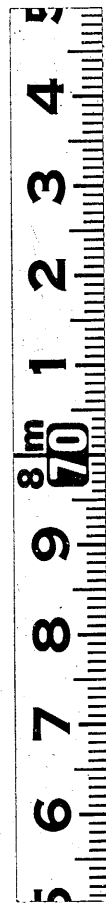


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THE
RIGHTS
Of His Majesty's
FOREST

ASSERTED,

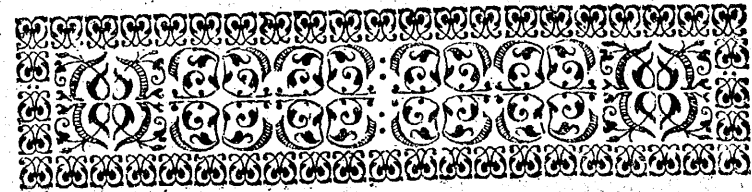
In a Charge given at a *Swanimote*-
Court held in the *Castle-Court* belong-
ing to the Honor and *Castle of Windsor*,
before the *Verderers of the Forest of*
Windsor, the 27th Day of *Septem.* 1717.

By NATHANIEL BOOTHE, *Esq;*
Steward of the Court.

LONDON:

Printed for S. Mabbat in *Grey's-Inn*, 1719.

*The Errors of y^e Prep are vera Natura
w^{ch} should be vera Natura fo. g. should
be admejurations*



THE
PREFACE.

THE Reason of my publishing the ensuing Charge, does proceed from the Railing and Ignorance of those People who condemn the Laws of the Forest, and at the same Time are entirely Strangers to the Reasonableness of them, and the Mitigation of the Rigor of them from Time to Time, and likewise the great Authority on which they are founded, as they now stand in Being: To the clearing of each of these Particulars, and to quiet the Minds of those People, whose Minds are so warped and evilly disposed against Forest in General, and more particularly that of Windsor Forest, is my Intent in this Prefatory Discourse.

Having for some Years been Steward of the Courts within the Forest of Windsor, it has afforded me many Opportunities to look into the Laws of the Forest, and likewise to peruse many Iters

The P R E F A C E,

for that Purpose: And that I may make out what I have premised, I say that when Men were much multiply'd, and that wild Beast were all like to be destroyed, seing all could not eat of such delicate and strengthening Food as old Isaac's savory Dish Venison, nor all have the Use of the noble Exercise of Hunting by the Civil Laws of many Places, a farther destroying of them or the Woods and Thickets in which they had their Covert was forbidden, and they became appropriated unto Kings, as most deserving, and withal, most needing their Disports and Recreations, for Recreations being the Restorative of Nature, after it has been harass'd with Care and Thinking; and the Cares of good Kings, who study to rule well, being the greatest Care of all, who should more need them than such Kings. And thus I say, at last were Laws made for the Preservation of wild Beasts, and those Woods and Thickets and waste Places in which they had Covert, and Officers appointed to see those Laws executed; and if any should demand how such Laws can be just, seing the Fera Natura, by the Law of Nature, which is immutable, belong'd to every one who could take and kill them, I shall advise them to read Grotius, who says, That tho' the Law Civil of any Place cannot either command what the Law of Nature forbids, or forbid what the Law of Nature commands, yet something may be allowed of by the Law of Nature, of which the Law Civil may otherwise determine, and then in that Case, the very Law of Nature it self will dictate the Observance of such a Determination: And in another Place he saith, That the Laws Civil of most Places have appropriated the Fera Natura to their Princes, especially those of the German Race. And that it was so done here in England, is clear from that of
Braeton

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Braeton, where he saith, That by the Common Law of this Realm, the King has in Possession all such Things which by the Law of Nature ought to be common, as wild Beasts and Fawls which are not tame, and which by the Law of Nature may be every ones who can catch them, Lib. 2. Cap. 24.

And thus I think it evident that the Origin of Forest and Forest Laws is to be derived from those Times, when the Civil Laws of Nations and Kingdoms put a Stop to the Destruction of wild Beasts and their Coverts. And as to the Origin of English Forests and their Antiquity, there is no Doubt to be made but they began here as in other Places, namely, when by the Laws of the Kingdom, thick Woods and waste Places, and all the Fera Natura became appropriated to Kings; and all others under severe Penalties, were prohibited the killing of them; and how common and usual this was here in England appears plainly by Sir Henry Spelman.

The Catalogue of the Forests are allow'd by most that have writ concerning them to be no less than sixty nine in Number, which is enough to shew how usual and common it was here in England for Kings to have their Forest. And then as to the Antiquity of them, my Lord Coke saith, that of this sixty nine in Number, all (except the new Forest in Hampshire, erected by William the Conqueror, and Hampton-Court Forest by Henry the VIII. Anno Regni 29. by Authority of Parliament) are so ancient as no Record or History doth make any Mention of their Erection or Beginnings.

A Query may be made relating to the Antiquity of Forest in England, that Forest at first being made of Waste Grounds and Places where there was no Occupancy, and when there was a Necessity
cessity

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cessity of making Laws for the Preservation of wild Beasts, were appropriated to Kings, how it came to pass that Men had formerly and have now a Property in Lands in Forest, and how Kings could have a Right over the Grounds of private Men?

The Answer is, That the Kings of England have been and are Lords Paramount of all the Lands within their Dominions, and have such a Dominion or Property so free and absolute, as that it is without any Load or Burden, and therefore it might so happen, that at the making of a Forest at first some private Persons might be in possession of some Lands holden of the King in Fee, but this, tho' it gave them a perpetual Estate, yet made it not their Property absolute but conditional, and so could not prejudice the direct and absolute Dominion of the King's, and therefore a Jus Foresta, or a Right of making Forest over such Grounds and Lands, might still of Right to him belong. And this, if I mistake not, is that which my Lord Coke does acknowledge; for first having said that now at this Day the Common Law hath so admeasured the King's Prerogative, as to this Particular of making of Forest, that they cannot take away nor prejudice the Inheritance of any; he then adds, But we agree that the Lands of the Subject are originally derived from the Crown, and therefore when the ancient Kings had the most Part in their own Hands, or at least great Desarts, Waste, and Woody Grounds for want of Habitation, they might make what Forests it pleased them therein, may be a Reason and Cause of a lawful Beginning, and therefore a Forest may be by Prescription good in Law over other Mens Grounds.

And

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And as private Persons in ancient Times might have some Lands of Inheritance, over which the King might have Jus Foresta before any Forest was made in that Place. See Winstanly's Life of William the Conqueror.

I William King, the third Year of my Reign.

Give to the Norman Hunter, to me that are both Leefe and Dear,

The Hop and the Hopton, and all the Bounds up and down,
Under the Earth to Hell, above the Earth to Heaven,

From Me and Mine to Thee and Thine,

As good and as fair as ever they mine were.

To Witness that this is Sooth I bite the white Wax with my
Tooth,

Before Jug, Maud and Marjery, and my youngest Son Henry.

For a Bow and a broad Arrow when I come to hunt upon
Tarrow.

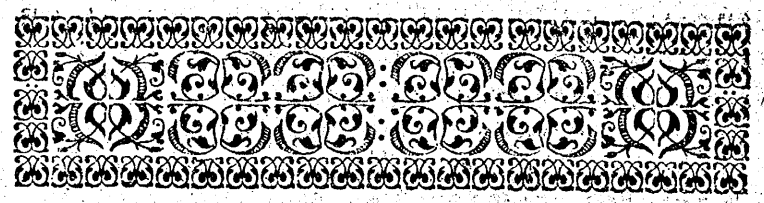
So might others come to have Lands of Inheritance within a Forest after the Aforistation of it, and this might be when the King gave Leave to enclose Lands within his Forest to such as desired to live there, that they might be serviceable to him in his Hunting, which Leave no Doubt he would grant to Favourites, and make them a Title to them and their Heirs, upon the Performance of some small Service. But then the Land did always pass cum Onere suo, and the Jus Foresta was ever reserved to the King. Besides all this, Carta de Foresta and Magna Carta my Lord Coke calls two glorious Lights, and truly so far they were adjudged in Parliament to be taken as the Common Law, 25. Edw. 1. And albeit Judgments in the King's Courts are of high Regard in Law, yet it is provided by the same Act of Parliament,

The PREFACE.

ament, That if any Judgments be given contrary to any of the Points of either of the Charters by the Justices, or by any other of the King's Ministers, it shall be undone and holden for nought, because the Judgment is given against Law.

And in such high Estimation have these two Charters been, that they have been confirmed, established and commanded to be put in Execution by two and thirty several Acts of Parliament.

To conclude, how many Acts of Parliament have been made of late Years to preserve the Game in every particular Man's Mannor, all over the Kingdom, let the Value be never so small, and must not his Majesty a Fortiori enjoy his Game in his Royal Franchise, I mean his Forest, no body will say the Contrary, tho' they deny it in Practice.



Foresta de Windsor. } Cur' Swanimot Domini Georgij Dei Gratia Magn' Britan' Francia & Hibern' Regis Fidei Defensor' &c. tent' die Veneris, viz. vicesimo septimo die Septemb. Ann. Regni sui quarto apud Exter' pari' Honor' & Castri Dni. Regis de Windsor' prad' in & pro Forest' prad' coram viridar' & aliis Ministris ejusdem Foresta tunc ibid. presentibus.

YOU Gentlemen of this Jury that are summon'd to appear here this Day, to inquire after the Pleas of the Forest of Windsor, give me leave to acquaint you with the Laws of the Forest, and likewise, with the particular Heads of your Inquiry; and the rather, because it does appear by the Court Rolls and the manifest Destruction that has been committed against the Vert and Venison, that the keeping of Swanimote's and other

other Courts incident to the Forest, for the better Preservation thereof, have been greatly neglected, so that it must be presumed, that most of you understand not fully what your Duty is, for lack of continual and due Information of the Privileges appertaining to a Forest; and many of you Gentlemen are but very lately authorized into this Service.

Therefore for your being better enabled in your Duty, which presently you are to perform to his Majesty, I will account unto you in as brief a Manner, as the present Occasion will give me Leave, what belongeth to all that are Officers or resident and dwelling in the Forest.

And least thro' Ignorance of the Original and first erecting of Forest you should think the Assizes, Laws and Customs of the Forest now to be put in Execution to be intolerable or full of Oppression I will shew to you what a Forest is, and both the ancient and present Prerogatives thereunto belonging (whose Transgressions you by your continual Abode in the Forest are presumed to know, and in regard of the Oath you have taken, stand bound to prevent.

In ancient Time, all wild Beast whatsoever belong'd to the King in whose Grounds soever they were, and the Penalty upon Offenders, Hunting, or killing them,

them, was at the King's Pleasure; He might fine them as pleas'd him, or take away Life or Member for the same Transgression.

St. *Edward* the Confessor thought this over prejudicial to the Subject, and therefore he declared his Will and Pleasure, That no Man should incur any Punishment for chasing or killing any wild Beast, so that they refrained to hunt or kill them in such special Places as he should privilege for their quiet abode.

Here first began Forest, Places fit for wild Beasts taken into the King's Protection for the Safety of his Game. This Law *William* the *Norman* found in Force, which he confirm'd during his Life, *William Rufus* did the same; *Henry* the First, his Successor, not only continued, but increas'd the Certainty of Forest Laws. All his Laws King *Stephen* ratify'd; so did *Henry* the Second. Now, for as much as all Places, were not fit for Preservation and Maintenance of the King's Game. Wheresoever the King saw fairest Pastures and thickest Woods, whose Lands soever it was, he proclaimed to be privileged for the Rest and Quiet Abode of his Deer. Thus Forest, Woods and Parks grew to be the chiefest Ornament and Beauty of the King's Demesns, and became so delightful, that the King and his

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Nobles having disported themselves, they were able to overcome the serious Affairs of the Common-Wealth.

But after the Barons Wars, *Henry* the Third, Successor to King *John* by his Charter of Liberties of the Forest, granted that no Man, for hunting Causes should lose Life or Member, and willed that all such Forest as *Henry* the Second, *Richard* the First, and King *John* had made, should be disforested for so much as was in Land belonging to others and not to the King's Demean; and here first begun *Purluemes*, for no Land is called *Purlueme* but such as was once afforested, and by the Owner disallowed to continue Forest by Force of this Statute of *Charta de Foresta*, and yet in Respect of all others but the very owner, it remaineth Forest still, and for this Cause it beareth the Name of *Purlay*, which signifieth no more, but for Him, meaning him that is Owner of the Land. This Grant of Dis-forestment made at the special Instance of the Commons, but it turned not to so great a Benefit as they coveted, for by this Dis-forestment they thought the King's Deer had lost all Amity that was wont to belong to them, if they came upon their Ground; and yet they would not restrain their own Cattle from commoning in the Forest. Hereupon, *Edward* the First, Son and Successor

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cessor to *Henry* the Third, ordered that such as dis-forested their Lands should have no Common or other Advantage in the Forest, but they that refus'd to dis-forest their Lands should have Common as before, and therefore divers never dis-forested their Lands but they remain Forest to this Day. Thus you see from Time to Time, the Kings of this Realm have not by their Royal Prerogative for the Maintenance of their Pleasure incroach'd prejudicially upon the Subject, but still releas'd somewhat of that belong'd to them, for the Benefit of their Subjects. Therefore let every Man that hath Lands or Woods within the Precinct of the Forest, say; I am not wrong'd by the Restraint I have to fell and cut my Wood or to do with it as I please, for then my Ancestors would have dis-forested, but they found that the inter-commoning and other Easements countervail'd these and such like Discommodities. And if his Majesty's Predecessors by their gracious Favour hath made the Laws more easie and gentle than before, may surely be allowed to quit himself of those assiduous Cares and Applications by taking his Pleasure in those Places.

Hitherto I have only shewed you what Prerogative his Majesty's Progenitors have releas'd for the Good of his Subjects. It
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behoveth me now that I shew unto you wherein his Majesty retaineth his Prerogative for the Maintenance of his Vert and Venison, under which Words are comprehended the whole Forest, both in Woods and in Lands, and the Game that is preserved in both. Now for as much as Deer are the principal Beauty and Ornament of the Forest I will first begin with them.

In the Forest the Deer ought always to have quiet, and *Virgil* in his first *Eneid*, says (*Itur in antiquam silvam stabula alta ferarum.*)

They ought to have Rest and Abode but chiefly the securest Peace when they fawn, as the common Word of Fence Time doth import, which is as much as to say, the Time wherein the King has defended and forbidden all Men to enter into the Forest, except to walk in the common Roads, and that with great Caution, and restrained not only Strangers from hunting, but Commoners from troublesome Recourse into the Forest with Cattle or Dogs, that the Game may every Year increase.

Such as ride or walk thro' the Forest as the Way lieth must hold up their Dogs, for if they Wind the Deer, and drive at them and breaking loose, whether it be in the Forest or without, they shall be punished for Offenders. Deer

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Deer when they come out of the Forest, though they lose something of their former Freedom, yet are they expected back again, which you Gentlemen of the Jury ought diligently to take Notice of. For most Men reckon the Deer his own that he can find out of the Forest, but this is a great Mistake, for if they be in the *Purlews* of the Forest, they ought well near be as safe as in the Middle of the Forest; for on the Sabbath Day no Man whatsoever may hunt him, and on other Days no Man may hunt *Purlews* before Sun Rising or after Sun Setting. No Man may hunt them in Fence Time, nor at any Time oftner than thrice a Week.

In hunting *Purlews*, no Man may be accompanied with more than his Menial or Household Servants, neither may any Man hunt *Purlews* out of his own Grounds, and if the same, together with his Free Land, amount not to the clear Yearly Value of forty Shillings, he ought not to hunt, and the other Free Land must be in the same Shire where the *Purlewe* Land is. Neither ought any Man letting slip in the *Purlews*, follow his Dog within the Bounds of the Forest, but standing there, must call back his Dog and blow his Horn, and if his Dog has kill'd the Deer, yet he may not have him, unless his Dog seized him in the *Purlewe* and the Beast by his Force drew him into the Forest. Like-

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Likewise no Man within three Miles of the Forest may have Salteries or Gaps in his Park or other Ground to receive Deer, that by chasing or otherwise fly out of the Forest, so that when they are in they cannot get out again.

It is likewise provided, that no Man may hunt the King's Deer within seven Miles of the Forest, within forty Days before or after the King's Hunting, to the End that at the Hunting, the Game may be quiet, and after, such as be driven out by Strength of Hand or Noise of Men, may quietly resort again to their Haunt in the Forest.

This is the Safety and Protection which belong to the King's Beasts of Venary, and of the Transgressions against any of these Points ; you stand charged by your Oaths to make a true Presentment.

For as much as the Deer can neither multiply and prosper without sufficient Pasture and Breeding, nor be defended from Men disposed to make a Prey of them, without thick and strong Coverts.

For this Cause the Verte, which comprehendeth all that is green within the Forest, both the Herbage and the Wood, are diligently to be taken Care of. No Man ought to surcharge the Forest with more Cattle than according to his Grant, or the Quantity of his Land, and upon this
Head

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Head I crave Leave of you, Gentlemen of the Jury, that I may speak my Mind freely to you, and that is, I take it to be one of the greatest Grievances of the Forest, the surcharging of it with Sheep, the Deer not associating with them, drives them into the neighbouring Plains, whereas there ought only to be an Allowance of so many Sheep to an Acre.

The Means to know who is a Surcharger is thus. First to make a true Estimate of the Number of Acres which the Place where the Common is surcharged doth contain. Then to set down how many Parishes, Villages or Hamlets, have Right of Common there, then to number the Messuages and Cottages in those Towns and Parishes, and what Land belongs to each of them : So that by knowing the Certainty of the Number of Beast which are usually fed on the Common so surcharged, a perfect Estimate may be made rateably what Number of Beasts may be kept by every Man who hath a Right of Common there, according to the Quantity of Land he enjoyeth, leaving sufficient Food and Pasture for the wild Beasts. So that he who is found to have more Beasts there than his Rate doth allow him to keep, is a Surcharger. The same Course is observ'd at Common Law, to avoid surcharging a Common by the Writ de ~~Abusibus~~

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Pastura

ad mea
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Pastura, lib. Intr. fo. 13. which Writ is directed to the Sheriff of the County where the Commoners claim their Right of Common, that each of them may be admeasured, so that they may Common with no more Beasts than they ought.

In like Manner, upon Complaint of the Officers of the Forest that the same is so much surcharged that there is not sufficient Pasture left for the Deer, in such a Case a Commission may be directed out of the Chancery to the King's Lieutenant of the Forest, and the Verderers and chief Foresters there, commanding them to enquire by the Oaths of good and lawful Men, what Number of Acres the Place does contain wherein the Surcharge is supposed to be made, and what Number of Beasts are Commoning therein, and whose they are, and what Parishes, Villages and Hamlets ought of Right to have any Common there, and how many Messuages and Cottages there are in each of them, and how many Acres of Land do belong to every House, and then by computing how many Beasts may Common in the same, leaving sufficient Pasture for the Deer, they shall rate and apportion every Man what Number of Beasts, and of what sort, every Man may keep, and he who keeps more is a Surcharger of the Forest.

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You ought to present any Person that does commit any Act tending to the diminishing of the Herbage, by making of Assarts, Closes, Purprestures, or altering the Bounds of the Forest; this Word Assart is to dig or plough up Land. And an Assart by the Assizes of the Forest, is said to be made, when Woods, Heath or other Ground is digged up or plough'd or sown with Corn, or if a Wood be turn'd into Meadow Ground. You that have Inheritances in the Forest, must take Heed of offending in this Point, for the Penalty thereof is no less than the Loss of Land so assarted. You that pay Assart Money know, I suppose, very well, for that is a sure Token, that the Land was some Time forfeited for that Offence.

Closes are when any Freeholder within the Forest doth inclose his Land without License and turneth it only to Pasture, or else into Meadow and Pasture, but if he plough it, it is never called a Close, but an Assart, the Penalty is a Fine and Forfeiture of the Land.

A Purpresture in the King's Forest is any Building or Inclosure, and is become such a notorious Aggrievance, that contrary to the Laws of the Forest the Offenders convey them to one another, and levy Fines as if it were their own Property, all which ought to be presented.

Thus

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Thus having spoken sufficiently concerning the Pasture of the Forest, and the Preservation thereof, I shall next speak of the Coyert, as Woods, Underwoods, Trees or other Profits growing or breeding in the same.

The Woods and Underwoods of the Forest, some belong to the King, some to common Persons. If they be the King's it is not lawful for any Commoner in the Forest to cut Oaks or other great Trees there, and if any Person so do and take them away, the Horse and Cart which carrieth them away is forfeited to the King; therefore your Charge is not only to present the Offenders themselves, and the Number and Value of the Trees, but also the Price of the Cart and Horses by which they were carried away.

And if any Man have a Warrant to sell or take Wood, Underwood or Trees, you must inquire whether he has exceeded the same, by taking or felling more than his Warrant alloweth, or if he take no more than he should, yet if he take them without the Views of the Verderers and Foresters, you are to present them for it.

These are the greatest Offences committed in the King's Woods, the lesser Offences are so obvious, that you must not suffer them to escape unpunished.

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Concerning other Mens Woods within the Limits of the Forest, no Man, tho' he be the true Proprietor thereof, may cut them without License, if he do the King may seize the Woods, and the Offender shall not have them again until he has paid his Fine and found Sureties not to offend again.

There remaineth one thing unspoken of, namely, some Places not generally known privileged for the Disport and Pleasure of the King for Hawking at Mallards, Heron or other wild Fowl at the River, and for fishing there, and tho' the River or Water be the utmost Bound of the Forest, yet ought no Man to Hawk or fish there, for by the Assize of the Forest, all the Boundaries of the Forest belong wholly to the King as Part of the Forest.

I will now shew you what Duty and Service belongeth to the Officers and Inhabitants of the Forest, and so conclude.

Generally all Inhabitants are restrained from keeping any Dogs, Bows, or Engines, to the Prejudice of his Majesty's Game, and if they will keep Mastives and Dogs for the Defence of their Houses, they must law them, that is, they must cut off the three fore Claws hard by the Skin; if they see Offenders they must apprehend them, that they may be sent to the Coal-Hole,

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Hole, a Prison at this Place appointed long ago for this Purpose.

The Regarders are to look generally to the whole Forest, but especially to other Mens Land which is within the Forest and *Purlmes* thereof, all Assarts, Closes, Purprestures and Waste they are to present to this Court.

All that hold any Land within the Forest are to appear at this Court and others upon Summons, and be sworn in the Enquest and Jury. They must pay their Rights and Services and other Customs and Duties as they ought, besides all that which belongeth to them as Inhabitants within the Forest.

You Gentlemen of the Jury, I am to charge you in particular, that you present those Persons that kill Heath-Polts, for if they have a License to shoot, they ought not to begin untill the first Day of *August*, for before that Time they are not strong enough to fly,

Gentlemen of the Jury, it will be taken very kindly, tho' I take it to be your Duty, and that is, that you will give this Court that Satisfaction as to make some general Representation what your Opinions are how the Game may be better preserved and the Occasion, as you conceive, of its great Decay.

I shall

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I shall crave Leave to give you a short Exhortation to inforce your Duty, and so dismiss you to the Exercise of it.

I know no one thing under the Cope of Heaven more ardently to be embrac'd of a Loyal Subject, than is the Conservation of those Things wherewith the Sovereign may be either preserved in Health or with some Recreation be refresh'd amongst the infinite Cares of the Commonwealth.

Diodorus Siculus in his Fourth Book and First Chapter *De Rebus*, doth convey to us surprising Examples to Posterity, of the dutiful Care that Subjects had to their Princes. At *Taurus*, among the rude *Scythians*, the People so affected the Safety of Things wherein the King delighted, that they made the King's Joy their Joy, and sympathised with him in all his Difficulties. To pass over a Number of Heathen Precedents, I will now apply the Premises to the Subject Matter of the Charge you have now taken upon you.

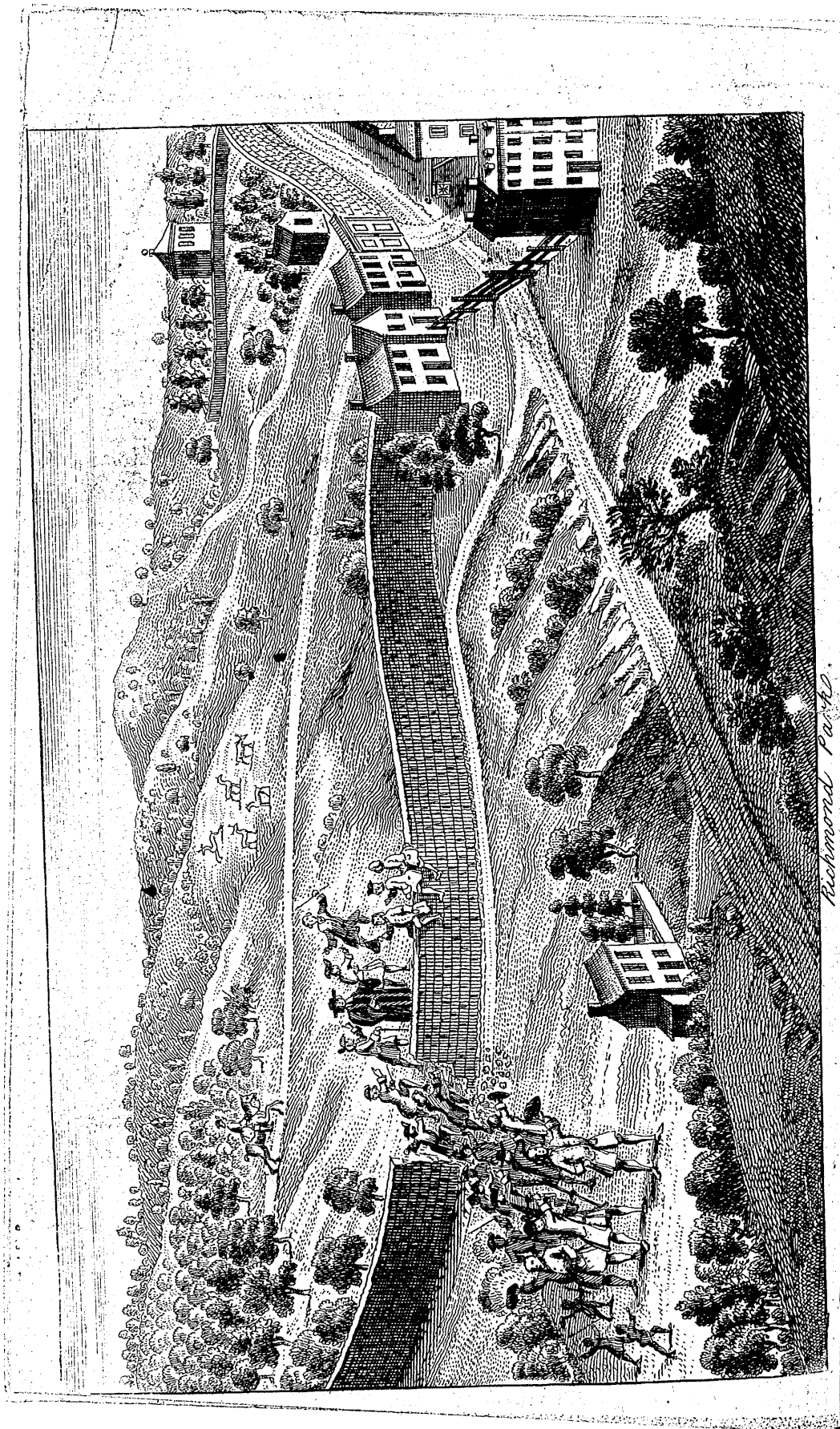
The King's most noble Progenitors Princes of this Realm, as well before the coming of *William* the *Norman*, as since, even from the first to the last, by the common Consent of the whole Kingdom, have enjoyed, used and had (as you all know) certain Regal Franchises of Forest, Chaces

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Chaces and Parks within this Realm, furnished with Vert and Venison, for the only End to refresh their wearied Spirits from the daily Toil in the Affairs of the Publick. Recreations are the Restoratives of Nature and does loosen the Mind from that Intenfeness that does so much tie up their Thoughts, for Crowns have not those Delights shed abroad them, as vulgar Minds imagine.

And that these Princely Delights may add Vigour to that invaluable Life of our King, is what we ought all to contribute, for if ever there was a Life dear and precious to all good Subjects, none ever exceeded or came up to that of King George, whom God Almighty grant, long, long, to reign over us.

F I N I S.



Richmond Park.