Droit le Roy.

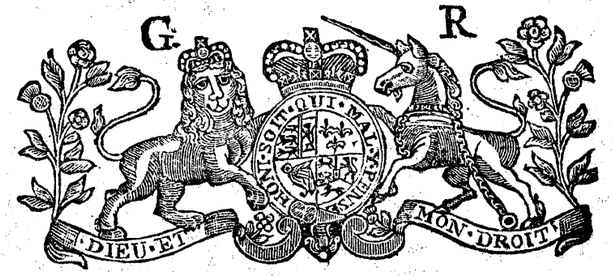
Or a DIGEST of the

RIGHTS and PREROGATIVES OF THE IMPERIAL CROWN OF GREAT-BRITAIN.

Jan. 1. 1764.

BY A MEMBER OF THE SOCIETY OF *LINCOLN's-INN.*

DIEU ET Mon Droit.



LONDON:

Printed and Sold by W. GRIFFIN, in Fetter-Lane.

MDCCLXIV.

INTRODUCTION.

SAINT Germain, in his Doctor and Student, a treatiſe moſt deſervedly eſteemed of the higheſt authority, obſerves, "That the third ground of the law of England ſtandeth upon divers *general* cuſtoms, of old time uſed through all the realm, which have been accepted and approved by our Sovereign Lord the King, and his progenitors, and *all* his ſubjects. "And becauſe the ſaid cuſtoms be neither againſt the law of God, nor the law of reaſon, and have been *always* taken to be good and neceſſary for the common wealth of *all* the realm, therefore they have obtained the ſtrength of a law in ſo much that he that doth act againſt them, doth act againſt juſtice; and theſe be the cuſtoms that properly be called the COMMON LAW."

The great lord Coke, ſpeaking of the common law, ſaith, it is not only grounded upon reaſon, but it is the perfection of reaſon, acquired by long ſtudy, obſervation and experience, and refined by learned men in all ages: and I beg leave farther to add,

add, that it is the common parent of the ſubject's* liberties, and the king's prerogatives: both the one and the other deriving their very form and conſtitution from it.

I have been thus explicit in deſcribing what the common law is, becauſe I am thoroughly perſuaded not one perſon in twenty of our clergy and gentry, nor one in ten thouſand of our common people, know the diſtinction between *ſtatute* and *common law*: and for want of this knowledge they have been lately led aſtray by ſtrange notions of right and wrong, generally miſtaking the one for the other. A miſtake entirely owing, I hope, to their ignorance, for as they know not the various operations of our laws, they might eaſily imagine that what in one and the ſame caſe is binding to the people, ſhould alſo be equally binding to the king: but *è contrario*, the common law having time immemorially preſcribed to the ſovereign and the ſubject a diſtinct peculiar circle of action, hath placed the prerogative royal in ſo ſuper-eminent a ſtation, that what is law almoſt in every

* By 25 Ed. 1. it is declared, that the *Great Charter* of liberties ſhall be taken as the *Common Law*.

caſe

caſe of the king, is law ſcarcely in any one caſe of the ſubject.

Two reaſons may be alledged for this almoſt-national ignorance of the common-law (ſo far I mean as it deſcribes and upholds the juſt rights of the crown.)

Firſt, becauſe the rights and liberties of the people, ever ſince the acceſſion of the houſe of Brunſwick, and in particular ſince the acceſſion of his preſent majeſty, to the imperial diadem of this realm, have been never diminiſhed, but frequently enlarged: witneſs, the ſeveral acts of parliament paſſed of late years "*for the further* LIMITATION *of the crown, and better ſecuring the rights and liberties of the people.*" Witneſs his preſent Majeſty's moſt gracious ſpeech, in 1760, from the throne to both houſes of parliament, when, unſollicited, and of his own mere godlike motion, he was pleaſed to declare, "That he looked upon the in-
"dependency and uprightneſs of Judges as
"eſſential to the impartial adminiſtration
"of juſtice, and as one of the beſt ſecuri-
"ties to the rights and liberties of his lov-
"ing ſubjects, and therefore recommend-
"ed it to the conſideration of his parlia-

"ment

" ment to make farther proviſion for con-
" tinuing judges in the enjoyment of their
" offices during their good behaviour,
" notwithſtanding the demiſe of his ma-
" jeſty, or any of his heirs and ſucceſſors."
Witneſs alſo the grateful anſwer of both houſes on this momentous occaſion in the following expreſs terms, " In return for your Majeſty's paternal goodneſs, and in the juſteſt ſenſe of your tender concern for the religion, laws, and liberties of your people, we have taken this important work into conſideration, and have reſolved to enable your majeſty to effectuate the wiſe, juſt, and generous purpoſes of your royal heart: any law, uſage, or practice, to the contrary thereof in anywiſe notwithſtanding."

The *ſecond* cauſe of this amazing ignorance, in almoſt all degrees of perſons, is owing to the difficulties attending the acquirement of a competent knowledge in this branch of literature: ſince it is but too notorious that the ſeveral laws and cuſtoms reſpecting the prerogative royal, are not collected in a maſterly manner into one body, as our canon, ſtatute, and mutiny laws are,

are, but lye ſcattered and diſperſed amongſt the rubbiſh and lumber of our monkiſh hiſtories, Engliſh-Latin annals, Anglo-Saxon manuſcripts, Norman-French records, dull law-books, and parliamentary rolls.

Theſe, I take to be the two principal cauſes that the DROIT LE ROY has been ſo little underſtood this century even by men of letters and other gentlemen, whoſe duty it is either as eccleſiaſtic or civil magiſtrates not only to know it thoroughly themſelves, but early to inculcate and diffuſe its loyal principles amongſt their ſeveral neighbours, pariſhioners, and dependants: for on this law (which exalts our king ſo much above his ſubjects) depends that due ſubordination which conſtitutes the political beauty, harmony, and ſtrength of every well governed ſtate, and without which no ſtate whatever can long endure without ruſhing into anarchy and confuſion.

To render this moſt uſeful and requiſite knowledge more eaſily acquirable, the author of this treatiſe hath, with unwearied and intenſe application, collected from various yet authentic ſources of antiquity, the ſeveral ſcattered parts and formed them into one

body or digeſt of the *Prerogative Royal*, and by ſo doing hath reduced that neceſſary learning within the narrow compaſs of two or three hours reading, which otherwiſe muſt have been the painful ſtudy and irkſome fatigue of many years.

The author preſumes not to arrogate to himſelf any other merit, but that of an indefatigable and faithful compiler: yet well knowing the great utility and neceſſity of ſuch a work, he preſumes to recommend a careful and frequent peruſal of it to the biſhops of every dioceſe, the lords-lieutenants of every county, the governors of every colony, the lords of trade and plantation, the lords commiſſioners of the board of admiralty, and in particular the ſecretaries of ſtate, not doubting but their affection, loyalty, and zeal towards the moſt virtuous monarch that ever graced the Britiſh throne, will, like a ſecret charm, impel them diligently to diſtribute this little treatiſe to every one of the ſubordinate clergy, gentlemen in the commiſſion of peace, and other civil officers, under their reſpective departments and juriſdictions: to the end that the dignity of the crown being univerſally underſtood, and

and the fundamental principles on which this pre-eminent dignity is *lawfully* founded being communicated by their influence and example throughout the whole Britiſh empire, every Great-Briton may be ſatisfactorily convinced that the *liberties* of the ſubject and the *prerogatives* of the king are conjunctives ſo conſtitutionally blended together in one joint intereſt, that ſpringing from one common parent (the great common law of the land) both the one and the other, like the two conjoined twins mentioned by Hippocrates, muſt neceſſarily rejoice or mourn, flouriſh or fade, exiſt or periſh together.

Laſtly, altho' we live in an age, in which the frivolty of French faſhions ſeems to be growing into ſovereign contempt with every ſenſible Great-Briton, the author cannot but think himſelf ſufficiently juſtifiable in prefixing the French title of *Droit le Roy* to this treatiſe; ſince of all the phraſes expreſſive of the *Prerogative Royal*, this ſeems to be the only one that correſponds with the motto to the royal arms of Great-Britain, Dieu et Mon Droit: a motto full of abſtruſe political learning, and by which we

we are to underſtand that every monarch on the Britiſh throne is under an indiſpenſible obligation both to himſelf and his royal heirs, religiouſly to defend and maintain without impeachment of waſte, or the minuteſt diminution, "the abſolute "indefeaſible *ſupreamacy* over the Anglican church, the *ſovereign ſeignory* over "the empire of Great Britain and Ireland, "and the *hereditary right and title* to "the crown of France to its fulleſt extent;" and for this reaſon hath the royal motto, as a perpetual memento, been handed down in the *French language*, from the reign of Edward the THIRD, of glorious memory, to *that* of George the THIRD, our preſent virtuous and incomparable monarch, whom God long preſerve.

(1)

DROIT Le ROY,

OR, A

Candid Aſſertion

OF THE

RIGHTS

OF THE

Imperial Crown of ENGLAND.

BEFORE we give a definition, or rather a deſcription of the autocratorical power and dominion appertaining to the kings of England, it will be neceſſary to preſent the readers with a view of the ſeveral appellations, which this power, has received by the Grecian, Roman, and our Engliſh lawyers.

The Grecians in their laws term it, Ἀκραν ἐξουσίαν, Κυρίαν Ἀρχην, Κύριον πολίτευμα, Αὐτοκρατορίαν, Ἐξουσίαν Αὐτοκρατορικην, Ἐξουσίαν υπερέχουσαν, Ἐξουσίαν Ἀρχιτεκτονικήν, Ἐξηρημένην Αἰτίαν, πρῶτον Ἀξίωμα, Δύναμιν Ἀναλλαγικην.

The Civilians call it, *Summum imperium*, *jura imperii*, *ſummi imperii jus*, *jura majeſtatis regiæ*, *majeſtatis imperium*, *majeſtatem*, *imperii majeſtatem*, *majeſtatem principis ſupremam*, *ſacra regni*, *regalia*, *ſummum imperii*, *ſummum arbitrium*, *ſacra ſacrorum*,

 dignitatis

dignitatis præeminentiam, ſupremam poteſtatem, poteſtatem ſummam, poteſtatem ſupereminentem, imperii poteſtatem, authoritatem ſupremam, ſupremitatem, ſereniſſimam majeſtatem regiam.

The appellations among us are ſuch as theſe, *Privilegium regis, jus regium, jus regium coronæ, droit le roy, royalty, regality, royal authority, royal eſtate, privilege royal, ſovereign ſeigniory, royal dominion, ſeigniory royal, imperial majeſty, the royal eſtate of the imperial crown, the imperial crown of England, ſovereign and royal authority, ſovereignty, ſupremacy, preheminence royal, prerogative royal,* and the like.—But the reader call it what he pleaſes, I thus deſcribe it.

It is the exempt, abſolute and independent power, the ſupreme dignity of England, that acknowledgeth no ſuperior, but God Almighty, not to be divided, communicated, nor transferred to any perſon whatſoever. Out of this deſcription theſe four maxims may be deduced.

1. *That the kings of England did never* de jure *acknowledge any ſuperior here on earth, either in church or ſtate.*
2. *That the ſovereignty of England is indiviſible.*
3. *That the regality of this realm is incommunicable.*
4. *That the royalty of England is unalienable.*

Theſe four deductions ſhall be made good by ſeveral authorities.

1. *That the kings of England did never acknowledge any ſuperior here on earth, either in church or ſtate.*

IT is reported, that when Sigiſmond the emperor, cozen-german to the moſt victorious prince king Henry the fifth, accompanied with the arch-biſhop of Rhemes, ambaſſador from the French king, arrived at Calis, to whom were ſent ſeveral great ſhips to waſt him over: at Dover, the duke of Glouceſter, with a brave company of gallants, (upon the emperor's approaching to land) with their ſwords drawn, ſtept up to their knees in water, proteſting, *If he came as the king's friend, or for his honour to move ought, he ſhould be welcome; but if as an emperor he claimed any jurisdiction,*

tion, they were ready to reſiſt him to the laſt drop of their blood. Upon this declaration, the emperor renounced all imperial authority, juriſdiction and ſovereignty: and with great reaſon; for the regality of this nation was never *de jure* attendant to any foreign prince or potentate; but was ever imperial, exempt, abſolute, independant, ſubject to none but God, equivalent to that power which any ſupreme prince whatever, has at any time, in any part of the world, (of right) challenged to himſelf; and this aſſertion will be apparented by theſe authorities following: firſt, to begin with the ſtatute laws, not as new introductive laws, but as explanatory revivers of the old common law of this land.

Note, that our king, whoſe government is politic, is of no leſs power than he that royally ruleth his people after his own pleaſure, although they differ in authority over their ſubjects. *Forteſcue* c. 11.

In 16. R. 2. it is declared, *That the crown of England hath been free at all times; that it hath been in no earthly ſubjection, but immediately ſubject to God in all things touching the regality to the ſame crown, and none other.* 16 R. 2. chap. 5.

In 24 Hen. 8. It is reſolved, declared, and recognized, *That by ſundry old authentic hiſtories and chronicles, it is manifeſtly declared and expreſt, that this realm of England is an empire, and ſo has been reputed in the world.* 24 H. 8. chap. 21.

In the 25th H. 8. it is declared, *That this realm, recognizing no ſuperior under God, but only the king, hath been, and is free from ſubjection to any man's laws;* but only to ſuch as have been deviſed and obtained within this realm for the wealth of the ſame, or to ſuch other as by ſufferance of his GRACE, and his progenitors, the people have taken at their free liberty, by their own conſent to be uſed among them. 25 H. 8. chap. 21.

In the firſt year of queen Elizabeth, it is reported, *That the crown of England is imperial.* *After ſtatutes,* it may be alſo apparented from our antient authors in the law. 1 Eliz. chap. 1.

Lib. 1. c. 8. num. 5. *Omnis ſub rege*, (ſays Bracton) *& ipſe ſub nullo, niſi tantum ſub Deo. Parem autem non habet in regno ſuo, quia ſic amitteret præceptum, cum par in parem non habeat imperium.* With Bracton concurs our *Fleta. lib.* 1. c. 5.

Mirror. c. 1. ſect. 2. *Le Roy ne devoit aver nul peer en ſa terre.*

Co. 4. Inſtit 342. Rot. clauſ. 13. Ed. 2. m. 6. Public Notaries, made by the emperor, claimed to exerciſe their office here in England, but were prohibited, becauſe it was againſt the dignity of a ſupreme king.

Cambden's Britania, f. 163, in Engl. The king, (ſaith Cambden), hath ſovereign power, and abſolute command among us, neither holdeth he his empire in vaſſalage, nor receiveth the inveſtiture, or inſtalling from another, nor yet acknowledgeth any ſuperior but God alone.

Sir John Davy's reports. Le caſe dell county palat. 61. a. Upon a difference ariſing betwixt king William the ſecond, and Anſelme, arch biſhop of Canterbury, touching the juriſdiction and authority of the biſhop of Rome; the king alledged, *That none of his biſhops ought to be ſubject to the pope; but the pope himſelf ought to be ſubject to the emperor, and that the king of England had the ſame abſolute liberty in his dominions, as the emperor had in his empire.*

Davis's reports le caſe dell count. palat. 60. B. The doctors of the imperial law hold, *Quod ſolus princeps, qui eſt monarcha & imperator in regno ſuo, ex plenitudine poteſtatis, poteſt creare comitem Palatinum.* The kings of England have made counties palatine, as the counties palatine of Lancaſter, Cheſter, Durham, and Pembroke, and granted them royal rights and privileges; and therefore the king of England is an abſolute monarch within his dominions and territories.

Bracton, lib. 3. c. 9. de actionibus, co. 3. inſt. 57. dr. & ſtu. lib. 2. c. 51 Co. Lit. 65 Beverlies To be ſhort, the king is ſtiled in our books of law, God's vicar on earth, *pater patriæ*, *ſupremus Dominus*, lord paramont, *noſtre Signior le Roy*, &c. &c. &c.

a. Co. 2. Inſt. 273 r Lit. ſect. 85, 87, 153, 159. Co. lib. 4. caſe weſt. 1. C. 17. Co. lib. 9. 38. B.

By

By the foregoing conſtats, it appears clearly, that the monarchy of England is an abſolute, free, and independent regality, recognizing no ſuperior on earth, but God Almighty.

It is alſo evident by our books of Law, that the king of England is abſolute and ſupreme lord of Scotland, Wales and Ireland. And,

1. *Of* SCOTLAND.

THE kings of England had ever appertaining to them, the ſuperior dominion of Scotland, as ſhall be manifeſted by theſe authorities following: the Scots performed the oath of fidelity and homage, to Edred king of England; Kennethus king of Scots, did homage to our king Edgar; and Conſtantine the Scottiſh king yielded homage and allegiance to Athelſtan, king of England.

Malcolme king of Scots, to William the conqueror; Duncan the ſon of Malcolme, to William Rufus; David of Scotland to Matilda the empreſs, (daughter to H. 1.) and for this cauſe the ſame David being required by king Stephen to do his homage, refuſed; becauſe he had already done it to the empreſs Matilda; but Henry, the ſon of David, performed it to our king Stephen, and Malcolme king of Scots, to our Henry the ſecond; William king of Scots to our king John; Alexander the Scottiſh king, to Henry the third; and to Edward the firſt, kings of England.

Alexander dying without iſſue, John Balliol, and David Bruce, contending for the ſucceſſion, the peers of Scotland referred the controverſy to our king Edward the firſt, as their ſupreme lord and judge; and by virtue of this ſupremacy and ſuperiority over that nation, Balliol was conſtituted king of Scotland.

After the defeat of Hallidown-hill, Balliol king of Scots, at Newcaſtle, did homage to E. 3. king of England, as his ſuperior lord, and takes his oath of fealty, binding himſelf and his heirs, to hold that kingdom of him and his ſucceſſors for ever.

Humfrey duke of Glouceſter, protector to king H. 6. ranſomed and enlarged the king of Scots, (who had been for many years priſoner) taking homage and fealty of him for the crown of Scotland, the form and inſtrument of this H 6.

homage

homage I will tranſcribe, verbatim as I find it recorded. "*I James Steward, king of Scots, ſhall be true and* "*faithful unto our lord H. by the grace of God, king of* "*England and France, the noble and ſuperior lord of* "*Scotland, and to you I make my fidelity for the ſame* "*kingdom, which I hold and claim of you; and I ſhall* "*bear you faith and fidelity, of life and limb, and* "*worldly honour againſt all men, and faithfully I ſhall* "*acknowledge, and ſhall do you ſervice due for the* "*kingdom of England aforeſaid: So God me help.*"

Cap. 13. vide Selden's notes on this chap.

To conclude with juſtice Forteſcue, who tells us, that Scotland was ſubject to England, as a dukedom, and was after advanced to a politic and royal kingdom.

And, more may be found touching England's ſuperiority over the kingdom of Scotland, in theſe authors following: Dr. Duck, lib. 2. c. 10. *De authoritate Juris civilis Romanorum.* Matthew Paris, Daniel's hiſtory, and Truſſel's hiſtory of H.6. Camb. Eliz. *Anna* 1560. Lord Herbert's H. 8. p. 481. 1 H. 7. 10. a.

2. *Of* WALES.

THE kings of England were ever ſupreme lords of Wales, as appears by theſe vouchers:

Co. 3 inſt. fol. 11.

David prince of Wales, levied war againſt Edw. 1, this was treaſon, by reaſon, that David was within the

Co 2. inſt. on ſtat. weſt. 1.

homage and legiance of the king of England, and judgment was accordingly given againſt him as a traitor, and not as an enemy.

27 H. 8. c. 26.

It was declared, in the 27th year of H. 8. that the king's moſt royal majeſty, of meer Droit, and very right, is very head, king, and lord, and ruler of Wales.

3. *Of* IRELAND.

Co. 4. inſt. 359.

THAT the king of England is abſolute and ſupreme lord of Ireland, is manifeſted ſo early as in the reign of king Edgar, who, by his charter of Oſwald's law, deprived the married prieſts, and introduced the monks; this inſtrument is dated at Gloceſter 966.

The next account we find of our king's having ſovereign authority over Ireland, is in the reign of Henry 2.

ry 2. for upon that king's landing at Waterford, and ſtaying there a few days, *rex Corcagienſis Dormitius*, (ſaith *Giraldus Cambrenſis*, who was ſecretary and hiſtoriographer to Hen. 2d. and accompanied him in his expedition into Ireland) *advenit ei, et tam Subjectionis Vinculo quam Fidelitatis Sacramento regi anglorum ſe ſponte ſubmiſit.* He voluntarily ſwore fealty and ſubjection to the king of England. The ſame author farther obſerves, that on Henry's arrival at Caſhel, Dunaldus, king of Limerick, *ſe quoque fidelem regi exhibuit:* together with all the nobility and princes in the ſouth of Ireland: and alſo on his arrival at Dublin, that Macſhaglin, king of Ophaly, O'Carrol, king of Urich, O'Rourk, king of Meath, Rotheric O'Conner, king of Connaught, and as it were monarch of the whole Iſland, came in, *et firmiſſimis fidelitatis et ſubjectionis vinculis Domino Regi ſe innodarunt.* This account is likewiſe authenticated by the annaliſt Roger Hovedon (*vide annal. Parſpoſter fol.* 301.) About the kalends of November, ſaith he, king Henry 2d. of England, landed at Waterford, *et ſibi venerunt ad eum rex Corcagiencis, rex de Limeric, rex de Oxenie, rex Mediæ, omnes archepiſcopi, epiſcopi et abbates totius Hiberniæ, et receperunt eum in Regum & Dominum Hiberniæ jurantes ei et hæreditus ſuis fidelitatem, et Regnandi ſuper eos poteſtatem in perpetuum.* Mathew Paris, ſpeaking to the ſame effect, ſaith, *ipſum Henricum in Regem et Dominum receperunt, et ei fidelitatem & homagium juraverunt.* John Brampton, abbot of Jornal, in his *Hiſtoria Jornalenſi* p. 1070, ſpeaking of the ſeveral kings, princes, archbiſhops, &c. of Ireland, ſaith, that king Henry received from every one of them, *litteras cum ſigillis in modum chartæ pendentibus regnum Hiberniæ ſibi et hæredibis ſuis confirmantes, et teſtimonium perhibentes ipſo in Hibernia eum et hæredes ſuos ſibi in Reges et Domines in perpetuum conſtituiſſe.* Thus it is evident from theſe extracts, that Henry 2d. and our other king's of England, were in fact, kings of Ireland, although they only ſtiled themſelves Lords of that kingdom, 'till the 33d. of Henry 8th. when that monarch took the ſtile and title of King of Ireland.

But after all theſe confirmations, the reader may ſay, that he was long ago very well ſatisfied concerning the king of England's ſuperiority over Scotland, Wales

and

and Ireland; but he would be glad to know what title the king has to the realm of France: and the rather, becauſe we give him the title of king of France, in all our inſtruments, &c.

'Tis anſwered, that our king has a juſt and a legal title to that kingdom, upon the account of Edward 3. king of England, whoſe title to the crown of France is agreed to by all hiſtorians to be thus:

Philip the 4th. called Philip le Bell, eldeſt brother to Charles de Valois, married Johan, queen of Navar, and by her had three ſons,

Lovis, ſir-named Hutin or Mutineer, Philip the Long, and Charles the Fair, and one daughter named Iſabella, that was married to king Edward 2. king of England, and ſurvived her three brothers, who died every one of them without iſſue of their bodies lawfully begotten.

Theſe ſucceſſively, one after another, had enjoyed the crown of France; but after the death of the third brother Charles, a pretended fundamental law of that kingdom, (called The Law Salique) excluding women from ſovereign inheritance was broached by Philip of Valois, ſon of Charles the younger, brother to Philip le Bell, who endeavouring to put the Salique Law in execution, laid hold of the crown, againſt whom, in the right of his mother Iſabella, our king Edward 3. oppoſing and quartering the arms of France, which was Semi de Luces, proclaimed his title to be king of France and England, and in hoſtile manner entered France with banners diſplayed, where he performed ſuch marvellous exploits, that whilſt any records laſt, cannot be forgotten.

There he continued victorious during the time of Valois, and left his ſon the Black Prince, to proſecute the claim, who, to his eternal honour, took not only John, the French king priſoner, but braved Charles 5. to his teeth unanſwered, that wiſe king thinking it no good policy to meet a roaring lion in the field. Since
H. 5. Edward 3d. time, our king Henry 5. advanced his banner, and challenged the ſame rightful ſovereign inheritance, and proved moſt fortunately victorious.
H. 6. Upon the ſame account H. 6. was crowned at Paris, king of France, receiving the oaths of homage and fealty, of all the nobility of France preſent, and of all the

the citizens and inhabitants of that city, and the places adjacent.

Having preſented to the reader a ſurvey of our king's title to the crown of France, it will not be impertinent that the validity of this pretended Salique Law be now inquiſited and examined.

The pretended Salique Law is this, *That the crown ſhall deſcend to the next heir male, and exclude all females.*

The unjuſt ſurmiſe of this ſame law, I ſhall endeavour to refell, both by reaſon and examples.

1. By reaſon, *in terram ſalicam mulieres ne ſuccedant*, is the text on which the French build this law; I ſay, this law was made in Germany, to diſcountenance the diſhoneſt manners of the German women, and had no relation to France: for Pharamond, whom the French affirm to be the author of this conſtitution, deceaſed above three hundred and fifty years before the French were placed beyond the river Sala; the one dying at four hundred twenty-ſix, and the other being ſeated there *Anno* 805. Now, let any man that underſtands the nature and import of a poſitive law, judge whether there be any colour of reaſon in this extravagant ſolution: *for a law is the direction of the perſon that governeth, to be obſerved by thoſe that are governed.* How then can the Gallican crown devolve, or deſcend according to the cuſtom of the Salians, if the French crown be not ſubject to the people of Salia? but where this country of Salia ſhould be, no geographer or hiſtorian, ancient or modern can tell us.

2. As for examples—we will cite amongſt others, Pepin, Hugh Capet, and Lewis 9. who enjoyed the French crown, not by virtue of the Salique law, but as heirs generally, or otherways.

Firſt for Pepin; he having put Childerick into a monaſtery, had not any colour of title, but as he was choſen by the parliament of Paris; ſo that it ſeems the parliament of Paris may do what the king and general-aſſembly cannot, and alter the moſt fundamental conſtitution of France, which at other times is immutable, not to be altered by the king, and ſtates-general.

Secondly, for Hugh Capet, who, to make his title good againſt Charles of Lorain, the right Maſculin-

heir to Pepin, did derive his pedigree from one of the Daughters of Charlemain, ſon of king Pepin.

Thirdly, for Lewis 9. He (a moſt religious prince) could not be reſolved in conſcience to take upon him the government, untill he was ſatisfied, that by his grand-mother's ſide, he was deſcended from the right heirs of Charles of Lorain. In ſhort, I admire with what confidence the French can urge this law againſt others, and yet practice the contrary themſelves. As for inſtance, Charles the eighth, having married Claude the dutcheſs of Britain, (and by that title poſſeſſed the dutchy) by whom he had Claude, married to Francis the firſt, who had iſſue H. 2. that had iſſue Francis 2. Charles 9. H. 3. and Hercules, and Elizabeth married to Philip 2. of Spain, and Margaret to H. 4. Now Francis, Charles, Henry and Hercules, dying all without iſſue legitimate; we Engliſhmen would fain know, how, againſt the Salique Law, Charles and his poſterity ſhould have a title to Britain, and yet king Philip and his poſterity, be debarred of it, by virtue of this pretended Salique Law.

For a concluſion to what I have ſaid, touching the validity of this pretended French Salique Law; I ſhall ſubjoin the ſentiments of Sir Thomas Ridley, in his view of the civil and eccleſiaſtical law, part 2. c. 1. ſect. 8. And he has been pleaſed thus to expreſs himſelf.

'Succeſſion in kingdoms, ſays he, in moſt part of 'the world, in former time hath been, and at this 'day is, by right of blood (a few only excepted, which 'are elective, as the kingdom of Poland is at this day). 'And in ſucceſſion, the eldeſt ſon taketh place before 'the reſt; and if there be no heir male, then the 'eldeſt daughter ſucceedeth in the kingdom, and her 'iſſue; for kingdoms (as alſo ſucceſſion in other dignities) are impartible. And yet France (to exclude 'Ed. 3. from the inheritance of the crown thereof, 'who deſcended of Iſabel, the ſiſter of Charles the fair, 'and ſo was next heir male to the crown of France), 'alledged for themſelves the law Salique, pretending 'none, who claimed by the woman, albeit, he 'was the next heir male in blood, was to ſucceed, as 'long as there were of the male line alive; how far 'ſoever they were off, in degree from the laſt king 'deceaſed.

'deceaſed. But this is but a meer device of the 'French, fathered upon ſome rotten Record of that 'part of the gallic nation, called Salii, of whom otherwiſe they have nothing memorable to ſpeak of, as 'being the baſeſt nation among them all, of whom 'they report their people to have been compounded; 'but this device ſerved their turn then, whether it 'were antiently invented, or newly coined.'

Thus much for the title that our kings have to Scotland, Wales, Ireland and France. To proceed now to my ſecond deduction; that the regality of this realm will ſuffer no diviſion.

2. *That the ſovereignty of* England *is indiviſible.*

THE dignity royal of this realm will not endure diviſibility: as it will comport no ſuperior, ſo it will admit no competitor. The world may as ſoon be governed by two ſuns, as this kingdom by ſeveral ſupreme legiſlators: for royal dominion is a plenitude, *quæ non capit plures in ſolidum.*

The royal dignity of a king or monarch, (ſays Coke) from which fountain all other ſubordinate dignities are deduced, *tanquam lumen de lumine*, are derived without any diminution, will ſuffer no diviſion, *regia dignitas eſt indiviſibilis.* Co. 4. inſt. 24.

Again, (ſays Coke) the dignity of the crown of England, is without all queſtion deſcendable to the eldeſt daughter alone, and to her poſterity, and ſo it hath been declared by act of parliament: for *regnum non eſt diviſibile.* Co. Lit. 165. a. 25 H. 8. 22.

Moreover, let the reader review and conſider all politicians, and they will grant, that *ſuprema poteſtas eſt in indiviſibili poſita*, ſupremacy and ſovereignty is an indiviſible and undivided entity. How can we ſhare it then amongſt more or many?

Beſides, that the ſovereignty of England, is an entity undiviſible, I ſhall offer to prove by arguments, on the following *dilemma.*

Though government, for example, differs in *ſpecie*, *viz.* Monarchy, Ariſtocracy, and Democracy, yet in all of them this power or command is the ſame and equal, *viz.* Supreme; and this power or command muſt reſide in one object or one being, *viz.* in one

Man, in one Court, in one People: but if it be divided into two or more, it is either *ſupervacaneous* or *deſtructive:* for thoſe two or more, in whom this divided empire doth conſiſt, muſt either agree or diſagree in the ſame thing; if they agree to will or nill the ſame, then it is ſupervacaneous: for it had been all one, if but one part had willed it, and *fruſta fit per plura*, &c. but if they diſagree in willing or nilling the ſame thing, it is deſtructive. For it is impoſſible for the ſubject to obey, becauſe the law itſelf is a contradiction, and if the ſubject obeys one, he diſobeys the other, and to obey neither, brings Anarchy and confuſion upon all the governed: what is left then but the ſubject to be divided, as well as the power. And a 'kingdom divided in itſelf cannot ſtand;' neither are the governors in whom this divided power or command does conſiſt, in any better caſe than the ſubject: for,

Lucan. *Nulla fides regni ſociis, omniſque poteſtas*
Impatiens conſortis erit.——

This ſame argument, the Papalini would fain evade with a diſtinction of theirs; they tell us, that cauſes are two fold, ſpiritual and temporal; though neither the ſovereignty in *temporalibus*, nor the ſupremacy in *ſpiritualibus* is impartible, not to be divided into two or more, yet the ſovereignty may be veſted in one perſon, as in the king; and the ſupremacy in another, as in the pope: ſo that the king ſhall be ſovereign in matters ſecular, and the pope, ſupreme head in cauſes ſpiritual and eccleſiaſtical.

This is a diſtinction (ſay we) without a diverſity; for the king of England as king, is ſupreme governor as well in cauſes ſpiritual, as in matters civil; the ſovereignty of England, being a replete compacted body, and impartible. If the church interfere, and claſh with the ſtate, and ſtruggle for a joint partnerſhip, how can the ſcepter continue its prerogative, or the people their privileges? in a word, the ſpiritual and temporal authority are (and ought always to be) wreathed in the imperial crown, or it will not be worth wearing.

If what I have ſaid, be not ſufficient towards the confuſion of this popiſh diſtinction, let the reader read the

the caſe of *Præmunire* in Sir. John Davis, his Iriſh Reports, and I am confident, he will judge it a meer vanity, a Chimera, or fantaſtical nothing, fit to be ſent to purgatory for a token.

As for our Miſo-monarchical ſectaries, they endeavour to extricate themſelves out of this Dilemma, by intoxicating the vulgar, with a new ſtate-deviſed principle, *viz.* that in monarchy, *the legiſlative power is communicable to the ſubject, and is not radically in ſovereignty in one but in more*; ſo that that they fancy a *mixture* or *co-ordination*, in the very *ſupremacy* itſelf; that the *monarchy*, or higheſt power itſelf is compounded of three *co-ordinate* eſtates; and this ſome call a *mixt monarchy*. The vanity of which government will be evidenced by theſe following arguments:

The firſt is this, *monarchy* compounded of three *co-ordinate* eſtates, in plain Engliſh ſpeaks this *nonſenſe*, the power which one only hath, is in three jointly and equally.

The ſecond ſhall be this: if there be a *co-ordination* in the *ſupremacy*; that is, if our king, the lords and commons, are jointly, the ſupreme governor, the *correlatum* is wanting, none are left over whom they ſhould reign, we ſhould have a kingdom without a ſubject, becauſe all may challenge a ſhare in the ſovereignty.

The third and laſt argument may be this, all agree that there are three ſorts of government, Monarchy, Ariſtocracy and Democracy; now if they may be mixed, then ſure there may be more than three, *viz.* Monarchy, Ariſtocracy and Democracy; Monarchy mixed with Ariſtocracy; Monarchy mixed with Democracy, and Monarchy mixed both with Ariſtocracy and Democracy: Ariſtocracy mixed with Monarchy, Ariſtocracy mixed with Democracy, and Ariſtocracy mixed with both. And ſo Democracy mixed with Monarchy, Ariſtocracy and both; ſo that either theſe three ſorts of government will admit of no mixture, or elſe there may be above three ſorts of regiment; and what muſt this government be called? could any perſon give a name to it, it muſt be either Ariſtomonarchy or Demonarchy: in plain Engliſh, the chief men-government of one man alone, or the people-government of one alone.

Having

Having given the reader my arguments to discover the deception and weakness of this Antimonarchical principle, which on this mixture or co-ordination, in the very supremacy of power itself is grounded, I will demonstrate the true meaning of that, which our new statists call a Mixt Monarchy.

Mr. Dudley Diggs. If we speak correctly, there cannot be such a thing as *mixtum imperium*, a mixt manarchy, or a mixt Aristocracy, or mixt democracy; because, if there are divers supreme powers, it is no longer one state. If the supreme power be but one, and that authority be *le dernire resort de la justice*, or unto which the last appeal must be made, and against whose sentence, though unjust, we have not any legal remedy. This must be placed either in one person who is the fountain of all jurisdiction, and then it is a Monarchial government, or in some nobles, and then the regiment is Aristocratical, and the sentence of the major part of them becomes law to all effects, whether concerning our goods or lives: or if the civil constitutions of a state, direct us to appeal to the people, this is an absolute and true Democracy. By a mixt monarchy, therefore (not to quarrel about words) nothing but this position can reareasonably be understood, that it is not Παμβασιλεία, or Παντελὴς μοναρχία, in which the will of the prince publicly made known, gives the law, *quodqunque principi placet, legis habet vigorem*; but Βασιλεια κατὰ νόμον, a government not arbitrary, but restrained by positive constitutions, in which a prince hath limited himself by promise or oath, not to exercise full power. This grant is of force, because any man may either totally resign, or diminish his rights by covenant. Hence it is, that in monarchies all kings have supreme power, though they have not all the same *jura regalia*; their prerogatives are larger or narrower, according to their particular grants. For example, our kings have retained to themselves the rights of coining money, making great officers, bestowing honours, as dukedoms, baronies, knighthoods, &c. pardoning all offences against the crown, making war and peace, sending ambassadors to negotiate with foreign states, &c. and they have restrained themselves from the use of that power, which makes new laws, and repeals old, without the consent of the lords and commons in parliament, as likewise

likewise from raising money on the subject, without their consent.

More may be seen for the further discovery of this cheat; I mean, our new statist's mixture of government, in Mr. Roger Coke's observation on Mr. Whites Grounds, pag. 20, 21. Dr. Ferne, in his tract, entitled Conscience satisfied, sect. 4. In Sir Robert Filmer's two pieces, and in a treatise, entitled *Sacro-sancta Regum Majestas*, cap. 8. pag. 95. cap. 9. pag. 103. cap. 10. pag. 105. This last piece was printed in the year 1644, and dedicated to the marquis, afterwards duke of Ormond.

3. *That regality of this realm is incommunicable.*

UNUM imperium (says Tacitus) *unius animo regendum est*; councel may be in many, as the senses, but the supreme power can be but in one, as the head; and therefore, neither it, nor any of its essential attributes can be totally communicated to any subject. As for example;

The king cannot grant power to any subject to pardon a felon; because it is a *prerogative* which is not grantable. 1H.4.5b.

So a corporation is a thing which ought to be instituted by the king himself, and by his own words, and therefore he cannot give licence to another to make a corporation. 2H.7.13 a.

So the king cannot grant to any other person, to make of Aliens born, Denizens; because, it is by the law inseparably and individually annexed to his royal person, and is a high point of royal prerogative. Co. lib.7. Calvin's Case.

Bracton tells us, *that the rights of the crown cannot be granted away. Those things which belong to jurisdiction and peace, and those things which are annexed to justice, appertain to none but to the crown and dignity of the king; nor can be separated from the crown; nor be possessed by any private person.* Lib. 2. c. 24. num 11.

The king cannot grant to me, to make my justices of peace, no more than he can grant to me the pardoning of felons: for he is the Chief Justice, and 'tis annext to his person, from which it cannot be severed. 20 H. 7. f. 7.a.8.a.

But after all this, it may be objected, that the chief governor of counties palatine had *jura regalia*, as fully as

as the king had in his palace (for they could pardon treaſons, murders, felonies, and outlawries. They
Co.4.inſt. 20. could make juſtices of eyre, juſtices of aſſize, of gaol-deliveries, and of the peace, &c.) And therefore ſovereign power, and the eſſences ſeem to be communicable to ſubjects.

To this objection, this anſwer may be returned, that the power and authority of thoſe that had counties palatine, was *de facto*, king-like; but this kingly power was afterwards reſumed from them, and united
27 H.8.c. 24. again to the crown, by the ſtatute of 27 H. 8. if not for the illegality of the communicativeneſs, yet for the inconveniencies that aroſe from ſuch communication; and yet, whilſt theſe earls palatine had royal authority in all things, there was an acknowledgement of the king to be their ſuperior lord and ſovereign.
Lib. 3. c. 8. de Corona. And ſo ſays Bracton, *comites palatini regalem habent poteſtatem in omnibus, ſalvo domino regi ſicut principi.*

The ſum of all is this, his majeſty's prerogatives are as the lawyers ſpeak, *in indiviſibili poſita quæ diſtrahi non poſſunt, minui non poſſunt*, are ſo indiviſible in themſelves, and naturally and intrinſically inherent in the crown, in his ſovereignty and ſupremacy, that they cannot be made away; or ſo communicated to the ſubject, *ut defluat radix ſupremæ poteſtatis*, to deveſt himſelf of them, *ad minuendam majeſtatem* to leſſen ſovereign majeſty, although, by truſt and delegate power, the execution may be entruſted to others, *ad minuendam ſolicitudinem*, to eaſe him of unſupportable burthen. Theſe eſſential attributes of ſovereign power, are fitly reſembled by the royal crown, from which, if you take away the leaſt part, you ſpoil it ſo in its nature and ſhape, that it is no more a crown.

4. *That the Royalty of* England *is unalienable.*

BY the laws of this realm, it is not in the power of the king to collate his crown by any diſpoſitive or teſtamentary will, or by any other act, the right deſcending to the next of blood, only by the cuſtom and law of the kingdom; and therefore it hath been declared by the lords and commons, in parliament,
14. *that no king can put himſelf, nor his realm, nor his people in ſubjection to any other potentate, without the aſſent of*

of the lords and commons in parliament; wherefore if king John had ſurrendred his kingdoms of England and Ireland, to the pope, by the common council of the barons, as his charter purported, yet it bound not; for it was not done in parliament by the king, lords, and commons. And albeit it might (as it appeareth, it cannot be done without authority of parliament), yet this is contra legem & conſuetudinem parliamenti *to do ſuch a thing.* Roys auſi *(ſays our ancient Britton)* ne purront rien aliener en droit de lour corone, ne lour royaltie, que il ne ſoit repealeable, pur lour ſucceſſors. Cap. 34. de Donus.

More of this learning may be ſeen in *Grot. lib. 2. c. 7. nu. 25. de jure Belli & Pacis. 1 H. 7. 10. a. Co. lib. 12. f. 28. Cowels inſt. 2. 8. Swinburn's tract of Wills. Dr. Ducke lib. 2. c. 9. nu. 5. de authoritate juris civilis. Dr. Zouch pars 1. ſect. 3. nu. 2. de jure inter gentes. pars 2. ſect. 7. de juditio inter gentes.*

Agreeable to this doctrine, I poſitively affirm, that no king of England, (the Engliſh monarchy being by ancient cuſtom, and fundamental laws of the realm, merely ſucceſſive, either to the heirs male, or heirs general) can any ways diſpoſe of this kingdom in prejudice to the next heir in blood, according to the cuſtom, (I mean, male or general) no not though the parties intereſſed in the ſucceſſion ſhould commit treaſon, or ſhould be excluded, by act of the ſtates or parliament.

That treaſon cannot avoid a lawful ſucceſſion in blood, we have an example in our king H. 7. who ſtood attainted of high treaſon, at the time of his coming into England, and yet no reverſal of the attainder was made; for all the judges of England (after communication had amongſt themſelves) did agree, that the king was a perſon able, and diſcharged of any former attainder *ipſo facto*, the moment he took upon him to reign, and to be king; and the reaſon then given was, becauſe the imperial crown once worn, quite taketh away all defects. *1 H. 7. 4. b. Plowd. Comment. 225. Co. Litt. f. 16. b.* lord Bacons, *H. 7. anno primo, & Cambd. Eliz. anno* 1559. Thus it manifeſtly (by the way) appeareth, that by the laws of England, there can be no *inter-regnum* within this kingdom, and that by diſcent, the next heir in blood is immediately compleatly and abſolutely king, without any eſſential ceremony,
Co. lib. 7. Calvin's caſe, Hil. 1. Jac. Regis in caſe of Watſon

and Clark popiſh prieſts, Co. 3. juſt. f. 7.

remony, or act to be done *ex poſt facto*, and that the coronation is but a royal ornament, and outward ſolemnization of the diſcent; a ceremony to ſhew the king unto the people. That is to ſay, coronation is only a ceremony, and ſuch a ceremony as *doth* not any thing, but only declareth what is *done*: the king was king before it, as much as he is after it; only by it he is declared to be what he was before, and what he ſhould have been ſtill, though he had not been ſo declared. I pray you, what ſolemnity was uſed at the coronation of king James in Scotland? for he was crowned in the cradle, and by a people, who had profanely baniſhed all manner of ceremonies, *Sedè diverticulo in viam.*

But, whether an act of Parliament may exclude the ſucceſſion in blood, is the greateſt queſtion. And we for our parts have ſtatutes that make it treaſon to deny it, but never otherwiſe made than only for fear or flattery of the preſent prince, and never obſerved; in the civil wars between the two houſes of York and Lancaſter, how many ſtatutes have been made to the diſinheriſon of the title of York, and all vaniſhed in ſmoak?

The ſtatute of 25 H. 8. c. 22. in diſheriſon of queen Mary, and confirmed by another ſtatute of 26 H. 8. c. 2. how were they, I pray obſerved? and laſtly, the great act of 35 H. 8. c. 1. which gave authority to the king, in caſe his own line ſhould become extinct, to diſpoſe of the kingdom, either under his great ſeal, or by will; have we not ſeen it, to the great and unſpeakable joy of us all, moſt happily neglected ſo far, as that the very caſe, which in that ſtatute is put, of the extinguiſhment of H. 8. his line, and a will made, ſuch as it was, to the diſinheriſon of the Scottiſh line, the validity of it was never ſo much as once conſidered upon by our council and lords, for it was wholly immaterial, whether the will was a will or not, ſince the act of itſelf was a void act that ſhould have given ſtrength to the will.

To what I have ſaid, touching ſucceſſion in hereditary monarchies, I ſhall preſume to add the oppinion of two moſt learned and ingenius authors; namely, Mr. Roger Coke, and the late earl of Clarendon.

The former has theſe very words, 'No human law 'can create a human right, *jura ſanguinis nullo jure 'civili*

'*civili dirivati poſſint*; nor is this right of ſucceſſion 'from divine poſitive laws, but obſerved as well where 'God's revelation of himſelf is not received, as where 'it is; and if according to the reſolution of all the 'moſt learned and reverend judges in Calvin's caſe, 'ſubjection is from no human law, but from the law 'of nature, then of neceſſity muſt regal right, and in-'heritance be from the law of nature; for no man ſup-'poſeth ſubjection where he does not preſuppoſe power. 'The will therefore of Hen. 8. where for want of 'iſſue of Edward, Mary and Eliz. he gives the Eng-'liſh monarchy to the iſſue of Frances, and Elianor, 'daughters of Mary his younger ſiſter, before the 'right heirs of Margaret, his eldeſt ſiſter, wife of 'James the fourth of Scotland, was void, and not to 'be allowed; and ſo was that of Edward 6. who 'diſinherited his ſiſters, Mary and Elizabeth, and gave 'the crown to Jane, daughter of Frances the French 'queen aforeſaid, by Charles Brandon, duke of Suf-'folk, and ſo were the acts of parliament made by 'H. 4. H. 5. & H. 6. which intailed the crown upon 'their heirs, ſo were the acts of Henry 6. which 'intailed the crown upon him and his heirs males of 'his body; and ſo were the acts of the 1 of R. 3. & 'H. 7. which intailed the crown upon them, and their 'heirs. Neither is ſucceſſion and inheritance of crowns 'declared by any human law in the world, that I 'know of, but only the pretended French Salique 'law.'

The Earl of Clarendon, in his ſurvey of the dangerous errors of church and ſtate, in Mr. Hobs's book, intitled, *Leviathan*, pag. 61, expreſſeth himſelf thus:

'Methinks his own natural fear of danger, which 'made him fly out of France, as ſoon as his *Leviathan* 'was publiſhed, and brought into that kingdom, ſhould have terrified him from invading the right of 'all hereditary monarchies in the world, by declaring, 'that by the law of nature which is immutable, it is 'in the power of the preſent ſovereign to diſpoſe of the 'ſucceſſion, and to appoint who ſhall ſucceed him in 'the government; and that the word (heir) doth not 'of itſelf imply the children, or neareſt kindred of a 'man; but whomſoever a man ſhall any way declare

'he would have ſucceed him, contrary to the known 'right and eſtabliſhment throughout the world, and 'which would ſhake, if not diſſolve, the peace of all 'kingdoms.'

Thus much may ſuffice (and I hope ſufficiently) to prove, that the deſcent of the crown cannot *(de jure)* be impeach'd in the right line.

Having thus ſufficiently proved out of our books, that the power of the kings of England is an exempt, abſolute, ſupreme, and independent authority, acknowledging no ſuperior, but God Almighty, not to be divided, communicated nor transferred to any perſon whatſoever, without previous aſſent and conſent of the nation in parliament aſſembled. I proceed to ſhew the reader in the next place, that George the third, our now gracious ſovereign lord and king, is the lawful and undoubted heir of the blood royal of this realm, as appears by the pedigree following: and conſequently his moſt excellent majeſty, has the ſame abſolute, ſovereign and regal power over the ſubjects of this nation, that his royal predeceſſors, the kings and queens of England, have heretofore claimed and enjoyed.

The Royal Pedigree of ENGLAND.

HENRY 7. by the father's ſide was the ſon of Edmond earl of Richmond, the grand-child of Owen, the ſon of Meredith Tudor, and Catherine the widow of H. 5. king of England, and daughter of Charles the ſixth king of France.

2. By the mother's ſide, he was the ſon of Margaret, grandſon of John Ghent duke of Lancaſter, great grandſon of Ed. 3. king of England.

Elizabeth.

By the father's ſide.

1. By the father's ſide, was the daughter of Edward the fourth, king of England; grand-daughter of Richard, duke of York; great grand daughter of Richard of Cambridge; great, great grand-daughter of Edmund duke of York; the fifth ſon of Edward the third, king of England.

2. By

By the mother's ſide.

2. By the mother's ſide, ſhe was the daughter of Eliz. grand-daughter of Richard of Woodvill, earl of Rivers, and Jacoba dutcheſs of Bedford.

By this H. 7. and his wife Elizabeth, were begotten.

1. Arthur, who died without iſſue.
2. Henry, who reigned after his father.
3. Edmund, who died in his infancy.
4. Margaret, who was married to James 4. king of Scots, who begat on her.

James 5. king of Scots.
Arthur,
Alexander,
and one Daughter.

This Margaret's ſecond huſband was Archibald Douglas, earl of Argyle, and ſhe had by him, Margaret who was married to Matthew duke of Lenox.

By this latter Margaret and Matthew, were born Henry, who died in his infancy; and Henry Darley, who married Mary queen of Scots; and by her begot James 6. of Scotland, and firſt of England, king; and Charles earl of Lenox, the father of Arabella.

5. Elizabeth, who died a child.

6. Mary, firſt the wife of Lewis the thirteenth king of France, by whom ſhe had no iſſue, and then ſhe was the wife of Charles Brandon duke of Suffolk; who had by her, Henry, Charles and Frances. This Frances was married to Henry Grey, marquiſs of Dorcheſter, and betwixt them was begat, Jane *regina infelix*.

7. Catherine, who died a child.

Henry the eighth, married firſt Catherine, the relict of his brother Arthur, and on her begat, Henry, who died in his youth; Mary, who afterwards reigned; Henry the eighth being devorced from this Catherine, married Ann of Bolen, by this queen, Henry the eighth had the lady Elizabeth, who afterwards reigned.

The ſecond wife being beheaded, Henry the eighth married Jane Seymour, by whom he had Edward the ſixth, who immediately after his father, reigned, and died without iſſue.

Mary

Mary was married to Philip king of Spain, and died without iſſue.

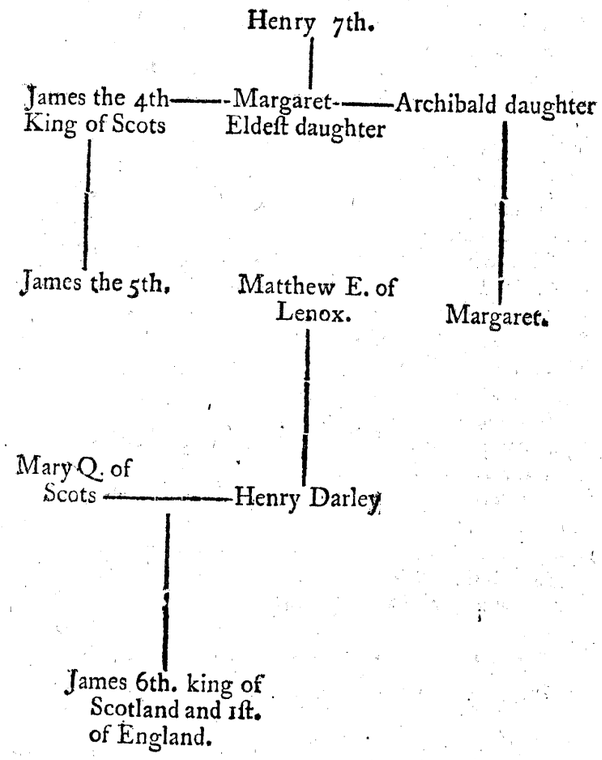
Elizabeth reigned, and was never married.

James 1. of England.

By the father's ſide, was the ſon of Henry Darley, grand-ſon of Mathew earl of Lenox, great grandſon of Archibald Douglas, and Margaret, the eldeſt daughter of H. 7.

By the mother's ſide, he was the ſon of Mary, queen of Scots, grand-ſon of James 5. king of Scotland, great grand-ſon of James 4. king of Scots, and Margaret, the firſt begotten daughter of Henry 7.

Henry



Upon the pedigree here ſet forth, was grounded the recognition of the lords and commons, in the firſt year of the ſaid king. And it was, *That immediately upon the diſſolution, and death of queen Elizabeth, the imperial crown of England, and of all the kingdoms belonging to the ſame, did by inherent birth-right, and lawful ſucceſſion deſcend, and come to his moſt excellent majeſty, as being lineally next, and ſole heir to the blood royal of this realm.* 1 Jac. 6.

And it is worthy obſervation, that the whole right of the Saxons and Normans, and of the houſes of York and Lancaſter, were intirely united in king James.

This

This James, ſtiled king of Great-Britain, married Ann the daughter of Frederic 2. king of Denmark and Norway, by whom he had iſſue, two ſons and three daughters, *viz.*

1. Henry, who died in his father's life time, in the flower of his age, without iſſue.
2. Charles the firſt, (the royal martyr).
3. Elizabeth, who was married to Frederic V. elector palatine of the Rhine, and king of Bohemia; of this intermarriage was born the moſt excellent princeſs Sophia, who, in the year 1658, was married to Erneſt duke of Brunſwic Lunenburg, afterwards elector of Hanover, great, great grand-father of the illuſtrious Monarch, who now wears the imperial crown of Great-Britain.
4. Mary, who died young.
5. Sophia, who died in her infancy.

On the demiſe of James the firſt, Charles 1. his only ſurviving ſon, ſucceeded next. This unfortunate prince took to wife, the princeſs Henrietta Maria, daughter to the French king, Henry 4. and left behind him three ſons and three daughters, *viz.*

1. Charles, afterwards king of Great-Britain.
2. James, afterwards James the 2d. king of Great-Britain.
3. Henry, duke of Glouceſter, who died unmarried.
4. Mary, who married William prince of Orange, father to king William 3.
5. Elizabeth, who died a priſoner in the Iſle of Wight.
6. Henrietta, married to the duke of Orleans, only brother to Lewis the 14th.

Charles the ſecond, eldeſt ſon of Charles the firſt, ſucceeded his father, and on May the 8th. 1660, was proclaimed at London; he married Catherine of Portugal, but had no iſſue, he was therefore on his demiſe in 1684, ſucceeded by his brother the duke of York, by the name of James the 2d. who, while he was duke of York, had married Ann eldeſt daughter of Hyde, earl of Clarendon, by whom he had iſſue, the queens, Mary and Ann. By his ſecond conſort, an Italian princeſs, he had ſeveral, though ſhort-lived children, except another Mary, who was born, and died

died in France, aged twenty. But this James openly admitting father Petre, with ſeveral popiſh lords into his privy council, introducing popiſh judges into the courts of juſtice, and in direct violation of the coronation-oath, which he and his predeceſſors (from the reign of Henry 8. had now eſtabliſhed and confirmed into an indiſpenſable conſtitution of ſtate, the violation of which conſtitution, works of itſelf, an inability to reign over the proteſtant empire of Great-Britain, he, through a ſelf-evident conviction of ſuch inability, voluntarily abdicated the throne on the 11th. of December 1688, and as this realm admits of no *inter regnum*, the vacated crown, devolved on his elder daughter Mary, as the neareſt proteſtant heir, and *in her right* on her huſband William prince of Orange, by the names of

William 3. and Mary 2. but Mary dying in 1694, and William in 1701, without iſſue,

Ann, ſecond daughter of James 2. ſucceeded king William: this princeſs, for the ſecurity of the proteſtant religion in 1683, was married to his royal highneſs prince George of Denmark, and had iſſue, two ſons, and four daughters, who all died in their infancy.

Before I mention the kings of the houſe of Hanover, it will be proper to ſhew the ſeveral branches of the blood royal of England, and the ſettlement of the crown in the Proteſtant Line.

There are two branches of the preſent royal family; the one Proteſtant, and the other Popiſh; the latter is nearer in deſcent, but the former inherits the crown by the laws of the realm.

Henrietta, the youngeſt daughter of Charles 1. was married to Philip duke of Orleans, only brother to Lewis 14. by whom ſhe had two daughters, the younger of which was married to Victor 2. duke of Savoy. Their iſſue were Charles 1. king of Sardinia, and two daughters: the elder married the late duke of Burgundy Dauphin, father of the French king Lewis 15. the other married Philip 5. king of Spain.

The palatine branch contains a numerous iſſue. The root is the lady Elizabeth, daughter of king James 1. who married Frederic 5. elector palatine of the Rhine. In 1619, he was crowned king of Bohemia, but loſt both that kingdom and the palatinate upon the

defeat of his forces near Prague, by Ferdinand the emperor; and died at Mentz, 1632. The princeſs Elizabeth, his queen dowager, died at Craven-houſe in Drury-lane, London, 1661.

By the ſaid princeſs he had ſix ſons, Charles, Rupert, Maurice, Edward, Philip, Guſtavus; and four daughters, of which Sophia only had children. And of the ſons, Charles and Edward only had iſſue.

Charles ſucceeded his father in the palatinate, by the treaty of Munſter, and left one ſon and a daughter by Charlotte his wife, of Heſſe-Caſſel. Rupert and Maurice, both died batchelors; the firſt in England: Edward lived in France, where he turned papiſt, and married Ann of Mantua, from which match came a numerous offspring.

The ſon of Charles ſucceeded alſo by that name in the Palatinate; but dying without iſſue, the Palatinate fell to the popiſh family of Neuburg.

Elizabeth, daughter of the elector Charles, was the ſecond wife of Philip, duke of Orleans, who had by her the duke of Orleans, regent of France; and Elizabeth married to Leopold duke of Lorrain, who was father to Francis and Charles of Lorrain; Francis married the queen of Hungary, Charles married her ſiſter.

Edward, the youngeſt ſon of the unfortunate king of Bohemia, married, as I ſaid before, Ann of Mantua, by whom he had three daughters, Ann, Benedict, and Lucy, which laſt never married.

Ann married the prince of Condé, of the houſe of Bourbon; Benedicta married John duke of Hanover; by whom he had two daughters: Charlotte, the firſt, married the duke of Modena; and Wilhelmina married the emperor Joſeph.

I conclude with the proteſtant branch of the royal family, in the houſe of Hanover, which begins with the princeſs Sophia, ſiſter to Charles and Edward aforeſaid, whoſe offspring we have ſeen.

This moſt excellent princeſs, the fourth and youngeſt daughter of Frederick 4, elector Palatine of the Rhine, and king of Bohemia, and of Elizabeth of Great-Britain, was in the year 1658, married to Erneſt duke of Brunſwick and Lunenburg, afterwards elector of Hanover; which duke Erneſt ſucceeded to the biſhoprick

rick of Oſnabrug; and alſo to the dukedom of Hanover, upon the death of his elder brother John, who died without male iſſue, 1680.

The elector Erneſt had iſſue by the ſaid Sophia, George, afterwards king of Great-Britain; Frederic ſlain in Tranſilvania 1690, valiantly fighting againſt the Turks; Maximilian, the third ſon, deceaſed; Charles, the fourth ſon, ſlain at the battle of Caſſaneck in Albania, 1690. Chriſtian, fifth ſon, ſhot in the river Danubé, croſſing to charge the French, at the battle of Munderkingen, in 1703. Erneſt duke of York and biſhop of Oſnaburg: Sophia, their only daughter, was married to Frederick, the firſt king of Pruſſia, who married with his couſin-german, Sophia Dorothy, only daughter of king George 1. and had Charles king of Pruſſia, and a numerous iſſue.

Purſuant to the act of ſettlement on the death of queen Ann, the princeſs Sophia alſo dying two months before; George the next indiſputable proteſtant heir, was on the 1ſt. of Auguſt, 1714, being Sunday, proclaimed king of Great-Britain, *&c.* by the unanimous voice of the people.

But George the 1ſt. demiſing in 1727, left iſſue by his royal conſort the lady Sophia, daughter of his uncle the duke of Zell, one only daughter named Sophia, married to Frederick 2. king of Pruſſia, and one only ſon, George prince of Wales, who immediately ſucceeded by the name of George 2. who, by his conſort Caroline princeſs royal of Pruſſia, had iſſue two ſons and four daughters, *viz.*

1. Frederick, prince of Wales, married to the moſt excellent princeſs Auguſta, ſiſter to Frederic 3. duke of Saxe-Gotha.
2. William, duke of Cumberland.
3. Ann, married to the late prince of Orange and Naſſau.
4. Amelia Sophia, unmarried.
5. Mary, married to William, now landgrave of Heſſe Caſſel.
6. Louiſa, late conſort to Frederic 5. king of Denmark.

Frederick, by his conſort, her royal highneſs the princeſs of Wales now living, had iſſue five ſons, and four daughters, namely.

1. George, our preſent illuſtrious monarch.
2. Edward Auguſtus, now duke of York and Albany.
3. William Henry,
4. Henry Frederic.
5. Frederic William.
6. Auguſta, now bethrothed to the hereditary prince of Brunſwick-Wolfembuttle.
7. Elizabeth Caroline, deceaſed.
8. Louiſa Ann.
9. Caroline Matilda.

His royal highneſs Frederick prince of Wales, deceaſing in 1751, and George the ſecond in 1759, the imperial crown of Great-Britain, devolved on his eldeſt grand-ſon, George the third, our preſent, incomparable Sovereign.

I ſhall add one word with reſpect to the pre-eminence of our kings, a pre-eminence ſuperior to that either of France or Spain, as appears in a debate of this kind boldly aſcertained, and peremptorily inſiſted upon by our Engliſh orators in the council of Conſtance, Anno 1417, (a) when it was urged and alledged by them, as an argument in the conteſt between our Henry the fifth's legates, and thoſe of Charles the ſixth, the then French king, for *precedence*; "*ſatis conſtat*, (ſay they) (b) *ſecundum Albertum magnum et Bartholemeum de proprietatibus rerum, quod toto mundo in tres partes diviſo, ſcilicet in Europam, aſciamet Africam* (for America was not then diſcovered) *Europa in quatuor dividitur regna ſcilicit primum Romanum, ſecundum Conſtantinopolitanum, tertium regnum* HIBERNIÆ *(quod jam tranſlatum eſt in Anglos) et quartùn regnum Hiſpaniæ. Ex quo patet, quod rex Angliæ et regnum ſuum ſunt de eminentioribus et antiquioribus regibus et regnis* TOTIUS *Europæ.*" And accordingly the antiquity and precedence was then allowed him, wholly on the account of his kingdom of Ireland. And agreeable to this right of precedence, Pope Urban the ſecond, cauſed the archbiſhop of Canterbury, when in the council of Cleremont, to ſit at his feet, and DECREED that he ſhould take the ſame place in all future councils, *tanquam alterius orbis pontificem*", and as a farther proof, it is on record, that upon the diviſion of Chriſtianity into nations, at the two general councils of Conſtance and Piſa, (the firſt, by

(a) Selden's Tit. horſ. par. 1. c. 8. ſect. 5. Uſher, archbiſhop of Armagh, of the religion of the ancient Iriſh cap. 11.

(b) Act. Council. Conſtant. ſeſ. 28. M. S. in Bib. Reg. not in the printed acts.

by much the greateſt that ever was held, the laſt, not the leaſt) England gave voice as one fourth part of Chriſtendom, the other three parts were France, Germany, and Italy, which being Iberia Major, contained Spain, as Iberia Major.

Now George 3d. wearing the imperial crown of Great-Britain, France and Ireland, with other and much more extenſive dominions dependant on the Britiſh diadem, and being our undoubted and lawful liege lord, according to the forementioned pedigree, may challenge (amongſt others) theſe prerogatives following, as incident to the imperial crown of Great-Britain, ſome of which are the very eſſence of ſovereign power, and ſome of them annext to the regality by the municipal laws, and old cuſtoms of the lands.

---

1. Prerogative.

His Majeſty as to the coercive part of the law, is ſubject to none under God.

GOD intending the good of mankind, which is not to be obtained without preſervation of order; hath commanded us to be ſubject to the ſupreme authority; not to offer any manner of violence to the perſon of him, in whom is veſted ſovereign majeſty. The ſanctitude of whoſe perſon is ſo great, that we are not to ſpeak evil of it, no, not to think, much leſs to hazard the power, or injure the perſon, either by force or judicial proceedings. Liber ab omni jegum Coactione.

The authorities that I intend for the proof of this prerogative are theſe:

Bracton and Fleta, ſay thus: If any thing be demanded of the king by a ſubject, (ſeeing a writ lieth not againſt him) he is put to his petition, praying to correct and amend his own fact; which, if he will not, it is a ſufficient penalty for him, that he is to expect a puniſhment from the Lord. No man may preſume to diſpute of what the king does, much leſs to reſiſt him. Bract. lib. 1. c. 8. lib. 5. c. 3. de defaltis Fleta lib. 2. c. 17.

Sir John Markham, chief juſtice, told king Ed. 4. that the king cannot arreſt any man for ſuſpicion of 1. H. 7. 4. b.

treaſon

treaſon or felony, as other of his lieges may: for that if it be a wrong to the party grieved, the ſubject has no remedy.

3 Ed. 3. 19. Co. 4. Inſt. 17. Co. lib. 1. 44. b. Plowd. Com. 24. Co. Lit. 19. b.

The king has no peer in his land, and therefore cannot be judged.

Our law ſays, that the king can do no wrong, and therefore cannot be puniſhed; and the reaſon why it is ſaid in our law, that the king cannot do a tort, is, becauſe nothing can be done in this realm by any act of the king, as to the ſubject's lands or liberties, but muſt be approved by the eſtabliſhed laws of this realm, which the judges are ſworn to obſerve and deliver, between the king and his ſubjects; and therefore the judges and miniſters of juſtice, are to be queſtioned and puniſhed if the laws be violated, and no reflection to be made on the king. *Si factum injuſtum fuerit* (ſays Bracton) *perinde non erit factum regis.*

Co. lib. 7. Calvin's caſe.

The Spencers in Ed. 2. Time, hatcht to cover their treaſon, this moſt horrid opinion, *viz.*

That homage and the oath of allegiance, was more by reaſon of the king's crown, (that is of his politic capacity) than by reaſon of the perſon of the king, upon which opinion, they inferred theſe curſed principles:

1. If the king demeaned himſelf not according to reaſon in the right of the crown, his lieges are bound by oath to remove him.

2. Seeing the king could not be removed by ſuit of law, it was to be done by force.

3. That the ſubjects be obliged to govern in default of him.

All which moſt abominable tenets were condemned by two parliaments, one in the reign of Ed. 2. called *Exilium Hugonis le Spencer*, and the other in the reign of Ed. 3. And the ſeparation of the king's perſon from his power, is the principal article condemned.

12. Carol. 2 Regis c. 30. The attainder of ſeveral perſons guilty of the horrid murder of king Cha. 1.

To conclude, it was declared by the lords and commons in parliament, *That by the undoubted and fundamental laws of the kingdom, neither the peers of this realm, nor the commons, nor both together in parliament, nor the people collectively, nor repreſentatively, nor any other perſons whatſoever, ever had, hath, or ought to have any coercive power over the perſons of the kings of England.*

With

With our laws do concur the laws imperial, *Sacrilegii inſtar eſt reſcripto principis obviare: unde ipſe legibus civilibus non aſtringitur. Nam in omnibus imperatoris excipitur fortuna cui ipſas leges Deus ſubjecit.*

Princeps legibus ſolutus eſt, ſays *Juſtinian*; That is to ſay, the power of all monarchs, is *legibus ſoluta*, ſubject to no over-ruling power of man. Conceive it not ſo, that kings are free from the direction of, and obligation to the law of God, nature, and common equity; but from the coercion human, or any human coactive power, to puniſh, cenſure or dethrone them.

More of this excellent learning the reader may ſee in doctor Duck, *lib.* 1. *c.* 3. *num.* 1 & 2. *de authoritate juris civilis.* Sir Walter Raleigh, *hiſt. pars* 1. *lib.* 2. *c.* 4. *ſect.* 16. Mr. Rober Coke, *lib.* 2. *c.* 3. *num.* 5, 6.

2. Prerogative.

Power of making Laws.

Legem ferendarum ſumma poteſtas.

THE king in a double reſpect is the life of our laws, he is the life of our peace, without which our laws are put to ſilence; and again, becauſe laws are *literæ moutuæ* without the ſtamp of his royal authority: and therefore the agreeing votes of the two houſes of parliament are not concluſive to his majeſty's judgment, nor can they carry with them his royal aſſent, whom they do not repreſent in any kind; nor is the king any further obliged to concur with the votes of the lords and commons, than he ſees them conformable to the laws of God and nature, agreeable with his ſacred rights and prerogatives as a ſovereign, and tending to the general good and welfare of his loving ſubject:

In proof of this poſition, theſe authorities may be offered.

Though a bill hath paſſed both houſes of the lords and commons in parliament, yet before it be a law, the royal aſſent muſt be aſked or demanded, and obtained.

It

It is no ſtatute if the king's royal ſanction be not to it, and he may diſaſſent; for the king in parliament hath a negative voice, and therefore in a clauſe made 2 H. 5. both houſes of parliament do acknowledge that it is of the kings regality, to grant or deny ſuch of their petitions as pleaſeth himſelf.

13. Car. 2. Regis c. 1. It is declared, that there can be no legiſlative power in either or both houſes of parliament without the king.

But upon what hath been ſaid, it may be objected, that ſeeing his majeſty cannot enact laws without the lords and commons, (for every ſtatute, as appears in our books muſt be made by the king, with the aſſent of the lords and commons) the legiſlative power is not ſolely in the king, but in him and the two houſes of parliament; ſo that they fancy the two houſes partners of the ſovereignty, and turn the monarchy of England, into a tripartite and co-ordinate government, which others call a mixt monarchy.

4. H. 7. 18. b. Co. Lit. 159. 6. Co. 4. Inſt. 25.

I anſwer, that to the two houſes of parliament, belongs a right of privilege, for the making of laws, by yielding their conſent; but that they have a co-ordinate, co-equal, corrival and collateral power with the ſovereignty of royalty, all able juriſts, and true politicians utterly deny; for the houſes are called together by the royal authority, not to be dictators but Councellors; not to be Partners in the Legiſlature, but Petitioners? as appears by the very form of paſſing bills at this very day obſerved, *Le Roy le veult & fait come il eſt deſiré*, which form of words ſhew, that the rogation of laws, belongeth to the two houſes, but the Legiſlation to the king, it is the king's great *prerogative* to be thus *pre-roged*; their act, that is to ſay, the act of the two houſes is the Preparative, his only Juſſive; or if you will, though the king doth not *abſolutè ſolus*, yet *principaliter ſolus*, he maketh laws concerning matters eccleſiaſtical, capital, civil, martial, maritime, and the like.

But yet farther; if the two houſes of parliament do retain their proportion in the legiſlation, that is to ſay, if they have a co-ordinate or concurring power, with the king in enacting laws; then they muſt have it, either Originally in themſelves, or from ſome other quarter, by way of Derivation.

First,

First, they cannot have this coordination of power, originally and radically veſted in themſelves; for (as to the lords) Mr. Bracton tells us, that the earls and barons, were not before the firſt king; for ſays he, *Reges aſſociant ſibi Comites, & Barones, ordinantes eos, in magno Honore:* earls and barons are made by the king, and aſſumed for counſel, therefore inveſted with a long robe; and for defence, therefore girt with a ſword; which ſhews, the power they have is not originally in themſelves, but proceeds from the kings grant and favour; they are meer conceſſions of grace.

Dodridges tract of the nobility, pag. 8. 34. Co. lib 7. Nevils Caſe Co. 2. Inſt 5, 6. lib. 12. earl of Shrewſbury's caſe.

As for the houſe of commons, I hope they will not pretend to any ancient or better title than the lords can pretend to. Sure it is (ſays ſir Robert Filmer) that during the heptarchy, the people did not elect any knights, becauſe England was not then divided into ſhires or counties.

All our books can inform us, that the king is *Principium, Caput, & finis Parliamenti*, and that every member, as well as both houſes, have their right, and ſitting there from him; they are ſummoned to ſit in that council, by virtue of the kings writ and authority, without whoſe call they cannot meet together, and at whoſe pleaſure they are diſſolved in law and bound to depart to their own homes.

Secondly, as the two houſes have not a Partnerſhip in the ſupremacy, or Legiſlation originally in themſelves, ſo neither have they it, by way of derivation; if the houſes have a coordinate, coequal, and corival authority in enacting laws, derivately, then it muſt proceed from the king, one of theſe two ways, that is to ſay, either by way of grant, or by way of cuſtom and preſcription.

1. They cannot have it, *via Conceſſionis*, by way of grant; for kings reign by a higher than any human law, and therefore no act of any king can diveſt himſelf or ſucceſſor of any eſſential attribute of power due to him or to his ſucceſſor. And if kings actions did oblige themſelves or ſucceſſors, then were this crown not free, but ſubject to the pope, becauſe our king John made it ſo; but I do utterly deny, that ever any king of this realm did ever grant the parliament or either houſe, a concurring power or fellowſhip of making laws with him;

Vide treatiſe intituled Sacro-Sancta Regum Majeſtati.

tis true they have an indefeiſable right *ad aliquid*, to ſome act, of exerciſing the ſupreme power; that is to ſay, to the making of laws, by giving their aſſent, without which no ſtatute is binding. Co. 4. Inſt. 25. Co. Litt. 159. b.

And this right belongs to the houſes, by a fundamental conſtitution of the kingdom; a fundamental I ſay, not of monarchy ſimply, but of government as it now ſtands; a fundamental not of the regal power, but of the people's ſecurity: for government may receive a change and qualification, by conſent of king and people, from more abſolute, to qualified, or reſtrained, and ſuch a conſtitution is a fundamental, becauſe all after-laws are built upon it, but not a fundamental to the regal power, for it gives no new power to the king, as it does to the two houſes, but rather leſſens his power, by limiting upon agreement, that he will not impoſe any laws upon his people without their conſent.

2. They cannot have it *via præſcriptionis*, by way of preſcription; for no uſage, preſcription or cuſtom can take place, where there are records or proofs enough to the contrary; and whether there are not proofs to the contrary, let the reader take ſo much pains as to view the ſtyles of the acts printed from 9. H. 3. untill H. 7. his time, and he will find, that the king always made the law, and the lords ſpiritual and temporal did aſſent, at the inſtance, requeſt, or petition of the commons, or by the king, with the aſſent of the lords and commons, which was not or but rarely uſed, unleſs in Richard the ſecond's time. In Henry the ſeventh's time, the commons got to have their aſſent as well as the lords in paſſing laws; and this manner of paſſing laws continued generally untill Edward the ſixth's time, when they were made ſometime by the king, with the aſſent of the lords ſpiritual and temporal and commons in parliament, and ſometimes by the parliament. But the form of enacting laws by the king and the lords ſpiritual, temporal, and commons aſſembled in parliament was ſeldom or ever uſed before queen Mary's time.

Vide Mr. Roger Coke lib. 3. c. 3. of the municipal laws of England, f. 115. 116.

So that we may very well conclude, by what has been ſaid againſt coordination, *That the making of laws is a peculiar and incommunicable privilege of the ſupreme power; and that the office of the two houſes in this caſe is only*

only conſultive or preparative, but the character of the power reſts in the final ſanction, which is in the king; and therefore when the lords and commons preſent any bill to the king, and he paſſes it; this is an act of parliament, which is no more a law of the lords and commons, than the laws paſſed at the petition or rogation of Celius, Caſſius, Sempronius &c. were the laws of Celius, Caſſius, and Sempronius.

Let the reader note this maxim for a concluſion, viz, though the king cannot make new, or abrogate old laws, without conſent in parliament; yet the interpretation of theſe Laws ſolely belongs to his majeſty; for Mr. Bracton in the reign of H. 3. tells us, that in doubtful and obſcure points, the interpretation and will of the king, is to be expected, *Since it is his part to interpret, who made the law.* In a word, our king hath as much right by our conſtitutions as that civil law gave the Roman emperor; *Inter equitatem Juſque interpoſitam Interpretationem nobis ſolis & licet, & oportet inſpicere. L. 1. c. de Leg. & Conſtit.* or that other; *Rex ſolus judicat de Cauſa à Jure non definita.*

3. Prerogative.

Power of calling and aſſembling Parliaments.

Jus convocandorum comitiorum.

THE king is armed with divers councils, of which the court of parliament is the higheſt and moſt tranſcendent, conſiſting of the kings moſt excellent majeſty, ſitting there as ſupreme head, in his royal politick capacity, and of (*a*) three eſtates, the lords

(*a*) for in our laws, the clergy, nobility, and commonalty are three eſtates. We your ſaid moſt loving, &c. Subjects, viz. The lords ſpiritual and temporal, and the commons, repreſenting your three eſtates of your realm of England. 1 Eliz. c. 3. The clergy being one of the greateſt ſtates of this realm. 8 Eliz. c. 1. This court conſiſteth (ſays Coke in 4. Inſt. f. 1.) of the king, &c. and of the three eſtates of the realm. Of the lords ſpiritual and temporal, and commons.

ſpiritual, the lords temporal, and the commons of the realm, the calling and aſſembling of which three eſtates, is a part of the ſupreme power or regal prerogative, inſeparably annext to the ſacred perſon of the king; on whoſe royal pleaſure, as the convoking, ſo the appointment of time and place for the holding of parliaments, their prorogation, adjournment, continuation, diſſolution, do ſolely depend.

Co. Lit. 110. a Co. 4. Inſt. f. 6. &. 28. 16 Car. 1. c. 1.

The authorities intended for the proof of this prerogative, are theſe:

None can begin (ſays Coke) continue, or diſſolve the parliament, but by the king's authority.

In the reign of king Charles the firſt, it was declared, that the appointment of time and place for the holding of parliaments, hath always belonged, as it ought, to his majeſty and his royal progenitors.

16 Car. 2. Regis.

In the reign of Charles 2. It is acknowledged, that it is a prerogative inherent to the imperial crown of England, the calling and aſſembling of parliaments.

Co. 4. Inſt f. 46. Rot Parl. 1 H. 5. num. 26.

Note, as all commiſſions concerning the adminiſtration of juſtice, do determine by the demiſe of the king, ſo upon his deceaſe, a parliament then in being, is abſolutely diſſolved; yea, though an act of parliament be made, that the parliament ſhall not be diſſolved, but by act of parliament, as the ſtatute 16, 17 Car. 1. c. 7. Which parliament is declared to be diſſolved upon the death of the royal martyr. Vide 12 Car. 2. c. 1. and 13 Car. 2. c. 1. By 6. Ann. c. 7. it is declared that the parliament ſhall not be diſſolved by the death of her majeſty, or her ſucceſſor; nor the privy council, officers civil and military &c. diſcharged, but to act and continue in their offices for ſix months, unleſs prorogued or diſcarded by the ſucceſſor. So that this act ſtill leaves the royal prerogative in its full force, by not preſuming abſolutely to determine all offices on the demiſe of the ſovereign, but leaving the ſovereign next in ſucceſſion the option whether he will determine them or not.

4. Prerogative.

Power of life and Death.

Poteſtas vitæ ac necis.

JUSTICE and mercy (the brighteſt ſtars in the ſphere of majeſty) are incidents inſeparable to an imperial throne. The exerciſing the ſword, as well as of calling parliaments; of puniſhing, rewarding, and pardoning, as well as reigning, is a prerogative inherent to the crown of England.

The authorities for the proof of this prerogative are theſe.

Lib. 3. c. 8. de Corona.

Rex (ſays our *Bracton*) *poteſtatem habet judicandi, de Vita, & Membris, vel tollendi Vitam, vel concedendi.*

Fleta lib. c. 16.

Vita & Membra hominum ad tuitionem, vel ad pœnam cum deliquerint, in poteſtate Regum ſunt.

9 Ed. 4. 2. a.

A Cheſcun Roy, per reaſon de ſon office, il appent a fair juſtice en execution des Leyes, Grace, en granter pardons, &c.

Inter leges Edvardi Lambard. fol. 143.

Jam ſi quiſpiam rei capitalis, reus propoſcerit regis miſericordiam pro foris facto ſuo timidus mortis, vel membrorum perdendorum poteſt ei lege ſuæ dignitatis condonare, ſi velit etiam mortem promeritam.

But it is to be underſtood, as indeed the ſtatue of 2 E. 3. c. 2, explains it, that no charter for murder, *&c.* is to be granted, but where one killeth another in his own defence, or by miſadventure: and by the ſtat. of 14 E. 3. c. 15. it is further explained and promulgated, "that no pardon of the death of any man to be granted, or other felony, but where the king may do it, conſiſtent with his coronation oath; and by 16 R. 2. c. 9. the king thought proper to notify and declare, that where the offence is found wilful murder, no pardon is to be allowed, and in appeal of death the king will not pardon."

By the ſtatute of 27 H. 8. c. 24. It is declared, that no man can pardon treaſons, murders, man-ſlaughters, or any kind of felonies, but the king only.

Zo. pars 4. ſect. 4. de jure principis.

With our law doth concur the civil law, *ad majeſtatem ſpectat poteſtas vitæ ac necis, cum ſolus princeps primario habeat jus gladii; unde pœna minui, & reſtitutio in integrum concedi duntaxat a principe poteſt.*

5. Prerogative.

Power of reſtoring infamous perſons to their former Credits.

Jus infames famæ reſtituendi.

ALthoug the poet tells us, *pœna poteſt redimi, culpa perennis erit*, pardon may diſcharge a man of puniſhment, but the ſcandal of the offence remains; yet in our law, when the king doth grant a pardon to any ſubject, for an offence perpetrated againſt the dignity of the crown; the king by that pardon, doth not only take away the puniſhment, but likewiſe cleareth the perſon of the crime and infamy in which no private man is intereſted, but the common-wealth, of which the king is the head, and in whom all general injuries reſide, and to whom the reformation of all public wrongs doth appertain; and therefore, a man can no more call another thief or traitor, after a general or ſpecial pardon, than to ſay, a man is a villain, that is manumized.

In proof of this prerogative, this authority may be produced.

Hobart's Reports, Cuddington v. Wilkins f. 67, 81, 294.

An action of the caſe was brought, for calling a man thief; the defendant juſtified, alledging, that the plaintiff had ſtolen ſomewhat: the plaintiff replied, that ſince the ſuppoſed felony, the general pardon in the 7th. year of the king was made, and makes the uſual averment to bring himſelf within the pardon; upon which averment the defendant demurred, and it was adjudged for the plaintiff: for the whole court were of opinion, that though he were a thief once, yet when the pardon came, it took away not only *pœnam* but *reatum:* for felony is *contra coronam & dignitatem regis.*

To ſhew further, the force of the king's pardon, I will ſubjoin this caſe, *viz.*

2 Ed. 3. Cor. 134. Co. 3 inſt. fol. 237.

If in an appeal of felony, the defendant doth offer trial by battle; the plantiff may counter-plead it, by ſaying, that the defendant being apprehended, eſcaped or brake priſon, which preſumes a guiltineſs: now, if the king pardon the breaking of priſon, the counter-plea fails, and the defendant ſhall be reſtored to the battle: and yet the reaſon of the preſumption

ſumption of the guiltineſs is the ſame after the pardon, as it was before. But the reaſon of the caſe is, that the king's pardon doth not only clear the offence itſelf, but all the dependencies, penalties and diſabilities incident unto it, and that againſt the appellant.

That his majeſty hath power not only to confer grace, but alſo to deliver ſubjects from the reproach of their former miſcarriages: let the reader look into the ſtatutes of 12 Car. 2. c. 11. 13 Car. 2. c. 1.

---

6. Prerogative.

Power of creating Magiſtrates.

Poteſtas conſtituendorum magiſtratuum ad juſtitiam expediendam.

ANnexed to the ſovereignty of England, is the right of judicature, of hearing and deciding all controverſies; for this kingdom (as all other kingdoms in their conſtitution) is with the power of juſtice, according to the rules of law and equity, both which being in the king as ſovereign, were ſettled in ſeveral courts, as the light being firſt made by God, was after placed in the great bodies of the ſun and moon; and therefore the lord chancellor, (or lord keeper) the judges of the realm, and all other juſtitiaries, are but miniſters to his majeſty, who (being not able alone to manage all matters and proceedings in law) hath delegated the power of juſtice to theſe perſons to be his inſtruments; by which delegation his majeſty's power is conveyed to every place, where the virtue of it is extended.

The authorities to be produced in proof of this prerogative, are theſe:

I will begin with Bracton, (a man worthily famous for his knowledge, in the civil and common law).

Lib. 2. c. 24.

Sciendum, ſays he, *quod ipſe Dominus Rex, qui ordinariam habet juriſdictionem, & dignitatem, & poteſtatem ſuper omnes, qui in regno ſuo ſunt: habet enim omnia jura in manu ſuâ, quæ ad coronam & laicalem pertinent poteſtatem, & materialem gladium, qui pertinet ad regni gubernaculum:*

naculum: habet etiam juſtitiam, & judicium, quæ ſunt jurisdictiones, ut ex jurisdictione ſuâ, ſic ut Dei miniſter, & vicarius, tribuat unicuique quod ſuum fuerit: habet etiam coercionem, ut delinquentes puniat, et coerceat. Item habet in poteſtate ſua leges & conſtitutiones, aſſiſas in regno ſuo proviſas, &c. *ipſe in propriâ perſonâ ſuâ obſervet, & ſubditis ſuis faciat obſervari, nihil enim prodeſt jura condere, niſi ſit qui jura tueatur.* The Engliſh of it is this; the king hath ſupreme power in all civil cauſes, and is over all perſons; all jurisdictions are in him; the material ſword of right belongs to him, and whatſoever conduces to peace, that the people committed to his charge may lead peaceable and quiet lives. The power of holding aſſizes is derived from him, and of puniſhing delinquents; for laws were vainly enacted if there were not ſome perſon enabled to protect us by defending them, &c.

The author of the book called the Mirror, expreſſes himſelf thus: *Judgment vient de jurisdiction que eſt la pluis grand dignity quæ appert al Roy. Juriſdiction ne peut nul aſſigner forſque le Roy. Le Roy per le authoritie de ſa dignitie fait juſtices en divers degrees, & limit a cheſcun poiar.*

Cap. 4. ſect. 2. & ſect. 4.

King E. 1. in the beginning of his book of laws, called Breton, declares, *that he is God's vicegerent, & that he hath diſtributed his charge into ſeveral portions,* confeſſing himſelf not able alone to hear and determine all the complaints of his ſubjects.

Non poteſt aliquis (ſays Fleta) *judicare in temporalibus niſi ſolus rex, vel ſubdelegatus*

Lib. 1. c. 17

All commencement, tout L' adminiſtration de juſtice fut en une main, viz. *en le corone, donques, apres multiplication de peuple, adminiſtration de juſtice fut devide,* &c.

12 H. 7. 17. b.

The king himſelf is *de jure* to deliver juſtice to all his ſubjects, and becauſe he himſelf cannot do it to all perſons, he delegates his power to his judges, who have the cuſtody, and guard of the king's oath.

Co. lib. 12. caſe of conſpiracy, f. 25. Brad. againſt Atw. p. 28, and 46.

It is enacted by 27 H. 8. c. 24. That no perſon of whatſoever condition, ſhall have any power to make any juſtices of the peace, or juſtices of goal-delivery; but all ſuch officers ſhall be made by letters patent, under the great ſeal, in the name and authority of the king and his heirs, in all ſhires, counties, counties palatine,

palatine, and other places of the realm. This act is a recontinuance of liberties taken from the crown.

Sine warranto juriſdictionem nemo habet, ſaith Bracton; nor can any one appoint a ſubſtitute under him, but every judge is bound to officiate *propriâ perſonâ*, the juſtice in eyre only excepted, and that by a particular ſtatute for particular reaſons there expreſſed.

With our laws agrees the law imperial, *ad curam principis magiſtratuum creatio pertinet non ad populi favorem in L. vinc. F. ad legem amb.*

Creatio magiſtratuum (ſays Zonarius) *maxima pars eſt imperatorii muneris.*

7. Prerogative.

Power of making War, and the ſole diſpoſition of the Militia.

IT is the office of the king to defend, and by arms to protect his people; and the power of war, as the power of the ſword, is a branch of his imperial authority; and that no way impartible to any perſon but either to the king himſelf, in whom reſides the ſupreme power, or to thoſe that are commiſſionated by him.

Jus belli ſuſcipiendi.

Authorities in proof of this prerogative are theſe:

Wars make aliens enemies, and *bellum indicere* belongeth only to the king.

Co. lib. 7. Calvin's caſe.

No ſubject can levy war within the realm, without authority from the king, for to him only it appertaineth.

Co. 3. Inſt. f. 9. F. N. b. f. 113. a.

The prelates, earls, barons, and commonalty of this realm declared, *That to the king it belongeth, and his part it is, through his royal ſignory ſtraitly to defend by force of arms, and all other force againſt his peace at all times, when it ſhall pleaſe him, and to puniſh them which ſhall do contrary, according to the laws, and uſages of this his realm.*

Co. lib. 9. Wiſeman's caſe. An. 7. E. 1.

And accordingly in parliament, in after times, the king alone did iſſue his proclamations, to prohibit

bearing of arms by any perſon, in or near the city, where the parliament was, excepting ſuch of the king's ſervants, as he ſhould depute, or ſhould be deputed by his commandment, and alſo excepting the king's miniſters.

And this power of raiſing forces to be ſolely in the king, is ſo known, and inſeparable a right to the imperial diadem; that when in the reign of H. 8. there being a ſudden rebellion, the earl of Shrewſbury, without warrant from the king, did raiſe armies for the ſuppreſſion of it, and happily ſuppreſſed it; yet was he forced to obtain the royal pardon.

If any levy war to expulſe ſtrangers, to deliver men out of priſons, to remove counſellors, or againſt any ſtatute, or to any other end, pretending reformation of their own heads, without warrant from the king, this is levying a war againſt the king, becauſe they take upon them royal authority, which is againſt the king.

Co. 3. Inſt. 160. 11. H. 7. 22. If any perſon by mutual aſſent, do uſe juſts, or turnaments, or play at ſword and buckler, or any other deeds of arms, and the one killeth the other, this is felony, becauſe it is not lawful to uſe them without the king's licence.

Britan. c. 20. Co. Litt. 5. a. Co. 2. Inſt. 30. Co. 3. Juſt. 201. No ſubject can build a caſtle or houſe of ſtrength imbattelled, or other fortreſs defenſible, without licenſe from the king. Although theſe authorities aforeſaid are ſufficient to demonſtrate to the reader, that by the laws of the land, the power of raiſing forces or armies, or levying war, for the defence of the kingdom, or otherwiſe, hath always belonged to the king, and to him only; yet I will add one authentique evidence more, and it ſhall be the ſtatute of 13 Car. 2. c. 6. which is not a conſtitutive law, but an act declarative, not introductory of a new law, but declaratory of the old fundamental laws of this realm in this point of prerogative.

13 Car. 2. c. 6 vide 14 Car. 2. c. 3. In the reign of Charles 2. it was declared, that within his majeſty's realms and dominions, the ſupreme government, command and diſpoſition of the militia, and of all the forces by ſea and land, and all forts and places of ſtrength is, and by the laws of England, ever was the undoubted right of his majeſty, and his royal

royal predeceſſors, kings and queens of England, and that both or either of the houſes of parliament, cannot or ought to pretend to the ſame, nor can, nor lawfully may raiſe or levy any war offenſive or defenſive, againſt his majeſty, his heirs, or lawful ſucceſſors.

Note, that the kings of this realm ſtill uſed to refer cauſes petitioned in parliament, to the proper places of cognizance and deciſion; but for matter of war and peace, the kings ever kept it in *ſcrinio pectoris*, in the ſhrines of their own breaſts, aſſiſted and adviſed by their council of ſtate. As for example:

In the 4th year of Ed. 3. the commons petitioned, that the king would enter into certain covenants and capitulations with the duke of Brabant; in which petition, there was alſo inſerted ſomewhat touching a money-matter; the king's anſwer was, that for what concerned the monies, they might handle it, and examine it; but touching the peace, he would do as to himſelf ſeemed good.

In the ſecond year of K. R. 2. the merchants of the ſea-coaſts, did complain of divers ſpoils upon their ſhips and goods by the Spaniards. The king's anſwer was, that with the advice of his council, he would procure remedy.

In 50 Ed. 3. The merchants of York petitioned in Parliament againſt the Hollanders; and deſired the Dutch ſhips might be ſtayed both in England and at Calais. The king's anſwer was, let it be declared to the king's council; and they ſhall have ſuch remedy, as is according to reaſon. I will add one more, and that is a very remarkable precedent; and it is in 17 R. 2. This king made offer to the commons in Parliament, that they ſhould take into their conſiderations matters of war and peace then in hand. The commons in modeſty excuſed themſelves, and anſwered: *the commons will not preſume to treat of ſo high a charge.* The reader may ſee more of theſe matters in ſir Francis Bacon's Reports in the houſe of commons, of ſpeeches delivered by the earls of Saliſbury, and of Northampton, and at a conference, touching the petition of merchants. Parl. 5. Jacob.

Agreeable to our laws is that which the doctors of the imperial law aſſert, *viz. In communione militari primus eſt, & ſupremam poteſtatem obtinet imperator;*

nam poſt quam lege regia, populus in imperatorem omnem ſuam poteſtatem contulit, ad ipſum etiam belli & pacis arbitrium devolutum eſt.

In the Codes of Juſtinian, is extant the conſtitution of the emperor's *Valentinian & Valens*; *nulli prorſus nobis inſciis, atque inconſultis, quorum libet armorum movendorum copia tribuatur.* Agreeable to which is that of St. Auſtin: *Ordo naturalis mortalium paci accomodatus hoc poſcit; ut ſuſcipiendi belli authoritas atque conſilium penes principes ſit.*

---

8. Prerogative.

Power of making leagues and truces with foreign Princes.

Fœderum percuſſio penes regem.

AS it appertaineth to his majeſty, to provide that peace be continued in the heart of his empire, and that things contrary to public quiet be by foreſight prevented and avoided; ſo it is inherent to his royal dignity, to procure amity, to make leagues and truces with foreign ſtates, and to maintain them, by preventing whatſoever may tend to the violation of truce and ſafe conduct.

The authorities for proof of this prerogative are theſe:

Co. lib. 7. Calvin's caſe.

Leagues between our ſovereign and others, are the only means to make aliens friends; *& fœdera percutere*, to makes leagues, only and wholly pertaineth to the king.

2 H. 5. c. 6.

To the king only it belongs to make leagues with foreign princes.

19 E. 4. 6. Co. 4. Inſt. f. 152.

Brian held, that if *all* the ſubjects of England would make war with any king in league with the king of England, without the aſſent of the king of England, that ſuch a war was no breach of the league.

All addreſſes of ſtate are made to our kings without any obligation to bind the crown to communicate any thing to any of the members of the great council, privy council, or common council, much leſs to either of the miniſters

miniſters of ſtate, whether ſecretaries or not, however ſworn to ſecrecy and truſt. Nor requires there a more pregnant inſtance of the king's inherent and determinate prerogative in this point, than that *verbal order* of Henry 8. to the lord Grey, governor of Bullen in France, who, upon a diſpute about demoliſhing a fort, the French were then erecting by the name of Chaſtilon's garden, contrary to the ſenſe of all the lords of his council expreſſed *in ſcriptis* on their part, and on the king's part formally confirmed by an order delivered out in his *own letters*, did nevertheleſs by a verbal commiſſion only, privately whiſpered to lord Grey, juſtify that nobleman in flinging down that work, which act was a manifeſt breach of the peace with the French, and conſequently would have been a capital crime in the governor, had not the kinghad an inherent power in himſelf at all times and upon all occaſions, to break or make leagues or truces, either *per ſe* or *per deputationem.*

With our law concurs the learned Grotius, *pactione inire* (ſays he) *quæ bellum finiant, eorum eſt quorum eſt bellum; rei enim ſuæ quiſque moderator.* Lib. 3. c. 20. nu. 21.

Livy ſays, *Fœdera eſſe, quæ fiunt juſſu ſummæ poteſtatis.*

Tacitus, of the emperor: *donec referantur literæ, an paci annueret.*

Seneca: *Imperator fœdus percuſſit, videtur populus Romanus percuſſiſſe, & fœdere, continetur.*

In regnis, regnum eſt fœdus facere, ſays another.

---

9 Prerogative.

Power of ſending and receiving Ambaſſadors.

Jus mittendi legatos, ac recipiendi.

IT is the law of all countries, that meſſengers of peace, and ſuch as are employed to procure and maintain amity, ought to be defended againſt all injuries, to be ſafe and ſecure in the places where they reſide. Now who can be a competent perſon to receive ſuch negotiators, but he that can afford them ſafe conduct? and

and who can perform that, but he that hath authority to inflict penalties on thoſe that dare offer violence unto ſuch ſacred perſonages? and none can inflict puniſhment, but his majeſty, who is the ſovereign, life, and head of the law; and therefore *Jus Legationum* belongs only to the dignity and royal eſtate of the imperial crown of England.

The proofs intended for theſe prerogatives are theſe.

Cam. Eliz anno. f. 41. in Engliſh Co. 4. Inſt. f. 153. *Nulli niſi Abſoluti Principes & qui majeſtatis Jura habent, legatos conſtituere poſſunt,* (ſays Mr. Cambden) none but abſolute princes, and ſuch as have the prerogative of majeſty can conſtitute ambaſſadors.

Co. 4. Inſt. f. 155. Of ancient time, and until later days (ſays Coke) no ambaſſador came into this realm, before he had a ſafe conduct from the king: for as no king can come into this realm, without licenſe or ſafe conduct, ſo no Prorex, who repreſenteth the king's perſon, can do it.

1. H. 7. 10. a. Huſſey ſaid, that in the time of K. Ed. 4. a legate from the pope came to Calais, with an intent to come into England; but the king would not ſuffer him to come into this realm, untill he had taken an oath, that he ſhould attempt nothing againſt the king or his crown. That this was the ancient law of England, appears in our Cambden's Eliz. Anno 1561.

To receive ambaſſadors, Curtius tells us, that it was king-like.

Et priſtina quidem Regia ſpecies manebat; nam & legati gentium Regem adibant, & copiarum duces aderant, & veſtibulum ſatellites, armatique complerent.

10 Prerogative.

The power of coyning money.

THE coining of money is a prerogative of ſovereign power, and reckoned amongſt the Regalia's of the crown; hence is it, that no money can be currant, but by the king's authority; and in caſe any ſubject preſume of his own head to coin money, he incurs the heinous crime of high treaſon: and as it is his majeſty's right to make money; ſo it is his prerogative to make any foreign coin currant within his dominions, by his royal proclamation. Jus cudendi ſeu poteſtas monetandi.

The authorities to be produced for proof of this prerogative are ſuch as theſe:

It doth appertain to the king only to put a value to the coin, and make the price of the quantity, and to put a print to it, which being done, the coin is currant for ſo much. Plow. Com. 316. vide Davy's Reports le caſe de mizt monies.

The money of England is the treaſure of England, and none is ſaid to be treaſure-trove, but gold and ſilver; and this is the reaſon, the law doth give to the king mines of gold and ſilver. Co. 2. Inſt. 577.

To counterfeit the king's coin, is declared high treaſon, by 25 Ed. 3. c. 2. *de proditionibus.*

Alſo counterfeiting, impairing, &c. of the king's coin, or foreign coin made current, is made high treaſon, by the 14 Eliz. c. 3, 4. and 18 Eliz. c. 1, 7.

Reſolved, that Spaniſh ſilver was lawful money of England by proclamation, in the time of Phil. and Mary, and ſo were French crowns: for the king by his proclamation may make any foreign coin lawful money of England. This prerogative is purely imperial, and ſo uncontrolled that we find ſome of our kings have impoſed on us copper, others Tinn, and Henry 8. when at Bulloigne in France, iſſued out leather money, making it as current as ſilver or gold; nor have any of our kings at any time communicated this privilege to any of their ſubjects (though ſome of them have had even the title of KING conferred on them) but have Co. Lit. 207. lib. 5. Wade's caſe.

always

always kept this power in their own hands, as one of the great *inſeparabilia*, not to be parted with.

With our law goes hand in hand the law imperial.

Budelius de re nummaria. lib. 1. c. 5.

Jus cudendæ monetæ, niſi cui ab imperatore conceſſum fuerit, nemo uſurpato.

Monetam ſeu nummos cudere, non cujuſvis eſt, non privati, non cujuſvis civitatis, ſed ejus tantum, qui magiſtratum gerit. Id enim jus inter regalia jura cenſetur. Gothofr. *Princeps ad arbitrium ſuum, irrequiſito aſſenſu ſubditorum valorem monetæ conſtituere poteſt, quia populus, quantum ad hoc, omnem poteſtatem, & juriſdictionem in imperatore tranſtuliſſe dicitur.*

11. Prerogative.

The power of Ennobling.

Jus nobilitandi.

AS the beams of the ſun ſpread themſelves in giving light, heat, and comfort unto all living creatures without any diminution of the ſolar virtue, either in ſubſtance, courſe, or brightneſs, ſo from the ſacred power and royal authority of the kings and queens of England, all dignities do proceed; yet their own princely and ſovereign power, *in ſuâ primâ ſublimitate*, doth not ſuffer or ſuſtain any blemiſh or detriment.

Co. 4. Inſt. 243.

The proofs for this prerogative are ſuch as theſe:

From the royal dignity of the king, all other ſubordinate dignities, *tanquam lumen de lumine* are derived,

Co. lib. 12. counteſs of Shrewſbery's caſe

without any diminution.

All honour and nobility is derived from the king, as the true fountain.

Co. Litt. 165 a. lib. 12. f. 12.

The king is the ſovereign of honour and dignity, and therefore if a baron dies having iſſue divers daughters, the king may confer the dignity on him who marries any of them.

Sir Edw. Terril's caſe, 14. Caroli primi.

So in like manner, none may ſurrender, give up, tranſfer or part with the honour, degree, title, or dignation majeſty hath given or impreſſed upon him to any perſon whatſoever; but it muſt neceſſarily return to the ſame royal fountain, from which it firſt took its

it's creation, and that by matter of record; as in the caſe of a Baronet.

Co. 4. Inſt. 361. 31. H. 8. c. 10.

As it appertaineth to the king to confer titles of honour, ſo at the common law, the king by his prerogative royal, might give ſuch honour, and placing or precedance to his councellors and other his ſubjects, as ſhould ſeem good to his royal wiſdom.

Zoucheus pars 2. ſect. 2. de nobilitate

With our common law concurs the civil law: *inter nobiles primus eſt imperator, cum omnis ordo ab ipſo pendeat, ordinis cujuſque arbitrium primo eſt penes imperatorem.*

Gothofredus ad D. 2. 4. 10. 2.

Princeps ingenuum facere poteſt, poteſt & nobilem facere, & ut galli loquuntur, Il peut faire d'un villein, un chivalier.

12. Prerogative.

The ſupreme care and ſuperintendancy in Church-matters, is veſted in the King.

Jus rerum ſacrarum penes regem.

THE higheſt prerogative (ſeeing it is purely ſpiritual) is the *jus rerum ſacrarum*, to which no princes in the world have a fairer pretence than ours. For the kings of England are the only kings in all Chriſtendom, that can boaſt an originally diſtinct and national church. And though our kings never at any time exerciſed the ſacerdotal function, by performing divine worſhip in the church, yet they were from time immemorial the rightful *overſeers* (Επισκοποι) touching all eccleſiaſtical ſupremacy and juriſdiction; and accordingly took upon them to repreſs the novelties of ſchiſms and corrupt opinions, to reform the indecencies and confuſions in ſacred adminiſtrations, and to DEFEND the church of England againſt all ſacrilegious, invaſions upon her rights and revenues.

It is a groſs error to think our kings claim the title of *Defender of the Church or Faith*, from no higher æra than the reign of Henry 8. for we find it in common uſe with us, three hundred years before that reign, as appears by ſeveral writs of king Richard 2. to the ſheriffs: the old ſtile runs thus, "*Fidei cujus*

nos Defensor sumus, et volumus," nor was this a title newly assumed by Richard the 2d. for Constantine the Great, (son of Constantine Chlorus both emperors, both natives of Britain) first took the title of *Defensor Fidei*, (a thousand year before the last mentioned reign) reserving to himself and in himself, all spiritual as well as temporal power.

Matthew, (firnamed Parker) archbishop of Canterbury, a prelate of great erudition, and deeply skilled in the knowledge of antiquity, published a book in Latin 1573, where he affirms in these express words that "*Rex Angliæ olim erat conciliorum ecclesiasticorum præses vindex temeretatis Romanæ, propugnatur religionis, nec ullam habebant episcopi authoritatem præter eam quam a rege referebant. Jus testamenti probandi non habebant, administrationis potestatem cuiq. delegare non poterant.*"

Now, because the supremacy, *in ecclesiasticis*, is so nice a point as the popish faction render it, many of whom not comprehending the legality, (for who so blind as those who will not see) much less the necessity of its being intrusted with the king only; it may be reasonable to examine the matter of right by the matter of fact, as that by common usage, which our common lawyers date, *du temps d'ont il ny à de memoire an contraire*, from the authority of which age, we may conclude the practice, whatever it has been, to have gained the form and effect as well as the honour and repute of a law, according to that known maxim, *quod prius est tempore, potius est jure.*

Bracton, fol. 314. Cook sur Lit. l. 2. sect. 170. Cook sur Lit. l. 3. sect. 659.

Pass we then through those four noted periods of Christianity: 1. From the time of Cymbeline anno 156 the first professed believer in the Christian persuasion of any prince in the known world, on which account his countrymen changed his name into that of Levermawer, *i. e.* the *Great Light*; for which reason also, the Romans called him Lucius; a name (as one of our historians figuratively observes) that seems to have been written with the beams of the sun, to the intent it might be legible throughout all ages, to that of Constantine, the first Christian king, or emperor of the Romans, reckoned about a hundred and fifty years. 2. From that time till the conversion of Ethelbert, the first Christian king of the Saxons or English, supposed to be three hundred and sixty years more.

3. From

3. From that period to the time of the first king of the Norman line here, which was not so little as five hundred years more, at what time the pope first put in his claim. 4. From thence to the time he let go his hold again, which was about the beginning of queen Elizabeth's reign (whose ambassador the Romish pontiff refused to treat with) making up near five hundred years more, and if in all that long series of christianity, it shall appear by consent of all ecclesiastical writers, in all times, that our king has ever been deemed to be *papa patriæ, jure proprietatis*; *& Vicarius Dei in Regno, jure possessionis*; I hope then the imputation of heresy and schism laid upon Henry the eight by Paul the third, for taking upon him to be the supreme head of the church within his own dominions, will vanish as a result of ignorance or prejudice, and our present kings be judged in remitter to their antient right, or (as the law-books express it) *Enfin melior Droit.*

Cymbeline, otherwise Lucius, and those claiming immediately from, by, and after him, I take to be stated in a double right: *rationes fundationis, & ratione donationis.* For (as the lawyers have it) *cujus est dare ejus est disponere:* now that all the bishopricks of this isle were of Cymbeline's foundation and donative, appears by all ecclesiastical historians. And he first reduced the rudiments of the Christian Religion into practice, as divers of our ecclesiastical writers inform us, by establishing with his royal authority, archbishops and bishops in the church; instead of the Roman Flamins and Arch-Flamins, who, before his time, were the chief officers in the Paganish temples, and by this institution, the British church had the start of all other Christian churches in the world, in point of honour, as well as order, seeing it is universally allowed there is no constat of so high a title as that of Archbishop, in any of the Eastern churches at that time. Thus the first Christian canons received their sanction *ex Divinitate Principis* (as the canonists express it) till such time as that foundation laid by him was buried in the rubbish of Diocletian's persecution. After which we have no proof of any ecclesiastical polity till the time of Constantine, who, having recovered the church out of its ruins, and laid a new superstructure of his own upon the old foundation, is upon that account, both by Eusebius and Socrates

25 Assiz. pl. 4. 35 Assiz. pl. 11. 23 Edw. 3. 69. 11 Cen. 4. 50. Tit. Remit. 11.

ſtiled the Great (and it is well they called him not the Univerſal) Biſhop: his power being no leſs extenſive than his dominions; the firſt of them pointing at his power in general, calls him τῶν ὑπὸ Θεὸν Καθεσταμένων Ἐπίσκοπος; the laſt referring to his more immediate power over the clergy (for to ſay truth, he precided even in Rome itſelf) ſtiles him Ἐπίσκοπος τῶν Ἐπισκόπων, *i. e. Epiſcopus Epiſcoporum*, or, in other words, *Pontifex Maximus*.

Euſeb. vit. Conſtant. cap. 24. l. 4. Socrat. hiſt. Eccleſ.

From the time of this Conſtantine the Great, till that of pope Gregory the Great, neither heard the natives or churchmen of Britain, any thing of the church of Rome, nor they of Rome any thing of the church of Britain; nor will this aſſertion ſeem ſtrange, when we reflect, that Rome was at that time but a private dioceſs, not having credit enough to give laws even to all the churches of Italy, much leſs to impoſe any upon thoſe further off; for every perſon of literature knows that Millanees (not to mention any other) conteſted with the Romans for the precedence many years after: and as a farther and inconteſtible proof it is diſputably known, that as ſoon as Auſtin came hither, he found part of this iſle Pagans and part Chriſtians; but the latter ſeemed to him to be more inhoſpitable than the other; at leaſt, they were ſo far from ſubmitting to his legatine authority after the ignorant Pagans had owned it, that they fell from arguments to arms, and the miſſionary having no probability of ſubjugating them under his juriſdiction, baptized almoſt as many of them in blood as he did in water; but as it appeared that he brought them no new faith, ſo neither would they ſuffer him to bring in any new laws amongſt them, defending their own church ſo well with their own cannons, that neither he, nor any of the Roman community could break in upon them, or infringe their liberty in the leaſt for the ſpace of near five hundred years, when Henry the ſecond, reducing both ſtate and church under like paction of ſervitude, forced them by the laws of conqueſt to part as well from their eccleſiaſtical as civil rights; and at the ſame time they became no church, to become no people, being ſo cantonized with England, that they were no longer conſiderable; which had yet been impoſſible for him to

Sygonius lib. 9. de Reg. Italiæ dicit, non debere Ambroſianum Rom. legibus ſubjicere.

He cauſed 1200 Monks of the Britains to be murthered at one time.

to have effected, had he not at the ſame time he ſet up his own, declared againſt the pope's ſupremacy.

But to proceed to that of the Britains, to conſider the primitive ſtate of the Engliſh church, it may yet be allowed for good preſcription (and that we know is a title implies a long continued and peaceable poſſeſſion derived *ab authoritate legis)* if it can be made out that any of the Saxon kings, converted by the aforeſaid Auſtin from the time of the proto-chriſtian king Ethelbert himſelf, until the Norman conqueſt, did at any time ſo far agnize the pope's authority, as to forbear the exerciſe of any part of that ſpiritual dominion which they challenged *proprio jure*. For as it is evident that they did conſtrain as well eccleſiaſticks as laicks to ſubmit to the final determination, as well of ſpiritual as civil pleas in their temporal courts, ſo they not ſeldom made the eccleſiaſtical cenſures without, and ſometimes againſt the conſent of the biſhop, if it diſpleaſed them, even after excommunication pronounced: nor did they diſpenſe even with the offences themſelves, if they were only *mala per accidens*, and not *mala in ſe* (as the caſniſts diſtinguiſh.) Nay, they did not permit even nuns to marry againſt the uſual practice of thoſe times, and the judgment of the church, doing many other things of the like nature, which whoſo reads *M. Paris*, *Florentius Eadmerus*, &c. will find more at large than becomes the brevity I deſign; and all this they did without any exception or ſcandal, or, (to uſe Baronius his own phraſe) *ſine ullâ Eccleſiarum Labe*.

Lit. ſect. 170.

Indeed ſuch was the plentitude of their eccleſiaſtical power, that each king of them was (as the prieſt prayed at their coronation they might be) *ſicut Aaron in tabernaculo*, *Zacharias in templo*, *Petrus in Clave*; as appears by their ſeveral edicts yet extant; ſome for the better obſervation of the lord's day, ſome for the due keeping of Lent, others for the right adminiſtration of the Sacraments, the regulation of matrimony, and aſcertaining the degrees of conſanguinity, ſome for permitting divorces, others for perfecting contracts; in fine, they did whatever might become the wiſdom and honour of ſuch as had the ſole care of the church, all chriſtian obedience being enforced *providentiâ & potentiâ regis* (as Hoveden expreſſes it) or as we find it

Leg. Alfred cap. 8 p. 25. As were prieſt marriage, baſturdy, non reſidency, pluralities &c. Baronius tome 3. anno 312. N. 100. See the old formular continued till H. 6. time. Leg. alured. c. 39. p. 33. Bede lib. 3 cap. 8. Jornal, 1, 761. c. 2.

Leg. Canut, c. 7. p. 101. Leg. alured, ut supra. Hoveden fol. 410. 2 H. 4. N. 44. Bellarm. Pontif. lib. 4. Twisden eccles. jurisd. Regis. Jan. Anglor. lib. 1. pag. 85.

it in some records, *justitiâ & fortitudine regis*; for however the bishop was always joined in commission with the lay magistrate, as having in him *jus ordinis* (as some divines call it) yet this was not so much in affirmation of his ecclesiastical as for prevention of his disputing the regal authority, and to take off all clashing, *inter placita regis & christianitatis jura*, that is to say, in M. Paris's own words, *ne contra regiam coronam, & dignitatem aliquid statuere tentaret Episcoput*, who was to the king as the arch-deacon to him *tanquam oculus regis*, as the other was *tanquam oculus episcopi*.

But the greatest instance of all was, that of the investiture of the bishops by the king; who gave them the ring and the pastoral staffe, the antient emblems of supream dignity and authority, which he himself had accepted at his coronation: the first signifying the power of joining such an one to the church; the last denoting the jurisdiction ecclesiastical, in *foro interiori*, or as some term it, *in foro animæ*; but he kept the scepter in his own hand as the proper ensign of that *jus potentiæ*, or sovereign power, by which he stood particularly obliged to *defend* the church; to which king Edgar doubtless referred when he told his bishops at a genaral convocation, *ego Constantini, vos Petri gladium habetis in manibus*; and as Christ commanded Peter, as soon as he had drawn his sword to put it up again; so did he (as Christ's representative) forbid St. Dunstan (who would be thought St. Peter's) to sheath his weapon when he began to draw upon the lay magistrate, and would have been medling with those things that were Τὰ Ἐκτὸς τησ Ἐκκλησίας, forbidding any inquiry to be made, *de peccatis subditoram:* add to this that in all general councils the king himself presided *tanquam papa patriæ*; thus Ina (for I chuse to begin with him, because Baronius stiles him *Rex maximæ pius)* presided in the great synod at Winchester, *anno* 733, by the title of *Vicarius Dei*. Edgar, at another meeting gave the law to all the clergy, *tanquam pastor pastorum*; the like did Ethelred under the stile of *Vicarius Christi*; after him again Canute presided in another council at Winchester by the title of *Dei Præto* once, and another time at Southampton, under the stile of *Divini Juris Interpres*; neither was Edward the confessor behind any of them, when he made his ecclesiastical

As Socrates expresses it.

Tom. 9. anno 740. N. 14. Jornal, lib. 761. Vide Tit. GarEdgar Eadmer, 146, 16.

clesiastical laws by the title of *Vicarius Summi Regis*. These titles I have the rather mentioned to shew what divine office was esteemed to be in the king properly, who having a mixture of the priest and prophet with that of his kingship, was obliged to be solicitous, *tam de salute animarum, quam de statu regni*, as Jarvalensis expresses it; and thus our wise law-makers heretofore (not to say law-masters) who were very nice in wording all the antient statutes relating to the supremacy, have not stiled the king a spiritual person (although they knew him to be Ἐπισημονάρχης) but *persona mixta cum Sacerdote*.

Eadmer, 155, 6. Leg. Canut, l. 26. p. 106. Leg. Ed. confes. c. 17. p. 142. Leg. Inæ. in præfat. p. 1. apud Jorvalens. col. 761.

And accordingly it is well argued by Dr. South, a writer of no mean note, that his authority must be equivalent with any of those popes, at least, who were laicks at the time they were chosen to that supream dignity. For, whilst there is no qualification in their office of papacy to render them so far ecclesiastical as to consecrate any bishop personally, but that of necessity they must do it (as he notes) by their bull; it must necessarily follow, that that bull (being a deputation granted to some bishop to do the office for him) differs very little, if any thing from that of the king's commission in the like case. And if it had been otherwise understood in former times, it had been in the power of his Unholiness to have extinguished the function of bishops in any princes dominions whatever.

41. Vid. lib. intit. animadvert upon the book intit. Fanaticism Fanatically imputed to the catholic church by Dr. S.

The first pope who found out a way to supplant the king's authority *in ecclesiasticis*, by seeming to support it, was Nicholas the second, one of the most subtil of all the Roman prelates, contemporary with Edward the confessor, one of the weakest of our kings; who created a title to himself by implication, whilst he persuaded the king to accept of a bull of confirmation from him, by which granting him, *Plenam advocationem regni & omnium totius Anglæ Ecclesiarum*; he made that seem to be of grace only from him, which before was of right in the king: of which artifice his successor Gregory the seventh, took no small advantage, when he put in for a share of the supremacy with William the *Bastard*, making that *single* president the foundation of his claim. 1. *The investiture of bishops*, which I take to be that *directum dominium* held by the king, *jure patronatus*; in acknowledgement of which right, the clergy

Vid Twisden ut supra.

clergy pay him their * firſt fruits. 2. The benefit of *Annates*, which was a chief rent out of all the ſpiritualities. 3. The power of *Calling Synods*, by which he might impoſe upon the government. 4. The right of † *Receiving Appeals* to *Rome*, which overthrew all the king's courts. 5. The ſole power of ‡ diſpoſing and tranſlating biſhops, which made them his homagers and feifes. 6. The power of *altering* and *diſpenſing with Canons*. 7. The privilege of *ſending a legate* to reſide here; as a ſpiritual ſpy to detect all the ſecrets of ſtate, and be a kind of check-mate to the king himſelf.

But William the *Baſtard*, as he was a prince that was apter to invade other men's rights, than to part with any of his own: ſo finding his prerogative ſufficiently guarded by the antient laws of the land, then called The laws of king Edward, (which was not the leaſt reaſon he continued ſo many of them as he did) would by no means yield to him ſo long as he lived: his ſon William Rufus continuing yet more obſtinate, who, after the death of the aforeſaid Gregory, ſurnamed Hildebrand, would admit of no pope, but what himſelf approved of: ſo that for eleven years together there was no pope acknowledged here in England; which may be a good preſident for any churchman that ſhall hereafter hold (as ſome of their catholick doctors have as far as they durſt affirm) that there may be *Auſferibilitas Papæ*; neither would he permit appeals or any intercourſe to Rome; which when Anſelme archbiſhop of Canterbury (who was a natural Italian) attempted to bring about, he firſt rifled him and then baniſhed him: neither was his brother Henry the firſt leſs tenacious of his right, as appears by thoſe inſtructions given to his biſhops when they went to meet Calixt the ſecond at the council of Reimes; whom he forbad in the firſt place to appeal to the pope upon any grievance whatever, for that himſelf (he ſaid) would be ſole judge betwixt them. 2. He commanded them to tell the pope plainly, if he expected his antient

See Dr. Dun 43 Sermon preached on the 5th Nov. at Pauls croſs

* Firſt fruits and annates, an. 1534, 26. H. 8. c. 3. were granted to the king. † Suing an appeal to Rome is made treaſon, 13 El. c. 8. ‡ No man to be preſented to the ſee of Rome, for the dignity of biſhop, &c. 25 H. 8. c. 10.

rent

rent here, he would expect a confirmation of his antient priviledges. 3. He directed them to ſalute the pope and receive his apoſtolick precepts, *ſed ſuperfluas inventiones regno meo inferre nolite*. The conteſt between the arch biſhop Becket, and Henry the ſecond, ſhews what temper he was of; for he oppoſed both the pope and the biſhop ſo long, that they had undoubtedly caſt him out of the church, but that they feared he would not come in again: only king John, in a kind of diſtraction that was upon him, when wrackt betwixt two extreams of hate and fear, (his enemies preſſing hard upon him, whilſt his friends forſook him) to avoid being ſplit upon either rock, caſt himſelf upon the quick ſand of the pope *Innocent* the third's protection, ſubmitting to an act of pennance that ſhewed the weakneſs of his faith more than of his right, his renouncing the ſupremacy at that time, being no more to be wordered at than his renouncing chriſtianity itſelf at another time; but his ſon recover'd the ground his father loſt, when he brought the whole kingdom to reſent the indignity ſo far, as to join with him in demanding ſatisfaction of the ſame pope, and not content with a bare diſclaimer, forced the inſolen tlegate to fly the kingdom, *timens pelli ſui* (as the record hath it) neither ſtopt the parliament there, but voting that ſubmiſſion of his father a breach of his coronation oath, entered ſo far into the conſideration of the whole matter of the pope's uſurpation, as to make that ſtatute of proviſo's, which after brought in thoſe other 27 and 38 Edw. 3. and that brought on the treaty betwixt that king and Gregory the Eleventh, which after two years debate ended with this expreſs agreement, *Quod papa de cætero reſervationibus beneficiorum minime uteretur*, which dignities Henry the fourth, made no ſcruple to collate to his own uſe, notwithſtanding his being anointed with that oil which came from heaven, whoſe virtue was to incline all the princes that were inaugurated with it to be favourable to the church: his ſon Henry the Fifth (for his exemplary piety ſtiled the Prince of Prieſts) thought fit to demand of Martin the Fifth ſeveral eccleſiaſtical priviledges, which his predeceſſors had got from the kings of England at ſeveral times, and his ambaſſadors finding the pope to ſtick at it, and give them no ready anſwer, told him plainly, that the king their maſter intended to uſe his own

Walſingham hiſt. 1374. p. 184.

mind in the matter, whether he conſented or no, *Ut pote quæ non à neceſſitatis ſed honoris cauſa petat.*

In vit. H. Chichley. p. 56, 57. Edito. an. 1617.

Thus the papal power as it was interrupted in all times, ſo from this time it ſenſibly languiſhed, till it received its fatal blow from Henry the Eighth, who (if I may ſo ſay) did, as it were beat out the pope's brains with his own keys; and had he not afterward uſed violence to himſelf, by referring the point of his ſupremacy to the parliament, to be confirmed by ſtatute law, that was ſufficiently firmed before by the common law, that cannot change, he had undoubtedly been more abſolute lord of himſelf than any chriſtian prince whatever, and acknowledged head of the church, *nullis exceptionibus* (as Tacitus expreſſes it in another caſe:) but laying the burthen of that weighty queſtion of the ſupremacy upon the ſhoulders of divines, which had been better ſupported by thoſe of the great lawyers, he was perplext with many ſcruples, and in the end forced to enter the liſt in perſon, and fight the pope at his own weapon, the pen; in which combat, (by great good fortune, being a great maſter of defence that way) he had the better of it, and by the authority of his example drew many to ſecond him; ſo that his ſupremacy was afterwards juſtified by the whole convocation of divines in both the univerſities, and moſt of the monaſtics and collegiate theologiſts of the whole kingdom, four only excepted, who adventured to aſſent the pope's right.

Antiqu. Brit. Eccleſ p. 384 37.

I ſhall now obſerve by way of recapitulation and further explanation, that all the eccleſiaſtical laws of England, were not derived, nor brought from the court of Rome: for, a long time before the canon law was authorized and publiſhed (which was ſince the Norman line) the ancient kings of this realm, Ina, Alfred, Edward, Athelſtan, Edmund, Edgar, Canutus, and Edward the confeſſor, have by the advice of their own clergy, within the realm, made divers ordinances for the government, of the church of England. *Vide* our Saxon laws, by Mr. Lambard.

Vid. Davy's Rep. Le caſe de commen. la.

And ſince the coming of William the Norman, provincial ſynods have been held, and many conſtitutions have been made by William the firſt. H. 1. Ed. 1. *&c.* all which are part of our eccleſiaſtical laws to this day, unleſs

unleſs altered or repealed by ſtatute law. And therefore the kings of England from time to time in every age, have granted diſpenſations in eccleſiaſtical affairs, as we find them amply teſtified by the charters of Kenulphus, and William the Norman, ſirnamed the *Baſtard.*

Co. lib. 5. Cawdry's caſe.

Beſides, many of thoſe eccleſiaſtical laws now here in force, are not laws derived from the pope, but were extracted out of the ancient canons, as well general as national. *Vide* Davy's Reports, 72. b. 73. a Le caſe de Commenda. Anderſon's Reports, Evans and Aſcough's caſe. Co. lib. 4. Holland's caſe.

And farther; although ſome of the pope's canons, are here received (I deny they were impoſed,) and uſed in this realm, yet by ſuch an allowance, reception and uſage, they became part of the eccleſiaſtical laws of this nation: and for this cauſe the interpretation, diſpenſation and execution of thoſe canons, belong only to the kings of England and their miniſterial and judicial officers within their own dominions; and the king of England and his judges have the ſole juriſdiction in ſuch caſes, and the biſhop of Rome has nothing to do in the interpretation, or execution of thoſe laws within the king's dominions, although they were firſt deviſed at Rome, no more than the chief magiſtrates of Athens or Lacedæmon could claim juriſdiction in the ancient city of Rome, becauſe the laws of the twelve tables were brought from thoſe cities of Greece: no more ſay I, than the maſter of New Colledge in Oxford, ſhall have command and juriſdiction over King's Colledge in Cambridge, becauſe, the private ſtatutes by which King's Colledge is governed, were for the moſt part taken out of the foundation-book of New Colledge in Oxford: and certainly by the ſame reaſon the emperor may claim juriſdiction in maritime cauſes within the dominions of the king of England, becauſe we have received and admitted the uſe of the imperial laws, for a long time, for the determination of naval cauſes.

I ſay further, ſeeing ſeveral of the pope's canons were rejected by temporal princes. As for example:

1. The canon that prohibited the donation of benefices *per manum Laicum*, was always diſobeyed in England, France, Naples, and divers other countries.

2. The canon to make infants legitimate, which were born before eſpouſals, was particularly rejected in this realm; when in a parliament held at *Merton omnes comites, & barones una voce reſponderunt; nolumus leges Angliæ mutari, quæ huc uſque uſitatæ ſunt.* 20 H. 3. c. 9. Co. 2. Inſt. f. 98. Co. Lit. 245. a.

3. The canon that exempted clerks from ſecular power, was never fully obſerved in any kingdom of Chriſtendom.

4. The canon that ouſteth battle in a writ of right, was not here received.

5. The king of England and his council, did not receive the conſtitution of the biſhop of Rome, at Lyons, which excluded men twice married, or Bigamy, from all privilege of clergy.

Seeing, I ſay, ſuch canons as theſe were rejected; it is an argument undeniable, that thoſe canons or conſtitutions, had not their force from any authority which the court of Rome had to impoſe laws on the Engliſh kings; for, by the very ſame reaſon they rejected the canons above mentioned, they might have rejected all others that were received.

---

13. Prerogative.

The higheſt and laſt Appeal appertaineth to his Majeſty.

Extremæ provocationis jus.

THE dignity royal of England being not feudatory to the majeſty of any other prince, as to a ſuperior lord, but imperial, and independant; our king hath plenary power and juriſdiction, to put a final determination to all cauſes whatſoever, without provocation to any foreign potentate; and therefore from his majeſty's ſentence lieth no manner of appeal.

Doctor & Stu. lib. 2. c. 36

The proofs for this prerogative are theſe:

The king and his progenitors, kings of England, without time of mind have had authority to determine the right of patronages in this realm in their own courts, and are bound to ſee, that their ſubjects have right in that

that behalf within the realm; and in that caſe from him lieth no appeal.

At the parliament holden at Clarendon, it was enacted and declared, *that no appeals ſhould be made to the court of Rome.* 10 H. 2. c. 8.

It is declared in 24 H. 8. That the king is inſtituted by the goodneſs of God, with entire power, to yield juſtice, and *final* determination of all ſubjects within this realm in all cauſes without reſtraint or provocation to any foreign potentate of the world. 24 H. 8. c. 12.

A general prohibition in 25 H. 8. that no one ſhall be purſued out of the realm to Rome, or elſewhere. 25 H. 8. c. 19.

Our law, (ſays Sir Jo. Davis) in his preface dedicatory, doth demonſtrate the ſtrength of wit and reaſon, and ſelf ſufficiency, which hath been always in the people of the land, which have made their own laws out of their wiſdom and experience, not begging or borrowing a common-wealth from Rome, or from Greece, as all other nations of Europe, but having ſufficient proviſion of law and juſtice within the land, and have need *juſtitiam & judicium ab alienigenis emendicare.*

Note, my lord Coke ſays, that though the ſtatutes of 24 and 25 H. 8. do upon certain appeals make the ſentence definitive, as to any appeal; yet the king after ſuch definitive ſentence, as ſupreme head, may grant a commiſſion *ad revidendum*, becauſe that after a ſentence definitive, the pope, as pretended ſupreme head, by the canon law uſed to grant a commiſſion to review, and ſuch authority as the pope had *de facto*, doth of right belong to the crown, and is annexed unto it by the ſtatutes of 26 H. 8. c. 1. and 1 Eliz. c. 1. Co 4. Inſt. fo. 341.

That the laſt appeal belongs to the ſovereign power, Tacitus can tell us in the fourth book of his Annals; *Iiſque inſtantibus ad principem provocant*; and Agrippa, who ſaid unto Fæſtus, *This man might have been ſet at liberty, if he had not appealed unto Cæſar.*

14. Prerogative.

The power of Founding Colledges, Guildes, and Fraternities.

Poteſtas collegia & univerſitates inſtituendi, King is ſaid in our law never to die.

AS it is the ſole power of almighty god to create natural perſons, ſo 'tis a privilege royal in his majeſty, to found bodies politick, to give them life and being, to make them (like himſelf) immortal. Hence no corporation (be it temporal or eccleſiaſtical) can be erected within this realm to continue in ſucceſſion, and to be capable of endowments without the authority and licenſe of his moſt excellent majeſty.

The authorities to back this prerogative are theſe:

9 H. 6. 16 b. Co. lib. 4. adam's and lamberts caſe. 107. b.

The king only may grant a licenſe to found a ſpiritual corporation.

Co. 3. Inſt 202.

The pope cannot found or incorporate a colledge within this realm, neither can he aſſign or licenſe others to give temporal livings to it; but it ought to be done by the king himſelf, and no other.

Altho the baronage of England might build churches without the kings licenſe; yet could they not erect a ſpiritual politick body to continue in ſucceſſion, without the king's licenſe.

Co. 3. Inſt 202.

Any man may erect, and build an houſe for an hoſpital, ſchool, working-houſe, or houſe of correction, or the like, without any licenſe: for that it is but a preparation, and may be done as owner of the ſoil, but by the common-law, could not incorporate any of them without the royal licenſe.

49 Aſſpel. 8. le caſe de Whittawers. Coke lib. 8. f. 125. The caſe of don.

The cuſtom of London to make corporations, was held void: for the king only can do it by his prerogative.

In favour of trade, the law giveth the king power to erect Guildam Mercatoriam, a fraternity, ſociety, and incorporation of merchants.

Every body politick or corporate, be it eccleſiaſtical or lay, may commence and be eſtabliſhed three manner of ways, viz. by preſcription, by letters patents, or by act of parliament; and to any of theſe ways is the

the royal aſſent, allowance, and approbation neceſſary.

The civil law runs thus: *Neque Societates, neque Collegium, neque hujuſmodi Corpus paſſim omnibus habere conceditur. Collegia autem certa ſunt, quorum corpus conſtitutionibus principalibus conſervatum eſt.* D. 3. 4. 1. *Collegium, ſi nullo ſpeciali privilegio ſubnixum ſit, hæreditatem capere non poſſe, dubium non eſt. Cod.* 6. 24. 8.

---

15. Prerogative.

Power of diſpenſing with Politick Laws.

Jus diſpenſandi.

NO act of parliament can bind the king from any prerogative, that is ſolely and inſeparably annext to his ſacred perſon, and royal power; but that he may diſpenſe with it, by a *non obſtante*.

As for example; it is provided by the ſtatute of 23 H. 6. c. 8. That all patents made of any office of a ſheriff for term of years, or for life, in fee ſimple, or in taile, are void and of none effect, any clauſe or word of *Non obſtante*, in any wiſe put in ſuch patents to be made, notwithſtanding; yet the king by his royal ſovereign power of commanding, may command any perſon by his patent to ſerve him and the weal publick, as ſheriff of ſuch a county, for years, or for life, &c. with a ſpecial *non obſtante*, contrary to the ſtatute, which pretendeth to exclude *non obſtantes*.

2. H. 7. 6. 6. 13 H. 7. 8. b. Plowd. Com. Grendon. v. biſhop of Lincoln. 205. 6.

So none ſhall be a juſtice of aſſize as appears by the ſtatute of 8. R. 2. c. 2. in the county where he was born, or did inhabit, and yet the king, with a ſpecial *non obſtante* may diſpenſe with this law; for this diſpenſation belongs to the inſeparable prerogative of the king, viz. his power of commandment to ſerve.

8. R. 2. c. 2.

To what I have ſaid, relating to this prerogative, I will ſubjoin certain rules, by which the reader may the better diſcern for the future, the true extent and latitude of the king's diſpenſative power; that is to ſay, with what he can, and with what he may not diſpenſe. And my rules are ſuch as theſe:

1. When

1. When an act of parliament is made that disableth any person, or maketh any thing void or tortious for the good of the church or commonwealth, in this law all the subjects have an interest, and the king himself may not dispense with it (no more than with the common law. As for instance.

It was resolved by sir Thomas Egerton lord chancellor of England, and Coke upon conference with other judges, upon a question referred unto them by king James: That one sir Robert Vernon cofferer to the king, having contracted with sir Arthur Jugram for money to assign his office; and sir Arthur having obtained a grant of it from the king; It was, I say, resolved that the bargain by the statute of 5 Ed. 6.c.1.6. was void, and that the person (sir Arthur,) was disabled to take that office, as at no time during his life, he can have it, although it become void, by the death of any other officer, and a new grant be made unto him, with a *non obstante* of the statute aforesaid. Co. 1. Inst. 234. a. Co. 3. Inst. 154. Cro. 2. part 386. The king v. bishop of Norwich. Hobarts reports Roy v. bishop of Norwich f. 75.

As the king may not dispense with the statute of 5. E. 6. nor with the statutes, viz. of 3. E. 4. c. 4. of manufactures, Co. lib. 11. Monopolies f. 8. 15. R. 2. c. 3. of the admiral jurisdiction Hill. 7. Jac. Hiemaus case. 31. Eliz. c. 6. of simony Co. 3. Inst. 154. Co. Litt. 120. a. Hobart f. 75. 5. Eliz. c. 1. of knights for taking the oath of supremacy. Co. 3. Inst. 154.

2. When a statute prohibiteth any thing upon a corporal pain, there the king may dispense with the penalty. As for example, if any man transports wool beyond sea, to any other place, besides the staple, it shall be felony; in this case the king may license a man to do it, and he shall not be impeached of it, and so 'tis of all other like forfeitures given to the king, 13. H. 7. 8. b. 11. H. 7. 12. a. Vide. Co. 3. Inst. f. 74. on the statute of 5. H. 4. c. 4. touching multiplication.

3. Where a statute prohibiteth any thing upon a penalty, and giveth the penalty to the king, or to the king and informer, there the king may dispense with the

the penalty, Co. 1. Inst. 122. a. Co. lib. 11. the case of Monopolies 88. Co. lib. 7. penal laws.

4. No act of parliament can so bind the king from any prerogative that is solely and inseparably annexed to his royal person and power, but that he may dispense with it by a *non obstante*, vid. 2. H. 7. 6 b. 13. H. 7. 8. b. *Plowden's Com. Grendon v. L'eveſque de Lincolne* 502. b. Co. lib. 7. Calvin's case. Co. lib. 12. fol. 18.

5. And last rule is this, when statutes are enacted to put things in ordinary form, and to ease our sovereign of labour, those laws do not so deprive him of power, but that he may dispense with them: as for instance, the commission of tryal of pyracy upon the statute of 28 H. 8. c. 13. is good, though the chancellor do not nominate the commissioners, as that statute appoints, 4 Eliz. Dyer f. 211.

The queen made sheriffs without the judges, notwithstanding the statute of 9. E. 2. Mich. 5. &. 6. Eliz. Dyer 225. b.

The office of alnage granted by the queen without the bill of the treasurer it is good with a *non obstante* against the statute of 31 H. 6. c. 5. for these statutes, and the like were made to put things in ordinary form, and to ease the sovereign of labour, but not to deprive him of power; and therefore the king is not restrained by such laws, but his regal authority remains full and perfect as before, and he can dispense with them as king; for all acts of justice and grace flow from him. Mich. 13. & 14. Eliz. Dyer f. 303. b.

---

16. Prerogative.

General Laws bind not the King.

THE king in respect of the dignity and superexcellency of his person, is not included within general words, and therefore being not particularized in an act of parliament, is exempted out of it, be the statute in the affirmative, or negative. As for example:

Plow. Com. Berkley's case.

The ſtatute of Weſtm. 2. c. 5. which gives the plea of Plenarty by ſix months, doth not bind the king, becauſe the act is general, and the king is not named.

So by the ſtatute of *Magna Charta*. c. 11. its provided in the negative, that *Communia placita non ſequantur Curiam noſtram, ſed teneantur in certo aliquo loco*; but this doth not bind the king: for he may have a *Quare impedit*, in the kings-bench; becauſe a general act doth not extend to the king.

part Armiger v. Holland.

So the king by his prerogative, may licenſe a new biſhop to retain his parſonage in Commendam, notwithſtanding negative words in the ſtatute of 25 H. 8. becauſe not expreſly named in it.

Vide more of this kind of learning, Plowden's Com. 240. Berkley's Caſe. 4 & 5 Phil. & Mar. Dyer 155. a. Cro. 3. part. Alcough's Caſe in the court of wards.

17. Prerogative.

Judges are bound to take notice of all ſtatutes that concern the King, though they be not pleaded.

IT is due by oath, and office to watch for him, who wakes for us, *nequid detrimenti capiat Reſpublica*; and if charity begins at it ſelf, ſo ought juſtice to do, that his majeſty who granteth juſtice to all, ſhould not be wanting to himſelf, and therefore 'tis great reaſon, that the judges, who are conduit pipes and conveyances of the king's juſtice, ſhould always take cognizance of thoſe laws which advance our ſovereigns intereſt, though they be not pleaded.

In proof of this prerogative, this one authority is offered.

Co. lib. 4. Holland's caſe.

In all acts of parliament, though the matter of them contains individual or particular things; yet if they touch the king, the judges *ex officio*, ought to take cognizance: for every ſubject has an intereſt in the king, as the head of the commonwealth; and if the inferiour members cannot eſtrange themſelves of the actions

actions or paſſions of the head, no leſs may any ſubject eſtrange himſelf of any thing that concerns the king, their ſupreme head; and therefore it is, that the law accounts all ſtatutes that concern the king, general laws; and takes notice of them, though they be not pleaded.

Vide more of this learning. Co. lib. 4. Lord Cromwell's Caſe Co. lib. 8. Caſus principis 28. a. Plowden's Com. Willion v. Berkley 231.

18. Prerogative.

No length of time can weaken, alter, or defeat the Kings intereſt.

NEITHER cuſtom nor preſcription ought to exalt its ſelf againſt the kings prerogative, neither can any laws be imputed to him, becauſe it is preſumed, that his majeſty is always imployed, about the affairs of the kingdom, and has not leiſure (as ſubjects have) to look after his own particular rights and intereſts, and therefore *vigilantibus & non dormientibus Jura ſubveniunt* is a rule for the ſubject; but no preſcription or length of time, runneth againſt the king, nor can bring any prejudice to his royal rights, as for inſtance.

Cuſtom of London to retain goods pledged, till ſatisfaction be made, doth not extend to the jewels of the crown; ſo if a man hath toll or wreck, or ſtray by preſcription, this extends not to the goods of the king. 35. H. 6. 26. a. Davy's Rep. 33. b. caſe de Taniſtry.

So if lands (in which the king hath a right to enter) be aliened before the king enter, yet the king may enter into whoſe hands ſoever the lands ſhall come, becauſe *nullum tempus occurrit Regi*. Co Litt. Sect. 178. 13. H. 7. 6. 9. H. 6. 21. a.

The reader may meet with more of this kind of learning in Mirror cap. 3. Plowden's Com. f. 243. Co. lib. 6. Boſwell's caſe Co. Litt. 294. b.

19. Prerogative.

The King is Lord Paramount.

Dominus ſuper omnes.

THE Feudiſts divide lands, in which a perſon hath a perpetual eſtate, into *Feudum & Allodium*; the firſt is that which a man holds by acknowledgement of ſuperiority and attendance; the latter, defined to be land, that one poſſeſſeth in his own right, without any ſervice or duty; this laſt is a property in the ſuperlative degree, which in this kingdom ſolely belongeth to his majeſty, the lord Paramount; the fountain from which all lands were firſt derived, and to which they revert upon breach of allegiance, as commitment of treaſon, *&c.*

The authorities to be produced in proof of this prerogative, are theſe:

Bracton, Co. Lit. f. 1. b. *Prædium domini regis eſt directum dominium, cujus nullus author eſt niſi Deus*; and therefore the poſſeſſions of the king, are called, *Sacra Patrimonia*, becauſe the king hath no ſuperior, but God Almighty.

Terms of law f. 246. b. Property is the higheſt right that a man hath, or can have to any thing, which no way dependeth upon another man's curteſy; and this none in this kingdom can have in any lands or tenements, but only the king in the right of his crown, becauſe that all the lands thro' the realm, are in nature of fee, and are held immediately or mediately of the crown.

Co. Litt. 65. a. 98 a. Co. 4. Inſt. 365. Co. 4. inſt. 301, 363. All lands within this realm, (ſays Sir Edward Coke) were originally derived from the crown; and therefore the king is ſovereign lord, or lord Paramount either mediate or immediate of all, and every parcel of land within the realm.

The ſovereign lordſhip of the emperors, was thus deſcribed by Seneca, *lib.* 7. *de beneficio cap.* 3 & 4. *Omnia rex* (ſays he) *imperio poſſidet ſinguli dominio; ad imperatores poteſtas omnium pertinet, ad ſingulos proprietas: in iis eſt ſuprema poteſtas & gubernatio, non proprietas rerum ſingularum. Vide* Doctor Duck, *lib.* 2. *c.* 1. *un.* 6. *de authoritate juris civilis*, Earl of Clarendon in his ſurvey of chap. 24, of the Leviathan.

20. Prerogative.

The king for the public good, can deprive a ſubject of his right.

THOUGH, ſince the law of property hath been introduced, every man may challenge this or that to be his own, yet in caſe of public neceſſity, for the ſafety of the kingdom, his majeſty may revive that priſtine right of uſing things, as if they ſtill remained in common. This doctrine is founded upon the old rule, *Salus populi, ſuprema lex eſt*; wherefore the property of the ſubject ſhall not ſo exclude the royal dominion of our ſovereign; but that he lawfully may (in caſes of neceſſity, for the good of the commonweal) uſe his ſovereignty, and ſupereminent dominion.

As for example; when the enemy comes againſt the realm, to the ſea-coaſt, it is lawful to come upon any land adjoining to the ſame coaſt, to make trenches or bulwarks for the defence of the realm; for every ſubject hath benefit by it; and in ſuch caſes of extremity, they may dig for gravel, for the making of bulwarks; and for the common-wealth a man ſhall ſuffer damage, as for ſaving a city, or town, a houſe ſhall be plucked down, if the next be on fire: and the ſuburbs of a city in the time of war, for the common ſafety, ſhall be plucked down. And a thing for the common-wealth every man may do, without being liable to an action; and in this caſe the rule holds true, *Princeps & reſpublica ex juſta cauſa poſſunt rem meam auferre.* Co. lib. 12. f. 12, & 13. 8 E. 4. 23. 3 H. 8. 15. 21 H. 7. 27. b.

What the ſupreme power may do in caſes of neceſſity, and public danger, *vide* Mr. Roger Coke's obſervations on Hugo Grotius, page 48. And in his fourth book of Juſtice, c. 1. num. 5. Doctor Sanderſon in his Prelection the tenth *de obligatione conſcientiæ*. How the maxim, *Salus populi, ſuprema lex*, is to be underſtood, ſee Doctor Sanderſon's Prelection the tenth, throughout, and the author of that moſt learned and profound tract, intitled, *Sacro-ſancta Regum Majeſtas*, c. 16.

21. Prerogative.

Goods, in which no man can claim property, belong to the king.

THOSE things in which no man can claim property do appertain (according to nature) to the first occupant. Thus here in England of ancient time, wrecks and other casualties, as treasure-trove, waifes, strays, and such like, did belong to the first finder; but afterwards the law appointed them to the king, as sovereign and supreme head of the commonwealth.

The authorities for proof of this prerogative, are such as these:

Lib. 2. c. 24. nu. 1. *Habet rex* (says Bracton) *præ cæteris omnibus in regno suo, de jure gentium privilegia propria, quæ de jure naturali esse deberent inventoris, sicut Thesaurus, Wreccum maris, Balæna, sturgio, waivium, quæ in nullius bonis esse dicuntur; ac etiam aliæ res, quæ dominum non habent, sicut animalia vagantia quæ nullus sequitur petit vel advocat.*

Lib. 1. c. 43. Fleta thus: *Thesaurus licet inventoris erat, jam de jure gentium, regis efficitur, & alia quædam, quæ in nullius bonis esse dicuntur sicut Wreccum Maris, Balæna, Sturgio, & Waivium.*

8 H. 4. 2. b All goods in England in which no body has property, are adjudged the king's by his prerogative.

Vide more of these matters in Bracton, *lib.* 3. *Tract.* 2. *c.* 3. *nu.* 4. *Fleta, lib.* 1. *c.* 45.

22. Prerogative.

The king is the sovereign lord, and proprietor of the narrow seas.

THE king of Great-Britain, is the lord and proprietor of the circumfluent, and surrounding sea, as an inseparable and perpetual appendix of the British empire; he hath time out of mind enjoyed supreme government and jurisdiction, in prescribing laws for the preservation of peace and justice, in giving rules of navigation to such as pass through it, in exercising all manner of authority in matters of judicature, and in receiving all such profits and commodities as are peculiar to every kind of sea-dominion whatsoever.

That the king has enjoyed several super-eminent rights in the British seas, as special signs or pledges of sovereignty and dominion, shall be evidenced by records, and the marks or signs are such as these.

1. *Making laws and exercising supreme naval jurisdiction over all persons, and in all cases*

Very many foreign nations, as well as the estates of England, did in a libel or bill of complaint, publicly exhibit in the time of king Edward the first, and king Philip the Fair, before a court of Delegates, especially in that behalf by them appointed, in express terms acknowledge, that the king of England hath ever been lord not only of this sea, but also of the islands placed in it *par raison du Roialme d' Angleterre*, upon the account of the realm of England, or as they were kings of England, which truly (says our Mr. Selden) is all one, as in most express terms, to ascribe this whole sea unto them, as far as the shores or parts lying over against us.

Sir Edward Coke hath set down the record itself at large in French, which I shall not, for brevity's sake, here repeat, but only give my reader an extract of it in English. Co. 4. inst. f. 14. 21, 43.

--- Do declare, *That the kings of England by reaſon of that realm time out of mind have been in peaceable poſſeſſion of the ſovereign dominion of the ſea of England; and of the iſlands ſituate in it, by ordering and eſtabliſhing laws, ſtatutes, and countermands of arms, and veſſels, otherwiſe furniſhed than for merchandizing, and by taking ſecurity, and giving protection in all caſes needful; and by the ordering all other things, requiſite for the maintaining of peace and right amongſt all other people, as well of other ſignories as of their own paſſing trho' the ſame.*

Co.4.inſt. 144. The laws of Oleron, which (after the Rhodian laws were antiquated) have now near 500 years been received by all the chriſtian world, for regulating ſea affairs, and deciding of maritime controverſies, were firſt declared by our king Richard, at his return from the Holy Land, and by him cauſed to be publiſhed in the iſle of Oleron, as belonging to the dutchy of Aquitain.

To theſe let me add, the recognition or acknowledgment of ſea dominion of the kings of England, made by the Flemings, in an embaſſy to our king Edward the ſecond, when the ambaſſadors of Robert earl of Flanders, complaining of their goods being taken at ſea, and imploring remedy of the king of England; they ſaid more than once, that they were taken upon the Engliſh ſea, towards the parts about Crauden, within the power of the king of England, and brought into England; but that it appertained to the king of England; to take congniſance of the crime, *For that he is lord of the ſaid ſea, and the aforeſaid depradation was committed upon the aforeſaid ſea within his territory and juriſdiction; which are the words of the record.*

Rot. pat. 14 Ed. 2. Membran 26 in dorſo.

2. *Granting Licenſe or liberty to foreigners to fiſh in the Britiſh ſeas.*

We find that a licence for fiſhing hath been obtained by petition from the kings of England.

Rot. Parl. 2. R. 2. part. 2. Art. 38. in Schedula. There is a clear teſtimony of this prerogative in a record of the 2 R. 2. concerning thoſe tributes or cuſtoms, that were impoſed in this king's reign upon all perſons whatſoever, that uſed fiſhing in the ſea. The words of the record are theſe in our Engliſh idiom.

Item,

Item, *To take of every fiſher-boat that fiſheth upon the ſea of the ſaid admiralty for herrings, of what burthen ſoever it be, for each week of every ton ſix-pence.*

Moreover, it appears by a record of king H. 6. that he gave leave particularly to the French, and very many other foreigners, for one whole year only (ſometimes for ſix months) &c. *to go and fiſh throughout the ſeas at all times, and as often,* &c. But this leave was granted under the name even of a paſsport or ſafe conduct; yea and a proportion was preſcribed to their boats, that they ſhould not be above 300 tons. Rot. Franciæ 38. H. 6. Membran. 9. & 14.

Licenſes to fiſh in the Britiſh ſeas, have been alſo granted by H. 6. to the dutcheſs of Burgundy; to thoſe of Brabant by E. 4. to Philip king of Spain by queen Mary, for the Hollanders to fiſh upon the North coaſts of Ireland, for the term of twenty-one years, paying yearly for the ſame 1000 l. which was accordingly paid into the Exchequer of Ireland.

Moreover alſo, in our time (ſays the famous antiquary Mr. Selden) leave was wont to be aſked of our admiral, for the Frenchmen to fiſh for Soals in the neighbouring ſea, for king H. 4. of France his own table; as it is affirmed by ſuch who have been judges of our admiralty, and commanders at ſea of an ancient ſtanding; yea, and that the ſhips of thoſe French were ſeized, as treſpaſſers upon the ſea, who preſumed to fiſh without this kind of licenſe. Lib. 2. c. 21. Of the dominion of the ſea.

Mr. Cambden in his diſcourſe of Yorkſhire, ſaith, that no ſtranger durſt let fall a net into the ſea, till he had obtained leave of Scarborough caſtle.

In the ſeventh year of the reign of king James, this right was aſſerted by proclamation, and all perſons excluded from the uſe of the ſeas upon our coaſts, without particular licence; the grounds for this excluſion you may ſee in the proclamation itſelf. 6 to Maii anno Domini 1609.

But it may be demanded, whether other princes have ſuch right of receiving tribute for fiſhing, and other matters in other ſeas?

It is anſwered, that they have, and do at this day receive tribute of ſtrangers. At Coole, the empreſs of Ruſſia; and Wardlings and Sound, the king of Denmark; all the princes of Italy, bordering upon the ſeas do the like; as the Venetians in the Adriatique

sea; the Genoese, in the Liguſtique; the Tuſcans, in the Tyrrhene; the pope, in that which is called the Churches Sea.

3. *Granting Licenſes of ſafe Conduct to Strangers.*

Strangers (by the law and cuſtom of the Britiſh ſeas) either in coming to England, or going to any other place (without ſo much as touching upon any of his majeſty's dominions) have uſed to take ſafe conducts, and licenſes of the kings of England, to ſecure, and protect them in their voyage or paſſage; of which facts we have clear teſtimonies on records.

Rot. Franciæ 5 H. 4. membr. 11. Our Henry the fourth granted leave to *Ferrando Urtis de Sarachione*, a *Spaniard*, *to ſail freely from the Port of* London, *through our Kingdoms*, *Dominions*, *and Juriſdictions*, *to the Town of* Rochel.

It is manifeſt (ſays Selden) that in this place, our dominions and juriſdictions, do relate to the ſea flowing between.

5 H. 4. Membr. 14. When Charles the ſixth, king of France, ſent ambaſſadors to Robert the third king of Scots, to treat about the making a league; they upon requeſt made to H. 4. obtained paſſ-ports for their ſafe paſſage and *Præter-Navigation*, *Par touz nos povoirs*, *deſtrois et ſigniories*, *per Mere*, *et per Terre*, that is, through all our powers, ſtreights, and ſigniories, as well by ſea as by land.

It is (ſays Selden) worthy of obſervation, that theſe kind of letters for ſafe conduct and paſſage, were uſually ſuperſcribed and directed by our kings to their governors of the ſea, admirals, vice-admirals, ſea-captains; to wit, the commanders appointed by the king, to protect his territory by ſea, whereas notwithſtanding, we find no mention at all of any ſuch commanders, in thoſe paſs-ports of that kind, which were granted heretofore by the French king, to the king of England, when he was to croſs over into France. Letters of that kind were given to our Edward the ſecond, by king Philip the long, ſuperſcribed only thus: *Philip by the grace of God king of* France; *To our Judges and Subjects greeting*. But the reaſon is evident, why the king of England was wont to direct his letters to his commanders

Rot. Clauſ 13 Ed. 2. numb 7. in dorſo.

commanders of the ſea, and the French king at that time only to his judges, and ſubjects in general. Becauſe the king of England had his ſea-commanders throughout this whole ſea, as lord of the ſame; and therefore when he croſt over, it was not reaſonable that the French king ſhould ſecure him by ſea, it being within the bounds of the Engliſh territories. To theſe authorities, I ſhall add but one more, which is this; John king of Sweden, in that letter of his ſent to queen Elizabeth in the year 1587. deſired leave for Olavus Wormæus, a Swede, to carry merchandiſe into Spain, acknowledging that he muſt of neceſſity *Maritima Reginæ ditiones pertranſire*, *paſs through the ſea-dominions of the Queen*, which are the very words of the letter, in ſir Robert Cotton's library.

Theſe forementioned authorities do ſufficiently aſſert on the behalf of the kings of England, the dominion and poſſeſſion of the ſea, from that leave of preternavigation or paſſage, which hath been granted by them to foreigners.

4. *Impoſing and receiving Tributes or Cuſtoms, for the Guard of the* Engliſh *Sea.*

Concerning the tributes or cuſtoms that were wont to be impoſed, paid and demanded for the guard and protection of the Engliſh ſea, there are very many ample, ancient teſtimonies before and ſince the reign of the Normans; but I ſhall content my ſelf with one or two.

It is manifeſt, that the tribute firſt exacted in the reign of Ethelred by Anlaff the third, and afterwards impoſed in the time of the Engliſh Saxons, for the guard of the ſea, which was called Danegeldt, was wont now and then to be paid heretofore under the Norman kings.

It was paid in the reigns of William 1. William 2. H. 1. and king Stephen alſo. And Roger Hoveden ſaith expreſsly, that it was uſually paid, untill the time of king Stephen. Annal. Parl. 1. p. 276.

In the parliamentary records of king R. 2. we find that a tribute or cuſtom was impoſed upon every ſhip that paſſed through the northern admiralty (that is, in the ſea ſtretching it ſelf from the Thames mouth, all along the eaſtern ſhore of England, towards the north-eaſt,) for the pay and maintenance of the guard, or protection Rot. Parl. 2. R. 2. part 2. Art. 38. in Schedulâ.

protection of the ſea; nor was it impoſed only upon the ſhips of ſuch merchants as were Engliſh, but alſo by the ſame right in a manner upon thoſe of any foreigners whatſoever, no otherwiſe than if a man that is owner of a field, ſhould impoſe an annual rent for the liberty of thorowfare, or driving cattle, or cart through his field. Payment was made at the rate of ſix pence a tun, upon every veſſel that paſſed by.

Vide more of theſe matters in Mr. Selden's Mare Clauſum, lib. 2. c. 15.

5. *Preſcribing Limits to Foreigners that are at enmity with each other.*

Another evidence of the ſea-dominion of great Britain is drawn from the laws and limits uſually ſet by our kings in the ſea, to ſuch foreigners as were at enmity with each other, but in amity with the Engliſh.

About the beginning of the reign of James king of England the reſt of the chriſtian world was every where at peace, but the war waxed hot betwixt the ſpaniard and the ſtates of the united provinces by which means it happened, that both thoſe parties, being in amity with the Engliſh, did infeſt one another with mutual and very frequent depredations in the Engliſh ſeas; touching the lawfulneſs of theſe depredations divers queſtions aroſe amongſt the king's officers, in the court of admiralty; our king following the examples of his predeceſſors, did as lawful ſovereign, and moderator of the ſeas, ſet forth a proclamation, appointing certain limits upon the Engliſh coaſts, within which he ordained there ſhould be ſafe riding for both parties, with ſafe paſſage; yea, and declared that he would give equal protection to both in ſuch manner, that within theſe limits, neither might the Spaniards uſe any hoſtility againſt the united Netherlands, nor thoſe againſt them, nor the ſubjects of any nation whatſoever againſt thoſe of another, without incurring his diſpleaſure.

Procl. 1. Martis 2. Jac. an. 1604. in Rot. Pat. 2. Jac. Regis part 32.

Vide more in Selden's Mare Clauſum lib. 2. c. 32.

6. *The*

6. *The ſtriking of the Top-ſails, by every Ship of any Foreign Nation whatſoever, if they ſail near the Kings Ships.*

It is affirmed by all that are uſed to the ſeas, as a fact indiſputable, that this intervenient law, or cuſtom of ſtriking ſail, hath been very uſual to the Engliſh and other nations; and that it is very ancient, and received for near 600 years, appears by the following record at Haſtings, a town ſituate upon the ſhore of Suſſex. It was decreed by king John (in the ſecond year of his reign, or of our lord 1200) with the aſſent of the peers; that if the governor or commander of the kings navy, in his naval expeditions *ſhall meet any Ships whatſoever by ſea, either laden or empty, that ſhall refuſe to ſtrike their ſails at the command of the kings governor, or admiral, or his lieutenant, but make reſiſtance againſt them which belong to the fleet; that then they are to be reputed enemies if they may be taken, yea, and their ſhips and goods be confiſcated as the goods of enemies. And that, though the maſters or owners of the ſhip ſhall alledge afterwards, that the ſame ſhips and goods do belong to the friends and allies of our lord the king. But that the perſons which ſhall be found in this kind of ſhips, are to be puniſhed with impriſonment at diſcretion for their rebellion.*

It was accounted treaſon (ſays our Selden) if any ſhip whatſoever had not acknowledged the dominion of the king of England in his own ſea, by ſtriking ſail.

To be ſhort, that the ſtriking of ſails is done, not only in honour of the Engliſh king, but alſo in an humble recognition and acknowledgment of his ſovereignty and dominion in the Britiſh ſeas, is preſumed a point out of queſtion. Sure the French cannot doubt of it, who by ſuch a kind of ſtriking, would have had themſelves heretofore acknowledged lords of our ſea, but in vain; that is to ſay, they were much overſeen in the former age, in ſetting forth two edicts, or ordinances, to acquire and ratifie ſuch a kind of ſtriking ſail to themſelves by all foreigners, as they were in ſo raſhly challenging the ſea-dominion of the king of England.

Vide edicts in Mr. Selden's Mare Clauſum Lib. 1. c. 18. &. lib. 2. c. 26.

To

To theſe four ſpecial marks of ſea-dominion, I will add the teſtimonies in our law-books, and the moſt received cuſtoms by which the ſea-dominion of the king of England, is either aſſerted or admitted.

It muſt be acknowledged that ſome of the ancient authors of our law, after they had read through the civil law alſo, were ſo ſtrict, in following thoſe determinations word for word, which they found concerning the ſea in that law, that when they treated *de Acquirendo Rerum Dominio*, of the manner of acquiring the dominion of things, they transferred them into their own writings. From thence it is, that Mr. Bracton ſaith, *Lib.* 1. *de rerum diviſione c.* 12. *nu.* 5. & 6. *By the law of nature all theſe things are common, running water, the air and the ſea, and the ſhores of the ſea as acceſſories or dependants of the ſea. Alſo if butldings be raiſed in the ſea, or upon the ſhore, they become theirs that build them by the law of nations*; and a little after, *a right of fiſhing is common to all in haven, and in rivers.* But this very man afterwards lib. 2. c. 24. nu. 2. &. 5. f. 56, & 57, ſays, that by the kings grace and favour, *were exempted from paying tolls and cuſtoms, throughout the whole kingdom of* England *in the land, and in the ſea, and throughout the whole kingdom both by land and by ſea.*

Rot. Par. 51 H. 3. memb. 11. A freedom was granted from ſome payments to the citizens of London, *throughout the whole kingdom, as well by ſea as by land.*

Of purpreſtures (ſays Bracton) made upon our lord the king, either on land or on the ſea, or in ſweet waters, either within the liberties or without, or in any place whatſoever; by which words of Bracton is is recognized the dominion of the ſea to be as much the right of the king, as the land.

Robert Belknap, one of R. 2. his judges tells us, that the ſea is ſubject to the king, as a part of his Engliſh kingdom, or of the patrimony of the crown. His words in the Norman tongue run thus; *La Mere eſt del Legeans del Roy, come de ſon Corone d' Angleterre.* He addeth to his words (ſays Selden) in a remarkable way, *as belonging to the crown of England, or as, belonging to the royal patrimony of England*, to the end that no man might queſtion, whether the ſea belonged to the

the king by the right of the kingdom of England, or of the dutchy of Normandy, or of any other province in France.

Another alſo, that wrote in the reign of H. 3. ſaith, that of the old cuſtom of the realm, as the lord of the narrow (that is to ſay the Britiſh) ſea is bound to ſcour the ſea of pirates, and ſo it is read of the noble king Saint Edgar, that he ſcoured the ſea of pirates. St. German in his Doct. & Stud. lib. 2. c. 51.

To conclude; upon the authorities that I have here produced, to prove his majeſty's ſea-dominion, was grounded the declaration of that long parliament, *Anno* 16 and 17. Car. 2. which was in the preamble of their act thus: that the equipping and ſetting out to ſea of a royal navy, is for the preſervation of his majeſty's ancient and undoubted ſovereignty in the ſeas.

---

23. Prerogative.

The king is ſole lord of all navigable rivers.

THOUGH the king permits his ſubjects, for their eaſe and conveniency, to have common paſſage upon all navigable rivers; yet he hath as well the ſole intereſt, ſoil, ground and piſchary, as the care to redreſs all nuſances and obſtructions in ſuch ſtreams that are any impediment to navigation and paſſage, to and from the ſeas.

In proof of this prerogative, theſe authorities are producible:

It is found by commiſſion, that the river of Lee, which runneth from Ware to Waltham, and to London, is the high ſtream of the king. Dyer 117. a.

H. 8. Granted to *ſtrange-ways, totam libertatem piſcariam*, called the fleet in Abbots-bury, which is a bay, or creek in the ſea. Co. lib 7. le caſe de Swannes.

The commiſſion of ſewers, that was awarded by the king, by virtue of his prerogative royal, before any ſtatute made in ſuch caſes, extends not only to the walls, and banks of the ſea, but alſo to navigable rivers. And it is recited in the ſtatute of 25 H. 8. c. 10. That the 25 H. 8. c. 10.

the king, by reaſon of his dignity and prerogative royal, ought to provide, that navigable ſtreams be made paſſable.

27 H. 8. c. 16. Perſons annoying the river Thames, by making ſhelves, caſting dung, *&c.* incur a penalty of 5 *l.*

24. Prerogative.

Chief lord of all ports and havens.

THE king, by virtue of his prerogative royal, hath the cuſtody of the havens, and ports of this iſland, being the very gates of the kingdom. He only in his royal function, is truſted with the keys of theſe gates; he alone therefore hath power to ſhut and to open them, when, and to whom, he in his princely wiſdom ſhall ſee good.

Davy's Reports, le caſe de cuſtoms, f. 9. b. le caſe de royal piſchary, 56. l.

The king (ſays Sir Jon Davys) is guardian of all the ports and havens of the realm, which are *Oſtia ſeu Januæ Regni*; and therefore the king is *Cuſtos totius Regni*. He ought of right to ſave and defend his realm, as well againſt the ſea, as againſt the enemies.

25. Prerogative.

Power of granting letters of marque and repriſal.

THIS privilege is incident to the imperial crown of England, for the advancement of trade and commerce; and therefore, if an Engliſh merchant happen to be injuriouſly deprived of his goods by foreigners, and cannot obtain juſtice abroad, the king can grant letters of marque or repriſal to the party thus wronged, to redreſs himſelf out of the merchandizes of any ſubject of that country, to which the deſpoilers do belong.

The authority for proof of this prerogative is this:

The

The law of marque in ſome records, is called *jus regium*, becauſe by this prerogative the king, doth his liege's right: as in the parliament holden in 11 H. 4. John Cowley of Bridge-water, in his petition, prayed the king, that he might take marque or repriſal of all French goods (having no ſafe conduct of the king) to a certain value, for certain his ſhips and other goods taken by the French, in the time of the truce. The anſwer of the king was, that upon ſuit made to the king, he ſhould have ſuch letters requiſitory as are needful, and if the French king refuſe to do him right, the king will then ſhew his right.

Co. 2. inſt. f. 205. on weſt. 1. c. 23.

Vide more, touching letters of marque. 27 E. 3. c. 17. 4 H. 5. c. 7.

26. Prerogative.

Power of granting licenſes to go beyond the ſeas.

THOUGH by the law of nature every man hath his liberty to leave his native country, and to go whither he liſt; yet the rule of natural equity is to be obſerved with us, as in former times, amongſt the Romans, *viz. That it is not lawful, if prejudicial to the public intereſt*, according to the ſaying of Proculus, *Non id quod privatim intereſt unius ex ſociis ſervare ſolet, ſed quod ſocietati expedit.*

Jus peregrinandi.

The authorities produced in proof of this prerogative are theſe:

Britton perſonating the king, ſpeaks thus, *Nul grand ſeignior, ne chivalier de noſtre realm, ne doit prender chemin ſans conge noſtre, car iſſint poet le realme remainer diſgarnie de forte gent.*

c. 123. Co. Lit. 130. b.

In the tenth year of H. 2. it was declared, that it is not lawful for any arch-biſhops, biſhops, and other perſons to depart out of the realm without the king's leave; which although they have obtained, yet were notwithſtanding to ſecure the king, neither in their going, or returning, or ſtaying, to practice any thing prejudicious to his ſtate or perſon.

Co. 3. inſt. 178.

Dyer, 128. b. If the king ſends a ſpecial command, under the privy ſeal or great ſeal, to any of thoſe that are in *partibus tranſmarinis*, and have gone out of the realm without licence, that they return into the realm by a day certain, under a penalty, *&c.* And if they refuſe to come, their lands and chattels ſhall be ſeized to the uſe of the king for the contempt.

The civil law joins hands with our law in this point of prerogative; *Edixit omnibus ſenatoribns* (ſays Dion of Auguſtus) *nequis eorum peregrinaretnr extra Italiam injuſſu ſuo.*

27. Prerogative.

Power of granting liberties and franchiſes.

Jus privilegiorum concedendorum. THOSE things that we term royal privileges, liberties and franchiſes, as hundreds, leets, wrecks, waifes, ſtrays, fairs, markets, park, warren, deodans, conuſance of pleas, and the like, may be (though appendant to the crown) ſeparated from it, and tranſferred to the ſubject, by the ſpecial grace of his majeſty, from whom, and his royal predeceſſors, kings and queens of England, all thoſe fore-mentioned liberties, with divers others, now in the hands of ſubjects; were at firſt derived.

In proof of this ſame prerogative, theſe authorities are offered:

Bracton, lib. 2. c. 24 num. 2. *Ea quæ dicuntur privilegia licet pertineant ad coronam à corona ſeparari poſſunt & ad privatas perſonas tranſferri, ſed de gratia ipſius regis ſpeciali.*

39 H. 6. 40. a. The king can grant to a man a charter of exemption, that he ſhall not be put on juries.

Co. lib. 12 the preſident and council of the North. The king by his letters patents, can grant to ſuch a corporation, in ſuch a town, *Tenere placita realia perſonalia & mixta.*

Co. lib. 11 87. It is not lawful for any man to erect a park, chaſe, or warren, without a ſpecial licenſe from the king, who is *pater patriæ*, and head of the commonwealth.

In hoc rex Anglorum (ſays Cowel) *legibus eſt ſuperior, quod privilegia pro arbitrio ſuo, dum tertio non injurioſa, perſonis ſingulis vel etiam municipiis aut collegiis concedere poſſit.* Caſe de Monopolies Co. 2. inſt. 190. Inſt 1. 2. 5.

28. Prerogative.

To the king belongs the cuſtody of Idiots and Lunaticks.

Cura amentium. IF we look into the laws of nature, we ſhall find that none are capable of dominion, but thoſe that have the exerciſe of ratiocination; however human laws have introduced a cuſtom in favour of Idiots, Lunaticks, and the like, ſo that they now are capable to have and enjoy, though not to order and diſpoſe of their properties; the diſpoſal of their properties belongs unto the king, who hath the ſupreme care of all his ſubjects in general, to defend their perſons and eſtates, from all manner of violence, uſurpation and oppreſſion, *a multo fortiori*, it is a duty in the king to defend and protect the properties and perſons of thoſe that are natural fools and madmen.

In proof of this prerogative take theſe authorities:

17 E. 2. c. 9 & 10. The king by his prerogative, ſhall have the cuſtody of the lands of Idiots, finding them and their families neceſſaries, *&c.* and after the death of ſuch Idiots, rendering the eſtates to the right heir.

This is by Statute; and by the Common-law, the king has the cuſtody of the body, goods and chattels of Idiots, after office found; but we muſt here make a diſtinction; for if a perſon hath once underſtanding, and becomes a fool by chance or misfortune, the king may not have cuſtody of him. And with reſpect to Lunaticks properly ſo called, the king hath only the *guardianſhip* of their lands, but not the *cuſtody* of their lands or bodies.

Hob. Rep Colt. and Glover verſus bian ſhop of The eſtates and perſons of Idiots and Lunaticks, are by the law intruſted to the king.

If an Idiot (ſays Coke) make a feoffment in fee, he ſhall in pleading never avoid it, by ſaying that he was

Coventry and Litchfield, 155. Co. Lit. 247. a.

an Idiot, at the time of the feoffment, and ſo hath been from his nativity, but upon an office found, the king ſhall avoid the feoffment for the benefit of the Idiot, whoſe cuſtody the law giveth the king.

---

29. Prerogative.

To a thing that may be of profit to the common people, the king can charge them without aſſent of the commons.

THOUGH the king (whoſe authority over his ſubjects is not only royal but politic) can neither change laws, nor charge his ſubjects with ſubſidies, &c. without their conſent, yet his majeſty can charge them at his pleaſure, with ſuch things as may be of profit and benefit to the common people.

As for inſtance:

Co. lib. 12 f. 33. Le caſe de cuſtoms. 13 H. 4. 14. b. Cro. 1 part Heddy, v. Wheeler. 559.

The king may for the benefit of the ſubject, make an impoſition or toll, within the realm, to repair highways, bridges, and to make walls for defence.

The king may grant a fair, and that toll ſhall be paid, although it be a charge upon the ſubject, becauſe his ſubjects have benefit and eaſe by ſuch fairs.

Vide more, 40 E. 3. 17. b. 18. a. 13. H. 4. 14. b.

---

30. Prerogative.

Nothing that is incident to the crown ſhall paſs from it, without expreſs and determinate words.

TO make men watchful in their affairs, and to put a period to many queſtions, about the conſtruction of words; it is moſt agreeable to reaſon, that every man's words ſhould be taken ſtrongeſt againſt

againſt himſelf; but this rule hath its exception in reference to the king, whoſe words ſhall always be taken moſt advantagious for himſelf; becauſe the king is the ſole conſervator of the law, which is the commonwealth, and becauſe he is the ſupreme head, the law hath a more favourable eye to his rights, and will not permit any of them to paſs from the crown without expreſs and determinate words. As for example:

2 H. 7. 7. a.

If the king grant all amerciaments, royal amerciaments do not paſs.

Co. 2. Inſt 512.

The fine *pour congè d' accorder*, doth belong to the king, in ſo high a degree of prerogative, that it paſſes not by his general grant of all fines.

Co. lib. 1. Alton-wood's caſe. Davy's reports le caſe de cuſtoms. f. 17. 8 H. 4. 2.

It is adjudged, that by the grant of all mines in ſuch a ſoil, although that the grant be *ex certa ſcientia & mero motu*, mines royal of gold and ſilver ſhall not paſs; but the words [Soil and Mines] ſhall be taken in a common ſenſe, and to a common intent; but to have them paſs from the king, they ought to have ſpecial words.

The king grants to me the chattels of felons and fugitives; for what offences ſoever, I ſhall not have the goods of one that ſtands mute: for theſe are forfeits for contempt, and this grant ſhall be taken ſtrictly, becauſe it ruſheth upon the king's prerogative.

---

31. Prerogative.

Power of Denizating Aliens.

Jus denizandi.

THE law eſteemeth denizating of Aliens a point of high prerogative, annexing it individually to the ſacred perſon of the king, who by virtue of this royal preheminence, can make letters of denization, to whom, and how many he pleaſeth, enabling them to ſue in any action real or perſonal, and can make them capable of enjoying the laws, liberties, and inheritances of this realm, in ſuch ſort, as any natural born ſubject.

In proof of this prerogative, theſe authorities are offered:

A Den-

9 E. 4. 8. a. Co. Lit 129. a. Plowd. Com. Berkley v. Thomas. 130 b. Co. Lit. 129. a.

A Denizen is one that is infranchiſed by the king's letters patents, by which the king doth grant unto him, *Quod ille in omnibus reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noſter infra dictum Regnum noſtrum Angliæ oriundus, & non aliter, nec alio modo.*

The king may make a particular denization, as he may grant to an Alien, *Quod in quibuſdam Curiis ſuis Angliæ, audiatur ut Anglicus, & quod non repellatur per illam exceptionem quod ſit Alienigena. & natus in partibus, tranſmarinis*, to enable him to ſue only.

Co. Litt. f. 274. b.

The king can denizate an alien for life, in tail, or upon condition ſubſequent or precedent.

N. 78. 5.

Civil law: *Antoninus pius multis é peregrinis Jus Romanæ Civitatis dedit.* Thoſe that were aliens of another nation, were received into the Roman album, and made citizens of Rome.

---

32. Prerogative.

Right of Tribute.

Jus Vectigalium.

TRIBUTE is only due to him, in whom reſides the ſuperiority majeſtatical, and therefore a prohibitation to pay it to Cæſar, is an uſurpation on ſovereign power; and if there be a refuſal to render it, 'tis an affront to God, and a violation of humane laws; for tribute and cuſtoms are due to his majeſty by the law of God, the law of nations, and by the laws of the realm.

1. *By the Law of God.*

Rom. c. 13. v. 7. Mat. c. 22 v. 2. Mar. c. 12. v. 17.

St. Paul ſpeaking of the higher powers, enjoineth ſubjects, to render to all their dues, tribute to whom tribute, cuſtom to whom cuſtom, and this injunction is grounded upon good authority; for we find that our bleſſed Saviour himſelf taught, that we are to render to Cæſar the things that are Cæſar's.

2. *By*

2. *By the law of Nations.*

Cicero in his epiſtles tell us, that *Imperium ſine vectigalibus nullo modo eſſe poteſt. Neque Quies* (ſays *Tacitus*) *gentium ſine Armis, neque Arma ſine ſtipendiis, neque ſtipendia ſine Tributis habere queunt.*

3. *By the Laws of the Realm.*

Plowd. Com. Le. Caſe de Mines.

It is (ſays Plowden in his commentaries) the office of the king, to preſerve his ſubjects in peace, and their preſervation doth conſiſt, in the due execution of the laws, and in armour to defend them againſt all hoſtility; now armour cannot be had, nor juſtice maintained without treaſure, and no treaſure without tribute and cuſtoms; hence it is, that in all caſes where the king is put to expences, in diſcharge of his royal office, for the protection of the ſubject; the law yieldeth out of the thing protected ſome profit towards the maintenance of that charge, as for the upholding of courts of juſtice, the law giveth the king fines, and the like; for the ſafety of merchants upon the ſeas, cuſtoms, priſage, butlerage, tunnage and poundage, are to the king always allow'd to wage war with a foreign enemy, and to ſuppreſs rebellion, and inſurrections at home; the king in parliament may levy aids and ſubſidies, but without the royal aſſent and authority, the order of both or either houſes of parliament for the levying of taxes, are againſt the fundamental laws of the kingdom, and ſo 'tis declared in an act made in the thirteenth year of Charles 2d. 13. Car. 2. cap. 1.

Agreeable to this uſage are the rules of the imperial law.

Vectigalia ſine Imperatorum præcepto, neque Præſidi, neque Curatori, neque Curiæ conſtituere nec præcedentia reformare, & his vel addere vel diminuere licet.

Siquis Vectigalia imponere, abſque illius Licentia auſus fuerit, Judicio Civili coercetur.

Non ſolent nova vectigalia, inconſultis principibus, inſtitui; ergo & exigi aliquid, quod illicite poſſideatur, Competens Judex vetabit et id quod exactum videtur, ſi contra Juris Rationem extortum eſt, reſtitui Jubebit. C. 4. 62 3.

33. Pre-

33. Prerogative.

To the king the higheſt and moſt eminent love, legiance and reverence of all kinds is due.

TO obey, revere, and love our prince, we are bound by the laws of God and man; diſloyalty is an affront to the higheſt, who hath delegated ſovereign power to kings and princes; for this cauſe Solomon adviſed us, to keep the king's commandment, and that, ſays he, in regard to the oath of God; but thoſe ſubjects that have not taken the oath of allegiance, are as much bound, as if they had, allegiance being connatural, written by the pen of nature in the heart of every ſubject; it is therefore indelible, * *It cannot be forfeited, removed nor circumſcribed within the four ſeas:* but ſubjects ſhall have obligations upon them of duty and loyalty in what part ſoever of the world they ſhall inhabit, and as their love and legiance flows from nature, ſo it ought to be in the higheſt degree of affection, beyond all other relations, yea life itſelf; for the public concerns were ever by loyal hearts preferred before any private intereſt; and therefore unto us, he neceſſarily muſt be dearer, from whom floweth the whole unity, and univerſal weal of the realm, His moſt excellent majeſty being the pillar † that ſupports, the ſtar that guides the ſhip of the commonwealth, the *ſpiritus vitalis* by which we ſubſiſt: for on his life depends the laws, the liberties, the properties, together with the glory of the Engliſh nation.

Co. 2. inſt. on the ſtat. of Marleb. c. 10.

Jus ſumme fidelitatis. Honora patrem, is a precept of the moral law, which doubtleſs doth extend to him that is *Pater patræ.* Co. lib. 7. Calvin's caſe. *Principi ſummi rerum arbitrium dii dederunt, ſubditis obſequii gloria relicta eſt.* Tacitus.

* Co. lib. 7. Calvin's caſe, *Ligeantia naturalis nullis clauſtris coarcetur, nullis metis refrænetur, nullis finibus premitur. Vide* Co. Lit. 129. a. 13. Eliz. Dyer 330 b. Dr. Story's caſe. Cod. 10. 38. 4. D. 50. 1. 6.

† Alexander in Curtius is called *Macedoniæ Columen & Sydus.*

To

To ſtudy therefore the preſervation of the king's perſon, to defend to the utmoſt his crown and dignity, againſt all violators of royal majeſty, ſelf-love (if not ‡ bounden duty) ſhould prompt all ſubjects whatſoever.

The authorities offered in proof of this prerogative are theſe:

In doing homage to any ſubject, this clauſe always ought to be added (*ſalve le foy, que jeo doy a noſtre ſeignior le Roy*) both becauſe there is (ſays Sir Edward Coke) *homagium ligeum*, which is due to the king only, and alſo becauſe he is ſovereign lord over all. Lit. ſect. 85,86,87.

And therefore, the reaſon a tenant is not ſworn in doing his homage to his lord is, becauſe no ſubject is ſworn to another ſubject, to become his man of life, and member; but to the king only, and that is called the oath of allegiance. Co. Lit. 68. b.

Where the king is party, one ſhall not challenge the array for favour, *&c.* becauſe in reſpect of his allegiance, he ought to favour the king more. Co. Lit. 156. a. 4 H. 7, 8. a.

To the king (ſays Coke) the higheſt and moſt eminent honour, legiance, and reverence of all kind is due. Co. Lit. 64. b.

To this prerogative, both Cicero and Seneca, give their atteſtation.

The former thus: *Eſt antiquior parens quam is, qui, ut aiunt, creaverit majori profecto quam parenti debetur gratia.* The king is Pater patriæ.

‡ That it is our duty, appears by the law of nature, the law of God, and the laws of the realm. 1. By the law of nature; Seneca of the emperor, *Somnum ejus nocturnis excubiis muniunt, circumfuſique defendunt, incurrentibus periculis ſe opponunt: nec hæc vilitas ſui eſt, aut dementia, pro uno capite tot millia accipere ferrum ac multis mortibus unam animam redimere, &c. Plutarc. Primum virtutis opus eſt, ſervare ſervantem cætera.* 2. It appears in the laws of God, 2 Sam. c. 21. v. 16, 17. cap. 23. v. 15. 16. cap. 18. v. 3. 3. In our law, it is our duty, as appears in 11 H. 7. c. 1, 18 and 19 H. 7. c. 1. Co. lib. 7. Calvin's caſe. Co. Lit. fol. 69. b. And in the ſtatutes of 1 Eliz. c. 3. and 1 Jac. c. 1. The lords and commons in parliament promiſed to aſſiſt and defend the royal majeſty, with expence of lives and fortunes.

The latter ſo, *Princeps regeſque & quicunque alio nomine ſunt tutores ſtatus publici, non eſt, mirum amari ultra privatas neceſſitudines, nam ſi ſanis hominibus, publica privatis potiora ſunt, ſequitur ut is quoque charior ſit, in quem respublica convertit.*

---

34. and laſt Prerogative.

Jus ſupplicationum.

BEING informed ſufficiently, that we are bound by our natural legiance, to obey and ſerve our ſovereign lord the king, we may, I ſuppoſe, be eaſily perſwaded, that it is our duty likewiſe to make prayers and ſupplications to God, for a bleſſing upon the ſacred perſon and government of his majeſty, to whom we owe, under God, all the peace, liberty, juſtice, property and proſperity we now enjoy.

By the ſtatutes of 2 and 3 Ed. 6. c. 1. and 1 Eliz. c. 2. and 14 Car. 2. *Regis*, is ordained an uniformity of common-prayer and ſervice in the church of England, in which office there are appointed prayers for the king, and this appointment is grounded on ſcripture, and the law of nature.

1. *On Scripture.*

The Iſraelites ſhouted and ſaid, *God ſave the king.* 1. Sam. 10, 24.

St. Paul exhorteth all Chriſtians to make ſupplications, prayers, interceſſions, and giving of thanks for all men, for kings, *&c.* 1 Tim. 2. 2.

2. *On the Law of Nature.*

Caliſthenes of king Alexander. in Curtius

Ego ſeram immortalitatem precor regi, ut vita diuturna ſit & æterna majeſtas.

Pliny in his panegyrick to Trajan.

Unum omnium votum eſt ſalus principis.

Vivat Rex.

POSTCRIPT.

HAVING apparented, that the imperial crown of England is, and was at all times *de jure*, (and I hope will be for ever *de facto*) inveſted of thoſe foremention prerogatives, I ſhall preſume to detain the reader a few moments with a curſory view of ſome other privileges and preheminences, which were originally reſerved to the crown, and are part of the common-law of England; and they are ſuch as theſe:

1. The king is not bound to offer an acquittance to a ſubject, as he is obliged to offer to the king. 2 H. 7. 8. b. — Acquittance.

2. If the king make a leaſe for term of years, reſerving rent; if the rent be in arrear, he ſhall enter without any demand of the rent; ſo ſhall not a common perſon. 2 H. 7. 8. b. Co. lib. 4. Borough's caſe. Co. lib. 5. Knight's caſe. — Demand of Rent.

3. The king can grant a thing in action, and ſo ſhall not a ſubject. 2 H. 7. 10. a. 5 E. 4. 8. — Choſe in Action.

4. The grant of the king ſhall not enure to a double intent. 2 H. 7. 13. a. Co. lib. 1. 52. a. Alton-wood's caſe. — Double intent.

5. Where a title appears from the king, the court *ex officia*, ought to award for him. And the king's title is not to be tried without warrant from the king, or the aſſent of the attorney-general. 12 H. 7. 12. a. Cro. 3. part. Yates v. Dryden. — Title.

6. The king may diſtrain for his ſervices, in other lands that are not holden of him. 5 H. 7. 39. a. 13 E. 4. 6. a. Co. 4. Inſt. f. 119. — Diſtreſs.

7. If money be paid to the king, and in his coffers, no judgment of reſtitution, as it ſhall in the caſe of a common perſon. 6 H. 7. 16. b. — Money.

Goods and chattels may go in ſucceſſion to the king, though they may not to any other ſole corporation. Finch, 83. — Goods and Chattels.

8. The king cannot be ſued, no action of covenant lies againſt him. 12 H. 7. 13. a. 2 H. 7. 3. b. 21 H. 7. 2. a. — Action.

No prescription of time runs against the king, he is not within the statute of limitation of actions. Action lies not against the king, but a petition to him in chancery in its stead.

There are no costs allowed against the king.

Election both of court and action.

9. The king may sue in what court he pleases, and cannot be nonsuit, he may make choice of his action. He need not plead an act of parliament, tho' a subject must. Co. 4. Inst. 15, & 17. 12. H. 7. 21. b. 14. H. 7. 23. b. 14. E. 4. 5. 39. H. 6. 26.

Double count or plea.

10. The king shall not be said to make a double count or plea, as a subject may. 16. H. 7. 12. b.

Disseizing

11. The king cannot be disseized or put out of possession of things permanent, or of inheritance. No entry will bar him; and no judgement is ever final against him: and in the case of others, the king may issue a command to the judges not to proceed till he is advised where his right may be prejudiced. Doctor & Stud. Lib. 1. c. 8. 2. H. 4. 7. b. Co. lib. 6. Green's case. 21. E. 4. 2. 4. E. 4. 25. Cro. 2. part the King v. Champion f. 54. Cro 1. part the queen v. Vaughan.

Entire things.

12. Where the king comes to an entire thing by act of law as attainder, or by other act of law; he by his prerogative shall have the whole. Co. 3. Inst. 55. 8. E. 4. 4. Plowd. Com. 259. b. 7. E. 4. 7. Hobart's reports 127. Cro. 1. part f. 265.

No disseizor.

13. The entring upon me, by or without title, he shall not be accounted a disseizor, or abator. 3. E. 4. 25.

Action.

14. The king shall have every action, that another can have 22. E. 4. 48.

Toll, pontage.

15. The king shall not pay toll, pontage &c. 35. H. 6. 25.

Petition.

16. A disseizor infeoffs the king, the disseizee shall not enter. Sans petition 35. H. 6. 60, & 61.

The issue tryed at bar, or by Nisiprius.

17. The king may try his issue at the bar, or by Nisiprius, at his royal pleasure, Cro. 3. part. Soutley v. Price 247.

Render en valur.

18. The king shall never render in value upon voucher. Cro. 3. part. f. 76.

19. If

Advowson.

19. If the king have but two parts of an advowson; yet he shall present alone, Hobart's Reports, chancellor of Cambridge. v. Walgrave f. 127.

Atturnment.

21. A grant to the king, or by the king to another, is good without atturnment, by his prerogative. Co. Lit. 309. b.

Kings debtor.

22. A common person shall not have execution against the king's debtor, untill agreement for the king's debt. Cro. 3 part. Stevenson's Case.

Sole founder.

23. The king is said to be founder, though another join with him in the foundation. Co. 2. Inst. 68.

Clerks omission.

24. The omission of the clerk shall not prejudice the king. Cro. 3. part. 349.

Parol.

The king may present by parol. Cro. 2. part. v. 248.

Abatement of writs.

26. If the king bring an action, and the parties die, the writ shall not abate. Cro. 2. part. Dominus Rex. v. Web. 481.

Testimony.

The king's only testimony of any thing done in his presence, is of as high nature and credit as any record: in all writs or precepts issued for the dispatch of justice he useth no other witnesses than himself, as *Teste Meipso*, &c.

King served first.

27. Though a statute be extended, yet after the king comes before the Liberate he shall be served first. Hobart's Reports. Sheffield. v. Ratcliffe. 339.

Two titles concurring.

28. When the title of the king and a subject concur, the king's title shall be preferred. Co. lib. 9. Quicke's Case. lib. 4. Le Case de wardens. 55. a Plowden's Com. Hale's Case. Co, Litt. 30. b.

Protection.

29. The king may grant a protection to protect his debtor. Co, Litt. 131 h.

Plenarty.

31. Plenarty in a Quare impedit is no plea against the king. Co. Litt, 344. b. Co. 2. Inst. 361.

Presentation to a church.

32. If the king do present to a church, and his clerk be admitted and instituted; yet before induction, the king may repeal and revoke this presentation. Co Litt. 344. b.

33. Any

Challenge

33. Any man may challenge for the king, ſhewing particular cauſe. Co. 2. Inſt. 431.

Kings debt.

34. By order of the common law, the king for his debt had exemption of the body, lands, and goods of the debtor, Co. 2. Inſt. f. 19.

Grant of a thing not in eſſe.

35. The king can grant a thing that is not in him, as he may grant, that I ſhall be diſcharged of a 15. granted at the next parliament. 6. H. 7. 5. a. 32. H. 6. 9. 35. H. 8. Dyer 56. b.

King deceived.

36. If the king be deceived in his grant, the grant is void, notwithſtanding the words, *Ex Gratiâ ſpeciali, ex certâ Scientiâ*, and *ex mero motu*, which do imply bounty, knowledge, and done without ſuggeſtion. Co. lib. 6. Green's caſe, 29. b. Co. lib. 1. 43. b. 44. a 46. a. Alton-wood's caſe.

Privilege of cinque ports, &c. avail not againſt the king.

37. The privilege of parliament, of the cinque ports, or any other place doth hold between ſubject and ſubject; but no privilege or franchiſe, in caſe of treaſon, felony, the peace, or impriſonment, can be againſt the king; and therefore to diſpute his commands is not to diſpute the juriſdiction, but the power and prerogative of the king, and his courts at Weſtminſter. Co. 4. Inſt. 25. 215. Cro. 3. part. Soutley. v. Price 24. Cro. 2. part. Bourne's caſe. Cro. 1. part. Criſpe v. Verral.

Kings palace.

38. The kings palace is a privileged place from all ſummons, and citations. Co. 3. Inſt. 141.

To come to a concluſion; the law of England hath ſo much reverence and honour for our king, that it alloweth him (as God's vicegerent on earth) almoſt divine attributes, as,

1. Immortality; the king never dies, Co. Litt. 9. b. Co. lib. 6. le caſe de Souldiers. 27. a. Co. 3. Inſt. f. 7.
2. Omnipreſence; he is ever preſent in court, 1. H. 7. 13. b.
3. Perfection; the king cannot be ſaid to be a minor, and in him the law will ſee no defect, negligence, or folly. Co. Litt. 43 ab Co. 4. Inſt. 209, & 210.
4. Omniſcience; *Rex omnia Jura habet in Scrinio pectoris ſui.* Co. Litt. 99. a.

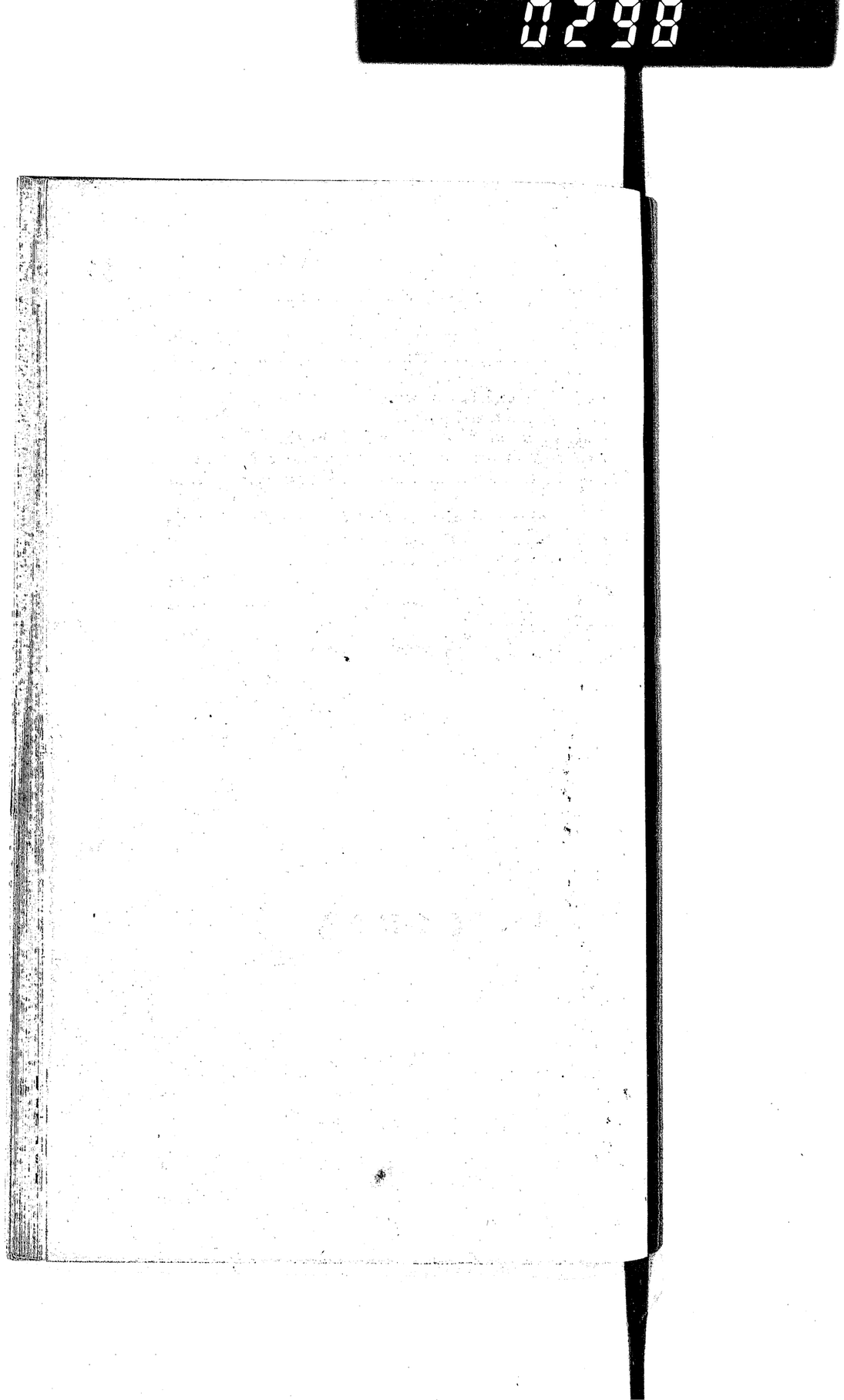
5. Truth

5. Truth and wiſdom; *Rex fallere non vult, falli autem non poteſt.*
6. Juſtice; the king can do no wrong. Co. Litt. 19. b. Co. lib. 1. 44. b. Alton-wood's caſe, Plowden's Com. 246.
7. Majeſty and ſupremacy.
8. Sovereignty and power.

And out of a dutiful reſpect to theſe ſuper-eminent and almoſt God-like attributes, it is the cuſtom of this realm as ſir Thomas Smith obſerves (lib. 2. c. 4.)

That no man ſpeaketh to the prince, nor ſerveth at the table but in adoration and kneeling: all perſons of the realm be bare-headed before him: inſomuch that in the chamber of preſence, where the cloath of eſtate is ſet, no man dare walk; yea though the prince be not there, no man dare tarry there, but bare-headed.

FINIS.


0298