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RIGHTS of the KINGDOM:
OR,
CUSTOMS
Of our
ANCESTORS.
Touching
The Duty, Power, Election, or Succession
Of our
KINGS
AND
PARLIAMENTS,
OUR
True Liberty, due Allegiance, three Estates, their Legislative Power, Original, Judicial, and Executive; with the MILITIA.

Freely discussed through

The *British*, *Saxon*, *Norman* Laws and Histories.

WITH

An occasional Discourse of *GREAT CHANGES* yet expected in the World.

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THE PREFACE TO THE READER.

READER,

IF you be wiſe and good, you are above my Epithets, and more above my Flatteries: But yet you may expect a Preface to excuſe this unexpected Addreſs. The habit is ſomewhat ſtrange, and my ſelf ſo little acquainted with it, that I can-

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not much wonder if others ſhould gaze upon it: but account me a Stranger, and you will forgive me.

It is no matter who, but what, is here preſented to your view: I cannot excuſe it, either for matter or manner. It hath much folly to my ſight; and more, I believe, than yet I ſee. It may be alſo ſomewhat falſe, although I know it not. This ſhould not prejudice all: for there are Spots above the Clouds; and the Kingdom of Heaven it ſelf was like a Field of Wheat with many Tares: How much more, how much worſe, muſt it be with a frail man!

But why then do I venture to come

come abroad? The Objection was ſtrong enough to keep me ſilent hitherto; and it may be, nothing but Duty ſhould have perſwaded or prevailed on me to be publick now: and yet I do not plead an extraordinary Call; which is a cloſe Writ, and not a Patent. Thoſe who receive and act by ſuch a Warrant, ſhould be ſure they know the Hand, or Seal, or Dialect of Heaven.

But I am an Engliſh-man; and therefore am obliged to this Country, and to theſe Laws that made me free. And this may be ſome Call; that I ſay nothing of particular Obligations to the State, in any Courts of Juſtice, or relation to the higheſt Court of Parlia-

Parliament. And why may not I believe my ſelf as free to *think*, or *ſpeak*, or *write*, as others are to *do*?

There is a Night of ſilence, and an evil Day, when every *prudent man ſhall hold his peace*; but alſo there is a time to ſpeak, and a word in ſeaſon, fitly placed, like *an Apple of gold in a Picture of ſilver*. But who knoweth his ſeaſon? for our time is hidden: and becauſe man knoweth it not, therefore is his labour increaſed under the Sun. This alſo is vanity, and a ſore vexation.

I ſaid, there are older, and wiſer, and better than I; they ſhall ſpeak and teach me Wiſdom: I will hear in ſilence. Nor do I now ſay, *They convinced him not, leſt it ſhould be*

be ſaid, We have found out Wiſdom; God thruſteth him down, and not man. Nay, they have ſpoken much; and little may be left for me, but to repeat ſomewhat already ſaid.

Be it ſo then; by this I ſhall be free: for if I ſpeak their words, I may be pardoned, as thoſe that ſpake before: And if I adde a new word, ſhall I be made *an Offender for a word?*

However, my hope is, that the Great Day of Judgment (of which we have long heard, and now ſeen ſo much before us) will have ſuch influence upon our Judgement and Affections, that we ſhall all be ready to judge our ſelves, rather than others; or if others, not with prejudice. And with this

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this aſſurance, or with this confidence, I now preſume upon your goodneſs; knowing well, that if you find but one, ſo much as one Cluſter, you will ſpare it, and be pitiful; there may be a Bleſſing in it.

RIGHTS

RIGHTS OF The Kingdom, &c.

TO ſee the Kingdoms *Rights*, the *Laws* and *Cuſtoms* of our *Anceſtors*, concerning *King* and *Parliament*; that we may know their *Power* and *Priviledge*, their *Duty* and their *Limits*, &c. and how our Fathers did commit the power of making Laws, and judging by thoſe Laws; and how they made us ſwear

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Allegiance to our King; what power they gave him over us; and what they did not give him over any of his Subjects; how we ſhould behave our ſelves, *&c.*

He that accounteth theſe unworthy of enquiry, may be thought (as the *Grecians* ſaid to the *Perſians*) not to have heard of Liberty: *Which elſe would be valued above an Enquiry.* But alas, who is able! who will undertake to trace our *Laws* and *Cuſtoms* thorough the Heights and Depths, and dark Abyſſes and Meanders of the *Britiſh*, *Saxon*, and the *Norman* Nations that have ruled here? Yet there are thouſands that may do it much better than I; and therefore I might juſtly ſit in ſilence, and expect my Antients and my Betters ſhould begin, that I might learn from them. Nor ſhould I now preſume to ſpeak, but that I might inform my ſelf from others, that by this occaſion may reform my Errours, and may clear our Laws and Cuſtoms, much more fully than I do, or can be able; who pretend to nothing but deſire of Truth and Peace.

And

And firſt, to ſpeak of the mutual obligations of Oaths between Prince and People, the School-men would be thought moſt curious, or moſt tender, in the point of Oaths: They mince them out ſo fine, that a whole million of Oaths may ſtand (as they ſpeak of Angels) on the point of a ſharp Needle.

They tell us of the *Object*, and the *Subject*, or the *Matter*; which, they ſay, may ceaſe or fail ſo much, that any man may find or make himſelf abſolved *from his Oaths.* But in things of ſuch concernment to ones Soul, I love to ſpeak or think in *Engliſh*, that I may underſtand my ſelf: and I thought it madneſs in the man that ſaid his Prayers in two or three Languages, adding this in the cloſe: *Now take thy choice; for all are alike to me: I know not my meaning in either.*

In plain Engliſh, I do not ſee I may abſolve my ſelf from an Oath, by ſaying, He was not the man I took him to be, in ſome material points, at the time of my Oath; yet this is much, and that which ſeemeth near to that which

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But can the World, (this vain and frail and foolish World,) command, controll, and over-awe my Soul, to take an Oath, *the Oath of God*, to what I think unjust? It may be so, for I am Man and frail, with those that are the weakest; for *He knoweth my foolishness*: but it should not be, and when it is, I must be very tender, lest I adde more Sin to Sin; as bad, or worse, to that which is too Bad already; For, by breaking such an Oath, I may do worse, much worse, than first I did in making it; except I Swore to sin, and then I may not keep my Oath.

And I believe the *Jews* might not have pleaded Force, or over-awing Arguments, in Swearing Homage to the King of *Babylon*; and yet 'tis known how God did charge and chasten that said Perjury; nor is it altogether inconsiderable that good *Lot's*, or at least the men of *Sodom's* freeing themselves from *Chedorlaomer*, is stiled by God himself, plain downright *Rebellion*; Yet there was another King of *Sodom*, and *Chederlaomer* seemeth but a kind of Tyrant, that had but little Right but Conquest and his Might.

The *Catholicks* may seem too free in dispensing with *Oaths* to *Protestant Kings*; but some there are with them, *Sacred* Persons: And because I

now

which the Schools speak of, want of Subject, or sufficient Matter to be ground of such an Oath.

I should have looked to that before; it may be rash, and so must be repented: but a River of Tears may never wash me from this Oath of God, as the case may stand. And so it was, I suppose, in that of the *Gibeonites*: they were not such as they made themselves, nor such as *Israel* took them for: the Oath was rash, unjust; they ought not to have sworn; they should have stayed and sought direction: for they were forbidden Leagues with such, commanded to destroy and ruine such as those men were, and might have been suspected. But when it was done, we see how strict and solemn God was still, in pressing them to keep that Oath.

Nor may it suffice to say, *I swear against my will; they had advantage of me; and I could not but comply, either with some Mental Reservation, or at least* (for that is much condem'd by most) *I am now grown wiser, and do now see I may absolve my self from that which I would not have taken, but by force or fraud.*

But

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now dispute *ad Hominem*, I shall touch on that in which we know them most Religious, Their solemn Obligation to the *Pope*; which yet is such, they will not deny, as doth not secure or free him from being *Judged*, or *Coerced* in cases of *Distraction*, *Natural* in Raving, or *Moral* in Raging, so that danger be apparent to those about him, or in some Spiritual Frenzie of notorious *Heresie* Convict (the Chair in Conclave, not the Person is exempt,) or much suspected; while himself refuseth Legal Tryal by a Council or the like. The Case is argued in *Occhams Dialogues* with others.

Our Oath of *Fealty* comes next upon the *Test*, although I might interpose (as a Parallel to the Pope) the *Jewish* High *Priest*, a very Sacred Person, and the Lords Anointed also; but yet such as must still submit to the Sentence of the Great *Sanhedrin*, nay, and that for his *Life* also if they so adjudged him; For which of the *Sanhedrins* Power over the Jewish *King*, in Criminals and in *War*, (except only what God had commanded against *Amaleck* or the seven Nations,) I might cite several clear passages from the *Talmud*, and those that expound it long before *Cochius* or *Sanhedrin*, or *Schickards Jus Regium*.

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Our Land seemeth to Mourn because of Oaths (but I must only touch the civil Part, or what is Legal,) and our Law seemeth Deficient in this of Oaths, for there is scarcely any Law (since the Star Chamber) to punish *Perjury*; but only where it is before a Court of Justice; and there also the Punishment of *Witnesses* is very light, and exceeding short of *Attaint*, on Jurors, by the Common Law.

Our Customs seem to overgoe our Laws, in much of *Oaths*, They were but *Attestations*, though most Solemn, in the Name and Presence of God, *As the Lord doth Live.*

But they are now brought to *Imprecations*, or a kind of Curse, *So help me God, and the Contents of this good Book.* Yet so it was of old at *Combat*; on Appeal; the *Appellè* did first devote himself.

Again, some force a *Kissing of a Book*: the Law requireth but a *Sight* and *Touch*. For ought I find, the *Saxon* Jurors were *Sacra Tenentes*. In the first *Norman* times, it was *Sacris Tactis*; and in later writs, *Evangelijs Tactis*; Nay, the *Priests* hand was upon his *Breast*, (in *Matthew Paris*) not upon the *Book*, and the *Villain* seemeth forbidden to touch the *Book*. The Statute saith,

he

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he ſhall hold his Hands over it, but the *Freeman* upon it ; and from this *Touch* with the *Body*, ſuch an Oath was called *Corporal*.

The *Jews* and eldeſt Chriſtians, (in their Swearing, Bleſſing, Praying,) lifted up the *Hand*, and ſometimes Bowed the *Head* or *Knee* ; for, *In his Name ſhall all Knees bow*, ſeemeth but Parallel to that of the Pſalmiſt, *In thy Name will I lift up my Hand* ; and the *Grecian* or *Trojan* Princes, lifted up their Scepters in Swearing, but others held Earth and Water, in Alluſion perhaps to the ſacred *Styx*.

Moſt, if not all publick Officers were tyed to their Dutyes, by ſome Oaths, but they were made by *Parliament*, in all Ages ; This being a Pillar in our Laws, that none can make, alter or impoſe an Oath, without an Act of *Parliament*, or Cuſtom by the Common Law.

'Tis ſtrange, how much in all we degenerate from our good Anceſtors ; So that with us to break ones Oath, (even in the greateſt Office) is but a kind of Petty *Aggravation* (as they call it) rather than a Crime ; becauſe ſuch Oaths be now accounted but meer Forms, or Ceremonious Shaddows.

But it was not ſo, *ab initio* ; and among other Prece-

Precedents, I find the old *Mirrour*, ſpeaking of a *Chancellour* of *England* charged with Perjury, for taking a ſmall Summe of Money (half a Mark,) for Sealing of a Writ, which was againſt his Oath ; being neither to *Deny*, *Delay*, or *Sell* Juſtice or Remedial Writs. (Yet Six Pence was allowed to the King for Sealing of a Writ) How great a Crime they did account ſuch *Perjury*, I need not ſay to Lawyers, or to any that have read the *Saxon Parliaments*.

But of all our Oaths, thoſe ſeemed to be moſt content to be counted Formal ; That tliey were impoſed on meer *Children* of a dozen Years old ; how many ſuch we have or had in great Schools or Univerſities, may be known and felt too much I fear.

And the Oath of *Allegiance* was twelve Years old, and ſo preſſed at the *Leets* or *Turns* ; but did they mean we ſhould Obſerve it but as *Children*, not as Men or Chriſtians ? It is true, the *Saxons* alſo had a twelve-Year-old Oath, but againſt *Theft* ; and how the Laws of *Henry* the firſt did Annul the *Oaths of Children* was obſerved, and the fifty ninth Chapter of thoſe Laws forbiddeth any to Plead, or to be Pleaded *in Judicio*, till the Age of fifteen.

It

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It was alſo a Maxim in our Law Books, that *Minors* could not Eſſoyn, becauſe they could not Swear; and that *Homage* might be done in *Nonage*, but not *Fealty*: For although *Homage* was the more *Honourable*, done upon the Knee; yet *Fealty* was the more *Sacred*, being ever done by *Oath*; and from hence is the uſual Phraſe in all Lawyers and Hiſtorians, to Do *Homage*, but to Swear *Fealty*.

Muſt our *Allegiance* only, run before our Reaſon or Diſcretion? which yet was our *great Fealty*: for it differed little from *Homage*, with the Oath of *Fealty* to *Mean* Lords, but in the *Salvo*; which I touched before, and muſt again, being one good help to explain our *Allegiance*.

I ſhall acknowledge that *Allegiance* ought to have been kept by all Subjects, although they never took that Oath; which it may be, many did not, eſpecially, ſince the late Oaths of *Allegiance* and Supremacy; which have ſeemed to abate the uſe, (I ſay not the Force) of the old Leet Oath of Grand *Fealty*; Which was perhaps never taken, or much underſtood by ſome of thoſe that appear moſt zealous in crying up *Allegiance*; For it is natural to us all, to be moſt confident in that which we leaſt underſtand. They

They ſeem to have done much wrong to the King and Crown, (and to have made ſo many averſe from the very Name of a King,) who by too much Zeal did ſtrain our Engliſh Legiance out beyond all bounds of Engliſh Laws, and then they would fly out to Forreign Laws; as if the Moulds and Sphears of Kingly Power or Subjects Duty, were by nature equal in all Climates, and in every Kingdom.

Yet I know not that we need be much afraid to appeal to the Laws of any Civil State, eſpecially to thoſe of *Judah*, which if ſome had known more, they would have preſſed leſs for our Pattern: But all Engliſh Kings had Engliſh Bounds by Law; and ſo we Swore *Allegiance*, and no otherwiſe by Law.

It was a Pang of Zeal or ſtrange Affection, more than Reaſon or Religion, which did make ſo many once (at *Cambridge*) Swear to *Edward* the Senior, *To Will what he Willed*, &c, Of which the *Saxon Chronology*; But I hope it is not fatal to that Place, or to any others in this Kingdom.

For I cannot learn that e're our Law did force or wiſh us to oblige our ſelves by Oath, to Think, Speak or Doe as any King would doe,

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doe, or have us for to doe, if contrary to Law and right Reason.

Our Law dispenseth much with Womens *Homage*, and of old they were not pressed to it; for a *Woman* might not say, I am your *Man*, nor to a man, (but to her own Husband) *Sir, I am your Woman*, yet she was to Swear *Fealty*.

So were the Bishops also to Swear *Fealty*, (except in *Frank almoigne*,) but the Law dispensed with a Bishops (or Church-mans) *Homage*, so that he needed not to say, *My Lord, or Liege, I am your Man*. The Reason is, because he was (or should be) *the Man of God*, and might not give himself so much away to others, as any other whatsoever.

And the reason of this may reach to all our *Fealty*, so far as to perswade us to consider what it is we cannot, nor we may not give away to any Man or Angel.

Was it not an hard Covenant tendred by *Nahash*, that he would protect all those, or own them for his Subjects, that would put out their right Eyes? and yet this had been more reasonable and Just, than to have required absolute *Allegiance*, without any Limitation or *Salvo* at

at all: For this had been to have bid them pluck out their *Souls*, or at least to uncase them from that which nature hath made the *Cabinet of Souls* (that curious Orient *Mother of Pearl*,) *Right Reason*, which doth make us *Men*; that I say nothing of that which makes us Christians or Religious Men.

We sinned if we wholly gave our selves unto a King, without any Limitation or Restriction whatsoever: For by so doing we unman our selves, and give away to a Man what we owe not, what we may not give to any mortal Creature whatsoever.

Let us discuss it then by Law and Reason, what is our Legal *Fealty*, how Made, how Limited, how Kept, or how Dissolved. Let us inquire what Duty, what *Allegiance* is commanded by the Laws, and what they did not mean they would not have us give to mortal Man.

Shall we behold the Sun Reflected or Refracted in a Stream of Water? shall we consider the King as Cloathed in the Dress or habit of some other Lord? For every Lord (the meanest and the lowest) is, or may be to his Vassals, as a little King to his Subjects: Such was the Plea of *Lanfranc* (as before,) at *Pinenden*; and so it was adjudged and confirmed by that Parliament, that he should be in his *Demesn*, as was the *King in his*.

And

And the old Laws of *Alfred*, *Ethelſtane*, *Edgar* and *Canute*, with the good Laws of *Hen.* the firſt, do as much forbid and puniſh Treaſon againſt Inferiour Lords, as againſt the King himſelf; for to them alſo is *Homage* done, and *Fealty* Sworn by their Vaſſals, ſaying, *My Liege, I am your Man, and bear you Faith of Life, Member and Terrene honour, ſaving the Faith I owe to other Lords.*

Or thus, *My Lord, I will bear you true Faith, and do you true Service, as my Duty to you is,* (ſo the Statute of *Edw.* the Second) that is, *according to my Fee.* And the *Mirrour* will tell us, that it was an Abuſe for the King himſelf to require it any otherwiſe; for it did not conſiſt in a Point, but had much Latitude, and ſeveral Degrees, according to the ſeveral Fees.

And if any ſuch Tenant were preſſed on more Service or other than his Fee required, or were injured; he might Implead his Liege in Law: For what his Duty was, neither himſelf, nor his Liege Lord might determine, but the Law.

For a *Villain*, who of all Vaſſals, was moſt Fettered, (moſt forbidden to moleſt his Lord,) yet might be *Demandant* in ſome *Real*, or *Plaintiff* in ſome *Perſonal* Actions, where the Lord might not make plain defence (as they ſpeak.) Nay, and *Villains* alſo did often bring Actions of *Treſpaſs*.

And in Caſes of others, as of *Orphans*, where the

the *Villain* is Executor in Truſt, he may implead his Lord, who can not deny to anſwer, though he do it with a *Salvo*, leſt ſuch a Suit might make his Villain free, as much as if he had made him an *Obligation*, or a Deed of ſome Annuity, or a Leaſe for Term, or Infeofment with Seiſin, or had ſued him in Law for what he might have had without a Suit.

For theſe did *Enfranchiſe* the *Villain* as much as being in a City, or Caſtle, without claim or Challenge for a Year and a Day, or his Lords giving him (by the Right Hand) to the *Sheriff* in full *County* Court, ſhewing him the open Doors and free wayes, and delivering to him a Sword and a Lance, or other Free Arms, which are the wayes of *Manumiſsion*, in the Laws of King *William* and *Hen.* the firſt, where we alſo find the Text ſo much Commented by *Glanvil*, *Bracton*, *Britton*, *Fleta*, with the *Mirror* and others.

They all agree in this, that the Bond and Obligation is *Mutual*, and that the Lords Kiſs whiſpereth as much Reſpect and Defence, as the Vaſſals Kneeling doth his Reverence; Nay, there is in Law ſo great an Obligation on the

 Lord,

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Lord, and ſo great a Charge often, in *Guarranty*, (which of old was much larger than now, in *Homage Anceſtrell*;) That the Lord would often refuſe and delay to take his Tenants Homage; So that there was a Writ made, commanding him to take it, and by it, to Oblige himſelf to his Tenant, whom he was to Defend; and his Treſpaſs on him in Law, had a very great Aggravation; becauſe the Vaſſal was to be *ſub defenſione Ligea*, as we found the *Jews*, in the Laws of the *Confeſſor*.

Some Kingdoms are in Fee to others, and muſt do *Homage*, Swearing *Fealty*; So *Scotland* unto *England*; ſo was alſo our *Engliſh* King, but not the Crown or State, (which hath oft in Parliament been adjudged and declared Imperial, Independent;) when himſelf did *Homage* unto *France*.

And yet I do not find our Engliſh King did ever much Scruple at his waging War with all *France*, and the French King alſo; but did often fight in Perſon againſt his Perſon; and he might do ſo by Law, if the King of *France* did Injure and Oppreſs him againſt Law: That I ſay nothing of the Perſonal Challenges by *Rich.* the firſt, *Edw.* the third and *Rich.* the ſecond;

ſecond; Or of King *John's* being cited or Condemned by *France*, for *Murther* in that Kingdom.

This might yet be enlarged, and further cleared, from the good Laws of K. *Henry* the firſt, which are ſo ſtrict for Allegiance and due Fealty to every Lord, that they ſeem almoſt to forget our old Engliſh Clemency; and yet they ſpeak enough of a Vaſſals impleading, *&c.* his Lord, for which divers Chapters, from the 40th to the end, are very conſiderable.

And the 55th Chapter limiteth all Homage and Fealty, *per honeſtum & utile*, that which is honeſt and profitable; and as *Honeſtum* there reſpecteth God and the common Faith, (*Deum & fidem Catholicam*,) ſo muſt *Utile* reſpect the Kingdom, and the *Common good*; it being uſual for thoſe times to expreſs the *Common Good* by ſuch a Phraſe of *Utile*.

So the Laws of St. *Edward* (for *Foromotes & Heretokes*,) *ad Honorem Coronæ, & ad Utilitatem Regni*; So King *Williams Additions* were granted and Confirmed, *ad utilitatem Anglorum*; So the Parliament at *Merton* was to treat, *de communi utilitate Regni*; (which may be conſidered in the Writs of thoſe times,) and the great Charters

Charters granted, *à tout la commune Dengleterre*; (as *Articuli super Chartas*) And the first of *Westminster, pur le common profit de st esglise & de Realm*; and the *Confirmations of the Charters* in *Edw.* the first, forbidding all Impositions, *&c.* but by *Common assent* of all the Realm, *& pur le common Profit de ceo*; which must be determined by *Commune Assent*, and no otherwise; So *Ethelreds* Law, *Efferatur Concilium quod Populo Utilissimum*; And *Canutes, quæ ad Reipublicæ Utilitatem & Commune commodum*, which there may Paraphrase *Regalitas*, of which before.

And (however the late Oaths of Allegiance are,) if we consider the old Oaths, both in the *Saxon* and first *Norman* times, we shall find them to respect the Kingdom and its common Good and Profit, as well as the Kings Prerogative or private Profit to the Crown.

By *Bracton* with others, we are led to the Laws of the *Confessor* for our great *Allegiance*; But in those Laws, the Oath is to *defend the Kingdom* with the *King*; and that by such an Oath we should all be, *sicut conjurati Fratres, ad defendendum Regnum, contra Alienigenas, & contra Inimicos, unâ cum Domino Rege*, &c.

That it was so also in the *Brittish* times of

of K. *Arthur*, (whose Parliaments we may assert by more, than that in *Caius* of *Cambridge*,) we find in these very Laws, and that by Vertue of this Oath, King *Arthur* raised his Subjects, and expelled the *Saracens* and Enemies *a Regno*, from the *Kingdom*.

And the same Laws tell us, that the same Oath was renewed and Confirmed by K. *Edgar*, whose Laws are severe enough for *Treason*, but against *all Lords* as well as the *King*; and it is Punished, as *Theof*. And the Laws of *Canute* (confirming those of *Edgar*) require *Fealty* conjoyned with *Duty* and *Virtue*; and again with Common Justice, *Jusjurandum datamque fidem Religiosissimè servato, injustitiam pro sua quisque virili Parte, ditionis nostræ finibus omnem arceto*, as *Lambard* translateth the *Saxon* of those Laws; and in another place of them, *The Leet Oath of Fealty, Jure Jurando fidem det, omni se in posterum ætate, tum furti, tum furti Societate & Conscientia temperaturum.*

And to this doth King *Edwards* Oath of Allegiance (in *Britton*) seem to allude, *que ilz nous serrount Feaul & Leaux, & que ilz ne serrount Felons, ne a felons assentaunts*; yet I do not deny but *Theof*, in this Oath might include *Treason* with

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with other Felony, (as vvas touched before) but however, it is as well for the *Kingdom* or the Common good, as for the Kings Prerogative, or private Honour of the Crown.

So also the first *Norman* Laws (called the *Conquerors*) require an Oath of *Allegiance* ; but for the Publick Peace and common Justice, to the Kingdoms good as much as to the Crown ; for so the words run, *sint Fratres conjurati ad Regnum N. contra inimicos defendendum, & Pacem, & dignitatem N. & Coronæ N. & ad judicium rectum & Justitiam, constanter modis omnibus pro posse suo,* (as K. *Canutes* Laws before,) *sine Dolo, & sine dilatione faciendam.*

This is now continued also through our great Charter, and all the Confirmations of K. *Edwards* and K. *Williams* Additions, *in utilitatem Anglorum*, vvhich may be considered as a good Comment on the usual vvords in *Indictments* against the *Peace*, and *Crown*, and *Dignity*, vvhich by those Ancient Lavvs, vvas to be joyned vvith the publick common good and Justice of the *Kingdom* ; So that *Allegiance* vvas *ad Legem*, to the *Laws*, the *Kingdom*, and the *Kingdoms good* or *Profit*, together vvith the *King*.

And in all the Lavv Books vve may read of

of *Treason* done and committed against the *Kingdom*, as against the King ; So in *Hengham Parva*, cap. 3. If any raise War against the *King*, or against the *Kingdom*, *ubi quis movet Guerram contra Regem, vel Regnum* ; And his Commentator referreth to several Cases in *Edward* the third, *Henry* the fourth, with *Plowden* and others which would be considered.

Nay, there are many old Authors and Masters of Law, that expresly declare it to be as *Real Treason* to *seduce the King, or the Kingdom*, or an *Army* for the Kingdoms Safety, as to Act against the *Kings* Life.

So in *Hengham Magna*, cap. 2. *Treason* is branched thus, *de Nece, vel Seditione Personæ Domini Regis, vel Regni, vel Exercitus.* And the very same Division of *Treason* is in *Glanvil*, both in his first Book and second *Chap.* and the first *Chapter* of his 14th Book.

To which also may be added *Bracton*, Lib. 3. cap. 3. *de Coronâ* ; and *Fleta*, lib. 1. cap. 21. *vel ad seductionem ejus, vel exercitus sui* ; and *Britton*, cap. 22. *disheritur de N. Royalme, ou detrahir N Hoste* ; of which also *Stanfords* Pleas of the Crown, *lib.* 1. *cap.* 2. and others that Wrote since the Twenty fifth of *Edward* the third, which may seem to limit or to lessen high Treason,

 but

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but not to annul Treaſon by the *Common Law*.

And in Caſes of ſuch *Treaſon*, they declare, that although there be no Accuſer, but only Suſpicion (*ſed fama ſolummodo publica*, ſo *Glanvil*; but in *Bracton*, *Fama apud graves & bonos*; and in *Fleta*, *apud bonos & graves infamia*;) yet muſt the Party be Attached, *vel per Carceris Incluſionem, vel per Plegios idoneos*; ſo it was in *Glanvils* time, (for all but *Homicide*,) but in *Fleta's*, *Diffamatus vel Accuſatus, attachiabitur per Corpus, & Captus Remanebit, donec ſe indè Legitimè acquietaverit*. That is, (in him,) till he have Legally cleared himſelf from all Seducement of the King, Kingdom, or Kingdoms Army; *Omnemque ſeductionem Regis, Regni vel ſui exercitus, & quicquid ſit contra Pacem ſuam*; which *Glanvil* expreſſeth thus, *Machinatum fuiſſe, vel aliquid feciſſe in mortem Regis, vel ſeditionem Regni, vel Exercitus, vel Conſenſiſſe, vel Conſilium dediſſe, vel Authoritatem præſtitiſſe*.

In ſuch Caſes alſo they debate who ſhould be *Judge*, and for this they all agree in that fundamental Principle of right Reaſon and Nature, that *Parties* may never be *Judges* in their own Cauſes; for which, beſides all others, the *Mirror*

Mirror is large and clear among all *Exceptions* to the *Judges* Perſon, (if he have no Commiſſion, or refuſe to ſhew it as he ought, or be Party, *&c.*) of which alſo *Britton* in *Appeals*, *cap.* 22. *fol.* 41.

And for this reaſon *Bracton* and *Fleta* with others, agree that in ſuch Cauſes, neither the *King* (who might, ſo they ſay, be *Judex & Actor*,) nor the Kings Commiſſioners ſhould Judge or determine: But *Curia & Pares*, except only when the Caſe is not of Life, but finable; for in ſuch the Kings Commiſſioners may determine *ſine Paribus*.

But who are theſe Peers, and what is this Court? One of *Bractons* firſt Maxims (in his ſecond *Chap.*) is, that all obſcure, difficult and new Judgments, ought to be ſuſpended, *Uſque ad magnam Curiam, & ibi per Conſilium Curiæ terminentur*.

Fleta is ſomewhat clearer, (in his ſecond Book and ſecond *Chap.*) *Habet enim Rex curiam ſuam in Concilio ſuo, in Parliamentis ſuis præſentibus Prelatis, Com. Baron. Proceribus, & aliis viris Peritis, ubi terminatæ ſunt Dubitationes Judiciorum, & Novis injuriis emerſis, Nova conſtituuntur Remedia, & unicuique Juſtitia, prout meruit, Retribuetur Ibidem.*

 Uni-

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Unicuique! What, to every Man in all the Kingdom? or how far, and how high may this extend or reach? Shall we propound this Doubt to the Antient Parliaments, who were most like to know their Power and Priviledge?

The Law was clear enough before, but some were pleased not to think it so; and therefore in the Statutes of *Marlbridge*, (as old as *Henry* the third) in the first place of all it was agreed and enacted, That *all men Living of this Kingdom*, as vvell high as lovv (*tam Majores quam Minores*) must and ought submit to Judgment, *Justitiam habeant & Recipiant in Curia Domini Regis.*

That this Expression may go lovver than the Court of Parliament, I can not deny; nor vvill others, I suppose, deny but that it may and must be yielded to the highest Court of all.

One of the Clauses of the Kings duty expressed in the *Saxon* Lavvs, is to do all things rightly by the Judgment of his great Court, *per Judicium Procerum Regni*; and again, by that great Council to maintain or do Justice and Judgment, *Judicium Rectum facere & Justitiam tenere per Concilium Procerum Regni.*

All vvhich, and much more in those Lavvs, must

must be solemnly Svvorn by the King, before the Kingdom and the Clergy, *in propria persona inspectis & tactis Sacrosanctis Evangeliis*, &c. *coram Regno & Sacerdote & Clero*, (This may be considered) *antequam ab Archiepiscopis & Episcopis Regni Coronetur*; Even *before he may be Crowned*, or should require his Subjects *Homage*.

Insomuch that vvhen the Subjects have tendered *Homage*, (as some Lords did to King *Henry* the fifth) before the King had done his *Homage*, and Sworn his *Fealty* to the State and Laws; It hath been observed by Historians, as some kind of *Comet*, that I say not a *Prodigy*, in State Politicks.

And besides all the forms of Coronation found in *Hoveden*, *Walsingham*, and other Historians, (*secundum antiqua Statuta*, as *Matthew Paris* speaketh,) it is clear enough in the Records and Rolls of *Richard* the second (before others,) how the King first did take that Solemn *Oath*; and then the Archbishop went to every side of the Scaffold, relating to the Kingdom how the King was Svvorn; and then he asked them, *si ipsi consentire vellent*, if they would now *give consent* to take him for their *King* and *Liege* Lord; and if so, they came and did him *Homage*.

If

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If they would consent! What, was it at their *Choyce*? and were our English Kings *Elective*, plain Elective? sure it would be duely weighed, and I confess some things have made me very much suspect they were *Elective*.

And the rather also by considering the great Care and Importunity of some Kings, to procure the Crown to be setled by *Parliament* upon their *Heirs*; Which might intimate that indeed it was not their *Inheritance* at Common Law; for it was seldom seen, I suppose, that English Men have taken much Pains to obtain an Act of Parliament to settle their *Inheritance* on their own *Heirs*, except they were *Illegitimate* or *Aliens*.

And upon search, I cannot find the old Oaths of Allegiance did relate to the Kings *Heirs* or *Successors*, either in the *Saxon* or first *Norman* times, although we find the Oath in old Laws, long before *Edw.* the second, and in old Lawyers, *Bracton*, *Britton*, *Fleta*, with the *Mirror*, punctual in the Oath of *Allegiance*, but not a Syllable of *Heirs* or *Successors* that I can find.

Yet in the times of *Henry* the first and *Henry* the second there was some special Acts of Parliament for setling the Crown on *Maud* the Empereſs

Empereſs or her Iſſue, and King *Henry's* Son was Crowned in his Fathers Reign, and of that time the *Salvo* in *Glanvil*, *Regi & Hæredibus*, which I find not in any other old Lawyer; and I believe it not usual till the great Quarrels of *York* and *Lancaster*, it may be much Later.

But all such Acts (for tying the Crown to such or such a Family) do not evince a former Right of *Succeſſion*, any more than the House of *Austria* doth prove the *Empire* not to be *Elective*, though it now seem as entailed on that Family.

I say not how often it hath been adjudged that *Affirmative* Statutes do not annul the *Common Law*; and that one may *Prescribe* against a Statute *Negative*, but in *Affirmance* of the *Common Law*, (for which the Comments on *Littletons Burgage*;) So that if an English King was *Elective* by the *Common Law*, the Kingdom might prescribe against late Statutes which might erre much more than they could oblige all future Parliaments, but they might still be free, and most of all in what was due before by Common Law.

Let us discuss it then, and see what Antient Lawyers and Historians do record about our Kings

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Kings, their limitations by our Laws, their Title by Succeſſion or Election at the Common Law.

If *Bracton* or if *Fleta* may be Judges of this Queſtion they will tell us, that in their times our King was *Elective*; *Non a Regnando dicitur ſed a Bene Regendo, & ad hoc* Electus *eſt*; And again, *ad hæc autem Creatus Rex, &* Electus, *ut Juſtitiam faciat Univerſis*; *Not only Created*, but *Elected*, it is where they treat of *Judges* and of *Juriſdiction.*

And of our *Saxon* Anceſtors, the *Mirror* is very plain that they did *Elect* or chuſe their King from among themſelves, *Eſlierent de eux un Roy à reigner ſir eux*; and being *Elected*, they did ſo and ſo Limit him by *Oath* and *Laws.*

In this we might appeal to *Tacitus* of our Anceſtors, For theirs, who did both *Elect* and *Bound* their *Kings* and *Generals*, *Reges ex Nobilitate, Duces ex Virtute ſumunt*; and of their King he ſaith, the Power was be bounded, that he could not call it *Free*, *Nec infinita, aut libera Poteſtas*, and that *in Conciliis*, Their *Kings Authority* was *in perſwaſion* rather than *Command*, *Suadendi potiùs quam jubendi poteſtate.*

Cæſar ſeemeth to conceive they had no *King* or

or fixed Common Governour in time of Peace: but for *War*, ſaith he, they *Chooſe* out *Generals*, *qui Bello præſint ut vitæ neciſque habeant Poteſtatem.*

In our Brittiſh Anceſtors he found a King, but by *Election* of a great *Common-Council*, by whoſe conſent he obſerveth that *Caſſivelane* was *choſen King* and *General* againſt his Landing; *Summa Imperii Bellique adminiſtrandi, communi Concilio permiſſa eſt Caſſivellauno*; and again, *Noſtro adventu permoti Britanni, hunc toti bello imperioque præfecerant.*

That the *Brittans* agreed much with the *Gauls* in their Cuſtoms, I do not deny; but I know not why this ſhould make the *Gauls* to be the *Elder* Brothers, as ſome teach us, becauſe our *Britain* is an *Iſland*: Yet it may be much diſputed, if not proved, that it once was joyned to *Gaul*, (or *France*) in one Continent, for which we might produce ſome of the old *Poets*, and others before *Twine* and *Verſtegan.*

However, it is clear enough from *Cæſar* and *Pliny*, that the *Gauls* were much moulded by the *Brittiſh Druids*, although they ſeemed more Polite in *Juvenal's* time; and afterwards being more *Frank*, they afforded a *Chriſtian* Queen to *Ethelbert*, and the Model of a great School to

 Sigeſ-

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Sigesbert; which yet must not wrong *Alcuinus*, who from hence moulded the University of *Paris*, if we may Believe all that write of *Charlemaign*.

And if we add *Strabo* to those cited before, we shall find they *Chose* both *Generals* and all great Magistrates.

When they had a King, the Crown passed by Election, and was so limited, that *Ambiotrix* (one of their Kings) acknowledged, *Ut non minus in se Juris Multitudo, quàm ipse in Multitudinem*; So in *Cæsar*.

Their *Common-Council* much consisted of *Equites* (and such perhaps our *Knights* of Shires; *Electi de plebe*,) and *Druydes*, their *Clergy* who did over-rule them all, by their *Banns*, and Sacred *Oak Misleto*, as if it had grown in *Dodona*'s Grove.

Their grand Corporation was dissolved by *Roman* Edicts, in *Gaul* by *Claudius*, (as *Seneca*, *Suetonius*;) but in *Rome* by *Tiberius*, (if not *Augustus*) in *Pliny*; but *Vopiscus* keepeth a *Druydess* to presage the Empire to *Diocleſian*, when he had killed the Boar; and *Ammianus* may afford them in *Rome*, in *Julian* or *Constantius*.

But

But in *Scotland* or *Ireland* they remained longer, if we may believe their Annals of *Columbanus*, and of *William* the Irish Abbot: But in *Diocleſian*'s time, *Amphibalus* the famous Brittan, fled from *Rome* to his Friend St. *Alban*, (who dyed for him in his Cloaths, it is said; but we find him Condemned by Law, and styled Lord of *Verulam*, *Prince of Knights*, and *Steward of Brittain*, in his Shrine, and *Jacob de Voragine*.) 'Ere long we find him made a Bishop in the *Holy Isle*, and there he did Succeed the Brittish *Druyds*, and his Scholars were enow with their Blood and Carkasses to make the name of *Litchfield*.

But the turning of *Druyds* into our Bishops, (in *Lucius*'s time,) is no more certain, I think, than that those were the *Flamins* or *Arch Flamins*, of whom we hear so much of late; but of old few or none relate it, but only *Monmouth*.

The Name of *Flamin* came to *Brittain* from the *Grecians* or the *Romans*, (who had *Druyds* from the *Brittans*,) where they were most Sacred *Priests*; at first but three, but when every God and Godded Man or *Dæmon* had his *Flamin*, they became extreamly innumerable.

Yet the first three still kept their Distance,

 Place

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Place and Seniority, from whence the Phrase of *Arch-Flamin*, which yet I dare not assert to have been in *Brittain*, or to be so much as known in the time of *Lucius*; or the name of *Arch-bishop*. But of this Sir *Henry Spelman*, of *Lucius*'s Epistles in *Gratian*, and Mr. *Patrick Young* on *Clements* Epistle to the *Corinthians*.

But *Fenestella* with his Names of *Bishop*, *Arch-Bishop*, *Cardinal*, *Patriarch*, *Metropolitan*, &c. is now come out with another Title of a later Age, than he that lived in *Tiberius*.

But to return to our *Brittish Druyds* moulding the State, and yet they would not speak of State but in or by a *Common-Council*, (as was touched before in the *Militia*,) and among these the same *Cæsar* will tell us, that there was a chief or *President*, but chosen by Deserts, and not by a blind way of *Succession*; *Si sint Pares plures suffragio adlegitur; nonnunquam etiam armis de principatu contendunt.*

Nor is it probable the *Brittans* should be great Patrons of *Monarchical Succession*, which could hardly well consist with their *Gavelkind*, which is not only in *Kent*, but in divers other Places of *England* and in *Wales*; from the *Brittans*, as we may learn from Parliament, in 27 *Hen.*

27 *Hen.* 8. and in K. *Edwards* Statute of *Wales*, with *Littletons* Parceners: And his Commentator makes it one mark of the ancient *Brittans*, and from them also to *Ireland*: and from the Brittish *Gavelkind*, do all the Children yet among us part their Fathers *Arms*, of which also the great Judge on *Littletons Villenage*.

But on the *Parceners*, he deriveth the *Crowns* descent to the *Eldest*, from the *Trojans* to the *Brittans*, so indeed do many others with *Monmouth* and *Basingstock*.

Yet our Best *Herald* the Learned *Cambden*, will deride the Story of the *Trojans* coming hither, but his many Arguments to prove the first Inhabitants to be a Kin to the *Gauls*, do no more convince me that the *Trojans* might not come hither afterwards, than that the *Normans* did not come, because the *Saxons* were before them.

I repeat nothing from *Gyraldus Cambrensis*, *Matthew Paris*, *Hoveden*, *Huntingdon*, or others, who derided *Monmouth*, till they were convinced by some *Brittish* Writers which themselves found; besides all the *Greek* and *Latin* Authors cited by *Virunnius*, *Leland*, Sir *John Price*, and divers others, that I say nothing of the *Scottish Chronicles*,

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Chronicles, or of the Learned man that ſhewed King *Henry* the firſt the Deſcent of divers Nations of *Europe* from the *Trojans*, in *Huntingdon* and *Hoveden*.

But it may be conſidered what this State and Parliament hath oft owned of *Brute*, and the *Trojan* Story, not only in the grand Moot of the Dependance of *Scotland* on *England*, ever ſince King *Brute*; which, beſide all Records in the Exchequer, is at large in *Walſinghams Edward* the firſt, and the *Survey* of *Normandy*, as alſo in the Laws of the *Confeſſor*, cap. 35.

To which I might add, the *Trojan* Reliques, Statues, Tablets and Pictures, in all the Brittiſh, Daniſh, Saxon, Engliſh Wars, found here in *Cornwall*, *Wales*, and other Parts, beſides our *Troy Novant*, or *new Troy*, the old *Trojan Roman* name of this Famous City of the *Troinovantes*, (in the Roman Writers *Trinobantes*) now *London*, ſince the time of *Lud*'s building a Gate, and changing this Cities Name.

But for leaving out the Name of *Troy*, ſome were ſo much offended, that it came to a great Conteſt and Quarrel, couched in Verſe (from others) by the old *Gildas*, and tranſlated by the Famous *Nennius* of *Bangor*, eſcaping that bloody Maſſacre. Who

Who hath alſo left us an old Hiſtory, (yet to be ſeen in MS.) collected, as himſelf ſaith, from the *Brittiſh* and *Scottiſh* Records, and from the old *Roman* Annals, (which were then found) relating the Pedigree of *Brute* or *Britto*, (ſome will have him *Brotos*, and ſome *Brutus*,) from *Æneas* to *Rome*, and his bringing ſome *Trojan* Reliques hither by the way of *Gaul*, where (he alſo ſaith) he built the City of *Turons* or *Tours*, much as *Monmouth* and others have the Story, though I could never find it in *Homer* or any of the Ancients, by them cited for *Turons*.

Yet I find the ſame *Nennius* confeſſing that the *Brittiſh* Annals had another deſcent of their *Brute* or *Britto*, from *Japhet* (obtaining *Europe* for his Portion with the Brittiſh Iſles, of which *Noahs* Will in *Euſebius*, or other old Fragments;) came *alone*, from whence the *Almans* and *Francks*, beſides our *Britto*, (Father to the *Brittains*,) whoſe Genealogy through twenty Deſcents to *Noah* and *Adam* he ſaith he had from the Tradition of thoſe who lived here *in Primis Britanniæ Temporibus*.

So that if we may not believe *Talieſſin*, (the Britiſh Bard) of *Trojans* coming hither with their *Brute*, yet we may peruſe his Scholar, or the *Merlin* that

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that foretold the Name of *Brute* ſhould come again upon this *Iſland*; whether in the *Scottiſh* Union, or in the *Welſh* returning to their Loſt Dominions, I diſpute not; nor how this Iſland came ſo like to *Somothrace*, (ſo near a Kin to *Troy*) in Rites of Worſhip, or in other Cuſtoms, as of old ſome did obſerve, eſpecially in thoſe concerning *Ceres* or *Proſerpina*, ſo famous here, that in the old *Argonauts* the *Brittiſh* Iſles are ſtiled the *Court* or *Palace* of *Ceres*; and yet this might be for other Reaſons.

But although I cannot deny ſome *Trojan* cuſtoms among us, yet I know not why I ſhould grant that *Trojan Succeſſion* to the Crown, which ſo many do aſſert, when as themſelves do yield the ſame *Trojans* to be *Brittans*, and thoſe *Brittans* of whom we ſpake before.

And beſides the Brittiſh *Gavelkinde*, and all before, themſelves do alſo relate their own *Brute*, parting his Kingdom among his three Sons, and again the Crown parted between the two Sons of *Madan*, two of *Gorbodio*, two of *Molmutius*, two of *Lud*, ſo near a Kin to him that *Cæſar* found *Elected* King by *Common-Council*.

And I muſt believe thoſe who aſſert the *Trojan* Crown to go by *Succeſſion*: yet I know not why

why I may not alſo believe ſo many good or better Writers of the *Trojan Common-Council* or *Parliament*, and their Power in Peace and War, with all things elſe that might concern the King or Kingdom; which great Council did conſiſt of *Princes* or *Nobles*, and *Elders* of the People.

Of which *Trojan Parliament* we read in *Apuleius*, *Socrates*, *Dæmon*, and in *Homer*, *Virgil*, *Dictys*, and moſt ancient *Dares*, who lived alſo in our *Britain*, (if good *Bale* deceive us not,) which yet is not ſo certain as that he was Tranſlated or Paraphraſed in Latin Verſe, by *Joſeph* of *Exon*, or *Iſcan* our Countrey-Man, as many of his Verſes ſpeak; although that Elegant Poem be aſcribed to *Cornelius Nepos*, as by him Dedicated to *Saluſt*, in the times of the great Commerce between *Rome* and *Britain*, which produced ſo many famous *Brittiſh Romans*, beſide *Conſtantine*, *Helen*, and the modeſt *Claudia*, of whom St. *Paul* ſpeaketh, and *Martial* (in ſeveral places) maketh her a *Britiſh* Woman.

I will not inſiſt upon their *Election* of Emperors or *Generals* by a kind of Lot in *Dictys*, nor will I deny but the *Trojans* were ſevere enough to all *Traitors*, whoſe dead Bodies alſo were denyed *Burial*, if we may believe all from the

 Illiads;

Illiads; but the *Odysses* may alſo afford us the very ſame Puniſhment for *Tyrants*, whom they hated as much as the *Grecians*.

Nor will the Patrons of *Succeſſion* or *Prerogative* find more encouragement among the *Grecians* than among the *Trojans*; though I cannot deny but they do rightly obſerve many *Grecian* Cuſtoms among the *Britains*; nor will I deny to our Anceſtors, both *Greek Philoſophers* and *Greek Schools*, beſides *Bladud's* at *Stamford* and other Places.

I could eaſily believe theſe Iſlands to be known to the *Grecians* long before the *Romans*, of whom *Lucretius* is the firſt (that I yet know) ſpeaking of *Britain*; but it was deſcribed by *Polibius*, (though our great Herald ſeem to forget it,) who might learn it from the *Carthaginians* trading hither, and by *Eratoſthenes*, *Dicæarcus*, *Pithæas*, and *Artemidorus*, if I be not deceived from *Strabo*, that I ſay nothing of the old *Argonauts* (aſcribed to *Orpheus*,) naming *Ireland* and deſcribing *Britain*, or of the Book of the *World*, (in *Ariſtotles* Works) where *Albion* and *Ferne* are *Brittiſh* Iſles, mentioned alſo in *Dyoniſius*; and very famous for their *Mines* of *Tin* or *Lead*, whence the name of *Caſſiterides*, of

of which *Herodotus*, and others of the Ancients.

What was the *Grecian Genius* towards their Kings, doth not only appear in their Superciliouſ *Ephori*, Eye-brows, or the *Left* eye of *Greece*, but in the *Right* Eye, or *Athens*, of which much might be ſpoken from all the Greek Hiſtorians, beſides their Laws or Politicks of *Plato* and his Schollars, long before the *Attick Laws* Collected by *Petitus*, that I ſay nothing of *Ariſtophanes* or any of their Poets.

But how much our Anceſtors owed to the *Grecians*, I do not find expreſſed by any; moſt of our *Plays*, much of our *Works*, and ſomewhat of our *Laws* ſeemeth to be *Grecian*.

The *Genius* of a State is ſeen in *Plays*, ſome think, rather than in *Work*; they are *Paſſions* and as Lovers *Pulſes*, which do ſhew the *Soul* much quicker than do *Words* or *Actions*; and the Greek *Scenes* were *Paſſions* (or Sufferings) of *Princes* rather than their *Actions*; and a Tyrants blood was thought the Richeſt and fatteſt *Sacrifice* to pleaſe the People and appeaſe their Gods; but *Interludes* muſt be Corrected much, and then they may both Moralize and Methodize the beſt Hiſtorians, and may be Divertiſements

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of Use as much as Pleasure to a *State*, which else was apt to grow *Morose* or *Melancholick*, if it were too *Sedentary*.

The *Grecian Cards* or *Chess* (at the Siege of *Troy*,) may shew their Shuffling, *Cutting* and *Triumphing* over *Kings*, and *Checking* them by small *Perins*, and in the East *Scheck-mæt* doth signifie the *King is Dead*, or the *Kings Death*.

But when shall we come again to the *Mathematical* (or *Philosophers*) *Game*, which was also used here, though now we have lost old *Plato's Analyticks*, of which his *Theon* long before *Vieta*? when shall our *Kittel*-Pins return again into the *Grecian Skyttals* of the *Muses*, whence they might degenerate?

When shall our *Cards* return again to *Charts*, and teach our Children *Prospects* and *Geography*, with the true *Site* of Countreys, Cities, Persons, and the famous men of old, who conquered (in their *Plays*,) by Laws of *History* and exact *Chronology*, and not by Fancy only as of late.

When shall our *Grecian* Dice be taught to teach our Children *Squares* and *Cubes*, with all the Mathematicks, as they might much better and easier than our Papers and our Tedions Figures; for I need not say how much the six sides of a *Dye* would help

help for the Root of all perfect *Cubes*, anp half six for all *Surds* in that and higher *Powers*; beside so many other uses of the *Dye* in all *Mathematicks* and *Architecture*.

In which also we owe to the *Grecians* for our *Attick* and *Ionick*, and our other *Moods*; and so in *Musick* also, that I speak not of *Perspective* and almost all the *Mechanicks* of *Wheels*, *Beams* and *Leavers*, with perpetua or continual Screws; or of the *Physick* and *Apothecary* Terms, more *Grecian* than *Italian*.

And beside, divers of our *Law-Terms*, *Endite*, *Ideot*, *Chyrographer*, *Protonotar*, &c. I could almost believe the *Grecians* were the Patrons of our *Tryal* by Twelve, which was not first brought in by the *Normans* or by the *Saxons*, although we found it with them in *Ethelred*, or *Edward* the *Senior*, and before them in *Alfred*, as appeareth by the Causes why he hanged so many Judges in the *Mirror*.

From the twelve signs of the *Zodiack*, it might come to the *Chaldeans*, thence (or from the *Jews*) to the *Egyptians*; for in *Egypt* was the old *Jury* of Twelve Gods, so often in *Homer*, *Herodotus*, *Diodorus*; and from *Egypt* to *Greece*, with the Twelve Labours of *Hercules*, *Egyptian* or Oriental

ental *Hircol*, *Hirtot*, *Hirsut*, and thence the Fable of his *Lyons Skin*.

But in *Greece* this Number was both Famous and *Sacred*, as in our *Juries*: and of this, *Plato* in *Timæus*, and in *Phædrus*, in his *Laws*, and in *Phædo* and *Critias*, which would almost perswade me that he had seen *Moses* or the *Flood*, or the Twelve old *Heroes*, or had read in *Moses Song* of the Earth being parted, according to the *Number of the Sons of Israel*, or (as some would have it) of the *Angels* or the *Sons of God*.

And for the *Grecian* Trials by Twelve, I need cite no more than the known Histories of *Orestes*, and of *Mars*, tryed for *Murther* by a *Jury* of Twelve, (and quitted only by the equality of Votes,) in that Famous Place which from him was called *Areopagus* or *Mars Hill*, of which St. *Paul* (and *Dyonisius*) and the *Altar to the strange God* is described in *Pausanias*, to be compared with *Laertius Epimenides*; (and divers others) that I say nothing of the Σεμναὶ Θεαὶ, which from *Areopagus* might come hither with the Tryal by Twelve, and be Mothers to the Name rather than Person of the famous Brittish *Samothes*, as *Areopagus* seemeth to have been to much if not to most of our Law Pleadings and Customs in Criminals. Yet

Yet it may be possible that this Number might be as Sacred among the *Trojans*, although I remember little of it till *Æneas*'s coming into *Italy*; and then we hear of twelve *Procers*, twelve *Vulturs*, twelve *Lictors*, twelve *Hours*, and at length twelve *Months*, and other things, for which *Dionysius*, the *Saturnals*, the *Genials*, and *Tiraquel*, may be considered, with that of old *Ethelward*, in *Edgar*, *Argivæ Hebdomadas gentis posuere Magistri, septimanas quas voce Latini.*

But the *Romans* allso had many, if not all their *Dozens* from the *Grecians*, which were known here long before *Ethelbert* did settle his *Dooms Romano more*; and we often find the number of Twelve in the old Histories of *Britain* and *Gaul*, for their Twelve *Peers* are much older than some may think, that will have them onely to be *French*.

Nor would it be impossible, I do think, to shew some other of our Law Customs borrowed from the *Grecians*; yet I do not know that our old *Greek Lade*, was so called from Greek Law, (as divers would perswade us) or from *Greek Leod*, or from *Greek Language*, which yet appeareth in the *Welsh*; but I know not that it was spoken *here* or in *Gaul*, but

near

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near *Marseils*, a *Greek Colony*, not much younger than the elder *Cyrus*.

But it may be that the *Druyds* had their Learning and their Letters (though in *Sacris* they did write but little) from the *Grecians*, or *Phenicians* rather, who in this did teach the *Grecians*, as both *Dictys* and the Crowd of *Cadmus*.

I could also believe their *Characters* to be very like those of *Canaan*, (as *Scaliger* on *Eusebius*, and others,) but I cannot yield them to be *Hebrew*, though so many Learned men affirm it: but for this see *Fullers Miscellanies*, and *Buxtorfs Dissertations*, with the *Punick* Columns of *Joshuah* and *Adorams* Tomb in *Spain*, *Villalpand*, *Crinessius*, old Hebrew in *Larius*, Mr. *Selden de Dis Syris*, and *de Jure Gentium*, that I say nothing of *Tuscans Antiquities*.

Yet, if any thing, I could wish the *Samaritan Pentateuch*, where the true Ancient *Hebrew*, (as so many, before *Marinus*,) it should be in *Terahs* Age, at his Death, which would more settle *Chronology*, than else I find it possible, he being there sixty Years younger when he Dyed than our Bibles make him; so that *Abraham* might be born at his Seventy, in which the *Jesuit* also agreeth unto *Scaliger*.

I can

I cannot believe the Story of *Ulysses* Navigation hither, or that *Hannibal* did Conquer *Britain*, although it be recorded in a *Jewish* Writer of as much note as *Gorionides*; but the mistake is of *Bretany*, for the *Brettian*, *Brutian* or *Brescian* Tract in *Italy*; and such a slip is also found in some Copies of *Polibius Atheneus*, and the Fragments of *Olympiodorus*.

But of *Phenician* Traffick hereabout, there are many Proofs and Reliques, beside the Famous Story of the *Punick* Pilot, who was commended and Rewarded by the State of *Carthage*, for sinking his Ship and Fraught rather than he would be forced by the *Romans* to discover the *Punick* Traffick for *Lead* or *Tin*, found about the *British* Islands, therefore called *Cassieterides*.

Of which so many Greek Authors before *Strabo* or *Pliny*, who relate the *Carthaginian* and *Marsilian* Traffick for those Oars. And *Matthew Paris* telleth us, that 1241. there was no *Tin* (that he had heard) in all the World, but in *Cornwall* only: And then it came to be found in some parts of *Almain*.

The Learned Author of the late *Peleg* (among divers other Brittish words) hath found a new Etymology for the Name of *Britain*;

 which

which (notwithſtanding *Brith*, for Colour or Painting, and *Bretas*, in ſome Greek Poets, for a *Picture* or a *Painted Brat*) he would have to be called by the *Phœnicians*, *Berat Anac*, or the *Field of Tin and Lead*.

To which I may add the Northern Sea, called of old the *Phronean* Ocean, or the Sea of *Saturn*, whom they feigned to lye aſleep in the Bottom of that Sea, bound by *Jupiter* in a *Golden Pumice*, of which *Plutarch*, *Euſebius*, *Ptolomy*, and divers others; and of this, the Author of the *Veyl*, or *Maſk of Heaven*.

Of which I muſt ſpeak but little, only this for a *Clavis*: The *Scene* is the little World, or Iſle of *Brittain*; *Thule*, ſome appendant to that Crown, or *Scotland*, whoſe troubles of 1639. are ſhadowed in the night work, called *Scotos*, (or Darkneſs) *Saturn*, the *Scottiſh* Genius, and *Mercury* the Clergy, but in ſpecial the late *Arch-Biſhop* of *Canterbury*; *Jupiter* (the Son of *Saturn*) or a great *Scottiſh* Lord, lately on the *Scene*, that was firſt ſent to reconcile *Saturn*, but he turned *Retrograde*. *Mars* the *Genius of War*, and in ſpecial, the great *General* againſt *Saturn*, or the Lord Lieutenant of *Ireland*: *Venus* ſeemeth to be *Queen Mother* of *France*, then alive in *England*: *Phœbus*

Phœbus and *Phœbe*, need no gloſs. *Imperii fata*, plain enough to thoſe that know that Dialect.

But *Phœbe* might have there ſeen (before this Parliament,) that *Peace* had been her *Work*, and ſhould have been her *Happineſs*: nor is it yet too late, or wholly paſt. *Habent etiam ſua fata Reginæ*; and there is a ſilent Patience which may Conquer more than all the World can get by *Force*.

Who will unmask the *Chymical Part*? which the Poets alſo Veiled in their Fables of *Saturn*, bound by *Jupiter* in *Golden Pumice*; and it may be poſſible that future Ages may be brought to ſee or know the Treaſures in our *Chronian* Ocean, and the meaning of that Riddle. In the mean time, he that can improve the *Sympathy* of *Mars* and *Venus*, or remove the *Antipathy* of *Saturn* and *Mercury*, or can bind *Saturn* by *Jupiter*, and by the Mediation of *Phœbe*, can reconcile all to *Phœbus*, or can live on *Herbs*, may have little need I hope to flatter any.

But to return to our *Britiſh Anceſtors*. How *Cordiel* and *Guintoline* were Created *populi Juſſu*, *Archigal*, *Ennianus* or others Depoſed, is obſerved by divers: I ſhall only add, that *Proceres*

 and

and *Magnates* here are rendred *Estates*, *People* or Commons in *Grafton* and *Chaucer*, or the old *Fructus*, by *Julian* of St. *Albans*.

Molmutius first did wear a *Crown of Gold* (they say:) he did deserve it, for to him we owe divers of our *Common Law* Principles; nay, and that, for more than is found in *Monmouth*, as I touched before.

And upon him the Patrons of *Succession* build a fixed *Monarchy*, which was not such it seems before; nor since, if we may believe those we can hardly disprove, that from this time begin the petty Princes, *& plurimis Regulis supremam Mandandi & Judicandi Authoritatem.*

And themselves divide the Crown between his two Sons, *Brennus* the *British Thunderbolt* to *Rome*, (and some do carry him as *Lightning* to *Delphos*,) while his Brother *Belin* did return and dye in peace; and first of *British* Kings was burnt to *Ashes*, yet he lived here in *Bilingsgate* and *Key*, besides his famous *Ways* or *Streets*, his own and Fathers *Laws*, (which with the *Mertian* came to us through *Alfred*.) But we need not go to his Daughter *Cambra* for the first Affinity between the *Brittans* and *Sicambrian Francks*, or *Gaulish Germans*.

Come

Come we now to *Cesar's* time, *Lud* is alive in *Ludgate*, *London*, (as before,) he did amend the Laws, but by a *Common-Council*: And such Council did reject his Sons, and Chose *Cassivelane* (as *Cæsar* doth agree with *British* Authors.) He did summon one (that slew his Kinsman) to appear and submit himself to Judgment, *Sententiam quam proceres Dictarent subire.*

But the famous *Androgeus* protected him in *London* (being then the Governour,) pleading the Custom and priviledge of that City, which had also then a Court to hear and determine, all the Pleas of Citizens, or *Quicquid aliquis in Homine suos clamaret*, and that also by Ancient Prescription, *ex Veterum traditione.*

Which from *Monmouth*, *Virrunnius Ponticus*, and others may be compared with the Laws of the *Confessor*, for *Troinovant* or *London*, and its weekly *Hustings*, and *Ardua Compota*, and *Ambigua placita Coronæ*, and for the *Courts of the whole Kingdom* there, whence it is called *Caput Regni & Legum.*

Which may also be compared with that of the *Mirror*, for Parliaments to be in *London* by ancient Laws, which is here expressed, *Juxta vete-*

veteres Consuetudines bonorum Patrum & Predecessorum, & omnium Principum & Procerum, & Sapientum seniorum Regni, very full and clear, Parliaments of all Estates.

That which is added of those *Courts*, to sit and hold wherever the King was, is *British* also as well as *Saxon*. So the Laws of *Howel, Dha*, the *Good*, (in the Chronicles of *Wales*, but larger in Sir *Henry Spelman*,) *Ubicunque Sacerdos, & Destein, & Judex, ibi Dignitas Curiæ & Aula Regia, licet Rex absens sit*: and this is one Reason why the King was never *Nonsuit*; because he was supposed *present* in all *Courts*: and yet his Atturneys *Ulterius non vult*, had the effect of a *Nonsuit*.

But for *London* and its Antiquity before *Rome*, *Stephanides* (a Monk as old as K. *Henry* the first, now in Print,) may be compared with *Tacitus*, *Ammianus Marcelinus*, nay, with *Cæsar* also for the *Trinobantes*, although some think he never saw this City. But the Charters of K. *William* and *Hen.* the first are in Print; so also of *Richard* the first, and K. *John*, in *Hoveden* and others, which yet must not perswade us that *Sheriffs* were then first Created here.

For *Counts* or *Viscounts* are as old as *Counties*: and

and the *Brittish* Authors speak of Dukes of *Troynovant*, (such was *Androgeus*,) and *pro Consulibus vice-comites, in Fitz-Stephen*, and *Willielm. de Einford vice-comes de London, & Joannes Subvicecomes*, in the Book of *Ramsey, Wallbrook Case* in *Hen.* the first; that I may say nothing of *William* the *Chamberlain de Londonia*, of whom before in *Hen.* 1. which may be premised to the Famous *Quo Warranto*, brought in *Edward* the Second.

But to return to our *British* Kings, I cannot deny but some Authors do Record the Crown (as by Act of Parliament,) settled on the Heirs of *Cassivelane*; but themselves also can shew us the very next King brought in by *Election*, (not from *Cassivelane*,) and that both of *Lords* and *Commons* too, if we may believe *Chaucer*, or the old *Fructus Temporum*.

This *Theomantius* (many of their names are Greek,) was Duke of *Cornwall*, when he was *Elected* King; He doth yet live in a Famous Son, great *Arviragus*, (whom the Roman Poet, and so many others praise,) he did amend the Laws, but by consent of Parliament; for all agree that a *Senate* was *Elected* (or *Dilected* as they speak,) in his time; not then first Created,

Created, but it might be renewed after the *Romans* had ſo much interrupted it, of which before from *Tacitus*; ſo far am I ſtill from believing our firſt Parliament did come from the *Roman Senate*.

It is a known Hiſtory, how that King Divorcing himſelf from his *Scottiſh* Queen, and Marrying a Daughter of *Claudius Cæſar*, (at *Claudio Ceſtre*,) was cenſured by his Parliament or *Proceres*, ſo that he was fain to exhibit his Anſwer in Writing, which is ſtill left us in Fragments in divers places.

Amongſt other paſſages, he ſaid, he knew not but it might be lawful for him to have more Wives than one; *Eo quod Leges Britannorum, illuc uſque id nunquam prohibuiſſent*, becauſe the *Brittiſh Laws* had not yet forbidden it.

I muſt not here diſpute what moved *Lucius* to deſire and ſend for the *Roman Laws*, nay, and that for the *State* alſo. Nor can I yet Subſcribe to them that think the *Britains* to be wholly Governed by *Roman* Laws, from *Claudius* to *Attila*'s time.

But could the *Britiſh* King ſend out for *Forreign* Laws, or call them in without conſent of Parliament? it might not be, and *Eleutherius*'s Anſwer

Anſwer is in Print, (among the *Confeſſors* Laws and every where,) *ad Petitionem Regis & procerum Regni Britanniæ. Petiſtis à nobis Leges Romanes & Cæſaris*; his anſwer was, You have the Scriptures, and from them you ſhall do well to frame your Laws, but by your Parliament, *per Conſilium Regni veſtri*.

They which begin our *Britiſh Chriſtianity* from *Eleutherius*, ſeem not to conſider his Epiſtle, granting that the *Britans* were already Chriſtians, and had both the Old and New Teſtament: *Suſceptis nuper Miſ. D. in Regno Britanniæ, Legem & Fidem Chriſti, habetis penes vos in Regno utramque Paginam*, &c. They were *Chriſtians* long before.

Tempore ſummo Tiberii Cæſaris, as *Gildas Badonicus*; and *Albanius* telleth how *Philip* the Apoſtle ſent hither *Joſeph* of *Arimathea* out of *Gaul*, ſee *Baronius*, E MS. *Hiſtoria in Vaticano*, & *Melchin*, cited by *Bale*, *Capgrave* of *Arviragus*, and *Malmſbury* of the Famous *Glaſſenbury*, which in old Charter by Parliament is ſaid to be *Founded by the Lords Diſciples*, and is therefore Styled, *Fons & Origo Religionis*; as *Weſtſex* is *Caput Regni & Legum*, in the Laws of *Henry* the firſt, as *London* in St. *Edwards*.

Some

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Some have alſo brought St. *Paul* in *Britain*; ſo *Venantius Fortunatus* (Anno 570.) from *Theodoret* perhaps, who yet nameth not St. *Paul*, but the *Leather Cutter*, and the *Publicans* and *Fiſhermen*, which may be St. *Peter*, if we may believe the Greek Author cited by Mr. *Patrick Young* on *Clemens*, or *Sophronius* and *Nicephorus*, as *Dorotheus Tyrius* of *Zelotes*: That I ſay nothing of the Britiſh *Bard*, who from the Stars did tell the Birth of our Saviour, in ſo many older than *Bale*.

But again to the *Brittiſh* Parliaments, for ſo we read in the Laws of King *Alfred*, (out of *Britiſh*, *Trojan*, *Grecian*, &c.) that in the very firſt times of Chriſtian Religion in this Iſland, Laws were made by a Common-Council of Biſhops and other Wiſe Men; with that of *Bede*, *Servabant Reges ſacerdotes privati, & Optimates ſuum quique Ordinem.*

After the Death of *Lucius*, the *Britains* could not ſoon agree about the Choice of another King; ('tis every where,) 'ere long they choſe *Aſclepiodat* the Duke of *Cornwall*, by conſent of *Commons* alſo; *Communi aſſenſu & annuente Populo*: Troubleſome he was to all the *Romans*, but eſpecially to *Gallus*, who hath left his Name in

in *Walbrook*, as the *Gauls* (ſome think) in *Wales*; but for this *Polydor Virgil*, and the *Confeſſors* Acts, with the Laws of King *Ina*, may be compared with *Monmouth*, *Virunnius*, *Baſingſtoke*, *Florilegus*, *Gyraldus*, and ſome paſſages of *Bede*.

Coel e're long appeareth on the Scene, but yet againſt *Succeſſion*; and he cannot dye ſo long as *Helen* liveth, Mother to the Chriſtian Emperor, but Daughter to our *Brittiſh Coel*, who was alſo Father unto *Colcheſter*.

We are come to times of more certainty, when that deadly wound (of one of the *Heads*) had made the *Roman Empire* gaſp, as if it would Expire and breathe no more; it had little liſt or leiſure to command or Counſel any of the *Toes*, or other Members at a Diſtance.

In this point of time the *Britains* Roſe (with other Nations) and did ſoon recover moſt of that the *Romans* held by force; their Laws and Cuſtoms now were free, 'tis yielded us by all: but they could hardly turn and view their Liberty, before they came to be new Slaves to the *Picts* and *Scots*, ancient Appendants to the *Brittiſh* Crown in Fee.

The Roman *Conſul* then in *Gaul*, could not regard the Brittiſh Sighs and Tears, which himſelf

 knew

knew to be as just as pitiful; for had the *Romans* not so gleaned *Britain* of its Glory, (for their Conquest of other Nations,) they had never asked help it seems against the *Scots*.

From the *Romans* they had first recourse to their Neighbour *Gauls*, or to their Countrey-men in *Gaul*, for such they were in that which to this day is called *Brittany*.

Upon what terms they had help from them I dispute not; their King had as great a Name as the great *Constantine*, but how himself or his Sons like the *Brittish* Reins, we may guess in part from what we read in *Gildas Tears* for his poor Countrey; where he complaineth that Kings were Elected and Anointed for nothing of God or of Good in them, but only for their Force, *&c.*

This is also found in another Author (besides *Gildas*) as old as King *Stephen* or *Henry* the Second, which may the more perswade us that *Monmouth* had good Authority for what he Writes of those times, for he also hath *Gildas*'s words, with very little variation.

By which we see the Law, or at least the Custom of those times, both for *Electing*, *Anointing* Kings among our *British* Ancestors.

Two

Two of those Kings may be *Constantine* and *Constans*, who are said to be Slain by some of their Guard or Attendants, yet so as divers intimate it came from a farther and an higher Hand.

Constans also came up to the Crown by a Faction rather than a free Choice, as all relate; who ascribe it to the Duke of *Cornwall*, not without great Contests of divers Lords, and with little consent of Commons, *vix Annuente Populo*, as we may read in divers Authors, who are also plain enough to make us know, that he was pulled down by the same Hands that set him up.

Vortiger came next, but on *Election*, it is agreed by all; and that there were two Royal Princes (Sons to the late, and Brothers to the last King,) who must wait for the Crown with much Patience.

How he called in the *Saxons* by consent of *Parliament*, I shewed before in the *Militia*, and I might confirm it from divers others; who do also Record, that the King told the *Saxons* that he durst not without the Consent of his *Proceres*, assign them any Land, or City, or Castle; for that it was *against the Laws of his Kingdom*, *&* *prohi-*

prohibitus ſum, quod Proceres Regni diſſuaderent, &c.

Yet it may ſeem the Lords agreed to their ſetling in *Thanet* afterwards, but the Commons Diſſented ſo, that they reſolved to drive them out again, and that in Common-Council or Parliament: *Concilium fecerunt cum Majoribus ſuis, ut pacem diſrumperent; & dixerunt, Recedite à nobis*, &c. My Author is old *Nennius* of *Bangor*.

He hath clear paſſages for Parliaments in that time, and for their Power alſo: As for *Inceſt* with his own Daughter, *Vortiger* was firſt Corrected, (perhaps with the *Jewiſh* Diſcipline, which was here alſo till the time of *Henry* the Second) and St. *Germane* the Arch-Prelate, came with the whole Convocation-Houſe (*Cum omni Clero Britanniæ*) *Corripere Eum*.

Nennius ſaith, that in a great Moot of Clergy and Laity, he was ſo roughly handled, that he roſe up in a great Rage and Fled, or at leaſt ſought how to Flye, but he was Banned; *Maledictus eſt, & damnatus a beato Germano*.

Afterwards *Vortimer* was choſen King, ('tis every where) but after divers Victories he Dyed, Poyſoned (as ſome thought) by *Vortiger*.

He now Combineth with the *Saxons*, and by their Power entreth the Scene again, but with

with little Conſent of the *Britains*; and although he Acted a while, yet he was Hiſſed off, being odious to all, till at length his Heart brake. *Nennius* addeth, that ſome ſaid the Earth opened for him; and St. *Germane* Writeth, that his whole Family was Burnt from Heaven, which was much aſcribed to the Clergies Curſe or *Excommunication*.

Which was in uſe among the *Britains*, and that alſo upon their Princes, of which we have many examples; as of *Teuder*, and *Clotri*, for Homicide and Perjury, and *Hovel*, *Gleviſſicg*, and *Brochwell* did hardly eſcape by a great Fine *& Judicium Suffere non potuit*, of which Sir *Henry Spelman* in his *Synods* of *Landaf*.

It was then by much more heavy than of late: *Cæſar* obſerveth it among the *Druids*, and in him it is *Pœna Graviſſima*; adding alſo, that ſuch Perſons were Abhorred by all as ſome Loathſome Diſeaſe, and that they might have no Honour or Right of Law, *Neque iis petentibus Jus redditur*.

And among St. *Patricks* Canons we find the *Excommunicate* excluded, *à Communione, & Menſa, & Miſſa, & Pace*; their Ceremonies in this ſeem a-kin to the *Jewiſh Cherem*, nay, to their *Shammatha*

matha, (or St. *Pauls Maranatha*,) and it so continued among the *Saxons* also, as we may see in the Laws of *Canute*, making it Capital to protect or harbour any such: But in the *Confessors* Acts, when an *Excommunicate* fled to the Bishop for Absolution, *Eundo & redeundo Pacem habeat*; else it seems they were as *Out-Laws*, who might then be Killed by any that met them, as the same Laws of *Woolfshead* in another Chapter.

Which may help us to Interpret those that speak of the *Jews* being *Excommunicate*; nay, and that also by *Seculars* in *England*, of which in *Matthew Paris* and his *Additaments*; but his *Glossar* rightly expresseth it by the University Phrase of *Discommoning Townsmen*, which of old was much worse it seems than now.

After *Vortiger*, *Aurelius*, *Ambrose*, *à Convenientibus Britannis*, *& Convocato Regni Clero in Regem erectus est*: He might also be Inserted into *Gildas*, for he dyed by Poyson, if good Authors deceive us not.

At his Death a *Comet* like a *Dragon*, and the *Bards* apply it to his Brother, thence called *Uther-Pendragon*; *Florilegus* addeth, that he made two *Dragons* of Gold, Offering one, and carrying

ing the other still before him, whence the *Dragon* in our English *Standard*, although some have asserted much of him they call St. *George*.

That which *Westmonster* or *Polydore* expresseth by *Præcepit proceribus Regni Convenire*; *Monmouth* thus, (in *Aurelius*) *Jussit Clerum ac Populum submonere, ad Ædictum ergo illius venerunt Pontifices & Abbates, & ex unoquoque Ordine qui ei Subditi*; and again of *Uther*, *Convocato Regni Clero, annuentibusque cunctis sublimatus est in Regem*; and again, *Communi Populorum Concilio*.

This *Uther-Pendragon* is vouched and asserted in the famous Contest of Little *Britains* Subjection to *Turon*, (may it also allude to the Story of *Brute*,) of which *Gratians* Decrees and *Matthew Paris*, ad *An.* 1199.

Uther being Dead, *Convenerunt Pontifices cum Clero Regni & Populo*, a Parliament (agreed by all) to Bury him *Regio More*, in the Gyants *Dance* or *Stonehenge*, which himself had gotten by *Merlins* help out of *Ireland*, fixing it so near to *Salisbury* for a Monument of that Parliament, which was thereabout Destroyed by the *Saxons*.

A *Parliament* I call it, so I may: In *Nennius* they are *Seniores Vortigirini Regis*, but in *Monmouth* (and those that follow him,) they are *Principes*

cipes & Consules, (that is, *Comites*,) & *Barones & Cives*, called by the Kings Command, Edict, or *Writ of Summons*.

For *Arthurs* Parliaments, it would be much Superfluous to produce more proof than what already is in Sir *John Price*, *Cajus*, *Leland*, or others that assert his History; this I shall only add, that in this of all we may Credit *Monmouth*, who is so punctual in nothing as in vouching each *County* and *City* that made up his Parliaments; *Ex Diversis Provinciis, proceres Brittonum Duces*; and among others, *Dux Doroberine Consules*, both of *Counties* and *Cityes*, *Boso Ridocensis*, id est, *Oxonefordiæ*, Lot *Consul Londonesiæ*, &c.

And among Forreign Princes, he Nameth the Kings of *Ireland*, *Island*, *Godland*, *Orcades*, *Norway*, *Denmark* and others, besides the twelve Peers of *Gaul*, (of whom also in divers other places, that I speak not of the twelve *Reguli*, which *Brute* found in *Gaul*;) nor was there a Prince of Note (saith he) *citra Hispaniam*, who did not appear at his Summons: which may be compared with that of K. *Arthur*, among the Laws of the *Confessor*, and in *Horn*, as Authentick as *Neubrigensis*.

Come we to the *Saxons*, what I cited before from

from the *Mirror*, *Tacitus*, *Cæsar* or others, may be fully asserted from their Histories; I shall not insist upon *Offa's Election*, although it be clear enough from his own Words; *ad Libertatis vestræ Tuitionem, non meis meritis, sed sola Liberalitate vestra unanimiter me convocastis*: and the Lives now Printed with *Matthew Paris*, (and his *Henry* the third) mention divers, if not all the *Counties* which made up K. *Offa's* Parliaments. Nor will I spend time in *Cuthred*, *Beonerd* or others, *Deposed* by Parliament, because the *Monarchy* was not yet so fully settled.

But in the *Confessors* Acts we find K. *Ina* Elected (though by means of an *Angel*,) and the first *Saxon* Monarch; of his Laws, and Match with his *Gaulish*, *Walish*, *Cambrian* Queen before, as also of his clear and full Parliaments in the *Militia*.

E're long we find a Parliament at *Calcuth*; *Conventus Pananglicus, ad quem convenerunt omnes Principes tam Ecclesiastici, quam seculares*: wherein, by the King, Arch-Bishop, Bishops, Abbots, Dukes, Senators, & *Populo Terræ*, (Lords and Commons,) It was Decreed and Enacted, That *Kings should be Elected by the Parliament*; *à Sacerdotibus & Senioribus Populi Eligantur*; and that being so

 Chosen,

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Chosen, they should have prudent Councellers, fearing God; *Consiliarios Prudentes, Deum Timentes*; and that Bastards (*de adulterio vel Incestu procreati*,) should not be admitted to the Crown: it is both in Sir *Henry Spelman*, and in the *Magdeburgens*. cent. 8. cap. 9. pag. 583. *&c.* Edit. *Basil* 1567.

Egbert by all is a fixed settled *Monarch*, but without or against Right of *Succession*: *Ordinatur in Regem*; So *Ethelwerd*, *Omnium Consensu Rex Creatur*, in *Polidor*; *Ad Regnum Electus, moxque imperare Jussus, Patriæ desideriis satisfecit*, as we read in the Monk of *Malmsbury*.

About this time the Mannor of *Mallings* in *Sussex* was settled on the Church of *Canterbury* by Act of Parliament, *Consentientibus Magnatibus*; It had been given before by one of the Kings, but it was recovered again, *Eo quod Magnates noluere Donationem illam Ratam fore.* To what Sir *Henry Spelman* hath of 838, I shall only add, that *Matthew* of *Westminster* doth afford us *Princes*, *Dukes*, *Earls* and *Barons*, both in that and former Years, besides Inferior *Laios* and *Clergy*, whom he calleth *Rectores Ecclesiarum*; and in *Ingulph* we find *Principes*, *Duces*, *Comites*, *Barones*, *Comitatus* and *Baronias* with *Proceres Majores*, long before the *Norman*. *Ethelwolf*,

Ethelwolf, a Monk, a Deacon and a Bishop, yet *Elected King*, because they could not find a fitter person for the Crown, *Necessitate Cogente factus est Rex*, in *Roger Hoveden*, *& Consensus Publicus in Regem Dari petiit*, in *Bale*.

At *Rome* he repaired the English Colledge lately Burnt; but he displeased the Parliament, by getting his Son *Alfred* to be Crowned by the *Pope*, and by Marrying a Daughter of *France*, whom without their Consent he styled *Queen*, which was against the Common and the Statute-Law, *contra Morem & Statuta*, as we find in *Florilegus*, to be compared with the *Saxon* Chronology, and *Asser Menevensis*, with *Wigornensis* and *Malmsbury*, before *Stow* or *Polidore*.

But notwithstanding his Coronation by the *Pope*, King *Alfred* did acknowledge his Kingdom to the *Bounty* of his *Princes* and *Elders* of his People: *Deus & Principes cum Senioribus Populi, misericorditer ac benignè dederunt*; as himself speaketh in his *Will*, (subjoyned to his Life by *Menevensis*;) wherein he also desireth to leave his People (whom he calleth *Noble West Saxons*) as free as mans Thoughts within him; *Ità Liberos, sicut in Homine Cogitatio.*

How far *West Sex* did then extend, may be known.

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known in the *Saxon* Laws, with those of St. *Edward* and *Hen.* the first, where it is Styled, *Caput Regni & Legum*, (as *London* before,) to which all must have *recourse*, *in omni Dissidentia Contingentum.*

Edward the *Senior* was his Son, but *Elected* King by Parliament; *Successor Monarchiæ Eadwerus à Primatis Electus*, my Auhor is old *Ethelwerd.*

King *Ethestane* a natural Son, and so excluded from the Crown by Act of Parliament at *Calcuth*, yet being a gallant Prince (of great Hopes and Virtues) he was Elected: *Electus magno Consensu Optimatum, & à Populo consalutatur & ab Archiepiscopo more Majorum Coronatur*, as we read in *Malmsbury*, *Huntingdon* and *Virgil.*

Yet there was a great Lord, *Elfred*, who opposed much, and e're long Rebelled, scorning to Submit to him, *Quem suo non diligisset Arbitrario*; being sent to *Rome* to purge himself of this Treason, he Forswore it at St. *Peters Altar*, but fell down, and being carryed into the English Colledge, Dyed, and his Estate by Act of Parliament was given to the King: *Adjudicata est tota Possessio, in magnis & in Modicis quemadmodum judicaverunt omnes Optimates Regni Anglorum*, as the Kings Charter speaketh; settling his

his Land on *Malmsbury*. How tender they were of Blood, I spake before, and of K. *Williams* Law, *Nequis occidatur vel suspendatur*: but *Wigornensis* and *Hoveden* speak of K. *Henrys* Law for Hanging any found in *Furto vel Latrocinio*; yet in *Ethelstane* the *Wergylds* were agreed by Parliament, and a Kings Life valued at 30000 Thrymses.

Of *Anlo's* League among the *Saxon* Laws, that he was chosen King by some that rejected *Edmund*, we read in *Florence* and *Hoveden*; as of one that Scrupled in *Ethestane*, because he had Sworn Fealty to *Anlave* in the Monk of *Malmsbury*, but it might be another *Anlave.*

Edred came in by *Election*, being preferred before the Sons of *Edmund*, who was King before him; of his Parliament *Summoned by Writ*, we spake before in the *Militia.*

About this time were the *Constitutions of Odo, de officio Regum & Secularium Principum*; they are found in *Saxon*, and are now Printed in *Latin*, to be compared with the Statutes of *Calcuth.*

What Power they had, may appear in *Edwin*, for *Incest* Excommunicate by the same *Odo*; *& unanimi omnium Conspiratione Edwino dejecto, Eligerunt Deo Dictante* Edgarum *in* Regem, *& Annuente Populo, res* Regni Publica *despertita inter Fratres*; and

and afterwards, *Clito Edgarus ab omni Anglorum Populo Electus est, &c. Confluentibus Principibus, & omnis Ordinis Viris, cum magna Gloria Bathoniæ coronatus est presentibus Præsulibus, ac Magnatibus Universis, Datis singulis Donariis consuetis, quæ Reg. Coronat. dari Magnatibus consuescant*; of which *Matth. Westmon. Malmsbury, Hoveden,* and *Florence* of *Worcester.*

How this Mighty *Edgar* was handled and Humbled for Ravishing a kind of *Nun*, is observed by divers; and that after his seven Years Pennance, (being not to wear his Crown,) *Congregatis omnibus Angliæ Principibus* Episcopis & *Abbatibus*; The Crown was again Restored to him, *Coram omni Multitudine Populi Anglorum, cunctis Lætantibus & Deum in Sancto Dunstano Laudantibus*, as may be read in *Capgrave.*

Baronius of this, and a great Lords Rape, (of that time) speaketh of some *Appeal* to *Rome*, whence *Dunstan* was commanded, *Peccatori condescendere*; but he would understand it only, *si* Penitens Peccatum *relinqueret*; *Nec aliter* (saith *Baronius*) *potuit intellexisse.*

Edgar being dead, there was much Contest in *Electing* the next King: *De Rege eligendo Magna inter* Regni *Primores orta est Dissensio*; *quidam*

Eadwardum

Eadwardum; *Quidam eligerunt* Ethelredum, as the Monk of *Worcester*, besides *Hoveden* and *Matthew* of *VVestmon.* who agree also that at length the Arch-Bishops, *cum Chorepiscopis, Abbatibus, Ducibusq; quamplurimis*, did Elect, Consecrate, and Anoint *Edward.*

Who enjoyed it with little quiet, and among divers Contests of Parliament, affrighted at the House *Fall*, or amazed at the *Angels* or some Strangers voice they knew not whence: E're long we find him hudled into Dust at *VVarham*, which Queen *Ælfrith* (or *Ælsted*) attoned by Hospitals or other works of Devotion; but a Fiery bloody Cloud followeth a Blazing Comet.

Of St. *Edwards* and St. *Dunstans* annual Festivals, established by Parliament, the Laws of *Canute.* It was that *Dunstan* who presaged so much ill of *Ethelred* (at his *Baptism*,) and to him at his *Coronation*, which yet was by consent of Parliament; *Matris suffragio proceribus Congregatis*, as the Monk of *Malmsbury.*

Where we have this Compendium of *Ethelred*: *Regnum adeptus obsedit potius quam Rexit, Annis* 37. *Sævus in Principio, miser in Medio, Turpis in Exitu*: So that we need not wonder at the

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Parliament which in his Time provided, that the greateſt and the higheſt Offender ſhould have moſt puniſhment and heavieſt Doom.

In the *Daniſh* Storm he fled to *Normandy*, and the Parliament ſent him this Meſſage, (in *VVigornenſis*, *Hoveden*, *Huntingdon*, *Florilegus* and All,) That they would receive it again on Condition he would govern more Juſtly, or more Mildly; *ſi ipſe vel Rectius gubernare, vel Mitius.*

By his Son *Edward* he cajoled both the Lords and the Commons, *Majores Minoreſq; Gentis ſuæ*; promiſing to be wholly guided by them, and ſo return'd again. But he gave ſo little ſatiſfaction to his People, that they rejected his Sons, and Elected *Canute*: Who did ſolemnly Swear to them, *quod & ſecundum Deum & ſecundum Seculum Fidelis eſſe vellet eis dominus*; as the Monk at *VVorceſter*, and thoſe that follow him.

Yet it is alſo agreed, that the Citizens of *London*, *& pars Nobilium*, did Elect *Edmund Ironſide*; and that the Kingdom was alſo parted between theſe Two, by conſent of *Parliament*: and (beſide the croud in the Road,) the Laws of the *Confeſſor* do aſſert that Agreement to the *Par-*

Parliament, *Univerſis Angliæ Primatibus aſſenſum Præbentibus.*

Edmund lived but a few Months to interrupt *Canute*, who was then received by Conſent of All: *Juraverunt illi quod eum Regem ſibi eligere vellent*; *Fœdus etiam cum Principibus*, *& omni Populo ipſe*, *& illi eum ipſo percuſſerunt*, as Old *Florence*, and *Hoveden*, beſides the *Saxon Chronology*; and the Abbot of *Croyland* hath it thus, *Omnium Conſenſu*, *Canutus ſuper totam Angliam Coronatus.*

Of his Parliaments and their good Laws I ſpake before, and of their Oath to the *Kingdom* much might be added: And beſides all Hiſtorians, *Fleta* ſpeaketh of his *Brief* or *Writ*, ſent to the *Pope*, and of his *Church-ſeed*, payed (as he ſaith) *Sanctæ Eccleſiæ*, *die Sancti Martini*, *Tempore tam Britonum quam Anglorum*, Lib. 1. Cap. 47.

Harold came after, *Conſentientibus quam plurimis Natu Majoribus Angliæ*: As *Wigornenſis* and *Hoveden*: *Electus eſt in Regem*, *fuit N. Magnum placitum aput Oxenford*, *& Elegerunt Haroldum*, as we read in *Huntingdon*, and *Matthew* of *Weſtminſter*.

But *Harold* being dead, *Proceres ferme totius Angliæ*, *Legatos ad Hardicanutum Brugæ Mittentes*, *Rogaverunt illum ut Angliam veniret & Sceptra Regni ſuſciperet.* And afterward, *Gaudentur ab omnibus*

bus ſuſcipitur; and *Huntingdon* addeth, *Electus eſt*: But he did nothing worthy of their Choice, and ſo became odious. : E're long, we find him ſwooning at *Lambeth*, in the midſt of a Wedding Jollity, and ſoon after Expiring.

Edward the *Confeſſor* ſucceedeth by *Election*. *Paruit Edwardus, & Electus eſt in Regem, ab omni Populo.* And *Florilegus* addeth to *Huntingdon*, That *Annuente Clero & Populo Londinis, in Regem Eligitur*: As before them both, *Ingulph*, *Omnium Electione in Edwardum Concordatur.*

His Elder Brother *Elfred* ſtepping in between the Death of *Harold* and *Hardicanute*, *Compatriotarum perfidia, & maxime Godwini, Luminibus orbatus eſt*; and little leſs than *Famiſhed*; *Godwin* excuſeth himſelf by the Kings Service or Command, but it would not acquit him, though he beſtowed coſtly Bribes.

Edward can hardly diſſemble it; *Godwine* rageth, flieth out into Rebellion, and is Baniſhed (it ſeems) by Parliament: E're long, he returns again, preſuming on his Great Friends and Alliance; but in Parliament the King *Appeals* him of his Brothers Death, which *Godwine* denies, and puts himſelf upon the Parliament, as did the King, ſaying, That they had heard his *Appeal*

peal, and the *Earls* Anſwer; and it remained that they ſhould do Juſtice, and pronounce Judgment.

It was in Debate, whether a Subject might Combat his Prince upon *Appeal*; but at length the Quarrel was compoſed by the Parliament, (till *Godwine* curſeth himſelf, and is choaked, as his Lands ſwallowed in *Godwins Sands*,) of which Old *Wigornenſis* and *Hoveden*, with *Malmsbury*, *Huntingdon*, *Florilegus*, and divers others, but eſpecially *Aornalenſis*, and Mr. *Seldens Titles of* Honour.

That King *Edward* named the Duke of *Normandy* for his *Succeſſor*, is affirmed by ſome that follow the Abbot of *Croyland* and *Malmsbury*; but the Monk of *Worceſter* aſſerteth *Harold* to be *choſen* by the King and Parliament, to be his Succeſſor: *Quem Rex Succeſſorem elegerat, à totius Angliæ Primatibus, ad Regale Culmen electus*: as *Roger Hoveden* (in the ſame words.) And the Monk of *Malmsbury* confeſſeth, That *Angli dicant a Rege Conceſſum, &c.* Adding alſo, That *Harold* excuſeth his Breach of Oath to the *Norman* (in which All agree) by ſaying, It was *preſumption* ſo to ſwear or promiſe the *Succeſſion* to the *Crown*, without conſent and act of Parliament: *Abſque Generali Senatus & Populi Conventu & Edicto*; or, *Abſque Generali conſenſu*, as *Matthew Paris*, and

and *Westminster* expreſs it; but what in them, is *Tanto favore Principum*, as in *Malmsbury*, and the continuer of *Bede* : *Tanto favore Civium, regendum ſuſceperit.*

Of *William* the *Norman* much in the *Militia*, much yet to be added for his *Election*, and the Peoples free conſent againſt his Conqueſt.

Londonias cum Epiſcopis plurimis Petit, & Lætanter receptus oranterque Rex conclamatus. So, the Abbot of *Croyland* living at the time, which *Malmsbury* expreſſeth thus : *Londoniam petit, moxque cum gratulatione Cives omnes effuſi, obviam vadunt; prorupit omnibus portis unda Salutantium auctoribus Magnatibus : Ita Angli, qui in unam coeuntes ſententiam potuiſſent Patriæ reformare ruinam, dum nullum ex ſuis vobebant induxere Alienum.* *Huntingdon* thus, *Suſceptus eſt à Londinienſibus pacifice, & Coronatus.* *Matthew Paris* and *Florilegus* thus; *In Magna exultatione, à Clero & Populo ſuſceptus, & ab Omnibus Rex acclamatus.* *Gemitivenſis* addeth, That *ab omnibus Proceribus Rex eſt electus, & Sacro Oleo ab Epiſcopis Regni delibutus*, as *Walſingham* in his *Neuſtria.* *Wigornenſis* telleth us, that before his Coronation he did ſolemnly Swear, *Coram Clero & populo, ſe velle Sanctas Dei Eccleſias & Rectores illarum defendere, nec non cunctum populum juſte regere, rectam Legem ſtatuere*

ſtatuere & Tenere, &c. So alſo doth *Hoveden.* *Matthew Paris*, in the Life of *Frethrerick* Abbot of St. *Albans*, ſheweth how free the *Norman* found our Anceſtors: *Jugum ſervitutis à tempore Bruti neſcientes, & more Normanorum Barbas radere*, (which they note in *Cæſar* alſo of the *Britains*;) and concludeth, that *pro bono pacis*, he did ſolemnly ſwear to obſerve their Old Laws; *Bonas & Approbatas, antiquas Leges, quas Sancti & Pii Angliæ Reges, ejus Anteceſſores, & Maxime Rex Edwardus ſtatuit, inviolabiliter obſervare*; (the like Phraſe we find in *Ingulph* of the ſame Laws) which was ſome Repetition of his Coronation Oath.

Some affirm that he refuſed to be Crowned by *Canterbury*; but *Neubrigenſis* telleth us, that he ſought it of him, *Tyranni nomen exhorreſcens, & legitimi Principis perſonam induere geſtiens*; but *Canterbury* denied to lay on his hands, *Viro Cruento & alieni Juris inſavori.* Then he complyed with *York*, and bound himſelf *Sacris Sacramentis, pro Conſervanda Republica, &c.*

It might alſo be added, that if K. *Edward* might diſpoſe the *Crown* as his own *Fee*, yet by the *Common-Law*, or *Statute* of *Calcuth*, he could not diſpoſe it to a *Baſtard*; as K. *William* is.

is expresly called in the Letters sent to the Pope, from the Parliament of *Lincoln*, in *Eward* the first, besides his own Charters, and of attempts to Legitimate him, (that so he might succeed by Common-law:) See the Comments on *Merton* in the second Part of *Institutes*, and of the Laws of *Norway* before.

But in the Old Book of *Caen*, we may find K. *William* on his death Bed, wishing that his Son might be King of *England*, which he professed he neither found or left as *Inheritance*: *Neminem Anglici Regni Constituo Hæredem, non enim Tantum Decus, Hæreditario Jure possedi.*

That K. *William* the second, K. *Henry* the first, and K. *Stephen* came to the Crown by *Election*, without Right of Succession, is so much agreed by all, that it were vain to prove it. Their *Elections* and their *Oaths*, are every where among the Monks and good Historians: So also of *Henry* the second, and *Rich.* the first.

But in K. *John's* Coronation we are brought beyond dispute, in full Parliament, of Archshops, Earls, Barons and all others, which were to be present; the Arch-bishop stood in the midst and said, *Audite universi, noverit Discretio vestra*, &c. It is well known to you All, that *No*

no Man hath Right of Succession to this Crown, except that by unanimous consent of the Kingdom, with Invocation on the Holy Ghost, he be Elected from his own Deserts: Lectus & secundum Morum Eminantiam præelectus, &c. *But if any of the last Kings Race be more worthy and better than others, his Election is more proper or more Reasonable: Pronius & promptius in Electionem ejus est consentiendum: As it now is in Earl* John, *here present.*

Nor was any one found that could dissent, or oppose what was so spoken; for they all knew it was not without much Reason and good Warrant from their Laws and Customs; *Scientes quod sine Causa hoc non sic definiverat*: For which *Matthew Paris*, or *Wendover*, may be compared with *Hoveden*, *Westminster*, and others of those Times.

Which seemeth most rightly to state the nature of *Succession*, as it was in this Kingdom. So that all did amount but to this, That if a King had such Children, so qualified, and so Educated, that they were above others in Vertue, Wisdom, and true worth, (or at least, *Cæteres Pares*,) they were the most likely *Candidates* for the *Crown.*

But as we found before among the *Jews*,

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in the ſtricteſt *Succeſſion*, where the *Crown* was eſpecially tied to the Houſe of *David*; yet their great *Sanhedrin* had alwayes the Power and Right to determine of the Claims, Intereſts, Deſerts and Vertues of Heirs, or all Pretenders: So if here we allow not ſuch a Legal power of Judging of Claims or Titles, to be placed ſomewhere or other; our Anceſtors did leave the Crown at a more blind uncertainty than in all other things they were accuſtomed, from the Law of Nature and Right Reaſon.

I might add the *Formal* of *Coronation*, joyned to the *Iriſh Modus* of Parliament, under the Great Seal of *Henry* the Fourth, where we read: *Electio à Plebe ad Regem, ut conſecretur; Poſtquam ad Idem iterum Conſenſerit*; and again, *Electum interroget Metropolitanus*, &c.

How our Allegiance was of Old, tied to the Kings Perſon, not to his Heirs nor to his Perſon but together with the Kingdom and the Laws and Rights thereof, hath been obſerved already. Much I might add of latter times, Nay, that very Statute of *Henry* the Seventh, which of late was preſſed for the King and his *Militia*, or taking Arms with him as Allegiance required; doth expreſly declare our *Allegiance* to be

be to the *Kingdom* with the King; and that by ſuch *Allegiance*, men are tied to ſerve the King *for defence of him and the Land*. And for the Kings *Heirs*, I find them not in our *Allegiance*. Yet the Statutes of *Edw.* 2. are punctual in expreſſing the Kings *Prerogative*, or Rights of the *Crown*; but where is proviſion for his *Heirs*?

In *Eward* the Third, the *Judges Oaths* were made, and ſtand among the Statutes as enacted by *Parliament*, (although I do not find it ſo upon the *Rolls*;) And there is a Clauſe againſt Conſent to the Kings Damage or *Diſherison*: So alſo it is in the Oaths of divers in the Courts of Juſtice, as of Maſters of *Chnacery*, with the Kings Serjeants, or Councel at Law, and others; but not ſo by Parliament. See the third Part of *Inſtitutes*, *Cap.* 101. Yet our Old *Allegiance* did forbid *Diſherison* or *Damage*, but with *Limitation*, as we ſhewed before.

The late Oaths of *Allegiance* in King *James*, and of *Supremacy* in *Q. Elizabeth* (taken by Parliament-men and divers others,) are to the Kings Perſon and his Heirs and *Succeſſors*, with particular Relation to defence of the *Crown* and *Dignities* thereof: Which is Remarkable, and that which may ſeem to excuſe ſome, in not aſſent-

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ing to others which are not ſo obliged; and yet it is thought by ſome, that the main or onely meaning of thoſe Oaths, was againſt *Rome* or *forreign Enemies*: For which alſo a Declaration in the Queens *Injunctions* may be conſidered. But in all Caſes of real Scruple, I cannot cenſure any that (in a quiet humble manner, ſeeking Peace and Truth,) followeth his Conſcience till it is rightly informed.

In the Quarrels of *York* and *Lancaſter*, there was an Act (in *Henry* the Fourth) to *entail* the *Crown* upon the Kings *Iſſue*, of which four are there named: But in *Henry* the Eighth, the Parliament declared the *Succeſſion* to the *Crown* not yet ſettled or cleared enough; and then it was *entailed* again, and for lack *Heirs* Male, upon *Elizabeth*: But this again repealed in *Mary*; and again in *Elizabeth* and *James*.

How much or how little theſe annulled the *Common-law*, I muſt ſubmit to others: leſt upon debate, I ſhould be forced to yield it might be poſſible for future Parliaments to reduce *Succeſſion* to *Election*, as juſtly as ſome late Parliaments did turn the *Common-law* of *Election* into ſuch or ſuch a *Succeſſion*; which can only ſtand by *Statute*; if it be true (as all tell us) that there was no

no *entailed* Inheritance but by *Statute-law*, ſince the Second of *Weſtminſter*, of which before.

How little Power Kings had over their Crown or Kingdom without conſent of Parliament; (beſides all that is ſaid already,) might be further cleared from the acknowledgments of Kings Themſelves, below the time of the Conqueſt.

In the Conqueſt, about *Inveſtitures*, K. *Henry* the firſt wrote to the *Pope*, that he could not diminiſh the uſual Rights and Dignities of the Crown or Kingdom; and that if he ſhould be ſo Abject as to attempt it, his Parliament would not permit it. *Optimates mei & totius Angliæ Populus id nullo modo pateretur.*

In the great Moot of *Scotlands* dependance upon *England*, *Edward* the Firſt confeſſed as much to another *Pope*; to whom alſo the Parliament (both *Lords* and *Commons*) wrote, that they they were all obliged by Oath to maintain the Juſt Rights, Liberties, Laws and Cuſtoms of the Kingdom; (where we may ſee their Oath of *Allegiance* to the *Kingdom*,) that nothing ſhould be acted againſt Them, *In exheræditionem Juris Coronæ, & Regie Dignitatis, ac ſubverſionem ſtatus ejuſdem Regni, nec non præjudicium Libertatum, Conſuetudinum & Legum Paternarum.* Theſe are on

on the Rolls, and printed on the Statute of *Merton*, and in *Walsinghams Edward* 1. and the *Surveigh* of *Normandy*.

And from other Records of the same King, we learn that when the Pope demanded the Grants of K. *John*, he answered, That he could not do it, without consent of his Parliament: *Sine Prælatis & Proceribus Regni*; being tyed by his *Coronation Oath* to keep all the Laws and Rights of the Kingdom, *Illibati*; and to do nothing that might touch the Crown without their Consent. Which may be added to that before in St. *Edwards* Laws, of the Kings Oath, to *do all things* Ritè, *per Concilium Procerum Regni*.

When the King of *France* demanded Homage of K. *Edw.* the Third, he desired Respite, till he had the Advice of his Great Council, (as we may read in *Froizard*;) because he could not act without them in such great Affairs.

And when the *Pope* demanded Homage of the same King; he referred it to Parliament, who adjudged and declared, that K. *Johns* Grants to the *Pope*, were unjust, illegal, and against his *Coronation Oath*, being done without his Parliaments Assent or Counsel: And yet K. *John's* Charter (to the Pope) in *Matth. Paris*, doth pretend it done *Communi Concilio Baronum*. And

And about *Stephen Langton*, the same K. *John* did write to the *Pope*, that he could not depart from the Liberties of his Crown, but would, or should defend them to his Death: And hence began the Great Excommunication, which begot a Confiscation of the Church Revenues; *& hinc ille Lachrymæ*, which could not be stopped, till the Crown did stoop to *Pandulph*; which might have excused the poor Hermit, *Peter*, from being so cruelly dragged from *Corf*-Castle to *Warham*.

But when the same King felt his Arms loose, he laid about him so, that all believed he meant to strike. In that *Meen* the Arch-bishop told him, It was against *his Oath*, to raise or make War without the Consent of his Great Court: *Si absque Judicio Curiæ suæ, Contra quempiam Bellum moveret*, to be added to the *Militia*: But the fire was already kindled, and the Smoak or Flame brake out at *Nottingham*.

I must not touch the *Barons Wars*, except I had leisure to discourse and discuss them freely: Only, as we found our *Great Charters*, made up of old Laws and Customs; so I might now also clear it more, that it was not a new Fetter on the King to have some *Supervisors* set about him,

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him, for to order all his Actions; who, by his *Coronation Oath*, was tied to do nothing touching the Kingdom, but with Advice and Consent of the *Great* Council; *per Concilium*, & *per Judicium Procerum Regni.*

That it was so also among the *Britains*, to all observed before, I might add, the Old *Scottish* Custom of choosing Twelve *Peers* in *Parliament* to be the *Kings Tutors*, as we may call them; for by them the King must be wholly governed; *Quorum Concilio Rex Regnum gubernare debebat*, as we may read it in *Walsinghams Edward* 1. besides their own Chronicles; that I say nothing of the Twelve Brittish *Peers*, of which *Cambden* in *Siluribus*.

We need not much wonder at the Writs in K. *John's* Time, requiring all Men of all Conditions to oblige themselves by Oath, to maintain the Great Charter, and to compel the King thereunto: *Et quod ipsum Regem pro posse suo, per Captionem Castrorum suorum, distringerent & gravarent, ad præfata Omnia Exequenda*; when as this very Clause was in his Charter; *Et illi Barones, cum Communa totius Terræ, distringent & gravabat nos, modis Omnibus quibus poterunt, scilicet per Captionem Castrorum, terrarum possessionum, & aliis modis quibus potuerint*

tuerint; *donec fuit emendatum secundum Arbitrium eorum.* Which may be added to that before of our *Allegiance*, or Oath of Fealty to the King with the Kingdom, and of the *Kings* Oath to be guided by the Judgment of his Great Court.

Nay, as if K. *John's Salva persona*, N. & *Reginæ* N. & *Liberorum* N. had been too loose; in K. *Henry's* Charter it was expressed thus, *Licet Omnibus de Regno* N. *contra Nos insurgere*; Nay, and to *do all things*, *quæ gravamen nostrum respiciant, ac si nobis in Nullo tenerentur.*

These times seem not to attend our Grand Maxim of State, *The King can do no wrong*; or at least they understood it not, as some late Courtiers would perswade us: Yet it is true, he can do nothing but by Law; and what he may by *Law*, can do no *wrong*: And if he do against the *Law*, his Personal Acts, Commands, or Writing, do oblige no more than if they were a *Childs*: And the Books call him an *Infant* in Law (though his Politick Capacity be not in *Nonage*; as the Parliament declared in *Edward* the Sixth;) which is not to exempt him from *Errors*, or to excuse his *Crimes*; but to shew that he must be guided by his Coun-

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cil; and that his own Personal Grants or Commands cannot hurt any more than an *Infants*; which may be reclaimed and recalled by the Council of the Kingdom. So the *Mirror* saith, The King cannot grant a Franchise to prejudice his Crown or others; because he holds his Right and Dignities but as an *Infant*, *Cap.* 4. *Sect.* 22.

If I should say, The *Commons* in Parliament are and were the *Kingdoms Peers*; as well as the Lords, I might vouch an Old Authority, as good as the Ancient *Modus* of Parliament, which doth often call the *Commons*, *Peers* of Parliament, as well as the *Lords*.

So, *debent Auxilia Peti pleno Parliamento, & in scripto cuilibet graduum Parium Parliamenti; & oportet quod omnes Pares Parliamenti consentiant; & duo milites pro Comitatu majorem vocem habent in Concedendo, & contradicendo, quam Major Comes Angliæ*, &c.

So in doubtful Cases of Peace and War, *disputetur per Pares Parliamenti*: and if need be, Twenty five shall be chosen *de omnibus paribus Regni*; which are so specified, Two *Bishops*, Three *Proctors*, Two *Earls*, Three *Barons*, Five *Knights*, Five *Citizens*, and Five Burgesses. And again,

again, *Omnes Pares Parliamenti sedebunt, & nullus stabit, sed quando loquitur, ut omnes audiantur à Paribus.* And again, *Nullus solus potest nec debet recedere à Parliamento sine Licentia Regis, & omnium Parium Parliamenti, & hoc in pleno Parliamento; Ità quod inde fiat mentio in Rotulis Parliamenti.*

It may be possible, That *Bracton* and *Fleta* with others, may use the Phrase *Pares*, in such a sence; when they say, That the *King* or his *Commissioners* should not judge and determine of *Treason*, but *Pares*. Which may be added to the 25*th* of *Edw.* 3. reserving *Treason* to Parliament, where of Old, it seemeth only determinable; so that *The Mirror* would not have it *Endicted*, but by Accusation and in full Parliament, as in King *Edmund's* Time, *&c. Cap.* 2. *Sect.* 11. and in *Edw.* the 3*d* it was enacted, That Offences of Peers, and great Officers, and those who sued against the Laws, should be tryed in *Parliament*.

And although now the Phrase be given to all the *Lords* of Parliament, yet it was most or only proper to the *Earls*, whom by Law and custom the *King* styleth *Consanguineos*, and he might style them his *Peers* or *Companions*, as in Latine *Comites*.

So *Bracton*, *Comites dicuntur quasi Socii Regis*,

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& qui habet Socium, habet Magistrum; and in another place, *A Societate Reges, enim tales sibi Associant ad consulendum & regendum Populum Dei*; and the like is in *Fleta, Comites à Comitiva dicuntur, qui cum viderint Regem sine Freno, Frenum sibi apponere tenentur*, &c. which is also in *Bracton*.

The *Mirror* is yet clearer, although the King had no Equals, yet because himself or his Commissars might not be Judge, it was provided by Law that he should have *Companions* to hear and determine all his Torts, *&c*, *Aux Parliaments*, and those *Companions* were called *Countees*, (Earls) from the Latine *Comites*.

So also *Sarisberiensis* (cited before) in *Hen.* 2. *Comites à Societatis participatione dici quisquis ignorat ignarus est literarum*, &c. some will have them, *Comites & Socii in Fisca*, because of old, some *Earls* had a third part of profits accrewing by Pleas and Forfeitures in their *Counties*, as the Laws of the *Confessor*, and Mr. *Selden* in his *Comes*; but he will also grant their name *à Comitiva potestate*, rather than from such *Communion of profits*.

That the old *Sheriffs* also, who were *Vice-Comites*, did come to *Parliament*, appeareth in the Ancient Writs and Histories; and yet the Barons

Barons seem to be the Kingdoms *Judges*, and the present *Earls* may seem to sit in Parliament but onely as *Barons*, who are now all Peers and Lords of Parliament.

But although the Lords were the great *Judges* of the *Kingdom*, and of all Members thereof, yet it is well known, that in full Parliament, as old as *Edw.* 3. they did not only acknowledge, but protest that they were not to *Judge the Commons* in Cases of *Treason* and *Felony*, being not their *Peers*.

How it was in *Rich.* the Second, may be seen at large in the Rolls and Records now printed: In *Edward* the Second the *Commons* proceeded by the Judgment of the *Lords*, for which also the *Fructus temporum* cited before, may be added to all in the Road.

Appeals and Writs of *Error* were from the *King* to the *Lords*, in Ecclesiasticals that touched the King, they were to the Spiritual Prelates, Abbots and *Priors* of the *Upper House*, by Act of Parliament in 24 *Hen.* 8. till which it may be *Temporal Lords* had also Cognizance of *such* as well as *Temporals*.

And *Writs of Error* in the Parliament were Judged by the *Lords*, for they came from the *Kings* Court, his *Bench* or his *Exchequer*; and if

if *Errors* had been in the *Common Pleas* or below it, they ſhould not be brought into *Parliament*, but to the *Kings-Bench*, and from the *Kings-Bench*, as from the *King* (not otherwiſe) they came to the *Lords* ; and although there was a formal Petition for removing the Record from the *King*, it was but of Courſe, and the King could not deny it.

Which we found granted by all the old Lawyers and Hiſtorians, (as I ſhewed before) and by the grand Maſter and Patron of Law, King *Edw.* 1. in *Britton*, becauſe none may Judge in his own Cauſe, *Therefore in Cauſes where our ſelf ſhall be Party, we do conſent, que N. Court ſoit judg Sicom e Counts & Barons in Temps de Parliament.*

In the Laws of *Hen.* 1. one of the Chapters beginneth thus, *Judices ſunt Barones Comitatus, qui liberas in eis terras habent*; for in thoſe times *Barons* were by *Tenure* only, not by *Patent*, (that I know) till *Beauchamp* of *Holt* in *Rich.* 2. nor by *Writ* (that I can find) till the *Barons* Wars, but K. *Johns* Charter, is to Summon *Comites & Barones Regni majores ſigillatim per literas N.* But all *that hold in Capitæ, by general Summons* forty days before the Parliament, and that *Negotium procedat ad diem aſſignatum, ſecundum conſilium eorum*

eorum qui preſentes fuerint, quamvis non omnes ſubmoniti venerint; and the Summons of Delinquents or Suitors in Parliament, was to appear and abide the *Judgment of the Court*, not of the *King*, but of his Court, for the *King is Father* and not *Judge* of his People, in his proper Perſon, as was ſhewed before ; and all the Books agree that he muſt *Commit his Juriſdiction* unto Judges in the Courts of Juſtice, and when he might aſſume great Offices into his own Hands, by Parliament in *Edw.* the third, all *Judges* were expreſly excepted, and the *Judges* Oaths, and ſeveral Acts of Parliament require them to proceed according to the Law, notwithſtanding the *Kings* Command or *Seal* againſt it, and the *Regiſter* affordeth a *Writ* to Superſede or Revoke any ſuch Seal from the *King* himſelf to any of the Judges.

And the Lord Chief Juſtices, as the Lord Chancellor and Treaſurer were Choſen by the Kingdom, as we found before in the time of *Hen.* 3. how much more then ſhould the *Lords* of Parliament be made by Parliament ? for elſe they be the Kings Commiſſioners.

So the *Roman* ſaith, our *German* Fathers choſe their *Lords* in Common Council, to be Judges, *in*

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in iisdem Conciliis Eliguntur & Principes qui Jura reddunt. De Minoribus consultant Principes, de Majoribus Omnes. And *Cæsar* also observeth, that their *Princes* (or *Lords*) were their great *Judges*; *sed Principes Regionem atque Pagorum inter suos jus dicunt, Controversiasque minuunt.*

Yet *Tacitus* will also tell us, that with those Princes they did joyn *Commons*; *Centeni ex Plebe Comites*; which were (perhaps) the Fathers of our County *Hundreds.*

And in K. *Williams* Edition of the *Confessor's* Laws, when he inclined so much to them of *Norwey*; *Universi Compatriotæ* Regni, *qui Leges Edixerant*, came and besought him not to change their Old Laws and Customs of their Ancestors, because they could not *judge* from Laws they understood not; *quia durum valde foret sibi suscipere Leges ignotas*; & *Judicare de eis quas Nesciebant.*

How it was in Parliament, while there were only *Barons* by *Tenure*, would be more enquired. But of later times, *Commons* have adjudged *Commons*, and have joyned with the *Lords* in adjudging *Lords*; of which there are divers Cases cited, in the Fourth Part of Institutes, *Cap.* 1. *pag.* 23.

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It may be considered, that many Kingdoms, and Common-wealths (that were not Kingdoms) in all Ages did consist of *Three Estates*; (as of *Three Principles* in Nature, or Bodies Natural;) which might occasion the Phrase of *Tribe*, in many other besides the *Romans*: who in *Three Estates*, were not so Ancient as the *Grecians* or *Ægyptians*; that I speak not of the *Gauls*, *Britans*, or the *Eastern* Nations.

And if any would observe, it might be possible to find the Prophets hinting a *Trinity* in divers Kingdoms or Estates; and that not only for moulding, but for overthrowing them: Besides the Three Captivities, or Three overturnings of the *Jewish* State; and the Three blows of the Goat on the *Ram* in *Daniel*; as alluding to the Three great Battles which did break the *Persian* Empire.

And why may not the Sacred *Trinity* be shadowed out in Bodies *Politick*, as well as in *Natural*? And if so, our Three *Estates* may be branched as our *Writs*, into *Original*, *Judicial* and *Executive*; as shadows of the *Being*, *Wisdom*, and *Activity* Divine.

If I may not grant, yet I cannot deny *Original* Power to the Commons; *Judicial* to the Lords, *Executive* to the King; as the *Spirit* to the Body, or if you will, the *Head* (or Fountain of Sense and Motion;) But he must *see* by two *Eyes*, and *hear* by two *Ears*; as I touched before, yet his very *pardoning* although it be by Law much limited,) doth seem to speak his

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Power *Executive*: And so his *Writs* do speak aright; *Because my Courts have so, and so judged: Therefore I do so, and so, command the Judgment shall be executed.* And if any will assert the *Militia*, to this Power *Executive*, I shall also grant it to the *King*; So that it may be alwayes under the Power *Original* and *Judicial*.

This might belong to the *Lords*, and that to the *Commons*. And the plain truth is, I do not find more Arguments to prove the *Judicial* Power to belong to the *Lords*, than I do for rhe *Legislative* in the *Commons*: And (as it seemeth to be above, so *below* also) it may be much disputed, That the *Legislative*, *Judicial* and *Executive* power, should be in distinct Subjects by the Law of *Nature*.

For if *Law-makers* be *Judges* of those that break their Laws, they seem to Judge in their own Causes: which our Law, and Nature it self so much avoideth and abhorreth. So it seemeth also to forbid both the *Law-maker* and *Judge* to *execute*: And by express Act of Parliament, it is provided, That *Sheriffs* be not *Justices*, where they be *Sheriffs*. But if *Execution* be alwayes consonant to *Judgment*, and *This* to the *Law*; there is still most sweet Harmony, and as I may say, a *Sacred Unity* in *Trinity* represented.

That the Commons should have most Right to the Power *Original*, or *Legislative* in *Nature*; I shall leave to be disputed by others. I shall only touch some few Particulars, which have made me sometimes

times to suspect that by our Laws, and Model of this Kingdom, it both was and should be so.

How the *Roman* Historian found the *Judicial* power given to the *Lords*, by our Old Ancestors, I did observe before; he is as plain for the *Legislative* in the *Commons*: Nay, to the *Lords* themselves, he saith in *Judging* was adjoyned a Committee of Commons, both for *Counsel* and *Authority*: *Ex plebe Comites, consilium simul & Authoritas.*

And again he sheweth, how the *Lords* did sit in *Council*, about the *less* Affairs; but of *greater*, all both *Lords* and *Commons*: So also that those things which the *Commons* did determine, *Quorum Arbitrium penes Plebem, apud Principes pertractentur*; they should be debated with the *Lords*, for their *Advice*, but not their *Legislative* Votes.

And the *Mirror* (a good Comment on *Tacitus*, in this) sheweth how our *Lords* were raised out of the *Commons*; and giveth them a power *Judicial*, but where is their *Ligislative*? Nay, the *Modus* of Parliament will not only tell us, that the *Commons* have better and stronger Votes than the *Lords*; but that there may be a *Parliament* without the Lords, (as well as *Prelates*:) For, there was a time in which there was neither Bishop nor *Earl*, *nec Baro*, (so the *Irish Modus*;) and yet there were *Parliaments* without them; but never without the *Commons*. So that if the *Commons* be not summoned, or for Cause Reasonable, cannot, or will not come, for Specialties

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in which they blame the King; *Parliamentum tenebitur pro Nullo, quamvis omnes Alii status plenarie ibidem interfuerint.*

And the Kings *Oath* is to confirm the Just Laws which the *Commons* (not the Lords, but *Commons*) shall Elect or Choose; *quas Vulgus Elegerit*; So in *Latine*, and in *French* of *Edw.* 2. and *Edw.* 3. *Les quiels la Communante aur' eslu*: And in *English*, of *Hen.* 8. and other Times, *which the Commons of the Realm shall choose.*

And if we look into the Old *Writs* of *Summons*, we shall find the *Commons* called, *ad consentiendum & faciendum*; and the Old Writ addeth, *quod quilibet & omnes de Comitatu, facerent vel faceret, Ii personaliter interessent*: (As it is in the *Modus* of *Parliament*,) with sufficient intimation that without the *Commons* nothing could be done, which the late Writs express thus: *Ita quod dicta Negotia Infecta non remaneant, pro defectu potestatis*, &c. But the Lords are called, *de quibusdam arduis tractaturi, & consilium Impensuri*; only as *Counsellors*, not as *Law-makers*: For the very same words are in the *Writs*, for the *Judges* and others coming to Parliament, although they do not *Vote* in making *Laws.*

This may also shew us, how the *Lords* themselves did Elect the *Knights* of *Shires*, (and by Statute of *Rich.* 2. are to contribute to the charges of the County *Knights*) who were to sit and Vote in Parliament as *Law-makers* for the whole *County*: whereas the *Lords* were there but as *Judges*, and the *Kings Counsellors.* And is it

it probable they should retain to their own Persons that for which they *delegated others?* who were there to do, *quod quilibet & omnes facerent personaliter*, even all that all the Lords themselves should do as *Freeholders*, not as *Lords* or the Kings *Patentees*, who might so be his *Councellors* or *Judges* rather than *Law-makers*; this was more left (it seems) to the *Commons*, who for this and other Reasons should not be Common *Judges* (as I think) in private Causes or of private Persons, but of *Judges*, or of such as the *Mirror* speaketh, of whom elsewhere there was no Common Justice to be had.

But if the *Lords* had not a *Legislative* Right, why did the *Commons* send up the *Bills* to them? how came the *Lords* to joyn with the *Commons* in Passing of Acts?

It cannot be expected that I should shew the Original of all Changes or Distempers in this Kingdom; It is work enough to shew our first Mould or Constitution: yet for this also it cannot be doubted, but the *Barons Wars* and Power might gain upon the *Commons* more than on the *King*; he had such Bounds before that he could hardly be obliged more, or capable of granting much, but what was due before to all his People: But it might be easie for the Potent *Lords* to grow upon the *Commons* in the Name of *Barons.*

In that Name I say, for I cannot determine but the old Barons (being the great Freeholders and the Lords of all the *Manors* that have left their Names in our *Courts Baron*,) had by Law and Reason much more Power than had the Kings *Patentees*, Created *Barons* by *Patent* or *Writ.*

But this new Creation did but multiply the *Judges* or the *Kings Councellors*, for by so taking their Commission from the King, they were only as other Judges in Inferiour Courts, and so did really lose their great Power of *Judging*, which was proper only to those who were the Kingdoms *Peers* and *Judges.* So that these Lords did justly admit the *Commons* (or rather were admitted by the *Commons*) into the grand *Judicature*; and it may be that as the *Barons* did communicate their

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their Power *Judicial*, ſo the *Commons* might communicate their *Legiſlative* unto thoſe who had the Name, but little of the Nature of the old *Barons by Tenure*; yet by ſo doing they might bring Confuſion or an harſh Diſcord into *Natures* Harmony.

But the main occaſion ſeemed thus, the King was tyed by his *Coronation Oath* to hold, keep and defend the juſt Laws and Cuſtoms choſen by the *Commons*; *Juſtas Leges & conſuetudines quas vulgus elegerit*; and this Limitation (*of Juſt*) ſeemed to admit of reaſon or debate, ſo much as might convince the Laws required to be *Juſt*, for elſe I know not that the King was ever tyed to them.

And becauſe he was or might be an *Infant*, he had ſtill a great *Council* about him to diſcuſs the Laws propoſed by the *Commons*; and for this Cauſe he did, and by reaſon might Summon the *Lords*, (or any other Wiſe and good Man he knew,) to come and give him Counſel, as the *Writ* ſpeaketh to the *Lords* and *Judges*, &c. *De quibuſdam arduis nobiſcum tractaturi & Concilium impenſuri*; So we find the old *Acts* paſſed *per Conſilium Baronum*, as we might ſhew in all Ages.

And becauſe he uſed to demurr at Bills, till he had the Advice of his great Council; hence it may be (for more Compendium,) the *Bill* was ſent up firſt to the *Lords*, as the Kings *Counſellors*, and if they Counſelled him againſt it, then he anſwered, *Le Roy s'aviſera*, *The King will yet be farther Adviſed*; for he did not, and I think he could not give a denyal, nor of old (perhaps) Demurred, till the *Lords* adviſed him againſt it.

I diſpute not how much the *Commons* might oblige the *Commons* without aſſent of *Lords* or *King*; Nor have I yet ſaid, that in the *Coronation Oath* the *Commons Juſt Acts* are called *Laws*, and to *Mould* them may be works diſtinct enough; and the plain truth is, his Oath is to hold, and to keep, and to defend the Commons Laws, (*à Tenir & Gardir & Les Defenderer, per ſe tenendas & protegendas*,) as well as to Grant or to Confirm. How-

However, I do not ſee, either by Reaſon or Law, That the King was ſo obliged to the Judgment of his own created Lords (and there be few or none others left in *England*) that he might not be convinced by the *Reaſon of the Commons*, either without or againſt the Lords.

And (beſide divers *Ordinances* without any of the *Lords*,) it cannot be denyed, but in Divers ages, there were *Acts of Parliament* made without or againſt all the *Lords Spiritual*; which yet, often, were the Major part of the *Lords Houſe*, and had as good, it may be better, Votes (as Barons by Tenure) than had all the other Lords, by *Writ* and *Patent* only: which might make them Judges or Councellors, much rather than *Law-makers*.

I ſhould ſtill be far from deſiring to obtrude my own Fancies or Opinions upon any, leaſt of all to the wrong of others: Therefore, if any can produce a better Title, my Petition is, they may be heard, and may receive their Juſt Rights and Priviledges. But if this be true, (which I now only propoſe, and ſubmit to better Thoughts and Judgments,) then had the Lords of late but a Right *Conſultative* of making *Laws*.

And beſides all that was ſaid before, this ſeemeth one Reaſon, why our Anceſtors did ſo willingly follow the Vice of *Nature*, in placing the Power *Legiſlative*, *Judicial* and *Executive*, in three diſtinct Eſtates, (as in *Animals*, *Aerials*, *Etherials* or *Celeſtials*, three Regions, and three Principles in *Naturals*,) that ſo they might be forced to conſult often and much in all they did.

And if this frequent Conſultation were retained, and obſerved ſtill, it might not only occaſion good Reviews, but alſo prevent That, which to the Common-wealth I fear (and not Alone to private Perſons) may be ſometimes prejudicial, in a ſudden Vote or Act of one Houſe, or one Body; and yet one may be better much than Many, if they be not good.

It muſt be granted, that in Bodies of the Beſt Complexion and Compoſure here below, there may be ſuch Diſtemper, and

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and ſuch Gangrene in ſome Members, that it may be more than fit to cut it off. Nay, what was beſt, may come to be the worſt in Putrefaction; That it may be meer Neceſſity to bury it, although it were as Dear as *Sarah* was to *Abraham*, or ſet on high by him that raiſed up the *Brazen Serpent*, which ſee e're long lye buryed with this Epitaph, *Nehuſhtan*.

And to all that is truly Juſt, the Commons of *England* will not need to plead a bare *Neceſſity*; for by Law and Reaſon too it may be ſaid, and proved (I believe,) That both the King himſelf who chooſeth by his Writ, and All the Lords, by ſeveral Votes, have left the *Legiſlative* power ſo to the Houſe of *Commons*, that they had a Legal Right to do what all the Kingdom and Common-wealth of *England* Juſtly could.

But They are Men, and therefore may be much *unjuſt*; Nay, where the Thing they do is *Juſt*, They may be much or moſt *unjuſt*. I have neither Calling nor Ability to Judge them: Nor may I act with force againſt them, for whate're I think Unjuſt: No, not if I ſhould think they did Uſurp the Crown.

For, if the Law Reports and Books deceive me not, it hath been Judged Treaſon, and ſo is; for Private Men to riſe, conſpire, or Levy War againſt one that Uſurps the Crown and Rights thereof; except it rightly were declared Uſurpation, or that others ſhould or might oppoſe him that did ſo Uſurp: Of which the Reaſons may be Great and obvious.

Let me then ſuppoſe any one Man of all the Commons in Parliament, (for I will not ſuppoſe it poſſible for All the *Houſe*) to Uſurp the Royal Crown, with all its Dues; what ſhould I, what may I doe, but mind my Calling, and attend the Judgment of the Higheſt Court, I know? That may command my Body, and my Judgment much (for ought I ſee) in things I know ſo little, as I do or can, the Due diſpoſal of the Crown, or that Mighty Burthen, or that *Royal Venom*, as the *Roman* Emperor did call it. I did

I did, and ſtill do, believe there may, and ſhall, be ſuch a *Monarchy* ere long, through all the World; that I ſhall gladly bow, and ſtoop, and bear the Yoke: For, it is eaſy, and the Burthen light.

I hope and believe, or know that God will come, and appear, ere long, to dwell in the World: For, the *Earth* ſhall be *full* of his *Glory*, and his *Kingdom* ſhall *come*, and his *Will* be done, on *Earth*, as now in *Heaven*. So, we were taught to ask; and it therefore ſhall be fully anſwered.

I could deſire him rather (if he pleaſed) in the *ſtill quiet Voice*, then in the ruſhing *Wind*, or *Fire*, or *Thunder*-claps: Yet ſo, he came before, and ſhook the Earth: And ſo, it ſeems again; yet once again to ſhake both *Heaven* and *Earth*. *Overturning, overturning, overturning,* (for there alſo were *three*,) *till he comes, whoſe Right it is*; To whom, both Kings, and Lords, and all muſt bow, (or be bowed,) to ſubmit, and caſt down their Crowns, their Coronets, and all their Glory.

The Earth ſhall reel and fall, and *riſe no more*. For, he will *viſit the Hoſt of high ones, that*

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are on high; and the Kings, of the Earth, upon the Earth, they shall be taken, and cast into Prison, shut up in the Pit, and shall be visited, or wanting. Nay, he will *darken the Sun,* and confound *the Moon,* and make the *Stars to Blush*; before he reigneth in Glory, *among his Antients, in* Jerusalem. His Tabernacle then, shall appear again, and rest among them: But BABYLON must first be pulled down.

We may deceive our selves, in chayning *Babylon* to any *Town,* or *City,* whatsoever: although one it may be, more especially. But *Babel* was the *head of* Nimrod's *Kingdom*; whence *Tyranny* did stream through all the World.

For, although the *out-lets* of *Euphrates,* be (long since) stopped, in the *Fenns of Caldea*: Yet, there is another rapid Torrent, *Tygris,* which from *Babylon* dispersoth much *Confusion,* (troubled Waters,) into all the Seas about.

Nor may it wholly be unworthy of our Thoughts, how *Babylon* was alwaies the *beginning,* or the *Head* of *Tyranny, through all this World.* But *fatal* still, to most that did but touch it.

So

So to *Nimrod,* the great *Bell of Babylon,* and the *Assyrians. Sardanapalus* might effect an end, so like to *Belus*; who was burnt (some think) with Fire from Heaven. So, that a Statue, was made of him, who left no Relique: And from hence, began Idolatry. So to *Nebuchadnezer,* and the *Babylonian Monarchy*: when the Watchers saw him, strut and say, *Is not this my* Babylon?

The Story of this, and of its loss to *Persians,* is so clear, in Sacred Writ; That I need not enlarge it from *Josephus,* the true *Berosus, Megasthenes, Herodotus, Xenophon,* or any later. Though it be also very considerable among those Heathens. And so, is that famous Ruine of *Senacherib,* whom *Esay* maketh a *Type* of all the Churches Carnal and Spiritual Foes: Insomuch, that from him, rather than *Egypt*, St. *John's binding of Satan,* the old *Dragon,* the *crossing* Serpent, seemeth borrowed.

The *Persian* Empire, did begin from *Cyrus,* taking *Babylon.* It's Pride and Tyranny, did much encrease; then, when *Darius* won this *Babylon* again. But neither *Cyrus,* nor *Cambyses*, *Darius*, nor *Xerxes*; (or any other

 Persian

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Persian Monarch,) could much prosper, in ought of Consequence; in *Scythia*, *Greece*, or other Places; after they were stained, or cursed, with *Babylon*.

The *Macedonian*, was succesful very much; but not accounted, any of those Monarchies, till *Alexander* lost himself, by gaining *Babylon*. 'Tis strange, how great a Change it made in him; that then became, a Cruel, Lustful, and Licentious Tyrant; stay but a while, and you shall see him lose both Life, and Monarchy, at once, in fatal *Babylon*.

Philip was very young, but old enough to be the Father to a famous *Grecian Epocha* (which used in the *Machabees*, and many others,) first began in *Babylon*; (as *Nabonassors*'s also, long before.) The Character was *Red*, and dyed, with the *Blood* of all *that Family*.

Seleucus, durst not call himself a *King*, till well possessed of *Babylon*: From whence began the Kingdom of the *North* which was, (in *Daniel*) to wrestle, with the *South* or *Ægypt*; till the Ships of *Chittim*, made him afraid; and proud *Antiochus* was glad to bow, and speak the *Romans* fair, before he could be freed from

from his *Circle*; though it were, but made in *Sand*, by a riding Rod.

Babylon was fatal to the *Romans* also: for, so far they prospered still, but never over, or beyond the Streams of *Babylon*. *Charan* was Tomb to *Crassus*'s Army, as before to *Terah*: nearer much to *Ura*, (found in divers,) then to *Urchoa*, with *Ptolomy*.

Much I might speak of *Parthians*, *Persians*, *Saracens*, *Turks*. These seem as *Angels*, *bound beyond Euphrates*; but being *loosed*, and possess'd of *Babylon*, their Tyranny was divilish. Now it is, (or rather is not, but poor *Bagdad*) in *Turkish* Hands, most times; except an Army of *Locusts*, ('tis remarkable,) appear as *Harbengers* before the *Persian*. But his *Sun* must be eclipsed, with the *Turkish Moon*, before the Glory of *Jerusalem*.

But to return to *Babylon*, while *Romans* kept the Scene, they acted well; but 'twas a *Tragedy*, for some have thought they brought more Shame and Sin, and Tyranny, from all the Coasts of *Babylon*, then *Brass* from *Corinth*, or Antiquities from *Greece*. Thus *Babylon* was *buried* in *Rome*, but *Rome* is *ruined by* Babylon.

Edom-

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Edom and *Babylon* run Parallel, in Judgment (through the Prophets,) and the *Jews* were plain enough, in saying, or in proving, who is *Edom*, in this western World.

This *Edom*, did give name, all say (since learned *Fuller* wrote his *Miscellanies*) to the *Red*, or rather, the *Reed Sea*, but this may be doubted; and the rather, (with other great Objections; for it is scarce a drop, to that the Antients call the *Erythrean* Sea, or *Mare Rubrum*; never belonging unto *Esau*:) in that *Edom* will hardly be found, to denote *Red*.

A great Master of the *Arabick*, and other kinds of Learning, in *Cambridge*, Mr. *Wheelock*, did almost perswade me once that *Edom*'s Name, is better sought and found, in *Arabick*, where it may sound as much as *Eator*, or a *Glutton*: who did sell his Birthright, for a mess of Broth; as *Adam* (the first Glutton,) sold his *Paradice*, and all, for a little Apple, or the like.

This Etymology, of *Edom*, I could the rather believe; because in *Tuscan*, *Latin*, and so many other Tongues, *Edo*, *Eso*, *Esor*, (and the like Words,) do all signifie *Eating*: and in

in other Nations, the *D*, is only changed into *T*, its Cousen Germane.

How *Edom* came to be a Type of *Rome*, (as the *Jews* so constantly affirm,) may appear in due Place. This is very considerable, that among all other Judgments threatned on *Babylon* and *Edom*, (for they are equals in most;) this is one, and the chief of all, that they shall be *perpetual Desolations*, and shall never return, or rise again, when they be fallen.

Tyre and *Sydon*, might return again; *Ægypt* and *Æthiopia*: for *Chush* may reach to *that* also, from *Chusiana*, on the Banks of *Euphrates* and *Tygris*; whence they passed through *Arabia*, (and there left their Name also,) cross the *red Sea*.

Moab and *Ammon* shall escape, from the last Northern King in *Daniel*; and they shall return in the latter days (a noted Phrase.) Nay *Sodom* it self, shall return and rejoice with her Sisters, *Samaria*, (for *Ephraim* in this also, seemeth to be the *first born*;) and with *Jerusalem* the younger Sister. So, spake the Type also, when *Lot*, and *Abraham*'s Tennants of *Sodom* were, (in the fourteenth great Year) delive-

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red, from the Oppression and Tyranny of all the *four grand Monarchies*, of *Shinaar*, or *Babylon*; of *Elam*, or *Persia*; *Ellassar*, (the Prince of *Ellas*) or *Greece*: which three also, may lie in the *Heifer*, *Ram*, and *Goat*, (God's own Emblems, of the three first Monarchies;) which were *divided*, and *broken* about the *Dove*, and *Turtle of* Abraham; *and the King of the* Gentiles, may typifie the *Roman Empire*: Although I could yet believe, there may be more in it. *Antichrist*, may seem to have two Horns, one in the *West*, and Christian Temple: the other in the *East*, and Jewish Temple. (*Edom* and *Babylon*) *Mahomet* did rise, about as bad a time, at Rome, as *Hildebrand*. But it may be, his Horn must end in *Gog*, and *Magog*, (whence the King of *Gogim*, in *Genesis*;) which is very probable to be *Alleppo*, the Turks greatest Residence in *Asia*, directly *North* to *Jerusalem*: and of old, not only *Hierapolis*, but *Magog* also, in some antient Heathen Authors. But *Edom* and *Babylon* shall mourn and lament, in that *Eternal Desolation*; while the whole Earth, besides, (so speak the Prophets,) shall rejoyce.

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The World must be renewed, the Promise and the Blessing to *Adam* must not fail one tittle, nor could the Flood (or its worst Causes) disanul the Grace of God, established so long before. Nay, it was continued, confirmed, and inlarged, in the new Charter to *Noah*. The Scripture is very observable; although I dare not be too confident in ought of *Noah's* Blessing, or Will or Commands, found in the Cave among the *Tuscan* (Rarities much rather then) *Antiquities*. Yet With much of those also there is more to be compared, then I have yet seen in *Lazius* or *Berosus* (for *Annius* may be excused, who found it with that Title,) but the Book was written by a *Jew*, if *Tsemack David* do not deceive me.

And the Jews with much consent, expect this glorious Change. Both touching themselves, (who never yet ('tis thought) possessed half their promised Land, from *Euphrates* to the Sea, from *Lebanon* to *Ægypt*, nay, where ever their Feet did tread) and others also of the Pious Gentiles.

To this day they shake their Palms in Triumph every way (in their great Hosanna;)

in

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in alluſion to the Pſalms and Prophets; who ſay, that *every Tree of the Wood* ſhall ſhout, rejoyce, clap Hands, and ſing for Joy.

Nor do they think the time far off, and that from better Grounds perhaps, than is the old Prediction in their *Zohar*, which foretels their Redemption ſhould be upon, or about, the Year laſt paſt; to which they add ſomewhat they ſee, or have heard from their Brethren of *Juda* in *Braſile*: or of *Iſrael* in other parts of *America*, which they cannot much believe (till it be better confirmed;) although it be with many Arguments aſſerted by a grave ſober Man of their own Nation, that is lately come from the Weſtern World.

It is ſtrange, if it ſhould prove true, and that which might regain ſome of *Eſdra's* Credit, (beſides all of Chriſt, and the *Jews* long *Captivity*, with their return about the Ruine of the *Roman Empire*, whoſe *twelve firſt* Cæſars, with divers others, he deſcribeth clearly;) in that alſo of the *ten* Tribes paſſing through a River or Strait, (may it be the *Strait* of *Anian*) in a long Journey of many Months or Years, *to a Countrey not inhabited.*

It

It is alſo remarkable, that ſuch good Authors ſhould relate the Traditions of the *Mexicans*, or others in thoſe parts; coming a great Journey, with an Ark carried before them on Mens Shoulders, with their God therein, and what others have obſerved of *Circumciſion* found in ſome of thoſe parts: with other Rites of *Tribes*, *Heads of Tribes* and *Families*, with ſome pretty Ceremonies of *Marriage*, *Funerals*, and *Waſhings*; not altogether unlike the *Jews*, or *Iſraelites*.

However, it ſeems they left many of their Brethren behind them in *Aſia*, though it muſt not be in *Tartary*. The World will not admit of it of late, although it was very current a while, in *Dan* and *Naphtalim*, Mount *Tabor*, or I know not what, in *Ortelius* and others.

But Millions of them, are ſtill found in *Perſia*, and other parts of *Aſia*, though I give no Credit to their *Kingdom* in *Caramania*, or elſewhere deſcribed or feigned by *Benjamin*, the Jew in *Eyre*. Yet with him muſt be condemned (if he lies in all) ſome of our own, that have travelled in thoſe parts.

Not only Maſter *Herbert*, who hath many

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considerable Passages; besides that of a mighty high Peak of *Taurus*, for *Ararat*, not very far from the *Caspian Sea*; which he saith the Inhabitants do still, to that day, call the *Descent from the Ark*, which would much have pleased Sr. *Walter Raleigh*, and other learned Men, that would not have *Noah* come out of *Armenia*; though so many *Heathens* also do record it thereabout.

But to return to the *Jews*, and their Return, It is so clear, and so full in the Scriptures (both Old and New) that I need not seek it in the *Apocrypha*, where yet are many Predictions of it clear enough, especially in *Tobit*. I mean the old *Hebrew Tobit*, brought from the *East*; for that we have is broken and imperfect much, being only taken from a *Jew*'s Mouth, that Translated it to *Jerome*; as himself confesseth, if I forget not. All the *Prophets* speak clearly of it; but *Jonas*, that of him we have, was but a second Prophecy, which, besides all the *Jews*, somewhat in his own Words doth intimate: And we need no more; for, in the Kings we find *Jonas*'s Prophecy for *Israel*'s, (even *Israel*'s) Restoration, which is there also

also carried up to *Moses*'s *Song* (cited also in *Ezechiel*, besides other Prophets) as that which is clear enough for what we speak.

So is *Moses* also clear, that *great Troubles shall befal them in the latter Days*: that is, in the *time of the Messiah*, as they all confess; for so they still interpret the Phrase. And to this *Place*, with others, they refer their Afflictions, under *Messiah Ben Joseph*. Whom (I hope) they begin to think already come: although *Ben David* do not yet appear to them, but *Moses* addeth, that the *Gentiles* should also rejoyce with his People *Israel*. For he would *again be merciful to his People, and his Land*, and so that Song endeth; which was to be kept and considered, in the latter Days, or time of the *Messiah*.

Abraham was first told his Seed must be as *Dust*, and afterwards as *Stars*: Not Stars for *Multitude* I think, but *Glory*. Except there be more *Stars* then the Jesuite thought, who hath lately wrote a Book in Praise of the *Virgin*; being nothing else but one Verse (*Tot tibi sunt Dotes Virgo, quot sidera Cœlo*;) which he hath changed above a thousand times, (and might have done it much oftner,) keeping

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keeping the very ſame entire Words in a true Verſe.

Abraham the *High Father*, had two Sons in ſpecial. *Iſhmael* a Type of the *carnal Jew* (who had alſo twelve Princes, twelve Patriarcks) from *Hagar*, the Earthly *Jeruſalem*: coming firſt from *Egypt*, and growing proud, ſhe is driven out (into *Captivity*) but ſoon returns again upon an Angels Call.

Yet ſhe muſt only ſtay till *Iſaac* (a real Type of *Chriſt*) is born, and weaned a while; and then, her ſelf and Son (for mocking *Iſaac*) muſt be turned out of doors, from *Abraham*'s Houſe, or Church. It was very bitter to good *Abraham*, but ſhe muſt out. *And ſhe is yet in Bondage* (in the Wilderneſs, a long Captivity,) *together with her Son poor Iſhmael.*

But in this Wilderneſs, when ſhe is near Deſpair, ſitting alone, wringing her Hands, for Grief and Woe; and her poor Son, at a diſtance crying, or rather gaſping for Life, *God will hear, God will hear*, (*Return O God to the many thouſands of* Iſrael,) and he will call, and *ſpeak kindly to her, in the Wilderneſs*: He will then

then open her Eyes to ſee a Well, *a Fountain of living Water.* The *Well of him that hath lived long*, and *looked on her.*

For, when the Poor and Needy ſhall thirſt ſore, and their Tongue cleave to their Mouth, (when they ſit in Darkneſs, he will ſee and execute Peace,) *he will open a Fountain in the Wilderneſs*: So do the *Pſalmiſts* and *Prophets* often alude to this of *Hagar in the Wilderneſs*, an Hiſtory of all the Bible, much, I may ſay, more remarkable.

After this ſhall *Iſaac* come and ſeek his poor Brother *Iſhmael*, he alſo ſhall come and dwell with his Brother at his Well *Labairos*: and thereabout he met *Rebecca*, though I dare not draw the Paralels. But it may be worthy of inquiring, that about forty Years old, he ſhould meet his Wife at *Hagar*'s Well.

The *Jews* do tell us pretty Stories of old *Abraham*'s coming oft, and knocking at the Door to call and ſee his Son, though *Hagar* was much abroad and yet they ſay, ſhe did return again at laſt into his Houſe. And ſome will alſo have her to be *Keturah*, on whom *Abraham* had many Sons, that peopled the

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the East. These seem to be the *Abrahamides*, or *Brachmonides*, of whom we hear so much, yet see so little, but their Names.

Certain it is, what ere became of *Hagar*, that *Ishmael* returned to *Isaac*, or rather *Isaac* to *Ishmael*. For, besides that of *Isaac*'s living so much at *Ishmael*'s *Well*, the Text is clear, for their being together at *Abraham*'s Death, or Funeral. And *Ishmael* (a better Man then some may think) dyed in Honour, or as the Phrase is, *in the midst of his Brethren*, if I mistake it not.

Isaac (a Type of *Christ*) *had two Sons*, that Wrestled and Fought so soon as they had being. *Edom* the eldest (which the Jews will have to be the *Roman Christian Church*, the first *born to Christ*, or *Isaac*;) yet must come to serve the *younger*, when he cometh up.

Jacob (the Father of all *Israel*) had two Wives. *Leah* the visible Church of carnal Jews, or Gentiles, bleer eyed; not so lovely to her Husband as was *Rachel*. Who was long barren, but at length beareth *Joseph*; And she is then to leave her Father's House: For

For he will give them up (for smiting *Joseph*,) until she that travailed bring forth, and receive her Son with Joy.

In this flying Posture, *Jacob* meets the Angels at *Mahamin* (it was the way with the *Canticles*.) He wrestleth and prevaileth with God, and with *Edom*. 'Tis a great Mystery: But I am tedious.

Poor *Rachel* is loath to leave her Idols. These stick and stain her (but they must be buried in *Bethel*,) till at length she come to *Bethelem-Ephrata*; and there she travaileth with *Benjamin*; to her, *Benoni*; for she must expire as soon almost as he is born. Nor did she regard the Words of those, that told her, that she had a Son: but she shall receive him again with Joy.

I dare not say that blear-Eyed *Leah*, was typified by old *Lilith*, of whom the *Jews* speak so much, and so Ill; because she did so much displease our Father *Adam*, till God in pity cut him asunder, (as they speak, and so doth *Plato* also,) and of one of his *Sides* made *Eve*. Otherwise his Body had been more round; Male before, and Female behind: To which they say the Psalmist doth allude; besides that of *Moses*: *Male and*

Female created he them, or him; at the first.

They have also an antient Tradition, of which, the *Talmud*, and many of their best Writers; that there should come two *Messiahs*, and the first should attempt, but not perform the full *Deliverance*: But that he should dye, and leave them in a doleful Plight, so long, till a second came, and relieved them all, and Reigned over them, as *David*: For, they call him *Ben-David*, as the former *Ben-Joseph*, or *Ben-Ephraim*.

Not only for his Relation to *Joseph*, but they use to call any Noble Gallant Man an *Ephraimite*. And in that of their *First Messiah*, they seem to allude to a common Story among them, of *Ephraim*'s hardy Attempt to carry them forth from *Egypt*: But his Rashness cost him many thousand armed Men, drawing the Bow, *but turning back in the Day of Battle*; as the Scripture seemeth to allude in several Places.

Those *two* distinct Men, (with the *Jews*) seem but *two* distinct Estates in *One*, and the same *Messiah*. Which two Estates seem also to be Tipyfyed by *Joseph* and *Benjamin*, good *Jacob*'s *Darlings*, and the Sons of his beloved *Rachel*, the good Jewish Church.

Some-

Somewhat it is the Scripture meaneth, I believe, in bringing *Christ* from *Bethlehem-Ephrata*: by which we are also led, and bid by St. *Matthew* to look on *Rachel*, falling in Travail there, and weeping for her Childrer, *who were not*.

And often did she Weep, if she could see how often *they were not*, or seemed not to be. So *Joseph* in the Pit, in the *Dungeon* in *Egypt*, in *Ephraim*'s first Attempt from *Egypt*. So *Benjamin* in that famous History, when all *Israel* wept as well as *Rachel*, because *Benjamin* was not.

Yet again, how oft did she, must she Weep? poor *Rachel* weepeth till she see them all again: and so she shall in the *latter Days*, as saith the Prophet *Jeremiah*. And then also the Children of Barren *Rachel* may be more, than of Fruitful *Leah*.

And another Prophet saith, *they shall be given up* (as deserted by the Father) *till she that Travailled shall bring forth*: Nay, till she have leisure to attend with Joy, that a Man-child is born to her. Some have thought the Travailer to be *Gentile Church*, but it is Interwoven with *Bethlem Ephrata*.

I need not spend much time to Parallel the

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two Estates of our Messiah with this *Joseph*, and *this Benjamin*; *The Lord will dwell between his Shoulders*, more then when the Holy Place was in the Tribe of *Benjamin*: he also was cut off, (as *Joseph* was) but did prolong his Days and prosper. Yet a little while, I hope, and *Benjamin* shall come down from his good *Father*; and then shall *Joseph* (*Ben Joseph*) make himself known to his *Brethren*, who did hate him, shout at him, cast him into the Pit, deliver him to the Gentiles.

But he was brought from Prison and from Judgment: At thirty Years he stood before the King, and was made Governour of all. His Brethren must come and bow down to him, tho they rememb'red not his Affliction; yet he preserveth them in *Ægypt*: and tho Dead, yet goeth before them to *Canaan* in his Coffin; of which the Jews have many Stories, in the Life of *Moses* and others.

They shall see him who they have pierced, and shall weep over him: For he shall melt them by saying, *I am* Joseph *your Brother*.

But he must stay till *Ægypt* be destroyed by Famine: and be glad to yield it self to *Joseph*; he must sit till his Enemies be put under him. And then shall come the Restitution; when *Babylon*

bylon is pulled down. It filleth all the Scene as yet: And whil'st *Satan* acteth as if he were *God*, it is no Wonder that we see so little done of Good. I must not trouble the World with the time of this great Change: But it may be sought (and perhaps found) not only by Types, but plain Expressions in *Moses*, and the *Prophets*; besides our Saviour's Words, and the Revelation.

This I may observe, that as *Ægypt* was broken before the *Tabernacle* was first raised, and *Edom* before the first *Temple*, and *Babylon* before the *Second*; So both *Edom* and *Babylon* before the *Third*, in *Ezekiel* and St. *John*: for I now seek not the three Temples in *Ezekiel*, *Sitnah*, and *Rohoboth* (digged by *Isaac*) as do many *Jews*.

Of all the Crimes of *Edom* and *Babylon*, this hath a heavy Charge: that the afflicted *Heber*, the People of his Love. But those that Curse them must be Cursed. How great a share in that this Kingdom had, I cannot say, there are Mistakes on either side.

We say they *Crucifyed a Child*, or more: They do deny it, and we prove it not. They say we drove them out from hence: it is not clear.

They

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They were in Favour once at Court; they did deserve Respect, who brought the Crown two hundred thousand Pounds *per Annum* (little less, as mony now,) for divers Years together. And King *John* did give or sell them a Charter of *Priesthood*, or rather *Presbytery*; for I know not, that by this they ever *Sacrificed*. And the Charter yet remaineth, for old Jacob *the Presbyter of all the* Jews *in* England, during Life.

Their Use and Brocage was so burthensom, that in King *Edward* the First, one Parliament did quite deny them Leave of *Usury*; and that did *draw* them, but not drive them *hence*. It was *their Motion* that obtained a *Writ* for safer Passage, which yet secured them not, but that the best of them were drowned in the Thames, by Fraud of those that undertook to Wast them over: But they hanged for abusing those poor Jews.

The next Parliament did grant a whole Fifteenth *pro expulsione Judæorum*, yet they had but a *Writ for a Pasport*; and they were but 15000 and odd, if I may believe a great learned Judg, who has so Reported and Recorded.

How they are now, I need not say: although

though I might also bear them Witness, that they are yet Zealous in their Way: nor do they wholly want Ingenious Able Men, of whom I cannot but with Honour mention him that has so much obliged the World, by his learned Writings, *Rab Menasseh Ben Israel*: a very Learned Civil Man, and a Lover of our *Nation*.

The more I think upon the great Change now coming on them, and all the World; the more I would be Just and Merciful to them, to all: nay Universal Sweetness if I could; a Christian overcoming all with Love.

And such one should be more I believe, if one had conquered all the World. For then there would be nothing left, but *Self* to Conquer. Then one would return in Love, and say, *come forth my Enemies and Live, enjoy your Rights, your Peace and Liberties, with all your Joyes. There shall not an Hair fall off your Heads. By this it shall be known, that God alone must Reign.*

I know that *Antichrist* and *Babylon* must fall, and rise no more. But these are more in Hearts, then any Walls, or any City. Not only in the *Heart*, much less the *Name* of *King* or *Lord*: I Judg my self, or so I should much rather,

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rather, and much heavier than I Judg another. For I ſee much cauſe to fear my ſelf, leſt I may keep a little Pretty, rather Ugly Antichriſt within my Breaſt; whil'ſt I am buſie to deſtroy ſome others, more then it in others, or my ſelf.

There is a *ſweeping Rain*, oppreſſing more then any *Thunder*. There is a *Pride* moſt proper to a *Leathern Coat*. And one there was that trod on *Pato's* Pride, with *Prouder* (it was ſaid) and fouler Heels.

I find it in the Scriptures: thence I know that *Babylon* muſt down, and be thrown down with *Violence*. More *Force* it may ſeem, than *Form of Law*.

Yet, even in ſuch things, God ſeldom doth that which is not juſt in Man's Eye alſo. Nor did he ruine *Babylon*, or ſpoyl *Ægypt*, till they oppreſſed *Iſrael*. Nor did he bring the *Jews* by pure Force to poſſeſs *Canaan*, before they had purchaſed *Sechem* or *Machpela*; with ſuch a Legal Seiſin as might warrant Force, or Forcible Diſſeiſors, that ſo held Poſſeſſion againſt the true Owners.

And what ever Force may appear in pulling down of *Babylon*, I do not Read or Know that the new Temple, or the *new Jeruſalem* ſhall be built

built with *Violence*, or by *Violent Men*, that may ruffle much in forcing *Babylon*; But they may periſh by the Sword that uſe it moſt. *Moſes* was the meekeſt Man alive, yet he had a ſpecial Commiſſion, (that was a *Patent ſealed with the Arms and Impreſs of Heaven*) to ruine or impoveriſh *Ægypt*. He pulled down indeed, but he raiſed little but a *Tabernacle*: Only a *Shadow of good things to come*. And it muſt be aboliſhed by him that was typified by *Joſhua*: For *Moſes* could not bring them into *Reſt*, altho by Force and a mighty Hand he brought them out of *Ægypt*. *David* was a Warriour and a mighty puller down: He cut off the Head of *Goliah*, and weakened all the *Philiſtins*; he threſhed *Ammon*, *Moab was his Waſhpot*, *and over* Edom *he caſts his Shoe*. He ſhall be brought into the ſtrong City, and ſhall harrow *Edom* and ſow it with *Salt*, or cut off all the Males but one or two that can eſcape by Stratagem.

But yet, *he muſt not build the Temple*: for he was a *Man of Blood*; and when he would but remove the Ark, *Uzza* is ſmitten, and *David aſhamed* as well as afraid *at that great Breach*, which remaineth to his Day; I had almoſt ſaid prophetical of our Times.

From *Perez Uzzah* the Ark is brought but

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a few Paces; for it must rest a long time with *Obed-Edom*, a mysterious Name, and when it comes from thence to the City of *David*, it must be content with a *Tabernacle*, with many Forms and Ceremonies: and among others *Obed-Edom* is the *Porter* to that Tabernacle.

Shall some of *Edom* also be brought in; although his *Desolation be eternal*, or for an Age of Ages? May they come to be *Porters*, as *the Gibeonites were Hewers of Wood for the House of God? His Judgments are in all the World*; and so they must be long. But Judgment *is his strange Work*, and *he delighteth in Mercy; he will turn again, and be Merciful unto us. Nay, all the World shall Sing and Rejoyce.*

The Sea shall roar a while, and all that in it dwells: but there shall be no more Sea, no more Death, or Hell, but what shall be sealed up in the great Pit. But *the Earth shall Rejoyce, and his Goodness shall be over all his Works: they shall all bless him, they shall all praise him. Nay, all the Trees in the Forest shall Rejoyce.*

This is also the more considerable, in that it was so clearly expressed in that joyful Psalm, which was made and Sung at *David's bringing the Ark from* Obed-Edom: But it is divers times repeated and inlarged in the Psalms and Prophets:

phets: For it is a great Mystery. *Solomon* the *King of Peace* must build the *Temple* up: there must not be a Hammer heard, or a Stone Squared, but before it cometh thither.

He is married to *Ægypt*, and in League with *Tyre* and *Sydon*: the Letters are yet to be found and read in old Authors: then *Pineda*, he is reconciled to *Moab* and *Ammon*: and the *Arabians* bring him Gifts, as did the *Magi* from the *East*. He spake peace to the *Gentiles* afar off: not only to the *Queen of Sheba*. I do not reject or believe all the Titles or History of *Precious John*: But I could with a Sight of *Solomon's* Works; and others in his famous Library at *Amyra*.

Nay, to the *Isles* of the *Gentiles*: We need not travel to *Peru* as some have done, to seek *Ophir*: it is nearer much, and better found in *Zealand*, one of the best Islands I suppose in all the World: and the learned Author of the late *Peleg*, maketh demonstrative Paralels of this with *Ophir*, or the *Taprobane* of Ancients.

Yet even *Solomon*, this peaceful King, had two great Enemies; one was an *Edomite* (*David* left but very few,) and the other was a *Syrian*; I do not say an *Assyrian* or *Babylonian*, altho these often come into the Name of *Syria*,

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ria (a vast Latitude.) But the Text saith, the *Syrian* reigned about *Damascus*, which seemeth near the Borders of the old *Magog*; and it may be compared with the Close of the 16*th*. or rather with the middle of the 20*th*. of the Revelation; or with much in *Ezekiel*, about the time of *his Temple*; or it may be, long after it was built.

The second Temple was built in a time of Trouble, and great Fear: For they held their Swords together with their Trewels. But yet it was not built by *Power* or Might, (much less by *Force*,) *but by his Spirit and Goodness*, that did overaw his Enemies.

Zerubbabel did hardly live to see his Temple, or at least the City finished. This was but a gentle Visitation, as the Jews used to call it: not a Restoration of the two Tribes, much less of all, as the Prophets promise: Nay, some of them promised after this Return from *Babylon*.

And this Temple was imperfect much, it wanted divers Glories of the former: *Five* in special, as the Jews affirm (at the want of ה in the Word foretelling its Glories) which never were recovered: tho great *Herod* did encrease the outward Glory. And there was a greater

greater than *Solomon* to give Peace in that place: and so he did to all the World. 'Tis known how oft the *Romans* shut the Temple of their *Janus*.

But why could not this Peace endure? was it because this Temple was not *founded in Peace*? for *Ephraim* envyed *Judah*, and *Judah* vexed *Ephraim*. Nay among themselves they could not agree: for some wept, as others laughed.

But *when the People did with one Voice, and one Consent, Sing out to Bless and Praise the Lord* (so saith the Type in *Solomon*,) then, and not till then, *the Glory of God came down and fill'd the House; so that the Priests could not enter*; nor it may be, needed in that Glory. This was but a Type of somewhat yet to be fulfilled, more, much more in building of the new Temple.

Solomon did also then pray that *all the Earth might come to know the Lord, and serve him, as his People Israel did*. And this was heard and answered by God; and almost all the Prophets, who with much Consent assure us, that *the Earth shall be full of the Knowledg and Glory of God*. And *that he shall be served with one Consent*, and *with one Shoulder*: *even from the rising of the Sun, to the going down thereof*. (For it is worth observing how Learning and Religion, came along

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along with the Sun from East to West.) *In every Place shall Incense be offered with pure Oblation.* And then *Ephraim shall no longer envy* Judah, *nor* Judah *vex* Ephraim.

If I durst assert *Esdras* to be Scripture in any thing; it should be in those most considerable Prophecies of the Ruine of the *Roman Eagle*, to which it may be, our Saviour also alludeth; as he seemeth to do in divers other Passages, found no where that I know, but in *Esdras*.

And about the Fall of that *Roman Eagle*, he seeth a great Multitude of *Fighters*, (as in Armageddon.) But at length arose a *Man*, who was the Son of Man, that called to him a *peaceful People*, that should leave off War, for it should cease in all the World; *their Swords and Spears must be beaten into Plow Shares and pruning Hooks.*

And when the Multitude (in the Revelation) stand and Sing the new Song, the Song of *Moses* (of the Sabbath, or the Red Sea,) and the Song of the Lamb (not yet known abroad:) Then, and not till then, is the Vail of the *Tabernacle in Heaven Opened.* But there was yet a Smoke to cloud that Glory.

But when the seventh Angle shall sound, and all the Kingdoms of this World become the

the Kingdoms of our Lord, and of his Christ: *and those be destroyed, that destroyed the Earth.* Then *shall the Temple of God be fully opened in Heaven, and the Ark of his Testament* (the Model shewed to *Moses* on the Mount,) *shall be seen* and viewed in that Temple: not in a *Tabernacle*, but a *Temple*: then also shall the four Beasts (which in *Ezechiel's Mircavah*, the Jews will have to be the Emblems of the four great Monarchies in *Daniel*:) *even these four Beasts*; and the Elders of Presbyters; *with all the Angels of Heaven, and all the Creatures of Heaven and Earth, and of the Sea, and under the Earth*; (how long, or how far this may reach, I know not) all shall fall down about the Throne, giving *Honour* and *Blessing*, and *Praise to him that sitteth on the Throne, and to the Lamb, for ever and ever. And the four Beasts again in special say Amen.* There is much spoken of a *Personal Reign of Christ upon Earth*: I do not affirm it, yet I believe there is more, much more for it, then I have yet seen in any of the many Writers on *Daniel*, or the *Revelation*. And beside the Judgment of so many, if not *all the Orthodox* in *Justin Martyr's* time: there be some very antient, (almost Apostles,) that relate how our Saviour himself discoursed of this Kingdom, which the *Acts* do but Intimate.

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But for my part, I do acknowledg my ſelf to be ſo ambitious, as to expect ſomewhat much higher and better then his *bodily Preſence*, which yet I long for: *as the Captive haſteth to be looſed.* But this would pleaſe or profit little without *Life and Power*, and Real *Light* above our *Doubts*, *Diſputes*, or *Demonſtrations.*

Nor would this much profit man, or pleaſe God, I think, without *true Love*, proportionate to ſuch a Light.

The firſt Paradice had one River parted into four Streams, and one *Tree of Knowledg*: but of *Evil* rather than *Good.* The new Paradice ſhall have many Rivers of Knowledg, to cover the Earth, and many Trees of Knowledg alſo; whoſe very *Leaves* ſhall *heal the Nations*; what then ſhall their *Fruit be*, but *Reſurrection from the Dead*?

I ſee ſo much of this vain World, that I cannot but earneſtly deſire and long for a *new Earth*, and for *new Heavens*: but yet I ſhould not value or deſire them much, were it not that in theſe I hope to ſee *more Juſtice*, and *more Mercy.*

Is not that the *World to come*, of which the *Hebrews* and our Saviour ſpeak, as *pardoning all* but *one Sin*? The Phraſe is common with the Jews;

Jews, who do expect it on Earth; and the Prophets make it a *pardoning World to come*, ſo *that the Inhabitants ſhall not ſay they are Sick*, for *their Iniquities ſhall be forgiven.*

I muſt confeſs my Hope is, that he that bid us ſtill forgive ſo much, that we might be like our Father: meaneth himſelf to forgive very much; being himſelf the Founder and great Patron of that great Order of Chriſtians, whoſe Badg is this, *Conquer thy ſelf, and others Evil by doing Good.*

Elijah muſt *level* his Way, and many (if not all the Antients,) thought *Elijah* yet to come; which our Saviour alſo ſeemeth to intimate with that at his *Transfiguration.* And the Jews repeat the Verſe of the Prophet *Malachi*, which ſeemeth alſo to ſpeak of two *Days*; and all *Elijah's* Work was hardly fulfilled at Chriſt's firſt Coming.

However when that *Levelling* is over and paſt, the *Lamb* ſhall come of *another Spirit. For the Son of Man came not to deſtroy, but ſave*: He is the *Prince of Peace.* And when he ſhall come *to Conquer*; He will come on a *White Horſe*, and ſhall ride on *Proſpering, becauſe of Meekneſs, with Truth and Righteouſneſs. He will have Mercy and not Sacrifice*, and that will pleaſe

 him

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him more than *all burnt Offerings*. He will make *our Officers Peace*, and *our Exactors Righteousness*: For *Violence shall be no more*: But a King shall Rule in Judgment, and a Man shall be an hiding Place from Storm and Tempest.

I will hear what the Lord God will speak; For he will speak Peace (as well as Truth) *to his People, and to his Saints; that they may no more return to Folly*, or have Cause to Blush. *Mercy and Truth shall meet together, Righteousness and Peace shall kiss each other. Truth shall spring out of the Earth, but Mercy* (this the Jews called *Righteousness*) *shall come down from Heaven*; for the Kingdom of God consisteth in *Peace* and *Joy*, as well as *Righteousness*.

For *the Fruit of Righteousness is Peace, and Assurance for ever; being sown in Peace, of them that make Peace*. Such is the *Wisdom from above*, and such are the *Fruits of the Holy Spirit*.

What shall we say then to *the Messenger of the Nation*? or to the *Angel, spoyling* Edom *and* Babylon? What? *That the Lord hath founded* Sion, *and the Poor of his People shall trust in it: He will leave an afflicted poor People, and they shall trust in the Name of the Lord; and then will he give them a pure Language, that they may all call upon him with one Consent.*

Thou

Thou hast indeed smitten Edom *and* Babylon. *Let not thine Heart lift thee up, for why wilt thou meddle to thine own Ruine? that thou shouldest also fall, thou and all* Juda *with thee.*

Shall the Sword devour for ever? Knowest thou not that it will be Bitterness in the latter end? How long shall it be then, ere thou bid the People return from persuing their Brethren.

Again, and yet again, I bow my Soul and Pray, and humbly Beg; That all may be both *Just*, and *Justly done*. Not with Justice only, but with *Pitty* and great *Compassion*, and much *Mercy*, *for in many things we fail all.*

I say that the *Commons* also failed to the Common-wealth. But to speak freely, altho I will not Judg the *Commons*, yet I cannot Justifie that House; but I must also Condemn what was lately done to them also, (even to the House of *Commons*) by that Army which hath often been acknowledged, to have both served and saved them from Ruine or Slavery.

I desire not to dispute matter of Fact, nor can I Judg it. It is true that by express Law (besides all of Reason and Nature) there should be no Force of Arms near, or so much as in appearance of overawing the Parliament: and I looked on it as an heavy Charge on some

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that perſwaded the *Scots*, or the *Northern Army*, to look as if they would have moved towards the City and Parliament againſt its Will. Nor can we forget, it was ſo late, that the Houſe voted it Treaſon to act by Command of Parliament, under a viſible *Force*.

But how ſhall wee know or diſcern this viſible *Force*? They may be *Free* under that which I may think a *Force*, and therefore I muſt believe them to be *Free*, unleſs they *declare* themſelves to be *Forced*. For by Judging what is the Priviledg of Parliament, I may certainly break their Priviledg; while I inveigh againſt others for ſo doing, and by this incur the Danger of thoſe that Judg before the time, or out of Place; for I ſuppoſe I ſee 100 of the *Commons* ſeized and ſecured; I cannot Judg it a *Breach of Priviledg*, becauſe I know not but it might be done by the Command, Order, or Conſent of *Parliament*; till it *declare* the contrary: Or if not by Order of *Parliament*, yet it may be by ſome Officer, *Virtute Officii*; or if by private Man, yet upon ſome emergent *Neceſſity*, or ſuch Reaſon, that I or others may not Judg, much leſs Condemn but in Parliament. For it may be poſſible perhaps (but I hope not probable) that ſome Parliament-men may deſign or con-

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ſent to ſuch a dangerous *Treaſon* or *Felony*, that it may be the Duty of Officers or others to detain or ſecure them, till the Cauſe be heard in Parliament: and Reſiſtance of any that detain upon *ſuſpicion* of *Treaſon*, hath been adjudged Ground enough to Juſtifie Detention and Securing, till there be a legal acquitting. And that *ſpecies* of *Treaſon*, which is againſt the *Kingdom*, or the *Kingdoms Army*, may ſo much concern a *General*, that it cannot be wondered if he ſhould be the Accuſer or Attacher: who is the Kingdoms *Sheriff*, and intruſted with the *Poſſe Regni*; which he ought to manage for the beſt Advantage of the Kingdom: *prout & melius viſum eſt, in Honorem Coronæ, & Utilitatem Regni*: as the *Confeſſor's* Laws *de Heretochiis*; and yet he is no Judg of this, but muſt ſubmit it to the Courts of Juſtice; and in ſpecial to the Parliament, when ever it concerneth any of that Body Repreſentative.

I ſay not, that the Houſe ſhould not, or need not demand their Members; and the Cauſe of any ſuch Detention (which ſtill ought to be ſubmitted to the Judgment of Parliament,) but I think it may be poſſible to ſuppoſe ſuch a Caſe as cannot ſoon be heard and adjudged; and in ſuch Caſe, I do not know it is abſolute-

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ly Neceſſary for the Houſe to ſit ſtill, and to refuſe to act at all, till all their Members be reſtored. For by this it might be poſſible for a few miſchievous Perſons, ſtill to keep the Parliament in ſuch a perpetual Imployment, or rather Idleneſs; that they ſhould do nothing but Diſpute their own *Priviledg*, and breach thereof. Whereas it may be ſuch a Caſe, that ſhould make them that be Free, to be more active in the publick Service, *Ne quid Detrimenti capiat Reſp.* while ſome cannot, and others will not come to do their Duties.

Yet if any be Zealous to ſpend their Time, or rather the *Kingdoms*, in Diſputing an airie empty Species of *Priviledg* (which themſelves may reflect or refract at Pleaſure, every Moment,) I may not Condemn or Judg them: But when the Sea breaks in, I ſhould fear it a Madneſs in my ſelf, to ſit and frown with a Spaniſh Gravity, chaſing at thoſe that broke down the Banks, till the Waves come in, and drown me with my Friends and Country.

I do not deny but that by the Law and Cuſtom of Parliament, 40 may be an Houſe of Commons as well as 400. Yet to ſpeak freely, I could believe it to be the Duty of ſuch 40 to call in their fellow Members, eſpecially when

when the Work is great and weighty. And I muſt confeſs I ſhould ſomewhat wonder to ſee 40 ſit alone, about the greateſt Matters poſſible, without ſo much as calling the reſt, or ſending Writs for new Elections.

The *Modus of Parliament* telleth us, that as the King might not abſent himſelf (but in the Caſe of Sickneſs, and then he muſt lie in the ſame City or Mannor,) without Conſent of Parliament; ſo alſo there was great Caution againſt the Members abſenting themſelves; ſo that it was expreſſed in the old *Writ* of Election, that they ſhould not depart from Parliament without Conſent of Parliament. But I know not whether the Crime may be ſo great in thoſe that deſert their Truſt; as it may be in thoſe who permit them ſo to do.

But I will ſuppoſe the Houſe of *Commons* is both *Full* and *Free*; which we may, and ſhould (for ought I know,) till they declare it otherwiſe. Yet when they are freeſt, they have Limits; for they be not Infinite. Nay when they are moſt Free, they are moſt bound to good Orders and to right Reaſon.

They which bring them to this at any time (though by any Army of Arguments, or any thing elſe that is Reaſonable,) are ſo far from enſla-

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enſlaving them, that indeed they make them Free, compleatly Free; and when they are ſet Free, they are the more Inexcuſable, if they be not Rational; for when Men are Slaves, they may be the more excuſed, for acting without or againſt *Right Reaſon*; which to Man is the Natural Law of *Liberty*.

Which is not a Power to act *quicquid Libet*, *what we liſt*, (for this may be *Licentious*, and a Luſt or Paſſion may enſlave a Man as much as any Chain or Fetter,) but *quod Licet*, what is *Juſt* and *Rational*; or as ſome of the *Schools* expreſs it, by the *Wills* following the Dictates of the *Underſtanding*, or *Right Reaſon*, rather than by a blind irrational *Indifference*, or Power to *Contradict* its own Acts, or to *ſuſpend* its own Acting; which is not found in all, no not in the beſt Agents, in their beſt Acts about the chiefeſt Good, moſt *Free* and yet moſt *Neceſſary*: and wherever ſuch *Indifference*, or ſuch *Suſpenſion* is, it is a Stain or Spot, and may be Slavery rather than an Ornament or Badg of *Liberty*: For it ariſeth from ſome Darkneſs, in not diſcerning what is beſt; or from ſome Inconſtancy, or Inability to follow it; which without *Suſpence* ſhould be always Embraced, and followed by *Right Reaſon*.

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But what is this *Reaſon*? is it only *Diſcourſe*, as the *Schools* uſe to expreſs it? who yet find ſomewhat higher in Man, even a kind of *Intuition*, which the old Philoſopher did make the higheſt Sphear of all in Man's Soul, *Concentrical to Good*, when both *Reaſon* and *Fancy* were *Excentrical*.

But to me the Word λογος (which we tranſlate *Reaſon*) ſeemeth to be the firſt uſed of *Proportion* in the *Mathematicks* (Mother of all *Analogy*, and of moſt Learning to the Ancients:) ſo that thoſe were called *Rational* Agents which acted in *Proportion*.

So the ſame old Philoſopher (that ſaith, God ever acteth in *Geometrical Proportion*,) placeth Reaſon in a *Mean*, between two Ends or Objects: and the Maſter maketh *Reaſon* to be Miſtreſs, both to *Art* and *Prudence*, (this is *Proportion* in the *Moral*, that in the *Natural* Part of Actions;) and deſcribeth *Virtue* by a *mean Proportion*, which he calleth *Reaſon*; *as a Wiſe Man would define it*. As the Sacred Writer of the *Number of a Man*; that is perhaps *Rational*, a *Logarithm*, or a piece of true *Algebra*, which we may Tranſlate *Mans Numbring*: For of all Viſible Creatures, *Man* only was found to uſe *Numbers* and Proportion.

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But what is this *Proportion*, which Denominates an Agent to be *Rational*? Is it between the *Actor* and the *Object*? and do *Rationals* only observe a *Difference* of *Objects*; whereas *Natural* Agents go on alike to all, *Eodem modo ad Extremum posse*? But *Rationals* still do, or still should act in *Proportion* suitable to themselves, and to their *Objects* also: which is two or three times observed by the Prophet *Esay*, in describing *Reason*, in that of *Ploughing* and *Threshing*, and of *Punishing*, with that of the *rough East-Wind*: *Chap.* 27, 28.

But there is a more inward *Proportion* yet to be found in *rational* Agents, when their Activity is *proportional* to their *Being*, and to their *Knowing*: and when ever these three are preserved *Equal* or *Proportional*, there is *true Liberty*. So it seemeth to be in *God*, (may be so darkly shadow out the Blessed Trinity;) His *Being*, *Knowing*, and *Activity* are Infinite (and therfore *Proportional* to each other) and absolutely *Free*, altho *Necessary*.

By his *Knowing*, he freely comprehendeth; and by his *Acting*, freely diffuseth his own *Being*: So that all the *Creatures* seem as several Rayes, or *Ideas* (rightly called *Species*,) *acted*, that is, diffused through infinite *Knowledg*; from, or

or rather within Infinite *Being*; which the *Jews* call the *Place*, *in which we Live*, *and Move*, *and have our Being*.

Creation was of somewhat *not appearing* before; so both Reason and the Scripture teach: But how it was, or could be, from meer *Nothing*, would be more considered: and it may be the Hebrew Word may signify to *Cleer*, *Manifest*, or *Reveal*, somewhat hidden before; rather than to make of *Nothing Something* (*De novo*,) which may seem impossible, if there ever was *Being Infinite*, (as much real *Entity*, as there could be,) altho not so visible in all its *Moods*, as it was since the *Revelation*, which we call Creation.

All the *Creatures* have some Image of the Creator's *Being* and *Activity*; it may be also some kind of *Knowing* suitable to both: for which there is much to be said, and perhaps more then is yet written by any *de sensu Rerum*: where we might also find Causes of *Antipathies*, and such as are now called *occult Qualities*. And wherever *Activity*, (for this is most to Sence, and by this we used to measure *Freedom*, tho it should it be in *Knowing* as much as in *Doing*,) is preserved *equal*, or *proportional* to *Being*, there and there only, seemeth to be true *Liberty*:

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which may most appear in the *Actings* of those *Beings* which are most *knowing*.

Shew me then the *Sphear* of Man's *Being*, and you may quickly find the *Measure* of his *Freedom*: his being is by all agreed to be *Rational*, and *Reason* therefore is the proper Measure of his *Liberty*. For he is then *Free*, when his *Activity* is preserved equal or proportional to his *Being*; this is *Rational*, and so must that: and Man is then, and then only Free, when he can Act *what he should Act*, according to *right Reason*. This is the Law of his *Nature*, which is *Rational*; and *Reason* is his Royal Collar of S. S. S. or a Chain of Pretious *Pearls*, which *Nature* hath put about his Neck and Arms, as a Badg of Honour, and most happy *Freedom*.

This Digression would be scarce excusable, but that our Law doth so adore *right Reason*; that is a *Maxim*, What is contrary to *Reason*, is contrary to Law.

Knights Service (with Ward and Marriage) draweth *Relief*: but *Reasonable* by common Law, before the *Charter*, and the Statutes do ascertain *Aydes*, which were before to be *Reasonable*.

Guardian in *Chivalry* need not account: but Guardian in *Socage*, *Prochein Amy*, or *Tutor Alienee*,

be liable to a *reasonable* Account: For the old Writ requires *Compotum rationabilem*. But an *Action* of *Account* will not lye against an *Executor*, to such in *Socage*; (tho this hath been pressed in Parliament,) because it was not *reasonable*; but in case of the *King*, it was so adjudged.

Tenant at Will, ejected by his Lord, shall by Common Law have *reasonable* Time to remove his Family and Goods, with free *Egress* and *Regress*, during the said Fine *reasonable*.

Tenant by Copy, with *Fine uncertain*; is not wholly at his Lord's Pleasure: for by Common Law, he must only make a *Fine reasonable*.

Housboot, *Hedgboot*, *Ploughboot*, all *Estovers* (both for Tenants and Prisoners) must be *reasonable*, and so must all Partitions between *Parceners*, and upon *Elegit*, *&c*. Which are therefore not left to the Sole Pleasure of a Sheriff, or of any other, but in a sworn Enquest, as we may find in the Writ *de Rationabili Partitione*.

In divers *Mannors*, there be many petty Customs which can hardly be brought into publick View: but for those, and for all, the Law hath a short Text, *Que nest pas Encountre reason, poit bion estre admitte & allowe*: And the great

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great Commentator addeth, *Lex est summa Ratio.*

If you ask him who must determin of *Reason*, or what is *reasonable*; his Answer would be, that if any man find himself aggrieved by his Lord, or his Fellow Tenants, the Law supposeth the *Judges Breast* to be a sufficient *Closet*; or, if you will, a *Castle for right Reason.*

I remember one Case, (and there may be divers,) in which the *Law* leaveth private Men, (even in their own Causes,) to be *Judges of Reason*, or what is *reasonable*: It is a case of *Escuage.*

The great Charter dispenseth with *personal Service*, (in some Cases,) where it is not *reasonable* a Man should serve in Person: and the *Reason* of this runneth so through all *Escuage*; that if any Man will send another in his Room, the Law dispenseth with it, supposing he seeth *reason* not to attend in Person: Nor may he by Law be compelled in such Case against his own Reason.

Most, if not all other Cases in that *Tenure*, are by Common Law left to the immediate *Reason* of the Parliament, which may be worth a little Pause; as that which may somewhat clear

clear the grand Question of the *MILITIA.*

It is true that by the Common Law, and by the *Laws* of the Confessor, cited by some, to assert the *Commission of Array*; Men ought indeed to have *Arms*, and them to keep in Readiness for Defence of the King and Kingdom.

But it is also true that this, besides other Passages, is strangely cited and applyed for Defence of that *Commission of Array.* For altho the Close of the Sentence be as they say, *Juxta præceptum Domini Regis, &c.* Yet the same Sentence (had they cited it whole,) seemeth to be much more against the *Array*, than for it.

For the *Arms* required there, must be *Assessed by Common Consent*: and that also limited in that very Sentence, to the Proportion of ever Man's *Estate*, and *Fee for the Defence of the King and Kingdom*; *and for the Service due to the Lords, Juxta præceptum Domini Regis*; and these Words in this place do refer to the immediate precedent Words, *Servitium Dominorum*; which by the Custom of the Kingdom was so Limited, that in all *Homage* or *Fealty*, there used to be added this *Salvo*; *Salve lay foy que jeo Doi, à Seignior le Roy.*

And

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And left King *Edward's* Laws ſhould not be plain enough *ſecundùm quod eis ſtatutum eſt, & adjudicatum, & quod debent* : King *William* the firſt, by Advice of his great Council explained them thus ; that *nothing ſhould be exacted or taken, but Liberum Servitium* ; free Service. *Prout ſtatutum eſt, per commune concilium totius regni* ; *as it was eſtabliſhed by the Common Council of the whole Kingdom* : which is alſo a clear Proof, for ſuch a *Common Council* in his time, and before.

In the ſame Laws, this *William* (whom ſome call the *Conquerour*) granteth that *Cities, Burroughs, Caſtles, Hundreds,* and *Wapentakes, ſhould be ſo kept and watched, as the Sheriffs,* Aldermen, *&c. ſhould beſt order for the good of the Kingdom, per Commune concilium* ; by ſuch *Common Council* : and a little after giveth this Reaſon, *Becauſe they were founded for publick defence of the Kingdom and People thereof, idcirco obſervari debent, cum omni libertate, integritate, & ratione* ; a very happy Trinity.

And for *Service*, with ſuch *Arms* as were by *Common Council* aſſeſſed : The ſame King (called the *Conqueror*) hath indeed ſuch a Law, *That all Earls, Barons, Knights, &c. ſhould have and keep themſelves in Arms and Horſes, as it became*

came and behoved them : So much of this Law, the *King's* Declaration cited for the *Commiſſion* of *Array*. But the following Words of that Law quite daſh ſuch *Array* ; for the Cloſe of all is, *according to what they ought to us, by their Fees and Tenure*, to do by Law ; *& ſicut eis ſtatuimus per commune Concilium Totius Regni* : Even by Parliament, for the Common Council of the whole Kingdom.

Theſe *Laws of King William*, with the *Additions* and *Emendations of the Confeſſor's*, were afterwards confirmed by King *Henry* the 1*ſt.* as appeareth by his *Charter* ; not only in the *Exchequer*, but in other Places alſo ; beſides that we have in *Matthew Paris* ; a Copy of which was kept in every County. And the ſame *Charter* was again confirmed by King *John*, (they know it may be proved ;) and again by King *Henry* the 3*d.* and ſo it came into the great *Charter*, and by Conſequence Confirmed, in more *than* thirty *Parliaments*.

In which alſo there hath often been, moſt eſpecial Care of this touching the Militia, being one of the main Cauſes of thoſe Statutes, entituled *Confirmationes Chartarum*, and of thoſe *De Tallagio non concedendo* ; *except by common Conſent in Parliament* : beſides many later Statutes,

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in King *Edward* the 3*d.* and *Henry* the 4*th.* with other Times.

I deny not that in *Henry* the 4*th.* there did issue out a *Commission of Array.* But it is as true, that in the last Parliament of the same King *Henry* the 4*th.* it was again declared as the undoubted Right of this Kingdom, not to be charged with ought, for Defence of the Realm, or Safeguard of the Seas, but by their own Will and Consent in Parliament.

By which we may learn how to interpret all the Precedents acted by the King, for his *Array*: and by how much the more is it true, that some Commissioners of *Array* have been *confirmed by Parliament*? which is always needful to Confirm *any such Array*: Which yet is not proved ever to be Paralelld in any Parliament, for ought I can find.

For in all yet seen, there is no such boundless Authority, given to two or three Strangers, (or others,) to compel all Men but themselves, to provide and bear Arms, *how*, and *when*, and *where* it shall seem good to such Commissioners: Which at once seemeth *to Dissolve all Laws of Liberty.*

Which by the *Mirrour* with other old Lawyers, is chiefly placed in this; *not to be tyed to any*

any Man, but by ones own Consent. In explaining of which they are Large, in shewing how the *Tenures* of the Crown were appointed for *Defence of the Kingdom*: and none *tyed to Service*, but according to this *Tenure*; which was assessed by *Common Consent.*

And if such *Commissions of Array*, might be Legal from the King; *Escuage* is so far from the worst or hardest *Tenure*, (as it was commonly thought,) that it would prove the *best*, and easiest in all the Kingdom.

For if the *Escuage be uncertain* by *Tenure*: None that hath read so much as *Littleton*, can be Ignorant, that by the Common Law and Custom of the Kingdom; it is not to be assessed by the *King*, or any other, but by *Common assent in Parliament*: which hath now done much to settle this also.

And *if Certain*, then is the King as really limited as the *Tenant.* So that the King cannot command or require his Tenant, but according to his *Tenure expressed.*

Not *when he will*: For it must only be in *time of War*, and this is not to be determined by the King, but by the *Courts of Justice.* When they *are open*, as appeareth by all the Law-Books, in the Case of *Roger Mortimer*, *Thomas*

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mas Earl of Lancaster, and divers others.

Nor in *all times of War*, but only in a *Voyage Royal*; to which *Escuage* is most properly tyed: and this must not be determined by the King (who may be a Child, Sick, Incomposed,) nor by *his Marshal*, or *Constable*, but by the Courts of Justice.

Nor in a *Voyage Royal, as long as the King may please*: But according to the *Tenure*; usually forty Days for each Knights Fee; and it hath been demurred in Law, when those forty Days should begin.

They are *Littleton's own Words*, and very Pregnant; as if he thought that by Law, *the King could have no Host, or Muster, but by Consent of the Commons*: and he was as like to know our Laws, as most Men living now.

Nor is the Tenant to serve, but according to his *Tenure* in *Gascoyn, Wales, Ireland, Scotland*, to which *Escuage* proper, (but rather from the *Scute* or *Shield*;) and the Books have divers Cases, where the King hath required Service, denyed by Limits in *Tenures*; which the *Courts of Justice*, especially Parliament, in all Ages did determine.

Nor is the King to determine *how the Knights shall serve him*; whether in *Person* or not. For this

this is by Law, at the Tenants Choice. And if the *Knight* or his Proxy, will not attend, or stay out his Time: yet cannot the King proceed against him, but in a *Court of Justice*, and not by *Marshal Law*: Yet the *Marshal's Certificate* is a Legal Evidence, that the Tenants did not appear in Service; but his Reasons must be heard with all just Pleas.

Nor *with what Arms or Horses, the Tenants may serve*: all is expresly limited; *if the Tenure be certain*: and if not *Certain*, it must (as all Lawyers know,) be assessed by Parliament; which did also at first establish that, which now is *Certain*.

Nor would it be difficult for a mean Historian to shew how in all Ages, the *Militia* was as well *disposed* and *managed*, as it was *Moulded* by *Common Consent*, which is very considerable; and the rather, because all that wrot for the *Array*, did most, or only run out in this; That *the King had the sole disposal of the Militia*: not attending, that if *this had been proved*, (which never was that I know) yet *this* was only but *half*, and it may be *the least half of the Question*. For by that strange *Commission of Array*, the King did not only challenge the Right of *Disposal*, of the *Legal Militia*, already setled; but also

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alſo of *Moulding* and Making *a new Militia*, not yet made or ever thought of, that I could learn by any of our Anceſtors.

If I were forced to enter the Liſts, which I would avoid, as a Purgatory; (being otherwiſe, I ſay not better imployed, than in ſuch unprofitable Wranglings,) I ſhould believe it not very difficult, much leſs impoſſible to maintain; That both the *Moulding* and *Manage*, (the *Make* and the *Uſe*) of the Kingdoms *Militia*, was ever immediately ſubject to the Command of the *Courts of Juſtice* (eſpecially the Parliaments,) which may in a large Senſe of Law, be called *the Crown*, or *King's Politick Capacity*; but never I think to the King's Perſon alone, which in Law is ſtill an Infant, as the *Mirrour* expreſly calls him, though his *common Capacity* be *ever of age*. Be the Perſon a Child, an Infant, Lunatick, *Incompos Mentis*, or a Woman, which ſure our Anceſtors could not but deem a moſt unlikely Perſon for a wiſe and *valiant General*.

If I were compelled to argue this, it ſhould not be only from *right Reaſon*, or the Law of Nature, which yet to me, ſeemeth much to encline this way.

The *Feet* are to bear, and the *Hands* to help, to

to hold, to bind, and rub the *Head*, (in any Diſtemper or Weakneſs,) but if I ſhould hear of any Man born with his *Heels* in his *Neck*, or his *Hands* tyed to his *Head*, or immediately *under his Chin*, I ſhould think it a Monſter.

And wherever both *Hands* and *Feet*, are at their due Diſtance from the *Head*, with divers Nerves and other Veſſels, Bones and other parts between them: yet I never heard or knew that they did *obey* the *Head*, till it did command *itſelf*, and them alſo by *Reaſon*; or till it alſo doth *Obey*, not only its own *Eyes* and *Ears*, but the *Common Senſe* and *Reaſon* of the Soul.

I muſt confeſs I have heard that *Ticho-Brah*, did ſometimes imagine that he found *Mars below, or under the Sun*. But if it were really ſo, it ſeems as great a Prodigy in Nature as the new Star, and that of *Mars*, rather than a *new Star* in *Caſſiopeia*, might preſage thoſe ſad Commotions which have ſince followed in many Places of *Europe*, while *Mars* hath been ſo much *below or under the Sun*. For by Nature *Mars* was ſaid, and ever thought to be placed immediately *under Jupiter*, the great Judg, *or Court of Juſtice*; which ſhould command the *Sword*.

And ſo it doth by *Law*. For in *England* the *Judg-*

Judgments given in any *Court* of *Record* do so command the *Militia* for *Execution*; for a *Writ* runs of Course, which was made by *Common* Consent, and cannot be denyed.

Release to all Actions, will not hold against *Execution*, except all *Suits* were also released: But this is such a *Suit* as the Law calls a *Demand*, which may not be denyed.

And for other Cases of Routs, Riots, unlawful Assemblies, Invasions, *&c.* The *Posse Comitatus*, and by Consequence the *Posse Regni*, was Disposed and Commanded by known, sworn Officers; that acted *Virtute Officii*, by the Law and Custom of the Kingdom.

For it may be known that the old *Justices*, or *Conservators of the Peace*, were chosen by the Counties; as appeareth by Writs, yet to be read from the Rolls of *Edward the First*. And now their Commission and their Power dependeth on *Parliament*.

Nor could the *Chancery* have given such a Power, had it not been so Established by Parliament, which hath also strictly provided for their Legal Nomination and Election. For which the Statutes of *Richard* the Second, *Henry* the Fifth, *Henry* the Sixth; and before them all, *Edward* the third thought it were not printed. And

And it is very well known, how by the Common-Law and Custom of the Kingdom, all the *Sheriffs* do command the *Posse Regni* in their several Counties: and that not onely *Execution of Writs*, which may be thought to be Matters of *Peace*; But the Lawyers know, that Sheriff is *Custos Legis* and *Reipublicæ*, as well as of *Peace*; of which he is the Principal *Conservator* in his Shire and County. Nor may it be Presumption to say, That all these *Sheriffs* also ought to be, and so were, *chosen by the People*; as is sufficiently found in *Hoveden*, and in the Laws of the *Confessor*. And in full Parliament of *Edward* the first, it was declared to be the Law and Custom of the Kingdom; and therefore so setled in the Choice of the People.

There was in latter times some *Alteration* made in Choice of *Sheriffs*; but it was by *Parliament*.

However, we all know, that *Headboroughs*, *Constables*, (greater men than themselves know) *Coroners*, and divers others, are yet still chosen in the Counties; and do act by Custom and Common-Law. And the *Sheriff* also, however he be chosen, yet he stands not by Commission; nor ought to fall with Kings death: But is a standing Officer, by Common-Law. Who may command all Lords, Knights, Gentlemen, and others in his County, by his *Writ of Assistance*. Which issueth of course to every *Sheriff*.

I need not say, how little the Kings Personal Command or Warrant, can by Law interrupt or hinder the

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Proceſs of *Sheriffs*, *Juſtices*, *Conſtables*, or others, in their legal courſe for the Publick Peace. Yea, inſomuch that if I ſhould have beaten a Drum, or raiſed Forces to reſcue King *Henry* the Eighth from the *Compter*, for abuſing a *Petty Watch* in a Night-walk; I might have been arraigned for it.

And ſo I might have been, for refuſing to fire the *Beacons*, or to have raiſed the *Counties*, if I had ſeen a Navie of *French* or *Turks* landing in King *John*'s time: Although the King had come to me and bid me quiet, becauſe they were *Friends*, or ſuch as he invited in for the good of his Kingdom. Which from his own Mouth, or under his hand, would have been no legal *Superſedeas* to a private man, in caſe of ſuch Danger; much leſs to a *Sheriff*, or other ſworn Officer.

For in ſuch caſes of Apparent Danger, any man that is next, may eſteem himſelf an Officer; as, in quenching great Fires, or damming out the Sea. And in ſuch, though the King himſelf ſhould forbid me, or get me indicted; I may demur, and put my ſelf on the Judges of Law; eſpecially Parliament, the moſt proper Judges in ſuch Cauſes. And to Lawyers I need not cite Records or Precedents.

Nor ſhall I need to adde, That in caſe of *Foreign Invaſion*, or Inteſtine Motions, and Breaches of Publick Peace, the Common known Laws of the Land will warrant a *Sheriff*, *Officer*, or private man, to go over a Pale, an Hedge, a Ditch, or other Bound of a Shire or County.

County. In which our Anceſtors were not ſo ceremonious or ſuperſtitious, in caſe of hot Purſuit, or the like: Although they were punctual enough in keeping of *Land-marks*: And in Peace, in caſes of real Actions, and perſonal Trials. They were very tender of thoſe Marks, in ſpecial, that bounded out *Shires* or *Counties*.

The Original of Shires and Sheriffs, is generally fixed upon King *Alfred*. But the old Abbot of *Crowland* (whence this aroſe) ſeemeth to ſpeak of new *Names*, rather than Things: for himſelf hath *Provincias*, *Comites*, *Vice Domini* (though not *Vice Comites*) of Ages before King *Alfred*. And the Monk of *Malmsbury* durſt not follow *Ingulph* in this of Shires, as he doth in *Hundreds*; which yet (as *Wapentakes*) were elder much, if we may credit *Tacitus*.

Old *Ethelward*, and the Author of both the *Offa's*; with *Huntingdon*, among Hiſtorians; and the Lawyers old *Horn-book*, the *Mirrour*; do find or make *Counties* and *Counts*, before King *Alfred*. And we may go higher much, if we may truſt to *Alfreds Saxon Bede*, now printed, with an old *Saxon Chronologie*, by Mr. *Wheelock*. In both which we read ſo much of *Eorl*, *Eolderman*, *Shire-Alderman*, and *Biſhops-ſhire* (beſides *Shireborn*) that is, his *Pariſh*: For this was the old Dioceſs, before the Novel Diviſion of *Pariſhes*.

And before *Alfred*, as high as King *Ina*. His Laws, now extant, tell us of *Shire-men* that were *Judges* alſo,

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(as the old *Counts* and *Shireeves*) and of *Ealdermen* that were to forfeit their Shires, if they let *Thieves escape*.

I might adde the old *Writs of Assize* in St. *Edmund's* time; on which the great Judge buildeth (in two or three Books of *Reports*) for *Sheriffs*, *Tryal* by Twelve, and other things; which might have other clearer Proofs.

If any would also assert such Division among the old *Britains*, he might have much from *Nature*, in Rivers or such Partitions, to most of our *Shires*; besides the names in *Cesar*, *Tacitus*, *Strabo*, *Ptolomy*; and besides that, which *Virgil* himself will admit of, *Molmutius* Laws; assigning the *Ways* and *Plows* for every *County*, which is in others; besides *Monmouth* or *Virunnius*: For *Polydore* addeth in this: which is to be marked; besides St. *Edward's* Laws.

This Digression may be the more tolerable, as that which maketh way to such Elections; as we might assert in the Parliaments of those times also, were this the proper place.

But to return to the *Militia*. We have found it moulded by *Common Consent*; and by it also committed to *Shireeves* and other Officers, known, sworn, and *chosen by the People*. We shall now step a little higher, that we may see how in elder times the great work of *War*, as well as *Peace*, was managed. And this also we shall find entrusted to a *Common Council*.

I do not deny, but the King himself hath sometimes been General of a great Army; and that legally also: for it was by Consent of the People or Parliament.

So it was when the *Romans* came into this Island, *Cassibelan* was King and chief Commander in War: But it was by Consent of a great *Common Council*; as *Cæsar* himself observeth and reporteth: *Summa belli Communi Concilio, Cassibelano traditur.*

Nor can it be wondered at, when their *Druyds* grand Maxime of State was this: *Ne loqui de Republica, nisi per Concilium.* Not so much as to speak of a matter of State, but in or by a Council.

These were they that sent *Cæsar* word, they had as good Bloud as he; and from the same Fountain: having been so long acquainted with *Liberty*, that they knew not the meaning of *Tribute* or *Slavery*.

The *British Druyds* moulded the *Gauls*: *Cæsar* reporteth it, with the Brag of one of them, saying, *That he could call or appeal to such a great Common Council, that all the World could not resist it.*

But there were others also, besides *Kings*, chosen by the *Britains* to be *Generals*; such as old Authors call *Principes Militiæ*: a Phrase given to divers; two I remember, *Bolinus* and *Levisham* (as now he might be called) in the time of *Kimbolinus*: acting by Common Council, as all may find that read those Histories. Which we may now assert, by better Authors than old *Monmouth*, though he be better also; much better than *Polydore* or others would perswade us.

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It was this *great Council*, with the *King*, that treated with and against the *Romans* in all times; and that sought their aid at length against the *Picts* and *Scots*. And when the *Romans* could not attend the *Britains Tears*, it was this *Council* that called in their Neighbours first, and Friends the *Britains* from *Armorica*; (the *Gallish Britain*) and that before King *Arthur*'s time: Of which so many Authors write, that *Convocato Clero*, and *Primatibus Communi tandem assensu mittuntur in Armoricam Nuncii, &c.* A Parliament clear enough; yet not so clear; as any man acquainted with those times, might prove beyond dispute. But I now must attend the *Militia*.

A Parliament it was that called in the *Saxons*; not the King alone, but Parliament, of *Lords* and *Commons* also; if (besides the Crowd of all in the Road) I be not deceived by the *Saxon Chronologie*; and *Gildas* himself, (whose very words almost are used by *Monmouth* and others;) and by the famous *Nennius* of *Bangor*, who yet liveth in *Manuscript*.

He is clear enough for divers things we doubt in *British Stories*: And for Parliaments also, before the *Saxons* setling here; which was by *Act of Parliament*. *Dum Conventa magna Synodus Clericorum & Laicorum, in uno consilio & cum majoribus natu Consilium fecerunt, & scrutati sunt quid facerent; tandem Concilium omnibus fuit, ut pacem facerent: postea verò Conventum adduxerunt*, (here was a *Covenant* also by *Parliament*) &

& Statutum est, ut amicitia firma adjuvicemesset, &c. Thus *Nennius*, after his escape from the *Massacre* at *Bangor*.

Come we now to the *Saxons*, setled here by *Parliament*. In this they may seem more considerable, that by most they are made the Patrons of *Chivalry*, or *Tenures by Knights-service*: for it is now believ'd by no Lawyer or Historian, (that I know) that this came in with the *Normans*; although it was so thought by some.

I have somewhat to say in due place, why it might look higher than the *Saxons*; yet I must yield, it had been but little room among the *Britains* of *Gavel-kind*. Of which, the Parliament in *Henry* the Eighth; and more hereafter: besides all the Comments upon the Statute (or rather the *Writ*) *de Militibus*.

None doubt but *Tacitus* speaketh of our *Saxon* Ancestors (or rather *theirs*) in that, in *their chosing Kings* and *Generals*, (*Reges ex nobilitate, Duces ex virtute*) *by Common Council, in iisdem conciliis, Eliguntur & Principes, de Minoribus Principes, de Majoribus, omnes consultant*. And that such Council did both mould and manage the *Militia*, is plain enough in the same Author: Who besides all matters of History, telleth us their general Custom was; *Not to entrust any man with bearing Arms, antequam Civitas suffecturum probaverit, till some Common Council, more or less, had approved him.* For so, I may translate it to all that know, how much *Urbs* and *Civitas* do differ. The

The Tract of *Parliaments* is visible enough in all the *Saxon Writings here.* I should be tedious in citing but one quarter of that which their Laws (yet to be found, and very good Authors) do afford in this.

Some have much wondred at a Passage now found in the *Confessors Laws.* It is about *Titles*; which he saith, were preached by *Austin, and granted by the King* (then reigning) *and the Barons, and common People*: *Concessa sunt à Rege, Baronibus, & Populo.* A very full and clear Parliament.

We need not suspect or doubt it: for in those very times there were such Parliaments, and such degrees. Nay, *Cæsar* himself found such *degrees* among the *Britains*; a *King* and *Druyds*, (which were as *Bishops* and *Archbishops*, as we may clear anon) *Dukes* and *Nobles*, besides the *Commons*: So civil was our *British Ancestors.* Of whom, much more ere long.

And for the very first times of Christian Religion (which was much higher than *Austin* the *Father*, who might have been great Grandfather to *Austin* the Monk) King *Alfred*'s own Laws acknowledge, that in this Island the Laws were then made by a *Common Council of Bishops and other Wise men, or elder men of the Wytan.*

Old *Bede* seemeth plain enough for this, in several places; *Servabant Reges, Sacerdotes, Privati* (Were the Commons before the Lords?) *& Optimates, suum quique Ordinem.*

And

And of the *Saxons*, called in by Common Council, *Initum est Concilium, quid agendum, &c. placuitque omnibus, cum suo Rege Vortigorno, ut Saxonum gentem in auxilium vocarent.*

And of *Ethelbert* (King of all the South to the River *Humber*;) *Among other good works* (saith he) *quæ consulendo conferebat, etiam decreta Judiciorum juxta exempla Romanorum, Concilio Sapientium constituit.*

And among other Laws of his (in the same *Bede*) that is one, in special, for Priviledge, *Ecclesiæ, Episcopi, & Reliquorum ordinum.*

That this might also extend to the great *Priviledge of Parliaments*, I could the rather believe, from the Laws of the said King *Ethelbert*, yet to be found in the old book of *Rochester* (*Textus Roffensis*) of which, Sir *Henry Spelman*; unto whom we owe so much for all Antiquities. Where, after provision for the things of *God* and the *Church*, (to which St. *Edward*'s Laws allude) the next Act is for *Priviledge of Parliament*, it seems; being for the punishing and sore fining of those that should do any damage, *Gif Kyning his Leode to him gehateth*, &c.

And in the old Chronicle of *Canterbury*, we read of this King *Ethelbert* being at *Canterbury* with his Queen and Son, and the Archbishop *Austin*; *Cæterisque Optimatibus, convocato ibidem Communi Concilio tam Cleri, quam Populi*: With divers other proofs for Parliaments in Charters to that Church, in print. And *Spot* deserves as much.

One

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One thing I must not omit, that *Bede* (observing how Religion was preached both to the King and to the *Counts*, *omnibus Comitibus*) saith, there was a *License* granted for publick *Preaching*; but when the King and divers great men were converted and baptized, yet there was no force used to compel others to be of that Religion: because (he saith) they were taught, that *Christs service must be voluntary, and not forced.* But the *Mirrour* telleth us, the King was bound *to compel men to Salvation.* O happy men! or unhappy King!

But the *Britains* would not be forced from their Rites by *Austin* the Monk, *Absque suæ gentis, & imprimis Senatorum suffragio:* as a learned man translates King *Alfred's Saxon Bede.* Which is also very clear in several places, for setling of Christian Religion, (when it was freely chosen) with destruction of Pagan Idolatry: with *Lent*, and other things, confirmed by divers Acts of Parliament in time of *Ercombert* and King *Edwin*; *Mid his Witum, & mid his Ealdormanum.*

So is the old Book of *Peterburgh*, for a Parliament or *Heatfield.* With which we may compare somewhat in *Ingulph*, and more in *Bede*, *Ethelward*, and *Huntingdon*, about the Parliaments which received and confirmed the *General Councils*; and that which established the Division of *Parishes*, and *Patronage* of *Churches.* Of which, *Stow*, and the Antiquities of *Canterbury*; but especially a Manuscript in *Camdridge*, cited by Mr. *Wheelock* on the fourth or fifth of *Bede.* I

I should not digress to *Sigesberts* founding the *University* of *Cambridge*, had not King *Alfred* himself in this, added good Notes to *Bede.* By which we may see whence he learned what so many say he did to *Oxford*, the younger Sister: For which *Polydore* is plain enough; besides so many better elder Authors. It is also considerable, that King *Alfred* calleth *Cambridge* (or *Grantacestre*) a *City*; which *Bede* would make a *Civitatula.* How little it might then be made by the *Danes* or others, I know not: But in old *Nennius* of the British Cities, I find *Cair Granth* next before *Cair Londen.* And Sir *Simon d' Ewes* affirmeth it to be ranked before *London*, in *Gildas Albarius*, and an old *Saxon Anonymus*; besides that of the old (but not the oldest) book of *Doomsday.*

Nor must I omit the *Records of Richard the First*, for the Customs of the *City of Cambridge*, found by a Jury in an Assize of *Darrein Presentment* for the Church of St. *Peters* in *Cambridge.* Of which, the great Judge in his Reports or Commentaries

To which I might adde what the *Saxon* Chronology speaketh of *Grante Briege*, at the year 875, and 921; where we also find an ancient *Military Sacrament*, or great Oath of *Fealty:* more to be marked, than may seem at first view.

Come we to the *Saxon* Laws, *extant* in print. They begin with King *Ina*; whom some will have to be a *Britain.* But in the *Confessors Acts*, he is stiled

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Optimus Rex Anglorum, qui electus fuit in Regem per Angelum, & qui primum obtinuit Monarchum Totius Regni hujus, post adventum Angliorum : And that himself and others of his People, matched with the *Britains*. But *per Communæ Concilium & assensum omnium Episcoporum, & Principum, Comitum, & omnium Sapientum, Seniorum & Populorum totius Regni.*

Not onely a clear proof for *Parliaments* in King *Ina*'s time, but a good Comment on his Laws in print : Providing about *Matches*, *Dowries*, and *Womens Thirds* ; and all by Parliament : as the Proem it self expresses : beside King *Edward*'s Laws.

And for the *Saxon Militia*, (a Phrase used by *Bede* himself ; *Nam egressi contra Gevissorum gentem, omnes pariter cum suâ Militia corruerunt :*) King *Ina*'s Laws afford us divers Acts of Parliament, providing against Thieves, Riots, Routs, and all unlawful Assemblies, in several degrees and branches : As also for Officers of the *Militia* (to be ready on a great Fine) to march upon all just occasions. With which we may compare Mr. *Lambert*'s *Custos Paganus* , *Sithecundman :* which some would have to be the Father to our *Sidemen*. See *Whithred*'s *Military Dooms*.

Egbert is by all esteemed a great, if not the first *Monarch* of the *Saxons* ; a great Warriour, and a Conquerour : But yet he neither made or managed the *Militia*, without a great Common Council or Parliament.

For

For which, besides all others, we have a clear proof in the old Abbot of *Croyland* ; to which there was a great Charter confirmed, *Coram Pontificibus, & Proceribus, Majoribus totius Angliæ :* which were all together at *London, consulting how to provide against the Danish Pirates :* *Pro Concilio capiendo, contra Danicos Piratas*, &c.

That also *Majores* in this place, might denote some lower than *Earls* or *Lords*, may not onely be gathered from the Subscriptions to that Charter, but from *Bede*, or other old Authors that use the Phrase *Majores*, of such Officers or Magistrates as *Mayors* in Cities now seem to be. Of which, I might give divers Examples.

It is worth observing, how in these *Danish* storms, all Historians make the *Counts*, or great *Shireeves*, to be Generals or Commanders of the *Militia*. And of these, I know none more famous than *Dorsetshire Reeve Ethelhem*, in the great Battel of *Hampton*, or in that about *Port* (of which so many write) at the *Danes* first landing thereabouts.

Danigeld is scarce so ancient : Yet this also was granted for provision against *Danish Pirates* ; as St. *Edward*'s Laws affirm. Who first remitted this Tax (but it came up again) about forty years after it had been diverted from its first institution ; and paid as *Tribute to the Danes*. But this was also by Parliament. Of which, *Ingulph* and *Hoveden*, with all about *Ethelred* and *Edward*.

I

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I must not digress to the Parliament of *Winchester*, (in King *Egbert*'s Sons) in which *Tenths* of Lands (as other *Tythes*) were confirmed for *Church-Glebe*. Of which, the *Saxon Chronologie*, with *Ethelward*, *Hoveden*, the Abbot of *Croyland*, the Monk of *Malmsbury*, and *Matthew* of *Westminster*, with divers others, before *Polydore*. To which we may adde King *Edgar*'s Oration to St. *Dunstan*; which is known enough. As also the *Wednesday Masses*, one for the King, and the other *pro Ducibus*, &c. *Consentientibus*: The Charter being subscribed by the King, Archbishops, Dukes, Earls, and *Procerum totius Terræ*, *Aliorumque fidelium infinita Multitudine*.

I should not omit the Parliaments confirming *Rome-Scot*; much mistaken by divers. It was granted by King *Ina*, then by *Offa*, and again, by King *Ethelwoolf*; not to the *Pope*, (as it is generally thought) but to the *English School*, or *Alms-house for Pilgrims* at *Rome*. Yet it was called *Peter-pence*, because fixed on *Peters-day*: A famous day in our Law, as may appear by the second of *Westminster*, and other Parliaments.

But it might be called *Peter-pence* from King *Ina*, whom (at his Baptism in *Rome*) the *Pope* name *Peter*; as the Saxon Chronicles; others. Or there might be as much reason for *Peter-pence*, as there was for *Peterburg* (which was *Medhamsted*;) but Vows might be performed or absolved here, as well as at St. *Peter*'s Threshold in *Rome*: And hence the name of *Peterburg*.

But

But of *Peter-pence*, before *Polydore*, we read in much older Historians; especially the Author of King *Offa's Life*, now printed with *Matthew Paris*: Beside the Laws of King *Edgar*, *Canutus*, *Edmund*, and the *Confessor*; where it is called *Eleemosynæ Regis*: But in the Saxon Chronology, 'tis *Kynninges and West Seaxena Almessan*: And in King *Alfred*'s Life, (by *Asser Menevensis*) *Eleemosynæ Regis*, and *Anglo-Saxonum*: Being confirmed by common Assent, or Parliament.

I must omit the Parliament at *Kingsbury*; where among other divers matters, a great Charter was confirmed to *Crowland*: *Unanimi Consensu totius Concilii, pro Regni Negotiis Congregati*: Subscribed by the King of *Mercia*, Archbishops, Bishops, Earls, &c. And among others, by *Offlat*, who was *Pincerna Regis Ethelwoolphi*, & *Legatus Ipsius*, & *filiorum*, *Nomine Illorum*, & *Omnium West-Saxonum*; as we are told by the old *Abbot*, who knew it well.

I might pass over King *Alfred*'s Parliaments: so the famous in all Historians and Lawyers. But in none I know clearer, than in the old *Mirrour*. Of which, before, for *Alfred* and his Parliaments, twice every year in *London*. With which we may compare one passage in the *Confessors Laws*, touching this great and *old City*. But of this, hereafter.

This was the learned King, who perused all the old *Trojan*, *Grecian*, *British*, *Molmutian*, *Mercian*, *Danish*, and *Saxon* Laws; especially those of *Ina*, *Offa*, and

King

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King *Ethelbert*: *Cum consulto Sapientum, partim innovanda curavit*, as himself speaketh. And his Laws were established by Parliaments, by his Witan, or *Witena*: *Atque eis omnibus placuit, edici eorum Observatione*; As learned *Lambert* translateth the Saxon.

But I may not omit King *Alfred*'s *Doomsday-book*, made by such *Common Council*, the *great Roll of Winchester*; which was again renewed by the *Confessor*, and then again by King *William the First*; and then also called the Roll of *Winchester*, and *Doomsday*, as before. Of which, old *Ingulph*, with *Natura Brevium*.

Yet it seemeth, that before King *Alfred*'s time, there was such a *Doom-book* made by *Ethelwoolf* (at the time of the *Church-Glebe*;) of which Book, the Saxon Chronology, at the year 854. But this might rather be a Land-book (whence the Phrase of *Booeland*.) See King *Alfred*'s *Will*, annexed to *Asser*. But we also find an ancient *Doom-book* for their Laws and matters *Judicial*.

Of which *Doom-book* we read in several places of the Laws of *Edward the Senior*; strictly charging all the Judges and Magistrates to be just and equitable: *Nec quicquam formident, quin jus Communæ audacter, libereque dicant*: according to the *Doom-book*. And again, in *Edgar*'s Laws, we find the *Doom-book* for Tythes, and the famous *Kyricseat*.

These succeeded King *Alfred*. But long before his time, among the *Dooms* of *Withred*, made about the year

year 697. by the King and Bishops, *Cum cæteris Ordinibus*, and Military-men (or *Milites*) at *Berghamsted*; a Fine is set upon a Commander found in Adultery, *Spretta Sententia Regis, Episcopi, & Booca-Doom*.

I could believe King *Ethelbert*'s Parliaments were Authors to this *Doom-book*. Of which, the *Roll of Rochester*, *tha Doomas dhe Athelbirth Cyning*; with *Rihtra Dooma* (in the fore-cited place of *Ethelbert*) in the Saxon *Bede* of King *Alfred*.

How severe *his Dooms* were to the *Counts*, old *Shireeves* and *Judges*, we find in *Asser*: more in *Horn*, and his *Kirk-dooms* in his Laws; which do also speak of *Kiric-Ealdor*, a *Church-Elder*.

But again to the Saxon *Militia*. In *Alfred*'s time there was a League made with the *Danes*: Then the Title was, *Fœdus quod Aluredus & Guthrunus Regis ferierunt, ex Sapientum Anglorum consulto*; confirmed by Act of Parliament. And the Saxon Chronologer addeth, That the *Dane* swore to the Peace, and promised to be baptized; as he also was, and King *Alfred* was his Godfather, naming him *Ethelstane*. Some adde, a Daughter of King *Alfred*'s for his Wife: which may be worth enquiring, more than now may seem.

The Articles of this League were again renewed and enlarged by Parliament, in *Edward* the *Elder*: *A Sapientibus recitata sæpius, atque ad Communem Regni Utilitatem, Aucta atque Amplificata*. In the Preface to those Statutes.

In

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In this *Edward*'s Reign, there was an Insurrection; and *Ethelwald* seized on *Winborn*, &c. whose Charge and Crimes was this: That he did such an Act, without permission of the *King* and *Parliament*; *but an tdes Kynings, leafe ac his Witena.* So the *Saxon.* And *Malmsbury* addeth, That *à Proceribus in Exilium trusus, Piratus adduxerat.*

But the King summons a Parliament at *Exon*; and there, *Mid his Witan*, consulted how the Kingdoms Peace might be restored and preserved: *Orabat vehementer, & obtestabatur*, (such was his Mean to the Parliament) *hoc unum Curent, ne quem injuriâ afficiant:* Beseeching them mainly to mind this, That they wronged none. A most pious Christian Motion! And our Monthly *County-Courts* are as old as this Parliament at *Exon.* The Acts are printed. But I must not digress to their *Ordeals*, appointed there for *Perjury.*

In this Kings Reign the Pope sent his Bull to excommunicate the King and all his Subjects: For that, *Per 7 annos destituta fuerat Episcopis, omnis Regio Gavisorum, id est, West-Saxonum.* Whereupon the King summoned a Parliament; *Convocavit Synodum Senatorum Gentis Anglorum:* As saith the Monk of *Malmsbury.* *Et Eligerunt & constituerunt Singulos Episcopos, Singulis Provinciis Gavisorum:* (For the *Bishops Shire* used to be equal to the *Earls*, or the *Ealdormens Shire*, with whom he sate in *Folkmoote.*) *Et quod Olim duo habuerunt, in quinque diviserunt.*

King

King *Ethelstane* came next. He was the first of all the English Kings that ruled over all the Island, conquering *Wales*, and regaining *Scotland*: Which being subject to *England*, as a *Dukedom* thereof, was advanced to a Politick and *Royal Kingdom*: As the learned *Fortescue* doth plainly affirm. And for this, against all that *Buchanan* writeth, I need onely refer to the Authors and Records cited by the great Master of Antiquities, with other Learning, Mr. *Selden*, in his short but pithy Notes on it, with *Hengham*: To which we may adde somewhat in *Polydore*, and the Saxon Chronology, from the year 934; but especially from *Oswald*'s *Laws*, and others of the famous *Edgar*, vouching *Ethelstane* for *Scotland.* Of which we read in many places, beside the fourth Part of the great *Reports.* But that victorious Monarch suffered the *Scot* to reign under him, saying, That it was more *glorious to make a King, than to be a King.* A pious Prince, to whom we owe for translating the *Bible* from *Hebrew*; which some think he did by some Converted Jews.

Among his Laws, now extant, we find divers enacted in *Celebri Gratanleano Concilio*; where there were *Archiep. Optimates, & Sapientes, ab Ethelstano vocati frequentissimi.*

And again at *Exon*, we find him *Mid his Wytan*; and their *Wergylds* for the King, Archbishop, Eorles, Bishops, Ealdermen, and other Degrees, may suffice to prove them to be Acts of Parliament.

 With

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With those several Degrees there mentioned, we may compare the Laws of King *Edgar* and *Canute* in divers places, one of the Ranks of their Nobility, as a *General* or great Commander in *Wars*; which may be observed for the *Militia*.

Edmund succeeded; and at *London* holds a Parliament of Clergy and Laity; (*ge Godcundra, ge Worulcundra:*) And again, *Mid Witena getheahte gegodra hada gelewedra.* And to the Parliament he giveth solemn *Thanks* for *their Aid in setling the Kingdoms Peace.* His Laws are printed. And we omit his Charter to the Church of *Glastonbury*, which was made, *cum Concilio & Consensu Optimatum*, as we read in *Malmsbury.*

But I must not omit that Parliament of his, recorded in the *Mirrour*; where we find a kind of *Appeal*, or a legal Accusation of Treason brought by *Roceline* against *Walligrat*, *in full Parliament*, in the time of King *Edmund.*

In King *Edred's* Reign there was a Parliament solemnly *summoned by Writ*, as we read at large in the Abbot of *Crowland.* To which there was then a great Charter confirmed, being drawn or dictated by *Turketulus*, then Abbot, but he had been *Lord Chancellor.* And the date is, in *Festo Nat' B. Mariæ*, *cum Universi Magnates Regni, per Regis Edictum summoniti*; *tam Archiepiscopi, & Episcopi, ac Abbates*, *quam Cæteri totius Regni Proceres, & Optimates, Londoniis Convenissent*; *ad*

ad tractandum de Negotiis Publicis totius Regni, in Communi Concilio.

Edgar was a great Monarch, and as great a Conqueror by Sea, as *Ethelstane* by Land: It might be easier to shew his four Seas, of which so many speak, than to set their exact bounds. Yet it may not be unworthy of our thoughts, to consider, how our Ancestors did often divide the Office of their *Admirals*, usually as Nature hath parted our Seas; as thinking it indeed too great an honour and a burthen, for a Subject to be Admiral of all the Seas of such an Island. But the late *Cardinal of France* did wisely (it was thought) dispose, or rather retain, that Office, as the best Jewel of that Kingdom; which yet by Sea might yield to this.

But I must not digress, nor can I determine the bounds of *Edgar's* Conquest, to the *North* (they say, to *Norway*) or the *West.* Of which, some speak, as if they would but give us hints for farther search and Queries.

I dare not affirm, that in those days our *Saxon* or *British* Ancestors did know *America.* But if we may credit any Records besides the Scriptures, I believe or know it might be said and proved well, that this new World was known, and partly inhabited by *Britains* or by *Saxons* from this Island, three or four hundred years before the *Spaniards coming thither.*

Nay, the more I consider the Discourses which did pass

pass between the *Spaniards* and the *Mexicans*, the more I could believe the *King* himself of *Mexico* might possibly descend from those that went from hence to *Florida*, or rather *Mexico*: So that we need not wonder at the *British* Words, or Beads, the *Crucifix*, or other Reliques, which the *Spaniards* found at their Arrival. And for this, besides so many other Authors, we have much among the *British* Annals.

Those in special left by *Caradoc* of *Lancarvan*, or from him, continued by the *Beirdhs* of *Conwey* and *Stratford*; gathered and translated by the learned *Llhoyd*. To which we may adde what Doctor *Powell* hath of this out of Records, and best approved *British* Authors, in the Life of *Owen Gwyned*, or *David*, and *Madoc*, his Sons, about the Reign of King *Stephen*.

To which, at least for that which concerneth *Hanno*, or the old Navigations (with *Plato's Atlantis*, or what else appeareth in *Aristotle*, *Theophrastus*, *Virgil*, *Seneca*, with others) it may not be amiss to compare two late and very learned French Authors of *Peleg*, and *orbis maritimus*; very worthy (I think) of good perusal.

But to return to *Edgar*'s Parliaments: How that great Council did often dispose the King himself, we must discourse in a fitter place. We shall now but observe, that good Historians tell us, that King *Edgar*, by the Council of the Kingdom, did repeal the Acts of *Edwin*, both his brother and predecessor, *Convocato ad*

ad Brandanfordeam Regni Concilio, fratris Edwini Acta & decreta rescindit. And the famous *Oswald's Law* was signed by this King, *Cum consensu, Concilio, & astipulatione, Archiepiscoporum, Principium, & Magnatum.* It is printed, and found in ancient Authors.

King *Edgar*'s Charter to *Glastonbury* (reciting the Acts of so many Kings before him) was confirmed, *Generali assensu Pontificum, Abbatum, & Optimatum*: If we may believe the old Monk. And the Charter is to be read at large: *Archiepiscopis adhortantibus, consentiente etiam & annuente Brithelmo Fontanensi Episcopo; cæterisque Episcopis, Abbatibus, & Primatibus.* And the Close is, *Acta hæc, & confirmata, apud Londonium, Communi Concilio, omnium Primatum meorum, &c.* I should be unjust to our Laws, if I should omit the Process and Plea of *Morgan Hen*, against *Howell Dha*, the good Prince of *Wales*. Upon complaint, they were both summoned by King *Edgar*, *Ad curiam suam*; and their Pleas were pacately heard, *In Pleno Concilio, & repertum est, justo Judicio curiæ Regis, quod Howell Dha nequiter egisset extra Morgan Hen, & filium sui Huwen, & depulsus est Howell Dha ab his duabus Terris* (the Lands then in question) *sine recuperatione; & Postea Rex Edgarus dedit & concessit, Hueno Morgan Hen, illas duas Terras,* (*Istradum & Euwias*) *in Episcopatu Landas constituas, sicuti suam Propriam Hereditatem, & illas easdem duas Terras sibi & Heredibus suis; Per chartam suam sine Calumpnia alicujus Terreni hominis con-*

confirmavit, communi nostro assensu, & testimonio omnium Archiepiscoporum, Episcop. Abbatum, Comitum, & Baronum totius Angliæ & Walliæ; factum est coram Rege Edgaro, in pleno concilio, &c.

This Record of King *Edgar*, is in *Codicæ Landavensi, fol.* 103. I find it cited by the great Antiquary Sir *Henry Spelman*: and it may be compared with the Monk of *Malmsbury*, and *Matthew* of *Westminster*.

I must not relate the Visions or Predictions of the *Fates* of this Kingdom, which Historians record about the Reign of King *Edgar*; they are in print, and may be read of all: Besides the Prophecies of both the *Merlins*; for the *Scottish Merlin* was fuller and plainer than the *British* in *Vortigers* time: That I say nothing of *Cadwalladers* Vision, or *Alans* Council (which was long before the other *Alane* wrote on *Merlin*) or of the famous *Eagle* of *Shaftsbury*, that agreed with others in the *Britains* recovering their Kingdom again, after their grand Visit at *Rome*, whence they must bring *Cadwalladers* bones.

This leadeth me also to the *Sybils* Prophecy of three British Princes that should conquer *Rome*. *Brennus* was one; King *Arthur* some make the second; *Et quis fuit alter?* And of these *Sybils*, or one of them, sending a book to King *Bladud*, (so famous for the *Bath*, and Greek-Schools, or University at *Stamford*) the *Scotish Merlin* seemeth to have written, if among others I mistake not *Baleus*.

But

But of *Edgar*'s Parliaments, one was at *Salisbury*; so we read in *Chaucer*, or the old *Fructus Temporum*, by *Julian Notary* at St. *Albans*. And of another of his Parliaments at *Bath*; the Saxon Chronology, at the year 973.

His Laws are now printed; and their Title is, *The Acts of King* Edgar *and his Parliament: Mid his Witena, Getheate gerred*, &c.

Here we find much considerable of *Thanes*; which all will have to be *Noble-men*: but it must be with them a *Saxon* word. And *Dhenian* is to serve: whence the Princes Motto, *Ic Dhæn.* (For so it should rather be, than in Dutch, *Ich Dien.*) But why should Noble-men, or those that were the freest, have their name from *serving?* Here they flie to Knights-service, King-service, or I know not what; most proper, as they say, to free and Noble-men.

But from a Judge, or *Fleta*, we may be taught, that the Saxon *Dhæn* or *Thæn*, is a Servant; but *Thayn*, a *Free-man*. And in this sence it seemeth to be used here. As also in *Denmark*, and *Ireland*. Nor did the *Britains* differ much; whose *Hæne* or *Hane*, is an *Eldar*: (although *Hyne* be sometimes used for a Servant.) And so the Irish *Tane* is *Elder*; whence their *Tanistry* or *Eldership*: (the cause or sad occasion of such bloudshed.) These British *Hanes*, the Saxons in compliance, called *Ealdermen*: (St. *Edward*'s Laws afford so much) and it may be *Thanes*; although with them

they

they had the name of *Greeves* or *Graves*, suiting well with *Elders*, *Hanes*, or *Senators*. With which we may compare the Phrase of *Seniores*, which we read so oft in *Gildas*, *Nennius*, *Monmouth*, and others of the British and first Saxons times in *Britain*.

I should be tedious in but glancing over the Acts of Parliament in *Edgar*'s time. That of the *Standard* at *Winchester* is considerable; and that of one Coyn through all the Kingdom. The *Mirrour* is plain in making it an Act of Parliament, in Saxon times, That no King of this Realm, should *change his Money, or embase, or enhanse it, or make other but of silver; Sans l' assent de tout ses Counties.* Which the Translator is bold to turn, *Without the Assent of the Lords and all the Commons.*

We may not omit the Act against unjust Judges, or Complaints to the King, except Justice could not be had at home. For which also, the *Hundred-Courts* were again confirmed, and the *Grand Folkmootes*, or *Sheriffs Turnes*, established by Act of Parliament. Of which, and of their relation to Peace and War, more in *Edward*'s Laws; which may afford a Comment for the Saxon *Militia*.

I need not speak of the Parliament at *Calna*; it is famous enough; where, *Considentibus totius Angliæ Senatoribus*, the Roof fell down, and hurt them most, but St. *Dunston*. Of which, *Wigornensis*, *Jornalensis*, *Malmsbury*, *Matthew* of *Westminster*, and so many others may be cited.

King

King *Ethelred*'s Laws have this Title in *Lumbard*; *Sapientum Concilium quod Ethelredus Rex, promovendæ pacis causâ, habuit Wodstoci Merciæ, quæ legibus Anglorum gubernatur: æfter Ænglа-Lage, Post Anglis Lagam*; as an old Author turneth it.

In those Acts, we read of *Ordale Sythan the Gemot wæs æt Bromdune*; *Post Bromdune Concilium*: It seems, a Parliament.

And again, *Jussum ac scitum hoc nostrum, si quis neglexerit, aut profuâ quisque virili parte non obierit, ex nostra omnium sententiâ Regi* 120^{s} *Dependito.* By which it appeareth to be a Parliament, and not the King only that made those Laws.

That which Sir *Henry Spelman* calleth, *Concilium Ænhamense Generale*, was clearly one of King *Ethelred*'s Parliaments: and the very Title is, *De Witena Geredness an, and tha Gerædnessa the Englaræd Witan gecuran, &c.* And divers Chapters begin, *Witena Gerædnesse is*, enacted by Parliament.

And the old Latin Copy of this Parliament, telleth us, that in it were, *Universi Anglorum Optimates Ethelredi Regis Edicto, & convocato Plebis multitudine collectæ Regis Edicto.* A Writ of Summons to all the Lords, and for choice of the *Commons*: a full and clear Parliament.

In this Parliament were divers Acts for the *Militia*, both by *Land* and *Sea*; (as most Parliaments after King *Edgar*:) and among others, for Castles, Forts,

Cities,

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Cities, Bridges, and time of the *Fleets* setting out to Sea. It is made *Treason* for any to destroy *a Ship that was provided for the State-service: Navem in Reipublicæ expeditionem designatam:* as a learned man translateth the Saxon.

And no Souldier must depart without leave, on forfeit of all his Estate. None may oppose the Laws, but his Head, or a grievous Mulct (according to the Offences quality) must recompence.

It was here also enacted, That *Efferatur consilium quod Populo habeatur utilissimum.* And again, *In rem totius Patriæ.* And that each should do, as he would be done to: Which it calleth, the *Most right Law.* And that the higher and greater men the Delinquents were, by so much the more and heavier they should be punished. Of which, and of their *Wergylds*, for all Ranks of men.

Again, *Iniqua omnia, & injusta, quæ Rex unâ cum Optimatibus, exterminare decreverit, abjiciantur*, &c.

That about this time, *Danegeld* came to be paid to the *Danes*, (which was before against them) is agreed by all. *Malmsbury* is bold to ascribe it to a Decree of the *Archbishop* of *Canterbury*; but *Huntingdon* may be his Comment, telling us, That *Consilio infausti Siricii Archiepiscopi*, *Edelredi* 13. *primum Statuerunt Angli, quod ipsi Censum Dacis persolverent.* A clear Act of Parliament. Of which also, *Florence* of *Wygorn.*

And

And again, *Anno* 1007. *Rex & Senatus Anglorum Dubii quid agerent, quid omitterent, communi deliberatione, gravem Conventionem cum exercite fecerunt; & ad pacis observationem* 30000 l. *ei dederunt*, &c. This also from *Huntingdon.*

And among the Saxon Laws, we read, *Fœdus quod Ethelredus cum exercitu Anlavi*, &c. *ex Sapientum suorum Consilio feriit.* And again, *Pacis fœdus Ethelredo Regi, & omni Populo, Leodsayre.* And again, *Socii ac fœderati nostri, omnes per Mare & Terras, in Portu, & extra, pace fruuntor.* With divers other Passages of Peace and War, setled by that Parliament.

Jornalensis addeth another Parliament in this King's time: *Apud habam, & Constituerunt omnes, ut Regi suo pareant, sicut Antecessores sui melius fecerunt, & cum eo Pariter, defendant Regnum*, &c. *& ut cantetur quotidie pro Rege, Communiter & omni Populo suo.* And again, *Prohibemus omnem Roboriam*, &c. *& omnis Index Justus Misericordiam & Judicium liberet in omnibus; timeat omnis Judex, ac diligat Judicem suum, ne in die Judicii mutus fiat, humiliatus*, &c.

Nor may I forget the famous Judgment for the Bishop of *Winchester*, by the *Thanes* and *Ealdormen*, in the *Witenagemote* (or Parliament) of *Eldred*: *Quo dum Duces, Principes, Satrapæ, Rhetores, & Causidici, ex omni parte confluxerant.* Of which, the old Book of *Ely*, cited by Mr. *Selden* in his *Titles of Honour.*

And

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And for the *Militia*, *Roger Hoveden* is very clear and full, at the *Danish* Irruptions: *Qua recognitâ, Rex Anglorum Egelredus* (his names are many) *suorum Primatum consilio, & classem, & Pedestrem congregavit exercitum.* And again, *Habito Concilio cum Regni suis Primatibus, utile Duxit à Danis dextras accipere, stipendium dare, & placabile tributum solvere.* And again, *Primatum suorum Concilio, nummos ad Danos, &c.* And again, *Rex & Regni sui Primates, ad illos (Danos) miserunt Legatos, pacem ab iis petentes; stipendium & tributum eis Promittentes.*

So is old *Florence* of *Worcester*: *Consilio Jussuque Regis Anglorum Æthelredi, procerumque suorum, de tota Angliæ robustiores, Lundoniæ, congregatæ sunt naves.* And again, *Procerum suorum consilio, ad eos (Danos) Legatos misit, promittens tributum & stipendium.* And again, *Omnes Angliæ Primates utriusque Ordinis ante Pascha Lundoniæ congregati sunt, & ibi tamdiu morati sunt, quousque tributum Danis Promissum, quod erat* 48000 l. *Persolveretur.* And again, *Cum apud Oxonefordam magnum haberetur placitum, &c. eodem tempore Canutus cum magna classe, &c. Eadmundus Clito magnum congregavit exercitum, &c.*

So is *Matthew* of *Westminster*; adding much to those before him, and ascribing that bloudy Council of the *Danish Massacre* to one *Huna*, *Princeps Militiæ, qui sub Rege, Regni negotia dispondenda susceperat; cujus consilio, misit litteras Rex in omnes Regni fines, Mandans nationibus singulis & universis, &c.* Of which, St. *Edward's* Laws. But *Oxoniense placitum*, is in *Florilegus*: *Magnum apud Oxoniam colloquium Anglorum pariter & Danorum.* And so the old Glossary of *Canterbury* tenders *Gemot* by *Placitum*; and *Fologemot*, by *Populi Placita.* So also, *Law-Mootes*, are *Placita*: *Magnum placitum*, the great *Folo-mout*, or Parliament; as *Comitatus placita*, with *Matth. Paris*, County-Courts: *parva placita*, Oxford *Parvises.*

I must not stay long on the Acts of Parliament which *Angles Kynnes Witena* made and established, *Cum Walliæ Consiliariis de Monticolis*: Where, among other things, we find it enacted, That *Viri duo denijure consulti, Angli sex, Wallique totidem, Anglis ac Wallis jus dicunto.* With which we might compare our Laws, *de Medietate Linguæ*, &c.

But for our Trials by a Jury of Twelve, we have a much clearer Law in another Parliament of *Ethelred*; *Frequenti apud Wanalingum Senatu.* Of which, *Jornalensis*, and Mr. *Lambards Glossary.* *In singulis Centuriis Comitia sunto, atque Liberæ conditionis viri duodeni, ætate Superiores, una cum præposito, sacra Tenentes Jurante, se adeo virum aliquem Innocentem haud Damnaturos Sontemve absoluturos.* An old MSS. thus: *Habeantur placita in Singulis Wapentakis, ut exeant Seniores* XII. *Thani, & præpositus cum eis, & Jurent super Sanctuarium, quod eis dabitur in Manus, quod Neminem Innocentem velint accusare, vel Noxium Concelare.* But of more

more ancient Tryals by Twelve, in fitter place: although I must not spend time to confute the *Italian*, who will have that *terrible Custom* (as he thought) *brought in by the Conqueror.*

The Proofs of Parliaments in *Canutes* time, are so many, and so full, that they tire us altogether. How he confirmed the Laws of *Ethelred* and other Predecessors, we read in the Monk of *Malmsbury*, who recordeth also his remarkable Letter from *Rome*, directed to the *Archbishops*, *Bishops*, &c. *Primatibus*, *& Toti Genti Anglorum*, *tam Nobilibus quam Plebeis.* As also his Charter to *Glastonbury*: *Cum Concilio & Decreto Archipresulis Edelnothi, simulque Cunctorum Dei Sacerdotum, & Consensu Optimatum.* *Hoveden* in full, in this also. *Cujus (Edmundi) post Mortem, Rex Canutus omnes Episcopos, & Duces, necnon & Principes cunctosque Optimates Gentis Angliæ, Lundoniæ Congregari Jussit.* A clear *Summons* of Parliament.

And the very name of Parliament, is found of his time, in the old book of *Edmunds-bury*: *Rex Canutus anno Regni quinto*, &c. *Cunctos Regni sui Prælatos, Proceresque, ac Magnates, ad suum convocans Parliamentum.* And again, *In suo Publico Parliamento.* And that it was indeed a *full Parliament*, we may believe from the persons we find there at the Charter of that Monastery, confirmed by *Hardi-Canute*; but granted by *Canute*, *in suo Publico Parliamento, præsistentibus personaliter in eodem Archiepiscop. Episcopis, Suffragenis, Ducibus,*

Ducibus, Comitibus, Abbatibus, cum quam plurimis gregariis Militibus, (Knights of Shires, it seems) *& cum Populi Multitudine Copiosâ* (other Commons also) *omnibus tum in eodem Parliamento personaliter Existentibus.* And the Title of these Acts is, *Statuta Canuti, Regis Angl. Dan. Norw. venerando Sapientum ejus Concilio, ad Laudem & Gloriam Dei, & sui Regalitatem*, (Reipub. Utilitatem) *& Commune Commodum, habita in S. Nat. D. apud Winton*, &c.

This I find also cited by the great Judge in one part of his *Reports*; but fuller, by Sir *Henry Spelman.*

It would be tedious and superfluous, to cite the Authors that assert, he did confirm King *Edgar*'s Laws in full *Parliament.* For which we might produce some better, or at least much older, than good *Bale*, or *Grafton.*

Many of his Acts of Parliament are printed: *Consultum quod Canut. Angl. Dan. Norw. Rex Sapientum Concilio Wintoniæ Sancivit.* Here *Allegiance* or *Fealty* setled by Parliament, and afterwards, *Præcipimus uniuscujusque Ordinis singuli, Muneris atque Officii sui Religionem Diligenter, cauteque teneant.* And among other Encouragements to *Chastity*, this is one, That such chaft men of God should enjoy the same Rights or Priviledges with *Thanes*: (and *Ethelstane*'s Laws do equal *Priests* with *Thanes*) But there are two or three degrees of *Thanes* in these Laws about the *Hereots*: for the *Eorles* and *Thanes*, &c. much to be marked, as per-

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taining to the *Militia.* For which, and for all *Canutes* Laws, the old MSS. *Huntingdon*, is worth perusal.

Again, we find other Statutes, *Civil* or *Politick*, *Sapientum adhibito Consilio, Mid, Minan Witenan ræde, that Man heald ofer eall Englaland.*

With provision against Thieves, Robbers, for the Peace, Hue and Cry, *&c.* There are Statutes also for repair of *Burgs* and *Bridges* : *Scyrforhinga*; *præsidii fiat apparatus Terrestis ac Maritimus, quoties ejus Muneris Necessitas Reipublicæ obvenerit.*

And presently after, *Quæ ad Reipublicæ pertinent Utilitatem.* Among the Crown-Prerogatives, *Violata Pacis & Divitatæ Militiæ Mulcta.*

Sheriffs Turns, Hundreds, and Tythings, are here confirmed; and the twelve-year-old *Fealty*, with views of Frank-pledge. But this Oath was to the *Kingdom*, rather than to the King: *Fidem det omni se in posterum ætate, tum Furti, tum Furti Societate & Conscientiâ temperaturum.*

Again, of passing *Ordeals*, *Sythan tha Gemot wæs on Winceaster*; since the Parliament at *Winchester* (this being at *Oxford:*) and after, *Jussum vero ac Placitum hoc Nostrum, si Præpositorum aliquis incuriâ omiserit, aut exequi aspernabitur, ex Nostrâ Omnium Sententia, Regi* 120 s. *Dependito.* A clear Parliament.

Si quis alium injustè, armis spoliavit, eam quæ est loco Colli obstricti, Mulctam Dependito Healsfange. It is also in the same Laws, the punishment of false Witnesses. Some

Some think it the *Pillory*, some worse; as the Original of that Proverbial Letany, *From Hell, and from Halefax.* See K. *Hen.* Laws, and *Helfang.*

Si quis in Militiâ (perfectione Militari) pacem violaverit, vita, vel Weregild Mulctator : si quid rapuerit, pro facti Ratione, compensato.

Si quis Pensionem ad oppida, pontesve reficiendos denegarit, Militiamve subterfugerit, dato is Regi 120 s.

Again, in those Statutes, *The King must live upon his own Feormians* (or *Farms*; which in Saxon, *afford all needful for man* :) *and none may be compelled to give him any Maintenance : That the Folk be not burthened.* It is the 67th Chapter.

Loss of Dower or Joynture to Widows marrying within twelve months, might seem hard; but so long she need not pay any *Heriot.* And the same Laws free the Wife from her Husbands *Theft*, although found with her; except it be lockt in her *Hord*, *Chest*, or *Tyge*, (*Dispensæ, arctæ, & Serinii*) Of which that Law giveth her leave to keep the *Keys.* But *Ina*'s Laws are hard, concerning Children.

Again, for the *Militia*, *He that in Sea or Land-fight, leaveth his Lord or Comrague, (& Felago) must die as a Traytor; his Boocland to the King, other Land and Estate, to his Lord. But of him that dieth fighting with his Lord, without any Heriot, the Heirs may enter, and* Scyftan hit swithe righte. Of this *Shift-Land*, and *Gavelkind*, *Lambard in Terra & Scripto*, Perambulation

 of

of *Kent*, and *Spot* of *Canterbury*; besides several Acts of Parliament, in *Edw.* 1. *Edw.* 3. and *Hen.* 8.

If *Celeberrimus ex omni Satrapia Conventus*, (which is there, and by King *Edgar* also, to be twice a year, or oftner) be *Parliament*, as such great men have thought; then have we much here also for *Power* and *Priviledge* of *Parliament*. Nay, more indeed, if it were but the Grand *Folemoot* or *Sheriffs Turn*, so much below a *Parliament*.

He that in such a Grand Moot had defended and maintained his Right and Plea to any Land, is there setled without dispute, for his life, and his Heirs, or Assigns, as his *Will* should dispose: Chapter 76.

And again, for *Priviledge of Parliament* (or yet lower) *Sive quis ad Comitia profiscator, sive revertatur, ab eisdem, (from Gemote, or to Gemote) placidissima pace fruitur, nisi quidem furti fuerit manifestus. Theof, Thievery*, founded more with them, than now with us. For their *twelve-year-Oath* (of which before) at Frankpledge, was onely against *Theof*; which yet seemeth to intend *all above it*: for what forbiddeth the *less*, forbiddeth the *greater* much more.

One thing more I may observe; through all these and other old Laws, there is still so much *Religion* and plain-hearted Simplicity, with Piety, expressed, that it shews our Ancestors had not yet learned to be ashamed of *their God*, or of looking towards *Heaven*.

I have been the longer in these, that so I may be the

the more brief in those that follow: for by this time I am come to the Laws of St. *Edward*, as he is called; and I should mispend my own time, and abuse others, in vouching all the Demonstrations of Parliaments in his time.

His Charters to *Westminster* are near enough, and may be known of all: wherein he confesseth his Resolutions for going to *Rome*. But, *Optimates, Communi habito Concilio, rogabant me, ut ab intentione desisterem*, his Vows made him more pressing, than else he should have been. But these also his Parliament undertook to satisfie; *Et tandem, utrisque placuit* (so he speaks) *ut mitterentur Legati*, &c.

While these stayed at *Rome*, procuring his Absolution, a Vision to a Monk commandeth repairing (or refounding) of St. *Peters Westminster*, as antient as *Austin* the Monk. (I cannot omit a passage in one of the Popes Letters of that time, telling the King, *That he must expect great Motions and Alterations: for the World was near its great Change; and the Kingdom* (which he calls, *Sanctorum Regnum*) *foretold in the Scripture, was coming to begin, and never should have an end.*)

King *Edward* refers it to the Parliament; and at length, *Cum totius Regni Electione*, (they are his own words) he sets upon the decayed Minster: Which he rebuilt, (with the *Tenth* of his whole Estate) and there

there reposed the *Reliques* (which the Popes gave to King *Alfred* at his Consecration) with this grand Priviledge of Refuge and Pardon, to any that fled hither, for *Treason*, or any other Crime whatsoever.

Another Charter he granted to the same Minister: *Cum Concilio, & Decreto Archiep. Episcop. Comitum aliorumque Meorum Optimatum.*

And a third Charter addeth, *Aliorumque omnium Optimatum.* And a little lower, *Coram Episcopis, Abbatibus, Comitibus, & omnibus Optimatibus Angliæ, omnique Populo.* A very clear and full Parliament.

His Laws are in print. I must not so much as glance, but as he that followed the great King so swiftly, that his steps could not be seen upon the Sand.

May not his third Chapter extend to *Priviledge of Parliament? ad Dedicat. ad Synod. ad Capitul. venient. Si Summoniti sint*, &c. *sit summa Pax. Hoveden* will help sometimes for a Comment.

That of *Out-Laws* should be explained. It is, *Ore Legali Regis*; which is, *Per Judicium Coronatorum*; or in the great and old City, *Per Judicium Recordatoris.* See King *Ethelred*'s Charter to *Ulfrie*, of the Lands of *Ethelsig*, outlawed for *Theof. Rep. part 6. Pref.* But of *Woolff-head*, and the *Outlaws* being slain upon *Resistance*, I have spoken already. As also of *Tythes*, and King *Ethelbert's Parliaments* in these Laws mentioned, and of *Rome-scot*, *Danegeld*, and *Wergylds*. But of these, again ere long.

Of

Of the Kings Duty and *Oath*, we must speak more in due time. Of his *Pardon*, before, as it might stand with the *Oath of his Crown.* Here also we find, that when his Pardoning Power was largest, yet it could not reach to *Murder* or *Treason*, or other Crimes, but so as they must *abjure*: and if they stay and be found, any might do *Justice* on them, without *Judgment.* It is the 19th Chapter.

Somewhat we said of *Degrees*, or *Counts*, *Earls*, *Thanes*, or *Barons.* The Phrase doth here occur; but of elder times by much, nay, long before King *Ethelbert*'s Barons: if we may believe Historians. But of this, again in due time.

Of the *Jews*, also before *Judæi, & omnia sua Regis*, seemeth hard; but it had a gentle Comment in succeeding times, and here also *they must be defended: Sub tutela & defensiones Regis Ligeâ.* The Phrase may be remembred, till we meet it again: King *John* did but confirm King *Richard*'s Charter to the *Jews.* See *Hoveden* and *Matthew Paris*, of *Richard* and *John*, *Walsing. Edw.* 1. *& Neustria.*

Pax per breve Regis, is a short Expression; but it might have a long gloss, and be compared with all our books; laying this for a principle or foundation of Law, That *Writs were made by Parliament*; *and without such common Consent, could not be changed.* Of which, the *Mirrour*, *Bracton*, *Fleta*, divers others. But of another *Breve de pace*, before the Combat, in *Right* or *Assize*, *Glanvil*, *Hengham*, and the *Register.*

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Of Frank-pledge, Tythings, Counties, Hundreds, and Wapentake, ſomewhat before. This Law may fill up *Lipſius* on his *Tacitus*: nor is it uſeleſs for the *Militia*. *Hac de cauſâ, totius ille conventus dicitur Wapentac, eo quod per Armorum (i. e. Weapun) tactum, ad vincem confœderati ſunt.*

There is an old Comment on that, *de moribus Germanorum*; that may help and pleaſe in all, of *Hundreds*, *Wapentakes*, *Cities*, *Counties*, with *Counts* or *Eolders*: of which before, in State and Church. But to theſe of the Church, I did not then adde their Power and Cuſtom of *healing the Sick*, by anoynting them. For which, the Saxon Canons of *Ælfrick*, may be peruſed.

In this Chapter of *Greeves*, with the Appendix *de Heretochiis*, we may ſee the whole Model of the *old Militia*; with the Power of Headboroughs, Conſtables, Bayliffs, Aldermen, Sheriffs, Lieutenants, or Generals, all the Greeves both in the *Gree* and *Væ*, *Peace* and *War*: for ſo the Law is pleaſed to criticize; and for *Peace* we do *agree*.

The Law is in print, and may be read of all; in which it is ſo clearly ſtated and aſſerted by theſe Laws. I ſhould do wrong to take them in pieces.

Not onely in matters of common Juſtice, or ſerving of *Writs*, or petty Caſes of Peace, as ſome have pleaſed to expreſs it; but *when any unexpected doubtful miſchief ariſeth againſt the Kingdoms (or againſt the Crown)* Nay,

Nay, when it proceedeth ſo far as to War, Battel, or pitched Fields, the *Heretoches* muſt order the War; *Ordinabant acies, & alas conſtituebans, Prout decuit, & prout eis melius viſum eſt, ad honorem Coronæ, & ad Utilitatem Regni.*

And leſt yet there might be any miſtake, the ſame Law telleth us, That thoſe *Heretoches*, (*ductores exercitus, capitales Conſtabularii, vel Mareſhalli exercitus*) were and ſtill ought to be, choſen *Per Commune Concilium* (by Common Council;) *and for the common good and profit of the Kingdom, even as the Sheriffs* (ſaith that Law) *ought to be choſen.*

Again, the former Laws are renewed for thoſe that *flie*, and thoſe that *die* in the War, and of their *Heriots*; which here are again remitted, with all *Relief*. Of which, before.

I am the longer in this, becauſe it was this very Chapter which has been ſo ſtrangely cited; and that alſo from a place as much ſuſpected, as any of all theſe Laws: which I do not ſpeak as if I thought they might not be ſtrongly aſſerted; even there where the oldeſt Copies are defective. And for one inſtance, of many, I might produce that piece about the *Kings Oath*; which is cleared not onely by the *Mirrour*, and divers others, but by another paſſage in the oldeſt of theſe ve-

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ry Laws themſelves; by comparing it with what is there ſaid of *King* Edward's *own Oath* to his Kingdom. Of which, much more hereafter, on occaſion.

To that of King *Arthur*'s, King *Edgar*'s, and King *Ethelſtane*'s Conqueſts, much might be added; in ſpecial, touching *Scotland*: Of which, before. And now I adde, That what is here aſcribed to *Eleutherius*, may be much aſſerted and enlarged from thoſe that have clearly ſtated the bounds, extent, and juriſdiction of the *Province* and *Dioceſs* of *York*: for to it belonged (as I find in a very good Author) all the Church of *Scotland*, long before it was divided into modern Biſhopricks.

That of *Norway*, and their Affinities with *England*, and Oath of Fealty, may now be little worth; but in this that is added at the cloſe of that Law, *So did King* Edward *eſtabliſh*: *Per Commune Concilium totius Regni*: *By the Common Council of the whole Kingdom*, or by Parliament: which may well be added to each and every of thoſe Statutes.

How the *Militia* was (on particular perſons or places) aſſeſſed by *Common Aſſent*, hath been obſerved and cleared already. I ſhall now only adde this, That when ſuch Aſſeſſments were made by

by *Common Council*, it was then no more in the Kings power to *releaſe* them, than it was to *impoſe* them before, or without ſuch *Common Aſſent*.

For this, might be cited in more than an hundred Charters, to religious houſes, and places of greateſt Franchiſe; in which there is ſuch an uſual exception to the *Trined-neceſſity*, of *Military Expedition*; *Caſtle* (or *Burgbote*) and *Bricqbote*: for here alſo, as with the *Romans*, they were eſpecially *Pontifices*.

And where-ever theſe are found releaſed, as to *Peterburg*, *Canterbury*, *Weſtminſter*, but eſpecially to *Glaſſenbury*, the firſt and oldeſt Church in *Britain*: *Fons & origo, totius religionis*. It may be a clear Demonſtration of the Parliaments aſſent to ſuch a Charter.

For otherwiſe they could not be diſpenſed with by the King, as we may find expreſſed in divers Charters; as in thoſe of *Crowland*: which yet had great immunities. And of that Reſtriction, *Matth. Paris* may afford us the true reaſon, becauſe *thoſe three were ſetled for the Kingdom*: *Propter Publicam Regni Utilitatem, ut per ea reſiſterent hoſtium in curſibus*. And K. *William*'s Laws, *Caſtel. & Burg. & Civit. fundatæ & ædificatæ ad tuit. Gent. & Popul. Regni, & ad De-*

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fens. Regni & idcirco observari debent cum omni libertate, integritate & Ratione.

Private Castles for habitation, may be given in *Dower*, and divided by *Pacerners*; but so may none for *publick defence*. Yet of such also, may a man be Tenant by the *Curtesie*, being able to guard them for Publick service of the Commonwealth.

One grand Objection must be removed; but we need not fear it: for it will flie or run away of it self. 'Tis that of the *Conquest*, as many are pleased to call it; not attending how little in this they be the Kings Friends: for if this were his onely or his main and best *Title*, there might be found in future ages, some that may come to think it as lawful to conquer him, as it was or could be, to conquer them.

It must be considered: for if the foundation be not sure and low, the higher the building is, the nearer its fall. And it hath been observed, that the higher *Skale* (got up by accident) is more ready to pop down again, than it was before while it hung in due poize.

It seemeth a great weakness, to be apt or prone to *Suspition*: and therefore I shall not say I do suspect some that are most zealous for Prerogative, or the Title of Conquest, to be least ac-

acquainted with the Laws or Histories of *England*. But I cannot be wholly free from wonder, that any Lawyer or Historian that was friend to the King, should be passionate in these, which were so clearly quitted by that King whom they call the Conquerour.

He stood on Stilts or Patents, or Pantofles; but on plain English ground, with two feet, as other men. The *left* and the weakest was *Succession* to *Edward*, whose Kinsman he was, and Heir by Will; as appeareth by divers Passages in these very Laws of Saint *Edward*, and *William*; which may be seen and read of all.

But the right Leg, with the strongest and best Foot he had to stand upon, was the *Peoples Assent*, Consent, Acceptance, and *Election*; which we shall yet more fully clear, when we discuss the Right of *Succession* or *Election* to this Crown and Kingdom.

But for the present, it may suffice to observe, That all these Laws we now have of King *Edward*'s, come to us through the Hands, and Grant, and Confirmation of King *William* the *Norman*; and no otherwise.

Which I need not prove to any that have either read or seen the Laws themselves, of which we speak.

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For in the very Title and Preface thereof (besides divers other passages in them) all this, and much more, is fully related and recorded.

For it is there also further added, That all those Laws were so presented to the said King *William*, by a sworn *Jury* out of every County: Who did also assert, That these which they did present as the Laws of St. *Edward*, were the undoubted Laws and Customs of the Kingdom, that had also been collected into a Body by King *Edgar*, and continued (though *sopite*) through the Troubles of succeeding Kings, till *Edward* had the leisure to renew or rather confirm what was the Law before.

Nay, when among all those Laws King *William* did most encline to those which came from *Norway* (whence his Ancestors and Lords had issued forth, and where a Bastard might inherit) all the *Patriarchs* of *England*, *Compatriotæ Regni, qui Leges edixerant*, did so move and press him (with such Arguments as may again be well considered) that at length in Parliament, *Concilio habito, precatis Baronum*; the King himself consented as they did desire. This is expressed in his own Laws.

And by his own desire, the Archbishop of *Can-*

Canterbury was one of those entrusted with enrolling or recording of those Laws: Which to that very King, and to his Successors to this very day, became one special Clause of the *Coronation-Oath*: Which was, *To confirm all the Laws and Customs of the Kingdom; but especially the Laws of St.* Edward, *called the Confessor.*

And one of King *William*'s own Laws is, That all men observe and keep the Laws of King *Edward* in all things: *Adauctis his quas constituimus, ad Utilitatem Anglorum.*

If this be not yet clear enough for the Laws themselves (which are now extant, and may be read and known of all) we might confirm it much by *Ingulph*, living at the same time, and bringing those Laws with his own hands from *London* to his *Crowland*, with such an Endorsement or Title of his own making: *Leges æquissimi Regis Edwardi, quas Dominus meus inclitus Rex Willielmus Autenticas esse, & perpetuas, per totum Regnum Angliæ; inviolabiliterque tenendas, sub pœnis gravissimis Proclamarat: & suis Justitiis commendarat, &c.* He was like enough to know it.

And the old *Book of Litchfield*, cited in the great

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great Reports (besides that of the *Jury* from every *County*) addeth also, That the same King *William* did by the Counsel of his Barons, call by Writ of Summons (*Summoniri fecit*) *all the Nobles, Wise-men, (Elders of the Witan) and learned Lawyers in each County.* And in that great Parliament, *Ad Preces Communitatis Anglorum, Rex acquievit, &c.* confirming all by Common Council. This of *Litchfield* is now printed in several places; and *Roger Hoveden* agreeth in *Henry the Second.*

Nor did he onely confirm, but in some things *mitigate*; and in divers, explain and clear what might seem obscure or heavy to the People: (*Ad Utilitatem Anglorum.*) His Laws are now printed, both with Mr. *Selden*'s Notes on *Eadmerus*, and with Mr. *Wheelock*'s Impression of the Saxon Laws and History; with a very good Preface of Sir *Roger Twisden.* They do oblige us much, that love and clear our Laws, so far as just and good.

What Emendations and Additions King *William* made to St. *Edward*'s Laws in this also of the *Militia*, we have observed before, at our unexpected enterance on this Question. Which was

was not at all intended, to be once, so much as touched, but in one Parenthesis: Which was past Recovery, before this Discourse was so much as designed.

But now having wandred so much, and so far, (beyond my own purpose, as well as my Subject,) I could almost, be perswaded, to step a little further; and to touch (I must no more,) upon some few passages; between the Conquest, as they call it; and the *Barons of Wars*: Or the time of the *great Charter.* For, since that time, the Rolls and Printed Acts, are every where; much larger, and much better, than my little reading or my leasure, can present them.

Two words have sound of horror, to the People; who are taught, to think them both, oppressions, and the sins of him they call the *Conqueror.* *Dane-geld*; and the Book of *Doomsday.* (Some have added *Curfeu*, with I know not what, to make poor Children *quake.*)

These, have been proved, to be long before, the *Normans* coming in. To that of *Dane-geld*; I may add, that good King *Edward*, did also retain it, to his Coffers; (when the *Danish* Storm was over;) till he saw, the Devil dance upon it: As the *Crouland* Abbot doth Record. But

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it did rise, from one, to three, to four, to six shillings on the Hide; but so, by Parliament: as may be much collected from the 11th Chap. of King *Edwards* Laws; compared with *Florence* of *Worcester*, *Hoveden*, *Huntingdon*, *Math. Paris*, and *Math.* of *Westminster*, besides some others, which we must produce e're long.

And (to say nothing of *eleemosyne pro Aratris*; of which *Canute* and *Ethelred*:) it is clear, in King *Ethelstanes* Laws; that single *Hides* (or *Ploughlands*) in *England*, were to maintain two *Horsemen*, with *Arms*; by Act of Parliament. (And this was more it seems, than ever was King *Williams Hydage*; or *Dane-geld*.) Which may be added to King *Ethelstanes Militia*, as also, his Doom book; (for all Judgments in one *Form*; of which his Laws speak,) to what is said, of *Booca Doom*.

But to King *Williams Doomsday*, I shall now, add, (to what before,) that besides the *Mirror*, and *Fitz-Herberts*, *N. B.* with the old Abbot of *Crouland*. There is enough, in every segment of that Roll, to make one know, it was a *Review*; and little but a Review of what was done before. They do abuse us else, that bid us read, the *T. E. R.* in all that Roll, *Tempore Edwardi Regis*; plain enough, sometimes, without all Divination. That

That it was, also confirmed by Parliament; may be clear enough from the many exemptions *a servitio Regis*, and a *Vice-comit*. Nay to some inferiour places; as *Ely* and *Worcester*: Besides old *Crowland*: which was not exempted from such service, till the latter *Saxon*, or first *Normans* time; though *Ingulph* spake of divers *Ethelreds*. But the same Abbot, will tell us, that this *Doom Book*, was now, also made; *juxta Taxatorum fidem, qui Electi de qualibet Patria*, &c. And that his *Taxors* were both *kind and merciful*; *non ad verum pretium, nec ad verum spatium*, &c. *So preventing future Burthens and Exactions. Talem Rotulum, & multum similem ediderat quondam Rex Alfredus*, &c. But *Alfreds* own *Will*, seemeth to carry it higher.

Nor was *Ingulph's* favour at the Court, altogether useless; for, by that, we come to know, that our *Norman* King, even in little things proceeded by a *Great Councel*. So, that our Abbots Charters, must be viewed by Parliment. *Coram Domino meo Rege, ac universo Concilio*, &c. Thence he brought St. *Edward's Laws*; as was observed before.

Huntingdon and *Matthew Paris*, with *Matthew* of *Westminster*, spake of his *Hydage* and *Doomsday*; as done with great Advice, and Justice.

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Misit Justiciarios per unamquamque scyram, & inquirere fecit per jusjurandum, quot Hydæ (i. e. *jugera, uni Aratro sufficientia per annum*;) *essent in unaquaque*, &c. Nor are they wholy silent, of his Parliaments, *Cum de more, tenuisset curiam suam, in Natali, ad Gloucestriam*, and again, at *Winchester*, the like at *London*, in another season.

Tilburiensis telleth us, that *Mony* was paid, to the Crown, by Cities, and Castles, that used no Tillage: But from the Land (or Farms,) only *Victuals*, till *Henry* the first. And when the Kings foreign Wars, did make him press for ready Mony, the people murmured; offering their Plowshares. *Horum igitur Querelis inclinatus Rex*, by advice of his Great Council, (*definito magnatum Concilio*; he sent out discreet, prudent men; that upon view of all the Lands, should assesse the sums, which the Sheriffs were to pay into the Exchequer. This *Gervase* lived a while after King *William*.

Florence of *Worcester*, near his Reign, he telleth us, of a Great Councel, at *Winchester*. And again, of another, at a place called *Pedred*; not only by the King, Arch-Bishops, Bishops, Earls, but also, *primatibus totius Angliæ*, a full Parliament; for which, *Florilegius*, and *Walsingham*, *Newstria*, may be considered, with *Hoveden*, following *Wigornens*. That

That in his Reign there was an *High Constable of England*, (ceasing in *Henry the Eight*; appeareth by the Parliament Rolls of *Edward* the Fourth: (but *Alfigar* in the Book of *Ely*, was such; in St. *Edwards* time,) and to Him, some ascribe, the Constable of *Dover*: with the *Warden*, and Priviledge of the *Cinque Ports* (with their *Hamlets*, or Circuit; including *Rye*, and *Winchelsey*.) But all this speaketh Parliament, as doth also, his *New Church Priviledge*: *Communi Concilio Archiep. Episcop. Abbat. & omnium Principum Regni mei.* Yet to be seen, not only at Sir *Robert Cottons* Jewel House, but among the Rolls with King *Richards* Charters, for the Dean and Chapter of *Lincoln*.

This exemption of the *Church* from *Seculars*, &c. is the more considerable, because it came up with the *Norman* King; at the time of *Hildebrand*, whose Letters missive came hither, *ad Willielmi Regis Concilium*. And that this Councel, was a full Parliament; appeareth, by the Charters (as I may call them;) of the Arch-Bishop of *York*, *ex præcepto Papæ Gregorii 7.* and *Confirmatione Domini Willielmi Regis, sub Testimonio Universalis Anglorum Concilii*, &c. Of which *Roger Hoveden* is clear, telling us also, that this King summoned, the Arch Bishops, Bishops,

 Abbots,

Abbots, Counts, Barons, Vice Comit. *cum suis Militibus*, were these *Knights of Shires*.

To this I may add (from the Continuer, of the *Saxon* Chronology;) that *Lanfranc*, came hither from *Caen*, (on the Kings call, and the Popes Command,) *& primatum Regni Anglorum in Ecclesia Cant. suscepit; eligentibus eum Senioribus, cum Episcopis, & principibus, clero, & Populo Angliæ, in curia Regis*, a very clear and full Parliament. Nor may I so wrong our Common Law, as to detain that antient Record, which the great Judg in his Reports citeth; of a *Writ of Right*, brought by this *Lanfranc* (against *Odo Bishop of Bajeux*;) and removed by a *Toll*, into the *County Court*, where the King commanded all the good Lawyers, to attend the County; *& a toto Comitatu, Recordatum atque judicatum est; That as the King held his Lands, in His Demesn; (in Dominio suo;) so was the Arch Bishop, to hold his, omnino liberas & quietas in Dominiquo suo;)* which Judgment was afterward confirmed by the King and Parliament, *cum consensu omnium principum suorum.*

With which Record, I may compare the old Manuscrips in *Bennets Coll. Cambridge*; telling us, *of a great Moot (magnum placitum) in loco qui dicitur Pinenden; in quo Lanfrancus diratiocinatur*, and the

the conclusion, that he was to hold his Lands, and Customs, by *Sea* and *Land*; as free, as the King held his: ezcept in *three things; si regalis via fuerit effossa; arbor incisa juxta, super eam ceciderit, si homicidium factum & sanguis in ea fusus fuerit; Regi dabit, alioquin liber a Regis exactoribus.*

In the same Author, were read, of a *Great Counsel* at *London*; in that *Normans* Reign, and of another at *Glocester*; where the Arch Bishop of *York*, (*jubente Rege, et Lanfranco consentiente,*) *did consecrate William Bishop of Durham*; having no help (*adjunctorium,*) from the *Scottish Bishops, subject to him*: which may be added to that before, of *Scotland*, belonging to the Province or *Diocesse of York*.

Nor can I abstain from the next paragraph, in the same Author, how *Lanfranc* did consecrate *Donate* (a Monk of *Canterbury*;) *ad Regnum Dubliniæ*, at the Request of the *King, Clergy*, and *people of Ireland*. *Petente Rege, clero & populo Hiberniæ*, which with divers others, might be one Argument, for the Antiquity of *Irish Parliments*, and their dependance on *England*, long before King *Henry the Second*.

For

For which I might alſo cite King *Edgars* Charters, *Oſwalds* Law; and divers Hiſtorians of his times. But the Charters mention *Dublin* it ſelf; and yet our Lawyers, are ſo Courteous as to free *Ireland* from our Laws and Cuſtoms, till towards the end of King *John*, and ſome of them conjecture, *that the Brehon* Law, came in again, and that our Parliament, obliged them not till *Poynings Law in Henry the ſeventh.*

But to return to our *Norman* King. I need not beg proofs of Parliaments, in his time; at leaſt not to thoſe, who know the Priviledge of antient *Demeſne*, which therefore is free, from ſending to Parliaments, and from Knights Charges, and Taxes of Parliament, becauſe it was in the Crowns, not only in King *William*, but before him, in King *Edward*; and the *Rolls of Wincheſter*, for which, the old Books are very clear, with divers Records, of *Edward the third, and Henry the fourth*: *beſides natura brevium*, That I ſay nothing of the old *Tractat. de antiquo Dominico*, which is ſtiled a Statute among our Engliſh Statutes.

And beſides all the late Reports, or Records; I find it in the Year Books of *Edward the Third*, that he ſued a Writ of Contempt, againſt the Biſhop of *Norwich*, for encroaching on *Edmondsbury*

bury, againſt expreſs Act of Parliament: By King *William the Conqueror*, and by the Arch-Biſhop of *Canterbury*, and all the other Biſhops, Counts and Barons of *England*. It is 21 of *Ed.* 3. *Mich.* fol. 60. *Title* 7. *Contempt*, againſt an Act of Parliament.

This might well be one of the reaſons, why the great Judge, giveth ſo much credit, to the old *Modus of Parliament, as it was held in the time of King* Edward the Confeſſor, which as the antient copy ſaith, was *by the diſcreet men of the Kingdom, recited before King* William *the* Norman, *and by him approved; and in his time uſed.*

I have cited it before, and compared it, with *Iriſh Modus*: which my much honoured friend Mr. *Hackewil*, one of the *Maſters of Chancery*, hath under his hand atteſted; from the *Great Seal and Charter of Henry the fourth*, (which himſelf hath ſeen:) reciting a former Charter of King *Henry R. Angliæ & Hiberniæ conqueſtor, & Dominus* who ſent, the ſame *Modus* into *Ireland.*

Where himſelf or his Son (*John ſans terre*;) had no great work to reduce them, to the civility of Parliaments: To which they had been long before accuſtomed, and the Roll

 ſaith,

ſaith, *communi omnium de Hibernia conſenſu, teneri ſtatuit*, &c. nor doth the diviſion of the *Iriſh-Shires* ſeem ſo lately ſetled, as ſome have thought; although I may not diſſent from the great Patron of Civill, and Eccleſiaſtical Learning, the late *Primate of Ireland*.

Touching that *Iriſh Modus*, I have very little to add, to the *fourth part of the great Inſtitutes*: in ſeveral places. I ſhall now, only obſerve, that both theſe, *old Modi of Parliaments*, do agree; in this Cuſtom of the Kingdom; *that the King ſhould require no Ayd, but in full Parliament; and in Writing to be delivered to each in degree Parliament.*

And both they agree, that *every new, difficult caſe of Peace; and any war emergent, within, or without the Kingdom, (vel Guerre emergat, in Regno vel extra,) ought to be written down, in full Parliaments; and therein to be debated*, which may be conſidered, by all that will argue the *Militia*.

To which alſo we may add, one clauſe of the Jewiſh Laws; of their great *Sanhedrim*, to whom, they retain the power of *Peace* and *War*; eſpecially where it is Arbitrary, and not meerly *defenſive*, in which the Law of nature maketh many Magiſtrates; and this might with eaſe

eaſe be confirmed, from the Laws and Cuſtoms, of all Civil Kingdoms in all ages. But I muſt not wander, from our Engliſh Laws.

I had almoſt forgotten that, which ſhould be well remembred. Although many would perſwade us to ſeek our Laws in the *Guſtumier*, of *Normandy*; it is not only affirmed in the Great *Reports*; but alſo aſſerted by *Guil. de Rovell Alenconien*; (and proved by divers Arguments;) in his Commentaries, on that *Grand Cuſtumier*; that the *Normans*, had their chief Laws from *Hence*. As had alſo the *Danes*; in the time of *Canute*, for which, we might have more proof, and witneſs, than the Abbot of *Crowland*. So much even ſtrangers did Love and Honour old Engliſh Laws.

Of King *William the Second*, (Sirnamed *Rufus*?) I ſhall ſpeak but little; for I muſt diſcuſs his Election, and Coronation Oath; in a fitter place.

Some footſteps we find of his Parliaments; in divers; *Wigornenſis* and *Hoveden* tell us, that when he would have conſtrained the *Scottiſh* King; *ut ſecundum judicium Baronum ſuorum, in curia ſua, Rectitudinem ei faceret*; *Malcolm* did refuſe to do it, but in the Confines, or Marches, Where (he could not deny;) but the Kings of

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Scotland, were accustomed, rectitudinem facere regibus Angliæ. But he then said, *it ought to be, by the Judgement* of the Parliaments of *both Kingdoms*; *secundum judicium utriusque Regni primatum*;

And I find the like Record, cited on *Fortescue*, from *Godfrey of Malmsbury*. But *Huntingdon*, and *Matthew Paris* also relate, that the same King *Malcolm*, did submit, both to *do Homage*; and to *swear Fealty* to our English King, and *Paris* addeth, a pretty Story of King *Malcolms* overlooking Treason. But again to King *William*.

Of his Errors in Government, I shall only say, that if *Edom*, did really signified *Red*, as hath been thought; I could believe, that all Historians, speaking of *Adamites*, then oppressing the People; might allude to the near *affinity*, between *Edom* and *Rufus*, for *Red*. For, this was his Sirname, of King *William the Second*.

Henry the First, is yet alive in his Laws and Charters. Not only in *Wendover*, with other Historians; but among the Rolls, and Records, yet to be seen, in the Exchequer. They are now in Print, with the Statutes of King *William*; after the *Saxon Laws*. I must but run, and glance.

His

His Charter acknowledgeth his Crown, to the Mercy of God, and the Common Councel. *Communi Concilio, & assensu, Baronum Regni Angliæ.*

It confirmeth King *Edwards* Laws, with all those *Emendations* which King *William* added; for the profit of the Kingdom. It forbiddeth all Levies, nay, the *Monetagium Commune*; but what was agreed, and setled in King *Edwards* Reign.

And the *Test* of that Charter, is, by *Arch-Bishops, Bishops, Barons, Comitatibus, Vice-Comitatibus, & optimatibus, totius Regni Angliæ, apud Westmonasterienses, quando Coronatus fui.* This was copied out into every County, and kept in every *Abby*. So much also, we find in *Matthew Paris*.

Of his Charter to *London*, I may touch, in another place. This I must not omit in his Laws. *Sive agenda præcipiat, levia permittat, hortatur maxima, vitanda prohibeat*, yet still the Laws must be, *Manifesta, Justa, Honesta, & Possibilis*; a kind of sacred *Tetragram*. It is the 4th. Chapter.

And the next, is the Basis, or Foundation of our Law process, and of all Judicials; *In all Causes, Accusers, Parties, (or Defenders,) Witnesses*

ses and Judges; be and must be distinct. Nec perigrina sint judicia, vel a non suo judice, vel loco, vel Tempore celebrata; nec in re dubia, vel absente accusato dicta sit sententia, &c.

Nihil fiat absque Accusatore; nam Deus & Dominus Noster Jesus Christus, Judam furem esse sciebat; sed quia non accusatus, ideo non abreptus. Testes Legitimi sint, & presentes; absque ulla infamia, vel suspicione, vel manifesta Macula. Recte, Sacerdotes accusare non possunt (Laicos.) Nec oportet quemquam Judicari, vel dampnari, priusquam Legitimos Accusatores habeat presentes: Locumque Defendendi accipiat, ad abluenda crimina, &c.

And again, *Pulsatus ante suum judicem, si voluerit, causam suam dicat; & non ante suum Judicem pulsatus, si voluerit, taceat. Si quis, Judices suspectos habeat, advocet, aut contradicat. Appellantem, & vitiatam causam appellationis Remedio, sublevantem; non debet afflictio vel detentionis injuriare Custodia. Unusquisque per* P A R E S *suos, Judicandus est, & ejusdem Provinciæ. Quicquid adversus Adsentes, vel non a suis judicibus; penitus evacuetur*, Chap. the 5th. and the 31th.

Juramentum, debet habere Comites, Voritatem, Justitiam, & Judicium: si ista defecerint, non juramentum, sed perjurium est. Qui per lapidem, falsum Jurat, perjurus est. Deus ista accipit, sicut ille, cui

cui juratur accipit. Juramenta filii & filiæ, nesciente Patre; & vota Monachi, nesciente Abbate; & juramenta pueri, irrito sunt.

Are These the Laws of *England*; or of *Nature*, rather? These we owe to *Beauclerck*; which he owed much to *Cambridge*. See *Malms.* of *Plato's* Kings.

Touching the *Militia*, (beside that in General, confirming King *Edwards*; and King *Williams Emendations*:) There are some particular, as of Tenants by *Knights Service*, to be freed from *Gilds*, &c. That so they might be more ready, for the *Defence of the Kingdom*: and in it, the Kings Service.

This agreeth with the old Writ, *de essend. Quiet. de Tallagio*: Which the Tenant in *Chivalry*, might require of Right. And Tenants in *Dower*, or Widows, had the like Priviledge, of which the Old *Register*, & *natura brevium*.

That also of *Edgar* or *Canute*, for *Cowards in Land*, or *Sea-fight* is renued; with that of *Boorland*, as before. Much also of *Helfeng.*

Releifs are agreed and settled. For *Earls* and the Kings *Thaynes*; with others called *Meane Thaynes*. But in some Chapters *Thaynes* are equal to *Barons*. (And all Tenants *En chef*, at

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Clarendon, were ſtiled *Barons*: and *Relief*, is Coſin German to the Saxon *Heriot*. Being for the *Heir* or *Militia*: whence *Heretoche* in King *Edwards* Laws.

But the Dutch *Here*, is alſo *Dominus*, as *Senior*, in ſo many Nations; ſince the time of *Charles the Great*. And ſome will have the Saxon *Heregeat*, to be the *Her's Geat*, or *Beaſt* of the *Lord*, or *Here*: (which of old, was paid before, or rather than, the *Mortuary*.) And from this *Here*, ſom would derive *Hæres*. So, that all *Heirs*, ſhould be *Her's* or Lords; as *Homines* were *Yeomen*, (*You Men*, or *Young Men*:) but *Homines*, in Law (as with us, *Men*) are *Servi*. Such they ſay were *Yeomen*, and none *Gentlemen* but ſuch as came from *Barons*; or at leaſt the Tenants in *Capite*, if not in *Antient Demeſn*. But for this, ſee *Edw*. 1. *Tit. Attorney*. 103 And the Learned *Janus*.

Dane-geld, is here alſo reduced to 12*d*. the Hyde; as of Old: (from which it rambled, to 3, 4, 6, 8, 10, or 12.) ſtrict proviſion, is alſo made for keeping of *Arms*; and againſt uſing or lending them, for the dammage of Others. Nay a mulct, is ſet upon him, whoſe Lance, or Sword, doth much Treſpaſs; though againſt his will. He is to be ſevere-

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ly puniſhed, that diſarmeth any unjuſtly; and muſt anſwer, all the miſchief that enſueth ſuch diſarming.

To this Kings time, belongeth the caſe of *William* the Kings Chamberlain, *de Londonia*: who refuſed to find a man, for the Army, as his *Tenour* required: But the *Abbot of Abbingdon* (of whom he held;) *in preſentia ſapientum* (in a *Witen Moot*) *rem ventilari fecit*, &c. *Unde cum Lege Patriæ, decretum proceſsiſſet, ipſum exortem Terræ, merito deberi fieri*, &c. by Friends, it was compoſed; and the Tenant enjoyed his Land.

I find it, from Sir *Robert Cottons* ineſtimable Treaſury, cited by Mr. *Selden* on *Hengham*. Nor can I deny, but this (with divers other caſes,) might forfeit the Land. But, as in caſe of *Alienation of ſuch Tenures*; a Statute of *Edward* the 3d. provided that the King ſhall not retain the *Forfeits*, but ſhall only, take a *Fine Reaſonable*; (which the Chancery, muſt alſo aſſeſs; by due Proceſs:) So, is our Law very tender in all caſes of Forfeit. And among the old *Wytes*, *Wardwyte* was for the *Militia*: being an acquittance of Mercy to him that had not found a man, for the *Serviſe*; according to his Tenure. Of which old *Fleta*, with others.

The Laws of this King do evince, the Tryal

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per PARES to be long before, the great Charter. Nor would it be hard, to ſhew it, before King *Henry*, and beſides all other hints, through Elder times; the caſe is well known, of *Roger Fitz Osborn*, apprehended by *Tiptoft* Sheriff of *Worceſterſhire*; and condemned for Treaſon in King *William* the *Norman*; *per judicium parium ſuorum*; Of which antient Hiſtorians, before the Commentator on *Magna Charta*.

I ſhould not omit King *Henry*'s Charter, to the Abbot of *Bee*, confirming his antient Cuſtoms, and Priviledges, preſcribed for St. *Edmonds* time, for *Grand Aſsizes*, &c. yet to be found in the Book of *Aſsizes*; *lib.* 26. *Pl.* 24. and in the 3d. or 8th. part of the great Reports: and in the Comment on *Magna Charta*, *cap.* 11. but here it is from *Ethelred* and *Edward the Confeſſor*.

One of his Priviledges, was to be free from the Juſties of *either Bench*, and of *Aſsize*. Which is one of the firſt Records, for the antient *Benches*. But it may not be impoſſible to trace them, thorow ſome Elder times.

For the Saxon Law, (ſo often repeated, and confirmed) that none ſhould *complain to the King but want of Right*; or againſt *ſummum jus*, at *Home*, might in modern Language be tranſlated Thus. The *Writ of Right*, muſt abide the *Baron* or Bayliffe:

liffe: (For it cannot fall to a *Copyhold Steward*:) except the Lords default, or conſent, or the Tenants ſuit, procure a *Tolt*, to lift it up to the *County Court*. Or a *Pone*, place it in the *Common Pleas*.

That ſuch a courſe was antient, may be gathered from the *Mirror*, *Aſſer*, and others of *Alfred*, *Edgar*, *Canute*, *Ethelred*: and of the *Tolt* before, in King *William*. To which I may add the Writ of *Right* (in the third Book of *Reports*;) brought by *J. de Beverlace*, againſt *Walter* of *Fridaſtern*; and by a *Tolt* removed from the *Court Baron*, to the *County*; and for default of the *Baron*, (how it muſt be falſified, we may touch; (anon) it was concluded, before *Ranulph de Glanvil*, Sheriff of *Yorkſhire*.

Glanvil is clear enough; for the courſe of removing to higher Courts; and of the *Writ de Pace*, ſtepping between the Combat (on the *Writ of Right*) and *Aſsize*, *Coram juſtitiis in Banco ſedentibus*, and although this Book (intituled *Glanvil*) was not written, till about *Henry* the 2d. yet it is plain enough, that he ſpeaketh of *Antient Cuſtom*. His words are very conſiderable.

The *grand Aſsize* (ſaith he;) *is a Royal benefit, granted by the Parliament*; (*Clementia principis, de Concilio procerum, populis indultum*;) as being that

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which ſaved blood, and did oft prevent the Combat (on the *Writ of Right*;) and of this he ſpeaketh (in the third of the ſame Book;) as of a very old and antient Cuſtom. *Secundum jus & conſuetudinem Regni antiquam.* A weighty expreſſion, from ſo antient an Author: which may poſſibly lead us higher than the *Saxon* times. For, we may find the Duel, or Combat, among the *Gaules* (from *Britiſh Druides*:) as among the *Germans* alſo; whence our Fathers came.

Nonnunquam etiam armis de principatu contendunt. So of the *Gauls* or *Britiſh Druids*; He that was like to know it, and of thoſe, and *Germans*, *Tacitus*, and *Diodorus Siculus*, before *Aventinus*. Some obſerve it, in the *Salique Law*; and among the Laws of *Charlemaign*, and that the *Longobards* did bring it into *Italy*; where it was alſo ſetled by Law. But of our Anceſtors combats, in another place.

I know not any *Fines* upon Record, till *Richard* the Firſt. But *Stowels* Caſe in *Plowden*, may inform us, that they were before the *Norman*. And we need not doubt, the Books of *Edward* the third; ſpeaking of Benches, ſettled in *Henry* the firſt, but I do not remember, the phraſe of *Capitalis Juſticiarius noſter*, till *great Charter*; which repeateth elder Cuſtoms.

Good-

Goodwin, the famous Earl of *Kent*, among the *Saxons*, had two Sons, that (in as good an Author as *Huntington*) are ſtiled, *Regni Juſticiariis*; (the phraſe is common, in *Hoveden*, and others, of the times of *Clarendon* Aſſizes.) And K. *Edgar* had a Coſin *Ailwin*; who was *totius Angliæ Aldermannus*; which is ſuppoſed, *Lord Chief Juſtice*; by a Learned man; beſides the beſt (though yet imperfect) Gloſſary. But it might denote the *Lord High Conſtable*: Of which before, in *William* the firſt.

And *William* the 2d. found great *Odo* of *Baieux*, ſetled L. Ch. Juſtice of *England*. *Juſticiarius totius Angliæ*. So, *Matth.* of *Weſtminſter*. and *Huntingdon* calleth him, *Juſticiarius*, and *Princeps* and *Moderator totius Angliæ*, in *Wigornenſis*, He is *Cuſtos Angliæ*. And the phraſe of *Juſticiarius*, is alſo in *Matth. Paris* of *William* the firſt: *Juſticiarii in Banco Regio*, of after times, as alſo, *placita de Nova diſſeiſſena*; before Juſtices in *Eyre*. But he ſpeaketh of *placita lethifera*; the Pleas of Life and Death; (yea, even in Biſhops Courts;) about the *Normans* coming in.

But in *Polydore*, we find out 4 *Terms*, (with divers other elder Cuſtomes) aſcribed to the firſt *Norman*. But that which he addeth, of the place, for theſe Courts, to be, at the Kings appointment;

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ment; might be true: till the Law fixed the *Pleas*, which may be, long before our Charter, of *Henry* 3d. where it is confirmed, not created. But, for the Kings *Bench*, the *Return* was, *coram Nobis ubicunque*, &c. and for the *Pleas*, *coram Justiciariis nostris apud Westmon.*

That which *Virgil* addeth of the *Judges in Westminster; and of those higher beyond appeal*; and *of Justices of Peace*, setled by the *Conqueror*; (as he saith *Sheriffs* were,) in every *County*: may be more considered. For it may be, as much too late, as, some have thought it, too early.

They which presume to make K. *Henries* Cubit the first *Standard* of *Winchester*; must refute the old *Saxon* Laws; (of which before:) For, those may seem to deserve, as much credit as *Malmsbury*, other marks.

That he did confirm the *Curtesie d' Angletterre* I may yeild to the *Mirror*, and other Authors: but not that he first began it. For the Statute of *Kentish* Customs; and those that treat of Gavelkind, may shew us an Older *Tenure by Curtesie*; there also, where the Tenant had no Issue.

And this may teach us, whence the like Custom came into *Ireland*; as also to be, *Curialitas Scotiæ*; which our master seemeth to forget, when he saith *Que ne'st use en auter Realm, forsque tant*

tant solement en Engleterre. But his Commentator he lyeth in this; and in divers other things.

In case *Entails*, this English *Curtesie* is very remarkable: in which the Book of Cases have great diversity. But those that perswade us, there was no Land in *Tayles* before the 2d. of *Westminster*, in King *Edward* the first; (which are all, that subscribe to *Littleton*;) must interpret the Laws of King *Alfred*, much otherwise than I can do. For the 37th. Chap. of his Laws, is to me, much clearer, for Lands Entail'd; then is all the Statute, *de Donis Conditionalibus*.

One Case of the *Courtesie*; may be considered, for the *Militia*. If Land *in Capite* descend to a Woman; who upon Office found, intrudeth (on the King;) and taketh an Husband; and by him, hath Issue; and then dieth: yet cannot the King eject or detain the man; but he shall be *Tenant by the Kingdoms Curtesie*; although he came in, upon *Intrusion*. Which seemeth to hint, that Our Law, did chiefly intend, the Kingdoms good defence, and service, (which might be performed, by such an intruder:) rather than the Kings pleasure; or his bare Prerogative, in this, which is thought, so great a Prerogative, *of Tenure in Capite*. For which the Comments on *Magna Charta*. and the Statute of *Prerogative*; with

with *Littletons Dower*, and *Curteſie*; are clear enough.

To *Henry* the firſt, they alſo aſcribe the *Curteſie*; of ſaving the *wreck*, from his *Exchequer*; if there were, ſo much as a *Cat*, or a breathing Creature let in the Ship. I do not deny him, to be ſo courteous as to confirm, ſome ſuch Sea-Cuſtom; (for which, he had a very ſad Occaſion; when his Sons and Daughter, with ſo many Friends were drown'd in one Shipwrack.) But, as *Richard*, ſoon after him, ſeemeth more courteous, in this alſo, (if we may believe *Hoveden*:) So I doubt not, to aſſert it, to higher and elder Times. And yet the Law *Maritime*, is dark enough: with all the juriſdiction of the Court *Admiral*. Whoſe office, may be harder, than the Name: A ſtrange mixture of *Greek* and *Arabick*.

The old *MS. del' Office del' Admiral*; hath divers Records of *H.*1.*R.*1. and K.*John*: Speaking of *Tryals* by 12. (as at Common Law;) but now the practiſe is much otherwiſe. In the Rolls of *Ed.* 1. the Name of *Admiral*: but not in our Printed Laws, that I know, till *Edw.* 2d. And in *Edw.* 3d. the Rolls are full of that Office, parted among divers: for the North and South Seas, &c. As was touched before, in *Edgar*.

In *Richard* the 2d. it was brought to a weldy mo-

model: being *uncertain* rather than *infinite* before. For the bounds were ever ſtraiter much, than ſome may imagine. They were again diſputed in *Henry the* 4*th*. *Eliz.* and *James*. It lies more open to the Common Law, than to the Wind and to a Premunire, (ſome are apt to think;) much more, then all are aware. I may touch it again in a fitter place.

Here I ſhall only add, that beſides the Laws of *Arthur* the *Brittain*, and *Edgar* the *Saxon*; we have ſome Records (for ſo I may call them,) of Cuſtoms by Sea; as well as by Land. With Priviledge, to ſome, below the King; before the *Norman*; whom they make the Founder, (yet he was but Patron,) of the Ports; and *Wardens* for the Sea. Somewhat of this in *Lanfranc's* Caſe before: and more again ere long.

Hiſtorians are clear and full of this King's Parliaments; and of his *Summons* to Parliament. *Majores natu Angliæ Londoniæ Congregavit*. and again, *principes omnes & totius Regni Nobilitatem ſanctione adnotavit*: ſo the Monk of *Worceſter*, and *Hoveden* (almoſt in the ſame words,) which *Matthew Paris*, expreſſeth thus; *magnatibus regni Edicto Convocatis*. And in *Walſinghams Neuſtria*; *Majoribus regni*; and *Principibus Convocatis*, *Virgil* himſelf confeſſeth his full Parliaments.

 And

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And of a *Convocation House*, distinct from the Parliament, sitting at the same time; they are plain enough. *Et cum rege principes regni omnes, tam Eccles. quam Secular apud Westmon. ubi etiam Anselm. Cantuar. Archiep. magnum tenuit Consilium; de his quæ ad Christianitatem pertinent.* as *Florence*, and *Hoveden.*

Huntingdon, is also clear in such a distinction; *Rex tenuit Concilium apud Londoniam; & Willielmus Archiep. Cantuariensis, similiter in eodam villa, apud Westmon.* and this Author useth to stile, the Parliament, *magnum placitum*,(of which before;) and the *Convocation House*, *Concilium*, or *Synodus*; which yet in him, in all, was confirmed by Parliament; or else invalid.

In Parliament were also decided, the Great Contests between *Canterbury* and *York*; not only concerning the Crown, or Act of Coronation: in which (to this King,) they both joyned; as we find in *Matth. Paris*, and *Walsingham.* But the Parliament declared, that it did not at all belong to *York*: as besides *Hoveden*, we read in him, that continueth *Florence* of *Worcester.* But in *Beckets* absence, it did fall to *York*: and so it had been before. So also *Canterburies* contest with the King was debated in full Parliament, three days together, in the Arch Bishops absence: and at length

length composed, with the consent rather than content of both parties.

The King was resolute for investiture as he found it from his Father and Brother: the Clergy was pertinacious, for the Popes Decrees. But the Emperour (Son in Law, to our King;) did so muzzle Pope *Paschal*; that he Consents and Decrees, that none should be Consecrate, but whom the *King Invested*, as the *Clergy*, and *People chose him.*

It seemeth considerable, how all Historians (of that time and dispute,) do Record, the choice of Bishops, to be in the *People*: in *Phebe* and in *Populo*, as well as in *Clero.*

They mention *Radulph*, ordained a Bishop for the *Orcades*: but rejected by all, because not Elected by Common assent of the People; *Plebis, Clero, Principis*, 'tis every where in the old Monks; and how the poor Bishop, wandred up and down, as an assistant, to other Prelates. Of him and of English Right in *Scotland*, and *Ireland*; much might be added, from the Notes of *Eadmerus*; and somewhat of *Lanfrancs* Plea at *Pinenden.*

And at Prince *Roberts* Landing; *commoti sunt principes erga Regem causa Roberti*, &c. But many of the Lords left the Parliament, (*subtrahentes se*

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de Curia;) *ſed Epiſcopi, et milites Gregarii & Angli*, (the Commons) ſtuck to the King; who was *Provincialibus gratus* : and at length the *Witan* or Parliament, compoſed the quarrel. *Sapientiores utriuſque partis habito conſilio, Pacem inter fratres compoſuere.* 'Tis in *Florence* and *Hoveden*, with *Malmſbury*.

Wendover with *Huntingdon* Record, how the great Firebrand in that War, *Ranulph* of *Durham*, was committed by the Parliament : *de Communi Conſilio Gentis Anglorum.* This was the great man. whom K. *William*, had made *Pacitator*, in *Matth. Paris* : but *Placitator & exactor totius Regni*, in the Monk of *Worceſter*.

His continuer addeth alſo, that the Peace, or League with *France*, in this Kings time; was made by Parliament; *Conſilio optimatum* : and that by advice of Common Council, the Cuſtody and Conſtableſhip of the Caſtle of *Ros* or *Roch* (with its Ford, &c.) were ſetled in the Arch-Biſhop, and Church of *Canterbury* : with leave to build a *Tower*, and divers other Priviledges, for the *Militia*.

I muſt not mention the Orders of King *Henries* Parliaments, againſt Money *Clippers* and corrupters : with ſuch a change of Money, as made things very dear. So dear a time that an Horſe-load

load of good Wheat, could ſcarcely be bought under ſix ſhillings : as *Henry* of *Huntingdon* and others.

Of King *Stephens Election*, more, when I ſhall diſcuſs, the Right of *Succeſsion* to the Crown. But I muſt not omit that which, of him, is Recorded by ſo many good Authors : That he did prohibit the Laws brought hither from *Rome*. And this alſo by Parliament : as *Bale* affirmeth. But of this, in much older writers.

Frier Bacon is one, (in his Compendium of Theology, or his *opus minus* : and the great Reporter citeth it, from *Bacons impedimentum ſapientiæ*.) He was a very Learned man, and a moſt genuine *Son of Art*; his *Opticks* and his *Burning-glaſſes*, would be more enquired after; for they may be little worſe than thoſe of *Archimedes*, who in this is newly found to go beyond himſelf.

Such Glaſſes muſt be Conick Section : and in Concaves not exactly *Circular*, but *parabolical*, for which there is as real Demonſtration, (by the Law of Reflections;) as for the beſt perſpectives, (by refractions,) in *Ellipſes*, and *Hyperbolies* : to which I muſt not add, that *Mirandum Naturæ* of two lines, that approach nearer and nearer, *in infinitum*; yet they ſtill ſhall be Aſymptots, and never meet, (for ſuch attend *Hyperbolies*.

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Which yet, is more Demonſtrable, by *Reaſon*; than is that of *Merſennus*, (or others) by *ſenſe*; that Concave Glaſſes may be placed in ſuch a continued proportion (may I ſay) of *Reflection*; that by ſuch it may be poſſible to fire a Ship, (or other matter combuſtible;) at a far greater diſtance, than between *Dover* and *Calice*. I ſay not (asſome have ſaid,) *in infinitum*.

But in this and all the *Mathematicks*; who can add, to him that did contract (and correct) *Longomont*, into a page? Our Country-man, he is: but at too great a diſtance, in *Breda*.

But I muſt not wander from K. *Stephen*. His Repeal of Roman Laws, is alſo in *Sarisburienſis* (living in the time of K. *Henry* the 2d:) an Author of Credit, and polite enough. It is among his Court trifles (*Polteraticus*, or *de nugis Curialium*).

Nor is he content to meddle only, with mean Courtiers; but even of the higheſt, he is plain enough. And one of his Theſis, is, that by Reaſon and Scripture, it is both Lawful, and a glorious Act, to kill a publick Tyrant. But of his exceptions to the Oath of *Fealty*; we muſt have more in its Time and Place.

That of K. *Stephen* is in his 8th. Book, and 22 chap. (near enough to his diſcourſe of Tyrany.) Where we have alſo an hint of him, that brought

brought thoſe Laws into this Kingdom. *Theobald* the Arch Biſhop of *Canterbury*, going to *Rome* for his Pall (ſome ſay;) and for this the Monk of *Malmesbury*, would be conſidered; Who hath alſo Recorded, K. *Stephens* Oath; of which we muſt ſpeak again. I muſt not diſpute whether thoſe *Italian* Laws, by him prohibited; were the *Civil*, or the *Canon* Laws: which I rather believe. Although I cannot deny, but the Civil alſo did come in, or intrude upon our Engliſh Laws. Nor may I forget a paſſage of Parliament in that famous Appeal, or charge of Treaſon, in King *Richard* the Second's Time.

The Lawyers eſpecially Civilians, were conſulted, about the charge. They conceived it, not to be rightly moulded, according to the forms of Law. But the great Council reſolved, and declared, that they would proceed, by no other Law, but the courſe and *Cuſtom* of *Parliament*. To which they added, that *England* never was, ought or ſhould be Ruled or Governed, by the *Civil Law*: which yet is enough: (ſome think too much;) in cauſes *Maritime* and *Eccleſiaſtick*, that I ſpeak not of any other Courts.

Forteſcue (or rather the young Prince in him) telleth us, of ſome of our Kings, that have attempted to bring in, the *Civil Laws*, and *patrias*

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Leges abolere, but I cannot tell *who*, those were; no more, than the Learned Commentator. Except perhaps, he may reach up, to King *Lucius*; who did desire the *Roman Laws*, (even for the State:) but can we say, the *Civil Laws*, were then *Born*? or at least *Christned*, enough for a Christian King?

But the reason, why, any King so much esteemed the *Civil Law*; may be rightly guessed; to be this, grand maxim of Tyranny; *Quod principi placuit, Legis habet vigorem.* A Sentence of the Civil, Royal or Imperial Laws; citeth indeed, by *Glanvil*, *Bracton*, and others of our Lawyers: who refuted, rather than allowed it. But in this who can add to Mr. *Seldens* late Dissertations on *Fleta*.

Wigornensis, lived till K.*Stephens* time. In him, or his *Continuer*, we find what Laws these were, & *how*, or *who* did bring them hither. For we are there told, that *Theobald* with other Prelates, had a Summons from the Pope to *Rome*: and there were admitted to a *Council*; such as many ages could not Parallel. For thence, (he saith) they brought those *Canons*, or *Decrees*; *quæ longe lateque per Angliam jam Conscriptæ.*

He lived not perhaps to know they were prohibited: but he doth intimate, enough, in what a cold

a cold manner, the Parliament did entertain, the Legate, sent from *Rome*. He was a great *Leveller*, it seemeth: For, he came, to pull down, and to destroy; that so, he might plant, or build, we read it, in the Monks. Who bring, this Legate, *Coram Rege & primoribus*. And again, before the *Commons* also; *Episcopis, Abbatibus, & innumera Cleri & Populi multitudine.*

Ere long, we find K.*Stephen* at another Parliament; *ad Boum vadum Oxes foord*; or *Oxford*. Where some Lords, or Prelates, are committed, for suspicion of Treason. And by some it is ascribed to the King alone. But in the Monk of *Malmesbury*, we may find it done upon complaint of Those, he calleth *potent Laicks*: and by Councel, or perswasion of *Magnates*, and *Proceres Regni*.

The thing doth speak it self. For one of the Lords, committed was the great *Roger* of *Salisbury*, (the grand Favorite;) of whom before. His Charge was this, in chief; that without leave of King and Parliament; he had built, and fortified a Castle. But in his *own Devise* (this was the Castles name;) he did ensnare himself. The Name and Fate, hath since been found, observed more than once; and yet they write, it was the faireſt Castle in all *Europe*.

Matth. Paris followeth *Huntingdon* and *Hove-*

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den ; but in this, they both come ſhort of *Malmsbury* ; well acquainted with that famous *Roger*, whoſe miſgiving heart, was like, to have prevented, what did follow, in that Parliament. But ſo we might have loſt, or miſt that Act, which here was made, for the *Militia* : ſetled clearly in the King and Parliament.

We find it alſo in the old Continuer of the Monk of *Worceſter*. Who living at that time, doth tell us, that in full Parliament; (*habito poſtmodum Concilio, coram primoribus Angliæ, ſtatutum eſt*,) it was Enacted for a Statute, that *All Burghs, Caſtles, Forts*, &c. (*in quibus ſecularia ſolent exerceri negotia*) *ſhould ſubmit to the King & Parliament. Regis & Baronum ſuorum juri cedant.* And by vertue of this Act of Parliament, was the Caſtle of the *Deviſe* preſently demanded ; and at length yeilded : while the great Prelates neck, (or his Sons who had been alſo Chancellor,) was in the Rope to have prevented his Quartain, of which he died.

In the ſame Author we find much, of an *High Conſtable* ; and ſeveral men, with that Title. One is *Milo* : who did lead the King, in Royal State ; *cum honore, Regiam ad Aulam* ; *ubi Cives fidelitatem Juraverunt*, &c.

Ere long, we find him charged with Treaſon, (ſo as is worth conſidering, for the *Militia* ;) and

and his Office conferred, on *Walter de Bello Campo* ; *Wigornenſi Vice-comite*. But diſcontents (that roſe before) did now increaſe. And when the Oath of Fealty, was preſſed on ſome ; they refuſe, and ſay, the King may take *their words*, if he pleaſe.

But for a *Biſhoprick* the Prelates perſwaded a grave man, to ſwallow the *Oath* : and ſo he did ; on much reluctance. *Maurice*, was his Name ; Elected by the people ; a *Clero & Populo* : being then preſented to the King, by Biſhops ; Atteſting his deſerts and due Election.

Another Biſhoprick is conferred on *Philip*, the Lord *Chancellor* ; but *Conſilio Baronum*. And a while before, the Abbot, was made a Biſhop, at *London* ; *petente Milone Conſtabulario, & favore Populi, utriuſque Ordinis* ; that is, the *Lords* and *Commons* ; or rather the *Clergy* and *Laity*.

In *Huntingdon*, we read of *Robert* Arch-Deacon of *Leiceſter*, about this Time, Elect Biſhop of *Lincoln* ; *Rege, Clero, & Populo, ſummo gaudio annuente*. And a while after, he ſhews us the King at *London*, in a full Parliament, diſputing the grand queſtion of *Appeals* ; with the Romiſh Legate. For, ſuch *Appeales* (ſaith he) had not been *uſed in England*, till *That Henry* of *Winton* the *Legate*, had cruelly intruded them. *Malo ſuo crudeliter intruſit*.

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The Monk of St. *Albans* borroweth from him; and ſometimes repayeth, with intereſts. As in that Statute, for Priviledge of *Churches*, and *Church-yards*; with all the *Clergy*; ſo, that none but the Pope could abſolve, from violence done to ſuch, (in which they all agree:) he added alſo, another Act of the Parliament, that *Plowes* in the Field with Husbandmen ſhould enjoy the ſame Peace or priviledge; as if they were in a Church-yard.

His *Geffry de Mandevil*, (*Conſul*, or *Comes*;) was a very great man: *de magna villa*. For he ſpeaks, of his *Princeps Militiæ*; and of another, that was, his *Magiſter peditum*. But in *Henry* of *Huntingdon*, we find him, at length, clapt up in *Priſon*: but ſcarcely, *ſecundum jus Gentium*: *Rex cepit eum in curia ſua; ex neceſsitate magis, quam ex honeſtate*. *Hoveden*, hath of him, the like expreſſions; adding alſo, that from a *Baron*, he had been raiſed, to the degree of a *Conſul*; that is an Earl. For in him the *Earl of Flanders*, is *Conſul Flandrenſis*, and the *Earl of Anjou*, *Conſul Andegavenſis*.

This was he that come to be *Hen.* the 2d. who at his Landing, (being *Duke of Normandy*) *coyned money*; which paſſed here, by the name of the *Dukes coyn*. Nor only he; but *Omnes potentes, tam Epiſcopi, quam Comites & Barones, ſuam faciebant monetam*.

netam. (and of this, *Nubrigenſis*.) Which may be compared, with the *Saxon* Laws, of King *Ethelſtan* and others. As K. *Hen. monetag. common*. In the ſame *Huntingdon*, we alſo read, that (by the Mediation, of *Theobald* of *Canterbury*, and *Henry* of *Winton*;) the King was ſo reconciled, to this Duke and Earl *Henry*; that they never more diſcorded, (alſo that the Duke, was made, *Juſticiarius Angliæ*, next under the King; *& omnia Regni Negotia, per eum terminabantur*.) But in *Polydore*, we find this *Pacification*, made by Parliament: *Cujus Authoritate pactio facta eſt*.

Matthew Paris is ſo full of *Law Terms*, that I could beleive him, in this, to allude to the Law *Fines* and *Recoveries*. For at this peace, he telleth, how the Kingdom was again *Recovered*. And (after a digreſſion to *Merlins Prophesie*, in which the phraſe of *Vice-comites*, may be duly conſidered;) he concludeth, thus a War that had raged 17 years together, was now quieted by ſuch a *Time*, *hoc fine quievit*.

To which he adds, that famous ſtory of the Souldier, that in this *Vacation* made a Voyage to St. *Patricks Purgatory*. And by that occaſion, he relates, the beſt deſcription of Hell, or Helliſh Torments, that I remember, in any Hiſtorian of credit. With which may be compared; divers

divers others in the ſame Author. But that which is added, at the Souldier return to the King; may be added alſo to what is obſerved before, touching *Irelands* dependance on *England*. For, the ſame Souldier was again ſent, by King *Stephen* into *Ireland*: to be Aſſiſtant, as an interpreter to *Gilbert*; who had a grant from hence, to found an Abbey in *Ireland*. Whither he alſo carried this Souldier, ſpeaking Iriſh, and with Tears, he would often relate, his Voyage to Hell. Which is ſo recorded and aſſerted by divers Religious men.

To K. *Stephen's Militia*, we may alſo refer that, which ſo many Hiſtorians Record, of his damning the *Hidage* or *Danegeld*: Which yet was not his Act, but the Parliaments; that did Elect, and create him King. We muſt diſcuſs it more fully ere long; but now, for *Danegeld*, we may aſſert it to be expreſſed, in his very Coronation Oath: on which, he was admitted.

One of the clauſes was, that he ſhould, for ever deſiſt from that, which had been paid to ſome of his Predeceſſors, *ſingulis annis*. And *Wendover*, or *Paris* expreſs no more. But in *Hoveden*, and *Huntingdon Dane-geld* is expreſly ſpecified, which both affirm to be then at 2 s. the Hyde. They agree alſo, with others; That this

this was again, ſpecified in Parliament, at *Oxford*: Where the King, did again confirm, his Coronation Oath.

Matthew of Weſtminſter doth alſo Record that of theſe promiſes or Oaths, he made a *Charter*, which ſeemeth to be that Charter, which the great Reporter, in his 8th. part, affirmeth, to be yet found, in an old *MS. de antiquis Legibus*. And that, the ſaid Charter, among divers other things, doth expreſſely confirm, the Laws of K. *Edward* and of K. *Henry*.

Nay the Monk of St. *Albans* affirmeth, that in Parliament, *Congregatis Regni magnatibus*, he did there ſolemnly promiſe, to *meliorate the Laws*, or make them better as they ſhould deſire, or require, *juxta voluntatem & Arbitrium ſingulorum*; which we may conſider again upon occaſion.

Nor muſt I omit, that much of this very Charter, is yet to be read in Print; in an old Monk that lived in King *Stephens* Time; and thoſe particulars, for confirmation of all good Laws; and in ſpecial, thoſe of King *Henry*: with divers other things, that are worth peruſal. It is in the Monk of *Malmsbury*: but a little after the Letters written to the Pope, about King *Henries* death; confeſſion, abſolution and *Anoynting* by the *Elders*; according to what was let to the Church

Church, by the Apoſtle St. *James* : as in thoſe Letters, is more fully expreſſed. Which may be added to that, before, of the *Church Elders*.

Polydore telleth us that in full Parliament at *Oxford* ; King *Stephen* did aboliſh that, which had been oft exacted, for *Hydage per ſingula jugera* : and that he *intreated* another Parliament, to carry on that War, which by their Adviſe and Councel had been undertaken, in the Name of *Common Wealth*. *Reipublicæ Nomine, veſtro cum Conſilio tum Conſenſu, ſuſceptum eſt* : and his deſire to them was, *ſo to act in Perſon ; that the People might not be burthened with Taxes*.

And at his end *Virgil* addeth that, *for all his continual Wars ; he did exact, little or no Tribute, from the People*. So that the Parliament it ſeems, did wholly manage his *Militia*.

From a long Storm at Sea ; we are now come, into a quiet Port, and a calm Haven, ſuch were the Thoughts, Expectations, and Hopes of All ; in *Henry* the 2d. We have his Laws in Print ; in ſeveral places : and his Lawyers, known enough. For who needeth to be told of *Glanvil* in his Reign ; of whom before : and much I might add, from divers others beſides *Hoveden*.

Who by occaſion of that Jugdes Name ; hath not only given us a Copy, of St. *Edwards* Laws ; but

but hath alſo, aſſerted their confirmation by K. *William*, (as I ſhould before ;) upon the Oaths of choſen men, from every County, (ſworn, as ſtrictly as I remember any to have ever been ;) with additions alſo of ſome emendations added by King *William* ; *ad Utilitatem Anglorum*.

Theſe Laws he ſaith, were compiled (or *conditæ*) by the ſaid great *Glanvil* ; who (in *Henry* the 2d.) he ſtileth; *ſummum Juſticiarium totius Angliæ*. And for this Kings confirmation of the good Laws of *H.* the firſt, we need no more than what we find in him (and all other Hiſtorians;) of the grand conteſt upon that occaſion ; between the King & *Becket*, Son to a *Saracen* or *Syrian* Woman, yet a Citizen of *London*, (and his Fathers Name was *Gilbert*.)

Favourite at firſt he was to *Theobald*, (of whom before :) by him commended ſo, that he became Lord *Chancellor*. But at his Patrons Death, being choſen to ſucceed (in *Canterbury* ;) he reſignneth up the Seal at taking orders : and in this both *Wendover* and *Matthew Paris* add to *Hoveden*, who in *Becket* is the largeſt.

Polydore agreeth, that his former perferment was, to be *Arch-Deacon*, to that Sea : to which he makes the Office of a *Legate*, to be then entailed ; ever ſince Lord *Theobald* did fetch his *Pall* from *Rome*.

 But

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But the great quarrel was about the confirmation of K. *Hen.* Laws, (of which before.) They touched all the Clergy: So, that once reading of them, was enough to make the Pope condemn and Ban them all. In a great Councel or Parliament the King did ask, (they say petitioned the Church,) that all would agree to keep the Laws of his Grandfather, *Henry* the first.

Becket with some reluctance did consent, without his *Salvo*. But again repents in Parliament, at *Clarendon* 'tis clear as well for Commons as for others. *Congregato Clero & Populo Regni, apud Clarendun.* And again, the Lords beseech the Prelate that he would vouchsafe to come and say before the King and *Commons, coram populo diceret*, that he would receive and admit those Laws.

He doth consent and comes into the House, and frames his lips into a *Content*: the King is glad and bids the Lords retire, and bring those Laws from the Records; that all might be perused and agreed. Somewhat more he meant: for when the Lords returned with those Rolls, the motion was that all should set their hands, or Seals in witness of agreement. But at this,

The Prelate startles and recoyles again, and riseth high or foul in Language; So withdraws in greatest discontent. Ere long, we find him out

out again; at least, he would be out; For now he sueth for a Pass to *France*: he meant the Pope. I must not here omit the course the King did take to stop him. One there was that did complain, he had been long in suit; in some inferior Court of *Becket*, yet he could not get his right: and therefore was at length enforced to some other course and Court. For which his way was first to falsifie the Prelates Court by Oath, according to the Custom of the Kingdom: and of that we spake before in *Writs of Right*; and *Tolts* or *Pone's*; to remove them to some higher Court.

This seemed but a petty Case that happen'd every day, so that the usual Writ hath such a clause, that if the *Baron* did not, then the *Sheriff* should. And if the *Sheriff* failed (in the *County Court*,) then *Bench* must help.

But this was now enough to give a pause and check to that great Prelate. He must stay and plead it out; at length he finds the formal Oath (to falsifie his Court) was made upon Paper (or a Service Book:) whereas the Law required, that the Oath should be upon the Holy *Gospels*. This would not suffice, but Parliament, (at least the Barons, and the Tenants *en Chief* were such;) did put the Prelate into *Misericordia*.

He doth struggle and attempt a Writ of Er-

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rour or the like; (*Judicium illud falsificare*:) but he must submit and is amerced at 500 *l.* he cannot bear it: falleth sick, but soon receives another summons.

For he shall have load enough, and now must give account of all his former Bailywick. He seeks delay, and would be *Essoyned*, *de Malo lecti*, and instead of *Knights*, two *Earles* are sent to view him, whom they find in Bed, but give him respite only till the morrow.

This bringeth a Case of Law to mind, *Essoyned of sickness* cannot *Rise*; without a *License*. If the Knights (that come to view him) find him not, or out of Bed it is *default*, Of which in *Bracton*, *Fleta*, *Hengham*. And his Learned Commentator addeth a pretty Case in *Rich.* the First.

The *Abbot* of *Crowland* sueth the *Prior* of *Spalding* for entring upon his Marsh. The *Prior* Pleads, he entred as upon his own *Fee-simple*; and doth offer 40 Marks for grand *Assise*: and so the *Mise* is joyned; and the *Right* doth lie at stake.

The *Abbot* is *Essoyn'd de malolecti*; and the Writ goes out to the *Knights*. But while one was coming to view him, he doth rise and cometh towards the Court; so the Knights Certificate is, *The Abbot was not in Bed.*

On long debate, the judgement was, that upon

on *default* the *Abbot* (yet in Possession) must submit to yeild the *seisin* to the *Prior*, whom he sued: See the Statute of *Marlbridge*, and the 2d. of *Westminster* cap. 17.

But *Becket* had Law enough to make him Rise, and come to the Court; in fear and discontent, but his Right hand is so fastned to his Cross; that it could hardly be forced from him, who did struggle for it. But his sorest pressure, is an heavy Action of *Account*, for all he had received as Lord Chancellor.

He pleads Discharge. And that at his Election *Henry* Son to him, that had such interest in the Kingdom, (*cui Regnum adjuratum fuit*;) and all the Barons of the *Exchequer*, *and Richard de Lucy*, *Justiciarius Angliæ*; did declare him free: *quietum Deo & Ecclesiæ, & ab omni exactione seculari*, &c.

But his conclusion (*Ideo amplius Nolo inde placitare*;) cost him dear. For when the King had this, he knew his way and said to the Parliament, (or *Baronibus suis*,) do me speedy Justice on this man. *Cito facite mihi Judicium de illo, qui Homo meus ligeus est: & stare Juri in Curia mea recusat.*

So they did retire and being alone without the King; *exeuntes Judicaverunt.* And they did adjudge him to Prison. But he escaped before his

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his Commitment: although ſome, (that ſaw him going,) cryed Traytor, ſtay, and take thy Doom, By ſtealth he got to *Sandwich*, thence to *France* (by *Flanders*:) where he found the Pope.

I do not know that he talked much, of refuſing to make his account. But his grand complaint was, that he was preſſed to conſent to ſuch injurious Laws, as thoſe (which he brought to the Pope,) of King *Henry* the Firſt. Which were ſoon damned, notwithſtanding our Kings Embaſſadors.

But *Writs* were ſent abroad to the *Sheriffs* and *Juſtices*, for ſeizing all, belonging to the *Arch-Biſhop*: for attaching Arms that did appeal to *Rome*; or bring any Letters of Excommunication, or attempt a Voyage beyond Sea without a Licence. And for ſequeſtration of the Peter pence till further order.

If that I have cited already, were not clear enough for Parliament in theſe; we may have more from *Wendover* or *Matthew Paris*, where we are expreſly told, that the great meeting at *Clarendon* (of which before) was made up of a Lord *Preſident* (*de mandato ipſius Regis*,) with *Arch-Biſhops*, *Abbots*, *Earls*, *Barons*; and to theſe, alſo are added *Proceres Regni*: which may here ſpeak the *Commons*, as in *Hoveden*, *Populus*; ſo often expreſ-

ſed,

ſed of that Parliament. For it may be remembred, that *Virgil* himſelf doth acknowledge the *Commons* alſo to be very frequently called to *Parliament*; from the time of King *William*, as we may read in his large deſcription of our Parliaments in *Henry* the firſt. To which alſo (for this Parliament at *Clarendon*) we might cite very many Hiſtorians, beſides *Gervaſe*, and the *Quadrilogus* (or *Becket's Life* by 4 cited on *Eadmerus*; and in *Janus*,) from which there is much to be added to that in *Matthew Paris*.

Where it is alſo aſſerted that theſe Conſtitutions of *Clarendon*, were not only agreed, but expreſly ſworn by all the degrees of Parliament. *Epiſcopi, Clerus cum Comitibus & Baronibus ac Proceribus cunctis Juraverunt*, &c. as alſo that theſe were but a *Recognition* or *Recordation*, of ſome part of the Cuſtoms and Liberties, *anteceſſorum ſuorum*. Of which alſo *Florilegus* thus *coram lege & Magnatibus, facta eſt Recordatio regiarum Libertatum & Conſuetudinum*; *Cui Archiepiſcopus aſſenſum non præbuit*, &c. Nor would it be hard to ſhew very many if not all of them, agreed in Elder times. Of *Foreign Appeals* we ſpake before, and the Writ *Ne Exeas Regnum*, is as old as *Rufus*; if we may beleive *Polidore*, or better Authors.

To that of *Appeals from Eccleſiaſtical Courts*, (to

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the King or Delegates ;) I can add very little, to what is in *Caudries* Case ; in the 5th. part of the great Reports, with the preface to the 6th.

That against Excommunication of the *Kings Tenants*, (or as the Elder Law was of the Barons) is cleared enough in the Notes on *Eadmerus*; from the first *Norman* Records. To which may be added a Law of *Henry* the first, of the Wills or Legacies of his *Barons*, *vel Hominum* ; with which the Learned *Janus* compareth an Old Law of *Canute* ; and toucheth the power of the *Ordinary*, in Case of *Intestates* ; which is prescribed from most antient *Parliaments*, but the Original doth not appear.

I must not spend time in heaping up the many proofs of Parliament, for the *Assizes of Clarendon* : which were again, renued at *Northampton*. *Hoveden* is large and clear for them all, and for the *Circuits*, and *Judges in Eyre*, by full Parliment : *Communi omnium Concilio*. But the *Mirror*, and those that write of *Alfred* will afford us these in many older Parliaments.

From that *Assize of Arms* for every Fee, we may learn to expound the *Statute of Winchester*, and others speaking of a former *antient Assize* : which is here found at large. To which I may add, that what is here spoken of the *Justices presenting*

senting to the King ; may be expounded to the King in Parliament. As is fully expressed, not only in *Fleta*, but in the said *Statute of Winchester*, *The Justices assigned, shall present the defaults at every Parliament*. The defaults of *Arms* for the *Militia*. And by this time I shall not need to speak of *Escuage* in *H.* 2d. assessed by Parliament ; for *Tholouse*, *Wales* and *Ireland* ; of which *Gervase* the red Book in the *Exchequer*, and *Matth. Paris*, with the Notes of *Hengham*. To which I might add *Matth. of Westmin. de unaquaque Carrucata terræ totius Angliæ, quatuor denarii Concessi sunt & collecti*, for the Holy Land. But when he had the offer of the Kingdom of *Jerusalem* ; *Convocato Clero Regni, ac Populo*, it was rejected *Concilio universo* ? as the Monk of St. *Albans* speaketh,

Of K. *Rich.* Coronation, and his Oath before the Nobles, *& Clero, & Populo*, *Hoveden* is very large. From him it may be found in others. And of the Jews in those times, to whom he was a Friend (as his Charters shew;) and very sorry for their sufferings; who did help him much for his Eastern Wars ; as some relate with *Polydore*. See Mr. *Selden* on *Arundeliana Marmora*, his great Charter to the King of *Scotland* ; of many Liberties, (for which he did recieve 10000 Marks ;) but still retaining the antient Dues to this

 Crown

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Crown is every where. For which I must not forget what was before in *H.* the 2d. *Malcolm* became his man 'tis said, and did him *Homage*: but on some disgust he was not Knighted by our King; as was wont. (and *Matth. Paris* addeth also, that the *Scottish Kings Horse*, was the *English Marshals Fee*, at such a Knighting,) But *Hoveden* telleth us that about two years after, the same King came again, and was then *Knighted* by King *Henry*.

Of his Parliaments and their Power, in War and Peace; I might cite very clear proofs. The League with *France*, was agreed by both Kingdoms, *& Archiep. & Episcop. in verbo veritatis*, (that was the mode in those days for them, as for the Lords since, *in verbo Honoris*;) *& Comites, & Borones Regnorum, præstito Sacramento, juraverunt.*

And his *Sea Statutes* were made *de Communi proborum virorum Consilio*, as the Charter it self expresseth it in *Hoveden*, *Wendover* or *Matth. Paris.* Who doth add, that *per Consilium magnatum*, there were made, *Justiciarii super totum Navigium Angliæ* &c. Which with divers Records of *H.* 3d. may be added to the *Admiral*, or Saxon *Aen mere eal*; Over all the Sea.

How the Lord *Chancellor* (being left the *Custos Regni*,) did on pretence of the Kings Warrants, pole

pole the People; is at large in *Hoveden* and others. But in the Monk of St. *Albans* we may read, that er'e long in Parliament of Commons also, (*assensu Communium definitum est*,) it was enacted, that *none should so domineer in England*; to disgrace the Church and oppress the People. And that all the Castles which the said L. *Chanc.* had committed to his Clients, (or disposed without the Parliaments assent;) should be presently delivered up: and in particular *the Tower of London*; where he then was, and was glad to yield, and make his peace, with much submission for to save his Life.

For which also *Polydore Virgil* is worth perusing. And in him we also find the *North* committed to the Bishop of *Durham*; (who of an *old Bishop*, was made a young Novice Earl, but he paid dear, for his honour:) and how the *Chancellor* excused himself by the *Kings Command.* As if (saith *Polydore*) *the Kings Command, might disannul the Law*: *Quasi fas esset, jus omne principis jussu rescindere.*

Of the Kings Voyage to the East, I shall not speak; nor of the famous Prophesies he found touching *Antichrist*, and the *Revelation.* They are in *Hoveden*, besides all others.

Where we also find him ransomed by *Commune*

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mune assent; in special of the *Clergy*. And for this *Walsinghams Neustria*, may be added to others in the Road, and at his return, he is again Crowned before the *People* as well as the *Lords*; *& Consilio Procerum.*

Yet *Polydore* (with others) is bold to charge his Reign with great exactions on the *Clergy*, in special for his ransome: but himself yeilded, that the King did send, the Bishop of *Salisbury* into *England*, that by the consent of Parliament; *Regii Senatus Authoritate*; he might get his Ransome.

And himself yeilded that at his return there was a Parliament; wherein the King thanked his People for their Faith to him, and for that they had helped him in his Wars and Imprisonment. And that *Ejus Nutu, Archiep. Cantuar.* was conferred on the said Bishop of *Durham*: and that the *Chalices*, &c. were again restored to the *Churches*; and that the Laws, with weights and measures, were then also corrected or amended.

K. *John*'s Election must be discussed in another place. Of his *Military Aids*, *Paris* with *Wendover* is clear, that they were granted in, and by Parliament. *Convenerunt ad Colloquium apud Oxoniam, Rex & magnates Angliæ; ubi concessa sunt Regi Auxilia Militaria, de quolibet scuto duæ marcæ & dimidium.* Nor are

are the Records wholly lost of his Parliament, summoned about a War with the *French*, (or rather defence against them:) and his *Writs* are known enough. They speak consent of Parliament, *provisum est de communi assensu Archiep. Comitum, Baronum & omnium Fidelium nostrorum Angliæ, quod novem Milites per Angliam, inveniant decimum bene parat: ad defensionem Regni.* Besides the Rolls, this is found in the 9th. part of the great Reports, and in divers others. His Charter is now so well known in Print; that I need not cite any clause thereof. No not that so clear for the *Militia*, *Nullum scutagium vel Auxilium ponam in regno nostro; nisi per commune Consilium Regni nostri.* Yet I may add, that the Aides, there excepted and called *Reasonable*, (being such by Common Law) were afterwards assessed, and ascertained by Parliament.

For which the first of *Westminster* may be compared with the 25*th.* of *Ed.* 3d. and in the 14*th.* of that King; his Aides were remitted by Parliament, because (for his Wars) he had taken other Assistance than was due by Law: which was much excused by himself, and divers other Kings.

And for this I might cite the 48*th.* of *H.* 3d. the 25*th.* and 31*th.* of *Edw.* 1st. the 10, 11, 12, and

and 13 of *Edw.*2d. the 19*th.* and 20*th. Edw.* 3*d.* who did *buy* Souldiers rather than *Press* them; as the *Roman Historian*, of the declining times, of that *Empire.* Of the *Barons Wars*, I must not speak, a syllable, they do deserve a discourse by themselves: and it may be possible er'e long to see it. Now I shall only observe, that, our *great Charter* was rather the *Cause* (or occasion) than the *Effect* of *those Wars.* For, had it been so kept as it was made; the Crown might have rested in peace enough.

They which perswade others that this *Charter* was first created by King *Henry*, and extorted from him, only by a prevailing *Sword*, seem not to consider so much as its *Title*; as it now is printed: where we find it granted, in his 9*th.* year. Although it was so ill performed, that it needed confirmation afterwards.

Matth. Paris is very clear and plain in this, that it was wholly the same or exactly agreeing, with that of K. *John*, *& in nullo dissimilis.* Nay he speaketh of K. *Johns Charter*, *quas sponte promisit Baronagio Angliæ*: and again in K. *H.* 3*d. sponte liberaliter concessit.* And the *Popes Letters* tell us, of K. *Johns Charter*, granted most *freely*: *Liberaliter ex mera & spontanea Voluntate, de Communi consensu Baronum suorum*, &c. Besides the very words, in

in one of those *Charters*, *spontanea & voluntate nostra dedimus, concessimus, pro nobis, & Heredibus nostris, Libertates has subscriptas.*

Nor were these new priviledges, then *first* Created by him. But the *old Rights of the People* by long and ancient Custom: as we may find at large also in *Wendover*, with *Matthew Paris*, where they are not only, *Antiquæ Leges & consuetudines Regni*; but we are also told, they did present, the *great Charter of H. the first*, with his Laws and St. *Edward's.* And to these the *Barons* sware: as the King had also done before. For so we read their Covenant was; that if the King would break his Oath, *a juramento proprio resilire*, (which they had some cause to believe or suspect, *propter suam duplicitatem*;) yet, they would keep theirs; and would do their best, to reduce him to keep his.

Virgil is also clear in this, who telleth us, K. *John's* Troubles, and proceedure from his not restoring K. *Edw. Laws, as he had promised.* And that the Barons urged him, *ut promissas tandem aliquando Lege daret*, and again they ask for their *Antient Customes*; *vetera instituta, quibus olim Reges Pop. Angl. bene rexissent*: and the close is, *quæ ille prius recepisset se sanctissime observaturum.*

And for *Henry the Third*; the same Author affirm-

affirmeth, that (instead of his granting ought, that was new;) the People granted him that grand Prerogative of *Wardships*; (which that King accepted, with many thanks) adding also, that the People did not intend it for *his Successors*.

But of this I may speak in another place. I shall now only adde, that if there be not yet enough said, (from all the Saxon Laws, and Histories, with the first Norman Confirmations and Explications;) to assert the Great Charter, to be more Antient (for its matter) than K. *Henry* or K. *John*: I shall only desire those that are yet unsatisfied, they would please to peruse the 2*d. part* of the *Great Institutes*; or at least so much of it as speaketh of *H.* 3*d.* and *Edw.* 1st. And it may be they will not wonder that at the Prelates motion, that Bastards might inherit: the Parliament at *Merton*, cryed out so loud, *nolumus Leges Angliæ mutare*, &c.

To which also (besides the late Declarations of this Parliament; and the Petition of Right,) may be added; the Learned arguments, of those Grave and Honourable Judges; to whom we shall ever owe so much, for standing up (in an evil day,) for Truth and Common Justice; in the Case of *Ship-money*: Sir *Richard Hatton*, Sir *George*

George Crook, and Sir *John Denham*; with the truly Noble *Oliver St. John* Lord Chief Justice of the Common Pleas. Their Arguments are now in Print by publick Command. Nor may I presume to add a word in that subject.

Nor shall I speak of the times following the great Charter; which was confirmed more than thirty times in full Parliament: with many special Provisions for the *Militia*. It being most just and reasonable, that what did so much concern all, should be considered by all: *Quod omnes tangit, ab omnibus approbetur.*

Which is one clause in the Writ of Summons to Parliament (about a War with *France*;) in *Edward the First*. Which seemeth to speak a necessity of Parliaments, for matters of War. Not only for Money, (as some have pleased to speak:) or at the Kings choice to call them, if he please. The Writ speaks an Act of Parliament: *Lex justissima, & provida circumspectione stabilita*; not let at loose to the Kings pleasure: but as *Fortescue*, or long before him, the old *Modus of Parliament*, maketh it necessary for the King, and his Duty to Call a Parliament in all such Cases.

Nor ſhall I need to add what *Paulus Jovius*, *Froiſard*, *Comineus*, *de Serres*, and the Duke of *Roban*, with many other ſtrangers have obſerved of our Parliaments, in this; which is the Law of Nature, rather than of *England*.

For as in the Heavens or great World we did before obſerve *Mars*, (or the Genius of War,) to be there placed immediately under *Jupiter*, (the great Councel;) and not under the *Sun*. So in the Microcoſm or little World of *Man*; we find both *Spleen* and *Gall*, within; *Hands* and *Feet*, without; at a good diſtance from the *Head*: and never joyned to it; but in Monſters. Yet it is true that ſome Creatures have Horns on their Heads, but they are *Beaſts* and not *Men*. Much leſs *Kings*, I hope.

But did we Labour, Toyl, and Sweat ſo much to keep a little *River* in its bounds; that ſo we might be drowned, by the boundleſs *Ocean*? Or be ſwept away at once, by a deſtroying and devouring *Deluge*? Did we ſcruple at a little *Gravel* or a Pebble, that we might be cruſhed by a *Mountain*? Would we ſtrain at a *Gnat*, that we might be choaked by a *Camel*? or be ſwallowed whole by *Behemoth*?

It

It may not be, at leaſt, it may not ſeem enough to quiet trembling minds, to ſay, or prove by arguments, there ſhall be nothing done but what is juſt: except we alſo ſee or know the *way*, and *means*, and uſual *courſe*, our Governours will pleaſe to take; in doing that which may, or is, and ever ſhall (I hope) be *juſt*. The *way* muſt be both *Right* and *Clear* as well as is the *End*. And of the two; Unjuſt and Arbitrary Power, doth ſeem to be in *Proceſſe*; or in *ways* and *means*; much rather than in *Ends* or *Things*, that be effected by it.

Sure it was, at leaſt it might be, good; to build a gallant *Fleet of Ships*; and ſo it might be *juſt*, that each ſhould contribute, a part to ſuch a publick work. Nor was it only that, which then was taken from us, for a Ship; that made us ſigh and groan, and cry, or fear our Ruine; or a univerſal deluge of Oppreſſion. But it much or mainly was we did not ſee the *way*, or *mean*, or *Legal Proceſs*, which the Court did take, in Taxing, or Aſſeſſing ſuch a Place, a County, or a Perſon. And it was but thus in *Loans*; and ſo in divers if not all, the things, we ſo abhorred in the Crown: the thing, did not ſo much diſpleaſe as did the *way*, or *means*, to ſuch or ſuch an *End*.

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I need not ſay how curious, or how ſcrupulous, and tender ſtill our Laws have been; in pointing out the *Way* as well as *End*: the *Proceſs* in the Courts of Juſtice; as the *Final Judgements*. So that indeed the very Form, and Life, and Power, or Subſtance of the juſteſt Laws, doth much conſiſt in Proceſſe: which by ſome may be thought a ſhadow, or a Ceremony; left at pleaſure for a bluſtring Wind, or any furious hand, to ſhake as much, as long as it ſhall pleaſe. And then to *ſalve* it up, by ſaying to the Root, *We mean you Good; and do but lay you bare, that ſo you may the more behold, and more admire our Juſtice in the End: when all the Boughs and Branches ſhall be gone, that do but hinder all your Proſpect.*

I muſt but *Touch* and glance. There is a *Trinity* which all our Laws do ſeem to Worſhip here on Earth: *Eſtate*, *Liberty* and *Life*.

Of all Eſtate, the *Dower* of Widows hath the greateſt priviledge. For which the Comments upon *Littletons* firſt and fifth, with the Statutes of *Merton*; and ſome clauſes, of the great Charter it ſelf, for *Quarentine* and Dower, are good gloſſes, on the *Saxon* Laws; or thoſe already touched: and I ſhall not add one ſylla-

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ble. All Eſtates have priviledge in Law; and all Amercements muſt be ſuch, as may conſiſt with mens Eſtate; from *Alfred*, *Edgar*, *Ethelred*, *Canute* or *Edward*, it did come to *Henry* the firſt; and thence to the *Great Charter*. Where the Law is plain and clear. *No Free man ſhall be Amerced, but according to his Default and Eſtate: Salvo ſibi Contenemento ſuo.* Which is ſo branched, that it reacheth to *Villains* alſo; though it ſpeak at firſt but of *Free-men*.

Hence the Name of *Amercement*; becauſe it was and ought to be an *Amerciament*; or a *merciful Fine*. In which the *Saxons* went beyond us, in their *Weregylds*, and *Divers Wytes*: for which *Fleta*, may be a Comment to the Laws of *Ethelſtane*, and others of the *Saxons*.

All this for *End*: but what muſt be the *Way*? How ſhall it be impoſed: ſo that it may as it ſhould be *merciful*? 'Tis *miſerecordiu Regis*; as the Laws and Books do ſpeak: but the King doth not, may not Fine, or Amerce any, but in and by his Courts of Juſtice. So that to render ones ſelf, to the Kings Judgment, is to no effect; and ſo adjudged.

For

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For as the *Father, judgeth no man*; so the *King*, (who is or should be *Father* of the Country;) but he hath committed all judgment unto *Men*, that are our Fellows, (*Pares*,) in the Courts of Justice. VVhere indeed the *King*, did sometime sit in *Person*; yet the *Court* did Judge; and not the King; as *Fortescue* doth plainly tell us. And the Judgment still is entred from, and by the Court, (and not the King) *Ideo consideratum est per Curiam*. And so the great Charter saith; we will not go upon him; *nec ibimus nec mittemus*; but by Legal Judgment of his Peers; *vel per Legem Terræ*: and of this last clause I never saw a fuller Comment, in a few words, than in Mr. *Seldens* Notes, on *Attaint* in *Fortescue*. But of all *Judgments*, to be made by *Peers* somewhat was said before in *Henries* Laws, and more again ere long.

And for *Fines* by Courts of Justice (not by the King,) and *Amerciaments by Peers*; besides the Comments on *Magna Charta*; there are divers Book Cases cited from *Henry* the fourth, *Henry* the sixth, *Richard* the third; in the fourth part of Institutes, *Kings Bench*; To which may be added *Greislies* Case, in the eighth part of *Reports*. And the first of *Westminster* doth add to

to the great Charter; or at least explain it, in this. But the *Mirror* will tell us, it was an abuse, not to expound it, so largely before. And although the VVrit *de moderata misericordia*, (in the Register, and *N. B.*) be founded on the *Statute*; yet it seemeth clearly, but in affirmance of the *Common Law*. As appeareth, not only by *Bracton* and *Fleta*; but by *Glanvil*, who did write before the *Charter*: and by all the *Saxon* Laws, which were the samplers to King *Henry* the first.

But how tender our Law hath always been, in matters that concern *Estate* or *Liberty* may well appear by all the *Executions*, grantable for Debt or Dammages.

The *Merchant and the Staple*, *Statutes* are and were by *Statute*, not by *Common Law*.

They seem as sweeping Rain, and Storms, that drive away the *Body*, *Goods*, and *Lands* in *Fee*, (at time of Recognition; or accrewing since:) but none in *Tail*, but during life of him that was the *Cognisor*: Nor *Copyhold*, or Goods or Leases, for a Term of years; but only what was in possession, at the *Execution* done.

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They are fore-known, and therefore may be well avoided, by all ſuch as do not chooſe their own deſtructions. And there is a tender care in Law, not only of exact, and punctual Recognitions; and recording of them, but in caſe of forfeit, upon a *Certiorari*, ſued forth from the Chancery; and not before return thereof, a *Capias*, ſhall be granted (on the *Statute Merchant*) for the *Body* only; if it be a *Laic*: and if *Laic* be not found, (and ſo returned into the *Kings Bench* or *Common Pleas*;) then on pauze of divers months, the *exigent* may be awarded. But in *Statute Staple*, on the firſt Return of *Certiorari*, may the *Execution* iſſue forth, returnable into the *Petty Bag*; of all it ſeems the worſt, in this. But the *Merchants* Court, *Æquitatem ſummam deſiderat*: although a kind of *Peepoudres*; *as Bracton* and the Notes on *Forteſcue*.

Upon a *Recognizance* a *Capias* doth not go; before a *Scire Facias* be Returned into the *Chancery*. Then a *Capias* or a *Fieri Facias* or an *Elegit*; at the choyce of *Cogniſee*; as in other Common Judgements.

And of theſe the *fieri facias* is the *mildeſt*, and the oldeſt, by the Common Law. It toucheth Goods

Goods and Chattels only: ſuch as are the Parties Own; not lent by, or Leaſed to another. For although the Sheriff find them, in the Parties Uſe and full Poſſeſſion, as he thinks; yet may he be a Treſpaſſer in taking ſuch; and ſo may run the hazard of an Action; ere he be aware. Nor did the old *Levari facias*, ſeize the *Land*: but Corn, or that which grew thereon.

An *Elegit*, hath its Name from his Election, or his Choice that ſues it out: Who ſo concludes himſelf from other Executions. This did come by *Statute*; not by *Common Law*: and toucheth *Half the Fee, and all the Goods*; but yet with *Salvo* to *Contenement*: he muſt not loſe his *Oxen*, or his *Cattle* for his Plough; For then he cannot live and keep his Family. So Tender is our Law, for all Eſtates and Livelihood.

Nay this *Extent* muſt not be made by Sheriffs; (who may not divide a right;) but by a *Jury* of *Inqueſt*. And ſo muſt be Returned, and preſerved on Record; (as the firſt *Capias*, with all *mean Proceſſe* muſt,) or elſe, it ſhall be

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nothing worth: as may appear at large, in the fourth and fifth parts of the great Reports; *Hoes* and *Fulwood*; with divers other Cases. And the second of *Westminster*, that giveth this *Elegit*, doth require both *Extent* of *Lands*, and prize of Goods to be *Reasonable*; that is by *Inquest* of Twelve and so returned of *Record*. As is cleared in the Commentator. See also *Littletons Parceners*.

A *Capias ad Satisfaciendum*, taketh the Body; but it is by *Statute* only: for it did not lye, by Common Law, in Debt or Dammages; but only where the Original Action, was for Forceable Trespass; *Vi & Armis*. Which is *Now*, crept into every Trespass. But of this Sir *William Herberts* Case, in the third part of Reports.

It may be forbidden again by Statute, as it was first granted: and that justly too for ought I know; if other course be taken, for the payment of Just and Reasonable Debts. For the *Capias* (as now managed,) is a great mischief, and divers times, to the utter ruine of the Debtors whole Family. And yet but very little advantage to the *Creditor*: except the *Debtor* escape

escape (and so the *Sheriff* come to pay the Debt;) or except he dye in Prison, and the Plaintiff get an *Elegit*, for the Debtors Goods at his death, or half his Fee-Simple, which he had at the time of Judgement or after it. For an Action for Debt or Dammages, doth but respect the *Person*; and the Law attendeth not; what Lands were enjoyed at the *Original*, or before the Judgment. But an Action, brought against an *Heir*, may aim at *Land*, and so may charge it; although he Aliene while the suit dependeth.

Neither shall I need to add, that all these *Executions*, must be sued out, (For this is required by Law, except in the Kings Case:) within one year and a day after Judgment. Yet they may be continued after; and by a *scire facias*, be renewd or repealed; till the Judgment have *Full Execution*. But this was also given by Statute: and to this may the Debter plead, although he cannot plead against an *Execution*. Yet, it may be suspended by a Writ of *Errour* and Recognizance, according to the Statute of *James*, and 3 *Caroli*.

And without a Writ of *Error*, after judgement, if the Defendant have matter to discharge him of the *Execution*; still the Law is open for him. And he may relieve himself by a Writ of *Audita Querela*. And in case of *Elegit*, as soon as the Debt is satisfied; the *Debtor* may enter on his Lands again: and if he conceive the *Creditor* satisfied by casual profits he may bring a *scire facias*; upon which the Creditor may clear, how much he hath received of the Debtor's Estate.

Unto this occasional discourse, I shall only add that grand maxime of our Law, that *Executions* ought to be more favourable, than any other *Process of Law* whatever: Of which the great Judge upon *Littletons Releases*, and the second of *Westminster* in *Edward the First*.

And for Executions, for the *Kings Debt's*; restrained by the great Charter; I have little to add, to the Comment on the eight chapter of that Charter. But the twelfth of *Articuli super Chartas*, hath afforded a Writ commanding the Sheriff to accept of *Sureties*: else an Attachment lieth against him; or the party may bring an Action against the Shetiff, that *refuseth Sureties*.

It

It is a maxime in Law, that a mans House, is his Castle: so that the Sheriff cannot break it open for an Execution. But upon a Writ of Seisin or Possession, the Sheriff, (and other Officers, upon suspicion of Treason or Felony,) may break open an House; and so also in common Executions, where the King is a party. But in all such Cases first the Sheriff must request the door to be opened. And the *First* of *Westminster*, doth also require solemn demand of Beasts driven away into a Castle or Fort; (which is a kind of *vetitum nomium* which may be regained. By *Withernam*.)

Which Case I cite the rather, because of the *Militia*. For in such a Case the *Sheriff* or Bayliff shall not only force his Entry, by the *Posse-Comitatus* into such a *Castle*; on the suit of a *Subject*: but it may also, come so far, that the said Fort or Castle, may be beaten down without recovery.

And although it be said, it shall be done by the Kings Command; yet it is well known and seen by experience, that it is, and always was by Order of the Courts of Justice: and for this *Semain's* Case, in the fifth part of Reports, may be

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be very well added to the Comments on the *First of Westminster*. By which we see how much the very Forts and Castles or *Militia*, must be subject to the *Courts of Justice*: Not the King only, but in and by his Courts; especially the *Parliament*, that may Command, Controul and Over-rule, all other Courts.

How tender the Law is in Case of *Estate*, *Forfeit* by *Alienation*, I have touched before, much is to be added: Nay in the worst and lowest Estates by Tenure of *Will*, (of which somewhat also before, for a Fine *Reasonable*, &c.) as by *Copy*; where Alienation, and Wast against the Custom, with other Cases (in the fourth part of Reports,) may *Forfeit* to the Lord: but he cannot *Out his Tenant* at pleasure, (especially him that sweareth *Fealty*;) but the said *Tenant* may sue his Lord, or bring his Action of *Trespasse*.

For Offices *Forfeited*, by Bargain and Sale or Brocage; the Statutes are clear and just. To which may be added the Comments of *Littletons Estates Conditional*: as also for Forfeitures of Conditions.

It is expresly provided, by Act of Parliament, that no Sheriff or any other Person, do take or seize

seize any mans Goods, (much less may he take his Lands;) for *Treason* or *Felony*; until he be duly convicted, or Attainted by Trial, Confession or Outlawry upon pain to Forfeit double; to the party grieved, nor is this only in *Richard* the third, but in the first great Charter, and before it also, as was touched before.

Among the *Saxons* none were *Outlawed* but for Capital crimes: we find it often, in the *Mirror*, and in such the Out-law might be killed, by any that met him; (as might any man, Attainted of *Premunire*, that vast Chaos of confusion; till Queen *Elizabeths* Time.) I do not find any outlawry below *Felony* till about the *Barons Wars*; and then it came not below an Action of Forceable Trespass, *Vi & Armis*.

But (in the Common Pleas) it came to lie upon Account, Debt, Detinue, Covenant, and other petty Actions: which the Mirrour would pronounce a most great abuse. But in *Edw* the third, there was some amends, in providing that none should kill an Out-law, but a Sheriff only with lawful Authority. Yet in inferior Cases, Land Issues might be sequestred, in the Kings Hands till Appearance, or Reversal. Only in

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Treason and *Felony*, it forfeiteth as much; as Attainder by Judgment.

But it may be Pleades and Reversed divers ways. And a Petty *Misnomer* or a misdate, is ground enough to Reverse it; by a Writ of *Errour*. And of this the Books are full. But *Nimin's* case is a criticism in Chronology. One of the Sheriffs Returns was dated on the 8th. of *July* in the second and third of *Phil.* and *Mary*; but it was declared, there could be no such day, but in the 2d. and 4th. year, (which was only, between the 6th. and 25th. of *July*:) yet this was enough, to Reverse an Attainder of *Treason*, by Writ of *Errour*. And in Favour of Life, our Law admitteth *Pleas* to Out-Lawries in Capitals; there where in other Cases must be brought a formal Writ of Error.

I cannot deny but even by the common Law, upon *Indictment* for Treasom or Felony, the Goods and Chattels might be *Inventored*: but not seized as *Forfeit* till *Conviction*. Nor are Lands and Tenements Forfeit, till *Attainder* by Judge- And in case of *Appeal*, (which related no time;) that is only *Forfeit*, which is possessed at the *Judgment*. But upon *Indictment* (dating the crime,)

crime,) the Forfeiture will reach to the crime committed: although there be Alienation before Judgement.

But no *Forfeiture* before *Conviction*; no seizure before *Indictment*. And the Book of *Assizes* telleth us, the Judges took away, a Commission, from one that, under the great Seal, had power to arrest and seize on Goods, before Indictment.

And how tender our Law was, in this for Estate, it may be seen at large in *Bracton* and *Fleta*; with the old Writ, not only in them, but in the *Register* also; relating to the great *Charter*, forbidding all Disseisin till *Conviction*. Yet it requireth the *Sheriff*, *per visum suum & legalium hominem*, to Apprise and Inventory, all the Offenders Chattels, but with a double *Salvo*, both for safe keeping them; (and for this *Security* was to be given by the *Bailiffs* or the Township;) and for maintaining the person in Prison, with all his necessary Family. *Salvo tamen eidem Capto, & familiæ suæ necessariæ, quamdiu fuerit in prisona, Rationabili Esto verio suo.* Which was not only *Meat* but *Cloathing*, &c. as hath often been adjudged in *Edward* the

 third

third, *Henry* the fourth and other Times. See the third part of Institutes, cap. 103.

It will not be long I hope before God stirreth up our Governours to Reform the crying sins, of this Kingdom (and not only Gaolers) in our oppressing grinding Prisons. But the Heathen Moralist hath also told us, that *Divine wheels*, are also *grinding*, and will *grind* to *powder*; though they be slow in motion, as unwilling to revenge.

It is true, that Prisons should be by Law, both safe and strait Custodies; nor should they admit such wandring abroad as some mens Mony doth procure. But although *Recoveries* on Record; (much lesse Discents) do not bind men in Prison, or conclude them for want of claim: yet upon motion Prisoners may and ought to be brought to the Court, in Suits or Actions against them, in case of Judgement; or where ever else, they ought to be in person present. And for this I may only referre to the Commentator on the *continual claim*; and the Cases by him cited.

How

How unwilling our Law was to empair our *Liberty*, was touched before in the *Capias* on Debt. And although some latter Statutes do out-go our Common Law for Imprisonments; yet it is still received, for a general maxim in Law, that Prisons should be *Custodiæ*, not *Pœnæ*. And where ever any man is unjustly in Prison; the Law affordeth him, more ways of getting out than his Enemies had to get him in.

He may have an *Habeas Corpus*; and he may have a Writ *de Homine Replegiando*. He may have an Action of *False Imprisonment*. And may found an Action on the Great Charter: Or on it, may cause his unjust friend to be *Endicted*. And the Writ *de Odio & Atia*, was again revived though by Statute once it was forbidden.

And for these with *Bayl* by Judges or Justices; *Replevins* by Sheriffs, &c. We have the Judgement of all the Judges on *Articuli Cleri*: and the Comments on the great *Charter*; with the Statute of *Marlbridge*, and the *first* and *second* of *Westminster*. To which we may add the old Records, cited by the great Judge (on *Littletons Rents* and *Releases*;) for *Minors* and *Women with Child*, being excused from Imprisonment; not

 only

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only in Judgment on *Trespasses*, but an *Appeal* of Robbery.

More curious yet, and tender is our Law in all that toucheth *Life*. The *Mirror* is full of Complaints, that in his time, (and *Horn* did live about King *Edward* the first or rather the second for he nameth *Edward* the first:) some sins were made *mortal*, which were but *Venial*. As was *Rape* (with him) till *Edward* the first. But none (saith he) can make a Venial sin, *mortal*, by any Statute without consent of the Pope and *Emperour*.

And besides the *Saxon* Laws cited before, it is considerable that one the first *Normans* (called *Conquerours*) Laws so often confirmed since, was this, that no man should be *hanged* or put to *Death* for Treason or other crime: but lose his Eyes (or be exect) or some way dismembred that so he might be a living Monument and spectacle *Proditionis & nequitiæ*.

And of such there are many precedents, and of some *Banished*; but of very few *Hanged* or put to *Death* till about the Time of *Fitz-Osborn* cited before. And *Rape* was punished with loss of

of Eyes, and exection (in *Bracton*) before the Statute of *Westminster*. The second but in *Glanvil*, it seemeth to have been as mortal as Murder or *Burning*.

From the Monk of *Malmsbury* we find that the Laws of *Henry* the first, did punish this and *Theft*, with loss of Eyes and exection. But of this Mr. *Seldens Janus*, and his Notes on *Hengham*, shew the like Customs, continued in *Winchester*, and *Walingford*. *Hanging* is a late punishment for *Theft*, but some kinds of *Felony* did lose the *Head*. And for *Adultery* the Woman of old did lose her Ears and Nose: but she was burnt to Death, for killing her Husband; which *Cæsar* also observed of the British Gaulish *Druids*.

But our Ancestors allowed Bail, in Cases very high and heinous; (we must speak of *Treason* in another place,) that I say nothing of *Sanctuary*, *Abjuration* and *Clergy*; which was much larger than later Statutes have made it. But of this for the *Peers* in special (although they could not read) see the first of *Edw.* the 6th. and a later Statute of King *James*, for burning and whipping of Women who could not be *Clerks* as men.

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It may be considered how our English mercy, may be continued some other way; if this be put down.

Which is very disputable, and the plain truth is, it was much at the *Ordinaries* pleasure. For they were not fined, for refusing to come before the Justices; who yet might reprieve the Prisoner, in case of such Refusal. And in Case of *Sacriledge*, it hath been declared at the *Ordinaries choice* to give or deny Clergy, for which an old Record of *Edw.* the 3d. is to be added to *Poulters* Case, with *Cawdries and Biggens* in the 5th. part of Reports.

This Case of *Sacriledge* is very considerable, being of all the most *forlorn*; for being denyed the Priviledge of *Sanctuary*, it could not *Abjure*. For this was Appendant to *Sanctuary*: whither the Offended did first fly and then Abjure.

By the old Law the person *Abjured* must banish himself, into a Forreign (yet a Christian) Country. But in *Henry* the 8th. he was removed to some other *English Sanctuary*. And in K. *James* if it is taken away; but what was allowin 35th. of *Elizabeth*, which remaineth yet, (without *Sanctuary*) for ought I know.

But

But to all Antiquities for *Abjuration* and *Sanctuary* in the *Mirror* St. *Edward's* and the *Saxon* Laws may be added, those of *Molmutius* the old *Britain* so long before Christian Religion. Of whom before, and yet again ere long.

Pain fort and *Jure* (the pressing punishment in case of standing *Mute* in petty Treason and Felony;) with *Martial Law*; are not so old, as our Ancestors *Mercy*. Yet in this they are merciful that they do not forfeit Estate; or Attaint, and corrupt blood as do other Capitals. But when shall we live, to have no need of that Novel *Pressure*, of Law *Martial*? When shall we again return to our Fore-fathers tenderness in all of Blood?

And that not only in *Pitty* but *Policy*, both in this and other Nations. Who could else have made no great Title to many of their best slaves in *Gallies* and other employments. Which yet were not so good as our *Mines* might prove, if at least they were known how to be found, used and improved: As they may, and shall I hope ere many Ages more are lost, or worse than lost, in hating, spoiling, killing and devouring one another.

But of all little Islands near us, the *Isle of Man* (a very Famous place of old, and a distinct King-

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Kingdom of it ſelf; though Appendant to this Conqueſt,) ſeemeth to be worthy of Enquiry, for their Laws and Cuſtoms. Which are very much, more compendious, than Ours, in ſome Caſes of Law, with all Pleadings and Proceſs.

In Criminals they have ſtrange Cuſtoms it being with them more Capital to Steal a *Pig* or a *Capon*, than an *Horſe* or an *Oxe*. One reaſon, is becauſe they love plain dealing, and be open-hearted, and they hate the man that Steals and *Hides*, much more than him, that doth it in on open way. I find it in a very good Author, and a great Lawyer; who reporteth them, to be induſtrious and religious, true and very free, from begging or ſtealing.

All Controverſies are determined in little time; with leſs Expence, Pleading or Writing. Yet in Caſes of unuſual Weight and Doubt; they have recourſe to Twelve they make and call the Iſlands Keys: being above their common Deemſters; whom they chooſe from among themſelves. Their Bargains are compleated and comfirm'd, by the giving and taking, of as mean a matter as a *Straw*: as of old alſo *per traditionem ſtipulæ*, from whence the phraſe of ſtipulation came. But theſe were moulded alſo by our Britiſh *Druids*; or of later date, our *Saxon Anceſtors*. I need

I need not ſpeak, how curious our Fathers were, in all their Proceſs, touching Life: The *Way* was ſtill as punctual, as clear, and plain, as was the *End*.

They loved to be juſt; and to do juſtly.

Doth our Law condemn or give power to condemn any man, without *Hearing*; or due Summons to Judgment? I hope it never will.

A Great man of a good Name, ſtandeth upon Record, as by Parliament, condemned to Death, without *Hearing*; or Legal Summons. But there is a Bluſh, or a Vail of Oblivion, drawn upon it, by good Writers, as a ſtain and a ſhame, to the Parliament-Rolls: yet as a juſt judgment on him, that had firſt moved, that another, might be ſo condemned. And he ſo periſhed, by that Law, which he would have made for others.

This ſeemeth alſo, to be written in the Law of *Nature*. And doubtleſs, the Sins of *Sodome* were as notorious to God, in Heaven, as any others, can be, to Men in Parliament. And yet, He would, and did, go down, to hear, and ſee, and proceed in a judicial way.

Nor would he condemn or execute, before he had, not onely, cleared his juſtice in himſelf, or to his Angels; but alſo to *Abraham*, *Lot*, and other Lookers on; that he ſtill might be juſtified, both when he judgeth, and is judged. For he ſtill did, and will, put his Actions on Man's Judgment.

This Proceſs alſo towards *Sodom*, is by many of our

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old Lawyers, brought for the Pattern of our Laws; in that especially, that none may be condemned without a Legal Hearing. And in this, and divers other things, do *Bracton* and *Fleta* borrow much from the Laws of *Henry* the First.

And be the Matter of Fact never so notorious; yet may there be some Plea, that no man can foresee, or ought to forejudge before he heareth; for all men may plead necessity, or force upon themselves (as well as *Right* and *Law*) for any thing they do amiss. And for this, and other Reasons, the Law doth suppose all men to be just, or excusable, till they be Legally heard and adjudged. This Difference, there is between the Judges and the Law-makers: For these (they say) do suppose all men to be evil; but the Judges should suppose all men to be good till they be proved to be evil.

The Charge and Accusation, by the Law of Nature, ought to be clear, distinct, and particular, (with time and place, or other Circumstances) else the Party accused cannot discharge himself. *Universalia non premunt omnino, vel opprimunt*; Generals do not press at all; or else, they are apt to oppress.

The Witness, and the Evidence, must also be so clear, that these must condemn rather than the Judge, who sitteth as Counsel for the Party accused; that so, he be not oppressed by, or against Law.

And besides the Judges, (in most Cases, and in those

those also of Life, in *Scotland*) there is *Counsel* allowed by Law, which may, and ought to be heard in Particulars of Law, or whatever may be justly disputable; as *Treason* is by Statute. So, that of all Crimes, by express Acts of Parliament, it ought to have no *Tryal*, but clear and plain, according to the course and custom of the *Common Law*.

In such Cases, therefore, should the *Judges* (both in Law and Conscience) sit, and be, instead of *Counsel* to the Party. This they owe to every Subject, though they had a special Obligation to the King.

Who, to his own *Rights*, (and therefore to his *Wrongs*) was an *Infant* in *Law*? and so expresly declared in the Old *Mirror*, besides other Books. His Politick Capacity never, but his Person ever in *Nonage*, or supposed so in Law: for it may be a *Child*, or a *Woman* not able to know the Laws, and therefore always had, by Law, a Legal Mouth assigned, in *Councel* of Law: And so might any man else (of old) it seems, for matter of Demurrers, before Judgment; or for framing of Legal Appeal (by Writ of Error, or some other way) from any Judgment whatsoever.

It is also the Law of this Kingdom, and of Nature, that though there be no Councel assigned; yet may any, in a good manner move the Court to keep the Party from *Injustice*, or the Court from *Error*; as *Stanford*, and the 3d. part of *Institutes*, *Cap.* 2. 63, and 101. And in such Cases it may be excused (and not censured for rash zeal)

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if ſome do, or ſhall appear, where or when, it may be thought they be not called.

Neither can the whole Parliament of *England*, I ſuppoſe, make any Court to condemn without lawful Accuſers, or lawful Witneſſes; which, by expreſs Acts of Parliament, is moſt eſpecially provided in Caſe of *Treaſon*, in King *Edward* the Sixth, and Queen *Maries* Reign: and *Tryal of Treaſon*, was moſt expreſly tyed to the courſe and cuſtom of the *Common Law*. Nay, in full Parliament of *Hen.* the VIII. it was declared, that Attaint of *Treaſon*, in, or by *Parliament*, was of no more force or ſtrength, than it was, or ought to be, by the *Common Law*: or this as good and ſtrong, as that by *Parliament*.

Nor can the whole Parliament, I think, by the Law of Nature, and right Reaſon, make any (Children, Ideots, or all others) whatſoever, to be, ſo much as Accuſers or Witneſſes; that I ſay not Indictors, Tryers or Judges.

By expreſs Acts of Parliament, in *Philip* and *Mary*; *Edw.* VI. *Hen.* VIII. *Hen.* IV. *Hen.* I. (for, to him, doth the *Mirror*, and his Laws, lead us as to a clear Cryſtal Fountain of our Law Proceſs;) none ſhould ſuffer, for Treaſon or other Crime, but by lawful Accuſers, lawful Witneſſes, before thoſe, that by Law, might receive Indictments; which, with all Enqueſt, are to be made, by honeſt, lawful, able men, Neighbours to the Fact.

And

And the Law of *Nature*, with the Law of the Kingdom, giveth any man leave to except againſt ſome for Accuſers, others for Witneſſes; and many for *Tryers*. It being the known Law of the Land, that one may challenge the *Array* (either the principal Pannel, or the *Tales*) as well as the *Polls*; and that the loweſt Subject, muſt be admitted, if he require it, to a perremtory challenge of divers, (it is now, in moſt Capitals, limited to 20. but in *Treaſon*, it is, as at Common Law it was, to 3. Juries, or 35) which may be challenged, without any particular reaſon. And the Law of Nature alſo ſeemeth to hear all Reaſons, and juſt exceptions, againſt any whatſoever.

Nor, ſhall I need to ſhew, how ſutable our Law is to the Law of *Nature*, in providing, that no *Infant*, *Ideot*, *Alien*, *Abjured*, *Perjured*, or *Attaint*, *Outlaw'd*, or in *Premunire* be of any Enqueſt, or *Jury*; eſpecially in Caſe of Life and Death.

And for *Tryers*, beſides all other exceptions; This was thought enough that any of them had been *Indictors*: which maketh *Forteſcu* ſo much to Glory in our Law, that putteth no man to Death, but by the Oath of four and twenty men.

I ſhould miſpend my time to ſhew it to be the great Law of the Kingdom, as well as of *Nature*; that none may be *Judg*, and *Parties*, in their own Cauſe; which may ere-long be found perhaps, to be the reaſon, of the *Three Eſtates*; and very much of our Common Law,

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which is punctual in nothing more, than in providing for a clear distinction of *Accusers*, *Witnesses*, *Endictors*, *Tryers*, and *Judges*, especially in Cases of *Treason*; which upon divers motions, of the Commons in Parliament, have been so often Enacted and declared to be onely Tryable by the course and custom of the *Common Law*, and no otherwise.

Nay, in Parliament it self, and Parliament Men, there was, and for ought I find, always, the like course observed. For, in Case of a Peer, the Custom of the Kingdom is, to proceed by a special Commission, to one as Lord *Steward*, and 12 others (at least) for a *Jury* of *Tryors*; besides *Accusers* and *Witnesses*; and a formal *Indictment*. And all from Record to Record; or all this is Illegal, if it be onely by the House of Peers.

If Charge come from the House of *Commons*, they are as Indictors, being more than twelve sworn men, Trustees to the whole Kingdom; and Neighbours to the Fact, or Party, or both. To which also there must be a legal proof by lawful Witnesses, or else the Charge will not suffice.

And in such *Indictments*, from the Commons; the *Lords* are the *Tryers*; and the *King* may seem as the *Judg*; but in other Courts also the Judgment goeth of course upon the *Verdict*; and must be entred *per Curiam*, (as adjudged by the *Court*) although there be but one Judge; or tho' his Mouth pronounce not the Sentence. But we are not yet come, to debate the *King*'s Consent, to the *Lords* Judg-

Judgment; an *Indictment* from the *Commons*.

It is also to me very considerable how the House of *Commons* could, or ever did *Indict*. I cannot deny them to have been a Court, and a Court of *Record*; (although some have seemed to question it; and their *Records* are not so ancient as some others.) But I have not fully understood how they ever did make, or receive a Formal, Legal *Indictment*; when as they did not give a single Oath, much less, Empannel a *Jury*, or *Enquest*.

Yet some, there be, that without a *Writt*, or any written Commission, did and might do, this, *Virtute Officii*: But they be known, chosen, sworn Officers of the Kingdom, for such Purposes; as the Peeples Bayliffs, *Coroners*, *Sheriffs*, *Escheators*; and some Officers about the *Forest*; who, by the *Common Law*, did Summon and Empannel Juries.

But so did not the House of *Commons*. How then, did they *Indict*?

Of all Crimes committed in the *House*, they are, and were, so much, the *sole Judges*, that they seldom use, to complain, much less to *Indict* any other.

And for any thing done *abroad*, I hope, they do not use to take *Rumours* and *Reports* (though from their own *Members*) to be sufficient for, or equivalent to a legal *Indictment*, on Oath: Seeing their scarce is, or can be any Case so *notorious*, but it may be pleaded unto by somewhat of *Law*, or *Necessity*.

And although I should yield the *Commons* to be the *Masters*

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Masters of the *Law* in making it; yet they pleased to allow others, to be *Judges* in their Laws.

And if they reassume this also, yet it may be more easie to judge of some *Law*, than of any *Fact*; at least as it may be *cloathed*, so as a curious search, or *Enquest*, may be requisite to lay it clear and naked.

Neither can I see, how it may be necessary, to proceed against any by force, or illegal Process, when it is easie, as well as just, to go rightly, as to do right.

For who can imagine a Case so dark and intricate, but it may be contrived so, that particular men may be *Accusers*; and others *Witnesses*? with a clear and real distinction between *Indictors*, *Tryers*, and *Judges*? most of all in Cases notorious and evident. For in such there may be less fear of the *Juries Verdict* against *Evidence*; or of the *Judges Sentence* against the *Verdict*.

Or if this should happen in a Tryal; is there not a most heavy doom appointed by Law for all *Jurors* that *forswear* themselves, and goe against their Evidence?

Is there not a clear way of Relief, by Writ of *Attaint*? Is it not worse than Death, to forfeit all Estate, and be thrown into Prison; while both Wife and Children must be turned out of Doors and All? For his House must be pulled down, his Ground be plowed up, and his Trees rooted out; with loss of *Franchise*; and with a perpetual Brand of *Villany*. This is the *Common Law* for a *perjured Juror*; and that also in Petty Cases: how much more might it be just in Case of Life and Death?

And

And for *Corrupt Judges*, our Law is very severe; altho' we have much lost the Custom of the Grand *Eyres* in this also; & King *Alfred* be long since dead; who hanged 30 or 40 more unjust Judges, than *Cambyses* flead. And for that the *Mirror* may be a good Comment on some Passages, in *Alfred*'s Life, by *Asser*: And if it be true, that *Horn* lived to the end of K. *Edward*; it is much wonder, that on such occasion, he did not also mention some of those Judges by him so punished; when there was scarce any left but good *John* of *Mettingham*, and *Elias of Bechingham*. And of this the Dissertations of *Fleta* may be added to all before; as that of Sir *William Thorp* and the Great Judg, in the third Part of *Institutes*, about corrupt *Judges*, and the *Judge*'s Oath.

It is very considerable, how curious the *Jews* were in Creating, or rather Ordaining of Judges. For indeed the Phrase of *Ordination* seemed to be first raised from Them. For which I have little to add to Mr. *Selden* on the *Eutychian*, or *Alexandrian* Antiquities, (as old as St. *Mark* the Evangelist.) Nor can it be denied but the Jewish Judges and Magistrates had a very good Right; and so used (as we find in the Books of *Moses*, and the *Kings*, and *Tirshatha's*) to Read and Expound the *Law Moral* as well as *Judicial*. Nay, in this, they seemed to have some advantage of the *Priests*, or *Levites* that had work enough most times in that which was but *Ceremonial*. This may Expound those Pieces of Scripture, Old and New; where we find some explaining

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Scripture; being neither Priests, nor of the Tribe of *Levi*.

And the *Jews* Punishments, of evil Judges, are severe, and most remarkable; nay, where all others were again restored to their Offices after Corporal Punishment, their Lord *Chief Justice* or *President* of their *Sanhedrim*, or any Chief *Justice*, could never be restored again after such punishment; no, not to be as one of his inferour Colleagues. So just he ought to be and circumspect by daily experience, added to his own wisdom.

Our Laws are so just, and so good, in themselves, that there could not be be so much cause of complaints, in all our Gates, (for such were the *Jews Courts of Justice*) if our Judges were such, as they should, and might be. And yet I cannot deny but that there be very great abuses among the Lawyers, and Attorneys, or Solicitors; but if the Judges were as just, and wise as they may be, inferiour Officers would soon amend, or comply for Love or Fear, so much as would prevent Complaints and many of their Causes.

But it is the work of a God and not of a Man, to reform abuses, in all Courts of Justice. *Hercules* did never cleanse so great, so foul a Stable, or a Stall; yet in this also, a wise and just Parliament, will do much, and will need none of my help, or advice.

How tender all should Delegates be, in making Delegates: But in nothing should they be more tender, or more circumspect, then in this of making Judges; For in these of all Delegates, our law is most scrupulous.

Before

Before the Statute of *Merton*, those that held by suit Service, were bound to appear in Person, because the Suitors were Judges, in causes not their own; but by that Statute, they had power given, to make Attorneys; but it was only, *ad Sectas faciendas*, to make, or follow suites for them, but not to sit as Judges: For, (as the Commentator addeth) they could not depute, or make Attornies in a place and act judicial.

I will not, I cannot say, the Commons of *England* cannot choose, or constitute their Judges; but this I say, or believe, their delegates ought to be exceeding Curious (I had almost said, exceeding Scrupulous) in making Judges, and in bounding them to law, and Justice, both in way, as well as *End*. I must again repeat it; That it may not seem enough to settle Judges, just and wise and good: Nor only to provide, that they may do what is just (I speak of end) but men are men, and ought in cases of such consequence, to have their Way, their Rule, and Square, (by which they must proceed) to be prescribed in their Patents or Commissions, that they may do justly too, as well as what is just.

To me it seemeth to be reason, or the law of nature unto men, that the *Supreme Court*, should so limit all inferiours, that it may not be left at large, to their list or pleasure, to condemn or sentence without Hearing, Accusation, Witness, or without such Process and Tryal, as shall be clear and plain, and so prescribed in the Patent or Commission.

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If it be not so done, and expressed, I know not what appeal can be, but from the Court, before Judgment: For, what appeal, what writ of *Error*, or what Plea can a man frame upon their Judgment, who have no Rule, no way of process prescribed, and so cannot Err, Transgress, or Exceed their commission, no, not if they should without all accusation, proof, or witnesses condemn one to be sliced and fryed with exquisite tortures. They are Judges, but unlimited in way of Process, infinite and purely *Arbitrary*. No they are *Men*, and so they must be *Rational* and *Just*; which was presupposed by them that gave so vast power.

They may be *Just* indeed, and so they should, but yet no thanks for this to their *Commission*, if it do not bound, and limit out their way and manner of Process, as it doth their work, and *Object*, or their *End*; which was the wont of English Parliaments, who were Just and wise themselves, that they did see or fear it might be possible for their *Committees*, to be most *Unjust* and *Arbitrary*, if they were not most exactly limited.

Of all Commissions, none were more curiously drawn and Pointed out by our Ancestors, than those of especial *Oyer* and *Terminer*; because the cases were not only heinous (so they ought to be;) but such as for some extr ordinary cause emergent, seemed to be as it were *Extra Judicial*, and such as could not stay, and abide the usual process of the settled Courts of Justice.

Yet

Yet of these also did our Fathers take most especial care, that they might be *Just* (in *Way* as well as *End*) and that they might not be *too High* in *Justice*; for it seems that they had also learned an usual saying of the Antients, *Summum jus est injuria*: So that in divers of the Saxons Laws, we find *High Justice* (*Summum Jus*) to be as much forbidden as *Injustice*. And I should tremble at it, as an ill Omen to hear Authority commanded, the the *Kings Bench* or any other Court, should be now Stiled the Bench of *High-Justice*: For in *Justice*, the higher men goe up, the worse, or so at least it was esteemed by our Ancestors.

Their constant limitation was in every such Commission, *Thus* and *thus you shall proceed*; *but still according to the Laws and Customs of England*: *Secundum Legem & Consuetudinem Angliæ*; and no otherwise, that is, as *Fortescu* will say, *you shall be pittiful in Justice, and more merciful then all the world, besides this Kingdom*. And if such a limitation were not expressed, this was enough to prove the Commission, Unjust and Illegal; which is so well known to all Lawyers, that I need not cite *N. B.* or the *Register* Commissions, or *Scrogs*'s case in *Dyer*, or so many elder cases, in *Edward* the 3*d*. *Henry* the 4*th*. and almost all Kings Reigns.

Nay, in King *James*, among the great debates of Uniting *Scotland* to *England*, when it was driven up so close, that instead of *Secundum Legem & Consuetudinem Angliæ*, it might be *Secundum Legem & Consuetudinem Brittanniæ*;

tanniæ; It was resolved by all Judges, that there could not be, that little change but of one word (that doth so limit such Commissions) but by consent of Parliament of both Kingdoms.

And in divers Parliaments of *Ed.* 1. *Ed.* 3. *Hen.* 4*th.* there were many Statutes made, to limit all Commissions of *Oyer and Terminer*; as that they must never be granted, but before; and to some of the *Judges*, of the *Benches*, or of the Grand *Eyre*. Nor those to be named by *Parties*, but by the *Court*: And with this usual Restriction according to the known clause of the *Statute of Westminster the* 2*d.* in the Reign of *Edward the* 1*st.*

But the Printed Statute must be compared with the Roll, and with the 2*d* of *Ed. the* 3*d.* for else, there may be in this (as in other Printed Acts) a great mistake, by leaving out, or changing one particle: for that Clause, *except it be for heinous offence*, hath such influence into all the words before; that by the known Common Law a *Supersedeas* doth lye to such Commissions, *quia non enormis Transgressio*; as the Register may teach us.

And although by Law there may be granted a Commission of Association; with a Writ of *Admittance*, of others, to the *Judges*, assigned for *Oyer* and *Terminer*: yet in all those Commissions and Writs the Rule must be prescribed, *quod ad Justitiam pertinet*; and that also according *to the Law and Custom of the Kingdom*, which is so much the Law of *Nature*, that I need not wonder at the great Judg, who in all his *Institutes*, and so many *Reports*, maketh

keth those words absolutely necessary to the work of a *Lawful Commission.*

And for more prevention, or Redress of injustice and Arbitrary Process, were our Ancestors so punctual in requiring *Records* of all Proceedings in the Courts of Justice; which is so agreable to *Reason*, and the Law of *Nature*, That the whole Parliament of *England*, as I humbly conceive, cannot it self proceed in matters of highest concernment, but by *Record*. Much less can it Licence other Courts, to be without, or above *Record* in such Affairs.

It is so well known to be the custom of the Kingdom, that I shall not need to shew it in the Statute of *York*, in *Edw.* 2d. and many others, in affirmance of the great Charter, *nisi per Legem Terræ* (*But by the Law of the Land.*)

And in *Edw.* 3d. it was, in full Parliament declared to be the *Law of the Land*; that none should be put to answer but upon *presentment before Justices, or matter of Record.*

And the 2d. of *Westminster* is very punctual in requiring *Records* for all legal exceptions, (as well as other matters;) and provideth, that in case an *Exception* should not appear on *Record*, the Party must produce the *Judge's Seal*; which may be required by *Writ*, and cannot be denied; no not in such *Exceptions* as the present Court do *over-rule.*

And for Enrolling *Records*, the same Statute provideth, That the King should not Erect Offices, or Elect Officers for *Enrollment*; For that by the Common Law this

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this did belong to the Courts themſelves, and Judges therein: As to the Sheriff alſo, to Elect the County *Clerk* for *Enrollments*; ſo that the King himſelf could not Elect him, as we find in *Mitton's* Caſe. So punctual is our Law, in all, concerning *Rolls*, *Enrollments* and *Records*.

Which is alſo the Law of *Nature*; and for many Reaſons. As for that of Appeal, to which all Courts on Earth muſt willingly ſubmit. Nay Heaven it ſelf admits *Appeal*, from its juſtice to its mercy; ſo it would to Juſtice alſo by ſome *Writ of Error* if it could commit an error. But however, that its Judgments may be cleared to be juſt, it alſo proceedeth by Record. For God hearkeneth, as the Prophet ſaith, when ought is good, (when they meet and ſpeak well together; a Record is made, and bound up as a Jewel;) and when evil alſo, ſome are Watchers to Record it. For the Books ſhall be opened, and we ſhall all be judged by the Record of Heaven, and our own Conſciences, which are now foul Draughts, but ſhall then be as fair and clear as thoſe of Heaven it ſelf.

But in Courts on Earth, if there be no Records, there is ſcarce deviſable a legal Traverſe or Tryal, whether all be right, or appeal if any thing be wrong. For what Appeal can any man make from that which doth not appear? but it is only a Tranſient Air or Breath, which may as ſoon be denied as it was ſpoken!

How can Errors, not appearing, be corrected or amended by the Parliament it ſelf, or any other Court, but

but onely that keepeth Records of all our thoughts, as much as of our words or actions.

I may be tedious in ſhewing how our Law hath ever allowed Appeals in Eccleſiaſticals; They were agreed in the Aſſizes of *Clarendon* in oppoſition to *Appeals Foreign*, which were firſt attempted by *Anſelm*, as ſome affirm; but the Date is later. And the Lord *Dier*, of *Appeals*, is now printed in the 4th. part of *Inſtitutes*.

The Judgment of *Delegates*, on ſuch *Appeals*, is called *definitive*: And yet not ſo but that it may be all redreſſed by a Court below the Parliament: for which we have the *Commiſſion of Review* granted upon the *Delegates*; nay and upon High Commiſſion it Self, as by a Clauſe in that Commiſſion appeareth. To which may be added *Killingworth's* Caſe, and divers others.

Of the Court *Admiral*, much I might add from the Laws of *Olerom* in *Richard* the 1ſt. and the Rolls of *Henry* the 3d. and *Edward* the 1ſt. of which alſo the Commentator on *Littleton's continual Claim*; and the 22 Chapter of the laſt part of *Inſtitutes*. How it lieth open to the common Law, and to daily *Prohibitions*, may be fully ſeen in its Complaints to King *James*, which were as fully anſwered by all the Judges.

It is no Court of Record, and ſo did all the Judges declare in 8 *Jacobi*; yet it muſt keep Records enough to ground an *Appeal*; which lieth from thence (as from Courts Eccleſiaſtical) to *Judges delegate*; of which the 8th of *Elizabeth*, and other Statutes.

 County,

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County, *Hundred*, *Baron* Courts; and those of *Antient Demesne*, (with all *Close* Writs) are not of *Record*. The *Sutors* are the *Judges* (as was said before) in Cases not their own. And some have thought they did proceed (much by fancie) without legal Proof and Witnesses, till the great Charter, commanding all *Bayliffs* to put no man upon *Oath*, without *faithful Witnesses*. But we have found the Charter long before King *Henry* the 3d. And in that Phrase of *Bayliffs* (which in *France* are Governours and Magistrates, as in eldest Towns or Cities with us) some great Lawyers include all *Judges*, as *Fleta* with the *Mirror*; which also calleth *Coroners* the Peoples *Bayliffs*; and the *Sheriffs* Returns are *de Baliva*.

These inferiour Courts being not of *Record*, held petty Pleas of Debt or Damages, under 40 *s.* (Antient *Demesne* had other priviledges) but not of forceable Trespass, *Vi & Armis* (finable to the Crown.) Yet these also must keep Copies or some such Records as may suffice for *Appeals*. For they may be questioned, and their Proceedings being denied shall be Tryed by *Jury*, and upon their judgments lyeth a Writ of *false judgment*; not a Writ of *Error*.

But in the Case of *Redisseison* the Sheriff is *Judg* by the Statute of *Merton*; and a Writ of *Error* lieth on his judgment. But in Case of *Debt*, *Detinue*, *Trespass*, or other action above 40 *s.* where in the County the Sheriff holdeth Plea by force of a Writ (or Commission) of *Justices*; the *Sutors* are still the *Judges*, and no Writ of *Error*, but false judgment lieth on them. Nor doth the

the *Coroner's* judgment of *Out-Lawry* in the County Court forfeit Goods till it be returned and appear on Record. Nay, the Coroners Certificate, on a *Certiorari*, did not disable the *Out-Law* (although the King might seize his Goods) till the Return of the *Exigent*, *Quinquies Exact.*

But a Writ of *Error* is proper to Record, and from Record, and a Plea of *Nul tiel Record* is not tryable by Witness or *Jury*, but onely by it self in a Court Record. Such are the Sheriffs Turns, and from them (as from *Counties*, *Hundreds*) came the Court *Leets*; which may be held by prescription against the *Great Charter*: In which *Leets* the Steward is *Judg*; as in the *Turns* the Sheriff and Bishop was, till the first *Norman*, who by Parliament exempted the *Clergy* (as was touched before.) But the Laws of *Henry* I. bring them again into the *Secular*. So also the 10th. of *Marlbridg*; and before it the Laws of *Clarenden* for all *Barons*, or Tenant *in Capite* to attend the Great Court till Sentence of Life or Member, which continued long in the Parliament also.

The *Turn* enquireth of Common *Nusance*, and of *Felonies*; *de Furtis & medletis*, whence our *Chance*, or *Chaud Medly*; hot Debate or sudden Fray: see the Notes on *Hengham*) but not of Murder, or Death of Man; which alone (of all Felony) belongeth to the Coroner. He was a very antient Officer, and ought to be made a Knight; for which the Register and Rolls of *Edward* the 3d. where a Merchant, chosen Coroner, was removed, *quia communis Mercator*. He must have a

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good Estate, and might receive nothing (of Subjects) for doing his Office. But by late Statute he hath a *Mark on Indictment of Murder*: yet upon Death by misadventure he must take nothing. See the Comments on the 1st. of *Westminster*.

The Coroner's Court is of Record; and he may take Appeals as well as Indictments (upon view of the Body) and must enter them, but cannot proceed, but deliver them up to the Justices (which is as antient as the *Great Charter*) for the next Gaol-delivery, or the King's Bench sometimes also; he is *locum tenens* to the Sheriff; and he standeth when the King dieth. When also so many think there is no Sheriff; but it may be more considered.

I must not stay in the Court of *Peepoudres*, (incident to every Fair or Market, as a Court Baron to a Mannor) although it be a Court of Record; and a Writ of Error lyeth on its judgment; for which *Jones* aud *Hall's* Case in the 10th Part of *Reports*, and in the 4th *Institutes*.

I need not speak of Writs of Error from the Common Pleas to the Kings Bench; from the King's Bench to the Exchequer-Chamber; and from thence (as from the King's Bench also) to the Parliament; or of the known Statute of *Henry* the 6th. making it Felony to steal, withdraw, or avoid Records, or any parcel of Record.

But

But of no *Records*, is the Law more punctual than in of extraordinary Cases, of *Oyer and Terminer*, which were more private oft, and less fixed, being transient on emergent Cases; which yet being heinous, seemed to require most exact *Records*, especially because there might be Appeal so just and needful, if the Judges exceeded but one tittle of their *Commission*.

If it were discontinued or expired, then the *Indictment* and all *Records* were to meet in their proper Center at the King's Bench: but in other Cases Records of *Oyer and Terminer* were sent into the Exchequer. So in *Edw.* the 3d. As in *Elizabeth*, Results on charitable uses, and the like, were to the Chancery by Act of Parliament.

The *great Seal* was the Soul to inform and actuate the *Body of Records* in all exemplifications from the Rolls; in all Writs Pattents or Commissions; and the rather also, that by this nothing of moment might be hudled up, but duly weighed and considered, while it passed so many hands and judgments as it should before the Sealing.

Nor shall I add, that an Act of Parliament it Self is not pleadable in a Court of Record, but from *Record*, or under the *Seal*; whence the old custom was to remove the Records of Parliament by a Writ of *Certiorari* into the Chancery; thence, by the Lord *Chancellor*, into the Kings Bench; and thence, by a *Mittimus* into the Common Plea and Exchequer; with an usual Writ commanding

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ing all the Courts to keep and observe such Acts of Parliament, which of Old were Proclaimed by the Sheriffs, and were put under the Seal; (as we may see by the Proclamation now printed among the Statutes of *Edw.* the 3d.) and they were not hudled into Print in those Days; not of such vertue in Print as on Record, and under the Seal. For there were not then such Printers, or Copiers that (without much caution) our fore-Fathers durst trust with all their Lives and Estates; which by one dash of a Pen the change of a *not*, a *with*, a *to*, a *for* or a *from*, might be soon destroyed or enslaved.

Much less then should a Court of Record be Created but by Record; yea, and that be shewed under the Seal also. For when the Seal was moulded, our Ancestors ordained that no Jurisdiction should be grantable but under the Seal, which should be known, and obeyed by all the People; as the *Mirror* discourseth at large.

In *Edw.* the 4th. it was resolved by all the Judges, in the *Exchequer-Chamber*, that no man could be a *Judg* or *Justice* by Writ (which was also Sealed) but by open Pattent, or a publick Commission. But the *Lord Chief Justice of England* hath of late no such Commission or Pattent, yet a Sealed Writ; and of Old he was also Created by Pattent till about the end of King *Henry* the 3d. if good Authors deceive me not.

It

It seemeth also somewhat disputable, whether he were not included in the Statute of *Henry* the 8th. for Commissions to the Judges, by Letters Pattent under the Seal.

However, the words are plain enough, for *Justices of Eyre*; which of Old were also by Writ, as those of *Oyer and Terminer*; but now not to be but by Comission, or Pattent under the Great Seal.

Which Commission should also be read and shewed in Court lest there be some kind of *Demurrer*, or exception unto jurisdiction, which hath been in some Cases at the Kings Bench, and may be by Law to all now Judges by special Commission, except it be produced under the Seal, if the old Books deceive us not; who do do not onely ascribe all jurisdiction to the Seal, but in all legal exceptions ever admit of that to the *Judg*, if he be a Party, or have not jurisdiction, or be otherwise incompetent.

That the Parliament also will never Erect or Create any Court of Record, but by Record, and open Commission under the Great Seal, I do the rather believe, because the Seal is so proper and peculiar to the Parliament, being made by common consent; (of which the *Mirror*, and others at large) and by such common consent used and committed to the special care of the Chancellor, or Lord *Keeper* of *England*, as he was called for keeping that which our Fathers esteemed as the Kingdoms Key or *Clavis*.

It

It is well known how King *Henry* the 3d. was brought to acknowledg, That among all great Officers the *Lord Keeper* or *Chancellor* did especially belong to the Choice of the Parliament: and *Ralph Nevil* among others refused to yield up the Seal to the King when it was demanded; saying that he had received it by the Common Councel of the Kingdom; and without their Warrant he would not deliver it; of which both *Matthew Paris*, and *Matthew* of *Westminster*.

From the continual use of this Seal in Parliament, it is the Law and Custom of the Kingdom, that the Lord *Keeper* shall have place in Parliament still to be there with the Sael (although he be often no *Peer*, and have no Vote but) for making and Sealing of Charters, Pattents, Commissions and Writs framed by Parliament.

For although the Register (made or continued by Parliament,) be now so full that there be little need; yet the framing of *New Writs* was a great work of *Old Parliaments*, as appeareth in the Books and Statutes, as in that of *Westminster* the 2d. *de Casu consimili*.

And as if the Parliament had made uo Laws at all, but onely New Writs the *Old Modus* brancheth out all the Laws of Parliament into Originals, Judicials and Executives, which all know to he the Division of Writs; Those especially *de Cursu*, drawn by the Cursitors; for *Brevia Magistralia* were let to be

be framed by the *Masters of Chancery*, as appeareth at large in *Bracton* and *Fleta*, and in the Oath of the *Six Clerks*, or other Clerks of Chancery in Ed. 3 with that of Ed. 1. *de casu continili*; in which Statute it is asol provided, that if the *Masters* could not agree in framing such a *new Writ*, they might, if they saw cause, respit the Parties till the next Parliament, that so it might be formed by Advice of all the great Lawyers of the Kingdom.

Yet besides this of making and sealing of *Writs*, there was another work, and great use of the *Masters of Chancery* in Parliament: Which was the *Receiving of Petitions*, (As the Rolls of most times witness) It being the old *Mode*; and others accounted it somewhat against Reason, that Petitions should be taken and brought into the House, by those that were to debate and determine them, and so might at pleasure keep them *Out*, or too hastily might press them in.

Whereas they were to be filled up in course, and so to be debated as they were received, which was therefore entrusted to the care of known and sworn Officers of the Kingdom: Although of late, their work in Parliament be so strangely degenerate from that it was of old: when also beside *Receivers*, there were some appointed for *Tryers of Petitions*, who (as it seemeth) were to enquire of matter of Fact, expressed in the Petition, that it might be cleared and rightly stated before it came to be debated in full Parliament.

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I do not deny but these *Triers of Petitions* were most frequently some of the Bishops, and other Barons: But by this I am not convinced, that the Lords had by *Right* and *Legislative* Power, or were *the* sole *Determinors* of all Petitions, as some would infer; or that they were the sole Judges; except also the Petty Jury that are Tryers of Fact, shall be esteemed the sole Judges of Matters of Law.

And yet I shall not deny, but Petitions concerning abuses or errors in Judicature were often determined by the Lords as the great Judges; but of error in the King's Bench, as Judges above the King, (as was shewed before) or from the Exchequer. In Queen *Ellzabeths* Time, for the seldom meeting, or great Affairs of Parliament, the Writs of Error from the King's Bench were by special Act of Parliament to be brought before the Judges of the Common Pleas, and Barons of the Exchequer, and by them to be determined.

But with these express Limitations, as the Law shall require; other than for Errors to be assigned, or found, for, or concerning the Jurisdiction of the said Court of Kings Bench, or for want of form in any Writ, Process, Verdict &c. and that after all, *the Records, and all concerning them, be remanded to the King's Bench, as well for execution as otherwise, as shall appertain; and (with this express Proviso) That any Party agrieved by such Judgment, in the Exchequer, shall and may sue in Parliament*

liament for a further and due Examination.

By which I do not see such Parties agreed were absolutely tied to Petition the Lords onely, although it were onely in a Case judicial. Yet I deny not but in *Edward* the 3d. there was a Committee made of a Bishop, two Earls, and two Barons to hear and determine all Petitions complaining of Delays or Grievances in Courts of Justice.

But with great Limitations, so that they must send for the Records and Judges, which were to to be present, and be heard, and then by good advice of the Chancellor, Treasurer, Judges (and other of the Council) to make an Accord; yet so that all be remanded to the Judges before whom the Cause did first depend, who were then to proceed to Judgment according to the Accord of the said Committee.

And in Case it seemed to them to be such as might not well be determined but in full Parliament; that then the said Records or Tenors should be brought by the said Commitee to the next Parliament; it being the Common Law of the Kingdom, and so expressed in all the old Books, that all new, unwonted, difficult matters of consequence should still be brought and submitted to the Judgment of full Parliament, so that all our Judges did, and ought to respit such Causes till the next Parliament; of which there be almost innume-

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numerable Precedents in all the Rolls.

Nay, in *Richard* the 2d. there was a Committee of Lords and Commons appointed to hear and determine all Petitions present in that Parliament. But afterwards it was adjudged and declared, That such a Commission ought not to be given; committing or betraying the High Power of Parliament into a few private hands; as we may learn out of *Henry* the 4th. beside other times.

Yet the *Modi of Parliament* admit that some extraordinary Cases, where the Estates could not agree (or the greater part of the Knights, Proctors, Citizens, *&c.*) There, by consent of the whole Parliament, the Matter might be compromised to 25. chosen out of all Degrees, and to fewer, till at length it might come to 3. who might determine the Case, except that being written it were corrected by Assent of Parliament and not otherwise.

And this seemeth to be the Law of Nature and right Reason, That Delegates should not delegate others, which was one reason why the Commons never made *Pracies* as the Lords did. Nor might any Committee so determine but there might be Appeal from it to the Parliament. Nor doth the Parliament it Self conclude so, but that there may be Appeal from its self to its self, even to its *Justice* if it erre, or at least to its mercy by some motion or Petition.

In

In one Parliament of *Richard* the 2d. it was Enacted, that no man condemned by Parliament should move for Pardon; but another Parliament 10 years after did annul this Branch, as unjust, unreasonable and against the Law and Custom of Parliament. For from this, which is the highest here, there still lieth Appeal from its Self to its Self. For which also, by the Laws and Customs of the Kingdom, there were to be frequent Parliaments, that so the errors or omissions of one (being still human, and therefore errable) might be corrected and amended in another.

By express Statutes of *Edw.* the 3d. we are to have Parliaments once every year, *and oftner if need be.* They were of Old three or four times a year, as may be found in all the Old Historians, speaking of the great Feats in the *Militia* in King *Alfred's* Time, they were to be twice a year; and that at *London* as the *Mirror* affirmeth, which we compared with the Laws of the *Confessor*: And I speak also of King *Edgars* and *Canutes* Laws for the *Celeberrimus Conventus ex qualibet Satrapia*, which the Great *Judg* applieth to the Parliament.

Eternity it self would be a Burthen unto him that is not pleased with his Being: so would Omnipotence to him that is unhappy in his acting: It was therefore goodness in God to limit man, as well in Doing as in Being.

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It was alſo the Wiſdom of our Anceſtors to bound and limit out the Being, Acting, and continuing not onely of other Judges, but alſo of Parliaments.

Yet the *Old Modi of Parliament* agree in this, That a Parliament ſhould not be Diſſolved till all Petitions were diſcuſſed and anſwered; and that after all there ſhould be Proclamation made in ſome open place, whether any had a Petition or juſt Addreſs to the Parliament; and if none replied then it was to be Diſſolved.

I need not ſhew the Care of our Anceſtors, or former Parliaments for moſt ſtrict obſervation of their own good Orders and Cuſtoms of Parliament, which are ſuch ſo juſt and reaſonable, that they well deſerve a peculiar Diſcouſe by themſelves; and ſuppoſe it not impoſſible to clear them more by the practice and conſent of moſt Ages in this Kingdom, which might alſo be uſeful for the Times to come.

And although it might be poſſible to find ſome of their old cuſtome fit to be changed; yet my hope is they will retain and obſerve ſuch Rules of right Reaſon, good Orders and Cuſtoms as may ſtill make this an Happy Nation; and that they will be mindful of their great Truſt; for which they are accountable: And however it may be in this World, yet they alſo muſt be judged at his coming, who ſhall

ſhall bring every Work into Judgment with every ſecret Thing, whether it be good, or whether it be evil? And I am not aſhamed both to long and pray for his coming; *who is King of Kings, and Lord of Lords*; The Prince of *Salem*, that is *Peace*, as well as *King of Righteouſneſs*, *Melchizedek*, the Lamb upon the white Thone.

All the Creation groaneth; and the Spirit and the Bride ſaith, come Lord Jeſus, come quickly.

FINIS.

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