REPORT OF THE CASES

OF

WRIGHT,

AND

DE YONGE,

ON

EXCHANGING GUINEAS FOR BANK NOTES,

&c. &c. &c.

A

REPORT

OF THE

CASES

OF

THE KING *v.* WRIGHT,

AND

THE KING *v.* DE YONGE,

WHO WERE SEVERALLY TRIED FOR EXCHANGING

Guineas for Bank Notes.

TO WHICH IS ADDED,

A COPY OF THE ACT OF PARLIAMENT,

51 Geo. III. c. 127.

RELATIVE TO THIS SUBJECT.

By JOHN KING, Esq.

OF THE INNER TEMPLE, BARRISTER AT LAW.

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1811.

PREFACE.

THE circumſtances under which the following caſes aroſe, and the important reſults which have followed their deciſion, will be, it is conceived, a ſufficient apology for giving them to the public in their preſent ſhape. They are, perhaps, more particularly intereſting to legal readers, as containing the reſult of a patient and anxious inquiry into a ſubject of great antiquity and difficulty. Beſides tracing the legal hiſtory of the paper currency of this kingdom, they alſo aſcertain the boundaries by which the courts of law have ſeparated it from the eſtabliſhed coinage of the realm.

The caſe of *De Yonge* was, in time, prior to that of *Wright*; and was the firſt which was made a ſubject of legal inveſtigation. It was tried at the Sittings after Trinity Term at *Guildhall*, before Lord *Ellenborough* C. J. of the King's Bench; and the main objection, which formed afterwards the ſubject of theſe arguments, was there made by Mr. *Marryatt* in favour of the defendant *Yonge*. The Chief Juſtice of the King's Bench then ſtrongly inclined

inclined againſt the objection, and a verdict was given for the Crown, ſubject to the opinion of the Court of King's Bench upon any motion which Mr. *Marryat* might make for a new trial.

During the interval between this verdict and the following *Michaelmas* Term, the caſe of *Wright*, ſimilar in all eſſential reſpects to that of *De Yonge*, came on to be tried at the aſſizes for the county of *Buckingham*, before the Right Honourable Sir *James Mansfield* C. J. of the Common Pleas. Upon this trial alſo the ſame objection was made by Mr. *King*, the defendant's counſel, and over-ruled by that learned Judge. It was, however, reſerved for the opinion of the twelve Judges. In *Michaelmas* Term Mr. *Marryat* moved for his new trial in *De Yonge*'s caſe. But the court, upon an intimation of what had paſſed in the caſe of *Wright*, poſtponed the conſideration of *De Yonge*'s caſe till the Judges ſhould have given their determination upon the former. And it thus happened that the caſe of *Wright* was the firſt argued. *De Yonge*'s caſe was, as will be ſeen, argued afterwards; and upon that the court of King's Bench gave judgment in their own court. In the caſe of *Wright* two other objections were taken, and were reſerved for the opinion of the Judges, as will be ſeen by referring to the report; but upon more mature conſideration, it ſeemed that the ſuggeſtion which related to the value of the dollar was virtually comprehended within

within the import of the great queſtion upon the intent of the ſtatute; and the doubt upon the propriety of the allegation of the fact of exchange, as ſtated in the indictment, and which formed the other queſtion, ſeemed to favour too much of an hypercritical exactneſs, and was therefore abandoned; and thus the caſe of the defendant was placed upon its only and proper baſis, and the arguments were thereby confined to the great and real ſubject of diſcuſſion.

For the accuracy of this report, I believe I can ſafely vouch, as it has been compiled from the notes upon which I argued, and a ſhort-hand note taken at the time by a Gentleman at the bar, Mr. *Gurney*, who had been one of the Counſel for *De Yonge*, and to him I beg leave to expreſs my ſenſe of the obligation I owe him on this account.

The caſe of *De Yonge* is alſo reported from the notes taken by myſelf and Mr. *W. P. Taunton*, to whom alſo I feel greatly indebted for the uſe of his papers.

It will be obſerved, that this latter caſe is given more immediately as it occurred at the time, with all its terms, and with the queſtions and obſervations of the ſeveral Judges.

In

In fact, upon the argument in the case of *Wright*, there were very few instances, and perhaps none, in which any observation was made by the Judges, excepting such as was strictly founded upon some legal objection to the course of argument, and these not much pressed. But in the case of *De Yonge* much more passed between the court and the counsel, and it is thought not unseasonable to give this to the public.

Finally, as the judgment given in *De Yonge*'s case is only general in its terms, viz. that the offence charged was not within the stat. of *E.* 6. it seems doubtful upon which proposition that judgment proceeded; and it seems equally uncertain whether or not it was the opinion of the court, that the 5 & 6 *E.* 6. was an expired statute. For these reasons all the arguments addressed to the court upon each point are here stated.

At the conclusion is subjoined the lately introduced bill of Lord *Stanhope*, that these pages may contain the whole existing law upon this most important question.

A

REPORT,

&c. &c. &c.

THE KING *v.* SAMUEL WRIGHT.

THE defendant, *Samuel Wright*, was tried at the *Midsummer* assizes 1810, for the County of *Buckingham*, before the Right Hon. Sir *James Mansfield*, C. J. of the Common Pleas, upon an indictment for unlawfully giving for guineas more in value, benefit, profit, and advantage than they had been declared by a proclamation of *Geo.* I. in 1717 to be current for.

Defendant S. W. on the 2d of Feb. 50 G. 3. unlawfully did exchange five guineas with one W. S. giving and paying more in value, benefit, profit, and advantage for the said five pieces than the same is declared by a proclamation of G. 1. to be current for, ſs. five promiſſory notes of the B. E. called B. N. for 1l. each, and of the

The indictment was in substance, That *Samuel Wright*, *on the 2d day of February in the fiftieth year of the reign*, &c. *unlawfully did exchange certain coined gold of this realm* (that is to say) five pieces of gold coin of this realm called guineas, of the value of five pounds and five shillings, *with one William Salter, giving and paying* to the said *William Salter more in value, benefit, profit, and advantage*, for the said coined gold so exchanged (that is to say) for the said five pieces of gold coin of this realm called guineas, than the same is declared by a certain proclamation of His late Majesty King *George* the First, given at the court of His said late Majesty King *George* the First, at

value of 1l. each, one ſilver dollar of the value of 5s. and 3s. & 9d. in monies numbered,

St. James's, under His Great Seal, the 22d day of *December* 1717, in the fourth year of His reign, *to be current for within this His Majeſty's realm*, and other His dominions (that is to ſay) five promiſſory notes of the Governor and Company of the Bank of *England*, called Bank Notes, for the payment of the ſum of one pound each, and of the value of one pound each; one ſilver dollar of the value of five ſhillings; and three ſhillings and nine-pence in monies numbered: in contempt of our ſaid Lord the king and his laws; to the evil example, &c. againſt the ſtatute, &c. and againſt the peace, &c.

did exchange five guineas of the value of 5l. 5s. with W. S. giving and paying therefore five B. E. notes, &c. being 3s. 9d. more in value, benefit, profit, and advantage for the ſaid laſt-mentioned 5 pieces of gold coin than the ſame is declared by the ſaid proclamation to be current for;

SECOND COUNT.—That the ſaid *Samuel Wright*, on the ſame day, *unlawfully did exchange* certain coined gold of this realm (that is to ſay) five pieces of gold coin of this realm called guineas, of the value of five pounds and five ſhillings with the ſaid *William Salter*, giving and paying for it to the ſaid *William Salter*, five promiſſory Notes of the Governor and Company of the Bank of *England*, called Bank Notes, for the payment of the ſum of one pound each, and of the value of one pound each; one ſilver dollar of the value of five ſhillings; and three ſhillings and nine pence in monies numbered; being three ſhillings and nine-pence more in value, benefit, profit, and advantage for the ſaid laſt-mentioned coined gold ſo exchanged as laſt aforeſaid, (that is to ſay) the ſaid laſt-mentioned five pieces of gold coin of this realm called guineas, than the ſame is declared, by the aforeſaid proclamation of His ſaid late Majeſty King *George* the Firſt, to be current for within this His Majeſty's realm and other His dominions, &c. &c. &c.

did exchange 5 pieces of coined gold money of this realm called

THIRD COUNT.—That he *unlawfully did exchange* five pieces of coined gold, money of this realm, called

guineas, of the value of 21s. each, and together of the value of 5l. & 5s. giving and paying more in value, benefit, profit, &c. to wit, five, &c. (as in 1ſt count)

called guineas *of the value of twenty-one ſhillings each*, and together of the value of five pounds and five ſhillings, with the ſaid *William Salter* giving and paying to the ſaid *William Salter*, more in value, benefit, profit and advantage for the ſaid laſt mentioned coined gold money, ſo exchanged as laſt aforeſaid, than the ſaid laſt mentioned coined gold money is declared by the aforeſaid proclamation, &c. &c. [as before] to be current, (*that is to ſay*), five promiſſory notes of the Governor and Company of the Bank of *England*, called *Bank Notes*, for the payment of the ſum of one pound each, and of the value of one pound each, one ſilver dollar of the value of five ſhillings, and three ſhillings and nine-pence in monies numbered, &c. &c.

did exchange 5 guineas, of the value of 21s. each, and together of the value of 5l. 5s. each, and every of the ſaid 5 pieces being then and there current for 21s. and no more, by virtue of the ſaid proclamation giving and paying to the ſaid W. S. 9d. more in value, &c. for each and every of the ſaid 5 pieces called guineas than each of them is declared by the ſaid proclamation to be current for, that is to ſay, five, &c. &c. being together of the value of 5l. 8s. 9d.

FOURTH COUNT.—That he *unlawfully did exchange* with the ſaid *William Salter* five pieces of coined gold money of this realm called guineas, of the value of twenty-one ſhillings each, and together of the value of five pounds and five ſhillings each, and every of the ſaid laſt mentioned five pieces of coined gold money of this realm called guineas, being then and there current for twenty-one ſhillings and no more, by virtue of the aforeſaid proclamation, he the ſaid *Samuel Wright*, then and there giving and paying to the ſaid *William Salter* nine-pence more in value, benefit, profit, and advantage for each and every of the ſaid laſt mentioned five pieces of coined gold money of this realm called guineas, ſo exchanged as laſt aforeſaid, than each and every of the ſaid laſt mentioned five pieces of coined gold money of this realm called guineas is and are declared by the ſaid proclamation to be current for, (that is to ſay), five promiſſory notes of the Governor and Company of the Bank of *England* called Bank Notes, for the payment of the ſum of one pound each,

each, and of the value of one pound each, one ſilver dollar of the value of five ſhillings, and three ſhillings and nine-pence in monies numbered; the ſaid laſt mentioned bank notes, ſilver dollar, and three ſhillings and nine-pence in monies numbered, being together of the value of five pounds eight ſhillings and nine-pence, &c.

did exchange 5 pieces of coined gold money of this realm called guineas, of the value of 5l. & 5s. giving and paying 3s. 9d. more in value, benefit, &c. than the ſame is declared by the ſaid proclamation of G. 1. to be current for within this His Majeſty's realm.

Fifth Count.—That he *unlawfully did exchange* with the ſaid *William Salter* five pieces of coined gold money of this realm, called guineas, of the value of five pounds and five ſhillings, giving and paying to the ſaid *William Salter* three ſhillings and nine-pence more in value, benefit, profit, and advantage for the ſaid laſt mentioned five pieces of coined gold money than the ſame is declared by the aforeſaid proclamation, [as before] &c. &c.

The ſtatute upon which the above indictment was framed is the Fifth and Sixth *Edward* Sixth, c. 19. intituled, "An act touching the exchange of gold and and ſilver." Which reciting that

5 & 6 E. 6. c. 19.

"Where, in the Parliament holden at *Weſtminſter* the "twenty-fifth year of the reign of King *Edward* the Third, "it was accorded that it ſhould be lawful for every man to "exchange gold for ſilver, or ſilver for gold, or for gold and "ſilver, ſo that no man did hold the ſame as exchanged, "nor take no profit for making ſuch exchange, upon pain "of forfeiture of the money ſo exchanged, except the "king's exchangers which take profit of ſuch exchange, "according to an ordinance before that time made; "which ſtatute notwithſtanding, divers covetous perſons "of their own authorities have of late taken upon them "to make exchanges, as well of coined gold as coined "ſilver, receiving and paying therefore more in value "than

"than hath been declared by the king's proclamation to "be current for within this his realm and other his "dominions, to the great hindrance of the commonwealth "of this realm:"

Proceeds to enact,

"That if any perſon or perſons exchange any coined "gold, coined ſilver or money, giving, receiving, or "paying any more in value, benefit, profit, or advantage "for it, than the ſame is or ſhall be declared by the "king's majeſty's proclamation, to be current for within "this his highneſs realm, and other his dominions, that "then all the ſaid coined gold, ſilver, and money ſo ex-"changed, and every part and parcel thereof, ſhall be for-"feit, and the parties ſo offending ſhall ſuffer impriſonment "by the ſpace of one whole year, and make fine at the "king's pleaſure; the one moiety of the ſaid gold, ſilver, "or coin ſo forfeited to be to the king our ſovereign lord, "and the other moiety to be to the party that ſeiſeth the "ſame, or will ſue for it by bill, plaint, original action of "debt, information, or otherwiſe, in any of the king's "courts of record, in which ſuit no eſſoin, protection, or "wager of law ſhall lie, be allowed, or admitted."

To this indictment the defendant pleaded that he was not guilty, and upon trial the following evidence was given upon the part of the proſecution.

The Gazette of 1717 was produced from the Gazette Office, and read, containing the following proclamation:

"GEORGE R.

"Whereas *the value of the gold compared with the value* "*of the ſilver* in the current coins of this realm, as paid

" and received, is greater in proportion than the value " of gold is to the value of ſilver in the neighbouring " nations, and *the over valuation of gold in the current " coins of this realm* hath been a great cauſe of carrying " out and leſſening the ſpecies of the ſilver coins thereof, " which is highly prejudicial to the trade of this king- " dom: And whereas the commons in parliament, have " by their addreſs humbly beſought us that we would be " graciouſly pleaſed to iſſue our royal proclamation to " *forbid all perſons to utter or receive any of the pieces of gold,* " *called Guineas, at any greater or higher rate than one and* " *twenty ſhillings for each guinea,* and ſo proportionably for " any greater or leſſer pieces of coined gold, which we " have graciouſly condeſcended unto: Now, for and " towards remedying the ſaid evil, we have thought fit " with the advice of our Privy Council to iſſue this our " royal proclamation, hereby ſtrictly prohibiting all and " every perſon and perſons whatſoever to utter or re- " ceive any of the pieces of gold coin of this kingdom, " commonly called guineas, (which in our mint were " coined only at twenty ſhillings each, but have been " by our ſubjects paid and received at the rate of one and " twenty ſhillings and ſix-pence each), *at any greater or* " *higher rate or value than one and twenty ſhillings for each* " *guinea,* and ſo proportionably for the pieces of gold " called half guineas, double guineas, and five pound " pieces, and the other pieces of antient gold coin of this " kingdom, which by their wearing may be diminiſhed " in their weight, at any greater or higher rate or value " than as followeth (that is to ſay), the piece of gold " now received and paid for three and twenty ſhillings " and ſixpence, to be hereafter received and paid for " three and twenty ſhillings and no more, the piece of " gold

" gold now received and paid for five and twenty ſhillings " and ſixpence, to be hereafter received and paid for five " and twenty ſhillings and no more, and ſo proportion- " ably for ſmaller pieces of the like gold coin; at which " rates and values we do hereby declare the ſaid re- " ſpective pieces of coined gold to be current: And we " do hereby ſtrictly charge and command all our loving " ſubjects whatſoever, that they do not preſume to " receive or pay the gold coin of this realm at any " greater rates and values aforeſaid, upon pain of our " higheſt diſpleaſure, and upon pain of the greateſt " puniſhment that by law may be inflicted upon them for " their default, negligence, and contempt in this behalf.

" Given at our court at *St. James's* the 22d day of " *December* 1717, in the fourth year of our reign.

" God ſave the King."

WILLIAM SALTER, the other perſon named in the indictment, proved—That the defendant was guard of the *Liverpool* mail from *Stoney Stratford* to *London*; that on or about the 20th *January* then laſt, the defendant had ſeveral times ſeen and converſed with the witneſs on the ſubjects of buying and ſelling guineas, *and that the defend- ant had told the witneſs that he would give a premium of nine- pence for every guinea that the witneſs could get.* That the wit- neſs on the 2d day of *February* went with one *William Wil- ſon*, a conſtable of *Stoney Stratford*, to the *Croſs Keys* there, and went into the bar where the defendant was; that the witneſs had five guineas which he had received from the bank of *Oliver* and Co. at *Stratford*, and which were marked in his preſence. That the witneſs called the defendant out, and told him that he the witneſs had got five guineas; that the defendant ſaid he would have them, and would give

the witneſs nine-pence premium for each guinea. That the witneſs gave defendant five guineas, and the defendant gave to the witneſs for the ſaid five guineas five bank of *England* notes for the payment of one pound each, one dollar and three ſhillings and nine-pence in money, *i. e.* three ſhillings, a ſixpence, and three penny pieces; *the defendant took the guineas, and the witneſs took the notes, dollar, and money.* That afterwards other perſons were called in, and the defendant was charged with the offence, and told that he muſt give back the guineas, and he accordingly laid them upon the table, they were taken by *Wilſon*, and the defendant was taken into cuſtody.

WILLIAM WILSON confirmed the foregoing evidence, and produced the guineas, the notes, the dollar, and three ſhillings and nine-pence in money, the notes were one pound bank of *England* notes, and the dollar appeared to be a ſilver dollar, ſtamped and circulated by the bank of *England* for the value of five ſhillings. No other evidence (beſides that herein ſtated) was offered, or that the notes were of value, or that the dollar was a genuine dollar of that deſcription laid in the indictment.

The confeſſion of the defendant was alſo proved as follows:

"*Bucks*, to wit. } The examination of SAMUEL WRIGHT, now in cuſtody, and charged before me the honourable and reverend *A. H. Cathcart*, one of his majeſty's juſtices of the peace for the ſaid county, *with having purchaſed the gold coin of the united kingdom*, and paying more than the value for the ſame:

"Who ſaith, that he has been guilty of the offence with which he now ſtands charged by *William Salter*, of purchaſing

chaſing five guineas of the ſaid *William Salter*, and that he paid him for the ſame a premium of nine-pence for each guinea; that he has been in the habit of buying guineas and paying a premium for the ſame about a fortnight, and that he was induced to do ſo on account of a young man who is a two-penny poſt letter carrier, and whoſe name he this examinant thinks is *Clarke*, having aſked him if he had any, and offering to give him a premium of one ſhilling and three-pence for each guinea that he bought; that he believes this young man's delivery of letters is in *Old Broad Street* in the city, and that he appears to be about twenty years of age, is tall, thin, and marked with the ſmall pox. That on *Thurſday* laſt the 1ſt day of *February*, he this examinant aſked *Davies*, the guard out of *London* to the *Portſmouth* mail, to purchaſe ſome guineas which he had by him, and that he ſold either five or ſeven guineas to the ſaid *William Davies*, and received a premium of one ſhilling and three-pence for each guinea from the ſaid *William Davies*. That he this examinant is in the habit of frequenting the *Bull Inn* in *Sherborne Lane*, where he met the young man who offered to purchaſe guineas of him, and that he has frequently heard converſation to that effect at that houſe,

"S. WRIGHT.

"Taken before me,
"*A. H. Cathcart.*"

Upon this evidence, the priſoner was found guilty, and judgment was reſpited till the next aſſizes, upon the following objections made upon behalf of the priſoner by his counſel:

Firſt, That there was not ſufficient evidence of the deſcription and value of the notes and dollar.

Second,

Second, That the defendant *giving the notes*, dollar, and money, *and taking the five* guineas for them, was not an offence properly described in the indictment as an *exchanging* by the defendant of the five guineas for the said notes, dollar, and money.

Third, That the act of defendant as laid in the indictment, and proved in evidence, was no offence in law.

A special case was thereupon stated for the opinion of the twelve Judges in the Court of Exchequer Chamber; and on *Saturday* in *Easter* Term, 1811, the case came on to be argued by Mr. *King*, of Counsel for the defendant; and Mr. *Best*, of Counsel for the prosecution.

The Judges present were, Sir *James Mansfield* C. J. of C. B. Mr. Justice *Grose*, Mr. Justice *Bayley*, of the King's Bench; Mr. Justice *Le Blanc* being absent from indisposition, and Lord *Ellenborough* C. J. being absent upon other matters; Mr. Justice *Heath*, Mr. Justice *Chambre*, and Mr. Justice *Lawrence*, of the C. B. The Chief Baron Sir *A. Macdonald*, Mr. Baron *Wood*, Mr. Baron *Graham*, of the Exchequer; Mr. Baron *Thompson* being absent from indisposition.

Mr. *King*, Counsel for the prisoner, was heard, and having stated that he did not intend to press the 1st and 2d points, proceeded to argue upon the third only, viz.

"*That the act of the defendant as laid in the indictment, and proved in evidence, was no offence in law.*"

Upon the investigation of this question, he said, no recourse could be had to precedents, or to reports, or to the treatises of those who had written upon the common

and statute law, inasmuch as, from the period of the enactment of the statute of *Ed.* 6.; and even from the remoter period of 25 *E.* 3. the statute upon which that of *E.* 6. was subsequently founded, there had not been in any of the courts any decision upon either of those two statutes. There was not any mention of either made by any of the very learned persons who have written upon the nature of the coin of this realm, and the offences relating to it. *Coke*, *Hale*, *Plowden*, the several antient abridgements, and *Blackstone*, do not in any one instance even advert to these statutes by name. They have fully treated upon other statutes, and common law doctrines, upon these subjects, but in this particular instance they are altogether silent; and the only mode of ascertaining that such a statute has or ever had any existence, is by finding it in the volume of the statutes of the realm.

The proposition above stated on behalf of the defendant upon this indictment is to be maintained by either or all of the following points:

(1.) The word exchange in the statute of the 5 & 6 *Ed.* 6. *c.* 19. is solely applied to the conversion of one species of coin into another species of coin.

(2.) Bank notes are neither within the common law nor statutable meaning of the word "*Money*," as used in that statute.

(3.) The words "value, profit, benefit, and advantage," refer to coin only, and to no other thing whatever.

(4.) The 5 & 6 *E.* 6. was only a temporary statute, or it was virtually repealed by the statutes 6 & 7 *W.* 3. *c.* 17, —7 & 8 *W.* 3. *c.* 10. & *c.* 19.

(5.) The

(5.) The proclamation of 1717 was contrary to law, inaſmuch as it was contrary to the proviſions of 7 & 8 *W.* 3. *c.* 19. *ſ.* 12.

The only method by which any arguments can be preſented for the conſideration of theſe points is, by aſcertaining the intent of the ſeveral phraſes uſed in theſe two ſtatutes, from an examination of the ſeveral antient ſtatutes in which the ſame phraſes were employed upon the ſame ſubject matter; and afterwards by ſhewing from the ſeveral deciſions which have occurred upon other points collaterally connected with the preſent, that the conſtruction to be affixed to theſe phraſes is the conſtruction now adopted in this argument.

Firſt, 'That the word 'exchange,' as uſed in this ſta-
'tute, is uſed to expreſs an exchange of *coin for coin*, and
'for no other purpoſe,'

By the 25 *E.* 3. *ſt.* 5. *c.* 12. "It is accorded, that it ſhall
" be lawful for every man to exchange *gold for ſilver, or*
" *ſilver for gold, or for gold and ſilver*, ſo that no man hold
" a common exchange nor take *no profit* for making ſuch
" exchange upon pain of forfeiture *of the money ſo ex-*
" *changed*, except the King's Exchangers, which take
" profit for ſuch exchange according to the ordinance
" before made."

By the 5 & 6 *Ed.* 6. *c.* 19. It is recited, that 'Where, in
'parliament holden at *Weſtminſter*, in 25 *E.* 3. it was ac-
'corded that it ſhould be lawful for every man to ex-
'change gold for ſilver, or ſilver for gold, or for gold and
'ſilver, ſo that no man did hold the ſame as exchanged
('*hold a common exchange*'), nor take no profit for making
'of ſuch exchange, upon pain of forfeiture *of the money* ſo
'exchanged,

'exchanged, except the King's Exchangers, which take
'profit for ſuch exchange according to an ordinance be-
'fore that time made,—which ſtatute notwithſtanding,
'divers perſons of their own authorities have of late taken
'upon them to make exchanges as well of *coined gold* as
'of *coined ſilver*, receiving and paying therefore *more in*
'*value* than hath been declared by the King's procla-
'mation to be current for within this his realm and other
'his dominions, to the great hindrance of the common-
'wealth of this realm.'

And then the ſtatute proceeds, "be it enacted therefore,
" That if any perſon or perſons exchange *any coined* gold,
" coined ſilver, or money, giving, receiving, or paying
" *any more in value, benefit, profit, or advantage* for it *than*
" the ſame is, or ſhall be *declared* by the King's Majeſty's
" proclamation *to be current for* within this his highneſs
" realm and other his dominions, that then all the *ſaid coined*
" *gold, ſilver, and money* ſo exchanged, and every part and
" parcel thereof *ſhall be forfeit*, and the parties ſo offend-
" ing ſhall ſuffer impriſonment by the ſpace of one
" whole year, and make fine at the King's pleaſure. The
" *one moiety of the ſaid gold, ſilver, or coin* ſo forfeited, to be
" to the King our Sovereign Lord; the other moiety to
" the party ſeizing the ſame or ſuing for it."

The operative word in theſe two ſtatutes is the word '*Exchange*,' and the grievance which is recited in the ſtat. of *E.* 6. and for the preventing of which that ſtatute was paſſed, is the exchanging of *coined gold* and *coined ſilver* in a particular manner. It is therefore requiſite to inquire the preciſe meaning to be attached to this word 'exchange' prior to the ſtatutes of 25 *E.* 3. and 5 & 6 *E.* 6.

It

Tamp. M. 3. It appears that in the time of *H.* 3. gold coin were firſt introduced into this kingdom: Before that period, ſilver had been the common meaſure of value, and therefore as the juſt relative values of gold and ſilver were not then well aſcertained, and as the people were habituated to the uſe of ſilver in all their tranſactions of buying and ſelling, they received this gold coin with great reluctance; and for this reaſon, and for the purpoſe of increaſing their confidence that the gold coin would always be transferable into the quantity of ſilver aſſigned by the King as its value, a proclamation was iſſued, (*a*) "that whoever choſe to receive *his* gold coin in payment, might bring them *to his exchange*, and receive there to the value at which each had been made current."

The firſt legiſlative enactment paſſed ſubſequently to this proclamation, appears to have been the 20 *E.* 1. *ſtat.* 4. 20 E. 1. ſt. 4. called the *ſtatutum de moneta*. It begins by 'forbidding 'any man to pay or receive any monies of other coinage 'than of the coinage of the King of *England*, *Ireland*, 'and *Scotland*;' and then after guarding againſt the introduction of foreign coin into the realm, it proceeds thus: "and that no man, rich or poor, may be ignorant how to diſtinguiſh the lawful money (*deniers*), "and the clipped; It is ordained that whoever hence"forth ought to receive or deliver *deniers*, receive or "deliver them by the weight of v. s. in amount, and "of v. s. in price by the tumbrell, delivered by the "*Warden of the Exchange* marked with the mark of the "the King." And any perſon might pierce the denier

(*a*) Lord Liverpool upon Coins, 38.

which

which would not weigh the tumbrell. The next ſection of the ſtatutes ſpeaks of the Inſpectors and Wardens of money.

By this antient ſtatute it appears that the *Exchange* was the place from which the coin of the realm was iſſued, and that it had a juriſdiction over it for the purpoſe of preſerving its purity and quantity.

The next ſtatute upon this ſubject was the 20 *Ed.* 1. *ſt.* 5. called the *ſtatutum de moneta parvum*. It prohibits 20 E. 1. ſt. 5. merchants bringing into the kingdom clipped or foreign counterfeit money; and enacted, that others than merchants who ſhould have clipped or foreign counterfeit money, ſhould immediately perforate it, and bring it *to the Exchange* (ad excambium noſtrum), and have it coined with the King's coinage.

The 28 *E.* 1. *ſt.* 1. (*De falſâ monetâ*), was paſſed to pre- 28 E. 1. ſt. 1. vent the importing of falſe money, and to authorize the ſeizure of the money and the perſons of thoſe who had it. It enacted that the Warden of the priſon 'ſhall ſend and deliver *it to our great Exchange*, and as to *other goods*, ſhall charge themſelves with them and anſwer *to the Exchequer*.' And it ordains, that there ſhall be at *Dover* a table *to change*, when requiſite, *money* for goers and comers; and appoints perſons to keep that table, and to make that change under the view of the Comptroller appointed by the King; and that all perſons coming from over ſeas, and bringing *French* money, ſhall take it to the ſaid table, and there receive *to the value in money* of the Realm.

And

And it is obſervable that in the former part of this ſtatute, the *money* is to be taken to the *Exchange*, but the *Goods* are to be anſwered for at the *Exchequer*.

9 E. 3. ſt. 2. c. 2. By the 9 *E.* 3. *ſt.* 2. (*The ſtatute of money*) *c.* 2. No falſe money ſhall be brought into the kingdom, 'ſo always that all people of what realm or dominion they be may ſafely bring to the *Exchanges* or bullion, and no place elſe, ſilver in plate, veſſels of ſilver, and all manner of money of ſilver of any whatever value, ſaving falſe money, and there receive *good and convenient exchange*.

Here the name of the place is uſed for the buſineſs which is tranſacted at it. The force of the expreſſion, good, &c. is, that perſons ſo going to the Exchange ſhould receive in return for the money carried thither good and convenient money.

9 E. 3. ſt. 2. c. 7. By the 9 *E.* 3. *ſt.* 2. *c.* 7. *exchanges* ſhall be where it ſhall pleaſe the king and his council.

17 E. 3. 17 *E.* 3. It is accorded that none be ſo hardy to bring falſe and ill money into the realm, upon pain of forfeiture of life and member; and to make *exchanges* with them which ſhall paſs the ſea, of gold for their good ſterlings (ſilver coin) to the value.

It is clear that in this ſtatute alſo, by *exchanges* are meant tranſactions of an interchange of coins.

Theſe are all the ſtatutes to be found relative to the exchange and coin, prior to the 25 *E.* 3. And in them the word "exchange" is, throughout, conſtantly uſed, and the ſubject of exchange is, as conſtantly, gold and ſilver coin of the realm.

It

It ſhould ſeem that only one reaſon can be aſſigned for the frequent enactment of ſtatutes upon this ſubject; viz. to eſtabliſh the ſuperiority and powers of the king's exchange; and by its means to ſecure the people againſt the fraudulent practices of thoſe who would either introduce baſe coin into the kingdom, or under the pretence of giving one kind of coin for another, paſs, upon thoſe whom they pretended to aſſiſt, bad money for the good ſterling which they received. Probably alſo in thoſe times when commercial tranſactions were few, and money was ſcarce in quantity and great in value, it was not in the power of every one to convert one coin of a higher denomination into a lower, when his convenience required it: and the king's exchange enabled him to do this with greater facility.

Added to this, there were great and continual fluctuations in the ſtandard of coin, and it was material that there ſhould be ſome place for aſcertaining the value by the ſecureſt means. But however that may be, it is apparent that coin and exchange are uſed in connection with each other throughout theſe ſtatutes.

Where foreign coin, not current in the realm, was however brought by foreign merchants, there was a peculiar advantage in the eſtabliſhment of theſe exchanges; for, excepting by perſons verſed in the aſſay of monies, it was hardly poſſible that any juſt proportion could be aſcertained between the foreign and legal coin.

The next ſucceeding ſtatute was the 25 *E.* 3. *ſt.* 5. *c.* 12, which ſtatute is in theſe words: "It is accorded that "it ſhall be lawful for every man *to exchange gold for* 25 E. 3. ſt. 5. c. 12.

" *ſilver, or ſilver for gold, or for gold and ſilver*, ſo that no " man hold a common exchange, nor *take no profit for* " *making ſuch exchange*; upon pain of forfeiture of the " money ſo exchanged; except the king's exchangers, " which take profit of ſuch exchange, according to the " ordinance afore made."

What this ordinance was I cannot aſcertain, but it appears that there had been one allowing the king's exchanger to take a profit upon the converſion of one ſpecies of coin into another; which profit undoubtedly was a part of the king's revenue.

In this ſtatute the force of the term *exchange* peculiarly appears; as alſo of the words *gold* and *ſilver*; viz. that *exchanging* is applicable only to an interchange of coin for coin. It ſhews alſo the buſineſs of the king's exchangers, and the mode of tranſacting it. The *profit* ſpoken of in the ſtatute, certainly intends a portion of coin deducted as a compenſation for the convenience and ſecurity afforded by the office of exchange. It is further to be obſerved, that the thing forfeited is the money ſo exchanged, *i. e.* the money given, and the money received. So alſo, the appointment of particular ports for exchanges for the convenience of merchants entering or leaving the kingdom, ſhews the nature of the office.

Another circumſtance is alſo apparent from this ſtatute; viz. that before that time none but the king's exchangers had a right to give one ſpecies of coin for another; but whoever wiſhed to poſſeſs coin of a denomination different from that which he already poſſeſſed, muſt have had recourſe to the king's exchanger.

But

But as commerce advanced, and the occaſions and objects of ſale and purchaſe conſequently multiplied, this became too troubleſome a mode, and this preſent ſtatute rendered it lawful for every perſon to exchange gold for ſilver, or ſilver for gold, or for gold and ſilver, provided, however, that no one ſhould publicly keep an office of exchange, or take a profit upon the tranſaction: in other words, that the full value of any piece of coin ſhould be paid in other pieces, without deduction or abatement.

The next ſtatute upon the ſubject, was the 27 *E.* 3. *ſt.* 2. *c.* 14. which ordained, " That all merchants may " ſafely bring into our kingdom plate of ſilver, billets of " gold, and all other manner of gold, and all monies of " gold and ſilver, to our bullion, or *to our exchanges*, " which we ſhall ordain at our ſaid ſtaples and elſewhere, " and there receive money conveniently to the value." 27 E. 3. ſt. 2. c. 14.

" Provided that no money be current in our kingdom " excepting the money of our own coinage, and that no " one carry out of our kingdom the old ſterling, nor other " money, except merchant ſtrangers, who bring in money, " and are not willing to ' employ ' that money."

In this is to be obſerved the uſe of the word ' *employ*,' where money is to be given for merchandize; and the uſe of the word *exchange*, where money is to be given for money.

So the 5 *H.* 4. *c.* 9. Compelling merchant ſtrangers to *employ* upon the commodities of the realm, the money *taken* therein *for* the *merchandizes* brought by the merchant ſtrangers; and that the money which ſhall be delivered by *exchange* in *England*, be employed upon the 5 H. 4. c. 9.

 commodities

commodities of the realm in the realm, ſhews that there was a clear diſtinction between the act of converting one ſort of coin into another, and giving coin for merchandize. When they ſpeak of a transfer of coin for coin, they make uſe of the word "*exchange*;" when of coin for commodities, then the word 'employ' is ſubſtituted. And nice as this diſtinction may appear, yet it is preſerved through all the ſtatutes.

9 H. 5. ſt. 2. c. 1. 9 *H.* 5. *ſt.* 2. *c.* 1. — A confirmation of all ſtatutes made touching money.

——— c. 2. ———*c.* 2. All men may reſort to the king's exchangers to have *money new coined.*

——— ſt. 2. c. 3. 9 *H.* 5. *ſt.* 2, *c.* 3. At the king's exchanges good money ſhall be delivered to the parties.

9 H. 5. ſt. 2. c. 4. 9 *H.* 5. *ſt.* 2. *c.* 4. — The officers of the *exchangers* ſhall bring to the Tower all the gold or ſilver which they "*buy* or *exchange*:" thus preſerving the diſtinction between a purchaſe, and a mere exchange.

1 H. 6. c. 1. 1 *H.* 6. *c.* 1.—The lords of the king's council may appoint *exchanges* where they pleaſe.

1 H. 6. c. 4. 1 *H.* 6. *c.* 4. The maſter of the mint ſhall ſend to the mint to be coined all the *gold and ſilver that ſhall come to his hands by exchange.*

2 H. 6. c. 12. 2 *H.* 6. *c.* 12.—Regulating certain offices in the mint, and naming an officer called the *Exchanger*; and has theſe words, "ſo that the common people may have recourſe to the *Exchange* for ſmall gold and white money."

17 E. 4. c. 1. 17 *Ed.* 4. *c.* 1.—*An Act for money*, reciting the 9 *E.* 3. *c.* 7. and there alſo uſes the expreſſion "*employing*" money upon merchandize, not *exchanging*.

By

By the 8 *H.* 6. *c.* 24.—For that merchant aliens of late have taken in cuſtom that when they *ſell any of their merchandizes* to any perſon within the realm, they will not *demand nor receive for any payment* for the ſame any manner of ſilver as they were wont, but only gold nobles, half nobles, and farthings, &c. 8 H. 6. c. 24.

3 *H.* 7. *c.* 6.—None ſhall make any *exchange* without the king's licenſe, or make *exchange or rechange of money*, to be paid within the land, but only ſuch as the king ſhall depute thereunto, to keep, and make anſwers for ſuch *exchanges and rechanges*, upon the pain contained in 14 *R.* 2. *c.* 2. viz. of forfeiture of the ſame. 3 H. 7. c. 6.

This ſtat. of the 3 *H.* 7. *c.* 6. alſo applies the word exchange to transfers of coin, and alſo ſhews how continually the king's right in theſe matters was aſſured to him by ſtatute: it likewiſe, as well as the 8 *H.* 6. *c.* 24. proves that while exchange was applied to tranſactions of coin, it never was ſo applied where merchandizes conſtituted the object of ſale or purchaſe.

The 19 *H.* 7. *c.* 5. is relative to the currency of coins, and ſpeaks of *taking* ſuch coins in *payment*, or of carrying them to the *mint*, and there *changing* them *for others*. 19 H. 7. c. 5.

If then throughout theſe numerous and antient ſtatutes, preceding the 5 & 6 *E.* 6. the office of exchange appears to have had a peculiar object, viz. the protection of the coin, both as to its purity and its proportion, and the converſion of one kind of coin into another to have been ſolely in the power of the king as appears by 9 *H.* 3. *c.* 7. and if the act of exchanging is continually ſpoken of as an act of transferring coin

of one ſpecies or nominal value for other coin; and if when theſe ſtatutes refer to tranſactions in which coin paſſed as the thing given or received in return for merchandize, they uniformly employ other terms, as *payment*, or *employment*, as in the 5 *H.* 4. *c.* 9. and 17 *E.* 4. *c.* 1. and 8 *H.* 6. *c.* 24, (This diſtinction having been taken even ſo early as the proclamation of *H.* 3. which mentions the receiving gold *in payment*, and taking it to the *exchange and there receive the value*:) It muſt be preſumed that upon theſe ſubjects the word exchange had a peculiar and appropriate legal meaning: and perhaps it may not be inappropriate to obſerve that in this reſpect it was uſed after a ſimilar manner with the old legal word "excambium," which was itſelf applicable only to caſes where real property was transferred for other real property of ſimilar tenure and equal value.

5 & 6 E. 6. c. 19. After theſe ſeveral ſtatutes, the 5 & 6 *E.* 6. *c.* 19. was paſſed, which, reciting that, 'Where in the parliament 'holden at *Weſtminſter* in the twenty-fifth year of the reign 'of *K. E.* 3. it was accorded that it ſhould be lawful for 'every man to exchange gold for ſilver, or ſilver for gold, 'or for gold and ſilver, ſo that no man did hold 'the ſame, 'as exchanged,' (a common exchange), nor take no 'profit for making of ſuch exchange, upon pain of 'forfeiture of the money ſo exchanged, except the king's 'exchangers, which take profit of ſuch exchange, according to an ordinance before that time made; 'which ſtatute notwithſtanding, divers covetous perſons of their own authorities have of late taken upon 'them to make exchanges, as well of coined gold as of 'coined ſilver, receiving and paying therefore more in 'value

'value than hath been declared by the king's proclama-'tion to be current for within this his realm, and other 'his dominions, to the great hindrance of the common-'wealth of this realm;'

Enacts, "that if any perſon or perſons exchange any "coined gold, coined ſilver or money, giving, receiving "or paying any more in value, benefit, profit, or advan-"tage for it than the ſame is or ſhall be declared by the "king's majeſty's proclamation to be current for within "this his highneſs realm and other his dominions, that "then all the ſaid coined gold, ſilver and money ſo ex-"changed, and every part and parcel thereof, ſhall be "forfeit, and the parties ſo offending ſhall ſuffer impriſon-"ment by the ſpace of one whole year, and make fine at "the king's pleaſure: the one moiety of the ſaid gold, "ſilver or coin ſo forfeited to be to the king, our ſove-"reign lord, and the other moiety to be to the party that "ſeizeth the ſame, or will ſue for it by bill, &c."

Comparing then the 25 *E.* 3. with that of the 5 & 6 *E.* 6. it appears that by the former ſtatute the king relinquiſhed a portion of the right of exchange in favour of his ſubjects, by allowing to individuals a power to exchange gold for ſilver, or ſilver for gold, or for gold and ſilver, (meaning by theſe words money, as appears by the clauſe which renders forfeit the *money ſo exchanged*,) with this reſtriction, that they ſhould not have a regular exchange office, nor take a profit for the convenience they afforded to others. The ſame ſtatute at the ſame time acknowledging the right in the king's exchangers to take a profit.

It is to be noted alſo, that the recital in the latter ſtatute has the words 'hold the ſame as exchanged;' whereas in the former ſtatute the correſponding words are, 'hold a 'common exchange:' They have, however, the ſame meaning, for 'to hold as exchanged,' means, 'to con- 'ſider the exchange as done at the king's exchange,' and conſequently inſiſting upon a ſimilar profit upon the transfer.

That *gold and ſilver* are in this ſtatute of *E.* 3. ſynonimous with *coined money* is confirmed by the obſervation of *Coke*, who ſays, that 'by ſilver is meant money,' and conſequently, as there can be no *money* of *England* but coined gold and coined ſilver, (as will appear hereafter) it will follow that this ſtatute was paſſed with a view to the due exchange of the legal coin of the realm.

The ſtatute of *E.* 6. having recited the 25 *E.* 3. proceeds to ſtate the grievance, which it alleges to exiſt in breach of that ſtatute. It ſays, that notwithſtanding the 25 *E.* 3. divers perſons had "*of their own authorities*" taken upon them to make exchanges as well of "*coined* "*gold as of coined ſilver*;" (explaining thereby the words 'gold and ſilver,' in the 25 *E.* 3. to have meant *coin* of the realm;) 'receiving and paying therefore, *i. e.* for the coined gold and coined ſilver, more in value.' This phraſe, "*receiving*, &c. *more in value*," refers evidently to the words "taking a profit," uſed in the 25 *E.* 3.; and the phraſe "*of their own authorities*," is as clearly choſen for the purpoſe of deſcribing the breach of the ſtatute of *E.* 3. which forbids any but the king's exchangers to take a profit for the exchange.

Then

Then comes the enacting clauſe, if any perſon ſhall 'exchange any *coined* gold, *coined* ſilver, or *money*,' receiving, &c. then 'all *the ſaid coined gold, ſilver, and* '*money* ſo exchanged,' (where the word *coined* is prefixed to *gold* and *ſilver*, and the word *money* preſerved,) 'ſhall 'be forfeit,' 'one moiety *of the ſaid gold, ſilver, or coin* 'ſo forfeited.' But the ſubject before declared to be forfeited was the coined gold, ſilver, and money; therefore in the diſtributive clauſe the uſe of the word *coin* ſhews the meaning of the word *money* before uſed.

It is therefore clear, that the ſubject of the exchange, upon which a profit was forbidden to be taken, was the legal coin of the realm; that all profit upon ſuch exchanges was to be confined to the king's exchangers; and that prior to the 25 *E.* 3. it was a penal act to give coin in exchange for coin.

Again, the 5 & 6 *E.* 6. enacts, that the perſon committing this offence ſhall be ſubject to a certain penalty, one part of which is, "That all the ſaid coined gold, "ſilver, and money ſo exchanged ſhall be forfeit; and "one moiety of the ſaid gold, ſilver, or coin ſo forfeited "to be to the king, and the other moiety to the party "ſuing for the ſame."

But if it were true that any other thing than coin could be the ſubject of transfer under this ſtatute; then as it is alſo true that coin alone can be forfeited, if any one had given or received any other thing than coin for coin, he who ſo received or paid that other thing would incur no forfeiture; and thus the perſon making a profit by parting with his coin, and who is therefore the offender, eſcapes ſo much of the penalty of the ſtatute as relates to the forfeiture.

feiture. But ſurely it never could be in the contemplation of the ſtatute that the moſt guilty perſon ſhould ſuffer the leaſt.

But the truth of the propoſition now contended for does not reſt for its ſupport merely upon the obvious and natural conſtruction of the words contained in the ſtatutes of *E.* 3. and *E.* 6.; aided as it is by the ſimilar import of ſimilar expreſſions, unequivocally expreſſed in other ſtatutes made in *pari materia*; but the hiſtorical accounts of the coins of this realm, the changes which they underwent in kind, quantity, and quality, and the difficulties conſequent thereupon, all conſpire to demonſtrate that theſe ſtatutes could have no other object than that ſtated in this firſt propoſition.

It appears by *Stow's Annals*, p. 93, that *Edward* the Confeſſor *gave* to abbot *Baldwin* of *St. Edmondſbury* authority to have an Exchange or Mint, and to coin in his monaſtery. This is the firſt hiſtorical mention of an Exchange, and it appears to have been a privilege in the gift of the king.

Temp. H. 3. *A. D.* 1257. Gold was firſt coined, and the citizens of *London* made a repreſentation againſt this gold coin; and the king thereupon publiſhed a proclamation that no one was obliged to take it, and whoever did might bring it to his Exchange, and receive there the value at which it had been made current. (*Carte*, vol. 2, p. 111.)

Mr. *Leake*, in his hiſtorical account of *Engliſh* money, (p. 68. 3d edit.) ſpeaks of the Exchange and Mint as one and

and the ſame place; and he adds, that in the time of *H.* 3. the old money, which was called in, was there exchanged for new, making a certain allowance to the officer; and it further appears, by the ſame paſſage, that this exchange could only be accompliſhed in *London*, to the great damage of the people, and eſpecially of thoſe who came from diſtant places.

In p. 75, ſpeaking of the re-coinage in 18 *E.* 1. he mentions the employment of certain perſons in the buying and exchanging of ſilver for that purpoſe; and adverts to the operations of buying and exchanging as two diſtinct tranſactions: Alſo he ſays that, at the places appointed for the recoinage, that king had placed certain *changers* to take in the old money to be recoined; and it was upon the completion of this new coinage that the *ſtatutum de moneta* was paſſed, authorizing the application of the tumbrell, as delivered and marked by the warden of the exchange, to diſtinguiſh the bad from the good money. (See this ſtat. ante.)

At this time alſo (18 *E.* 3. anno 1345.) there was a new coinage of gold; but the people conceiving that the *current* value of gold did not bear a juſt proportion to the current value of ſilver, two proclamations were iſſued, aſcertaining the proportionable values of gold and ſilver; making the new coins only optionally receivable; and fixing the rate for exchanging gold for ſilver, or ſilver for gold, at the king's exchange. *Leake*, 103—105. Ld. *Liv.* 41.—From the notion the people entertained of the inequality of the aſſigned relative values of gold and ſilver, and alſo from the novelty of the gold coin, which was, probably, the cauſe of this unequal valuation, theſe difficulties

ficulties and uncertainties appear to have arisen. Similar cauſes ſeem to have been the occaſion of the ſtat. of *E.* 3. for in his 25th year there was again an alteration of the gold money; it was made of like impreſſion and value, but was in fact of a lighter weight; and an ordinance iſſued that none ſhould refuſe this new money at the price aſſigned.

Mr. *Leake*, p. 105. ſtates the reaſon alleged for this laſt alteration to have been, that the old money being better than that of any other kingdom, had been carried abroad, and baſe money brought in, to the damage of the people. However the 25 *E.* 3. *ſt.* 2. *c.* 12. was paſſed, and afterwards the 25 *E.* 3. *ſt.* 5. c. 13. in the ſame year, enacting, that the money of gold and ſilver then current ſhould not be impaired in weight or alloy.

The 25 *E.* 3. *ſt.* 5. *c.* 12. was immediately afterwards paſſed; and from the preceding hiſtory, its object muſt be clearly ſeen; *viz.* to preſerve the coin at its legal valuation and proportions by means of the king's Exchange.

From theſe hiſtorical facts it appears that the preſervation of the coin of the realm, and the adjuſtment of their relative proportions, were objects in thoſe days of great anxiety to the government; that the exchange office was inſtituted for this purpoſe, and that the ordinances affecting the ſtate of the coin, relied chiefly upon the exchangers for their due enforcement; and that till the 25 *E.* 3. they were the ſole depoſitaries of the right of exchange and profit reſulting from it.

Connecting

Connecting theſe obſervations then with the arguments ariſing from the conſtruction of the ſeveral ſtatutes prior to the 25 *E.* 3. the concluſion is irreſiſtible, that it related entirely to the interchange of coin.

During the interval between the 25 *E.* 3. and 5 & 6 *E.* 6. the ſame difficulties occurred, and the legiſlature were continually endeavouring to obviate them. In the time of *H.* 5. a number of ſtatutes were enacted with this view, and the king's exchange ſtill continued to be the agent of the government in the reformation of the coin, by receiving it, recoining it, and diſtributing it.

By the 1 *H.* 6. *c.* 4. There ſeems to be a difference taken between the mint and the exchange; but gold and ſilver are deſcribed as coming to the Maſter of the Mint by way of exchange, as if he were ſtill the ſuperintendant of the mint and alſo an exchanger. But by the 2 *H.* 6. *c.* 12. which is an act particularly regulating the Mint, and its officers, the Maſter of the Mint and the Exchanger for the time being, are prohibited from aliening the gold and ſilver coined or uncoined brought to the mint or to the exchange, but ſhould apply the ſame only to the money purſuant to the indenture, ſo that the common people might have recourſe to the king's exchange for ſmall gold and white money. So that whatever might be the diſtinction between the mint and exchange, it is clear that the exchanger ſtill had *his* office unimpaired.

During the whole of the period of which we are now ſpeaking, viz. between the reign of *E.* 3. and *E.* 6. and particularly towards the latter end of it, the variations in the

the different real values as compared with the nominal values of the ſame piece of coin were moſt extraordinary.

Hen. 8. carried the debaſement of the coin to the greateſt extent. In conſequence of which, the old ſterling was hoarded up, melted, or exported; the angel coined at 10*s.* was exchanged for 21*s.*; and the prices of all things, and the rent of lands was raiſed enormouſly; vaſt profits were made by exchanges of coin; great derangements were occaſioned in the tranſactions of buying and ſelling, and farmers refuſed to come to market, ſcarcely knowing from theſe arbitrary changes of value, what prices to aſk for their produce. Statutes were paſſed regulating, by aſſize, the prices of the common neceſſaries of life. Ld. *Liv.* 89—91. *Stow*, v. 1. p. 88.

Theſe inconveniences continued till the beginning of the reign of *E.* 6., who, firſt adopting the baſe coinage of his father, afterwards called in all that baſe coin, and then iſſued gold coin of the ancient purity. And upon ſuch iſſue a proclamation was ſent forth, declaring its currency.

Upon the coinage of this good new money, (ſays Mr. *Leake*, p. 215.) it ſeems, *the ſame was bought up with the old bad money at a premium, and hoarded*, the natural conſequence of permitting good and bad to be current at the ſame time. Wherefore it was enacted, 'that if any perſon ſhould exchange any coined gold, coined ſilver, or money, receiving or paying any more in value, benefit, profit, or advantage than the ſame was or ſhould be declared by the king's proclamation to be current for, the money ſo exchanged ſhould be forfeited, and the party ſuffer fine and impriſonment.'

5 & 6 E. 6. c. 19.

Thus

Thus the hiſtory of the coin during this ſecond period, confirms the reaſoning uſed upon the phraſing of the ſeveral ſtatutes cited, and together with the immediate occaſion of the paſſing of the 5 & 6 *E* 6. demonſtrates that this laſt ſtatute and that of *E.* 3. had the ſame objects in contemplation; that they only had in view the preſervation of the due relative values of coin, aſſuming the king's proclamation as the criterion of that value; and that for the more complete attainment of theſe objects, they forbade profit to be taken upon the exchange of coin.

Upon the whole matter, therefore, it ſufficiently appears that the word *exchange* had in all theſe ſtatutes one, and only one, meaning, viz. *a transfer of coin for coin.*

If any additional reaſoning be neceſſary to corroborate what has been advanced upon this point, a reference to ſubſequent acts of ſtate, and of the legiſlature will amply confirm it. For the word exchange has, in later ſtatutes, and for ſimilar purpoſes, ſtill the ſame meaning affixed to it.

By a Proclamation of *J.* 1. *Feb.* 4, 1618. (*Rym. Tom.* 17. p. 133.)—A former proclamation was confirmed, and it was obſerved, that the drawing of monies into the goldſmith's hand by turning ſilver into gold 'upon *profit of exchange*,' doth make it more ready into the merchant's hand for tranſportation to mints abroad; and then it prohibited the melting of the gold or ſilver coin of the realm. (Ld. *Liv.* 62.)

6 & 7

6 & 7 *W.* 3. *c.* 17. entitled, " An Act to prevent " counterfeiting and clipping the coin of this kingdom.

ſ. 2. " That after *May* 16, whoever ſhall at any one " time or payment, *exchange*, lend, ſell, borrow, or buy, " receive or pay, any broad ſilver money, or ſilver " money unclipped of the coin of this kingdom, *for more* " *in tale*, benefit, profit, or advantage, than the ſame was " coined for, and ought by law to go for, be lent, ſold " for, borrowed or bought, received or paid, ſhall forfeit " 10*l.* for every 20*s.* that ſhall be ſo exchanged, &c."

The words in this ſtatute extend to every poſſible caſe, the acts forbidden being 'exchanging,' 'lending,' 'ſelling,' 'borrowing,' or 'buying', 'receiving,' or 'paying,' they ſeverally have their diſtinct meaning, reddendo ſingula ſingulis; and in this view of the ſtatute, as 'tale' ſignifies '*number*,' *exchanging* refers to *tale*, and the offence is '*exchanging for more in number*;' and ſo clearly refers to an interchange of coin; the ſubſequent words '*lend*, *&c.*' refer to benefit, profit, or advantage. Thus the ſame meaning ſtill attaches to the word *exchange*.

So 14 *G.* 3. *c.* 70. An Act for calling in and recoining the deficient gold coin; and " collectors of the revenues " are to receive the diminiſhed gold coin, and convey the " ſame to the B. E. there to be *exchanged for other* " *current coin*."

There are various other ſtatutes relative to the Bank, and other objects, in which exchange is as conſtantly applied to thoſe caſes in which there is a mutual dealing for coin; and in which when coin conſtitutes only a part of the

the tranſaction, then ſome other word is uſed to expreſs its nature.

Upon the whole, therefore, it ſeems both from the conſtruction of theſe ſtatutes, and from the evidence of hiſtory, that the propoſition " that the word exchange in " the ſtatute of 5 and 6 *E.* 6. *c.* 19. is ſolely applied to " the converſion of one ſpecies of coin into another ſpecies " of coin" is indiſputably true.

Bank of England notes.

It may however be ſaid, that Bank of *England* notes are within the legal intent of the word " money" in this ſtatute, which brings us to the ſecond propoſition, viz. " *That bank notes are neither within the common law nor* " *ſtatutable meaning of the word 'money' as uſed in this* " *ſtatute.*"

The word '*money*' ex vi termini has a peculiar meaning well known to the common law. In *Davis*'s Reports, 19, *Caſe of mixed monies*, it is ſaid, that every thing may be valued by the word *ſilver*, for by that word is underſtood *coined money.*

1 *Inſt. lib.* 3. 207 *a.* Lawful money of *England* is of two ſorts; viz. the *Engliſh* money coined by the King's authority, or foreign coin by proclamation made current within the realm.

2 *Inſt.* 577. The *money* of *England muſt be* either of gold or ſilver.

2 *Inſt.* 576. 3 *Inſt.* 17. It was ordained that no King of this realm can change his money, nor impair, nor amend, nor make other money *but of gold or ſilver*, without aſſent of parliament; (and he cites *Mirror, c.* 1. *ſ.* 3.). Mr. Juſtice *Blackſtone* alſo in the 1ſt vol. of his Commentaries, p. 278, quotes this paſſage:

2 *Inſt.* 741. is an expoſition of the ſeveral ſtatutes of employments; there is a commentary upon 4 *H.* 4. *c.* 15. which compelled all merchants, aliens, ſtrangers, and denizens who ſhould bring merchandizes into the realm, and the ſame ſell within the ſame, and receive *Engliſh money* for the ſame, to beſtow the ſame upon the merchandize of *England*, &c.; and Lord *Coke* commenting upon the words *Engliſh money*, ſays, "this is intended of all money of gold or ſilver current within the realm of *England*, although it be not coined within *England*."

In 3 *Inſt.* 17. Lord *Coke* again commenting upon the 25 *E.* 3. *c.* 2. (the ſtatute of high treaſon), and adverting to the words, '*ſa monnoie*,' ſays, "It is holden that *at the making of the* 25 *E.* 3. *there was no money current* within this realm but the King's own coin," and then he adds, "ſee the ſtatutes called '*ſtatutum de moneta magnum*,' and '*ſtatutum de moneta parvum*.'

Lord *Hale* in his *Hiſtory of the Pleas of the Crown*, in the chapter upon money, *vol.* 1. *p.* 188. gives a long account of the hiſtory of the coin of the realm, and the legal proviſions and authorities relative to it; and he ſays, that money conſiſts of,

1. The material whereof made.
2. The denomination or extrinſic value.
3. The impreſſion or ſtamp.

1. The

1. The money of *England* is pure ſilver or pure gold.

2. The denominated value is, and of right ought to be given by the King, as his unqueſtionable prerogative; it is *inter jura majeſtatis*.

Ib. 192. He may by his proclamation legitimate foreign coin.

Ib. 197. A proclamation writ under the great ſeal is abſolutely neceſſary for *this* purpoſe.

Hale calls theſe three particulars the eſſentials of coin.

P. 191. He adds, that though certain perſons, by ſpecial charter or uſage, had the coining of money, yet they had only the profit: they had not the power of inſtituting either the allay, the denomination, or ſtamp.

P. 198. The ſame doctrine, and concludes, "et *tunc* "uſui apta erit, ita ut extunc non ſit impune a quoquam "de populo recuſanda."

P. 210. Foreign money current by proclamation *muſt be gold or ſilver*.

25 *E.* 3. *ſt.* 5. *c.* 2. Deſcribing the offences which ſhall be treaſon, ſays, "and if a man counterfeit the great or privy ſeal of the King, *ou ſa monnoie*, he ſhall be guilty of treaſon."

In the time of *C.* 2. certain copper farthings and halfpence were proclaimed current; and Lord *Hale*, 1 *H. H. P. c.* 211. in treating of the offence of counterfeiting theſe coins aſks, "Is the counterfeiting thereof

 "treaſon?"

" treaſon?" And ſays in anſwer, " It ſeems to me, that " this proclamation makes it not the King's money within " this act of 25 *E.* 3.—1ſt, Becauſe it is made ſo *to a ſpe-* " *cial purpoſe only*, viz. in receipts and payments under " 6*d.* only, and not otherwiſe.—2d, Becauſe, here is no " diſpenſation or non-obſtante of the 25 *E.* 3.—Again, " when by 25 *E.* 3. *c.* 13. *ſt.* 5. it is enacted, that the " *money of gold and ſilver* which now runneth ſhall not be " impaired in weight or allay; we can hardly think that it " ever intended that the *copper* money ſhould be that " money which ſhould be intended within the act made " at the ſame parliament touching treaſon.—[*Quære tamen.*]"

From theſe authorities then, which might eaſily be multiplied, the jealouſy of the law in matters of coin is very perceptible; and it appears that, though this be perhaps the higheſt and moſt undoubted prerogative of the crown, it is nevertheleſs ſubject to very definite reſtrictions, one of which is, that whatever be the form or name, or allay of coin, ſtill it muſt be compoſed of gold and ſilver, or at leaſt of ſuch a mixture that the gold and ſilver ſhall predominate. The King could not impart to any perſon or body politic any ſhare of this his prerogative, *i. e.* he could only transfer to them the mere power of executing the mechanical part of the proceſs of coining; the allay, denomination and ſtamp, being inſeparable from his crown and dignity. And as he could not transfer this prerogative to others, ſo neither could he by his own royal power extend it to any object but gold and ſilver. And therefore, though the farthings iſſued by *C.* 2. had every attribute, excepting that they were not of gold or ſilver, as coming from the King's mint, ſtamped with his ſtamp, and

and made current by his proclamation; yet that ſingle defect put them immediately out of the proviſions of the 25 *E.* 3.

If therefore the law has been ſo jealous of the prerogative in this inſtance, it is fair to conclude, that it would, with at leaſt an equal degree of vigilance, reſtrain individuals from aſſuming any portion of this power, and that it would not confer upon *their* acts a potency it denied to thoſe of the Sovereign himſelf.

And accordingly, it will upon inveſtigation appear, that bank notes have never, excepting under the particular circumſtances of ſome particular caſes, been conſidered as money.

The 5 *W.* & *M. c.* 20. was the Bank incorporation act, and it appears from *ſ.* 29. of that act, that at its very outſet, bank notes were receivable only at the option of the public, and it was not pretended that they were money, or equivalent to money. By that *ſ.* " all bills obligatory " and of credit under the ſeal of the ſaid corporation, " made or given to any perſon, may, by indorſement " under the hand of ſuch perſon, be aſſignable to any " perſon who ſhall *voluntarily* accept the ſame; the aſ- " ſignment to transfer the property in the bill, and the " money due upon the ſame." Theſe bills were not bills payable on demand, but were drawn payable at a certain number of days after date. There can be no doubt upon this ſection, that as the acceptance of theſe bills was to be voluntary, the perſon ſo receiving them might do it upon any terms he choſe to ſtipulate; which terms would naturally depend upon the opinion he might entertain as to the ſtability of the Bank, or upon the degree

of convenience with which he could take the bills, and upon the uſes for which he required them.

The 8 & 9 *W.* 3. *c.* 20. *ſ.* 20. enlarged the ſtock of the bank; *ſ.* 28. excluded the formation of any other bank, during the continuance of the Bank of *England*; and by *ſ.* 30. the governor &c. were empowered to borrow by bills or agreement a certain further ſum, provided they obliged themſelves in the ſaid bills to pay the money therein mentioned upon demand; theſe bills to be expreſſed to be on account of the particular additional ſum by this act allowed to be levied.

This ſtatute therefore excluded the rivalry of other banks, and inſiſted that the bills iſſued under it ſhould be payable on demand.

The 6 *Ann. c.* 22. *ſ.* 9. prohibited any body politic or corporate, other than the Bank of *England*, or any other perſons whatſoever united in covenant or partnerſhip, exceeding ſix in number, to take up money on their bills or notes payable at demand, or at any leſs time than ſix months from the borrowing; and this ſtatute was confirmed by the 4 *G.* 3. *c.* 25. *ſ.* 13. This ſtatute therefore in one reſpect narrowed the reſtriction enacted in the laſt ſtatute, by rendering it lawful for any number of perſons leſs than ſix to iſſue bills payable on demand.

The 11 *G.* 1. *c.* 9. *ſ.* 6. firſt rendered the counterfeiting of Bank of *England* notes a felony.

The 15 *G.* 3. *c.* 51. has a remarkable preamble; it recites, 'that whereas various notes, bills of exchange, and draughts for money, for very ſmall ſums had for ſome time

time paſt been circulated or negociated in *lieu of caſh*, to the great prejudice of trade and public credit,' &c; and then it proceeds to enact, 'that all promiſſory notes or bills of exchange being transferrable for leſs than twenty ſhillings ſhall be void.'

The 17 *G.* 3. *c.* 30. refers to the former ſtatute; ſtates that its reſtrictions had been found beneficial, and that it would be right to extend them to further ſums, and then it enacts, 'that all promiſſory notes, &c. for the payment of twenty ſhillings and under five pounds, ſhould be made payable within twenty-one days from the date.'

Theſe laſt two ſtatutes, therefore, not only did not contemplate Bank of *England* notes in a more favourable light than thoſe of other banks, but put a reſtriction upon the mode of iſſuing them; and the firſt, ſo far from conſidering them to be money, actually recites them to have been iſſued *in lieu of caſh*.

And to avoid any difficulty upon this point the 37 *G.* 3. *c.* 28. was paſſed, reciting; "Whereas it is expedient for public ſervice, and for the convenience of commercial circulation, that the Governor and Company of the Bank of *England* ſhould iſſue promiſſory notes payable to bearer for ſums of money under five pounds; now, *to avoid any doubt concerning the validity* of the ſame, be it enacted that ſuch promiſſory notes, for the payment of any ſum under five pounds, ſhall be valid as if iſſued for the ſum of five pounds."

37 *G.* 3. *c.* 32. A mode is given of recovering before a juſtice of the peace the ſums of money for which any

notes under five pounds payable on demand ſhall have been iſſued, if the perſon liable to the payment thereof ſhall neglect for three days after demand to make full payment in money of the ſums for which the notes ſhall have been iſſued.

This laſt ſtatute therefore contained a diſtinction between notes and money, and gave, upon non-payment of a certain kind of them, a ſummary remedy equally againſt the Bank of *England* as againſt other banks. Thus far therefore, and it embraces the whole period from the firſt incorporation of the Bank of *England* up to the reſtriction act, the legiſlature had in no one inſtance identified Bank of *England* notes with caſh, but in many caſes had carefully diſtinguiſhed them from each other; nor had they ever placed them upon a more favourable foundation than the notes of other banks.

Miller v. Race.

The firſt caſe which occurred in which the nature of bank notes was much conſidered, was the caſe of *Miller* v. *Race*, 1 Burr. 452. It was an action of *trover* for a bank note payable to *W. F.* or bearer.

W. F. being poſſeſſed of the note, loſt it by robbery. It came to the plaintiff's poſſeſſion in the uſual courſe of buſineſs for a full and valuable conſideration, without notice of the robbery.

W. F. ſtopped payment of the note at the Bank by means of the defendant, who was a clerk to the Bank.

The defendant, upon the note being preſented for payment, refuſed either to pay the note, or to re-deliver it to the plaintiff.

Upon

Upon this the plaintiff brought the action, and recovered a verdict.

The QUESTION for the court was "Whether the plaintiff had a ſufficient property in the note to entitle him to recover?"

It was admitted that bank notes were paid and received *as caſh*: that in the uſual way of negociating they paſſed by *delivery* only.

It was argued for the defendant, that the title to the money, and to the note, were diſtinct: that the *note* was the ſpecial property of *W. F.* And that the plaintiff ſhould have brought his action againſt the Bank for the money. Aſſuming that the note was only *evidence* of money due to plaintiff as bearer.

And *Ford* v. *Hopkins*, 1 Salk. 283, 284, was cited to ſhew, that if bank notes, exchequer notes, or lottery bills are ſtolen or loſt, the owner has ſuch an intereſt in them as to bring an action into whatſoever hands they come; that money or caſh is not diſtinguiſhable; but theſe notes are, and *cannot* be conſidered as caſh.

It was argued for the plaintiff, that by uſage theſe notes paſſed and were conſidered as current caſh, and that poſſeſſion of them carried with it the property: and that the right to the money attracted to it a right to the paper.

In reply, it was conceded that it was a ſort of *mercantile caſh*: but alſo inſiſted that it was a mere piece of paper, and might as well be ſtopped as any other ſort of

mercantile

mercantile cash, and that robbery did not divest the owner of his property.

Lord *Mansfield* held the action would lie. He said bank notes do not resemble goods, or securities, or documents for debts, nor are so esteemed, but are TREATED *as money, as cash*, in the ordinary course and transacting of business, *by the general consent* of mankind, which GIVES them the CREDIT and currency of *money* to all intents and purposes.

They are as much money as guineas themselves are, or any *other current coin* that is *used* in common payments as money or cash.

They pass *by a will* bequeathing all the testator's money or cash, and are never considered as securities for money, but as money itself.

On payment of them, whenever a receipt is required, the *receipts* are always given *as for money*, not as for *securities*.

In bankruptcies, they are not followed as identical and distinguishable from money, but are always considered *as money* or *cash*.

He denied that bank notes were like lottery tickets as was said in *Ford* v. *Hopkins*.

That bank notes were constantly and universally treated *as money, as cash*; and paid and received as cash.

That

That *trover* would lie both for money and for a bank note BEFORE it had passed away in currency, but not after.

Then he qualified this expression by saying, 'that it could not be followed into the hands of a person who *bonâ fide* took it *in the course of currency*, and in the way of business."

Then he added, that the bank note was treated always as *money or cash*, and paid or received as cash.

In this case it appears that Lord *Mansfield* conceived that the true owner had no right to the *note* in question, it having been fairly received by the plaintiff; and inasmuch as goods may be followed into other hands, though lost by the original owner, and fairly acquired by the after possessor, he grounded his decision upon the identity of a bank note with *money*, which cannot be followed under such circumstances.

But the whole foundation of his decision was, the general consent of mankind to take them as money; his whole argument rests upon their being treated as such; as deriving their credit and currency from general consent; and this very concession shews that they in fact are not to be considered as money; the very instances he gives evince that all their value is merely conventional, and that it is only by contract that any one can be bound to receive them as money. For example, in case of the will, it is reasonable, that one devising *all his money*, shall be intended as including that which he treated as money, and was instantly convertible into money; and also it is just

ſuſt that he ſhould be conſidered, when uſing the common phraſeology of mankind, to intend the ſame thing; and this more eſpecially in a court of equity.

In the caſe of receipts alſo it is obvious, that he who gives the receipt as for money, does by that voluntary act bar himſelf from afterwards denying the receipt of money to that amount; but it is a *petitio principii* to ſay, that he was bound to give a receipt as for ſo much money.

In fine, the ſum of Lord *Mansfield*'s argument is this: that bank notes being by conſent circulated with the ſame credit as money, acquired by that conſent and circulation the character of money, and conſequently could not be taken out of the hands of a perſon to whom it had come *bonâ fide*, any more than money could; and that as the plaintiff had not paſſed it away, he could maintain *trover* for it, as he alſo could for money under the ſame circumſtances. Still, however, the whole reſts upon the circulation by conſent.

Wright v. Reed.

The next caſe was that of *Wright* v. *Reed*, 3 *T. R.* 554. (a° 1790.) which was a rule to ſhew cauſe why certain annuity deeds ſhould not be delivered up to be cancelled: part of the conſideration was in money, and part in bank notes; but the conſideration was deſcribed in the memorial as money.

Lord *Kenyon* C. J. ſaid, 'Bank notes are conſidered as money *to many* purpoſes; it was ſo held in *Miller* v. *Race*.'

Aſhurſt J. ſaid, 'Bank notes are money to *all intents*, and 'in this inſtance were taken as ſuch.'

Buller

Buller J. ſaid, 'This court has never yet determined that a tender of bank notes is at all events a good tender: but if notes have been offered, and no objection has been made *on that* account, this court has conſidered it to be a good tender; *and properly ſo, for bank notes paſs in the world as caſh*, [*i. e.* are taken and uſed and accounted as caſh, and therefore a perſon to whom a tender is made in bank notes ſhall be ſuppoſed to hold them in the ſame eſtimation as the world does, unleſs he announces at the time his intention to the contrary.] In a caſe on the other ſide of the hall, the Lord Chancellor ſince ſuggeſted a doubt whether theſe kind of notes were money; but here we have been always inclined to conſider them as ſuch, though the queſtion has never been determined.

In this caſe Mr. Juſtice *Buller* gives the clear reaſon for, and the extent of the doctrine that bank notes are caſh; he ſays, that if offered as a tender, and there be no objection, it is a good tender, 'becauſe the bank notes *paſs* in the world *as caſh*;' clearly referring to the preſumed operation of a known general uſage upon the minds of the parties. And thence raiſing the fair preſumption, that as each party knew the general character aſſigned to bank notes, and paid and received them without any expreſſed objection to the validity of this general character, they each of them adopted it into their tranſaction with each other.

Couſins v. Thomſon.

The next ſucceeding caſe was that of *Couſins* v. *Thomſon*, 6 *T. R.* (*anno* 1795.) 335. The ſame objection was made that the conſideration was deſcribed as money, whereas it was partly in bank notes, and was over-ruled upon the authority of the laſt preceding caſe. And the court, in anſwer

anſwer to the caſe of *Rumball* v. *Murray*, 3 *T. R.* 298, which was cited to ſhew that if notes formed a part of the conſideration, they muſt be ſet forth in the memorial, ſaid, that in that caſe the notes were one of them a promiſſory note, the other a banker's check, the particulars of which it was neceſſary to ſtate in the memorial, to guard againſt the impoſition of giving notes payable at a diſtant day, inſtead of money paid at the inſtant. And that was the ground of deciſion in this caſe; which therefore ſtill maintained the principle laid down in *Wright* v. *Reed*, viz. that that which was the generally received opinion amongſt mankind ſhould be underſtood to have been adopted by the parties.

Knightv.Criddle. The next caſe was *Knight* v. *Criddle*, 9 *E. R.* 48. In which Lord *Ellenborough* C. J. held that as money could not be taken in execution, ſo neither could bank notes, which, he ſaid, *for this purpoſe* were the ſame.

Armiſtead v. Philpot. This caſe relied upon another, of *Armiſtead* v. *Philpot*, *Dougl.* 230. in which Lord *Mansfield* ſaid, it had been decided that money could not be taken in execution (becauſe money could not be ſold, according to a quaint reaſon he had ſeen in the books). But the point was not decided, the caſe going off upon another ground. However, it is clear that, in the principal caſe, Lord *Ellenborough* conſidered bank notes as money only to a particular purpoſe.

The laſt caſe in which the nature of bank notes, as compared with money, was conſidered, was that of *Pickard* v. *Bankes*, 13 *Eaſt's Rep.* 20.

The

The plaintiff had laid a wager with a third perſon, who had offered ten guineas to one upon a certain event. The defendant was the ſtake-holder, the plaintiff won; the defendant, however, paid the ten guineas to the other perſon; the plaintiff brought this action for money had and received to his uſe. The evidence was, that the depoſit had been made in country bank notes, and not in coin of the realm; and it was contended, that theſe were not money, and that therefore *trover* ſhould have been brought for the notes. And upon a verdict for plaintiff there was a motion made to ſet aſide that verdict; and the words of Lord *Ellenborough* C. J. were ſo emphatic and expreſſive, and ſo confirmatory of the whole doctrine argued upon in this caſe, that it is moſt uſeful to ſtate them. He ſaid, " *Provincial* notes are certainly not " money; but if the defendant received them as ten " guineas in money, and all parties agreed to treat them " as ſuch at the time, he ſhall not turn round and ſay " that they were only paper and not money. As againſt " him, it is ſo much money received by him."

The motion was therefore refuſed.

Now it has appeared by the ſtatutes already recited, and will equally appear upon the conſtruction of the reſtriction acts, that Bank of *England* notes are not placed upon any better footing than country bank notes, and therefore the reaſoning upon the latter equally applies to the former. It ſeems therefore clearly eſtabliſhed, that *in caſes of contract*, bank notes ſhall, if received without exception, be conſidered as received in the character of money, ſo long as they are generally received in the purchaſe and ſale of commodities, as of equal value with the equal nominal amount of coin. Still it all reſts upon con-

tract, and therefore as the contract of one man cannot bind him who is a ſtranger to that contract, the faith and character in which they are generally received does not neceſſarily compel another ſo to receive them; but it is open to him to treat them as money or as leſs valuable than money, according to his own opinion or mere will.

The next point of view in which the conſideration of the nature of bank notes preſents itſelf, is under the operation of the reſtriction act.

By the 37 *G.* 3. *c.* 45 *ſ.* 2. it was enacted, That it ſhould not be lawful for the Governor and Company to iſſue any caſh in payment of any debt or demand whatſoever, and that during the reſtriction no ſuit ſhould be proſecuted againſt the ſaid Governor and Company to compel payment of any notes expreſſed to be payable on demand, which the Governor and Company ſhould be willing to exchange for any notes of equal amount expreſſed to be payable on demand; or to compel payment of any ſum of money which the Governor, &c. ſhould be willing to pay in notes expreſſed to be payable on demand.

And, that the court in which any ſuch ſuit ſhould be brought ſhould, upon application by the Governor and Company, ſtay all proceedings until the expiration of the time in the act limited for the continuance of the reſtriction.

And where the ſuit ſhould be brought in reſpect of notes payable otherwiſe than on demand, upon ſimilar application proceedings ſhould be in like manner ſtayed on payment of the ſum of money expreſſed to be payable, by delivery of Bank

Bank of *England* notes, payable on demand, "*if the party "ſhall be willing to accept payment thereof in ſuch notes*;" and upon refuſal proceedings ſhall be ſtayed as before.

ſect. 3. prohibited the Governor and Company from iſſuing more than a certain fractional amount in caſh.

ſ. 8. payments in Bank of *England* notes, payable on demand, ſhall be deemed payments *in caſh, if made and accepted as ſuch*; any law, ſtatute, or uſage to the contrary notwithſtanding.

ſ. 9. requires that in an affidavit to hold to bail it ſhall be ſtated that no offer has been made to pay the ſum of money in the affidavit mentioned, in Bank of *England* notes, payable on demand.

ſ. 10. compels collectors of the public revenue to accept Bank of *England* notes in payment of public taxes.

37 *G.* 3. *c.* 92. almoſt *verbatim* the ſame.

38 *G.* 3. *c.* 1. the ſame.

43 *G.* 3. *c.* 18. the ſame, excepting a proviſion relative to thoſe who apply to be diſcharged upon common bail.

44 *G.* 3. *c.* 1. An act to continue the reſtriction.

Theſe acts do not give any additional validity to Bank of *England* notes, but in truth take from them almoſt the only quality which rendered them in any degree of equal value with caſh, inaſmuch as they exonerate the Bank

of *England* from the neceſſity of paying them in money when offered for payment.

Soon after the original reſtriction act had paſſed, a caſe occurred in which its operation was very much diſcuſſed. It was the caſe of *Grigby* v. *Oakes* and another, 2 *Boſanquet* and *Puller's Reports*, 526.

Grigby v. Oakes and another.

It was an action upon a promiſſory note. The defendants pleaded, as to all but five guineas, *non aſſumpſerunt*; and as to the five guineas a tender. The defendants were country bankers, and iſſued the note in queſtion for five guineas, payable on demand to bearer. The plaintiff preſented the note for payment, and the defendants tendered in payment a five pound Bank of *England* note and five ſhillings in ſilver. The plaintiff refuſed to accept the note tendered, and required to be paid in money. It was argued for the defendants, that ſince the reſtriction act, Bank of *England* notes muſt be conſidered as caſh.

Lord *Alvanley* C. J. ſaid, that upon this act he conceived the legiſlature intended to make Bank Notes a legal tender only in certain caſes by them expreſſed, and in all other caſes to leave them as they were before the act, except as to exemption from arreſt. And that the 8th ſection, though it enacted nothing new, ſhews clearly the intention of parliament not to alter the character of Bank of *England* notes, except in the caſes ſpecially provided for. *Heath*, J. was ſtrongly of the ſame opinion.—"The queſtion for us to decide is, whether a tender in Bank Notes is a good legal tender. The 37 *G.* 3. *c.* 45. appears to me to negative that queſtion, for the ſeveral

proviſions of the act making them a good legal tender in certain excepted caſes, excludes the idea of their being ſo generally in caſes not provided for by the act. It has been argued however that the operation of the act will in many caſes be very injurious, unleſs we determine it to be a neceſſary inference from the act, that Bank Notes were intended by the legiſlature to be put upon the ſame footing as caſh. But whatever inconveniences may ariſe, the courts of law cannot apply a remedy. I think indeed the legiſlature acted wiſely, having the recent example of *France* before their eyes, to avoid making Bank Notes a legal tender; for, in *France*, we know that legiſlative proviſions of that kind in favour of paper currency only tended to depreciate the paper it was deſigned to protect, and were ultimately repealed, as injurious in their nature. *Rooke* J. agreed; and *Chambre*, J. ſaid the caſe was too plain for argument. That it had been thought that the courts went a great way in holding a tender in Bank Notes to be a good tender if not objected to at the time. (*Wright* v. *Reed*). *Certainly*, he ſaid, that was *an innovation*. But the act in queſtion afforded nothing but arguments againſt the inference attempted to be drawn from it. By making Bank Notes a good tender in certain caſes ſpecifically provided for, they appear to me to have negatived the conſtruction now attempted to be put upon it."

Thus, neither before nor ſince the reſtriction act, has the courſe of legal deciſions recognized any character in Bank of *England* Notes, beyond that which they may acquire by the conſent of individuals; leaving them to that valuation which like all other commodities may be aſſigned to them by general uſage or ſpecial contract.

In the crown books there have occurred three cafes in which it became neceffary to give fome legal defcription of the nature of a Bank Note; viz, *Morris's* cafe, *Dean's* cafe, and *Robinfon's* cafe. In *Morris's cafe*, (which is 2 *Leach's* crown cafes, 525,) *G. Horne* was indicted upon the 12 *An. c.* 7. and 2 *G.* 2. *c.* 25. for ftealing two Bank Notes, the property of *S. S.*, in the dwelling houfe of the faid *S. S.* *Morris* was indicted on the 3 *W.* & *M. c.* 9. *f.* 4. and the 5 *Ann. c.* 31. *f.* 5. for receiving the faid notes, the *property and chattels* of the faid *S. S.* knowing them to have been felonioufly ftolen. And it was objected that receiving Bank Notes, knowing them to have been ftolen, was not within any ftatute which makes receivers acceffaries of the fact; inafmuch as they were not goods or chattels; and of this opinion were the Judges.

Morris's cafe.

This decifion does not neceffarily recognize Bank Notes to be money, or *in loco* money; inafmuch as many written fecurities are not within the comprehenfion of the legal term 'goods and chattels;' and yet are certainly not in the remoteft degree a-kin to money.

In *Dean's cafe*, *Leach's Crown Cafes*, 798, *Dean* was indicted for ftealing a Bank Note, of the value of twenty pounds, the property of *J. M.* in his dwelling houfe; the 12 *Ann. feff.* 1. *c.* 7. makes the ftealing "any money, goods or chattels, wares or merchandizes "of the value of forty fhillings, a capital offence." And the judges held that Bank Notes were within the 12 *Ann.* "for that the ftatute was intended to protect every fpecies "of property."—It therefore feems that it was only becaufe of the *intent* of the ftatute, that Bank Notes were held to be within it.

Dean's cafe.

Robinfon's

Robinfon's cafe, *Leach's* Crown Cafes 869, was an indictment upon the 9 *G.* 1. *c.* 22. for fending a threatening letter demanding a *Bank Note*. And it was held by all the Judges that a Bank Note was a *valuable thing within that ftatute:* for that it might at any time be turned into cafh, and was to the owner of the value of the money for which it was given.

Robinfon's cafe.

One general obfervation applies to all thefe three cafes, which is, that however Bank Notes may have been confidered within the feveral ftatutes, either as property, or valuable things, ftill their legal nature has not been in other refpects changed.

But it may be faid, that in the cafe of the prefent defendant, the general ufage with refpect to Bank Notes and their equivalency to money was adopted by thefe parties into the contract; that they were mutually treated as money, and that the tranfaction was entered into and completed upon that mutual implied agreement.

To anfwer this, the obfervation is obvious, that however a particular ftatute may, with a view to a particular offence, cloath any thing with a particular character; or however by general ufage, or by particular contract, the fubject, or means of performing that contract, may be inveſted with the character of fome other fubject well known and defined in law;—yet neither that ftatute nor that contract can in the conftruction of a penal ftatute vary the real nature of the fubject of offence, for it muft be tried upon its own true legal character; no ufage, however inveterate, nor any contract, however certain, can change this.—The intent to commit any offence

does not create the offence, but it must be completed in law as well as in intent. In questions of trade or of contract the intent of the parties is the only sure guide; but in criminal matters the only effect of ascertaining the intent is, to shew that the act done was done for a purpose criminal in a moral view; but whether criminal in the eye of the law, can only be determined by the legal nature of the transaction. For instance, at common law, larceny cannot be committed of things connected with the freehold; the taking of such things being a mere trespass; but by particular statutes it is made a felony to steal particular things though attached to the freehold. And yet in all civil questions these things still retain their common law character, and are considered as in their nature partaking of the freehold.

Such therefore have been the decisions upon the nature of Bank Notes, and so guarded have Judges been in considering them even to share the nature of money.

In addition to these arguments, it may be observed that in comparing Bank Notes with money these distinctions are to be taken:

1. By common and universal consent, *gold and silver* have every where and at every time an intrinsic value, though different in degree.

Bank Notes, have no intrinsic but merely a conventional value.

2. *Coin*,

2. *Coin*, can only be issued by the king: Bank Notes may be issued by any one.

3. It is indictable to *refuse gold coin* in any quantity, and silver coin to a certain amount when tendered, if the amount be not disputed.

But any one may refuse either to sell for Bank Notes, or to take them for a debt, and need assign no reason for such refusal but that they are Bank Notes.

4. It is *high treason to forge* coin; it is only a felony, and that by statute, to forge a Bank Note.

But it may be argued that, although Bank Notes do not come within the meaning of the word "*money*", they do within the terms, "profit, value, benefit, or advantage" in the stat. of *E.* 6. contained. The negative of this is our third proposition. These words, we shall shew, are also confined to profit, value, benefit, or advantage in coin, arising from the exchange of one species of coin for another at a different proportion than that ordained by the king's proclamation.

The 25 *E.* 3. *st.* 5. *c.* 12. authorized the exchanging gold for silver, or silver for gold, or for gold and silver, so that *no profit* were taken for the exchange.

The 5 & 6 *E.* 6. reciting the 25 *E.* 3. and that persons in contempt thereof had exchanged *receiving and paying more in value*, &c. enacted, that persons in such exchangings, '*giving, receiving or paying, more in value, benefit, profit or advantage*;' so that here are three sets of words used to express the same transaction; the last set being

the largeſt, and referring to every mode by which ſuch an exchange could be effected.

What this profit was, is explained by Mr. *Leake* in his book, p. 105, 6. & 134. He mentions the making of the gold money in the 18 *E.* 3. and the proclamations conſequent thereon; and then he adds, that a certain rate was ſettled for exchanging gold for ſilver, or ſilver for gold at the king's exchange; that there had before been ſome difficulties about the relative values of gold and ſilver coins; and that it was then ſettled, "that thoſe who would change gold for eaſterlings at the king's exchange, (for no other was allowed,) were to take for the noble of gold a penny leſs than the half mark; the maille, a penny leſs than the value, and the Ferling a farthing. This fact ſhews that not only was the ſubject of exchange confined to coin, but the profit likewiſe was to conſiſt of coin.

In *p.* 123, & 134, he ſays, that in the time of *H.* 5. becauſe a great part of the gold then current was neither of true weight nor good allay, and though a noble was good gold and weight, men could get no white money for it, there was to be a recoinage at the Tower, making to the officers of the mint certain allowances for ſeignorage and cunage. And thoſe that would exchange the light and bad money at the Tower, to pay the exchange a penny for the noble, a halfpenny for the half noble, and a farthing for the quarter, with the ſeignorage and cunage as before; and if the money delivered at the exchange were defective, it might be refuſed, and the exchanger was to melt it. See Lord *Liverpool*, p. 90, & 140.

Theſe

Theſe two facts explain the nature of the profit authorized to be taken by the king's Exchanger, and forbidden to be taken by others who exchanged coin for coin in the common courſe of buſineſs. And it was for carrying on this traffic in contempt of the 25 *E.* 3. that the penalties in the 5 & 6 *E.* 6. were enacted. And in fact, as will appear hereafter, this was a traffic which at different times was carried on to a great extent.

The criterion adopted by the ſtatute for the purpoſe of aſcertaining whether or not 'more in value, &c.' had been received, &c. was the king's proclamation; it ſays "more "than the ſame is or ſhall be declared by the king's majeſty's "proclamation to be current for within this his high-"neſs realm." Now the only mode in which the currency is declared (and was then declared), by the king's proclamation, is by fixing the relative proportions between one ſpecies of coin and another; that a certain number of ſilver coins of a certain denomination ſhall paſs for and be equivalent to a certain piece of gold coin; and ſo ſilver coin for ſilver coin; and the only command of the proclamation is to obſerve theſe mutual proportions. Therefore it is only by giving a greater or leſſer number of coins of one kind for a coin of another kind, that there can be any diſobedience committed againſt the proclamation. And as diſobedience to the proclamation is the crime contemplated by the ſtatute of *E.* 6. it again follows that the profit muſt, as well as the exchange, be of coin. The proclamation itſelf of 1717, for a contempt of which this ſtatute is now put in force againſt the preſent defendant, alſo fortifies this argument; for it begins by reciting that "Whereas the value of the "gold compared with the value of the ſilver in the "current

" current coin, is greater in proportion, &c." evidently having no other object in view than the preſervation of this proportion.

It may be further urged that money, both by law, and in reaſon is the ſtandard of value; that between coins of different kinds of metal there is a relation by law eſtabliſhed; but that between coin and commodities the law has eſtabliſhed no relation, but left it to be fixed by the neceſſities and opinions of mankind. And therefore although when for the ſame nominal amount of coin, a greater or leſſer quantity of a commodity is given, we know that it is the ſame thing whether we pronounce the commodity to be cheaper or the coin dearer, yet we ever ſpeak in the reverſe, and value the commodity by the coin, committing thereby, if the law were to be expounded as is now contended for, an offence by every alteration of price, purchaſing by commodities a greater or leſſer quantity of coin.

But it may be ſaid that although this be true of commodities generally, yet Bank Notes have a character and nature which diſtinguiſh them from what is termed a a commodity. But inaſmuch as Bank Notes are not a tender for the ſum at which they are expreſſed to be payable; as their value depends entirely upon the voluntary aſſent of individuals; as their currency is conventional, and as they are not money; it follows that they are not the ſtandard of value; and if not, that they may themſelves be valued: and if they may be valued, it muſt be at the option of the receiver, and in the ſame way as a commodity of another kind. It therefore ſeems impoſſible to ſay that it is an unlawful act to value a Bank Note,

Note, iſſued as of twenty ſhillings value, at eighteen ſhillings.

It has never been contended that it would be any offence to value a country bank note at leſs than its iſſuable value; and it has been ſhewn that the Bank of *England* notes are not placed by any ſtatute upon a more favoured ground than thoſe of country bankers. Suppoſe that the reſtriction act had not paſſed, or in other words, that the Bank of *England* had been unable to do that which the legiſlature reſtrained them from doing; i. e. to pay money in return for their notes; would it have been illegal to have valued theſe notes below their aſſigned value? The only reaſon for a preference, even at ſuch a juncture, of coin to notes, would have been, the greater certainty of acquiring by coin any object deſired by the holder of it, than he could have by the notes; and the ſame motive muſt at all times influence thoſe who are willing to give a Bank Note at leſs than its aſſigned value for a guinea. He muſt be perſuaded that the Bank Note, &c. is not to him individually equivalent to a guinea. It would in truth be an abſurdity to ſuppoſe that a man would give more than a guinea's worth for a guinea.

And even if it were granted that a Bank Note were really worth twenty ſhillings, and that the receiver of it did actually gain a profit upon the tranſaction; ſtill it is equally true that the tranſaction would not be within the ſtatute, unleſs it could be ſhewn that by it, the relative proclaimed current values of the gold and ſilver coin could be affected by it. And the truth is that the whole of this tranſaction amounts merely to an undervaluation of the Bank Note, and that the individual who gave his notes

notes and ſilver coin for the guineas, conceived the guinea to be more than an equivalent for a one pound note and one ſhilling.

Upon the whole therefore the three firſt propoſitions ſeem to be completely eſtabliſhed; and that it is therefore undeniable that theſe two ſtatutes had in view a regulation only of the exchanges of coin for coin, for the ſake of very ſalutary objects; that upon the ſame principle they were forbidden, excepting in certain caſes; and that the profit forbidden to be received was a profit in coin; and that Bank Notes have never been conſidered as equivalent to money, excepting in the conſtruction of civil contracts proceeding upon the implied intent of the parties, and that upon penal ſtatutes they are to be conſidered merely as property having value, that value being optional with thoſe who receive or pay them. That money is the ſtandard of value in all things, and that whatever be given for money, the law will not pronounce that by ſuch tranſaction the coin of the realm was either under or over-valued.

We now come to the next, or fourth propoſition, viz. that,

"*The* 5 & 6 *E.* 6. *c.* 19. *was a temporary ſtatute*," and the courſe of argument upon this point will be, firſt by ſhewing the total ſilence of all records and legal writers upon the ſubject, and the exiſtence nevertheleſs of facts in hiſtory, and caſes in the books, in which the authority of this ſtatute would have been of great importance, if it had been conceived an exiſting ſtatute. And then by ſhewing that the words of the ſtatute will bear the conſtruction, that its duration was limited to the reign of *E.* 6. and inferring from that conſtruction the cauſe of the ſilence ſo obſerved. The

The ſtatute of *E.* 6. was paſſed above two hundred and fifty years ſince, and during the whole of that long period no trace is diſcoverable of any proſecution having been founded upon it. *Coke* in his Inſtitutes frequently adverts to the coin of the realm, and the king's prerogative therein; and he has one Chapter, (2 *Inſt.*) that which is his commentary upon the ſtatute *articuli ſuper chartas*, where he expreſsly expounds the laws relative to coin, its exportation and importation, melting, embaſement, aſſay, counterfeiting, and mode of making it, but never once adverts to this ſtatute: and yet he did not live in times very remote from the reign of *E.* 6.

Staunforde who has a chapter *de prærogativa regis*; Lord *Hale* who alſo wrote expreſsly upon the ſubject; *Plowden*, who has reported a very celebrated caſe, *The Caſe of mines*, in which the royal prerogative in matters of gold and ſilver is much diſcuſſed; Sir *John Davis*, who reported the great *Caſe of mixt monies*; *Viner* and *Comyn* in their laborious and very comprehenſive digeſts; have every one totally omitted all mention of this ſtatute.

Nor is there any trace of it to be diſcovered in any one of the books of reports, antient or modern.

Yet there are caſes in the books, and hiſtory gives an account of certain facts which demonſtrate that it was not for want of an opportunity that it was never put in force.

In the ſecond vol. of *Ruſhworth*'s Hiſt. Coll. p. 350, there is a curious caſe preſerved, in which this very ſtatute of *E.* 6. was moſt peculiarly applicable: but to which there appears never to have been the leaſt alluſion made

Caſe in the Star-chamber.

made. It was a caſe in the Star Chamber, 12 *Car. Feb.* 7. *H.T.* (*A.D.*1635.) A complaint was made in this court by the Attorney General againſt divers perſons for tranſporting gold and ſilver out of this kingdom into foreign parts, and for culling out the weightieſt money, and for melting down his Majeſty's coin into bullion, and *giving above the price* of his Majeſty's mint *for gold and ſilver* (as by the information more at large). It likewiſe ſpecially appeared to the court, that the defendant *Timothy Eman*'s courſe was to receive merchant's money, and then to employ his ſervants to cull and ſort out by the balance the heavieſt ſhillings and ſixpences. And afterwards to ſell them by ounce, and thereby make 3 *per cent. profit*, it being uſual to find 14, 15, or 16*l.* or more, heavy in 100*l.* and he was furniſhed by divers perſons with heavy culled *Engliſh* money, to *whom he gave* ſometimes *two ſhillings and ſometimes three ſhillings in a hundred pounds, to have the culling thereof*; that in the courſe of ten years he melted down 20,000*l.* and got a profit of 1,000*l.* by it. And *Henry Futter* bought light gold, and furniſhed one *Violet* with 1,000*l.* of light gold, *beyond the allowance of great rates*, knowing it was for tranſportation. And hereupon, ſome were ſtated to have been guilty of tranſportation of *Engliſh* gold; ſome of tranſportation of foreign coin and bullion; *Eman* of culling out and melting down the heavy coin of the kingdom for his own profit; and *Futter* of buying light gold and ſelling the ſame again; and another of melting heavy coin. They were ſeverally fined heavy fines; *Eman* being fined 2,000*l.* and *Futter* 500*l.*

Now, although the Star Chamber was an oppreſſive and arbitrary court, yet beyond a doubt it would not have diſdained

dained the colour of law, if any law had been conceived exiſting; and eſpecially as the forfeiture and fines under the ſtat. of *E.* 6. would have greatly exceeded thoſe which were impoſed by this ſentence. Indeed *Eman* is in the record repreſented as having culled out to the amount of 500,000*l.* a year, and to have derived 7 or 8,000*l.* yearly profit.

The occaſion of this proſecution may be found in 1 *Ruſhw.* part. 2. p. 149. who ſays, that in the 7 *C.* 1. (anno 1632) gold was ſo plenty and ſilver ſo ſcarce, that drovers in Smithfield would ordinarily make their bargain to be paid in ſilver and not in gold. And beſides, in this time people did ordinarily give 2*d.* and ſometimes more, to get 20*s.* in ſilver for the exchange of a 20*s.* piece in gold full weight.

Lord *Liverpool*, in his book upon coins, p. 65. refers to this caſe, and adds, that notwithſtanding theſe proclamations and ſeverities, it appears from a writer in thoſe times (*Violett*), that ſilver in foreign coin or bullion was ſold during the whole of this reign at 1*d.* 2*d.* 3*d.* &c. per ounce above the mint price, and that 30,000*l.* in ſixpences, ſhillings, and half crowns were melted annually by one ſingle goldſmith for ſix years together, from 1624 to 1630. Theſe facts elucidate the proclamation of *J.* 1. cited in a former part of this argument, and amply ſhew either the total ignorance of the laywers of thoſe days of the exiſtence of the ſtat. of *E.* 6. or it ſhews their opinion to have been, that it had then expired.

The two next caſes were ſubſequent to the coining of guineas; and to underſtand them it will be neceſſary to trace the hiſtory of that coin.

Temp.

Temp. H. 7. the Sovereign or Double Ryal was coined at 20 *s.* the Double Sovereign at 40 *s.*

18 *H.* 8. the Sovereign 22 *s.* 6 *d.*

34 *H.* 8. ——— 20 *s.*

During the reign of this king, the fluctuations were so many, and the relative values of gold and silver so preposterously fixed, that 220 *per Cent.* was made by exchanging silver for gold.

3 *Ed.* 6. The Sovereign was coined at 20 *s.*

4 *Ed.* 6. ——— 24 *s.*

At this time 270 *per Cent.* was made by exchanging silver for gold, and at last it amounted even to 550 *per Cent.* But afterwards the Sovereign was again fixed at 20 *s.*; and it was after this that the 5 & 6 *E.* 6. was passed.

In the reign of *Elizabeth* and *James* 1. the Sovereign was current at 30 *s.*

In 17 *Jac.* 1. The Unite, which took the place of the Sovereign, was coined at 20 *s.* and afterwards at 22 *s.* This rise in the silver price of the Unite was occasioned by the great influx into *Europe* of silver from *America*.

C. 1. The Unite was coined at 20 *s.* and was so continued by the Protector.

In 1660. In the time of *C.* 2. new 20 *s.* pieces were coined, which were afterwards vulgarly called by the name of Guineas, in allusion to the coast from whence the gold, of which they were composed, had come. They were coined

coined as 20 *s.* pieces, though (according to *Leake*, 367.) they never went for so little. There were also 40 *s.* pieces and 5 *l.* pieces. They were made current by a proclamation of the 27th of *March* 1663, and by the name of 20 *s.* pieces, and not by the name of guineas; (see a book entitled, 'A view of the gold coin and coinage of 'England, from *H.* 3. to the present time;' printed for *T. Snelling*, 1763, with handsome and numerous copper-plates;) but they soon were received at 21 *s.* by common consent; and between this period and 1688 they were successively current at 21 *s.* 6 *d.*, 25 *s.*, 28 *s.*, and at last at 30 *s.*, owing to the very bad state of the silver coin.

In the reign of *W.* 3. also, guineas were coined, but whether any proclamation was ever issued to make them current does not appear; they were, however, issued as 20 *s.* pieces, though received at the prices above mentioned; and before the recoinage, there occurred the case of *Pope* v. *St. Leiger*, 6 *W.* & *M.* (1695.) 5 *Mod.* 1. Action of debt for 100 guineas upon a wager.

Declaration, Defendant was summoned to answer defendant of a plea that he render to him £107. and 10 *s.* It further stated, that the wager was upon a certain event, which, if it happened, plaintiff was to pay defendant 150 guineas.—If a certain other event happened, defendant obliged himself to pay plaintiff 100 guineas.—Then it averred that plaintiff won the wager, and that the 100 guineas were of the value of £107. and 10 *s.*, &c. Pope v. St. Leiger.

Defendant, after demanding oyer of the writing containing the wager, pleaded the 16 *C.* 2. *c.* 7. in bar, and then averred the playing at the game, and the betting of the 100 guineas, and that they were worth above £100.

at the time of the betting, &c. to wit, of the value of £107. and 10*s.* (21*s.* 6*d.* each.)

General demurrer, and judgment for plaintiff.

Defendant brought error.—And for plaintiff in error it was argued, That it was bad to declare of ſo many guineas *valoris*, &c. for that a guinea was *Engliſh* money, of which the Court would take notice, and therefore it ought not to be *ad valentiam:* that a guinea in law *was no more than* 20*s.*, and IN an action on the CASE damages ſhall be given for them according to the value; but IN DEBT for them, the plaintiff never declared for more than 20*s.* as in *Harriſon* v. *Byron*, in which caſe he ſaid it was adjudged that the Court would judicially take notice of a guinea, and that the legal value of it was but 20*s.* though by conſent it might paſs for more.

Contra, it was ſaid, that the 100 guineas were *valoris* £107. 10*s.* of which the Court were bound to take notice: that it was not a noted money or coin of the kingdom, as 20*s.* pieces were: there being no proclamation to make them paſs; but it was more like a medal or a foreign coin.

Holt, C. J.—Guineas were coined at the mint for 20*s.* only, and there was never any proclamation to make *them* paſs, though there was one to take the twenty-ſhilling-(*i. e. unites*) pieces. It is true *by conſent they may paſs* for more than 20*s.* but legally no more *is to be demanded* for them than 20*s.* The guinea was coined according to the 20*s.* piece; we call them guineas by agreement, but how can we take notice of what value they are? If plaintiff had declared

declared of 20*s.* pieces we muſt have judicially taken notice of them; but do you think it is not high treaſon to counterfeit guineas? Certainly it is, though the indictment ſhall not run for counterfeiting guineas, but of ſo many pieces of 20*s.* value. A guinea is the current coin of the kingdom, and we are to take notice of that.

In this caſe Lord *Holt* is made to ſay, that guineas were coined at 20*s.* only, and there was never any proclamation to make *them* paſs, though there was one to take the 20*s.* pieces; and then he adds, that *by conſent* they might paſs *for more* than 20*s.* though *legally no more was demandable* for them. When he ſays there was never any proclamation to make guineas paſs, he muſt have meant 'to make theſe 20*s.* current by the name of guineas.' Now if they were current *ſubſtantially* by proclamation, the name which they acquired in vulgar acceptation could not alter the legal conſequences attaching upon the proclamation; and therefore if the ſtatute of *E.* 6. was in force at the time of this judgment given by Lord *Holt*, it was a complete anſwer to his obſervation, 'that by conſent guineas might paſs for more than 20*s.*'

The next caſe was that of *Dixon* v. *Willoughs*, 2 *Salk.* 446. 8 *W.* 3. *anno* 1697. Caſe upon ſeveral promiſes. Verdict for plaintiff and entire damages. It was moved in arreſt of judgment that one of the promiſes was ill laid; *viz.* that whereas defendant was indebted to him in £13. 10*s.* for nine guineas, he promiſed to pay, &c. and ſays not nine guineas *ad valorem*, as he ought, the value not being aſcertained by proclamation. Dixon v. Willoughs.

Holt, C. J.—Any piece of money coined at the mint is of value, as it bears a proportion to other current money, and that without proclamation.

This laſt caſe ſhews that the Court conſidered the guinea as money having all the character of a coin of the realm, though it had not ever been proclaimed *eo nomine*.

The ſilence of Judges upon a ſtatute in caſes coming immediately within its proviſions; and the forbearance of a court like that of the Star Chamber, able and willing to proceed with the utmoſt ſeverity both within and beyond the limits of the law, will ſtrongly favour the conſtruction, if any ſuch can be fairly made, that this ſtatute was intended merely as a temporary ſtatute, confined for the term of its operation to the reign of the then king.

The doctrine laid down by Lord *Kenyon* in the caſe of *Leigh* v. *Kent*, 3 *T. R.* 362. ſtrongly favours this argument; for he ſaid, that though where the words of an act of parliament are plain, it cannot be repealed by *non-uſer*; yet where there has been a ſeries of practice, without any exception, it goes a great way to explain them where there is any ambiguity.

The caſe was an action on 21 *Hen.* 8. *c.* 13. *ſ.* 26. for non-reſidence, and upon a verdict for the plaintiff, an objection was made upon a motion to ſtay proceedings, that no affidavit had been filed according to 21 *J.* 1. *c.* 4. and it was ſtated in anſwer, that the conſtant practice had been not to make ſuch affidavits.

But it may be urged that the word KING, uſed in the ſtatute, is a term which neceſſarily extends to all the ſucceſſors of the then king, being applied to him in his politic capacity.

Now,

Now, though this be generally true, yet that it is not always and neceſſarily ſo, appears from the 1 *Hale's Hiſt. of the Pleas of the Crown*, p. 100, and p. 707. And in p. 101. he refers to the ſtatute of 34 & 35 *H.* 8. *c.* 26. giving power to the king to alter the laws of *Wales*, in the following words: "That the King's moſt Royal "Majeſty ſhall and may at all times hereafter, from time "to time, change, add, alter, order, &c. all things be-"fore rehearſed; and alſo make laws and ordinances for "the commonwealth and good quiet of his ſaid dominion "of *Wales*; and all ſuch alterations and laws and ordi-"nances ſhall have as much authority as if made by act "of law." This ſtatute is ſaid by Lord *Hale* to have died with *H.* 8., but that in *majorem cautelam* it was repealed by the 21 *Jac.* *c.* 10.

The only ground upon which it could have been ſo conſtrued muſt have been the nature of the power given by the ſtatute to the king; for the caſes are many in which it has been decided that *king* imports ſucceſſors.

Indeed the word ſucceſſors is not uſed in any ſtatute prior to the time of 6 *H.* 6. and therefore when any antient ſtatute was declared to continue 'ſo long as it ſhould 'pleaſe the king,' it was held to continue during the reign of his ſucceſſor, unleſs there were proclamation to the contrary. In the 18 *H.* 6. *c.* 1. there occurs the expreſſion, "our lord the king or his heirs." The 23 *H.* 8. *c.* 1. is the next ſtatute in which the expreſſion "the king "our ſovereign lord, his heirs and ſucceſſors," occurs; and again in 24 *H.* 8. *c.* 8. and becomes more common after the 25 *H.* 8. *c.* 21.

So that of neceſſity the omiſſion of 'heirs and ſucceſſors' in the ſtat. of *E.* 6. is no argument againſt its continuance. But the context of the ſeveral phraſes deſignating the kingly power in this ſtatute will ſhew its limited nature; the firſt is, "more in value than hath been declared by the king's proclamation to be current for within *this his* highneſs realm," which laſt words clearly allude only to the proclamation of *E.* 6. Then it enacts the penalty for exchanging, &c. for more, &c. "than the "ſame *is*, or ſhall be declared by the king's majeſty's pro"clamation to be current for within *this his* highneſs "realm." In which phraſe, '*is*' points to preſent time, and refers to the currency within 'his highneſs realm,' ſpeaking of *E.* 6.; and '*ſhall be*,' equally point to the ſame King's proclamation.

There ariſes alſo another ſtrong obſervation, militating much againſt the notion that the ſtat. of *E.* 6. was an exiſting ſtatute in the reign of *W.* 3.; it is this, that under ſuch a ſuppoſition the moſt eaſy and moſt powerful remedy againſt the evils complained of in the ſtatute of *W.* 3. would have been the immediate iſſue of a proclamation by the crown; as upon that, the penalties of *E.* 6. would immediately have attached, and offenders been puniſhable with greater ſeverity than the ſtat. of *W.* 3. can inflict.

The next point is, that the ſtatute of 5 & 6 *E.* 6. if not intended as a temporary ſtatute, was at all events virtually repealed by the 6 & 7 *W.* 3. *c.* 17.; and the 7 & 8 *W.* 3. *c.* 19. & *c.* 19.

The

The former ſtatute, viz. the 5 & 6 *E.* 6. ſtates in its recital, that perſons had offended by making certain *exchanges*, and 'receiving and paying therefore more in 'value than had been declared to be current for by the 'king's proclamation.' And in the enacting clauſe, a penalty is impoſed upon the committing of that ſame offence; and the king's proclamation is, undoubtedly, aſſumed in this ſtatute as the criterion of value.

By the 6 & 7 *W.* 3. *c.* 17. *ſ.* 2. "If any perſon ſhall "at any one time or payment *exchange*, lend, ſell, borrow, "or buy, receive or pay, *any* broad ſilver money, or "*ſilver money* unclipped, of the coin of this kingdom "*for more in tale*, benefit, profit, or advantage than the "ſame was coined for and ought by law to go for, be "lent, ſold for, borrowed, or bought."

By the 7 & 8 *W.* 3. *c.* 10. *ſ.* 18. "No perſon ſhall re"ceive, take, or pay any of the pieces of gold coin of "this kingdom, commonly called guineas, at any greater "or higher rate than 26*s.* for each guinea, and ſo in "proportion for half guineas, double guineas, and five "pound pieces; and in caſe any perſon ſhall offend there"in, he ſhall forfeit for every ſuch offence double the "value of the gold ſo received or paid, and alſo the ſum "of 20*l.* And nothing in this act ſhall be conſtrued "to compel any to receive any guineas at the ſaid rate "of 26*s.*"

By 7 and 8 *W.* 3. *c.* 19. *ſ.* 12. there is the ſame proviſion enacted, excepting that the rate at which the guinea is to paſs when at the higheſt value is fixed by this ſtatute at 22*s.*

Comparing therefore theſe four ſtatutes with each other, it is to be obſerved that the ſtatute of *E.* 6. relates generally to the current coin of whatever metal it may be made.

That the ſtatute of 6 & 7 *W.* 3. *c.* 17. relates only to the ſilver coin, and the ſtatutes of 7 & 8 *W.* 3. *c.* 19. and *c.* 10. to the then exiſting gold coins; and that therefore theſe three latter ſtatutes taken together are co-extenſive with the antient ſtatute of *E.* 6. at leaſt in this reſpect; viz. as the 5 & 6 *E.* 6. had reſpect to all the coins then current, ſo the latter ſtatutes comprehended within their proviſions all the current coinage of *W.* 3.

It may be objected, that as the ſtatute of *E.* 6. ſpeaks of coin current by proclamation; and thoſe of *Wm.* ſpeak only, in the firſt inſtance, of ſilver coin generally; and in the laſt, of gold coin by their ſeveral names; the operation of one is limited and diſtinct from that of the others.

It ſeems, however, that there is no real ground for this diſtinction; ſince, as has before been ſhewn, and as is well laid down by all writers upon this ſubject, and as was diſtinctly decided by Lord *Holt* in the above cited caſe of *Pope* v. *St. Leiger*, with reſpect to the guinea; the iſſuing of the king's proclamation does not in reality add to or take from the legal attributes of coin; but every offence againſt the ſame will be as complete without ſuch form obſerved, as with it.

Lord *Hale* in 1 vol. of *H. P. C.* p. 196, enumerating the ſix circumſtances ſaid in ſir *J. Davis*'s Rep. to be neceſſary to the legitimation of coin, of which the laſt was *proclamation*,

proclamation, ſays, 'the laſt is not always neceſſary to the legitimation of coin, for there is ſcarce any king's reign but that there are various ſtamps or impreſſions of money which were never proclaimed; and therefore, if upon an indictment of clipping or counterfeiting the king's coin, it be queſtioned whether it be the king's coin or no upon the evidence, there is not a neceſſity of proof thereof by a proclamation.'

And in 198, that though in the caſe of money newly coined by the king's authority in *England*, a proclamation is not abſolutely neceſſary to the legitimation thereof, yet it is fit.

That money is, *without proclamation*, the lawful money of *England*, and within the ſtatute of 25 *E.* 3. (*i. e.* the ſtatute of treaſons).

It therefore is the moſt probable argument to ſuppoſe, that the deſcription of the coin with the addition of the words 'current by proclamation,' muſt intend thereby the coin *of the realm* of every deſcription.

This conſtruction ſeems to be equally conſonant with good ſenſe as with legal authority: ſince the object of the ſtatute of *E.* 6. being confeſſedly the preſervation of the relative proportions of coin, it could hardly be intended by the legiſlature to place out of its proviſions whatever coin might be iſſued merely by indenture between the king and the mint, but without the further protection of a proclamation. Many inſtances have occurred of ſuch iſſues; and under the ſuppoſition that this ſtatute was not temporary, we muſt believe that it was at all events nugatory in its operations, and ſo intended to be by the legiſlature, if it were limited according to the conſtruction ſought to be put upon it.

It

It does, however, appear by the book before quoted, p. 29. (Snelling's view of the gold coin of *England*) that in the reign of *C.* 2. *Mar.* 27, 1663, the coin, which almoſt immediately after that period was, and ſince to this time has continued to be known by the name of a guinea, was named in the indentures, and iſſued by proclamation, as a xx*s.* piece; its weight and alloy has continued the ſame; the guinea is therefore identically the ſame with the xx*s.* piece, and muſt therefore be conſidered as having been at the time of the ſtat. of *W.* 3. a coin current by proclamation, however, in vulgar acceptation, it might have acquired a name differing from that under which it was iſſued. It therefore ſeems both moſt reaſonable and moſt concurrent with fact, to underſtand this expreſſion in the ſtatute of *E.* 6. as importing that all coin iſſued by the king, and having the attributes of legal coin of the realm, was the ſubject intended to be protected by its proviſions.

Aſſuming, then, either or both of theſe poſitions, viz. 1ſt, that the ſtatute of *E.* 6. extended to all legal coin proclaimed or not;—2d, that the guinea was at the time of the enactment of the ſtatutes of *W.* 3. a coin current by proclamation; it ſeems a legal conſequence that in this reſpect at leaſt, viz. the purchaſe and ſale of guineas for coin was no longer an offence under the 5 & 6 *E.* 6. but that this laſt ſtatute was virtually repealed by the ſtatute of *W.* 3.

The penalty impoſed by that of *E.* 6. is forfeiture of the coin exchanged, one year's impriſonment, and fine at the king's pleaſure.

The

The penalty impoſed by the ſtatutes of *Wm.* is, where ſilver is the coin exchanged, 10*l.* for every 20*s.* exchanged; where gold coin, then double the gold received or paid; and 20*l.* is the penalty, for giving more than 22*s.* for each guinea.

Here is therefore, in relation to the gold coin, an expreſs proviſion againſt giving more than 22*s.* for a guinea. If it were a coin current by proclamation, or only a coin within the ſpirit of 5 & 6 *E.* 6. this laſt ſtatute ſuperſedes the force of former enactments; ſince, by preſcribing a maximum and value, and a penalty for exceeding it, it frees from penalties all exchanges at a value below that maximum, and it aſſumes a character which altogether nullifies the 5 & 6 *E.* 6. in caſes of exchange above the maximum; and this is true from the inconſiſtency of the penalties ſeverally impoſed by the two ſtatutes.

In the caſe of the *Queen* v. *Pugh* and another, 6 *Mod.* 140. caſe 197, an inquiſition was taken before two juſtices againſt the defendant for a riot upon the ſtat. of 13 *H.* 4. *c.* 7. The Queen v. Pugh & another.

The puniſhment for a forcible entry is by the 5 *R.* 2. *ſt.* 1. *c.* 8. and is adopted by 13 *H.* 4. *c.* 7. It is impriſonment and ranſom at the king's will.

By 8 *H.* 6. *c.* 9. *ſ.* 3. the juſtices who find a forcible entry may reſeiſe; and by *ſ.* 6. the party grieved may have an aſſiſe of novel diſſeiſin or writ of treſpaſs againſt the diſſeiſor; and the plaintiff recovering ſhall have treble damages, and make fine and ranſom to the king. And upon argument it was held, that the juſtices have power to inquire of all riots and routs whatever by this ſtatute; and if a *forcible entry* be made by three, for fewer cannot commit *a riot*, the juſtices may inquire

inquire of it by the ſtat. of 13 *H.* 4. *c.* 7. and fine according to the 8 *H.* 6. *c.* 9. and award reſtitution; for a ſubſequent ſtatute that gives a *greater* puniſhment does not take away the power given by a precedent ſtatute.

Rex v. Cator. Rex v. Davis.

So alſo in *R.* v. *Cator*, 4 *Burr.* 2026. the ſame principle was adopted; and more fully in *R.* v. *John Davis*, *Leach's* Crown Caſes, 306. caſe 131. in which the priſoner was indicted on the black act, 9 *G.* 1. *c.* 22. for unlawfully, wilfully, and feloniouſly hunting a fallow deer, contrary to the proviſions of that act; the puniſhment being death as in caſes of felony.

The learned judge who tried the cauſe ſuſpended the trial of the priſoner till he had ſubmitted to the judges the following queſtion, viz. Whether the 9 *G.* 1. *c.* 22. ſo far as it reſpected the offences in the indictment, unaccompanied by the circumſtance of being *armed and diſguiſed*, were not virtually repealed by the 16 *G.* 3. *c.* 30. which renders ſuch an offence (without that accompanying circumſtance) puniſhable by a forfeiture of twenty pounds; and the ſecond offence felony, and puniſhable by tranſportation for ſeven years?

And the judges were unanimouſly of opinion, that the 16 *G.* *c.* 30. amounted to a repeal of the felony of ſimply killing deer in a park incloſed; as it puniſhes the firſt offence with a pecuniary forfeiture of twenty pounds, and makes the ſecond offence felony.

Dr. Foſter's caſe.

And in Dr. *Foſter's* caſe, 11 Rep. 853, one of the points there decided was, that a ſtatute giving a larger penalty does not repeal a ſtatute in pari materia, which gave

gave a leſs penalty. Theſe caſes therefore, with many others, decide the principle that a prior penalty may well ſtand with a ſubſequent accumulative or increaſed penalty; which is the converſe of the rule laid down by Mr. Juſtice *Blackſtone*. In vol. 1. of his Commentaries, p. 89.

He ſays, "An old ſtatute gives place to a new "one; and this upon a general principle of univerſal "law, that 'leges poſteriores priores abrogant,' con- "ſonant to which it was laid down by a law of the "twelve tables at *Rome*, that 'quod populus poſtremum "juſſit, id ratum eſto.' But this is to be underſtood, "only, when the latter ſtatute is couched in negative "terms, or where its matter is ſo clearly repugnant that "it neceſſarily implies a negative. As, if a former act "ſays, that a juror upon ſuch a trial ſhall have twenty "pounds a year; and a new ſtatute afterwards enacts that he "ſhall have twenty marks; here the latter ſtatute, though "it does not expreſs, yet it neceſſarily implies a negative, "and virtually repeals the former. For if twenty marks "be made a qualification ſufficient, the former ſtatute "which requires twenty pounds is at an end."

This lucid paſſage from that excellent commentator places in a moſt diſtinct point of view the preciſe difference between the two ſtatutes of *E.* 6. & *W.* 3. The former ſays that one guilty of the offence therein deſcribed ſhall, beſides forfeiture, ſuffer fine and impriſonment at the king's will; the latter is merely inflictive of fine and forfeiture, and each of them certain: there can be no doubt which is the minor penalty, and as it is the laſt enacted, it muſt for the reaſon given in the Commentaries be the only legally exiſting penalty. But there is a reaſon

reaſon in this particular caſe founded upon general principles of law, and one which ſeems invincible. It is in favorem libertatis & in miſericordiam, that a ſubſequent ſtatute which impoſes comparatively a very lenient penalty ſhould not ſtand together with one inflicting ſo enormous a penalty, as arbitrary fine and *a year's impriſonment*, whatever might be the degree of offence; which indeed was in the preſent inſtance of ſmall magnitude.

To illuſtrate this, if illuſtration were further neceſſary, let us ſuppoſe, that by ſome ſtatute a particular crime had been made puniſhable by death, and afterwards by a ſubſequent ſtatute, the penalty of a pecuniary forfeiture was impoſed upon the ſame offence; could it be ſuppoſed for a moment that the ſtatutes could continue in force together? and if not, it is impoſſible to ſtate any but a general rule, viz. that the ſubſequent enactment of a minor penalty is a virtual repeal of a greater penalty impoſed by a former ſtatute; unleſs it, indeed, ſhould appear from the particular language of the act that both *could* ſtand together without the impeachment of common ſenſe and juſtice.

Upon the whole, therefore, it ſeems a fit and juſt concluſion, that the ſtatutes of *W.* 3. amount to a virtual repeal of the 5 & 6. *E.* 6.

It now remains to conſider the fifth and laſt propoſition, viz.

"*That the proclamation of* 1717 *was contrary to law,*
"*ſo far as reſpects the* 5 & 6 E. 6. c. 19. *inaſmuch as*
"*it interfered with the proviſions of the* 7 & 8 W. 3.
"c. 1c. & 19."

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The ſtatutes in queſtion have been already recited, as has the proclamation of 1717, (ante, p. 5.); and the terms of the latter are only material in this one reſpect, viz. that whereas it was antecedently to the 7 & 8, *W.* 3. and to the date of the proclamation, lawful for any perſon to give as many as twenty-two ſhillings for one guinea, the proclamation forbade the giving more than twenty-one ſhillings for it, and declared it to be current at that rate.

The hiſtory of this proclamation may be comprized in a few words; the ſilver currency had entirely diſappeared, and the only circulating medium which remained, conſiſted of the gold coin.

The immediate cauſes of its diſappearance were exportation and melting: the remote and radical cauſe was its under valuation as compared to gold; *i. e.* too many ſhillings were allowed to be the legal return for a guinea: thoſe therefore in this country who had, or could obtain gold, changed it into ſilver coins, and exported them; and then in foreign parts, exchanging their ſilver coin for gold, received more gold than was contained in a guinea. The gold conſequently came back to this country, and then the ſame traffic recommenced. A more equal valuation of their proportions was therefore indiſpenſable if the country deſired to retain its ſilver coinage. It was therefore debated in the Houſe of Commons, and an addreſs voted by them to the King, praying a proclamation to the above effect, and this of 1717 did accordingly iſſue.

And it does not appear that in thoſe debates there

was

was any reference made to the ſtatutes, either of *E.* 6, or of *W.* 3.

Aſſuming then the preſent exiſtence of the 5 & 6 *E.* 6. as a ſtatute unrepealed, it is ſaid that, by virtue of that ſtatute, it is a miſdemeanor to violate the injunctions of this proclamation of 1717; which is alſo aſſuming that the proclamation itſelf was legal.

But if, as ſeems to be the fact from the arguments uſed upon the laſt propoſition, the ſtatutes of *E.* 6. and of *W.* 3. were made upon the ſame ſubject matter, then in effect the latter, previouſly at leaſt to the proclamation, exempted a certain claſs of perſons from the operation of the 5 & 6 *E.* 6. viz. thoſe who paid or received leſs than twenty-two ſhillings for a guinea.

If this be not true, then this abſurd concluſion, amongſt others, muſt follow; that if proclamation be made (as in the preſent inſtance) of a current value under twenty-two ſhillings; and a party offend againſt it within the proviſions of the 5 & 6 *E.* 6. a heavy puniſhment muſt be impoſed under that ſtatute; but if more than twenty-two ſhillings be given, then it is an offence within the ſtatute of *W.*; and therefore, although the profit made by the tranſaction be greater, and the offence be in truth more complete in degree, yet the penalty impoſed is leſs.

But, indeed, when a ſtatute enacts that thoſe who give above a certain number of ſhillings for a guinea ſhall ſuffer a certain penalty, the common uſage and conſtruction of language declares, that any ſum within that may lawfully be given. This is under the ſuppoſition contended for by the oppoſite ſide, that there was no proclamation when the ſtat. of *Wm.* was paſſed. If then this

this *maximum* did at the time of its being fixed by law, allow, in effect, that any perſon might give any ſum under 22*s.* for a guinea; it alſo virtually enacted, that no one ſhould be liable to any penalty who ſhould confine his exchanges within that *maximum*: in other words, that they would be out of the proviſions of the ſtat. of *E.* 6. even if it were at that time an operative ſtatute, and guineas could be conſidered as *coin* within the true ſpirit of its *enactment*.

The ſtatute of *W.* therefore did that which it was competent to the king to have done; it aſcertained the relative proportion between the gold and ſilver coin. With this difference indeed, that whereas the king's proclamation fixes an invariable relation, this ſtatute only fixed a *limit*, in the ſhape of a maximum; and the queſtion now reſolves itſelf into its laſt form, viz.

How far did the king's prerogative remain in force as to this particular ſpecies of coin, upon the enactment of the 7 & 8 *W.* 3.?

Notwithſtanding that the limits of the prerogative are now fully known, and as fully obſerved, yet as a near view of the opinions of antient lawyers upon this matter may perhaps impreſs the underſtanding with a conviction of the juſtice of this argument, more forcibly and diſtinctly than a diſtant and general recollection of them can, it is thought fit to produce before the reader ſome few of them in their own language.

Sir *Edward Coke*, in his 12th book of Reports, 74, 75, in his Chapter of PROCLAMATIONS, upon a queſtion before the chancellor, privy council, and judges, how far the king's prerogative might extend, ſays, in the

ſtrongeſt terms, without citing any caſe, but as a matter of undoubted principle, " that the king cannot " change any part of the common law, *nor create any of-* " *fence by his proclamation, which was not an offence before,* " without parliament. That the king cannot create any " offence by prohibition or proclamation, *which was not* " *an offence before,* for that was to change the law, and to " make an offence which was not; *ergo,* that which can- " not be puniſhed without proclamation cannot be pu- " niſhed with it."

" He, by proclamation, cannot make a thing unlawful " which was permitted by the law before."

So in his 3 *Inſt.* 162. " proclamations are of great " force, which are grounded upon the laws of the realm."

And in 1 *Bl. Com.* 270. " proclamations are binding upon the ſubject where they do not either contradict the old laws or tend to eſtabliſh new ones, but only enforce the execution of ſuch laws as are already in being, in ſuch a manner as the king ſhall adjudge neceſſary."

And it is well worth while upon a queſtion of this nature to peruſe the admirable argument of Mr. Juſtice *Hutton,* in *Hampden's* caſe, which is in 1 *Ruſhworth,* 2d part, append. 164.

Now, therefore, to reſume the argument, the guinea is ſaid to have been an unproclaimed coin, and therefore not within the ſtat. of *E.* 6. And the ſtat. of *W.* is ſaid to have fixed a *maximum* to its current value; and, below that maximum, to have left all perſons free and unreſtrained, and ſubject to no penalty. Then the proclamation,

mation comes into operation, and, as is ſaid, may, by fixing the current value below the ſtatutable *maximum,* render perſons giving above the proclamation value, but below the *maximum,* objects of the proviſions of the ſtatute of *E.* 6.; or in other words, liable to its penalties.

If this conſtruction can be maintained, then it will follow that the force of this proclamation is ſuch as to ſubject to penalties perſons otherwiſe exempted from them; and that where a ſtatute has expreſsly permitted to the ſubject a right to go to a certain limit, a proclamation may abridge them of this right; a doctrine which ſeems directly contrary to the above authorities.

It ſeems therefore that they who endeavour to give effect to this proclamation, are endeavouring to render that a highly penal offence which under the fair conſtruction of the ſtat. of *W.* is not any offence; and thereby to give to a proclamation the force of law.

Nor, if this proclamation be accounted void in law as far as the ſtatute of *E.* 6. is concerned, does it involve an abridgment of the king's prerogative, ſince it is ſtill competent to him to alter the name or the actual weight and quantity of metal in the coin; and ſuch new coin would, when proclaimed, be within the ſtatute of *E.* 6., and protected by it's proviſions, ſo long as it ſhould continue in force.

The above arguments have been advanced under the ſuppoſition that the guinea was not a proclaimed coin, nor within the ſpirit of the ſtat. of *E.* 6. We, however, contend that it was, in fact, a coin current by proclamation, and that if it were not, it was fairly within the ſpirit of that ſtatute. In the event of the truth of

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the firſt of theſe two aſſertions, the ſtat. of *W.* ſeems clearly to have abſorbed the king's prerogative, and thereby placed the reſumption of it by the proclamation of 1717 beyond all poſſibility, both at law and in reaſon; ſince, as before ſtated, it would be to impoſe the heavier penalty upon the lighter offence. And if it were only within the ſpirit of the ſtatute, the arguments uſed above, apply with equal force.

The preceding arguments were addreſſed to the court upon two ſeveral days; and upon the ſecond day,

Mr. *Beſt* was heard in anſwer, on the part of the proſecution.

And the following is a correct outline of the topics advanced by him in oppoſition to what had been argued by the defendant's counſel:

Having ſtated that he conceived it the moſt proper courſe to reverſe the order adopted by the defendant's counſel, inaſmuch as if the court ſhould be of opinion that the two latter points were ſatisfactorily eſtabliſhed, it would not be neceſſary for him to proceed further in the argument: He then ſaid, that the ſtatute of *E.* 6. muſt be conſidered as an exiſting ſtatute, from its own evident conſtruction, and that till proclamation made, it was inoperative; and that hence it was eaſily diſcoverable why no proſecution had been inſtituted prior to the time of *W.* 3. viz. on account of the abſence of any proclamation.

That as the ſtat. of *E.* 6. only had relation to coin current by proclamation, the ſtat. of *W.* had relation only to a coin at that time not current by proclamation, viz. the guinea; and that they might therefore well ſtand together,

together, as ſtatutes not contradictory to each other, but impoſing different penalties upon offences different in kind.

That under the ſame conſtruction the ſtat. of *W.* was not to be intended as interfering with the king's prerogative; that it ſtill left to him the power of proclaiming the value of the guinea at any rate below that fixed by the ſtatute.

That it did not aſſign any ſtated value to that coin, but only limited its utmoſt extent, in other words eſtabliſhing a maximum. The prerogative thereby remaining untouched.

Upon the other points he ſaid, that there was antiently an office of the king's money exchanger, whoſe duty it was to adjuſt the exchange of money; and it was for the ſecurity of thoſe offices that theſe ſeveral acts were paſſed.

It is obſervable that the ſtat. of *E.* 6. carries the offence further than was done by the 25 *E.* 3.; and adds a new character to it, viz. that the coin exchanged muſt be ſuch as the king ſhall have firſt made current by proclamation. That there is no expreſſion in this ſtatute confining the exchange to coin; and that if the words value, profit, benefit, and advantage be ſo conſtrued, the effect of the ſtatute is very much narrowed.

And moreover, that the character of the tranſaction was very clearly eſtabliſhed by the conduct and admiſſion of the party. That the defendant himſelf treated the bank notes as of the value of 1*l.* each; and expreſsly

ſtated, that by the exchange he was to gain a premium; and therefore, as far as he was concerned, the bank note was of the alleged value.

In reply by the defendant's counſel it was again urged, that the 5 & 6 *E.* 6. did not ſtand in need of any proclamation to give it an operative force, but that it was ſufficient that an exchange ſhould take place of legal coin for legal coin, whether proclaimed or not; inaſmuch as the object was to preſerve the due relations of ſuch coins as ſhould be iſſued by the king. That moreover, upon the authority of Snelling's book, the guinea had been proclaimed as a 20*s.* piece; and that certainly, there had been at various times proclamations making current many of the antient coins.

That if the act of the king's prerogative had not called into action a penal ſtatute, there might be an argument raiſed upon the queſtion of its excluſion; but as the conſequence of allowing its legality in this inſtance would in truth be the revival of a very penal ſtatute againſt a claſs of perſons who under the ſtat. of *W.* were exempt from its operation, it was more than doubtful whether ſuch a proclamation could or ought to have the force of law.

That it was quite contrary to every rule of conſtruing penal ſtatutes to look to the acts of parties as the ſtandard of their legal guilt; and that no uſage, however inveterate, could clothe any perſon or thing with a character not previouſly recognized by law; and that no contract, however ſpecific, could create and make parties amenable to the law, where the law itſelf was defective; and that, therefore, although the preſent defendant might really have received

received the bank note as of 20*s.* value; ſtill it was for the Court to inquire, whether it was the exchange and the value contemplated by the ſtatute.

That the very language of the proclamation of 1717, was a compariſon of gold and ſilver coin, a complaint of their erroneouſly fixed proportions, and an order aſcertaining how much ſilver coin ſhould be given for certain pieces of gold coin. That it was not in the nature of the preſent tranſaction to violate this order, ſince the only reſult which could follow would be, that gold was daily becoming, and was, in the eſtimation of one party at leaſt, actually of more value than a bank note. In other words, that a bank note and one ſhilling were no longer, to all intents and purpoſes, equivalent to a guinea in gold.

Upon the whole, therefore, it has been maintained, by the preceding arguments, that if the ſtatute of *E.* 6. be a ſubſiſting ſtatute, the tranſaction for which *Wright* ſtood indicted was not within that ſtatute, inaſmuch as the 5 & 6 *E.* 6. relates only to exchanges of coin for coin, where it makes uſe of the word 'Exchange;' and as the word *money* cannot be extended either expreſsly or impliedly to bank notes; and as this reſtricted meaning is not extended further by the general words, 'value, benefit, profit, or advantage:' theſe points have been eſtabliſhed by referring to antient ſtatutes, and the hiſtory of tranſactions leading immediately to the enactment of the ſtatute upon which this indictment is framed.

And further it has been argued, from the general ſilence of legal writers and commentators, and from the total abſence of decided caſes, (notwithſtanding there daily

 occurred

occurred opportunities for enforcing this ſtatute;) and from the language of the act itſelf,—that the ſtatute was only a temporary act, confined in its duration to the reign of *E.* 6.; and this argument has been ſtrengthened by the obſervation, that it was competent to the king to have rendered the guinea current by proclamation, when the penalties of *E.* 6. would have attached as a neceſſary conſequence, if it had been then an operative ſtatute, and thereby all occaſion for the paſſing of the ſtatutes of *W.* would have been rendered unneceſſary.

Upon this propoſition alſo, it has been urged that theſe ſtatutes of *W.* virtually repealed the ſtatute of *E.* 6., inaſmuch as it inflicted a minor penalty upon the ſame offence; and in arguing this, it was firſt aſſumed that the guinea was a current proclaimed coin; and if not, that it was within the ſpirit of the ſtatute of *E.* 6.

The laſt point related to the legal value of the guinea, and the legal validity of the proclamation of 1717, and in arguing this, it was urged that the ſtatute of *W.* did in effect preclude the further exerciſe of the king's prerogative in reſpect to the guinea, ſince it plainly exempted certain perſons from all penalty; and the proclamation of 1717, if valid, rendered thoſe ſame perſons liable to the pains and penalties of the ſtatute of *E.* 6. which is an effect beyond the power of the prerogative; and therefore, even ſuppoſing the ſtatute to be an exiſting ſtatute, ſtill it is not an offence to give under 22 *s.* and above 21 *s.* for the guinea.

Such are the arguments upon this great and important queſtion. They are the reſult of great reſearch and attentive conſideration, and were advanced in the ſpirit of inquiry

inquiry and ſincerity, and from no vain hope or deſire of aſſiſting the defendant by a ſimulated defence. Upon public queſtions of this nature, involving in themſelves conſequences of the greateſt importance, it is neither becoming nor ingenuous to advance ſpeculative doctrines for the ſake of novelty or victory. Theſe have, therefore, been ſtudiouſly avoided, and thoſe only have been urged which ſeemed to the Counſel really maintainable upon the ſecureſt and ſoundeſt reaſoning. They were addreſſed, certainly with great anxiety, to the aſſembled Judges, and were left to their conſideration in full confidence of their firmneſs, their wiſdom, and their impartiality.

Upon the concluſion of the ſecond day's argument, the Judges, after ſome conſideration, were pleaſed to direct that the matter ſhould be further argued by thoſe who had been the ſenior counſel in the caſe of *De Yonge*: Accordingly, at a future day in the following *Trinity* term, it was argued on the part of the proſecution by Sir *Vicary Gibbs*, His Majeſty's Attorney-General, and on the part of *De Yonge*, by Mr. *Marryatt*.

R. v. *De Yonge.*

R. v. De Yonge.

The indictment was drawn as in the caſe of *Wright*, and the only ſubſtantial difference in the evidence was, that *De Yonge ſold his* guineas, and received *above* 22 *s.* (22*s.* 6*d.*) for each; whereas *Wright* had given notes for, *i. e. bought his*, guineas, and had given *leſs* than 22 *s.* for each; but each was equally charged to have *exchanged* gold for bank notes.

This caſe of *Rex* v. *De Yonge* came on to be argued in *Trinity* term, *Saturday June* 15,

By Mr. *Marryatt*, for the defendant,

And by Mr. *Attorney General*, for the proſecution,

Before

Before Lord *Ellenborough*, C. J. of K. B.
Groſe, J.
Le Blanc, J.
Bayley, J.

Sir *James Mansfield*, C. J. of C. B.
Heath, J.
Chambre, J.
[*Lawrence*, J. was abſent on account of illneſs.]

Sir *Archibald Macdonald*, C. Baron.
Graham, Baron.
Thompſon, Baron.
Wood, Baron.

On the part of the defendant in this caſe it was ſtated, That the indictment charged the defendant with having exchanged guineas at more than the proclaimed value, as fixed by the proclamation of *G.* 1. anno 1717; and that the ſtatute of *E.* 6. related only to ſuch coin as had been made current by the king's proclamation, and that if no offence had been committed againſt the ſtat. of *E.* 6. it was clear that none could have been committed againſt the ſtat. of *W.* 3. becauſe every count in the indictment ſtated the nature of the thing received under a videlicet referring to the proclamation of *G.* 3.——

Upon which Mr. *Attorney General* ſaid, that no ſuch thing was intended to be relied upon: and

Sir *James Mansfield*, C. J., ſaid, that much had been ſaid upon the former argument (*Rex* v. *Wright*) upon the ſuppoſition

ſuppoſition that the ſtatute of *W.* 3. virtually repealed, as to the guinea, the ſtatute of *E.* 6. [ſee that part of the argument, *ante*]; but that it was not pretended that it was no offence at all ——

Mr. *Marryatt* then ſaid, That an exchange of coin for Bank of *England* notes, whether it were conſidered as a purchaſe of coin for bank notes, or an exchange of bank notes for coin, was no offence within the ſtatute of *E.* 6. ſince that ſtatute was applicable only to caſes in which coin was exchanged for coin. That a penal ſtatute ought to be conſtrued ſtrictly, and therefore, unleſs the offender were within the letter and ſpirit of the act no offence had been committed. That the ſtatute of *E.* 6. had not in its contemplation Bank of *England* notes, ſince at that time no national bank had been eſtabliſhed; yet, bills of exchange, and ſecurities for money had exiſted long prior to that period; they had exiſted immemorially, and were then well known; yet there was no prohibition of an exchange of coin for them; and it could not be ſuppoſed that a different ſpecies of ſecurity, not in exiſtence at the time of the paſſing of the act of *E.* 6., nor for a long period afterwards, was within its contemplation. That the 25 *E.* 3. was merely a prohibition of the exchange of gold for ſilver, &c. without impoſing any particular penalty for the breach of ſuch prohibition; and that the ſtatute of *E.* 6. finding the miſchief ſtill exiſting, ſuperadded a penalty where none had been before. That the ſtatute of *E.* 6. recited no new evil or miſchief, but merely contemplated the former ſtatute of 25 *E.* 3. That in the enacting clauſe of the ſtatute of *E.* 6. a penal proviſion is alike made againſt the giver as the receiver; they being made liable to the ſame puniſhment and to equal penalties.

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It does not ſuppoſe or puniſh one as committing extortion upon the other. But if it be the true conſtruction of the ſtatute, that the prohibition of the ſtatute attaches upon one receiving any thing beſides coin for coin, then a minor penalty is impoſed upon him who ſo receives than upon him who gives, inaſmuch as the forfeiture is only of money; for it is "of all the coined gold, ſilver, and "money ſo exchanged," and the diſtributive clauſe is, "one moiety of the ſaid gold, ſilver, or coin ſo ex-"changed."

Gold coin had been introduced into circulation recently before the ſtatute of *E.* 3, and there was a diſinclination, on the part of the public, to receive this new coin, either becauſe they preferred the ſilver to the gold; or becauſe they thought the relative proportions at which they were coined not anſwerable to the real comparative values; or becauſe they were uncertain as to their real values; and many taking advantage of theſe meaſures, got the one coin for the other and made a profit by the exchange. The act of *E.* 3. was introduced to prevent profit on either ſide, where one exchanged coin with another for coin, excepting the king's exchangers, who were allowed to traffic; and for that purpoſe the exception which related to them was introduced.

They trafficked in nothing but money, and their profit was ſolely derived from that traffick, and did not ariſe upon the exchange of any other commodity. They dealt out coin to thoſe who brought them coin, and from this their profit was derived. The king's exchangers, in the execution of that duty, were probably precluded from exerciſing other trades; their profit was not for their own individual benefit, but for the king; except ſo far, perhaps,

perhaps, as the place might be granted out by the king.

Then the ſtatute of *E.* 6. recites no new miſchief; the danger provided againſt is not more extended than that of the 25 *E.* 3. In the recital of 25 *E.* 3. it ſtates the evil to be 'the giving,' &c. '*therefore*, *more in value*,' &c. where the words '*therefore*,' and '*more in value*,' emphatically apply to an exchange of coin for coin; of proclaimed current money for proclaimed current money.

It is not a ſtatute introducing a new miſchief, but only enforcing a former ſtatute; it is made for the preſervation of the coin.

It is manifeſt that the only alteration made is, the ſuperadding of a new penalty upon the former prohibition.

The nature of the penalty ſhews this; a part of it is, that the money ſo exchanged ſhall be forfeited. If paper or goods be given in exchange, the parties whom the ſtatute meant to place in equal degree, are, by the conſtruction contended for, no longer ſo.

But there are caſes which fall within the conſtruction contended for, and which ſhew that if it be admitted, it is abſurd in the conſequences.

Suppoſe that a man purchaſes a commodity of a known and aſſized price; or a thing of fixed value: as a debenture, a government bill, a bill of exchange; and the ſeller takes a quantity of coin, larger in amount than the legal diſcount; is not this, under ſuch a conſtruction, as much an offence within the ſtatute as the preſent caſe is. The perſon

perſon purchaſing a 10*l.* note for 9*l.* coin makes profit by his ready money; he receives more in value, benefit, profit, or advantage, than the coin he exchanges is current for by proclamation.

And a Bank of *England* note is not to be diſtinguiſhed from the note of a private individual.

In the caſe put, he would be liable upon the ſtatutes of uſury, but not upon the preſent.

Lord *Ellenborough* C. J. here obſerved, that the caſe put was not a purchaſe nor an exchange, nor was either of thoſe ſpecies of contract contemplated. To raiſe the argument he ſaid, there muſt be on one ſide a ſtipulation for coin, otherwiſe it could not apply.

Mr. *Marryatt*.—There are ſtatutes againſt uſury as old as *H.* 8. before a national bank was eſtabliſhed; and then a bill could be diſcounted only in coin.

Lord *Ellenborough* C. J.—The bargain muſt be on one ſide for money.

Mr. *Marryatt*.—Before the time of *E.* 6. there could have been given nothing but money for money. Neither bank notes nor paper ſecurities exiſted before that time, and none therefore could be in the contemplation of the then legiſlature.

What can prevent Bank of *England* notes from being at a diſcount? The legiſlature itſelf has contemplated the poſſibility of their being lower than the value at which they were

were iſſued. For by the 9 & 10 *W.* 3. *c.* 44. *ſ.* 89. which authorizes the exchequer to take bank bills, it is expreſsly enacted, that they ſhall not be received there if they be at any diſcount.

Lord *Ellenborough* C. J.—This is produced for the purpoſe of ſhewing that they are not of any received and known value, but are liable to be depreciated, and when depreciated, not receivable at his Majeſty's exchequer.

Mr. *Marryatt*.—It certainly ſhews that they were not to be taken as money if they were at any diſcount. Hence, in ſuppoſing that they may paſs at a depreciated value, it is only adopting a fact contemplated by the legiſlature as poſſible.

Before Bank of *England* notes were in exiſtence, every bargain for goods would have been within this ſtatute, if this conſtruction could have prevailed. Suppoſe a bargain for credit at a certain price in money; but if for ready money, then for a leſſer price. There would be in ſuch caſe an offence againſt this ſtatute, under the conſtruction contended for.

So of bread, which is at a fixed price by ſtatute, and by aſſize; if it be bought at a leſs price, would not the buyer and the ſeller be within the ſtatute.

So of bullion.

Mr. *Marryatt* then ſaid that without abandoning any of the points argued on the former day, he ſhould proceed to the ſecond, viz.

II. If

II. If the king's proclamation were illegal, no offence could have been committed.

The ſovereign may fix the value of the coin and vary it, where the legiſlature have not fixed it; but where they have, it is no longer in the power of the ſovereign to alter that value.

Many proclamations have been iſſued fixing the value of the coins, but guineas were the firſt coin interfered with by the legiſlature; being originally circulated at an arbitrary value; and afterwards of various current prices.

Lord *Ellenborough* C. J. aſked if ſome ſubſequent ſtat. had not recognized the proclamation of 1717; and the relative value between guineas and ſilver, as it was fixed by proclamation? to which it was anſwered that there was none which did make that recognition.

(The 7 & 8 *W.* 3. *c.* 10. *ſ.* 22. & *c.* 19. ſtill further reducing the value of gold, were then recited.)

Lord *Ellenborough* C. J.—Does not that merely limit the maximum for the king's prerogative, and leave it with the king to fix the value at any ſum below? It is neceſſary for you to ſhew that the crown cannot fix the value at a lower rate.

Mr. *Marryatt*.—The word in the preamble of the clauſe, "uncertainty," ſhews that the ſtatute meant to fix the price at a certain value; and leaving all others to give any ſum beneath that ſtatutably fixed for the guinea; and not attaching any penalty upon their ſo doing.

Mansfield

Mansfield C. J.—The argument implies that the ſtatute fixes the loweſt value, as well as the higheſt; but that is not ſo; that the king could not raiſe it higher, is the force of that ſtatute.

Mr. *Attorney General*.—I do not think that act touched the prerogative at all, but it provided for a caſe in which there had been no proclamation.

Mr. *Marryatt* obſerved, that the value might have been fixed more eaſily and ſpeedily by proclamation than by ſtatute; and he then added, that if it were not true that the ſtatute fixed the *minimum*, as well as the maximum, the reſt of his argument on this head became irrelevant.

Thompſon, Baron, obſerved, that if the king's proclamation were illegal, a tender of a guinea for twenty-two ſhillings would be a good tender. To this the defendant's counſel aſſented.

It is juſt to obſerve in this place that Lord *Ellenborough* C. J. here addreſſed Mr. *Marryatt*, and intimated his ſtrong opinion that this point was not tenable. Upon which Mr. *Marryatt* argued no further upon it, but added, That beſides all this, it might be generally obſerved, that there was not in any book, or digeſt, or ſtatute, any alluſion to or explanation of this ſtatute, and that there was no trace of any proſecution having been ever inſtituted upon it.

Mr. Attorney General in anſwer to Mr. *Marryatt*.—It is inſiſted that the ſtatute of *W.* 3. has controlled the king's prerogative. But that ſtatute does not touch the

queſtion for what ſum guineas ſhall be current. It only makes it criminal to give more than a certain ſum for a guinea, ſtill leaving to the king a power of fixing the value of a guinea at any ſum within that maximum. But it ſupports my view of the ſtat. of *E.* 6. as the ſtatute of *W.* follows up the proviſions of the former ſtatute in caſes of coin not current by proclamation. The ſtatute of *E.* 6. referring to coin current by proclamation.

It ſhews what the legiſlature underſtood to be the intent of the ſtatute of *E.* 6. and ſo the poſterior ſtatute of *W.* 3. explains the ſtatute of *E.* 6.

In the time of *E.* 6. the miſchief was, the putting off the current coin at a greater than the proclaimed value. In the time of *W.* 3. the guinea was not a coin current by proclamation, and therefore the ſame evil exiſted with reſpect to that coin; yet it was not within the ſtatute of *E.* 6.; and the ſtatute of *W.* 3. was therefore paſſed to teract it.

A proclamation is not neceſſary for the making coin current, for the fact of the making of the indentures between the king and the officers of the mint, and of it being iſſued by the king, makes it lawful coin, as appears by the argument in the caſes in *Salkeld* & 5 *Mod.* but without proclamation it is no crime to bargain for it at a different value than that at which it was iſſued. It would be a good tender if tendered at the value for which it was iſſued; but perſons might give more for it, if they choſe.

The caſe, however, is different when a proclamation has been iſſued.

It

It is ſtated that that which is given and received muſt be coin, for the forfeiture is of coin; and yet that, according to my conſtruction, there will be no forfeiture where the thing given for the coin is not coin. But here is a fallacy; the exchanger did not exchange coin for coin of this kingdom only, but for foreign coin alſo; and the words of the ſtatute are only that the current coin of this kingdom ſhall be forfeited. So, if a man gave ten guineas for ten piſtoles, the guineas would be forfeited the piſtoles not. The word coin certainly means not foreign coin, excepting it be legitimated and ſo made current by proclamation, as *Portugal* pieces.

Lord *Ellenborough* C. J.—I do not apprehend the act is intended to be interpreted on the other ſide as meaning, by the word coin, any other thing than the current coin of the realm.

Mr. *Attorney General*.—The fact is, that there was an exchanger, and none but the king's exchanger could exchange coin; he did it and received a profit; afterwards by the ſtat. of *E.* 3. others were allowed to do ſo, but not at a profit. Then the policy of the ſtatute of *E.* 6. was to prevent any perſon by any means from putting off the current coin of the realm at a greater ſum than it was current for.

This ſtat. of *W.* 3. did not interfere with the king's prerogative.

Lord *Ellenborough* C.J.—Will you ſhew me that part of the ſtat. of *W.* which ſhews that the legiſlature meant to prohibit any thing but metallic exchanges?

The *Attorney General*—" No one ſhall receive, take, or

"pay any guinea at any higher rate than twenty-ſix "ſhillings for each guinea." This applies to all manner of traffic with guineas. On the former ſtatute they faſten upon the word exchange; but in this ſtat. of *W.* there is no ſuch word.

Lord *Ellenborough* C. J.—They will contend they do not violate even this ſtatute; for that they only value the Bank Note at ſomething leſs.

Mansfield C. J.—In the *Buckingham* caſe, no doubt, the parties contemplated the Bank Note to be of the value of twenty ſhillings.

The *Attorney General*.—They would argue that it is the ſame thing whether they ſell the guineas or buy the Bank Notes.

Wood Baron.—The indictment avers the notes to be of the value.

The *Attorney General*.—It was a contract, not for the ſelling of Bank Notes, but for the buying of guineas.

Lord *Ellenborough* C. J.—Certainly the language of the dealing imported that they gave more than the nominal value of the guinea.

Mr. *Attorney General*.—They did not inſiſt that the Bank Note was depreciated; but they bargained for a premium.

Mr. *Marryatt*, *in reply*.—Still we come back to the ſtatute, and the queſtion whether this be an offence within it.

It

It is quite clear that the party did not come to give guineas for guineas, but paper for guineas.

The penalty would attach upon the exchange of foreign for *Engliſh* coin, if the foreign were made current by proclamation; and at various periods, both prior and ſubſequent to theſe ſtatutes, foreign coins of different denominations have been made current by proclamation. In the 27 *E.* 1. by the act *de falſâ monetâ*, a table was eſtabliſhed at *Dover*, at which the king's exchanger exchanged foreign for *Engliſh* coin, and *Engliſh* for foreign, upon a profit. This he was only empowered to do by ſpecial ſtatute. But private individuals, by ſetting up their own common exchanges, interfered with this profit; and to prevent this, theſe ſtatutes were enacted.

As to the forfeiture, if money is given only on one ſide, and ſomething not money on the other, the forfeiture is unequal, and much more penal on the one ſide than on the other.

It is ſaid by Mr. *Attorney General*, that the proclamation was publiſhed becauſe the ſtatute of 5 & 6 *E.* 6. could not attach for want of a proclamation, and was iſſued to enable them to put in force that ſtatute.

But upon adverting to the proclamation, it fully declares its own object; it does not ſtate that the ſtat. of *E.* 6. cannot be enforced for want of proclamation, but that the value of gold coin is too high, &c.

Macdonald C. Baron.—The report of Sir *Iſaac Newton*, upon which that proclamation was founded, exactly confirms your preſent line of reaſoning.

Mr. *Marryatt*,

Mr. *Marryatt*.—All the ſtatutes have this, and only this, object, to preſerve the due proportion between ſilver and gold coins, and to prevent the buying up of one ſpecies of coin with another.

The conſtruction of the word exchange in theſe ſtatutes muſt be the ſame as in other ſtatutes, and muſt prevail. Upon the concluſion of this laſt argument the Judges deferred giving judgment.

But on *Wedneſday*, *July* 3, 1811, in Trinity term, the following judgment was given in the Court of King's Bench by Lord *Ellenborough* C. J. in the caſe of *De Yonge*.

The caſe of the *King* and *De Yonge* was a caſe of a conviction upon an indictment tried before me in *London*, at the ſittings after laſt Trinity term. The judgment was ſtayed by order of this court upon a queſtion of law reſerved by me for the determination of the court upon a motion made by Mr. *Marryat*. There was likewiſe a motion for a new trial; but the order of the court was, that the judgment ſhould be ſtayed; and as it appeared that there was a ſimilar queſtion in a prior caſe of The *King* againſt *Wright*, which had been reſerved by Sir *James Mansfield* in *Buckinghamſhire*, it was thought fit by us that this caſe ſhould be referred to all the Judges upon argument in the Exchequer Chamber; both caſes have been ſince ſolemnly argued at ſeveral times before all the Judges, except three, who were abſent from indiſpoſition: but I am not aware that they differ from the other Judges who were preſent at the argument. The charge in the different counts in this indictment is the exchange of gold coin called guineas to the amount of 52*l.* 10*s.* with a perſon of the name of *Call*, and receiving from ſuch perſon more in benefit, profit, value, and advantage, than the ſum

declared by a proclamation of his late majeſty king *George* the 2d to be current coin. The exchange was ſtated in the indictment to have been of theſe guineas for certain notes of the governor and company of the Bank of *England:* In the reſult all the Judges preſent at the laſt argument were of opinion, that the exchange deſcribed on this record, that is, of guineas for bank notes, taking ſuch guineas at a higher value than they were current for under the king's proclamation, was not an offence againſt the 5 & 6 *Edward* 6. upon which the indictment was founded. The conſequence of this opinion is, that the judgment in the caſe of the *King* and *De Yonge*, depending in this court, ought to be and therefore is arreſted accordingly.

Since this report went to preſs, the other defendant, *Wright*, was called upon his recognizance to receive the judgment of the Court, at *Buckingham Midſummer* Aſſizes, 1811; but through ſome miſapprehenſion he was not preſent, and his recognizance was thereupon reſpited till the enſuing *March* Aſſizes for the ſame county. However, after the judgment given in the caſe of *De Yonge*, the deciſion upon *Wright*'s caſe muſt obviouſly be the ſame, and it is therefore not thought neceſſary to delay this report till it has been formally pronounced.

APPENDIX.

BY the 51 *G.* 3. *c.* 127. which is entitled, "An Act for making more effectual provision for preventing the current gold coin of the realm from being paid or accepted for a greater value than the current value of such coin; for preventing any note or bill of the Governor and Company of the Bank of *England* from being received for any smaller sum than the sum therein specified; and for staying proceedings upon any distress by tender of such Notes;" it is enacted, that no person shall receive or pay for any gold coin lawfully current within the realm, any more in value, benefit, profit, or advantage, than the true lawful value of such coin, whether such value, benefit, profit, or advantage be paid, made, or taken in lawful money, or in any note or notes, bill or bills of the Governor and Company of the Bank of *England*, or in any silver token or tokens issued by the said Governor and Company, or by any or all of the said means wholly or partly, or by any other means, device, shift, or contrivance whatsoever; and every person who shall offend herein shall be deemed and adjudged guilty of a misdemeanor.

s. 2. That no person shall by any means, device, shift, or contrivance whatsoever receive, or pay any note or notes, bill

bill or bills of the Governor and Company of the Bank of *England*, for less than the amount of lawful money expressed therein, and to be thereby made payable, except only lawful discount on such note or bill as shall not be expressed to be payable on demand; and every person who shall offend herein shall be deemed and adjudged guilty of a misdemeanor.

s. 3. In case any person shall proceed by distress or poinding to recover from any tenant or other person liable to such distress or poinding, any rent or sum of money due from such tenant or other person, it shall be lawful for such tenant or other person, in every such case to tender notes of the Governor and Company of the Bank of *England*, expressed to be payable on demand, to the amount of such rent or sum so due, either alone or together with a sufficient sum of lawful money, to the person on whose behalf such distress or poinding is made, or to the officer or person making such distress or poinding on his behalf; and in case such tender shall be accepted, or in case such tender shall be made and refused, the goods taken in such distress or poinding shall be forthwith returned to the party distrained upon, or against whom such poinding shall have been used, unless the party distraining or poinding and refusing to accept such tender shall insist that a greater sum is due than the sum so tendered, and in such case the parties shall proceed as usual in such cases; but if it shall appear that no more was due than the sum so tendered, then the party who tendered such sum shall be entitled to the costs of all subsequent proceedings: Provided always, that the person to whom such rent or sum of money is due shall have and be entitled to all such other remedies for the re-

 covery

covery thereof, exclusive of distress or poinding, as such person had or was entitled to at the time of making such distress or poinding, if such person shall not think proper to accept such tender so made as aforesaid: Provided also, that nothing herein contained shall affect the right of any tenant, or other such person as aforesaid having right to replevy or recover the goods so taken in distress or poinding, in case, without making such tender as aforesaid, he shall so think fit.

s. 4. Provided always, and be it enacted, that every person who shall commit in *Scotland* any offence against this act, which by the provisions thereof is constituted a misdemeanor, shall be liable to be punished by fine and imprisonment, or by one or the other of the said punishments as the judge or judges before whom such offender shall be tried and convicted may direct.

s. 5. Nothing in this act shall extend to *Ireland.*

By *s.* 6. The continuance of this act is limited to 25th *March* 1812.

THE END.

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