest Severity: But this was taken away by this Charter, and the Criminal was then to be fined after Conviction, but in a grievous manner; and if he could not pay the Fine, he was to be committed to Prison for a Year and a Day, and after the expiration of that Term, if he could not give Security never to offend in the like case, he was then to abjure the Realm, (*i. e.*) he was to swear to depart the Kingdom for ever.

## C H A P. XI.

**W**Hatsoever Archbishop, Bishop, Earl or Baron, coming to us at our Commandment, passeth by our Forest, it shall be lawful for him to take and kill one or two of our Deer, by the View of

of the Forester if he be present; or else he shall cause one to blow a Horn for him, that he seem not to steal our Deer: And likewise they shall do in returning home from us.

## C H A P. XII.

**E**Very Freeman from henceforth without Danger, shall make, in his own Woods, or in his Lands, or in his Water which he hath within our Forest, Mills, Springs, Pools, Marl-pits, Dykes, or arable Ground, without enclosing the arable Land, so that it be not to the Annoyance of his Neighbours.

## C H A P. XIII.

**E**Very Freeman shall have within his own Woods, Airies of Hawks, Sparrow-Hawks, Falcons, Eagles and Herons, and shall have also the Honey that is found in his Woods.

## N O T E S.

*Every Freeman from henceforth, &c.* which Words import, that before that time he could not erect any Mill, &c. in his own Grounds within the Forest and without Leave; for if he did, it was a Purpresture, and the Offender was to be committed without Bail, till he paid a Fine to the King.

And as for Hawks and Falcons, &c. the King claimed them by Virtue of his Prerogative, though they were bred in another Man's Woods.

## C H A P.

## C H A P. XIV.

**N**O Forester from henceforth (which is not a Forester in Fee, paying to us Farm for his Bailiwick) shall take Chiminage: But a Forester in Fee, paying us Farm for his Bailiwick, shall take Chiminage, (*viz.*) for Carriage by Cart, the Half-year two pence, and for another Half-year two pence; for an Horse that beareth Loads, for an Half-year; an Half-penny, and for another Half-year an Half-penny, and but of those only who come as Merchants through his Bailiwick by his License, to buy Bushes, Timber, Bark, Coal, and in another place to sell it again where they will, at their pleasure; but for no other Carriage by Cart, Chiminage shall be taken. Those who bear on their Backs, Bruff, Bark or Coal to sell, though it be their Living, shall pay no Chiminage to our Foresters, except they take it within our Demefne Woods.

## N O T E S.

The Foresters, before the making this Charter, did frequently oppress the People passing through the Forests, by exacting Toll from them for Carts or Horses carrying any Burthens, which was called Chiminage; and they likewise exacted another Toll from every Traveller through the Forest, either on foot or horse-back, and this was called Pedage.

This was remedied by this Charter, so that those who were only Foresters during Pleasure, or for Life, could take no such Toll, but only those who were Foresters in Fee, and farmed their Bailiwicks of the King; and they were likewise limited to take but a Half-penny for the Half-year in the Summer, and two pence for the Winter Half-year, and not of all who travelled through the Forests with loaded Carts and Horses, but only of such who come to buy Timber

or

or Bark to sell again; and they were to take nothing of the poorer sort of People, who were not able to keep Horses, but carried the Bark and Coals on their Backs, tho' it was to sell again, unless it was taken within the King's own Demefnes.

## C H A P. XV.

**A**LL that be outlawed of Trespas within our Forest, since the time of King *H.* our Grandfather, unto the first Year of our Coronation, shall come to our Peace without Let; and shall find to us Sureties, that from henceforth they shall not trespass unto us within our Forest.

## N O T E S.

If a Man was indicted for any Offence done within the Forest, who lived in another County, and could not be taken by the Foresters, he was usually outlawed; in which the proceedings were the same as at Common Law; and by Vertue of such Outlawry, his Goods and Chattels were forfeited to the King, and likewise the Profits of his Lands.

And if he was outlawed for an Offence, either in destroying the green Hue, or in killing the Deer, and afterwards taken upon the *Capias ut legatum*, he was to be committed without Bail, and to remain in Prison till delivered by special Warrant from the King, or from the Chief Justice in Eyre, or Chief Warden of the Forest.

But now by this Charter, all those who had been convicted by Outlawry were pardoned, and restored to their Goods and Liberties, upon giving Security not to offend in the like Nature again.

## C H A P. XVI.

**N**O Constable, Castellain or Bailiff, shall hold Plea of the Forest, neither for green Hue nor Hunting; but every Forester in Fee shall make

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Attachments for Pleas of Forest, as well for green Hue as Hunting; and shall present the same to the Verderors of the Provinces: And when they be inrolled and inclosed under the Seals of the Verderors, they shall be presented to our Chief Justices of our Forest, when they shall come thither to hold Plea of Forest, and before them they shall be determined.

**N O T E S.**

*Castellan* was a certain Officer, who had a Command over all, or some part of a Forest, and before the making this Charter, he and the Constable and Bailiff would attach those who committed any Trespas in the Forest, either in the Vert or in Hunting; but it was prohibited for the time to come, and that none should make such Attachments, but a Forester in Fee who was a known and constant Officer of the Forest, and responsible to the Party grieved, if he should mis-behave himself: And his Business is to attach Offenders either by their Goods, or in some cases by their Persons; but if the Party enter into a Recognisance to appear at the next Forest-Court, taken before the Verderors, because they are Judges of Record, and they are to receive the Attachments from the Foresters, and to inroll them in their Rolls, which they are to certify to the chief Justices of the Forest at their next general Sessions or Eyre.

Upon the whole matter, it will appear upon a Recapitulation of this Charter, that the People of *England* recovered by it as many and as great Privileges and Liberties, as they did by *Magna Charta*.

For before this time the Kings of *England* claimed a Prerogative to make Forests of the Lands of any of his Subjects; so that no Man could say his Estate in those Lands was his own; and when they were converted into Forests, those who hunted there were punished with the greatest Severity, even to the Loss of Limbs and Life, and sometimes by imprisonment, and at other times by abjuring the Realm for ever, and the mildest Punishment was a grievous Fine.

'Tis true, tho' these Lands were made Forest, the Inheritance continued still in the Proprietors, but that signified very little; for they being subject to the Laws of the Forest, the Owners could make no Profit of them; for they could not sell any Timber, even for the necessary Repairs of their Houses,

Houses, without a License from the Chief Justice in Eyre; which could not be obtained without Expence and Trouble, and sometimes not at all: They could not take in Agistments, nor plough their Lands, and sow them with Corn, but they must lie open to the Deer, (*i. e.*) they might inclose them with a low Hedge, so that the Deer might easily get in.

And as there were many new Forests made, so there were many Courts erected, and made peculiar to such Places; which Courts were kept oftner than at first they were appointed to be kept, and the People were compelled to attend upon a general Summons, or to be amerced if they neglected.

There were likewise many Oppressions and Extortions made by a multitude of Officers, who were to take Care of those Forests; for the Regarders would make their Presentments every Year, which they ought to do but once in three Years, and tho' such Presentments were void, yet the Party must be at Expence to discharge himself by Plea.

Then no Man could keep a Dog near the Forest, without cutting off three of the Claws of the Fore-feet, under the Penalty of being amerced 3 s. every third Year. The Foresters likewise kept Ale-houses in the Forests, and compelled People to come thither to spend Money for Fear of their Displeasure; and no Man could enjoy his Common quietly without making them Presents of Lambs, or Pigs, or Corn, or Hay; and they exacted Toll, not only of those who came with Carts and Horses loaded, but generally of every Man, who travelled thro' the Forests.

Then if any Trespas was done in the Forest, and the Offender could not be taken, he was prosecuted to the Outlawry; and if he was afterwards taken upon that Process, he was sure to be committed to Prison, there to remain without Bail, and never to be released, but by a Special Warrant from the King or Chief Justice in Eyre; all which was remedied by the Grant of this Charter.

*A Confirmation of the Charters of the Liberties of England, and of the Forest, made in the 35th Year of Edward I.*

**C H A P. I.**

**E***Dward*, by the Grace of God, King of *England*, Lord of *Ireland*, and Duke of *Guyan*, to all those these presents Letters shall hear or see, Greeting,

ing. Know ye, that we, to the Honour of God and of Holy Church, and to the Profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and Charter of the Forest, which were made by common Assent of all the Realm, in the time of King *Henry* our Father, shall be kept in every Point without Breach. And we will, that the same Charter shall be sent under our Seal, as well to our Justices of the Forest as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that We cause the aforesaid Charters to be published, and to declare to the People that we have confirmed them in all Points, and that our Justices, Sheriffs, Mayors, and other Ministers, which under us have the Laws of our Land to guide, shall allow the same Charters pleaded before them in Judgment in all their Points, that is to wit, the *Great Charter* as the Common Law, and the Charter of the Forest for the Wealth of the Realm.

## C H A P. II.

AND we Will, that if any Judgment be given from henceforth contrary to the Points of the Charters aforesaid, by the Justices, or by any other our Ministers that hold Plea before them, against the Points of the Charters, it shall be undone, and holden for nought.

C H A P.

## C H A P. III.

AND we will that the same Charters shall be sent under our Seal to the Cathedral Churches throughout our Realm, there to remain, and shall be read before the People two times by the Year.

## C H A P. IV.

AND that all Archbishops and Bishops shall pronounce the Sentence of Excommunication against all those that by Word or Deed, or Counsel, do contrary to the aforesaid Charters, or that in any Point break or undo them; and that the said Curses be twice a Year denounced and published by the Prelates aforesaid; and if the same Prelates or any of them be remiss in the Denunciation of the said Sentences, the Archbishops of *Canterbury* and *York* for the time being shall compel and distrain them to the Execution of their Duties in Form aforesaid.

## C H A P. V.

AND forsomuch as divers People of our Realm are in fear that the Aids and Taxes which they have given us before time towards our Wars, and other Businessses, of their own Grant or Good-will, however they were made, might turn to Bondage to them and their Heirs, because they might be at another time found in the Rolls, and likewise for the Prices taken throughout the Realm by our Ministers; We have granted for Us and our Heirs, that we shall not draw no such Aids, Tasks  
nor

nor Prices into a Custom, for any that hath been done heretofore, be it by Roll, or any other Precedent that may be founden.

C H A P. VI.

**M**oreover, We have granted for us and our Heirs, as well to Archbishops, Bishops, Abbots, Priors, and other Folk of Holy Church, as also to Earls, Barons, and to all the Commonalty of the Land, that for no Business from henceforth, we shall take such manner of Aids, Tasks, or Prices, but by the common Assent of the Realm, and for the common Profit thereof; saving the ancient Aids and Prices due and accustomed.

C H A P. VII.

**A**ND forsomuch as the more part of the Commonalty of the Realm find themselves sore aggrieved with the Maletot of Woolls, that is, to wit, a Toll of forty Shillings for every Sack of Wooll, and have made Petition to us for to release the same: We, at their Request, have clearly released it; and have granted for us and our Heirs, that we shall not take such things, without their common Consent and Good-will, saving to us and our Heirs the Custom of Woolls, Skins and Leather, granted before by the Commonalty aforesaid. In Witness of which things, we have caused our Letters to be Patent. Witness *Edward* our Son, at *London*, the Tenth of *October*, and the Twenty fifth Year of our Reign.

Sen-

*Sententia lata super Chartas.*

The Sentence of the Clergy, against the Breakers of the Articles above-written.

**I**N the Name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King, to the Honour of God, and of Holy-Church, and for the common Profit of the Realm, hath granted for him and his Heirs for ever, these Articles above-written; Robert Archbishop of Canterbury, Primate of all England, admonisheth all his Province, once, twice, and thrice; Because that Shortness will not suffer so much Delay, as to give Knowledge to all the People of England of these presents in Writing. We therefore enjoyn all Persons, of what Estate soever they be, that they and every of them, as much as in them is, shall uphold and maintain these Articles granted by our Sovereign Lord the King, in all Points. And all those that in any Point do resist or break, or in any manner hereafter procure, counsel, or any ways assent to resist or break those Ordinances, or go about it, by Word or Deed, openly or privily, by any manner of Pretence or Colour: We the aforesaid Archbishop, by our Authority in this Writing expressed, do excommunicate and accurse, and from the Body of our Lord Jesus Christ, and from all the Company of Heaven, and from all the Sacraments of Holy Church, do sequester and exclude.

N O T E S.

It may be observed, that this Curse is left out of our late printed Statute-book, though inserted at large in that printed in three Volumes, in Queen *Elizabeth's* days, Anno 1557. There is likewise another like dreadful, but more full and  
express

express Curse, solemnly pronounced before in the time of King Henry III. which being also omitted in our Modern Statute-book, I shall add here for the Reader's satisfaction.

*The Sentence, or Curse, given by the Bishops against the Breakers of the Great Charter, and the Charter of the Forest.*

**I**N the Year of our Lord, One thousand two hundred and fifty three, the Third day of May, in the great Hall of the King at Westminster, in the Presence, and by the Assent of the Lord Henry, by the Grace of God, King of England, and the Lord Richard Earl of Cornwall his Brother, Roger Bigot Earl of Norfolk and Suffolk, Marshal of England, Humphry Earl of Hereford, Henry Earl of Oxford, John Earl Warren, and other Estates of the Realm of England: William Boniface, by the Mercy of God, Archbishop of Canterbury, Primate of England, F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of St. David's, Bishops apparelled in Pontificals, with Tapers burning, against the Breakers of the Church's Liberties, and of the Liberties or other Customs of the Realm of England, and namely, of these which are contained in the Charter of the common Liberties of England, and Charter of the Forest, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the Glorious Mother of God, and perpetual Virgin Mary, of the Blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs, of Blessed Edward King of England, and of all the Saints of Heaven: We excommunicate, accurse, and from the Benefits of our Holy Mother the Church, we

we sequester all those that hereafter willingly and maliciously deprive or spoil the Church of her Right: And all those that by any Craft or Wiliness do violate, break, diminish, or change the Church's Liberties, and free Customs contained in the Charters of the common Liberties, and of the Forest, granted by our Lord the King, to Archbishops, Bishops, and other Prelates of England; and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly or openly, by Deed, Word or Counsel, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Counsellors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before-mentioned, that wittingly shall commit any of the Premises, let them well know, that they incur the foresaid Sentence, ipso facto. And those that commit ought ignorantly, and be admonished, except they reform themselves within fifteen days after the time of their Admonition, and make full Satisfaction for that they have done, at the will of the Ordinary, shall be from that time forth wrapped in the said Sentence; and with the same Sentence we burden all those that presume to disturb the Peace of our Sovereign Lord the King, and of the Realm. To the perpetual Memory of which thing, we the foresaid Prelates have put our Seals to these Presents.

So zealous were our Ancestors to preserve their Liberties from Incroachments, that they employed all the Strength of humane Policy and religious Obligations, to secure them intire and inviolate. And since this Act is still in as much force as the Act against Conventicles, I cannot fathom the Reason why our Prelates should not as well hold themselves obliged twice a Year to accurse the Infringers



such manner of Statutes and Customs shall be void and frustrate for evermore.

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C H A P. V.

*Pardon granted to several Offenders.*

**M**oreover we have pardoned *Humphry Bohun*, Earl of *Hereford* and *Essex*, Constable of *England*; *Roger* Earl of *Norfolk* and *Suffolk*, Marshal of *England*; and other Earls, Barons, Knights, Esquires, and namely, *John de Ferraris*, with all other being of their Fellowship, Confederacy, and Bond; and also of other that hold 20 l. Land in our Realm, whether they hold of us in chief, or of others, that were appointed at a Day certain to pass over with us into *Flanders*, the Rancour and Evil-will born against us, and all other Offences, if any they have committed against us, unto the making of this present Charter.

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C H A P. VI.

*The Curse of the Church shall be pronounced against the Breakers of this Charter.*

**A**ND for the more Assurance of this thing, we will and grant, that all Archbishops and Bishops for ever, shall read this present Charter in Cathedral Churches twice in the Year, and upon the reading thereof in every of their Parish-Churches, shall openly denounce accursed all those that willingly do or procure to be done any thing contrary to the Tenour, Force and Effect of this present Charter, in any Point and Article. In witness of which

thing we have set our Seal to this present Charter, together with the Seals of the Archbishops, Bishops, which voluntarily have sworn, that as much as in them is, they shall observe the Tenour of this present Charter in all Clauses and Articles, and shall extend their faithful Aid to the keeping thereof, &c.

*The Comment.*

**T**HE word Tallage is derived from the *French* word *Tailler*, to share or cut out a Part, and is metaphorically used for any Charge, when the King, or any other, does cut out, or take away, any Part, or Share, out of a Man's Estate, and being a general Word, it includes all Subsidies, Taxes, Tenths, Aids, Impositions, or other Charges whatsoever,

The word *Maletot* signifies an Evil (that is an unjust) Toll, Custom, Imposition or Sum of Money.

The occasion of making this Statute was this; King *Edward* being injured by the *French* King, resolves to make War against him, and in order thereunto requires of *Humphry le Bohun*, Earl of *Hereford* and *Essex*, and Constable of *England*, and of *Roger Bigot*, Earl of *Norfolk* and *Suffolk*, and Marshal of *England*, and of all the Earls, Knights, Esquires, and Freeholders of 20 l. Land, who held of him *in Capite*, to contribute towards such his Expedition, that is, to go in Person, or find sufficient Men in their places in his Army; which the Constable and Marshal, and many of the Knights and Esquires, and especially this *John Ferrers* taking part with them, and all the Freemen, stoutly denied, unless it were ordained and determined by common Consent in Parliament, accord-

ing to Law. And, it seems, the Contest grew so hot, that a strange Dialogue passed between them, viz. That when the Earl Marshal told the King, *That if his Majesty pleased to go in Person, he would then go with him, and march before him, in the Vanguard, as by Right of Inheritance he ought to do; but otherwise he would not stir;* the King told him plainly, he should go with any other, though he went not in Person. *I am not so bound,* (saith the Earl) *neither will I take that Journey without you.* The King swore, *By God, Sir Earl, you shall either go or hang.* And *I swear by the same Oath* (said the Earl) *I will neither go nor hang.* And so the King was forc'd to dispatch his Expedition without them. And yet (saith my Lord Coke) although the King had conceived a deep Displeasure against the Constable, Marshal, and others of the Nobility, Gentry and Commons of the Realm, for denying that which he so much desired, yet, for that they stood in Defence of their Laws, Liberties, and Free Customs, the said King Edward the First, who, (as Sir William Herle Chief Justice of the Common Pleas, who lived in his time, and served him, said in the time of King Edward the Third, was the wisest King that ever was) did, after his Return from beyond the Seas, not only consent to this Statute, whereby all such Tallages and Impositions are forbidden for the future, but also passes a Pardon to all the Nobles, &c. of all Rancour, Ill-will and Transgressions, if any they have committed; which last words were added, lest by Acceptance of a Pardon of Transgressions they should implicitly confess that they had transgressed; so careful were the Lords and Commons in former times to preserve the ancient Laws, Liberties, and free Customs of their Country.

But note these words, *Si quas fecerint, if any they have committed,* are left out in all the printed Books of Statutes; but they are in this Statute recited by Coke, in his second Book of Institutes, fol. 535. and specially noted; which he would never have done, if it had not been so in the Rolls. And since 'tis probable there may be many more like Omissions, Mistakes and Falsifications, crept into the Prints, and for that the Record, and not the printed Statute-book, (varying from the Records) is the Law, it were to be wished, that all the Rolls of Acts of Parliament were carefully, by some Persons of Learning and Integrity, viewed and compared with the Prints, and notice taken of all such Variations, and of Errors committed in the Translations, and of any Statutes of a publick Import, if in force, that were never printed, and the same to be made publick.

This by the By: Now to return to the Statute: Those who have exalted the Prerogative above the Laws, and particularly Dr. Heylin, in his Advertisements on the History of Car. I. fol. 89. tells us, ' That the Norman Conqueror knew his own strength  
' too well, to reign *precario*; he won the Kingdom  
' by his Sword, and by that he kept it: 'Tis true,  
' the People did petition for a Restitution of the  
' Laws of King Edward the Confessor, in which  
' an Immunity from extraordinary Taxes might be  
' granted to them, but neither he or *William Rufus*  
' *fus* who succeeded, did ever part with so much  
' of their Power, as not to raise Money on the  
' Subjects for their own Occasions whensoever they  
' please: And it is true also, that both King *Henry*  
' *ry I.* and King *Stephen*, who came to the Crown  
' by unjust and disputable Titles, did flatter the  
' People when they first entered on the Throne  
' with an hopes of restoring the said Laws; but  
' they

they were not so good as their words. The first of our Kings which gave life to those old Laws, was King *Henry* the Second, the first Grantor of the *Magna Charta*, which, notwithstanding, he did not keep so exactly, as to make it of any Strength or Consequence to bind his Heirs; but the Commons having once tasted the sweetness of it, they with the Lords in a long War against King *John*, extorted it from him by a strong hand, and had it confirm'd unto them at a place called *Running-Mead* near *Staines*, Anno 1215. confirm'd afterwards in more peaceable times by King *Henry* the Third, in the ninth Year of his Reign, but so that he and his Successors made bold with the Subject notwithstanding in these Money-matters, till the Statute *De Tallagio non concedendo* was pass'd by *Edward* of *Carnarvan*, eldest Son to King *Edward* the Third, (but I suppose he meant to *Edward* the First) at such time as his Father was beyond the Seas, in the War of *Flanders*; which being disallowed by the King at his coming home, seems to have been taken off the File, to the Intent it might not pass for a Law for the time to come; nor is it to be found now in the Records of the Tower amongst the Laws of that King's time, as are all the rest.

This is the Account given us by that learned Historian, both of the *Magna Charta* and of our Statute *De Tallagio, &c.* but before I make any particular answer to it, I cannot but observe what a mean Contrivance it was of those who designed to invade the Liberties of the People, that as soon as any Statute was made to confirm those Liberties, it was presently taken off the File, that it might not remain as a Record and pass into a Law.

But a Law it was notwithstanding the Record was taken away, as both *Magna Charta* and this Statute

Statute were from the rest of the Records; and when the People stood up for their Liberties, a way was found out to confirm these Laws, and particularly *Magna Charta*; and that was by the *Inspeximus* of this very King, I mean *Edward* the First, by which word it was signified, that the King had seen the Record, which he recited *verbatim*, and then he confirmed it.

But the Statute *De tallagio non concedendo*, though it was taken off the File, remains in force to this very day; and I do not find, notwithstanding what Dr. *Heylin* hath told us, that any of our Kings ever exercised such a Prerogative, as to impose a general Tax on the People, without their Consent in Parliament, but in the violent Reigns of the two *Williams*, the Father and the Son, and then the Taxes were laid on the *English*, and not on the *Normans*.

'Tis true, the Kings of *England* have taxed their Tenants in *Ancient Demesne*, without their Consent in Parliament, but this was not a general Tax of the People; besides, these Tenants were exempted from being taxed with the rest of the Nation in Parliament, because they were liable to give the King a Tallage, *ratione tenuræ*, whenever he had occasion for it; and this was accounted rather a Privilege than otherwise, because they were free from all other Taxes and Parliamentary Attendance, and were taxed much less than the rest of the People, in regard of their tilling the King's Lands for the maintenance of his Household; but when this reasonable Prerogative was abused, and the Exactions levied upon these Tenants became intolerable, then they would no longer pay, but got it remedied by this Statute *De tallagio, &c.*

So likewise the Tenants, who held of the King by Knights Service, taxed themselves out of Parliament:

Now for the true understanding of this matter, it will be necessary to be a little more particular, because Arguments have been deduced from thence to prove that Taxes may be raised upon the People without their Consent in Parliament.

*William* called the Conqueror, divided several Lands in *England* amongst his great Followers, to find so many Horses and Arms, and to do particular Services; and their Descendants afterwards held these Lands upon the same Tenure, which was called *Knights Service*, and the Tenants were called Tenants *in capite*, because they held immediately of the King, as of his Crown.

He likewise gave other Lands to Persons to perform meaner Services, as to be his *Woodwards, Foresters, Huntsmen, Falconers, &c.* which was properly called a Tenure in *petit Serjeanty*; not but that the presenting him with a Bow and Arrow, or a Pair of Spurs every Year, might be called so to.

Some of our Historians have found out an ancient Record to prove, that these Tenants *in capite* did tax themselves out of Parliament, (*viz.*) *Anno 19 H. 3.* there is a Writ directed by that King, to the Sheriff of *Suffex*, reciting, that the Lords Spiritual and Temporal, and all others who held of him *in capite* had voluntarily, & *sine consuetudine*, granted to him an Aid of two Marks for every Knights Fee, and therefore he was commanded to distrain for it, &c.

But this Writ only proves, that the King's Tenants *in capite* gave him an Aid in an unprecedented manner; for the Writ tells us, it was *sine consuetudine*; neither was this a general Tax, for almost half the Lands in *England* were then in the Possession of Bishops, Abbots, Priors, &c. and near two Thirds of those Lands were held in *Libera Eleemosyna*, and not of the King *in capite*; and all the  
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Lands, almost in whole Counties, were held by others in Free Socage, so that the Tenants *in capite* could not tax them, though they might tax themselves. 'Tis true, some of our Kings did tax the Under-tenants of these Tenants *in capite* who were both numerous and rich; and this they did out of Parliament, apprehending that they might as well tax such Under-tenants, as the Tenants *in capite* might tax themselves.

But this was straining the Prerogative too far; and those Under-tenants being made uneasy by such Exactions, they joined with the whole Nation, to recover their Liberties, which in this particular was done by this Statute, *De tallagio non concedendo*.

My Lord *Coke* in his 2 *Inst. fol. 532.* tells us, that the Year before this Statute was made, the King had taken a Tallage of all Cities and Boroughs without Assent of Parliament; whereupon arose a great Murmuring and Discontent amongst the Commons; for pacifying which Discord between the King and his Nobles, and for the quieting the Commons, and for a perpetual and constant Law for ever, both in this and in other like cases, this Act was made, &c. being no other than a Restitution to the Subjects, of all their Laws, Liberties and free Customs, as freely and wholly as at any time before.

Now if this is a true Account of the making this Statute, it might be passed by *Edward* of *Carnarvan*, who was eldest Son to *Edward* the I. and was probably Regent here whilst his Father was in *Flanders*; but it was not disapproved by him at his Return, because it was made for the quieting the People whom he had incensed a little before, by exacting a Tallage from those who dwelt in Cities and Boroughs, without their Assent  
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in Parliament; and 'tis not likely so wise a King as Edward I. would aggravate his Subjects, by dissenting to such a reasonable Law to restore them to their Liberties, especially when at the same time he was engaged in Wars against his Enemies abroad.

And though we are told by the aforesaid Doctor that notwithstanding Magna Charta, both King John himself, and some of his Successors, made bold with the People in Money-matters, until this Statute was made: He might as well have told us, that though we have several good Laws to secure our Properties, yet we very often meet with Men on the Road, who make bold with us in Money-matters, but certainly such boldness doth not make what they do lawful; but the Doctor had forgot the Rule, that *a facto ad jus non datur consequentia*.

And here it may not be improper to mention an attempt to raise Money without Consent of Parliament, in a late Reign, which was called Ship-money, (*i. e.*) Money raised only by the King's Proclamation to build Ships, and to provide Naval Stores for the Defence of the Nation, when in Danger; and the King was to be sole Judge of that Danger; and accordingly great Sums were levied on the Subjects, and those who refused to pay were committed without Bail, and no Habeas Corpus would be allowed to discharge them.

'Tis true, this Money was not squanderd away, but the Royal Sovereign, a Ship well known by that Name, and some other Ships were built with it: And though the King was then engaged in a War with the House of Austria, to restore his Brother in Law to the Palatinate, which was his Inheritance, and this at the desire of the Parliament, from whom he could afterwards have no Assistance, and was therefore forced to make use of some exorbitant Methods

Methods to raise Money, (of which this was one) and tho' he did it by the Advice of his Privy Council, and almost all the Judges, yet it being illegal, and an Infringment of the Liberties of the People, it made them discontented; and therefore before the Parliament sat in the Year 1640, he released all those who were in Prison for not paying this Money, and wholly acquiesced in the Judgment of both Houses, who condemned those Proceedings as illegal; and he left all the Judges, who gave their Opinion for it, to the Judgment of Parliament.

There was about that time another way found out of raising Money without the Parliament, and that was by Tonnage and Poundage, (*i. e.*) so much for every Ton of certain Goods, and one Shilling for every Pound in value of other Goods, brought into the Kingdom, or exported.

This was a Subsidy first granted to H. 6. and to all successive Kings by the Parliament, for and during their respective Lives; but it being levied by King Car. 1. before it was granted by the Parliament, as soon as they met they drew up a Remonstrance against it; and at the End of the Sessions they voted, not only that the Ministers who levied it, but that those who voluntarily paid it, were Traytors of the Liberties of England, and Enemies to the Common-wealth.

Anno 25 Ed. 3.

*A Declaration what Offences shall be adjudged Treason.*

Whereas divers Opinions have been before this time, in what case Treason shall be said, and in what not, (2) the King at the Request of the Lords and Commons hath made a Declaration in the manner as hereafter followeth, that is to say,

say: When a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and Heir. (3.) Or if a Man do violate the King's Companion, or the King's eldest Daughter unmarried, or the Wife of the King's eldest Son and Heir. (4.) Or if a Man declare War against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm, giving them Aid and Comfort in the Realm, or elsewhere, and thereof be *provably* attainted, of open Deed, by the People of their condition. (5.) And if a Man counterfeit the King's Great Seal, or Privy Seal, or his Money (6.) And if a Man bring false Money into this Realm, counterfeit to the Money of *England*, as the Money called *Lushburgh*, or other, like to the said Money of *England*, knowing the Money to be false, to merchandise, or make Payment, in Deceit of our said Lord the King, and of his People. (7.) And if a Man slay the Chancellor, Treasurer, or King's Justices of the one Bench or the other, Justices in *Eyre*, or Justices of Assize, and all other Justices assigned to hear and determine, being in their Places doing their Offices. (8.) And it is to be understood, that in the Cases above rehearsed that ought to be judged Treason, which extends to our Lord the King, and of his Royal Majesty. (9.) And of such Treason the Forfeiture of the Escheats pertaineth to our Lord, as well of the Lands and Tenements holden of others, as of himself. (10.) And moreover, there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a Man, Secular or Religious, slayeth his Prelate, to whom he oweth Faith and Obedience. (11.) And of such Treason the Escheats ought to pertain to every Lord of his own Fee. (12.) And because that many other like Cases  
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of Treason may happen in time to come, which a Man cannot think nor declare at this present time: It is accorded, That if any other Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony. (13.) And if perchance any Man in this Realm ride armed covertly or secret with Men of Arms, against any other, to slay him, or rob him, or take him, or retain him, till he hath made Fine and Ransom for to have his Deliverance; it is not the mind of the King nor his Council, that in such Case it shall be judged Treason, but shall be judged Felony, or Trespass, according as the Law of the Land of old time used, and according as the Case requireth. (14.) And if in such Case, or other like, before this time any Justices have judged it Treason, and for this Cause the Lands and Tenements have come to the King's Hand as forfeit; the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements be in the King's Hands, or in others, by Gift, or in other manner. (15.) Saving always to our Lord the King the Year and the Waste, and the Forfeitures of Chattels which pertain to him in the Cases abovenamed. (16.) And that the Writs of *Scire Facias* be granted in such Case against the Land-Tenants, without other Original, and without allowing any Protection in the said Suit. (17.) And that of the Lands which be in the King's Hands, Writs be granted to the Sheriffs of the Counties where the Lands be, to deliver them out of the King's Hands without delay.

*The Comment.*

**T**Reason is derived from *Trahir*, which signifies, treacherously to betray: When it concerns the Government and the Publick, 'tis called High Treason, but against particular Persons, as a Wife killing her Husband, a Servant his Master, &c. it is Petty Treason.

High Treason, in the Civil Law, is called *Crimen Laesæ Majestatis*, a Crime wronging Majesty; but in our Common Law-Latin, *Alia Proditio*, and in an Indictment for this Offence, the Word *Proditorie* must be in.

Before the making this Act, so many things were charged as High-Treason, that no Man knew how to behave himself: Now by this Statute, the Particulars of that Grand Crime are reckoned up, and all others excluded, till declared by Parliament. And the settling of this Affair was esteemed of such Importance to the Publick Weal, that the Parliament wherein this Act passed, was called long after, *Benedictum Parliamentum*, The Blessed Parliament.

The Substance of this Statute is branched out by my Lord Coke, 3d Part of *Instit.* fol. 3. into six Heads, *viz.*

The first concerning Death, by compassing or imagining the Death of the King, Queen, or Prince, and declaring the same by some Overt-deed. By killing and murdering the Chancellor, Treasurer, Justices of Assize, Justices of either Bench, Justices in Eyre, Justices of Oyer and Terminer, in their Places doing their Offices.

The second is to violate, that is, to carnally know the Queen, the King's eldest Daughter unmarried, the Prince's Wife.

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The third is, Levying War against the King.

The fourth is, adhering to the King's Enemies, within the Realm or without, declaring the same by some Overt-Act.

The fifth is, Counterfeiting the Great, the Privy Seal, or the King's Coin.

The sixth and last, by bringing into this Realm Counterfeit Money, to the likeness of the King's Coin.

Now as to the particular Exposition of the several parts of this Statute:

1. *When a Man doth compass, &c.* In the Original it is *Quant Homē*, which extends to both Sexes; but one that is *Non Compos Mentis*, or an Infant within the Age of Discretion, is not included; but all Aliens within the Realm of *England*, being thereby under the King's Protection, and owing a local Allegiance, if they commit Treason, may be punish'd by this Act; but otherwise it is of an Enemy.

2. *To compass and imagine*, is to contrive, design or intend the Death of the King; but this must be declared by some Overt-Act. But declaring by an open Act a Design to depose or imprison the King, is an Overt-Act to manifest the compassing his Death. For they that will depose their King, will not stick to murder him, rather than fail of their End, and (as King *Charles* the First excellently observed, and lamentably experienced) *There are commonly but few steps between the Prisons and the Graves of Princes.*

3. By the word *King* is intended, 1. A King before his Coronation, as soon as ever the Crown descends upon him; for the Coronation is but a Ceremony. 2. A King *de Facto*, and not *de Jure*, is a King within this Act; and a Treason against him is punishable, though the right Heir get the Crown.

**Crown.** 3. A Titular King, as the Husband of a Queen, is not a King within this Act, but the Queen is, for the word *King* includes both Sexes.

4. What is to be understood by the King's eldest Son and Heir within this Act? I answer, 1. A second Son, after the Death of the first-born, is within this Act; for he is the eldest. Secondly, The eldest Son of a Queen Regnant is as well within the Statute, as of a King. Thirdly, The collateral Heir Apparent, or presumptive, is not within this Statute. *Roger Mortimer, Earl of March, was in Anno Dom. 1487. (11 Rich. 2.) proclaimed Heir Apparent. Anno 37 Hen. 6. Richard, Duke of York, was likewise proclaimed Heir Apparent, and so was John de la Pool, Earl of Lincoln, by Richard III. And Henry, Marquess of Exeter, by King Henry VIII. But none of these, or the like, are within the Purview of this Statute, saith my Lord Coke, 2 Inst. fol. 29.*

*Note, Whereas in the printed Statute Book, it is there said Probably Attainted, the same is a great Error; for the words of the Record are, Et de ceo Provablement soit attainit: And shall be thereof Proveably Attaint: And I cannot but admire that such a gross Mistake should be suffered, since my Lord Coke has so expressly observed the difference, in these words following, 3 Inst. fol. 12. In this Branch (saith he) four things are to be observed: This Word [Provablement] Provably, that is, upon direct and manifest Proof, not upon Conjectural Presumptions, or Inferences, or strains of Wit, but upon good and sufficient Proof. And herein the Adverb [Provablement] Provably, hath a great force, and signifieth a direct and plain Proof; which word, the Lords and Commons in Parliament did use, for that the Offence was heinous, and was so heavily and severely punished, as none other the like; and therefore the Offender must*  
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*Provably be attainted, which words are as forcible, as upon direct and manifest Proof. Note, The word is not [Probably] for then Commune Argumentum might have served; but the word is [Provably] be attainted. Secondly, This word [Attaint] necessarily implieth that he be proceeded with, and attainted according to the due Course and Proceedings of Law, and not by Absolute Power, or by other means, as in former times had been used. And therefore if a Man doth adhere to the Enemies of the King, or be slain in open War against the King, or otherwise die before the Attainder of Treason, he forfeiteth nothing, because (as that Act saith) he is not attainted: Wherein this Act hath altered that, which before this Act, in Case of Treason, was taken for Law. And the Statute of 34 Edward III. cap. 12. saves nothing to the King, but that which was in esse, and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament, in Ann. 29. H. 6. cap. 1. That Jack Cade being slain in open Rebellion, could no way be punished, or forfeit any thing, and therefore was attainted by that Act of High Treason. Thirdly, Of open Deed, per Aperum Factum, these words strengthen the former Exposition of [Provablement], an Overt-Act must be alledged in every Indictment upon this Act, and proved. Compassing by bare words is not an Overt-Act, as appears by many Temporary Statutes against it. But there must be some open Act, which must be manifestly proved. As if divers do conspire the Death of the King, and the manner how, and thereupon provide Weapons, Powder, Poison, Harness, and the like, for the Execution of the Conspiracy. If a Man be Arraigned upon an Indictment of High Treason, and stand Mute, [that is, refuse to plead] he is not to be pressed to Death, but shall have the same Judgment*  
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ment, and incur such Forfeiture, as if he had been convicted by Verdict, or had confessed it. For this standeth well with this word [*Provablement*] for *fatetur facinus qui iudicium fugit*. But otherwise it is in Case of Petit Treason, Murder, or other Felony. If a Subject conspire with a Foreign Prince, to invade the Realm by open Hostility, and prepare for the same by some Overt-Act, this is a sufficient Overt-Act for the Death of the King. *Fourthly*, The Composition and Connexion of the words are to be observed, *viz.* [*Thereof be Attainted by open Deed.*] This, (as was resolved by the Justices in *Easter Term, 35 Eliz.*) relateth to the several and distinct Treasons before expressed (and specially to the *Compassing and Imagination of the Death of the King, &c.* for that is a Secret in the Heart) and therefore one of them cannot be an Overt-Act to another; as for example: A Conspiracy is had to levy War, this (as hath been said and so resolved) is no Treason by this Act, until it be levied; therefore it is no Overt-Act, or manifest Proof of the Compassing the Death of the King within this Act; for the words are [*de eo, &c. thereof*] that is, of the Compassing of the Death. Divers later Acts of Parliament have ordained, That Compassing by bare Words or Sayings, should be Treason, but are all either repealed or expired. And it was wont to be said, bare words may make an Heretick, but not a Traytor, without an Overt-Act. And the Wisdom of the Makers of this Law would not make *words only* to be Treason, seeing such variance commonly among the Witnesses is about the same, as few of them agree together. But if words be set down in Writing by the Delinquent himself, that is a sufficient Overt-Act within this Statute.

And

And this was one *Williams's Case*, who wrote a Book called *Speculum Regale*, wherein he foretold the Death of the King.

And even Words themselves may be laid as an Overt-Act of Treason; for 'tis the natural way to express our wicked Intentions, and this was one *Crobagon's Case* an *Irish Man*, who being beyond Sea said, *I will kill the King if I can come at him*, and afterwards he came into *England*, and was apprehended and indicted for Compassing the Death of the King, and these words were laid in the Indictment as an Overt-Act, and being proved, he was convicted of High Treason.

'Tis true, my Lord *Coke*, in his Pleas of the Crown, *fol. 14.* was of a contrary Opinion, *viz.* That *Words* are not an Overt-Act, but in Case of the Regicides, that Opinion was denied to be Law.

In the 13th Year of King *James*, one *Owen* declared, That the King being excommunicated by the Pope, might be deposed or killed: I do not find that this was laid as an Overt-Act of Treason at that time; but it was never yet doubted but that sending Letters, to incite wicked Persons to attempt it, or printing any treasonable Positions, was High Treason.

Gathering Men together, to compel the King to comply with their Demands, or to remove Evil Counsellors, or to conspire with a Foreign Prince to invade the Kingdom; these and such like are Overt-Acts to make a Man guilty of High Treason.

In the Preamble of the Statute 1 *Mar.* Concerning the Repeal of certain Treasons, declared to be so after the making this Statute 25 *Ed. 3.* and before that time) and for bringing back all Treasons to be comprehended in some of the Branches thereof; it was agreed by the whole Parliament,

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liament, That, *Laws justly made for the Preservation of the Commonwealth, without extream Punishment, are more often obeyed and kept, than Laws and Statutes made with great and extream Punishments, and in special, such Laws and Statutes so made, whereby not only the ignorant and rude and unlearned People, but also learned and expert People, minding Honesty, are oftentimes trapped and snared, yea many times for words only, without other Act or Deed done or perpetrated*; therefore this Act of 25 Ed. 3 doth provide, that there must be an Overt-Act; but words without an Overt Act are to be punished in another degree, as an High Misprision.

*By People of their Condition, that is their Equals.*

7. As to Treason by levying War, 'tis true a Conspiracy or Compassing to do it, is not High Treason, if the War is not actually levied; this appears by the Statute 13 Eliz. cap. 1. which made such Conspiracy Treason during her Life: But if a War is levied, then the Conspirators are all Traitors, though they may not all be in Arms; and if 'tis not levied, yet the meeting and consulting to do it, is a sufficient Overt-Act to prove the Compassing and imagining the Death of the King.

Raising Forces for any publick End or Purpose is Treason, as may appear in the Instances following,

Some London Apprentices were committed for a Riot, and some other Apprentices conspir'd to release them, and to kill the Lord-Mayor; and intending to provide themselves with Armour, they broke open two Houses near the Tower; they got a Trumpet, and hung an old Cloak on a Pole for their Colours, and were going towards the Lord-Mayor's House, in this tumultuous manner, but were opposed by the Sheriffs whom they resisted; and this was adjudged High Treason by

levying War, &c. and within the Statute of 13 Eliz.

So where one Cotton, and several other London Apprentices assembled to pull down Bawdy Houses in Moorfields, and having chosen Captains amongst themselves, they march'd in a Warlike posture, and wounded the Constables, and opposed the King's Guards, who came to suppress them; all which being found by a Special Verdict at the Old Baily, upon an Indictment against some of them, it was adjudged High Treason, in levying War against the King; and some of them were executed.

Several conspired in Oxfordshire to pull down Inclosures, and intended to go to the Lord Norris's House to furnish themselves with Armour, Horses, and from thence to London, and there to join with more; this was likewise adjudged to be Treason.

Two or more; conspired to levy War, and one of them did afterwards actually raise Forces; this was adjudged by all the Judges to be High Treason in all of them; and this was Sir Nicholas Throgmorton's Case, who conspir'd with Wyat.

(8.) As concerning the interpretative Treasons, by killing the Chancellor, Treasurer, Justice of one or the other Bench, Justice in Eyre, or of Assize, or Oyer and Terminer; the Statute extends only to the Persons therein named, and not to the Lord Steward, Constable or Marshal, or Lords of Parliament; and it extends only to those, during the time they are in the said Offices, and not afterwards, nor when they are wounded, unless they die of those Wounds.

By the Statute 3 H. 7. cap. 14. compassing to kill a Privy Counsellor is Felony, but by a late Statute, made in the ninth Year of Queen Anne. cap. 16. reciting that *Anthony Guiscard*, being under

an Examination before a Committee of Privy Council for Treason, did with a Pen-knife stab Robert Harley, Esq; then Chancellor of the Exchequer, and a Privy Counsellor, and being committed for the said Crime died in *Newgate*; and there being no sufficient Punishment by the Laws now in being for assaulting, or wounding a Privy Counsellor, it was therefore enacted, That if any Person unlawfully attempted to kill, or should unlawfully assault, and strike, or wound a Privy Counsellor, when in the Execution of this Office, the Offender being convicted thereof, should be a Felon, and should suffer Death, as in Cases of Felony, without benefit of Clergy.

(9) Counterfeiting the Great or Privy Seal is Treason; but it must be an actual Counterfeiting it, for compassing to do so is not Treason; neither is it Treason for the Chancellor to fix the Great Seal to any thing without a Warrant: So fixing a new Great Seal to another Patent, is a great Misprision, but no Treason; because 'tis not a Counterfeiting within this Statute; neither is the counterfeiting the Privy Signet or Sign manual Treason within this Act; but 'tis made so by the Statute 1 *Mar. cap. 6.*

One *Leak*, glued two Parchments so close together, that it could not be perceived, and then he put a Label thro' both, and upon the uppermost he wrote a Patent, and got the Great Seal fixed to the Label, then he took off the written Parchment, and left the Label hanging to the Blank, this was adjudged a great Misprision.

One *Robinson* counterfeited the Privy Seal, and a Patent, but he omitted some words in the Style of the King, and added other words on purpose, that there might be a difference between the real Patent which was truly sealed, and the Privy Seal, which was counterfeited; and by the help of this

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counterfeited Privy Seal, he obtained the Great Seal to his Patent; this was declared to be High Treason, for having collected Money by these Counterfeits, he had usurped Regal Authority.

(10.) As to the Coin, it was Treason at Common Law for any Subject to make it, tho' he did not utter it, but to counterfeit, it was made Treason by this Statute.

Clipping, Washing, and Filing, was not counterfeiting within this Law; those Offences were made High Treason, by a subsequent Statute, (*viz. 5 Eliz. cap. 1.*) but without Corruption of Blood, or Loss of Dower.

Neither is Impairing, Diminishing, Falsifying or Scaling the Coin any Counterfeiting within this Statute, but 'tis made Treason by the Statute 18 *Eliz.* without Corruption of Blood, &c.

And Forging any Foreign Coin, if Current here by Proclamation, is High Treason by the Statute 1 *Mar. cap. 6.* and if not Current here, 'tis a Misprision of Treason in the principal Forgers, their Aiders and Abettors, by the Statute 14 *Eliz. cap. 3.*

The second Offence concerning Money, here declared to be Treason, is, If any Person bring into this Realm counterfeit Money: Where *note*, 1. It must be counterfeit. 2. Counterfeited to the similitude of *English Money*. 3. It must be brought from a Foreign Realm, and therefore not from *Ireland*. 4. It must be brought knowingly. 5. Brought, and not barely uttered here. But by the Statute *De Moneta*, if false or clip'd Money be found in a Person's hands, and he be suspicious, he may be arrested till he can clear himself. 6. He must merchandize therewith, that is, make Payment thereof.

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(11.) As

(11.) As this Statute leaves all other doubtful Matters to be declared Treason in Parliament, but not to be punish'd as such till so declared: So in succeeding Kings Reigns, abundance of other Matters were declared Treason, which being found very grievous and dangerous, by the Statue of 1 Mar. cap. 1. it is Enacted, That thenceforth no Act, Deed, or Offence, being by Act of Parliament, or Statute, made Treason, Petty Treason, or Misprision of Treason, by Words, Writing, CIPHERING, Deeds, or otherwise how ever, shall be taken, had, deemed or adjudged to be High-Treason, Petty-Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petty-Treason, or Misprision of Treason by this Statute of 25 Edw. 3.

(12.) The Offences made Treason, since the first Year of Queen Mary, are as follow.

Refusing the Oath of Supremacy upon the second Tender, is Treason by the Statute 5 Eliz. cap. 1. but no Corruption of Blood; and by the same Statute, 'tis Treason to bring into this Realm the Popes Bulls, or to put them in Execution, or Reconciling any of the Subjects to the Church of Rome, or absolving them from their Obedience, or for a Priest to come into England, and not to submit himself in two Days; the like for Englishmen in Foreign Seminaries, 27 Eliz. cap. 2.

So likewise by an Act made in the 4th and 5th Years of the late Queen Anne for the better Security of her Majesty's Person and Government; 'tis Enacted, That if any Person after the 25th of March, 1706, shall maliciously, advisedly, or directly, by Writing or Printing, declare, or affirm that the Queen is not lawful Queen, or that the pretended Prince of Wales hath any Title to the Crown, or that any other Person hath a Right to it, otherwise than according to the Act of Settlement, made

1, & 12 W. or that the Kings and Queens of England are not able by the Authority of their Parliaments, to make Laws sufficient to limit and bind the Crown of this Realm, shall be guilty of High Treason, and being thereof convicted and attainted, shall suffer Death, and all Losses and Forfeitures, as in Cases of High-Treason.

And if any one by Preaching, Teaching, or advised Speaking shall declare, maintain or affirm, as aforelaid, such Person being lawfully convicted shall incur the Penalty of a Præmunire, (i. e.) they shall be out of the King's Protection, shall be committed to Prison, and lose their Lands, and Tenements, Goods and Chattles.

But by this Statute, if the Prosecution be for Words, there must be Information given of them upon Oath to one or more Justices of the Peace within three Days after such Words were spoken; and the Prosecution must be within three Months after such Information, and the Conviction must likewise be by the Oath of two credible Witnesses.

'Tis to be observed that in High Treason there are no Accessaries; and therefore my Lord Coke tells us, that what will make a Man Accessary to a Felony before the Fact, the same will make him Principal in High Treason.

Now as to Trials for Treason, there hath been a considerable Alteration made in the Law for the benefit of the Subject in late Years; and one would wonder that amongst a People so jealous of their Liberties, that it had not been done before; or indeed, that in these Cases, where the Punishment is so great, the Criminal should not have the same Benefit of defending himself, as he hath for a common Trespass.

My Lord Coke, in the 12 Year of King James, tells us, that the Jesuits had slandered our Law in Cases of Trials for Treason, because the Offenders had

had neither Counsel allowed, and that their Witnesses were not examined on Oath.

But in this the Jesuits were mistaken, for Counsel is allowed the Prisoner, but 'tis with Leave of the Court; 'tis true, his Witnesses formerly were not on Oath, and he was under many hardships after his Commitment; his Friends (if he had any) were not suffered to come to him, he had neither Pen, Ink or Paper allowed, and was altogether ignorant for what Species of Treason he was committed, or who were the Witnesses that accused him; for he could not have the Copy of the Indictment; if by chance any Person was so hardy as to give him any manner of Advice, without Leave of the Court, such Person was punishable; and if upon his Arraignment he desired Counsel, upon any point of Law arising upon the Fact, such Counsel must be ready to argue it *instanter*, and the Court usually gave Judgment upon the Point so argued, at the same time.

The whole Proceedings against him were very strict; for though he might except against any of the Jury, yet that could be no manner of Advantage to him, because he was not allowed a Copy of the Pannel, that he might consider against whom to except.

If he produced any Witnesses, (it was right as the Jesuits observed) they were not examined on Oath, and this, (as it hath been very justly observed) was either too great an Advantage for the Prisoner, or rather none at all; for if the Witnesses not sworn, should have equal Credit with those who were, then the Prisoner had too great an Advantage; but if they were to have no Credit with the Jury, because not sworn, then it was meer trifling to suffer him to produce any Witnesses at all.

But

But the Parliament in the seventh Year of the late King *William*, wisely considering that Truth cannot well appear, but by the Testimony of Witnesses, thought it absolutely necessary to put the highest Obligations on them, and that on both Sides, which is an Oath.

Therefore they provided, That a Person indicted for Treason, by which Corruption of Blood might be made, or for Misprision of such Treason, shall have a Copy of the whole Indictment five Days before his Trial, he desiring the same; and that he may advise with Counsel, and make his full Defence by two of them; that his Witnesses shall be upon Oath, and that he pay for the Copy of his Indictment, not exceeding five Shillings, but he is not to have the Names of the Witnesses for the King.

'Tis farther enacted, That no Man shall be indicted, tried or attainted of such Treason, or Misprision of Treason, but upon the Oath of lawful Witnesses, who shall both speak to the same Overt-Act of Treason, or to different Acts, but of the same Treason, unless the Prisoner is mute, refuseth to plead, or challengeth above thirty-six peremptorily, or confesseth the Fact.

But such Offender may be *outlawed*, and if attainted by Outlawry, yet he may come in and be tried by Law after such Outlawry, and he shall upon his Trial have the Benefit of this Act.

And where distinct Treasons of divers kinds are alledged in one Indictment, one Witness to one Species of Treason, and another Witness to another, shall not be two Witnesses within the Meaning of the Law; and no Evidence shall be given of an Overt-Act, unless expressly laid in the Indictment.

The Prosecution shall be within three Years after the Offence committed, except it be for Treason

son in designing or attempting the Assassination of the King.

No Indictment shall be quash'd for mis-writing, or for false or improper Latin, unless Exception be taken to the same, before the Evidence given in Court; neither shall any such matter be a sufficient Cause to arrest the Judgment after Conviction; yet it may be reversed by Writ of Error.

When a Peer is tried, all the Peers who have a right to sit and vote in Parliament, shall be summoned twenty days before the Trial; and they must take the Oaths, &c.

But this Act doth not extend to any Indictment for counterfeiting the Coin, the Great Seal, &c.

These are the Inconveniencies remedied by this Act, 7 W. cap. 3. so that now a Person committed for High Treason hath the same Liberty and Method of defending himself, as if he had been indicted for an ordinary Trespas.

But as to Indictments for Treason they must be found in the County where the Fact was done; and if it is for levying War, conspiring the Death of the King, or adhering to his Enemies, (i. e.) by aiding or comforting them, it must conclude *contra ligeantiae sua debitum*: And it is not sufficient, though the particular Facts alledged do shew that it was against his Allegiance: This was Mr. Walcot's Case, who was executed for High Treason, and his Attainder was reversed for this Reason in the House of Lords, but it was by the Majority of one Vote and no more.

Another

Another Statute of King Edward the Third.

Anno 2 Edm. 3. Cap. 2.

In what Cases only Pardon of Felony shall be granted, &c,

Item, Whereas Offenders have been greatly encouraged because the Charters of Pardon have been so easily granted in times past, of Manslaughters, Robberies, Felonies, and other Trespases against the Peace. (2.) It is ordained and enacted, that such Charters shall not be granted, but only where the King may do it by his Oath, that is to say, where a Man slays another in his own Defence, or by Misfortune. (3.) And also they have been encouraged, because that the Justices of the Gaol-Delivery and of Oyer and Terminer, have been procured by great Men, against the Form of the Statute made in the 27th Year of the Reign of King Ed. Grandfather to our Lord the King, wherein is contained, that Justices assigned to take Assizes, if they be Lay-men, shall make deliverance; and if the one be a Clerk, and the other a Lay-man, that the Lay-Judge, with another of the Country associate to him, shall deliver the Gaols. (4.) Wherefore it is Enacted, That Justices shall not be made against the Form of the said Statute. (5.) And that the Assizes, Attaints, and Certifications, be taken before the Justices commonly assigned, which shou'd be good Men and lawful, having Knowledge of the Law, and none other, after the Form of another Statute made in the time of the said King Edward the First. (6.) And that the Oyers and Terminers shall be granted, but before the Justices of the one Bench or the other, or the Justices Errants; and that great Hurt, or horrible Trespases, and of the King's special Grace, after the Form of the Statute thereof ordained in the time of the said Grandfather, and none otherwise.

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## The COMMENT.

Touching this Statute, and several others to the same purpose, as 14 *Edw. 3. cap. 14.* and 15 *Edw. 3. cap. 2.* and 13 *R. 2. cap. 1.* and 16 *R. cap. 6. &c.*

We shall only give you the words of *Coke* in the third part of his *Inst.* fol. 236.

What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

**I**N 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 do it by his Oath.* Secondly, That no Man shall obtain Charters out of Parliament. Stat. 4 *Edw. 3. cap. 13.* 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 as be let to Mainprize do put in good Sureties, as Esquires or Gentlemen: And that no Pardon were granted but by Parliament.] Thirdly, for that the King hath granted Pardons of Felonies upon false Suggestions; 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.

Fourthly,

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, Statute 13 *R. 2.* Before this Statute of 13 *R. 2.* by the Pardon of all Felonies, Treason was pardoned, and so was Murder, &c. 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. But it hath been conceived, (which we will not question) that the King may dispense with these Laws by a *Non obstante*, (notwithstanding) be it General or Special (albeit we find not any such Clauses of *non Obstante*;) notwithstanding, to dispense with any of these Statutes (but of late times.) These Statutes are excellent Instructions for a Religious and prudent King to follow, for in these Cases, As it is the highest Kingly Power to be able to Act what he Wills; so it is his Greatness and Nobleness to Will only what he lawfully can. Hereof you may read more in Justice *Staundford*, lib. 2. cap. 32. in divers places of that Chapter, of his grave Advice in that behalf. Most certain it is, that the Word of God has set down this undisputable general Rule. (*Because Sentence against evil Men is not speedily executed, therefore the Hearts of the Children of Men are set in them to do evil.*) And thereupon the Rule of Law is grounded. [*The hope of impunity encourageth Offenders.*] [*And the facility of obtaining Pardon, is an Incentive to commit Offences.*] This is to be added, that the Intention of the said Act of 13 *R. 2.* was not that the King should grant Pardon of Murder by express Name in the Charter, but because the whole Parliament conceived, that he would never pardon Murder by special Name, for the Causes aforesaid; therefore that Provision was made, which was (as in other Cases I have observed) grounded upon the Law of God. [*Whosoever shall shed Man's Blood.*]

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Blood, by Man also shall his Blood be shed, because Man was created after the Image of God; neither can it be expiated otherwise than by his Blood, who spilt the Blood of another.] And the words of every Pardon, is after the Recital of the Offence, Nos pietate moti, we being moved with Piety, &c. But it can be no Piety, to violate an express Law of God, by letting Murder scape unpunished. Thus Coke, whereby we see what Opinion he had of such Pardons.

But notwithstanding this Opinion of my Lord Coke, Murders are pardoned by express Name; nay, the Pardon is not good, if the word *Murdrum* is left out.

And as to the express Law of God, *He that shedeth Man's blood, by Man shall his blood be shed*, a very learned *Casuis*t hath lately shewed, that 'tis not binding to a Christian Prince; an Abstract of his Argument, is as followeth.

This is the second Law given to *Noah* after the Flood; the first was a Prohibition to eat blood, which was confirmed many Ages afterwards by *Moses*, and never abrogated; and yet several Christian Nations do not take this Law to be binding, and particularly this Nation; for nothing is more common than to eat Blood.

Now if this first Law is not binding to Christians, why must the second? especially since 'tis not a moral, but a positive Law; and such Laws are always capable of a Dispensation.

As for Instance, it was a positive Law, that the Sabbath should be sanctified, and it was a capital Crime to do any Work on that Day; but 'tis certain that in some cases, that Law was not binding; for if a City was set on Fire on that Day, Men might leave the Church and Divine Service, and labour to quench it.

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'Tis likewise to be observed that the Proposition is not universal for 'tis not that every Murderer shall be put to Death, 'tis only that by Man his blood shall be shed, (i. e.) by the Magistrate; for if the Supreme Power had committed a Murder, (as *David* did) he could not be put to Death, because there was no Power upon Earth above him.

And as it did not extend to the Supreme Power, so in some Cases it did not extend to the Subject; for if a Master had killed his Servant, if he did not die immediately under his Hand, but lived twenty four Hours, the Master was not to die.

So where the Law required two Witnesses against a Murderer, and the Offence could be only proved by one, the Blood of that Murderer could not be shed by any Man.

Neither was this a Negative Law; for it doth not say the Supreme Magistrate shall not pardon a Murderer, it only declares what the Punishment shall be.

Now 'tis certain that *Simeon* and *Levi* were guilty of Murder, for tho' *Shechem*, the Son of *Hammer*, had defiled their Sister *Dinah*, yet he would have married her, and they treated with *Jacob* her Father about it, and agreed to all the terms which *Simeon* and *Levi* proposed; but yet were basely murdered by them afterwards.

Those two great Patriarchs *Isaac*, (who was then living) and *Jacob*, the Father of the Murderers, who were Men of great Piety, and beloved of God, had then the Supreme Power; and they could not be ignorant of this Law given to *Noah*, because he died but a little above forty Years before *Isaac* was born; yet they did not put this Law in execution against the Murderers, which they certainly would have done, if they had believed there could

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be no Dispensation; but 'tis as certain that they were both pardon'd, because many Years afterwards, they went down into *Egypt* with their Father *Jacob*, and died there.

Neither did this Law bind *David* and the *Jews* in his time; for if it had, he who was the best of Kings, and a Man after God's own Heart, could not have transgressed it in pardoning *Absalom* for a Murder.

About Eight hundred Years after this Law given to *Noah*, there was another very severe Law, given by God to *Moses*, and by him to the Children of *Israel* in these words (*viz.*) *Ye shall take no satisfaction for the Life of a Murderer, which is guilty of Death, but he shall surely be put to Death.*

Now these *Mosaical* Laws, were either Ceremonial or Judicial, and given by God, for the better Government of other *Jews*, and therefore bound only them to whom they were given and made known; therefore they never bound the *Gentiles* before the coming of our Saviour, nor the *Christians* since, and the Obligation of the Ceremonial Law ceased, even to the *Jews* themselves, at the death of our Saviour: And the Obligation of the Judicial Law ceased at the Destruction of *Jerusalem*, when the *Jewish* Common-wealth, was utterly destroyed; so that 'tis plain, a Law not in being cannot be binding.

Neither did the Moral Law prohibit Princes from pardoning Murder; for that Law was written in the Heart of *Adam* at the Creation, who had a Will to follow the Dictates of right Reason, but by his Fall, it was defaced both in him, and all his Posterity; therefore God by *Moses* gave to his own People the *Jews*, the whole Substance of that Law; and this he did in the ten Commandments, and added the Promises of his Blessing to those who ob-

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observed, and Punishments to those who transgressed against them.

But these Laws did never oblige the *Gentiles*, for that *St. Paul* tells us, they (*viz.*) the *Gentiles* who had not the Law, do by Nature the things contained in the Law. Where by the word *Nature*, is meant, they do those things which are written in their Hearts by Nature, (*i. e.*) by the moral Law, for no positive Law whatsoever was, or can be written in the Heart of Man by Nature.

As the Laws themselves, so the Promises and Punishments annexed to them, were given only to the *Jews*, and this will plainly appear by the following Instances.

The Promise added to the fifth Commandment, (*viz.*) *Honour thy Father, and thy Mother, that thy days may be long in the Land, which the Lord thy God hath given thee,* (*i. e.*) the Land of *Canaan*, for that was promised and given only to the *Jews*.

The Laws to which Punishments were annexed, were not moral, but positive Laws, and those were given to the *Jews*, to whom they were given after they came out of *Egypt*, and above 2450 Years after the fall of *Adam*; for if they had been moral Laws, they would have bound all Men from the Creation to this time, and so eternally; but 'tis evident they do not; and this is by the Judgment and Consent of all the *Christian* World.

As for Instance; by the *Mosaical* Law, he who cursed or smited his Father or Mother, or who would not obey them, was to die; and so was he, who did any Work on the *Sabbath*: But this was never done amongst *Christians*; tho' the Law of *Moses* is very positive, that the one shall be stoned to Death, and that the other shall surely die.

The very same words are in the Law for punishing a Murderer, (*viz.*) *He shall surely die.* Now

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if the Murderer was *surely to be put to Death*, by the same Law, the Workman on the Sabbath must be so too; and then the greatest part of Mankind must be put to Death, because there are but very few, who have not done some Work on a Sabbath-day.

The *Rabbies* tells us, that those words (*viz.*) *He shall surely be put to Death*, relate only to the Judges, who were to take no Satisfaction for the Life of a Murderer, but were obliged to condemn him; they do not at all relate to the Supreme Magistrate, who had a Power to pardon.

And this appears by *David* himself, who was the best of Kings, and certainly knew the *Jewish Laws* as well as any Man; for he reprieved *Joab*, who had Murdered *Abner* and *Amasa*, two of the Captains of the Hosts of *Israel*; and this was in time of Peace; 'tis true, he left the Execution of the Law to his Son *Solomon*, but gave him no direction in it; for he left it to be done as his Son thought fit, who afterwards put him to Death.

But he absolutely pardoned *Absalom*, who was guilty of the Blood of his Brother *Amnon*, two Years after he had ravished his Sister *Tamar*; 'tis true, he was afraid of his Father's Anger, and therefore fled for fear of being punished; but after some time he was brought back to *Jerusalem*, where he lived two Years, in all which time his Father would not see him, which made *Absalom* very uneasy, insomuch that he told *Joab* he would see the King, saying, *If there is any iniquity in me, let him kill me*; and being brought before him, after he had humbled himself, the King kissed him.

This Reprieve of *Joab*, and Pardon of *Absalom*, who were both guilty of Murder, were never imputed to *David*, as any manner of Crimes, or Transgression of the Laws of *Moses*, but rather the contrary,

*Of Appeals.*

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trary, for the Scripture tells us, *that he did what was right in the sight of the Lord, and turned not aside in any thing, &c.* save only in the matter of *Uriah*.

Now if *David* might lawfully reprieve and pardon a Murderer amongst the *Jews*, to whom these Laws were given by *Moses*, and which they were strictly bound to obey; there can be no manner of obligation from those Laws, especially to Christian Princes to whom they were never given, and by which they cannot be bound; but they may reprieve, and pardon those, who are guilty of Murder.

## Of A P P E A L S.

THIS Discourse of Pardons puts us in mind of another legal Prosecution, in which the Subject hath a particular Benefit, and that is by *Appeal*, of which it may be convenient to give a short Account.

Where a Criminal deserveth to be punished with Death for any Offence, and particularly for Murder, there are two ways to bring him to answer, one is by an Indictment, which is at the Suit of the King, and the other is by *Appeal*, which is at the Suit of the Party injured by the Murderer; as a Widow, a Son whose Father, or a Brother whose Brother, hath been murdered.

Now if the Offender be found guilty upon the Indictment, a Pardon hath been sometimes obtained. But in an Appeal all agree, the King can grant no Pardon. Nay, if a Person be tried by Indictment, and acquitted, or convicted, and get a Pardon, yet an Appeal may be brought, and if he be thereupon convicted, notwithstanding such his former Acquittal or Pardon, he must be hanged.

The word *Appeal* is derived from the *French* Verb *Appeller*, to Call, because he or she that brings it, calls the Defendant to Judgment; but the meaning thereof is all one with an Accusation, and is peculiarly in legal Signification applied to Appeals of three sorts: First, An Appeal brought by an Heir Male, for some Wrong done to his Ancestor, whose Heir he is. Secondly, of Wrong done to an Husband, and is by the Wife only, if it be for the Death of her Husband, to be prosecuted. The third is, of Wrongs done to the Appellants themselves, as for Robbery, Rape, or Maim, *Coke 1 Instit. Sect. 500.*

*Note,* That this Appeal must be brought within a Year and a Day after the Murder committed; for afterwards it cannot be brought at all. And anciently it was customary not to bring an Indictment for the King, till after the Year and the Day, waiting in the mean time for the Prosecution of the Party; but this was found very inconvenient, for the Party was frequently compounded with, and at the Year's end the business was forgot, and so Offenders escaped Justice.

And therefore the same was altered by the Statute 3 Hen. 7. cap. 1 whereby it is Enacted, *That the Coroner shall do his Office, and the Offenders may be arraigned at any time within the Year, at the King's Suit, but if acquitted, yet the Party, within the Year and Day, should have liberty to bring an Appeal against such Person, either acquitted or attainted, if the Benefit of the Clergy be not before thereof had. And in order therunto, that when any Person happened to be acquitted for the Death of a Man, within the Year, the Justices before whom he is acquitted, shall not suffer him to go at large, but either to remit him again to the Prison, or else to let him to Bail, after their Discretion, till that the Day and the Year be passed, that so*  
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*he may be forth-coming to answer an Appeal, if it shall happen to be brought.*

Thus that Statute; as to the latter Clause whereof, you see the Judges have Power, in Case of Acquittal, to keep the Party in Prison still, till the Day and Year be over; or else to admit him to Bail; and though this be left to their Discretion, yet it must not be such a Discretion, as confounds all Discretion; but they must weigh the Circumstances, and go according to Law and Judgment; and certainly the Law intended such Bail, if any be accepted, should be bound Body for Body, for otherwise it seems no Security. And therefore many wise Men wondered, when Count *Conningsmark* was acquitted on the Indictment for the barbarous Murder of Esquire *Thynn*, that he was suffered to go so soon abroad, for being a Stranger, he was never like to come again into *England*; and being so rich, what values he to discharge the Forfeitures of his Sureties Recognizances, which likewise may be easily compounded? At most, the Forfeiture is to the King, and what is that to the next Heir or Kinsman? He is by this means outed of his legal Remedy to revenge the Blood of his near and dear Relation.

*The Form of an Appeal of Murder.*

**I**C. hic instanter Appellat W. F. &c. (In English thus) I. C. here instantly appeals W. F. of the Death of his Brother H. C. For that whereas the aforesaid H. was in the Peace of God and the King, at Tunbridge in the County of Kent, the twenty-eighth day of March, in the thirty-fourth Year of the Reign of our Lord Charles the Second, &c. at seven a Clock in the Evening of the

same day, came the said W. F. as a Felon of our Lord the King, in a premeditated Assault, with Force and Arms, &c. And upon him the said H. C. then and there feloniously an Assault did make, and with a certain Sword, of the Price of twelve pence, which he then and there in his right Hand did hold, the aforesaid H. upon his Head did strike, and one mortal Wound of two Inches long in the forepart of his Head even unto the Brain to the said H. did then and there feloniously give; of which said Wound the said H. for three days then next following did languish, and then, viz. the [such a] day of [such a Month] he there died, [or if the case be so, instantly died.] And so the said W. H. as a Felon of our Lord the King, the aforesaid H. feloniously did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity: And that this he did wickedly, and as a Felon, against the Peace of God, and our Lord the King, the aforesaid offers that the same be detained, as the Court of our Lord the King shall think meet. Diversity of Courts and Jurisdictions, written in the time of King Henry VIII.

1. Note, That a Woman cannot now bring an Appeal for the Death of any other Ancestors, being barred therefrom by *Magna Charta, cap. 34.* whereas (as you have heard) it is provided, that none shall be taken or imprisoned upon the Appeal of any Woman for the Death of any Person, but only of her Husband. But she may at this day bring an Appeal for Robbery, &c. for therein she is not by that Statute restrained. *Coke 2 Inst. it. Fol. 68.*

2. The Woman that brings an Appeal for the Death of her Husband, must be his Wife, not only *de Facto*, but *de Jure*, not only called and reputed,

ted, or cohabiting with him, but actually and legally married to him; and of such a Wife the ancient Law-book speaks, *De morte viri inter Brachia sua Interfecti*, the Husband is killed within her Arms, that is, whilst he was legally in her Possession; but that the Appellant and the Person killed were not ever lawfully coupled in Matrimony, is a good Plea in an Appeal.

(3.) This Right of Appeal for the Death of her Husband is annexed to her Widow-hood, as her *Quarentine* is; and therefore, if the Wife of the Dead marry again, her Appeal is gone, even although the second Husband should die within the Year and Day after the Murder of the first: For she must, all the while before the Appeal be brought, continue *Fœmina viri sui*, his Widow upon whose Death the Appeal is brought. Furthermore, if she bring the Appeal during her Widow-hood, and take a Husband whilst it is depending, the Appeal shall abate (that is, be out of doors) for ever. Nay, if on her Appeal she hath Judgment against the Defendant, if afterward she take an Husband before the Defendant be hanged, she can never have Execution of Death against him.

(4.) By the Statute of *Glocest.* made in the sixth Year of King Edward 1. *cap. 9.* it is Enacted, That if an Appeal set forth the Deed, the Year, the Day, the Hour, the Reign of the King, and the Town where the Deed was done, and with what Weapon the Party was slain, the Appeal shall stand in effect, and shall not be abated for default of fresh Suit, if the Party shall sue within the Year and the Day after the Deed done.

(5.) As for the Year and Day here mentioned, it is to be accounted for the whole Year according to the Calendar, and not for twelve Months, at twenty-eight Days to the Month. So likewise

the

the Day intended is a natural Day ; and this Year and Day must be accounted after the Felony and Murder committed. Now if a Man be mortally wounded on the first Day of *May*, and thereof languishes to the first Day of *June*, and then dies ; the Question here arises, Whether the Year and the Day allowed for bringing the Appeal, is to be reckoned from the giving the Wound, or the time of Death ? Some have held the former : For that the Death ensuing, hath relation to it, and that is the Cause of the Death, and the Offender did nothing the Day of the Death. But the truth is, the Year and the Day shall be accounted only from the first of *June*, the Day of the Death, for before that time no Felony was committed. And thus it hath often been resolved and adjudged, and the reason abovesaid grounded upon Relation (which is a Fiction in Law) holdeth not in this Case. *Coke 2 Instit. Fol. 320.*

(6.) If an Appeal of Murder be brought, and depending the Suit, and after the Year and Day is elapsed, one become Accessary to the Murder, the Plaintiff shall have an Appeal against him after the Year and Day past after the Death ; but it must be brought within the Year and Day after this new Felony as Accessary.

(7.) If a Man be indicted for Murder, and convicted only of Manslaughter, and have the Benefit of his Clergy, it seems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord *Coke 3 Instit. Fol. 131.* cites a Case in these words: *Thomas Burghe, Brother and Heir of Henry Burghe, brought an Appeal 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 Oyer and Terminer, he was upon that*  
*Indictment*

*indictment arraigned, and confessed the Indictment, and prayed his Clergy, and thereupon was entered Curia advisare vult, the Court will consider ; whereupon he demanded Judgment, whether the Plaintiff ought to maintain that Appeal he had brought ? To which the Plaintiff demurred in Law. And in this Case three Points were adjudged by Sir Christopher Wray, Sir Thomas Gawdy, and the whole Court.*

*First, That the Matter of the Bar had been a good Bar of Appeal by the Common-Law, as well as if the Clergy had been allowed : For that the Defendant, upon his Confession of the Indictment, had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the Party Defendant, albeit the Appeal was commenced before the Allowance of it.*

The second Point adjudged was, *That this Case was out of the Statute of 3 Hen. 7. for that the words of that Act are,*

*If it fortune, that the same Felons and Murderers, and Accessaries so arraigned, or any of them, to be acquitted, or the Principals of the said Felony, or any of them to be attainted, the Wife or next Heir of him so slain, &c. may have their Appeal of the same Death and Murder against the Person so acquitted, or against the said Principals so attainted, if they be alive, and that the Benefit of his Clergy thereof be not had.*

*And in this the Defendant Holcroft was neither acquitted nor attainted, but convicted by Confession, and the Benefit of the Clergy only prayed, as is aforesaid, so as the Statute being Penal concerning the Life of Man, and made in Restraint of the Common-Law, was not to be taken by Equity, but as Casus Omissus, a Case omitted, and left to the Common-Law.*

As

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, And he does ask Judgment, if the above-mentioned Thomas Holcroft shall be obliged to answer again for the same Death he was once convicted of: 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.

It has been a doubt, that if upon an Appeal the Jury find the Person not guilty of the Murder, but guilty of Manslaughter, whether the King can pardon the burning in the Hand? Those who say he cannot pardon it, do ground their Opinion upon the nature of the Action, (viz.) that it is at the Suit of the Party; but my Lord Coke tells us, that in *Shuckborough* and *Biggin's Case*, which was upon an Appeal of the Wife for the Death of her Husband, it was adjudged upon a Conference had amongst the Judges, that the King might pardon the burning in the Hand, because it is not part of the Judgment or Punishment of the Criminal; it is only a Mark to signify that he shall not have his Clergy again: And this was likewise the Opinion of my Lord *Hobart* in his Argument of *Searle* and *Williams Case*, so that this Point is settled.

There have been some Questions likewise in what County to bring an Appeal, as for Instance: If the *Principal* is attainted in *Surrey*, and an Appeal is brought in the same County against the Accessory, setting forth that he, *apud London*, did incite the *Principal* to commit the Murder; this Appeal is not well brought in *Surrey*, because the *inciting* was a personal wrong done in *London*, and therefore the Appeal ought to be brought there.

And

And as the Place where, so the Time when, an Appeal must be brought, is very material: And as to this matter, the Law makes some difference in respect to the nature of the Crimes for which the Appeal is brought; for if it is for Murder, it must be within a Year and a Day after the Fact, as hath been already observ'd; but if it is for a Robbery, it may be many Years afterwards.

So likewise it hath been a doubt, if a Man being indicted for Murder, and found guilty of Manslaughter, and an Appeal brought, whether the Court may proceed upon that Conviction, and allow the Party his Clergy pending the Appeal?

And as to this matter a late Case happened, by which the Law is settled, and it was thus,

One *Lisle* was indicted at the Assizes at *Carlisle*, for the Murder of *Amstrong*, and found guilty of Manslaughter, and an Appeal brought immediately, which was received by the Court, but before it was arraigned he pray'd his Clergy.

Then the Appeal was read in the Court, to which *Lisle* appeared but did not plead to it, but desired that he might be admitted to Bail, which was not granted, so he was sent back to Prison.

These Proceedings were removed by *Certiorari* into the King's Bench, and *Lisle* being brought up by *Habeas Corpus*, was committed to the *Marshalsea*.

And upon a motion in Court (where Mr. *Lisle* was brought up) the first Question was, Whether he might be bailed before his Clergy was allowed? And it was adjudged he might.

The next Question was, Whether the Court might proceed upon the Conviction of Manslaughter, though there was an Appeal then depending? And adjudged that they might, because neither the Appellant nor Appellee had any Day in Court; for

for the Appeal being commenced at the Assizes was determined as soon as the Assizes were ended; for it cannot be continued from one Gaol-Delivery to another.

It was admitted on all sides, that it was not wholly discontinued, because Mr. *Lisle* being in Custody of the Marshal, might move the Court to be arraigned, or if he was not in Custody, the Appellant might take out Process against him to bring him in, but he cannot proceed upon this Appeal thus commenced, unless it is revived, which was not done, and therefore the Court may proceed upon the Conviction of Manslaughter.

It was likewise agreed, that if an Offender was indicted, and at the same time, and before the same Judge, an Appeal was *freshly prosecuted* (*i. e.*) before the Party was convicted upon the Indictment, in such Case the Appeal ought to be preferred; because if it was for a Robbery, the Appellant might have Restitution of his Goods, which he could not have upon an Indictment before the Statute of 21 *H. 8.* and if it was for a Murder, then no Pardon could prevent the Punishment.

It was very incertain what is the legal Sense of a *fresh Prosecution*, for it was generally left to the Discretion of the Court, and it is probable that this might be the occasion of making the Statute of *Gloucester cap. 9.* by which it is enacted, That *no Default shall be in the Appellant so he bring his Appeal within a Year.*

Thus it appears, that there ought to be no delay in prosecuting an Appeal; and because it often happened otherwise, and sometimes Appeals were brought on purpose to obstruct the Prosecution on an Indictment; and sometimes an Agreement was made with the Appellant, so that the Year's End and all was forgotten, therefore the said Statute

Statute of *H. 7.* was made, by which it is enacted, That an Indictment may be tried without staying for the Appeal.

But notwithstanding such an Indictment, or any Attainder or Acquittal thereon, the benefit of Appeal is saved, if the Clergy was not had, which shews, that before the Statute, if the Clergy was had, there was an end of the Appeal, for it was a good Plea in Bar to it.

So that tis unreasonable that an Appeal should interpose between the Conviction of Manslaughter and the Judgment, so as to hinder the Execution; for if that was to be allowed, then an Appeal might likewise hinder the Execution even upon a Conviction of Murder, as well as Manslaughter.

Thereupon the King's Counsel at another Day moved for Judgement against *Lisle*, who being asked, what he had to say why Judgment should not pass against him? pray'd his Clergy, and it was allowed; and the Court said, that upon the like Prayer, it ought to have been allowed at the Assizes, and afterwards he read, &c. and was burnt in the Hand.

But he still standing upon his Recognizance, he brought a *Scire facias* against the Appellant, to compel him to prosecute his Appeal, to which he appeared *gratis*; for if he had not appeared, he would have been nonsuited.

And thereupon the Appeal was arraigned in *French*, by the Appellant's Counsel; and the Appellee was arraigned by the Clerk of the Court, and ordered to put in new Bail, or be committed; but at last the Court gave Leave that he might stand upon his old Recognizance till he could get other Bail upon another Day, and then to plead.

At the Day appointed Mr. *Lisle* pleaded the Indictment and Conviction of Manslaughter at the Assizes, which was removed into the King's Bench, &c.

*&c.* and that at the time of the Conviction he was, and yet is a Clerk, and that he then prayed his Clergy, and offered to read as a Clerk if the Court would have admitted him: And that afterwards, *viz.* on Monday next after *Crastinum Purificationis, &c.* being demanded by the Court, why Judgment should not be given against him, he prayed the Benefit of the Clergy, which being allowed, he read as a Clerk, and was burnt in the Hand, as it appears by the Record, *&c.* and as to the Felony and Murder he pleaded not guilty.

The Appellant replied, that he demanded the Appellee to plead at the Assizes, which he refused, to which Replication the Appellee demurred.

It was objected, that a Conviction for Manslaughter on an Indictment for Murder, and Clergy allowed, could be no Bar to an Appeal, which was either precedent or concurrent to the Indictment: Now here the Appeal was concurrent to the Indictment and precedent to the Conviction; for both being returned of one Sessions, both were of the same Day, because the Assizes or Sessions is but one Day in Law.

So that this is a Case at Common Law, and not within the Statute 3 H. 7. which doth not extend to an Appeal which is precedent, but to that which is subsequent to the Indictment.

But adjudged, that at Common Law, if a Man was indicted for Murder and acquitted, or convicted only for Manslaughter, such Acquittal or Conviction had been a good Plea to bar any Appeal, and so would the Law still have been, if it was not for the Statute 3 H. 7. by which the Acquittal or Conviction is made no good Plea, unless Clergy be had thereon.

By which 'tis plain, that if the Clergy be not had, the Party may bring an Appeal against the Person  
acquitted

acquitted or attainted: And the Statute doth not say when the Appeal shall be brought, either precedent, or concurrent with the Indictment; but generally that he may bring an Appeal, so that it be brought within a Year and a Day, *&c.* and so that Clergy is not had.

Now as to having the Clergy, it hath been adjudged: That praying to have it is having it within the intention and meaning of this Statute, for by praying it, the Prisoner has done all he can; but he cannot pray it, if the Court will not proceed to Judgment, and ask him what he hath to say, why Judgment should not be given; therefore their Default or Delay shall not prejudice him.

Upon the whole matter; a Man is indicted for a Murder, and convicted of Manslaughter, such Conviction with Clergy had, is a good Plea in Bar to an Appeal, either precedent, concurrent or subsequent to the Indictment; and so it is, if the Clergy was not had by the Default of the Court in not asking the Prisoner what he had to say, why Judgment should not be given against him?

*Note,* The ancient Law was, when a Man had Judgment to be hanged in an Appeal; that the Wife and all the Kindred of the Party slain, should draw him to Execution, and this Judge *Gascoigne* said was done in his days.

Thus much for Appeals, the Practice whereof has been almost lost or forgot, till not long since it was revived by a Woman in *Southwark*, who brought an Appeal for the Death of her murdered Husband, against one who had got a Pardon; but she got Judgment against him, the Appeal being tried before Baron *Weston*, and the Person was executed, notwithstanding the Pardon; since which time Appeals have been frequently brought, and almost as often compounded; for they are seldom effectually prosecuted.

Of PARLIAMENTS. Touching the Antiquity, Use, and Power of Parliaments, and the Qualifications of such Gentlemen as are fit to be chosen the Peoples Representatives.

THE Recital of these several Laws before mentioned, for frequent calling of Parliaments, declaring the same to be of such Importance, or Necessity, to the Safety or Well-being of the Nation, invites us to give the Reader some farther Information touching those most Honourable Assemblies.

Of the Name and Antiquity of Parliaments.

THE word PARLIAMENT is French, derived from the three words *Parler la ment*, to speak one's mind, because every Member of that Court should sincerely and discreetly speak his Mind, for the general Good of the Commonwealth; and this Name (saith Coke, 1 *Instit. Fol. 110.*) was used before William the Conqueror, even in the time of Edward the Confessor. But most commonly in the Saxons time, it was called *Michegemote* or *Witenage Mote*, that is, the *Great Mote* [Meeting or Assembly, whence our *Ward-Motes* in London receive their Name to this Day] or the *Wise Mote*, that is, the Assembly of the wise Men and Sages of the Land.

But this word Parliament is used in a double Sense.

1. *Strictly*, as it includes the Legislative Power of England, as when we say—*An Act of Parliament* :

*ment* : And in this Acception it necessarily includes the King, the Lords, and the Commons, each of which have a Negative Voice in making Laws, and without their joint Consent, no new Laws can pass, that be obligatory to the Subject.

(2.) *Vulgarly*, the word is used for the Two Houses, the Lords and Commons, as when we say, the King will call a Parliament, His Majesty has dissolved his Parliament, &c.

The Lords of Parliament are divided into two Sorts, *viz. Spiritual*, that is to say, the Bishops (who sit there in respect of their Baronies) parcel of their Bishopricks, which they hold in their Politick Capacity; and *Temporal*.

The Commons are likewise divided into three Classes or Parts, *viz. Knights* or Representatives of the Shires or Counties; where *Note*, that though the Writ requires two Knights to be chosen, and that they are called Knights; yet there is no Necessity that they should actually have the degree of Knight-hood, provided they be but Gentlemen; for the Statute 23 *Hen. 6. cap. 15.* hath these words, *That Knights of the Shires, for the Parliament hereafter to be chosen, shall be notable Knights of the same Counties for which they shall be chosen; or otherwise such notable Esquires or Gentlemen born of the same Counties, as shall be able to be Knights, and no Man to be such Knight, which standeth in the degree of a Yeoman and under.*

Secondly, Citizens chosen to represent Cities.

Thirdly, Burgeses, that is to say, those that are chosen out of Boroughs.

*Note*, That the difference between a City and a Borough is this, a City is a Borough Incorporate, which is or has been within time of Memory an Episcopal See, or had a Bishop; and this (although the Bishoprick be dissolved, as *Westminster* having heretofore a Bishop, though none now)

now) still remains a City. *Coke 1 Instit. Sect. 164.* Boroughs are Towns Incorporated,) but such as never had any Bishops,

*Of the Three Estates in Parliament.*

There has been a great Debate about the *Three Estates*, some zealously pleading, that the Bishops are one of the *Three Estates* of the Realm, and the Lords Temporal a Second, and the Commons House the Third, and the King over all as a Transcendent by himself: Others as stiffly deny this, and assign the King (as he is the Head of the Common-wealth) to be the first Estate, the Lords as well Spiritual as Temporal jointly to be the Second, and the Commons House the Third.

We shall not presume to undertake a Decision of this Controversy, but in our Opinion the Matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly set down what it is they severally mean by the word *Estate*. Which may be taken, 1. For a Rank, Degree, or Condition of Persons considered by themselves, different in some notable Respects from others wherewith they may be compared. And in this respect, my Lords the Bishops may very properly be said to be an Estate, or one of the Estates of the Realm; for then there will be several Estates, above the Number of three; for so in the House of Commons there may be said to be three Estates, *viz.* Knights, Citizens and Burgeses. And heretofore, in the days of Popery, when there were Twenty-six Abbots and Priors, that held *per Baroniam* too, as well as the Bishops, called to the Parliament, and sat in the Lords House. Whether they being Religious and Monastical Persons, whereas the Bishops were Seculars (no small difference in their account) might not as well claim to be

be a distinct Estate by themselves, as now the Bishops do, may be a question.

But Secondly, When we speak of three Estates in the Constitution of our *English* Government, 'tis most natural to mean and intend such a Poize in the Ballance, or such an Order or State, as hath a Negative Voice in the Legislative Power: For as the King and Commons excluding the Lords, so neither the King and Lords excluding the Commons; much less the Lords and Commons excluding the King, can make any Law; but this glorious Triplicity must be in mutual Conjunction, and then from their united Influences spring our happy Laws. But in this Sense the Lords Spiritual by themselves, have no Pretence to be a distinct Estate: That is, they have by themselves no Negative Voice, (which I conceive the proper Characteristick or Essential Mark of each of the three Estates,) for, suppose a Bill pass the Commons, and being brought into the Lords House, all the Twenty-six Bishops should be against it, and some of the Temporal Lords; yet if the other Temporal Lords be more in Number than the Bishops, and those that side with them, the Bill shall pass as the Act of the whole House; and if his Majesty please to give it his Royal Assent, is undoubted Law. Which demonstrates the Bishops have of themselves no Negative Vote, and consequently are none of the Three Estates of this Realm.

But there are those who deny this Consequence, and affirm if they had a Negative Vote, it would have caused Emulation and Strife between them and the Temporal Lords, therefore when the Order of Bishops were by the Princes of *Christendom* first erected into a Succession of Nobility, they were not divided from the Temporal Noblemen in their great Councils, for that would have made trouble and distraction in the Affairs of Princes; and therefore it

was a very wise Constitution to unite them in one House, where they might hear their mutual Reasons and Debates, and by this means their Resolutions would have the greater Authority.

These two Orders thus united, became two Estates, which together with the Representatives of the Commons make the Third, and this we call a Parliament.

This agrees with all political Constitutions in Europe, which come from the same Gothic Original with England, and are founded upon the same Model, as for Instance :

The Empire of Germany is divided into Three Estates, of which the Emperor is Sovereign, the First of which Estates is composed of the Spiritual Electors, together with the Archbishops, Bishops, Abbots, Priors, &c. The Second is of Temporal Electors, Dukes, Marquesses, &c. and the rest of the Nobility: The Third is of the imperial Cities of which are about threescore, which are represented at the general Diets by such Commissioners as they appoint for themselves.

There are likewise three Estates in France, the Clergy, Nobility and Commons; and out of these three are chosen certain Commissioners for each Estate as often as the King shall require their Meeting; and these, when met, do make that which they call an *Assembly of the Estates*, much like our English Parliament.

Spain is also divided into three Estates, consisting of the Clergy, Nobility, and the Commissioners of the Provinces, and most ancient Cities, and their Meeting is called *Cortex*, (*i. e.*) the chief or great Court.

The same Division is therein Hungary, Sweden, and Denmark; and it seems very strange that the Lords Spiritual and Temporal should make but one Estate

state here, when they make two every where else in all Kingdoms founded upon the same Gothic Constitutions as England is: Therefore it was a great Improvidence in King Car. 1. who in his Message to the Parliament from York, dated 17 June 1642. reckoned himself one of the three Estates, and a Member of the House of Peers, when it seems very plain that he presides over them.

And to make this matter a little more evident we have several Instances in our Parliament-Rolls, who these three Estates are (*viz.*)

After the Funerals of H. 5. were performed, the three Estates did assemble and declared his Son H. 6. then an Infant, to be his Heir and their King.

The Petition tendered to Richard Duke of Gloucester, to accept the Crown, runs in the Name of the three Estates, (*viz.*) by the Lords Spiritual and Temporal and Commons assembled in this Parliament, and by Authority of the same, he was declared King.

So in the Statute 1 Eliz. cap. 3. 'tis expressly said, that the Lords Spiritual and Temporal and Commons in that Parliament assembled, did represent the three Estates of this Realm, and did recognize the Queen to be their lawful Sovereign.

And my Lord Coke in his 4 *Instit.* published by order of the Long Parliament, doth expressly affirm that the Parliament consists of the Head and Body, (*viz.*) That the King is the Head, and that the Body are the three Estates, (*i. e.*) the Lords Spiritual and Temporal and Commons; in which words we have not only the Opinion of that Oracle of the Law; but of that Parliament by whose order his Book was published.

*Touching the Power of the Parliament.*

**T**HE Jurisdiction of this Court (saith Coke 1 *Instit. Sect. 164.*) is so Transcendent, that it maketh, inlargeth, diminisheth, abrogateth, repealeth and reviveth Laws, Statutes, Acts and Ordinances, concerning Matters Ecclesiastical, Civil, Martial, Marine, Capital, Criminal and Common. And 4. *Instit. Fol. 36.* The Power and Jurisdiction of the Parliament for making of Laws in proceeding by Bill, is so transcendent and absolute, as it cannot be confined, either for Causes or Persons within any bounds. Of this Court it is truly said, *If you regard its Original, it is most ancient; if its Dignity, it is most honourable; if its Jurisdiction, it is most capacious.*

Sir Thomas Smith, a great Statesman, and in high Esteem and Place under Queen Elizabeth, in his Treatise, *de Republica Anglorum, lib. 2. cap. 2.* gives this Character of this supream Court. *The most high and absolute Power of the Realm of England consisteth in the Parliament; for the Parliament abrogateth old Laws, maketh new, giveth order for things past, and for things hereafter to be followed; changeth the Rights and Possessions of private Men; legitimateth Bastards, corroborates Religion with civil Sanctions, alters Weights and Measures; PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN; Defines doubtful Rights, where there is no Law already made; appointeth Subsidies, Taxes and Impositions; giveth most free Pardons; restoreth in Blood and Name, &c.*

As for the Power of Parliaments over both Statute and Common Law, take it in the accurate and significant Words of a Parliament, *viz.* the Statute

tute of 25 H. 8. cap. 21. as follows, — *Whereas this Realm recognizing no Superiour under God but the King, hath been and is free from Subjection to any Man's Laws, but only to such as have been devised, made, and ordained within this Realm, for the Wealth thereof, or to such other as the People of this Realm have taken at their free Liberty, by their own Consent, to be used amongst them; and have bound themselves, by long Use and Custom, to the Observance of the same; not to the Observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the accustomed and ancient Laws of this Realm, originally established as Laws of the same by the said Sufferance, Consents and Custom, and none otherwise. It standeth therefore with natural Equity and good Reason, that all and every such Laws Humane, made within this Realm, or induced into this Realm, by the said Sufferance, Consents and Custom, the King, and the Lords Spiritual and Temporal, and Commons, Representing the whole State of the Realm, in the most High Court of Parliament, have full Power and Authority to dispense with these and all other Human Laws of the Realm, and with every one of them, as the Quality of the Persons and Matter shall require. And also the said Laws, and every of them, to abrogate, annul, amplify, or diminish, as to King, Nobles, and Commons of the Realm, present in Parliament, shall seem most meet and convenient for the Wealth of the Realm.*

Thus far that notable Statute, which in Truth is only Declarative, and in Affirmance of the ancient Common Law of England.

The particular Business of Parliaments.

**B**Y what hath been said, you may perceive the Work of an *English* Parliament, is not (as some would have it) only to be Keys to unlock the Peoples Purfes. That is but one part, and perhaps one of the least parts too, of their Office. They are to propose new Laws that are wanting for general Good, and to press the Abrogation of Laws in being, when the Execution of them is prejudicial or dangerous to the Publick. They are to provide for Religion, and the Safety and Honour of the Nation; they have a Power (as you have heard from Sir *Thomas Smith*) to order the Right to the Crown (understand all this with the King's Consent) and they have very frequently undertaken, and actually limited the same, contrary to, and different from the common Line of Succession. Nay, by the Statute of 13 *Eliz. cap. 13.* it is expressly Enacted, *That if any Person shall, in any wise hold and affirm, or maintain, that the Queen, with and by the Parliament of England, is not able to make Laws and Statutes of sufficient Force and Validity, to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof; or that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the Parliament of England, with the Royal Assent, for limiting the Crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient Force and Validity to bind, limit, restrain and govern all Persons, their Rights and Titles, that in any wise may or might claim any Interest or Possibility, in or to the Crown of England, in Possession, Remainder, Inheritance, Succession, or otherwise howsoever, and all other Persons whatsoever, every Person so holding, affirming or maintaining, during the Life of the Queen, shall be adjudged*

*judged a high Traitor, and suffer, and forfeit, as in Cases of High Treason is accustomed, and every Person so holding, affirming or maintaining, after the Decease of our said Sovereign Lady, shall forfeit all his Goods and Chattels.*

Which Clause, and last mentioned Penalty is still in force, and ought to be considered by those who now pretend that an Act of Parliament cannot dispose the Succession.

It has been objected that this Act was made to serve a present Turn, (*i. e.*) to keep the Queen of *Scots*, and her Party from attempting any Thing against Queen *Eliz.* she pretending to be the next Heir to the Crown, and therefore the Act declares, that it shall be Treason, during the Queen's Life, to maintain that she by Authority of Parliament could not limit the Succession of the Crown: And as for the last Clause, which makes it Forfeiture of Goods after her Decease, that was only inserted to preserve her Memory from being defamed with the Crime of Usurpation, which must have been the inevitable consequence of affirming that she and her Parliament could not limit the Succession.

Besides there are those who affirm her best Title was by Act of Parliament, because her Mother's marriage was declared unlawful by the Act 28 of *H. 8.* and if the Marriage was unlawful, the Issue which proceeded from it must be so too.

'Tis likewise objected that this Statute is expired, because in all the Editions of the Statutes since that Time, the Title of it is only mentioned with the Letters following, *EXP.* which signifies *expired.*

But it is plain by the Statute it self that it is not expired, for 'tis declaratory of the former Laws and Statutes made in other Kings Reigns, by which the Succession of the Crown had been settled upon those who were not the next Heirs.

As for Instance: Upon the Deposition of *R. II.* the Parliament voted, that *H. IV.* should be King, and

and thereupon he was placed by the Archbishop of Canterbury, on the Throne, though *Edmond Earl of March* was the next Heir in Right of Blood.

So the Parliament settled the Crown on *H. 7.* and the Heirs male of his Body, before he married the Princess *Elizabeth*, who was the next Heir, by virtue of which Settlement he held it all his Reign.

Now the Parliament *Anno 13 Eliz.* reciting, That some Doubts were made, whether the Laws and Statutes of this Realm remaining then in force, were sufficient for the Safety and Preservation of the Queen; therefore to clear these Doubts, they enacted amongst other things, *That if any Person should hold or affirm, that the Common Laws of this Realm, not altered by Parliament, ought not to direct the Right of the Crown of England, or that the Queen by and with the Authority of Parliament, is not able to limit and bind the Crown, &c. that then, &c.*

Every Government hath a Power to preserve it self, which is never more effectually done, than by preserving the Laws of the Nation, and the Liberties of the People, that they may not be subverted by the next Successor, who is an Enemy to the Established Religion, and who would certainly alter it, by breaking through all Laws which are made to guard it, and by making his Subjects Slaves.

But this Power ought not to be exercised by any Act of Parliament, but in such Cases where the Government is in Danger by such a Successor, if he should get into the Throne.

And though some have affirmed, that by the Law of God and Nature, the Succession of the Crown is inseparably annexed to the next in Blood, certainly those who are of this Opinion, do not consider

consider that the *Laws of God and Nature* do not give a Right or Property to any Man, because all Property is of positive and human Appointment: We claim our Rights and Liberties by the Laws of the Land, 'tis that which tells us what is properly our own, and what is not; so that whatever Right a Man may have to a thing before there is a Law to exclude him from it, 'tis very certain he hath none afterwards.

This was admitted even by the most zealous Advocates against the Bill of Exclusion of the Pretender's Father, who argued that all those who had taken the Oaths of Allegiance, were obliged before God, to defend him against all Attempts whatsoever, until he was disinherited by Act of Parliament, which was a Concession that he might be disinherited; and the Parliament was of the same Opinion, who passed that Bill: And 'tis very remarkable how unanimous they were in that Opinion, for upon the first reading it in the House of Commons, there was not one Man spoke against it but Secretary *Jenkins*, and there being no body to second him as 'tis usual, it was made a Jest, that he ought to second himself.

By what has been said 'tis plain, that the Succession of the Crown hath been directed by Act of Parliament; in which, the Consent of the whole Nation is virtually included by their Representatives, so that it has been directed according to the presumed Will of the People, which is collected from what is most expedient.

'Tis for this Reason, that one Daughter, Sister or Female of the next Degree shall succeed, and not all, if there are more than one; whereas in private Inheritances the Estate is equally to be divided amongst all the Females.

But

But 'tis the Interest, and therefore the presumed Will of the People, that the Kingdom should not be divided, but united under one Prince; because the Strength of the Nation is thereby preserved and the publick Peace better established,

So a Son by the second Venter shall succeed to the Crown, because he is equally of the Blood of his Father, and from whom the Expectation of the People is as great, being descended from him, to whom their Allegiance and Submission was once due; the same reason admits an *Alien-born*, tho' he be a Stranger to us by Birth.

And here it may be proper to give a short Historical Account of the Succession in *England*.

'Tis certain when we had seven Kings here together, as in the *Saxon Reigns*, there was no Hereditary Right.

Afterwards *Alfred*, *Adelstane*, *Edmond* the Martyr, and *Harold*, tho' they were all *Bastards*, were successively Kings here, but by a Law under the Saxon Monarchy, *De ordinatione Regum*, Bastards were prohibited to be chosen.

*Edward* the Confessor had no Hereditary Right, for that was in *Edward* the Son of *Edmond Ironside*, Father to *Edgar Etheling* his Nephew, during his Life, and after his Decease, in that *Edgar* who was Nephew to the Confessor.

*William* the First was a Bastard, and had no Right, but the Submission and Election of the People made him King after he had beaten *Harold*.

His Son *William Rufus* had an elder Brother living, whose Name was *Robert*, when his Brother was King.

And *Henry* the First succeeded, tho' his elder Brother the same *Robert* was still alive.

*King Stephen* was chosen by the Clergy and People, and his Election was confirmed by the Pope, tho'

tho' *Maud* the Daughter of *Henry* the First, had the Right, but she was excluded.

And *Henry* the Second had no Right, because the said *Maud*, who was his Mother, and Daughter and Heir of *Henry* the First, was then living, and never made any formal Resignation of her Right.

King *John* had an elder Brother, *Jeoffry* Earl of *Britany*, then living; which *Jeoffry* had Issue *Arthur* and *Eleanor*, but neither of them succeeded H. 2.

*Hen. 3.* was King, tho' *Eleanor* the Daughter of *Jeoffry*, who was his Father's elder Brother, was then living.

*Henry 4.* upon the Resignation, or rather deposing *Rich. 2.* was made King; 'tis true, he claimed a Right as Heir to *Edmond* (surnamed *Crouchback*) Brother to King *Edward* the First, which *Edmond* was the eldest Son of *Hen. the third*, and put by because he was deformed; all which was false; for if it had been true, it would have given him a good Right, not only against *Richard* the second, but against his own Grandfather *Edward* the third, had he then been living.

But the King himself, after he got on the Throne, would not trust to this pretended Hereditary Title, but thought a Parliamentary Title to be better; and therefore in the eighth Year of his Reign, he procured the Crown to be settled upon himself, and upon all his Sons by name, and to the right Heirs of their Bodies; and this was the first Act of Parliament which was made for entailing the Crown.

'Tis true, *Henry* the Fifth and Sixth were lineally descended from him; but I do not find that they ever claimed by any Hereditary Right, but by virtue of this Entail, under which it was enjoyed for three Discents, for the space of above sixty Years.

As

As to *Henry 6.* tho' his Reign was in very unsettled times, occasioned by the Wars between him and *Edward 4.* who were alternatively Kings in each other's Life-time, yet it may not be unacceptable to the Reader, to give him this short Account of it.

The Duke of *York* and Earl of *Warwick* raised an Army, and took him Prisoner at the Battel of *Northampton*; he was brought from thence to *London*, and a Parliament was called in his Name, but without his Consent; in which he claimed a Right to the Crown: None of King *Henry's* Counsel would plead his Cause, and the Judges could hardly be prevailed on in the House of Lords, to say any thing against the Title of the Duke, and so he was declared Protector.

But the Queen and her Son having renewed the War, they took the Duke of *York* Prisoner at the Battel of *Wakefield*, and there he was killed; but his Son *Edward* Earl of *March*, afterwards *Edw. 4.* returning from beyond Sea with some Forces, and being assisted here by the Earl of *Warwick*, took *Henry 6.* Prisoner at the second Battel of *St. Albans*, and marching to *London*, declared himself King, and then calling a Parliament, he was so declared, and that *Henry 4, 5, and 6.* were Usurpers.

But the Earl of *Warwick*, who had assisted this King against *Henry 6.* and now turning against him after he had reigned ten Years (in all which time *Henry 6.* was kept Prisoner) replaced him once more on the Throne, and then he called a Parliament, which repealed all the Statutes of *Edward 4.* and entailed the Crown upon his Issue, remainder to the Duke of *Clarence*, who was Brother to King *Edward 4.* and yet fought against him.

Afterwards

Afterwards King *Edward 4.* regained the Crown and then *Henry 6.* was murdered, together with his Son Prince *Henry*; and in the next Parliament, he and all his Party were attainted of Treason; and one principal Reason for it was, because the Duke of *York*, who was the Father of *Edward 4.* had been declared Heir to the Crown by Act of Parliament, after *Henry 6.* had been killed by them at the Battel of *Wakefield*, which Act was repealed 1 *Hen. 7.*

After the Death of *Edward 4.* the next in Succession was *Ed. 5.* who claimed by virtue of the aforesaid Entail made in the Reign of *H. 6.* but he was deposed by his Unkle *Richard* Duke of *York*, who was the youngest Brother of *Ed. 4.* pretending that all the Children of his said Brother were Bastards, because of a Precontract made by him with the Lady *Eleanor Boteler*, before he married *Elizabeth* his Queen, and that the Blood of his eldest Brother *George* Duke of *Clarence* was attainted by Act of Parliament, in the Reign of *Ed. 4.* for being in Rebellion, and siding with *Hen. 6.* against his own Brother as aforesaid, so that none of the lineal Blood of *Richard* Duke of *York* now remained uncorrupted besides himself, who was his third Son, and thereupon,

*Richard 3.* was crowned, and immediately afterwards he called a Parliament, in which his Right and Title were recognized and declared to be just and lawful, and grounded upon the ancient Laws of the Realm, and therefore he was declared King, as well by Inheritance as by lawful Election, Consecration and Coronation.

But not trusting to his Title by Inheritance, having bastardized and attainted his Nephews as aforesaid, the Parliament proceeds in this manner, viz. Nevertheless, for that most part of the People are not sufficiently

sufficiently learned in the Laws, and therefore lest his Right should be put in doubt and question, and for that the Parliament is of such Authority, that a Declaration made by the three Estates, may remove these doubts, therefore they declare him King, &c.

From which Act 'tis plain, that Parliament supposed the generality of the People not capable to understand the Laws upon which the King's Title was founded, and therefore the surest way was to rest upon the Judgment of their Representatives in Parliament.

Henry 7. succeeded after Richard 3. was killed at the Battel at *Bosworth*, but he did not claim by the Lady *Elizabeth* his Queen, who was Daughter of *Ed. 4.* for fear he should be a King only by *Curtely*, and so be set aside if he should survive her, who had the Title by Inheritance; but he trusted upon the Parliamentary Title, which he had by Virtue of the Entail made in the Reign of *Hen. 6.* as aforesaid: and before he married the right Heir the Princess *Elizabeth*, his Title was acknowledged by the Parliament, not by Declaration, or Recognition of Right, but in these words, *viz. That the Inheritance of the Crown should rest, remain, and abide to him, and to the Heirs of his Body, lawfully coming perpetually;* which words might be applied thus, *viz. To him,* whether as having a former Right, which was very doubtful, or *To him* who had then the Possession, which could not be denied

And 'tis observable, that after the Death of Queen *Elizabeth*, *Hen. 8.* who was her Son, pretended to no manner of Title during his Father's Life, as being Son and Heir of his Mother, who had the Title by the Course of Succession.

*Henry 8.* succeeded, but it was never declared by what Title, and there was no occasion for it, because

because he was Heir both to his Father and Mother, and the Inheritance was certainly in one of them, for his Father was Heir of the House of *Lancaster*, and his Mother of the House of *York*.

In the twenty-fifth of his Reign, the Marriage between him and *Katherine* his Queen was declared unlawful, and the Crown was settled by Act of Parliament on him and the Heirs of his Body, by *Anna Bullen* his then Queen.

*Anno 35 H. 8.* The Crown was again entailed upon Prince *Edward* and the Heirs of his Body, Remainder upon the Lady *Mary*, and the Lady *Elizabeth*, in like manner; and by the said Act, Power was given to him to dispose it by Letters Patent, or by his last Will, either in Remainder or Reversion, and to such Person or Persons as he should please, after his three Children *Edward*, *Mary* and *Elizabeth* should die without Issue; in which Act 'tis made High Treason to speak or write against this Settlement, or to go about to repeal it: And likewise a Proviso, that if the Lady *Mary* should not keep such Conditions which the King should declare by his Letters Patents, or last Will, that then the Crown should come to the Lady *Elizabeth*; and if she should not observe the same, then it should go to such Person as the King should appoint.

These Acts were confirmed by the Oaths of the People, and it was made High Treason to refuse such Oaths, and several Persons were attainted in his Reign, by several Acts of Parliament, for opposing such Limitations of the Crown, and the Authority of the Laws by which they were made.

*Edward 6.* succeeded, who had both an Hereditary and Parliamentary Right.

But Queen *Mary* his Sister and Successor had no Hereditary Right, because she was declared illegitimate

itimate by Act of Parliament, Anno 25 H. 8. so that she must succeed by Virtue of the Entail made Anno 35. H. 8.

'Tis true, in the first Year of her Reign she took off the Act by which she was declared illegitimate; but 'tis as true that the Act 35 H. 8. by which the Crown was entailed on her, was not actually repealed in all her Reign, tho' by another Act of Parliament, made to confirm the Marriage Articles between her and King Philip, the Crown was again entailed; but she dying without Issue,

Queen Elizabeth her Sister succeeded, and her Title was apparently by the Act of Entail made in the 35 Year of her Father's Reign; for she never got her Mother's Marriage to be declared lawful.

Besides she was born whilst Katherine her Father's first Wife was living, and tho' the Parliament in the first Year of her Reign, declared her *rightly, lawfully and lineally descended of the Royal Blood*, that must be intended, of a *lawful and lineal Descent* according to the aforesaid Acts of Settlement, for it could not be a *lawful and lineal Descent* at Common Law.

It was pursuant to these Precedents in Fact, that in the 13th Year of her Reign, that Act of Parliament was made, which hath been before mentioned, and by which the Power of Parliaments is declared to limit the Succession of the Crown. But she dying without Issue,

King James succeeded, who had a certain Title, tho' 'tis not mentioned in the Act of Recognition; whether it was from H. 7. alone, or from Elizabeth his Wife, or from both, the Act only declares, that he was lawfully descended from Margaret the eldest Daughter of H. 7. and Queen Elizabeth his Wife, the eldest Daughter of Edw. 4.

and

and therefore they were bound, both by the Laws of God and Man, to recognize him sole Heir of the Blood Royal.

Now by the Laws of God and Man must be understood, such Laws which God impowers the King to make; for there is no *Divine Right of Succession to Kingdoms* appointed by the Laws of God, any more than to other Inheritances whatsoever. Nor was any Succession by Right of Blood alone ever established by any *positive Law of Man*; or settled by any constant or uninterrupted Custom.

So that notwithstanding this Act of Recognition, King James's Title may be said to be derived from the Act of Settlement, made on King Henry the 7th. from whom he was lineally descended; and tho' his Pedigree be also derived from Queen Elizabeth, that was only to shew, that he had every way a good Title; for tho' she was eldest Daughter to Ed. 4. yet she had a Title by the before mentioned Acts of Settlement, in the 39th Year of H. 6. and 1 Ed. 4. by which the Crown was vested in Richard Duke of York, who was the Father of Ed. 4. and Grandfather of the said Elizabeth, but killed by H. 6. at the Battel of Wakefield aforesaid; by which last Act, all the *Henries* of the House of Lancaster were declared *Kings de facto*, and not *de jure*, there being never any such Distinction made before; for whenever a King was crowned and acknowledged by the Parliament, he was esteemed King in point of Right.

'Tis true, that ever since the Reign of Ed. 1. the Crown has been claimed by an Hereditary Right; but it is as true that it hath been enjoyed by Princes, who had not just pretence to such Title; for the Parliament, notwithstanding such Claims, have declared those to be Kings whom they knew had no such Right, and they have al-

ways been taken to be lawful Kings, because their Laws are binding to this Day, tho' never confirmed by any of their Successors, who had a Title by any such Right: So that all the subsequent Acts for entailing the Crown, are so many, plain and evident Recognitions, what the fundamental Constitution of the English Government was, in that great point of Succession, &c.

**A**ND now, to divert my Reader a little with what Provision the Parliament of England hath made, for the settling the Crown upon the Head of a Protestant Prince, whereby the Rights and Liberties of Englishmen may be defended from the Usurpations of Tyranny and Arbitrary Power, I shall insert the Declaration, &c. presented to Their Majesties by the Lords Spiritual and Temporal, and Commons, assembled in Parliament, upon their Accession to the Throne.

**W**Hereas the late King James the Second, by the Assistance of divers evil Counsellors, Judges and Ministers, employed by him, did endeavour to subvert and extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom; by assuming and exercising a Power of dispensing with, and suspending of Laws, and the Execution of Laws, without Consent of Parliament: By Committing and Prosecuting divers worthy Prelates, for humbly petitioning to be excused from concurring to the said assumed Power; by issuing and causing to be executed, a Commission under the Great Seal, for erecting a Court, called, The Court of Commissioners for Ecclesiastical Causes. By levying Money for and to the Use of the Crown by pretence of Prerogative, for other time, and in other manner than the same was granted by Parliament. By raising and keeping a Standing Army within this Kingdom in time of Peace, without

without Consent of Parliament, and quartering Soldiers contrary to Law. By causing several good Subjects, being Protestants, to be disarmed at the same time, when Papists were both armed and employed, contrary to Law. By violating the Freedom of Election of Members to serve in Parliament. By Prosecutions in the Court of King's-Bench, for Matters and Causes cognizable only in Parliament; and by divers other Arbitrary Illegal Courses.

And whereas of late Years, partial, corrupt and unqualified Persons, have been returned and served on Juries in Trials, and particularly divers Jurors in Trials for High Treason, which were not Freeholders. And excessive Bail hath been required of Persons committed in Criminal Cases, to elude the Benefit of the Laws made for the Liberty of the Subjects: And excessive Fines have been imposed; and illegal and cruel Punishments inflicted: And several Grants and Promises made of Fines and Forfeitures, before any Conviction or Judgment against the Persons upon whom the same were to be levied. All which are utterly and directly contrary to the known Laws, and Statutes, and Freedom of this Realm. And whereas the said late King James the Second, having Abdicated the Government, and the Throne being thereby vacant, His Highness the Prince of Orange (whom it hath pleased Almighty God to make the Glorious Instrument of delivering this Kingdom from Popery and Arbitrary Power) did (by the Advice of the Lords Spiritual and Temporal, and divers principal Persons of the Commons) cause Letters to be written to the Lords Spiritual and Temporal, being Protestants; and other Letters to the several Counties, Cities, Universities, Boroughs, and Cinque-Ports, for the choosing of such Persons to represent them, as were of right to be sent to Parliament, to meet and sit at Westminster, upon the two and twentieth day of January, in the year one thousand six hundred eighty and eight, in order to

such an Establishment, as that their Religion, Laws and Liberties, might not again be in danger of being subverted: Upon which Letters Elections having been accordingly made.

And therefore the said Lords Spiritual and Temporal, and Commons, pursuant to their respective Letters and Elections, being now assembled in a full and free Representative of this Nation, taking into their most serious Consideration, the best means for attaining the Ends aforesaid; Do, in the first place (as their Ancestors in like Case have usually done) for the Vindicating and Asserting their ancient Rights and Liberties, Declare, that the pretended Power of suspending of Laws, or the execution of Laws by Regal Authority, without Consent of Parliament, is illegal. That the pretended Power of dispensing with Laws, or the execution of Laws by Regal Authority, as it hath been assumed and exercised of late, is illegal. That the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other Commissions and Courts of like nature, are illegal and pernicious. That levying Money for or to the Use of the Crown, by pretence of Prerogative, without Grant of Parliament, for longer time, or in other manner, than the same is, or shall be granted, is illegal. That it is the Right of the Subjects to petition the King, and all Commitments and Prosecutions for such Petitioning, are illegal. That the raising or keeping a Standing Army within this Kingdom in time of Peace, unless it be with consent of Parliament, is against Law. That the Subjects which are Protestants, may have Arms for their Defence, suitable to their Conditions, and as allowed by Law. That Election of Members of Parliament ought to be free. That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament. That excessive Bail ought not to be required, nor excessive Fines imposed, nor cruel and unusual Punishments

ments inflicted. That Jurors ought to be duly impanelled and returned, and Jurors which pass upon Men in Trials for High Treason, ought to be Free-holders. That all Grants and Promises of Fines and Forfeitures of particular Persons, before convicted, are illegal and void. And that for Redress of all Grievances, and for the Amending, Strengthening, and Preserving of the Laws, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Liberties; And that no Declarations, Judgments, Doings or Proceedings, to the Prejudice of the People in any of the said Premises, ought in any wise to be drawn hereafter into Consequence or Example. To which Demand of their Right, they are particularly encouraged by the Declaration of His Highness the Prince of Orange, as being the only means for obtaining a full Redress and Remedy therein.

Having therefore an intire Confidence, that his said Highness the Prince of Orange will perfect the Deliverance so far advanced by him, and will still preserve them from the Violation of their Rights, which they have here asserted, and from all other Attempts upon their Religion, Rights and Liberties, the said Lords Spiritual and Temporal and Commons assembled at Westminster, do Resolve, That William and Mary, Prince and Princess of Orange, be, and be declared King and Queen of England, France and Ireland, and the Dominions thereunto belonging, to hold the Crown and Dignity of the said Kingdoms and Dominions, to them the said Prince and Princess, during their Lives, and the Life of the Survivor of them: And that the sole and full Exercise of the Regal Power be only in, and exercised by the said Prince of Orange, in the Name of the said Prince and Princess, during their joint Lives: And after their Deceases, the said Crown and Royal Dignity of the said Kingdoms and Dominions, to be to the Heirs

of the Body of the said Princess: And for default of such Issue, to the Princess Ann of Denmark, and the Heirs of her Body: And for default of such Issue, to the Heirs of the Body of the said Prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess, to accept the same accordingly. And that the Oaths hereafter mentioned, be taken by all Persons of whom the Oath of Allegiance and Supremacy might be required by Law, instead of them: And that the said Oaths of Allegiance and Supremacy be abrogated.

**I** A. B. Do sincerely Promise and Swear, That I will be Faithful, and bear true Allegiance to their Majesties King WILLIAM and Queen MARY. So help me God.

**I** A. B. Do Swear, That I do from my Heart abhor, detest, and abjure, as Impious and Heretical, this damnable Doctrine and Position, that Princes Excommunicated or Deprived by the Pope, or any Authority of the See of Rome, may be Deposed or Murthered by their Subjects, or any other whatsoever.

And I do Declare, That no Foreign Prince, Person, Prelate, State or Potentate, hath, or ought to have, any Jurisdiction, Power, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm. So help me God.

But nothing is more properly the Business of Parliaments, then to redress Grievances, to take notice of Monopolies and Oppressions, to curb the Exorbitances of great Favourites, and pernicious Ministers of State, to punish such mighty Delinquents, who are protected by the King, that they look upon themselves too big for the ordinary reach of Justice in the Courts of Common Law,

Law, to inspect the conduct of such who are intrusted with the Administration of Justice, and interpret the Laws to the prejudice of the People, and those who dispose the publick Treasure of the Nation.

All Crimes of these and the like kinds are publick Nufances, and wound the Body Politick in a vital Part, and can scarce be found out, or when found, can scarce be redressed, but in this great Assembly, before whom the most insolent Criminals tremble; and it has been observed, that they seldom prosecute any such Persons, but sooner or later they convict them, tho' they are in the greatest Favour of the King.

As for Instance, *Ed. 2.* doated upon his Favourite *Peirce Gaveston*, (a *Frenchman*) he wasted the King's Treasures, he had Honours conferr'd on him, and Riches, but without any Merit; he affronted the Nobility, presuming upon the Favour and Indulgence of the King. The Parliament in the beginning of his Reign made their Complaint, and thereupon he was banished into *Ireland*; the King afterwards calls him home, and marries him to the Earl of *Gloucester's* Sister; the Lords complain again so effectually, that the King not only consents to his second Banishment, but that if ever he returned, or were found in the Kingdom, he should be held and proceeded against as an Enemy to the State. Yet back he comes, and is received once more by the King as an Angel, who carries him with him into the North, and hearing the Lords were in Arms to bring the said *Gaveston* to Justice, plants him for safety in *Scarborough Castle*, which being taken, his Head was chopped off.

In King *Richard* the Second's time, most of the Judges of *England*, to gratifie certain corrupt and per-

pernicious Favourites about the King, being sent for to *Nottingham*, were, by Perswasions and Menaces, prevailed with to give false and illegal Resolutions to Questions proposed by them, declaring certain Matters to be Treason, which in truth were not so; for which, in the next Parliament, they were called to account, and attainted; and Sir *Robert Tresilian*, Lord Chief Justice of *England*, was drawn from the Tower through *London* to *Tyburn*, and there Hanged: As likewise was *Blake* one of the King's Council, and *Uske* the Under-Sheriff of *Middlesex*, who was to pack a Jury to serve the present Turn, against certain innocent Lords, and others, whom they intended to have had taken off; and five more of the Judges were banish'd, and their Lands and Goods forfeited. And the Archbishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, three of the King's Evil Counsellors, were forc'd to fly, and died miserable Fugitives in Foreign Parts.

In the beginning of King *Henry* the Eighth's Reign, Sir *Richard Empson*, Kt. *Edmund Dudley* one of the Barons of the Exchequer, having, by colour of an Act of Parliament to try People for several Offences without Juries, committed great Oppressions, were proceeded against in Parliament, and lost their Heads.

In the nineteenth Year of the Reign of King *James*, at a Parliament holden at *Westminster*, there were shewn two great Examples of Justice; which, for future Terror, are not unfit to be here related; one upon Sir *Giles Mompesson*, a Gentleman otherwise of good Parts; but for practising sundry Abuses, in erecting and setting up new Inns and Ale-houses, and exacting great Sums of Money of People, by pretence of Letters Patents granted

granted to him for that purpose, was sentenced to be degraded from his Knighthood, and disabled to bear any Office in the Common-wealth, though he avoided the Execution by flying the Land: But upon Sir *Francis Mitchel*, a Justice of the Peace of *Middlesex*, and one of the chief Agents, the Sentence of Degradation was executed, and he made to ride with his Face to the Horse-tail through the City of *London*. The other Example was, of Sir *Francis Bacon*, Viscount *St. Albans*, Lord Chancellor of *England*, who for Bribery was put from his Place, and committed to the Tower.

In King *Charles* the First's time, most of the Judges that had given their Opinions contrary to Law in the case of Ship-Money, were call'd to account, and forced to fly for the same. And in nineteenth Year of King *Charles* the Second, the Earl of *Clarendon*, Lord Chancellor of *England*, being questioned in Parliament, and retiring thereupon beyond the Seas, was by a special Act banished and disabled. In a word, it was well and wisely said of that excellent Statesman, Sir *William Cecil*, Lord *Burleigh*, and High Treasurer of *England*, That he knew not, what an Act of Parliament might not do; which Apothegm was approved by King *James* and alledged (as I remember) in one of his published Speeches.

And as the Jurisdiction of this Court is so transcendent, so the Rules and Methods of Proceedings there, are different from those of other Courts. For saith *Coke* 1 *Instit.* Fol. 15. As every Court of Justice hath Laws and Customs for its Direction, some by the Common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs, &c. So the High Court of Parliament, subsists by its own peculiar Laws and Customs. It is, *Lex & Consuetudo Parliamenti*, the Law and Custom of Parliament, that all

weighty

weighty Matters in any Parliament moved concerning the Peers, and Commons in Parliament assembled, ought to be determined, adjudged and discussed by the Course of the Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more Inferior Courts. Which was so declared to be, *Secundum Legem & consuetudinem Parliamenti*, according to the Law and Custom of Parliament, concerning Peers of this Realm, by the King, and all the Lords Spiritual and Temporal; and the like is for the Commons, for any thing moved or done in the House of Commons: And the rather, for that by another Law and Custom of Parliament, the King cannot take notice of any thing said or done in the House of Commons, but by the Report of the House: And every Member of the Parliament hath a Judicial place, and can be no Witness. And this is the Reason that Judges ought not to give any Opinion of a Matter of Parliament, because it is not to be decided by Common Law, but *Secundum Legem & consuetudinem Parliamenti*, according to the Law and Custom of Parliament: and so the Judges in diverse Parliaments have confessed. And some hold, that every Offence committed in any Court punishable by that Court, must be punished (proceeding Criminally) in the same Court, or in some higher, and not any Inferior Court, and the Court of Parliament hath no higher. Thus Coke.

In the Reign of King Charles the Second, great Complaints was made, about the House of Commons sending for some Persons into Custody by their Serjeant at Arms; but certainly they did no more therein, than what their Predecessors have often done; every Court must be supposed armed with a Power to defend it self from Affronts and Insolencies: In all Ages, when the Houses has appointed particular Committees, hath it not been usual to order, that they shall be impower'd to send for Papers, Persons, and Records? But to bring Men

to a sober Consideration of their Duty and Danger, I shall give a few Instances, besides those before mentioned, of what the House of Commons hath done in former Ages.

1. Anno 20 Jacobi, Dr. Harris, Minister of Bletchingly in Surrey, for mis-behaving himself by Preaching and otherwise, about Election of Members of Parliament, upon Complaint, was called to the Bar of the House of Commons, and there, as a Delinquent on his Knees, had Judgment to confess his Fault there, and in the Country, in the Pulpit of his Parish Church, on Sunday before Sermon.

2. Anno 21 Jacobi, Ingrey Under Sheriff of Cambridgehire, for refusing the Poll, upon the Promise of Sir Thomas Steward to defend him therein, kneeling at the Bar, received his Judgment to stand committed to the Serjeant at Arms, and to make Submission at the Bar, and acknowledge his Offence there; and to make farther Submission openly at the Quarter-Sessions, and therealso to acknowledge his Fault.

3. Anno 20 Jacobi, the Mayor of Arundel, for mis-behaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but Packing a number of Electors, was sent for by a Warrant, and after ordered to pay all the Charge, and the House appointed certain Persons to adjust the Charges.

4. And 3 Car. 1. Sir William Wray, and others, Deputy-Lieutenants of Cornwall, for assuming to themselves a Power to make whom they pleas'd Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country, Letters for the Trained-Bands to appear at the Day of Election, and menacing the Country, under the Title of *His Majesty's Pleasure*, had Judgment given upon them, 1. To be committed to the Tower. 2. To make Recognition of their Offence,

at the Bar of the House upon their Knees, which was done. 3. To make a Recognition and Submission at the Assizes in *Cornwal*, in a Form drawn by a Committee.

But most remarkable are the Proceedings against Dr. *Manwaring* in the Parliament, Anno 1628. This Man was then Vicar of *St. Giles in the Fields*, his Crime was for preaching two Sermons, in which he asserted, *That the King might impose Taxes and Subsidies on the People, without Consent of Parliament, and that they were bound to pay Taxes under pain of Damnation, which if they refused to do, they were guilty of Disloyalty and Rebellion.*

Dr. *Heylin*, tho' he was a very zealous Advocate for absolute Monarchy, and an Enemy to the Power and Privileges of Parliaments; yet he made but a very slender Excuse for this Vicar; for he tells us, he spoke no more in the Pulpit, then Serjeant *Hele* did in the Parliament, in the 43 Year of the Queen, who affirmed, *That he wondered the House stood, either at granting a Subsidy, or at a time of Payment, since all we have is her Majesty's, and she may lawfully at her Pleasure take it from us, and that she had as much Right to all our Lands and Goods, as to any Revenue of the Crown, and that he had Precedents to prove it:* For which words he tells us the Serjeant was never questioned, but that poor *Manwaring* was sentenced to his absolute Ruin, if the King had not been more merciful to him than the Commons.

But I can tell him when the like Doctrine was preached before that time, I mean before the Reign of *Car. 1.* and tho' the Preacher was not punished, yet his Sermon was censured by the Parliament; and this was Dr. *Harsnett* Bishop of *Chichester*, about the middle of King *James's* Reign, who preaching upon this Text, (*i. e.*) *Render unto Cæsar,*

*far, the things which are Cæsar's;* he affirmed, *That all the Subjects Goods and Money were the King's, and therefore were not to be denied him, if he demanded them for the publick Use.*

The Parliament ordered this Sermon to be burnt by the Common Hangman; but the Doctrine was so pleasing to the Court, that this Bishop was afterwards translated to *Norwich*, and from thence to the Archbishoprick of *York*.

So likewise this *Manwaring*, tho' he was sentenced by the Parliament (as you may see by what follows) yet after it was dissolved, he was first presented by the King to a rich Benefice in *Essex*, and afterwards made Bishop of *St. David's*.

But having before these Preferments been charged with preaching and publishing this slavish Doctrine it was refer'd to a Committee to enquire into the same, who brought in their Report, which was delivered to the House with this Speech.

Mr. Speaker,

I AM to deliver from the Sub-Committee, a Charge against Mr. *Manwaring*, a Preacher and Doctor of Divinity, but a Man so criminous, that he hath turned his Titles into Accusations; for the Better they are, the Worse is he, that hath dishonoured them. Here is a great Charge that lies upon him, it is great it in self, and great because it hath many great Charges in it: *Serpens qui serpentem devorat, fit draco;* his Charge having digested many Charges into it, is become a Monster of Charges. The main and great one is this, a Plot and Policy to alter and subvert the Frame and Fabrick of this State and Common-wealth. This is the great one, and it hath others in it that gains it more Greatness: For to this End he labours to infuse into the Conscience of His Majesty, the Perswasion of a Power not bounding it self with Laws, which King *James*

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of

of famous Memory, calls in his Speech in Parliament, 1619. Tyranny, yea, Tyranny accompanied with Perjury.

2. He endeavours to perswade the Consciences of the Subjects, that they are bound to obey illegal Commands; yea, he damns them for not obeying them.

3. He robs the Subjects of the Property of their Goods.

4. He brands them that will not lose this Property, with most scandalous and odious Titles, to make them hateful both to Prince and People, so to set a Divisi. on between the Heads and Members, and between the Members themselves.

5. To the same End (not much unlike to Faux and his Fellows) he seeks to blow up Parliaments and Parliamentary Power. These five being duly viewed, will appear to be so many Charges, and withal they make up the main and great Charge, a mischievous Plot to alter and subvert the Frame and Government of this State and Common-wealth. And now that you may be sure that Mr. Manwaring, though he leave us no Propriety in our Goods, ye he hath an absolute Propriety in his Charge; Audite ipsam Belluam, hear Mr. Manwaring by his own words, making up his own Charges.

Here he produced the Books, particularly insisting on p. 19, 29 and 30. in the first Sermon, p. 35, 36 and 48. in the second Sermon; all which passages he heightened with much Eloquence and Acrimony, thus concluding his Speech, I have shewed you an evil Tree, that bringeth forth evil Fruit; and now it rests with you to determine, whether the following Sentence shall follow, Cut it down, and cast it into the Fire.

Four days after the Parliament proceeded to his Censure, consisting of eight Particulars, it being ordered by the House of Lords against him, as followeth.

1. To

1. To be imprisoned during the Pleasure of the House.

2. To be fined a thousand Pounds.

3. To make his Submission at the Bar in this House, and in the House of Commons, at the Bar there, in verbis conceptis, a set Form of words framed by a Committee of this House.

4. To be suspended from his Ministerial Function three Years, and in the mean time a sufficient Preaching-man to be provided out of the Profits of his Living, and this to be left to be performed by the Ecclesiastical Court.

5. To be disabled for ever hereafter from Preaching at Court.

6. To be for ever disabled of having any Ecclesiastical Dignity in the Church of England.

7. To be incapable of any Secular Office or Preferment.

8. That his Books are worthy to burned, and his Majesty to be moved, that it may be so in London, and both the Universities.

And accordingly he made his Submission at the Bar of both Houses on his Knees, on the 23d of June following, with these outward Expressions of Sorrow, as follow,

I do here, in all Sorrow of Heart, and true Repentance, acknowledge those many Errors and Indiscretions which I have committed in Preaching and Publishing the two Sermons of mine, which I called Religion and Allegiance, and my great Fault in falling upon this Theme again, and handling the same rashly, scandalously and unadvisedly, in my own Parish-Church in St. Giles's in the Fields, the fourth of May last past. I humbly acknowledge these three Sermons to have been full of dangerous Passages and Inferences, and scandalous Aspersions in most part of them. And I do

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humbly

*humbly acknowledge the just Proceedings of this Honourable House against me, and the just Sentence and Judgment passed upon me for my great Offence. And I do, from the bottom of my Heart, crave Pardon of God, the King, and this Honourable House, and the Commonwealth in general, and those worthy Persons adjudged to be reflected upon by me in particular, for these great Offences and Crimes.*

But the *Vicar* of *St. Giles's* was not the only Man that preached this Doctrine; for the Year before, one *Dr. Sibthorpe*, preaching an *Affize-Sermon* at *Northampton*, on *Rom. 13. 7.* affirmed, *That the King alone made the Laws, and that nothing could excuse from the active Obedience to his Commands, but what is against the Law of God and Nature; and that the King had power to lay Poll-Money upon his Subjects Heads.*

This Sermon was printed with the Title of *Apostolical Obedience*; but *Archbishop Abbot* refused to license it, because this Doctrine was contrary to Law; for which the Court did not thank him, for it was supposed one of the chief Causes of his Suspension; but it was licensed by *Bishop Laud*, after some Passages concerning the Prophanation of the Sabbath, and Toleration of Popery were expunged; but this Man, tho' he lived many Years afterwards, and even to the King's Return, was never preferr'd any higher than to the Parsonage of *Brackly*, and another Living in the County of *Northampton*.

The Truth is, 'tis the High Court of Parliament, that only can hinder the Subject from being given up as a Prey to the Arbitrary Pleasure, not only of the Prince, if he should attempt it, but (which is ten times worse) to the unreasonable Passions and Lusts of Favourites, chief Ministers, and Women; when otherwise instead of a Monarch (who, as some-

sometimes it may happen, shall govern but in Name) we might be ruled like the ancient *French*, by an insolent *Mayor of the Palace* who will be sure to mind the private Interest of himself and Family, more than that of the Prince or the publick Good: Or like the *Turkish* Empire under a weak Grand Seignior, by the prevailing Concubine of the Seraglio, who is perhaps her self managed by no other Dictates, than that of her chief Eunuch, or She-Slave It is strange therefore to observe the impotent Ambition of some Men, (and such as, with shame let us speak it, boast themselves *Englishmen* too) who (provided they may trample upon, and domineer over their Inferiors) care not how much their Superiors do the like over them. Their Souls (like most insolent Mens) being mean enough to submit thereunto; or, who can enough deplore and abhor the Ignorance and Stupidity of some lazy insignificant Gentlemen, who care not how things go, provided they may enjoy their Hawks, Hounds, and Bowling-Green Meetings; whilst not only for Divinity, but Politicks too, they are govern'd by their more impertinent Chaplain, or the Parson of their Parish? Now nothing is more obvious than the Designs of some idle, coverous, Sycophant Clergymen, who, like Ivy, tho' it cannot grow without the support of the Oak, and yet will destroy it at last, do in private Parlours over the the Glass, whilst Healths go round, as well as in their Pulpits over their Cushions, set up Absolute Monarchy to be *Jure Divino*, declaiming against the unreasonable Stubbornness of any Parliament that will not give away the Peoples Money, and submit themselves to be fleec'd, as often as the prime Minister or Favourite think fit: They cry up the Prince like an Angel, so long as he will be their Executioner, to whip, imprison or hang all

that will not truckle to their own Pride and Avarice; or refuse to give up their Souls once again to be managed by an implicit Faith, whereby in the mean while these *Huffish Facks* might not be troubled with those uneasie Talks of *Studying, Preaching, &c.* but may have nothing else to do, but live at ease, keep their Coach and Horses, with a silly Curate to do all the Drudgery; whilst they themselves are making Addresses above, by flattering and informing at some great Nobleman's or Bishop's Table, and railing against the Whigs and Fanaticks, and speaking a good word for Popery by the By: Or else, if their Parts reach so high, by some *Socinian* Pamphlet, or Sermon against the Government established by Law, they teach, that Men have no Property either in their Lives or Goods, but only during the Prince's Pleasure, &c. If there be not such a Parcel of Things as these that call themselves Divines, then no Body is concerned in this Character; but if there be, they are the worst of Men, and ought not only to be expos'd, but severely punished.

Therefore since at present we live under so happy a Government, where being securely landed our selves, we behold the Shipwreck of our Neighbours; it is therefore the indispensable Interest and Duty of all true Englishmen, to maintain these Privileges, conveyed from their Ancestors thro' so many Generations, inviolable, upon which all our (Earthly, and in a great measure our Spiritual) Happiness, Safety, and Well-being depends. Nor can any Man in his Senses but acknowledge, that the only way to attain that end, is to look well to the Means, and that is, by taking due care what Persons they choose for their Representatives, with whom they must trust their Estates, Lives and Liberties.

Now

Now this Government of a Prince, by and with Parliaments, whenever the Condition and Necessities of the State require them, however according to its primitive Institution, it was the best of all others; yet as well in that, as in Christianity itself, there have been found out ways of Corruption, and that is, when either they sit too long, or too seldom, or are too frequently dissolved; too frequent Dissolutions being no less dangerous to the Subject, than too long Sessions. Nevertheless it may be in the Electors power to avoid the Inconveniencies of both, and that is by making a good Choice.

Whereas if the Country People will sell all that they have for a little Roast-Beef, a Glas of Sack, and a Pot of Ale, choosing him that will give them most Drink to-day, though they know him to be a Person, who will sell both their Religion, Liberties and Fortunes to-morrow, then frequent Dissolutions will of necessity ruin us, and utterly debauch this excellent Constitution; for the honest Country-Gentleman, designing no other private Advantage, but the true Service of the King and his Country, hath no reason, nor is he able, once in half a Year, to spend 4 or 500 *l.* only to purchase a place full of Labour, Charge, Trouble and Danger, without any Profit to himself, only to serve those who put him to such an unkind Expence. And when honest Loyal Gentlemen are thus discouraged, if this sottish Humour amongst the Electors continue, the Papists, and their Faction, or necessitous Persons of prostituted Consciences, will carry their Votes; for they can afford to buy them at large Rates, being resolved to repay themselves, though with the Ruin of the Nation.

This is no vain Surmize, or idle Speculation, but the very truth of the Case; and the meanest Countryman that has Eyes in his Head, and will use them,

them, cannot but see it: For did you ever know a Coachman, or Groom, buy his Place, unless he designed to rob his Master's Bin? Therefore whoever you put to charge in your Elections, blame him not, if he makes Money of what he bought, and lays out his Vote in the House, not for your Good, and that of the Publick, but that way as will best please the Ministers of State, that so he himself may get a good Place, or Preferment, or Title of Honour by the Bargain. I say, though he himself be a base Wretch for so doing, yet you cannot blame him, since you did not lend him your Trust, but sold it him; and what a Man hath purchased with his own Money, he may lawfully sell again.

Therefore that Man who does willfully give his Voice for one disaffected, does his endeavour to ruin both his Country, and himself, and his Posterity, and to be as bad, or worse, than the Person he chooses; and if the greater part of the House happen to be wiser or honest, it is no thanks to him; he did as much as he could to debauch it; and therefore for his part, if none else were concerned with him, it were no matter if he were forthwith made a *Slave*, and his Children *Perpetual Vassals*.

The before mentioned old Lord Treasurer *Burleigh*, (who is thought to have been the greatest Statesman that ever this Nation bred) did frequently deliver as a Maxim, or rather as a Prophecy, *That England can hardly be ruined, unless it be by her own Parliament*; undoubtedly foreseeing that other Oppressions, as being wrought by Violence, might perhaps by Violence be in time shaken off again; whereas, when in a Parliamentary way we are undone by a Law, that can never be revers'd, but by a down-right Rebellion, because the Parties advantaged

taged by that Law, will never agree to the repealing of it; and a Rebellion is both so dangerous, and of so black a Character, as Men either rich or conscientious, will not engage therein; and therefore no publick Mischief is so irrecoverable, as that which is grown into a Law; and nothing, you know, can become so, but what is imposed upon you by Parliament. Such is the happy Frame of your Government, so prudently and strongly have your Ancestors secured Property and Liberty (rescued by Inches out of the Hands of incroaching Violence) that you cannot be enslaved, but with Chains of your own making; for as you are never undone, till you are undone by Law, so you can never be undone by a Law, till you chuse the undoing Legislators; and may not your Enemies add *Scorn* to their *Cruelty*, and pretend Justice for both, when they can plead they had never trampled on your Heads, had you not laid them on the Ground?

From what has been said, it evidently appears, of what vast Importance it is at all times, whenever his Majesty shall be pleased to issue out his Writs for a Parliament, to chuse (as much as in us lies) a good House of Commons, as we tender our Religion, Liberties, Estates and Posterity; upon our well or ill chusing, depends our well or ill being; 'tis here as in Marriage or War, there is no room for second Errors; one Act may ruin a Nation beyond Retrieve.

Besides, they whom you chuse, will represent the Qualities as well as the Persons, and if you send up a false Glass, it will represent you with an ugly Face; you have hitherto had the Repute of an ancient and grave People, but if you chuse raw Saplings, green Heads, unexperienced Children, the World will judge of you, as they once did of the

The *Grecians*, that you were either always Children, or are grown twice so; you have long been a famous religious Protestant Nation, but if you chuse debauched swearing Atheists, Men of no Religion, or such as are meer Formalists, or inclinable to Popery, what can the World think, but that the Nation has lost its Sense of Religion, and is contented to be led back into the *Egyptian* Darknes of *Romish* Fopperies? You have formerly had the Character of a sober temperate Nation, but if you chuse Drunkards for your Trustees, or give your Voices for those that gorge you most with Liquor; what can be supposed, but that you are already drunk with Folly, and just reeling into Slavery?

*Some Directions concerning the Choice of Members to serve in Parliament, and the Qualifications that render a Gentleman fit or unfit, worthy or undeserving of your Voices for so great a Trust.*

1. **A** Void all such as hold any Office of considerable Value during Pleasure, they being subject to be over-awed. For altho' a Man wish well to his Country, and in the betraying thereof, knows at the long Run he mischiefs and enslaves his Posterity, if not himself, yet the narrowness of Mens Minds is such, as makes them more tenderly apprehend a small present Damage, than a far greater hereafter. Such Men must of necessity be under a great Temptation and Distraction, when their Consciences and Interest look different ways. For to say truth, such an Office is but a foster word for a Pension: Therefore since these Men know before-hand, the Inconveniences that attend the Trust of a Member of Parliament faithfully discharged

charged, 'tis very suspicious and reflecting upon their Honesty, if any such stand for it: And I think we are bound in Charity, nor can we do them a greater Courtesie, than to answer their Petition in the Lord's Prayer ——— *Not to lead them into Temptation.*

2. Suspect all those (especially if they be Men of ill Repute) who in their Profession, or near Relations, have Dependency upon the Court. For though to be the King's Servant is no Bar from being Parliament-man, or from serving his Country honestly in that Station, and no doubt several of them have, at divers times, well discharged the same; yet frequently such Persons (unworthily) guessing at their Prince by themselves, are apt to vote right or wrong, as they imagine will most please the Prerogative Party; and 'tis an hard matter for a Courtier to please that great Statesman and Minister who supports him, and those whom he represents, at the same time; and if he endeavours to oblige both, he becomes such an uncertain Weathercock, as most commonly he obliges neither. And therefore the most prudent and honestest of the Courtiers are always observed to decline being Parliament-men, for this very Reason.

3. Meddle not with such as have been or are like to prove Pensioners, or receive Salaries for secret Services. I know they would some time since brazen it out, that there were no such Men, no such Practices, but the contrary is notorious: Did not the House of Commons once take the thing into Examination? Nay, did not Sir *S. F.* by his Memory (without the Books, which for some reasons were refused to be brought in) name about thirty of them, and the respective Sums yearly paid to each? And would not many more have been discovered, and the whole Knot of them severely and

exemplarily punished, if that Parliament had a little longer continued? Now there is none more implacably your Enemy, than that Person whose Interest it is to destroy you; that must neither eat nor drink except you starve; that must go in Rags except you go naked; are taught to fleece you, that they may keep themselves warm. To prevent this, avoid not only all former Pensioners, but such other as may be in danger to become so; therefore meddle not with Men of necessitous Fortunes, or much in Debt. The Representatives of a Nation, ought to consist of the most wise, wealthy, sober, and couragious of the People, not Men of mean Spirits, and little Figure, and sordid Passions, that would sell the Interest of the People that chose them, to advance their own; or be at the Beck of some great Men, in hopes of a List to a good Employ. Those that have fair Estates, have in a manner given Hostages to their Country, and must be Errant Fools, before they can play the Knave with you. But what cares the needy Passenger if the Ship perish, if he can but save himself in the Long-Boat, or get some Booty by the Wreck? What Protection can you expect from them who cannot shew their Faces with confidence without a Protection, either in or out of Parliament? Who are no less apprehensive of a Bailiff, than of the once growing Greatness of the *French*; and dread not *Popery* half so much as an *Outlawry*? Will you secure them within the Walls of the House of Commons, who were secured within the Walls of a common Gaol? Who can never pay their Debts contracted by their Prodigality, but out of your Purses; and must run you in, to get themselves out of their Mortgages? These Mens Fear of being dissolved, makes them submit to any thing, rather than be left to the unmerciful Rage of their hungry

hungry Creditors, who have so long fasted for their Money. For all such Persons (though some of them may be look'd upon as honest and fair conditioned Gentlemen, and good House-keepers) are in danger of being tempted to repair the Decays of their own private Fortunes, by the Ruin of the Publick. Moreover, the chusing such broken Fortunes, decays Trade, and ruins whole Families; insomuch that I have known it drive many Men (contrary to their own Inclinations) to wish never to see Parliaments more in *England*. In a word, If Beggars ever come to be your Representatives, how can they judge what is expedient for the Nation to spare, whose only care is, to get a piece of Money to spend?

4. As you are not unadvisedly to chuse such as retain to the Court at Home, so much less are you to elect any such as have their Dependence upon Foreign Princes or States, these are under strong Obligations to see you ruined; for your own Reason will tell you, that no Foreign Power will prodigally throw away his Pistoles, where he expects not an Harvest answerable to his Seed. 'Tis possible this Caution may not be unnecessary; for 'tis more than suspected, that there are some such degenerated English-men, who having forsaken the Interest of their Native Country, have sold themselves to an Outlandish Interest, that they may the better gratifie their own Ambition, and those potent Lusts which their own meaner Fortunes could not otherwise feed or satiate,

5. Be not over-fond to receive Bribes and Gratifications, from Persons that would fain make a Prey of you, and by their Purses, lavish Treats, and Entertainments, would allure you to prostitute your Voices for their Elections; you may be assured they would never bid so high for your Suffrages,  
but

but that they know where to make their Markets. Chuse the worthy unwilling Person, before the complemental unworthy Man, whose extraordinary Forwardness prognosticates he seeks not your Good, but his own; separate from the publick. Let us not play the Fools or Knaves,, to neglect or betray the common Interest of our Country, by a base Election; let neither Fear, Flattery, nor Gain, bias us. Consider with your selves, what Losers you will be, if to laugh and be merry one day, the Person you chuse, should give you and your Children occasion to mourn for ever after.

— Say not, *He's but a single Person, one Man cannot do such Hurt.* Silly Men! What if all other Places should be as bad as your selves? Then all the House would be of a piece; and besides, do not you know, that sometimes a single Man hath carried a Vote, which perhaps was no less mischievous than irretrievable? Think how justly the gallant ancient Heathens may upbraid this Baseness of us Christians, when as they sacrificed many of their Children, nay, and oftentimes their own Lives, for the good of their Country: So on the contrary, do we sacrifice, or at least Hap-hazard, both our Religion, Lives, Children, and Country, for the swinish Pleasure of a day or two's Debauchery.

6. Make not your publick Choice the Recompence of private Favours; 'tis not pleasing a Neighbour, because rich and powerful, but saving of *England*, that you are to regard. Neither pay nor return private Obligations at the cost of the Nation. Sir *John* is a pretty Gentleman, and treats People civilly; and my Landlord is a good Man, and has been kind; and Esquire such a one is our next Justice of Peace, but yet I will not give my Voice contrary to my Conscience, or have an hand in a Choice

Choice that may ruin my Country, to gratifie any or all of them. Let no such Engagements put you upon dangerous Elections, as you love the Liberties and Freedom of your Posterity; but tell them in this Affair they must hold you excused, for that the weight of the Matter will well bear it; this is your Inheritance, all may depend upon it; 'tis a more modest Request, if they would desire you to give them that Freehold Estate that qualifies you for an Elector, than to press you to be for a Man, that in your Conscience you think unfit, or not so fit as his Competitor, for so weighty a Trust. Men do not use to lend their Wives, or give their Children, to satisfy personal Kindnesses; nor ought you to make a Swop of your Birthright (and that of your Posterity's too) for a Mess of Pottage, a Feast, or a lusty Drinking Bout; there can be do Proportion here, and therefore none must take it ill, that you use your Freedom about that which in its Constitution, is the great Bulwark of all your ancient Liberties.

(7.) Have a care of ambitious Men, and Non-Residents, such as live most about the Town, and not with their Estates in the Country. These seek Honours and Preferments above; and little or never imbetter the Country with their Expences or Hospitality, for they are too much for themselves, to act vigorously for the advantage of their Country; or if in the House they do for a while swagger a little, and speak it briskly, 'tis only that the Court may take notice of them, and take them off by some Preferment; and then these false Patriots shall be the only Sticklers for unbounded Prerogative.

(8.) Be resolved (against all Temptations) to chuse no Minors: What, will you be content with sucking Statesmen? and Beardless Politicians? and

Reboam's Counsellors? Then expect, for well you deserve, to be lash'd with Scorpions: Can you judge them fit to dispose of your Liberties, Lives, Estates and Religion, who cannot legally dispose of their own Estates or themselves? What Security can they give you, that they will not give away yours and you, whose Bond in the Eye of the Law, will not be taken for 40s? But sure, your own Experience of what such green Persons have been, and done, in former Parliaments, hath, I hope, learned you sufficient Wisdom, not to chuse the like again.

(9.) Elect no prodigal or voluptuous Person, for besides that such are not regular enough to be Law-makers, they are commonly idle; and though possibly they may wish well to your Interest, yet they will rather lose it than their Pleasures; they will scarce leave one of their nightly Revellings, to give you their Attendance and Service next day, and therefore they are not to be relyed upon. And upon this occasion I shall borrow the words of an Author, to whom I do not much desire to be beholden; *Some Senators are drawn from their Duties by Pleasure; perhaps a Party at Tennis, Bowls, Cards, a Pack of Dogs, a Cock-fight, or a Horse-match, a Comedy, a Good-Fellow, or a Mistress. And while they are thus employed, the vigilant Faction steals a Vote that is worth a Kingdom.--- Some again are so transported with the Vanity of Dress and Language, that rather than serve the Publick with one Hair amiss, or in one broken Period, they will let the Publick perish, Mallent Republicam turbari, quam capillos. These, while their Country lies at Stake, are ordering of their Heads, and polishing the Phrase, shaping the parts of a set Speech, till it is too late to use it. Nothing, methinks, does less beseem a grave Assembly, than this Facultatula Loquendi; this same Rhetorical Twittle-*

*Twittle-twattle, it spins out so much time in tedious Circumstance, that it makes a Man e'en Sick of a good cause, and, for the very Form, prejudge the Reason of it.--- Sloth and Neglect are yet more dangerous in a Senator, in regard of Surprizes from the Faction; these think a wet Day or a cold Morning, a sufficient discharge of their Attendance; and while they are taking t'other Nap, or t'other Bottle, the Monarch perhaps has lost his Crown, or the Subject his Liberty.*

(9.) Avoid all those that play the Protestants in Design, and are indeed disguised Papists, ready to pull off their Mask on the first opportunity, whenever time serves. You may know them by their Swagging for a Popish Successor to maintain the Protestant Religion; their Laughing at the Popish Plot, and disgracing the Evidence of it; and at the same time affirming (without any grounds) the Reality of a Presbyterian Plot; their associating with known Papists, and winking at them; but eager Heats to put the Laws in Execution, with the utmost Rigour, upon Protestant Dissenters: These are Men, whose Affection for the Protestant Interest, notwithstanding all their fair Speeches, may justly be question'd, since their Practice gives their Words the Lye: Nor will their large Pretensions, and seeming Zeal for the Church of England, at all prevail with wise Men; for we know, the Papists themselves, when 'tis for their Interest, will pretend the same thing, and speak fair of our Church, and rail only upon the Fanaticks; when yet in their Hearts, they hate our Church, as much as they do any of the Sects: Observe all their Pamphlets, the Noise is against the Presbyterians and Dissenters, but 'tis with a Design to destroy them first, and the Church of England afterwards; for when so great a Body of Protestants are represented as disloyal and dangerous, and crush'd and undone, the Church of England Men will be left alone, and

then they hope to deal with them well enough: And that this is their Aim, may be perceived, if you observe how zealous the Papists are, to stir up Prosecution against the Dissenters; and none more joyful when it goes on, &c. Now what's all this for? Are they, think you, indeed and in earnest, so very kind to the Church of England? For what Acquaintance? No, no, 'tis all Diffimulation and Roguery, a Design which they drive on, first to divide, and then to ruin us. Therefore beware how you chuse any such Tool, as they make use of therein. The contrary are Men that bless God for the most happy Discovery of the Hellish Popish Plot, and all their wicked Shams ever since, and would have the bottom thereof fairly search'd into, and the Traytors, though never so great or potent, brought to condign Punishment, and in their Conversation zealously direct themselves in an Opposition to the Papal Interest, which indeed is a Combination against good Sense, Reason, and Conscience, and to introduce a blind Obedience without (if not against) Conviction: And that Principle, which introduces implicit Faith, and blind Obedience in Religion, will also introduce implicit Faith and blind Obedience in Government: So that it shall be no more the Law in the one than in the other, but the Will and Power of the Superior, that shall be the Rule and Bond of Subjection; this is that fatal mischief Popery brings with it to Civil Society, and for which all such Societies ought to beware of it, and its Friends and Abettors; which sure none can be, but such who are design'd for Slaves by Nature as well as Fortune; debauch'd, leud unthinking Animals, properly enough called Tories; silly, servile, yet conceited and cruel Creatures, altogether of an Irish Understanding.

(10.) As for you Citizens, Burgesses, and Freemen, of Cities and Corporations in particular, I shall

shall only say, *That whoever is not fit to be chosen Knight of the Shire, is likewise unfit to be chosen a Burgess*: Neither let the more specious Pretences of any Man, that shall promise to build you a Town-Hall, or relieve the Poor with Money, or out of his adjacent Woods, or any such Good-morrows, deceive you; for if so, wherein are you wiser than your Horses, whom you catch every Day, and clap a Bridle into their Mouths, only by shewing them a few Oats, which they are never like to eat? Even the very Mice are too wise to be taken by an old Bait, but will first have the Trap new baited before they'll meddle: And yet I have known a Corporation which has been taken twice by the same Bait. But suppose these Men do really perform what they promise, what Compensation is that, if the same Men should lay a good swinging Tax upon your Estates, without a real Cause? Or should give up the very Power you have of Taxing your selves, or sending your Representatives in Parliament, (for one bad Parliament may ruin us) what Good would the Money for your Poor do in such a Case, more than, that when you are thereby reduced to Beggary, you might, perhaps, your selves (the Gentry of the Country having no reason to relieve you) be forc'd to come in for a small Share of this their Hypocritical Charity? An excellent Reward for a Knavish Folly. Neither say—O! *this is but one Man, and can have but one Vote, he will do our Town a great deal of Good, and can do us but little Hurt if he would, &c.* For 1. (as I told you before) one or two Voices have sometimes carried a Vote of great Importance. 2. You know not what Mischief your bad Example may do in other Corporations; and if all should do so, what a miserable Case would you be in, since the Voices of the Boroughs

make two thirds of the House? Lastly, No Man can tell the influence that one running Talkative ill Man may get over the rest of the House, especially over those that weigh Words more than Sense, or Reason, and the Interest of their Country.

Hitherto we have talked of Negatives, and described such as are not fit to be chosen; Now we come positively to set before you who are fit for such a Trust in such a dangerous Juncture as, I suppose, we may fall into. In order to which, we must consider for what ends they serve; and they are principally two. The first is, the Preservation of our Religion from Popery; the other is, to preserve inviolable our Liberty and Property, according to the known Laws of the Land, without any giving way unto, or Introduction of that absolute and arbitrary Rule practised in Foreign Countries, which we are neither to imitate or regard. Therefore,

1. Take care to chuse such as are well known to be Men of good Consciences, fearing God, thoroughly principled in the Protestant Religion, and of high Resolution to maintain it with their Lives and Fortunes. And among these, rather cast your Favour upon Men of large Principles (I mean in matter of meer Opinion) such as will not sacrifice their Neighbours Property and Civil Rights, to the Forwardness of their own Party in Religion. Narrow Souls, that will own none but those that bear their own Image and Supercription, will sooner raise Persecution at home, than secure us from Popery and Invasion from abroad. *The great Interest of England, at this Day, is to tolerate the tolerable, to bear with the Weak, to encourage the Conscientious, and to restrain none, but such as would restrain all besides themselves.*

2. As we ought, as near as we can possibly judge, to elect good Protestants towards God, and just to-

wards Men, yet since in this corrupt Age wherein we live, Men are not so Spiritual as they ought to be, it is not amiss to see for those, whose Spiritual Interest is seconded by a Temporal one: For tho' Men talk high, and keep a great Noise with Conscience and Love to their Country, yet when you understand Mankind aright (not as it should be, but as it is, and I fear, ever will be) then you will find, that private Interest is the String in the Bear's Nose, it is that governs the Beast. And therefore the surest Champions for our Religion (*Ceteris Paribus*) against the Papacy, are our Abby-landed Men; for notwithstanding the registred Dispensation to King Henry the eighth, from the Pope, for the seizing those Monasteries and Lands, yet of late they pretend that the Pope had not Power to alien them from the Church; so that the present Possessors can never trust or rely upon that, or any new Promises, or actual Grants thereof, especially from him, whose everlasting and declared Maxim it is — *Never to keep Faith with Hereticks.* Undoubtedly, to make easie his Ascent into the Saddle, he will proffer many Assurances and Grants, but if these Abby-landed Men be not the most silly of all others, they will never believe him. For when he is once firmly settled, then will he, with his Canon-Law Distinctions, like Fire under Quick-silver, evaporate away all his Promises, and violently resume the Lands, glorying of his own Bounty, if he require not the mean Profits, ever since they have sacrilegiously with-held them from Holy Church.

3. Endeavour to chuse Men of Wisdom and Courage, who will not be hector'd out of their Duties by the Frowns and Scowls of Men. Never had you more need to pitch upon the old English Spirit, that durst be faithful and just against all Temptations. What a degenerate Race have we

known, that could never yet resist Smile or Frown, but tamely sunk below their own Convictions, and knew the Evil they did, but yet durst not but commit it?

4. Make it your business to chuse such as are resolved to stand by, and maintain the *Power and Privileges of Parliaments* (for they are the Heart-strings of the Common-Wealth) together with the *Power* and just *Rights* of the King, according to the *Laws* of the Kingdom, so as the one may not intrench upon the other. And such as with a becoming true English Courage, will *prosecute* all Traytors, whether already impeached, or to be impeached; and to secure us from *Popery* hereafter, and to remove all corrupt and arbitrary Ministers of State, and wicked Judges, and Stiflers of the Discovery of the *Popish-Plot*, and *Suborners*, and vile *Pamphleteers*, that endeavour so industriously to clear the *Papists*, and expose the *Protestant Religion*, and *poison the People*.

Lastly, Take particular notice of those who are Men of Industry and Improvement; for such as are ingenious and laborious to propagate the Growth and Advantage of their Country, will be very tender of yielding to any thing that may weaken or impoverish it.

If you conduct your selves thus *prudently, honestly* and *gallantly* in your Choice, without putting the Gentlemen, whom you chuse to serve you, to Charges, the Consequence will be, that as you will be sure to have a *good Parliament*, whenever His Majesty shall please to call one, and such as will be zealous for the Safety of the *Protestant Religion*, and *Prosperity* of the Nation, if they shall continue to sit and act; so on the other side, if they should be *dissolv'd*, and never so many new *Parliaments* be called, yet you run no Hazard, for the same

same Candidates will still be ready to serve you. And so we shall conclude our Discourse of *Parliaments*, when I shall first have observed, that anciently all Freemen of *England* (tho' not Free-holders) had a Right to chuse their Representatives, till the same was altered and limited by the following Statute, for the Reasons therein mentioned.

*The Statute Anno 8 Hen. 6. Cap. 7.*

What sort of Men shall be *Chusers*, and who shall be chosen *Knights* of the Parliament.

**I**tem, *Whereas the Elections of Knights of Shires, to come to the Parliaments of our Lord the King, in many Counties of the Realm of England, have now of late been made, by very great, outrageous and excessive Numbers of People, dwelling within the same Counties of the Realm of England, of the which most part was of People of small Substance, and of no Value, whereof every one of them pretended a Voice equivalent, as to such Elections to be made, with the most worthy Knights and Esquires, dwelling within the same Counties, whereby Manslaughter, Riots, Batteries, and Divisions among the Gentlemen, and other People of the same Counties, shall very likely rise and be, unless convenient and due Remedy be provided in this behalf. (2.) Our Lord the King considering the Premises, hath Provided, ordained, and established, by Authority of this present Parliament, that the Knights of the Shires, to be chosen within the said Realm of England, to come to the Parliament of our Lord the King hereafter to be holden, shall be chosen in every County of the Realm of England, by People dwelling and resident in the same Counties, whereof every one of them shall have Land or Tenement, to the Value of Forty Shillings by the year,*

at the least, above all Charges. (3.) And that they which shall be so chosen, shall be dwelling and resident within the same Counties. (4.) And such as have the greatest number of them, that may expend Forty Shillings by the Year and above, as afore is said, shall be returned by the Sheriffs of every County, Knights for Parliament by Indentures sealed betwixt the said Sheriffs, and the said Chusers, so to be made. (5.) And every Sheriff of the Realm of England, shall have Power, by the said Authority, to examine, upon the Evangelists, every such Chuser, how much he may expend by the Year. (6.) And if any Sheriff returned Knights to come to the Parliament, contrary to the said Ordinance, the Justices of Assizes in their Sessions Assizes shall have Power by the Authority aforesaid therefore to enquire. (7.) And if by Enquest the same be found before the Justices, and the Sheriff thereof be duly attainted, that then the said Sheriff shall incur the Penalty of an Hundred pounds, to be paid to our Lord the King; and also that he have Imprisonment for an Year, without being let to Mainprize or Bail. (8.) And that the Knights for the Parliament, returned contrary to the said Ordinance, shall lose their Wages.

Now tho' this Statute inflicts the pecuniary Penalty of one hundred pounds, and no more, on the Sheriff for a false Return, yet the House may further punish him by Imprisonment for an Year, without Bail, and this at their Pleasure, by the Law and Custom of Parliaments.

But since the making this Statute, and since frequent Parliaments are now called, there have been many Statutes made concerning,

(1) The Qualifications of a Member to serve in Parliament.

(2) The method of issuing out Writs and Precepts.

(3) The

(3) The manner of chusing a Knight of the Shire, and the Qualifications of the Voters, and of taking the Poll of the Freeholders.

(4) Of Officers of the Excise, who concern themselves in Elections, and of treating Voters by any Person.

(5) Of false and double Returns of Members to serve in Parliament.

(6) Of Elections of Members for the Cinque-Ports.

(7) Of the continuance of Parliaments.

And first, of the Qualifications of Members: By the Statute 9 *Annæ* cap. 5. 'tis enacted, That no Person shall be a Member who hath not an Estate of Freehold or Copyhold for Life, or for some greater Estate, to and for his own Use, either in Law or Equity; viz. for every Knight of a Shire, six hundred Pounds per Annum, over and above what will satisfie all Incumbrances. And for every Citizen and Burges, and Baron of Cinque Port three hundred Pounds per Annum; and if any Person returned to serve in Parliament, shall not at that time be seised of such an Estate, &c. the Return shall be void.

*Proviso*, that the eldest Son of a Peer, or of any Person qualified by the Act, to serve as Knight of the Shire, shall not be incapable of being elected, and returned, &c.

*Proviso*, that the Universities may return Members as formerly.

There is another *Proviso*, that no Person shall be qualified by virtue of any Mortgage, whereof the Equity of Redemption is in another, unless the Mortgagee shall have been in Possession seven Years before the Election.

Every Candidate shall at the Request of another Candidate at the time of Election, or by the Request

quest of two or more Persons who have a Right to vote, take this Oath.

The Oath.

I L. E. do swear, that I truly and bona fide have such an Estate in Law or Equity, and to and for my own Use and Benefit, of or in Lands, Tenements or Hereditaments, (over and above what will satisfie and clear all Incumbrances that may affect the same) of the annual Value of six hundred Pounds, above Repri- ses, as doth qualifie me to be elected and returned to serve as a Member for the County of Wilts, according to the known and true meaning of the Act of Parlia- ment in that behalf: And that my said Lands and Te- nements or Hereditaments, are lying or being within the Parish, Township or Precinct of Ogburne in the said County, or in the severall Parishes of Welford, Box- ford and Shefford, in the County of Berks. Or as the Case is.

But if the Candidate is for a City, Borough or Cinque-port, then the Oath shall relate only to three hundred pounds per Annum, mutatis mutandis.

It must be administred by the Sheriff or Under- sheriff, or by the Mayor or other Officer who takes the Poll, or by any two Justices of the Peace in Eng- land or Wales; and they must within three Months after certifie the same into the Chancery or King's Bench, upon the Forfeiture of one hundred Pounds between the King and the Informer, with full Cofts.

The Candidate refusing to take the Oath, either at the time of Election, or before the Day on which the Parliament meets, his Election and Re- turn shall be void.

And there shall be taken but one Shilling for ad- ministring the Oath, and two Shillings for making the

the Certificate, and two Shillings for filing it and no more, under the Penalty of twenty Pounds, to be recovered and divided as aforesaid.

(2.) As to the Method of issuing out Writs and Precepts, it was enacted by the Statute 7 and 8 W. cap. 25. That there shall be forty days between the Teste and Return of the Writ of Summons, and that the Lord Chancellor, &c. upon every new Par- liament, shall issue out Writs with all convenient speed, which shall be delivered to the proper Offi- cer, and to no other; and he must endorse the Writ the day when he received it, and forthwith make out his Precept, and within three days de- liver it to the proper Officer, who hath the Execu- tion thereof, and to no other Person; and he shall endorse the day when he receives it, and give publick Notice of the day of Election, and pro- ceed to the Choice within the space of eight days after the receipt of the Precept, and give at least four days Notice of the day appointed for the E- lection.

And that no Officer or Mayor, &c. shall take any Fee or Gratuity for making out the Precept, or for the Delivery, Return or Execution of any such Writ or Precept.

(3.) As to the manner of Chusing a Knight of the Shire, and the Qualification of a Voter, 'tis en- acted by the last mentioned Statute, That the She- riff shall hold his next County-Court for the E- lection, &c. at the usual Places where it had been held for forty Years last past, and there proceed to the Choice, unless it fall out to be within six days after he receives the Writ; and then he shall adjourn the Court to some convenient Place, giving ten days Notice of the Time and Place.

And

And if the Election be not determined on the View, but a Poll is required, the Sheriff shall proceed to take it; and for that purpose he may depute as many Clerks as he thinks fit, who shall be sworn by the Sheriff or Under-Sheriff truly and indifferently to take the Poll, and shall set down the Names of every Freeholder, the place of his Freehold, and for whom he polls, and shall poll no Freeholder who is not sworn. And the Sheriff, &c. shall appoint such Persons as shall be nominated by each Candidate to be Inspectors of every Clerk.

The Sheriff, &c. must proceed to poll the Freeholders then present, and shall not adjourn the County-Court to any other Place, without the Consent of the Candidates, not by any unnecessary Adjournment, delay the Election, but shall proceed from day to day, till the Freeholders shall all be polled.

And every Officer and Mayor shall forthwith deliver a Copy of the Poll to such Person who shall desire it, paying reasonably for writing the same; and for every wilful Offence, shall forfeit to the Party grieved 500*l.* to be received by him, or by his Executors or Administrators with full Costs.

The County-Courts for *Yorkshire* shall be held on Wednesdays.

And the Sheriff of *Hampshire*, at the Request of the Candidates, shall adjourn the Poll from *Winchester*, after every Freeholder there is polled, to *Newport* in the *Isle of Wight*.

As to the Qualification of a Voter, he must not only have 40*s.* per *Annum* Freehold, as aforesaid, but by the same Statute 'tis enacted, That no Man shall vote for or by reason of any Trust or Mortgage, unless he be in actual Possession, or receive the Profits; but the *Mortgagor*, or the *Cestui que*  
trust

trust in possession, may vote; and all Conveyances to multiply Votes, or to split or divide the Interest in Lands amongst several Persons to enable them to vote, shall be void, and no more than one Vote shall be admitted.

No Person under Twenty-one shall vote at any Election for any Member, and no Person shall be capable of being chosen, who is not Twenty-one Years old, and every Election and Return of a Minor is void; and if such Minor presume to sit and vote he shall incur such Penalties as if he had never been chosen.

But notwithstanding this Statute for electing Knights of the Shires, there were several scandalous Practices invented to multiply Votes, therefore *Anno 10 Annæ cap. 22.* it was enacted, That all Estates and Conveyances made fraudulently, and on purpose to qualify the Person to vote, tho' subject to an Equity of Redemption, yet shall be taken to be absolute against the Person, who executed the same; and all Bonds and other Securities for redeeming such Estates shall be void, and the Person making or procuring the making, or preparing or advising the same, shall forfeit 40*l.* to any Person who will sue for it.

No Man shall vote for a *Knight of a Shire* in right of any Lands, which have not been charged to the *Publick Taxes, Church-Rates, and Parish-Duties*, in such proportion, as other Lands of 4*s.* per *Annum*, within the same Parish, are usually charged, and for which such Person shall not have received, or be entitled to receive, the Profits to the full value of 40*s.* to his own Use for one Year before the Election, unless such Lands came to him by *Descent, Marriage, Devise* or *Presentation* to some Benefice, or by Promotion to some Office, to which such Freehold is annexed; the Person voting contrary, shall for every Offence, forfeit 40*l.* to be divided  
between

between the Poor of the Parish where the Lands are, &c. for which he voted, and him who will sue for the same.

The Oath of the Freeholder; that by the Stat. 7. W. being repealed.

You shall swear that you are a Freeholder in the County of Wilts, and have Freehold Lands or Hereditaments, lying in Ogburne, in the County of Wilts, of the Yearly value of 40s. above all Charges payable out of the same, and that such Freehold Estate hath not been made or granted to you fraudulently, on purpose to qualifie you to give your Vote, and that the Place of your Aboad is at Ogburne, in the said County; and that you have not been polled before at this Election.

This Oath is to be administred by the Sheriff or Under-Sheriff, or sworn Clerk by him appointed to take the Poll; and a Freeholder convicted of Perjury, or of a suborning another Freeholder to commit willful Perjury, shall incur the Penalties of the Statute 5 Eliz. cap. 9.

In taking the Poll the Sheriff, &c. must enter the Place of the Voter's Freehold, and 'of his Abode, and shall Mark jurat' against his Name; and the returning Officer shall within twenty days after the Election, deliver over to the Clerk of the Peace, all the Poll-Books, on Oath made before the two next Justices of the Peace, Quorum unus, &c. without Imbezilment or Alteration; and in such Counties where there are more than one Clerk of the Peace, he shall deliver the original Poll-Books to one, and the attested Copies to the other, to be preserved amongst the Records of the Sessions of the Peace.

The

The Sheriff of Yorkshire shall appoint seven convenient Places for taking the Poll, at the Cost of the Candidates, there to continue till the Poll is ended.

And the Sheriff of Chester shall appoint five Places and no more, in the Shire-hall, for taking the Poll, at the Cost of the Candidates, viz. two at the upper end, two on each side, and one at the lower end.

In this Act there is a Proviso, That a Quaker declaring the Effect of the Oath upon his Solemn Affirmation, &c. as directed by the Act 7 W. shall be admitted to vote, and the word Affirmat, shall be writ against his name, and if he is convicted of wilfully affirming a thing which is false, he shall incur the Penalties of Perjury.

And by another Statute 12 Annæ cap. 5. 'tis enacted, That the Statute 10 Annæ cap. 22. shall not extend to restrain any Person from voting for a Knight of a Shire, in respect to or in right of any Tithes, or other Incorporeal Inheritances, or in any Messuages or Lands, in Extraparochial Places, or in any Chambers in the Inns of Court or Chancery, or in any Messuages or Seats belonging to any Office, in regard or by reason the same have not been taxed to any publick Taxes, Church-rates or Parish-duties, or in respect or right of any other Messuages or Lands, in regard the same have not been usually taxed as aforesaid, Provided they have been usually assessed to some one or more of the said publick Taxes, Rates or Duties in such Proportion, as other Lands of forty Shillings per Annum within the same Parish.

(4) And because Officers to collect the Duties of Excise may have an Influence upon Ale-house-keepers and others, to vote or not to vote, therefore by this Statute 5 & 6. W. & M. 'tis enacted,

That

That no Collector, Supervisor, Gauger or other Officer concerned in the Excise, shall in any manner, perswade or dissuade a Voter, either to give or not to give his Vote, upon the Penalty of one hundred Pounds, one Moiety to the Informer, the other to the Poor of the Parish where the Offence shall be committed, to be recovered by any Person who will sue; and if the Defendant shall be convicted, he shall lose his Office, and be incapable of executing any Place under the Government.

And because all Elections should be free from Bribery, 'tis farther Enacted by the Statute, 7 W. cap. 4. That after the *Teste* of the Writ of *Summons*, or issuing out any Writ for electing a Member, if any Person by himself, or by any other in his Behalf, or at his Charge, shall before his Election give, or promise to give the Voter any Meat, drink or Gift, &c. for his Vote, such Person shall be disabled to serve in Parliament, and shall be deemed no Member.

(5) And to prevent all *false and double Returns*, 'tis declared by the Statute 7 & 8 W. cap. 7. That all *false Returns* wilfully made are against Law; and that if any Person shall return a Member contrary to the last determination of the House, of the Right of Electing in such Place, it shall be adjudged a *false Return*, and that the Party duely elected, may sue the returning Officer, and shall recover double Costs and Damages.

And if any Officer shall *wilfully and maliciously* and *falsly* return more Persons than are required by the Writ to be chosen, the like Remedy shall be had against him by the Party grieved, or against any one who procured such Return.

And that all Contracts, Promises, Bonds and Securities to procure any Returns of a Member shall be void, and he who made such Contracts, &c.

&c. to procure either a false or double Return, shall forfeit three hundred Pounds, one third part to the Crown, another to the Poor, &c. and the other to Informer, with Costs.

The *Clerk of the Crown* shall enter every single and double Return in a Book, and every Alteration and Amendment that shall be made to such Return, to which Book, all Persons shall have free Access, and take Copies, paying reasonable Fees; and if any Suit be brought, the Prosecutor may give that Book in Evidence, or a true Copy thereof; and the Clerk of the Crown wilfully omitting to perform his Duty, forfeits five hundred Pounds to the Party grieved, and shall lose his Office.

All Actions on this Statute must be brought within two Years after the Cause of Action, and not afterwards.

This was only a temporary Law at first, but by the Statute 12 *Annæ* cap. 15. 'tis made perpetual.

Then by the Statute 10 & 11 W. cap. 7. 'tis enacted, That the Sheriff or any other Officer, who hath the Execution or Return of the Writ, shall return the same to the Clerk of the Crown in Chancery, but not exceeding fourteen Days after the Election, and shall pay him four Shillings for the Return of every *Knight of the Shire*, and two Shillings for every Member, the same to be allowed in his Accompts to the King in the Exchequer.

And every Officer not making such Return forfeits five hundred Pounds, to be divided between the King and the Prosecutor.

(6) As to Elections for Members to serve for the *Cinque-ports*, the Lord Warden for the time being did formerly claim a Power to nominate one Member for each of the said *Cinque ports*, and for the two ancient Towns and their Members, but now by the Statute 2 W. cap. 7. such Nominations are declared

declared to be contrary to Law, and void for the future.

And by the Statute 10 & 11 W. cap. 7. the proper Officer of the Cinque-ports shall have six days after the Receipt of the Writ of Summons, to deliver the Precept to the returning Officer there.

(7) As to the Privilege of the Members, 'tis enacted by the Statute 12 W. cap. 3. That Actions may be prosecuted against any Member who is entituled to Privilege immediately after the Dissolution or Prorogation, until a new Parliament shall be reassembled; and likewise immediately after any Adjournment of both Houses for above fourteen days, and until they are reassembled.

The Procefs against a Peer is the same as 'tis out of Privilege-time; and the Procefs against a Commoner, must be by Summons, Attachment and Distress, till he appear and file Common Bail; and if a Bill be exhibited, then a Copy left with the Defendant, or at his House, Lodging, or Place of Abode, shall be good, and the Plaintiff may proceed: And if the Defendant doth not appear, and put in his Answer or doth not perform any Order of the Court, his Estate may be sequestred, but no Person entituled to Privilege shall be arrested during the Continuance of Privilege.

Where any Suit is staid by Privilege, the Plaintiff shall not be barred by the Statute of Limitations, be nonsuited, or be dismissed for want of Prosecution, but shall proceed to Execution at the rising of the Parliament.

But by the Statute 2 Annæ cap. 18. a Debtor to the Crown shall have no manner of Privilege, only his Person shall not be arrested.

And an Officer of the Revenue or any other Officer of publick Trust, may be sued for any Forfeiture, Misdemeanour or Breach of Trust, relating

ing to his Office or Trust; and such Suit, either against Peer or Commoner, shall not be staid by Privilege.

But the Procefs must be by Summons as aforesaid, and not by Arrest.

(8) As to the Sitting and Continuance of Parliaments, 'tis enacted by the Statute 6 W. & M. cap. 2. That from henceforth a Parliament shall be holden once in three Years at the least, and that no Parliament shall continue any longer, to be accounted from the Day on which by the Writs they are appointed to meet.

But this is now enlarged to seven Years.

And for the better Preservation of the Peace and securing of the Rights and Liberties of the People, 'tis enacted by another Statute, made 7 & 8 W. cap. 15. That the Parliament shall not determine, or be dissolved upon the Demise of the King, but shall continue and meet, and act for six Months afterwards, unless it be sooner prorogued or dissolved by the next in Succession, and in case there shall be no Parliament at that time, then the last preceding Parliament shall meet and act.

We shall now proceed to certain other excellent Laws, made before this time, for the Preservation of our Liberties, and in the first place mention that admirable *Petition of Right*, granted by King Charles the first, in the third Year of his Reign.

## The Petition.

The Petition exhibited to his Majesty, by the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, concerning the Rights and Liberties of the Subjects.

To the King's most Excellent Majesty.

**H**umbly shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, That whereas it is declared and enacted, by a Statute made in the time of the Reign of King Edward the First, commonly called Statutum de Tallagio non concedendo, that no Tallage or Aid shall be laid or levied by the King, or his Heirs, in this Realm, without the good Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other the Freemen of the Commonalty of this Realm. (2.) And by Authority of Parliament, holden in the Five and twentieth Year of the Reign of King Edward the Third, it is declared and enacted, that from henceforth, no Person shall be compelled to make any Loans to the King, against his Will, because such Loans were against Reason, and the Franchise of the Land. (3.) And by other Laws of the Realm it is provided, that none should be charged by any Charges or Imposition called a Benevolence, nor by such like Charge. (4.) By which the Statute before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have inherited this Freedom, that they should not be compelled to contribute to any Tax, Tallage, Aid, or other like Charges, not set by common Consent in Parliament.

2. Yet nevertheless of late, divers Commissions directed to sundry Commissioners in several Counties, with Instructions have Issued, by means whereof your People have

have been in divers places assembled, and required to lend certain Sums of Money unto your Majesty; and many of them, upon their Refusal so to do, have had an Oath administered unto them, not warrantable by the Laws or Statutes of this Realm, and have been constrained to become bound to make Appearance and Attendance before your Privy Council, and in other places; and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted. (2.) And divers other Charges have been laid and levied upon your People, in several Counties, by Lord Lieutenants, and Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by Command or Direction from your Majesty to your Privy Council against the Laws and free Customs of this Realm.

3. And where also by the Statute, called the Great Charter of the Liberties of England, it is declared and enacted, That no Freeman may be taken or imprisoned, or be disseised of his Freehold or Liberties, or of his free Customs, or be Outlawed or exiled, nor in any manner destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

4. And in the eight and twentieth Year of the Reign of King Edward the Third, it was declared and enacted by Authority of Parliament, That no Man, of what Estate or Condition that he be, should be put out of his Lands or Tenements, nor taken, nor imprisoned, nor Disinherited, nor put to Death, without being brought to Answer, by due Process of Law.

5. Nevertheless, against the Tenor of the said Statutes, and other the good Laws and Statutes of your Realm, to that end provided, divers of your Subjects of late, have been imprisoned without any Cause shewed; (2.) And when for their Deliverance they were brought before Justices by your Majesty's Writs of Habeas Corpus, there to undergo and receive as the Court should order, and their Keepers commanded to certify the Causes of their Detainment, no Cause was certified, but that

they were detained by your Majesty's Special Command, signified by the Lords of your Privy Council, and yet were returned back to several Prisons without being charged with any thing, to which they might make answer according to the Law.

6. Whereas of late great Companies of Soldiers and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills, have been compell'd to receive them in their Houses, and there to suffer them to sojourn against the Laws and Customs of this Realm, and to the great Grievance and Vexation of the People.

7. And whereas also by Authority of Parliament, and in the Five and twentieth Year of the Reign of King Edward the Third, it is declared and enacted, That no Man shall be forejudged of Life and Limb against the form of the Great Charter and Law of the Land; (2.) And by the said Great Charter, and other the Laws and Statutes of this your Realm, no Man ought to be judged to Death, but by the Laws established in this your Realm, either by the Customs of the Realm, or by Acts of Parliament: (3.) And whereas no Offender of what kind soever, is exempted from the Proceedings to be used, and Punishments to be inflicted by the Laws and Statutes of this your Realm; nevertheless, of late divers Commissions under your Majesty's Great Seal have issued forth, by which certain Persons have been assigned and appointed Commissioners, with Power and Authority to proceed within the Land, according to the Justice of Martial Law, against such Soldiers and Mariners, or other dissolute Persons joining with them, as should commit any Murder, Robbery, Felony, Mutiny, or other Outrage or Misdemeanour whatsoever, and by such summary Course and Order as is agreeable to Martial Law, and as is used in Armies in time of War, to proceed to the Tryal and Condemnation of such Offenders, and them cause to be executed and put to Death, according to the Law Martial.

8. By

8. By Pretext whereof some of your Majesty's Subjects have been by some of the said Commissioners put to Death, when and where, if by the Laws and Statutes of the Land, they had deserved Death, by the same Laws and Statutes also they might, and by no other ought to have been judged and executed.

9. And also sundry grievous Offenders, by colour thereof, claiming an Exemption, have escaped the Punishments due to them by the Laws and Statutes of this your Realm, by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborn to proceed against such Offenders, according to the same Laws and Statutes, upon pretence that the said Offenders were punishable only by Martial Law, and by Authority of such Commission as aforesaid; (2.) Which Commissions, and all other of like nature, are wholly and directly contrary to the said Laws and Statutes of this your Realm.

10. They do therefore humbly pray your most Excellent Majesty, that no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament; (2.) And that none be called to make answer, or take such Oath, or to give Attendance, or be confined, or otherwise molested or disquieted concerning the same, or for Refusal thereof; (3.) And that no Freeman in any such manner as is before mentioned be imprisoned, or detained. (4.) And that your Majesty would be pleased to remove the said Soldiers and Mariners, and that your People may not be so burthened in time to come; (5.) And that the foresaid Commissions for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commissions of like nature may issue forth to any Person or Persons whatsoever to be executed as aforesaid, lest by colour of them, any of your Majesty's Subjects be destroyed, or put to Death contrary to the Laws and Franchise of the Land.

11. All which they most humbly pray of your most excellent Majesty, as their Rights and Liberties, ac-

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cord.

ording to the Laws and Statutes of this Realm; and that your Majesty would also vouchsafe to declare, that the Awards, Doings and Proceedings to the Prejudice of your People in any of the Premises, shall not be drawn hereafter into Consequence or Example. (2.) And that your Majesty would be also graciously pleased for the further Comfort and Safety of your People, to declare your Royal Will and Pleasure, that in the things aforesaid all your Officers and Ministers shall serve you according to the Laws and Statutes of this Realm, as they tender the Honour of your Majesty, and the Prosperity of this Kingdom.

Which Petition being read the 2d of June, 1632, the King's Answer was thus deliver'd unto it :

*The King willeth, that Right be done, according to the Laws and Customs of the Realm, and that the Statutes be put in due execution, that his Subjects may have no cause to complain of any Wrong, or Oppressions, contrary to their just Rights and Liberties; to the Preservation whereof, he holds himself in Conscience, as well obliged as of his Prerogative.*

But this Answer not giving Satisfaction, the King was again petition'd unto, that he would give a full and satisfactory Answer to their Petition in full Parliament, — Whereupon the King in Person, upon the 7th of June, made this second Answer;

My Lords and Gentlemen,

**T**HE Answer I have already given you, was made with so good Deliberation, and approved by the Judgment of so many wise Men, that I could not have imagined, but that it should have given full Satisfaction; but to avoid all ambiguous Words, and to shew you, that there is no Doubt in my Meaning, I am willing to please you in Words, as well as in Substance; read  
your

your Petition, and you shall have an Answer, that I am sure will please you.

And then causing the Petition to be distinctly read by the Clerk of the Crown, the Clerk of the Parliament read the King's Answer thereto in these Words;

*Soit Droit fait, come est desire.*

Which is, *Let Right be done, as is desired.* This Answer, and the manner of confirming this Law, I have the rather recited, because the King's Answer, and Circumstances relating thereunto, were wholly left out in the Printed Book of Statutes.

The Petition it self is so plain, that there needs no Comment thereon, only the Reader may observe, That the things therein mentioned, were the Ancient Rights of the people, and therefore they expressly demand them of the King, as their Rights and Liberties.

And here it may not be improper to relate the Original of those Differences which happened between the King and his Parliament, who in all their Remonstrances and Declarations insisted so much on the Liberties of the People; and this I shall do in a very short and impartial manner, giving only an Account of Matters of Fact, collected out of many Volumes written on that Subject, and leave it to the Judgment of the Reader, to make what Observations he shall think proper.

King Charles the First was involved in a War with Spain by his Father, and this was to restore his Brother-in-Law, who had married his Sister, to the Palatinate.

He was soon afterwards engaged in another War with France, and he had no Assistance from three successive Parliaments, which he called and dissolved in the beginning of his Reign, and that put him upon unusual Courses to raise Money without them.  
And

And therefore in the Year 1626, he sent Commissioners throughout *England, &c.* to levy Money by way of *Loan*, not at any certain Rate, but according to the Abilities of Men, with respect to their Estates and charge of their Family; and he turned out the Lord Chief Justice *Crew*, because he declared himself against such *Loans*, and would have done the same by the Lord Chief Baron *Walter*, if his Patent had been *durante placito*, however he was forbid to sit any more in Court.

He raised Money by *Tonnage* and *Poundage*, and *Ship-money, &c.* and they who refused to lend were committed: He raised Soldiers and required the Counties to furnish the Charges of *Coat and Conduct* Money, and he appointed Commissioners to try, condemn and execute the Soldiers by Martial Laws in time of Peace, and many of them were quartered in private Houses, against the Consent of the Owners.

He caused several Persons of Quality and others to be imprisoned, without shewing any cause, and for no certain time, and would not suffer them to be delivered by *Habeas Corpus*; all which Grievances were redressed by him in the aforesaid *Petition of Right*, and in his third Parliament.

But yet the People were discontented, complaining that Dispensations were made of several Statutes against Papists, Priests and Jesuits, and that many of them had been released and pardoned, who had been actually condemned, and that he made Magistrates of those who were popishly inclined.

But this Parliament being dissolved, that which was afterwards called the *Long Parliament*, were assembled in the Year 1640; but before they sat, he released all those who were committed for not paying *Ship-money*, and *Tonnage* and *Poundage*, and some

some time afterwards the Earl of *Strafford* and Archbishop *Laud* were impeached of High Treason, and sent to the *Tower*; and on the 16th Day of *December* a Committee was appointed to draw up a Charge against the Archbishop, and on the same Day he was named an Incendiary, by the *Scotch* Commissioners, who promised to bring in their Complaint the next day; and on *Friday December* the 18th Mr. *Hollis* was sent up to the Lords with the Impeachment, and presently came in the Charge of the *Scotch* Commissioners.

The Lord Keeper *Finch*, who was very zealous for the *Ship money*, withdrew into *France*, and so did Sir *Francis Windebank*, who was Secretary of State, and reputed a *Papist*, tho' in truth he was not.

Afterwards the King condescended to pass what Laws the Parliament thought fit, for the Security of the Nation, against Popery and Arbitrary Government.

As to the Bill of Attainder against the Lord *Strafford*, the House of Commons appointed Mr. *St. John*, the King's Sollicitor General to open it in the House of Peers, which he did on the 29th day of *April*; and the next Day some of the Lords began to incline to the Bill, which moved the King (who was present at all the Debates) to declare before both the Houses on the first day of *May*, That he could not with a good Conscience condemn the Earl of *High Treason*.

Thereupon the Commons intending to send four Bishops to him, to satisfy and inform his Conscience, and the day being appointed, the King being informed of their Intention, sent for Dr. *Fuxon* then Bishop of *London*, to come to him very early in the Morning of the same Day, which he did accordingly, and upon a Conference between him and the King about passing the Bill, he advised the

the King, *Not to consent to it against the Vote of his own Conscience.*

The Archbishop *Usher* and the Bishops of *Durham, Lincoln* and *Carlisle*, came to the King in the Afternoon, these being the four Bishops sent by the Commons, and the Question then propounded was, *Whether the King might in Justice pass the Bill of the Attainder?* To which they gave this answer, *That if upon the Allegations on either Side, he did not conceive him guilty of the Crime with which he was charged, he could not in Justice condemn him:* Tho' Dr. *Heylin* tells us, that the Archbishop did advise the King to pass the Bill, and made a Distinction between his *Personal and Political Conscience*, which Dr. *Bernard*, who preached that Archbishop's Funeral Sermon utterly denies, affirming that he heard the Archbishop deny it in his Life.

But be that as it will, the Clamours of the People were so great against him, that the Earl sent a Letter to the King, wherein he set his Conscience at Liberty, *most humbly beseeching him for the Prevention of such Mischiefs which might happen by his Refusal, that he would pass the Bill*, and thereupon the King signed it, and the Earl was beheaded.

He likewise signed a Bill to take away *Tonnage and Poundage*, and another to take away the Court of *Star Chamber* and the High Commission Court.

He also passed a Bill to exclude the Bishops from sitting in the House of Peers, and afterwards declared, That he gave way to that Bill in hopes by that means, to preserve their Station in the House of God.

But a little before this, the Bill for Triennial Parliaments having passed both Houses, was also confirmed by his Royal Assent, and at the same time he passed the Bill of *Subsidies*, which were intended for the Relief of the Inhabitants of the  
*Northern*

*Northern Counties*, who were oppressed with two great Armies, living upon free Quarter, and raising Money for their Necessities: One of those Armies were *Englishmen*, who were to repel the *Scotch Army*, who had invaded those parts; and tho' the King himself was to have none of the Money to be raised by these Subsidies, but it was to be applied for the Relief of those who had suffered by these Armies, yet the Commons would not pass it, till the King had passed the Triennial Bill; by which the Sheriffs were impowered to issue out Precepts, to chose Members of Parliament, in Case the King should fail to issue out his Writs in due time.

Afterwards he passed that Act. which tied up his own Hands, and that was, *That he should not prorogue, adjourn or dissolve the Parliament without their Consent*; and having adjourned them for a time, went into *Scotland* to quiet the Commotions there.

During his Absence, the Fears and Jealousies of a *Popish Party* still continuing, the Commons drew up a *Remonstrance* of the State of the Nation, which was brought into the House upon the first meeting after the said Adjournment, and was passed by a small Majority of Votes, the Debate lasting from three in the Afternoon till ten the next Morning.

This *Remonstrance* contained a Repetition of all the past Grievances, tho' some of them had been already redressed by the Petition of Right and other Acts of Parliament; it was afterwards delivered to the King, and it was certainly believed by the People, because it came from their Representatives.

Soon afterwards, several Informations were presented to the House, of Plots and Conspiracies against the State; as for Instance, that the *Papists* and  
*Malignants*

*Malignants* were about to rise in Arms, and that Forces from *France* and *Denmark*, were coming to assist them to enslave the Nation.

Thereupon great Numbers of Apprentices and loose People of the City, came in a tumultuous manner towards *Westminster*: As they passed by *Whitehall*, they cried out, that the King was not fit to live; that they would have no Porter's Lodge between him and them, but would come to him when they pleased, using some other threatening words, as if they intended to break open the Gates.

But some Officers of the King's Army being then at the Court, and observing the Insolencies of the Mob, run upon them with drawn Swords, in which Encounter some of the Rabble were hurt and others dangerously wounded.

These Officers being Soldiers by their Profession, were then called *Cavaliers*, that name being first given to them at that Time, and upon this Occasion, which afterwards was a common Appellation to all those who were of the King's Side, tho' they never were in Arms.

However the *Mob* proceeded to *Westminster*, and petitioned the House, that all Papists should be disarmed, and that the Bishops and Popish Peers should be excluded the House of Lords, and that the Kingdom should be put in a posture of Defence, and the Militia in such Hands as the Nation might confide in.

The King issued out a Proclamation against these Tumults, and sent an Order to the Sheriffs of *Middlesex*, and to the Justices of Peace of *Westminster*, to set a Guard upon the *Hall* and the Parliament-house.

The *Commons* voted this to be a Breach of their Privilege, and immediately after sent their *Serjeant* to

to discharge those Guards, and one Mr. Long, a Justice of the Peace for *Westminster*, who had signed an Order or Warrant for those Guards, was sent to the Tower.

The *Commons* not trusting to the aforesaid Guards, but thinking themselves to be in danger of a Malignant Party, addressed the King to have a Guard out of the City, to be commanded by the Earl of *Essex*, which the King civilly denied, and thereupon they ordered *Halberds* to be brought into the House.

The King being informed that the most turbulent Men in these matters were, the Lord *Kimbolton*, Mr. *Hamden*, Mr. *Stroud*, Mr. *Pym*, Mr. *Hollis*, Sir *Anthony Haslerig*, &c. he by his Attorney General impeached them at the Bar of the House for High Treason, who exhibited seven Articles against them, and he commanded that their Chambers should be searched, and their Trunks and Papers sealed up.

This was voted a Breach of the Privilege of the *Commons*, and when the King demanded that those Members might be committed, the Speaker by Order of the House, commanded them to attend every day.

Thereupon the King went with his Guards, and attended by two hundred Gentlemen, or thereabouts, to the House, and there in Person intended to seize them, but they having notice of his coming withdrew before he came.

The House voted this to be a very high Breach of their Privileges, and the People being very much exasperated at these Proceedings, were ready to rise in Arms; but to prevent the Consequences of a general Insurrection, this Impeachment was dropt, and the King offered to grant a Pardon to all such as should be thought convenient by both Houses.

This the Commons refused, and to provide for their own Security, they ordered a Guard of the City Trained Bands, to be commanded by Coll. Skippen, and another Guard upon the Tower, and sent Sir John Hotham to Hull, to command that Town, and to secure the Magazine of Arms there.

But still to quiet the Minds of the People, the King sent a Message to both Houses in Writing, desiring them seriously to consider what should be necessary to support his Royal Authority, and to establish the Religion, Privileges and Liberties of the People, and that when they had entered into such serious Considerations, they should see how ready he would be, to regard the Examples of the most indulgent of Princes, and concludes, That if the present Distractions do not end in a Accommodation, that he hath not failed on his Part.

To this Message the Commons alone returned an Answer, by way of Petition, (viz.) That to give them a sure Confidence in what he intended, he would be pleased forthwith to put the Tower of London and also the Militia into the Hands of such Persons who should be recommended to him by that House.

The King replied, that he hoped his Message which he had sent to them, would have produced some better Effect; that as for the Tower, he had already committed it to the Government of Sir John Byron, a Person of Fortune and Integrity, but that he would remove him if they had any thing material to object against him; as for the Forts, they should be always in the Hands of such Persons as the Parliament might confide in, but that it was his Prerogative to name those Persons; and as for the Militia, when they should propose any Course for settling it, which he should think was for the Security of the Kingdom, he would then return

an answer agreeable to his Honour, and the Safety of the People, and would not deny them any thing, but such which would alter the fundamental Laws; and that having already granted more than any King before him, that encouraged them to ask more than any Subjects ever had done.

However if they would let him know the Grounds of their Jealousies and Fears, he would apply proportionable Remedies, protesting that the Preservation of the Peace, and the Laws and Liberties of his Subjects should be always his greatest Care, exhorting them that they would not be transported with Fears of impossible Dangers, but that they would pursue his Proposals in his written Message to them; which by the Blessing of God might compose these Distractions.

It was some time before the Commons made any Reply; for as yet the Lords did not join with them in Petitioning for the Militia; but the Bishops having been insulted by the Mob in coming to the House, the Archbishop of York presented a Petition to the King, and to the Peers, sign'd by himself and eleven other Bishops, setting forth their Right to sit in Parliament, and demanding the King's Protection, but so long as they were threatened and insulted, they would not attend the Service of the House, and therefore they protested against all Proceedings there in their Absence.

Soon afterwards at a Conference desired by the Lords with the House of Commons, the Lord Keeper told them, that this Petition and Protestation of the twelve Bishops was against the fundamental Privileges and Beings of Parliaments; and thereupon the Bishops were voted guilty of High Treason, and committed to the Black Rod, and afterwards to the Tower, and there they remained

mained till the King passed the Bill for disabling the whole Order to sit and vote in Parliament.

The Bishops being thus excluded, and several Popish and other Lords frighted from their Attendance, and many Petitions coming from Counties and Cities, and particularly from Oxford, some desiring that the Popish Lords might be put out of the House, others that the Kingdom might be put in a Posture of Defence; the Majority of the Lords remaining in the House, who upon the 26th of January refused to join with the Commons, did on the 2d of February following upon a Motion of Mr. Hollis at a Conference join with them in a Petition to the King, that the Nation might be put in a Posture of Defence, setting forth the Calamities, in which the Kingdom was involved, and the Danger which threatned the King; and tho' they received his written Message with Thankfulness, and would have earnestly pursued his Proposals therein, yet for the Safety of his Person, and for removing all Jealousies between him and his People, and for suppressing the Rebellion in Ireland, they humbly insisted that he would put the Tower of London, the Forts and Militia in such Persons Hands whom they should recommend to him, and concluded that they expected his immediate Answer, because the Distractions of the Kingdom would admit of no Delay.

The King replied, That he had considered their Petition, and when he should know the Extent of the Power which was intended to be established in those Persons whom they desired to be Officers of the Militia, and to what Time it should be limited, then he would declare himself contented to put in all Places, both of his Forts and of the Militia, such Persons, as both Houses should approve or recommend to him, so that they would declare their Names before-hand to him.

Now

Now before the two Houses named Persons to be Lords Lieutenants of the County Militia, they first made an Ordinance to regulate the Militia in London, and then they petitioned the King to settle the Militia in the several Counties, giving him a List of the Names of the Persons who they desired might be Lords Lieutenants, and at the same time presented to him a Form of their Ordinance for regulating the Militia of London, by which they desired him to settle the Militia of the Kingdom.

But the King refusing what they desired, there were fresh Reports of dangerous Plots, designed by the Papists to set several Cities and Towns on Fire; and thereupon another Petition was sent from the Parliament to the King, who was then at Dover, (to accompany the Queen and his Daughter, who were going to Holland) to which Petition they desired such a speedy Answer, which might raise a confidence in them that they should not be exposed to those who endeavoured to kindle a Combustion here as they had already done in Ireland, and which nothing could hinder but his granting their Petition.

The King replied, That as for the City of London, and such other Corporations who had Power by Charters to order the Militia, he would not alter it, and that he would not consent to any indefinite Time proposed by them to put the Kingdom in a Posture of Defence.

The two Houses voted this Answer to be a Denial of their Petition, which would hazard the Peace of the whole Kingdom, unless some speedy Remedy were applied by the Parliament; and that those Persons who advised the King to make this Answer were Enemies to the State: And immediately after this Vote, they sent another Petition to the King, (then at Newmarket) protesting that if he did not speedily assent to what they had desired, they should be

under a Necessity to dispose the Militia by the Authority of both Houses, and that they had resolved to do so.

This Petition was brought to him by the Earls of *Warwick* and *Holland*, both sworn Servants to him, and both of his Privy Council; and at the same time they brought a Declaration of both Houses setting forth his Misgovernment, by attempting to incense the *Northern Army* against the Parliament, by his Proceedings against the Lord *Kimbolton*, and the five Members, by the suspicious Desire of a Guard about his Person, by his underhand promoting the *Irish* Rebellion, by ordering his Admiral Sir *John Pennington*, to land the Lord *Digby* to procure foreign Forces to assist him against his Parliament; and that this is the more credible because he removed from *London*, with the Prince, and because many Advertisements came from *Rome*, and other foreign Parts, of great Aids intended for him, in order to some Design then in hand against the Protestant Religion and Parliament, concluding with their humble Desires, that he would put away his Evil Counsellors, and trust to his Parliament; which if he would do, they would sacrifice their Lives and Fortunes in his Service.

Then the aforesaid two Lords desired him to come nearer to his Parliament, but he refused; and when they mov'd him that the Militia might be settled for a time as the Parliament had desired, he swore, *No, not for an Hour, nor for a Minute, tho' his Wife or Children had desired it.*

Thereupon the Parliament voted that the Kingdom should be put into a Posture of Defence, and that the Navy should be commanded by an Admiral of their own Naming, and that a Declaration should be drawn up and published of the Reasons and Grounds of their Fears.

And

And now more Petitions were brought from all Parts of the Kingdom, purporting such Fears from Papists, that the People stood on their Guard every where, not daring to go to Church unarmed, earnestly desiring Assistance from the Parliament; and thereupon the Ordinance for ordering the Militia by the Authority of both Houses was passed, and a new Lieutenancy was appointed throughout *England* and *Wales*, without his Consent.

Afterwards in a Grand Committee sitting at *Merchant Taylors Hall*, a Declaration was drawn up of a design to alter Religion, and that the Wars both in *Scotland* and *Ireland*, were raised for that Purpose.

This Declaration was also presented to the King; but he not approving it, the Parliament voted his Commissions for the Lieutenancy illegal, and that there was a Necessity for them to put the Kingdom in a Posture of Defence, and that their Ordinance for the Militia ought to be obeyed by the fundamental Laws of the Kingdom, and that the Earl of *Warwick* would be Vice-Admiral; and thereupon Sir *John Pennington* was turned out, and the Earl soon afterwards sailing with a strong Squadron of Men of War reduced all such Ships whose Officers refused to obey his Orders, and seized on a Man of War, in the *Downs*, bound for *Newcastle* for the King's Service, and also another Vessel laden with Gunpowder.

The King, as hath been already mentioned, thinking his Person in Danger by the *London* Tumults, never returned thither after he went to *Dover* with the Queen; and another Reason was, because the Militia of *London* was commanded by its own Officers, and regulated by the Parliament; but he went from *Dover* to *Greenwich*, and from thence to *Hampton-Court*, whither he sent for the Prince and Duke of *York*, and soon afterwards he went to *Huntingdon*,

*tingdon*, from whence he published a Declaration in answer to that which was brought to him at *Newmarket*, by the Earls of *Holland* and *Warwick*, in which he set forth, that he had no Evil Counsellors, but if the Parliament could find any such, he left them to their Censure; that he had no Design against the Protestant Religion, that it was a causeless Injury to charge him with any Inclinations to the *Irish* Rebellion; that he never intended to exasperate the late *Northern* Army, or to use them against the Parliament; that he had already given a sufficient Answer about the Lord *Kimbolton* and the five Members; that the Care of his own Person made him remove from *Whitehall*, having first caused him to have a Guard there, and to accept the Service of the Gentlemen of the Inns of Court; and that he looked on the Foreign Advertisements to the Parliament to be idle and false.

Whilst he was at *Huntingdon*, he sent a Message to the two Houses, that he intended to reside at *York* for some time; and afterwards coming thither, he took a Guard for the Security of his Person, and marched in a little time to *Hull*, where he had a Magazine of Arms, which were brought thither for the War against the *Scots*.

But Sir *John Hotbam*, who had been sent thither by the Parliament with some Forces, having summoned the *Militia* of the Neighbouring Counties to assist him, refused him Entrance into the Town, though he desired it with no more than with twenty Horsemen; upon which he caused him to be proclaimed a Traitor, and so returned to *York*; from whence he sent to the Parliament, to demand exemplary Justice to be done on him, and that the Town might be forthwith delivered to him, together with the Magazine of Arms.

But the Parliament justified this Action of Sir *John Hotbam*, and declared the King's Design against

against *Hull*, an Infringement of the Liberties of the People; and immediately sent some of their own Members thither, the better to secure the Town and Magazine.

The King being now at *York*, issued out his Letters of Summons, to the Gentry of *Yorkshire* to attend him there, who coming accordingly, he told them of the Proceedings of the Parliament, and of the Business at *Hull*, and desired their Assistance to guard his Person; to which they agreed and returned to their respective Habitations to raise Forces, which the King told them were necessary for his present Service.

Not long after his coming to *York*, several of the Nobility and Gentry and some of the House of Commons came thither to him; particularly the Lord Keeper *Littleton*, who had already delivered the Seal to one who was sent for it by the King; but now it was recommitted to him again, and he, together with the Duke of *Richmond* and the Marquis of *Hertford*, and about forty more Earls and Lords, subscribed a Writing dated the 13th of *June* 1642, wherein they engaged not to obey any thing which was not warrantable by Law, and that they would defend the King's Person, Crown and Dignity, against all Powers whatsoever, and also the Protestant Religion, and the lawful Liberties of the People, and of both Houses of Parliament, and that they would not obey any Order concerning the *Militia*, which had not the Royal Assent.

And now the King having raised an Army of about 3000 Foot and 1000 Horse out of the *Militia* of *Yorkshire*, he once more marched to *Hull*; but Sir *John Hotbam* had furnished the Garrison with Men and Ammunition, and he caused all the Sluices to be pulled up, by which he laid all the low Grounds under Water, so that the King could not besiege the Town in Form, but blocked it up.

And now the Garrison sallied out with about 500 Men, commanded by Sir *John Meldrum*, and beat the King's Forces, who run away to *Beverley*; and afterwards upon a second Sally commanded by the same Officer, they killed about twenty, and took as many Prisoners on the King's Side, and set Fire to his Magazine of Gunpowder, which ill Success made him raise the Blockade, and return to *York*.

All this while the Parliament were not idle; for they insisted that what they had done at *Hull*, was to prevent a War upon them, which they knew, the King designed when he first went into the *North*; for otherwise why did the Queen go into *Holland*, with the ancient Jewels of the Crown, and with Pictures of great Value, but with an Intent to raise Money and buy Arms, which she afterwards brought into *England*, when she landed at *Burlington-Bay* in *Yorkshire*? Or else why did the King leave his Parliament and go to *York*, and there raise Forces upon a Pretence of a Guard for securing his Person, which soon encreased to an Army?

Then they published a Declaration, forbidding all Men to attend the King at his Pleasure, except such who were bound to it by special Service; and that all others should be esteemed Disturbers of the publick Peace; and that the Sheriffs thro' *England* should raise the Power of each County, to suppress them.

They also set forth another Declaration, charging the King with the Breach of his Word and Promises, and with many Oppressions of his Subjects, and Violations of the Laws: And they voted, That he being seduced by wicked Counsel, intended to make War against the Parliament, who proposed no other End in all their Consultations and Actions, but the Care of the Kingdom, and Duty to his Person.

Then they made a large *Remonstrance* in Justification

of their own Proceedings, in which they declared, that they had brought their Work to such a Success, that nothing could hinder the Accomplishment of it but the Curse of God.

Within three Days after this *Remonstrance*, they sent a Petition to the King at *York*, blaming him for a Breach of his Promise, and desiring him to disband his Forces, otherwise they must take Care to secure themselves and future Parliaments.

Shortly afterwards, they set forth a third *Remonstrance*, still justifying their own Actions and blaming the King, insisting upon the Obligation of his Oath to pass all Bills, which the Parliament should tender to him; and about this time the Magazine was removed from *Hull* to the *Tower*; and they voted, That whosoever should lend the King Money upon his Jewels, should be adjudged an Enemy to the State.

Within four Days after this *Remonstrance*, they published a Declaration, in which they declared, That his Proclamation on the 27th of *May*, 1642. forbidding Obedience to the Parliament's Ordinances for the *Militia*, was void in Law, requiring all Officers to muster and to march according to their Ordinance.

And on the 12th of *July*, after a long Debate, they voted an Army should be raised for the Safety of the King, and of both Houses, and of all those who had obeyed their Orders, and for preserving the Religion, Laws and Liberties of the People, and that the Earl of *Essex* should be General.

And accordingly they issued out Commissions for raising Men, and for mustering the *Militia*, which they insisted was done by them in their own Defence; otherwise the King might have marched to *London*, and have surprized them.

They voted also, That what the King had done at *York*, was preparative to a War against them, and

and a Breach of the Trust reposed in him by the People, and contrary to his Oath, and tending to the Dissolution of the Government; and that all those who served him therein, were Traitors to the Laws of this Kingdom.

They voted also, That a Petition should be sent to him at *York*, to move him to agree with his Parliament, and to prevent a Civil War; and that he would dismiss his Forces, and return to his Parliament, and hearken to their Advice; and that he would agree to settle the *Militia* by Bill in such way as should be safe to him, agreeable to the Parliament, and for the Good of the Kingdom and them; and that he would leave Delinquents to their Justice, and then they would cease the Preparations they had made for their Defence, and put *Hull* in the same Condition as it was before Sir *John Hotbarn* had the Command of it.

This Petition was delivered by the Earl of *Holland*, Sir *John Holland* and Sir *Phillip Stapleton*.

The King told them, That he was driven from *Whitehall* for the Safety of his Person, and not until the Parliament had raised Guards to secure themselves without the least Colour of Danger; that they had usurped a Power over the *Militia*, against Law and his Consent; that they had taken Possession of his Magazine at *Hull*, and committed it to Sir *John Hotbarn*, who shut the Gates against him, which they justified; that he would not dismiss his Forces till *Hull* was reduced; that as for coming nearer to his Parliament, he thought his Person not safe, and that he should be glad to hear of some Examples made on the Ringleaders of the Tumults; but that the Commons had declared they knew no such Persons, tho' the Peers had desired them to join in a Declaration against them, and that they had neglected to enquire out the Authors of Seditious Speeches and Writings.

That

That as for leaving *Delinquents* to their Justice, he protected none; but if by *Delinquents* they meant such who refused to submit to their Orders about the *Militia* and *Navy*, or such who had published his *Declarations* or *Proclamations*, he would protect them to his utmost Power; but was contented that all *Delinquents* should be prosecuted according to the known Laws of the Land; that since they had sent this Petition, they had beaten Drums for Soldiers, and chose a General of Horse; that Sir *John Hotbarn* had seized his Wine and Provisions for his Household: And desired, that *Hull*, his Magazines and Navy be forthwith delivered to him, it being High Treason in those who commanded them; and demanded, that all Arms and Provisions for War, made by both Houses, might be laid down immediately, and that then he would instantly lay down all his Forces and come to the Parliament; that all Differences might be debated in a Parliamentary way, and that he expected a full Answer on the 27th day of *July*, and that till then he would make no Attempt upon *Hull*.

The Parliament replied by the Earl of *Holland*, That they could not deliver *Hull*, nor the Navy, nor recal their Ordinance for the *Militia*, nor lay down their Arms, because what they had done was for securing their Religion, and the Laws and Liberties of the People; all which they saw were in imminent Danger, from which Danger when they should be secured, and that the Forces raised by the King, should not be used to their Destruction, then they would comply with the King's Demands; but they excused their laying down Arms, till the Causes which moved them to take them up were removed, and then they would make no farther Preparations.

But previous to all this matter, and a little before the Lord-keeper *Littleton*, and other Lords, had signed

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ed the aforefaid Writing at *York*, the two Houfes ſent nineteen Propoſitions to the King, containing Propoſals for a Peace, in which they demanded the *Militia*; which the King answered by the Marquis of *Hertford* and the Earl of *Southampton*, but would by no means part with the *Militia*, till at laſt, rather than Things ſhould run to Extremities, he offered to ſign a Bill for the Settlement of the *Militia* for a certain Time, and was contented to leave the Nomination of half the Lieutenantcy to the Parliament, reſerving the appointing the other half to himſelf.

But the Parliament not agreeing to it, there was nothing but Preparations for War on both ſides; for the two Houſes ſent out an Order with Propoſals to bring in Money and Plate, and to provide Horſes and Arms to ſuppreſs the traitorous Attempts of Evil Counſellors, who ſought to engage the King in a War againſt his Parliament; and they ſent out ſeveral of their moſt active Members, to execute their Ordinance about the *Militia* in ſeveral Counties; and afterwards they borrowed Money and Plate on the publick Faith; and this was to buy Arms and raiſe Men to guard both Houſes.

The Citizens of *London* readily complied to lend their Money, and to bring in their Plate, and their Wives and Daughters brought in their Bodkins, Thimbles and Caudle-cups, though the King had ſent a Letter to the Lord Mayor, Aldermen and Sheriffs, forbidding them to lend any Money to the Parliament.

But that Letter had very little Effect; for immediately upon the News thereof, the Parliament made an Order that the Deputy Lieutenants ſhould forthwith raiſe Horſe for the Service of the King and Parliament, which they juſtified in a Declaration, affirming it to be for the Maintenance of the Proteſtant Religion, the Perſon of the King, the Laws  
of

of the Land, and the Privileges of Parliament, and Liberties of the People; by which Declaration, they forbid the ſpreading the King's Letter, intimating, that neither his Commands or Threats could deter thoſe who were well affected, from contributing Money Horſes or Plate; and that the County of *Effex* in particular had contributed 207000 *l.* and upwards, and 800 Horſe; and the County of *Hertford* 8000 *l.* and 300 Horſe, and many other Counties in proportion.

The King had alſo iſſued out his Commiſſion of *Array* into all parts of the Kingdom, which Courſe had been formerly uſed for ſuppreſſing any Inſurrection or Invaſion; and he not only inſiſted on the Lawfulneſs of ſuch Commiſſions in ſome of his Declarations, but he ſet forth a Proclamation to inform the People, that they were lawful; and the Lord *Strange*, Son of the Earl of *Derby*, put theſe Commiſſions in Execution in *Lancaſhire* and *Cheshire*, and the Earl of *Huntingdon* and Mr. *Hastings* his Son, did the like in *Leiceſterſhire*, but not without Oppoſition from the Lieutenantcy appointed by the Parliament.

And now the two Houſes published a long Declaration againſt thoſe Commiſſions of *Array*, reſenting the Unlawfulneſs of them, by which the Nation would be enſlaved; and thereupon they ſent out Orders to forbid the Publication of theſe Commiſſions, and they ſent Sir *Richard Gurney*, Lord-Mayor of *London*, to the *Tower* for publiſhing them.

Afterwards they cauſed two other Declarations to be drawn up, ſetting forth, That their Endeavours were for the Service of the King, and for his Honour and Safety, and for regaining the ancient Laws of the Land and the Liberties of the People, and for ſettling the Proteſtant Religion in Peace; charging the King with Endeavours to alter both, and with a Breach of his Proteſtations; and that being ſeduced by *Popiſh* Counſels, he had begun a War  
upon

upon his Parliament, which gave them just Occasion to raise Forces for the Defence of their Laws and Liberties.

And now some Skirmishes began between those Commissioners of *Array*, and the Commissioners of the *Militia* appointed by the Parliament; and particularly by the Lord *Strange* in *Lancashire*, as aforesaid; who with the *Militia* he had raised for the King, intended to have seized *Manchester*; but being opposed by Sir *Tho. Stanley* and others, there was one Man killed on the King's Side, which was the first Blood drawn in this Quarrel, after the Forces on each side were raised.

The Army being now commanded on the Parliament's Side by the Earl of *Essex*, the King issued out a Proclamation, dated on the 9th of *August*, declaring that Earl and all his Adherents Traitors; but with a Promise of a Pardon to all those who should within six days, return to their Obedience.

This caused the Parliament to publish another Declaration, full of Invectives against the King; declaring also those to be Traitors who contrived that Proclamation; and that if he would leave his Evil Counsellors, and be advised by his Parliament, they would still make him and his Posterity great Princes.

Whilst these Declarations were making on both Sides, the Parliament's Forces did not sit still, for they took *Portsmouth* by Siege, and they surprized *Dover* Castle; and having borrowed 100000 *l.* of the Money which had been raised for the Service of *Ireland*, they levied fresh Forces, and made up an Army of above 30000 Horse and Foot, whilst the King's Forces were not so formidable till he went to *Shrewsbury*, and so to the Borders of *Wales*, where he was recruited with Money and Plate, by which he raised such a considerable number of Men, that he was able to give Battel to the Earl of *Essex*.  
On

On the 25th of *August*, the King set up his Standard at *Nottingham*; but as soon as he came thither, he sent a Message to the two Houses, intimating that some Mistakes had arisen by several Messages, Petitions, Answers and Replications which had passed between them, and which might have been prevented by a nearer Treaty; he therefore proposed that either Side should give Power to fit Persons, to treat and conclude all Differences between them, promising not only Safety, but Encouragement, to those who should be enabled by the Parliament to treat; and concludes, that if this Proposal be rejected, God would absolve him from the Guilt of the Blood which must be shed.

The Parliament returned an Answer, refusing to enter into any Treaty, till the King had recalled his Declaration, by which he declared the Earl of *Essex*, and both Houses of Parliament, with all their Adherents to be Traitors, intimating, that while they remained Traitors they could not by the Fundamental Privileges of Parliament make any other Answer, but desired him to take down his Standard.

The King protested, That he never intended to declare both Houses Traitors, or set up his Standard against them; and to remove all Scruples, he promised, if they would revoke their Declarations against all Persons who assisted him, to be Traitors, he would on the same Day recall his Proclamations and Declarations, and would also take down his Standard.

The two Houses answered, That they could not recede from their former Answer, and positively insisted that the King would recall his Declarations first, and take down his Standard, and leave his Forces, and return to his Parliament; intimating, that they would not be set in equal Ballance with those, whose Counsels had prevailed to hinder the Relief of *Ireland*; And at the same time they set forth

forth a Declaration, That the Forces which they had raised, were for the Laws and Liberties of the Kingdom; and that they could not with any manner of Safety be disbanded, till the King should leave those who had been voted *Delinquents*, to the Justice of the Parliament.

The King replied, he could neither do or offer more, and that he should think himself clear of the Blood which might be shed in this Quarrel, *Praying God so to deal with him and his Posterity as he desired to preserve Religion, the Laws and Liberties of his Subjects, and the Privileges of Parliaments.*

The two Houses repeated their former Answer, and withal, that whilst the King protected *Delinquents*, the Nation could not be safe, nor the Rights of Parliaments maintained; and therefore they could not enter into any farther Treaty with him.

So to Battel they went, of which I shall only mention those three of *Edg-hill, Marston moor and Naseby*; for it would be too long to give any Historical Account of the rest.

And first as to the Battel at *Edg-hill*, which was fought on the 23d day of *October*, it was a Question at that time who had the better of it; 'tis true, the Parliament sent the Earls of *Pembroke and Holland*, the Lords *Say and Wharton*, and Mr. *Strode*, on the 27th of *October*, to acquaint the Lord Mayor, Aldermen and Citizens, with the Greatness and Certainty of their Victory, and that God had owned his own Work; and that as the Cause had been undertaken with their Purfes and Persons, so they would crown their Work by following it with Zeal.

And the Commons voted a Present of 5000 l. to be given to the Earl of *Essex* their General, which was accordingly paid to him; and on the 11th of *November*, both Houses set forth a Declaration of the Valour and Services of that General, which was to remain on Record in those Houses, for

for a Mark to his Person, Name and Family, to Posterity.

But 'tis as true that the King took five hundred Prisoners in this Battel, who being moved to enter into his Service, most of them refused, and yet they were discharged with Life and Liberty, having first taken an Oath, never to serve against him; from which (we are told) they were afterwards absolved by Mr. *Stephen Marshall*, a famous Preacher in those Days.

'Tis likewise true, that on the day after the Battel, the Earl of *Essex* marched by speedy Journeys towards *London*; and that on the same day there was an Order from both Houses, by which all the Citizens, both of *London* and *Westminster*, were commanded to shut up their Shops, and put themselves in readiness to defend the City and Parliament.

Now there could be no Occasion for such an Order, if the Earl of *Essex* had been victorious; however the King marched after him, and this made the Parliament fear that he would come upon them before their Forces came to *London*; and 'tis certain that the King might have come much sooner than he did, but he staid by the way to take *Banbury, Oxford* and *Reading*, and then he marched towards *London*.

The Earl of *Essex* had lodged two of his best Regiments at *Brentford*, and some more of his Forces at *Kingston, Acton* and other Villages, to stop the King in his March, yet on the 12th of *November*, he beat up they Quarters at *Brentford*; but being told that the Earl of *Essex* had rallied his Forces, and that he together with the *Auxiliaries* of *London*, commanded by the Earl of *Warwick*, were in a Readiness upon *Turnham-Green* to stop his March, he was advised not to hazard a Battel, having no other Army if this should be beaten; and that made

him retire to *Oatlands*, and from thence to *Reading*, and so to *Oxford*, that being thought the fittest Place for his Court and Council to reside in.

The Battel of *Marston-Moor* near *York*, was fought on *July* the 2d : Prince *Rupert* commanded the King's Army ; and the Earls of *Manchester* and *Leven* (better known by the name of Colonel *Lestly*) and the Lord *Ferdinando Fairfax*, commanded the Forces of the Parliament ; at first Prince *Rupert* got Ground, and those in the main Battel were so hard put to it, that they fell on the Reserve of the *Scots* behind, and the right Wing of the Parliament Horse being as hard put to it by the left Wing of the Prince, they committed the like Disorder, by falling on the Lord *Fairfax's* Foot and the *Scots* Reserve, and by this means the Prince possessed himself of their Canon, and those three Generals of the Parliament retired.

This News came flying to *Oxford*, being reported by some of the Parliament Soldiers who had fled out of the Field, and it was so welcome there, that it was entertained with Bells and Bonfires, and discharging all the Canon about the Town.

But there being no Horse sent to make good the Ground which was left by the Parliament Forces in their Retreat, and the Prince's Soldiers being very earnest upon Pillage, Colonel *Cromwel* who commanded the Earl of *Manchester's* Horse, and who made a fair Retreat in the heat of the Battel, on Purpose to put new Life into his Men, and having rallied the broken Foot into some Order, he then pressed hard upon the Prince and turned the Fortune of the Day, for which Service he was cried up to be *the Saviour of three Kingdoms*.

There were more killed in this Battel than in any other during the whole course of the War, for those who buried the Dead found the Bodies of 8000 Men slain.

And

And now we are come to the Battel which is the last of the three I proposed, to mention, this Battel was fatal to the King and all his Party : It seemed very unaccountable that after he had taken *Leicester*, and thereby put his Affair in a more hopeful way than they had been at any time during the War, (as he told the Queen in a Letter to her) that he should come back to *Darventry*, and there spend almost a fortnight without doing any thing. The Noise of the Siege of *Oxford* by the Lord *Fairfax* was a poor Excuse for his returning; for certainly his staying so long at *Darventry* could not be the way to raise that Siege.

Neither was *Oxford* then in any great Danger, so as to make him return from the Pursuit of his Success, for it was made a Jest, that there was no other Inconvenience by the Siege, but that the Ladies could not be supplied with fresh Butter for their Pease.

But by his Return to *Darventry*, he gave time to *Cromwel* (without whom the Lord *Fairfax* could do little) to come up with six hundred Horse to the Army ; and even then they could not have made so much haste to fight the King at *Naseby* as they did, if they had not intercepted a Letter the very Night before the Battel, from Colonel *Goring* to the King, in which he wrote, that he was marching towards him, desiring the King to keep at a distance, and not to engage till he came. *Cromwel* upon reading this Letter, resolved to fall on the next Day, which was done, and the King's Army routed, his Cabinet of Letters and Papers taken, being most of them written to the Queen, in some of which he gave her Leave to promise some Favours to the *Roman Catholics* in *England*, if they could obtain any Succours for him from the *Catholicks* abroad.

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These

These Letters were printed and published by the Order of the Parliament; but it being contrary to the Rules of Humanity to publish those things which pass between Husband and Wife, it was generally disliked; and therefore the Parliament gave Order, that these intercepted Letters should be left out of that Volume of Ordinances published by *Edward Husbands*.

After this Battel, the King or his Party were never able to make any considerable Opposition to the Forces of the Parliament, but lost Battel after Battel, and Place after Place, under the Conduct their two Generals, the Lord *Fairfax* and *Oliver Cromwell*; till at last being reduced to a very low Ebb of Fortune, he was forced to quit *Oxford*, and fly to the *Scottish* Army for Protection, by whom he was some time afterwards delivered up to the Parliament, upon such Terms as had been agreed between them.

Then he was confined to some of his own Houses, and having refused to pass such Bills which were offered to him, they voted, that no more Addresses should be made to him.

'Tis true, *Cromwell* and the Officers of the Army treated him very honourably, and with Respect and Freedom at *Hampton Court*; but he fled from thence to the Isle of *Wight* in a Disguise, and there he was kept close Prisoner for several Months.

In *Scotland*, Duke *Hamilton* had raised an Army for the King, and to set him at Liberty, and thither *Cromwell* went to oppose him.

During his Absence, those who were called *Puritans* in both Houses (for the Name of *Presbyterian* was not then in fashion) resolved to take this Opportunity to treat and make a final Agreement with the King, then at the Isle of *Wight*, upon certain Conditions, to which at last he agreed; and

and had he done so when the Treaty first began and come immediately to *London*, and joined his Interest with that of the Parliament and the City, he might have raised an Army able to give Battel to those Forces which *Cromwell* was bringing from *Scotland*, after he had reduced it

But the time being delayed by several unnecessary Punctilio's in the Treaty, that General with his Independent Army marched up to *London*, and put an end to it, by excluding all those of the House of Commons who had voted the King's Concessions satisfactory; and then the remaining part (which were called the *Rump*, not being above sixty in all) first vote the House of Lords useless and dangerous, they having refused to join with them, and so ordered the matter, that they met no more.

Afterwards they passed an Ordinance for the Trial of the King, by certain Judges appointed by them for that purpose; and though he denied their Power, yet they condemned him, and he was Beheaded at the Gates of his own Palace.

In the next place I shall mention that excellent Statute, commonly called the *Habeas Corpus Act*, by which the Subjects are freed from all causeless, tedious and arbitrary Imprisonments.

Anno tricesimo primo Caroli Secundi Regis, cap. 2.

An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas, commonly called the *Habeas Corpus Act*.

Whereas great Delays have been used by Sheriffs, Gaolers and other Officers, to whose Custody any of the Kings Subjects have been committed

mitted, for criminal or supposed criminal Matters, in making Returns of Habeas Corpus to them directed, by standing out an Alias, and Pluries Habeas Corpus, and sometimes more, and by other Shifts, to avoid their yielding Obedience to such Writs, contrary to their Duty, and the known Laws of the Land, whereby many of the King's Subjects have been, and hereafter may be long detained in Prison, in such Cases where by Law they are bailable, to their great Charges and vexation.

II. For the Prevention whereof, and the more speedy Relief of all Persons imprisoned for any such criminal, or supposed criminal Matters: (2.) Be it Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority thereof, That whensoever any Person or Persons shall bring any Habeas Corpus directed to any Sheriff, or Sheriffs, Gaoler, Minister, or other Person whatsoever, for any Person in his or their Custody, and the said Writ shall be served upon the said Officer, or left at the Gaol or Prison, with any of the under Officers, under Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers, his or their under Officers or Keepers or Deputies, shall within three Days after the Service thereof, as aforesaid, (unless the Commitment aforesaid were for Treason or Felony, plainly and specially expressed in the Warrant of Commitment) upon Payment or Tender of the Charges of bringing the said Prisoner, to be ascertained by the Judges, or Court that awarded the same, and endorsed upon the said Writ, not exceeding Twelve-pence per Mile, and upon Security given by his own Bond, to pay the Charges of carrying back the Prisoner, if he shall be

he remanded, by the Court or Judge, to which he shall be brought, according to the true Intent of this present Act, and that he will not make any Escape by the way, make Return of such Writ. (3.) And bring or cause to be brought the Body of the Party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the Great Seal of England for the time being, or the Judges or Barons of the said Court from whence the said Writ shall issue, or unto and before such other Person or Persons before whom the said Writ is made returnable, according to the Command thereof. (4.) And shall then likewise certify the true Causes of his Detainer, or Imprisonment, unless the Commitment of the said Party be in any Place beyond the distance of twenty Miles from the Place or Places, where such Court or Person is, or shall be residing; and if beyond the distance of twenty Miles, and not above One Hundred miles, then within the space of Twenty Days after such the Delivery aforesaid, and not longer.

III. And to the Intent that no Sheriff, Gaoler or other Officer, may pretend Ignorance of the Import of any such Writ, (2.) Be it enacted by the Authority aforesaid, That all such Writs shall be marked in this manner, Per Statutum Tricesimo Primo Caroli Secundi Regis, and shall be signed by the Person that awards the same. (3.) And if any Person or Persons shall be or stand committed or detained, as aforesaid, for any Crime, unless for Felony or Treason, plainly expressed in the Warrant of Commitment, in the Vacatour-time, and out of Term, it shall and may be lawful to and for the Person or Persons so committed or detained, (other than Persons convicted, or in Execution by legal Process) or any one on his or their Behalf, to appeal, or complain to the

the Lord Chancellor, or Lord Keeper, or any one of His Majesty's Justices, either of the one Bench, or of the other, or the Barons of the Exchequer of the Degree of the Coif. (4.) And the said Lord Chancellor, Lord Keeper, Justices, or Barons, or any of them, upon view of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwise upon Oath made, that such Copy or Copies were denied to be given by such Person or Persons, or any on his, her, or their Behalf, attested and subscribed by two Witnesses, who were present at the Delivery of the same, to award and grant an Habeas Corpus under the Seal of such Court, whereof he shall then be one of the Judges. (5.) To be directed to the Officer or Officers in whole Custody the Party so committed or detained shall be, returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron, of the Degree of the Coif, of any of the said Courts. (6.) And upon Service thereof as aforesaid, the Officer or Officers, his or their under Officer or under Officers, under Keeper or under Keepers, or Deputy, to whose Custody the Party is so committed or detained, shall within the times respectively before limited, bring such Prisoner or Prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said Writ is made returnable, and in case of his Absence, before any other of them, with the Return of such Writ, and the true Causes of the Commitment and Detainer. (7.) And thereupon within two Days after the Party shall be brought before them the said Lord Chancellor, or Lord Keeper, or such Justice, or Baron, before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his

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Imprisonment, taking his or their Recognizance, with one or more Surety or Sureties, in any Sum, according to their Discretion, having regard to the Quality of the Prisoner, and Nature of the Offence, for his or their Appearance in the Court of King's Bench the Term following, or at the next Assizes, Sessions, or general Goal-Delivery of and for such County, City or Place, where the Commitment was, or where the Offence was committed, or in such other Court where the said Offence is properly recognizable, as the Case shall require, and then shall certify the said Writ with the Return thereof, and the said Recognizance or Recognizances into the said Court, where such Appearance is to be made. (8.) Unless it shall appear unto the said Lord Chancellor, or Lord Keeper, or Justice, or Justices, Baron or Barons, that the Party so committed is detained upon a legal Process, Order, or Warrant out of some Court that hath Jurisdiction of criminal Matters, or by some Warrant signed and sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such Matters or Offences, for the which by the Law the Prisoner is not bailable.

IV. Provided always, and be it enacted, That if any Person shall have wilfully neglected by the space of two whole Terms after his Imprisonment to pray a Habeas Corpus for his Enlargement, such Person so wilfully neglecting, shall not have any Habeas Corpus to be granted in Vacation-time in Pursuance of this Act.

V. Be it further enacted by the Authority aforesaid, That if any Officer or Officers, his or their under Officer, or under Officers, under Keeper or under Keepers, or Deputy, shall neglect or refuse to make the Returns aforesaid, or to bring the

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the Body or Bodies of the Prisoners, according to the Command of the said Writ, within the Respective times aforesaid, or upon Demand made by the Prisoner, or Person in his Behalf shall refuse to deliver, or within the space of six Hours after Demand, shall not deliver to the Person so demanding, a true Copy of the Warrant or Warrants of Commitment and Detainer of such Prisoner, which he or they are hereby required to deliver accordingly, all and every the Head Gaolers and Keepers of such Prisons, and such other Person, in whose Custody the Prisoner shall be detained, shall for the first Offence, forfeit to the Prisoner, or Party grieved, the Sum of One Hundred Pounds: (2.) And for the second Offence, the Sum of Two Hundred Pounds, and shall and is hereby made incapable to hold or execute his said Office: (3.) The said Penalties to be recovered by the Prisoner or Party grieved, his Executors or Administrators, by any Action of Debt, Suit, Bill, Plaint or Information, in any of the King's Courts at Westminster, wherein no Essoign, Protection, Privilege, Injunction, Wager of Law, or Stay of Prosecution by Non vult ulterius prosequi, or otherwise, shall be admitted or allowed, or any more than one Impar lance. (4.) And any Recovery or Judgment at the Suit of any Party grieved, shall be a sufficient Conviction for the first Offence; and any after Recovery or Judgment at the Suit of a Party grieved, for any Offence after the first Judgment, shall be a sufficient Conviction to bring the Officers or Person within the said Penalty for the second Offence.

VI. And for the Prevention of unjust Detention, by reiterated Commitments for the same, (2) Be it Enacted by the Authority aforesaid, That no

no Person or Persons, which shall be delivered or set at large upon any Habeas Corpus, shall at any time hereafter be again imprisoned or committed for the same Offence, by any Person or Persons whatsoever, other than by the legal Order and Process of such Court wherein he or they shall be bound by Recognizance to appear, or other Court having Jurisdiction of the Cause. (3.) And if any other Person or Persons shall knowingly, contrary to this Act, recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same Offence or pretended Offence, any Person or Persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the Prisoner or Party grieved, the Sum of Five Hundred Pounds, any colourable Pretence or Variation in the Warrant or Warrants of Commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, That if any Person or Persons shall be committed for High Treason or Felony, plainly and specially expressed in the Warrant of Commitment, upon his Prayer or Petition in open Court the first Week of the Term, or first Day of the Sessions of Oyer and Terminer, or general Gaol-Delivery, to be brought to his Trial, shall not be indicted some time in the next Term, Sessions of Oyer and Terminer, or general Gaol-Delivery after such Commitment, it shall and may be lawful to and for the Judges of the Court of King's Bench, and Justices of Oyer and Terminer, or general Gaol-Delivery, and they are hereby required upon Motion to them made in open Court the last Day of the Term, Sessions, or General Gaol-Delivery, either by the Prisoner, or any one in his Behalf, to set him at Liberty upon Bail, unless it appear

appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions or General Gaol-Deliberly. (2.) And if any Person or Persons committed as aforesaid, upon his Prayer or Petition in open Court, the first Week of the Term, or first Day of the Sessions of Oyer and Terminer, and General Gaol-Deliberly, to be brought to his Trial, shall not be indicted and tried the second Term, Sessions of Oyer and Terminer, or General Gaol-Deliberly, after his Commitment, or upon his Trial shall be acquitted, he shall be discharged from his Imprisonment.

VIII. Provided always, That nothing in this Act shall extend to discharge out of Prison any Person charged in Debt, or other Action, or with Process in any Civil Cause, but that after he shall be discharged of his Imprisonment for such his criminal Offence, he shall be kept in Custody according to Law for such other Suit.

IX. Provided always, and be it enacted by the Authority aforesaid, That if any Person or Persons Subjects of this Realm, shall be committed to any Prison, or in Custody of any Officer or Officers whatsoever, for any criminal or supposed criminal Matter, that the said Person shall not be removed from the said Prison and Custody, into the Custody of any other Officer or Officers; (2.) Unless it be by Habeas Corpus, or some other legal Writ; or where the Prisoner is delivered to the Constable or other inferiour Officer, to carry such Prisoner to some common Gaol. (3.) Or where any Person is sent by Order of any Judge of Assize, or Justice of the Peace, to any common Workhouse, or House of Correction: (4.) Or where the Prisoner is removed from one Prison or Place to another within the same County, in order to his

or her Trial or Discharge in due course of Law: (5.) Or in case of sudden Fire, or Infection, or other Necessity. (6.) And if any Person or Persons shall after such Commitment aforesaid, make out and sign, or countersign, any Warrant or Warrants for such Removal aforesaid, contrary to this Act, as well he that makes or signs, or countersigns, such Warrant or Warrants, as the Officer or Officers, that obey or execute the same, shall suffer and incur the Pains and Forfeitures in this Act beforementioned, both for the first and second Offence, respectively, to be recovered in manner aforesaid, by the Party grieved.

X. Provided also, and be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any Prisoner and Prisoners as aforesaid, to move, and obtain his or their Habeas Corpus, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of King's Bench, or Common Pleas, or either of them. (2.) And if the said Lord Chancellor, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the Degree of the Coif, or any of the Courts aforesaid, in the Vacation time, upon view of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made, that such Copy or Copies were denied as aforesaid, shall deny any Writ of Habeas Corpus by this Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the Prisoner or the Party grieved, the Sum of Five Hundred Pounds, to be recovered in manner aforesaid.

XI. And be it enacted and declared by the Authority aforesaid, That an Habeas Corpus according to the true Intent and Meaning of this Act, may be directed, and run into any County Palatine, the

Cinque Ports, or other privileged Places, within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, and the Isles of Jersey, or Guernsey, any Law or Usage to the contrary notwithstanding.

XII. And for preventing illegal Imprisonments in Prisons beyond Seas, (2.) Be it further Enacted by the Authority aforesaid, That no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resident of this Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, shall or may be sent Prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into any Parts, Garrisons, Islands, or Places beyond the Seas, which are, or at any time hereafter shall be within or without the Dominions of his Majesty, his Heirs and Successors. (3.) And that every such Imprisonment is hereby enacted and adjudged to be illegal. (4.) And that if any of the said Subjects now is, or hereafter shall be so imprisoned, every such Person and Persons so imprisoned, shall and may for every such Imprisonment, maintain by Vertue of this Act, an Action or Actions of False Imprisonment, in any of his Majesty's Courts of Record, against the Person or Persons by whom he or she shall be so committed, detained, imprisoned, sent Prisoner or transported, contrary to the true meaning of this Act, and against all or any Person or Persons, that shall frame, contrive, write, seal or counterfeign any Warrant or Writing for such Commitment, Detainer, Imprisonment or Transportation, or shall be advising, aiding or assisting in the same, or any of them. (5.) And the Plaintiff in every such Action, shall have Judgment to recover his treble Costs, besides Damages; which Damages so to be given, shall not be less than

Five Hundred Pounds. (6.) In which Action, no Delay, Stay, or Drop of Proceeding, by Rule, Order or Command, nor no Injunction, Protection or Privilege whatsoever, nor any more than one Imparance shall be allowed, excepting such Rule of the Court wherein the Action shall depend, made in open Court, as shall be thought in Justice necessary, for special Cause to be expressed in the said Rule. (7.) And the Person or Persons who shall knowingly frame, contrive, write, seal or counterfeign any Warrant for such Commitment, Detainer, or Transportation, or shall so commit, detain, imprison, or transport any Person or Persons, contrary to this Act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from henceforth to bear any Office of Trust or Profit within the said Realm of England, Dominion of Wales, or Town of Berwick upon Tweed, or any of the Islands, Territories or Dominions thereunto belonging. (8.) And shall incur and sustain the Pains, Penalties, and Forfeitures, limited, ordained, and provided in and by the Statute of Provision and Preamble, made in the Sixteenth Year of King Richard the Second. (9.) And be incapable of any Pardon from the King, his Heirs or Successors, of the said Forfeitures, Losses, or Disabilities, or any of them.

XIII. Provided always, That nothing in this Act shall extend to give Benefit to any Person who shall by Contract in Writing, agree with any Merchant or Owner, of any Plantation, or other Person whatsoever, to be transported beyond the Seas, and receive Earnest upon such Agreement, although that afterwards such Person shall renounce such Contract.

XIV. Provided always, and be it enacted, That if any Person or Persons, lawfully convicted of any Felony, shall in open Court pray to be transported beyond the Seas, and the Court shall think fit to leave him or them in Prison for that purpose, such Person or Persons may be transported into any Parts beyond the Seas; This Act, or any thing therein contained to the contrary, notwithstanding.

XV. Provided also, and be it enacted, That nothing herein contained, shall be deemed, construed, or taken to extend to the Imprisonment of any Person before the First Day of June, One Thousand Six Hundred Seventy and Nine, or to any thing advised, procured, or otherwise done, relating to such Imprisonment; Any thing herein contained to the contrary notwithstanding.

XVI. Provided also, That if any Person or Persons, at any time resident in this Realm, shall have committed any Capital Offence in Scotland or Ireland, or any of the Islands, or Foreign Plantations of the King, his Heirs, or Successors, where he or she ought to be tried for such Offence, such Person or Persons may be sent to such Place, there to receive such Tryal, in such manner as the same might have been used before the making of this Act, any thing herein contained to the contrary notwithstanding.

XVII. Provided always, and be it enacted, That no Person or Persons, shall be sued, impleaded, or molested for the same within two Years at the most after such time wherein the Offence shall be committed, in Case the Party grieved shall not be then in Prison; and if he shall be in Prison, then within the space of two Years after the Decease of the Person imprisoned, or his, or her Delivery out of Prison, which shall first happen.

XVIII. And

XVIII. And to the Intent no Person may avoid his Trial at the Assizes, or general Gaol Delivery, by procuring his Removal before the Assizes at such time as he cannot be brought back to receive his Trial there; (2.) Be it enacted, That after the Assizes proclaimed for that County where the Prisoner is detained, no Person shall be removed from the common Gaol upon any Habeas Corpus granted in pursuance of this Act, but upon any such Habeas Corpus, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall appertain.

XIX. Provided nevertheless, That after the Assizes are ended, any Person or Persons detained may have his or her Habeas Corpus, according to the Direction and Intention of this Act.

XX. And be it also enacted by the Authority aforesaid, That if any Information, Suit, or Action, shall be brought or exhibited against any Person or Persons, for any Offence committed against the Form of this Law, it shall be lawful for such Defendants to plead the General Issue, that they are not Guilty, or that they owe Nothing, and to give such special Matter in Evidence to the Jury, that shall try the same, which Matter being pleaded, had been good and sufficient in Law to have discharged the said Defendant or Defendants against the said Information, Suit, or Action, and the said Matter shall then be as available to him or them, to all Intents and Purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same Matter in Bar, or Discharge of such Information, Suit, or Action.

XXI. And because many times Persons charged with Petty-Treason or Felony, or as Accessories thereunto are committed upon Suspicion only, whereupon they areailable or not, according as

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the Circumstances making out that Suspicion are more or less weighty, which are best known to the Justices of Peace that committed the Persons, and have the Examination before them, or to other Justices of Peace in the County. (2.) Be it therefore enacted, That where any Person shall appear to be committed by any Judge, or Justice of the Peace, and charged as Accessary before the Fact, to any Petty Treason or Felony, or upon Suspicion thereof, or with Suspicion of Petty Treason or Felony, which Petty Treason or Felony, shall be plainly and specially expressed in the Warrant of Commitment, that such Person shall not be removed or bailed by Virtue of this Act, or in any other manner than they might have been before the making of this Act.

*The Comment.*

There are three things, which the Law of England (which is a Law of Mercy) principally regards and taketh care of, *viz.* Life, Liberty and Estate. Next to a Man's Life, the nearest Thing that concerns him, is Freedom of his Person; for indeed, what is Imprisonment, but a kind of civil Death? Therefore saith *Fortescue, cap. 42.* The Laws of England do, in all Cases, favour Liberty.

The Writ of *Habeas Corpus* is a Remedy given by the Common Law, for such as were unjustly detained in Custody, to procure their Liberty: But before this Statute was rendered far less useful than it ought to be, partly by the Judges, pretending a Power to grant or deny the said Writ at their pleasure, in many Cases; and especially by the ill Practices of Sheriffs and Gaolers, by putting the Prisoner to the Charge and Trouble of an *Alias* and *Pluries* (that is, a second and third Writ, before they would obey the first, for there was no Penalty till the Third) and then at last, the Judges would

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oft-times alledge, That they could not take Bail, because the Party was a Prisoner of State, &c. Therefore to remedy all those Mischiefs, this most wholesome Law was provided, which we shall briefly endeavour to divide into its several Branches, and explain it to the meanest Capacities, since no Man is sure, but one time or other, he may have occasion to make use of it.

The Act concerneth either first, Persons committed for some other criminal, or supposed criminal Matter, besides Treason or Felony, and these are to have an *Habeas Corpus* immediately. 2. Such who in their *Mittimus* are charged with Treason and Felony, and these shall have the Benefit of the said Writ, after the time herein limited. 1. If any Gaoler, or Under-Keeper, shall not deliver a true Copy of the *Mittimus* within six hours after the Prisoner demands it, the Head Gaoler or Keeper forfeits to the Prisoner, for the first Offence, 100 *l.* for the second Offence 200 *l.* and loses his Place. Nor is there any Fee to be paid for the same, the Turnkey must deliver it at his peril. And note, if the Prisoner should be lock'd up, or none suffered to come at him, any Friend of his may demand the same on his behalf.

2. Whatever the criminal Matter be, if Treason or Felony be [not expressly charged, any Person on the Prisoner's Behalf, carrying such true Copy of the Commitment to the Lord Chancellor, or any one of the Judges, or Barons of the Exchequer, or upon Oath made, that a Copy was demanded, and denied, he shall grant an *Habeas Corpus*, or forfeit 500 *l.* to the Prisoner. But note, the Request must be made to such Judge in Writing, and attested by two Witnesses.

3. If the Sheriff, or Gaoler, do not carry up the Prisoner, and return the true Causes of his Detainer,

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within three days, if under twenty Miles distance; or within ten days, if above twenty, and under an hundred Miles; or within twenty days, if above an hundred Miles, he forfeits 500 *l.* to the Prisoner.

*Note*, the Prisoner must pay the Charges of his carrying up; and the Judge, when he grants the Writ, may order how much, but it must not be above 12 *d.* a Mile.

If upon the Return of such *Habeas Corpus*, it appear the Prisoner is not charged with Treason or Felony, specially and plainly expressed, or for such Matters as, by Law, are notailable, the Judge shall discharge the Prisoner upon Bail.

4. If a Person once so bailed out, shall again be imprisoned for the same Offence, those that do it, forfeit 500 *l.*

5. If there be High Treason, or Felony, plainly and specially expressed, [That is, not only generally, for Treason or Felony, but Treason in conspiring to kill the King, or in Counterfeiting the King's Coin, or Felony, for Stealing the Goods of such an one, to such a value, &c.] Then the Prisoner cannot have his *Habeas Corpus*, till first he be, on the first Week of the Term, or first day of the Sessions of *Oyer and Terminer*, or General Gaol-delivery, petitioned in open Court, to be brought to his Tryal; and then if he be not brought to Tryal the next Term, or Sessions following, on the last day thereof, he shall be bailed; and if not indicted the second Term or Sessions, shall be discharged.

6. This Act extends to all places within *England* and *Wales*, the *Tower* cannot be supposed to be exempted, nor *Windsor-Castle*, nor any such Royal Forts; for the words are general. And besides, there is a special Act of Parliament, that unites the King's Castles

Castles to the Counties wherein they stand; there having been, it seems, some Pretensions, and ill Practices, to hold them distinct, that therein they might detain Men Prisoners against Law, and not admit any Writ to enlarge them. For Remedy whereof it was thus enacted;

Anno 13 Rich. Secundi.

Item. **I**t is ordained and assented, that the King's Castles and Gaols, which were wont to be joined to the Bodies of the Counties, and be now severed, shall be rejoined to the same Counties.

Lastly, No Person shall be sent Prisoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Fersy*, *Guernsey*, *Tangier*, or any other place beyond the Seas.

The Proviso's, and other Clauses of this Act, may be easily apprehended by the meanest Capacities.

And, As the Law provides thus for our Liberty, so it takes care, that those that are in Custody, shall not be abused or oppressed; to which purpose I shall here insert so much as is material and necessary to be known by all Persons, who are so unhappy as to be Prisoners, out of the Statute of the 22d and 23d *Car. 2. cap. 20.* The words whereof are as follows.

**W**hereas Persons that are under Arrests, or committed to the Custody of Sheriffs, Bailiffs, Gaolers, Keepers of Prisons, or Gaols, are much abused and wronged by extorting of great Fees, Rewards, and other Exactions, and put to great Expences under pretences of Favour, or otherwise, whereby they are greatly oppressed, and many times ruined in their Estates.

(2.) For remedy thereof, be it enacted by the Authority aforesaid, that if any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Minister whatsoever, shall at any time, or times hereafter, have in his or their Custody, any Person or Persons, by Vertue or Colour of any Writ, Process, or other Warrant whatsoever, it shall not be lawful for such Officer or Officers, to convey or carry, or cause to be conveyed or carried, the said Person or Persons, to any Tavern, Ale-house, or other Publick Victualling or Drinking-house, without the free and voluntary Consent of the said Person or Persons, so as to charge such Prisoner with any Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other things whatsoever, but what the said Person or Persons shall call for, of his, her, or their own accord (3.) And shall not demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly any other, or greater Sum or Sums, than what by Law, ought to be taken or demanded for such Arrest, Taking, or Waiting (until such Person or Persons shall have procured an Appearance, found Bail, agreed with his or their Adversaries, or be sent to the proper Gaol belonging to the County, City, Town or Place, where such Arrest or Taking shall be.) (4.) Nor take and exact any other Reward or Gratuity for so keeping the said Person or Persons out of the Gaol or Prison, than what he, she, or they, shall or will, of his, her, or their own Accord, voluntarily and freely give. (5.) Nor take, nor receive any other, or greater Sum or Sums, for each Night's Lodging, or other Expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next Justice of the Peace, or at the next Quarter-Sessions. (6.) And shall not cause or procure the said Person or Persons, to pay for any other Wine, Beer, Ale, Victuals, Tobacco, or other things than what the said Person or Persons shall voluntarily, freely, and particularly call for.

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And that every Under-Sheriff, Gaoler, Keeper of Prison or Gaol, and every Person or Persons whatsoever, to whose Custody any Person or Persons shall be delivered or committed, by Vertue of any Writ of Process, or any Pretence whatsoever, shall permit or suffer the said Person or Persons, at his and their Will and Pleasure, to send for, and have any Beer, Ale, Victuals, and other necessary Food, where, and from whence they please: And also to have and use such Bedding, Linnen, and other things, as the said Person or Persons shall think fit, without any purloining, detaining, or paying for the same, or any part thereof; nor shall demand, take or receive of the said Person or Persons, any other, or greater Fee or Fees whatsoever, for his, her, or their Commitment, Release or Discharge; or for his, her, or their Chamber-Rent, than what is allowable by Law, until the same shall be settled by three Justices of the Peace, whereof one to be of the Quorum, of each particular County, City, and Town-Corporate, in their several Precincts; and for the City of London, and Counties of Middlesex and Surrey, by the two Lord Chief Justices of the King's Bench and Common Pleas, and the Lord Chief Baron, or any two of them, and the Justices of the Peace, of the same, in their several Jurisdictions.

And likewise that the said Lord Chief Justices, Lord Chief Baron, and Justices of the Peace, in their several Jurisdictions, and all Commissioners for Charitable Uses, do their best Endeavours, and Diligence, to examine and find out the several Legacies, Gifts and Bequests, bestowed and given for the Benefit and Advantage of the poor Prisoners for Debt, in the several Gaols and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings, and Books of Accounts whatsoever; and any Person or Persons concerned therein, and to examine them upon Oath, to make true discovery thereof, (which they have full Power and Au-

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thority hereby to do) and the same so found out and ascertained, to order and settle in some manner and way, that the Prisoners hereafter may not be defrauded, but receive the full Benefit thereof, according to the true Intent of the Donors.

And that these Accounts of the several Legacies, Gifts and Bequests, given and bestowed upon the several Prisoners for Debt, within this Kingdom, and the several Rates of Fees, and the future Government of Prisons, be signed and confirmed by the Lord Chief Justices, and the Lord Chief Baron, or any two of them for the time being, and the Justices of the Peace in London, Middlesex and Surrey; and by the Judges for the several Circuits, and Justices of the Peace for the time being, in their several Precincts, and fairly written, and hung up in a Table in every Gaol and Prison, before the first day of November 1671. and likewise be registred by each and every Clerk of the Peace within his or their particular Jurisdiction: And after such Establishment, no other or greater Fee or Fees than shall be so established, shall be demanded or received.

And whereas it is become the common Practice of Gaolers, and Keepers of Newgate, the Gatehouse at Westminster, and sundry other Gaols and Prisons, to lodge together in one Room or Chamber and Bed, Prisoners for Debt, and Felons, whereby many times honest Gentlemen, Tradesmen and others, Prisoners for Debt, are disturbed and kindred in the night-time from their natural Rest, by reason of their Fetters and Irons; and otherwise much offended and troubled by their lewd and prophane Language and Discourses, with most horrid Cursing and Swearing (much accustomed to such Persons.) (2.) Be it enacted by the Authority aforesaid, That it shall not be lawful hereafter, for any Sheriff, Gaoler, or Keeper of any Gaol or Prison, to put, keep or lodge Prisoners for Debt and Felons together in one Room or Chamber; but that they shall be put, kept, and lodged

lodged separate and apart one from another, in distinct Rooms. (3.) Upon pain that he, she, or they which shall offend against this Act, or the true Intent and Meaning thereof, or any part thereof, shall forfeit and lose his or her Office, Place or Employment, and shall forfeit treble Damages to the Party grieved, to be recovered by vertue of this Act, any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding.

And to the end that English-men may more entirely enjoy their due Freedoms, the Prudence of our Legislators have thought fit, from time to time to remove Incroachments thereupon, though under Pretence of Jurisdictions and Courts of Justice; and to prohibit any exorbitant Arbitrary Power for the future, but that all things may be left to the calm and equal Proceedings of Law; and that most excellent Method of Trial by Juries, one of the principal Bulwarks of England's Liberties. For an Instance hereof, take the Act following.

An Act for Regulating of the Privy Council, and for taking away the Court, commonly called the Star-Chamber.

Whereas by the Great Charter, many times confirmed in Parliament, it is enacted, That no Freeman shall be taken or imprisoned, or disseized of his Freehold or Liberties, or Free Customs, or be outlawed or exiled, or otherwise destroyed; and that the King will not pass upon him, or condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2.) And by another Statute made in the fifth Year of the Reign of King Edward, it is enacted, That no Man shall be attached by any Accusation, nor fore-

forejudged of Life or Limb, nor his Lands, Tenements, Goods nor Chattels, seized into the King's Hands, against the Form of the Great Charter, and the Law of the Land. (3.) And by another Statute made in the five and twentieth Year of the Reign of the same King Edward the Third, it is accorded, assented, and established, That none shall be taken by Petition, or Suggestion, made to the King, or to his Council, unless it be by Indictment or Presentment of good and lawful People of the same Neighbourhood, where such Deeds be done, in due manner, or by Process made by Writ Original at the Common Law; and that none be put out of his Franchise or Freehold, unless he be duly brought in to answer, and fore-judged of the same by the Course of the Law: And if any thing be done against the same, it shall be redressed, and holden for none. (4.) And by another Statute made in the eight and twentieth Year of the Reign of the same King Edward the Third, it is, amongst other things, enacted, That no Man, of what Estate or Condition soever he be, shall be put out of his Lands or Tenements, nor taken, nor imprisoned, nor disinherited, without being brought in to answer by due Process of Law. (5.) And by another Statute made in the two and fortieth Year of the Reign of the said King Edward the Third, it is enacted, That no Man be put to answer without Presentment before Justices, or matter of Record, or by due Process, and Writ Original, according to the Old Law of the Land: And if any thing be done to the contrary, it shall be void in Law, and holden for Error. (6.) And by another Statute, in the six and thirtieth Year of the Reign of the same King Edward the third, it is, among other things, enacted, That all Pleas, which shall be pleaded in any Courts, before any of the King's Justices, or in his other places, or before any of his other Ministers, or in the Courts and places or before any of his Ministers, or in the Courts and Places of any other Lords within the Realm, shall be entered and enrolled

in Latin. (7.) And whereas by the Statute made in the third Year of King Henry the seventh, Power is given to the Chancellor, the Lord Treasurer of England for the time being, and the Keeper of the King's Privy Seal, or two of them, calling unto them a Bishop, and a Temporal Lord, of the King's most Honourable Council, and the two Chief Justices of the King's Bench and Common Pleas for the time being, or other two Justices in their Absence, to proceed as in that Act is expressed, for the Punishment of some particular Offences therein mentioned. (8.) And by the Statute made in the one and twentieth Year of King Henry the Eighth, the President of the Council is associated to join with the Lord Chancellor, and other Judges, in the said Statute of the Third of Henry the Seventh mentioned. (9.) But the said Judges have not kept themselves to the points limited by the said Statute, but have undertaken to punish where no Law doth warrant, and to make Decrees for things, having no such Authority, and to inflict heavier Punishments, than by any Law is warranted.

2. And forasmuch as all Matters examinable or determinable before the said Judges, or in the Court commonly called the Star-Chamber, many have their proper Remedy and Redress, and their due Punishment and Correction by the Common Law of the Land, and in the ordinary course of Justice elsewhere. (2.) And forasmuch as the Reasons and Motives, inducing the Erection and Continuance of that Court, do now cease: (3.) And the Proceedings, Censures and Decrees of that Court, have by Experience been found to be an intollerable Burthen to the Subject, and the means to introduce an Arbitrary Power and Government. (4.) And forasmuch as the Council-Table hath of late times assumed unto it self, a Power to intermeddle in Civil, and Matters only of private Interest between Party and Party, and have adventured to determine of the Estates and Li-

erties of the Subjects, contrary to the Law of the Land, and the Rights and Privileges of the Subject, by which great and manifold Mischiefs and Inconveniences have arisen and happened, and much Uncertainty, by means of such Proceedings, hath been conceived, concerning Mens Rights and Estates; for settling whereof, and preventing the like in time to come,

3. Be it ordained and enacted by the Authority of this present Parliament, That the said Court, commonly called the Star-Chamber, and all Jurisdiction, Power and Authority, belonging unto, or exercised in the same Court, or by any the Judges, Officers or Ministers thereof, be from the first day of August, in the Year of our Lord God, one thousand six hundred forty and one, clearly and absolutely dissolved, taken away and determined. (2.) And that from the said first day of August, neither the Lord Chancellor, or Keeper of the Great Seal of England, the Lord Treasurer of England, the Keeper of the King's Privy Seal, or President of the Council, nor any Bishop, Temporal Lord, Privy Counsellor, or Judge, or Justice whatsoever, shall have any Power or Authority to hear, examine or determine any matter or thing whatsoever in the said Court, commonly called the Star-Chamber, or to make pronounce, or deliver, any Judgment, Sentence, Order or Decree; or to do any Judicial or Ministerial Act in the said Court. (3.) And that all and every Act and Acts of Parliament, and all and every Article, Clause and Sentence in them, and every of them, by which any Jurisdiction, Power or Authority is given, limited or appointed, unto the said Court, commonly called the Star-Chamber, or unto all, or any the Judges, Officers or Ministers thereof, or for any Proceedings to be had or made in the said Court, or for any matter or thing to be drawn into question, examined or determined there, shall for so much as concerneth the said Court of Star-Chamber, and the Power and Authority thereby given  
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unto it, be from the said first day of August repealed, and absolutely revoked and made void.

4. And be it likewise enacted, That the like Jurisdiction now used and exercised in the Court, before the President and Council in the Marches of Wales: (2.) And also in the Court, before the President and Council established in the Northern Parts. (3.) And also in the Court commonly called the Court of the Duchy of Lancaster, held before the Chamberlain and Council of that Court. (4.) And also in the Court of Exchequer of the County Palatine of Chester, held before the Chamberlain and Council of that Court. (5.) The like Jurisdiction being exercised there, shall from the said first Day of August, Onethousand six hundred forty and one, be also repealed and absolutely revoked, and made void, any Law, Prescription, Custom or Usage, or the said Statute made in the third Year of King Henry the seventh, or the Statute made the one and twentieth of Henry the eight, or any Act or Acts of Parliament heretofore had or made, to the contrary thereof in any wise notwithstanding. (6.) And that from henceforth no Court, Council, or Place of Judicature, shall be erected, ordained, constituted or appointed, within this Realm of England, or Dominion of Wales, which shall have, use or exercise the same or the like Jurisdiction, as is or hath been used, practised, or exercised in the said Court of Star-Chamber.

5. Be it likewise declared and enacted by Authority of this present Parliament, That neither His Majesty, nor his Privy Council, have, or ought to have, any Jurisdiction, Power or Authority by English Bill, Petition, Articles, Libel, or any other Arbitrary way whatsoever, to examine, or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods, or Chattels, of any of the Subjects of this Kingdom; but that the same ought to be tried and determined in the ordinary Court of Justice, and by the ordinary Course of the Law.

6. And

6. And be it further provided, and enacted, That if any Lord Chancellor, or Keeper of the Great Seal of England, Lord Treasurer, Keeper of the King's Privy Seal, President of the Council, Bishop, Temporal Lord, Privy Counsellor, Judge or Justice whatsoever, shall offend, or do any thing contrary to the Purport, true Intent and Meaning of this Law, Then he or they shall, for such Offence, forfeit the Sum of Five hundred Pounds of lawful Money of England, unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, Wager of Law, Aid-prayer, Privilege, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlance. (2.) And if any Person, against whom any such Judgment or Recovery shall be had as aforesaid, shall, after such Judgment or Recovery, offend again in the same, then he or they, for such Offence, shall forfeit the Sum of One thousand Pounds of lawfull Money of England, unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at Westminster, by Action of Debt, Bill, Plaint or Information, in which no Essoin, Protection, Wager of Law, Aid-prayer, Privilege, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlance. (3.) And if any Person, against whom any such second Judgment or Recovery shall be had as aforesaid, shall, after such Judgment or Recovery, offend again in the same kind, and shall be thereof duly convicted by Indictment, Information, or any other lawfull way or means, that such Person so convicted, shall be from thenceforth disabled, and become, by this Act, incapable, ipso facto, to bear  
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his and their said Office and Offices respectively. (4.) And shall be likewise disabled to make any Gift, Grant, Conveyance, or other Dispensation of any of his Lands, Tenements, Hereditaments, Goods or Chattels; or to take any Benefit of any Gift, Conveyance or Legacy, to his own Use.

7. And every Person so offending, shall likewise forfeit and lose to the Party grieved by any thing done contrary to the true Intent and Meaning of this Law, his treble Damages, which he shall sustain and be put unto, by Means or Occasion of any such Act or Thing done; the same to be recovered in any of his Majesty's Courts of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, Wager of Law, Aid-prayer, Privilege, Injunction, or Order of Restraint, shall be in any wise prayed, granted or allowed, nor any more than one Imparlance.

8. And be it also provided and enacted, That if any Person shall hereafter be committed, restrained of his Liberty, or suffer Imprisonment, by the Order or Decree of any such Court of Star-Chamber, or other Court aforesaid, now, or at any time hereafter, having, or pretending to have, the same Jurisdiction, Power or Authority, to commit or imprison as aforesaid. (2.) Or by the Command or Warrant of the King's Majesty, His Heirs and Successors in their own Person; or by the Command or Warrant of the Council-board; or of any of the Lords, or others of his Majesty's Privy Council. (3.) That in every such case, every Person so committed, restrained of his Liberty, or suffering Imprisonment, upon Demand or Motion made by his Counsel, or other employed by him for that purpose, unto the Judges of the Court of King's Bench, or Common Pleas, in open Court, shall without Delay, upon any Pretence whatsoever, for the ordinary Fees usually paid for the same, have forthwith granted unto him a Writ of Habeas Corpus, to be directed generally unto all and every Sheriff,

riff, Gaoler, Minister, Officer, or other Person, in whose Custody the Person committed or restrained shall be. (4.) And the Sheriff, Gaoler, Minister, Officer, or other Person, in whose Custody the Person so committed or restrained shall be, shall, at the Return of the said Writ, and according to the Command thereof, upon due and convenient Notice thereof given unto him, at the Charge of the Party who requireth or procureth such Writ, and upon Security by his own Bond given, to pay the Charge of carrying back the Prisoner, if he shall be remanded by the Court to which he shall be brought, as in like cases hath been used, such Charges of bringing up, and carrying back the Prisoner, to be always ordered by the Court, if any Difference shall arise thereabout, bring, or cause to be brought, the Body of the said Party so committed or restrained, unto and before the Judges or Justices of the said Court, from whence the same Writ shall issue, in open Court. (5.) And shall then likewise certifye the true Cause of such his Detainer or Imprisonment; and thereupon the Court, within three Court-days after such Return made and delivered in open Court, shall proceed to examine and determine, whether the cause of such Commitment appearing upon the said Return, be just and legal or not; and shall thereupon do what to Justice shall appertain, either by Delivering, Bailing, or Remanding the Prisoner. (6.) And if any thing shall be otherwise willfully done, or omitted to be done, by any Judge, Justice, Officer, or other Person aforementioned, contrary to the Direction and true Meaning hereof, then such Person so offending, shall forfeit to the Party grieved, his treble Damages, to be recovered by such Means, and in such Manner, as is formerly in this Act limited and appointed, for the like Penalty to be sued for and recovered.

9. Provided always, and be it enacted, That this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star-

Star-Chamber. (2.) And to the said Courts holden before the President and Council in the Marches of Wales. (3.) And before the President and Council in the Northern parts. (4.) And also to the Court commonly called the Court of the Dutchy of Lancaster, holden before the Chancellor and Council of that Court. (5.) And also in the Court of Exchequer, of the County-Palatine of Chester, held before the Chamberlain, and Council of that Court. (6.) And to all Courts of like Jurisdiction to be hereafter erected, ordained, constituted, or appointed as aforesaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Restraints, and Imprisonments of any Person or Persons made, commanded or awarded by the King's Majesty, His Heirs or Successors in their own Person, or by the Lords and others of the Privy Council, and every one of them.

And lastly, Provided and be it enacted, That no Person or Persons shall be sued, impleaded, molested or troubled, for any Offence against this present Act, unless the Party supposed to have so offended, shall be sued or impleaded for the same, within two Years, at the most, after such Time, wherein the said Offence shall be committed.

### The Comment.

THE Court of Star-Chamber (so called, because held in a Chamber at Westminster, the Roof of which is garnish'd with Golden Stars) was not originally erected, but confirmed and established by the Statute of 3 H. 7. cap. 1. For there had before been some such Jurisdiction, as Coke observes 4 Inst. Fol. 62. yet there is reason to believe, that it grew up rather by Connivance and Usurpation than any due Course of Law. The Crimes it pretended to punish, were the exorbitant Offences

of Great Men, whom inferior Judges and Jurors (though they should not) would in respect of their Greatness, be afraid to offend; Bribery, Extortion, Maintenance, Champerty, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, &c. Their Proceedings were by *English Bill*, and Process under the Great Seal; and the Punishments by them inflicted, were *Fines, Imprisonment, Pillory, Cutting off Ears, &c.* But whatever Pretences there were for the setting up this Court at first, 'tis certain it was made use of as a Property of Arbitrary Power, to crush any whom the ruling Ministers and Favourites had a mind to destroy; and indeed there were three Things in the very Nature of this Court, which were destructive to the original Constitution of our *English Government* and Liberties. 1. They proceeded without *Juries*. 2. They pretended to a Power to examine Men upon their *Oaths*, touching Crimes by them supposed to be committed, which is contrary to all Law and Reason; For, No Man is bound to accuse himself. 3. The Judges of this Court proceeded by no known Law or Rules, but were left at Liberty to act arbitrarily, and according to their own Pleasures; whereas the Law of *England* hates to leave to any such, an unlimited Power, but as it marks out the several Species of Crimes, such or such an Act shall be Treason, this Felony, that Petty-Larceny, &c. So it awards certain and positive Punishment, proportionate to each of them. Therefore this Court being found a Grievance to the Subject, was by this Act dissolved and taken away.

And to the intent nothing of the like kind should by any other Name be practised for the future, it is declared and enacted, That the King and his Privy Council shall not question or dispose of the  
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Lands or Goods of any Subjects: And if they do each Privy-Counsellor present, forfeits 500 *l.* to the Party grieved.

A Clause in the Act of 31 Car. 2. Cap. 1.

**W** Hereas by the Laws and Customs of this Realm, the Inhabitants thereof cannot be compelled, against their Wills, to receive Soldiers into their Houses, and to sojourn them there, Be it declared and enacted by the Authority aforesaid, That no Officer, Military or Civil, nor any other Person whatsoever, shall from henceforth presume to place, quarter or billet, any Soldier or Soldiers, upon any Subject or Inhabitant of this Realm, of any Degree, Quality or Profession whatsoever, without his Consent: And that it shall and may be lawful for every such Subject and Inhabitant, to refuse to sojourn or quarter any Soldier or Soldiers, notwithstanding any Command, Order, Warrant, or Billeting whatsoever.

Having thus collected together divers of the most remarkable and advantageous of our Laws, whereby the Liberties of *English-men* are guarded and secured; since the best of Laws are but insignificant Cyphers, if not honestly put in Execution; and since in the Execution of our Laws, *JURIES* are mainly concern'd, who, if ignorant of their Duty, or corrupt or over-aw'd, and not daring to make use of that just Power, wherewith the Law hath invested and intrusted them, may give up all those precious Privileges, and subject us to the worst kind of Slavery, under pretence of Law: Therefore here in the last Place, for the Information of my honest Country-men, the Free-holders of *England*, and others, who in Corporations are daily call'd to this important Service, I shall subjoin a brief Discourse of *JURIES*.

## S E C T. I.

*Of the Advantage Englishmen enjoy by this Trial by Juries, above any other Nations under Heaven.*

**I**T is one of the miserable Follies of depraved Nature, that it commonly slights present Enjoyments, and rarely rates the good Things it possesses at their true value, till 'tis deprived of them. This grand Privilege of *Trials*, by our Country, that is, by *JURIES*, as it seems to have been as Ancient as the Government, or first Form of Policy in this Island; for it was not unknown to the ancient *Britains* (as appears by their Books and Monuments of Antiquity) practised by the *Saxons* and confirmed since the Invasion of the *Normans*, by *Magna Charta*, as you have heard, and continual Usage; so it is a Thing of the highest Moment, and an essential Felicity, to all *English* Subjects. For look abroad in *France*, *Spain*, *Italy*, or, indeed, (almost) where you will, and observe the miserable Condition of the Inhabitants, either intirely subjected to the arbitrary Lusts of Tyrants, who Plunder, dismember or slay them, according as the Humour takes them, and many Times without the least Provocation, meerly for Sport, and to gratifie a savage Cruelty: Or at best, you will behold them under such Laws, as render their Lives, Liberties and Estates, liable to be disposed of, at the Discretion of Strangers appointed their Judges, most times mercenary, and Creatures of Prerogative; sometimes malicious and oppressive, and too often partial and corrupt. Or suppose them  
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never so just and upright, yet still has the Subject no Security against Subornations, and the Attacks of malicious, false and unconscionable Witnesses; yea, when there is no sufficient Evidence, upon meer Suspicions, they are obnoxious to the Tortures of the Rack, which often make an innocent Man confess himself guilty, meerly to get out of present Pain: Or if he do, with invincible Courage, indure the Question (as they call those Torments) he is many Times so spoiled in his Limbs, as he scarce ever is his own Man again.

Whereas such has been the Goodness of God, and the prudent Care of our Ancestors, that, to our inestimable Happiness, we are born, and live, under a mild and righteous Constitution, where all these Mischiefs may be prevented; where none can be legally condemned, either by the Power of superior Enemies, or the Rashness or ill Will of any Judge, nor by the bold Affirmations of profligate Evidence: For by a Fundamental Law in our Government, No Man's Life (unless it be in Parliament, which is a supream Court, and 'tis supposed will never do any Man Wrong) shall be touched for any Crime whatsoever, but upon being found Guilty on two several Trials (for so may that of the Grand and Petty-Jury be called) and the Judgment of twice Twelve Men at least, all of his own Condition and Neighbourhood, and upon their Oaths, [*Coke 3 Part of Instit. p. 40.*] That is to say, *Twelve* or more to find the Bill of Indictment against him, and Twelve others to give Judgment upon the general Issue of *Not Guilty*: All which Jurors must be honest, substantial, impartial Men, and being Neighbours of the Party accused, or place where the supposed Fact was committed, cannot be presumed to be unacquainted either with the Matters charged, the Prisoner's  
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Course of Life, or the Credit of the Evidence: And all these must first be fully satisfied in their Consciences, that he is Guilty, and so unanimously pronounce him upon their Oaths, or else he cannot be condemned. For the Office and Power of these Juries is *Judicial*: They only are the Judges, from whose Sentence the Indicted are to expect Life or Death; upon their Integrity and Understanding, the Lives of all that are brought into Judgment, do ultimately depend; From their Verdict there lies no *Appeal*: By finding Guilty or or Not Guilty, they do complicate resolve both Law and Fact.

*Judges* are made by Prerogative, and many Times heretofore they have been preferred by corrupt Ministers of State, and may be so again in Time to come; and such advanced as would serve a present Turn, not always those of the most Integrity and Skill in the Laws: Their Places are so honourable and Profitable and their Tenure so ticklish, viz. *durante beneplacito*, merely during Pleasure, that they lie under no small Temptations, which perhaps with some may be nevertheless unlikely to prevail; for their having generally been wont to take Fees, they are concern'd in so many Causes, that they are the oftener subject to be tempted, and are so few that they may be the easier corrupted: They cannot be challenged, and may be apt to think themselves above any Action, and thence be encouraged to strain a Point now and then. The major Part of them agreeing, is enough; they are never sworn at each particular Trial, nor ever at all but once, and that exceeding generally. I say, all these Things may possibly happen to bias some Judges, (for I intend not the least Reflection hereby on any of those honourable Persons, who now deservedly sit upon

upon our Seats of Justice) But nothing of that kind can reasonably happen to a Jury. For, 1. They are return'd by a sworn Officer. 2. Must be Men of a clear Reputation, and competent Estate. 3. Being Neighbours, they may know something of the Business on their own Knowledge. 4. Their Office is but a Trouble, not accompanied with any great Honour, nor any Profit at all. 5. They are all solemnly sworn to each particular Cause. 6. The Party may challenge thirty-five in Case of Treason, and twenty of them in Felony, with out shewing any Cause; and as many more as he can assign Cause against. 7. Of the Grand Jury, twelve at least must joyn in the Verdict, and of the Petty Jury, every Man of the Twelve must consent upon his Oath, or else 'tis all Nothing. And lastly, if they give a corrupt Verdict between Party and Party, they are liable to an *Attaint*. [But I do not find any Attaint lies in criminal Causes, where the King is a Party.]

Now, let any Man of Sense consider, whether this Method be not more proper for *boulting* out the Truth, for finding out the *Guilty*, and preserving the *Innocent*, than if the whole Decision were left to the Examination of two or three, whose *Interest*, *Passion*, *Haste*, or *Multiplicity* of Business may easily betray them into Error.

Deservedly therefore is this Trial by *Juries* rank'd amongst the choicest of our fundamental Laws, which whosoever shall go about openly to *suppress*, or craftily to *undermine*, and render only a Formality, does *Ipsa Facto* attack the Government, and brings in an Arbitrary Power, and is an Enemy and Traitor to his King and Country; for which reason *English* Parliaments have all along been most zealous for preserving this great Jewel of Liberty Trials by Juries having no less than; fifty

Several Times since the *Norman Conquest*, been established and confirmed by the legislative Power, no one Privilege besides having been never so often remembered in Parliament.

## S E C T. II.

*What Persons ought to be Jury-Men, and how Qualified.*

**A**S the Office of Juries is of such great Importance, so the Wisdom of our Law has provided that the same shall be supplied with Persons of Ability, Honesty, Integrity, and Indifferency; for, (as my Lord Coke saith, 1 Part *Instit.* Sect. 234. Fol. 155) He that is of a Jury must be *Liber Homo*, that is, not only a *Free Man*, and not Bond, but also one that hath such *Freedom of Mind*, as he stands indifferent, as he stands unsworn. 2. He must be *Legalis*, and by the Law every Juror that is returned for the Trial of any Issue or Cause, ought to have three Properties. 1. He ought to be dwelling most *near* to the Place where the Question is moved. 3. He ought to be most sufficient, both for understanding, and Competency of Estate. 2. He ought to be least suspicious, that is, to be Indifferent as he stands Unsworn; but a Man's being excommunicated (as was said before) is no Bar to his being a Juryman, much less his being a Dissenter, or Non-frequenter of Church Ceremonies, if he be otherwise qualified Estate and Understanding; for at that Rate, if Popery should ever get uppermost, no Protestant at all would be capable of being a Jury-man, because a Nonconformist to Holy Church. Now if no Statute excludes

cludes Protestants unconvicted of any Crime, or Dissenters (*quatenus tales*) to serve on Juries, I should think we ought to wait at least till an Act of Parliament be made to that purpose, before we deny them *Liberam Legem*; and to act otherwise, in my silly Opinion, seems not only unwarrantable, but a daring Usurpation of legislative Power: In a word, Jurors must be Free of and from all Manner of Bondage, Obligations, Affections, Relations and Prejudices; they must be the Peers or Equals of the Party they are to try; they must be of full Age, twenty-one Years old, or upwards, not *Outlaw'd*, never *attainted* nor *convicted* of Treason, Felony, false Verdict, Perjury, or adjudged infamous; they were antiently all Knights, as we read in *Glanvil* and *Braeton*, and they must still be Persons of Worth and Repute; and as they are returned by a sworn Officer, the Sheriff, so they of the Petty Jury must be every one sworn every several Trial by a particular Oath, the more to remind them of their Duty. Nay, it should seem in antient Times, though the Office and Duty were still the same as at this Day, yet their Honour and Dignity were much greater: The *Mirror of Justices* makes no Scruple to call 'em *Judges*; and Dr. *Cowel* in his *Interpreter* tells us, Juries were antiently *Associates and Assistants to the Judges of the Court in a kind of Equality*, whereas now-a-days they attend them in great Humility: And cites the Customary of *Normandy*, and *Lambard*, as being of the same Sentiments. But I desire not to bring in Innovations, only that *Englishmen* may preserve their antient Rights and Privileges, inform themselves of their Duty and Office by Law, that so they may uprightly discharge the same to GOD and the King and their Fellow-Subjects.

*Of Grand Juries, their Duty, and the great Importance of their Office.*

Juries are of two Sorts: 1. The *Grand Jury*, so called, both because it consists of a greater number than *Twelve*, as commonly 21, 19, 17, or the like, [but *Note*, They can make no Verdict or Presentment, unless Twelve at least of them agree, and then what they do is valid, though the rest do not consent;] as also because generally they are of the greater Quality, and likewise in Respect of their Power, because the Extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they serve. 2. The *Petty Jury* (in Cases criminal, called commonly the *Jury of Life and Death*, which always consists of twelve Men, neither more nor less, who must every Man agree, or else it is no Verdict.

The Oath of a Grand Jury-man, as I find it inserted in the Collection, Intituled, *The Book of Oaths*, p. 216. is as follows.

**Y**E shall truly inquire, and due Presentment make of all such Things as you are charged withal on the King's behalf: The King's Counsel, your own and your Fellows, you shall well and truly keep, and in all other Things the Truth present: So help you God, and by the Contents of this Book.

But according to modern Practice, and as we find it published in the Account of the Proceedings against

against the Right Honourable the Earl of *Shaftsbury*, laid to be publish'd by His Majesty's special Command, is expressed somewhat more largely.

The Oath administered to the Grand Jury, as follows.

**Y**OU shall diligently inquire, and true Presentment make, of all such Matters, Articles, and Things as shall be given you in Charge, as of all other Matters and Things as shall come to your Knowledge touching this present Service; the King's Counsel, your Fellows and your own, you shall keep secret: You shall present no Person for Hatred or Malice, neither shall you leave any one unpresented for Fear, Favour or Affection, for Lucre or Gain, or any hopes thereof, but in all Things you shall present the Truth, the whole Truth, and nothing but the Truth, to the best of your Knowledge. So help you God.

The Office of a Grand Jury, or Grand Inquest, (for by both those Names 'tis promiscuously called) is principally concern'd in two Things, *Presentments* and *Indictments*, the difference of which is thus: The first is, when the Jury themselves, of their own Knowledge or Inquiry, do take Notice of some Crime, Offence or Nuisance, to the Injury of the Publick, which they think fit should be punished or removed; and in order thereunto, do give the Court notice thereof in Writing briefly and without Form, only the Nature of the Thing and the Person's Name and the Place. And this is call'd a *Presentment*, being the Matter whereon to form an *Indictment*, from which the *Presentment* differs in these two Respects. 1. In that it is always originally the Act of the Grand Jury. And 2. That

2. That it is not yet drawn up in Form & where as Indictments are commonly drawn up, either by the Order of the Court, or at the Instance of some Prosecutor, and are brought before, and delivered unto the Grand Jury, and the Witnesses sworn attend them, who examine the said Witnesses, and, as they think fit, return the Indictments indors'd either *Billa Vera*, [that is, a true Bill,] or *Ignoramus*, [*We are Ignorant*] that is, we do not find the Matter, or there does not appear to us such sufficient Grounds for the Accusation, that the Persons Life and Reputation should be brought into Question.

From whence it appears, that the End of their Office is likewise two-fold. 1. To inquire after, and give Notice of all Crimes, Offences, Nufances, &c. in the County for which they serve, which by reason of their Inhabitancy and Estates therein, they are presumed to have best opportunity to discover, and to find Bills against Malefactors, where there are good Grounds for the same, that so they may be brought to Trial if they are forth-coming, or may be proceeded against to the Outlawry, if they are fled for their said Offences. 2. To preserve the Innocent from the Disgrace and Hazards which ill Men may design to bring them to, out of Malice, or through Subornation, or other sinister Ends; for so tender is the Law, of the Reputation and Life of a Man, that it will not suffer the one to be sullied, by the Party's holding up his Hand at the Bar, and the other indangered by a Trial, until first the Matter and Evidence against him have been scann'd, examined, and found by a Grand Jury, upon their Oaths, against him. Therefore you see by their Oaths, They are sworn not only to inquire but diligently to inquire, not to be negligent or sloth-

slothful, nor to take Things upon trust, or hurry them over carelessly, but to weigh the Circumstances, and sift the Witnesses, and search out the Truth of such Informations as come before them; and to reject the Indictment, if it be not sufficiently proved; and if they have reasonable Suspicion of Malice, Subornation, or wicked Designs against any Man's Life or Estate, in such as offer or come to swear to the Bill of Indictment, they are bound by Law, as well as in Conscience, to use all Diligence to discover the Villany; and if it appear to them (whereof they are the legal Judges) to be a Conspiracy, or malicious Conspiracy, against the Accused, they are bound, not only to reject such Bill of Indictment, but forthwith to indict all the Conspirators, with their Associates and Abettors: and that this is a main Part of the Grand Jury's Office, appears not only from legal Reason, but by an express Statute, viz. 25 *Edw.* 3. 4. and 42 *Edw.* 3. 3. which says, *That for preventing Miscchiefs done by FALSE ACCUSERS, none shall be put to answer, unless it be by Indictment, or Presentment of good and lawful People of the same Neighbourhood where such deeds be done; that is to say, by a Grand Jury.*

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their own Knowledge, and so they may find an Indictment against a Person, though there be never a Witness at all to it; and a Petty Jury may in like manner find a Person Guilty of a Felony or Murder whereof he stands indicted, though no Witnesses appear against him to prove it; and the Reason thereof is, because the Juries being always of the *Vicinage*, the Law supposes they may know the Matter of their own Knowledge, and therefore in all such Cases, when a  
Jury

Jury is charged with a Prisoner, and after the Indictment read, Witnesses fail to appear, the Court always speaks thus to the Jury: *Gentlemen, here is A. B. stand indicted of a Crime, but here's no Witnesses come against him, so that unless, on your own Knowledge, you know him Guilty, you must acquit him.* And certainly if the Jury's Knowledge of a Man's Guilt, is enough to condemn him, I see not why their personal Knowledge of a Prisoner's Innocency, or of the Witnesses Swearing falsely, should not be sufficient to acquit him.

2. The other Ground upon which the Grand Juries are to proceed, is *Testimony of Witnesses*; and this is called EVIDENCE, because it ought to be such as may make the Matter clear, manifest plain and evident to the Jury; and of this Evidence the Jury, are the proper and only Judges; therefore they ought (according to their Oath) diligently inquire into the Quality, Repute and Circumstances of the Witnesses, the Likelihood of what they depose, and whether they do not swear out of Malice, Subornation, Self-interest, Combination, or some ill Design; which to discover, they will do well to examine them a-part, to note their Variations and Contradictions, to ask them sudden Questions, and what Questions are pertinent, not the Judges, but the Jury only can determine; for they may know how to make use of them towards Discovery of the Truth, though the Judge do not, and 'tis they are upon their Oaths, not he; 'tis they must satisfy their own Consciences, the Judge has nothing to do to intermeddle; he is bound by their Verdict: Let Witnesses be never so rampantly positive, yet if the Jurors have good and reasonable grounds, not to believe them they will, they

they must, remain as ignorant to the Party's Crime as before: We find this expressly asserted for Law in our Books, as *Style's Reports, Lib. 11.* though there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary: So *Coke Lib. 6.* The Judge use to determine *who* shall be sworn, and what shall be produced as Evidence to the Jury; but the Jury are to consider what Credit or Authority the same is worthy of. If a Grand Jury are not Judges of Evidence, they signifie nothing. If (as some would persuade us) because People swear desperately, though they do not believe them, they shall be bound to find the Bill, then they signifie nothing, and are no Security to preserve Innocency. A lewd Woman once resolved to indict the then Archbishop of *Canterbury* for a Rape, she swore it, no doubt verily he rtilly; according to this new Doctrine of going according to Evidence the Jury must have presently have found the Bill, the Archbishop must have been committed to Prison, suspended from Ecclesiastical Jurisdiction, his Goods and Chattels throughout *England* inventoried by the Sheriffs; would it, think you, in that Case have been a good Excuse for the Grand Jury, to have said, that though they believed in their Conscience the Baggage swore false, yet she swearing it positively, they as so many Parish-Clerks, were but to say *Amen* to her Oath of the Fact, and to find *Billa Vera* against that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Case, and may go contrary to it, Why, I pray, may they not have the same Liberty where they find good Cause in others?

If an Indictment be laid against a Man for criminal words, said to be uttered in a *Colloquium*,  
or

or Discourse, though the Witnesses roundly swear all the express words in the Indictment, yet unless they will relate and set forth the Substance of the whole Talk, 'tis impossible the Jury should judge of the Matter; for the foregoing and subsequent words may render Expressions that are innocent and loyal, which taken to halves, may be rank Treason; as if one should say, *To affirm the King has no more Right to the Crown of England than I have, (which is the Opinion of the Jesuits, of His Majesty, if once excommunicated by the Pope) is detestable Treason.* And two Men at some distance, not well hearing, or remembering, or maliciously designing against his Life, should swear — That he said *The King had no more right to the Crown than he had.* Now that the Man did utter these very words is true; but if you ask the Evidence the rest of the Colloquium, they shall tell you there was much more Discourse, but they cannot remember it; what Satisfaction is this to a Jury? Or would it not be hard, for a Man to be put to hold up his Hand at the Bar, under the frightful Charge of Treason in this Case? Or if a Minister, in his Sermon, should recite that of the Psalms, *The Fool hath said in his Heart there is no God: Jesuited Evidence may now come and charge him with Blasphemy, and swear that he said, There was no God:* And ask them what Expressions besides he used, may excuse themselves, and say, 'Tis a great while ago, we cannot remember a whole Sermon, but this we also positively swear, *He said there was no God.*

The Inquiry of a Grand Jury should be suitable to their Title, a *Grand Inquiry*; else instead of serving their Country, and presenting real Crimes, they may oppress the Innocent, as in the Case of *Samuel Wright* and *John Good*, at a Sessions in the *Old-Baily*, about December 1681. *Good* indicts *Wright*

*Wright* for treasonable Words, and swore the Words positively; but after a grand Inquiry, the Grand Jury found that *Wright* only spoke the Words as of others; thus, *They say so and so*—and concluded with this,—*They are Rogues for saying it:* And also *Good* at last confessed that *Wright* was his Master, and corrected him for Misdemeanors; and then to be reveng'd, he comes and swears against him, which he confessed he was instigated to by one *Powel*: So the Grand Jury finding it to be but Malice, return'd the Bill *Ignoramus*; whereas, if they had not examin'd him strictly, they had never discover'd the Intrigue, and the Master had causelessly been brought to great Charge, Ignominy, and Hazard.

The Judicious *Dalton*, p. 539. says well, *No less Care or Concern at all lies on the Grand Jury, than does on the Petty Jury*: People may tell you, *That you ought to find a Bill against any probable Evidence, for 'tis but matter of Course, a Ceremony, a Business of Form, only an Accusation; the Party is to come before another Jury, and there may make his Defence.* But if this were all, to what purpose have we Grand Juries at all? Why are the wisest, best Men in the County (for such they are, or should be) troubled? Why are they so strictly sworn? Do not flatter your selves, you of the Grand Jury are as much upon your Oaths as the Petty Jury; and the Life of the Man, against whom the Bill is brought, is in your Hands. The Lord *Coke* 3 *Instit.* 33. plainly calls the Grand Jury-men all wilfully forsworn and perjured, if they wrongfully find an Indictment; and if in such a case, the other Jury, through Ignorance, &c. should find the Person Guilty too, you are guilty of his Blood as well as they: But suppose he get off there, do you think it nothing to accuse a Man

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upon your Oaths, of horrid Crimes, your very doing of which puts him, though never so innocent, to Disgrace, Trouble, Damage, Danger of Life, and makes him liable to Outlawry, Imprisonment, and every thing but Death itself; and that too, for ought you know, may wrongfully be occasion'd by it, your rash Verdict gaining Credit, and giving authority to another Jury to find him Guilty: For if the Petty Jury find a Man guilty never so unjustly, the Law suffers no Attaint or other Punishment, to lie against them, for this very reason, because another Jury, *viz.* The Grand Inquest, as well as they, have found him guilty. If a Grand Jury find a Bill wrongfully against a Person, and it prove never so much to his Damage, he has no Remedy; for being upon their Oaths, the Law will not suppose any Malice. One of the Grand Jury cannot afterwards be of the Petty Jury, and why? Because, says the Law, he has once already found the Party guilty, and if he should not again, he must perjure himself. From all which it appears, what a Weight and Stress the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to say, either *Billa vera, It is true*; or *Ignoramus, We know not*; and never, *That it is not true*: Which shews, that if they be doubtful, or not fully satisfied, the Indictment must be indorsed not *Billa Vera, We know 'tis true*; but *Ignoramus, We doubt it, We do not know it, we are not certain it is true*. If they find a Bill where they ought not, they wound their own Consciences, and do an irreparable Damage to the Party; but where they do not find the Bill, there is no harm done to any Body, for another Indictment may be brought when there is better Evidence.

## S E C T. IV.

*That Juries are Judges of Law, in some respects, as well as of Fact.*

**A**mongst other Devices, to undermine the Rights and Power of Juries, and render them insignificant, there has an Opinion been advanced, That they are only Judges of Fact, and are not at all to consider the Law: So that if a Person be indicted for a Fact, which really is no Crime in itself by Law, but is work'd up by words of Form, as *Treasonably, Seditiously, &c.* if the Fact be but proved to be done, though the said wicked Circumstances do not appear, they shall be supplied by the Law, which you are not to take notice of, but find the Bill, or bring in the Person Guilty, and leave the consideration of the Case in Law to the Judges, whole Business it is.--- Thus some People argue, but it is an apparent Trap, at once to perjure ignorant Juries, and render them so far from being of good use, as to be only Tools of Oppression, to ruin and Murder their innocent Neighbours with the greater Formality: For though it be true, that Matter of Fact is the most common and proper Object of a Jury's Determination, and Matter of Law that of the Judges, yet, as Law arises out of, and is complicated with Fact, it cannot but fall under the Jury's Consideration. *Littleton, Sect. 368.* teaches us, That the Jury may, at their Election, either take upon them the knowledge of the Law, and determine both the Fact and Law themselves, or else find the Matter specially, and leave it to the Judges: 'Tis by applying Matter of Fact and Law together, and from their due Consideration

of, and right Judgment upon both, that a Jury brings forth their Verdict. Do we not see in most General Issues, as upon Not Guilty pleaded in Trespass, Breach of the Peace, or Felony, though it be matter in Law, whether the Party be a Trespasser, a Breaker of the Peace, or a Felon, yet the Jury do not find the Fact of the Case by itself, leaving the Law to the Court, but find the Party Guilty, or Not Guilty generally: So that, though they answer not the Question singly, what is Law, yet they determine the Law in all matters where Issue is joined. Is it not every Day's Practice, when Persons are indicted for Murder, the Jury does not only find them Guilty or Not Guilty, but many times, upon hearing and weighing of Circumstances, brings them in either guilty of the Murder, or else only of Man-slaughter, *per misadventure, or se defendendo*, as they see cause. Besides, as Juries have ever been vested with such Power by Law, so to exclude from our disseize them of the same, were utterly to defeat the end of their Institution. For then, if a Person should be indicted for doing any common innocent Act, if it be but cloathed and disguised in the Indictment with the name of Treason, or some other high Crime, and proved by Witnesses to have been done by him, the Jury, though satisfied in Conscience, that the Fact is not an such Offence as 'tis call'd, yet because (according to this fond Opinion) they have no Power to judge of Law, and the Fact charged is fully proved, they should at this rate be bound to find him Guilty: And being so found, the Judge may pronounce Sentence against him, for he finds him a convicted Traytor, &c. by his Peers: And so Juries should be made meer Properties to do the Drudgery, and bear the blame of unreasonable Prosecutions. But

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all this is absurd, and abhorr'd by the Wisdom, Justice and Mercy of our Laws.

In every Indictment, Information, &c. there are certain words of course, called Matter of Form, as *Maliciously, Seditiously, with such and such an Intention, &c.* And these sometimes are raised by a just and reasonable Implication in Law, and sometimes are thrust in meerly to raise a Pretence or Colour of Crime, where there is really none. Jury-men ought well to understand this Distinction, where the Act, or naked matter of Fact charged, is in itself a Crime of Offence against Law; as killing of a Man, levying of War against the King, &c. There the Law does in pleading require, and will supply those words; and if the Jury do find, and are satisfied, that the substance of the Charge is such a Crime, and the Person guilty thereof, they are bound to find it, though no direct Proof be made of those Circumstantials. But where the Act, or Matter of Fact is in itself innocent or indifferent, there the Purport of these words (as that it was done *Maliciously*, or with *such or such a design*) is necessary to be proved; for else there is no Crime, and consequently no fit Matter to be put to Trial. In which case, the Grand Jury is bound in Conscience and Law, to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

## S E C T. V.

*That Juries are not finable, nor any way to be punish'd under pretence of going contrary to Evidence, or against the Judges Directions.*

**M**uch of what we have said of Grand Juries, is also applicable to Petty Juries, so that we need not repeat it; only must answer one Objection. Some Jurymen may be apt to say,--- If we do not find according to Evidence, though we have reason to suspect the truth of what they swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may fine us, &c. --- I answer, This is a vain Fear: No Judge dares offer any such thing; you are the proper Judges of the Matters before you, and your Souls are at stake; you ought to act freely, and are not bound, though the Court demand it, to give the Reasons why you bring it in thus, or thus; for you of the Grand Jury are sworn to the contrary, viz. *To keep secret your Fellows Counsel and your own*: And you of the Petty Jury are no way obliged to declare your Motives; it may not be convenient. 'Twas a notable Case before the Chief Justice *Anderson* in Queen *Elizabeth's* days: A Man was arraigned for Murder; the Evidence was so strong, that eleven of the Jury were presently for finding him Guilty, the twelfth Man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the Prisoner Not Guilty. The Judge, who had several times admonish'd this Jury-man to join with his Fellows, being surpriz'd, sent for him, and discoursed him privately;

to whom, upon promise of Indemnity, he at last own'd that he himself was the Man that did the Murder, and the Prisoner was innocent, and that he was resolv'd not to add Perjury, and a second Murdet to the first. --- But to satisfie you, that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are, and ought not to be question'd for the same, I shall here recite an adjudged Case, that of *Bushel*, in the two and twentieth Year of King *Charles II.* reported by the Learned Sir *John Vaughan*, whose Book was licensed by the then Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: The Case begins Fol. 135. and continues 150. the whole well worth reading; but I shall only select certain Passages. ---

The Case was this.

**B**ushel, and others of a Jury, having at a Sessions, not found Pen and Read (two Quakers) guilty of a Trespass, Contempt, unlawful Assembly, and Tumult, whereof they had been indicted, were fined forty Pound a Man, and committed till they should pay it. Bushel brings his Habeas Corpus, and upon the Return it appeared, he was committed,--- For that contrary to Law, and against full and clear Evidence openly given in Court, and against the Directions of the Court in matter of Law, they had acquitted the said W. P. and W. M. to the great obstruction of Justice, &c. Which upon solemn Argument was by the Judges resolved, to be an insufficient cause of Fining and Committing them; and they were discharged, and afterwards brought Actions for their Damage. The Reasons of which Judgment are reported by Judge *Vaughan*, and amongst them he useth these that follow, which I shall give you in his own Words.

Fol. 140. One fault in the Return is, That the Jurors are not said to have acquitted the Persons indicted, against full and manifest Evidence, corruptly, and knowing the Evidence to be full and manifest against the said Persons indicted; for how manifest soever the Evidence was, if it were not manifest to them, and that they believed it such, it was not a finable Fault, nor deserving Imprisonment: Upon which difference, the Law of punishing Jurors for false Verdicts, principally depends.

And, Fol. 141. I would know, whether any thing be more common, than for two Men, Students, Barristers, or Judges, to deduce contrary and opposite Conclusions out of the same Case in Law? And is there any difference, that two Men should infer distinct Conclusions from the same Testimony? Is any thing more known, than that the same Author, and Place in the Author, is forcibly urg'd to maintain contrary Conclusions, and the Decision hard which is in the Right? Is any thing more frequent in the Controversies of Religion, than to press the same Texts for opposite Tenets? How then comes it to pass, that two Persons may not apprehend with Reason and Honesty, what a Witness, or many say, to prove in the Understanding of one, plainly one thing, but in the Apprehension of the other, clearly the contrary thing? Must therefore one of these merit Fine and Imprisonment, because he doth that which he cannot otherwise do, preserving his Oath and Integrity? And this is often the Case of the Judge and the Jury.

And Fol. 142. I conclude therefore, That this Return, charging the Prisoners to have acquitted P. and M. against full and manifest Evidence, first and next, without saying, that they did know and believe that Evidence to be full and manifest against the Indicted Persons, is no Cause of Fine and Imprisonment.

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In the Margent of that Fol. 142. it is thus noted: Of this Mind were ten Judges of eleven. The Chief Baron Turner gave no Opinion, because not at the Argument.

And in the same Fol. 142. he saith, The Verdict of a Jury, and Evidence of a Witness, are very different things in the Truth and Falshood of them: A Witness swears but to what he hath heard or seen generally, or more largely to what hath fallen under his Senses: But a Jury-man swears to what he can infer and conclude from the Testimony of such Witnesses, by the Act and Force of his Understanding, to be the Fact enquir'd after; which differs nothing in Reason, though much in the Punishment, from what a Judge, out of various Cases consider'd by him, infers to be the Law in the question before him.

If the meaning of these words, finding against the Direction of the Court, in matter of Law, be, That if the Judge, having heard the Evidence given in Court (for he knows no other) shall tell the Jury, upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the Pain of Fine and Imprisonment to find accordingly, and the Jury ought of Duty so to do; then every Man sees, that the Jury is but a troublesome Delay, great Charge, and of no Use in determining Right and Wrong; and therefore the Trials by them may be better abolished than continued: Which were a strange new-found Conclusion, after a Trial so celebrated for many hundred Years.

It is true, if the Jury were to have no other Evidence for the Fact but what is deposed in Court, the Judge might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; though even then, the Judge and Jury might honestly differ in the Result from the Evidence, as well as two Judges may, which often happens; but the  
Evidence

Evidence which the Jury have of the Fact, is much otherwise than that. For,

1. Being returned of the Vicinage, where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to try the Matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the Judge is a Stranger.

2. They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false; but to this the Judge is a Stranger, and he knows no more of the Fact than he hath learned in Court, and perhaps by false Depositions, and consequently knows nothing.

3. The Jury may know the Witnesses to be stigmatized and infamous, which may be unknown to the Parties, and consequently to the Court.

Fol. 148. To what end is the Jury to be returned out of the Vicinage, where the cause of Action ariseth? To what end must Hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in general? To what end are they challenged so scrupulously to the Array and Poll? To what end must they have such a certain Freehold, and be Probi & Legales homines, and not of Affinity with the Party concern'd? To what end must they have, in many Cases, the View, for exacter Information chiefly? To what end must they undergo the Punishment of the villainous Judgment, if, after all this, they implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when sworn to do it according to the best of their own Knowledge?

A Man cannot see by another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the thing to be resolved by another's Understanding or Reasoning;

soning; and though the Verdict be right the Jury give, yet they being not assured that it is so, from their own Understanding, are forsworn, at least in foro Conscientiæ.

Fol. 149. And it is absurd to fine a Jury for finding against their Evidence, when the Judge knows but part of it; for the better and greater part of the Evidence may be well unknown to him, and this may happen in most Cases, and often doth. Thus far Judge Vaughan.

'Tis true, in Wharton's Case they were fined for giving a Verdict against the Direction of the Court; but the Judges were of Opinion, That there had been some very undue Practices to procure that Verdict. *Yelv. 23.*

They were also fined and committed in Wagstaffe's Case, and upon an Habeas Corpus brought, they were not bailed; but this must necessarily be for some Misdemeanour, though tis not mentioned in the Case, and not for refusing to find a Verdict according to the Evidence, because they were not fined equally, which they would have been if their supposed Fault had been equal. *Hardres, 409.*

In Cases of Life and Member, if they cannot agree on their Verdict at the Assises, they must be carried on the Circuit till they do agree. *1 Vent. 97.*

If after they are gone from the Bar, one of them calls a Witness who was sworn before, and had given his Evidence in the Cause, and then desires him to repeat it again, which he did, this is a Misdemeanour, and the Verdict shall be set aside. *Cro. Eliz. 189.*

And though they cannot be punished upon a pretence of finding a Verdict contrary to Evidence;

dence; yet for these and many more Misdemeanours, they may be fined. I shall instance in some more (*viz.*) If an obstinate Jurymen will keep his Fellows together, by disagreeing with them without giving any Reason, or if he withdraw from them, he may be fined and committed, because he is sworn well and truly to try the Issue, and therefore to be resolute without a Cause, or depart from the rest is a Misdemeanour.

In *Baynes* his Case, the Jury had agreed on two Verdicts, intending to cancel one if the Court should be satisfied of the other. *Cro. Eliz.* 778.

So if they cast Lots, whether to find for the one or the other, this is a great Misdemeanour. *2 Lev.* 140, 205.

If they eat or drink before they bring in their Verdict, they are to be fined; and so they are if they eat and drink before or after they are agreed. But though they are to be fined, the Verdict shall stand good if they eat, &c. at their own Charge; but if at the Charge of the Party for whom they find, then it shall be set aside. *1 Leon.* 133. *Dyer* 137.

And some of them have been fined for having Figs and Pippins in their Pockets when they were withdrawn to consider of their Verdict, though they did not eat them. *1 Leon.* 133. *Moor.* 599.

Though the Law entrusts the Sheriff to return the Jury, yet the Parties have the Liberty to Challenge them (*i. e.*) to except against any who are returned, which they may do against the whole Panel, and then tis call'd, a Challenge to the Array, or against some particular Persons, and then 'tis called a Challenge to the Polls.

A Principal Challenge to the Array is, where the Sheriff is of Kin to the Party; but in such Case he must shew how and in what degree of Kindred;

Kindred; so if the Jury is returned at the desire of the Party, or if either of them have an Action depending against the Sheriff.

So if a Peer be returned of the Jury in the case of a common Person; so where a Peer is Defendant, and a Knight is not returned of the Jury; but if the Plaintiff in such case will not except, the Defendant cannot.

Any particular Juror may be challenged who hath not ten Pounds *per Annum*. Formerly the Sufficiency of a Jurymen, as to Estate, was left to the Discretion of the Judge: The first Statute as to this Matter was *Anno 2 H. 5. cap. 3.* by which it was enacted, That he should have forty Shillings *per Annum*, which by the Statute was increased to ten Pounds *per Annum*, either of Freehold or Copyhold; and so it still continues.

'Tis a good Challenge if there is any Malice or Favour between the Parties and Jurors, and as to the last it shall be presumed there is Favour, if the Juror is of Kin to either Party, though never so remote; or if there is any Affinity by Marriage; and it hath been adjudged a good Challenge, that a Juror is Godfather to the Defendant.

If a Juror hath given a Verdict already in the same Cause, this is a Principal Challenge to him; but then the Party must produce the Record.

Though in the Case of the Regicides it was resolved, That if an Indictment is found against several of them by the Grand Jury, and some of them are found Guilty by the Petty Jury, and two or more of that Jury are returned to try the rest, 'tis no Challenge to say, That they have already given their Verdict against others who were indicted for the same Offence; because in Law 'tis a several Indictment against every one, and the Jury are to give their Verdict upon particular Evidence

Evidence against such Criminals; and 'tis no Consequence, That because they found one Guilty, therefore they must find the rest so too.

This is very true, but 'tis not so fair a Trial; for though it doth not necessarily follow, that the finding one Guilty must induce them to find the other Guilty likewise, yet 'tis a very strong Presumption that they will do it.

There was formerly a Question about a Right to a Way, and before the Trial one affirmed, That there was such a Way, and that it would be very inconvenient if it should not be allowed as a Way; and this Person being returned of the Jury, he was challenged, and it was allowed to be a good Cause.

So where a Man indicted for a Battery done at *Canterbury*, and one of the Grand Jury who had found the Battery, was returned of the Petty Jury, to try the Cause, he was challenged; and held good. *Sid.* 244. It was likewise held a good Challenge, because the Prosecutor had been entertain'd at the House of the Juryman. *1 Vent.* 309.

There are many more Challenges to the Favour, which are not proper to mention here; but all of them are left to the Discretion of two Men of the Jury, who are called the *two Tryers*, because they are sworn by the Court to try whether there is any cause of Favour or not.

But there can be no Challenge, either to the Array or Polls, till there is a full Jury, which may be as well by a *Tales*, as if all of the principal Panel appear; but 'tis too late after they are sworn. But though Trials by Juries is one of the Fundamental parts of our Constitution, yet there were formerly very great Inconveniencies in returning them; for the Sheriff, who is the proper Officer  
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in such Cases, would sometimes summon as many as he pleased, and by this means the People were oppressed.

Therefore by the Statute, *Westminster 2. cap. 38.* Sheriffs were ordered to summon in one Assize twenty-four, and no more.

But it hath been adjudged, That this old Statute extends only to Jurors returned in Civil Actions, and not for the Trials of Criminal Causes; for in such Case the Sheriff might be commanded by the Court to return more, and 'tis usual to return sixty because of the peremptory Challenges.

But in Civil Causes, if there are not enough of the Principal Panel, the Sheriff may return a *Tales* out of some other Panel of the Jurors then attending; and if such *Tales Men* withdraw and will not serve, the Judge may fine them.

Every Summons of Persons, who are qualified to serve on Juries, shall be made by the Sheriff, or his proper Officer, and that at least six Days before the Trial, shewing to the Person the Warrant, under Seal of the Office; and if such Juror is not at his usual place of Habitation, then the Sheriff, or Officer, may leave a Note in Writing under his Hand to that effect, at his Dwelling-House, with some Person inhabiting there.

The Return made to the Justices shall be a good Excuse to the Sheriff, though he summon one who is not qualified, and on Action brought against him, the general Issue may be pleaded, and he may give this Act in Evidence; and if the Plaintiff be nonsuited, or discontinue, or a Verdict against him, then he shall pay treble Costs; and if the Sheriff, or his Deputy, or Bailiff, summon any Freeholder, or Copyholder, otherwise than as aforesaid, or neglect his Duty, or excuse any Person for Favour or Reward, or al-

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low any Exemption to one under Seventy Years old, to forfeit twenty Pounds to the Party grieved, or to him who will sue for the same.

There must be but one Panel of forty-eight Freeholders and Copyholders, and no more returned on the *Grand Jury*, each having Lands of eighty Pounds *per Annum*. See the Statute 7 & 8 *W. cap. 32*.

All Petty Jurors shall have in their own Name, or in trust for them, in the same County where Trials are to be had upon Issues joined, ten Pounds *per Annum*, at least, above Reprizes; and this must be either Freehold or Copyhold, or in Rents in Fee-simple, or Fee-tail, or for their own or some other Person's Life; and in *Wales* six Pounds *per Annum*; and if returned of a lesser Estate, it shall be a good cause of Challenge, and the Party returned shall be discharged upon such Challenge, or upon his own Oath; nor shall the Issues of any Juryman making default be saved, but by the special Order of the Court, for some reasonable Cause prov'd upon Oath.

Sheriffs, Coroners, and other Ministers, who shall return any Person to have been summon'd by them, unless they have been summon'd at least six Days before the Day on which they are to appear, or taking any Reward to excuse the Appearance of a Juror, forfeits for every Offence ten Pounds to the Crown.

And likewise if they return any Person not having ten Pounds *per Annum*, or six Pounds *per Annum* in *Wales*, shall forfeit five Pounds to the Crown.

This is all ordered by the Statute 4 & 5 *W. & M.* which was made at first but for three Years, and continued by the Statute 7 & 8 *W.* for seven Years,

Years is further continued by the Statute 10 *Annæ*, *cap. 14.* for eleven Years, &c.

An Attorney was turned over the Bar, for giving Directions to the Sheriff what Persons he would have returned.

## S E C T. I.

## Of Justices of Peace, their Original, their Office, and Power, &amp;c.

THE word *Justice* bears in itself so plain and easie a definition, that 'tis not necessary to enter into any Harangue about it; but the Person who is to administer this Justice had formerly many Appellations, tho' his Office was still the same; for at Common Law he was call'd a *Conservator* of the Peace; and by the Statute 1 *Edw. 3. cap. 16.* he is called a *Guardian* of the Peace.

There are different Opinions amongst learned Men concerning the time when Justices of Peace were first made; my Lord *Coke* tells us it was in the 6th Year of *Edw. 1.* but the learned Antiquary Sir *Henry Spelman*, was of another Opinion, (*viz.*) That they were constituted by *Edw. 3.* about the beginning of his Reign, in order to suppress those Tumults that might happen upon the Deposing of *Edw. 2.* at which time they had no judicial Authority; for their Power was only to examine and commit for a Breach of the Peace, as they saw Cause.

But in the 34th Year of that King, the Commons gave him Advice how the publick Peace might be better kept than at any time before, and that was by issuing out Commissions under the

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Great

Great Seal to six Persons in every County, where of two should be of the best Quality, two Knights, and two Men of the Law, and that they should have Power to hear and determine Trespases and Felonies; and that they should sit four times in every Year.

Thus began that Court which is now called the *Quarter-Sessions*: And because these Persons had Power by their Commission to hear and determine Causes, they were from thence called *Justices of the Peace*; and about two Years afterwards they were distinguished by that Name, by the Statute 36 *Ed. 3.* and from that time they were Judges of Record.

But it was not many Years before this Number of six greatly increased, insomuch that in the 12th Year of *R. 2.* the Parliament thought it necessary to reduce them to the first Institution, (*i. e.*) that there should be no more than six in each County.

But still they would be increasing, for about two Years afterwards, there were eight in every County.

This Law is still in force and not abrogated, but the Number of Justices still encreased, which made *Mr. Lambard* above one hundred Years since, complain in a Book which he wrote concerning the Office of a Justice of Peace; and his Countryman *Sir Henry Spelman*, takes notice after him, that in his time there were above three-score in most Counties.

'Tis true, in *Wales* there were but eight in each County; they were restrained to that Number by a particular Clause in the Statute 35 *H. 8.* Entituled, *An Act for certain Ordinances in the Dominion and Principality of Wales*; by which 'tis enacted, *That there shall be no more in any of the Shires,*

*Shires, over and above the President, Council, Justices, and the King's Attorney and Sollicitor, and that they shall be put in every Commission of the Peace in every of the twelve Shires.*

But this Clause is repealed by the Statute 5. *Will. cap. 4.* and 'tis made lawful for the King, by Commission under the Great Seal, to appoint what number he thinks fit.

The Court of Quarter-Sessions being established as aforesaid, my Lord *Coke* commended it to be such a form of Subordinate Jurisdiction for the Quiet of the Realm, that if duly executed, the Christian World had not the like.

I shall not endeavour to disprove him, though 'tis plain, that in all Governments there are subordinate Ministers and Courts of that Nature; but with us these Magistrates have been so unsuitably appointed, that a Country Justice is made a Jest in Comedies, and his Character the Subject of Buffoonry and Laughter.

'Tis probable that upon the Consideration of these Statutes, made in the Reign of *Ed. 3.* and the great number of Justices of Peace in every County, and some of them, if not many, very unequal for the Office; a late ingenious Author was for reducing them pretty near the Original both in Quality and all other Respects; and that was by constituting eight *Honorary Justices* in every County who should be Men of the *first Quality* there, and not be obliged to attend the Sessions at any time, unless their Zeal to do Justice should incline them to be present; and that there should be eight acting Justices, who in every respect should be fit and qualified for the Office, and who should constantly attend it, and be entitled to a Reward for their pains.

In former Days the Guardians of the Peace (who were almost the same with our Justices) had certain Fees allowed for executing their Office; and for that purpose Petitions have been exhibited to Parliaments, as particularly to that held at York, *Anne 8 Ed. 3.* which Petition was again renewed in the thirty sixth Year of that King's Reign, when they were called *Justices of the Peace*; and then the King answered that he would provide therefore: But it doth not appear what the Fees were, or what was farther done in it; but in *Hilary Term 12 R. 2.* it was enacted, that they should have 4*s.* every Day they sat in Quarter-Sessions, which in some Places is still paid by the Sheriff to the Chairman; and since this Statute there are others made, by which they are to have part of the Forfeitures upon Convictions; and by the Statute of Labourers they are to have 5*s.* for every Day they sit in Execution of that Act above three Days.

And there was so much care taken in those Days to reward these Magistrates, that by a Statute *Anno 14 R. 2.* 'tis appointed that the Names of the Justices and the Days of their sitting, should be written in Indentures at every Sessions; one part whereof was to remain with the Sheriff, that he might know to what Justices the Wages should be paid, and the other part was to remain in the Exchequer, that he might have Allowance made in passing his Accompts; and if he neglected or refused to pay the Wages, an Action of Debt might be brought against him for the same.

His Qualifications both in respect to Estate and otherwise, are as follow.

He must have 20*l. per Annum*, except he is a Man of the Law: One was indicted for acting not being qualified with such an Estate, and the

Indictment

Indictment concluded *contra pacem*, but it was quashed, because the time when he acted was not particularly set forth, for he might have 20*l. per Annum* when he acted, tho' not afterwards. *Roll. Rep. 2 part. 247.*

He must be a Man of Reputation: The old Word was, he must be a *prevalent* Man in the County (*i. e.*) a Man of some Authority and Power, and must not be a Steward to any Lord.

A Justice of Peace being, as it hath been observed, a Creature of the Statute Law; the Authority he hath is given likewise by particular Statutes.

As for Instance: By the Statute before mentioned, they had Power to hear and determine Trespasses and Felonies, and by Consequence Murder; for that is included under the general Name of Felony: And by the Statute 43 *E. 3 cap. 1.* and 2 *R. cap. 10.* they had power to proceed to deliver Thieves and Felons.

'Tis true, their Power is very much enlarged by these Statutes, beyond the Power of the Conservators of the Peace at Common Law; for they could not do so much as to commit for a Breach of the Peace: but yet since the 1 & 2 *Ph. & Mar. cap. 13.* directs them to certify the Examinations which they take in Homicide and Felony to the Justices of Gaol-delivery, the Court of Quarter-Sessions do seldom or never proceed in such Cases, but only in Petty Larcenies; but do certify their Proceedings to the Assizes, and bind over the Prosecutors thither.

His single Testimony upon the View of a Riot, or the Defect or Repairs of an High-Way is of greater Authority than an Indictment found by a Jury; and in all Cases where he hath a Jurisdiction, he is to be obeyed by the subordinate Officers, and his Warrant is not to be disputed by them; for they may be indicted if they either neglect or refuse to execute it.

If he is abused in any Thing relating to the Execution of his Office, the Offender shall be punished by Indictment and Fine; as for Instance, an Order was affirmed at the Sessions upon an Appeal, and the Person against whom it was made, said in Anger, that *if he could not have Justice there, he would have it elsewhere*; and for this Contempt he was indicted, fined, and committed for Non-payment of the Fine: And this Proceeding was held lawful; and it was a very strained Construction of this Sentence by one of the Judges to say, that the Words did not import any Contempt, but that they were spoken by way of Appeal, since they are a plain Accusation of the Court that he had not Justice done there.

He shall not be punished for any Thing done by him in Sessions as a Judge; because he is a Judge of Record, and not answerable for any Defect in his Understanding.

But if any Action should be brought against him for such Matters, and he should justify the Fact done by him as a Justice of Peace, he need not set forth his Commission; for that remains with the *Custos Rotulorum*, and he himself is a Judge of Record as hath been mentioned.

The Law favours him in all Things which he doth in Execution of his Office, but in no Irregularities; therefore where he compounded a Recognizance, and did not return it to the Sessions as he ought, and where he took 20 s. for every unlicensed Alehouse, and converted the Money to his own Use, he was fined one thousand Marks and committed during the King's Pleasure, and was ordered to find Sureties for his Good Behaviour for a Year, and to acknowledge his Offence at the next Assizes.

Dire.

*Directions for Coroners; his Fees, &c.*

A Coroner's Office is very ancient, and has been, and yet is, held in high Esteem; for the Lord Mayor of London is held to be Coroner there. 2 *Pro.* 531. And the Lord Chief Justice of the King's Bench is Sovereign Coroner of all *England*. 4 *Po.* 57, *b.* And he upon View of the Body of one killed in open View, as a Coroner, may make a Record returnable in the King's Bench *Ibid.*

But to come nearer to the intended Purpose; amongst other Matters, it is the Coroner's Business to view the Bodies of such as come to Casual Deaths, make away themselves, or are made away by others, or suspected to be put out of the World by a violent Death, or dying languishing in Prison, where there may be any Suspicion the Party died not naturally, but by hard Usage, Starving, or that the Imprisonment caused his Death, &c. For he is to know, and certify, how the King came to lose a Subject.

He is to have *Visum Corporis* of a Prisoner dying in a Gaol, by reason of Durefs. And the Jury or Inquest, before the Coroner, is to be of Persons within the four next adjacent Villages, made by the Bailiffs or Constables; and no Challenge lies to any of them so legally summoned on the Inquest, 1 *Cro.* 125. And upon a View of the Body, and a strict Examination how the Party came by his Death, they must give in their Verdict to the best of their Judgment, according to the Evidence, or other Matters appearing to them, whether it be *Felo de se*, he killed or drowned himself, &c. or died by the Hand of other

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Person

Person or Persons, or by the Fall of a House, Wall, Timber, Kick of a Horse, or any other Matter or Thing which brought the Party to an untimely End: And the Coroner being so satisfied, he is to give his Warrant for the Burial of the dead Person, according as it shall be found by the Verdict; and an Indictment may be grounded thereon against the Persons concerned; and in this Case he hath Power to commit or bind over the Party as he sees Cause.

He having Power only to inquire *super visum Corporis*, how the Person came by his Death, by whom and in what manner, and what Goods and Chattels he had at the Time of the Fact committed, therefore if the Body cannot be found, he hath no Authority to make any Inquisition; but in such Case the Matter may be presented to the Justices in their Quarter-Sessions, and there found by the Jury; and if the Person was *Felo de se*, this will entitle the King to a Forfeiture of his Goods.

But such a Finding and Indictment is traversable; and so is an Indictment *super visum corporis*; tho' it hath formerly been held otherwise. Now the Reason why he is to take an Inquisition only *super visum Corporis* is, that the Jury may see whether the Wound is mortal or not; and therefore *the Wound should be set forth*; and it must be alledg'd that it was *mortal*, and that the Party died of it; For where the Inquisition was that the dead Person, *cum cultro pretii &c. jugulum suum voluntarie & felonice & ut Felo de se secuit & seipsum occidit*, it was quashed, because it did not set forth the Wound, and that it was mortal, and that he died of the Wound.

'Tis true, the Word *Murdravit* was omitted, but there seems to be no necessity of that Word in an Inquisition, as there is in an Indictment; because there

are Degrees in the Offence where one Man is killed by another: For in some Cases 'tis Murder, in others Manslaughter, and in others Homicide *per infertunium*; and the Word *Murdravit* was inserted at first in Indictments to exclude the Offender from the Benefit of Clergy: But there are no Degrees in the Offence where a Man is *Felo de se*; and therefore in such Case the word *Murdravit* is not necessary.

This Inquisition being quashed for the Reasons before mentioned, the Coroner caused the Body to be taken up again, tho' it had been buried seven Months, and thereupon another Inquisition was found; of which Complaint was made, it being done at such a distance of Time that the putrified Body might infect the People, and that it was done without Leave of the Court; for where the Body hath lain some Time, it ought not to be digged up without Leave: And to this the Court agreed, it being a Nuisance so to do; but at last this Inquisition was traversed, and a Trial ordered at the next Assizes in the proper County.

A Man became *Felo de se*, and another ow'd him Money, against whom an Information was brought in the Name of the Master of the Crown-Office, for that the Money was forfeited to the King; but in such Case the Substance of the Inquisition must be set forth in the Information, otherwise 'tis void.

As for the *Witnesses*, the Coroner must take their Depositions in Writing, attested under their Hands, and he may bind them over to the next Gaol-Delivery, to give their Evidence there.

If the Jury which are impanelled by him are sworn, and the Witnesses not ready to give their Evidence, he may adjourn them to another Day, and bind them by a Recognizance to appear again at that Time.

When he hath Notice given to come and view the Body, he must make a Precept directed to the Constable, where it lieth, to summon twenty-four Men (who are to be of the Jury) to appear before him at a certain Day and Place, to execute such Matters and Things as shall then and there be given to them in Charge, concerning a dead Body then lying in such a Place, &c.

And if the Body shall be buried before he comes, the Village shall be amerced; and he may cause it to be digged up again; the Village must be also amerced for not sending for him in due Time, so that the Body is putrified before he comes, to the great Annoyance of the Jury and People.

He may cause any *Nuisance* to be found, by which the Death of the Party was occasioned; as that such a Bridge is in Decay, and by Reason of a Breach there, the Person going over it fell into the River and was drowned; in such case the Town shall be amerced: But then it must be found that the Town was to repair.

He is to take an Inquisition upon the Flight of the Felon; and this is to entitle the King to a Forfeiture of the Goods.

If he is guilty of any Practice to suppress the Evidence for the King, the Inquisition may be set aside upon a Motion in the Court of *King's Bench*, and Oath made of his Misbehaviour; and if he neglect or omit to make an Inquiry after Notice, the Chief Justice of the said Court may appoint Commissioners to do it; but then it must be *super Visum Corporis*.

If he doth not come, having Notice of the Death of any Person, or if he doth come, and neglects to bind over the Witnesses to the next Gaol-delivery, or doth not certify the Recognizance  
and

and the Inquisition as he ought to do, he may be discharged of his Office, and fined by the Court.

And therefore, where a Coroner did not return his Inquisition, the Jury having found the Fact to be Murder, and the same Person against whom it was found, being indicted at the next Assizes for the same Fact, the Jury there found it but Manslaughter; whereupon he confessed the Indictment, and pleaded a Pardon, which was allow'd; yet the Court made him plead to an Indictment upon the Coroner's Inquest, which he did; and it was *auterfois convict*, &c. But for this neglect the Court fined the Coroner.

In some Cases a *Melius inquirendum* may be granted upon moving the Court of King's Bench for that purpose, but never after an Inquisition *super Visum Corporis* is filed, unless 'tis quashed upon Oath made of some Misdemeanour either in the Coroner or Jury; as that they did not give a Verdict according to Evidence, &c.

The Forfeitures in these Cases are called *Deodands*, (i. e.) given to God, to appease his Wrath for shedding Blood; and for that purpose to be disposed by the King in Works of Charity.

But then it must be when any *moveable* things which are *inanimate*, or a Beast, causeth the untimely Death of the Person slain, without the *Will*, *Offence*, or *Fault* of himself; and this must be found by Inquisition, as aforesaid, for 'till then 'tis not forfeited.

*Anno 3 Will.* A Coach-man driving furiously through the Street at *Oakingham* in *Berks*, run the Fore-Wheel against a Post, and was thrown out of the Box, and kill'd between the Wheel and the Post.

The Coroner's Inquest found the Post a *Deodand*; which being contrary to the receiv'd Opinion,

nion, that nothing can be forfeited but what *moves* to the Death of the Party, and the Post being fix'd in the Ground, was *immovable*; therefore a Motion was made for a *Melius inquirendum*. Some of the Jury were order'd to attend the Court, which they did; but there being no Misdemeanour proved against them, the Court refused to grant a *Melius inquirendum*, there being no other Reason alledged, but because they found a Post to be a *Deodand*.

Lastly, as to choosing this Officer, 'tis done by Vertue of the Writ *de Coronatore Eligendo*, directed to the Sheriff, who gives Notice of the Time and Place, and there he is chosen by the Freeholders of the County; and when he is chosen, the Sheriff is to certify it, and the Name of the Person.

He is likewise to administer the Oath of his Office to him; and because he is elected by the Freeholders, his Office is not determined by the *Demise of the King*.

When he is thus chosen, he is then a *judicial* Officer, and for that reason cannot make a Deputy; and being an Officer at Common Law, for the Administration of Justice, he was to have no Fee for executing his Office, till by the Stat. of 3 H. 7. he hath Authority to demand the Fee of 13 s. 4 d. of the Goods of the Slayer, *super Visum Corporis*; and if he hath none, or is fled, then the Town may be amerced, for suffering the Criminal to escape, and he may take his Fee out of that Amercement.

But he cannot demand any Fee upon *viewing the Body kill'd by any Misfortune*; and in such case, if he should refuse to do his Office without being paid his Fee, he forfeits 40 s. per 1 H. 8. cap. 7.

So

So likewise, if he exacts above 13 s. 4 d. for himself, *super visum Corporis*, and 2 s. for his Clerk, he shall be fined 40 s.

He is likewise a ministerial as well as a judicial Officer; for if there is any just Exception against the Sheriff, as being of Kin, or Tenant to either of the contending Parties, or where there is a reasonable Cause to suspect any Partiality; in such Case the Process shall be directed to the Coroner, and he shall return the Jury; But then all Process in the same Suit must likewise be directed to him, tho' a more impartial Sheriff, should be made depending the Action.

If he return *fugam fecit*, 'tis not tranversable but if his inquest find the Person *Felo de se*, it may be traversed.

## Dead Bodies.

The Law, says *Rastal*, is, If a Man or Woman, &c. be wounded, and thereby in Peril of Death, the Party that did it, or was helping in doing it, being apprehended, may be committed and kept in Custody, till it be perfectly known by the Testimony of skilful Persons, whether the wounded Party will live or die of those Wounds or Blows given; and if he die, the Coroner, upon View of the dead Body, shall enquire of him or them that have done the Fact, whether Man or Woman, and take the Names of them that were present as Witnesses, or any other ways knowing of it. As also he shall take especial Notice of the Abettors or Concealers in, or towards the Fact, or any therein concerned, and so found, to inroll and certify the same.

The Coroner, according to his Inquest, shall give in their Verdict, if there be Cause; for he is to take care to prosecute the Offender or Offenders, if the Relations of the Deceased or others, refuse

refuse or are slack in so doing; so that if any Man, &c. be slain or murdered, thereof the Slay-ers, Murtherers, Abettors, Maintainers and Comforters, may be indicted, and brought to Arraignment and Trial of the Issue, whether they are guilty of the Murther, Manslaughter, &c. or not guilty; which may be done any time in a Year and a Day after the same Felony and Murther committed, which must be dated from the time of the wounding or beating, not from the time of the dying, if the Party languish and live any time after, though somewhat considerable, as a Week, a Month, or more.

And the Wife, or Heir of the Person so slain or murdered, as the Case requires, may commence his, or her Appeal, in proper Person, any time within the Year after the said Felony done, before the Sheriff and Coroner of the County where the said Felony and Murther was done, or before the King in his Bench, or Justices of Gaol-delivery. And the Appellant in any Appeals of Murther, or Death of a Man, &c. where Battel by the course of Common Law lieth not, may make their Attorneys, and appear by the same.

And the said Appeals, after they be commenced, may be proceeded in to the end of the Suit and Execution.

If a Murtherer, or Manslayer, escape, the Justices of Peace have Power to enquire of such Escapes, and to certify them in the King's Bench; and that after the Felony found, the Coroners deliver their Inquisitions before the Justices the next Gaol-delivery, in the Shire or County where the Inquisition is taken; and they are to proceed against such Murtherers, if they be in Gaol, or else certify the Inquisition in the King's Bench, or, as it is worded, Put the said Inquisition before the King in his Bench.

All

All such Coroners as are remiss in their Office, or Duty of their Place, and make not their respective Inquisitions upon the View of the dead Body, and certify not according as aforesaid is ordained, every Coroner, for such Offence, forfeits to the King 5*l.* by 3 Hen. 7. c. 1.

And now, that the Coroner may not be ignorant what is Murther, I shall briefly lay it down in general, and many material Particulars.

*Of Murther.*

This is the *killing any Person within the Realm upon Malice forethought*, the Death ensuing within a Year and a day after the Fact.

Which Definition is thus explained; and first as to *Killing*: This may be done by *Famishing*, *Poisoning*, *Smothering*, *Strangling*, and by several other Means, and with several Instruments; as by laying a sick Man in the Cold, by Reason whereof he died; by hiding an Infant under Leaves of Trees, who was afterwards destroyed by Vermin; by setting a Dog at a Man, accustomed to bite or to do mischief, he knowing thereof.

And, as to the Person *killed*, it must be in *Re-nun Natura*; for if a Woman take Poison to destroy the Child within her, tho' she is quick, 'tis not Felony if it die with that Poison, unless 'tis first born, and die afterwards by that means; but 'tis a great Misprison.

But he who advises her to destroy it before 'tis born, and if it happens afterwards to be born, and then killed, the Adviser is accessory to the Death.

(2.) the Killing must be within the Realm; for if a Man is wounded and dieth beyond Sea, the Criminal cannot be punished at Common Law,

2 but

but he may before the Constable and Marshal; and this is by Vertue of the Statute 22 H. 8. cap. 13.

If a Man is wounded at Sea, and dieth with that Wound on the Land, this is an Offence, but not punishable (as my Lord Hale tells us) at Common Law; and yet it cannot be denied but that the Killing shall have Relation to the Death, and not to the Wound.

Striking in one County and the Person dying in another, the Offender shall be tried in that County where the Person stricken died; but where a Man is Accessary in one County to a Murder done in another, and when the Principal is convicted, and that Conviction is certified, the Accessary may be tried in that County where he was accessary.

(3.) As to Malice forethought, it may be either implied or express.

Malice implied may be collected by several ways and means, (viz.) From the manner of the Act done; as if a Man rides into a Fair with an unruly Horse, knowing him to be so, and on purpose to do Mischief; or throws a great Stone over a House amongst a Multitude of People, knowing them to be there, these and such like, are unlawful Acts, and it shall be presumed that the Person had an ill Design in general, tho' not against any particular Person; and this implies Malice.

So where a Smith struck his Servant with an Iron Bar and kill'd him; or if a Farther, or Schoolmaster, correct his Son or Scholar with improper Instruments, which in all Probability may kill them, and death ensues, 'tis Murder.

So where a Woman kick'd and stamp'd on her Child's Belly and kill'd it; in all these Cases 'tis Murder, and the Law supplieth Malice in the Offenders.

But

But in a late Case of one Mawgridge, we are told, That if a Man assaults another with a dangerous Weapon, but without any Provocation, 'tis express Malice from the Nature of the Fault, which in itself is cruel.

Such a Provocation which may extenuate the Fact and make it Manslaughter, must be where there is some actual Force or Violence offered or done to the Person killing by him that was killed; for the most opprobrious Words or affronting Gestures, are not accounted in Law any Provocation, unless there is some Assault.

But if angry Words pass, and afterwards one pulls the other by the Nose, or if he only fillips him with his Finger, and the Person thus assaulted kills the other, this is no more than Manslaughter; because the Peace was broke by the Person who was killed.

But where the Peace is first broken by the Person killing, there 'tis otherwise; and this is the Case of Mawgridge before mention'd, (viz.) He threw an empty Bottle at Mr. Cope, which struck him on the Head, and immediately drew his Sword and gave him a mortal Wound; but between the time of his drawing the Sword and the Wound given with it, Mr. Cope threw another Bottle at Mawgridge, with which he broke his Head, but Mr. Cope was kill'd, his Sword being never drawn: This was adjudg'd Murder upon a special Verdict, and of Malice prepenesed, because the throwing the first Bottle was with a Design to do some Mischief, and the sudden drawing his Sword was to prosecute that Design; and though Mr. Cope threw another Bottle at Mawgridge before the Wound was given, that will not alter the Case, because it was in his own Defence, and therefore lawful for him to throw it.

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If two Men give each other reproachful Words, and a third Person strikes one of them and kills him, this is Murder.

So where one Man assaults another without any manner of Provocation, and runs at him with his Sword drawn, and then the Person assaulted draws his Sword in his own Defence, and is killed, this is Murder.

But if two Men fight, and a third comes in to assist one of them, and killeth the other, this is only Manslaughter, because there was an actual fighting, and the Peace broken between the other two before the third came in.

And yet if a Man is unduly arrested, or by any other means deprived of his Liberty, and he submits without making any Resistance, and another in rescuing him kills a Man, this is Murder; because Injuries must not be redress'd by Force or Violence, but by Law.

If one who is wounded shall neglect his Cure, or lives afterwards in a disorderly manner, yet if he dies of his Wounds, 'tis either Murder or Manslaughter, as the Case shall fall out upon the Evidence; and the Reason is, because the Wounds were the principal Cause of the Death which ensued.

Malice is likewise implied where one kills another who hath *not a Weapon drawn*; which are the very words of the Statute 1 Jac. cap. 8. commonly call'd, *The Statute against Stabbing*.

Five Years after the making that Statute it was held, That if the Person slain had but a *Stick* in his Hand, it should be accounted a *Weapon drawn*.

The Words of the Statute are, (*viz.*) *Stabbing another who hath not then any Weapon drawn, or that hath not then first stricken the Party stabbing,*  
and

and the Person dying within six Months then next following; this is Murder by that Statute *without benefit of Clergy*. There is a Proviso, that the Act shall not extend to one who kills another in his own Defence, or by Misfortune, nor to one who in keeping the Peace, or correcting his Child or Servant, shall unwillingly commit Manslaughter.

Several Cases have happened upon this Statute, which hath been expounded with a great deal of Nicety in respect to these words (*viz.*) *Or that hath not then first stricken the Party who stabs*.

As for Instance; In the 9th Year of Car. I. one *Byard* struck *Ward*, who struck him again, and then *Byard* stabb'd him: The Question was, whether he should have his *Clergy*, because the Person so stabbed, struck him before the Stab was given? And adjudged he should not; because the words *first stricken* in the Statute shall be construed the very first Stroke given by the Person slain at the beginning of the Quarrel, and not any Stroke before the Stab; so that if he who is killed, did not give the first stroke, the other who killed him, tho' he was stricken before the Stab, shall not have the Benefit of his Clergy.

There have likewise been several Expositions upon the Words what shall be a *Weapon then drawn*: As where two quarrelled and one threw a Pot at the other, but it missing him, the other drew his Sword and killed him: The Matter was found special, and the Doubt arising whether the Particle *then* should relate to the Beginning of the Quarrel, or to the time of the Stroke, it was the better Opinion, that it should relate to the Beginning of the Quarrel; for if in fighting one lets his Sword fall, or throws it at the other and is then killed, 'tis plain he had not a *Weapon then drawn*, that is, either to defend himself or offend his

Adversary, at the time when he had the Wound given; but yet because it was once drawn during the Quarrel, the Prisoner shall have his Clergy.

The Defendant was indicted for Stabbing, and two more who were present and abetting him, and they were all found guilty; yet the Person who gave the stroke shall be only hanged, and the other shall have their Clergy; for where 'tis known who gave the Stab, tho' all who were present and abetting are Principals, yet the Statute being so penal, shall be extended to him alone who *actually stabbed the other*.

*Anno 15 Car.* A *Welshman* having a Leek in his Hat on *St. David's Day*, was jeered by a Porter in the Street, and thereupon he took a Hammer out of one *Marbury's* Shop, and threw it at the Porter, but missing him, kill'd *Marbury*: The Question was, Whether this was within the Statute of Stabbing? for *Marbury* had not a *Weapon then drawn*: and adjudged that it was not; and probably the Reason may be, because the *Welshman* had no Anger against *Marbury*; and he was within the Proviso of the Act, which exempts the killing by *Misfortune*, as this was.

But those who have seen this Record tell us, that the *Welshman*, whose Name was *Williams*, was not indicted for Murder, but for Manslaughter on this Statute; and that if he had been indicted for Murder, he ought to have been found guilty, because the Provocation was not so great as to excite him to kill another.

Malice shall likewise be implied in many Cases where an Officer is kill'd in the Execution of Justice; but in some 'tis only Manslaughter.

If a *Constable*, or any other Person assisting him in the Execution of his Office, is killed, this is Murder; but then the Person who killed him must know

know he was Constable, and that he came to keep the Peace; otherwise 'tis no more than Manslaughter.

All who are present and assisting a Person arrested, if the Officer is kill'd, and they knew the Person was arrested, are Principals in the Murder.

Several came to rob a Park, and one of them kill'd the Keeper; 'tis Murder in all of them, tho' they were at some distance when the Fact was done, because they came into the Park to do an unlawful Act, and for that reason Malice shall be implied.

But in these Cases following, 'tis but Manslaughter.

§. As if the Officer is doing any thing which is not warranted by Law; as if he open a Window or Door to arrest a Man, and is killed, 'tis only Manslaughter.

An Officer had a Warrant to arrest the Defendant *A. B. Knight*, and he was not a Knight, but a Baronet, and the Officer was killed; this is Manslaughter, because he had no Authority to arrest the Baronet, for his Warrant was illegal; but if there is only a Mistake or Error in the Process, 'tis otherwise.

A Collector of the Chimney-Money distrain'd a Silver Cup for the Duty; and the Maid-servant, in the Absence of her Master, hindred him from carrying it out of the House, for which he beat her against a Post and killed her; this was held Manslaughter.

Several Owlers had loaded Wool in order to transport it, which was against Law for them to do; they were opposed by the King's Officers in the Night-time, and one of the Owlers shot off a Gun and kill'd one of his own Company;

this was only Manslaughter, because it did not appear that he discharged the Gun against any of the King's Officers, tho' it might be reasonably intended he did, because he was armed with a Gun, and was in Prosecution of an unlawful Design, in which he was obstructed; but if it had been found that he discharged the Gun at the King's Officers, in such case, if he had kill'd one of his own Party, tho' by Accident; it had been Murder, but not in the rest, unless they knew he design'd to kill any of the King's Officers.

In some Cases Malice may be collected out of the Circumstances, shewing the Temper of the Person killing.

As if one assaults another with an Intention to rob him, and being resisted, he kills the true Man, this is Murder; so 'tis if a Gaoler kills a Prisoner by hard Usage.

If two fight in a Tavern and are parted, and one of them alledgeth the Place to be very inconvenient to fight in, and thereupon they appoint another Place to which they both go immediately and there fight, and one is killed; 'tis Murder, because Reason prevailed more than Passion, so as to judge of the Conveniency of the Place.

So if two quarrel in the Morning, and fight in the Afternoon, and one is killed, 'tis Murder; for there was a reasonable distance of Time by which the sudden Heat might be allayed, and therefore the second Meeting must be with a malicious Intent to do Mischief.

There is a very nice Distinction made by some former Writers on this Subject, (*viz.*) If two quarrel and one is wounded, afterwards they meet and the wounded Man kills the other, 'tis Murder; because Malice shall be intended in him, occasioned

ed by the Wound he had receiv'd; but if the wounded Man had been killed by the other, that would have been only Manslaughter, because it shall be intended that his Malice was over by giving the Wound.

Some Provocations are so violent, that they mitigate the Crime and make it Manslaughter, which otherwise would have been Murder.

As where the Husband found his Wife in the very Act of Adultery with another, and killed him.

So where two Boys fought near their Fathers Houses, and one of them being bloody, went immediately to his Father and complained, he being then a Mile from the other Boy, but he went forthwith and beat him so that he died; this was held only Manslaughter.

Malice express in the Principal who doth not act; as where a Man resolveth to do any thing which is unlawful and Death ensueth, this is Murder.

If the Deceased challengeth the other who refuseth to fight, and afterwards upon Importunity they meet, and he kills the other, 'tis Murder.

All who are present and assisting are Principals; but if they are not present, yet if they come to do an unlawful act, and are in the same House and Place, tho' at a distance, 'tis Murder in all.

Where the Act is deliberate and malicious, and Death ensueth, tho' the Offender did not intend to kill any one, yet 'tis Murder: As where a Park-Keeper finding a Boy in the Park stealing Wood, tied him to a Horse's Tail, and the Horse running away with the Boy thus tied, he was killed; this is Murder.

If there is Malice between two, and one striketh at the other and killeth a third Person, this is Murder.

So where one bought Poison to kill another, and a third Person eat it, 'tis Murder.

Two or more come to do an unlawful Act, and one of them killed another, 'tis Murder in both, if abetting, or ready to abet; but then he must know of the malicious Design of the other, and the killing must be in Pursuance of that unlawful Act; and not only so, but it must be done deliberately; for if upon a sudden *Affray* 'tis only Manslaughter.

Besides, the unlawful Act ought to tend to the Hurt of another, either immediately, or by consequence; As where Persons assemble in a riotous manner with offensive Weapons, and one is killed, 'tis Murder.

Two having Malice fight, the Servant of one of them not knowing the Malice, killeth the other, this is Murder in the Master, and Manslaughter in the Servant.

One commands another to kill a third Person with a *Sword*, and he killed him with a *Gun*; this is Murder in the *Person commanding*; but if by Mistake he had killed another, and not the Person whom he was commanded to kill, then 'tis Murder in the Person killing, and he who commanded the killing the third Person, is not so much as Accessary.

If one command another to beat a third Person, and he doth it so that Death ensueth, 'tis Murder in him, and the Person commanding is Accessary to it.

In some Cases the Crime is aggravated by the Quality and Condition of the Offender; As where a *Maid-servant* and a *Stranger* conspired to rob the Mistress, and in the Night-time the *Servant* let the *Stranger* into the House and lighted him to her Mistress's Bed, where he killed her; the Servant

vant only holdind the Candle; this was adjudged Murder in the Person who did the Fact, and Petty Treason in the Servant.

So where the Wife and her Servant agreed upon a Time and Place to kill the Husband, and the Servant alone in the absence of the Wife did the Fact; this is Petty Treason in both; but if he had been killed by one who was not his Servant, the Wife should be hanged and not burnt, because she cannot be guilty of *Petit Treason*, where the Principal is only guilty of *Murder*.

By a Statute made in the Reign of King *James I.* 'tis enacted, That where a *Bastard-child* should be concealed, it should be taken to be born alive, and if 'tis dead, it shall be adjudged to be murdered.

So that by this Statute *Concealment* is made the Crime, and an Evidence that the Bastard was murdered.

Now if a Woman with Child of a Bastard, and going well to Bed is taken with travailing Pains in the Night, and knocks for some body to assist her, but is delivered without any help, and then puts the Child in a Trunk and conceals it for a Day, if there is no Sign of Hurt on the Body, 'tis not Murder within this Statute, because by her calling for some Assistance she had no Intent to conceal it; and there being no visible Hurt, it shall be taken that the Child was dead-born; but if there had been an Intent to conceal it, then 'tis Murder tho' the Child was not born alive.

## Of Manslaughter.

**M**anslaughter is the unlawful killing of a Man upon a sudden Provocation in the Heat of Blood, and without any Malice.

By

By this Definition it appears, that ther must be no deliberate Act, but it must be a *sudden Falling out*; and the Act which they are about, must be unlawful; for if 'tis lawful and Death ensues, then 'tis only *Chancemedley*.

A *sudden Falling-out* is where two Men fight and one of them breaks his Sword, but a Stranger immediately lends him another, with which he kills his Adversary; this is Manslaughter in both.

Two fight and are parted, but immediately meet again and one kills the other; this is only Manslaughter, because it was a continued *Affray*.

If there is Malice between two and the Deceased challenged the other, who refused to meet, but said he should go to such a Place, where the deceased met him and was kill'd, this is Manslaughter.

Where a Man entred an House with Force, and those who came to take Possession set it on fire, and he who was within shot and kill'd another without; 'tis Manslaughter, because his Entry was unlawful.

A Servant draws his Sword in Defence of his Master, and in the Quarrel the Master is kill'd, 'tis Manslaughter in the Servant.

A Prisoner in Execution for Debt escapes, and the Keeper coming to the Place where he was, kills him, either in pursuing or resisting him; 'tis Manslaughter.

Unlawful Acts where Death ensues are many; I shall instance in a few: *Playing at Foils, throwing Stones, shooting at Deer in another Man's Park, forcibly Entering and Ejecting another*, and such like, are unlawful Acts, but without any malicious Intent to kill any one; and therefore where Death ensues in these and such like Acts, 'tis only Manslaughter.

Bailiffs

Bailiffs coming to serve an Execution, and the Debtor having notice of it shuts his Doors, which the Officers break open, and one is kill'd; 'tis only Manslaughter, because the Breaking the Door was unlawful: The Offender hath the Benefit of his Clergy the first time, but forfeits his Goods and Chattels.

Of Chancemedley.

**T**his is where a Man is kill'd by another, casually, when he is doing any thing which is lawful, and without any Intent to do Hurt; As shooting at a Bird is a lawful Act, and if in such case a Man is killed, 'tis only *Chancemedley*; and so 'tis where a Father corrects a Son or Servant, and Death ensues.

A House was building at some distance from the High-way, and one of the Workmen being about to throw a piece of Timber from the House, called out, *Stand clear*, the Timber fell upon one of the Labourers, and kill'd him; this was held *Chancemedley*, for he was doing a lawful Act, and had no Intention to do any Hurt, because he gave Notice what he was about to do; but if it had been in the Streets in *London*, or any other great City or Town, it had been *Manslaughter*, because of the continual passing of the People; but in this case the special Matter must be found, that the Court may judge whether the Killing was by Misfortune, or not; for 'tis not sufficient to find it generally.

My Lord Coke tells us, there is no express Judgment in *Chancemedley*, but the Offender forfeits his Goods, and hath a Pardon of course, which is obtained by a Certificate of the Judge to the Lord Chancellor, who thereupon issues out a Pardon.

Of

## Of the Office and Duty of a Constable.

Both the High and Petty Constables are Officers at Common Law, and seem to be constituted at first for the Ease and Assistance of the Sheriff who had the Care of the whole County; but he alone could not so well preserve the Peace as when assisted by others; therefore every County was divided into *Hundreds*; and a High Constable was set over each Hundred, whose Office was to keep the Peace and suppress all Disorders and Riots: Neither was he together with the Sheriff sufficient for that purpose; for afterwards *Petty Constables* were appointed in every Town and Village of each Hundred, and these were to assist the High Constables.

The High Constable is chosen by the Steward at a Court-Leet, or by the Presentment of the Jury there: Such Choosing must be warranted by Custom; and in Places where the Leet is usually kept; and in such Cases the Justices of Peace have no Authority to meddle.

But where there is any Neglect or Refusal to keep a Leet, or to choose a High Constable, the Justices in their *Quarter-Sessions*, may appoint and swear one; and this is now the usual Course.

The *Petty Constable* is chosen by the People of the Parish; but in *Wales* two Justices, (*Quorum unus*) appoint him by Virtue of the Statute 34 H. 8.

The *Petty Constables* ought to be honest and able Men both in Body and Estate, and not of the meaner Sort; and therefore it hath been held that they ought not to be chosen by House or Custom, if not fit to execute the Office.

But 'tis now ruled, That a Custom for the Inhabitants

bitants to serve by Turns is good; so if it happen on a Woman she must provide one to serve the Office.

Formerly it was a Question, Whether a High Constable could make a *Deputy*? But 'tis now allowed; yet he must answer for the Miscarriages of his *Deputy*, unless he was allowed by the Court of Sessions.

The High Constable is to be resident where he is chosen; and if he is not qualified for the Office, or if he die, or move out of the Hundred, two Justices may choose and swear another; and he is to execute the Office till the next Leet or Sessions, and then the Steward or Justices may either approve him, or appoint and swear another; and he is to continue in his Office for a Year; and if longer, then upon Complaint to the Sessions they may discharge him.

When he is chosen if he refuse, to serve, the Justices may bind him over to the Assises or Sessions, where he may be indicted and fined; but then the Indictment must set forth the Place where he was required to take the Oath of the Constable, and before whom he refused to be sworn; for 'tis not sufficient to alledge generally that it was at the Sessions.

If any Action at Law is brought against him for any Thing done in the Execution of his Office, it must be laid in the County where the Fact was done; and he may plead the General Issue, and give the Special matter in Evidence; and if he recover, he shall have double Costs.

But several Persons are exempted from this Office; as *Attorneys, Clergymen, Justices of the Peace, Infants, Lawyers, Physicians, poor Men, old and sick Persons*, but not Tenants in *Antient Dem'sne*.

Of

## Of the Duty of a Constable in Affrays.

**H**E may by Vertue of his Office put a Man into the Stocks who breaks the Peace, *in his View*; or he may secure him till he can carry him before a Justice of Peace; *without any Warrant*, but if the Quarrel is over before he come, he must then have a *Warrant*.

If he hath Notice of a Quarrel and refuseth to go to the Place, he may be presented by the Grand Jury at the Sessions, and fined.

If any Persons are about to quarrel, he may command them to depart; and if they resist him in such Case, he may justify the Beating them; he may command other Persons to assist him, and if any of them happen to be killed, 'tis Murder.

He may break open the Doors of an House where any Persons are quarrelling and fighting; and if any of them are wounded, he may secure the Offender 'till he can bring him before a Justice of Peace.

*Ale-houses and Inns.*

**T**HE Constable is to levy twenty Shillings to the Use of the Poor, upon such who keep *unlicensed Alehouses*, and he may sell the Goods on which he levies it after three Days; and if no Distress can be had, he may cause the Offender to be whipt; and if he neglect it, then one Justice may commit the Constable without Bail, untill the Alehouse-keeper is punished, or until the Constable pay forty Shillings to the use of the Poor, &c.

He must levy twenty Shillings upon an Alehouse-keeper selling less than in full Quarts, &c. or he forfeits forty Shillings himself, to be levied by a Warrant of one Justice; and if no Distress can be taken, then he must be committed.

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He likewise having a Justice's Warrant, must levy ten Shillings upon an Alehouse-keeper who suffers a *Townsmen to sit tippling in his House*, or he forfeits forty Shillings himself; and so he must if he doth not certify the Default of a Distress to be had to levy the ten Shillings within twenty Days after he hath the Warrant.

He must levy three Shillings four pence on those who are convicted of sitting and *Tippling in an Alehouse*; or if he neglect, having a Warrant for that purpose, he must forfeit ten Shillings.

He must levy five Shillings for the Use of the Poor on those convicted of *Drunkenness*, or put him in the Stocks for six Hours.

He may cause those Inn-keepers to be indicted at the next Sessions, who refuse to lodge Travelers, paying or offering to pay ready Money.

*Armed Men.*

**C**ONSTABLES may take away the Arms of them who ride or go armed in Terrour of the People, and may bring these Persons before a Justice of the Peace to find Sureties for their Good Behaviour.

They must assist those Persons who have Warrants from the Lieutenancy to search for Arms; but it must be in the Day-time, unless in Towns; and they may enter forcibly, if resisted.

*Bridges.*

**J**USTICES in Sessions, upon Presentment made by the Grand Jury that a Bridge is in Decay, and 'tis not known who shall repair it, may assess the

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the whole County in proportion, as hath been usually assessed.

The Money thus assessed must be collected by the *Petty Constables* and *Headboroughs* of every Parish, or by such as the Justices in Sessions shall appoint; and it must be paid to the High Constables of each Hundred within six Days after 'tis collected; and they must pay it to such Person as the Justices by a Sessions-Order shall appoint, and that within ten Days.

The *Petty Constables* and *Headboroughs* must demand the Money of each Person on whom 'tis assessed; and if 'tis not paid within ten Days after Demand, he may levy it by Distress, &c. rendering the Overplus, and deducting the Charges; and if he neglect to assess, collect or pay the Money, he forfeits forty Shillings for every Offence.

Where a Manor is held by the Tenure of repairing a Bridge, and afterwards that Manor is divided and sold to several Persons, every one of them is subject to the whole Charge of repairing, and the rest must be contributory; for it shall not be in the Power of the Seller to apportion the Charge.

#### Clothiers.

THE *High Constable* of every Hundred may hear and determine all Complaints between *Clothiers* and their *Work-folks*, which *Work-folks* must be paid their Wages in ready Money, and they must perform their Duty in their Occupation, or they forfeit double Damages to the Party grieved; and the High Constable may commit such Workmen till they make full Satisfaction for the Damages.

The

The *High Constable* may search for and seize Ropes, Winches, &c. used for unlawfull stretching the Cloaths; and if resisted, the Offender forfeits ten Pounds.

#### Customs of the King.

Constables must upon Request assist all Persons who have a lawfull Warrant to search for Goods which have not paid the Duties or Customs, and he may (if within a Month after the Offence committed) enter into any House in the Day-time; and if he is refused or resisted in making such Entry, he may *break open* the Doors.

He must likewise assist all Persons appointed by the King to collect or manage his Customs.

#### Deer-stealers.

THE Constable is to levy the Penalty by Warrant from one Justice, &c. on the Goods of Persons convicted for Deer-stealing, which is twenty Pounds for *bunting, taking, killing or wounding any Red or Fallow Deer in any Place enclosed for keeping Deer*; and thirty Pounds for every Deer taken, wounded or killed; and he may detain the Offender for two Days, if he do not pay the Money, or cannot levy it, till he can make a Return of his Warrant.

He may by Virtue of a Warrant enter into any suspected Place, and carry away *Venison, Skins, of Deer or Toils*, and bring the Offender before a Justice, &c.

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Dogs.

## Dogs.

Constables, by Warrant of two Justices, may search any suspected Places, &c. of Persons who have no free Warren, or of those who are not Lords of Manors, or who have not an Inheritance of forty Pounds *per An.* or Freehold for Life of eighty Pounds *per An.* or who are not worth four hundred Pounds, and who keeps Dogs or Nets, and may kill and destroy them.

## Escapes.

THIS a great Misdemeanour in a Constable consenting or permitting a Felon to *escape*, before he is actually in Custody; for which he may be indicted and fined: But if he was once in Custody, and then the Constable suffers him *voluntarily* to escape, or to destroy himself, 'tis Felony in him; but if the Escape is involuntary or by Negligence, 'tis only finable; but the Place where the Felon was taken, and where he escaped, must be set forth in the Indictment.

He may discharge any Person taken upon *Suspicion* of Felony, if there was no Felony committed; but if there was, then he must not discharge him, tho' he knows the Person taken was not guilty of it, for he must be discharged by due Course of Law.

He may secure a Felon by putting him in the Stocks, and lock him up, or put him in Irons, or pinion him, in order to prevent any Escape when he is bringing him before a Justice.

Excise.

## Excise.

A Constable must be present with the Officer of Excise, when he enters into a Brew-house by Night to gauge any Vessel.

He must levy the Penalties on Offenders against the Laws of Excise, by Distress, and by Warrant, &c. And if no Distress can be taken, he must by the same Warrant carry him to Gaol.

He may enter with a Gauger in the *Night-time* the House of a Retailer of *Vinegar*, *Cyder*, &c. *for Sale*: Such Retailer refusing him Entrance, forfeits 15*l.* and a Brewer refusing him Entrance, forfeits 20*l.*

A Constable together with an Excise man, who suspects any secret Conveyance of Worts, may upon Request, break open a Door in the *Night-time*, and if opposed, the Offender forfeits 20*l.*

## Felons.

Constable is bound *ex Officio* to endeavour to take Felons, and may call Persons to his Assistance; he may likewise apprehend any one upon Suspicion; and upon Complaint, or even upon Common Fame, he may enter and search suspicious Houses.

The Constable may seize a Felon who flies, and make an Inventory of his Goods, and send Hue and Cry after him; (*i. e.*) he may raise the Town, and give notice to the next Constable; and if he neglect, he may be fined by the Justices.

The Petty Constables of every Parish are to set a Tax on every Inhabitant of those Parishes, which are taxed by two Justices for Damages recovered upon the Statute of Hue and Cry, and levy the same by Distress. X 2 *Fish.*

*Fish.*

Constable may by a Warrant from one Justice, levy ten Shillings on those who fish with Nets of less Meshes than three Inches and an half from Knot to Knot, or with any other Engine to destroy the Breed of Fish along the Sea-Coast, or in any Haven or Creek, or within five Miles thereof.

They are by the like Warrant to search in Shropshire, Worcestershire, and Gloucestershire, for any unlawful Nets used to take Fish in the Severn, and may seize such Nets, and carry them to the Sessions.

*Forcible Entry.*

Constable refusing to assist the Justices in removing a *Forcible Entry*, or carrying the Offender to Gaol, may be committed himself and fined.

*Gaming and Game.*

Constable must once in every Month search Houses where unlawful Gaming is kept, as *Bowls, Tennis, Tables, &c.* and may commit the Master of the House and the Gamesters, till they give Security not to offend in the like case again: If the Constable neglects, he forfeits 40s. for every Default.

But this is now by common Usage and Custom made lawful, and no Notice is taken either to punish the Master of the House, or those who play at those Games.

He may search the suspected Houses of any Person not qualified, and if he find any *Game* there,

there, he may carry the Offender before a Justice of the Peace.

The Qualifications are, (*viz.*) 100*l.* per Annum Freehold, or a Lease of 99 Years of 150*l.* per Annum, other than the Son and Heir of an Esq; or another of a higher Degree, &c.

An Alehouse-keeper, Carrier, Chapman, Higlar, Inn-keeper, Victualler, having in his Custody, or who shall buy or sell, or expose to sale, any Hare, Partridge, or Pheasant, forfeits 5*l.* to the Informer and Poor.

The like punishment for any Person not qualified to keep Grey-Hounds, Hays, Lurchers, Setting-Dogs, &c.

Lord of a Manor can appoint but one Game-keeper, and his Name must be entred with the Clerk of the Peace in the County where the Manor is, who must give him a Certificate thereof, and he must not kill a Hare in the Night.

An Hare found in the Possession of one not qualified, shall be adjudged an exposing to Sale.

*Hedges.*

Constable must whip those who break Hedges, being convicted by Oath of one Witness before one Justice; and the Procurers and Receivers of broken Wood, knowing the same to be broke and stolen, and not giving the Party Satisfaction, and being committed to the said Constable by the Justice: And if the Constable neglects to whip such Person, he may be committed without Bail till the Offender be whipp'd.

He may apprehend suspected Persons for carrying away Bundles of stolen Wood, and by a Justice's Warrant, may enter their Houses, and if he find any such Wood, may carry the Offender, and

and the Person in whose House 'tis found, before a Justice of the Peace.

## Highways.

Constable must every *Tuesday* and *Wednesday* in *Easter Week*, call together the Inhabitants; and choose two Surveyors, &c. for the next Year, otherwise may be fined by the Sessions, which Fine the Clerk of the Peace must estreat, and that shall be a Warrant to the High Constable to levy it; and if no Distress can be had, or he do not pay it within twenty Days after Demand, he is to forfeit double the Fine.

He must appoint six Days between *Easter* and *Midsummer* for mending the Highways, and must give Notice of those Days at the Church, under the like Penalty.

But by a late Statute 3 & 4 *Will.* Constables, and the Inhabitants of every Parish, must meet the day after *Christmas*; and the greater part of them must agree on a sufficient number of Men having 10 *l.* per *Annum*, or who are worth 100 *l.* or rent 30 *l.* per *Annum*; and if there are no such in the Parish, then the most sufficient Inhabitants, whose Names the Constable must return to the next Sessions specially to be held on the third day of *January* following, or within fifteen Days after; of which Special Sessions, the Constables must have ten Days Notice; and then the Justices may under Hand and Seal appoint Surveyors for every Parish; and the Constables must serve such Surveyors with the Justices Warrant within six Days after such Appointment; if he neglects to return a List of such Names, he forfeits 20 *s.*

Horses

## Horses Stoned.

Constable must assist such who call him to seize Stoned Horses put into Commons where Mares are usually kept; which Horses, when two Years old and not fifteen Hands high, must be brought to the next Pound, and there measured by the Constable in the presence of three Men: If he refuse to measure, then he forfeits 40 *s.*

If in Farm Grounds, the Stoned Horses may be no more than thirteen Hands high.

## Hue and Cry.

Constable is to raise *Hue and Cry* upon notice and Description of the Felon, and which way he is gone; and he may call the Parishoners to his Assistance in pursuing him to the next Constable; and he is to make an Inventory of the Goods of the Felon in the presence of his Neighbours; if he refuse to pursue the Offender, he may be indicted.

A Constable was indicted, for that a Burglary was committed by some Persons unknown, and that L. E. gave him Notice thereof at L. in the County of S. and required him to make *Hue and Cry*, which he refused; but if the Place where he gave Notice had not been in the Indictment, it had not been good.

## Juries.

IN *Michaelmas Sessions* the Constable shall return to the Justices a List of the Names and Abodes of Persons who are qualified to serve on Juries, and they must be between twenty one and seventy

X 4

Years

Years of Age; a Duplicate of which Lists the Justices shall order the Clerk of the Peace to deliver to the Sheriff before *January* following.

Justices at *Midsummer* Sessions shall issue out their Warrants, at least under the Hands and Seals of two of them, directed to the High Constables of each Hundred, requiring them to issue out their Precepts to their respective Petty Constables and Headboroughs, that they should meet the High Constable within fourteen Days after the Date of such Precept, at some convenient Place within the Hundred, then and there to prepare a List as aforesaid, which they must sign; and at the *Michaelmas* Sessions following deliver into Court; and if the High Constable refuse or neglect to issue out his Precept, he forfeits 10*l.*

The Petty Constables refusing to meet according to the Precept of the High Constable, or meeting and not preparing a List, and to return it as aforesaid, forfeit 5*l.*

Offenders may be prosecuted either at the Assizes or Sessions; one Moiety of the Forfeitures to the Crown, the other to the Informer.

The Grand Jury must be forty eight Freeholders or Copyholders, each having 30*l. per Annum*; but there must be more than twelve to serve; but if so many agree, 'tis conclusive to the rest.

The Qualification of a Petty Jury man must be 10*l. per Annum.*

#### Labourers.

A Constable may *ex Officio* set any ordinary Tradesman to work in Hay or Corn Harvest, being required by those who want Labourers, and put him in the Stocks for two Days and

and one Night, if he refuse to work; and the Constable neglecting his Duty herein forfeits 40*s.*

#### Malt.

Constable must search and view Malt made for Sale, and see if 'tis not steeped and dried three Weeks; if half a Peck of Dust is not sifted and fanned out of each Quarter, and whether 'tis made of Mow-burnt Barley or not, or whether 'tis spired or Good and Bad mixed together; and if he find any such, he may with the Advice of one Justice, sell the same at such Rates as the Justice shall think fit.

*Measures. see Weights.*

#### Militia.

Constable must levy the Money charged upon any Person by the Lieutenancy; and if no Distress can be found, may, by Warrant from the said Lieutenancy, commit the Person till he make Satisfaction.

#### Minister disturbed.

Constable *ex Officio* may apprehend any one disturbing a Minister in Preaching, &c. and carry him before a Justice of Peace.

#### His Oath.

THE Constable by a former Oath was usually sworn to many Particulars; as to suppress Affrays, to arrest armed Men, to apprehend Barretors, and to many other things; but now a shorter Oath is usually administered to the Petty Constable, as followeth.

ff. *Yon*

If You shall swear, that you shall well and truly execute the Office of a Constable for the Town, &c. for the Year ensuing, and until another be sworn in your Room, or until you shall be legally discharged from the same.

#### Presentments.

Constable is bound to make true Presentments of all Offences within his Liberty; but this is seldom done, for they usually make a formal Return, and carry it before a Justice of Peace to sign, and then he brings it to the High Constable, who at the Sessions makes Oath that he had it of the Petty Constable, and that 'tis not altered.

Now Inmates and unlawful Cottages are Offences which he ought to present; and there are few Country Parishes without such Offenders and Offences, which must necessarily fall under the observation of the Petty Constable; and yet those are seldom presented.

#### Prisoners.

Constable by a Warrant of one Justice may sell the Goods of a Criminal, to defray the Charges of carrying him to Gaol, the same being first appraised by some Inhabitants of the Place; and if he hath no Goods, then the Town where he was taken, must be at the Charge, and the Constable and three Inhabitants may set a Tax on every one dwelling there, which being allowed by a Justice, the Constable by Warrant may levy it on those who refuse; and being appraised by four of the Inhabitants, may sell it.

If a Constable is sued, &c. he may plead the General Issue, and if he recover, shall have treble Costs.

Rent.

#### Rent.

HE must assist the Person who distrains for Rent, and swear two Men to appraise the Goods; and the Overplus, after Debts satisfied, may be left in his Hands.

The like may be done as to Sheaves or Cocks of Corn loose or in the Straw, or Hay in a Barn, Stack, or Rick: But these things must not be removed, but kept in the Place where seized, and there impounded until replevied or sold.

#### Riots.

THE Constable is to suppress all Riots *ex Officio*, and may commit the Rioters, and all such who break the Peace.

A Riot is where three or four do meet to do an unlawful Act, and do put their Intent in Execution; if they only meet for such a Purpose, and afterwards depart of their own Accord without doing it, yet 'tis an *unlawful Assembly*; but if they move forward to put their unlawful Intentions in Execution, tho' they do not actually do what they intended, then 'tis a *Rout*; and all these are punishable by Fine and Imprisonment.

#### Rogues.

THE Constable must endeavour to seize Rogues, Vagabonds, &c. wandering and begging without License, or forfeits 10s. If any Person bring a Rogue to him, he must see that he shall be punished under the like Penalty, to be levied by Warrant by two Justices.

The

The Constable must punish such Rogues, &c. thus; (*i. e.*) he being assisted by the Minister of the Parish and one more, must cause the Rogue to be stripped naked from the Middle upwards, and to be whipp'd till he bleed; then he must send him to the Place of his Birth, if 'tis known, and if not known, then to the Place of his last Abode for one Year, before the Whipping; and if that is not known, then to the Town through which he passed last unpunished; and if it cannot be known where he was born or dwelt, then to the House of Correction, to be employ'd in Work, or in some Service, for a Year.

The Constable must give the Rogue a Testimonial of the Day and Place of his whipping, and if he is negligent, he forfeits 10*s.* Or such Constable who doth not receive a Rogue who is to be convey'd from one Town to another till he come to the Place of his Birth, forfeits 5*l.*: Or if he do not convey him to the next Constable, forfeits the like Sum.

#### Sabbath.

Constable must levy by Warrant of one Justice, five Shillings on him that resorts to Dancing, or any other Sport on the Sabbath-day, if above fourteen Years old; and if under, then one Shilling.

And he must levy 6*s.* on a Butcher killing Meat, or selling Flesh on that day; and 20*s.* on the Drover or Carrier travelling on that Day; and all Goods exposed to Sale, are forfeited to the use of the Poor; which Forfeiture he must levy; and 5*s.* on him who uses a Trade, or any Labour

hour on that Day; and 5*s.* on him who is seventeen Years old or upwards, and doth not come to Church on that Day.

#### Swearing.

Constable must levy 1*s.* upon every Labourer, common Soldier, and Seaman, and 2*s.* upon every other Person, for each Oath and Curse; this must be by Warrant from one Justice; and if that is not to be had, then if above twelve Years old, he must be put in the Stocks for three Hours; and if under that Age, then the Constable must whip him; but it must be by Warrant from a Justice; or the Parent may whip him in the presence of the Constable, if the Penalty is not paid: And for the second Offence double, and for the third treble; and for default of Distress, if the Offender be above sixteen Years old, he shall be put in the Stocks for one Hour for one Offence; and two Hours if convicted for Swearing more than once; if under sixteen Years old and do not pay the Penalty, he must be whipp'd by the Constable, Parent, or Master, as before.

#### Watch.

Constable must cause Night-Watches to be set with four able Men or more, from Sun-setting to Sun-rising, from *Whitsonide* to *Michaelmas*; if they refuse to watch, then the Constable may complain to the Justice, and he may bind the Person refusing, &c. to the Good Behaviour.

A Constable appointed a Man to watch, and because he refused, he put him in the Stocks: And in an Action of False Imprisonment brought against him, he justified as Constable; but did not shew that

that the Plaintiff was an *Inhabitant of the Town*; for he might be a Stranger, and then he could not appoint him to watch, nor put him in the Stocks for refusing, but must complain to a Justice of the Peace.

But those who are Inhabitants within the Town are not to watch at the Will of the Constable, but only when their Turn cometh, unless 'tis the Custom of the Place to do otherwise.

*Warrants to execute.*

**C**onstable is excused if he execute a Warrant of a Justice wherein he *exceeded his Authority*, because he is not to dispute, but to obey; but if he execute a Warrant of a Justice where he had no Authority, he may be punished, and so he may where 'tis apparent, that the Warrant is mistaken in the Penalty, or if he is commanded to do something out of his Liberty.

He may acquaint the Party with the Contents of the Warrant, but is not obliged to shew it.

If he apprehend a Person without a Warrant, and get one afterwards, 'tis False Imprisonment.

But he may justify the detaining an Offender for a Day by the Command of a Justice of Peace, without a Warrant, not having Opportunity to examine him.

If he let a Man go upon his Promise to return, he cannot retake him by Vertue of the first Warrant; but if the Person escaped, he may pursue him into another County and bring him back.

In Treason, Felony, or Breach of the Peace, he may *break open Doors* by Vertue of a Warrant; but first he ought to demand Entrance, and to acquaint the Person for what purpose he came.

If

If there are two Persons of one Name and the same Addition, and he takes the wrong Person, 'tis no False Imprisonment; but if the Warrant is against a particular Man by Name, and he apprehend another who is really the Offender, such Taking is wrongful, and the Party may have an Action of False Imprisonment, but will have but very little Damage given by a Jury.

He may be indicted for any Abuse of the Authority of a Justice, or a Contempt of his Warrant, and will be fined if found guilty; but if he is indicted for not executing a Warrant, the Prosecutor must set forth some particular Act of Disobedience, and not generally that he did not execute it.

*Weights and Measures.*

**C**onstable may search and examine, if any Person sell Corn, Grain, or Salt, otherwise than by the Standard; for every City, Borough and Town, must have a common Ballance and sealed Weights, and a Bushel sealed, which must be kept by the head Officer or Constable.

*Churchwardens.*

**C**hurchwardens are very ancient Officers, and are by the Common Law a *Corporation*, only as to the Goods of the Church, the Property of such Goods being in them; but 'tis not so as to the Lands, for they cannot prescribe by the name of Churchwardens to have the Lands of the Church.

Neither can they have any Action at Common Law, to recover any Goods for the Use of the Church, of which Goods they were never possessed;

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ferred; but by a Bill in Chancery they may recover them: But if once they were possessed of the Goods, they may have an Action of Trespass if they are taken away, and recover Damages to the Use of the Parishioners: They may likewise have an Appeal of Robbery if stolen, but they cannot sell them without Leave of the Parish; if they do, the Parishioners may chuse new ones, who may bring an Action of Accompt against those who sold them.

They are chosen by Vertue of the Canon made *Anno 1. Jac.* by the joint Consent of the Minister and the Parishioners; and if they cannot agree, then the Minister is to choose one, and the Parish the other; and this is to be done every Year in the *Easter Week*, unless there is a Custom to the contrary.

If he is chosen by a *Custom*, tho' against the Canon, and the Archdeacon should refuse to swear him, a *Mandamus* will lie to compel him: And if he should refuse one who is chosen, and appoint another against the Consent of the Parish, the Court of King's Bench will grant a special Writ of *Mandamus* to the Bishop to swear the Person duly chosen, or to signify the Cause why he doth not.

When he is chosen and hath taken the Oath, he is to see that the Parishioners come to Church every Sunday and Holy Day, and must present to the Ordinary the Names of those who absent, or levy one Shilling for every Offence.

☛ If he find any Persons in an Ale-house in time of Divine Service, the Forfeiture is 3 s. 4 d. and the Master of the House 10 s.

The Churchwardens may bring an Action for defacing a Monument in the Church or Churchyard; and so may the *Heir by Descent*; but if any  
Thing

Thing belonging to the Freehold is broken or defaced, as the *Walls, Windows, Doors* of the Church, or the *Trees* in the Church yard felled, the Parson or Vicar, and not the Churchwardens, must bring the Action.

An Action of *Accompt* was brought by Churchwardens against their Predecessors for a *Bell*, in which they declared that they should give them an *Accompt de bonis Ecclesie*, when it should have been *de bonis Parochianorum*; and for this Reason the Declaration was was not good.

They may apprehend those who disturb the Minister, and bring them before a Justice of Peace.

They are to execute Warrants against such who profane the Lord's Day; they are to join with the Constable in making Rates for the Relief of the Poor, and in choosing Surveyors of the Highways, and appointing the Days in which they are to work.

They must at the end of the Year *accompt*, and deliver what remains in their Hands to the new Churchwardens, by a Writing indented; if they refuse, they may be presented at the next Visitation, or the new Churchwardens may have an Action against them: And if they should be cited into the Ecclesiastical Court after they have delivered up their Accompts, and should upon such Citation be excommunicated, they may have an Action on the Case against the Prosecutor.

The *Ordinary* hath a proper Jurisdiction over the *Seats in Churches*, and may place and displace whom he thinks fit, unless in cases of Custom and Prescription; for a Man may have a Seat in the Church appendent to his House, and may prescribe, that he and all those whose Estate he hath, usually sat there and repaired the Seat; and in such Case a Prohibition will lie if he be disturbed;  
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but a Man cannot prescribe to a Seat in the *Body of the Church generally*, without shewing, that he and all those whose Estate he hath in the same, have time out of Mind repaired it. And so it is if the *Seat* is in the *Isle of the Church*; for such a Prescription to *repair the Isle* and to sit there with his Family, makes it entirely belonging to the House, and the Person cannot be displaced by any Body.

As to *Taxes* for repairing the Church, those are to be made by the Churchwardens and the greater part of the Parishioners present, after a general Notice given for that purpose, and the Charge must be imposed on them in respect of their Lands; and therefore if the Owner doth not live in the Parish where his Lands are, he shall be rated towards the Repairs in the Parish where the Lands lie, unless he lease them to another; and then he shall be charged in respect of the Rent reserved upon such Lease.

And because the Churchwardens may not know who is Landlord, if his Tenant is sued for Repairs in the Spiritual Court, he may plead to the Libel, That he is only Farmer or Tenant; and this appearing to the Court, the Tax shall be divided between him and his Landlord, (*i. e.*) he shall contribute in proportion to the Rent reserved, and the Farmer or Tenant for so much as the Land is worth above the Rent.

A Man had a Lease of a Stall in a Market-Town, where he came once in a Week and sold Goods, but lived in another Parish; he shall be charged in the Parish where he lives.

If a Man lives in one Parish and occupies Land in another, he shall not be charged for the *Ornaments* of the Church where the Lands are; because the Inhabitants only are to be charged in such Cases, and that in respect of their Personal Estates. If

If there is a Chapel of Ease which hath always been repaired by one part of the Parish, and to hear Divine Service there, but *bury* at another Place, they must contribute to repair the Church.

If the Parish is unequally taxed, those who are grieved, must (when they are sued in the Spiritual Court) plead that they are taxed more in proportion than the rest of their Neighbours; for they cannot have a Prohibition granted by the Courts of Common Law.

As concerning their Presentments, those are usually made twice in a Year; and one time is to be a Week before *Easter*, when the old Churchwardens are to be out of their Office, and the new ones sworn, which they ought not to be, till the others have given up their Presentments; and if they refuse so to do, the Parson or Vicar may Present them. But tho' 'tis usual to make their Presentments twice in a Year, they cannot be compelled to present oftner than once, except when the Bishop visits; and the Register is to take 4s. for every Presentment, and no more.

There are many Articles exhibited to them to present; and amongst the rest, one was to present *Filthy Talkers*: The Churchwardens refused to take the Oath to present this Article, and upon a Libel against them, a Prohibition was granted; but if the Oath tender'd to them had been to present according to Ecclesiastical Laws, and this Article and the rest had been offered only by way of Direction, in such Case a Prohibition ought not to go.

A Churchwarden was indicted, because *colore Officii sui extorsivè & corruptè*, he took a silver Cup of one L E. for making him a *Gallery Keeper* in *St. Martin's Church*. The Court was moved to quash this Indictment, because a *Gallery Keeper* is

not an *Office*, but an *Employment* under the Churchwardens, and to make them a Present for such an Employment is no Offence. But the Court would not quash it, but order'd it to be tried, whether the Cup was taken *corrupté & extorsivé*, or not.

When a Church is built and consecrated, neither the Ordinary or Churchwardens can give Leave to *Bury there*, but the Parson only, because the Freehold of the Soil is in him for Life.

*Grounds of Presentments.*

1. **W**Hether the Church, Chancel, Bells and Ropes, be in good Repair. The Lord's Prayer, Ten Commandments and Creed, be drawn in fair Letters; what Assellments are made for the Repair of the Church, and the Names of such as make default in paying them. Whether there be a Communion-Table, Carpet, and Font in the Church, and all other necessary and useful Ornaments in Church and Church-yard: Whether the Parsonage House and Out Houses are in good Repair.

2. Whether the Person, Vicar, or Curate, read the Common-Prayer at Morning and Evening Service with his Surplice, or preach every Lord's Day, read Homilies, catechise, keep Perambulation, preach sound Doctrine, and use no seditious Expressions against the Government: Whether he celebrate the Lord's Supper at least three times every Year; once to be at *Easter*: Whether he baptize Infants with Godfathers and Godmothers; bury the Dead according to the Form prescribed in the Book of Common-Prayer, preach in his Gown, visit the Sick, and pray with them: Whether he marry clandestinely: That he be a sober Man, live chastly, and be a Peace-maker in his Parish: Whether once every Year at least, he

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read the Canons to the Parishioners, and twice every Year the thirty-nine Articles.

3. Whether the Parishioners at due Age, resort to the Parish-Church to hear Divine Service, and there reverently and decently behave themselves: Whether any work, or sell Wares on the Lord's Day, &c. Whether Vintners, Inn-keepers, or Alehouse-keepers, keep Tippling in their Houses on the Lord's Day.

4. Whether any be Married within the prohibited Degrees, or be Adulterers, Fornicators, Swearers, Drunkards, Blasphemers, Sorcerers, &c. Whether all the Parishioners above sixteen Years receive the Communion, at least thrice in the Year, *Easter* to be one time: Whether any unseasonably keep their Children from being baptized, or Women decline the usual time of being church-ed after their Delivery: Whether any bring not their Dead to be decently buried after the Service of the Church: Whether any have been married without the Publishment of Banns or License, or at unlawful Hours: Whether their Hospitals, Alms-Houses, Schools, or Spittels, if any belong to them, be well and Godly used, or any thing detained from them: What Legacies are given to pious Uses; and if the Parishioners are orderly placed in their Seats without Contention.

5. Whether the Parish-Clerk or Sexton, be duly chosen, can write, read, make the Responses, and be an honest Man: If the School-master, Usher, Physician, Chirurgeon, or Midwife, if any be in the Parish, teach or practise without License: Whether the Churchwardens be duly chosen in the Week after *Easter*, by the Minister and Parishioners, according to the Canon or Custom: Whether the old Churchwardens have been careful to keep the Church in Repair, to keep and

carefully to secure all Furniture belonging to the Church, &c. And whether, in the middle of Divine Service, they walk out of the Church to visit Taverns, Alehouses, &c. where Tippling may be used; and to see who are loitering, or exercising any Sports on the Lord's Day.

*Precedents for Churchwardens.*

**T**HE Churchwardens have no Action at Common Law to recover a Legacy never in their Possession: But for any Goods and Ornaments of the Church, being once in their Possession and Custody, they may maintain an Appeal of Robbery against any one or more Persons that steals them, and an Action of Trespass against him that does, without Right take them away; even against the Parson or Vicar so offending: And the Damages so to be recovered against such Offenders, shall be converted to the Use of the Parish. But if it so fall out, that those Churchwardens, from under whose Custody the Goods were taken, chance to die before they have brought any such Action, the succeeding Churchwardens have no Right, by Law, to bring an Action for the same Goods.

If a Churchwarden presents, that any Parishioner, certifying his Name, is a Railer, common Disturber, or Sower of Discord among the Neighbours, unless it done in the Church or Churchyard, a Prohibition lies, if the Presentment be made in the Ecclesiastical Court; because it is the Leet, and not the Churchwarden, if the Offence be committed elsewhere, that is to present it.

If any one take the Organs out of the Church, the Churchwardens may bring an Action of Trespass;

pass; for the Organs appertain to the Parishioners, and not to the Parson; so no Action will lie in the Parson's Name; nor can he sue the Party that took them, in the Ecclesiastical Court.

If a Bell be broke, the Churchwardens may have an Action against him that broke it, or caused it to be broken, and recover Damages to the Use of the Parish.

If any one be sued in the Ecclesiastical Court, for refusing to feast and entertain the Churchwardens, and those that go with them in their Perambulation and Procession, with Bread, Cakes, Cheese, and Ale, tho' his Ancestors, living in the same House, had done it on the like Occasions, time out of Mind, a Prohibition will lie against it; for that in such Cases, the Churchwardens claim it in the nature of a Corody.

If a Suit be commenc'd by the Churchwardens in the Court Ecclesiastical, for a Church-way, claimed as a Right belonging to all the Parishioners by Prescription; here a Prohibition lies because it is a Temporal Case, and not in the Jurisdiction of the Spiritual Court.

*Overseers.*

**A**LL Overseers ought to be credible, honest, substantial Men. They are to be yearly chosen, and joined with the Churchwardens of the Parish, in the Oversight, due Regard, and Care of the Poor: They are to be made choice of by two or more of the Justices of the Peace, one to be of the *Quorum*, who are enjoined yearly, at *Easter*, or within a Month after, under their Hands and Seals, to appoint Four, Three, or Two Substantial House-keepers, according as the Parish requires, to be joined with the Churchwardens,

To oversee and look to the Poor in their Parish, according to the Statute of 43 *Eliz. c. 2. 21 Jac. 1. c. 28.*

In this case, the major Part of the Officers, without the Remainder, may do any thing belonging to their Office, with the allowance and consent of them, either in particular or general, with two Justices of the Peace, one to be of the *Quorum*, and when they are not hindred by just Occasion; (the Excuse to be allowed by two Justices of the Peace) they are to meet on the Lord's Day in the Church monthly, after Evening Prayer, to consult of such Matters relating to their Office, as may turn to their best Advantage; and upon Neglect, without such reasonable Excuse, are liable to forfeit 20 s. for every Default. 43 *Eliz. Wingate's Abr. Tit. Poor People.*

And if according to 43 *Eliz.* they be not regularly and duly appointed, then every Justice of the Peace, or Head Officer of that Division, forfeits 5 l. which may be levied by a Warrant of Sessions, and employed to the Use of the Poor where such Default is made.

Of the Poor there are reckoned three Sorts or Degrees; and first, those by Defect and Impotency, as the aged and decrepid, being past their Labour.

The Infant, fatherless and motherless, not capable of being set on Work.

Those naturally disabled, either in Wit or Members, as the Lunatick, Idiot, Lame, Blind, and the like, not being able or capable to work; and Persons visited with grievous Sickness and Diseases, tho' casually; however being, for a time, thereby rendered impotent.

These,

These in their Degrees are to be provided for, and the Overseers are to take care they have necessary Relief, and such proportionable Allowances as shall appear convenient, according to the Measure and Continuance of their Needs and Maladies.

*Secondly*, Such Poor by Casualty; such as are casually disabled or maimed in Body, as Labourers, Soldiers, Mariners, &c. maimed, or so disabled in their proper and lawful Calling. Also the decayed Householder, by Casualty of Fire, Losses at Sea, Suretiship, Robbery, or Decay and Loss in Trade, &c. A poor Man or Woman overcharged or burthened with Children, and not able to keep them by their Labour. All these, and the like, having Strength or Ability of Body, but no Means whereby to sustain themselves or Children, are to be set to work; but if the Profit thereby arising, procure not a sufficient necessary Maintenance, so that they cannot live thereby, they are Objects of Charity, and to be relieved at the Charge of the Parish, in some reasonable Proportion and Measure, as their respective Wants and Necessities shall render them deserving in the just Opinion of the Overseers, under whose Care they are.

*Thirdly*, Such as are thrifless, who have wasted what they had by Prodigality and Riotousness, Playing, Drinking, Debauchery, and the like; or such as are dissolute, Strumpets, Pilferers, idle Persons, refusing to work, Vagabonds that will settle in no Place, nor be content with Service; and for these the House of Correction is appointed, where they to be sent; and if of able Bodies, put to hard Labour, to maintain themselves by it, without being chargeable to the Parish, Town, or County, for any Allowance; however, they are not to be suffered to perish for Want: But in case  
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any of these last sort prove impotent by Sicknes, want of Ability of Body, or that their Work will not supply what is needful for the Necessaries of Nature, then in their extream Necessity there must be an Allowance by the Town, &c. *Dalt. Just. P. c. 73. Fol. 170.* And where the Parents are able to work for their Children, so that it will maintain them, they may be compelled to do it; but if over-burthened, the Overseers, at their Discretion, may take what Children they think fit off their Hands, and put them Apprentice, or otherways dispose of them to Nurses, or else allow the Parents something to enable them to keep them.

The Father, Grand-father, Mother, Grand-mother, Children and Grand-children, are obliged to relieve those so allied to them, that are poor, if themselves are of Ability, in such manner as the Justices shall order it at the Quarter-Sessions, by assisting the Party or Parties; and upon obstinate Refusal or Neglect to obey their Order, a Penalty of 20 s. every Month is forfeited to the Poor of the Parish, to be levied by the Churchwardens, Overseers, or one of them, by Distress and Sale of the Offender's Goods, having first, to that end, received a Warrant under the Hands and Seals of two Justices of the Peace, one to be of the *Quorum*; and in Defect of such Distress, the Justices may commit the Offender to Prison without Bail or Mainprize, to remain there till the Forfeiture be paid; but a Grand-father-in-Law, if he has no Estate with the Grand-mother in Marriage, or that after comes to her, is not held liable to this, though he brings her considerable of his own, or is afterward inabled by his Industry, or at least, if the latter, which is held doubtful, he is obliged to it no longer than his Wife lives. *Second Part of Bulst. Reports. Fol. 245, 246, 247.*

If any Person beg in the Parish, a License must be granted for it by the Overseers; and if in the High-

Highways, by those Overseers: And by Order of Sessions, a Cottage may be erected on the Waste of the Manor, and poor Inmates may be lodged therein; but it is afterward to be employed to no other Use. And such Poor as cannot get work, and are able, are to be set on work by the Overseers; and a Justice of Peace may send such to the House of Correction, that being employed by them and the Churchwardens, will not work, being not otherways able to maintain themselves; and they, with the Consent of two Justices of Peace, or more, one being of the *Quorum*, may set up, occupy, and use any Mystery, Trade, or Occupation, for the better Relief of the Poor in the Parish, Town, or Place, within their Districts, to set them on work, which is very commendable, and may be wished it were more put in Practice.

#### Poor Children.

Due Care must be taken of all indigent Children; that they must be so placed, as not again to be chargeable to the Parish; and that they may learn such suitable Crafts and Mysteries, as when their Time expires, with Labour and Diligence, they may be enabled to keep themselves and Children, their Age to be above Seven, and under Fifteen, when they are so placed; and in doing this, the Overseers must have the Consent of two Justices of the Peace; and they may bind Men-Children to the Age of Twenty-four, and the Female to the Age of Twenty-one, or till she be married, which first shall happen; but it must be within the Parish or Hundred; and they may give Money, if they cannot put them off without; and the Masters refusing to take them when so offered, may be presented and indicted for the same, upon the Statute of 43 *Eliz.* at the Assizes or Sessions of the Peace; and Parents refusing to let

let them be so put Apprentice without good Cause shewed for it, may by the Justice be bound over to answer the Default; and the Children refusing, may be sent to the House of Correction till they will comply. He or She, must be bound by Indenture, and the word *Apprentice* specified in it, or else it is not binding.

**The Form of an Indenture of an Apprentice, put out and bound by the Overseers, &c.**

**T**His Indenture, made the Eighteenth of September, in the fifth Year of the Reign of our most Gracious Sovereign Lord GEORGE, by the Grace of God, of Great Britain and Ireland King, Defender of the Faith, &c. Annoq; Dom. 1718. Witnesseth, That G. H. and N. O. Overseers of the Poor in the Town of Buckingham, and B. E. Churchwarden of the same Town, by and with the Consent of R. S. Esq; and W. T. Esq; two of His Majesty's Justices of the Peace of the County of Buckingham, have, by these Presents, placed and bound I. K. being a poor and fatherless Child, as an Apprentice to J. E. of Buckingham aforesaid, Taylor, and as an Apprenticeship him the said J. E. to dwell from the Day of the Date of these Presents, until the said I. K. shall come to the Age of twenty-four Years, according to the Statute in that Case made and provided; by and during all which Time and Term, the said I. K. shall the said J. E. his Master, well and faithfully serve in all lawful Business, according to his Power, Wit and Ability; and honestly and obediently in all things shall behave himself towards his said Master, and all the rest of the Family of the said J. E. And he the said J. E. for his part covenanteth and agreeth, that he

the said J. E. the said I. K. in the Art and Mystery of a Taylor, in the best manner that he can or may, shall teach, instruct or inform, or cause to be taught, instructed, or informed, as much as thereunto belongeth, or he the said J. E. knoweth. And also during all the said Term, to find unto him the said Apprentice, Meat, Drink, Linnen, Woollen, Hose, Shoes, Washing, and all other things necessary or needful for an Apprentice. In Witness whereof, We the said J. E. and I. K. have interchangeably set our Hands and Seals, to these Presents the Day and Year abovesaid.

**Poor.**

**B**Y Settlement of the Poor, it is here meant, such as are likely to be troublesome and chargeable to the Parish or Place where they reside. And by the 13 and 14th of Charles II. chap. 12. The Overseers and Churchwardens making their Complaint to any Justices of the Peace within four Days after any Person that is poor and likely to trouble the Parish, cometh to settle in a Tenement under 10*l.* by the Year, two of the Justices, one being of the *Quorum*, by Warrant under their Hands and Seals, may remove such a Person to the Parish where he last had a legal Settlement by the space of forty Days or more, unless Surety can be by him given, that the Justices shall approve of, to secure the Parish, &c. from Damages or Charges that may ensue, and all Persons aggrieved, have free Liberty to appeal to the Quarter-Sessions.

In Harvest, or Work-time, poor Persons settled in a Parish, having a Certificate under the Hands of the Minister of the Parish, one Churchwarden, and one Overseer of the Poor, declaring them Inhabitants there, may go into any of the adjacent

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or distant Parishes to work, and if they do not return by reason of Sicknes, or any other Impediment, it shall not be accounted a Settlement tho' they stay after their Work is done; and if any return from the Parish from whence they are removed, it is in the Power of the Justice of the Peace to send them to the *House of Correction*, where they may be punished as Vagabonds; or, at his Discretion, he may send them to a common Work-house, there to be employed at hard Labour; and upon the refusal of the *Churchwardens* and *Overseers* of the *Poor* to receive them, and find them Work, &c. they may, by the Justice, be bound over to answer it at the Sessions or Assizes.

But by a subsequent Act 8 & 9 *Will.* a poor Man may remove into any Parish where he may have Work; but then he must have a Certificate under the Hands and Seals of the Churchwardens and Overseers of the Poor, or the *major part of them*; or under the Hands and Seals of the Overseers, where there are no Churchwardens, acknowledging him to be an Inhabitant legally settled in the Parish; which Certificate must be attested by two Witnesses, and allowed and subscribed by two Justices, and then delivered to the Parish Officers to which he is removed; and this shall oblige the Parish from whence he came, to receive him and his Family, when he stands in need of Relief.

And by another Law 'tis declared, that those Poor People who shall come into a Parish by such Certificate, shall not be adjudged to have a lawful Settlement by any Act whatsoever, unless he take a Lease of 10*l.* per *Annum*, or execute some *annual Office* in the Parish.

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In *Trinity Term 2. Annæ*, this Case happened; A Person who had no lawful Settlement in the Parish, *who gave the Certificate*, but who had lived there many Years, went into another Parish by *Vertue of that Certificate*; afterwards being poor, the Parish from whence he came, took him again; but upon Enquiry, it appeared he had no lawful Settlement there, but in another Parish; and that before this Certificate was given, and thither they sent him; the Parish to which he was sent, appeals; because those who had given the Certificate, had owned him to be an Inhabitant lawfully settled with them; but the Court held the *Certificate* was only an Evidence of the Settlement, but was not conclusive so as to make it a Settlement there.

*As to making Rates,*

EVERY Inhabitant and Occupier of Houses, Lands, Tithes, *Mines*, or *Under-Woods*, is to be taxed towards the Charge, according to the visible Estate which he hath or renteth in the Parish where he is taxed, and not elsewhere. This Tax is to be made either on Lands or Goods; but one and the same Person is seldom taxed for both.

The Farmer, and not the Landlord, is liable to this Tax; for it ariseth by reason of the Land in the Parish, and the Landlord is never assessed for the Rent he receives.

The most reasonable way of taxing Land, is according to a Pound-Rate, and not according to the Number of Acres.

Where a Man hath Land and a great Stock of Goods, as a Clothier, or such a Trader, he may be taxed for both; but not for such Stock or Goods which he usually employeth in Husbandry.

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The Person must be charged for Goods in that Place where they are at the time when the Rate was made; for if he hath no Goods in that Place and at that Time, and is afterwards distrained, he may bring an Action of Trespass against him took the Distress.

Where the Parish extendeth into two Counties, the Justices are to intermeddle only within their respective Jurisdictions; but the Overseers shall act in the whole Parish thus divided.

If there is a Village in a Parish which formerly had a Church or Chapel, and Parish Officers, and other parochial Rites, this is a Parish in Reputation; but making Rates since the Statute, and Proof of a Chapel being in a Village before, will not make it a Parish.

If any Person occupy Land lying in several Parishes, he must in this Rate be accountable for them proportionably in the Parishes where they lie: But it seems reasonable, that for his personal Estate, he should be charged in the Parish where he is an Inhabitant.

In rating Stock or Goods, it is to be rated according to the Proportion of Land-Rent, as five or six pounds a Year in Land to be held equal with 100*l.* in Goods or Stock.

In a Parish where the Inhabitants by reason of their own Poverty or Fewness, are not able to relieve their Poor, two Justices, one being of the *Quorum*, may, by Rate, tax other Places and Parishes within the Hundred, if necessity requires it; and this not proving sufficient, the Justices in their Sessions may tax the County in part, or wholly, if they think fit. 43 *Eliz. Wingate's Abridg. Stat. tit. Poor People.* And if any Person find himself aggrieved by any Act done by the Justices of the Peace

Peace or Overseers, they may for redress, apply themselves to the Justices in the Quarter-Sessions, *Dalt. Just. P. ch. 73. fol. 160. &c.*

## Giving up Accounts.

IF a Parish shall reach to and lie in two Counties, or one Part thereof to lie in any City or Corporation Town, where there are proper Justices, in that Case the Justices of each County are to meddle so much as appertains to the Part lying in the County of which they are Justices, and so of the other parts; and yet the Overseers shall, without dividing themselves, execute their Office in all places within the said Parish, but shall give up their Account to the Justices or Head Officers of both Places. *Wingate's Abridg. Stat. Tit. Poor People. 43 Eliz. ch. 2. Dalt. Just. P. ch. 73. fol. 156.*

The Overseers of the Poor are, within four Days after their Year was expired, and other Officers nominated their Successors, to give up their Account in Truth before two Justices of the Peace, one to be of the *Quorum*, chiefly to this purpose.

1st. What Stock of Money they have received or rated, and not come to their Hands. 2d. What Stock of Stuff or Ware is in their own, or in the Hands of any of the Poor. 3d. What Apprentices they have put out, according to the Statute. 4th. What Poor they have set to work or relieved. 5th. What Poor they have suffered to beg or wander out of the Town in the High-ways, or in their Town, without their Directions. 6th. Whether they met Monthly to consider of such Matters as are properly belonging to their Office. 7th. Whether they have made their Rates indif-

ferent upon the Parilhioners, according to their Ability. 8th. Whether they have truly endeavoured to gather and levy all Assessments. 9th. Whether in them there has been any Neglect of the Justices Warrants directed to them on any account, especially those for collecting any Forfeitures, according to the Statute 43 Eliz. ch. 2.

Note, By the Statute made for the burying in Woollen, 30 Car. 2. the Justices may not allow the Accounts of the Overseers of the Poor, till such time as they have given them an account of the Burials and Certificates, and of their levying the penalty by that Statute directed.

If they refuse to give in their Accounts, or make and yield a true and perfect Account to the said Justices, of such Money and Stock in their Hands, as has been mentioned, two Justices of the Peace, one being of the *Quorum*, may commit them to the common Gaol, not to be dismissed till they shall render a true Account, and pay'd or satisfied the succeeding Overseers, so much of the Sum and Stock, as shall any ways appear to be remaining in their Hands; and upon making a false Account, lie liable to be bound over to the Sessions or Assizes, where an Indictment may be preferred against them: Or the Justices or any two of them, may grant a Warrant to the succeeding Overseers, to levy the Sum upon the Goods and Chattels of the Offenders, by Distress and Sale, and for want of such Distress, may commit them to Gaol till Satisfaction be made. But Note, Upon Sale, the Overplus is to be returned to the Owner. 42 Eliz. ch. 2.

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If it happen that any part of such Stock shall be found, or known to be in the Hand of any Poor, upon Refusal of Delivery, two Justices may, by Warrant, cause the Value to be levied; and for want of wherewith on which to make Distress, commit the Party to Prison, as in the former Cases.

And for these, and all other Faults and Negligences of Churchwardens and Overseers, relating to the Execution of their Office, as to the Poor, &c. for every such Default made by any of them, he is to forfeit 20s. upon Proof, by Confession, or Examination of Witnesses, to be levied by Warrant of two Justices of the Peace, by Distress and Sale of Goods; or for want of it, the Offender to be imprisoned, and the Money so levied, to be employed to the Use of the Poor of the Parish, 43 Eliz. ch. 2. So that by the Law great Care is taken that these Officers shall not be wronged in their just Rights, nor the Parish or Poor be wronged by them.

Fines for Poor's Use.

IT is the Business of the Overseers of the Poor, to receive such Fines or Forfeitures as accrue from Offences in such, as in the Night-time kill or take any Conies upon the Borders of Warrens, or such Grounds where the Owner may lawfully keep Conies, the Parties so killing or destroying, not being Proprietors, nor allowed by the Owner.

Also of such as use Hare-pipes, Snares, or such like Implements, or take Fish by any Nets, Angling, or other Device, in any Water or River not lawful, or shall be assisting thereunto, without the Consent of the Lord of the Manor or Owner of

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*Of Overseers.*

the Water ; and the Sum for these Offences is to be amerced by the Justice of *Peace*, before whom the Party offending shall be convicted, and the Sum not exceeding ten Shillings, over and above what the Owner may have, or recover his Damage sustained for ; and the Party for default of Payment, may be sent by the Justices, to the House of Correction, for any time not exceeding a Month, unless he enter into Bond with one or more Sureties to the Party aggrieved, the Sum not exceeding ten Pounds, never in the like manner to offend any more ; and for these Offences, the Offenders Goods are liable to Distress and Sale, but then the Imprisonment must be remitted, upon Satisfaction that way made. 22 & 23 *Car. 2.* ch. 2.

*Weights and Measures.*

**T**HE Overseers for the Poor, as well as other Officers, ought to have a special Regard to them ; and in this Case, there ought to be one Weight, one Measure, and one Yard, according to the Exchequer-Standard, in every part of the Realm, as well within as without Places privileged ; and every Measure of Corn is to be striked ; and those that keep different Weights and Measures not agreeing in all respects with the Standard, to buy and sell by, being convicted thereof by the Oath of two Witnesses, before any Justice of Peace, or Head Officer of the Town or Place where the Offence is done, shall forfeit five Shillings, to be levied by the Church-wardens, or Overseers of the *Poor*, in the Parish where the Offence is committed, by Distress and Sale of Goods upon Warrant, and for want of such Distress, the

*Of Scavengers.*

the Offender to be committed to Prison without Bail, till Payment be made ; and if any Person be troubled for any Matter concerning his Office, in this Case he may plead the General Issue, and give in Evidence, the Act of 17 *Car. 2.* And to have treble Costs, if the Suit so brought prove vexatious. *Dalt. Just. P. 112. fol. 246, &c.*

*Burying in Woollen.*

**T**HE Penalty of five Pounds is to the use of the Poor, where any Persons shall be buried in any Garment, Winding-sheet, Shroud, or any other Materials not made of Sheeps Wool only ; or if the Coffin the dead Body is put into, be lined or faced with any thing made of any Material but Sheeps Wool : And the Church-wardens and Overseers of the Poor are to take care of this in all respects, that the Forfeitures be duly levied. See more 30 *Car. 2.* ch. 3, &c.

*The SCAVENGERS Duty.*

**N**O Person under the Penalty of five Shillings, is to throw any Dirt or Rubbish, or noisome thing into the Streets, that may be a Hindrance, or give Offence ; nor in any Lanes, or places of publick Passage, &c. or against a Wall of any Church, Church-yard, or any House ; or if they throw it into any common Vault or Sink, to hinder the Current of the Drains, they forfeit 40 s. 14 *Car. 2.* ch. 2 And those that sweep not up their Dirt for the Scavenger to take away, before their Houses, in Streets, Alleys, and other publick Places, forfeit 13 s. 4 d. for every Neglect. 13 *Car. 2.* ch. 2.

If any hoop, wash, or cleanse any Barrels or other Cask, or set out empty Casks to mend, or hew rough Timber, or saw Stone, for each of these Offences they are to pay 20s. And every Householder is to keep the Streets, Lanes, and other publick Passages, so far as belongs to him, paved, well paved unto the Chanel, or middle of the Street or Lane, under the penalty of 20s. for every Rod that shall be defective, and 20s. a Week till it shall be paved or mended. To enquire after Offenders, and make such Redresses as are found Aggrievances, by applying themselves to the Commissioners, &c. And by the Statute of 2 W. & M. among other things, it is enacted, That the Rakers, Scavengers, and other Officers thereto appointed, shall every Day in the Week, *Sundays* excepted, and other Holydays, bring their Carts and other Carriages unto their severall Charges and Divisions where they can pass, and give Notice at or before by the ringing of a Bell there, and in Alleys and other Places where they cannot pass, that the People may sweep up and bring out their Soil, which the Rakers are every Day obliged to carry away, under Penalty of 4s. for every Offence.

Within twenty Days after the Surveyors are elected, the *Constable*, other Officers and *Parishioners*, or the greater Number of them present, are to make a Rate or Assessment, according to a Pound-Rate, upon the Inhabitants of their *Parish*, to be allowed and confirmed by two Justices of the Peace of the Place, &c. to be collected Quarterly; and if, upon Demand of the Scavenger, or other Officer appointed to collect the same, *Payment* be refused, Distress may be made by Warrant under the Hands and Seals of two Justices of the Peace, to be levied by Distress and Sale of Goods,

Goods, or for want of such Distress and Non-payment, the Offender to be imprisoned till Payment be made, unless a Peer of the Realm.

The Money so collected is yearly to be accounted for by the Scavengers for the time being, to two or more of the Justices of the Peace, residing in or near the Places for which the Scavengers are appointed, within twenty eight Days after the new Scavengers are chosen for the Year ensuing, and to be paid into the Hands of the new Scavengers, if any remain undisbursed in their Hands; and two such Justices of the Peace upon refusal to make Account, may commit the Refuser or Refusers to Prison without Bail or Mainprize, till he or they account and pay the Remainder.

Where in a *Parish* there are such High-ways as cannot be amended without the help of Assessment, then one or more Assessments from time to time may be made upon the Inhabitants, Occupiers, and Owners of Lands, Houses, Tenements, or any personal Estate there, usually rateable to the *Poor*, to be allowed, levied, and collected by such Persons as the said Justices of the Peace, at their General Quarter-Sessions, shall appoint and direct; and the Money so raised to be accounted for, and employed towards repairing such High-ways from time to time, as the Justices shall appoint or order to be levied, by the Distress and Sale of the Goods of the Persons assessed, upon Non-payment of the same within fourteen Days after Demand.

All the Sinks, Sewers and Vaults, made since the twelfth of King *Charles* the Second, in the City and Liberties of *Westminster*, &c. are under the Care of the Commissioners of Sewers, who have Power to cleanse, alter, or so order them

as to them shall seem best for Conveniency, or to make new ones, and to take all Nufances, and to take away all cross Gutters or Channels, in all or any of their Streets or Lanes within their Division.

Every Truss of old Hay brought or offered to be sold within the Cities of *London* and *Westminster*, and other places within the Weekly Bills of Mortality, is, according to Statute, to weigh fifty-six Pounds at least, from the last Day of *August*, to the first Day of *June*; and from the first Day of *June*, to the last Day of *August*, being new Hay of the Year's Growth, to weigh sixty Pounds; but if old Hay of the last Year's Growth, fifty-six, as aforesaid, and none to suffer their Waggon and Carts to stand in the places aforesaid, loaden with Hay or Straw, to sell the same, after two of the Clock in the Afternoon, from *Michaelmas* to *Lady-day*, nor after three from *Lady-day* to *Michaelmas*, on Penalty of five Shillings for every Offence or Neglect, one half to the *Poor*, and the other to the *Informers*, upon Conviction of the Offence; but if the Justice of Peace see it on View, then upon Conviction, one half to the *Poor*, and the other half to the *Scavenger*; upon Default of Payment for the paving and cleansing the Place, or otherwise to the Relief of the *Poor*, as aforesaid. This to be levied by Warrant, by Distress and Sale of the Offenders Goods and Chattels, by the Constable, Headborough, &c. of the Parish where the Offence is committed, and in Default of Distress or Non-payment within six Days, upon Notice or Writing left at the Offender's House by the Constable, or Headborough, where it is not by the Act of 2 *W. & M.* otherways provided, unless the Party be a Peer of the Realm, he is to be

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committed to the Common Gaol of the City or County respectively by Warrant; and to remain without Bail or Mainprize till Payment. And by the same Statute, the Wheels of every Cart or Dray to be used for any Carriage whatsoever, from any Place within the said Cities, and Places within the same, where the Streets are paved, are to be made to contain in full Breadth six Inches in the Felly, and must not be shod or wrought about with Ironwork, nor drawn with above two Horses, after they are up Hill from the Water-side, upon Forfeiture of 40s. for every Offence, to be levied by Warrant on Goods and Chattels, by Distress as in other the like Cases, though this extends not to Country Carts or Waggon that shall bring Goods to the Cities or Places aforesaid, or shall carry any Goods half a Mile beyond the paved Places of the Cities, Streets, &c. However, by an Act of 3 & 4 *W. & M.* ch. 12. this last Clause seems to be altered; for any Inhabitant of any of the Parishes within the weekly Bills of Mortality, who dwell off and from the Pavement, and uses his Cart as well off as upon the Pavement, or any Brewer, Scavenger, or other Person employed in carrying away the Dirt and Soil in Lanes, Streets, and Alleys, may use shod Wheels for Dray or Cart, and narrower than six Inches in the Fellies, notwithstanding the former Act, or any Law or Usage to the contrary. But this seems not to affect Cars, and such as carry Merchants or Shop-keepers Goods.

By the Act 2 *W. & M.* no Person or Persons are to keep, breed, or feed Swine in any part of the House, Backsides of the paved Streets of the said Cities, Boroughs, or Parishes, where such Streets are contiguous, on Penalty of forfeiting them

them to the use of the Poor of the Parish where such Swine shall be kept.

All Houholders in the Cities and Liberties of *Westminster*, and Counties of *Surrey* and *Middlesex*, comprized within the Bills of Mortality, are, by a new Act, where their Houses adjoin to and are near the Street, to hang out on the Out side of their Houses next the Street, every Night, from *Michaelmas* to *Lady-day*, Candles, or Lights in Lanthorns, from time to time, as it shall grow dark, to continue burning till twelve of the Clock in the Night, on Pain of forfeiting 2 s. for every Default, unless such as shall agree to pay and make use of the convex Lights or Lamps, to be placed at such Distance in convenient places of the Streets, as two or more Justices of the Peace shall approve of.

*Fairs, Tool-keepers, &c.*

A Fair must be kept no longer than the Grant or Use by Custom will warrant for what is warrantable; and Goods so sold after the Expiration of the Time, as Merchandize, &c. the Seller shall forfeit to the King double the Value of what is sold, and the Prosecutor shall have the fourth part: The Fair must be duly proclaimed by the Sheriff, or Lord of the Fair, and the Time it is to continue mentioned, the Place or Ground appointed, set out, and Care taken that there be no Riots or Disturbance, but an orderly keeping of it during the time it lasts.

Where there is a Beast-Fair for Horses, Mares, Geldings, and other Cattle, they must have their appointed Places, that those that resort thither may have a Certainty where to find them. And one sufficient Person or more, must be appointed to take Toll, and keep the same Place from Ten in the Forenoon every Day till Sunfet, during the

the Time of the Fair or Market, upon Pain to forfeit upon every Default 40 s. And in Tolling, the Party thereto appointed, must have before him the Parties bargaining, upon his tolling any Horse, Mare, &c. and must write in his Book the Christian and Surnames of all the Parties; also their Dwelling-places, with the Colours and some particular Marks of the Horse or Mare, &c. so sold or bargained for, on Penalty to forfeit for every Default 40 s. and he is to have one credible Person known to him to vouch the Horse or Mare, &c. and testify his Knowledge of the Seller, and his Name and place of Abode must be entered with the other's in the Book, with the Colour, Mark, or Price of the Horse or Mare, sold or exchanged, and the Buyer requiring it, may have a Note in Writing out of the Book, reciting the Contract, and Toll-man's Hand thereto, for which he may take Two pence.

If any Toll-keeper suffer a Sale to pass without a Voucher, unless he well know the Party, and every Party making a false Testimony, or Avouchment; or every Seller unknown, not bringing a Voucher, and causing the same to be entered, forfeits 5 l. one Moiety to the King, and the other to the Prosecutor, and the Sale of the said Horse, &c. to be void. Yet, notwithstanding such vouching, the Owner of a stolen Horse, &c. so sold, his Executors and Administrators claiming him within six Months after the Stealing, may redeem at the Price he was sold for, making Proof that it is his, and that it was stolen, by two sufficient Witnesses, before a Justice of the County where he is found, or the Head Officer or Magistrate of a Corporation; and the Price to be such as the Buyer upon Oath shall testify before the Justice, he paid for him;

him; and if the stolen Horse be not sold in open Fair or Market, and lawfully tolled, the Right is in the Owner, from whom he was stole, and he may seize or replevy him in any place where he finds him.

If any Person buy Oxen, Goats, Sheep, Calves, Heifers, &c. alive, he shall not sell them again alive, till he has kept them in his Pasture by the space of five Weeks.

Whofo shall sell or buy Corn without Measuring, being thereunto required, so felling or buying it in Sacks or Bags, or in any other thing, shall forfeit the said Corn, or the Value thereof, to the Party making his Complaint of this Offence against the Statute, 22 & 23 Car. 2. ch. 12. And upon Complaint, the Defendant, by the Oath of one or more Witnesses, before a Justice of the Peace, must prove, that he or they did buy or sell, according to the Statute of 22 Car. 2. and 23 Car. 2. or else pay the Forfeitures by the latter directed, which upon Warrant may be levied by Distress and Sale of Goods; the Warrant to be given under the Hand and Seal of one or more Justices, before whom such Conviction shall be, one half to the Poor of the Parish where the Offence is committed, and the other to the Informer. *Ibid.*

A Brass Bushel is to be chained to a Post, or publick Place in the Market-place, at the Charge of the Person taking Toll, for the publick Use of the Measuring, upon Penalty of forfeiting 5 *l.* 22 Car. 2. ch. 8.

As for Measure, there shall be only the *Winchester* Bushel, and no other Bushel; and that to contain eight Gallons: And whofo sells by any other, according to 22 Car. 2. ch. 8. forfeits 40 *s.* And

And upon the Clerk of the Market's refusing to seal such Measure as shall be full gauged, he forfeits for the first Offence 5 *l.* for the second 10 *l.* Or if the King's Clerk of his Market of his House exact, or take more Fees than his due, that is, above one Penny for sealing a Bushel, a Half-penny for a Half-Bushel, and one Farthing for Measures of less Proportion, he incurs, and shall undergo the Penalty in the Statute of Car. 1.

### The SURVEYORS Duty.

#### Mending High-ways.

**T**Hough Ways are generally called the King's Highway, yer of Ways there are three Sorts: 1. A Way where Men have a just Right to walk in, pass and repass. 2. A common Foot-way and Horse-way. 3. A Way for Carts and Wains, and all Sorts of Carriages; and this latter is most properly called the King's Highway, free for himself and Subjects to pass and repass at all Times; whereas some in the other Sense are Ways only to Grounds, Houses, &c. And Ways by Custom, and some again upon Sufferance. In the publick Ways all Nufances or Stoppages are indictable, especially if not timely removed on Notice given; or the Lord of the Soil for any digging or spoiling the High-ways, may bring his Action against the Of-

The Surveyors duly chose by the other Officers, senders.

with the Advice of the Inhabitants, or the major part of them, upon publick Notice before given, are diligently to oversee those that work on the Days appointed, for the digging and carrying Gravel

Gravel and other Materials, for mending such Ways where they shall find them defective, giving them Directions in order thereto; and upon publick Notice or Warning, the Persons so qualified are to send their Carts and Labourers.

Every Person having in his own Occupation thirty Pounds *per Annum* in Tillage or Pasture, or keeping a Plough or Draught in the same Parish, is liable to send, according to the Fashion and Custom of the Country *wherein he resideth*, or is so legally charged, a Wain or Cart with Oxen or Horses fit for Carriage and Work of this Nature, attended by two able Men, who shall do such Work as shall be by the Surveyors appointed them, for the space of six Days, working eight Hours every such Day, under the Penalty of Forfeiting for every Days default ten Shillings; and every other Householder, or Labourer, not being a hired Servant, shall in Person attend the Service, to work or send an able Man in his stead, under Penalty for every Day's Default to pay twelve Pence; and all other Persons, being no otherways chargeable; but Cottages being Subsidy, five Pounds in Goods, or ten Shillings by the Year in Lands, or above, they must find two able Men to work in the Service.

It is in the Discretion of the Surveyors, if there be more Carts, Wains, &c. than are necessary, to appoint two able Men instead of a Team, on Forfeiture of twelve-pence each, in Case of Default. And if in six Days the Ways cannot be conveniently mended, as is the usual Time, they may set a farther Time; but then they must make Payment for it according to the Rate of the County; and if hereupon there be no Agreement, the Justice may settle the Rate.

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If Materials be wanting, the Surveyors may take the small loose Stones from any Man's Quarry, and such Rubbish as he finds there, it being near the Road, without paying for it, but must not dig nor take away the great Stones. They may dig Gravel and Sand for the like Use near any Highway in other Men's Ground, not being their House, Yard, Orchard or Garden, without paying for it, the Pit not exceeding ten Foot in Breadth, and the like in Width; which, as soon as the Work is over, must be covered up and made good at their Charge who caused it to be digg'd; or if it be not so filled up within one Month, they forfeit five Marks, to be recovered by the Owner, by Action of Debt.

All Owners of Ground adjoining to the Highways are to keep their Hedge low and upright, that the Boughs or Brambles standing out may not hinder or offend Travellers, and that so the Sun may shine on the Ways to dry them; and such as are negligent in this may be presented and indicted, and thereupon forfeit ten Shillings besides their Charges.

And in case Ditches are stopped up with Mud or Oose that should be Drains to the Highway, so that the Water lies in it, and cannot have a current Passage, the Owner of such a Ditch or Water-drain shall forfeit twelve Pence for every Rod so neglected to be scowred, by 18 *Eliz. ch. 10*. And the Surveyor hath Power to make Conveniencies for draining the Highways, as Sluices, Out-lets of Water, &c. into any Man's Ditch or Ground, for the better and more speedy Conveniency of passing the Road. If any Man, upon cleansing a Ditch, cast the Soil into the Road, and suffer it to lie there above the space of six Months, he is liable to pay  
twelve

twelve-pence *per* Load for as many as shall be adjudged to be there.

If a Justice of the Peace shall, upon his own Knowledge of any Nuisance on the Road, make a Presentment, it stands good, and two Justices, one being of the *Quorum*, may make the Amercement or Fine to be levied on the Offender.

These Officers, *viz.* Surveyors, have in their Care all Bridges within their several Parishes or Liberties, to see that they are kept in good Repair, from Time to Time, at the Charge of the Parish, Hundred, or, as the Custom has been, and is continued; and if a Custom has therein ceased for a Time, it may be revived; for in some Cases particular Persons are bound by Tenure of Land, &c. to repair Part or the Whole of a Bridge, &c. without a Parish-Charge. But to instance these Particulars, would be too tedious for my intended Brevity; and many Times a whole County lies chargeable to be rated for the Repair of a Bridge, &c.

#### Draining of High-ways.

**A** Surveyor may cause a Water-course or Spring in the High-way, within his Parish, to be turned into another Man's Ground, or his Ditch next adjoining to the said Way, for the Convenience of keeping the Ditch dry, as in his Discretion shall seem fitting.

The Surveyors or any of them, have Power to present to the next Justice of the Peace every Default, upon the 2 and 3 of *Philip and Mary*, c. 8. and 5 *Eliz.* c. 14. within one Month after the Default made, on the Penalty of forty Shillings, and the Justice under Penalty of five Pounds must certify the same at the next Quarter-Sessions, where  
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the Bench of Justices have Power to enquire of the Default, and to set such Fine on the Offender as any two of them, one being of the *Quorum*, shall think fit, 5 *Eliz.* c. 1.

If any Justice of the Peace present in Sessions upon his own Knowledge, it shall be a good Conviction, whereupon any two of the Justices, the one being of the *Quorum*, may assess a Fine, as well as if the Matter had been found on the Verdict of Twelve Men: But in this Case the Offender shall be, as in other Cases, admitted to his Traverse. 5 *Eliz.* c. 13. *Rast.* 199. and all such Fines and Forfeitures are to be bestowed and employed towards the mending and bettering of the High-ways in the Parish where the Offences are committed, *Wing. Abridg. Tit. High-ways, 2 and 3 P & M. c. 8.*

Where Surveyors have laid out their Money for Materials to mend the Ways, where without there were none fitting to be had, it is enacted 2 & 3 of *W. & M.* That upon Notice given by the Surveyors of High-ways, to the Justices of the Peace, at their Grand Sessions, and Oath made of what Sum or Sums of Money are expended to that Use or Behoof; the Justices thereupon, or any two of them, under their Hands and Seals, may cause an equal Rate to be made, for the reimbursing the Surveyor or Surveyors, the Moneys by them to the Use aforesaid laid out, upon all the Inhabitants of such Parish or Township where it was expended, in Rates, according to the Rules and Methods prescribed in 43 *Eliz.* c. 2. for the Relief of the Poor; which Act directs the Tax to be laid on each individual Inhabitant, as Parson, Vicar, and others; and every Occupier of House or Land, Tithes Improprate, Improprations of Tithes,  
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Colonnies or saleable Underwoods in the said Parish, so to be rated; and the Rate so allowed and settled by the Justices, in their said Sessions, shall be gathered and collected by the Surveyor or Surveyors of the High ways; and if any one refuses to pay the Money according to the Rate assessed, it is lawful for the Surveyors to levy it by Distress and Sale of Goods and Chattels of the Persons so refusing, reserving reasonable Charges for making the said Distress, and rendering the Overplus to the Owner, if any there be. A Parson is not chargeable for his Glebe.

By the 3 & 4 of *W. & M.* it is farther provided, That whereas the Fines imposed and set on the Presentment of a Justice of the Peace, and other Fines and Issues, for not repairing the Highways, being oftentimes returned into the Court of Exchequer, and other Courts, and so levied upon some particular Inhabitants, and no Provision made to reimburse them; now on the contrary, Fine, Issue, Penalty or Forfeiture, shall not for the future, be returned into any of the said Courts, but be levied and put into the Hands of the Surveyors, to be applied towards the Repair of the said Highways; and if it be hereafter levied on one or more of the Inhabitants, his or their Complaint for Redress, lies to the Justices of the Peace, at their special Sessions; and they, or any two of them, by Warrant under their Hands and Seals, may cause a Rate to be made, according as before set down, for the reimbursing the Surveyors of their Money laid out for the Repair of the Highways, or of such Inhabitant or Inhabitants, as the Money shall be levied upon; which Rate so made and confirmed, shall be collected by the Surveyor or Surveyors; and he or they, within a Month

Month next after the making and confirming the Rate, must pay unto the Inhabitant or Inhabitants such Money so levied as aforesaid.

*Rescues upon Seizure.*

**I**F any Person or Persons shall resist or make forcible Opposition against any of the Persons employed in the due Execution of the Acts of Parliament, 2 & 3 *P. & M.* 5. & 18 *Eliz.* 22 *Car.* 2. made for the more effectual Amendment of the High ways; or shall Rescue any Goods or Chattel taken in Distress, by Vertue thereof, being convicted by the Oath of one credible Witness before any one Justice of the Peace, or by the View of the Justice himself; for every such Offence the Offender shall forfeit 40 s. and if not paid in seven Days, the Party to be committed to the County Gaol, where the Offence was committed, to remain 'till paid; and this is to be delivered to the Surveyor or Surveyors of the Highways, in the Parish where the Offence was committed, and imployed for the mending the said Ways, 22 *Car.* 2. c. 12.

All travelling Wains, Carts, or Carriages, by way of common Carriage, are not to go with a Team on the publick Highways, with above five Beasts at length; and if they shall drive with a greater Number of Horses or Oxen, the Offender or Owner of the Waggon, Carriage, &c, forfeits 5 l. one Moiety to the Surveyors of the Highways of the Town, Village, or Hamlet where the Offence shall be committed, and another to the Informer; and this to be imposed on the Offender by any Justice of the Peace of the Place or Division where the Offence is committed, upon the Oath of one credible

credible Witness, or upon the Justices own View, and to be levied by the High Constable, or other Officer of such Place or Division, by a Warrant. And a Surveyor seeing or suffering Waggon or Carts to pass with more Horses, &c. than mentioned, or in any other Order, may, upon Conviction for such his Neglect, be amerced by the Justice in any Sum under 40s. to be levied on his Goods and Chattels. But a Carrier may draw up-hill with as many Horses as the Sessions shall allow.

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**F I N I S.**