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THE
ANTIEN^T RIGHT
OF THE
Commons of England
ASSERTED;
OR, A
DISCOURSE

Proving by
Records and the best Histories, that the Commons
of England were ever an Essential part
of Parliament.

By WILLIAM PETYT of the
Inner-Temple, Esq;.

*Nonnulli tædio investigandæ veritatis cuilibet opinioni potius ignavi
succumbunt, quàm explorandâ veritate pertinaci diligentia perseverare volunt. Min. Fœlix.
Inter pericula veritatis & libertatis silent amicitia.*

LONDON,
Printed for F. Smith, T. Bassett, J. Wright,
R. Chiswell, and S. Heyrick, 1680.

*To the Right Honourable
Arthur Earl of ESSEX,
Viscount MALDON, Ba-
ron Capell of HADHAM,
Lord Lieutenant of the
County of HERTFORD,
one of his Majesties most
Honourable Privy-Coun-
cil, and First Lord Com-
missioner of his Majesties
Treasury.*

MY LORD,

THere have been *An-
thors* of modern times,
who have in their Writings,
concerning the *Government*
of this *Kingdom*, published
* to

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to the World, *That the Commons of England (as now phrased) were no part of the antient Commune Concilium, or Parliament of this Nation, before the forty ninth Year of H. 3. and then introduced by Rebellion.*

A *Position* when seriously weighed, equally wounds the *Peerage of England*, since the same Authors say, that there is no formal Summons of the *Lords to Parliament*, found upon Record before that time.

After I had often considered so great a point, and having often read of the
freedom

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freedom of this Nation, that no *Englishman* could lose his *right* ~~or~~ *property* but by *Law*, the *Life* and *Soul* of this so famous and so excellently constituted *Government*, the best *polity* upon Earth (which when united in all its parts by prudent *Councils*, made always the *people* happy at home in *Peace*, and the *Crown* ever *Victorious* abroad in *War*) I did resolve to take *pains* to search, if matters thus represented to the *biggest* disadvantage and prejudice of the *people of England*, were *true* or *false*; which I have industriously and
* 2 impar-

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impartially endeavoured, and hope with that clearness, that will evidence to all unbiaſſed judgments, the unſoundneſs of thoſe *Opinions*.

When I had ſo done, being unwilling my *labour* ſhould be to my ſelf alone, and not to thoſe who ſearch after *knowledge* in theſe matters, to diſabuſe and prevent others from building upon ſuch *miſtaken* and *dangerous* Foundations, I thought it not unreaſonable to publiſh this *Diſcourſe*, wherein there is no *Record* cited, but (in my opinion) equally aſſerts the right of
the

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the *Peers* of this Kingdom, as well as of the *Commons*, and therefore have taken the boldneſs to ſend it into the *World* under your *Lordſhips* Protection, whom I know to be a great *Lover* of *Truth*, To which *all mankind* ought to pay *Allegiance*. I ſhould have had great *ſatisfaction*, if before it had been put to the *Preſs*, it might have received your *Lordſhips* *judicious* *corrections* and *approbation*, whoſe knowledge and induſtry in *venerable Antiquity*, and all other *uſeful Learning*, is well known unto the *World*.

But

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But this *happines* I could not reasonably expect, your Lordships time being so much taken up in the service of the *Crown*, whereof your *Lordship* is so eminent, and so great a *Pillar*, as your Honourable Employments both *at home and abroad*, do sufficiently demonstrate. I most humbly beg your Lordships *Pardon* for my presumption in this *Dedication*, which fault I hope may be extenuated by the relation I have to your Lordship in my *Profession*, and being deprived of other means, publickly to shew my

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my *humble gratitude* for the many favours your Lordship has been pleased to confer upon,

My Lord,

Your Lordships most humble,

most faithful, and most

obedient Servant,

W. Petyt.

THE

THE PREFACE.

M*Y principal design in this following Discourse, is impartially to vindicate the just honour of our English Parliament from the calumnies and reproches of some late Authors who have asserted,*

1. *That an essential part of that Great Council, viz. the Commons of England, represented by the Knights, Citizens, and Burgeses in Parlia-*

A 3 ment,

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ment, were introduced and began An. 49 H. 3. by Rebellion.

2. That before that time the Commons were never admitted to have any Votes, or share in the making of Laws for the Government of the Kingdom, nor to any Communication in affairs of State.

To discover and refute the unsoundness of the second Position, and that the contrary may appear to be true, I shall before I come to answer the first, consider the second, and endeavour to prove, that during

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ring the Brittain, Saxon, and Norman Governments, the Freemen or Commons of England, as now called and distinguished from the great Lords, were pars essentialis & constituens, an essential and constituent part of the Wittena Gemot, Commune Concilium, Baronagium Angliæ, or Parliament, in those Ages.

1. Under the Brittain Government.

THE Brittons called their Commune Concilium, or Parliament, Kyfr-y-

A 4 then,

Spelm. Concl.
Tom. 1. p. 34.

then, because their *Laws* were therein ordained; and upon *K. Lucius* his Letter to Pope *Eutherius*, to send him the *Roman Laws*, the Pope who could not be ignorant of the constitution and frame of the *British Polity*, writes back to him,

Erat Britannia viginti & octo Civitatibus quondam nobilissimis insignita præter castella innumera quæ & ipsa muris, turribus, portis ac feris erant instructa firmissimis. Bedæ Eccl. Hist. Lib. II. Cap. I.

Habetis penes vos in Regno utramq; paginam, ex illis Dei gratia per Concilium Regni vestri sume legem, & per illam Dei potentia vestrum rege Britannia Regnum. But what their *Laws* and particular Government were, is very uncertain, by reason that *Scripta Patriæ* (as *Gildas* says) *Scriptorumve Monumenta*

menta (si quæ fuerint) aut ignibus hostium exusta aut Civium exulum classe longius deportata non comparent. The *Histories* of our Country (if there were any) are not to be found, being either burnt by the *Enemy*, or carried beyond the *Seas* by the banished Brittons. Yet this is certain, and not to be denied, that in their elder time, the People or *Freemen*, had a great share in their publick Council and Government. For *Dion Cassius*, or *Xiphiline* out of him in the *Life* of *Severus* assures us, *Apud hos i. e. Britannos populus magna ex parte principatum tenet.* 2. Un-

Xiphilin. è Dion Cassio p. 601. impress. Basilæ.

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2. Under the Saxon Government.

IT cannot be doubted but that the Saxons who made themselves Masters of the British Nation, brought with them their Country Laws, and Government; and that the Commons were an essential and constituent part of their Commune Concilium, Tacitus tells us, *De minoribus rebus Principes consultant, de majoribus omnes, ita tamen ut ea quoque quorum penes plebem arbitrium est, apud Principes prætractentur.*

After

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After the Saxon Government became united and fixed under a sole Christian Monarch, they still continued and kept their antient Wittenagemots, or Parliaments, as now phrased, wherein they made Laws and managed the great affairs of the King and Kingdom, according to the Plat-form of their Ancestors. Many Authorities might be given to evidence this, I will instance in three or four.

1. then, We have that famous Parliament summoned by King Ethelbert, An. 605. which my Author calls, *Commune Concilium tam Cleri quam populi.*
2. A-

Spelm. Conci.
Tom. 1. p. 126.

Idem Tom. I.
pag. 219.

2. *About the Year 712. King Ina assembled a great Council or Parliament, where- in he made Ecclesiastical Laws concerning Marriages, &c. and did other things, ad concordiam publicam promovendam per Commune Concilium & assensum omnium Episcoporum, & Principum, Procerum, Comitum & omnium sapientum seniorum & populorum totius Regni.*

Bed. Eccles.
Histor. lib. I.

3. *And we read elsewhere, that the grand League and Union between the Brittons, Saxons, and Picts, was concluded and confirmed, Per Commune Concilium & assensum*

sum omnium Episcoporum, Procerum, Comitum & omnium Sapientum seniorum & populorum & per præceptum Regis Inæ.

4. *Anno Dom. 905. Plegmundus Cantuar. Archiepiscopus unacum Rege magnifico cognominato Edwardo Seniore Concilium magnum Episcoporum, Abbatum, Fidelium, Procerum & Populorum in Provincia Gewisorum (in illa parte Angliæ quæ in plaga australi sita est Fluminis Thamesis) convocant, &c. unde salubriter constitutum est in hac Synodo ut pro duobus Episcopis quorum*

Antiquit. Br-
tanniæ, p. 75.

Parliamentum
Synodus magna nuncupatur.
Somneri Gloss.

rum unus *Wintoniæ*, alter *Sireburniæ* sedem habuit, quinque crearentur *antistites*, ne grex Domini pastorum cura orbatus luporum lanienæ & voracitati subjicerentur; *and there were several other Laws then made.*

Malmesb. lib.
3. p. 56. l. 24.

William of Malmsbury expresseth the Saxon *Witena Gemott thus*; Generalis Senatus & Populi Conventus & Edictum.

Spelm. Gloss.
Tit. Gemotum,
fol. 261.

Sir Henry Spelman: Convenere Regni Principes tam Episcopi quam Magistratus liberiq; homines, consulitur de communi salute, de pace & bello & de utilitate publica promovenda. Cam-

Camden thus: Quod Saxones olim *Witena Gemot*, nos *Parliamentum*, & *Pan-anglicum* recte dici possit, *summamq;* & *sacrosanctam* auctoritatem habet in Legibus ferendis, confirmandis, antiquandis, interpretandis & in omnibus quæ ad Reipublicæ salutem spectant. *And so we find Edward the Confessor reforming and confirming the antient Saxon Laws, and making new ones, and that done à Rege, Baronibus & Populo, as particularly in the Law de Apibus, how Tythes ought to be paid of them, and other things.*

Camd. Britan.
in 8°. impress.
1586. fol. 63.

Lambard de
priscis Anglor.
Legibus Cap.
8. fol. 139.

Hence

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Hence it is apparent and past all contradiction, that the Commons in those Ages were an essential part of the Legislative power, in making and ordaining Laws, by which themselves and their posterity were to be governed, and that the Law was then the golden metwand and rule which measured out and allowed the Prerogative of the Prince and Liberty of the Subject, (and when obstructed or denied to either, made the Kingdom deformed and leprous.) That great Monarch Æthelstan, in his Prologue to his Laws, made per Commune Concilium Regni,

Bracton f. 134.
Coke 12. Rep.
fol. 65. Plou-
den. Commen.
fol. 236, 237.

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Regni, thus declared and admitted; Ea mihi vos tantummodo comparatis velim quæ juste ac legitime parare possitis. Neq; enim mihi ad vitæ usum quicquam injuste acquiri cupiverim, Etenim cum ea ego vobis lege vestra omnia benigne largitus sim, ut mea mihi vos itidem concedatis.

Spelmani Con-
cilia pag. 390,
397.
Chron. Johan-
nis Brompton,
Col. 841.

I have past over the Danish Government, because I do not find that there was any great mutation, either of the Council or Laws of the English Nation. It is true, King Knute obtained the Diadem or Dominion of England; but
a 'tis

Inter Communia de Term. Sanctæ Trinitatis an. 7 E. 2. penes Rememoratorem Domini Thefaur. in Scaccario remanen. Charta Regis Cnut.

'tis as true he did not govern more Victoris, as may evidently be proved, 1. From the form of penning his Laws, they being ordained and confirmed, Cum consilio & Decreto Archiepiscoporum, Episcoporum, Abbatum, Comitum, aliorumq; omnium fidelium, words of a large comprehension. 2. From his general Law, or Declaration of Right to the English thus delivered to us by a faithful Historian, William of Malmesbury, who lived near those times. Obtestor & præcipio meis Consiliariis quibus Regni Consilia credi-

will. Malmsh. de Gestis Reg. Anglor. l. 2. pag. 41. b. l. 16.

di,

di, ne ullo modo aut propter meum timorem aut alicujus potentis personæ favorem, aliquam injustitiam, a modò consentiant vel faciant pullulare in omni Regno meo. Præcipio etiam omnibus Vicecomitibus & Præpositis universis Regni mei sicut meam volunt habere amicitiam aut suam salutem, ut nulli homini nec diviti vel pauperi vim injustam inferant, sed omnibus tam Nobilibus quam ignobilibus sit fas justa lege potiundi, à qua nec propter favorem Regum nec propter alicujus potentis personam, nec propter

ter mihi congerendam pecuniam ullo modo deviant; quia nulla mihi necessitas est, ut iniqua exactione pecunia mihi congeratur. After which the Historian says: Omnes enim leges ab antiquis Regibus & maxime ab Antecessore suo Ethelredo latas sub interminatione Regiæ multæ perpetuis temporibus observari præcepit, in quarum custodia etiam nunc tempore bonorum sub nomine Regis Edwardi juratur, non quod ille statuerit sed quod observaverit.

Pag. 42. l. 21.

3. Un-

3. Under the Normans.

King William the First.

THough William the Conqueror got the Imperial Crown of England, and introduced several Arbitrary Laws, as new tenures, &c. yet did he never make such an absolute Conquest, nor did the Kingdom receive so universal a change, as our English modern Authors (as it were by a general Confederacy, without examination of truth) have published to the World, who father upon this revolution all the alterations which
 a 3 their

Lib. I.

their conceits or fancies can imagine and suppose. Thucydides saith, Men receive the report of things, though of their own Country, if done before their time, all alike, from one as from another, without any examination; In like manner have those our Historians been mistaken, by transcribing and patching out their Histories one from another, so that in conclusion, with their own additions or comments, truth in many things is utterly lost.

1. The word Conquestor or Conqueror, did not in that Age import or signifie what

own

our late Authors by flattery have since made it; nor did it carry with it the enslaving of the Nation, after that William had obtained the Victory against Harold, there being no more in the Denomination of Conqueror, than that after William had made claim to the Crown from King Edward the Confessor, and Harold opposed him, he was forced to get his right by Battel against King Harold; and as to the word Conquestus or Conquest, Mat. Paris writes, Rex Angliæ ex Conquestu dicitur tamen, quod beatus Edwardus, eo quod hærede

Mat. Paris, pag. 941.

a 4 caruit,

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Spelm. Gloss.
 Tit. Conque-
 stus.
 Robertus filius
 Nigelli petit
 versus Ricar-
 dum Battail
 Capitale Mes-
 suagium, &c.
 Ricardus venit
 & dicit quod
 pater, &c. fuit
 persona Eccle-
 siæ de conquestu
 suo, &c. &
 dedit, &c. Pla-
 cita de terris
 Mich. 2 Jo-
 hannis penes
 Camerar. Scac-
 carii remanen.

caruit, Regnum legavit *Wil-
 lielmo Bastardo Duci Nor-
 mannorum.* Sir Henry Spel-
 man in his Glossary sayes,
Willielmus primus Conquestor
dicitur quia Angliam con-
quisivit, i. e. acquisivit, pur-
chased, non quod subegit. And
 Sir John Skene Clerk of the
 Register Council, and Rolls
 to King James in Scotland,
 in his Book, De verborum
 significatione, pag. 39. writes
 Conquestus signifies Lands
 quhilk ony person acquiris,
 and possessis privato jure, vel
 singulari titulo vel donatione
 vel singulari aliquo contractu.
 And therefore the learned
 Knight,

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Knight, Sir Roger Twil-
den, who well understood the
force of the word Conquestus,
in his Preface before that
Kings Laws, sayes, Non ex-
istimo Willielmum primum
de omnium Anglorum terris
ad voluntatem suam & pro-
hibitu in modum absolutæ do-
minationis disposuisse.

Apud Lamber-
 dum.

All which is most plain and
justified infallibly by Doomes-
day Book, made in that
Kings Reign, and in other
subsequent Records, where
the title and claim of many
common persons to their own
and Ancestors possessions, both
in his time and in the time of
 the

Seldens Review
 of his History
 of Tythes.
 Sir John Da-
 vies Reports,
 in his Case of
 Tannistrie, f 41.

the Saxon Kings, are clearly allowed; but if King William had made an absolute and universal Conquest of the Realm in the modern sense, how could such Titles have held, or who would or durst have made such claim, even against the King himself? would he not have seized all into his own hands, and granted the Conquered Lands to others? and his grant could not have been avoided by any Englishman who had the inheritance and possession, and lived in peace before and at his coming in, and no title could be derived but from or
under

*under him, at least none could have been maintained against his Grant. But that the contrary was true, will evidently appear if we consider, 1. That it is recorded in Doomesday Book, that King William had certain Lands in Demesne, viz. the Lands which were in the hands of King Edward, and entitled Terræ Edwardi Regis, and other Lands, which were forfeited to him by those who took part with Harold, entitled Terræ Regis. 2. William the first having given away Sharnborn Camd. Britan. in Norfolk, to Warren a great Favourite, one of his
 Nor-*

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Normans; Edwinus de Sharnborn, being an Englishman, and true owner of the estate, demands his right in open Court, before the King, upon this reason of Law, that he never was against the King, either before or after he came in; whereupon the King, vinculo iuramenti astrictus, gave judgment of right against the Norman, and Sharnborn recovered the Lordship. Sir

Spelman's Glossary verbo Drenches, pag. 184.

Henry Spelman out of an antient Manuscript concerning the Family of the Sharnborns in Norfolk, hath it thus. Edwinus de Sharnborn

&

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& quidam alii qui ejeti fuerunt è terris suis, abierunt ad Conquestorem & dixerunt ei quod nunquam ante Conquestum, nec in Conquestu nec post fuerunt contra ipsum Regem in consilio & auxilio, sed tenuerunt se in pace. Et hoc parati sunt probare quomodo ipse Rex vellet ordinare. Per quod idem Rex fecit inquire per totam Angliam si ita fuit, quod quidem probatum fuit: propter quod idem Rex præcepit ut omnes qui sic se tenuerunt in pace in forma prædicta, quod ipsi rehaberent omnes terras & dominationes suas adeo integre

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tegre & in pace ut unquam habuerunt vel tenuerunt ante Conquestum suum. This is cited almost as the only case or act of favour the Conqueror did; but that is a great mistake, for many other instances I could give of this nature, all acts of Justice and right, as appears in Doomesday Book; much more may be said upon this subject. I will only add the Judicious assertion of a great Lawyer and Judge in Edward the Thirds time, admitted and agreed as a rule of Law and truth, by the Judges, and transmitted to posterity.

Le

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Le Conqueror (saith he) ne vient pas pur ouster eux, qui avoient droiturell possession, mes de ouster eux que de leur tort avoient occupie aucun terre en desheritance del Roy & son Corone. It was spoken upon an objection made in a Quo Warranto against the Abbot of Peterborough, concerning a Charter granted by King Edgar to that Abbey, which the Kings Council would have avoided upon this pretence for want of a better, because by the Conquest all Franchises were devolved and come to the Crown.

2. King William claimed
the

Shard. in Cas. in Itin. Temp. E. 3. fol. 143. b. Johannes Shardeborwe unus Justic. de Banco. Rot. Pat. 16 E. 3. pars 1. m. 2.

In ore gladii
 (saiþ he) Reg-
 num adeptus
 sum, Anglorum
 devicto Haral-
 da Rege cum
 suis complici-
 bus qui mihi
 regnum cum
 providentia
 Dei destina-
 tum & benefi-
 cio concessio-
 nis Domini &
 cognati mei
 gloriosi Regis
 Edwardi con-
 cessum conati
 sunt auferre,
 &c. Chart.
 westm. in in-
 spex. Part. 7. 1
 E.4.membr.26
 MS. penes me-
 ipsum.

*the English Diadem, Jure hæ-
 reditario, from Edward the
 Confessor, which both his
 own Laws, Charters, and the
 Charters of his two Sons
 William and Henry, do
 fully prove: There are some
 indeed that mention that he
 obtained the Crown, ore gla-
 dii, but that must be under-
 stood quod jure belli contra
 Haroldum ipse acquisivit, as
 a Manuscript Historian sayes.*

3. He did not make an
 actual Conquest by his Arms
 (when he came in) of the fifth
 part of the Nation, for the
 Pope having sent him a con-
 secrated Banner, and a Bull
 of

*of Excommunication against
 the Bishops and Clergy, if
 they opposed him in adbering
 to King Harold, and he ha-
 ving got the Victory at Hast-
 ings, and the Clergy with
 several of the Nobility (whom
 he had purchased to his part,
 both by money and great as-
 surances of preferment and
 other advantages) basely and
 treacherously deserting Edgar
 Etheling, a soft and weak
 Prince, yet right Heir to the
 Crown; at length upon Wil-
 liams declaring that he would
 confirm the Laws of Saint
 Edward, he was electus à
 Clero & Populo, and with
 all*

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all the Ceremonies and Solemnities then in use, was Crowned at Westminster, the whole Nation submitting to him. But hear what the Historians of those times say.

Brevis Relatio de Will. Rege à Sylva Taylor edit. ad finem Tractat. de Gavelkind.

Londoniam convenientibus Francis & Anglis (ad Nativitatem Domini) illisq; omnibus concedentibus Coronam totius Angliæ & Dominationem suscepit. Die ordinationi decreto locutus ad Anglos condecienti sermone Eborac. Archiepiscopus sapiens, bonus, eloquens, an consentirent eum sibi Dominum coronari inquisivit, Protestati sunt hilarem consensum

willielmus Pictaviensis pag. 204. willielmus Pictaviensis quæ oculis suis vidit refert, saith Ordericus Vital. who lived under King Stephen. pag. 504.

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sum universi minime hæsitantes, ac si cœlitus unâ mente datâ unâq; voce Anglorum voluntati quam facillime Normanni consonuerunt fermocinato apud eos ac sententiam percunctato à Constantini Præsule, sic electum consecravit Archiepiscopus, imposuit ei Diadema ipsumq; regio solio, &c.

Ante Altare S. Petri Apostoli coram Clero & Populo jurejurando promittens se velle Sanctas Dei Ecclesias & Rectores illarum defendere necnon & cunctum Populum sibi subjectum *juste & regali providentia regere, re-*

Hoveden pars prior pag. 258. l. 13.

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Etiam legem statuere & tenere, rapinas injustaq; judicia penitus interdicere. Exacto prius coram omni populo jurejurando quod se modeste erga subditos ageret & æquo jure Anglos & Francos tractaret.

Malmesb. de Gest. Pontif. pag. 154. b.

Pursuant to all which, and to fix himself more sure in that his new-got Chair of Sovereignty, he by his Magna Charta, or Great Charter, grants and confirms the Laws of Edward the Confessor.

Spelm. Concil. Tom. 2. pag. 341, 342. Guilielmus Pictaviensis saith, Pag. 208. nulli Gallo datum quod Anglo cuiquam injuste fuerit ablatum.

Willielmus etiam Rex cui Sanctus Edwardus Regnum contulit, leges ipsius Sancti servandas esse concessit, saith

Sir

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Sir Henry Spelman. But now we will set down a branch of the Charter, which runs thus.

Seldeni ad Eadmerum Spicelieg. pag. 190.

Volumus etiam ac firmiter præcipimus & concedimus ut omnes liberi homines totius Monarchiæ Regni nostri prædicti habeant & teneant terras suas & possessiones suas bene & in pace, libere ab omni exactione injusta & ab omni Tallagio. Ita quod nihil ab eis exigatur vel capiatur nisi servitium suum liberum quod de jure nobis facere debent & facere tenentur & prout statutum est eis & illis à nobis datum & concessum jure hæreditario imperpetuum.

Nota.

Then not by Conquest.

b 3

perpe-

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perpetuum per Commune Concilium totius Regni nostri prædicti.

From all which it must necessarily be granted, 1. That this Statute or Law, was made per Commune Concilium totius Regni. 2. The Magna Charta of W. 1. H. 1. King Stephen, H. 2. and King John (the last of which sayes, Nullum scutagium vel Auxilium ponam in Regno nostro nisi per Commune Consilium Regni nostri, the same in substance with the Great Charter of William I.) was but a restitution and declaration of the antient Common

Mat. Paris pag. 255, 257.

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mon Law and right of the Kingdom, and no Law introduced de novo, or forced upon King John at Runningmead, to the disinberison of the Crown, and which by their severall sacred Coronation Oaths they had so solemnly sworn inviolably to observe and keep.

'Tis true indeed King William the First gave away the Estates of several of those who were in Arms against him, to his Adventurers and followers, but the rest of the English (as well by his Coronation Oath, as by a solemn ratification of St. Edwards

b 4 Laws

Magna charta quæ ex parte maxima leges antiquas & regni consuetudines continebat, faith Mat. Paris who was Historiographer Royal to H. 3. lived in the time of King John, and therefore could not be ignorant, that Magna Charta was but the antient Laws reduced under particular heads.

Seldens Titles of Honor, pag. 580.

Idem pag. 523.

Mat. Paris in vita Sancti Albani Abbatum, pag. 48.

Laws in a Parliament in his fourth year) were to enjoy their Estates and the benefit of those Laws; but that being not done in the general, and the English (who declared à majoribus didicisse aut libertatem aut mortem) being oppressed by the King and Normans, begun to be very uneasy under his Government, so that things were brought to that pass, that he vehemently feared, ne totum Regnum turpiter amitteret etiam trucidatus; to obviate which mischiefs in the seventh year of his Reign, (for so I take it,) by the policy of Lanfrank Arch-

Archbishop of Canterbury, serena facie vocavit eos, i. e. the English, ad pacem sed subdolan, who meeting at Berkhamsted, post multos disceptationes, both parties came to a second compact, and the King to give them satisfaction, reiterated his Coronation Oath, and swore upon the Holy Evangelists and Reliques of St. Alban, bonas & approbatas antiquas Regni leges quas sancti & pii Angliæ Reges ejus Antecessores & maxime Rex Edwardus statuit, inviolabiliter observare, & sic pacificati ad propria læti recesserunt. Rex autem

Mat. Paris in vita Frethericæ Abbatis, fol. 48. l. 39.

autem caute propositum su-
 um pallians, *perswaded many
 of the principal of the Nobility
 and Gentry to attend him into
 Normandy, where Civita-
 tem quæ Cynomannis, &
 Provinciam ad illam perti-
 nentem maximo Anglorum
 auxilio quos de Anglia se-
 cum adduxerat, sibi subjuga-
 vit, the rest that remained
 here, he suddenly set upon
 apart, which he durst not
 attempt when united, multos
 eorum trucidando, exhæ-
 redando & quamplures
 proscribendo, leges violans
 memoratas, & spoliatis An-
 glis pro libitu ac sine iudicio*
 Curiali

*Hoveden pars
 prior pag. 260.*

*Mat. Paris in
 vita S. Albani
 Abbatum, pag.
 48.*

Curiali depauperatis suos
 Normannos in suorum homi-
 num Anglorum * natalium * Naturalium.
 qui ipsum sponte sublimave-
 runt, provocationem, locuple-
 tavit. So that after this time,
 tis plain, he bore a heavy
 band upon the English, and
 increased his severity to acts
 of high injustice and barba-
 rous cruelty, and so gave occa-
 sion to Historians in future
 Ages, to say, that when he
 came in, he totally subdued
 and crushed the Nation, Nobi-
 lity, and Gentry. Yet notwith-
 standing the great power he
 took, we meet with some ge-
 neral Councils or Parliaments
 in

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in his Reign, whereby it appears, that the Freemen or Commons of England, were there, and had a share in making of Laws; for what could the promised restitution of the Laws of Edward the Confessor signifie, if their Witenagemot, or Parliament, the Augustissimum Anglicarum libertatum Asylum & sacra Anchora, was destroyed and broken?

For one of the fundamental and principal ends of Parliaments, was for the redress of Grievances, and easing the Oppressions of the People. The Mirror of Justices, an antient
and

Mirror of Justices, Chap. 1. pag. 9.

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and learned Treatise of the Law, saith, that Parliaments were instituted, pur oyer & terminer les plaintes de tort de le Roy, de la Roigne & de leur Infans, & de eux specialment de queux Torts lun ne poet aver autrement common droit, To bear and determine the Complaints of the wrongful Acts of the King, the Queen, and their Children, and especially of those persons against whom the subject otherwise could not have common justice.

And Knighton (one of our best Historians) writes, Quod ex antiquo Statuto & Consue-

De Eventibus Angliæ Lib. 5. fol. 2681. Col. 1, 2.

Consuetudine laudabili & approbata, &c. *That by an antient Statute and Custom, laudable and approved, which no man could deny; the King was once in the year to convene his Lords and Commons to his Court of Parliament, as to the highest Court of the whole Realm. In qua omnis Aequitas relucere deberet absq; qualibet scrupulositate vel nota, tanquam sol in ascensu meridiei, ubi pauperes & divites pro Refrigerio tranquillitatis & pacis & Repulsione injuriarum refugium infallibile quærere possent, ac etiam errata Regni reformare*

& de statu & gubernatione Regis & Regni cum sapientiori Concilio tractare; ut Inimici Regis & Regni intrinseci & Hostes extrinseci destruantur & repellantur, qualiter quoq; onera incumbentia Regi & Regno levius ad Ediam Communitatis supportari poterunt. *In which Court all Equity ought to shine forth without the least Cloud or Shadow, like the Sun in its meridian glory; where poor and rich refreshed with peace and ease of their oppressions, may always find infallible and sure refuge and succour, the grievances*

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vances of the Kingdom redrest, and the state of the King and Government of the Realm debated with wiser Councils, the Domestick and Foreign Enemies of the King and Kingdom destroy'd and repell'd, and to consider how the Charges and Burthens of both may be sustained with more ease to the people. But to return.

An. D. 1070. which was in the third and fourth year of William the I. at a General Council, or Parliament, Lanfranc was chosen Archbishop of Canterbury, Eligentibus eum senioribus ejusdem Ecclesie

Gervas. Dorob. Act. Pont. Cantuar. p. 1653. l. 5.

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clesie cum Episcopis ac Principibus Clero & Populo Anglie in Curia Regis in Assumptione Sancte Marie. Another Authbor relates it thus. Rex mittens propter illum in Normanniam fecit eum venire in Angliam, cui consensu & consilio omnium Baronum suorum omniumq; Episcoporum & Abbatum totiusq; Populi Anglie commisit ei Dorobernensem Ecclesiam.

Relat. willielmi primi ad finem tractat. de Gavelkind à Syla Taylor, pag. 194.

Anno 1072: The King summoned a General Council, or Parliament, at Pinneden in Kent, to examine and determine the great cause between

Seldens Tit. of Honor, pag. 580.

tween Lanfranc Archbishop of Canterbury, and Odo Bishop of Bayeux, Earl of Kent, because the first, libertatem Ecclesie Cantuariensis invaserat, yet Judgment went for the Archbishop, which Mr. Selden sayes, was confirmed totius Regni assensu, or as Eadmerus, stipulatione totius Regni.

Ex Cartulario Coenobii Westmonasteriensis in Bibliotheca Cotton. sub Effigie Faustine, A. 3.

In the fourteenth Year of this King, at a General Council, or Parliament, held at Westminster, the King by his Charter confirmed the Liberties of that Church after he had subscribed his own name, with the sign of the Cross,

Cross, adding many of the great Clergy and Temporal Nobility, instead of, Cum multis aliis, hath these words, multis præterea illustrissimis virorum personis & Regum Principibus diversz Ordinis omissis qui similiter huic confirmationi piissimo affectu testes & fautores fuerunt. Hii autem illo tempore à Regia potestate diversis Provinciis & Urbibus ad universalem Synodum pro causis cujuslibet Christianæ Ecclesie audiendis & tractandis ad præscriptum celeberrimum Synodum quod Westmonasterium dicitur, convocati, &c. In

Provincia, i. e. Comitatus, Selden Tit. of Honor, pag. 273. Spelm. Gloss. Tit. Provincia, pag. 471. Parliamentum Synodus magna nuncupatur, Somneri Gloss.

the margine of the Book I find writ this note, Nota hic hos omnes convocari à Rege sua auctoritate ad causas Religionis tractandas tam Nobiles de Clero quam Principes Regni cum aliis inferioris gradus, Conventio quorum videtur esse Parliamentum.

21 E. 3. fol. 60.

And in the Year-Book of E. 3. above 330. years since, in a Case touching the exemption of the Abbey of Bury from the Bishops of Norwich, we have mention of a Parliament held, en temps de W. Conqueror à son Parlement.

King

King *William* the Second.

King *William the First* Eadmerus in vita W. 2. fol. 13. l. 5. An. Dom: 1187. *being dead, William his second Son, then living, succeeded him in the Kingdom; who designing to prevent his elder Brother Robert of the Crown, finding Lanfranc Archbishop of Canterbury not altogether consenting with him therein, to the compleating his desire, and fearing lest the delay of his Consecration might prejudice his desired honor, he begun by giving large gifts and rewards to the people, and as well by himself as*

all others whom he could engage, fide sacramentoq; Lanfranco promittere, by his Faith and Oath to promise unto Lanfranc, Si Rex foret, Justitiam, æquitatem & misericordiam se per totum Regnum in omni negotio servaturum, he would in all actions observe and keep Justice, Equity, and Mercy, through the whole Kingdom; that he would defend the Peace, Liberty, and safety of the Church, against all men, and also, that he would in and through all things obey the Precepts and Counsels of the Arch-Prelate; thereupon, in Regem

Brompton.

gem eligitur & consecratur.

But not long after Odo Hoveden pars prior pag. 264.
Bishop of Baiox, Earl of Kent, Geffrey Biskop of Constance, Robert Earl of Morton, Roger Earl of Shrewsbury, and the greatest part of all the Norman Prelates and Nobility in England, entred into a Conspiracy to make Robert King, and to deliver King William to his Brother alive or dead; and thereupon they took Arms: the King hearing these things, and foreseeing his inevitable ruine if the English power did not preserve him, caused the English

lish to be assembled together, and shewed them the Treason of the Normans, and intreats and begs them to help and defend him, upon this condition, that if they would be faithful to him in that his necessity and distress, he would grant them better Laws which they should chuse, and would forbid or interdict all unjust Scotts, Taxes, or Tallages, and grant to all persons their Woods and Hunting. Upon which assurance and promise the English did faithfully assist him, and by their power valiantly overthrew the Normans, and preserved and fixed the Crown upon Williams

ams head. But whatsoever he promised he kept but a short time, the words of the Author are. His auditis Rex fecit congregari Anglos & ostendit eis traditionem Normannorum & rogavit ut sibi auxilio essent, eo tenore ut si in hac necessitate sibi fideles existerent, meliorem legem quam vellent eligere eis concederet, & omnem injustum Scottum interdixit, & concessit omnibus sylvas suas & venationem. Sed quicquid promisit, parvo tempore custodivit. Angli tunc fideliter eum juvabant *

Lin. 40. b.

* It seems the English were then considerable, and not totally ruined by W. I.

It is therefore evident from hence,

hence, that William the Second did not claim the Crown jure gladii, by the power of the Sword, nor did he affirm, that he had a despotical right to make or change Laws, ad libitum suum sine assensu Regni or Parliament. And 'tis a great observation to me, that from the pretended Conquest to this day, I never read of any King of England that declared and publickly owned any such prerogative or right, but only that miserable and unfortunate Prince Richard the Second, which the Parliament Roll thus expresseth. Item, Idem Rex nolens justas leges

Rot. Parl. 1 H.
4. Art. 16.

&

& consuetudines Regni sui servare seu protegere, sed secundum suæ arbitrium voluntatis facere quicquid desiderii ejus occurreret, quandoq; & frequentius quando sibi expositæ & declaratæ fuerant leges regni sui per Justiciarios & alios de Concilio suo & secundum leges illas petentibus justitiam exhiberet, dixit expresse vultu austero & protervo quod leges suæ erant in ore suo & quotiens in pectore suo, & quod ipse solus possit mutare & condere leges regni sui; & opinione illa seductus quampluribus de ligeis suis justitiam fieri

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fieri non permittit, sed per minas & terrores quamplures à prosecutione communis justitiæ cessare coegit.

But far different were the sentiments and Judgment of his Grandfather Great Edward the third, who tells us:

*Pultons Stat. 20
E. 3. fol. 137.*

Because, that by divers Complaints made to us, we have perceived that the Law of the Land, which we by our Oath are bound to maintain, is the less well kept, and the Execution of the same disturbed many times by maintenance and procurement, as well in the Court as in the Country; We greatly moved
of

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of Conscience in this matter, and for this cause desiring as much for the pleasure of God, and ease and quietness of our Subjects, as to our Conscience, and for to save and keep our said Oath, We have ordained, &c.

And wise King James saith, That not only the Royal Prerogative, but the Peoples security of Lands, Livings, and Priviledges, were preserved and maintained by the antient fundamental Laws, Priviledges, and Customs of this Realm, and that by the abolishing or altering of them, it was impossible

*King James's
first Speech to
his first Parli-
ament in Eng-
land. Pulton
Stat. 1 Jacobi,
cap. 2. fol.
1157.*

possible but that present confusion will fall upon the whole state and frame of this Kingdom.

King Charles the First's Declaration to all his loving Subjects, published with the advice of his Privy Council. *Exact Collections of Declarations*, pag. 28, 29.

And his late Majesty of ever blessed memory, was of the same mind and opinion, when he said, The Law is the Inheritance of every Subject, and the only security he can have for his Life, or Estate, and the which being neglected or disesteemed (under what specious shew soever) a great measure of infelicity, if not an irreparable confusion, must without doubt fall upon them.

Henry

Henry the First.

After the Death of King William, the Magnates Angliæ, not knowing what was become of Robert Duke of Normandy, Eldest Brother of the deceased King (the said Duke having been absent for five years in a Voyage to the Holy Land) were afraid to be long without a King, which Henricus fratrum ultimus & juvenis sapientissimus cum callide cognovisset, congregato Londoniis Clero

Mat. Par. A. D. 1100. pag. 55. l. 20. Inhibitio ne qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia notabilis persona transeat ad partes transmarinas. Rot. Claus. 3 E. 2. m. 16. dorso. Sic igitur isto modo Willielmo mortuo Robertus frater ejus in Normannia contra inimicos sibi infestos in guerra sua occupatus est, in eodem tempore iste Robertus semper contrarius & adeo innaturalis extiterat Baronibus Regni Angliæ

quod plenario consensu & consilio totius Communitatis Regni imposuerunt ei illegitimitatem quod non fuerat procreatus de legitimo Thoro Willielmi Conquestoris, unde unanimi assensu suo ipsum refutarunt & pro Rege omnino recusaverunt & Henricum fratrem in Regem erexerunt. *Henr. de Knighton, Coll. 2374. Cap. 8. l. 14.*

Angliæ

Anglia & Populo universo promisit emendationem legum quibus oppressa fuit Anglia tempore patris sui & fratris nuper defuncti, ut animos omnium in sui promotionem accenderet & amorem, ut illum in Regem susciperent & patronum; to which it was generally answered, That if he with a willing mind would grant, and by his Charter confirm to them, illas libertates & consuetudines antiquas, which their Ancestors enjoyed in the time of Edward the Confessor, in ipsum consentirent & in Regem unanimiter consecrarent.

Henry

Henry willingly granted this, and taking an Oath, that he would perform it, consecratus est in Regem, at Westm. upon Lady day, favente Clero & populo, and so forthwith he was Crowned by Maurice Bishop of London and Thomas Archbishop of York. After such his Coronation, he granted and confirmed to the Nation, for the advancement of Holy Church, and preservation of the peace of his people, a Charter of their antient Liberties.

The Charter the Reader may find in that industrious Revivor, and Restorer of decayed

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cayed

LL. Gulielmi primi, Lamb. fol. 175, 176. Hæc etiam Carta habetur apud Mat. Paris. An. Dom. 1118, and 1213.

cayed and forgotten Antiquities, Mr. Lambard, as also in Matth. Paris. Where it appears, that the Archbishops, Bishops, Barons, Earls, Vicounts, or Sberiffs, & Optimates totius Regni Angliæ, were Witnesses to the Charter.

Carta moderationis feodi magni sigilli Anno 1^o Johannis. Ex veteri Registro in Archivis. Cantuar. Archiepiscopi. Rot. Pat. 1 H. 3. m. 12. Coke 2. Instit. fol. 79. Rastals Stat. 1 E. 3.

And that at the Coronation of the King, those Laws were made, de Communi Consilio & assensu Baronum Regni Angliæ, by the common advice and assent of the Barons of England. It being usual in succeeding ages, at the Coronations of our English Kings, to confirm, make, and ordain Laws, De assensu Baronum Regni,

Regni, per Commune Concilium Regni, or Parliament.

I shall from hence observe two things.

1. *That these Laws were granted and confirmed, assensu Baronum Regni, or Baronagii Angliæ, there being a clear difference between Barones Regis, and Barones Regni, as appears in the very bowels of those Laws and elsewhere; for the K. saith, Si quis Baronum nostrorum, &c. but who were comprehended under those first phrases, Mr. Camden will tell us, Nōmine Baronagii Angliæ omnes quodammodo Regni ordines continentur,*

LL. Gulielmi primi Lamb. fol. 175, 176.

camd. Britan. in 8^o. De ordin. Angliæ, fol. 61.

tur, and so the Commons as we now call them, were there and assented to those Laws.

2. Clero & Populo universo Angliæ congregatis. We read King Stephen assensu Cleri & Populi in Regem Angliæ electus, & per Dominum Papam confirmatus, 10 H. 2. Congregato Clero & Populo Regni, or as Fitz-Stephens, Generali Concilio, the King made the Assise or Statute of Clarendon, which Council the learned Selden calls a full Parliament. King John was Crowned mediante tam Cleri quam Populi unanimi consensu & favore. Anno 50

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Will. Malmesb. Histor. Novel, lib. 1. pag. 101. l. 15. b. Hoveden pars posterior, pag. 282. l. 13. MS. vita Thom. Archiepiscopi Cant. in Bibl. Cotton.

Seldens Titles of Honor, fol. 585. Carta moderationis feodi magni sigilli.

H. 3. Per providentiam Cardinalis, meaning the Popes Legate, apud Kenilworth Clerus & Populus convocantur, which the Patent Roll of that year thus confirms. The King a le request de honourable pier Sire Ottobon Legat d' Engleterre son Parlement eust sommons à Kenilworth; where the Statute or Dictum de Kenilworth, was made between the King and his Communante, or Parlement. Rex primo, postmodum Clerus & Populus juraverunt quod Dictum inviolabiliter observarent. Thus have I at length, I hope, fully

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ascer-

Mat. Westm. pag. 397. l. 57.

Rot. Pat. 50 H. 3. m. 3. dorso. Rastalls Stat. pag. 12.

Mat. Westm. fol. 393. l. 1.

ascertained and explained the Historians phrase, Clerus & Populus, and proved it to be a Parliament from the Pat. Roll of H. 3.

Yet I do not think that the Lords Temporal only were the Populus, nor the Lords Spiritual the Clerus; for I agree with Dr. Heylyn, that there is no Record, either of History or Law (which I have observed) in which the word Clerus serves to signifie the Archbishops, and Bishops, exclusive of the other Clergy, or any writing whatsoever, wherein it doth not either signifie the whole Clergy generally,

D^r Heylins
stumbling
Block, pag.
189.

rally, or the inferior Clergy only, exclusive of the Archbishops, Bishops, and other Prelates; and 'tis my opinion as far as I can find, that the word Populus following Clerus, was, Thema universale in significando, and comprehended as well the Commons as the Lords, and indeed the subject matter of the Historians speaks it. William the Second, Henry the First, King Stephen, and King John, were to be elected and created Kings of England, having no hereditary right, 'twas but reasonable then, and according to the Laws and precedents of

d 4 other

other Countries in like Cases, Quod omnes tangit ab omnibus approbari debet, and so was the solemn Resolution of both Lords and Commons in the Parliament, 40 E. 3. That neither King John, nor any other, could put the Realm or people of England into subjection, sanz assent de eux, without their assent, or as the Parliament 29 H. 3. declared, sine assensu Regni, or as Malmesbury says, in vita Willielmi primi, absq; generali Senatus & Populi conventu & Edicto.

But now to close the Reign of Henry the first, I will out of

Rot Parl. 40 E. 3. n. 78.

Mat. westm. An. 1245. p. 191, 197.

Malmesb. lib. 3. pag. 56.

of that excellent Historian Matthew Paris transcribe the Oration, or Speech of that King to the Common Council or Parliament, in the seventh year of his Reign, his elder Brother Robert Duke of Normandy, then claiming the Crown of England, and ready to invade this Nation with a great Force; the Speech of the King, the learned Monk thus delivers to us.

Oratio Regis Henrici ad Anglos.

Magnatibus igitur Regni ob hoc Londoniam Edicto Regio convocatis Rex talibus alloquiis mel & favum oleumq; mellitis & molitis blandiens dixit: Amici & fideles mei indigenæ ac naturales, nostis veraci

Mat. Paris in vita H. 1. pag. 62, 63. Inhibitio nē qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia Notabilis persona transeat ad partes transmarinas. Rot. Claus. 3 E. 2. m. 16. dorso.

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veraci fama referente, qualiter frater meus Robertus electus & per Deum vocatus ad regnum Hierosolymitanum foeliciter gubernandum, & quam frontosè illud infeliciter refutaverit, merito propterea à Deo reprobandus. Nostis etiam in multis aliis superbiam & ferocitatem illius; quia vir bellicosus, pacis impatiens est, vosque scienter quasi contemptibiles & quos desides vocat & glutones conculcare desiderat. Ego vero Rex humilis & pacificus vos in pace in antiquis vestris libertatibus, prout crebrius jurejurando promisi, gesto confovere, & vestris inclinando consiliis consultius ac mitius more mansueti principis sapienter gubernare, & super his (si provideritis) scripta subarata roborare & iteratis juramentis prædicta certissime confirmare, omnia videlicet quæ sanctus Rex Edwardus Deo inspirante providè sancivit

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civit inviolabiliter jubeo observari, ut mecum fideliter stantes fratris mei immò & mei & totius Regni Angliæ hostis cruentissimi injurias potenter, animose ac voluntarie propulsetis. Si enim fortitudine Anglorum roborer, inanes Normannorum minas nequaquam censeo formidandas. Talibus igitur promissis, quæ tamen in fine impudenter violavit, omnium corda sibi inclinavit, ut pro ipso contra quemlibet usq; ad capitis expositionem dimicarent.

This Speech to me is another strong Confirmation and Argument against the Norman Conquest, for 'tis luce clarius, 1. That King Henry the First did not pretend to hold the Crown Jure Victoris. 2. That the English were not totally subdued and destroyed by his Father William the first. 3. That the Son
(as

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(as well as the Father) had several times solemnly sworn to the inviolable observance of the Laws of St. Edward or of the Saxon Government. 4. King Henry does not depend on the Normans that came in with his Father, no, it was upon the English Common Council, or Parliament; nor did he call them Vassels and Slaves, but *Amici & Fideles mei naturales*, in them he fixt his only hope and assurance, both for their Fidelity and Courage, and believed that they would (as indeed they did) preserve and defend his Crown and Life against the great Power and Policy of his and the Kingdoms most bloody Enemies, who were ready to Invade both with a mighty Army; it being then Prudentially and Politickly resolved unanimously in Parliament, not to permit, or suffer the Duke to land here, but to fight him in his own Country, which the English

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lish then did (forty years after the coming in of William the first) and at one Battle not only totally conquered and overthrew the Normans, but took Robert their Duke Prisoner, and thereby put a period to the dangers and fears of King Henry the first, and in despite of the French Power, set the Ducal Crown of Normandy upon the head of King Henry an English-man: and after Robert had remained for some time in Prison, at last to conclude the Catastrophe of his unhappy life, he had his eyes burnt out of his head, and so by a sad fate left all to the English King.

From all which Authorities and Reasons, under correction, it is sufficiently evidenced, that in the Brittish, Saxon, and Norman Governments, the Commons (as we now phrase them,) had Votes, and a Share in the making and en-acting

The Preface.

acting of Laws for the Government of the Kingdom, and that they were an essential part of the Commune Concilium Regni, Wittena Gemot, or Parliament, before and after the supposed Conquest by King William the First.

Having thus concluded my Preface, I shall now diligently apply my self to discuss that grand point touching the introduction of the Commons into our great Council, or Parliament, as represented by the Knights, Citizens, and Burgeses, being indeed the principal work I intended, and was finished before this Preface; the difficulty of which cannot be well judged of but by those who have undertaken subjects of like intricacy; for I have at a great charge, and expence of time, and without any mans assistance or help, out of the dark and

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The Preface.

neglected paths of Antiquity, endeavoured to make truth publick and general, and (with submission) I hope it will appear, that I have rescued from the force and power of a dangerous growing error, the just and ancient rights and priviledges of our Ancestors, in a matter of the highest moment and concern, which is impartially debated in the ensuing Discourse; a subject, whereof (to the best of my knowledge) no Author hitherto hath so particularly treated.

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A
DISCOURSE

*Wherein is proved, That the
Commons of England were an
essential part of the Parliament
before the 49th of Hen. 3.*

Several great and learned Au-
thors of our Age having in
their works and writings
frequently published, and asserted
to the world this Position as an
unquestionable truth,

*That the Commons in Parlia-
ment (as distinguished from the
Lords) compounded of Knights,
Citizens, and Burgesses, had their
first birth and beginning by Rebel-
lion, An. 49 H. 3. and that too af-*

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ter

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ter the Battle of Lewes, when the Barons had the King and Prince in their power as Prisoners, and exercised Regal Authority in his name:

The consideration and consequents thereof raised in my mind a great desire seriously and impartially to enquire into so important a point of Antiquity; and the better to satisfy both my own judgment, and the judgments of some of my Friends, I have run over many Records, and Historians, both Ancient and Modern, in Print and Manuscript, but cannot find any authority or reason to give a colour to so harsh an assertion.

I shall therefore, under an humble submission to so eminent Antiquaries, endeavour to disprove this notion of 49 *H. 3.* by these following Arguments.

1. From

[3]

1. From the Claim and Prescription of the Borough of *St. Albans* in the Parliament of 8 *E. 2.* to send two Burgesses to all Parliaments, *sicut ceteri Burgenses Regni totis retroactis temporibus*, in the times of *E. 1.* and his Progenitors; if so, then in the time of King *John* Grandfather to *E. 1.* and so before *H. 3.*
2. From Records *An^o 15^o Johannis Regis*, wherein the Citizens and Burgesses (not so numerous then as after, and now) together with the Earls, Barons, & *Magnates Anglie*, were to give *Consilium & Auxilium ad honorem Regis & suum & statum Regni*, who shortly after met at *London*, *Convocatum Parliamentum de toto Clero, & tota secla laicali*, and so within the exprels prescription of the Borough of *St. Albans.*
3. From the solemn resolution

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and

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and great judgment of both Lords and Commons in the Parliament of 40 *E. 3.* against the Pope, That if King *John* had *An^o 14^o* of his Reign (which was three years before the granting of his *Magna Charta*) made the Kingdom tributary to the Pope, he had done it *sanx low assent*, which must be understood to be without the consent of the Lords and Commons, and therefore void.

4. From several Records, *inter alia*, de *Annis 28, 32, 37, 42, 48 H. 3.* mentioning Parliaments then held, and their proceedings, in some of which the word *Commons* is expressly mentioned, as well as the Prelates, and *Magnates*, to be part of those Parliaments.

5. From an act of Parliament 2 *H. 5.* that famous Prince, where

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where it is declared and admitted, that the Commons of the Land were ever a part of the Parliament, and so consequently were part of the Parliaments *Annis 16, 17 Johannis, 28, 32, 37, 42, 48 H. 3.* all within the prescription of the Borough of *St. Albans.*

6. From the form of penning of Acts of Parliament, and expressions in Records in 49, 51, 54 *H. 3.* when it is granted that the Commons were a part of the Legislative power, which agree with the phrases of Records of Acts of Parliament before that time.

7. From the defect and loss of the Parliament Rolls of *H. 3.* and *E. 1.* and from the universal silence of all Records, and our antient Historians contemporary and succeeding 49 *H. 3.* till our days.

8. From

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8. From the various opinions of learned men, in and since H. 8. time, who never dreamed of any such origine, nor was ever heard of, till of late.

9. From comparing of the ancient *Generale Concilium*, or Parliament of Ireland, instanced An^o 38 H. 3. with ours in England, wherein the Citizens and Burgeses were, which was eleven years before the pretended beginning of the Commons in England.

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The FIRST ARGUMENT.

From the claim and prescription of the Borough of St. Albans, in the Parliament of E. 2. to send two Burgeses to all Parliaments, sicut cæteri Burgenses Regni totis retroactis temporibus, in the times of E. 1. and his Progenitours, if so, then in the time of King John Grandfather to E. 1. and so before H. 3.

1. **T**HE Burgeses of St. *Albans* in their Petition to King E. 2. An^o 8^o say, that they, *sicut cæteri Burgenses Regni ad Parliamentum Regis* (when it should happen to be summoned) *per duos Comburgenses suos venire debeant, prout totis retroactis* tempo-

Rot. Parl. 8 E. 2. n. 233. *Pro Burgensibus de Sancto Albano.* Who sent Burgeses to Parliament 28 E. 1, 35 E. 1. 1 E. 2. 2 E. 2. 5 E. 2. Pryn's 4. part of Parliamentary Writs, pag. 900.

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temporibus venire consueverunt, tam tempore domini Ed. nuper regis Anglia patris regis, as well in the time of E. 1. the Kings Father, & Progenitorum suorum, as in the time of E. 2. semper ante instans Parliamentum, and declared that the names of such Burgeses coming to Parliament were always inrolled in the Rolls of the Chancery; notwithstanding all which the Sheriff of Hartford at the procuration and favour of the Abbot of St. Albans and his Council, refused Burgeses predictos præmunire, seu nomina eorum retornare prout ad ipsum pertinuit, &c. and therefore they pray remedy.

Respons. Scrutentur Rotuli, &c. de Cancellaria, si temporibus Progenitorum Regis Burgeses predicti solebant venire vel non? & tunc fiat eis super hoc justitia vocatis evocandis si necesse fuerit.

I do not think there needs much enforcing

Those Rolls lost, or destroyed. The Statute of *Articuli Cleri* made the next year after this Record tells us that there were *diversa Parliamenta temporibus Progenitorum suorum Regum Anglia.* Coke 2. Instit. 50. 618. Respons. est per Concilium.

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enforcing this Record, since the prescription of sending *duos Comburgenses ad Parliamentum Regis, sicut cæteri Burgenses Regni* did, is, that they and their Predecessors were always accustomed to send two Burgeses to Parliament in all former Ages, not only in the time of E. 1. but his Progenitors; therefore in King *Johns* time, his Grandfather at least, and so before H. 3.

And though the answer to the Petition, which in that Age was given in Parliament (*per Concilium, or all the Judges of England, and others the Kings Learned Council*)

say, *Scrutentur Rotuli, si temporibus progenitorum Regis* (which may go to the whole Reign of King *John*, as before) *Burgenses predicti solebant venire, vel*

Nota, Rolls of Summons to Parliament, were extant this very Parliament, Rot. Clauf. 8 E. 2. m. 25. Selden's Titles of Honor, fol. 604, 605.

It appears by the Parent Roll of 26 E. 3. that there were *Parliamenta, and Summons to Parliament, temporibus Progenitorum, & ante au-*

num 49 H. 3. Rot. Pat. 26 E. 3. Pars 1. m. 22.

non;

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non ; yet that grave and wise Council do not in the least scruple, but clearly admit and confirm the general prescription, that there were Boroughs that sent Burgeses to Parliament, *temporibus E. 1. & Progenitorum suorum*, which goes higher than *H. 3.* his Father ; and it cannot in common reason be supposed, much less believed, that the Burgeses of *S^t Albans*, or the Lawyer or Pen-man of the Petition, should dare to tell the King and Learned Council, in the face of a Parliament, a Novelty so great and ridiculous, and that Recorded to Posterity by the Council, that they and their Predecessors, in the time of *E. 1.* and his Progenitors, had sent two Burgeses to every Parliament, when all the World then knew (if the modern opinion be true) that there was never any Election of any Burgeses to Parliament

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liament before the *49 H. 3.* which was but 50. Years before *8 E. 2.* and at the time of the Petition fresh in their own memories.

No, surely the Burgeses of *S^t Albans* did not ground their Petition of Right upon a general allegation, or an affirmation *in nubibus* ; but the justice and certainty of their claim, as they themselves very well knew, so they prayed it might be examined and tried by uncontrollable Witnesses, *Records*, the *Rolls of Chancery*. The Chancellor and the rest of the Council, did no less know there were such Rolls, and therefore order the search ; but if the Petition had been notoriously false and idle, instead of recording it to future Ages, they would with contempt and scorn have rejected it, nor would the great Abbot of *S^t Albans*, his Council, and the Sheriff of *Hertford*, against whom the
Petition

[12]

Petition was exhibited, have been wanting in their own defence, to have shewed and proved that this antient prescription was a meer *Chimera*, and *fable*; no, they all were well satisfied, that the Borough had sent two Burgesses to every Parliament, in the time of *E. 1.* and his *Progenitors*, and therefore it was in vain to oppose or contradict their just and antient right, according to their prescription; all which appears clearly by this, that both before the time of the Petition, and ever since, they have sent *two Burgesses* to every Parliament.

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The SECOND
ARGUMENT.

From Records An. 15 Johannis Regis, wherein the Citizens and Burgesses, (not so numerous then as after, and now, together with the Earls, Barons, & Magnates Angliæ,) were to give Consilium & Auxilium ad honorem Regis & suum & statum Regni, who shortly after met at London, Convocatum Parliamentum de toto Clero & tota secta laicali, and so within the express Prescription of the Borough of S. Albans.

I Am not ignorant. that some have dated the origine of the Commons being a part of the Parliament, from the Parliament of *Runningmead*, 17^o Reg. Joh.

It

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It may therefore be worth our pains to observe this great Record following, and to consider whether from thence may not be proved this Conclusion :

That the great Cities and Boroughs of the Kingdom (not so numerous then as after and now) in the 16^o of King John, before the granting of his *Magna Charta*, or rather confirming the antient Laws in his 17th year, at *Runnymede*, did send their Proxies and Representatives, to the *Commune Concilium Regni*, or Parliament ; for it cannot be supposed in reason, that every individual Citizen and Burgeses could come, no more than every Parson of a Parish to a Convocation, or to a meeting of the whole Clergy of *England*.

Rot. Pat. 15
Joh. Pars 2.
m. 2.

The Record saith, That the King being in *partibus transmarinis*, writes

Majori

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Majori & Baronibus London.

Majori & probis hominibus

Winton. Exon.

Northampt. Worcest.

Lincoln. Cantebr.

Ebor. Hunt.

Oxon. Bristol.

Glouc. Norwich.

Heref.

And all the great Boroughs of the *Demefnes* of the King, giving them account of his proceedings and successes in his War against the French, and that the Pope had by his Letters released the *Interdict*, under which the Kingdom then lay, which the King had then sent to Peter Bishop of *Winton*, Chief Justice of *England* ; and therefore desired that they would believe what the Bishop should speak to them, that *Consilium & Auxilium*

In the antient Subsidy Rolls we often meet with the Tenants in antient Demefne in Parliament, and giving Subsidies, and it is the opinion of my Lord Hobart, fol. 48. that by continuance of time they were discontinued, and it may be one reason thereof was, that it was an ease granted them by

the King in favour of their labour of the Earth. Vide Rot. de 20. & 15 Ed. 2. apud Northampton, An. Regni sui primo à Laicis concessis. Rot. de 15. Burgorum Regi E. 2. an. Regni sui nono apud Lincoln. à Laicis concessa. In Custodia Clerici Pipæ in Scaccario remanen.

vestrum

vestrum ad honorem nostrum & vestrum & statum Regni nostri in melius communicandum efficaciter super hoc apponatis, and that majori festinatione expediretur, Teste apud Rupellam 6^o die Martii.

Rot. Pat. 15
Fob. Pars 2.
m. 1.
Inhibitio ne qui
Magnates, viz.
Comes, Baro,
Miles, seu ali-
qua alia nota-
bilis persona
transseat ad par-
tes transmarinas.
Rot. Claus.
3 E. 2. m. 19.
dorso.

In the same manner he writ to William Earl Marshal, and to all the Earls, Barons, & Magnatibus Anglie, &c. Teste apud Rupellam 8^o die Martii.

In order therefore to our proof of a Parliament from these Records, let us make two observations.

- 1. Negative.
- 2. Affirmative.

1. Negative. Though the Writ be general, and mentions not any time or place for meeting or coming to Parliament, or the great Council (the King referring that I suppose to his Regent or Chief Justice here) yet it cannot be intended that Peter

Bishop

Bishop of Winchester, being then Chief Justice of England, should go from County to County, City to City, Borough to Borough, or as our Church-Wardens do, from House to House, rogare Consilium & auxilium (the proper business of a Parliament) to desire and entreat for their Counsel and Aid, for the Honour of the King, their own, & statum Regni, and the safety of the whole Kingdom; surely that had been an imployment fitter for the wandering Jew, or Johannes de Temporibus; and such counsel must needs have been of a very different and various nature, and both agreeing very ill with the words majori festinatione, and urgency of the contents of the Writs.

Let us then enquire what were the effects and consequents of these Writs, and that brings me to the second observation.

C

King

18 **The Commons of England ever**

2. Affirmative.

King John began his Reign 6^o Aprilis, the Writs bear date 6^o & 8^o Martii, which was the Close of An. 15^o. It may be the Winds were very cross, or for some other reason the Letters might not so speedily be brought over, or published here, or after the summons there might be above forty days before they met. But sure it is, in the beginning of July, (after that March) being the sixteenth Year of his Reign, we find:

Mat. Paris An. 1214. pag. 249. l. 27.

Nicholaus Tusculanensis Episcopus & Apostolicae sedis Legatus per nuntios memoratos Domini Papae Authenticum acceperat. Rex Anglorum erat in partibus transmarinis, sed quoniam idem Rex in recessu suo ab Anglia Legato jam dicto & Willielmo Marefcallo vices suas in hoc negotio commiserat, idem Legatus in urbe Londinensi apud Sanctum Paulum grande congregavit Concilium, ubi congregatis Archiepiscopis,

an Essential part of Parliament. 19

chiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & aliis ad hoc negotium Interdicti (the very business of the Writs) spectantibus proposuit coram omnibus formam restitutionis.

Paucis evolutis diebus congregantur apud Londoniam Archiepiscopi, Episcopi, Abbatibus, multarumque Ecclesiarum Praelati cum Comitibus & Baronibus totius

Regni ut negotia Regni & Ecclesiae pertractarent cum Theobaldo Cantuar. Archiepiscopo Apostolicae sedis Legato, eidem Concilio presidente. Mat. Paris in vita Rob. Abb. S. Albani An. Dom. 1155. pag. 72. l. 26.

And the Great Selden the Honour of the Inner-Temple, or rather as the Learned Grotius, *Honos Britanniae*, to drive the nail home, saith, *But we know by what is already shewed, that divers former Parliaments were in this Kings time (meaning before the granting of his Magna Charta, An. 17 Joh.) though the Laws made in them be lost. And in the year before the Charter also (which was An. 16 Joh.) the Author of Eulogium sayes, that Convocatum est Parliamentum Londoniis presidente Archiepiscopo cum toto Clero & tota secta laicali, wherein per Domini Papae praeceptum*

Selden's Titles of Honour, Part 2. fol. 587.

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*illa obligatio quam Rex Domino Papa
 fecerat cum fidelitate & homagio rela-
 xatur omnino, vii^o die Julii.*

Having thus proved a Parliament
 in the 16th of King John, and that
 the Citizens and Burgeses had their
 Summons to it, which is remarka-
 ble by a Writ particular and di-
 stinct from that of the Lords, viz.
 the Earls, Barons, & Magnates Ang-
 liae, I will conclude this Argument
 with the Statute of 5 R. 2. Cap. 4.
 where it is enacted by the assent of
 the Prelates, Lords and Commons,
 That all and singular persons and
 Communalities, (be he Archbish-
 op, Abbot, Prior, Earl, Baron, &c.)
 which should have a Summons to
 Parliament, should come from
 thenceforth to the Parliaments in
 the manner as they were bounden
 to do, and had been accustomed
 within the Realm of England of
old times; and if they did absent
 themselves,

an Essential part of Parliament. 21

themselves, and came not, he and
 they should be amerced, or other-
 wise punished according as of *old
 times* had been accustomed to be
 done: from hence I shall observe,

1. That there were Summons to
 Parliament of *old times*, as well to
 the Commonalties, that is, the Citi-
 zens and Burgeses; as to the Arch-
 bishops, Bishops, Abbots, Priors,
 Earls and Barons; and so the Statute
 may seem to affirm the prescripti-
 on of S^t Albans, that saith, that they
 had sent *Duos Comburgenses sicut cæ-
 teri Burgenses regni* did to every Par-
 liament *totis retroactis temporibus* be-
 fore E. 1. and his Progenitors.

2. That the phrase of *old times*
 is in point of prescription and an-
 tiquity applied equally, and with-
 out distinction or limitation, as
 well to the great Lords, as Commons;
 But if the first had of *old times*,
 as our modern Authors write, been

The Commons of England ever the only constituent parts of the Parliament, it might in reason and prudence be thought, they would not have consented to have admitted that Summons to Parliament; for the Commons was *Coeval* with theirs; nor would they have ratified and confirmed by a solemn Act the protestation or declaration of Right of the Commons of *England* in the Parliament, *2 H. 5. n. 10.* That the Commons had ever been a member of the Parliament, and that no Statute or Law could be made without their assent. 3. That if the Lords and Commons absented themselves, and came not to Parliament, they should be amerced, or otherwise punished as of *old times* had been accustomed to be done; this branch plainly agrees, 1. With the *Modus tenendi Parliamentum*, Written as Mr *Selden* saith *tempore E. 3.* That the first day

day the Burgesses and Citizens should be called, and if they did not come, they should be amerced; and so Mr *Pryn* mistakes in his *Animadversions*, when he saith, that no absent Lord was fined before *31 H. 6. 2.* It appears, *Ex vi terminorum*, of old times it had been so accustomed to be done; that this prescription may well be applied to the Parliament of *16 Joh.* and long before; for the Statute of *Magna Charta*, 17 of that King, saith, *Civitas London habeat omnes libertates suas antiquas*; by force and vertue of which word, *antiquas*, their old or ancient Liberties and Customs (not only confirmed by the *Magna Charta* of *William* the First, but used even in the Saxon times, and before) were in Parliament ratified and confirmed.

Mr. Pryn's Animadversions on the Lord Cokes Fourth Inst. pag. 3.

The THIRD ARGUMENT

From the solemn and great Judgment of both Lords and Commons in the Parliament of 40 E. 3. against the Pope, That if King John had An. 14. of his Reign, which was three years before the granting of his Magna Charta, made the Kingdom tributary to the Pope, he had done it sanz lour assent, which must be understood to be without the consent of the Lords and Commons, and therefore void.

Mat. Paris Anno 1213. pag. 236. An. Regni Joh. 14.

Rot. Parl. 40 E. 3. n. 7, 8.

King John An. 14. of his Reign made himself and Crown tributary to the Pope.

But Anno 40 E. 3. The Prelats, Dukes, Counts, Barons, and Commons;

mons; upon their full deliberation in Parliament, resolved with one accord, that neither the King, nor any other, could put the Realm nor people thereof into such subjection; sanz assent de eux, without their assent, viz. as well of the Commons, as of the Lords: and that it appeared by many Evidences, that if he had so done, it was done sanz lour assent, and contrary to the Coronation Oath.

And wich this agree the Scottish Laws. Et idem Rex Scotiae dicit sicut prius quod de aliquo Regno suum contingente non est ausus nec potest hic respondere

inconsultis probis hominibus regni nostri. Placita Parl. inter Johannem Regem Scotiae & Magdolphum. 21 E. 1. pag. 157. Item ad roborandum confederationem quondam iuram inter ipsum Francorum Regem ex una parte & dictum Johannem de Balliolo ac Prelatos & Nobiles & Universitates & Communitates Civitatum & villarum dicti Regni Scotiae pro ipsis & eorum heredibus & successoribus ex altera parte. Ex Rot. in Turri London. Prynn's 3. Tom. of Ecclesiastical Jurisdiction, 28 E. 1.

And if the Pope attempted any thing against either (having at the instance and sollicitation of the French King, threatned to interdict or out-law both King and Kingdom) They would oppose and

Rot. Pat. 15 Johannis Pars 2. m. 8. Interdictum, quod vulgariter utlagatio nuncupatur.

26 **The Commons of England** ever and resist him, *ove tout leur puissance.*

The observations I shall make from this great Judgment shall be two.

1. That above 300. Years ago, there was not the least scruple or fancy, that the Commons of England, of which the Citizens and Burgesses were then undoubtedly a part, ought not, and were not to be present in the *Commune Concilium Regni*, or Parliament of King Johns Reign, and to have assented to that Kings resignation, *An. 14.* to make it legal and valid, as well as the Prelates, Earls, and Barons.

Nam cum sub Edwardo tertio in ordinum confessa questio habebatur de donatione illa decantatissima Johannis Regis facta Innocentio Papa tertio & successoribus ejus, unde Urbanus Quintus tum annum inde natam mille marcatum Angliæ & Hiberniæ simul nomine censum sibi tunc solvi petebat, &c.

Ordines universi idq; tam generis hieratici (quod mirere) quam Proceres seu Senatus populusq; in Comitibus illis solebni invita deliberatione responderunt unanimes irritam plane fuisse Johannis donationem illam irpottam sine Ordinum assensu quam Juramento ejus inaugurali adversam. Johannis Seldeni ad Fletam Differtatio. Cap. 10. fol. 552.

2. If the Commons had never been a part of the Parliament before

an Essential part of Parliament. 27

fore 49 *H. 3.* but that the King and great Lords only made Laws, and had an inherent power (as some of our Modern Writers say) to tax the whole Kingdom, *de alto & basso ad libitum suum jure representationis*; surely they would not have left recorded to posterity so great a testimonial of the antiquity and right of the Commons of England (then so distinguished from the great Lords) as is expressed in the Roll: May it not then be admitted they spoke nothing but what was an undisputable truth, *in diebus illis*, unless we must believe, that the great and learned Authors of this Age, better understand the constituent parts of the *Communia Concilia*, or Parliaments of King Johns time (and so upward) above 460. Years since, than the whole Parliament of 40 *E. 3.* the Parliaments of their Grand-Fathers time, as

28 **The Commons of England** ever
as was the Reign of King *John*.

And indeed this famous resolution was no other than a Declaration of the antient Common Law of the Land before the Norman Duke gained the Imperial Crown of *England*, as appears by King *Harolds* Answer to his Ambassadors, requiring the performance of the Kings Oath to take the Dukes Daughter to Wife, and to preserve the Crown for him.

De Regno addebat præsumptuosum fuisse, quod absq; generali Senatus & populi Conventu & Edicto alienam illi hæreditatem juraverit.

Which is recorded by *William of Malmsbury*, *Lib. 3. p. 56. l. 24. in vita Williemi I.* an Author without all exception, who flourished in the time of *H. 1.* and therefore could not be ignorant where and in whom the Legislative Power of *England* did reside, there being but

an Essential part of Parliament. 29

33. Years from the coming in of the Norman Duke till the Reign of that King, and of this Historian the learned *Baleus* gives this *Eulogium*, *Vir erat suo seculo in omni genere bonarum literarum plene eruditissimus, & in eruendis antiquitatibus ingenio, diligentia & industria singularis Angliæ nostræ nationis studiosissimus illustrator.*

Upon the Death of *Arthur* Duke of *Bretaign*, the *Annals of England* tell us, that King *John* was Summoned by the French King, as Duke of *Normandy* to appear at his Court, and judicially to answer the pretended murder of *Arthur* his Nephew; whereupon the Bishop of *Ely*, and *Hubert de Burgo*, after Earl of *Kent*, and Chief Justice of *England*, *nuntii solennes & prudentes*, were sent to the French King, to whom the Bishop thus spake, *Domine Rex non possit Dux Normanniæ*

Nomine Baronagii Angliæ omnes quodammodo Regni Ordines continerentur. Camd. Britan. in 4. De Ordin. Angliæ. fol. 61.

ad Curiam vestram venire, nisi veniret Rex Angliæ, cum una persona sint Dux & Rex. Quod non permetteret aliquo modo Baronagium Angliæ, etsi ipse Rex hoc vellet. So careful was the Baronage or Parliament to preserve the antient rights, safety, and honour of the King and Kingdom, An. 3 Joh. before any difference happened between him and his Subjects.

Ex Chronico Adam Merimouth in Bibliotheca Cottoniana sub Effigie Cleopatæ. A. 16. p. 67, 68. An. Dom. 1300. 29 E. 1.

Anno 29 E. 1. the King sent Ambassadors to the French King, *ut quid de truga, de guerra, & de pace deliberasset, nunciaret,* and was answered, *se non posse sine duodecim paribus qui occupati fuerunt circa novam guerram tam ardua tractare,* but that he expected their coming in fifteen daies. *Quo tempore transacto, ipsis consentientibus,* they declare that they could not determine thereof, *inconsultis secum Scotis.* Whereupon those Ambassadors returned. *Igitur con-*

vocato

vocato Parlamento Londoniis, recitatisq; frustratoriis dilationibus & falsis machinationibus prædictorum, Ambassadors were again sent, and received this answer: Quod Rex Angliæ adveniret personaliter, & inter duos Reges de optima pace conveniretur: Whereupon the King of England, Aliud habuit Parliamentum, in quo talia recitata displicuerunt, & ex totius Regni Concilio (or Parliament) definitum est, Regem pro aliquo mandato vel suggestionibus ab Angliæ egredi non debere.

Rot. Claus. 3 E. 1. m. 9. in Scheda. De liberationem habere cum Prelatis & Proceribus (i.e.) Parlamento sine quorum communicato consilio Sanctitati vestre super prædictis non possumus respondere, & furejurando in Coronatione

nostra præstito sumus astricti quod jura Regni nostri servabimus illibata, nec aliquid quod Diadema tangat Regni ejusdem absq; ipsorum requisito Consilio faciemus.

From what hath been said, the Reader may easily observe, 1. That the weighty and great affairs which concerned the King and Kingdom, both in the Saxons time, and after, were by a fundamental principle and law of the Nation to be consulted of, and resolved in the *Communia Concilia,* or Parliaments, and that

no

The Commons of England ever no particular person or order of men did take upon them such power, *sine consensu Regni*: and this *H. 3.* and his Council well knew, when he told *Otto* the Popes Nuncio, *Quod solus non potuit definire, nec debuit negotium, quod omnes Clericos & Laicos generaliter totius Regni tangebatur*, which *E. 1.* and his Council in the 23th Year of his Reign thus confirms, *Quod omnes tangit, ab omnibus approbetur.* 2. That the *Generalis Senatus, & Populi Conventus, & Edictum*, or *Saxon Wittena Gemott*, the *Baronagium Angliæ*, in King *Johns* time, and the *Concilium Regni*, or *Parliamentum*, in the Reign of *E. 1.* were *verba synonyma*, differing in phrase, but one and the same Assembly in substance.

Mat. Paris. pag. 325. l. 45. 9
H. 3.

Rot. Claus. 23
E. 1. m. 3.
dorfo.

The

an Essential part of Parliament.

The FOURTH ARGUMENT.

From several Records, inter alia de *Arnis* 28, 32, 37, 42, & 48 *H. 3.* mentioning Parliaments then held, and their proceedings, in some of which the word *Commons* are expressly mentioned, as well as the *Prelates & Magnates*, to be part of those Parliaments.

THE general Council at *Runningmead*, held 17 *Job.* is 29 Years after, and 20 Years before 49 *H. 3.* called *Parliamentum de Runemed.*

Rot. Claus. 28
H. 3. pars unica, m. 12. dorfo.

Memorandum quod in Parlamento die Pasch. in tres septimanas Anno Regni Regis H. 3. 28. London celebrato negotium Crucis in Anglia una cum collectione decime beneficiorum Ecclesiasticorum

Rot. Pat. 28
H. 3. m. 13. intus

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corum Domino Regi in Subsidiu[m] terræ Sanctæ à sede Apostolica deputat. was treated of.

Rot. Clauf. Pat. 32 H. 3. m. 13. dorso.

An Utlary against William de Hastingscott, was reversed, and he restored to all he had lost thereby, and this done Coram Rege & toto Parlamento.

Rot. Clauf. 32 H. 3. m. 12. dorso. Rex in Norwicensi Episcopo, &c. In ultimo Parlamento nostro quod fuit London.

Inter Communia Hilar. 17 E. 3. penes Rememoratorem Domini Regis in Scaccario, It appears in a Plea between the King and the Prior of Coventry, that 29 & 32 H. 3. quedam subsidia per Magnates & Communitatem Regni spontanea & mera voluntate Regi concessa (or as Bracton phraseth it, Ex consensu Communi totius Regni, being one and the same with Magnates & Communitas,) towards the marrying of the Kings Eldest Daughter, and also the Kings Sister to Frederick the Emperour, which was done in Parliament; for the Close Roll of that Year

Bracton Lib. 2. cap. 16. fol. 37.

an Essential part of Parliament. 35

Year tells us of a Parliament, Consideratum fuit in Curia nostra & toto Parlamento nostro, &c.

Rot. Clauf. 32 H. 3. m. 13. dorso.

In a Parliament 37 H. 3. (for so Mat. Westm. calls it, pag. 352.) Rex, Magnates & Communitas populi protestantur publice, that they would never consent to any thing in the grand and terrible Excommunication then to be pronounced by the Clergy against the infringers of Magna Charta, contra consuetudines Regni antiquas & usitatas, In cuius rei testimonium & imposterum veritatis testimonium, as well the King as the Earls of Norff. Heref. Essex ad Warwick, as Peter de Sabaudia, at the instance and desire aliorum Magnatum & populi presentium scripto sigilla sua apposuerunt.

Rot. Pat. 37 H. 3. m. 12. dorso. At this Parliament was the dreadful Sentence or Curse published in the great Hall at Westm. by the Clergy against the breakers of Magna Charta by consent of Parliament. Rastals Stat. fol. 15.

Rex &c. Cum nuper in Parlamento nostro Oxon. communiter fuit ordinatum

Rot. Pat. 42 H. 3. m. 3. n. 9. De Inquisitionibus faciendis

per singulos Comitatus Angliæ. Rot. Pat. 42 H. 3. m. 4. Henr. &c. Saches que pur le profit de nostre Reaume & a la requeste de noz haus homes e prodes homes e du Comun de nostre Reaume.

36 **The Commons of England** ever quod omnes excessus & injuriæ factæ in Regno nostro inquirentur per quatuor milites singulorum Comitatum, ut cognita inde veritate facilius corrigantur, &c.

I have an Abridgment or abstract of the Rolls of this Parliament, writ by the hand of Mr. Elsing, late Clark of the Parliament, who saith, my Lord Coke had it; and some of the proceedings therein mentioned, I have found in the Exchequer enrolled at that time.

Rot. Pat. 48 H. 3. pars unica m. 6. dorso. Forma pacis inter Regem & Barones.

The Articles of Peace à Domino Rege & Domino Edwardo, Prælati & Proceribus omnibus & Communitate tota Regni Angliæ communiter & concorditer approbata, were sealed by the Bishop of Lincoln, the Bishop of Ely, Earl of Norff. Earl of Oxon, Humphry Bohun, Will. de Monte Canisio & Major London in Parlamento London Mense Junii, Anno Domini 1264. de consensu, voluntate & præcepto

an Essential part of Parliament. 37

præcepto Domini Regis, nec non Prælatorum, Baronum ac etiam Communitatis tunc ibidem præsentium.

And not only so, but that Record tells us, Quod quedam Ordinatio facta in Parlamento London habito circa festum Nativitatis Sancti Johannis Baptistæ proximè præteritum pro pace Regni conservanda.

And we read in another Record,

Rex &c. Cum super præteritis guer- rarum discriminibus in Regno Angliæ subortis, Quedam ordinatio seu forma pacis de nostro Prælatorum, Baronum & totius Communitatis Regni prædicti unanimitate & assensu provida deliberatione inita fuerit, &c. In cujus rei testimonium huic. Scripto nos Rex Angliæ, Comes Leyc. & Glouc. Jo. filius Johannis, Johannes de Burgo Sen. Will. de Monte Canisio, Henr. de Hastings, & Gilbertus de Gaunt, pro nobis & cæteris Baronibus & Com-

Rot. Pat. 48 H. 3. m. 4. dorso.

38 **The Commons of England ever**
munitate Regni Anglie Sigilla nostra
apposuimus. Dat. apud Cantuar. die
Jovis proxime post Festum Nativitatis
beatæ Virginis, Anno 1264.

Rafals Stat. p.
987. Stat. 3 &
4 E. 6. Cap. 3.
where in the
Parliament
holden at Mer-
ton in the 20
H. 3.

And therefore those that hold
that there were no Commons, or
Citizens and Burgeses in Parlia-
ment before 49 Hen. 3. would do
well to define and ascertain, who
the *Communitas* were after the
words *Praelati, Barones & Magnates,*
in the before-expressed Records.

The

an Essential part of Parliament. 39

The FIFTH
ARGUMENT.

From an Act of Parliament, An. 2 H.
5. that famous Prince, where it is
declared and admitted, that the Com-
mons of the Land were ever a part
of the Parliament, and so conse-
quently were part of the Parliament
Annis 16, 17 Joh. 28, 32, 37,
42, 48 H. 3. all within the pre-
scription of the Borough of S. Al-
bans.

THE Commons of England, up-
on their claim or protesta-
tion, had, as their undoubted
and unquestionable right, and in-
herent priviledge, allowed and ad-
mitted in Parliament, that they
had ever been a member of Parlia-

D 4 ment :

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ment: then were they a member of that 16 Job. before-mentioned, of 17 Job. 28, 32, 37, 42, & 48 H. 3. and that no Statute or Law could be made without their assent.

Rot. Parl. 2 H. 5. p. 2. n. 10. Nota, This memorable Record amongst several others as remarkable, is entirely left out in the Exact Abridgment of the Parliament Rolls, published under the name of Sir Robert Cotton, by Mr. Pryn.

The Record says, That so as hit hath ever be their liberte and freedome, that thar should no Statute, ne Law, be made of las than they yaffe therto their Assent, considering that the Commune of your Lond, the which that is and ever hath be a membre of your Parliament, ben as well Assentirs as Petitioners.

Yet was the affirmation of the Commons no other than a renovation or memorial of the ancient Law of the Land, as is proved before, and more fully explained and confirmed by the Petition to the King and his Learned Council, and answer thereto in the Parliament

Placita Parl. p. 619. Pet. Parl. 18 E. 2. n. 2. Engleterre.

of

an Essential part of Parliament. 41

of 8 E. 2. The Record is not unworthy of a serious perusal. Erchevesq; Evesq; Prelatz, Counts, Barons, & autre gentz de la Comunyalte Dengleterre que tiegnent lour Manoirs en chief de nostre Seigneur, as well within the Forest as without, to which Mannors they had Gasz (Wast) appendant, dont les Seignourages avantditz arentunt, by the acre, half acre, & per rode en approvaunt lour Manoirs. Whereupon the Ministers of the King made seisure thereof, Pur ceo qu' eux ne unt la licence le Roy d'entrer. Therefore they pray, that they may approver leur Manoirs & le povre peuple eyser, &c. Responsum in dorso, Il ne put estre fait sanz novele ley la quele chose fere la Comunalte de la terre ne vult my uncore assentir. infra, Coram rege.

From hence I make these Observations.

1. It proves that the Law could not be altered without consent of the

42 **The Commons of England ever**

the *Commons of England*, though in a case particular to the King, as this was, for the Petition was *coram Rege*; nor could the King and Commons, without the Lords. For *E. 3. per arys des Prelatz & Grauntz de la terre fist respondre as les petitions des Communes touchantes la leye de la terre, que les leyes eues & useez en temps passez, ne le processe dycelle useez ce en arere, ne se purrent changer sanz ent faire novel Estatute*, which as then they could not attend, but shortly would.

Rot. Parl. 22
E. 3. n. 30.

2. That they ought to agree to all new *Laws*, and that no Statute could be made without their assent. It is then remarkable, 1. That the *Commons of England*, as now we stile them, gave their suffrage and vote in the enacting and making of all Statutes and Laws in the time of the Progenitors of *H. 3.* which taken *extensive*, is a very large pre-
scription

an Essential part of Parliament. 43

scription of right, for that King by the Statute of *Assisa panis & cervisie*, made after 49. when it is pretended the Commons began, viz.

Pulton Stat.

An. 51. tells us, That at his *Parliament* held the first year of his Reign, he had granted that all good Statutes and Ordinances, made in the time of his Progenitors, and not revoked, should still be held. 2. But admitting the word *Progenitors* be restrained to two, which I conceive was never intended by the Law-makers, yet it cannot be denyed but that the Statute of *Magna Charta*, for so it is called *5 H. 3. Fitz-herb. Abrid. tit. Mordaunc. n. 53.* and by *Fleta, Lib. 1. Cap. 28.* and all other Statutes made at least, *temporibus Johannis & Ricardi I.* Father and Uncle of *Henry the Third*, had the assent of the *Commons in Parliament*, to make them *Laws*.

Rot. Pat. 1 H.
3. m. 13.

Rex Archiepiscopis, &c. Militibus & liberetenantibus & omnibus fidelibus suis per Hiberniam, &c.

quod in signum fidelitatis vestrae, &c. libertatibus Regno nostro Angliæ a patre nostro & nobis concessis de gratia nostra & dono in Regno Hiberniæ gaudeatis, &c.

Sed non sic Angliæ Statuta oriiri possunt dum nolumus Principis voluntate. sed & totius Regni assensu ipsa condantur. Fortescue, cap. 8. pag. 40.

Now

Now the word *Progenitors* in the Statute, must I conceive go higher than Ric. 1. for *Bracton* a Learned Judge, who flourished in the time of *Henry* the Third, and so by a reasonable computation of time, may be supposed to have lived in the latter end of the Reign of Ric. 1. or beginning of King *John's*, after he had declared to posterity that he had bent his mind, *ad vetera judicia perscrutanda diligenter non sine vigiliis & labore*, and whatsoever he found *Notatu dignum*, he reduced in *unam summam perpetua memoria commendanda*, concludes this point thus. *Cum legis vigorem habeat quicquid de consilio & de consensu Magnatum & Reipublicæ communi sponfione autoritate Regis sive Principis præcedente justè fuerit definitum & approbatum.*

Bracton. Lib. 1. cap. 1. fol. 1. Inhibitio nè qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia notabilis persona transeat ad partes transmarinas. Rot. Claus. 3 E. 2. m. 16. rit. dorso.

And so just and excellent was the ballance of the Constitution of our

our legal Government, in preventing any order or rank of the Subjects, to impose upon or bind the rest without their *common consent*, and in conserving as it were an universal *liberty and property* to every individual degree of men, from being taken from them without their assent, as the County *Palatine of Chester, ab antiquo* were not subject to such Laws to which they did not consent; for as well before the *Conquest of England*, as after, they had their *Commune Concilium*, or Court of Parliament, by authority of which the *Barones, Milites & quamplures alii* (Rot. 44 H. 3. m. 1. dorso) *Barones liberi homines & omnes alii fideles* (Rot. Pat. 3 E. 1. m. 6.) or as the Supplication to H. 6. saith, The Abbots, Priors,

Kings Vale Royal of England, fol. 9, 10, 11.

Apud Eundem. Which Suppli-

cation, though it be not that I know of upon Record, yet I have seen very many Copies thereof, and particularly I have a Copy of it my self which was written in the year MDLxxxii. *Ex literis Domini Tho. Mautwaring Cestrensis Baronetti ad me missis, Anno Dom. 1675.*

Clergy,

46 **The Commons of England** ever
 Clergy, Barons, Knights, Esquires,
 and Commonalty, did with the
 consent of the Earl make or admit
 Laws within the same, such as
 should be thought expedient and
 behoveful for the Weal of the In-
 heritors and inheritance of the said
 County, and no Inheritors or Pos-
 sessors within the said County were
 chargeable or liable, or were
 bounden, charged, or hurt of their
 Bodies, Liberties, Franchises, Lands,
 Goods, or Possessions, unless the
 said County (or Parliament) had
 agreed unto it. And I dare under
 submission affirm, that neither this
 County Palatine, nor *Durham*, were
 ever subjugated to have their Es-
 tates given away, at the good
 will and pleasure of the Earl or
 Bishop, under any notion or fan-
 cy in those days of being their re-
 presentatives in the *Commune Concili-
 um Regni*, or that being dependant
 Tenants,

an Essential part of Parliament. 47

Tenants, their consents were in-
 cluded in their Lords assent: and
 if the *Commune Concilium Cestrense*, or
 Parliament, was deduced from
 Records, it would be of greater
 use to shew us as in a Mirror the
 Government of *England* in antient
 days, than what I have yet seen
 published by any Author.

3. That the Answer of the
King to the Petition penned and
 made by all the *Judges* of the
 Land, his *Council in Parliament*
 cannot be supposed to be ground-
 ed upon a modern usage of 59.
 years from the time of 49 *H. 3.* till
 then, if the Tenants in *Capite jure*
representationis, made the *Parliament*
 as some hold, but was a Declara-
 tion of the ancient Custom and
 right of the Nation.

4. That it was not in the pow-
 er of all the Tenants in *Capite* of
England, or the greatest part, who
 were

were the Petitioners, though with the Kings consent, to bind and oblige others, or to make or alter a Law, sine assensu Communitatis Regni, who had votum consultivum, and decisivum, an Act of Authority and Jurisdiction, as well in assenting to spiritual Laws as Temporal, as may appear for an instance, in their Declaration or Protestation to E. 3. in Parliament.

Rot. Parl. 51
E. 3. art. 46.
Le Convocation
ne ad ascun pow-
er a faire ascun
chose a lier le
Temporalite.
20 H. 6. 13.
Et issent le Rule
44 E. 3. 19.
est vray q' nul
ley oblige le poe-
ple fors q' ceo q'
est fait par con-
sent del poeple.
Davis Rep. fol.
32.

Que nul estatut ne Ordenance soit fait ne grante au Petition du Clergie si ne soit per assent de voz Communes, ne que vous dites Communes ne soient obligez per nulles constitutions q'ils font pur leur avantage sanz assent de voz dites Communes: Car eux ne veullent estre obligez nul de voz Estatuz ne Ordinances faitz sanz leur assent.

Fortescue cap. 8. pag. 40. tells us, Sed non sic Anglie Statuta oriri possunt dum nedum Principis voluntate sed & totius Regni assensu ipsa conduntur.

Et

Et si Statuta licet tanta solemnitate & prudentia edita, efficaciam tantam quam conditorum cupiebat intentio, non esse contingant; Concito reformari ipsa possunt & non sine Communitatis & Procerum Regni illius assensu quali ipsa primitus emanarunt. And that this was the antient Law and Right of the Kingdom, appears by the answer of E. 1. an^o 22. of his Reign to the Petition of the whole Clergy of England; for the Clergy having given the King medietatem omnium bonorum tam temporalium quam spiritualium, complaining that the Immunity of the Church lesa fuit & violata, petit a Rege quosdam Articulos (Rege jubente) jussit enim Rex postquam votis ipsius paruerant (in giving the Subsidy) ut ipsi ab eo peterent remedia que vellent. Et petierunt imprimis ut Statutum de manu mortua, quod in prejudicium Sancte Matris Ecclesie fuit editum, deleteretur. Cui quidem

Henr. de Knighton de Eventibus Anglie lib. 34 pag. 2502. l. 24. An. Domini 1294. 28 E. 11

E Articulo

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Articulo respondit Rex, quod idem Statutum de Consilio Magnatum suorum (so phrased by the Historian) fuerat editum & ordinatum, & absq; eorum Consilio non erat revocandum : but a more certain authority tells us, that the Statute was made, *per Commune Concilium Regni*, or Parliament, as appears by *Rot. Claus. 7 E. 1. m. 5. dorso. Rot. Pat. 10 E. 1. m. 13.* and then the Commons were unquestionably an essential part, and joined in the making the Statute.

vide Coke 2. Inst. fol. 75.

an Essential part of Parliament. 51

The SIXTH ARGUMENT.

From the form of penning of Acts of Parliament, and expressions in Records in 49, 51, 54 H. 3. when it is pretended the Commons first began to be a part of the Legislative Power, which agree with the phrases of Records of Acts of Parliament before that time.

THE King writes to the Bishop of London, and to the rest of the Bishops of the Province of Canterbury, that his heart was wounded *acuto dolore*, that the Earl of Gloucester, and other Rebels, had by crafty persuasions circumvented, *proh dolor!* Prince Edward, & *ad partem suam proditorie*

*Rot. Pat. 49
H. 3. m. 13.
intus. n. 54.*

The

E 2

attrax-

52 **The Commons of England** ever
*attraxerunt proprii contemptu Sacra-
menti, contra formam de nostro & ejus-
dem filii nostri, Prælatorum, Magnatum
& Communitatis Regni nostri unani-
mi assensu & voluntate nuper London.
provisam.*

Rot. Pat. 51
H. 3. m. 16.
*Pro pace inter
Regem & Com.
Glouc.*

*Nota, Richard
Earl of Corn-
wal, was E-
lected King of
Hungary, or
Almain.*

Ibidem.

*Coke 2. Instit.
fol. 599.
Articuli Cleri
ex fragmento.*

Rot. Parl. An.
51 H. 3.

Rot. Pat. 54
H. 3. m. 7. in-
tus. *De signo
Crucis primoge-
nito Regis &
xx^a sibi concessa
in subsidium
terre Sancte.*

The King *per le conseil & l'assente-
ment le Rei de Alemain & de Countes,
& de Baruns, & del Commun de la
terre*, pardoned and released the
Earl of Gloucester, and all his Com-
pany, &c.

And the King *per le Conseil & l'as-
sentelement le Rei de Alemain, & les
Cuntes, & de Barons, & le Commun
de la terre*, pardoned and released
the Londoners, *totes maneres de
ire & de rancour & de male volente,
&c.*

The King and Prince having
undertaken the *Crusado*, for the
Holy Land, *quia tamen Prælatis,
Magnatibus & Communitati Regni
non videtur expediens neq; tutum*, that
they

an Essential part of Parliament. 53

they should be both out of the
Kingdom, *istis temporibus*, it was
agreed the Prince should go, and
a Subsidy was granted to the Prince
by the Parliament.

If one should shew the Au-
thors of the *novel opinion*, only
these Records, and thereupon ask
them who the *Communitas*, men-
tioned in these Records, after the
words *Prælati, Barones, & Magnates*
were, I doubt not but they would
say, Knights, Citizens, and Bur-
gesses, because they are after the
pretended inception of 49 H. 3.
but then I desire to know what
authority they can shew, why the
Communitas in 29, 32, 37, & 48 H.
3. should not be a part of the
Parliament as much as of 49, 51,
54. of that King, since the words
or phrases of both are alike in the
Records.

E 3

For

54 **The Commons of England ever**

For I do not think it a true way of reasoning, That because the notion of 49 *H. 3.* is generally published by our now Historians, and so believed: *Ergo*, it unquestionably was so, and has always and in all ages been distinctly known and believed.

The

an Essential part of Parliament. 55

The SEVENTH
ARGUMENT.

From the defect and loss of Parliament Rolls of H. 3. and E. 1. and from the universal silence of all Records, and our antient Historians contemporary and succeeding 49 H. 3. till our days.

IT is true indeed for any thing yet appears, the Parliament Rolls of *H. 3.* are all lost or destroyed, though references are made to them by several Clause and Patent Rolls of *E. 1.* and *E. 2.* yet no direct Writ of Summons *ad Parliamentum*, is extant of that time, either of the *Lords* or *Commons* (so *M^r Pryn*) till the Dorset of the Clause Roll 49 *H. 3.* in a

For all Parliament Rolls of the time of *H. 3.* are lost except one, of some passages in the Parliament at *Oxford*, in 44. of the same King, which I have heretofore used by the favour of an honourable person that communicated it. *Selden's Titles of Honor*, pag. 597.

E 4

Sche-

56 **The Commons of England ever**

Schedule affixed thereto, where there are Writs for Electing and sending to a Parliament at London, two Knights, Citizens, and Burgeses, and Barons for the Cinque-Ports, and likewise Summons to the great Lords.

But if that Roll of 49 H. 3. and Rot. Claus. 22 E. 1. had been destroyed as many others of that time were, then had there been no footsteps or testimony left us on Record, yet discovered, of any formal Summons to Parliament, of them or the Prelats and temporal great Lords, till 23 E. 1. though several Parliaments were in the interim, no less than twelve as the Printed Statute Books tell us. And the Commons expressly said to be present at some, and implied in all, if the Phrase of *Commune Concilium Regni* implies so much, which I think is unquestionable when compared

Pryn's first Part of Parliamentary Writs, fol. 160. Apud eundem parte secunda, fol. 33.

Pulton's Stat. fol. 14, 18, 25, 39, 43, 44, 46, 67, 69, 71, 73.

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compared with the Statute of *Westm. 1.* made 3 E. 1. which was not eleven years after 49 H. 3. wherein the constituent parts of the *Commune Concilium Regni*, are enumerated and expressed, the Statute being made *Per l'assentements des Archevesques, Evesques, Abbes, Priors, Countes, Barons & tout le Comminalty de la terre illonques summones.*

vide the Writs upon the Statutes of Westm. 1. 3 E. 1. Glouc. 6 E. 1. de mercatoribus, 13 E. 1. de Vastq, 20 E. 1. declare they were made per Commune Concilium Regni. Coke 2. Instit. fol. 156.

Now because from that one Record of 49 H. 3. (being the only Roll as yet found out) it should be wonderfully observed, and from thence infallibly concluded and nicked, and by an ominous and influential Asterism of Rebellion and Treason marked, that the very first Writs (whereby the great

All the antientest Writs of Summons of our Temporal

Lords to great Councils, being utterly lost through negligence, or perished through the rust or consumption of time, the very first Writ of Summons to them, and Kalendar of their names, now remaining, is that of 49 H. 3. *Pryn's Register of Parliamentary Writs, Part 1. fol. 160.* But to point out who they were (*viz. Barones majores*) that had their first rise by Writ of Summons until 22 E. 1. and afterwards, passeth my skill, there being no publick Record that doth make mention of them till then, excepting that of 49 H. 3. *Dugdale's Pref. to his Baronagium Anglie, Tom. 1.*

Lords

The Commons of England ever

Lords are said to be also first Summoned) to send two Knights, Citizens, and Burgeses for each County, City, and Borough, *ad Parliamentum*, in *Octabis Sancti Hilarii*, were made in this very year, at that very *Crisis* of time, nay tested on such very days, when the rebellious Barons (after the Battel of *Lewes*) had the King and Prince in their power, and exercised Regal Authority in his name, under good favour seems not at all satisfactory and convincing to me, until they give more certain and greater testimonials and evidence, and answer these few Records.

If the *Epocha* of the Knights, Citizens, and Burgeses, or Commons (as now called and distinguished from the great Lords) being first admitted a part of the Parliament and Legislative Power, had such a Creation and Origine,

an Essential part of Parliament. 59

gine, it is more than a wonder, though the Parliament Rolls be destroyed, that the Lieger Books, Charters, or Historians of that time, either National or Foreign, of which there are not a few, or our ancient Lawyers, *Bracton*, *Britton*, *Fleta*, and *Hengham*, had not amongst many Narratives of far less moment and weight, given posterity a remark, or some short hint or memorial of so suddain, so great, and so universal a change or Catastrophe of the whole constitution and ancient frame of the English Government, as that must unquestionably be admitted to be, or some subsequent Chronologer had not so much as dreamed of it till of late, or that branch in the ancient Coronation Oath of our Kings, demanded by the Archbishop, had not been omitted, or never administred, which runs thus.

Concedis

Ex MS. penes
Honorabilem
Dominum Bar.
de Hollis.

Concedis justas leges & consuetudines esse tenendas, & promittis per te esse protegendas, & ad honorem Dei corroborandas quas Vulgus elegerit secundum vires tuas. [Respondebit Rex, Concedo & promitto.]

The word *Elegerit*, being admitted to be of the *præterperfect tense*, it certainly shews, that the peoples Election had been the foundation and ground of antient Laws and Customs; and the term of *justas leges*, seems to allow a liberty of debate, reason, and argument, so much as might be of efficacy and force, to demonstrate and convince, that the Laws so required by the *Commons* of the King, were just and reasonable; the debate and consideration of which certainly was never, nor ever could be intended to be done in the diffusive capacity of all the *Commons* of *England*, *separatim*, but in an intire,

or in an aggregate body, that is, in their *Communia Concilia*, or *Parliaments*.

And with this agrees the Statute of Provisors, *An. 25 E. 3.* which saith, *Whereupon the said Commons have prayed our Sovereign Lord the King, that upon the mischiefs and damages which happen to his Realm, he ought and is bound by his Oath, with the accord of his people in his Parliament, thereof to make remedy and law, and removing the mischiefs and damage which thereof ensue.* (And this they say) *sith the right of the Crown of England, and the Law of the Realm was such.*

Nor indeed can I apprehend any colourable pretence, much less a probable reason, that if the Barons had *49 H. 3.* usurped the Sovereign power into their hands, they

Pulton's Stat. fol. 99. 25 E. 3.
It is considered and declared by the whole body of this Realm now represented by all the Estates of the same assembled in this present Parliament, that the Kings Highness, before Almighty God, is bound as by the duty of a good Christian Prince, for the conservation and preservation of the good Estate and Common-wealth of this his Realm, to do all that in him is, to obviate, repress, and redress the said abusions and exactions of Annates, or First-fruits. *Apud Capell. Rotulor. Rot. Parl. 23 H. 8. n. 33.*

62 **The Commons of England** ever they should 1. So easily and speedily divide and share it with the *Commons*, constitute a new *Court of Parliament*, and make them *essential* and *coordinate* with themselves in the Legislative Power: sure we know it is natural for all Courts, *ampliare & non diminuer Jurisdictionem.* 2. That at that Parliament the numerous Barons (as they stile them) should but summon 23. of their own Order, when the Archbishops, Bishops, Abbots, Priors and Deans, made 120, if we must be concluded by the Records. If there were then two Houses of Parliament, and that the Knights, Citizens, and Burgeses, did not sit with the Lords, the Prelates having so great advantage of the Temporal Lords in their Votes, were very unkind to the Crown they made not use of their overballance for the delivery of the King

an Essential part of Parliament. 63 King and Prince, then said to be in Custody. 3. Nor have I yet met with any reasons given, why when the Government of the whole Kingdom was at this Parliament of 49 *H. 3.* to be settled after so long and bloody a War, the Barons being then so victorious and numerous, as our modern Authors say, they would by their absence hazard and endanger the loss of all by entrusting the Prelates and *Commons* with the overballance. Many remarkable observations might be raised upon this Record, both as to the Lords and Commons, but I will now pass to my eight Argument, concluding this with *M^r Prynns* opinion, how the Parliament Rolls before *E. 3.* came to be lost or destroyed. I will use his own words. That there are no Records at all in the *Tower* (except some few ancient

M^r Prynns's Preface to *S^r Robert Cotton's* Abridgment of the Records in the *Tower.*

The Commons of England ever
 tient Charters or Exemplifications
 of them) antienter than the first
 year of King *John*, all the rest from
William the first his Reign till then
 (except some few in the Exchequer
 not relating to Parliaments) being
 utterly lost, the first Parliament
 Rolls yet remaining are these, 5,
 8, 9, and 19th of King *E. 2.* the
 Statute Roll of *H. 3. E. 1. E. 2.*
 containing some Statutes made in
 their Reigns, a Parchment Book
 of some Pleas in Parliament during
 the Reigns of King *E. 1.* and *2.*
 and a few Bundles of Petitions in
 the Parliaments of *6 E. 1.* and
1, 2, 3, and *4 E. 3.* none of which
 are here abridged (*viz. in the A-*
bridgment by him published) only I
 find in the Clause Patent Charter
 and Fine Rolls of King *John, H. 3.*
E. 1, and *2.* some Writs of Sum-
 mons, and some memorials of
 Acts, Ordinances made, and Aids,
 Subsidies,

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Subsidies, Dismes, Quindisms, Cu-
 stoms granted in Parliaments, held
 during their Reigns, the Rolls
 whereof are perished and quite
 lost, either through the negligence
 of the Record Keepers, or the In-
 jury, Iniquity of the times during
 the Civil Wars between the King
 and Barons, in the Reigns of King
John and *H. 3.* and betwixt the
 two Houses of *Lancaster* and *York*,
 for the Title of the Crown, where-
 in (it is very probable) the pre-
 vailing King's parties, by their In-
 struments, imbezled, suppressed
 such Parliamentary Records and
 Proceedings, as made most against
 their Interests, Power, Preroga-
 tives, Titles; or through the de-
 fault of our Kings great Officers
 and Attornies, who sending for
 the Parliament Rolls out of the
Tower, upon special occasions, ne-
 ver returned them again for rea-
 sons

Rot. Parl. i. ff.
 4. n. 8. Rex
 Richardus fecit
 Rotulos Parlia-
 menti pro voto
 suo mutari &
 deleri.

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sons best known to themselves, by
means whereof, those Parliament
Rolls being no where to be found,
their defects must be supplied only
out of such fragments and memo-
rials of them, as are extant in our
other Records and antient Histori-
ans, especially in *Matthew Paris,*
Matthew Westm. William of Malmes-
bury, Henry Arch-Deacon of Hun-
tingdon, Roger de Hoveden, Simeon
Dunelmensis, The Chronicle of
Brompton, Radulphus de Diceto, Ra-
nulphus Cestrensis, and Thomas of Wal-
singham, who give us some ac-
compts of their proceedings and
transactions, which else had been
utterly buried in oblivion, as well
as their Rolls wherein they were
at large Recorded, as is evident
by the Parliament Rolls yet ex-
tant.

The

an Essential part of Parliament. 67

The EIGHTH ARGUMENT.

*From the various opinions of the learned
men in and since H. 8. who never
dreamed of any such origine, nor was
it ever heard of till of late.*

IT would be tedious to set
down the various and wan-
dring opinions and reasons of our
modern Authors in English, touch-
ing the beginning of our Parlia-
ments, and constituent parts there-
of, especially of the *Commons*, as
now called and comprehended in
the Knights, Citizens, and Burges-
ses in Parliament: I will but in-
stance in a few eminent Authors,
and leave the Croud behind.

The great Antiquary, Mr. Lam-
berd

68 The Commons of England ever

Lamberd Archion. fol. 246.

berd holds, that they were before the time of William the First, and there are other learned men who give their assent to that as a great truth.

Prynns Truth Triumphant over Fallhood, Antiquity over Novelty, fol. 69. Parliamentum Synodus magna nuncupatur Somneri Gloss.

Mr. Prynne saith, By all the ancient Presidents before the Conquest, it is most apparent, That all our Pristine Synods and Councils were nought else but Parliaments; that our Kings, Nobles, Senators, Aldermen, Wisemen, Knights and Commons, were usually present, and voting in them as Members and Judges.

Polydore Virgil, Hollinshead, Speed and Martin, are of opinion, that the Commons were first summoned at a Parliament at Salisbury, Anno 16 H. 1.

Sir Walter Raleigh in his Treatise of the Prerogative of Parliaments, thinks it was Anno 18 H. 1.

My

an Essential part of Parliament. 69

My Lord Bacon in a Letter to the Duke of Buckingham, asks, Where were the Commons before H. 1. gave them authority to meet in Parliament?

Cabala fol. 65. An. Dom. 1621.

Dr. Heylin finds another beginning, and saith, that H. 2. who was Duke of Anjou, was the first Institutor of our High Court of Parliament, which (being an Anjo-vian) he learned in France.

Heylins Description of the great World, fol. 464. Impress. 1627.

But I cannot find that any of those ever supposed the Commons were first introduced in Parliament 49 H. 3. by Rebellion.

Nor was this opinion entertained by any Author I can meet with, Anno 1529. 21 H. 8. for in an answer of that great and excellent person Sir Thomas More, Lord Chancellor of England, in his supplication of Souls against the supplication of Beggars, discoursing about King Johns making (in the

Sir Thomas More's Works, fol. 296.

E 3

14th

The Commons of England ever
 14th year of his Reign, and three
 years before his granting *Magna*
Charta) the Realm Tributary to
 the Pope, declares his Judgment
 without any doubt or hesitation,
 and therein as I take it the univer-
 sal tradition and belief of all learn-
 ed men of that and precedent
 times:

That the Clergy and all the
 Lords and *Commons* of the Realm
 made the Parliament in the age of
 King *John*, and that never could
 any King of *England* give away
 the Realm to the Pope, or make
 the Land Tributary without their
 grant; whose Book, and so his opi-
 nion we find approved of and pub-
 lished by a grave and learned
 Judge of the Kingdom, Mr. Ju-
 stice *Rastall*, and dedicated to
 Queen *Mary* her self, *An. 1557.* not
 much above a Century ago.

Willielmus Ra-
stall Serviens ad
legem constitu-
tus Justic. de
Banco. Teste
Rege apud
westm. 27 Octo-
br. Rot. Pat. 5
& 6 Ph. & Mar.

The

The NINTH
ARGUMENT.

From the comparison of the antient Ge-
nerale Concilium, or Parliament
of Ireland instanced An. 38 H. 3.
with ours in England, wherein the
Citizens and Burgesles were, which
was eleven years before the pretended
beginning of the Commons here.

AS great a right and privi-
 ledge surely was and ought
 to be allowed to the English Sub-
 jects as was to the Irish before 49
H. 3. and if that be admitted, and
 that their *Commune Concilium*, or Par-
 liament, had its *Platform* from
 ours, as I think will not be denied
 by any that have considered the
 Histories and Records touching
 that Land, we shall find the two
 F 4 ensu-

The Commons of England ever

ensuing Records, An. 38 H. 3. clearly evince, that the Citizens and Burgeses were then a part of their great Council or Parliament.

Rot. Pat. 38 H. 3. m. 4. Hibernia.

Rex Justic. Cancellar. & Thesaur. nostris Hibern. &c. Volumus & vobis mandamus quod unum Parliamentum sive Magnum Consilium. Claus. 42 E. 3. m. 6.

That King being in partibus transmarinis, and the Queen being left Regent she sends Writs in the Kings name directed Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, liberis hominibus, Civibus & Burgensibus terre sue Hibernie, telling them that mittimus fratrem Nicholaum de Sancto Neoto, fratrem Hospitii Sancti Johannis Jerusalem in Anglia ad partes Hibernie ad exponendum vobis (together with I. Fitz Geffery the Kings Justice) the State of his Land of Vascony endangered by the hostile invasion of the King of Castile, qui nullo jure sed potentia sua confisus terram nostram Vasconie per ipsius fortitudinem a manibus nostris auferre

an Essential part of Parliament. 73

ferre & a Dominio Regni Anglie segregare proponit. And therefore universitatem vestram quanta possumus affectione rogantes quatenus nos & jura nostra totaliter indefensa non deserentes nobis in tanto periculo quantumcumque poteritis de Gente & pecunia subveniatis, which would turn to their everlasting honour, concluding his nostris angustiis taliter compatientes quod nos & heredes nostri vobis & heredibus vestris sumus non immerito obligati. Teste Regina & R. Comite Cornubiæ apud Windesfor, 17^o Die Februarii, per Reginam.

Inquisitio facta ad Parliamentum de Tristel Dermond die Mercurii proxima post Festum Sancte Trinitatis An. 48 H. 3. coram Domino Ricardo de Rupella Capitali Justiciario Hibernie & coram Domino Hugone de Tachmone Episcopo Mideni tunc Thesaurario, &c. Ex Registro Archiepiscopi Dublinensis. Parliament in Ireland, An. 48 H. 3.

The other Writ somewhat varies, being a Commission touching the Chief Justice Fitz Geffery, to be as an Assistant or Co-commissioner with Father Nicholas, to hold the Parliament, to declare to them the State of Gascony, & pericula nobis imminencia, & ad tractandum vobiscum super auxilio nobis faciendo, against the

The Commons of England ever the King of *Castile*, desiring they would give Faith to what the Chief Justice should say to them thereupon.

Rot. Pat. 5 E.
1. m. 13.

Rot. Pat. 5 E. 1. m. 13. we read: *Rex Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, & omnibus aliis Anglicis de terra Hibernia, &c. vobis mandamus quod ad certos dies quos ad hoc provideritis, videlicet citra Festum Nativitatis beate Mariæ Virginis, in aliquibus locis opportunis conveniatis, & diligentem tractatum inter vos habeatis, utrum fuerit præjudicio vestri & libertatum & consuetudinum vestrarum, that the meer Irish should use and enjoy the same Laws and Customs in common as the English there, and to send their Judgment and Counsel, under the Seal of the Justice of Ireland. And in the twentieth Year*

an Essential part of Parliament. 75

Year of this King, *Magnates & probi homines Terræ Hiberniæ quintamdecimam partem de bonis & catallis suis concesserunt gratiose* to the King, which certainly was done in the *Generale Concilium*, or Parliament, and that the general phrase (*probi homines*) did include and comprehend the *Citizens and Burgeses* to be part of that General Council, for Rot. Claus. 7 H. 3. m. 7. dorso, the *Citizens of Dublin* are called *Probi homines nostri Dublyn*.

Rot. Pat. 28 E.
1. m. 15. De
15^a Regi in Hi-
bernia concessa
taxand.

Inhibitio ne qui
Magnates, vi-
delicet Comes,
Baro, Miles, seu
aliqua alia no-
tabilis persona
transseat ad par-
tes transmari-
nas. Rot. Claus.
3 E. 2. m. 16.
19. dorso.

From hence may be observed,
1. That by the Patent Rolls of 38 H. 3. the *Citizens and Burgeses* were summoned to meet at the great Council or Parliament, as well as the Prelates, Earls, Barons, Knights, and Free-holders, and equally desired to give the King a *Subsidy of men and money*.

2. That though in the Writ of E. 1. the *Citizens and Burgeses* are

are

76 **The Commons of England** ever are not mentioned *eo nomine*, the phrases of directions in Writs being in those Ages very various, sometimes more general, and sometimes more particular; yet the words *omnibus aliis Anglicis* after *Baronibus & Militibus*, must comprehend the *Citizens* and *Burgessees*, who were to meet and diligently to treat with the Archbishops, Bishops, Abbots, Priors, Earls, Barons, and *Knights* and *Freeholders*, whether it would be in prejudice of their Liberties and Customs, if the *meer Irish* should enjoy the same Laws and Customs as they of the English extraction did, and they were to join in giving their judgment and counsel with the rest of the Parliament. And reason it self speaks it, since the admission of the *meer Irish* into equal priviledges and rights with themselves in their Cities and Towns, would be of so great

an Essential part of Parliament. 77

great a consequence to them; for upon the Kings granting by Charters to several Irish Families, the benefit of the English Laws, great disputes arose, so that *Rot. Claus. 10 E. 2. m. 28. intus*, upon a Petition to the King, he granted that *semel in anno teneatur* Parliamentum to redress their grievances touching the Irish and English Laws, and so the word *Parliamentum* ascertains what those Councils were in the Patent Rolls of 38 *H. 3.* and 5 *E. 1.* before-mentioned.

And now I will close my Arguments, declaring under the good favour of so eminently learned Authors, that their resolves and opinions which they have published to the World, that the inception and original Election of Knights, Citizens, and Burgessees, or the admission of the *Commons of England* (as now phrased) into Parliament by

78 **The Commons of England** ever by Rebellion and Treason, *Anno 49 H. 3.* are not at all satisfactory and convincing in my judgment, unless they give more certain and greater testimonials than yet I have met with, and answer these few Records against their so severe *Position*. A *Position*, believe me, that like a tempestuous Whirlwind, not only rends off and dismembers an essential branch, but shakes the very Root of the right and honour of our English Parliament, and equally wounds both Lords and Commons, because these learned Authors themselves do agree, that there is not yet discovered any formal Summons of the great Lords (no more than of the Commons) to any Parliament before the said *49 H. 3.*

And here I must beg the favour of the Reader of adding a *supplemental Argument*, which at first I confess

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 confess was not intended, and it is this.

If in the General Councils, or, in our present Dialect, Parliaments, for instance, 1. Of France, 2. Spain, 3. Portugal, 4. Denmark, 5. Sweden, and 6. Scotland, the Cities and great Towns or Boroughs, have from time immemorable, both de jure and de facto, had their Delegates or Representatives:

Upon what authority or reason can it be believed, that so universal a Northern Custom or Law, did not obtain and was never practised in England before 49 H. 3?

1. **F**OR France we find their *Paulus Amilius Hist. Franc. Lib. 9.* *Conventus ordinum, or L'assemblee des Estates, consisted de Sacerdotio, Nobilitate & plebe, of the Clergy, Nobility and Commons, this is*

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Rot. Parl. 9 H. 5. n. 14. Pars 1^a. *Approbatio pacis inter Regna Angliæ & Franciæ nuper conclusæ.*

Rot. Parl. 11 H. 7. n. 40. in *consimili forma.*

The last of which, being the Citizens and Burgeses, appeared by their Representatives or Delegates.

is evident by the Parliament Roll 9 H. 5. which takes notice of the peace made between England and France, that the same was confirmed in France, *per tres Status regni, viz. Prælatorum & Cleri, necnon Procerum & Nobilium ac etiam Civium, Burgensium, Civitatum, Villarum & Communitatum dicti Regni Francorum, ipsi tres Status eandem pacem & omnia & singula contenta in eadem APPROBARUNT, LAUDARUNT, ACCEPTARUNT & AUCTORIZARUNT.*

It seems by this that the French Kings were not so despotical and absolute by the fundamental Laws of that Kingdom, as their Successors have by acts of power since made themselves.

2. In Spain their Curia or Cortes del Reyno, is compounded (as Dr. Heylin cites out of the learned Bodin) of the Clergy, the Nobility, and the Commissioners of the Provinces and antient Cities. 3. The

an Essential part of Parliament. 81

3. The Portugal Cortes or Parliament consists of the Bishops and Prelats, the Nobiles majores & minores, and two Procurators or Burgeses from every City, who have a deliberative voice, which they call definitive.

The Portugal History. Im- press. An. 1677. pag. 279.

4. In Denmark, Pontanus saith, the Bishops, the Nobility, & Civitatum Delegati, the Deputies or Commissioners of Towns and Cities, made up their General Council.

Pontanus in Hist. storia rerum Dani- carum. Lib. 7.

5. For Sweden, it does not much differ from the Government and form of Denmark, their Common Council consisting of the same Estates and degrees of people, that is to say, Proceres & Nobiles, the greater and the less Nobility, Episcopi & Ecclesiastici, Civitates & Universitates, the Cities, Boroughs and Villages.

Thuanus Hist. Lib. 131. fol. 1108. Tom. 4.

I might here if it were needful, G shew

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shew how great a share and interest the *Hanze* or free Towns in *Germany* have by their Deputies in all Ages had in the Diet or General Council of the Empire.

Regiam Majestatem Scotiae.

6. But now at last we are come to Scotland, Sir John Skene in his Epistle Dedicatory to King James, before his Scottish Laws, writes thus. *Intelligo tuas tuorumq; Majorum Leges quæ cum Legibus Regni tui Angliæ magna ex parte consentiunt*; and then in his Book shews, that *Wilhelmus cognominatus Leo*, who as is said, begun to Reign in 1105. and reigned 49. Years, so as he was King of Scotland 5^{to} of our Henry the first, held his *Affise* or Parliament at Perth, where several Laws were ordained, to the observance whereof, *Episcopi, Abbates, Comites, Barones, Thani & tota Communitas Regni tenere firmiter juraverunt.*

Apud eundem Statuta Wilhelmi Regis, pag. 3. cap. 7.

King

an Essential part of Parliament. 83

King Alexander began to Reign Anno 1214. which was the sixteenth Year of our King John, and Reigned 35. Years, so as he died an. 38 H. 3. he made his Laws *de Consilio & assensu venerabilium Patrum Episcoporum, Abbatum, Baronum ac proborum hominum suorum Scotiae.* And what the *Communitas Regni* in King William's Statutes, and the *probi homines* in King Alexanders, were, the League made between the French King and the Crown of Scotland, Anno 28 E. 1. clearly shews, being ratified and confirmed in their Parliament, per *Johannem de Balliolo*, then King, ac *Praelatos & Nobiles & Universitates & Communitates Civitatum & Villarum dicti Regni Scotiae*; and the constant practice ever since hath been, that the Cities and Boroughs have sent their Proxies or Representatives to the Parliaments of that Kingdom.

Ibidem Statuta Alexandri Secundi, pag. 22. cap. 2.

Rot. Pat. 14
Johannis p. 215
2. m. 2.
Rex probis hominibus Exon.
Worcestr.
Hunt. Bristoll.
&c.

Ex Rotulo in Turri London.
28 E. 1.

G 2

It

84 **The Commons of England ever**

It may therefore seem very strange, that when the Cities and Boroughs in all the Kingdoms of Europe, *de jure* and *de facto* were *ab antiquis temporibus*, even in times *coeval* with the Government, an essential part of their *Common Councils* or *Parliaments*, that *England* should not be under the same constitution, being but descendants from *Gaul*, or the more Northern Countries; if so,

1. Was it because in the *Britton*, *Saxon* and *Norman* times, there were no Cities or Boroughs, or if there were, were they so poor and inconsiderable, as they deserved no observation in the eye of the State? or,

2. Was it because, by a strange and unheard of fate, peculiar and proper only to them, they were not fit or capable to give or hear reason, as well as the *Delegates* or

Repre

an Essential part of Parliament. 85

Representatives of the Cities and Boroughs of *France*, *Spain*, *Portugal*, *Denmark*, *Sweden* and *Scotland*? or,

3. Had they no property or right in their Estates? Certainly, in my opinion, none of these Objections can be admitted, allowed, or proved; for

In the *Brittons* time, venerable *Bede* tells us. *Erant Britannia viginti* *Beda Eccles. Hist. lib. 1. cap. 1.*

& octo Civitatibus quondam Nobilissimis insignita præter Castella innumera, quæ & ipsa muris, turribus, portis ac seris erant instructa firmissimis. Nor were they of less reputation in the *Saxon* or *Norman* times, when they were thought so necessary and proper for the safety of the Government, preservation and defence of the Laws, that it was ordained by

William the First, and the *Common Council* of the Kingdom; That no Market or Fair should be permit-

Lambard. de præcis Anglorum Legibus pag. 171. Inter leges Guilielmi Primi, cap. 61.

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ted to be held, *nisi in Civitatibus Regni nostri & in Burgis ubi consuetudines Regni & Jus Commune & dignitates Coronæ nostræ deperiri non possunt nec defraudari nec violari, sed omnia recte & in aperto & per Judicium & Justitiam fieri debent, &c. ad tuitionem gentium & populorum regni & ad defensionem Regni.* And if in the Brittons times the Nation was so strong in Cities and Castles, surely it cannot be imagined but that in the Saxon and Norman times, when the Nation became to be more civilized and considerable in the World, the Estates or Degrees of the Inhabitants would easily part with these Liberties and Priviledges, which their Ancestors, though less knowing and powerful, did claim and enjoy.

Populi omnes ad Aquilonem positi libertatem quandam spirant. Bod. de Republ. Lib. I. Cap. 8.

Having thus concluded my Arguments against the Position of
H. 3.

an Essential part of Parliament. 87

H. 3. I have thought it not altogether impertinent, to add some brief *Observations* for the better understanding of antient Records, and Historians in their various *Lecti- ons* and different expressions. I shall therefore consider,

1. *The different application of the words Commune, Communitas, or Plebs.*
2. *The several Denominations by which our antient General, or Common Council or Parliaments, were expressed.*
3. *The various acceptation of the word Baro, and that under the Phrase of Baronagium Angliæ, both Lords and Commons were comprehended.*

Observation I.

The different application of the words
Commune, Communitas, or
Plebs.

Objection.

*Eum ego Plebei-
um voco, quem
leges nostrae ho-
minem legalem
appellant, scilicet
a learned man,
a Lawyer and
Privy Council-
lor to the fa-
mous Queen.*

*Tho. Smith de
Repub. Angl. lib.
1. cap. 23. fol.
43. De plebeis.*

And the Arch-
bishops Que-
stion to the
King in the Co-
ronation Oath

*runs, Si leges & consuetudines ab antiquis justis & deo devotis Regibus
Plebi Anglorum concessas. Totilli Magna Charta, fol. 164.*

Answer.

Admitting the Objection true
(which I conceive otherwise) yet
it is no Conclusive Argument, for
before the Statute An. 3 R. 2. cap. 3.

*Rastalls Stat.
pag. 135. cap. 3.*

I can-

I cannot find the appellation of
Lords Temporal, nor before the 13th
of that King cap. 2. the phrase
Lords Spiritual and Temporal in our *ibid. pag. 156.*
Printed Statute Books; Ergo, from
thence it follows by a necessary
consequence, according to their
Argument, that they were not any
part of the *Generale Concilium*, or
Parliament, before those times, be-
cause not expressed by that name.
I suppose this Conclusion will not
be admitted true.

But as I am well satisfied, that
the Archbishops, Bishops, Abbots
and Priors, who were often ex-
pressed by, and comprehended in
the word *Praelati*, and who in after
times constituted the *Lords Spiri-
tual*, and the Earls and Barons, as
now differenced, the *Lords Tempo-
ral*, were *ab antiquo* undoubtedly a
part of the *Commune Concilium Regni*,
or *Parliament*; so it may be proved
if

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if insisted upon, That the *Milites* and *libere tenentes de Regno* or *Angliae*, the *Knights* and *Gentlemen*, or *Freeholders of England* (*licet nonnunquam diversis & variis appellationibus expressi & inclusi*, in which those *qui de Rege tenuerunt in capite*, or *Barones Regii*, or *Regis*, to difference them from the *Barones Regni*, were comprehended) were à *Crepusculo temporis*, a constituent and essential part also, although by *Historians* and *Records* they are often mentioned by, and included in titles, which in late times import more honour, and are now of an higher acceptation, and had not the name of *Commons* fixed, or generally stamped upon them as in after Ages. *Sed hæc obiter.*

Reges Antiqui cum in Chartis mentionem faciunt de Baronibus, sepe jungunt, possessionum meis vel nostris, id est Regios Barones sic distinguant à Baronibus, Episcoporum, Comitum, Abbatum, &c. Spelm. Gloss. Tit. Baro fol. 69. Anno 3 H. 3. Fitz-Herbert Abridgment. Tit. Prescription 56. fol. 102. Rot. Claus. 24 H. 3. m. 10. Pro Hawisia quæ

fuit uxor Johannis filii Alani. Glanville lib. 8. cap. 11. Et hoc debet Dominus Rex de jure Baronibus suis, scilicet quod ob talem causam possunt sui Barones Curias suas sic in Curiam suam ponere.

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1. As to the word *Communes* (or *Communitas*) I have in my enquiries observed it to be used in six senses.

1. To comprehend the whole *Commune Concilium Regni*, or *Parliament*.

A le commune Dangleterre: Here *Commune* is taken for people, so as *tout le Commune* is here taken for all the people, and this is proved by the sense of the words, for *Magna Charta* was not granted to the *Commons of the Realm*, but generally to all the *Subjects of the Realm*, viz. to those of the *Clergy*, and to those of the *Nobility*; and to the *Commons* also. And that [*Commune*] in this place signifieth people, it is proved by the preamble, for there the great *Charter* and the *Charter of the Forest*, are rehearsed to be granted by *King H. 3.* to his people, and

^{1.} Observation.

^{2.} *Instit. fol. 539. Articuli super Chartas, cap. 1.*

Note, before 9 H. 3. *Magna Charta* was granted and

confirmed several times. *Rot. Pat. 1 H. 3. n. 13. Rot. Claus. 2 H. 3. m. 11. dorso.* Of which last there are several antient transcripts. *MS. penes prenobilem Will. Pierpont. MS. penes Sam. Baldwin Militem Seruientem Domini Regis ad Legem. MS. penes Johannem Cook gen. de interiore Templo. MS. penes meipsum. 3 H. 3. Hist. Ecclesie Angl. apud Foxum Vol. 1. pag. 335. Ex MS. Domini Scales. Rot. Pat. 3 H. 3. m. 6.*

1. As

here

92 **The Commons** of England ever here they are said to be granted [A le Commune] and see before 25 E. 1. Confirm. Chart. cap. 1. & cap. 6. for this word Commune and Communitie: so as [A le Commune] here signifieth not to the Commons of the Realm, but to the people of the whole Realm; and herewith agree our Books, for that a common nuisance which concerns le commune ou le communitie, le suite sera done au Roi, where [commune] and [communitie] include all the Kings Subjects.

Rot. Pat. 48
H. 3. Pars 1.
m. 8. dorso n.
10.

2. To comprehend the *Communitas Prælatorum & Baronum.*

3. To comprehend the generality of all that came to Parliament, after the particular enumeration of the Orders of the great Lords, viz. *Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones.*

Coke 2. Infit.
fol. 156.
Rastal's Stat.
12 E. 2. fol. 59.

The Statute of Westm. 1. made 3 E. 1. eleven years after 49 H. 3. saith,

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saith, per l'assentements des Archevesques, Evesques, Abbes, Priors, Counts, Barons, & tout le Comminalty de la terre illonques summones.

The Statute, *de asportatis Religiosorum*, 35 E. 1. though made Anno 34^o saith, That Dominus Rex post deliberationem plenariam, & tractatum cum Comitibus, Baronibus, & aliis Nobilibus & Communitatibus Regni sui habitum in præmissis de consensu eorum unanimi & concordi, ordained, That it should be observed: but upon the producing the Roll in the Parliament 17 E. 3. it is said, That the Petition for the Statute was per *Countes, Barones & Communes du Royalme*, and so under the word *Communes*, the *alii Nobiles* are included.

Statutum de asportatis Religiosorum, 35 E. 1. Placita Parl. fol. 314. Coke 2. Infit. fol. 580.

4. The *Communitas Comitatum Regni*, or Universality of the Counties, Rot. de xx^o & xv^o. Regi Ed. secundo apud Westm. à Laicis concess. ann. Regni sui Octavo, apud Clericum Pipe. Ibidem consimile anno septimo. Consimile anno nono. *Communitas Comitatum.* Placita Parl. pag. 416, 417.

ties

94 **The Commons of England** ever-
ties of the Kingdom represented by
the *Magnates, Chivalers, or Grandz* of
the Counties; of which appella-
tions I shall give some few in-
stances.

*Rex &c. quia
ex querela mul-
torum intellexi-
mus, quod non-
nulli Magnates,
Cives & Bur-
genses & alii
in libertatibus
suis à Progeni-
toribus nostris
Regibus Angliæ
& nobis eis concessis easdem libertates frequenter excedunt, & sub velamine
libertatum illarum pluribus dampna non modica de die in diem inferunt.
Rot. Claus. 2 E. 1. m. 3. De libertatibus in manu Regis retinend.*

*Inter communia Brevia de Terminis
Sanctæ Trin. S. Mich. an^o 34^o E. 1.
penes Rememoratorem Domini Thes. in
Scaccario, The Milites Comitatum
and Barones Quinque Portuum, are cal-
led Magnates.*

*Rot. Claus. 3 E. 2. m. 16. dorso. In-
hibitio ne qui Magnates, viz. Comes,
Baro, Miles, seu aliqua alia Notabilis
persona transeat ad partes transmari-
nas.*

*Ex libro Statutorum Impress. lingua
Gallica penes meipsum, 15 E. 3. Cap. 4.
Rastalls Stat. pag. 85. Item que les
Prelats, Countz, Barons, Chivalers &
autres Grandes de chescun pais.*

Statutum

an Essential part of Parliament. 95

*Statutum de servientibus 25 E. 3.
per assent de les ditz Prelatz, Countes,
Barones, & autres Graundes de la dite
Communalte illonques assemblez.*

*MS. penes meipsum. Stat. 27
E. 3. Statutum Stapula. Grantz des
Counties.*

5. Applied to the Communi-
ties or Societies of the Cities and
Boroughs.

*Rot. de Superioritate Regis An-
glie in Regno Scotie, Anno 19 E. 1.
Omnes & singuli tam Episcopi & alii
Ecclesiarum Prelati, quam Comites, Ba-
rones, Magnates, Proceres Civitatum
& Burgorum Communitates.*

*Rot. Parl. 17 E. 3. n. 8. Chivaliers
des Countees & Communes.*

*Rastall's Stat. 27 E. 3. fol. 102.
Statute Staple, whereas good delibe-
ration had with the Prelats, Dukes,
Earls, Barons, and Grandes des Coun-*

*Ex veteri libro
Statutorum in
lingua Gallica penes meipsum. Nota, The Ordinances of the Staple were
made by a great Council, but confirmed and made a Statute in the Par-
liament, 28 E. 3. Cap. 13.*

tees

The Commons of England ever
tees de chescun Countee un par tout le
Countee, and of the Commons of the
Cities and Boroughs of our Realm
of England.

6. To the *Commune* or genera-
lity of the body of the Clergie in
Parliament.

Ex Bundell.
Pet. Parl. 8.
R. 2. n. 1, 2.
Rot. Parl. 25 E.
3. n. 69.

*Monstre la Commune de la Clergie, &
per la ou diverses Abbes, Piores, Es-
glises Cathedrales & Collegiates, & au-
tres gentz de Sainte Esglise ount diverses
rentz*

Obser:

Observation II.

2. The several Denominations by which
our antient General, or Common
Council, or Parliaments, were ex-
pressed.

IF any man will be at the ex-
pence of so great a charge and
trouble, as to compare the various
lections of *Historians* and *Records* to-
gether, and the manner and phrase
of words and speeches, proper to
particular ages and times, he may
fatisfie himself what those Coun-
cils were, and their *constituent parts*,
whom the antient *Historians* mean,
when they say;

Convocati, or Congregati fuerunt

Nobiles Angliæ.

H

Ommes

Nobilitas est duplex, superior & inferior.

Coke 2. Instit. fol. 583.

Nobiles minores sunt Equites sive Milites, Armigeri & qui vulgo Generosi & Gentlemen dicuntur.

Camd. Brit. fol. 123.

Mills de Nobilitate politica & civili, fol. 42, 43.

Nobilitas causatur ex loco, quoniam civis ex urbe splendida oriundus nobilis est. Chasticeus Catalogus Gloriae mundi, Pars 8. confid. 18.

Causatur etiam ex Clericatura, eo quod quis est clericus efficitur Nobilis.

Ib. Confid. 26.

Præcipuos Urbium, Vicorum & Castellorum

Magistratus Primates fuisse dictis. Camd. Brit. fol. 662.

Omnes Regni Nobiles.
Nobilitas totius Regni.
Tota Nobilitas Angliæ.
Totius Angliæ Nobilitas.
Magnates Angliæ.
Totius Regni Magnates.
Proceres Regni.
Proceres & fideles Regni.
Universitas totius Angliæ Nobilium.
Universitas Regni.
Barones Angliæ Terræ or Regni.
Universitas Baronagii, or Barnagii Angliæ.
Baronagium, or Barnagium Regni, or Angliæ.
Regni totalis universitas.
Pontifices & Principes Anglicani.
Primordes & Magnates Regni.
Principes Regni, Præsules & Principes Regni.
Optimates totius Regni, or Angliæ.
Primates Regni.
Majores Regni, Majores Angliæ.
Assisa Regni.

Discretio

Discretio totius Regni.
Generale Placitum.
Clerus & Populus.
Communitas Regni.
Generale Concilium Regni. Concilium Regni.

And such like expressions and phrases, varying in several Ages, till at last they fixed on the word *Parliamentum*.

To demonstrate all which will require a longer discourse than I here intend; however, having before touched upon the *Parliaments* of 17 *Johannis*, and 37 *H. 3.* I will give instances how they have been named in *Records* and *Histories*.

Anno 17^o Regis *Johannis*.

1. *Archiepiscopus Cantuariensis, Episcopi, Barones & Magnates.*

H 2

2. *Gene-*

Ex vetusto Chronico MS. in Bibliotheca Bodleiana inter Codices Willielmi Archiepiscopi Cantuariensis.

- Rot. Pat. 17
Joh. m. 17. dor. 2. Generale Concilium.
- Rot. Claus. 17
Joh. m. dorfo. 3. Barones & liberi homines totius Regni.
- Rot. Claus. 17
Joh. m. 23. dorfo. 4. Barones & liberi homines Domini nostri.
- Mat. Paris. A.
Dom. 1215. pag. 255. l. 39. Mat. Paris. pag. 255. 5. Magnates.
- 6. Fuerunt autem quasi ex parte Regis Stephanus Cantuariensis & H. Dublinensis Archiepiscopi, &c. illos quoq; qui ex parte Baronum affuerunt qui innumerabiles fuere, non est necesse numerare, cum tota Angliæ Nobilitas in unum collecta quasi sub numero non cadebat.
- Mat. Westm. p. 273. l. 48. 7. Barones.
- Claus. 28 H. 3. Pars unica, m. 12. dorfo. 8. Parliamentum.
- Ibidem. 9. Barones Angliæ.
- Mat. Paris. p. 920. l. 32. 40 H. 3. 10. Baronagium Angliæ.
- Rot. Parl. 15 E. 3. n. 50. dorfo. Pulton's Stat. 15 E. 3. Cap. 1. pag. 81. 11. Enprimes est accorde & assentu q' le franchise de seinte Esglise & la grand Chartre & la Chartre de la Forest & les autres Statutes faitz per nostre dit Seignour le Roy & ses Proge

Progenitors Piers & la Commune de sa terre.

Anno 37° H. 3.

- 1. Tota Nobilitas Angliæ. Mat. Paris. An. 1253. 37 H. 3. fol. 865. l. 43.
- 2. Parliamentum. Mat. Westm. fol. 302. l. 58. Fleta lib. 2. cap. 42. De sententia super Statutum. fol. 93.
- 3. Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, & alii Magnates Regni Angliæ. Rot. Pat. 37 H. 3. m. 12. dorfo.
- 4. Magnates & Communitas Populi.
- 5. Anno 1253. 37 H. 3. Hoc anno H. Rex Angliæ ad instantiam Prelatorum, Comitum & Baronum Car-tas duas eis concessit, unam de libertatibus quæ Magna Charta dicitur, & alia quæ dicitur de Foresta, pro qua concessione Communitas Angliæ concessit Regi quintam decimam partem omnium bonorum suorum mobilium per totam Angliam. Ex vetusto Cronico MS. in Bibliotheca Bodleiana inter Codices Willielmi Archiepiscopi Cantuar. 4. K. 84. Mat. Paris. fol. 970.

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Mat. Paris. pag. 970. l. 45, 53. an. 42 H. 3.

Nota, King John swore to observe Magna Charta, and the Barons did him homage. Rot. Pat. 17 Joh. pars unica m. 23. n. 3.

In the Parliament at Oxford 42 H. 3. Parlamento autem incipiente solidabatur Magnum Propositum & Consilium immutabile exigendo constantissime ut Dominus Rex Cartam Libertatum Angliæ quam Johannes Rex pater suis Anglis confecit & confectam concessit, quamq; idem Johannes tenere juravit, fideliter teneat & conservet, quamq; idem Rex Henricus multoties concesserat & tenere juraverat, & jusq; infractores ab omnibus Angliæ Episcopis in presentia sua & totius Baronagii horribiliter fecit excommunicari & ipse unus fuerat excommunicantium. So as the Excommunication here meant, being that of 37 H. 3. then made in the presence of the King, Great men, and Communitatis Populi, is here said to be done in presentia totius Baronagii Angliæ. And for the Honour of Magna Charta, I will conclude this head with an Act of Parliament. That Valiant and great Prince,

an Essential part of Parliament.

Prince, E. 4. after the overthrow of his Enemies, and peaceful possession of the Crown, assisted with the Judges of England, Archbishops, Bishops, Abbots, Priors, his Dukes, Earls, Viscounts, and Barons, with the great men or Knights of the Counties, and Commons in full Parliament, hath left this recorded to Posterity. They call this great Charter the Laudable Statute of Magna Charta, which Statute was made for the great wealth of this Land, upon which Magna Charta, the great Sentence and Apostolique Curse, by a great number of Bishops, was pronounced against the breakers of the same; and the same Sentence is four times in the year openly declared, according to the Law of Holy Church; and in affirmance of the said Statute, of the said great Charter, divers Statutes have been made and ordained.

Rot. Parl. 12 E. 4. n. Rastalls Stat. 12 E. 4. cap. 7.

H 4

And

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And great reason certainly they had to put so high a value on that so famous Charter, since the substantial part of the Laws thereof were no less than the great results, decrees, and judgments, ordained by the prudence and justice of the Brittish, Saxon, and Danish Dynasties, founded upon two grand and principal Bases or Pillars, Liberty and Property, which like those two brazen ones called Boaz and Jachim, supporting the Temple of Solomon, upheld the tottering Frame and Fa- brick of our antient Government, though often by evil men designed to be overthrown.

Preface to
Cooks 2. Inst.
Moore's Rep.
797. per Po-
pham.
Stat. Paris 839.

A Charter, *empta & redempta*, purchased and redeemed with vast treasure of the Nation, and the effu- sion of a Sea of Christian blood. A Law published and established with fearful execrations, and terri- ble Curses, against the infringers and

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and breakers thereof, and all done with that religious solemnity, and profound Ceremony, as it may seem inferior only to that of the Commandments of Almighty God given to the Jewish Nation.

Rot. Parl. 15
E. 3. n. 10. 37.

All great Ministers of State and Justice were at their entrance into their Offices, solemnly to swear the observation thereof, and great reason there was for the making of this Law, both for the preservation of the King, and also the Kingdom; for that Parliament well knew the woful confusions in the Reign of Edward the Second, who being se- duced by his two Minions the Spen- cers, for want of observing the good old Laws and Customs of England, cut off the head of Thomas Earl of Lancaster his Uncle, that being the first act of shedding the sacred Royal blood by colour of Law I ever met withal in History; they usurped Royal

Royal Power, they sent the *Queen* and *Prince* (afterwards great *Edward* the Third) beyond Sea, and prevailed with *E. 2.* to declare the *Queen* and *Prince* Traytors. They Monopolized the *Kings Eyes, Ears,* and his whole *Understanding,* so that the *King* nothing did, or would do, but what they did counsel him, were it never so great wrong; and if any had the courage to complain against them, or so much as fetch a loyal sigh, or lament the hard fate of the *King* then imposed upon by those *Favourites;* they were branded with arraigning the *Government,* striking at the foundation of *State,* and being guilty of *Treason,* and what not.

The consequences of whose unhappy Counsels and Policies, are too well known in History to have been the ruine both of the *King* and themselves.

Raft. Stat. 1 E.
3. pag. 64, 65.

The *Priests* and *Confessors* were strictly commanded to frame and direct the *Consciences* of the people to the observation and obedience of the *Great Charter,* and they did so, not like the *Sibthorps* and *Manwarings* of later times, who by their *Flatteries* of *Prerogative* for their own *promotion* seek to ruine the *Subjects property.*

Pupilla oculi,
fol. 50. cap. 22.
De sententia
lata super Mag-
nam Chartam.

Obser-

The

Observation III.

The various acceptation of the word Baro, and that under the phrase of Baronagium Angliæ both Lords and Commons were comprehended.

Observation 3.
Camd. Britan.
fol. 121. Selden's Titles of Honor, in 4^{to}.
Parte 2^{da} fol. 273.

AS to the word Baro, it was not much more in use before William I. obtained the English Diadem, that I can find, than the word Communes, Baro Britanni pro suo non agnoscunt in Anglo-Saxonicis legibus nusquam comparet nec in Alfrici Glossario Saxonico inter dignitatum vocabula habetur. For the English Saxons called those in their own Language Ealdremen which in Latine were named Comites, and the Danes Earls, but of so extensive an import in its signification, as we read

of

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of Aldermani Regis, Aldermani Comitatus, Civitatis, Burgi, Castelli, Hundredi, sive Wapentachii & novem decimorum, so according to the strict word they had whole Regiments of Earls. The greatest title of which, seldom, if at all, descended hereditarily till the Confessors' time, and after Will. I. became King, the word Ealdremen began to change and vary its signification, and in room of Aldermani Regis, we find Barones Regis; for Aldermani Comitatus, Barones Comitatus; for Aldermani Civitatis, Barones Civitatis; for Aldermani Burgorum, Barones Burgorum; for Aldermani Castellorum, Barones Castellorum; for Aldermani Hundredorum, Barones Hundredorum sive Wapentachiorum.

Sir Henry Spelman saith, that simplices villarum Maneriorum Domini de quocunq; tenentes qui sacham & socham habent, were antiently called Barones.

And

Spelm. Gloss.
Tit. de Aldermanis, & multiplici Magistratu apud Anglo-Saxones, fol. 24, 25.

Nunc ut Cantii Comites suo ordine percensam (omissis Saxonibus Godwino & aliis) qui non hereditarii sed officarii Comites erant. Camd. Britan. Cantium, fol. 248.
Spelm. Gloss. Diatriba de Baronibus, fol. 64, 69, 70, 71.

Spelm. Gloss. in verbo Barones, fol. 69, 70.

Ibidem.

Baroniae pluri-
mae in Nor-
thumbria,
cumq; omnino
Marti se quasi
consecrarunt, non
est inter eos
quispiam melio-
ris notae qui su-
am turriculam
aut munimen-
tum non habeat,
& in quamplu-
rimas Baronias
divisa fuit
quarum Domini
olim ante Ed-
wardi primi tempora Barones vulgo dicti. Camd. Britan. in fol. 658.

Johannis Sel-
deni ad Ead-
merum & notis
& spicileg. fol.
168.

Camd. Britan.
in 8. De ordin.
Angliae, fol. 61.

Theinorum enim
duo erant gene-
ra, majores quos
Theinos Regis
appellabant, nos Barones Regis & Theini simpliciter seu Theini minores, qui
iidem erant qui Barones minores & nonnunquam libere tenentes nuncupantur.
Spelm. Gloss. p. 242.

And all Freeholders, *hoc est tam in Soccagio quam per servitium militare,* had the Title of Barones; and in his species of Barones Comitatus, saith, *Proceres nempe & maneriorum Domini nec non libere quiq; tenentes,* Anglice Freeholders, had that appellation. *Notandum autem est libere hos tenentes nec tam exiles olim fuisse nec tam vulgares ut hodie deprehenduntur.*

The great Selden in his Notes upon Eadmerus upon the word Barones, saith, *Vocabulum nempe alia notatione usurpari quam vulgo, neq; eos duntaxat ut hodie significare quibus peculiaris ordinum Comitatus locus est.*

And the learned Camden writes, *Verum Baro ex illis nominibus videatur quae tempus paulatim meliora & molliora reddidit; nam longo post tempore non Milites sed qui liberi erant Domini & Thani Saxonibus dicebantur, Barones vocari*

cari ceperunt, necdum magni honoris erat, paulo autem postea (meaning after the Normans coming) eo honoris pervenit ut nomine Baronagii Angliae omnes quodammodo Regni ordines continerentur.

The authority of these most learned Antiquaries is such, That it would be a presumption in me to go about to add any thing, I shall only say, I have met with some Records that clearly prove their opinion, and for illustration shall subjoin one Record more, and so conclude this point.

Anno 29 H. 3. great complaint was made in Parliament against the Church of Rome's exactions here in England, whereupon

Anno 29 H. 3. Litterae missae Cardinalibus Romanae Ecclesiae apud Lugdunum a Baronibus, Militibus, & universis Baronagii Regni Angliae per Rogerum Bigod, Comitem Norff. Willi-

MS. vetus in
Bibliotheca
Cotton. sub effi-
gie Cleopatrae
Charactere con-
temporaneo.

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Willielmum de Cantelupo, Johannem filium Galfridi, Radulphum filium Nicholai, Philippum Basset, Barones Procuratores Baronagii Angliæ, tunc temporis Innocentio Papa quarto celebrante Concilium ibi generale. Anno gratiæ 1245.

Litteræ ad Concilium.

Venerabilibus in Christo fratribus universis & singulis dei gratia salutem. Barones, Milites, & universitas Baronagii Regni Angliæ, &c.

Mat. Paris. Histor. An. Dom. 1245. pag. 659. l. 10.

Electi sunt igitur (writes Mat. Paris.) ad hoc nomine totius Universitatis Regni Angliæ ad Concilium Lugdunense missi Comes Rogerus Bigod, Johannes filius Galfridi, Willielmus de Cantelupo, Philippus Bassett, Radulphus filius Nicholai, Milites, saith Mat. Westm. p. 321. l. 30. Magister Willielmus Powic Clericus.

Mat. Paris. An. eodem, p. 666. l. 51. Prodigma Neustrie, p. 466.

Another Letter was sent per Magnates & Universitatem Regni Angliæ, super extortionibus Curie Romanæ,

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manæ, to the Pope himself, who negotium posuit in suspensio. The Ambassadors returning, and a second Parliament being called at Westm. the Record goes on.

Articuli gravaminum & oppressio-^{Ex MS. prenotato.} num quibus Regnum Angliæ oppressum fuit temporibus Henrici filii Regis Johannis per Curiam Romanam, quæ scilicet ostensa fuerint Cardinalibus Romanæ Ecclesiæ, & Innocentio Papæ quarto ore tenus per Procuratores prædicti Regni in generali Concilio apud Lugdunum, & quod gravamina dictus Papa procuratoribus dederit in præmissis ad revocanda, quæ scilicet gravamina non revocata postea Barones, Milites & Universitas Baronagii Angliæ conquerentes ostenderunt prædicto Regi in Concilio habito apud Westm. in proxima Quadragesima sequenti post prædictum Concilium.

Whereupon by common advice it was agreed, to send Ambassadors

Litteræ Universitatis Angliæ ad Papam.

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Mat. Paris. p. 700. l. 51. an. 30 H. 3. Edwardus, &c. Vic. Ebor. &c. Ostens. quare cum ad Parliamta in quibus tam nostri quam regni nostri negotia debent pertractari, Prælatos, Comites, Barones, & alios tam clericos quam Laicos per quorum industriam super negotia hujusmodi consilium salubrius poterit adhiberi. Brevia Regis de an. 9 E. 2. in turri London.

dors with second Letters of their grievances to the Pope at Rome, directed thus. Sanctissimo, &c. devoti filii sui Comes Cornubiæ Richardus, &c. & alii totius Regni Angliæ Barones Proceres & Magnates ac nobiles Portuum maris habitatores, necnon & Clerus & populus universus, salutem.

Mat. Paris. 698. l. 40. An. Dom. 1246.

Matthew Paris calls this a Parliament, Convenientibus igitur ad Parliamentum totius Regni Magnatibus, and mention is made of the first message in the Close Roll, 29 H. 3.

Rot. Claus. 29 H. 3. m. 8. dorfo.

Nota The various Appellations and Phrases of these two Parliaments.

Barones, Milites, & Universitas Baronagii Regni Angliæ.

Tota Universitas Regni.

Magnates & Universitas Regni.

Totius Regni Magnates.

Universitas Baronagii Angliæ.

Barones, Proceres & Magnates ac Nobiles Portuum maris habitatores, nec non Clerus & populus universus. Parliamentum.

Rex Abbati de Sancto Edmundo salutem. Cum pro oppressionibus innumerabilibus factis in Regno nostro per Ecclesiam Romanam ob quam Magnates nostri ad sedem Apostolicam appellaverunt,

runt,

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runt, & quosdam pro ipsis & pro universitate Baronagii Angliæ ad Concilium in brevi celebrandum ad appellationem suam prosequendam duxerunt destinandos.

And indeed Records and Histories will furnish us with several Precedents, where succeeding Parliaments as well as these of H. 3. have sent Letters to the Pope when he attempted to invade the Rights of the Crown or Kingdom. I will give two instances in the Reigns of the two famous Princes, Edward the First, and Edward the Third.

1. Edward the First, An. 29 of his Reign, claimed Scotland, as Rex & superior Dominus, the Pope as a Fiefe of the Roman Church; the Pope backed by the French King, Summons Edw. to appear before him in his Court at Rome, and sends his Letters or Bulls to the Archbishop

Mat. Westm.
An. Dom.
1301. p. 439.
l. 2. Responso
Regis Archie-
piscopo Cant. ad
litteras Apostoli-
cas.

of Canterbury to serve them; the Archbishop obeys, the King tells him, *Verum quia consuetudo est Regni Angliæ quod in negotiis contingentibus statum ejusdem Regni requiratur consilium omnium quos res tangit,* and shortly after Summons his Parliament at Lincoln, in Octabis Sancti Hillarii, to advise with his Parliament, how to defend the rights of the Crown against the Papal Claim.

Mat. Westm. A.
D. 1302. 29E.
l. p. 443. 142.

The Parliament thereupon send their Letter to the Pope, subscribed and sealed by several of the principal men of the Parliament, as the usage of that Age was, telling him, that *sane convocato nuper per serenissimum Dominum nostrum Edwardum Dei gratia Regem Angliæ Illustrem Parlamento apud Lincolniam Generali;* the King had caused the Popes Letter, *in medio, or pleno Parlamento exhiberi ac seriose nobis fecit exponi, unde habito tractatu*

& deliberatione diligenti super contentis in litteris vestris memoratis, communis, concors & unanimes omnium nostrum & singulorum consensus fuit, est & erit inconcusse Deo propitio in futurum, quod prefatus Dominus noster Rex super Juribus Regni Scotiæ aut aliis suis temporibus nullatenus respondeat judicialiter coram vobis nec Judicium subeat quoquo modo aut jura sua predicta in dubium questionis deducat, nec ad presentiam vestram Procuratores aut nuncios ad hoc mittat, præcipue cum præmissa cederent manifeste in exheredationem juris Coronæ Regni Angliæ & Regiæ Dignitatis ac subversionem status ejusdem Regni notoriam, nec non in præjudicium libertatis consuetudinum & legum paternarum ad quarum observacionem & defensionem ex debito præstiti Juramenti astringimur, & quæ in manu tenebimus toto posse totisq; viribus cum Dei auxilio defendemus. Nec etiam permittimus nec aliquo modo permitte-

Animadvertas Reges & Proceres in condendis legibus earum olim jurasse observantiam. Spelm. Gloss. Tit. Assisa, fol.

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mus sicut non possumus nec debemus premissa tam insolita, indebita, prejudicialia & alias inaudita prelibatum Dominum nostrum Regem etiam si vellet facere seu modo quolibet attemptare. Quocirca Sanctitati vestre reverenter & humiliter supplicamus, quatenus eundem Dominum nostrum Regem qui inter alios Principes orbis terre Catholicum se exhibet & Romanæ Ecclesiæ devotum, jura sua & libertates & consuetudines & leges predictas absq; diminutione & inquietudine pacifice possidere ac illibata persistere benignius permittatis. In cuius rei testimonium Sigilla tam pro nobis quam pro tota Communitate predicti Regni Angliæ presentibus sunt appensa. Datis & actis Lincolnia, Anno Dom. 1301.

Walsingham in vita E. 3. fol. 161. l. 22.

2. The second is, the Letter to the Pope, made at the Parliament, 17 E. 3. touching Provisions. Quod Rex & tota Nobilitas Regni pati noluit, &c. thus translated, whereby the

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the phrase Nobilitas Regni, in the Historian, will be explained.

TO the most holy Father in God, Lord Clement, by the grace of God, of the holy Church of Rome, and of the Universal Church, Chief and high Bishop, His humble and devout Children, The Princes, Dukes, Earls, Barons, Knights, Citizens and Burgeses, and all the Commonaltie of the Realm of England, assembled at a Parliament holden at Westm. the 15th day of May last past, &c. In Witness whereof we have hereunto set our Seals. Given in the full Parliament at Westm. on the eighteenth Day of May, Anno Dom. 1343.

Apud Foxum Histor. Ecclesie Anglicane, Vol. 1. p. 501. Rot. Parl. 17 E. 3. n. 59, 60. dorso.

The Letter is said to be sealed, Souz les seales des ditx Grantz & totes les Comminaltees des Citees & Burghs Denglleterre.

And indeed the Commons were so highly incensed, that the Parliament Roll of this Year tells us, I 4 that

Rot. Parl. 17 E. 3. n. 59. dorso.

120 **The Commons of England** ever that *La dite Commune ne le poet ne le voet plus endurere* those strange oppressions of the Pope and Provisors.

So that the *Parliament* of 24 H. 8. after great debate and consideration, and a diligent search and inspection of the *Antient Records* of the Kingdom, did ground their *Statute* amongst others, upon these great Authorities; the *Statute* saith,

Whereas the *King* his most noble Progenitors, and the *Nobility* and *Commons* of the said Realm, at divers and sundry *Parliaments*, as well in the time of *King Edw. 1. E. 3. R. 2. H. 4.* and other noble Kings of this Realm, made sundry *Ordinances, Laws, Statutes,* and *provisions*, for the entire and sure conservation of the Prerogative, Liberties, and preheminences of the said Imperial Crown of
this

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this Realm, and of the Jurisdiction Spiritual and Temporal of the same; to keep it from the annoyance, as well of the See of *Rome*, as from the authority of other Foreign Potentates, attempting the diminution and violation thereof, as often and from time to time, as any such annoyance or attempt might be known or espied. *Pulton's Stat. 24 H. 8. c. 12.*

But to conclude the point of the *Various Lections*, Certainly the different and great variety of words and phrases, by which both the antient *Historians* and *Records* have in their several Ages and Times, expressed and denoted the *Communia Concilia Regni*, or *Parliaments*, as now called, and their constituent parts, being not well observed and considered by most of our late *English Authors* (who understood them as if they had signified what
after-

The Commons of England, &c.

afterwards they did, and now do) have imposed on our *Historical* Faiths, and propagated to posterity many palpable and gross errors, whereby great and unkind clashing and diversities of opinions, as well amongst learned men as others, have had their source and spring, nay, even between *Prince and People.*

THE

THE

General Conclusion.

MY only aim and endeavour in this Discourse hath been from publick *Records*, private *Manuscripts*, and the best *Historians*, to search out and discover *truth*, and to assert the just honour of our worthy and famous Ancestors *Commoners of England* (as now phrased) great *maintainers* of the *interest* and *dignity* of the *King and Kingdom*; and with submission to better judgment, I hope I have plainly proved,

1. That the *Freemen* or *Commons* of *England* were an essential and constituent part of the Saxon *Witena Gemott*, or *Parliament.*

2. That

2. That they so continued in the times of *W. 1. W. 2. and H. 1.* which last being an Englishman, by way of *Charter* restored and confirmed the Laws of *Edward the Confessor*, as his Father *William 1.* as well by his *Magna Charta*, or *Great Charter*, as by his Oaths had before done, both when he was Crowned, and also at *Berkhamstead*, in the seventh Year of his Reign.

3. And though the Rolls of *Parliament*, in the succeeding Kings Reigns till *E. 2.* be lost, or not found, so as we are at a loss as to the several Orders of *Parliament*, yet by what has been deduced from other Records before cited, it is evident I conceive, that the *Citizens* and *Burgesses* were a part of the *Parliament*, Anno 16. of King *John*, and so had not their begin-

beginning by rebellion, Anno 49 *H. 3.*

And therefore I may with good reason and warranty conclude, That our Ancestors, the *Commons* of *England*, the *Knights*, *Gentlemen*, *Freeholders*, *Citizens* and *Burgesses* of a great and mighty Nation, were very far from being in former times such *Vassals* and *Slaves*, or so abject, poor and inconsiderable, as the absurd and malicious ignorance and falsities of late Writers have been pleased to make and represent them, especially the Author of the *Grand Freeholders Inquest*, and Mr. *James Howel*, as if they were only *Beasts* of carriage and burden, ordained to be taxed and talliated, and have their *Lives*, *Estates*, and *Liberties* given away and disposed of without their own assents, under a novel opinion and conceit, that they

they were no part of the *Commune Concilium Regni*, or Parliament, before 49 *H. 3.*

Perlege quæ Regni clarissima Conciliorum

Sunt Monumenta, aliter nil præter somnia cernis.



Appendix.

After I had compleated the foregoing Arguments, a *material Objection* was by some of my Friends offered me, which, if not cleared in this discourse, might, in their judgment, give a colour and pretence for a belief of an Opinion, which is this:

That the Commons, or people of England, were from the time of the Norman Conquest represented by such as held of the King in Capite, until 49 H. 3. and then by two Knights

Objection.

K for

for each County, and certain Bur-
gesses for several Burroughs, and
Barons for the Cinque Ports.

Solution. Having before laid down a clear
and plain distinction between *Barones*
Regis and *Barones Regni*, I shall there-
fore now distinguish upon the phrase
Milites & libere tenentes.

Distinction. 1. *Milites & libere tenentes qui de*
Rege tenent in Capite.

Distinction. 2. *Milites & libere tenentes de Regno*.

f. Distinction. The first Distinction I thus prove,
Rot. Pat. 2. Johannis m. 9. Rex dilectis
& fidelibus suis Baronibus Militibus &
libere tenentibus qui de eo tenent in Hi-
bernia.

Rot. Claus. 19 H. 3. m. 7. 8. dorso.
Rex Vicecomiti Suffex Sciatis quod Ar-
chiepiscopi Episcopi Abbates, Priores,
Comites Barones, & omnes alii de Regno,
qui de nobis tenent in Capite spontanea
voluntate sua, & sine consuetudine con-
cesserunt nobis; efficacem auxilium ad magna
negotia nostra expedienda.

Rot. Claus. 26 H. 3. m. 7. dorso.
Rex Vicecomiti Norhamptoniæ præ-
cipimus tibi sicut alias præcipimus
quod summoneri facias Archiepiscopos,
Episcopos,

Episcopos, Comites, Barones, Abbates, Pri-
ores, Milites, & liberos homines qui de
nobis tenent in Capite, &c.

Eodem modo Scribitur omnibus vice-
comitibus Comitatum Angliæ.

ibidem.

As to the second Distinction, The 2. Distinction.
ancient Chronicles of the Kingdom say,
That both before and after the *Conquest*
(as we phrase it) the Kings of *England*
held their Court three times in every
year, at *Easter, Whitsontide, and Christ-*
mas, and then the *Crown* was attended
with most of those *qui de Rege tenuerunt*
in Capite, this was called *Curia Regis*;
if any difference of right did arise be-
tween the *King* and his *Tenants*, or
between *Tenant* and *Tenant*, here it
was heard and determined, and many
things were there acted and done in
relation to the *Kings Barons or Tenants*,
but under favour this was not the *Com-*
mune Concilium, Regni or *Parliament* as
we now call it, for the King held this
Court *ex more* of custom, as *Simon Du-*
nelmensis ——— and *Florentius Wigor-*
niensis write in *vita Henrici Primi*.

But when they, and contemporary
Historians, take notice of the meeting
of the *Commune Concilium, Regni* or
Parliament, then their expressions alter

and say, That *Rex ascivit* Ordericus *vitalis*, pag. 680. *Ex precepto Regis convenerunt*. Eadmerus *Rex Sanctione sua adunavit*, Flor. Wigorn. *Continuat*, and many such like expressions, which shew it was not held *ex more* of custom, yet true it is, Kings did often convene or summon the *Common Council* of the Kingdom at one of the said Feasts, being a great conveniency to the *Tenants in Capite*.

But they summoned the *General Council* also at other times, according to the Emergency of Affairs, examples of which are obvious in the ancient Historians.

Now to shew that the *Milites tenentes qui de Rege tenuerunt in Capite*, (together with the other great Lords that held of the King) were not the *partes constituentes*, and alone did compose and make up the *Totum*, the whole body of the *Generale*, or *Commune Concilium*, *Regni* or *Parliament*. I will begin with a Statute or Act of Parliament made *tempore* Richard the First, who Reigned before King John, Father to H. 3. and 74 years before 49 H. 3. the *Assize* or *Statute* being made *per Assensum & Consilium Archiepiscoporum, & Episcoporum, & Abbatum Comitum, & Baronum, Militum*

Hoveden.

Militum & libere tenentium totius Regni.

King John being divorced, the new Queen was Crowned *De communi assensu & concordia voluntate Archiepiscoporum, Episcoporum, Comitum, Baronum, Cleri, & Populi totius Regni.* Rot. Cart. 5. Johannis m. 5. n. 33.

The King Anno 6. Summons a Parliament *tractatur: Nobiscum de magnis & arguis negotiis nostris & communi Regni utilitate. Quia super his, que a Rege Franciæ per nuncios nostros & suos nobis mandata sunt; and that expedit habere consilium Magnatum terræ therein.* Rot. Claus. 6. Johannis m. 3.

Inhibitio ne qui Magnates, viz. Comes Barones seu alii qua alia notabilis persona transeat ad partes transmarinas, Rot. Claus. 3 E. 2. m. 16. 19. dorso.

The King *per Commune Concilium Regni* then made an Assize of Money. Rot. Pat. 6. Johannis m. 7. dorso.

And at the same Parliament *provisum fuit Communi assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, & omnium fidelium nostrorum Angliæ*, that nine Knights through all England should find a *Tenth bene paratum cum Equis & Armis* for the defence of the Kingdom, and that those nine Knights should find the *tenth Knight* every day two shillings *ad liberationem suam*. Certainly the words *Fideles Angliæ*

cannot be understood to be restrained to the Tenants *in Capite* only.

Rot. Pat. 8 & 9
Johannis, n. 2.

The Archbishops, Bishops, Abbots, Priors, & *Magnates Regni* gave an *Auxilium ad defensionem Regni & recuperationem terrarum nostrarum* against the French King, and who the *Magnates*

Rot. Pat. 22 E.
I. m. 2. De sub-
sidio Guerra.

Rot. Pat. 25 E.
I. m. 22. In
consimili forma.

then were, the Patent Roll 22 E. 1.

shews where it is contained, *Rex, &c.*

Cum Comites, Barones, Milites, & alii

de Regno nostro in subsidium guerra, nunc

sicut alias nobis & Progenitoribus nostris

Regibus Angliæ liberaliter fecerunt unde-

cimam de omnibus bonis suis mobilibus.

Hence I shall observe, 1. That the Sub-

sidy in E. 1. time was granted in Parlia-

ment, and so this of King John's. 2. The

words *Progenitoribus nostris Regibus*

Angliæ must unquestionably compre-

hend King John, Grandfather to Ed-

ward the First, and by a reasonable con-

struction may be extended higher.

Rot. Pat. 8 &
9 Johannis n. 1.
But we know
that diverse
Parliaments
were in King
John's time,
though the
Laws made in
them be lost,
Selden's Titles
of Honor, f. 587.

And at the same Parliament, 8 &

9 *Johannis*, the universitas *Comitum Ba-*

ronum Militum & aliorum fidelium com-

plain against the Clergy about Rome-

scot, whereupon the King granted his

Prohibition or *Supersedeas* to the Clergy

that they should do nothing there-

in, *quousque cum universitate* (before

men-

mentioned) *super hoc Colloquium habemus.*

Anno 17 *Johannis*, The Agreement and Peace at *Runningmead* was made

between King John of the one part, and Robert Fitz Walter, Marshal of God

and Holy Church, several Earls there named, & *alios Comites, & Barones, &*

liberos homines totius Regni ex altera parte, or as the Patent Rolls 17 *Johan-*

nis m. 17. dorso. Generale Concilium, and Rot. *Clauſ. 28 H. 3. m. 12. dorso.*

Parliamentum de Runemed, I have seen it several ways spell'd or writ, *Runemeid,*

Rendmed, Redmede, which may seem to be a word of *saxon* extraction, for

Mr. Somner tells us, that *Rædan* is *Con-*

ſulere, and so justifies *Mat. West. pag. 273.*

in his Etymology, when he says, *Ren-*

nemed quod interpretatum Pratum Con-

cilii eo quod antiquis temporibus ibi de

pace Regni sæpius Concilia tractaban-

tur.

Anno 2 H. 3. *Magna Charta* was in Parliament granted and confirmed, an ancient Transcript of which, writ in the time of E. 1. I have, and conceive that those who then gave a Subsidy of a Fifteenth to the Crown were the parts that compounded and made the *Com-*

K 4

mune

Rot. Pat. 17 Jo-
hannis m. 21.
dorſo.

Somneri Gloss.
in verbo Ræ-
dan.

Mat. westm.
Anno 1215.
17 Johannis.

mine Concilium, Regni or Parliament,
 and who they were let the Charter
 speak. *Probac autem donatione, & con-*
cessione libertatum istarum & aliarum
contentarum in Charta nostra de liber-
tatibus Forestæ, Archiepiscopi, Episcopi,
Abbates, Priores, Comites, Barones, Mil-
ites libere tenentes, & omnes de
Regno nostro dederunt nobis quintam de-
cimam partem omnium bonorum suorum
mobiliium. Testibus prænominatis &
multis aliis Dat. per manus venerabilis
patris Domini Dunholmensis, Episcopi,
Cancellarii nostri apud Sanctum Paulum
London sexto die Novembris, Anno
Regni nostri secundo.

M. S. penes Do-
 minum Samue-
 lem Baldwin
 servientem Do-
 mini Regis ad
 Legem.
 M. S. penes Jo-
 hannes Cook
 generosum de
 Interiori Tem-
 plo.
 M. S. Statuto-
 rum penes meip-
 um.

Which is confirmed by the close Roll
 of this year thus:

Rot. Claus. 2 H.
 3. m. 11. dorso.

Rex Vic. Ebor, &c. salutem Mittimus
tibi Chartas de Libertatibus concessis
omnibus de Regno nostro, tam de Foresta,
quam aliis mandantes quatenus eas legi
facias publicæ in pleno Comitatu tuo
convocatis Baronibus, Militibus, & om-
nibus libere tenentibus ejusdem Comita-
tus, qui ibidem jurent fidelitatem vestram,
& tu diligenter attendens singula puncta
Chartarum ea per omnia facias jurari
observari, &c. Dat. 22. die Februarii.

Anno

Anno Dom. 1225. 9 H. 3. That King
 summoned a general or Common
 Council of the Kingdom at *Westminster*
presentibus Clero & Populo cum Magnati-
bus Regionis solemnitate igitur ut decebat
completa Hubertus de Burgo Domini Regis
Justiciarius ex parte ejusdem Regis proposuit
 Angliæ pro libertatibus suis quas Rex Johannes pater eis concesserat &
 Charta confirmaverat apud Runemed, Ex M. S. Rad. Coggeshale.

Mat. Paris
 pag. 323. l. 9.
 Anno Dom.
 1225. Barones
 Angliæ conces-
 serunt Regi
 Henrico 15.
 partem om-
 nium mobili-
 um & cattal-
 lorum totius

coram Archiepiscopis, Episcopis, Comitibus,
Baronibus, & aliis Universis damna & in-
jurias, quæ Regi illata fuerant in partibus
transmarinis. Whereby the King and
 many Earls and Barons were disinherited
 & cum multi sunt in causa multorum
 subventio erit necessaria petit ergo ab
 omnibus Consilium pariter & auxilium
 quibus Corona Angliæ dignitates amif-
 sas, ac jura posset pristina revocare, Ad
 hoc quoque plene perficiendum Regi suffi-
 cere credidit, si ea quinta decima pars om-
 nium rerum mobiliium totius Regni Angliæ,
 tam a personis Ecclesiasticis, quam a Lai-
 cis donaretur. To which it was answer-
 ed, Habita deliberatione quod Regis pe-

Nota.
 Anno 1225.
 9 H. 3. Rex
 Henricus dedit
 & concessit ho-
 minibus de
 Regno Angliæ
 libertates &
 liberas consue-
 tudines sicut
 erant in diebus
 antiquis & fe-
 cit eis inde
 Chartas duas
 unam de liber-
 tatibus & li-
 beris consuetu-
 dinibus Regni
 aliam de liber-
 tatibus Forestæ
 pro hac donati-
 one & concessi-
 one dederunt
 Regi quintum-

decimum denarium per totam Angliam. Ex vetusto Chronico, M. S. in
Bibliotheca Bodleiana inter Codices Will. Archiep. Cantuar. 4^{to}.
 K. 84.

tionibus

titionibus gratanter adquiescerent; si illis diu petitas libertates concedere voluisset, which the King condescended unto. And Chartis protinus conscriptis Regis sigillo munitis & sic soluto Concilio.

The Charters I shall pass over, only with this former Observation, that I conceive those that gave the Subsidy were the members of that Parliament, and who they were will appear by the *Inspeximus* of the Great Charter, and the Charter of the Forest inrolled in the Statute Roll, 25 E. 1. viz.

Rot. Statut. 25 E. 1. m. 38. Coke 2. Instit. c. 38. fol. 76.

Rex H. 3. exigit ab Huberto de Burgo quod ei respondeat de collectione totius quinte decime que per Commune Concilium totius Regni custodiri & habere debant in deposito. Mat. Paris Ad. dit. pag. 150. l. 28.

All the ancient Writs upon Magna Charta say, That it was made per Commune Concilium Regni.

Pro hac autem donatione, & concessione libertatum istarum & aliarum libertatum contentarum in Charta nostra de libertatibus Forestæ, Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, libere tenentes, & omnes de Regno dederunt nobis quintamdecimam partem omnium mobilium suorum Concessimus etiam eisdem pro nobis & heredibus nostris, quod nec nos, nec heredes nostri aliquid perquiremus (i. e. a Papa) per quod libertates in hac Charta contentæ infringantur vel infirmentur. Et si ab aliquo contra hoc aliquid perquisitum fuerit, nihil

valeat

valeat & pro nullo habeatur. *Hiis Testibus Bonifacio Cantuariense Archiepiscopo, E. Londinense Episcopo & aliis Dat. apud Westmonasterium decimo die Februarii, Anno Regni nostri nono.*

Which was solemnly ratified in Parliament by King E. 1. who pro salvatione, & defensione Regni, & pro confirmatione Magnæ Chartæ de libertatibus Angliæ, ac etiam pro confirmatione Chartæ de libertatibus Forestæ, had then given him an eighth part *omnium bonorum singulorum Laicorum*, with this protestation, and *salvo, quod levatio octavæ prædictæ non cedat in prejudicium servitutem sive exheredationem, nec in consuetudinem ullo modo futuris temporibus trahi possit.* The Confirmation runs thus, *Nous al honour de Dieu & de Seinte Esglise & au profit de tout nostre Roiaume avez grante pur noz & pur noz heirs que le grand Chartre des Franchises, & la Chartre de la Forestæ les que les furent faites per Commune assent de tout le Roiaume en temps le Roy Henry nostre pier soient tenus en tous leur points sans ull blemissement.*

Rot. Pat. 25 E. 1. m. 6. Quod octavæ concessio facta Domino Regi pro confirmatione Magnæ Chartæ non cedat in populi prejudicium vel consequentiam.

Rot. Statutorum 25 E. 1. m. 38.

Nota.

Ibidem.

Eansî a vous grant pur nous & pur nos heirs as Archievesques, Evesques, Abbes, & Priors, & as autres Gents de Seinte Esglise

Nota. The parts that constituted the Commune assent de tout le Roiaume.

Appendix.

Esglise as Countes, & Barons, & a tout la Communante de la terre que mes nul besoigne tien manere des aides mises ne prises de nostre Roiaume ne prendromus forsque per Commune assent de tout le Roiaume & a Commune profit de mesme le Roiaume. Teste 10 Octobris.

To deny therefore that the Knights and Freeholders *de Regno of England* were a constituent part of the *Commune Concilium*, or Parliament, in 2 & 9 H. 3. but were represented by the Tenants *in Capite*. A man may with equal Reasons, and as strong Authorities argue and affirm, that though the Records plainly declare the *Enumeratio partium* of those great *Councils*, and the *Comites & Barones* to be one part then present, and that they gave a Subsidy concurrent with the other parts, yet really, 1. They were not there nor joined in the Tax, but were represented by the *Milites* and *libere tenentes de Regno*. 2dly, Though the *Comites, Barones, Milites, & libere Tenentes de Regno* are expressly and particularly mentioned in these *grand Charters*, yet in truth they were not present at those *great Councils*, but their Votes and

Appendix.

and Power were included, and they represented in and by *omnes Archiepiscopi, Episcopi, Abbates, & Priores de Regno*, (though the greater number of the two latter held not of the King *in Capite*.) who made Laws, and gave Taxes *exclusis* or *omissis Comitibus Baronibus Militibus, & libere tenentibus de Regno*. Or 3dly, Notwithstanding the naming of the Prelates of the Church, yet their Power, Vote, and Authority was transferred and made over to the Earls, Barons, *Knights* and *Freeholders* of the *Kingdom*, and their appearance there was not *Personal*, but by *Representation*, which no man certainly can believe.

I shall close up this Point with a memorable Record which I happily found in the Exchequer *de Anno 17 E. 3.* The Prior of Coventry was attached to answer to the King *de servitio octo feodorum Militum per ipsum Priorem & Predecessores suos Regi, & Progenitoribus suis ab Anno 29. Domini Regis H. proavi ipsius Regis nunc substracto & concealato*. The Prior appears per Henricum *de Stretford*, whereupon the Barons Order a search of the *Rolls* and *Memoranda* of the *Exchequer*, and thereupon it was found

Inter Communia de Termino S. Hillary 17 E. 3. Recorda penes Rememoratorem Domini Regis in Scaccario. warr. de Priore de Coventr. attach. pro transgressione.

found in the Roll of 29 H. 3. *sub Titulo de Auxilio ad primogenitam filiam Regis maritandam*, That the Prior stood charged with Ten pounds for ten Knights fees, and in the great Roll 32. of that King Titulato *Auxilium Episcoporum Abbatum, Priorum concessum ad sororem Regis maritandam Frederico Imperatori*, the Prior stood charged de *viginti marcis, &c.* To this the Prior pleads, *Quod ipse & Predecessores sui tenuerunt omnia terras & tenementa sua per servitium duorum feodorum Militum tantum & quod Dominus Rex, seu Progenitors sui de aliquibus aliis servitiis per ipsum Priorem, seu Predecessores suos nunquam seisiiti fuerunt per finem, seu servitium per corpora hominum factum quod liquere poterit per Memoranda hujus Scaccarii, si fiat inde scrutinium, &c.* Et quoad hoc quod compertum est hic in Rotulis &c. *Quod tempore dicti Regis Henrici Tertii computatum fuit de certis pecuniæ summis de auxiliis eidem Regi Henrico ad filium suum Militem faciendum & sororem suam maritandam concessis. Hoc ei non præjudicat in hac parte. Dicit enim quod Auxilia illa non fuerunt, nec censeri possunt esse servitia immo quedam subsidia per Magnates, & Com-*

& Communitatem Regni spontanea, & mera voluntate Regi concessa, & tam de tenentibus aliorum, quam de tenentibus de Domino Rege in Capite levanda quo pretextu dictus Computus de auxiliis predictis fuit tam pro feodis tenentium, tunc Prioris loci predicti quam pro feodis ipsius Prioris propriis, quod idem Prior dicit posse liquere Curie per Certificationem tunc Prioris loci predicti tunc Baronibus de Scaccario.

From this Record I shall make these Observations :

1. That the Crown could not *de jure* require any *servicia* from the Subject, but those that were *debita, omnes qui de Rege tenent per servitium militare*, (and none else,) *Regi faciant auxilium ad primogenitam filiam maritandam*, saith the King, *Rot. Pat. 29 H. 3. m. 7. dorso*, and so said the Law long before. *Sunt etiam quedam Communes præstationes quæ servitia non dicuntur, nec de consuetudine veniunt, &c. sicut sunt Hidagia, Corragia, & Carvagia, & alia plura de necessitate & ex consensu Communi totius Regni introducta & quæ ad Dominum feodi non pertinent.*

Brañton, lib. 2. cap. 16. fol. 37.

2. There

Rex Angliæ
neque per se aut
Ministros suos
subsidia, aut
alia quævis
onera imponit
Ligeis suis sine
assensu totius
Regni sui in
Parliamento suo
expresso. For-
tescue de Lan-
dibus Legum
Angliæ, cap.
36. pa. 84.

2. There is a difference appears be-
tween *Servitia* and *Auxilia*: The Law
allows therefore the Priors plea, when
he says, That those extraordinary Aides
were not *Servitia* but *Auxilia*, granted
to the Crown per *Magnates & Commu-
nitatem Regni spontanea & mera volun-
tate*, or as *Bracton* before cited, *Consen-
su communi totius Regni*.

3. Those Aides were given *tam de
tenentibus aliorum quam de tenentibus
de Domino Rege in Capite levanda,*
*quo pretexta dictus Computus de Auxiliis
predictis* were as well for the Fees of
the Tenants of the then Prior, as for
the Fees of the Prior himself, which the
Prior said would clearly appear to the
Court by the Certificate of the Prior,
his *Predecessor*, in the time of *H. 3.*
made to the Barons of the Exchequer,
so that the *Tenants of the Prior* did grant
an *Aid* as well as the Prior himself, and
that in *Parliament*, for as I have
observed before, *Rot. Claus. 32 H. 3.
m. 13. dorso*, there was a *Parliament*
then held.

4. That in the Reign of *H. 3.* and
preceding times, when the *Knights* and
Freeholders, who held not of the King,
but other Lords, did in the *Commune*
Con-

Concilium, or *Parliament*, grant an *Auxi-
lium* or *Aid* to the Crown, the great
Lord or *Baron* of the Fee, of whom
the *Freeholders* held, was charged in the
Exchequer to answer for the Collection
thereof, under the title of his *Barony*,
as the *Bishop* of every *Diocess*, even
till *Queen Elizabeth's* time, was by Law
chargeable for the collecting of *Aids*
granted by the *Clergy* within his *Dio-
cess*, yet certainly as the *Bishop* never had
any power to give for, or tax his *Clergy*;
no more could or did any great *Lord*
of the Fee either *jure tenuræ*, or *representa-
tionis*, charge or give away the Estate
of his free Tenants, who were independ-
ent *in omnibus serviciis suis debitis
solummodo exceptis*; this Point being
not well observed and understood by
late Authors, has caused the mistake
about the Tenants *in Capite*, represent-
ing the *Commons* in *Parliament*.

5. It seems to me a *severe* and *hard*
Principle to be believed, that the far
greater number of the *Abbots* and
Priors, the whole *Body* of the in-
ferior *Clergy*, in those and after-times,
so considerable every way in the King-
dom, the generality of the *Knights* and
Freeholders of *England*, who never
held

held of the King *in Capite*, yet very considerable in number, and all the Citizens and Burgesses should, till 49 H. 3. either be *totally excluded* from being any part of the *Generale Concilium Regni* or Parliament, or else by a Law, of which there is not the least footsteps in History or Law, were for so many Ages to be represented by the *Tenants in Capite* only in Parliament, the transcendent Power of which Council in Conjunction with the King as Head thereof Sir Thomas Smith, that great and learned man, who was Secretary and Privy-Councillor to our famous Queen, an old Parliament-man, when he comes to write of the Parliament, and its largeness of Power, says thus, *In Comitibus Parliamentariis posita est omnis Augustæ absolutæque potestatis vis, quippe quemadmodum Robur & virtus Angliæ dicuntur in Acie residere Parliamentaria Comitibus veteres leges jubent esse irritas, novas inducunt, presentibus juxta ac futuris modum constituunt, jura & possessiones hominum privatorum commutant, spurios Natalibus restituunt, Cultum divinum sanctioribus corroborant, pondera & mensuras variant-----incerti juris controversias dirimunt, ubi nihil lege cautum fuit,*

De Repub. & Administratione Anglorum,
Tho. Smith,
lib. 2. cap. 2.
fol. 50. 51.

fuit, censum agunt, Capitulationes & vectigalia indicunt, delictorum gratiam faciunt, afflictas & Majorum sceleribus perditas familias erigunt, vitæ necisque potestatem in eos obtinent quos ad hujusmodi disquisitiones Princeps advocaverat, atque ut concludam breviter, quicquid in Centuriatis Comitibus, aut in Tribunitiis Populus Romanus efficere potuisset, id omne in Comitibus Anglicanis tanquam in Cætu Principem populumque representante commode transigitur. Interesse enim in illo conventu omnes intelligimur cujuscunque amplitudinis status aut dignitatis Princepsve aut Plebs fuerit, sive per se ipsum hoc fiat, sive per procuratorem, nam omnibus peræque, gratum esse oportet quicquid ex Senatusconsulto Parliamentario profectum est.

6. It is observable, that the Prescription of Progenitores Regis, in the Record of the Prior of Coventry tempore E. 3. did expressly extend to the Reign of H. 3. his great Grandfather and higher too, so that I had good authority and warrant to say before, that, when the Burgesses of St. Albans, in the Parliament 8 E. 2. affirmed, That they and their Predecessors sicut cæteri Burgenses de Regno, as the rest of the Bur-

If it were needful, I could give numbers of Records, that prove the extension of such Prescription higher.

gesses of the Kingdom had *totis retro-actis temporibus*, in all times past, in the time of *E. I. & Progenitorum suorum*, and of His Progenitors, sent *Two Burgeses* to every Parliament, they had, as well as other Boroughs of *England* sent Burgeses to the *Generale Concilium*, or *Parliament* before mentioned, in the *17th* year of *King John*, Grandfather to *E. I.* at least, and so by clear evidence before *49 H. 3.*

From the aforesaid *Authorities* and *Reasons*, we may with good consequence conclude.

1. That the *People* or *Commons* of *England*, from the time of the *Norman Conquest*, till *49 H. 3.* were not represented in the *Commune Concilium*, *Regni* or *Parliament*, by such only as held of the *King in Capite*.
2. And that the *Commons* or *People* did not begin to be represented by *Knights*, *Citizens*, *Burgeses*, and *Barons* of the *Cinque Ports* in the said *49 H. 3.*

And now I shall subjoin some material Records relating to my former Discourse.

Inter

Inter Communia de Term.
Trin. Anno 7 E. 2. Ad-
huc Recorda.

*Penes Rememorator. Domini
Thesaur. in
Scaccario re-
manen.*

PIn nomine *Patriarchi*
Iesu Christi salvato-
ris mundi totiusque *Carta Regis
Cant.*
Creature Creatoris cu-
jus *Divino Dominatu*
quique *donatores* debi-
to *servitio* subnixe *deserviunt*, *cujus*
etiam omnipotentis univ-
ersis *potentis* obsecundari *examussim* *prepro-*
perant, *quia bonitas* ejus *bonitatis* est
incomprehensibilis, & *miseratio* *inter-*
minabilis, *mansuetudo* *bonitatis* *ineffa-*
bilis *longanimitas* quoque *super pra-*
torum nequitias *quantitatis* *prolixitate*
cujuslibet *longior* qui *cotidianis*
admonitionibus *religiosam* *conversa-*
tionem *ducentes* *monet* ut *pie* *Sectan-*
do justitiæ *culturam* *non* *eam* *deseren-*
doliquant; *quin* *potius* *perseverabili*
instantia *in* *eius* *cultura* *ut* *permaneant*
paterno *affectu* *hortatur*; *qui* *nihilomi-*
nus *eadem* *affectione* *mandat* *peccato-*
ribus *ut* *resipiscant* *a* *suis* *iniquitatibus*

L 3

con-

Nota, the parties of the Witenagemot or Parl. Fideles, i. e. oies qui in Principis alijus ditione sunt vulgo subiecti, Spel. Gloss. 223.

conuertentes, quia eorum execratur mortem ejus amoris stimulo & fide suffultus cujus largiflua miseratione Ego Erit Rex totius Albionis Insule aliarum nationum plurimarum in Cathedra Regali promotus cum Consilio & decreto Archiepiscoporum, Episcoporum, Abbatum, Comitum aliorumque omnium fidelium eligi sancienti. Atque perpeti stabilitamento ab omnibus confirmandum ut Monasterium quod Biadricelwoth Runcupatur, sit per omne ebum Monachorum gregibus deputatum ad inhabitandum, & ab omni Dominatione omnium Episcoporum Comitatus illius funditus liberum, ut in eo Domitio seruientes Monachi, sine ulla inquietudine pro statu Regni Domini preualeant precari. Placuit etiam mihi hanc optionis electionem roborare privilegio isto in quo indere precepi libertatis donum, quod jam olim Edmundus Rex occidentalium Saxonum largitus est suo equivoco pro nanciscenda ejus gratia, & mercede aeterna scilicet Edmundo Regi & Martiri quod bone voluntatis voto augere cupimus, quatenus ejus promereri partibus merear portionem ejus beatitudinis post hujus cursum vite.

vite. Tali libertate concedo fundo frui illi in quo idem status pascat ut quociens populus uniuersus persolbit censum Danis vel ad Naves seu ad arma persolbant inhabitantes in ipso fundo eadem ad usus, quos elegerint fratres illius loci sitque nobis remedio hoc michi quippe eque Reginae meae Elgise ac filiis nostris omnibusque qui pidem ei hoc contulerunt. Huic libertati concedo additamentum scilicet maritimos pisces, qui michi contingere debent Annualiter per Ceolonei lucrum & piscationem quam Ulfkytel habuit in Wylla, & omnia jura quarumcumque causarum in villis quae Monasterio adjacent & quae adjiciendae sunt per gratiam Dei dedi quoque Reginae meae assensum concedens ei pro sua elemosina dare quatuor Villia Anguillarum cum muneribus quae pertinent ad illas pro Annuali censu in villa que cognominatur Lakynghythe, si quislibet quod absit istam libertatem quoquoque conatu nititur seruitutis iugo subigere vel prava intentione transmutare. Ut cursus Clericos in eo collocet loco sit addictus captiuitati aeternae careat sempiterna libertate, & mancipatus seruitio Diaboli

Appendix.

hōli ejusque consortio sit in extricabili-
bus hābenis constrictus nisi satisfactio
ejus erratui subdeniat quod prolixus
optamus. † Ego Cnut Rex gentis
Anglorum altarumque nihilominus hoc
privilegium jussi componere & compo-
situm cum signo Dominicæ crucis
confirmando impressi.

- † Ego Alfgifa Regina omni alacrita-
te mentis hoc confirmavi.
- † Ego Wulstanus Archiepiscopus con-
fensi.
- † Ego Athelnothus Archiepiscopus
confirmavi.
- † Ego Godwinus Episcopus corrobora-
vi.
- † Ego Alfwinus Episcopus assensum
dedi.
- † Ego Alffinus Episcopus Confir-
mavi.
- † Ego Athericus Episcopus con-
clufi.
- † Ego Alfwynus Episcopus robo-
ravi.
- † Ego Brithwaldus Episcopus.

- † Ego Iric Dur.
- † Ego Godwinus Dur.
- † Ego Ulf Dur.

† Ego

Appendix.

- † Ego Eglaf Dur.
- † Ego Hacun Dur.
- † Ego Leofwynus Dur.
- † Ego Godricus Dur.

- † Ego Oslacus Miles.
- † Ego Theoreth Miles.
- † Ego Thurkil Miles.
- † Ego Thrym Miles.
- † Ego Brothor Miles.
- † Ego Alfricus Miles.
- † Ego Alfwynus Miles.

- † Ego Leofricus Abbas.
- † Ego Alfwardus Abbas.
- † Ego Athelstanus Abbas.
- † Ego Alfias Abbas.
- † Ego Leofwinus Abbas.
- † Ego Wulfredus Abbas.
- † Ego Oskytelus Abbas.

- † Ego Alfwius.
- † Ego Alfricus.
- † Ego Alfricus.
- † Ego Leoffius.
- † Ego Leofricus.

*Nota, here we
find that the
Knights were
in the Saxon
and Danish
Commune Comi-
tum, or Parlia-
ment in King
Cnuts Reign.*

Domina

Hen. primus
Rex, Eadmeri
Historiæ Novo-
rum, Lib. 5.
pa. 111.

Domino Sanctæ Universalis Ec-
clesiæ summo Pastori Paschali; Con-
ventus Ecclesiæ Christi Cantuariensis
fideles Orationes, & totius Sanctæ
Devotionis obsequium. Notum esse
non dubitamus gloriose Paternitati
vestræ (pie domine) quod Ecclesia
Cantuariensis Mater Nostra, Sanctæ
scilicet Romanæ Ecclesiæ Specialis filia
jam ab obitu beatæ Memoræ Patris
nostri Anselmi Archiepiscopi per quin-
quennium cura Pastoralis officii pec-
catis nostris exigentibus sit destituta
Nuper autem respectu Misericordiæ
Dei, adunato conventu totius Angli-
ci Regni in præsentia gloriosi Regis
nostri Henrici electus a nobis & Clero
& populo est ad Regimen ipsius Eccle-
siæ Radulphus Roffensis Episcopus
nobis sufficientissime cognitus, &
propter Vitæ suæ meritum & Sanctæ
conversationis effectum toti Regno val-
de acceptus. Huic Electioni assuerant
Episcopi Abbates & Principes Regni,
& ingens populû multitudo consentiente
Domino nostro Rege & eandem electi-
onem laudante, suaque auctoritate
corroborante Quoniam igitur ita res
se habet Mittimus ad vos, modis qui-
bus possumus supplicantes ut quem
ad

Nota.

Nota.

ad sublevationem & consolationem
Ecclesiæ suæ Deus (quantum nobis
Datur intelligi) elegit vestra Sancta
auctoritate in quo electus est confir-
metis, & ei Pallium quod omnes An-
tecessores sui a Sacratissima sede beati
Petri consecuti sunt transmittere
dignemini ne Sanctitate vestra aures
pietatis suæ precibus Nostris (quod
Deus avertat) non inclinante in-
pistinas miseras aliquo Eventu Ec-
clesia nostra (filia vestra) relabatur.
Ipsemet enim tanta corporis imbecilli-
tate gravatur, ut non sine Magno pe-
riculo sui, & detrimento omnium no-
strum valeat hoc tempore vestigiis
vestris se presentare. Sanctum Aposto-
latum vestrum omnipotens Deus dig-
netur ad honorem suæ Sanctæ Ec-
clesiæ per multa tempora incolu-
mem conservare Dignissime Pater.
Amen.

Henrico Regi Anglorum charo Do-
mino suo ac Summo honore Venerando,
frater Radulphus Sanctæ Cantuarien-
sis Ecclesiæ indignus Sacerdos & totus
Conventus ejusdem Ecclesiæ salutem,
& orationes & fidelia obsequia No-
tum facimus Sublimitati vestræ
Alexandrum

Henricus Pri-
mus Rex.
Eadmeri Hist.
Novorum, lib. 5.
pa. 131.

Alexander the First.

Nota, the various expressions of the General Council or Parliament of Scotland.

1. *Clerus & Populus.*
2. *Episcopi, Abbates, Comites, Barones Thani & tota Communitas Regni.*

3. *Episcopi, Abbates, Barones, ac prohi homines Scotiae.*

4. *Prælati, & Nobiles, & universitates & Communitates Civitatum & Villarum dicti Regni Scotiae.*

See Regiam Majestatem Scotiae, written by Sir John Skeene, pa 3. 22. Rot. in Turri London. 28 E. 1. vide pa. 82. 83.

Alexandrum Regem Scotorum cum consensu Cleri & populi Regni sui Legatos suos ad nos misisse & consilium curæ Pastoralis ad opus Ecclesiæ Sancti Andreae a nostra Ecclesia ex petuisse Considerantes ergo eorum justam Petitionem & tam Divini amoris Reverentiam, quam Sanctæ Matris Ecclesiæ Utilitatem attendentes laudandis desideriis pium præbuimus assensum Concessimus ergo juxta petitionem eorum personam Ecclesiæ nostræ ab eis Denominatam Dominum Edmerum quam a pueritia disciplinis Ecclesiasticis sublimiter justitum & Sanctis Moribus Decenter Decoratum ad officium Sacerdotale omnino scimus idoneum. Vestram igitur venerabilem sublimitatem submisso corde deposcimus ut vestræ celsitudinis pia voluntate atque auctoritate & illorum Deo digna petitio & super tam Necesario Ecclesiæ Dei Negotio nostræ humilitatis concessio roboretur. Omnipotens Deus sublimitatem vestram ad honorem suum & munimen Ecclesiæ suæ per longa tempora incolumen custodire & post temporale Regnum dignitate perennis Regni sublimare dignetur.

Refere-

Rescriptum Regis ad hæc.

Henricus Rex Anglorum Radulfo Archiepiscopo Cantuariæ salutem volo & concedo ut Monachum illum unde Rex Scotiae te Requisivit, liberum ei concedas ad consuetudinem Terræ suæ in Episcopatu Sancti Andreae Ceste Everardo de Calna apud Rothomagum.

Patri Venerabili Paschali Summo Pontifici Henricus Dei Gratia Rex Anglorum salutem Promotioni vestræ in sedem Sanctæ Romanæ Ecclesiæ plurimum Congaudeo, petens quod amicitia Quæ patri meo cum Antecessoribus vestris fuit, inter nos quoque illibata permaneat, unde ut dilectio & benignitas a me videatur sumere initium. Beneficium quod antecessoribus meis beatus Petrus habuit vobis mitto, eosque honores, & eam obedientiam quam tempore patris mei Antecessores vestri in Regno Angliæ habuerunt in tempore meo ut habeatis volo; eo videlicet tenore, ut dignitates usus & consuetudines quas pater

Chronicon Johannis Brompton, Col. 999. 1000. Anno Domini 1103. 4^{to}. Hen. primi.

Rot. Par. 40 E.
3. n. 7. 8.
*Quod omnes
tangit ab omni-
bus approbatur.
Vide Argu-
ment the 8th,
pa. 28. usque ad
finem.*

pater meus tempore antecessorum vestrorum in Regno Angliæ habuit, Ego tempore vestro in eodem Regno meo integre obtineam Notumque habeat Sanctitas vestra quod me vivente Deo auxiliante dignitates & usus Regni Angliæ non minuentur & si ego quod absit in tanta me dejectione ponerem, optimates mei immo totius Angliæ populus id nullo modo pateretur Habita igitur Karissime Pater utiliori deliberatione ita se erga nos moderetur benignitas vestra ne quod inditus faciam a vestra me cogatis recedere obedientia.

Rot. Par. 15.
*Johannis pars
2. m. 2.*

Rex Baronibus, Militibus, & omnibus fidelibus totius Angliæ salutem sciatis, quod die Martis prox. ante _____ suscepimus literas Domini Papæ in partibus Picaviæ de _____ Relaxatione Interdicti Angliæ, quas destinavimus venerabili P. Winton Episcopo Justic nostro & vos rogamus attentius tanquam dilectos, & fideles nostros quorum dilectioni & fidelitati plene confidimus quatenus secundum quod idem Episcopus vobis diceret Consilium & auxilium vestrum ad honorem nostrum & vestrum, & statum Regni nostri melius commu-
nicandum

nicandum efficaciter super hoc apponatis ut vobis modo ad uberiores teneamus gratiarum Actiones. Et ut dilect. quam hactenus erga nos habuistis in hoc merito _____ nostrum si fieri literas nostras super hoc transmissemus, set ut negotium illud, quod & nobis & vobis ad commodum cedet & honorem & majori expediretur festinatione has literas, &c. T. meipso apud Rupellam sexto die Martii.

Eodem modo scribitur.

Majori & Baronibus London.
Majori & probis hominibus Winton.
Probis hominibus Northampton.

Linc. Ebor. Wigorn. Cantabr.
Oxon. Glouc. Hunt. Bristoll.
Heref. Exon. Norwich.

Eodem modo scribitur.

Omnibus Burgis
&
Dominicis Domini Regis Dat.
eodem.

Rex

Rot. Clauf.
15. Johannis
m. 1.

Rex dilecto & fidei suo Willielmo Com. Haresc. salutem sciatis, quod salvi Dei gratia & incolumes apud Rupellam applicuimus die Sab-
bati prox. post capt. Jennim & magna partis gentis nostrae. Et statim ex quo advenimus tamen reddita nobis fuerunt cum relictis xvij. Castra & fortalicia & praeter paucos dies processimus ad Castrum de Willefen. obsidendum, & tunc Castrum illud cepissemus venit ad voluntatem & misericordiam nostram Johannes de Portio Clericus & continuo post illum venit similiter ad voluntatem & misericordiam nostram Savericus de Malo Leone quem Consilio Domini Burde-
genis Archiepiscopi & aliorum fideium nostrorum in pacem nostram admis-
simus; die autem Martii prox. ante mediam Quadragesimam dum adhuc moram fecissemus circa Castrum illud funditus prostrandum, venit ad nos Acelina Romana frater Gulielmi de Sancto Andoeno afferens nobis literas Domini Papae de forma Interdicti relaxandi in Anglia quas Generabili patri nostro Domino P. Winton Episcopo destinabimus, unde vobis mandamus Rogantes quatenus ad
negotium

negotium illud exequens ad hono-
rem Dei, & nostrum & vestrum Consi-
lium, & Auxilium efficaciter impendatis
& faciatis super negotio ista id quod
Dominus Winton Episcopus Justicia-
rius noster vobis dicet ad fidem & com-
modum nostrum, ut honorem inde
habeamus & Regni nostri status in me-
lius commutetur unde merito ad per-
petuas vobis teneamur gratiarum
actiones. T. meipso apud Rupellam
octavo die Martii.

Eodem modo scribitur omnibus
Comitibus, Baronibus, & Magnatibus
Angliae Dat. eodem.

Reverendo Domino suo & patri ^{Rot. Pat. 17 Jo-}
Sanctissimo J. Dei gratia summo ^{hannis m. 16.}
Pontifici Johannes eadem gratia Rex ^{Rex mittit Do-}
Angliae, &c. Salutem & debitam tanto ^{mino Papae pro}
Domino ac patri Reverentiam. Cum ^{Auxilio adver-}
Comites & Barones Angliae nobis de- ^{sus Barones}
voti essent antequam nos & nostram ^{Angliae.}
terram Dominio vestro subicere curas-
semus extunc in nos specialiter ob hoc
sicut publice dicunt violenter insurgunt.
Nos vero post Deum vos specialem Do-
minum & Patronum habentes defensi-
onem nostram & totius Regni quod
vestrum est esse credimus vestrae pater-
nitati commissam. Et nos quantum
D in

in nobis est Curam & sollicitudinem istam vestrae reservamus Dominationi devotius supplicantes quatenus in negotiis nostris quae vestra sunt consilium & auxilium efficax apponatis; prout melius videritis expedire Latores praesentium venerabiles Patres W. Burdegal & H. Dublin Archiepiscopos Magistram R. Canonicum nostrum Abbatem Belli loci Magrum P. Ebof Ecclesiae Praeceptorum & H. Archidiaconum & Magrum de Arenio Canonem Ebof, & nobiles viros J. Marefcallum & G. Lutterell fideles nostros quos propter hoc ad pedes vestros transmittimus benignius exaudientes. Nos enim super omnibus quae ad Nos & Regnum nostrum pertinent vices nostras & auctoritatem Sanctitati vestrae committimus Ratum habituri & firmum quicquid inde cum consilio Nuncioz nostrorum duxeritis ordinandum. T. meipso apud Doveram 13. die Septembris.

Pat. 17 Johannis m. 15. dorso.
Rex scribit Papae ut succurrat ei quoniam unicum & singulare presidium suum post Deum habuit in Papa.

Item Domino Papae, &c. In conspectu Paternitatis vestrae humiliamus

ad

ad gratias multiples prout melius scimus & possumus exhibendas pro Cura & sollicitudine quam ad defensionem nostram & Regni nostri Angliae Paterna vestra benevolentia indefinenter apponit licet duritia Praelatorum Angliae atque inobedientia maleficiose impediant prae vestrae provisionis effectum. Nos tamen pro effectu sincero quem ad nos geritis clementiae vestrae devotius inclinamus qui etsi ad praesens a superbis & a malevolis ad insipientiam sibi censeatur inefficax nobis erit Domino concedente ad tuicorem & pacem & inimicis nostris confusionem & terrorem inducit. Et licet Dominus Pandulphus fidelis subdiaconus vester Norwicensis Electus nobis pernecessarius esset in Anglia ut pote qui honorem Ecclesiae Romanae ac vestrum & totius Regni nostri fideliter & devote procurat quia tamen nullo modo de statu nostro & Regni Paternitas vestra certificari poterit melius quam ipsum ad pedes vestros eundem destinamus invitum devotius supplicantes quatenus per ipsum specialiter & alios fideles nostros illatae vobis in persona nostra injuriae veritate comperta ad Regimen Regni nostri & nostrae

D. 2.

nostræ obserbandum dignitatis paternæ manum sollicitudinis apponatis prout excellens vestra discretio viderit expedire quod per Dei gratiam laudabiliter facitis & fecistis pro certo habentes quod post Deum personam vestram & auctoritatem Apostolicæ sedis habemus unicum & singulare Præsidium & sub vestri confidencia patrocini respiramus. Ceste &c.

Rot. Pat. 37 H.
3. m. 12. dorso.

Vide pa. 35.
101, 102.

Reverint universi quod Dominus H. Rex Angliæ illustris R. Comes Norff. & Marecallus Angliæ H. Comes Hereford & Essex J. Comes de Warewico Petrus de Sabaudia cæterique Magnates Angliæ concesserunt in sententiam excommunicationis generaliter latam apud Westm̄ tertio decimo die Maii Anno Regni Regis prædicti. 37. in hac forma scilicet Quod vinculo præfatæ sententiæ ligentur omnes venientes contra libertates contentas in Cartis comunium libertatum Angliæ & de Forresta Et omnes qui libertates Ecclesiæ Angliæ temporibus Domini Regis & Prædecessorum suorum Regum Angliæ optentas & usitatas scienter & Maliciose violaverint, aut infringere præsumperint, & omnes illi qui pacem Domini Regis & Regni

& Regni perturbaverint, & similiter omnes qui jura & libertates Regis & Regni Diminuere infringere seu mutare præsumperint. Et quod omnes venientes contra præmissa vel eorum aliqua ignorantur & legitime moniti infra quindenam post mentionem præmissam dictam transgressionem non emendaverint Extunt prædictæ sententiæ excoicationis subjacebunt Ita tamen quod Dominus Rex transgressionem illam per considerationem Curia suæ faciat emendari sciendum autem quod si in scriptis super eadem sententia a quibuscunque confectis, seu conficiendis aliud vel aliter appositum vel adjectum fuerit aut Articuli aliqui alii in eis contenti inveniantur Dominus Rex & prædicti Magnates omnes & communitas populi protestantur publice in præsentia Venerabilium Patrum B. Dei gratia Cantuariensis Archiepiscopi totius Angliæ Primatis Recnon & Episcoporum omnium in eodem colloquio existentium quod in ea nunquam consenserunt, nec consentiunt set de plano eis contradicunt Præterea præfatus Dominus Rex in prolatione præfatæ sententiæ omnes libertates & consuetudines Regni nostri antiquas & usitatas & dig-

See pa. 35.
101, 102.

Colloquium p.
Parlamento,
Spell. Gloss.
137.

& dignitates & jura Coronæ suæ ore proprio specialiter sibi & Regno suo salvabit & Exceptit in cuius rei memoriam & in posterum veritatis testimonium tam Dominus Rex quam prædicti Comites ad instantiam aliorum Magnatum & populi præsentium scripto sigilla sua apposuerunt.

Rot. Pat. Val-
con. 37 & 38
H. 3. m. 4. n. 21.
De Magna
Carta tenenda.

Rex Regina & R. Comiti Cornub. salutem cum Nos, & omnes Magnates & Prælati Angliæ juraverimus & promiserimus nuper apud Westm¹, quod magnam Chartam nostram Angliæ in omnibus articulis suis teneri firmiter faceremus nos adhuc in eodem proposito persistentes volumus & mandamus quod Chartam illam super Sacramentum singulorum Vicecomitum in singulis Comitibus publice clamari faciat & teneri, dum tamen præfati Magnates & Prælati eam faciant simili modo de cetero a suis subditis Telle, &c.

Rot. Pat. 38 H.
3. m. 4.
Hiberniæ.
Vide the ninth
Argument, p. 73.

Rex Generabilibus in Christo Patribus omnibus Archiepiscopis, Episcopis, & Dilectis sibi in Christo Abbatibus, & Prioribus, & dilectis & fidelibus suis universis Comiti Baroni Militibus & aliis fidelibus suis Hiberniæ salutem Mittimus dilectum & fidelem nostrum filium J. Galfr

Galfr Justic nostrum Hiberniæ ad partes Hiberniæ ad Exponendum vobis Statum nostrum & terræ nostræ Vascoñ & Pericula Nobis imminentiæ & ad tractandum Vobiscum super Auxilium nobis faciendū contra Regem Castell qui dictam terram nostram Vascoñ in Hanu forti in Quindennam Pasche primo futuū hostiliter est ingressurus vobis Mandantes quod eidem Justic nostro in hiis quæ nobis ex parte nostra super prædicto auxilio perquirendo intimabit fidem adhibeatis In cuius &c. T. A. Regina nostra & R. Comi Cornub apud Westm. ij. die Febr. per Regn.

Rex Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comi Baroni, Militibus Liberis hominibus Civibus Burgensibus, & omnibus aliis fidelibus suis terræ suæ Hiberniæ salutem Mittimus fratrem Nicholaum de Sancto Neoto fratrem Hospit Sancti Johannis Jerusalem in Anglia ad partes Heberniæ ad Exponendū vobis una cum J. Galfr. Justic nostro Hiberniæ Statum nostrum & terræ nostræ Vascoñ & Pericula nobis imminentiæ de hostili adventu Reg. Castell

Ibidem.
Hiberniæ.

Castell qui Nullo jure set Potentia sua confusus terram nostram Galcon per ipsius fortitudinem a Manibus nostris auferre & a Domino Regni Angliæ segregare proponit Univerſitatem vestram quantum possumus affectione Rogantes quatenus nos & jura nostra taliter indefensa non deserentes nobis in tanto periculo constitutis quantumcunque in Mundo poteritis de Gente & Pecunia ad predictæ terræ nostræ defensionem quam prædictus Rex in Manuforti in estate prior. futuꝛ hostiliter est ingressurus subveniatis quod in vestrum honorem Cretetur sempiternum cum ex contrario hujus Negotii eventu non tantum nobis set singulis Regni nostri & terræ nostræ Hiberniæ ——— & rerum dampnum imineat periculolum His nostris Augustiis taliter compatientes quod nos & hæredes nostri vobis & hæredibus vestris Sumus non immerito obligati In cuius ec. Ceste a Regina & R. Com. Cornub. apud Windsor xvij die Februarii per Regiam.

Rex

Rex omnibus ec. Cum pro Negotiis nostris arduis Regnum nostrum contingentibus proceres & fideles Regni nostri ad nos London in Quindena Pasche prior. præterit faceremus convocari & cum de Negotiis supradictis maxime de prosecutione Negotii Siciliae diligenter cum eisdem tractaremus Ac ipsi nobis responderint quod si statum Regni nostri per Concilium fidelium nostrorum rectificandū duxerimus Et Dominus Papa condiciones circa statum Siciliae appositos melioraverit per quod Negotium illud prosequi possemus cum effectu ipsi diligentiam fideliter apponent erga communitatem Regni nostri quod nobis Commune auxilium ad hoc præstetur Nos eis concessimus quod infra festum Natalis Domini proximum futurum per consilium proborum & fidelium hominum nostrorum Regni Angliæ unacum consilio Legati Domini Papæ si in Angliam medio tempore venerit statum Regni nostri ordinabimus & ordinationem illam firmiter observabimus & ad hoc fideliter observandū supponimus Nos coercionem Domini Papæ ut nos ad hoc per Censuram Ecclesiasticam prout expedire viderit valeat

Rot. Pat. 42 H. 3. m. 10.

*Pro Rege & Baronagio Angliæ.**Nota, the different denominations of the Parliament or Common Council of this year.*1. *Proceres & fideles Regni.*2. *Baronagium Angliæ.*3. *Parliamentum, Rot. Pat.*

42 H. 3. m. 3. n. 9.

4. *Hans homes e prodes homes e Comune de Beaume.*

Rot. Pat. 42 H. 3. m. 4. vide pa. 35.

valeat arctare protestamur etiam quod Edwardus filius noster Primogenitus præstito Sacramento corporali per Literas suas concessit quod omnia superius expressa quantum in ipso est fideliter & indiolabiliter observabit & impium observari procurabit In cuius ec. Hiis Testibus Edwardo filio nostro Primogenito Galfr de Lazing, Willielmo de Valenc fribus nostris P. de Sabaudia, Johanne de Pless. Com. Marc Johanne Maunfell Chesaut Ebof Henrico de Wingham decano Sancti Martini London, Petro de Rivall Guidone de Rocheford, Roberto Fitzwalter pntibus & multis aliis Com Baronibus Regni nostri Dat. apud Westm. 7. die Maii.

Rot. Pat. 51 H. 3. m. 16. De pace inter Regem & R. Comitum Glouc. Nota. In those ancient times Pardons by Parliament, wherein the Commons gave their Counsel and Assent, were thought safe and requisite.

Notre Seignior le Roy per le conseil & l'assentement de le Roy de Alemain & de Countes & de Barons & de Comun de la terre pardone & relese a ceans de la meenee le Counte & a touz ceux de sa Compaignie ou que il scient ou eient este &c. En tesmoin de ceste chose nostre Seignior le Roy de Angleterre & le Roy de Aleme cest escrit unt mis leur seans Donne a Estratford le quinzime jour de Juyn le ann Cynquant premer.

Henry

Ibidem.

Henry per la grace dieu &c. per le conseil & le assentement nostre cher frere le Roy de Aleme e Countes e de Barons e le Comun de nostre terre avoms pardone quite & relese a touz ceus de Londres totes maneres de Ire & de rancor & de male volente &c. E avoms graunte & otree a touz ceus avantnoms que mal ne damage ne lour ferroms ne sufferoms estre fet, E ke il ne sient encheisonnez ne enquerelez pur les choses avantditz En tesmoin de cestes Nos & le Roy de Aleme a cest escrit avoms mis nos seans Donne a Estratford le Cessime jour de Juyn lan de nostre Regne Cynquante premier.

Rot. Pat. 7 E.

2. pars 1. m. 9.

Quod nullus
imprisonetur

&c. pro morte

Petri de Ga-

veston. Purven-

est & grante

per Nos & per

Ercevesques,

Evesques, Ab-

bes, Priors, Countes, Barons, & per tote la Comunalty de nostre Roialme a nostre Parlement &c. uniment assentuz est & accordez that all that had a hand in the death of Pierce Gaveston should be pardoned.

Rot. Pat. 12 E. 2. m. 17. De Perdon. pro Com. Lanc'. The King in Parliament pardoned the Earl of Lancaster. Consentientibus Prælati & Proceribus & Communitate Regni ibidem Congregatis.

Rot. Pat. 1 E. 3. m. 8. Andrew de Hethford, who was a principal Citizen of London, and a villanous Instrument of the two Spencers in E. 2. time, was de assensu Prælatorum Comitum & totius Communitatis Regni in Parlamento, pardoned all Homicides, Robberies, Burglaries, Fellonies, Appeals, &c.

Rot. Pat. 1 E. 3. m. 23. De perdonatione pro Communitate Civitatis London. De assensu Prælat. Com. Bar. & totius Communitatis Regni pro homicidiis rebell. &c. ad festam Regis, & de Appellis per quoscunque illatis.

Inter

*Penes Rememorator
Dominus
Thes. in Sacco.*

Inter Communia Brevia de
Termino Sanctæ Trin.
Anno Regni Regis E. I.
xxxiiij.

Recorda.

*Anglia de Auxilio
concesso
ad Miliciam
fil Regis.*

*Anno 34 E. I.
Consil. Intra-
cio. de eodem
Termino penes
Rememorator.
Regis in sacco.
Rot. 40.
Vide pa. 94.*

Memorand' quod cum nuper Dominus Rex ordinasset quod Edwardus filius suus Primogenitus in festo Pentecostes Anno Regni sui Tricesimo Quarto Cingulo Milicie decoraretur Et mandatum esset Archiepiscopis, Episcopis, Abb'ibus, Prioribus, Comitibus Baronibus, & aliis Magnatibus Regni quod essent coram ipso Domino Rege & Concilio suo apud Westmon' in Crastino Sanctæ Trinitat. proximo sequent' ad tractand' & ordinand' de auxilio Regis faciendo ad Miliciam prædictam & ad Consentiend' hiis quæ ulterius Ordinarentur in hac parte vel quod procuratores aut attornatos suos sufficienter instructos ad

ad præmissa loco eorum facienda mitterent tunc ibidem.

Ac etiam præceptum fuisset singulis Vicecomitibus Angliæ quod eorum quilibet venire faceret de Com' suo ad præfatos diem & locum duos Milites & de qualibet Civitate Ballivæ suæ duos Cives, & de quolibet Burgo ejusdem Ballivæ suæ duos Burgenses, &c. ad tractand' ordinand' & consentind' sicut prædictum est.

Venerunt personaliter coram Rege & Concilio suo apud Westm' ad diem illum Antonius Bek Patriarcha Ierosolomitanus Episcopus Dunelm W. de Langeton Coventr' & Lich. Radus de Baldok London Episcopi, H. de Lacy Comes Lin' J. de Warrenna Comes Sur' R. de Monte Hermer. Comes Gloucest' & Hertf. H. de Boun Comes Hereford G. de Bello Campo Comes War' Robertus filius Walteri Hugo le Despenser Johannes de Hastings Hugo de Veer Willielms Martyn, Henr le Tyeys, Johannes Lovell, Rogerus de Mortuomari, Johannes de Mohun, Alanus la Zouche, Wil' de Leyburn, & Robertus de Burghersh, Custos Quinque Portuum cum quibusdam Baronibus Portuum eorundem.

Ac

Ac etiam per Procuratores & Attor-
natos Robertus Cantuar & Wilts
Eborum Archiepiscopi Thom Exon
Richardus Hereford, Johannes Wynton,
Johannes Cicestr, Thom Roffen, Ro-
bertas Elyen, Johannes Norwycen,
Johannes Lincoln, Simon Sarum, Wilts
Wygorn, Walterus Bathon, & Wellen,
& Johannes Karliol Episcopi Abbates
Westmon, Sancti Edmundi, Sancti Au-
gustini Cantuar, Sancti Albani, Glastonie,
Burg Sancti Petri Rammeseye, Thor-
neye, Seleby & Malmesbury, Sancti Petri
Gloucest, Rogerus Comes Norff. &
Harc. Angliae Thom Comes Lancast,
Edmundus Comes Arundell, & quam
plures alii Prelati Magnates, & Pro-
ceres Regni Necnon de qualibet Co-
mitatu Regni ejusdem duo Milites & de
qualibet Civitate duo Cives & de quo-
libet Burgo duo Burgenses electi per
Communitates Comitatum Civita-
tuum & Burgorum eorundem ad pra-
missa loco Communitatu eorundem
tractand ordinand & conscenciend simi-
liter venerunt.

Nota.

Quibus

Quibus praedictis omnibus Congre-
gatis coram consilio Regis praedicto
ipsisque ostenso per idem Consilium ex
parte Regis quod de jure Coronae
Regiae auxilium Domino Regni fieri
debit in casu praedicto Ac etiam quod
expense multiplices & alia quam plura
onera eidem Domino Regi Incumbent
ad rebellionem & maliciam Roberti de
Brus proditoris ipsius Domini Regis
& sibi in Partibus Scotiae adherentium
qui adversus ipsum Regem jam in illis
partibus guerram movere praesumpse-
runt reprimendas.

Not the Con-
cilium here
meant, was all
the great Offi-
cers of State,
the Judges and
others the
Kings learned
Council in
Parliament.

Idem Prelati Comites, Barones, &
alii Magnates, necnon Milites Comita-
tuum tractatum super hoc cum delibe-
ratione habentes considerantesque auxi-
lium deberi ut praedictum est & quam
plura onera Regi incumbere propter
guerram praedictam tandem unanimi-
ter Domino Regi concesserunt pro se
& tota Communitate Regni tricesimam
partem omnium bonorum suorum tem-
poralium mobilium quae ipsos habere
continget in festo Sancti Michaelis pro-
futur habendam pro auxilio eidem
Domino Regi competente ad Malici-
am filii sui praedicti ac etiam in Auxilium
Mifarum quas ipse est factururus circa
guer-

Nota, in the
ensuing Re-
cord the Mil-
ites Comita-
tuum, and Ba-
rones Quinque
Porcum are
comprehend-
ed uuder the
words Magna-
tes Regni.

guerram prædictam Ita tamen quod ista concessio ipsius vel eorum successoribus aut hæredibus futuris temporibus Nullatenus cedat in præjudicium, nec in casu huiusmodi trahatur in exemplum Et quod in taxando bona prædicta excipiantur omnia que in taxatione Anintedecime a Communitate Regni Domino R. anno Regni sui xviii concessæ propter exilium Judeorum fuerunt excepta.

Cives quidem & Burgenses Civitatum ac Burgorum prædictorum ac ceteri de Dominicis Reg. congregati & super præmissis tractatum habentes confidentesque onera Domino R. incumbentia ut præmittitur eidem Domino Regi unanimiter concesserunt ob causas supradictas vicesimam partem bonorum suorum mobilium habendæ ut prædictum est.

*Inter Communia
Brevia de Termino
S. Michaelis Anno 34 E.
i. penes Rememorator.
Domini Thesaurarii
in Scaccario.*

Memorandum quod ad Crastinum Sanctæ Trinitatis prior. præteritum Prælati & ceteri Magnates Regni pro se & tota Communitate ejusdem Regni concesserunt Domino Regi Tricesimam

Nota, in the former Record Prælati, Comitès, Barones, & alii Magnates, necnon Milites, Commitatum grant ed a joint aid to the King, and here it is said, that the Prælati & ceteri Magnates Regni gave it, so as the Knights of the Counties, and Barons of the Cinque Ports are comprehended under the name Magnates.

nam

nam bonorum suorum omnium temporalium extra Civitates Burgos & Dominica Domini Regis, & Cives, & Burgenses, & Tenentes Dominicorum prædictorum vicesimam bonorum suorum tam ad militiam Edwardi filii Regis prædicti quam ad subsidium defensionis terræ Scotiæ contra Robertum de Brus & ipsius Complices inimicos Regis, &c. Et forma concessionis supradictæ plenius annotatur in memorandis Anni præcedentis Termino Trinitatis Et subscripti venientes modo hic concesserunt satisfacere Regi pro Tricesima & Vicesima prædictis ipsos contingentibus ut patet subsequenter.

N

Com-

*Penes Remem-
rator. Domini
Regis in Scacc.*

Communia de Termino
Sancti Hillarii Anno
xvij E. 3.

Recorda.

*warr. de Pri-
ore de Coventr.
attach. pro
transgressione.
Vide pa. 34.*

PRIOꝝ de Coventr̄ attachiatus fuit ad rendend̄ Domino Regi de serbicio octo feodorum militum per ipsum Prioꝝem & Prædecessores suos Regi & Progenitoribus suis ab Anno 29. Domini Regis H. Proavi ipsius Regis nunc substracto & concealato Et ipse Prior per Henricum de Stretford Attoꝝn suum venit. Et super hoc quia Barones plene volunt informari pro Rege per Rotulos & Memoranda Sacc̄i de quibusdam negotium prædictum tangentibus antequam &c. Datus est dies eidem Prioꝝi hic ex assensu Willielmi de Thorpe fervientis Regis a die Pasche in quindecim dies eo statu, &c. Ad quem diem Prioꝝ venit Et quia nondum plene scrutinium, &c. Datus est dies eidem Priori ex præfixione

fixione Cui in Octabas Sanctæ Trinitatis eo statu, &c. Et interim facta scrutinio Rotulorum &c. Compertum est in Rotulo 29. Regis Henrici Tertii sub titulo De Auxilio ad primogenitam filiam Regis maritandam videlicet de quolibet scuto xx s. contineri sic Prioꝝ de Coventr̄ reddit compotum de decem libris de decem feodis de quibus quidem decem libris Willielmus Trussell Vicecomes dicti Comitatus in Compoto suo de Anno 32. ipsius Regis Henrici oneratus fuit inter alia debita quæ debebat in fine ejusdem Compoti sicut continetur in magno Rotulo de eodem Anno 32. & in rotulo 31. ejusdem Regis Henrici compertum est etiam in quodam Rotulo Compotorum titulato Auxilium Episcoporum Abbatum Priorum concessum ad sororem Regis Henrici maritandam Fredirico Imperatori videlicet de quolibet scuto duas marcas contineri in hunc modum Prioꝝ de Coventr̄ reddit compotum de viginti marcis de eodem. In Chelaurario octo marcas Et debet duodecim marcas de quibus respondet in War̄ in Rotulo 34. Et in eodem rotulo 34. requirebantur de ipso Prioꝝe quindecim marcæ de auxilio ad transfretationem

N 2 Regis

Regis in Vasconiam & duodecim mar-
 ta de auxilio ad sororem Regis mari-
 tand. De quibus quidem duobus
 debitis Idem Prior postmodum Regi
 satisfecit sicut continetur in rotulis
 annalibus de annis 36. 39. & 40. dicti
 Regis Henrici Tertii. Item comper-
 tum est in rotulo de servicio Regis
 Edwardi filii Regis Henrici Summo-
 ni apud Rothelan die dominica in
 crastino Sancti Petri ad vincula Anno
 Regni sui decimo contra Lewelinum
 filium Griffini & David fratrem ejus
 & alios Walenses quod Prior de Co-
 ventu recognovit servitium duorum feo-
 dorum Militum pro quo finem fecit
 Et in rotulo de finibus factis pro ser-
 vitiis Scotiae Anno ejusdem Regis
 Edwardi tricesimo primo annotatur
 quod Prior & Conventus de Coventu
 recognoverunt servitium duorum feo-
 dorum militum & finem fecerunt per
 quadraginta libras Et in Rotulo de
 finibus pro serviciis Scotiae Anno 34.
 ejusdem Regis Edwardi filii Regis
 continetur quod Prior de Coventu per
 fratrem Johannem Holeweye Commo-
 nachum & Atornatum suum recogno-
 vit servitium duorum feodorum Mi-
 litum & finem fecit pro eodem per
 qua-

quadraginta marcas. Et inter fines
 factos in Scaccario coram tenente
 locum Thesaurarii & Baronibus pro
 serviciis Regi debitis in exercitu Sco-
 tiae Anno Regis Edwardi filii Regis
 Edwardi septimo videlicet pro servicio
 unius feodi viginti marcas continetur
 quod Willielmus Herle & Robertus de
 Leicestru finem fecerunt cum Rege pro
 Priore de Coventu pro servicio duorum
 feodorum militum per quadraginta
 marcas. Et praedictus Prior ad pra-
 dictas octavas Trinitatis venit ut prius
 per Atornatum suum praedictum Et
 Willielmus de Thorp, & Johannes de
 Stoford Servientes Regis veniunt
 pro Rege. Et super hoc expositis pra-
 fato Priori hiis quae per scrutinium
 Rotulorum inveniuntur ut supra & per
 ipsum Priorem auditis & intellectis
 iidem servientes Regis petunt quod
 idem Prior super hoc respondeat, &c.

Et praedictus Prior dicit quod ipse & *Plitum Prioris.*
 praedecessores sui tenuerunt omnia ter-
 ras & tenementa sua tam videlicet ea
 quae habet in dominico quam in servicio
 per servitium duorum feodorum mili-
 tum tantum. Et quod Dominus
 Rex seu Progenitores sui de aliquibus
 aliis serviciis per ipsum Priorem seu
 Pra-

Prædecessores suos nunquam seisiiti fuerunt per finem seu serbicium per coꝛpoꝛa hominum factum quod liquere poterit per Memoranda huius Scaccarii si fiat inde scrutinium, &c. Et quoad hoc quod compertum est hic in rotulis, &c. Quod tempore dicti Regis Henrici tertii computatum fuit de certis pecuniæ summis de auxiliis eidem Regi Henrico ad filium suum Militem faciendum & sororem suam maritandam concessis. Hoc ei non præiudicat in hac parte. Dicit enim quod Auxilia illa non fuerunt nec censeri possunt esse serbicia immo quedam subsidia per Magnates & Communitatem Regni spontanea & mera voluntate Regi concessa & tam de tenentibus aliorum quam de tenentibus de Domino Rege in Capite levanda quo prætextu dictus compotus de auxiliis prædictis fuit tam pro feodis tenentium tunc Prioris loci prædicti quam pro feodis ipsius Prioris propriis, quod idem Prior dicit posse liquere Curia per Certificationem tunc Prioris loci prædicti tunc Baronibus de Scaccario de mandato Regis Henrici factam de feodis quæ ipse tunc Prior tenuit de veteri feoffamento & de novo super quo

quo certificatum fuit quod feoda quæ dictus tunc Prior tenuit in Dominico & feoda quæ tenentes sui de ipso tenuerunt fuerunt in toto decem feoda, &c. Et petit iudicium desicut ipse tenet omnia terras & tenementa sua per serbicium duorum feodorum Militum tantum, nec sit compertum hic penes Scaccarium quod Dominus Rex seu Progenitores sui de aliquibus aliis seu pluribus serbiciis per manus dicti Prioris seu Prædecessorum suorum unquam seisiiti fuerunt si ipse de aliquo feodo seu huiusmodi serbicio concealato impetiri seu calumpnari debet in hac parte. Et super hoc quia dicti serbientes Regis volunt super responso suo deliberare, &c. datus est dies eidem Priori hic in octabas Sancti Hillarii eo statu, &c. Ad quem diem prædictus Prior venit & ob eandem causam quæ prius datus est ei dies ulterioꝛ hic a die Pasche in quindecim dies eodem statu quo prius. Ad quem diem idem Prior venit & ob dictam causam adjornatur ulterius usque quindenam Sanctæ Trinitatis eo statu, &c. ad quem diem venit & datus est ei dies ulterius usque octabas Sancti Michaelis anno viz, decimo nono Regis huius eo statu

statu quo &c. Ad quem diem venit & ob causam prædictam adjornatur ulterius usque quindeñ Sancti Hillarii eo statu, &c. Ad quem diem idem Prior venit & habet diem ulterius usque quindeñ Pasche. Ad quem diem idem Prior venit & adjornatur ulterius ob causam prædictam usque quindenam Sanctæ Triñ. Ad quem diem venit & ob eandem causam habet diem ulterius usque quindeñ Sancti Michaelis. Ad quem diem prædictus Prior venit & adjornatur ulterius ob causam prædictam usque quindenam Sancti Hillarii sicut continetur in memorandis anno vicesimo Regis hujus inter dies datos de Termino Sancti Michaelis.

F I N I S.

Errata in the Preface.

Pag. 30. l. 12. make a break at *Die*. p. 37. l. 15. for *Regis* r. *Reges*, p. 46. l. 4. for *first* r. *last*, p. 47. l. 6. for *Regum* r. *Regni*.

Errata in the Discourse.

Pag. 23. l. 10. blot out *That*, p. 33. l. 8. for *Prelatus* r. *Prelati*, p. 45. l. 17. for *Rot. 44 H. 3.* r. *Rot. Pat. 44 H. 3.* p. 86. l. 12. blot out *but*.

Errata in the Appendix.

Pag. 132. l. 15. for *Milites tenentes* r. *Milites & libertenentes*, l. 23. for *publicæ* r. *publice*, p. 142. l. 14, 15. for *Progenitors* r. *Progenitores*, p. 144. l. 12, 13. for *prætexta* r. *prætextu*, p. 171. l. 26. add *Baronum* after *Comitum*, p. 175. l. *pro Regni* r. *Regi*.