judgements ought not to be queſtioned *citra mare*, in any court, unleſſe it be according to the courſe of the lawes of the realme.

By the ſtatute of 4 H. 4. cap. 23. it is ordained and ſtabliſhed, 4 H. 4. ca. 23.
that after judgement given in the courts of our lord the king, the parties and their heirs ſhall be thereof in peace, untill the judgement be undone by attaint, or by *error*, if *there* be error, as hath been uſed by the lawes in the times of the kings progenitors.

[a] Alſo that which hath been ſaid appeareth by our books and ancient records, as hereafter ſhall appeare. [a] 10 H. 4. 1, 2. 18 H. 6. 6. b.

[b] 5 E. 4. fol. 6 where the ſtatute of 16 R. 2. cap. 5. ſaith, *In cur a Romana vel alibi*, eccleſiaſticall courts within the realme are within this word [*alibi.*] [b] 5 E. 4. 6. b. 44 E. 3. 36.

[c] Mich. 11 H. 7. it was adjudged by the whole court, that a ſuit in the eccleſiaſticall court within the realme for a temporall cauſe, was in caſe of premunire. [c] 11 H. 7. Premunire. Fitz. 15 H. 7. 9. acc'. lib. Intr. Raſt. 463.

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[d] A preſident of a premunire, for ſuing in the eccleſiaſticall court for a debt. [d] Raſt. pl. 429. b. & 430.

[e] It was reſolved, that he that ſued in the eccleſiaſticall court for the forgery of a laſt will and teſtament, incurred the danger of a premunire, becauſe the party grieved might have his remedy by the common law. And in the ſame year of 17 H. 7. juſtice Spilman alſo reporteth, that one Turbervile, as well as for the king, as for himſelfe, did ſue a premunire againſt a perſon for ſuing for tithes in the eccleſiaſticall court, alledging the ſame to be ſevered from the nine parts, and judgement given againſt the defendant. [e] 17 H. 7. of the report of juſtice Spilman.

Alſo it appeareth that the admirals court is within this word [*alibi*] if he hold plea of any thing, which is not done *ſuper altum mare*, but *infra corpus comitatus*.

[f] Richard Beuchampe eſquire and Thomas Pauncefoot eſquire, and others, are charged with the offence of premunire, for that they ſued John Creſſey eſq; before Henry duke of Exeter admirall of England, for taking away a croſſe of gold and other goods, ſuppoſing the ſame to be taken *ſuper altum mare*, where in truth they were taken at Stratford in the county of Eſſex; where the ſtatute of 16 R. 2. is recited, that none ſhould ſue *in curia Romana ſeu alibi, &c.* and that the conuſance of this plea belonged to the common law, and not to the court of the admirall. And ſo it is of the conſtable and marſhall, if they hold plea of a matter determinable by the common law. [f] Mic 13. H. 6. coram rege.

[g] Iſabel Winnington exhibited a bill of premunire againſt William Powdich upon the ſtatute of 16 R. 2. cap. 5. for ſuing in the admirall court before John earle of Huntington, admirall of England, for a cauſe which belonged to the common law, whereunto the defendant pleaded not guilty. [g] Mic. 9 H. 7. coram rege. Raſt. pl. 23. but this cauſe is entred. Trin. 9 H. 7. Rot. 37. coram rege.

And the reaſon of all theſe caſes is, becauſe they draw matters triable by the common law, *ad aliud examen*, and to be diſcuſſed *per aliam legem*.

But ſome have made a queſtion, whether ſince the eccleſiaſticall juriſdiction was acknowledged to be in the crowne, an eccleſiaſticall judge holding plea of a temporall matter belonging to the common law, doth incurre the danger of a premunire. Though hereof there is no queſtion at all, yet leſt any man might be led into an errour in a caſe ſo dangerous, we will clear this point by reaſon, preſident,

preſident, and authority. The reaſon holdeth ſtill to draw the matter *ad aliud examen*, &c. And the like queſtion might be made for the admirall court, which is, and ever was, the kings court, but governed *per aliam legem*: and ſo likewiſe of the court of the conſtable and marſhall.

At a convocation holden *anno* 22 H. 8. by a publick inſtrument made by all the biſhops and the whole clergie of England, the king was acknowledged to be ſupreame head of the church of England.

[h] 24 H. 8. tit. premunire, Brook 16.

[h] After this, viz. 24 H. 8. it appeareth that the ſtatute of premunire remained in force againſt eccleſiaſticall judges, for holding of pleas meerly determinable by the common law.

Hil. 25 H. 8. coram rege, Rot. Rich. Nick Biſhop of Norwich his caſe.

In 25 H. 8. Richard Nick biſhop of Norwich was attainted in a premunire at the kings ſuit, and his caſe was this. Within the towne of Thetford there then was a cuſtome, that all eccleſiaſticall cauſes ariſing within the ſaid towne ſhould be determined before the deane there, having a peculiar eccleſiaſticall juriſdiction, and that no inhabitant of the ſame town ſhould be drawn before any other eccleſiaſticall judge, and that every perſon ſuing contrary to that cuſtome, the ſame being preſented before the maior of Thetford, ſhould forfeit ſix ſhillings eight pence; and that an inhabitant of Thetford for an eccleſiaſtical cauſe riſing within Thetford, ſued another before the biſhop of Norwich within his conſiſtory court at Norwich: and this was preſented before the maior of Thetford according to the cuſtome, whereby he forfeited ſix ſhillings eight pence. The ſaid biſhop cited the ſaid maior for taking of the ſaid preſentment *pro ſalute animæ* to appear before him at his houſe at Hoxon in Suffolke, where the maior appeared, and there the biſhop *ore tenus* injoyned him, upon pain of excommunication to adnull the ſaid preſentment before a day. And for this offence he was attainted in a premunire upon his confeſſion before Fitz James chief juſtice, and the court of kings bench, upon the ſtatute of 16 R. 2. the record whereof we have ſeen. By which judgement two points are cleared: firſt, that the ſtatute of premunire extends to eccleſiaſticall courts within the realme. Secondly, that after the king was in poſſeſſion of his ſupremacy, the biſhops incurred the danger of premunire.

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Trin. 36 H. 8. coram rege. Rot. 9. the B. of Bangors caſe. D. & St. lib. 2. ca. 24. fo. 106. b. Lib. 2. ca. 23.

The biſhop of Bangor was attainted in a premunire for holding plea of an advowſion, and of tithes ſevered from the nine parts.

Saint Germin in his book of Doctor and Student, who wrote after 26 H. 8. holdeth: that if a man maketh a promiſe for a temporall thing, and ſwear to perform it, and doth it not; if he be ſued for perjury in the ſpirituall court, a prohibition or a premunire lyeth in that caſe. Alſo he ſaith; if a man be excommunicate in the ſpirituall court for treſpaſſe, or ſuch other thing, as belongs to the kings crown and his royall dignity, &c. the party, if he will, may have a premunire fac. againſt him.

Br. tit. Premunire. 21. Temps. E. 6.

Brook reporteth, that Barloe biſhop of Bath and Wels, in the reign of king E. 6. deprived the dean of Wels, which deanry was a donative: and thereby incurred the danger of a premunire.

1 Eliz. cap.

By the ſtatute of 1 Eliz. (which reſtoreth the ancient juriſdiction eccleſiaſticall to the crown) the act of 1 & 2 Ph. and Mar. cap. 8. is repealed. But there is a ſpeciall proviſo in that act of 1 Eliz. that it ſhould not extend to repeale any clauſe, matter, or ſentence contained or ſpecified in the ſaid act of 1 & 2 Ph. and Mar. which doth

doth concerne matter of premunire, but that ſo much of that which concerneth any matter or cauſe of premunire, ſhould ſtand in force and effect. And that clauſe of the ſtatute of 1 and 2 Ph. and Mar. is this. That whoſoever ſhall by any proces obtained out of any eccleſiaſticall court, within the realme or without, by pretence of any ſpirituall juriſdiction, or otherwiſe, contrary to the lawes of the realme, inquiet or moleſt any perſon, &c. for any mannors, &c. parcell of the poſſeſſions of any religious houſe, &c. ſhall incurre the danger of the act of premunire, in *anno* 16 R. 2.

See the ſtatute of 25 H. 8. which alſo hath reference to the ſaid act of premunire, and is revived by 1 Eliz. 25 H. 8. ca. 20.

Thomas Stoughton parſon of N. in Suffolke, brought a writ of premunire againſt R. T. upon this ſtatute of 27 E. 3. for ſuing in the court of audience of the archbiſhop of Canterbury, to impeach a judgement given in a *quare impedit*, before the juſtices of aſſize in the county of Suffolk, &c. the defendant pleaded not guilty, &c. And this (omitting many other things for this matter) ſhall ſuffice. And now let us peruſe the body of the act. Trin. 29 Eliz. in communi banco Rot. 747. Tho. Stoughtons caſe

(1) *Trahe nulluy hors de realme.*] Of this there is no queſtion, being againſt the ancient law of the realme always in uſe; as by this act appeareth. And this was a remedie for the firſt miſchiefe.

(2) *Ou des choſes dont judgement ſuer' rendus, &c.*] This branch prohibiteth all forain ſuits, viz. in the court of Rome, &c. for any thing whereof judgement was given in the Kings court. And this was a remedie for the ſecond miſchiefe.

(3) *Ou que ſuont en autre court a defaire ou impeacher les judgements rendue in le court le roy.*] This is a remedy for the third miſchief, for having by the ſecond branch provided againſt forain ſuits to undoe, or impeach judgements in the kings court, this branch doth (as hath been ſaid) extend to all courts, which proceed by the rule of another law, or draw the party *ad aliud examen*, and therefore this branch doth extend to eccleſiaſticall courts, to the court of the conſtable, and marſhall, to the court of the admiralty, and to the court of equity proceeding in courſe of equity: for it had been to no effect to have provided againſt forain ſuits, which were troubleſome, tedious, and chargeable, and to have ſuffered the party to have attempted and proſecuted any thing at home within this realm, to the prejudice and diſheriſon of the king, and his crown, and all his ſubjects, and to the ſubverſion of the common law. And firſt we will ſpeak of the court of equity. This court cannot proceed in courſe of equity after judgement at the common law, for three reaſons. Firſt, for that it draweth the matter triable, and determinable by the common law, *ad aliud examen*, viz. to a triall by witneſſes, which (as hath been ſaid) is contrary to the ancient law of the realm, and againſt the purvien of this ſtatute. Secondly, after judgment the parties ought to be at peace and quiet, for *judicia ſunt tanquam juris dicta*, and if the party againſt whom judgement is given, might after judgement given againſt him at the common law, goe into court of equity for matter in equity, there either ſhould be no end of ſuits, or every plaintif would leave the common law, and begin in the court of equity, whither in the end he muſt be brought, and that ſhould tend to the utter ſubverſion of the common law, as it is ſaid in the act. Thirdly, the court of equity in the proceeding in courſe of equity is no court of record, 37 H. 6. 14.

cord, and therefore it cannot hold plea of any thing, whereof judgement is given, which is a judiciall matter of record. And this is the ancient law at all times uſed, as this act ſpeaketh. At taking ſome few examples for many, both before, and after this ſtatute.

Anno 6 E. 1. the earl of Cornwals caſe. Lanceſton in Theſaur.

In the caſe of Edmond earl of Cornwall in *anno* 6 E. 1. it appeareth, that after judgement given before Roger Loveday and Walter Winborn juſtices of oier and terminer, againſt Walter biſhop of Exeter and his tenants, the ſaid biſhop procured the biſhop of Landaff in the pariſh churches of Cornwall and Devonſhire to pronounce ſentence of excommunication by the ſentence of the archbiſhop of Canterbury (which ſentence was had by the procurement of the ſaid biſhop of Exeter) againſt all perſons of what eſtate, degrees or dignity ſoever, that dealt in the proceedings, &c. againſt the ſaid biſhop and his tenants before the ſaid juſtices: and in this part of the record being in French, it is ſaid *La corone, et la dignity noſtre ſeigniour le roy ne doit per autre eſtre juſtice ne guyne, &c. Et les choſes que ſont paſſes en ſa court per judgement, ou en auter manner, ne devient eſtre en autri court recreeces, &c.* Out of this record we may obſerve three things. Firſt, what the ancient law of this realm was, before the making of this act. Secondly, that [*en autri court*] which are the words of this act, was taken to be another court within the realm. Thirdly, that the miſchief before this act, was for ſuits in other courts within this realm, after judgements given in the kings courts. Read the whole record, which beginneth thus. *Cornub. dominus rex mandat, &c.*

Mich. 13 E. 3. In communi banco. Rot. 40. Inter Johannem de Dingle and Mich. de Englis Bedf.

And in 13 E. 3. there was a ſuit in the court of Rome after judgement in the kings court, and in that record it is ſaid, *In regi contemptum, et coronæ ſuæ præjudicium, ac judicii prædicti enervationē manifeſtam, &c. Ac quòd judicia in curia regis rite reddita fruſtra redderentur, niſi debitum ſortirentur effectum.*

[a] Fleta who wrote before this ſtatute, ſaith, *Judicia debent rata permanere, et firma conſiſtere, uſque ad condignam ſatisfactionem inviolabiliter obſerventur.*

[a] Fleta li. 6. ca. 36. Trin. 19 E. 3. Rot. 50. Coram rege John Boltons caſe.

And as a maxime of the common law in the judiciall Regiſter, fo. 12. 35. 41, &c. it is often ſaid, *Ea quæ in curia domini regis rite acta ſunt, debitæ executioni demandari debent.*

Mich. 19 E. 3. Rot. 16 & Rot. 29. Alan de Conſburghs caſe. F. N. B. 169. f. 20 E. 3. eſſoin. 24. 21 E. 3. 40. b.

Now let us ſee what hath been done ſince the act. [b] The ſtatute of 4 H. 4. cap. 23. hath been recited before, which is a judgement of parliament. [c] A judgement was obtained by covin and practice againſt all equity and conſcience in the kings bench: for the plaintif retained by colluſion an attorney for the defendant, (without the knowledge of the defendant, then being beyond ſea) the attorny confeſſeth the action, whereupon judgment was given; [d] the defendant ſought his remedy in parliament, and by authority of parliament power was given to the lord chancellor by adviſe of two of the judges to hear, and order the caſe according to equity: which proveth that the chancellour could not do it of himſelf without higher authority.

[b] 4 H. 4. ca. 23.
[c] Paſc. 5 E. 4. Coram rege inter Cobbe and Nore.
[d] Rot. Parl. ſimile. 3 H. 5. nu. 44. & 3 H. 6. nu. 22.

[e] No injunction after verdict at the common law is to be granted in chancery, and if the lord chancellor ſhould grant an injunction in that caſe the judges ſaid, that if the chancelor impriſoned the party

[e] 22 E. 4. 37.

party for breach of the injunction, they would grant an *habeas corpus* and deliver him.

Amongſt the articles preferred to the king by Sir Thomas Moore lord chancellor of England, and all the privy councel, and by Fitz James chief juſtice, and juſtice Fitz-Herbert againſt cardinall Woolſey, one is in theſe words, [And the ſaid lord cardinall hath examined divers and many matters in the chancery, after judgement thereof given at the common law, in ſubverſion of your laws, and made ſome perſons to reſtore again to the other party condemned that, that they had in execution by vertue of the judgement of the common law] which I have ſeen in parchment under all their hands, and is yet to be ſeen. 1 Decemb. 21 H. 8. Art. 20.

If judgements given in the kings courts ſhould be examined in chancery, before the kings councell, or any other place, the plaintif or demandant ſhould ſeldome come to the effect of their ſuit, nor the law ſhould never have end, &c. See the Diverſity of Courts ca. Chancery. Doct. and Stud. ca. 18. the book of Diverſity of Courts.

Ralph Heydon gent. was indicted of a premunire upon the ſtatute of 27 E. 3. for procuring of Sir Nicholas Bacon lord keeper of the great ſeal, to grant an injunction in chancery after judgement given in an *ejectione firme* of lands in Hertfordſhire. And the record ſaith, *Quod predictus Radus machinatus eſt antiquas leges, et conſuetudines regni ſubvertere.* Mich. 8 & 9 El. in the kings bench.

A writ of premunire upon the ſaid ſtatute of 27 E. 3. by Richard Beans againſt Richard Lloyd, for ſuing before the preſident and councell in Wales, after judgement given in the court of common pleas, in an action of debt for forty and two pound ten ſhillings, *in ſubverſionem legum antiquarum, &c.* Trin. 21 El. in communi banco Rot. 319.

Peter Dewſe was indicted for procuring of Sir Thomas Bromly then lord chancelor, to grant an injunction in the chancery after a judgement given in an *ejectione firme.* Paſch. 27 El. in the kings bench.

John Heal of the Inner Temple London eſquire, was indicted of a premunire, for procuring a ſuit in chancery after a judgment given at the common law, contrary to the ſtatute of 27 E. 3. And the councell of Heal took two exceptions, one, that the court of chancery was not within the ſtatute of 27 E. 3. another, that one of the parties to the ſuit in chancery was named in one place by one name of baptiſme, and in another part of it by another. The court reſolved that the court of chancery was within the ſtatute of 27 E. 3. but found the other exception concerning miſnaming to be true. And therefore they quaſhed the indictment, but made a memorandum indorſed upon the back of the indictment, that it was overthrown for miſtaking a name, and not for the matter. Trin 30. El. in the kings bench. Diverſity of Courts, ca. Chancery.

Thomas Throckmorton exhibited a bill in the chancery againſt Sir Moyl Finch after judgement given againſt him in the court of exchequer upon apparent matter of equity. Upon which bill the defendant demurred in law, and for that Sir Thomas Egerton then lord keeper inclined to rule over the demurrer, ſaying that he would not meddle with the judgement, but puniſh the corrupt conſcience of the defendant, in relieving the plaintif in equity: upon a petition to queen Eliz. (who ever favoured the due proceeding of her laws,) ſhe referred the conſideration of the demurrer to all the judges of England, who hearing councell learned on Mich. 39 & 40 El. See the fourth part of the Inſt. cap. Court of Chancery.

both parts, and upon view of presidents in the time of H. 8. and since of injunctions granted after judgements, and finding very few of them to warrant that which had been affirmed, and none of them to be done by the advice of any of the judges, they all after divers hearings, and conferences, and consideration had of the laws and statutes of the realm, unanimously resolved, that the lord keeper could not after judgement given relieve the party in equity, although it appeared to them, that there was apparant matter in equity. And amongst others, the judges gave this reason, that if the party against whom judgement was given, might after judgement given against him at the common law, draw the matter into the chancery, it would tend to the subversion of the common law, for that no man would sue at the common law, but originally begin in chancery, seeing at the last he might be brought thither, after he had recovered by the common law, and thereupon they all certified, that the demurrer was good, and that Sir Moyl Finch the defendant ought not to answer.

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Hil. 12. Ja. regis coram rege.

An information upon this statute of 27 E. 3. against Sir Anthony Mildmay, for that he and other commissioners of sewers did impeach a judgement in the kings bench: he purchased a pardon from the king, and pleaded it.

See a privy seal bearing teste 18 Julii, anno domini 1616, to the contrary, obtained by the importunity of the then lord chancellor being vehemently affraid: *sed judicandum est legibus*, and no president can prevail against an act of parliament. And besides, the supposed presidents (which we have seen) are not authentical, being most of them in torn papers, and the rest of no credit.

44 E. 3. 7. 36.
39 E. 3. 7.
7 E. 4. 2.
27 H. 6. 5.
36 H. 6. 30.
* 43 E. 3. 6.
42 E. 3. 7.
2 R. 3. 17.
27 H. 6. 5.
22 H. 8. tit. Præm. Br. 1.
Tr. 39 E. 3. Rot. 95. Coram rege. 39 E. 3. 37. 30 E. 3. 11. 44 E. 3. 36.
Forebys case.
a 8 H. 4. 6.
Lib. 11. fo. 34. b. in Alex. Poulters case.

(4) *Eient jour contenant le space de 2 moys per garnishment a faire a eux, &c.*] By this it appeareth that a premunire lyeth as well for the party, as for the king, and they both may join in one writ.

* If the defendant come not at the day, &c. by the expresse letter of the law judgement shall be given against him according to this act. This suit need not be against them by originall writ, but if the defendant be *in custodia mareschalli*, the suit may be against him by bill, because the end of the giving of the two months was, that they should have notice, which is satisfied, and therewith agreeth the presidents; and the defendant cannot be sued in any other court, when they are *in custodia marescalli*. See the statute of 18 El. cap. 5. but that statute extends to common informers, and not when the suit is commenced by the party grieved.

a But if the defendant appear and plead, and the issue be found against him, or if he demur in law, &c. judgement shall be given against him, that he shall be out of protection, &c. And so hath this statute been interpreted, and judgement given accordingly. Perusse well the words of this act for this point, and see the book in 8 H. 4. 6.

39 E. 3. 7.
9 E. 4. 2.
15 H. 7. 9.
F. N. B. 26. m.

By the statute of 38 E. 3. cap. 2. the defendant ought to appear in person, and therefore he cannot appear by attorny without a speciall writ out of the chancery: and this act doth bind as well those that are lords of parliament as others.

27 H. 6. 5.
2 R. 3. 10.

Avant le roy et son councell.] Here councell cannot be taken, as most commonly it is, for his judges of his courts of justice, who are said to be of his councell for proceedings in courts of justice, because the courts of justice are hereafter in this act named: neither

ther doth it intend the kings privy councell, but the king, and the lords of parliament in parliament, which is a court of juſtice.

See the firſt part of the Inſtitutes, ſect. 164. *Veigne les burgeſſes al parlement.* There is *commune concilium*, *magnum concilium*, *privatum ſeu continuum concilium*, and *concilium juſticiariorum*, *le councel des juſtices.* The king is armed with divers councells.

Ils, lour procurators, attornies, executors, notaries, et maintcynors.] Note by this act the procurers, attornies, executors, notaries, and maintainers ſhall have the ſame puniſhment, that the principall ſhall have. Note in the ſtatute of 2 R. 2. this word (fautors) crept in, a word (derived *à favendo*) of a large extent, as it was conſtrued in the reign of H. 8.

The plaintif may chooſe whether he will make them all principals, or the one principall, and the other acceſſories, but the damages ſhall be ſeverally taxed. Stanf. pl. cor. 44. f. 44 E. 3. 7. 36 H. 6. 30. 42 E. 3. 7. 8 R. 2. *Prem.* 12. 8 H. 4. 6. pl. com. 97. b.

He that procures one to ſue to the court chriſtian, ſhall forfeit as much as he that ſueth, and is principall as well as the other, and are in equall degree of premunire: but if they both be indicted, the one of the act, and the other of the procurement, and he that is charged with the procurement is found guilty, and the other by an other enqueſt is found not guilty, judgement ſhall never be given againſt him, which was indicted of the procurement, becauſe he cannot be an offender, but in reſpect of the offence of the other.

Hors de la protection le roy.] By theſe words the perſons attainted in a writ of premunire are diſabled to have any action or remedy by the kings law, or the kings writs; for the law and the kings writs are the things whereby a man is protected and aided, ſo as he that is out of the kings protection, is out of the aid and protection of the law. See Littleton ſect. 199. and the 1. part of the Inſtitutes the ſame ſect. Lib. 7. fo. 14. in Calvins caſe.

But by the ſtatute of 25 E. 3. it is provided, that he that purchaſeth proviſions to abbies, or priories ſhall be out of the kings protection, and that a man may do with him, as with the enemies of the king and his realm, and that he, that ſhall commit any thing againſt ſuch proviſors in body or goods, or other poſſeſſions, ſhall be excuſed againſt all people. 25 E. 3. ca. 2. See 5 El. ca. 1.

Et lour terres, biens, et chateux forfait au roy.] This is intended of the lands that he hath in fee-ſimple, or for life, which the delinquent might lawfully forfeit, and not lands in tail: for tenant in tail ſhall forfeit only for term of his life, for that was all he could lawfully forfeit at the making of this ſtatute, either in caſe of treaſon or felony. And ſo it was reſolved by the judges in the caſe of Trudgyn of Devonſhire, who was attainted of a premunire upon the ſtatute of 13 El. cap. 2. 34 H. 8. forfeit. Br. 101. Paſch. 21 El. reſolution of the judges in Trudgyns caſe. Dier, manuſcript. Vide before. 25 E. 3. Verb. Et ſoit aſſavoir.

Nota, this is a new kind of forfeiture given by this law, and is penall, and cannot by equity extend further then the records, and therefore this act extendeth not to the forfeiture of fairs, markets, rents charges, rent ſeck, warrens, annuities, or any other hereditament that is not within this word (*terre.*)

Lour corps impriſon, et rents al volunt le roy.] The greatneſſe of theſe puniſhments doe ſhew the greatneſſe of the offence.

It is to be obſerved, that the ſaid ſtatute of 16 R. 2. is ſtrictly penned 16 R. 2. ca. 5.

Examples of theſe are quoted before.

penned againſt offenders. For firſt it extendeth to all perſons of what quality, or ſex ſoever, the words be [if any]. 2. To all courts of what juriſdiction ſoever, and whether holden by right or wrong, *in curia Romana, ſeu alibi*, which word (*alibi*) is a word of a large extent, as before it appeareth. 3. To all things whatſoever. [Where any thing,] which words be as generall as can be. 4. Not only againſt the king, his crown and dignity, but againſt the kingdome alſo: againſt the king, his crown, and regalty, or realm. 5. This act extendeth not only to procurers, abetters, maintainers, counſellors, &c. which are known words in law, but to favourers, *fautores*, which word was largely extended in the reign of H. 8. whereby it is to be obſerved how dangerous it is to bring new or unuſuall words into any act of parliament, eſpecially into ſuch as be ſo penned: for there it appeareth that Cliff being a parſon of a church granted to the cardinall an annuity, ſo long as he ſhould be legate, *ut decentius et ſublimius ſe gereret in authoritate ſua legantina*, which the cardinall had by bull, and paid to him ten marks in name of ſeaſon, and he was adiudged a *fautor*. But ſuch evaſions were found out of this and other ſtatutes, as were made againſt uſurpations and incrochments upon the good and ancient common law, as divers and many ſtatutes were made from time to time to meet with ſuch evaſions, which being many, (and others which concern the offence of premunire) we will but name, and leave the reader to peruſe the ſame at large, wherein (as we conceive it) he ſhall find a great light, by that which hath been ſaid, viz. 25 E. 3. ca. 22. 25 E. 3. Statut. de proviſoribus. 38 E. 3. ca. 1, 2, 3, 4. 3 R. 2. cap. 3. 7 R. 2. ca. 12. 12 R. 2. ca. 15. 13 R. 2. Stat. 2. ca. 2. 16 R. 2. cap. 5. 2 H. 4. cap. 3. & 4. 6 H. 4. cap. 1. 7 H. 4. ca. 6. & 8. 9 H. 4. ca. 8. 3 H. 5. cap. 4. 24 H. 8. ca. 12. 25 H. 8. ca. 19, 20, 21. 26 H. 8. cap. 15. 28 H. 8. cap. 10. 35 H. 8. ca. 1. Note, queen Mary repealed all offences made to be in the caſe of premunire ſince the firſt day of the firſt year of H. 8. but ſome of them are revived by the ſtatute of 1 El. ca. 1. But in all queen Maries time, the ſtatutes made concerning the offences of premunire before the reign of H. 8. were neither repealed nor altered, but (as hath been ſaid) allowed of in queen Maries time. 1 & 2 Ph. and Mar. ca. 8. 1 El. ca. 1. 5 El. ca. 1. 13 El. cap. 1, 2. 8. 27 El. ca. 2. 21 Jac. ca. 3.

Vide juſtice Spilman. Report. Mich. 21. H. 8. Cliffs caſe.

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1 Mar. ca. 1.

And where the ſtatute of 25 E. 3. de proviſoribus provideth, that certain offenders againſt that act, ſhall before they be delivered, make full renunciation. &c. becauſe we deſire that our ſtudent may in all things underſtand what he reads: it is to be known, that as well before that ſtatute, viz. in the reigns of E. 1. and E. 2. as after, the form of renunciation was to this effect. I renounce all the words comprifed in the popes bull to me made of the biſhoprick of A. (or the like) the which be contrary, or prejudiciall to the king our ſoveraign lord, and to his crown, and of that I put myſelf humbly in his grace, praying to have reſtitution of the temporalties of my ſaid church, &c. Whereby it may appear what the law was in that caſe before 25 E. 3. And albeit theſe laws be very ſevere, eſpecially againſt the buls, &c. of the pope, and forain juriſdiction, and though queen Mary reſtored his ſupremacy in ſuch ſort as hereafter appeareth, yet would ſhe not repeal the ſaid ſta-

Dier manuſcrip. Hil. 1 El. le caſe de Chriſtoforſon Eveſque de Chicheſter.

tutes of proviſion and premunire, but provided that they ſhould ſtand in force. See the ſtatute of 1 & 2 Ph. and Mar. whereby it is enacted, That whoſoever ſhould by any proces obtained out of any eccleſiaſticall court within this realm, or without, or by pretence of any ſpiritual juriſdiction, * or otherwiſe, contrary to the laws of this realm, inquiet, or moleſt any perſon, &c. ſhould incur the danger of the act of premunire made in the ſixteenth year of the reign of king R. 2. &c. And by another branch in the ſame act it is enacted, That all buls, diſpenſations, and privileges not containing matter contrary, or prejudiciall to the authority, dignity or prehemínence royall of the realm, or to the laws of this realm now being in force, and not in this preſent parliament repealed, may be put in execution. And laſtly, by the ſame act, it is declared and enacted, That neither any thing contained in the body of the ſaid ſtatute, or in the preamble thereof, ſhall be conſtrued, or expounded to diminiſh, or take away any of the liberties, priviledges, prerogatives, preheminences, authorities or juriſdictions which were in the imperiall crown of this realm, or belonged to the ſame before the twentieth year of H. 8. and the popes holines to have ſuch authority, preheminence, and juriſdiction, as his holineſſe uſed, or might lawfully have uſed by authority of his ſupremacy the ſaid twentieth year of H. 8. within this realm of England, without diminution or enlargement of the ſame, and none other. Whereby it appeareth how careſull the ſtate was in queen Maries time to preſerve the prerogative of the crown, and the ancient laws of the realm, and did at that time ſo cautiouſly reſtore the ſupremacy of the pope, *ſecundum quid*, but not *ſimpliciter*, and bounded his ſupremacy within ſtrait and legall limitations, as by the ſaid act appeareth.

1 & 2 Ph. and Mar. ca. 8.

* Nota.

See the ſtatutes which inflict the puniſhment of premunire, viz. 2 R. 2. c. 12. 3 R. 2. ca. 3. 7 R. 2. ca. 12. 24 H. 8. ca. 12. 25 H. 8. ca. 19, 20. 1 El. cap. 1. 26 H. 8. cap. 15. 28 H. 8. ca. 16. 1 & 2 Ph. and Mar. cap. 1. 8 El. cap. 1. 5 El. ca. 1. 13 El. ca. 2. 8. 39 El. ca. 18. 27 El. ca. 2. See the fourth part of the Inſtitutes, cap. Chancery, the articles at large againſt Cardinall Woolſey, artic. 7.

We have been the longer concerning caſes of premunire. Firſt, for that they be matters of great weight, and neceſſary to be known, and we wiſh that the offence may never be committed. And ſecondly, for that maſter Stanford hath in effect but named a premunire.

Stan. pl. cor. 44. f.

CAP. LV.

OF PROPHESIES.

33 H. 8. cap. 14.
1 E. 6. cap. 12. Nota.
1 Mar. ſtat. unicum, Seſſione prima.
5 Eliz. cap. 15. Mitius imperanti melius paretur.
* Nota.
The like act was made, 3 & 4 E. 6. ca. 15. expired.

PROPHESIES upon declaration of armes, fields, names, cognisances, or badges, were made felony without the benefit of clergy: but this act is twice repealed by generall words of all felonies made by any ſtatute ſince the firſt year of H. 8.

In anno 5 Eliz. a more moderate ſtatute was made againſt propheſies by writing, ſinging, or other open ſpeech, or deed, by the occaſion of any armes, fields, beaſts, badges, or other like things accuſtomed in armes, cognisances, or ſignets; or by reaſon of any time, year, or day, name, bloodſhed or warre, * to the intent thereby to make any rebellion, inſurrection, diſſention, loſſe of life, or other diſturbance within this realm, or other the queen's dominions. For the firſt offence, impriſonment of his body by the ſpace of a year without baile, and forfeit to the queene and informer, ten pound. And for the ſecond offence impriſonment during life without baile, and forfeit to the queen all his goods and chattels, reall and perſonall: but he muſt be therefore impeached or accuſed within ſix moneths next enſuing the offence by him done. A juſt and neceſſary limitation, and the rather, for that the offence may be committed by bare words. This offence is to be heard and determined before juſtices of aſſiſe, juſtices of oier and terminer, and juſtices of peace.

See hereafter the chapter of Newes, and the ſecond part of the Inſtitutes, W. 1. cap. 33. He that hath read our hiſtories ſhall finde, what lamentable and fatal events have falne out upon vain propheſies carried out of the inventions of wicked men, pretended to be ancient, but newly framed to deceive true men: and withall, how credulous and inclinable our countreymen in former times to them have been, we will ſet down the truth concerning the ſame.

Auguſt. in lib. Retract.

Certaine it is, that to foretell of things to come, is a prerogative appropriated to the Holy Ghoſt; and that the devill cannot *praedicere*, foretell of things to come, which notwithſtanding, S. Auſtin did ſometime hold that he could. But afterwards juſtly retracted it in theſe words, *Rem dixi occultiſſimam audaciore aſſertione, quam debui, &c. certiſſimum eſt daemones non praeſcire.*

Now for the predictions and foretellings of the Sibyls being Gentiles, ſo long before the incarnation of our Saviour Chriſt; and more directly and particularly, of thoſe high myſteries of the incarnation and paſſion of Chriſt, the coming of Antichriſt, the ſubverſion of Rome, and the end of the world, they are by the true prophets of Almighty God, who ſpake by the Holy Ghoſt, well diſcovered; that while the church was in her cradle, theſe predictions were invented and fathered upon the Gentiles; to the intent to make the doctrine of the ſaid high myſteries of the goſpel the more credible amongſt the Gentiles. And if any ſuch predictions had been by the ſaid Sibyls, out of queſtion thoſe great lights of nature amongſt the Gentiles, Plato, Ariſtotle, Theophraſtus, or

ſome

ſome other of thoſe great philoſophers, that with great alacrity dived into the ſecrets of all kinds of learning, would have found them out, and made ſome mention of them. But beſides the ſaid [a] diſcovery, ſuch predictions by the Gentiles and heathen perſons are [b] againſt the word of God.

Alſo predictions either of the time or end of the world, or that it is at hand, is not lawfull. For the firſt, [c] ſee the firſt of the Acts, It is not for us to know the times and ſeaſons which the Father hath put in his own power, &c. For the ſecond, ſee the ſecond epiſtle to the Theſſalonians. I beſeech you brethren, &c. that you be not ſhaken in mind, or troubled, &c. as though the day of Chriſt were at hand, let no man deceive you by any means.

We have the rather ſaid hereof thus much, for that we have heard divers men boldly and confidently upon their numerall calculation to have erred herein.

[a] Caſaubone Exercit 1. ad apparatum Annalium, cap. 10.
[b] Ezech. c. 3. v. 9 Col. cap. 1. v. 26. Rom. ca. 16. v. 25.

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[c] Acts ca. 1. v. 7. Mat. 24. 36. Mark 13. 32.
2 Theſſ. c. 2. v. 1, 2.

CAP. LVI.

OF APPROVER.

APROVER, or approver, in Latin *probator*, is a perſon indicted of treaſon or felony in priſon for the ſame, and not diſabled to accuſe: he may [a] upon his arraignment, before any plea pleaded and before competent judges [b] confeſſe the indictment, and take a corporall oath to reveale all treaſons and felonies, that he knows, and pray a coroner, before whom he is to enter his appeale or accuſation againſt all thoſe that are *participes criminis*, or of his ſociety in committing of treaſon or felony contained in the indictment, thoſe partners being within the realme: and if upon his appeale [c] all thoſe partners be convicted, the king *ex merito juſtitiæ*, is to pardon him. But it is in the diſcretion of the court, either to ſuffer him to be an approver, or after his approvement to reſpite judgement and execution, untill he hath convicted all his partners.

A prover.] [d] He is by Bracton called *probator*, by Britton, *provor*, by the Mirror *provor* and *approver*: and his name putteth him in minde of his duty, viz, to prove and approve his accuſation or appeale in every point, for [e] any fayler of truth diſableth him *in omnibus*. And as he muſt affirme the truth, and the whole truth, before the coroner in his appeale: ſo in the rehearſall of the appeale before the juſtices, it muſt agree with the appeale, 26 Aſſ. p. 19. and Bracton *ubi ſupra*. [f] In one record I finde him called *appellator*.

Perſon.] This extendeth not to a peer or a lord of parliament, for it is againſt Magna Carta, cap. 29. for him to pray a coroner.

[g] A man attainted of treaſon or felony cannot become an approver, becauſe (as the book ſaith) he is *hors de la ley*. Alſo though he be indicted, yet if he be out of priſon, he cannot approve.

Parl 28 E. 1. ca. Note, for confronting.
[a] 9 H 5 cor. 440. 21 E. 3. 19. 19 H. 6. 47. 2 H. 7. 3. 12 E. 4. 10. 3 H. 6. 50, 51.
[b] 1 H. 5. cor. 441. 3 H. 6 50, 51 in bank le roy. Paſch. 2. H. 4. coram rege pl. 6.
[c] 21 H. 6. 29. b. & 34. b.
[d] Bract. lib. 3. fo. 122. b. & 152, &c. Britton. fo. 7. 11. 17. 48. Mir. cap. 1. § 13. cap. 3. exec. al provors, cap. 5.
[e] 25 E. 3. 42. 21 H. 6. 34. 22. E. 3. cor. 460. 26. Aſſ. p. 19.
[f] Paſch. 2 H. 4. coram rege. 5.
[g] 11 Aſſ. pl. 17. 21 E. 3. 18.

19 E 2. cor. 387. 19 E. 3. ibid. 443. 17 E. 3. 13.

h Mir. ca. 1. § 13. Stanf. pl. cor. 140. d.

h The Mirror ſaith, that women, infants, idiots, lepers, or profeſſors in order of religion, or clerks, or perſons attainted of felony, or *non compos mentis*, cannot be approvers: and Stanford added men above the age of 70, or maymed: becauſe ſome of them cannot take an oath, and none of them can wage battell.

i 40 Aſſ. 39. 15 E. 3. cor. 113. 11 H. 7. 5.

Indicted.] i For in any appeale either by writ or bill the defendant ſhall not become an approver: and before indictment, no perſon can approve, becauſe if his approvement be falſe, no judgement (whatſoever he confeſſed) can be given againſt him, unleſſe he be indicted, k and no judgement can be given againſt him if his appeale be falſe, but of the offence contained in the indictment, and ſo are the books to be underſtood.

k 25 E. 3. 39.

l 18 H. 5. cor. 442.

l If one be indicted and approve, if after an appeale be ſued againſt him, the approvement ceaſeth.

m 19 H. 6. 4. 12 E. 4. 10. 6 H. 6. cor. 131. 19 E. 2. cor. 387.

Of treaſon or felony.] And that is only of that treaſon or felony that is contained in the indictment, as hath bin ſaid. m See Trin. 3 H. 4. Rot. 19. coram rege Hertford. *Probator in duello decisus appellat', de alta proditione, * pro qua decretus ſuſpenditur, decapitatur, et quatuor ſua dicitur, et ſtatile ibid. Anglia.*

* [130]

a 6 H. 6. ubi ſupra. 21 E. 3. tit. 18. V. 3 H. 6. 51, 52.

In priſon.] a Albeit he be indicted, yet if he be at large, and not in priſon, he cannot approve as before is ſaid.

b Bract. ubi ſup. 9 H. 4. 1. 2 H. 4. 19. 44 E. 3. 44. Lib. 10. fo. 76. b. 12 E. 4. 10. 21 H. 6. 34, 35.

Conſtituted iuſtice.] b As juſtices of the kings bench, juſtices of oier and terminer, and of goale delivery, but not juſtices of peace, becauſe they have no authority by their commiſſion to aſſigne a coroner. And by the ſame reaſon the lord high ſteward of England cannot aſſigne a coroner in caſe of treaſon or felony.

40 Aſſ. 39. 10 E. 4. 14.

Corporall oath.] Though the oath be generall of all treaſons and felonies, yet in courſe of law no approvement can be, but of the offence contained in the indictment as hath been ſaid. And this oath and the accuſation of himſelf make his appeale or accuſation of another of the ſame crime, to amount in law to an indictment.

1 E. 3. 17. 1 Aſſ. p. 2.

Particeps criminis.] For it cannot be of another treaſon or felony then is contained in the indictment.

Within the realme.] For if it be out of the realme, it wanteth triall, and therefore the accuſation or appeale not to be allowed.

26 Aſſ. 19. 8 H. 5 cor. 459. 21 H. 6. 34. 12 E. 4. 10.

Ex merito juſtitiæ.] And the reaſon is, for that he riddeth the countrey of wicked and hurtfull miſdoers: whereby the kings peace is kept, and the ſubject enjoyeth his own quiet. And therefore the king doth in the meane time give him wages.

Mich. 39 E. 3. coram rege Rot. 97. Suff.

A man became an approver and appealed five, and every of them joyned battell with him. *Et duellum percuſſum fuit cum omnibus, et probator devicit omnes quinque in duello, quorum quatuor ſuſpendebantur, et quintus clamabat eſſe clericum, et allocatur; et probator perdonatur:* ſo as the approver did and ought to fight in that caſe with all the appellees. But if there be two or more approvers againſt one man of one felony, and he joyne battell with them all, and vanquiſh the firſt, he is acquited againſt the other. Concerning the proces upon an approvement and other incidents, you may reade in Mr. juſtice Stanford, which need not here to be rehearſed.

7 E. 3. 7. 11 E. 4. 91. b. Of battell ſee more here, cap. Single combat, and the ſecond part of the Inſtitutes, Weſtm. 1. cap. 40.

* If the appellee joyne battell, or plead not guilty, and after

* 47 E. 3. 5.

the

the king pardoneth the approver, the appellee ſhall be diſcharged, and ſhall not be arraigned at the ſuit of the king.

Convicted.] The appellee may chooſe either to wage battell with the approver, or to put himſelf upon the countrey; and if the appellee be found guilty by verdict, it ſerveth as well for the approver, as if he had been overcome by battell. And therefore the book in 19 H. 6. 35. is miſprinted, or miſreported: and the note of Fitzh. in abridging the caſe, tit. Coron. pl. 6. in the end, is againſt law. *Vid.* Rot. Parl. 17 E. 3. nu. 36.

Stanf. pl. cor. 142.

19 H. 6. 35. a. Rot. Parl. 17 E. 3. nu. 36.

CAP. LVII. [131]

OF APPEALS.

OF appeals we have ſpoken in the firſt and ſecond parts of the Inſtitutes, and you may reade thereof in my reports, lib. 4. fo. 40, 41, 42, &c. lib. 5. fo. 105. 111. lib. 6. fo. 44. 80. lib. 7. fo. 13. 30. lib. 9. fo. 13. 119. Whereunto we will adde a [b] caſe which was adjudged in an appeal, where the caſe, as touching the point of the appeal, was thus. Thomas Burghe, brother and heire of Henry Burghe brought an appeale of murder againſt Thomas Holcroft, of the death of the ſaid Henry: the defendant pleaded, that before the coroner he was indicted of manſlaughter, and before commiſſioners of oier and terminer, he was upon that indictment arraigned, and confeſſed the indictment, and prayed his clergie, and thereupon was entred *curia adviſare vult*, and concluded, and demanded judgement, if that appeal the plaintife againſt him ought to maintain: whereupon the plaintife demurred in law. And in this caſe three points were adjudged by ſir Chriſtopher Wray, ſir Thomas Gawdie and the whole court.

First part of the Inſtitutes. § 189, 500, 501. Second part of the Inſtitutes, in Mag. Cart. ca. 34. W. 1. ca. 14. fo. 460. Cuſt. de Norm. cap. 68.

[b] Paſch. 20 Eliz. in the k. bench. Tho. Holcrofts caſe, and after, viz. Mich. 33 & 34 Eliz. between Kath. Wrote, late the wife of Rob. Wrote, pl. in an appeale againſt Tho. Wiggs def. *coram rege*, for the death of her huſband, reſolved againe accordingly.

Firſt, that the matter of the barre had been a good barre of the appeale by the common law, as well as if the clergie had been allowed: for that the defendant upon his confeſſion of the indictment had prayed his clergy, which the court ought to have granted, and the deferring of the court to be adviſed, ought not to prejudice the party defendant, albeit the appeale was commenced before the allowance of it.

The ſecond point adjudged was, that this caſe was out of the ſtatute of 3 H. 7. for that the words of that act are.

If it fortune that the ſame felons and murderers, and acceſſories ſo arraigned, or any of them to be acquited, or the principall of the ſaid felony, or any of them to be attainted, the wife or next heire of him ſo ſlaine, &c. may have their appeal of the ſame death and murder againſt the perſons ſo acquited, or againſt the ſaid principals ſo attainted, if they be alive, and that the benefit of his clergie thereof before be not had.

3 H. 7. cap. 1.

And

And in this caſe the defendant Holcroft, was neither acquited nor attainted, but convicted by confeſſion, and the benefit of clergy prayed,* as is aforeſaid. So as the ſtatute being penall concerning the life of man, and made in reſtraint of the common law, was not to be taken by equity, but is *caſus omiſſus*, and left to the common law.

As to the third it was objected, that every plea ought to have an apt concluſion, and that the concluſion in this caſe ought to have beene, *Et petit judicium ſi prædict. Thomas Holcroft iterum de eadem morte, die qua ſemel convictus fuit, reſpondere compelli debeat.* But it was adjudged that either of both concluſions was ſufficient in law: and therefore that exception was diſallowed by the rule of the court.

11 H. 4. 11. Pl. com. 306. b.

Nota, the ancient law was, that when a man had judgement to be hanged in an appeal of death, that the wife, and all the blood of the party ſlaine ſhould draw the defendant to execution, and Gaſcoigne ſaid, *Iſſint fuit in diebus noſtris.*

Trin. 10 E. 1. in Banco, Rot. 30. Norff.

Richardus de Crek appellat quinque pro felonia, et offert diſrationare per corpus ſuum contra quemlibet eorum ſeparatim. Ipſi petunt ſe allocari, quod ubi appellans dicit in appello ſuo, quod ipſi fregerunt oſtium Bracini, et non ſpecificat ex parte domus illius prædictum oſtium ſcitum fuit, et petunt judicium. Et Joh. Warnerius defendent' defendit feloniam, et

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tetum, et paratus eſt defendere per corpus ſuum ſicut curia conſideraverit. Ricus dicit quòd non poteſt pugnare contra prædictum Johannem eo quod ipſe mahematus eſt in humero ſuo dextro. Et prædictus Johannes petit judicium deſicut prædictus Ricus appellando ipſum optulit diſrationare prædictum Robertum verſus ipſum tanquam felonem prout cur' conſider' per corpus ſuum, et nullam fecit mentionem de aliquo mahemio, unde petit judicium de appello iſto. Et ideo conſiderat' eſt tam ad calumpniam prædicti Henr. et aliorum, quàm prædicti Johannis, quòd appellum ejus nullum. Set pro rege inquiratur rei veritas, &c.

Nota how the concluſion of the appeal of felony ought to be when the plaintif is mayhemed and cannot make tryall by battail.

* There lay an appeal of high treaſon by the common law either in parliament before the ſtatute of 1 H. 4. ca. 14. or in ſuch of the kings courts as have juriſdiction thereof triable by battail or verdict: and this appeareth by all our ancient authors, and divers records, and ſee in Bracton, fo. 119. a. What pleas the defendant in the appeal of treaſon may have, to diſable the plaintif to maintain his appeal, ſee Fleta ubi ſupra, and Britton ubi ſupra.

* See before c. 1. high treaſon, fo. 6. 1 H. 4. ca. 14. Glanv. li. 14. c. 1. Bracton, lib. 3. fo. 118, 119. Britton cap. 16 Mich. 4 H. fol. 123.

8 & 29. Fleta lib. 1. ca. 21. The Mirror cap. 2. § 11. Pat. 25 E. 3. part. 1 m. 4. coram rege Rot. 22. &c. 8 H. 6. ca. 10. F. N. B. 115. Lib. Intrat Fol.

CAP.

CAP. LVIII.

OF TREASURE TROVE.

Theſaurus inventus.

TREASURE trove is when any gold or ſilver, in coin, plate, or bullyon hath been of ancient time hidden, whereſoever it be found, whereof no perſon can prove any property, it doth belong to the king, or to ſome lord or other by the kings grant, or preſcription. Cuſtum. de Nor. ca. 18.

The reaſon wherefore it belongeth to the king, is a rule of the common law; that ſuch goods whereof no perſon can claim property belong to the king, as wrecks, ſtrays, &c. *Quod non capit Chriſtus, capit fiſcus.* It is anciently called * *fyndringa*, of finding the treaſure. And now let us peruſe this deſcription. * Inter leges H. 1. ca. 11.

Gold or ſilver.] For if it be of any other metall, it is no treaſure; and if it be no treaſure, it belongs not to the king, for it muſt be treaſure trove. Pl. Com. in caſe de Mines per totum. Vid. Bract. l. 2. fo. 222. Auri fodina, et argenti fodina. Fleta, lib. 4. ca. 19. Rot. Parl. 3 R. 2. nu. 42. 27 Aſſ. p. 19.

It is to be obſerved, that veyns of gold and ſilver in the grounds of ſubjects belong to the king by his prerogative, for they are royall mines, but not of any other metall whatſoever in ſubjects grounds.

Whereſoever.] [a] Whether it be of ancient time hidden in the ground, or in the roof, or walls, or other part of a caſtle, [b] houſe, building, ruines, or elſewhere, ſo as the owner cannot be known.

Whereof no perſon can prove any property.] For it is a certain rule, [c] *Quòd theſaurus non competit regi, niſi quando nemo ſcit qui abſcondit theſaurum.*

Of ancient time hidden.] [d] *Eſt autem theſaurus vetus depoſitio pecuniæ, &c. cujus non extat modo memoria, adeo ut jam dominum non habeat.*

Belong to the king.] [e] Where of ancient time it belonged to the finder, * as by the ſaid ancient authors it appeareth. And yet I find that before the conqueſt, *Theſauri de terra domini regis ſunt, niſi in eccleſia, vel cœmeterio inveniantur; et licet ibi inveniatur aurū, regis eſt, et medietas argenti eſt medietas eccleſiæ, ubi inventum fuerit, quæcunque ipſa fuerit, vel dives, vel pauper.*

By the kings grant or preſcription.] 21 H. 6. tit. Preſcription. 4. 22 E. 3. cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Stanf. pl. cor. 39. b. lib. 5. fo. 109. b.

The puniſhment of him that concealeth, &c. it.] It appeareth by Glanvill, and Bracton alſo, that *occultatio theſauri inventi fraudulosa* was ſuch an offence, as was puniſhed by death. But it hath been reſolved, that the puniſhment for concealment of treaſure trove, is by fine and impriſonment, and not * of life and member.

Pl. Com. in caſe de Mines per totum. Vid. Bract. l. 2. fo. 222. Auri fodina, et argenti fodina. Fleta, lib. 4. ca. 19. Rot. Parl. 3 R. 2. nu. 42. 27 Aſſ. p. 19.
[a] Bract. l. 1. fo. 10. li. 3. 120. Britton, fo. 3. b. 7. b. 26. b. 71. b. Mir. ca. 1. § 3. & § 13. ca. 3. §. iſto. Glanv. l. 1. ca. 1. li. 14. ca. 2.

[b] In bundell inquiſit. 32 E. 3. in Abbathia Sanctæ Mariæ Eborum. Bract. ubi ſupra. Non refert in quo loco hujuſmodi theſaurus inveniatur.
[c] 22 H. 6. Cor. 446.
[d] Bract. ubi ſupra, and the other ancient authors agree thereunto. [e] Glanv. li. 1. c. 1. li. 14. ca. 2. 8 E. 2. Cor. 436. 22 E. 3. *ibid.* 241. Glanvil, ubi ſup. Bracton and the other authors ubi ſupra. * 22 Aſſ. p. 99.

To

The ancient authors ubi ſupra, agree hereunto.

To whom the charge thereof belongeth.] It belongeth to the coroner, as appeareth by the ſtatute *de officio coronatoris*, *anno* 4 E. 1.

CAP. LIX.

OF WRECK.

SEE the ſecond part of the Inſtitutes W. 1. cap. 2. and the expoſition upon the ſame.

CAP. LX.

Of Falſe Tokens, or Letters in other Mens Names.

33 H. 8. ca. 1. IF any perſon falſly and deceitfully obtain into his hands any moneys, goods, chattels, jewels, or other things of any perſon or perſons, by colour or means of any falſe or privy tokens, or counterfeit letters made in any other mans name, &c. he ſhall ſuffer ſuch correction by puniſhment of his body, ſetting upon the pillory, or other corporall pain (except pains of death) as ſhall be to him adjudged by the perſon and perſons before whom he ſhall be convicted, with a ſaving to the party grieved by ſuch deceit, ſuch remedy by way of action, or otherwiſe, as he might have had by the common law.

Here it is to obſerved, that upon this ſtatute, for this offence the offender cannot be fined, but corporall pain only inflicted.

CAP. LXI.

OF THEFTBOTE.

Stat. Wall. anno 12 E. 1. Vet. Mag. Cart. pt. 2. fo. 6.

THEFTBOTE (deſcribed by act of parliament) *eſt emenda furti capta ſine conſideratione curiæ domini regis*: and ſo much the word ſignifieth, *bote* being taken for amends: *theftbote*, that is, amends for theft.

See Rot. clauſ. an. 1 E. 1. m. 7. 42 Aſſ. p. 5.

This offence is more then miſpriſion of felony, for that is not a concealment of his bare knowledge only: but theftbote is when the owner

owner not only knowes of the felony, but taketh of the thief his goods again, or amends for the ſame to favour or maintain him, that is, not to proſecute him, to the intent he may eſcape: but in that caſe, if he receive the thief himſelf, and aid and maintain him in his felony, then is he acceſſory to the felony. And ſo note a diverſity, *quando proprietarius recipit latrocinium, et quando latronem*, But if a man take his goods again that were ſtollen, it is no offence, unleſſe he favour the thief, as is aforeſaid.

Mir. ca. 2. § 12. 3 E. 3. Cor. 353. Stanf. pl. coron. 40. b. 42 Aſſ. ubi ſupra.

The puniſhment of theftbote is ranſome and impriſonment: and ſeeing the puniſhment of theftbote, which is greater then concealment of felony, is but ranſome and impriſonment, it ſtandeth with reaſon, that the puniſhment of * miſpriſion of felony ſhould be but fine and impriſonment. Theftbote is ſometimes taken *pro ipſo latrocinio*, for the thing itſelf ſtollen from you.

3 E. 3. Cor. 353.

You ſhall read in ancient authors of redoubbors, addoubors, derived of the French word *adloubeur*, they are in law patchers, botchers, or menders of apparell, that take * theftbote of cloth (and change it into another faſhion) and are dwelling out of burghs and cities; becauſe in thoſe days burghs and cities were ſo well governed, as ſuch offenders were ſoon diſcoverd: for they were not then commended, for that they were populous, but for that the governors were provident in preventing of offences.

* See before in the chapter of Miſpriſion of Treaſon, ca. 3. Mir. ca. 1. §. 17. Britton, fo. 33.

* That is, ſtoln cloth.

CAP. LXII.

OF INDICTMENTS.

CONCERNING Indictments we have ſpoken ſomewhat in the firſt part of the Inſtitutes. Sect. 194. 208. And you may read in my Reports many reſolutions concerning indictments, viz. lib. 4. fo. 40, 41, 42. &c. lib. 5. fo. 120, 121, 122, 123. li. 7. fo. 5, 6. 10. li. 8. fo. 57. 36, 37. li. 9. fo. 62, 63. 116. 118.

See the 1 pt. of the Inſtitutes, ſect. 194, 195.

We will add one point adjudged in the caſe between Burgh and Holcroft before mentioned in the chapter of Appeals, which was, that where it is provided by the ſtatute *de Artic ſuper Cartas*, cap. 3. *En caſe de mort del home (deins le verge) ou office del coroner appent as viewes, et enqueſts de ceo faire, ſoit maunde al coroner del pais que emſemblement ove le coroner del hoſtel le roy face loffice que appent*, &c. And in that caſe one man was coroner both of the kings houſe, and of the county, and the indictment of manſlaughter was taken before him as coroner both of the kings houſe, and of the county. And it was adjudged that the indictment was good, becauſe the miſchief expreſſed in the ſtatute was remedied, as well when both offices was in one perſon, as when they were in divers: and therefore in this caſe the rule did hold, *Quando duo jura concurrunt in una perſona, æquum eſt, ac ſi eſſet in diverſis.*

Holcrofts caſe. Artic. ſuper Cart. ca. 10. The ſame was again reſolved in Wrots caſe, ubi ſupra.

Richard Weſton, yeoman, late ſervant of Sir Gervaſe Elwys, lieutenant of the Tower, and under the lieutenant, keeper of Sir Thomas Overbury then priſoner in the Tower, was indicted: for that he the ſaid Richard the 9 day of May *an.* 11. *Ja. regis*, in the

Sir Tho. Overburies caſe. Mich. 13 Jac. See before, ca. 7. Of murder more of this caſe.

the Tower of London, gave to the ſaid Sir Tho. Overbury poyſon called roſeacre in broth, which he the ſaid Sir Thomas received. *Et ut idē Rich. Weſton præfatum Tho. Overbury magis celeriter interficeret et murdraret*, 1 *Junii anno* 11 *Ja. regis ſupradict.* gave to him another poyſon called white arſenick, &c. and that 10 *Julii an.* 11. *ſuprad.* gave to him a poyſon called mercury ſublimat' in tarts, *ut prædict' Tho. Overbury magis celeriter interficeret et murdraret:* and that a perſon unknown in the preſence of the ſaid Richard Weſton, and by his commandment and procurement, the 14 of Septemb. *anno* 11. *ſupradict.* gave to the ſaid Sir Thomas a glyſter mixt with poyſon called mercury ſublimat, *ut prædictum Thomam magis celeriter interficeret et murdraret. Et prædictus Thomas Overbury de ſeveralibus venenis prædictis et operationibus inde, à prædictis ſeperalibus temporibus, &c. graviter languebat uſque ad* 15 *diem Septemb. anno* 11. *ſupradicto, quo die dictus Thomas de prædictis ſeperalibus venenis obiit venenatus, &c.* And albeit it did not appear of which of the ſaid poyſons he died, yet it was reſolved by all the judges of the kings bench, that the indictment was good; for the ſubſtance of the indictment was, whether he was poyſoned or no. And upon the evidence it appeared, that Weſton within the time aforeſaid had given unto Sir Thomas Overbury divers other poyſons, as namely the powder of diamonds, cantharides, lapis cauſticus, and powder of ſpiders, and aqua fortis in a glyſter. And it was reſolved by all the ſaid judges, that albeit theſe ſaid poyſons were not contained in the indictment, yet the evidence of giving them was ſufficient to maintain the indictment: for the ſubſtance of the indictment was (as before is ſaid) whether he were poyſoned or no. But when the cauſe of the murder is laid in the indictment to be by poyſon, no evidence can be given of another cauſe, as by weapon, burning, drowning, or other cauſe, becauſe they be diſtinct and ſeveral cauſes: but if the murder be laid by one kind of weapon, as by a ſword, either dagger, ſtyletto, or other like weapon is ſufficient evidence, becauſe they be al under one claſſis or cauſe. And afterwards, Ann Turner, Sir Gervaſe Helwys, and Richard Franklyn a phyſitian, (purveyor of the poyſons) were indicted as acceſſories before the fact done: And it was reſolved by all the ſaid judges, that either the proofs of the poyſons contained in the indictment, or of any other poyſon were ſufficient to prove them acceſſories: for the ſubſtance of the indictment of them as acceſſories was, whether they did procure Weſton to poyſon Sir Thomas Overbury: and becauſe that not only Ann Turner, and Richard Franklyn, but ſome of the degree of nobility were indicted as acceſſories in another county, viz. in the county of Midd. divers notable points were reſolved upon the ſtatute of 2 E. 6. Firſt, if the acceſſory be in the county of Midd. where the kings bench is, and the principall did the felony, &c. in another county, that the court of the kings bench is within the words of that act, viz. (and that the juſtices of gaol-delivery, or oier and terminer, or two of them, &c.) for the cauſes and reaſons given in the lord Zanchers caſe, lib. 9. fo. 117, 118. &c. Secondly, if the indictment be taken in the kings bench, then the juſtices ſhall not write in their own names, *quia placita ſunt coram rege.* Thirdly, divers preſidents were ſhewed where the acceſſory was in the county of Midd. where the kings bench ſat, and the principall was attainted in another county, that the

Vid. l. 9. fo. 67. Mackallies caſe acc.

2 E. 6. cap. 24.

the juſtices of the kings bench have removed the record of the attainder of the principall before them by *certiorari*, and ſo it was done in the lord Zanchers caſe, *ubi ſupra*. The like preſident was ſhewed in a caſe where the principall was attainted in the county of Oxon, and the acceſſory was in Midd. and the kings bench ſitting there, the juſtices of the ſame court removed the attainder before them by *certiorari*. Fourthly, it was reſolved, that the lord ſteward of England, who is a judge in caſe of high treaſon, or felony committed by any of the peers of the realm, is within theſe words, juſtices of gaol-delivery, or oier and terminer, becauſe he is a juſtice of oier and terminer, for his authority is by commiſſion, and the words of his commiſſion be after divers recitals, *Et ſuperinde, audiend', examinand', et reſpondere compellend', et ſine debit' terminand.*: ſo as he hath power to heare and determine. And where the words be [or any two of them] that is to be intended, where there be two or more juſtices, and yet where there is but one, it extendeth to him. As the ſtatute of Merton, cap. 3. power being given to the ſheriffe in caſe of rediſſeiſin, the words be, *aſſumptis tecum coronatoribus placitorum coronæ, &c.* in the plurall number. And yet where there is but one coroner in the county the ſtatute extends thereunto, and the ſheriffe ſhall take that one. Alſo the words of the ſtatute are further, That then the juſtices of gaol-delivery or of oier and terminer, or other there authorized: within which words, [or other there authorized] the lord ſteward is included. Fifthly, if the record of the attainder were by writ of *certiorari* removed out of London into the kings bench, then there aroſe another doubt upon the ſaid ſtatute, if afterward any proceeding ſhould be had againſt any peer, for that the words of the ſtatute be, The juſtices, &c. ſhall write to the cuſtos rotulorum or keeper of the record where ſuch principall ſhall hereafter be attainted; and the attainder in this caſe was in London, and the kings bench was in Middleſex: ſo as if the record ſhould be removed into the kings bench in Middleſex, the record ſhould not be where the attainder was had; and conſequently, the lord ſteward could not write to the kings bench. And therefore to prevent all queſtions, it was reſolved, that in this caſe of the lord ſteward, no *certiorari* ſhould be granted, but a ſpeciall writ ſhould be directed according to the words of the ſaid act to the commiſſioners of oier and terminer in London, to certifie whether the principall was convict or acquitted: and they made a particular certificate accordingly, ſo as the record of the attainder of the principall, did notwithſtanding that certificat, remain with the commiſſioners of oier and terminer in London: ſo as if any further proceeding ſhould be had, the lord ſteward might write to them, as after he did in the caſe of R. earl of S. and F. his wife.

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39 H. 6. 42.
23 Aſſ. p. 7.

And it is to be obſerved, that the ancient wall of London (a mention whereof doth yet remain) extended through the Tower of London; and all that which is on the weſt part of the wall, is within the city of London, viz. in the pariſh of All Saints Barking, in the ward of the Tower of London: and all that is on the eaſt part of the wall is in the county of Middleſex; and the chamber of Sir Thomas Overbury was within the Tower on the weſt part of the ſaid wall, and therefore Weſton was tried within the city of London.

And

And where it is often ſaid in many [a] acts of parliament, [b] records, and [c] book caſes, that the king cannot put any man to anſwer, but he muſt be appriſed by indictment, preſentment, or other matter of record. True it is, in pleas of the crown or other common offences, nuſances, &c. principally concerning others, or the publick, there the king by law muſt be appriſed by indictment, preſentment, or other matter of record: but the king may have an action for ſuch wrong as is done to himſelfe, and whereof none other can have any action but the king, without being appriſed by indictment, preſentment, or other matter of record, as a [d] *quare impedit*, [e] *quare incumbravit*, a writ of [f] attaint, [g] of debt, [h] detinue of ward, [i] eſcheat, [k] *ſcire fac. pur repealer patent*, &c.

[a] Mag. Cart. ca. 29. 5 E. 3. ca. 9. 25 E. 3. c. 4. ſtat. 5. 28 E. 3. ca. 3. 37 E. 3. cap. 18. 38 E. 3. cap. 9. 42 E. 3. cap. 3.
[b] Rot. clauſ. 18 H. 3. m. Rot. Parl. 15 E. 3. nu. 9, 10. & 15. 42 E. 3. nu. 29. Sir John A Lees caſe. 17 R. 2. nu. 37. 2 H. 4. nu. 60.

[c] 7 E. 3. fo. 26. 50. Vide 6 E. 3. fo. 33. & 8 E. 3. 30. 26 E. 3. 74. tit. Reſcous 21. 43 E. 3. 32. per Knivet. 2 E. 3. fo. 7. John de Britains caſe, 3 E. 3. 19. 45 E. 3. Decies tantum 12. [d] 5 E. 2 Quar. Imp. 167. 33 E. 3. Bre. 916. [e] 17 E. 3. 50. 74 F. N. B. 48. f. 13 E. 3. Jurisd. 23. [f] 42 E. 3. 26. F. N. B. 107. D. [g] 19 H. 6. 47. 34 H. 6. 3. &c. [h] 39 H. 6. 26. 1 H. 4. 1. 15 E. 3. Corody 4. [i] Regiſt. fo. 165. a. F. N. B. fo. 7. b. 21 H. 3. Bre. 882. Britton fo. 28. b. cap. 18. [k] 16 E. 3. Bre. 651.

CAP. LXIII.

Of Councell learned in Pleas of the Crowne.

See before cap. 2. Petit Treaſon. fo. 29. 34. 9 E. 4. 22. Stanf. pl. cor. 151. b. otherwiſe it is in an appeale which is the ſuit of the party.

WHERE any perſon is indicted of treaſon or felony, and pleadeth to the treaſon or felony, not guilty, which goeth to the fact beſt known to the party; it is holden that the party in that caſe ſhall have no councell to give in evidence, or alleage any matter for him: but for as much as *ex facto jus oritur* it is neceſſary to be explained, what matters upon his arraignment, or after not guilty pleaded, he may alleage for his defence, and pray councell learned to utter the ſame in forme of law.

1. And firſt upon the arraignment what advantage he may take in caſe of high treaſon by the common law. If it be for compaſſing the death of the king, he may alleage, that in the indictment there is no ſuch overt or open act ſet down in particular, as is ſufficient in law or the like. For it is to be obſerved, that in no caſe the party arraigned of treaſon or felony, can pray councell learned generally, but muſt ſhew ſome cauſe.

1 H. 7. 22.

2. Secondly, in caſe of high treaſon by force of any ſtatute, he may alleage, that the indictment being grounded upon a ſtatute, the ſtatute is either miſtaken or not purſued.

3. Thirdly, of what matters he may take advantage equally concerning them both. He may alleage, that there was not at the time of the indictment of high treaſon, two lawfull accuſers, that is, two lawfull witneſſes.

4. Fourthly, of what matters he may generally take advantage in all caſes of treaſon and felony. He may alleage, that the offence is not certainly alleaged in reſpect of the matter, time, and place, or that he

he is not rightly named, or have not a right addition, or that the offences were done before the laſt generall pardon.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence: he may alleage, that he ought to have two lawfull witneſſes in caſe of high treaſon to prove the fact againſt him. 5.

Sixthly, he may take advantage in arreſt of judgement, if the verdict be found againſt him, that the triall came not out of the right place: as it fell out in Arundels caſe, convicted by a jury of wilfull murder; he informed the court that the jury that tried him came out of a wrong place, and thereupon he had councell learned aſſigned him; who indeed found, that the *venire facias* was miſawarded, and the court thereof by the councell being informed, judgement was ſtayed. And that the priſoner may alleage theſe or the like matters, it is evident, becauſe for every matter in law riſing upon the fact, the priſoner ſhall have councell learned aſſigned him. Alſo it is lawfull for any man that is in court, to informe the court of any of theſe matters, leſt the court ſhould erre, and the priſoner unjuſtly for his life proceeded with. And the reaſon wherefore regularly in caſe of treaſon and felony, when the party pleads not guilty, he was to have no counſell, was for two cauſes. Firſt, for that in caſe of life, the evidence to convince him ſhould be ſo manifeſt, as it could not be contradicted. Secondly, the court ought to ſee, that the indictment, triall, and other proceedings be good and ſufficient in law; otherwiſe they ſhould by their erroneous judgement attaint the priſoner unjuſtly. 6.

Lib. 6. fo 14. Arundels cafe.

9 E 4. 22.

Stanf. ubi ſup. 7 H. 4. 34, &c. See before fo. 19.

Robert Chirford counſelled the prior of the priory of Binham in Norfolke, that John of Leiceſter the kings ſerjeant at armes, comming to the priory with the kings writ of privie ſeale, ſhould not be admitted to the priory: for which counſell he was indicted in the kings bench, and depending the proces upon the indictment, the king doth pardon him: and in the pardon is contained a *ſuperſedeas* to the juſtices, commanding them to proceed no further.

Rot. clauſ. 14 E. 2. 17. 27 Octob.

CAP. LXIV. [138]

Of Principall and Acceſſory.

ALBEIT juſtice Stanford hath well collected the books concerning principall and acceſſory, yet *diverſa deſiderantur*: and neceſſary it is, that ſome things touching the ſame ſhould be added, which are very neceſſary to be knowne.

It is a ſure rule in law, that *in alta proditione nullus poteſt eſſe acceſſorius, ſed principalis ſolummodo.* This rule being well underſtood, will open the reaſon of divers caſes, which yet are involved in darkneſſe.

High treaſon is either by the common law, or by act of parliament: we will ſet downe examples (which ever do illuſtrate) of both.

Mich. 12 & 13 Eliz 296. Dier, Coniers caſe.

A. doth counterfeit the kings coine, viz. ſhillings, and C. knowing the ſame doth receive A. and comfort and aide him: this counterfeiting is high treaſon by the common law in A, as hath been ſaid: and yet it hath beene holden that in this caſe C. hath not committed treaſon: for ſay they, in caſe of felony, a receiver of a felon after the felony done, knowing him to be a felon, is no principall, but an acceſſory: and for that there is no acceſſory in treaſon, therefore C in the caſe before committeth no treaſon; for then in judgement of law he muſt be a counterfeiter of the kings coine within our ſtatute of 25 E. 3. which he is not: and therefore they ſay, this is *caſus omiſſus*, and not within any of the claſſes or heads of the ſaid act of 25 E. 3. But all agree, that procurors of ſuch treaſon to be done before the fact done, if after the fact be done accordingly, in caſe of treaſon, are principals, for that they are *participes criminis* in the very act of counterfeiting.

[a] 19 H. 6. 47. 3 H. 7. 10. Staff. fo. 3. See before ca. Treaſon. Verb. Si homo counterface le grand ſeale.

[a] But ſaving reformation we hold, that if any man committeth high treaſon, and thereby becommeth a traytor, if any other man knowing him to be a traytor, doth receive, comfort, and aide him, he is guilty of treaſon, for that there be no acceſſories in high treaſon.

[b] Paſch. 4. Jac. Abingdons caſe reſolved by the juſtices.

[b] And ſo it was reſolved in the caſe of Abingdon, who received, comforted, and aided Henry Garnet ſuperior of the jeſuits, knowing him to be guilty of the powder treaſon, and accordingly Abingdon was indicted and attainted of high treaſon.

[c] M. 12 & 13 El. ubi ſupra. See before ca. 3. Of Miſpriſion of Treaſon.

[c] And where it is ſaid, that the ſaid offence in Conyers caſe was miſpriſion of treaſon, that cannot be, becauſe there was a conceit, and not a concealment only: otherwiſe, high treaſon being the higheſt offence, ſhould have more favour, then felony: for the receiver and comforter in caſe of felony is punished by death, and ſo is not he that committeth miſpriſion of treaſon. And laſtly, this is no new treaſon, but a partaking and a maintaining of the old.

In caſe of felony there are principals and acceſſories, and acceſſories be of two ſorts, either before the offence be committed, or after. See the ſecond part of the Inſtitutes, W. 1. cap. 14. And concerning this, there be alſo certaine rules, [d] *Nullus dicitur fore principalis, niſi actor, aut qui præſens eſt abettans, aut auxilians actoris ad feloniam faciendam.* But this rule hath his exception: for [e] in caſe of poyſoning, if one layeth poyſon for one, or infuſe it into broth, or the like, albeit he be not preſent when the ſame is taken; and either the party intended, or any other is poyſoned, yet is he a principall: and in that caſe, both the principall and procurer, or acceſſory may be abſent. See the bookes aforeſaid for acceſſories before the felony committed, and where and in what manner the procurement ſhall be ſaid in law to be purſued: the learning whereof is ſo plainly ſet downe, as the ſame need not herein to be repeated. [f] *Nullus dicitur acceſſorius poſt feloniam, ſed ille qui novit principalem feloniam feciſſe, et illum receptavit * et comfortavit.* [a] And therefore if a man write letters for his deliverance, or in favour of him, or the like; he is no acceſſory, for that he received not the felon.

[d] 7 H. 4. 27. 21 E. 4. 71. 13 H. 7. 10. Pl. com. Lib. 4. fo. 42 in Heydons caſe. Lib. 9. fo. 67. Mackalyes caſe. & lib. 11. fo. 5.

[e] Lib. 4. fo. 44. Vaux̃es caſe. Pl. com. fo. 474. Saunders caſe. Lib. 9. 81. Agnes Gores caſe. See Paſc. 32. E. 3. coram rege rot. 62. Ph. Cliftons caſe.

[f] 25 E. 3. 39. b. cor. 126. 26 Aſſ. 47. 9 H. 4. 1. 7 H. 6. 42.

[a] 26 Aſſ. ubi ſup.

[b] A vicar, which inſtructed an approver which could not reade, whileſt he was in priſon, to reade, whereby he eſcaped, was adjudged no acceſſory to the felony.

[b] Mic. 7 R. 2. coram rege rot. 23. Cant. 7 H. 4 27.

Catlyn

Catlyn and Browne juſtices of aſſiſe in the county of Suffolke put this caſe to all the judges. [c] A man committed felony in the county of Suffolke, for which he was committed to the gaole; and R. an attorny adviſed the friends of the felon to perſwade the witneſſes not to appeare to give evidence againſt him, which was done accordingly. And it was reſolved, that neither the friends nor the attorny were acceſſaries to the felony, but that it was a great contempt and miſpriſion, for which they might be fined and impriſoned.

[c] 11 & 12 E the c. of Roberts the attorny.

[d] The acceſſory cannot be guilty of petit treaſon, where the principall is guilty but of murder. For *acceſſarius ſequitur naturam ſui principalis.*

[d] See before cap. Petit Treaſon.

[e] if divers commit any murder, or other felony, one man may be both principall and acceſſory to the other.

[e] 7 H. 4. 27.

See before cap. Clergie, that if the principall before attainder hath his clergie, the acceſſory is diſcharged. And note generally, where the principall before attainder is pardoned, or his life otherwiſe ſaved, the acceſſory is diſcharged.

[f] 2 H. 4. 16.

CAP. LXV.

Of Miſpriſions divers and ſeverall: and firſt of Miſpriſion of Felony, &c.

OF miſpriſion of treaſon we have already ſpoken, and of the etymologie of the word. It remaineth now that we ſpeak of other miſpriſions.

Miſpriſion is twofold: one is *crimen omiſſionis*, of omiſſion, as in concealement, or not diſcovery of treaſon or felony: another is *crimen commiſſionis*, of commiſſion, as in committing ſome heynous offence under the degree of felony.

Or miſpriſion is of two ſorts, viz. paſſive and active: paſſive is of the nature of concealment, whereof ſome be by the common law, and ſome by ſtatute. By the common law, as paſſive miſpriſion, that is concealement of high treaſon whereof we have ſpoken; and paſſive miſpriſion, that is concealement of felony, whereof we are now in this chapter to ſpeak. Some by ſtatute: as if any be moved to make commotion or unlawfull aſſembly, and do not within twenty four houres declare the ſame to a juſtice of peace, ſheriffe, maior, or bailiffe, &c. concealement by juries, 3 H. 7. ca. 1. 33 H. 8. ca. 6, &c.

1 Mar. 1. Parl. ca. 12. 1 Eliz. cap. 17. See the ſecond part of the Inſtitutes. W. 1. cap. 9.

Now are we ſpeak of concealement or not diſcovery of felony. As in caſe of high treaſon, whether the treaſon be by the common law, or ſtatute, the concealment of it is miſpriſion of treaſon. So in caſe of felony, whether the felony be by the common law, or by ſtatute, the concealement of it is miſpriſion of felony.

If any be preſent when a man is ſlaine, and omit to apprehend the ſlayer, it is a miſpriſion, and ſhall be puniſhed by fine and impriſonment.

8 E. 2. cor. 395.

And as the concealment of high treaſon is higher by many degrees then the concealment of felony, ſo the puniſhment for the concealment of the greater is heavier then of the leſſer, and yet the

W. 1. ca. 9. See the expoſition thereof, ubi ſup.

the concealment of felonies in ſherifs, or bailiffs of liberties is more ſeverely puniſhed then in others, viz. by impriſonment by one year, and ranſome at the will of the king. From which puniſhment * if any will ſave himſelf he muſt follow the advice of Bracton, to diſcover it to the king, or to ſome judge or magiſtrate, that for adminiſtration of juſtice ſupplieth his place, with all ſpeed that he can.

Bract. lib. 3. fo. 118. a. *Non enim debet morari in uno loco per duas noctes, vel per duos dies, nec debet ad aliqua negotia, quamvis urgentiſſima, ſe convertere, quia vix permittitur ei ut retroſpiciat.*

And this is intended of a concealment, or not diſcovery of his meer knowledge: for if in caſe of high treaſon, he that knoweth it, before it be done, and aſſenteth to it, is *particeps criminis*, and guilty of treaſon: and in caſe of felony, he that receiveth the thief, and aſſenteth to it, is acceſſory.

See before the chapt. of Miſpriſion of Treaſon, fo. 36. and of Principall and Accеſſory, fo. 138.

See before in the chapter of miſpriſion of treaſon, that every treaſon and felony doth include in it miſpriſion of treaſon and felony. See the ſtatute of 23 El. ca. 1. of miſpriſion, that is, *crimen commiſſum.*

Compaſſings, or imaginations againſt the king, by word, without an overt act, is an high miſpriſion, as before is ſaid. * *In cogitatione tua ne detrahas regi, &c. quia aves cæli portabunt vocem tuam, et qui habet pennas annunciabit ſententiam.*

* Eccleſiaſtes. ca. 10. v. 20.

[a] If any man in Weſtminſter hall, or in any other place, ſitting the courts of chancery, the exchequer, the kings bench, the common bench, or before juſtices of aſſiſe, or juſtices of oier and terminer, (which courts are mentioned in the ſtatute of 25 E. 3. *De prediſionibus*) ſhall draw a weapon upon any judge, or juſtice, though he ſtrike not; this is a great miſpriſion, [b] for the which he ſhall loſe his right hand, and forfeit his lands and goods, and his body to perpetuall impriſonment: the reaſon hereof is, becauſe it tendeth *ad impedimentum legis terræ*. [c] So it is, if in Weſtminſter hall or any other place, ſitting the ſaid courts there, or before juſtices of aſſiſe, or oier and terminer, and within the view of the ſame, a man doth ſtrike a juror, or any other with weapon, hand, ſhoulder, elbow, or foot, he ſhall have the like puniſhment; but in that caſe, if he make an aſſault, and ſtrike not, the offender ſhall not have the like puniſhment.

[a] See the ſecond part of the Inſtitutes, W. 1. ca 33.
25 E. 3 ca. 1. It is high treaſon to kill any of them in their places

[d] If any ſtrike in the kings palace, where the kings royall perſon reſideth, he ſhall not loſe his right hand, unleſſe he draw blood; but if he draw blood, then his right hand ſhall be ſtrucken off, & perpetually impriſoned, and fined and ranſomed.

[b] 22 E. 3. 13. 19 E. 3 Judgment 174. Mich. 6 E. 3. coram rege Rot. 55. Eborum.

Note the law makes a great difference between a ſtroke or blow, in or before any of the ſaid courts of juſtice, where the king is repreſentatively preſent, and the kings court, where his royall perſon reſideth. For in the kings houſe (as hath been ſaid) blood muſt be drawne, which needeth not in or before the courts of juſtice, but a ſtroke only ſufficeth. Again, the puniſhment is more ſevere in the one caſe, then in the other: ſuch honour the law attributeth to courts of juſtice, when the judges or juſtices are doing of that which to juſtice appertaineth: and the reaſon is, *Quia juſtitia firmatur ſolium.*

41 E. 3 cor 280. Note the forfeiture of his lands is but during his life
41 E. 3. 25.
[c] Int. leges Alveredi. cap 34.
3 El. Dier, 188.
2 Ja. Bellingbams caſe coram rege with his elbow and ſhoulder.

But note that by the ancient laws of this realm, ſtriking only in the kings court was puniſhed by death. *Vide Lambard inter leges Inæ ca. 6. Si quis in regia pugnarit, rebus ſuis omnibus mulctator. Ad ſtrictæ mortis etiam plectendus, regis arbitrium et jus eſto. Inter leges Canuti*

[d] 33 H. 8. ca. 12.

mati, cap. 56. *Si quis in regia dimicarit, capitale eſto, &c. Inter leges Alvredi, cap.* 7. *Qui in regia dimicarit, ferrumve diſtrinxeret, capitor, & regem penes arbitrium vitæ neciſque ejus eſto, &c.*

[e] Peter Burchet priſoner in the tower, ſtroke within the tower John Longworth his keeper (who ſtood in a window reading of the Bible) with a billet on the head behind, whereby blood was ſhed, and death inſtantly enſued: this being without any provocation was adjudged murder, for which he was attainted, and before his execution (which was in the Strand over againſt Somerſet houſe) his right hand was firſt ſtrucken off, by force of the ſtatute of 33 H. 8. for that the tower was one of the queens ſtanding houſes or palaces.

[e] Mich. 15 El. in the caſe of Peter Burchet eſquire of the Middle Temple.

The kings palace at Weſtminſter hath this liberty and priviledge, viz. *Nullæ citationes, aut ſommonitiones, liceant fieri cuicunque infra palatium regis Weſtm.*

Paſch. 8. E. 2. Coram rege Rot. 28 Norff.

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Like priviledge hath Weſtminſter hall, or other place, where the kings juſtices, &c. ſit, as by theſe following records appeareth.

[a] *Quia bedellus univerſitatis citari fecit Wil. de Wivelingham infra oſtium aulæ Weſtm. juſticiariis ſedentibus, ad compar. coram cancellario, &c. pro quo ſe poſuit in gratiam regis, committitur gaolæ, et Henricus de Harwood, ad cujus ſectam proſecutus fuit, committitur mariſchal. et finem fecit* 40. *s.*

[a] Mich. 12 E. 3. Coram rege Rot. 101. Cant.

[b] *Matilda de Nyerford, filia Willielmi de Nyerford militis defuncti,* did libell againſt John earl of Warien, and [c] Johan de Barro countes of Warren the kings niece *(in camitina dominæ reginæ conſortis domini regis)* in a cauſe of matrimony and divorce, and the ſame Johan de Barro was cited in the kings palace at Weſtminſter, &c. It was upon full examination of the cauſe, adjudged in parliament in theſe words, *Quòd prædictum palacium domini regis eſt locus exemptus ab omni juriſdictione ordinaria, tam regiæ dignitatis et coronæ ſuæ, quam libertatis eccleſiæ Weſtm', et maximè in præſentia ipſius domini regis tempore parliamenti ſui ibidem: ita quòd nullus ſummonitiones, ſeu citationes ibidem faciat, et præcipuè illis, qui ſunt de ſanguine domini regis, quibus major reverentia, quam aliis fieri debet, &c. Conſideratum eſt, quòd officiar' committatur turri London, et ibidem cuſtodiatur ad voluntatem domini regis.*

[b] Placita coram domino rege in parliamento ſuo apud Weſtm' in præſentia domini regis, an. 21 E. 1.

[c] Ellanor daughter of E. 1. married with William earl of Barry alias Barro in France, and had iſſue the ſaid Johan who married John earl Warien.

Here two things are principally to be obſerved: firſt, that this royall priviledge is not only appropriated to the palace of Weſtminſter, but to all the kings palaces, where his royall perſon reſides. Secondly, that this priviledge is to be exempted from all eccleſiaſticall juriſdiction, *regiæ dignitatis et coronæ ſuæ ratione, &c.*

If any doe reſcue a priſoner in or before any of the aboveſaid courts committed by any of the aforeſaid juſtices, it is a great miſpriſion, for which he and the priſoner aſſenting to it, ſhall forfeit their lands and goods, and their bodies to perpetuall impriſonment, but ſhall not loſe his hand, becauſe no ſtroke or blow was given.

22 E. 3. 13.

But it was reſolved by all the judges, that where Thomas Oldfield, ſitting in the court of the dutchy of Lancaſter, with a knife ſtabbed one Ferror a juſtice of peace in the view of the ſaid court, that the court of the dutchy was none of the courts to make it a miſpriſion to loſe his right hand, &c. but the offender was to be indicted, and grievouſly fined.

Trin. 8 Jac. regis Oldfields caſe.

And in 9 El. one Guirling ſtroke another in the Whitehall, ſitting

Paſch. 9 Eliz. Guirlings caſe.

fitting the mafters of requefts, and it was then refolved by the court of kings bench, that it was not any mifprifion, for the which he fhould lofe his right hand, &c. but he was indicted and fined.

Hil. 13 E. 3. Coram rege Rot. 104. Suff.

Quia Thomas de Holbroke manus violentas impofuit fuper Johannem de Lowde, &c. ad feffionem fuam fedentem apud Gipwicum, et cum de... committitur in parliamento turri London, et finitur 20. li. et invenit fex manucaptores pro bono geftu fuo.

And where fome of the books abovefaid fay, that the offender fhall forfeit his lands, and fome that he fhall be difherited, yet the forfeiture of his lands is only for tearm of his life, (as before is faid:) for being no felony, the blood is not corrupted, nor the heir difinabled to inherit. And this fevere punifhment is at the fuit of the king, and the party may have his action, and it fhall be tried by the officers and criers. And for fuch a ftroke Thomas of Whittefley recovered five hundred pounds, Trin. 9 E. 3. Rot. 154. Midd.

Trin. 9 E. 3. Rot. 154 Midd.

Brit. ca. 25. fo. 47. * Nota for the dignity of knights.

Britton faith, *Afcuns trefpaffes font nequedent plus punifhable, fi cel trefpas fait en temps de peace a * chivaliers, ou auters gents honorables per ribaudes, ou auters viles perfons; en quel cafe nous volons, que fi ribaud foit atteint al fuit de chefcun chivalier, que il eyt fa main per felony fon de... fait del chivalier que le ribaude per fon pome dont il trefpaffa:* fo great a refpect in thofe days was had of honour and order. Ribaud is taken here for a rafcall ruffian. There is a great mifprifion when any revenge is fought againft a judge, juftice, officer, juror, ferjeant, councellor, minifter, or clerk, for that, which they doe in difcharge of their feverall duties, offices, and places, concerning the adminiftration of juftice.

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Mich. 33 & 34 E. 1. Coram rege, Rot. 75.

Roger de Hegham and others being juftices of oier and terminer, and fitting in the exchequer chamber, gave judgement for Margaret late the wife of William Brewfe plaintif, againft William le Brewfe defendant, which judgement was pronounced by Roger de Hegham. William de Brewfe demanded of Roger de Hegham if he would avow the judgement, and faid, Roger, Roger, now thou haft thy will which of long time thou haft fought: of whom Roger de Hegham demanded, What is that? to whom William de Brewfe faid, My fhame, and my loffe, and this I will reward or recompence, or I will think of it. Whereof he being indicted and arraigned, and confeffing the offence, the record faith, *Et quia ficut honor, et reverentia, qui miniftris domini regis ratione officii fui faciunt, ipfo regi attribuuntur; fic dedecus et contemptus miniftris fuis fact' eidem domino regi inferuntur: confideratum eft quòd præd. Willielmus de Brewfe, difcinctus in corpore, capite nud... dep..ta, eat e banco domini regis ubi placita tenentur in aula Weftm', per medium aulæ prædict', cum curia plena fuerit, ufque ad fcaccarium (ubi deliquit) et ibidem veniam petat a præfato Rogero, &c. et poftea committitur turri London, ibidem moratur', ad voluntatem regis.*

Nota.

Note this exemplary judgement againft a gentleman of a great and honourable family. *Qualibet pœna corporalis, quamvis minima, major eft qualibet pœna pecuniaria.* And in that record it is faid, *Quòd dominus rex filium fuum primogenitum, et chariffimum Edwardum principem Walliæ, pro eo quòd quædam verba groffa cuidam miniftro fuo dixerat, ab hofpitio fuo ferè per dimidium anni amovit, nec ipfum filium fuum in confpectu fuo venire permifit, quoufque dicto miniftro de dicta tranfgreffione fatisfecerat.*

Bract. lib. 2. 105. Thefe words were given to the treafurer of England by the procurement of Pierce of Gaveston.

Quia

Quia Petrus de Scales minatus fuit Ricũm de Worlingworth, qui fuit de conſilio Johannis de Moten, de vita et membris, dictus Petrus invenit plegios de bono geſtu ſuo.

Hil. 20 E. 3. Coram rege Rot. 160.

There be many records for abuſing of jurours. viz. Paſch. 10 E. 3. Coram rege, rot. 87. Gilbertus Twiſt. Paſch. 26 E. 3 ibidem, rot. 22. Eſſex, Tho. Hubberd, Hil. 7 H. 5. ibidem, rot. 24. Ricũs Cheddre. Mich. 17 E. 2. Coram rege rot. 63.

Percuſſio clerici curiæ in veniendo verſus curiam, &c. Trin. 11 E. 2. Coram rege, rot. 42. London. Not only theſe particular revenges aboveſaid, but all other of what kind ſoever are great miſpriſions.

Alſo when any revenge is fought againſt any man for complaining in any of the kings courts, *ſuper gravaminibus, &c.* for grievances, &c. *Quia deterret homines à querelis ſuper gravaminibus in forma juris. De his qui vindictam fecerint, eo quod aliquo modo ſuper prædictis gravaminibus in curia domini regis conqueſti fuerunt.*

Cap. Itineris §. ultimo.

Juſticiarii taxaverunt damna 2 marc' ſuper Willielmum Boteford, eo quòd minabatur quendam Haroiſiam de vita et membris, eo quòd ipſa proſequebatur ipſum in placito tranſgreſſionis.

Paſc. 10 E 3. Coram rege Rot. 86. Linc.

We will conclude this point for private revenge with an ancient law before the conqueſt. *Si quis privato conſilio illatam ſibi injuriam vindicarit, antequam jus æquum ſibi dari poſtulaverit, quod nomine vindictæ ereptum reddito, integrum rei pretium præſtato, et 30 ſolidos dependito.*

Inter leges Inæ, cap. 6. Lamb. See the 4. part of the Inſtit. cap. Chancery., Artic. vers. Cardinal Woolſey. Art. 4. 5, 6. 11. 41.

See in the fourth part of the Inſtitutes, cap. Of the chancery, in the articles againſt Cardinall Woolſey. Artic. 4, 5, 6. 11. 41.

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CAP. LXVI.

Of CONSPIRACIE.

CONSPIRACIE [a] is a conſultation and agreement between two or more, to appeale, or indict an innocent falſely, and maliciouſly of felony, whom accordingly they cauſe to be indicted or appealed; and afterward the party is lawfully acquited by the verdict of twelve men: the party grieved may be relieved, and the offender puniſhed two wayes. Firſt, by a writ of conſpiracy, which is a civill or common action at the ſuit of the party, wherein the plaintife ſhall recover damages, and the defendant ſhall be impriſoned. Secondly, by indictment at the ſuit of the king, the judgement whereof is criminall: of which we are now to ſpeak.

[a] Vide ſtatut. de conſpiratoribus, anno 21 E. 1. vet. Mag. Cart. part 1. fo 111. & definition conſpir. 33 E. 1. ibid. fo. 90. b. Artic. ſup. Cart. cap. 10. F. N. B. 114, 115. Staunf. pl. cor. 172, &c. Lib. 4. fo. 45. Lib. 9. fo. 16, 56, 57. 78.

[b] Upon this ſuit of the king, if the offenders be convicted, the judgement is grievous and terrible, viz. That they ſhal loſe the freedom or franchiſe of the law, to the intent that he ſhall not be put or had upon any jury or aſſiſe, or in any other teſtimony of truth: and if they have any thing to do in the kings courts, they ſhall come [c] *per ſolem, id eſt*, by broad day, and make their attorny, and

[b] 24 E. 3. 45. 27. aſſ. 43 E. 3. Conſpiracy, 11. 59. 4 H. 5. Judgment 120. the like judgement as in attaint. See the firſt part of the Inſtitutes. Sect.

[c] Trin. 18 E. 3. Coram rege, Rot. 148. Paſch. 32 E. 3. Coram rege. Rot. 58.

forthwith return by broad day: and their houſes, lands, and goods, ſhall be ſeiſed into the kings hands, and their houſes and lands eſtrepped and waſted, their trees rooted up and erraſed, and their bodies to priſon: all things retrograde, and againſt order and nature, in deſtroying all things that have pleaſured or nouriſhed them; for that by falſehood, malice, and perjury, they fought to attaint and overthrow the innocent. Which judgement in our books is called, a villanous judgement. Firſt, in reſpect of the villainy and ſhame, which the party hath which receiveth it. Secondly, for that by the judgement he loſeth the freedom and franchiſe of the law, and therefore undergoeth a kinde of bondage and villany. And the reaſon of this heavy and terrible judgement is: 1. For that the offenders have conſpired and plotted the death and ſhedding of the blood of an innocent. 2. That they do it under faire pretence of juſtice and by courſe of law, which was inſtituted for the protection and defence of the innocent. 3. That if they had attainted the innocent, he ſhould have loſt his life, (by an infamous death) his lands, his goods, and his poſterity: for his blood thereby ſhould have been corrupted, &c. 4. All this falſhood, malice, and perjury is committed *in placito coronæ*, in a ſuit for the king, which aggravateth and increaſeth the offence; for that the king is the head of juſtice, and a protector of the innocent: and therefore at the kings ſuit, and not at the ſuit of the party, this villanous judgement ſhall be given. So as the law hath excellently diſtributed the remedies; the private action of the party to give him damages, &c. and the ſuit of the king for exemplary puniſhment. And it is to be obſerved, that this villanous judgement is given by the common law, (as in the caſe of attaint) and not by force of any ſtatute.

27 Lib. aſſ. p. 12. King E. 3. demanded of his juſtices and ſerjeants, whether divers men being indicted of conſpiracy for the indicting of R. of felony, were mainpernable or no? and they anſwered the king expreſly, that they were not, in reſpect of the odiouſneſſe of the offence.

CAP. LXVII.

Of Penſions, &c. received by Subjects, of Foraine Kings, &c.

See the fourth part of the Inſtitutes, cap. the Chancery Artic. againſt Cardinall Woolſey, art. 27. Vide part. 7 R. 2. nu. 16. Mat. ca. 26. v. 24.

IT is not lawfull for any ſubject of the king of England to take a penſion, &c. of any foraine king, prince, or ſtate (without the kings licenſe) albeit they be in league with the king of England; both, for that they may become enemies, and for that alſo it is miſchievous and dangerous to the king himſelf and his ſtate, as it appeareth by this diſtichon,

Principe ab externo veniunt lethalia dona,
Quæ ſtudii ſpecie, fata, necemque ferunt.

Nemo poteſt duobus dominis ſervire: aut enim unum odio habe-

And this was (ſay they) the caſe of the lord Haſtings chamberlaine to king E. 4. who in the fifteenth year of his raign, received a penſion

a penſion of two thouſand crowns yearly from the French king: who being informed by juſt. Cateſbye his inward friend, and others learned in the law, that the receiving hereof was an offence againſt law, being deſired by Pierce Clerett a Frenchman (who paid the penſion) to make him an acquitance for receipt thereof for his diſcharge, utterly refuſed the ſame. This report I do the rather hold to be true, for that all our Engliſh hiſtorians, (who for the moſt part rehearſe but the carkaſſe or outſide of any point in law) give great credit hereunto. And what ill conſequence this and other like penſions, and others of the councell of king E. 4. had, you may reade in our hiſtories.

See the caſe in 7 R. 2. of [a] Spencer biſhop of Norwich; and there alſo the caſe of [b] Pierce Creſſingham, and others: and of [c] ſir William Ellingham and others, puniſhed for receiving of money, &c. of the French king, which drew them without the kings licenſe, to yeeld up caſtles and forts in France committed to their cuſtody, puniſhed by fine and impriſonment.

See the fourth part of the Inſtitutes, cap. of the Chancery, artic. 27. againſt Cardinall Woolſey.

bit, et alterum diliget, aut unum ſuſtinebit, et alterum contemnet. 4 Regum, ca. 5. v. 26, &c. Geh ii. See 31 E. ca. 5. concerning the ſervice of a ſubject as a ſoldier or captain to a foraign prince, hereafter cap. Fugitives. *Polyd. Virg. Hall. Hollingſhed. Stowe, &c.*

[a] Rot. Parl. 7 R. 2. nu. 15. 18. 20. 21, 22, 23.

[b] Ibid. nu. 17.

[c] Ibid. nu. 24.

CAP. LXVIII. [145]

Of Bribery, Extortion, Exaction, &c.

And firſt of Bribery.

BRIBERY is a great miſpriſion (1), when any man in judiciall place (2) takes any fee or penſion, robe, or livery, gift, reward (3) or brocage (4) of any perſon, that hath to do before him any way (5), for doing his office, or by colour of his office, but of the king only, unleſſe it be of meat and drink, and that of ſmall value, upon divers, and grievous puniſhments. Forteſcue, ca. 51.

This word [bribery] commeth of the French word *briber*, which ſignifieth to devoure, or eat greedily, applyed to the devouring of a corrupt judge, of whom the Pſalmiſt ſpeaking in the perſon of God, ſaith, *Qui devorat plebem meam ſicut eſcam panis. Qui cogneſcit faciem in judicio, non bene facit: iſte pro buccella panis deſerit veritatem.* Pſalm 13. 4. Prov. 28. 21.

But let us peruſe the branches of this deſcription.

(1) *A great miſpriſion.*] But it may be objected, that bribery in a judge was ſometime adjudged a higher offence. For whereas at the aſſizes holden at Lincolne in the 23 yeare of E. 3. an exigent was to have been awarded againſt Richard Saltley, Hildebrand Boreſward, Guilbert Holliland, Thomas Derby, and Robert Dalderby, who formerly had been indicted of divers felonies before ſir William Thorpe, chiefe juſtice of the kings bench, and one of the juſtices of aſſize of the ſaid county of Lincolne, he the ſaid ſir William Rot. Pat. anno 24 E. 3. part 3. m. 2. and Rot. Pat. anno 25 E. 3. part 1. m. 17. Rot. Parl. 25 E. 3. nu. 10. 23 E. 3.

William Thorpe, to stay the said writ of exigent against them, *cepit munera contra juramentum suum*, viz. of Richard Saltly, 10 li. of Hildebrand, 20 li. of Holliland, 40 li. of Derby, 10 li. and of Dalderty, 10 li. King Edward the third appointed the earles of Arundell, Warwick, and Huntingdon, and two lords, the lord Grey and the lord Burghers' to examine this matter. Before whom William Thorpe being charged with the said bribery, *Non potuit dedicere, &c.* Now the record saith, *Consideratum est per ipsos justiciarios assignato ad judicand. secundum voluntatem domini regis et secundum regale posse suum, quod quia praedictus Willielmus de Thorpe, qui sacramentum domini regis, quod erga populum suum habuit custodiend. fregit maliciose, false, et rebelliter in quantum in ipso fuit, ita quod causis praedictis per ipsum Willielmum, ut praedictum est, ex regimine communis populi eadatur, et quod omnia terr. et tenta., bona et catalla sua remaneant forisfacta.*

Anno 24 E. 3.

This sentence seemeth to have his foundation as well upon the oath of the judges, (for the record saith *contra juramentum suum*, and the conclusion of the oath, and in case ye be found in any default in any of the points aforesaid, ye shall be *ad voluntatem regis*, of body, lands, and goods, thereof to be done as pleaseth him: as also for that this last clause is enacted by authority of parliament (as they say) in *anno* 20 E. 3. And hereupon they the said lords were appointed to judge *secundum voluntatem domini regis, et regale posse suum*, according to the words of the oath and act of parliament. And this judgement was repeated in anno 25. to the lords, and affirmed by them.

The oath of the justices anno 18 E. 3.

20 E. 3. cap. 1.

This president is not to be followed at this day for divers causes. First, it seemeth by the violation of the kings oath, and of this word [*rebelliter*] and by the forfeiture of all his lands and tenements to the king, that this offence should be treason against the king, and then it being either high treason, or petit treason it is taken away by the statute of 25 E. 3. *De proditionibus*, the same being none of them, that are there expressed. And in all the records this word [*felonice*] is not to be found, as it ought to have been, if it had been felony.

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Neither by the words of the oath, or of the supposed act of 20 E. 3. can the judgement (*quod suspendatur*) be warranted: for these words [to be at the kings will for body, &c.] cannot be extended to losse of life, no more then the statute of Carlisle (*sub ... gravi forisfactura omnium, quae ... potestate sua obtinet*) extendeth not to forfeiture of life, but to imprisonment, &c. viz losse of liberty, &c.

Anno 35 E. 1 the stat. of Carlisle.

But at this parliament, viz. in *anno* 20 E. 3. taking in hand of quarrels, other then their own, and maintenance of them is prohibited upon the paines aforesaid, viz. the paines contained in the said supposed act of 20 E. 3. cap. 1. upon paine to be at our will, body, lands, and goods, to do thereof as shall please us: which without question was never extended to losse of life, &c. but to imprisonment, as common experience daily teacheth. For *haec voluntas regis, viz. per justiciarios suos et per legem, &c.* Therefore, as by the record appeareth, sir William Thorpe was pardoned and restored to all his lands. And we were desirous to see the record of the act of 20 E. 3 cap. 1. but there is no record of any such act in the parliament roll. And the very frame and composition of it seemeth to be but a rehearsall of a commandment from the king: for the letter of it beginneth. First, we have commanded all our justices

20 E. 3. cap. 4.

2 R. 3. fo. 11.

See 8 R. 2 cap. 3. Rot. Parl. 10 R. 2. nu. 24.

juſtices, that they ſhall from thenceforth do equall law, &c. and therefore juſtly omitted out of the parliament roll of acts of parliaments: and yet the imprinting of it neceſſary, for that the fourth chapter of this parliament hath reference to the paynes contained in it.

It is enacted by Parliament *anno* 11 H. 4. in theſe words. Vid. 1 H. 4. nu. 99. & Nota.

Item, *Que nul chancelor, treaſorer, garden del privie ſeal counſelor le roy, ſernts. a councell del roy, ne nul auter officer, judge ne miniſter le roy, pernants fees ou gages de roy pur lour ditz offices ou ſervices, preigne en nul manner en temps à vener aſcun manner de done ou brocage de ulluy pur lour ditz offices et ſervices a faire, ſur peine de reſponder au roy de la treble que iſſint preignont, et de ſatisfier la partie, et punys al volunt le roy, et ſoit diſcharges de ſon office, ſervice, et councell pur touts jours, et que cheſcun que voiera purſuer en la dit matter, eyt la ſuite cibien pur le roy, come pur luy meſme, et eit la tierce part del ſomme, de que la partie eſt duement convict.* Rot. Parl. anno 11 H. 4. nu. 28. never imprinted.

By this act of parliament, which is the judgement of the whole parliament, it appeareth, that, if that which is imprinted as the firſt chapter of 20 E. 3. had been an act of parliament, then this ſtatute of 11 H. 4. would never have inflicted this kinde of puniſhment, which is other, and farre leſſe, then that which is mentioned in 20 E. 3. and where it is ſaid in this act of 11 H. 4. *(et punis al volunt le roy)* that is, by fine and impriſonment by the court where the conviction ſhall be; for, as hath been ſaid, *hæc eſt voluntas regis, viz. per juſticiarios ſuos, et legem ſuam, et non per dominum regem in camera ſua, vel alibi.* 2 R. 3. 11. a.

So as by warrant of this act of parliament we have ſaid, that bribery is a miſpriſion; for that it is neither treaſon, nor felony; and it is a great miſpriſion, for that it is ever accompanied with perjury.

* True it is, that ſir Thomas Weyland, chief juſtice of the court of common pleas, was attainted of felony, but it was not for bribery, but being guilty of † being acceſſary to murder, for the which by the common law he was abjured the realm. * Plac. de parl. apud Atherogg in Cro. Ep. anno 19 E. 1. Et Hollingſh. Chron. pag. 284, 285. he confeſſed felony, and abjured.

Likewiſe Adam de Stratton chief baron of the Exchequer a man of great poſſeſſions and riches was attainted of felony by him committed, all which I collect upon records of parliament the ſureſt guides. For in the parliament holden in 18 E. 1. in the ſame year when he was attainted, I find two petitions, one preferred by himſelf in theſe words, *Adam de Stratton petit gratiam regis, quòd reſtituatur ad aliquam partem terrarum ſuarum, et de bonis ſuis quæ habuit tempore quo fuit.** viz. 26000 li. [147] Rot. Parl. 18 E. 1. to. 5. nu. 61. * There is a ſpace left in the record.

The other by Margaret de Boteler in theſe words, *Margareta quæ fuit uxor Joh. de Boteler, de qua Adam de Stratton tenuit* 12 *li.* 10. *s. in London, clamat habere ut eſchaet'. Reſponſ. Rex non conceſſit; quia in civitate nulla eſt eſchaeta niſi regis.* And at the ſame parliament, fo. 3. it is reſolved, *non ſunt niſi tres formæ brevis de eſchaeta;* Et ibid. nu. 69.

eschaeta; *quia utlagatus, vel suspensus, vel abjuravit regnum.* And by consequence Adam de Stratton seeing his lands escheated, must have the judgement of one of these three. Which we have added to answer secret objections that might be made out of the mistakings of our Chronicles.

Rot. Parl. 20 E. 1. fol. 5.

The rest of the justices were removed, fined, and imprisoned, saving Johannes de Mettingham, and Elias de Beckingham, who to their eternall memory and honour were found upright, and free from all bribery and corruption.

10 R. 2 nu. 24.

It was petitioned in parliament, that the statutes whereby the justices of the one bench or the other should take no reward, nor be of any mans fee, may be observed. The kings answer was, [that] king hath and will charge such justices to minister right, and will punish the contrary, and therefore willeth that all statutes made touching them and the barons of the exchequer, be made void.

(2) *When any man in judiciall place, &c.*] For the difference between bribery and extortion is, that bribery is only committed by him, that hath a judiciall place, and extortion may be committed both by him that hath a judiciall place, or by him that hath a ministeriall office.

Deut. 16. 19

And this offence of bribery may be committed by any that hath any judiciall place either ecclesiasticall or temporall. *Non accipe personam nec munera*, (and the reason is expressed by the Holy Ghost) *quia munera excaecant oculos sapientum, et mutant verba justorum.*

If bribery hath so great force, as to blinde the eyes of the wise judge, and to change the words of the just, *Beatus ille, qui excussit manus suas ab omni munere. Judex debet habere duos sales; salem sapientiae, ne sit insipidus, et salem conscientiae, ne sit diabolus.*

Pasch. 17 E. 3. Coram rege. Rot. 130. Essex. John Berners case.

Though the bribe be small, yet the fault is great: and this appeareth by a record in the reign of E. 3. *Quia diversi justiciarii ad audiendum et terminandum assignat' ceperunt de Johanne Berners qui indictatus fuit, 4. li. pro favore habendo die deliberationis suae, finem fecerunt domino regi per iiii M. marcas*, so as they paid for every pound a thousand marks. See before sir William Thorps case. Rot. Parl. 7 R. 2. the chancellour was accused of a bribe of ten pound, and his man four pound and certain fish, which, though the things were small, yet it had been punished, if it had been proved.

Rot. Parl. 7 R. 2. nu. 12, 13.

Anno 18 E. 3.

(3) *Take any fee, robe, gift, or reward.*] This is warranted by the oath abovesaid.

* Since these Institutes so was it resolved in the Star-chamber, Trin. 6 Car. Reg. in an information against Bonham Norton and others.

But admit the party * offereth a bribe to the judge, meaning to corrupt him in the cause depending before him, and the judge taketh it not, yet this is an offence punishable by law in the party that doth offer it.

(4) *Brocage.*] There is good warrant for this word by the said act of 11 H. 4.

(5) *Of any person that hath to doe before him any way.*] This hath his ground upon the oath aforesaid, so as bribery may be committed not only when a suit dependeth *in foro contentioso* (as it was in the case of sir Fr. Bacon lo. of S. Alban lo. chancellour of England, who for many exorbitant and fordid briberies was sentenced by the lords of parliament, which you may reade Rot. Parl. *anno* 19 *Jacobis regis*) but also when any in judiciall place doth any thing *virtute* or *colore officii*, though there be no suit at all. For example, if the

the lord treaſurer for any gift or brocage, ſhall make any cuſtomer, controller, or any officer or miniſter of the king, this is bribery, for he ought to take nothing in that caſe by the ſtatute of 12 R. 2. but that he make all ſuch officers and miniſters of the beſt, and moſt lawfull men, and ſufficient for their eſtimation and knowledge. (An excellent law tending greatly to his majeſties advantage, to the good uſage and encouragement of merchants, &c. and generally to the advancement of commerce, trade, and traffique, the life of this iſland.) Reade this ſtatute, for it is of a large extent, and the ſtatute of 5 E. 6. for they are laws made *contra ambitum*, and worthy to be put in execution, for they prevent bribery and extortion; for they that buy will ſell.

2 R. 2 ca. 2. See the ſtatute of 5 E. 6. ca. 16.

Vendit Alexander claves, altaria ſacra:
Vendere jure poteſt, emerat ille prius.

And that the ſtatute of 5 E. 6. doth extend as well to eccleſiaſticall offices, as temporall, which concern the adminiſtration and execution of juſtice. And it was reſolved in the caſe of doctor Trever chancellour of a biſhop in Wales, that both the office of chancellour and regiſter of the biſhop are within that ſtatute, becauſe they concern the adminiſtration of juſtice.

Hil. 8 Ja. in communi banco D. Trevers caſe. See hereafter ca. of Simony, and the 1. part. of the Inſtit. ſect. 378. fo. 234.

* L. Earl of M. lord treaſurer of England took *colore officii* divers bribes, &c. And namely where the farmers of the cuſtomes exhibited a petition to have certain juſt allowances, which his majeſty referred to the ſaid lord treaſurer, who long delayed the petitioners, untill they gave him ſeverall bribes, and then he gave way to relieve them. For this, and other his briberies, extortions, oppreſſions, and other grievous miſdemeanours in his ſeverall offices of the lord treaſurer, and maſter of the court of wards (no ſuit being in any of thoſe caſes depending) upon complaint, and charge of the commons in this parliament, and after evident proof and often hearing of the cauſe, the lords of parliament (the lord treaſurer being brought to the bar by the gentleman uſher and ſerjeant at arms, and kneeling till he was commanded to ſtand up) upon the petition of the commons by the ſpeaker gave this judgment againſt him by the mouth of the lord keeper in theſe words. This high court of parliament doth adjudge. Firſt, that you L. Earl of M. now lord Treaſurer of England ſhall loſe all your offices which you hold in this kingdome. 2. And ſhall be for ever uncapable of any office, place, or imployment in this ſtate and common-wealth. 3. And that you ſhall be impriſoned in the tower of London during the kings pleaſure. 4. And that you ſhall pay to our ſoveraign the king the fine of 50000. li. 5. And that you ſhall never ſit in parliament any more. 6. And that you ſhall never come within the verge of the kings court, as by the ſaid roll of the parliament appeareth, which is worthy of your reading at large.

* Rot. Parl. 21 Ja. regis.

In *anno* 21 H. 8. by articles under the hands of all the lords of the privy councell, (whereof ſir Thomas Moor then lord chancellour was one) and of the principall judges of the realm, which I have ſeene, cardinall Woolſey was charged with divers briberies, namely in the eighteenth article, in theſe words. Alſo the ſaid lord cardinall conſtrained all ordinaries in England, yearly to compound with him, or elſe he would uſurp half, or the whole of their juriſdiction by prevention, not for good order of the dioces, but to extort treaſure: for there is never a poor archdeacon in

Anno 21 H. 8. Artic. 18

in England but that he paid to him a yeerly portion of his living.

21 H. 8. ca. 5. Vide 2 R. 2. Rot. Parl. nu. 46.

If any ordinary, &c. having power by the act of 21 H. 8. to grant the administration of the goods of him that dieth intestate, or as intestate, to the widow or next of kin, &c. take any reward for preferring of any person, before another, to the administration, it is bribery.

[149] The law before the conquest. Inter leges Canuti, cap. 13.

Si quis contra fas et leges administrarit, vel pro odio, quod in alium laburit, judicaverit perperam, aut denique mammonam se judice . . . laburit, proprii capitis æstimatione Anglorum jure regi damnetur, nisi quidem legum id accidisse insciti, &c.

CAP. LXIX.

Of Extortion, Exaction, &c.

THIS is another great [a] misprision because it is accompanied with perjury. Hereof you may read in the first part of the Institutes, sect. 701. See also in the second part of the Institutes, W. 1. cap. 26. and cap. 10. And in the fourth part of the Institutes, cap. Chancery, in the articles against cardinall Woolsey, article 3. Extortion of Ordinaries. [b] *Ramusiatores hominum, extortionatores hominum:* a rancummier, an extortioner of men.

[a] Lib. 10. fo. 101. & 102. Beawfages case. See the 1. part of the Institutes sect. 701. verb. [Extortioners] 2. part of the Instit. W. 1. ca. 26. The 4. part of the Institutes. ca Chancery in the articles against Cardinall Woolsey, art. 3.

[b] Trin. 28 E. 3. Coram rege. Rot. 37 Eborum.

[c] The collectors of the fifteens were committed to prison, for that they took of every town eighteen pence for an acquittance.

[d] A coroner was committed to prison, because he would not take the view of the dead body, before he had received for himself six shillings eight pence, and for his clerk two shillings, and was fined at forty shillings.

[c] Hil. 20 E. 3. Coram rege. Rot. 159. Norff.

[d] Ibidem in the same roll.

[e] If any of the kings councell or his ministers doe exact a bond of any of his subjects, to come to the king with force and arms, &c. when they should be sent for, such writings are to the kings dishonour; for that every man is bound to do to the king as to his liege lord, [f] all that appertaineth to him, without any manner of writing, (note the generality hereof) and such writings are to be cancelled, as by the act appeareth.

[e] 1 E. 3. stat. 2. ca. 15.

[f] Nota.

Hereupon (by authority of this parliament) these conclusions doe follow. First, whatsoever any subject is bound to doe to the king, as to his liege lord, no bond or writing is to be exacted of the subject for doing thereof. Secondly, whatsoever bonds or writings are to the kings dishonour, are against law. Thirdly, whether such bonds or writings be made to the king or any other, the bonds or writings be void.

[g] If a bishop or other ecclesiasticall judge, or minister, doth exact a bond or oath of any person in any case ecclesiasticall, not warrantable by law, the bond is void, and this exaction is punishable by fine, &c. the record is very long, but worthy to be read. See Rot. Parl. *anno* 8 H. 4. nu. 15, 16, 17, 18, 19, 20. excellent matter

[g] Int. Inquisit. apud Lancestion Coram Rogero Loveday, and Waltero de Wynburn, an. 6 E. 1. Coronb.

matter concerning fees in courts of juſtice, and in the kings houſhold.

[h] *Officialis indictatus de citando, et affligendo plurimos, non poteſt dedicere, et petit quod admittatur ad finem.*

[i] *Contra ſequeſtratores, commiſſarios, et alios offic' epiſcoporum pro ordione feodorum, priuſquam debent pro teſtamentis probandis.*

[k] The extortion of the clergy, and of their miniſters to be enquired of by juſtices of peace.

Reſolutions upon the ſtatute of 21 H. 8. ca. 5.

[l] If a man makes his teſtament in paper, and dieth poſſeſſed of goods and chattels above the value of forty pound, and the executor cauſeth the teſtament to be tranſcribed in parchment, and bringeth both to the ordinary, &c. to be proved: it is at the election of the ordinary whether he will put the ſeal and probate to the original in paper, or to the tranſcript in parchment: but whether he put them to the one or the other, there can be taken of the executor, &c. in the whole but five ſhillings, and not above, viz. two ſhillings ſix pence to the ordinary, &c. and his miniſters, and two ſhillings ſix pence to the ſcribe for * regiſtring the ſame: or elſe the ſaid ſcribe to be at his liberty, to refuſe thoſe two ſhillings and ſix pence, and to have for writing every ten lines of the ſame teſtament, whereof every line to contain ten inches, one penny.

If the executor deſire that the teſtament in paper may be tranſcripted in parchment, he muſt agree with the party for the tranſcripting; but the ordinary, &c. can take nothing for it, nor for the examination of the tranſcript with the original, but only two ſhillings ſix pence for the whole: and ſo belonging to him. Where the goods of the dead doe not exceed an hundred ſhillings, the ordinary, &c. ſhall take nothing, and the ſcribe to have only for writing of the probate ſix pence, to the ſaid teſtament be exhibited in writing with wax thereunto affixed ready to be ſealed. Where the goods of the dead doe amount to above the value of an hundred ſhillings, and doe not exceed the ſumme of forty pound, there ſhall be taken for the whole but three ſhillings ſix pence, whereof to the ordinary, &c. two ſhillings ſix pence, and twelve pence to the ſcribe for regiſtring the ſame. Where by cuſtome leſſe hath been taken in any of the caſes aforeſaid, there leſſe is to be taken. And where any perſon requires a copy, or copies of the teſtament ſo proved, or inventory ſo made, the ordinary, &c. ſhall take for the search, and making of the copy of the teſtament or inventory, if the goods exceed not an hundred ſhillings, ſix pence, and if the goods exceed an hundred ſhillings, and exceed not forty pound, twelve pence. And if the goods exceed forty pound, two ſhillings ſix pence, or to take for every ten lines thereof of the proportion before rehearſed, a penny.

When the party dies inteſtate, the ordinary may diſpoſe ſomewhat in pious uſes, notwithſtanding the ſaid act of 31 E. 3. but with theſe cautions, 1. That it be after the adminiſtration granted, and inventory made, ſo as the ſtate of the inteſtate may be known, and thereby the ſum may appear to be competent. 2. The adminiſtrator muſt be called to it. 3. The uſe muſt be publique and godly. 4. It muſt be expreſſed in particular. And, 5. There muſt be a decree made of it, and entred of record: ſo in caſe of commutation

[h] Mich. 22 E. 3. Coram rege Rot. 181. Eboram.

[i] Hil. 23 E. 3. Coram rege.

[k] Rot. Parl. 3 R. 2. nu. 38, 39. 1 H. 5. nu. 23, 24.

[l] Mich. 6. Jacobi Rot. 130 in communi banco. int. Edm. Neale informer, &c. et Jac bū Rowſe official' infra Archidiaconat' de Huntington defendant per le chief juſtice Walmeſly, Warburton, Daniell, and Foſter.

* [150] For puniſhment of eccleſiaſticall judges for extortion. See Rot. de Inquiſit. in Com. Eborum, Somerſet, &c. anno 4 E. 1. in Theſauro. De judicibus eccleſiaſticis dicunt, &c. Rot. Parl. 8 E. 3. nu. 9. The ſtatute of 31 E. 3. cap. 4. Patch. 32 E. 3. Coram rege. Rot. 27. Rot. Parl. 50 E. 3. nu. 9. 1 R. 2. nu. 109. 2 R. 2. nu. 40. 13 R. 2. nu. 38, 39. 7 R. 2. nu. 53. The ſtatute of 3 H. 5. ca. 4. Mich. 20 Jacobi in Camera Stellata, in Sir Jo. Bennets caſe.

commutation of penance, it muſt be after ſentence, and *mutatis mutandis, ut ſupra.*

2 H. 4. ca. 10. Whereas twenty, forty, or an hundred be indicted of one felony, or one treſpaſſe, and all plead to an iſſue, as not guilty, the clerk of the crown of the kings bench, ought not to take for the *venire facias*, or for the entring of the plea, above two ſhillings, but the ſaid clerk did take for every ſuch name by extortion two ſhillings. It is ordained and eſtabliſhed, that the ſaid clerk of the crown, ſhall take no more then hath been duly uſed of old time. And moreover our ſoveraign lord the king hath charged the ſaid juſtices of the kings bench, that no extortion be done in this behalf in the bench aforeſaid.

2 H. 4. ca. 8. The chirographer of the king in the common bench for making and writing of every fine levied four ſhillings, and no more, upon pain (if he take more) to loſe his office, be expelled the court, one years impriſonment, and to pay to the party grieved his treble damages.

2 H. 4. ca. 23. The fees to the marſhall of the marſhalſea of the kings houſe, you may read in the ſtatute of 2 H. 4. Vide 9 R. 2. cap. 5.

33 H. 8. ca. 39. If any auditor of the exchequer, dutchy of Lanc', or court of wards take more then three ſhillings four pence, for the enrolment of any letters patents, decree, grant, or indenture of leaſe, he ſhall forfeit, for every penny ſo taken, ſix ſhillings eight pence.

Munera ne capias, uncus latet hamus in eſca:
Nulla carent viſco munera, virus habent.

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CAP. LXX.

OF USURY.

37 H. 8. ca. 9. 13 Eliz. ca. 8. USURY is a contract upon the lone of money, or giving daves for forbearing of money, debt, or duty, by way of lone, chiviſance, ſhifts, ſales of wares, or other doings whatſoever. *Uſura dicitur ab uſu et ære, quia datur pro uſu æris:* or *uſura dicitur, queſt ignis urens.*

Deut. cap. 23. Exo. 22. Levit. 25. Ezech. 2. Pſal. 15. And firſt, uſury is directly againſt the law of God. And the reaſon wherefore it was permitted by the law of God for an Hebrew to an infidell, was; becauſe it was a mean either to exterminate, or to depauperate them, as they ſhould not be able to invade, or injure Gods people.

c 13 Eliz. cap. 8. 21 Jac. cap. 17. [c] And it is adjudged by authority of parliament, that all uſury being forbidden by the law of God, is ſinne, and deteſtable. And it is alſo enacted by parliament, that all uſury is unlawfull, that is to ſay, againſt the lawes of the realme. Let us therefore ſee what former laws have provided herein.

d See the Cuſt. de Norm. cap. 20. Int. leges S. Edw. [d] *Siquis de uſura convictus fuerit, omnes res ſuas amittat.*

e Glanvil. lib. 7. cap. 16. [e] *Uſurarii omnes res, ſive teſtatus, ſive inteſtatus deceſſerit, dominii regis ſunt: vivus autem non ſolet aliquis de crimine uſuræ appellari, nec convinci, ſed inter cæteras regias inquiſitiones ſolet inquiri, et probari aliquē in tali crimine deceſſiſſe per* 12 *legales homines de vicineto et per eorum*

eorum ſacramentum. Quo probato in curia, omnes res mobiles, et omnia catalla, quæ fuerunt ipſius uſurarii mortui, ad uſus domini regis capientur, penes quemcunq; inveniantur res illæ. Hæres quoq; ipſius, hac eadem de cauſa exhæredatur ſecundum jus regni; et ad dominum, vel dominos revertetur hæreditas. Sciendum tamen, quod ſi quis aliquo tempore uſurarius fuerit in vita ſua, et ſuper hoc in patria publice defamatus, ſi tamen à delicto ipſo ante mortem ſuam deſtiterit, et panitentiam egerit; poſt mortem ipſius, ille, vel res ejus lege uſurarii minime cenſebuntur. Oportet ergo conſtare quòd uſurarius ad obſerit aliquis ad hoc, ut de eo tanquam de uſurario poſt mortem ipſius judicetur, et de rebus ipſius, tanquam de rebus uſurarii diſponatur.

Vide le ſtatute de Marton. cap. 5. et Fleta, lib. 2. ca. 50. [f] *Manifeſtus uſurarius eſt inteſtabilis.*

[g] *Et inter les conſtitutions ordeins p. les reis Ils reyes Alfred. &c. ordeine fuit que les chattels des uſurers fuiſſent al roy, et que les heritages des uſurers remeiſſent eſcheats al ſeigniors des fees, et ne ſert' interre in ſanctuary.*

[h] *Item, atrox injuria eſt, quæ omnium mobilium amiſſionem confert et legem liberam aufert, quæ locum habet in uſurariis Chriſtianis.*

[i] *Ad 16 Artic. de uſuris reſponderunt: quod licet epiſcopis pro peccato illo penitentiam uſurario injungere ſalutarem. Sed quia committendo uſuram, uſurarius furtum committit, et ſuper hoc eſt convictus, catalla et debita uſurarii, ſicut catalla furis, ſunt regis, et ſi qui ſequi voluerint contractum hujuſmodi uſurarium, reſtituantur eis bona ſua, quæ ipſi uſurarii per uſuram extorſerunt.*

[k] And it appeareth by Bracton, that it was an article of the charge of inquiry by juſtices in eire *de uſurariis Chriſtianis mortuis, qui fuerunt, et quæ catalla habuerunt, et quis ea habuerit. Et quòd nullus recepit uſuram arte vel ingenio.* And divers were indicted for taking of uſury before juſtices in eire, and ſome were pardoned by the king, and others not.

In ancient time a great revenue by reaſon of the uſury of the Jewes came to the crown: for between the 50 year of H. 3. and the 2 yeare of E. 1. which was not above ſeven yeares compleat, there was paid into the kings coffers four hundred and twenty thouſand pounds of and for the uſury of the Jews. And yet that excellent king for divers weighty reaſons worthy to be written in letters of gold, did by authority of parliament utterly prohibit the ſame, in theſe words. Foraſmuch as the king hath perceived that many evils and diſheriſons of the good men of his land had come to paſſe by the uſuries which the Jews have done in times paſt, and that many ſins and offences have riſen thereupon: albeit he and his anceſters have had great profit thereby of the Jews; notwithſtanding for the honour of God, and for the common profit of his people, the king hath ordained, and eſtabliſhed, that no Jew ſhall take uſury, &c. Before this time Jews were divers times baniſhed this realm, but ſtill they returned again. But this wiſe and worthy king by authority of parliament baniſhing their uſury, put the Jews into perpetuall exile into forain countries, where uſury was tolerated. By which act it appeareth that the ſuppreſſion of uſury tendeth to the honour of God, and the common profit of the people.

By which authorities and records, and by many others that might be remembred, it appeareth that by the ancient laws of this realm uſury was unlawfull, and puniſhable, although the puniſh-

Merton cap. 5.
[f] Fleta, lib 2. cap. 50.
[g] Mirror, cap. 1. § 3. & cap. 5. §. 1. Parl. 50 E. 3. m. 58.
[h] Fleta, lib. 2. c. 1.
[i] Rot. Parliam. 51 H. 3. Petitiones cleri.
[k] Bract. lib. 3. fo. 116, 117. Fleta, lib. 2. ca. 1. Cap. itineris. vet. Mag. Cart. par. 1. fo. 151. Rot. pat. 3 E. 1. m. 10. 19, 20, 21, 22. 36 Rot. clauſ. 2 E. 1. m. 1. Rot. pat. 3 E. 1. m. 14. 17. 26. Willelm. Middleton reddit computum.

Vet. Mag. Cart. 2. part, fo. 58. 59. Stat. de Judaiſmo. See the 2. part of the Inſtitutes, ſtat. de Judaiſmo and the Expoſition upon the ſame.

ment was not always one, but ſometime greater, and ſometime leſſer: and therefore at the parliament holden in the fifteenth year
15 E. 3. ca. 5. of E. 3. It was enacted, and declared, according as it had been ſometime holden, that the king and his heirs ſhould have conuſance of uſurers after their death, and that the ordinary of holy church ſhould have conuſance of uſurers alive, for as much as to them it appertains, to compell them by the cenſures of holy church, for the ſin, to make reſtitution of uſuries taken againſt the law of holy church. But this ſtatute was afterward repealed, as hereafter ſhall appear.

Hil. 6 E. 3. Coram rege rot. 130. North. Vide 26 E. 3. fo. 71. Moignes caſe.

Johannes Hopd convictus per juratores pro uſura capiend' 11 *s.* 8 *d. pro* 20 *s. præſtand', et ſic de ſimilibus.*

Many of the citizens of London giving over trade and traffick (which is the life of the common-wealth, and ſpecially of an iland) and betaking themſelves to live upon uſury, Sir William Walworth being lord maior, by the advice of the aldermen his brethren, took ſuch good and ſtrict order for the execution of laws, and for ſuppreſſion of uſury within the city of London, as the commons in parliament put up a petition to the king in theſe words, [That the order that was made in London againſt the horrible vice of uſury, might be obſerved throughout the whole realm] whereunto the king anſwered; that the old law ſhould continue.

Rot. Parl. 50 E. 3. nu. 158. Vide Rot. Parl. 6 R. 2. nu. 57. 14 R. 2. nu. 24.

After this Sir John Northampton, maior of the city of London, by the advice of the aldermen his brethren, took more ſtrict order for the ſuppreſſion of unlawfull uſury within the city of London: which had ſo good ſucceſſe, as the commons in parliament petitioned the king in theſe words. The commons pray, that againſt the horrible vice of uſury (then tearmed ſcheſes) and practiſed as well by the clergy as laity, the order made by John Northampton late maior of London, may be executed through the realm. Whereunto the king anſwered, The king willeth thoſe ordinances to be viewed, and if they be found to be neceſſary, that the ſame be then affirmed. And here it is to be obſerved, that of ancient time the notable merchants of London deteſted uſury, and dry exchange.

Rot. Parl. 14 R. 2. nu. 14.

3 H. 7. ca. 5, 6. 11 H. 7. ca. 8. Vide 5 E. 6. c. 20.

By the ſtatutes of 3 H. 7. and 11 H. 7. all uſury is damned and prohibited, and there it is called dry exchange. So as uſury is not only againſt the law of God, and the laws of the realm, but againſt the law of nature. *Uſura contra naturam eſt, quia uſura ſua natura ſterilis, nec fructum habet.*

27 H. 8. ca. 9. 13 Eliz. ca. 8. 21 Jac. ca. 17.

But now by the ſtatutes of 37 H. 8. and 13 Eliz. all former acts, ſtatutes, and laws ordained and made, for the avoiding or puniſhment of uſury are made void, and of none effect. So as at this day, neither the common law, nor any ſtatute is in force, but only the ſtatutes of 37 H. 8. 13 Eliz. and 21 Jac. And the eccleſiaſticall juriſdiction is ſaved by the ſaid ſtatute of 13 Eliz. as thereby it appeareth. For the expoſition of which ſtatutes of 37 H. 8. and 13 El. ſee in my Reports, viz. lib. 3. fo. 80, 81. lib. 5. fo. 69, 72. lib. 9. 26.

CAP.

CAP. LXXI.

Of Simony and corrupt Prefentations.

SIMONY. *Simonia eſt vera eccleſiaſtica, à Simone illo Mago deducta, qui donum ſpiritus ſancti pecuniis emi putavit.*

Againſt ſimony, &c. the ſtatute of 31 Eliz. is made in theſe words.

Simony deſcribed by the act following.
Stat. de 31 Eliz. cap. 6.
See the 2. part of the Inſtit. in the expoſition of the ſtatute of 31 El. *Iſta eſt illa pecunia quæ gratis dari debet* vide Matth. ca. 10. ver. 8.

Be it enacted that if any perſon or perſons, bodies politique or corporate, ſhall or doe for any ſumm of mony, reward, gift, profit or benefit, directly, or indirectly, or for, or by reaſon of any promiſe, agreement, grant, bond, covenant, or other aſſurance, of or for any ſumm of money, reward, gift, profit or benefit whatſoever, directly, or indirectly, preſent, or collate (1) any perſon to any benefice with cure of ſoules, dignity, prebend, or living eccleſiaſticall; or give, or beſtow the ſame for, or in reſpect of any ſuch cauſe or conſideration: * That then every ſuch preſentment, collation, gift, and beſtowing, and every admiſſion, inſtitution, inveſtiture, and induction thereupon ſhall bee utterly voyde, fruſtrate, and of none effect (2) in law; and that it ſhall, and may be lawfull to and for the queenes majeſtie, her heires and ſucceſſors, to preſent, collate unto, or give, or beſtow every ſuch benefice, dignity, prebend and living eccleſiaſticall for that one time, or turne onely, and that all and every perſon and perſons, bodies politique and corporate, that ſhall give or take any ſuch ſumm of mony, reward, &c. ſhall forfeit and loſe the double value of one yeares profit (3) of every ſuch benefice, dignity, prebend and living eccleſiaſticall. And the perſon ſo corruptly taking, procuring, ſeeking, or accepting any ſuch benefice, dignity, prebend, or living, ſhall thereupon, and from thenceforth be adjudged a diſabled perſon in law (4) to have, or enjoy the ſame benefice, dignity, prebend, or living eccleſiaſticall.

* Nota, the ſtatute doth not make the word, promiſe, covenant, or other aſſurance void, but the preſentment, &c. and ſo it was adjudged, Pasch. 40 Eliz. Rot. 1745, in communi banco, between Gregory plaintiff and Oldbury defendant. Nota differentiam inter malum in ſe againſt the common law, et malum prohibitum by ſtatute law; et malum in ſe againſt the common law, and malum prohibitum by the civill or canon law; whereof the judges of the common law in theſe caſes take no notice.

This is the text of this part of the act, now let us proceed to the expoſition hereof, being a neceſſary law to be put in execution.

(1) *Preſent or collate.*] This is not onely intended, where the perſon preſenting or collating hath right to preſent, or collate; but alſo where any perſon or perſons, bodies politique and corporate, doe uſury, and have no title to preſent or collate. And ſo it was adjudged in caſe where the uſurpation was to a church of the king. *Sed* Mic. 13. Ja. in quare impedit between the

king and the b. of Norwich. Tho. Cole and Robert Secker, which began Pasch. 13 Jac. Rot. 21. for the vicarage of Haverell in Suffolk.

Sed quando præsentatio et jus patronatus sunt temporalia, quæritur quomodo fit simonia per donum pecuniæ pro illis: respondendum est quod jus patronatus et presentatio dicuntur spiritualia, respectu rei, ad quam præsentatur, quæ spiritualis est. Vide Linwood cap. de Jure. jurando, fo. 80.

(2) *Shall be utterly voide and of none effect.*] But here is to be observed a diversity between a presentation, or collation made by a rightfull patron, and an usurper. For in case of a rightfull patron, which doth corruptly present, or collate, by the expresse letter of this act the king shall present: but where one doth usurp, and corruptly present or collate, there the king shall not present, but the rightfull patron: for the branch that gives the king power to present, is onely intended, where the rightfull patron is in fault, but where the rightfull patron is in no fault, there the corrupt act, and wrong of the usurper maketh the benefice, &c. voide, but taketh not away the lawfull title to present from the rightfull patron, and so it was adjudged in the case abovesaid.

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Mich. 13 Jac. ubi supra.

Also upon these words, [If any patron without the notice of the person so presented, or collated, doth take reward, &c.] yet by the expresse letter of this branch the church, &c. is voide, for both the letter and intention of this act is to make the admission, institution, and induction of any presentee, that commeth in by a corrupt patron voide. And so was it resolved in the case abovesaid, as it hath been formerly adjudged in the common place. But where the presentee is not privy, nor consenting to any such corrupt contract, as is prohibited by this act, because it is no simony in him, there the presentee shall not be adjudged a disabled person within this act: for the words of that branch be, And the person so corruptly giving, &c. so as he shall not be disabled, unlesse he be privy to the corrupt contract: and upon the severall penning of these severall branches, the diversity abovesaid was resolved Mich. 13 Jac. *ubi supra.*

Mich. 41 & 42 El. in Communi banco between Baker and Rogers.

24 E. 3. fo. 35. 38 E. 3. 7 Eliz. Dier 257.

(3) *Shall forfeit and lose the double value of one yeares profit.*] The double value shall be accounted according to the very, or true value, as the same may be letten, and shall be tryed by a jury, and not according to the extent, or taxation of the church: whereof one was made both of the spiritualties and temporalties in 20 E. 1. 1292. in the time of pope Nicholas: of that *vide* 11 H. 4. fo. 35 F. N. B 176. and Polichron, lib. 7. cap. 38. Rot. Parl. 18 E. 3 nu. 44. sta. 2. 1 R. 2. nu. 102. 8 H. 6. nu. 15. And the other taxation was made in 26 H. 8.

(4) *Be adjudged a disabled person in law.*] It was resolved in the case of Mich. 13 Jac. *ubi supra*, that the king could not dispense with this disability by a *non obstante*: for when an act of parliament is made that disableth any person, or maketh any thing void, or tortious for the good of the church, or common-wealth, in this law all the kings subjects have an interest, and therefore the king cannot dispence therewith no more then with the common law: but where a statute prohibiteth any thing upon a penalty, and giveth the penalty to the king, or to the king and informer, there the king may dispense with the penalty, and this diversity is warranted by our books.

3 [illegible] 20. 11 H. [illegible] 26. 21 H. 6. 11 H. 7. 13 H. 7.

S. b. 27 H. 8. F. N. B. 211. b. Placita com. 502.

King

* King James referred this caſe unto Sir Thomas Egerton lord chancellor of England, and to the chiefe juſtice of the kings bench. Sir Robert Vernon being coferer of the kings houſe, by reaſon of which office, he hath the receipt and payment of 40,000 li. of the kings treaſure yearely, and payeth the wages beneath the ſtayres, &c. did bargaine and ſell the ſaid office for a great ſumm of money, and for certaine annuities to be paid, to Sir Arthur Ingram knight. The firſt queſtion was whether the ſaid office were void by force of the ſtatute of 5 E. 6. ca 16. The ſecond was, ſeeing the words of this act be [ſhall be adjudged a diſabled perſon in law, to all intents and purpoſes to have and occupy any ſuch office, &c.] whether the king might diſpenſe with that [diſabled] and upon mature deliberation and hearing of counſell learned, they reſolved, and ſo certified the king, that the ſaid office was void by the ſaid bargaine and ſale, and that the king could not diſpenſe with the ſaid diſabilty, for the reaſon and cauſe above ſaid; and thereupon Sir Marmaduke Darrell was preferred to that office.

* Anno 12 Jac. reg. Sir Arthur Ingrams caſe upon the ſtatute of 5 E. 6. cap. 16.

Likewiſe by the ſtatute of 5 Eliz. every perſon which ſhall be elected a knight, citizen, burges, or baron of the cinque ports for any parliament, before he ſhall enter into the parliament houſe, ſhall take the oath of ſupremacy appointed by the act of 1 Eliz. and that he that entreth into the parliament without taking the ſaid oath, ſhall be deemed no knight, citizen, burges, or baron, nor ſhall have any voice, but ſhall be, as if he had been never returned, or elected. Here be words that amount to a diſability, and therefore that according to the former reſolutions the king cannot diſpenſe with the ſame. 5 Eliz cap. 2

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It is further enacted, that if any perſon ſhall for any ſum of money, reward, &c. *(ut ſupra)* other then for uſuall fees, admit, inſtitute, inſtall, induct, inveſt, or place any perſon in or to any benefice with cure of ſouls, dignity, prebend, or other living eccleſiaſticall: that then every perſon ſo offending ſhall forfeit and loſe double value, *ut ſupra*; and that thereupon immediately from and after the inveſting, inſtallation, or induction thereof had, the ſame benefice, &c. ſhall be eftſoons meerely void, &c.

The reaſon of this clauſe (for I was of this parliament, and obſerved the proceedings therein) was to avoid haſty and precipitate admiſſions, inſtitutions, &c. to the prejudice of them that had right to preſent, by putting them to a *quare impedit*, and no ſuch haſt or precipitation is uſed, but for reward, &c. as it is to be preſumed.

There be two great enemies to juſtice and right, viz. *præcipitatio, & moroſa cunctatio.*

And albeit the church is full by the inſtitution, &c. againſt all, but the king, yet the church becommeth not void by this branch of this act, untill after induction.

And that the patron, &c. ſhall and may preſent, &c.] This is intended of the rightfull patron, or of him that hath right to preſent.

Vid. 14 H. 4. 19.

And be it further enacted, that if any incumbent of any benefice with cure of ſoules ſhall corruptly reſigne, or exchange the ſame, or corruptly take for or in reſpect of the reſigning or exchanging of the ſame, directly or indirectly, any penſion, ſum of mony, or benefit whatſoever: That then as well the giver as the taker, &c. ſhall loſe double the value of the mony ſo given, and double the value of one years profit.

By another branch of this act it is provided,

That if any perſon or perſons ſhall or doe receive, or take any money, reward, &c. *ut ſupra*, (ordinary and lawfull fees only excepted) for or to procure the ordaining or making of any miniſter, or giving any orders, or licence to preach, ſhall for every offence forfeit and loſe the ſumme of forty pound, and the party ſo corruptly made miniſter, ſhall forfeit and loſe the ſum of ten pound, and if at any time within ſeven years after ſuch corrupt entring into the miniſtry, he ſhall accept or take any benefice, living, or promotion eccleſiaſticall, that then immediately, from and after the induction, inveſting, or inſtallation thereof, or thereunto had, the ſame benefice, living, and promotion eccleſiaſticall ſhall be eftſoons meerly void, &c.

33 E. 1. tit. Annuity 51. V. c. Cr. on. 40. 1 Jac. in the 3. the oath againſt ſimony, &c. * 9 E. 3. 22. 10 E. 3. 1. 20 E. 3. 44. Regiſt. 58. 21 H. 8. ca. 13. vers. finem.

Take a benefice.] This word *beneficium eccleſiaſticum* extendeth not only to benefices of churches parochiall; but to dignities and other eccleſiaſticall promotions; as to deaneries, archdeaconries, prebends, &c. And it appeareth in our * books that deaneries, archdeaconries, prebends, &c. are benefices with cure of ſouls; but they are not comprehended under the name of benefices with cure of ſouls within the ſtatute of 21 H. 8. by reaſon of a ſpeciall proviſo; which they had been, if no ſuch proviſo had been added, viz. deans, archdeacons, chancellours, treaſurers, chanters, prebend, or a parſon where there is a vicar indowed.

If any perſon or perſons, bodies politique or corporate, which have election, nomination, voice, or aſſent in the choice,
[156] election, preſentation, or nomination of any ſcholar, fellow or any other perſon to have room, or place in any church collegiat or cathedrall, colleges, ſchools, hoſpitals, halls, or ſocieties, ſhall take or receive any money, fee, or reward, &c. the place, room, office, &c. of the offender ſhall be void, &c.

Like caſes in Pl. com. 176. upon the ſtatute of 32 H. 8. of Co. . . Dier, 20 Eliz. upon the ſtatute of 27 H. 8. Of Uſes.

Which have election, preſentation, &c.] This act being a law perpetuall, theſe words extend not only to ſuch perſon and perſons, &c. as at that time had election, preſentation, &c. but to all and every perſon and perſons, that at any time hereafter ſhould have election, preſentation, &c. otherwiſe the law ſhould be but temporary, which ſhould be directly againſt the meaning of the makers of the act. And by the ſame reaſon this act extendeth not only to

church-

churches, colledges, ſchools, hoſpitals, hals, and ſocieties founded at the time of the making of the act, but to all ſuch as ſhould be erected or founded after.

And if any fellow, officer, or ſcholar in any of the churches, colleges, &c. *ut ſupra*, contract or agree for any money, reward, &c. for the leaving, or reſigning up of the ſame his room or place to any other, &c. ſhall forfeit and loſe double the ſum of money, &c. ſo received, and every perſon by whom or for whom any money, &c. ſhall be given, &c. ſhall be incapable of that place or room for that time or turn, &c. And it is further enacted, that at the time of every ſuch election, preſentation or nomination, as well this preſent act, as the orders, and ſtatutes of the ſame places concerning ſuch election, preſentation or nomination ſhall then and there be publiquely read, upon pain to forfeit and loſe the ſum of forty pound, &c. whereof, the one moiety to him that will ſue, and the other moiety to the church, colledge, &c.

I have read ancient verſes concerning ſimony, and other corrupt entries into churches, which are not unneceſſary, in deteſtation of them, to remember.

Quatuor eccleſias portis intratur in omnes,
Caſaris et ſimonis, ſanguinis, atque Dei.
Prima patet magnis, nummo patet altera, charis
Tertia, ſed paucis quarta patere ſolet.

Four doors hath every church, and all but one forebod,
(Whereof unſeen ſome may be peradventure)
Of Ceſar, ſimonie, of kindre, and of God:
And each church man by one of theſe doth enter.
Great mens command doth open wide the firſt,
At next by money enter many one,
The third to weak allies, but (for the church the worſt),
Gods dore doth open to a few or none,

To conclude this chapter with this, that ſimony is odious in the eye of the common law: for a garden in ſocage of a mannor, whereunto an advowſon is appendant, ſhall not preſent to the church, becauſe he can take nothing for the preſentation, for the which he may account to the heir; and therefore the heir in that caſe ſhall preſent of what age ſoever. And if an heir of tenant *in capite*, hath livery *cum exitubus*, yet ſhall the heir not preſent to an advowſon, becauſe no iſſues or profit can be taken thereof.

* *Latro eſt qui aurum ex religione ſectatur.*

And the common law would have the patron ſo far from ſimony, as it denied him to recover damages in a *quare impedit*, or aſſiſe of *darrein preſentment*, before the ſtatute of W. 2. cap. 5.

[a] Simony is the more odious, becauſe it is ever accompanied with perjury, for the preſentee, &c. is ſworn to commit no ſimony.

7 E. 3. 39. a. 27 E. 3. 89. 29 E. 3. Preſent. al egliſe. Fitz. 17. & E. 2 Preſent. 10. Fitz. N B. 33. S. 24 E. 3. 29. * *Jerome.* 3 H. 6. tit. Damages. 17 adjuge. See the 2. pt. of the Inſtit. W. 2. ca. 5. Lib. 6. fo. 50. & 51. Lib. 5. 58, 59. Speccot.

[a] Vid. Linwood ubi ſupra.

CAP. LXXII.

Of Monomachia, Single Combate, Duell, Affrays, and Challenges, and of Private Revenge.

THIS ſingle combat between any of the kings ſubjects, of their own heads, and for private malice, or diſpleaſure is prohibited by the laws of this realm: for in a ſetled ſtate governed by law, no man for any injury whatſoever, ought to uſe private revenge; for revenge belongeth to the magiſtrate, who is Gods lieutenant. And the law herein is grounded upon the law of God. *Vindicta eſt mihi, et ego retribuam, dicit Dominus.* Vengeance is mine, and I will repay it, ſaith the Lord. *Qui vindicari vult, inveniet vindictam à domino, et peccata illius ſervans ſervabit.* He that will revenge, ſhall finde vengeance from the lord, and he will ſurely keep his ſins in remembrance.

Deut 32. 35. Rom. 12 19. Eccleſiaſticus 28 1.

It is alſo againſt the law of nature and of nations, for a man to be judge in his own proper cauſe, *judex in propria cauſa*, eſpecially *in duello*, where fury, wrath, malice, and revenge are the rulers of the judgement. See more of private revenge, cap. Miſpriſion, in [*crimen commiſſionis.*]

Gen. 34. ver. 25. & 30. of Simeon and Levi.

Object. But it is objected, that this ſingle combat may be undertaken for revenge, and preſervation of the honour of the party grieved.

Reſpond. 1. The honour or eſtimation of the party may more juſtly and notoriouſly be revenged, and repaired by the magiſtrate in publique, then by the party in private. 2. There is nothing honourable, that is againſt the laws of his country, and the law of nature and nations. 3. Whatſoever is againſt the law of God is impious and diſhonourable. 4. The eminent danger of the parties ſeeking private revenge. Firſt, concerning the ſoules of both of them, as well of him that killeth (who is *vir ſanguinis*) as of him that is ſlain, and dieth in his malice: and as to the world, he that ſlayeth is in worſe caſe, then he that is ſlain. For the murderer loſeth not only his lands and goods, but his life alſo and his honour, which he ſo much reſpected: for by his attainder his blood ſhall be corrupted, and if he were noble, or gentle before, he thereby becomes ignoble and baſe, and he that is ſlain by law loſeth none of them: ſo as hereof it is truly ſaid, *Infœlix pugna, ubi majus periculum incumbit victori, quàm victo.* 5. Not only the ſoul of man, but the body alſo, was originally made to the image of God, *Quicunque effuderit humanum ſanguinem, fundetur ſanguis illius, ad imaginem quippe Dei factus eſt homo.* Who ſo ſheddeth mans blood, by man ſhall his blood be ſhed, for in the image of God made he man. *Solus Deus, qui vitam dat, vitæ eſt dominus; nec poteſt quiſquam eam juſte auferre niſi Deus, vel gerens authoritatem Dei, ut judex.* And this was the reaſon, that amongſt Chriſtians it was not lawfull for the lord to kill his villain.

Gen. 9. 6.

In ancient time ſo much the law did reſpect honour, and order, as hear what Britton ſaith, *Si treſpas ſoit fait en temps de peace a chivaliers, ou a auters gents honorables per ribaudes ou auters viles perſons, ſi le ferue ſoit per felony, &c. ſauns deſert del chivalier, que le rialle perdra ſon poigne dount il treſpaſſa.*

Brit. c. 25. f. 49. b.

And many ordinances, laws, and acts of parliament, which doe prohibit the pardon of wilfull murder, are alſo grounded upon the law of God, to the end none ſhould offend in hope of pardon. * *Non accipies precium ab eo qui reus eſt ſanguinis, ſtatim enim et ipſe morietur. Ne polluatis terram habitationis veſtræ, quæ cruore maculatur; nec aliter expiari poteſt, niſi per ejus ſanguinem, qui alterius ſanguinem effuderit.* Ye ſhall take no ſatisfaction for the life of a murtherer, which is guilty of death, but he ſhall be ſurely put to death: ſo ye ſhall not pollute the land wherein you are, for bloud defileth the land, and the land cannot be cleanſed of the bloud that is ſhed therein, but by the bloud of him, that ſhed it.

Glouc. 6 E. 1. c. 9. 2 E. 3. ca. 2. 4 E. 3. ca. 13. 14 E. 3. cap. 15. 13 R. 2. St. 2. c. 1. Read theſe ſtat.

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* Num. 35. 31. 33. See before in chapter of murder.

And this law is confirmed by Chriſt himſelf in the Goſpel, and by the laſt book of holy ſcripture. *Omnes qui acceperint gladium gladio peribunt. Qui in gladio occiderit, oportet eum gladio occidi.*

Mat. 26. 52. Apocal. 13. 10.

Affray.

But albeit upon the ſingle combate no death enſue nor blood drawn, yet the very combate for revenge is an affray, and a great breach of the kings peace, an affright and terrour to the kings ſubjects, and is to be puniſhed by fine and impriſonment, and to find ſureties for their good behaviour; for it is *vi et armis, et contra pacem domini regis, &c.* and in reſpect of incrochment upon royall authority for revenge, it is *contra coronam et dignitatem.*

Trin. 10 E. 3. Coram rege, Rot. 87. Northt.

An affray is a publique offence to the terrour of the kings ſubjects, and is an Engliſh word, and ſo called, becauſe it affrighteth and maketh men afraid, and is enquirable in a leet as a common nuſans. See the ſtatute of 2 E. 3. c. 3. where it is; *(en effraier de la pais,)* and the writ grounded upon that ſtatute ſaith, *In quorundam de populo terrorem*, as it appeareth in F. N. B. fo. 249. f. and the Regiſter agreeth with the originall, and therefore the printed book *(en affray de la peace)* muſt be amended.

4 H. 6. fo. 10. 8 E. 4. fo. 5.

And if any ſubject by word, writing, or meſſage challenge another to fight with him, this is alſo an offence before any combate be performed, and puniſhable by law, and it is *contra pacem, coronam, et dignitatem.* For *quando aliquid prohibetur, prohibetur et omne, per quod devenitur ad illud.* Or ſuch offenders may be puniſhed in the ſtar-chamber, whereof there be many preſidents. Now when an affray is made by ſingle combat, any ſtander by, that is no officer, may endeavour to part them, and prevent further danger, and the law doth incourage them hereunto; for if they receive any harm by the affrayours, they ſhall have their remedy by law againſt them, and if the affrayours receive hurt by the endeavouring only to part them, the ſtanders by may juſtifie the ſame, and the affrayours have no remedy by law. But if either of the parties be ſlain, or wounded, or ſo ſtricken, as he falleth down for dead, in that caſe the ſtanders by ought to apprehend the party ſo ſlaying, wounding, or ſtriking, or to endeavour the ſame by hue and cry, or elſe for his eſcape they ſhall be fined and impriſoned. But if the ſherif, juſtice of peace, conſtable, or other conſervatour of the peace doe not part the affrayers for the preſervation of the kings peace, and apprehend them being within his view, or doe not his uttermoſt endeavour

Regula.

8 E. 2. cor. 295. 22 Aſſ. pl. 56.

endeavour to part and apprehend them, they may be fined and imprisoned for their neglect thereof, for they may command others to assist them, and therefore the rule holdeth in them, *idem est facere, et nolle prohibere cum possis: et qui non prohibet, cum prohibere possit, in culpa est.* And if any be commanded to assist them therein, and refuse or neglect the same, it is a contempt in them to be punished by fine and imprisonment.

3 H. 7. 10 b. Bedingfields case.

There is a *duellum* allowed by law depending a suit for the trial of truth, whereof we have spoken in another place, and as here it appeareth, there is a *duellum* against law: of both these an ancient authour saith thus, and first of the lawfull: *Duellum est singularis pugna inter duos ad probandum veritatem litis, et qui victor probasse intelligitur, et quamvis judicium Dei expectetur ibidem, quicunque tamen monomachiam,* i. e. *singularem pugnam sponte susceperit vel optulerit, homicida est, et contrahit mortale peccatum. Et eodem modo judex qui authoritate desert, vel præstat, omnesque accessores, et consulentes, faventes et auxiliantes, nec non et sacerdos qui dat benedictionem.*

Fleta, li. 1. c. 32. §. Duellum. 2. pt. of the Instit. W. 1 c. 40. Fleta ubi supra.

In a writ of right, if the tenant wage battail by his champion, and if the champion after become blind by infirmity, and not *de malitia*, he shall be discharged of the battail. And if a man be appealed of felony, and gage battaile, and after become blind *ut supra*, he shall be discharged of the battail, because he becometh so by the act of God. And if the appellant after battail waged become blinde upon any occasion, the appellee *in favorem vitæ* shall goe quit. When issue is joyned to be tried by battail, and the triall by battail is become impossible by the act of God, or by the default of the appellant, the appellee goeth free.

11 H. 3. tit. Droit. Fitz 57.

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And this kind of battail, in case of appeals and writ of right, is by publique authority and course of law, whereunto all the people by an implied consent are parties; and (as some hold) had his warrant by the word of God by the single battail between David and Goliah, which was strucken by publique authority.

1 Regum, c. 17. ver. 4, 5, &c.

King E. 3. in the sixteenth year of his reign, having war with the French king for his right to the kingdome of France, out of the greatnesse of his minde, for love of his subjects, the saving of christian bloud, and a speedy tryall of the right, offered the single combate with the French king, but he refused it.

Afterwards also, after long and chargeable wars between the crowns of England and France, for the right of the kingdome of France, it was an honourable offer which king R. 2. made to Charles the French king for saving of Christians guiltlesse bloud, and to put an end to that bloudy and lingring war, which we will rehearse in the very words of the record it self.

[a] *Rex dedit potem. Johanni duci Lancast' avunculo suo de certis receptis seu oblationibus Carolo regi Franc' faciend', viz. quod negocium bellicum inter prædictos reges finiatur.* 1. *Per certamen personarum suarum.* 2. *Vel aliter inter personas suas cum tribus pariuis ipsorum ipsi utrinque adjunctis.* 3. *Aut alioquin quod dies congruus assignaretur et locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat.* The duke of Lanc' according to his commission made these offers from the king of England to king Charles of France, but he was *auditus, sed non exauditus;* for king Charles liked none of these offers.

[a] Rot. Franciæ 7 R. 2. m. 24. The offer of R. 2. to king Charles of France.
1. A single combat between the two kings.
2. Or a combat between the two kings and three of their uncles on either side.
3. Or that a fit day and place might be assigned when under the universall conflict of both their armies, an end might be put to the war.

And

[b] And in *anno Domini* 1196. *anno regni Ricardi primi octavo*, Philip king of France ſent this challenge to Richard the firſt, that king R. would chooſe five for his part and he the king of France would appoint five for his part, which might fight in liſts for triall of all matters in controverſie between them for the avoiding of ſhedding *of more* guiltleſſe bloud. King Richard accepted the offer, with condition that either king might be of the number, but this condition would not be granted.

[b] N. Trivet.

[c] Theſe, and the like offers, as they proceeded from high courage and greatnes of mind, ſo had they been lawfull, if they had been warranted by publique authority.

[c] See the 2. part of the Inſtitutes W. 1. ca. 20.

CAP. LXXIII.

Againſt going or riding armed. [160]

Item, IT is enacted, that no man, great or ſmall, of what condition ſoever he be, (except the kings ſervants in his preſence and his miniſters in executing *des mandements le roy*, or of their office, and ſuch as be in their company aſſiſting them, and alſo upon a cry made for armes to keep the peace, and the ſame in ſuch places where ſuch things happen) be ſo hardy to come before the kings juſtices, or other the kings miniſters doing their office, with force and armes, nor bring force in affray of the people, nor to goe nor ride armed by night nor by day, &c. before the kings juſtices, or in any place whatſoever, upon paine to forfeit their armor to the king, and their bodies to priſon at the kings pleaſure, and to make fine, and ranſome to the king, &c.

2 E. 3. cap. 3. Paſch. 18 E. 3. Coram rege. Rot. 146. Hardd. 8 R. 2. cap. 13. the printed book is 7. but it ought to be 8. and ſo recited in 20 R. 2. ca. 1. Lib. 5. f. 72. St. Johns caſe.

20 R. 2. cap. 1.

Upon this ſtatute two things fall into conſideration. Firſt, what the common law was before the making of this ſtatute. Secondly, the true ſenſe and expoſition of this act. For it appeareth by a record in 29 E. 1. *quòd non liceat torneare, bordeare, juſtas facere, aventuras gwerre, ſeu ad arma præſumere, ſine licentia regis.* See Britton, fo. 29 b. It was called *turneamentum decurſus*, of turning and winding, in reſpect of the agility, as well of the horſe, as of the man. For in thoſe daies this deed of chivalry was at random, whereupon great peril enſued. Therefore in the reigne of E. 3. for ſafety the tilt was deviſed. See the ſtatute of 7 E. 2. *De defenſione portandi arma*, and the ſtatute of W. 1. cap. 9. & cap. 17. W. 2. cap. 39. and the expoſitions upon the ſame.

Paſch. 29 E. 1. coram rege. Rot. 121. Eſſex. Paſch. 18 E. 1. coram rege. Rot. 32. Glouc.

It is *lex et conſuetudo parliamenti*, that whereſoever the parliament is holden proclamation ſhould be made forbidding wearing of armor, and exerciſe of playes and games of men, women, or children, in or about the city, or place where the parliament is holden, leſt the proceedings in the high court of parliment *pro bono publico*, ſhould thereby be hindred or diſturbed.

Vet. Mag. Cart. 2. part. fo. 40. b. Rot. Parl. 6 E. 3. nu. 2. & 3. 13 E. 3. nu. 2. 14 E. 3. nu. 2. 15 E. 3. nu. 2. 17 E. 3. nu. 2. 18 E. 3. nu. 2. 25 E. 3. nu. 50. Parl. 1 & 25 E. 3. Parl. 2. nu. 5.

If

[a] 11 H. 7. fo. 23. vide before cap. *Homicide.* Brook Coron 229. See 24 H. 8. cap. 13. Juſts, Turnies, Bariers, &c.

[a] If any by mutuall aſſent, do uſe juſts or turneaments, or to play at ſword and buckler, or any other deeds of armes, and the one killeth the other, this is felony, for that it is not lawfull to uſe them without the kings licence; which agreeth with the record aboveſaid, of 29 E. 1.

[b] Paſch. 18 E. 3. Coram rege Rot. 146. Nota bene.

[b] *Willus Jordan inventus fuit vagans armatus de platis, &c. &c. compertum eſt per juratores, quòd minatus fuit per quoſdam latrones, et quòd pro ſalvatione vitæ ſuæ, platas prædictas oppoſuit ſuum. tamen invenit ſecuritatem pro bono geſtu ſuo.*

[c] 25 E. 3. cap. 2.

[c] The clauſe of the ſtatute of 25 E. 3. concerning this matter we have reſerved to this place, viz.

[d] See before cap. *High treaſon.* verb. *Ou ſi home leve guerre.* fo. 9.

[d] And if per caſe any man of this realm ride armed covertly or ſecretly, with men of arms, againſt any other to ſlay him, or rob him, or to take and keepe him, till he hath made fine or ranſome, it ſhall not be adjudged treaſon, but it ſhall be judged felony or treſpaſſe, according to the lawes of the realme of old time uſed, and according, as the caſe requires. And if in ſuch caſe, or other like, before this time any juſtices have judged treaſon, and for this cauſe the lands and tenements have come into the kings hands as forfeit, the chiefe lords of the fee ſhall have the eſcheats of the tenements holden of them, whether that the ſame tenements be in the kings hands, or in others, by gift, or in other manner. Saving alwayes to our lord the king, the yeare, and the waſt, and the forfeitures of chattels, which pertain to him in the caſes above-named. And that writs of *ſcire facias* be granted in ſuch caſe againſt the land tenants without other originall, and without allowing any protection in the ſaid ſuit. And that of the lands which be in the kings hands, writs be granted to the ſherifs of the counties, where the lands be, to deliver them out of the kings hands without delay.

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Vide cap. High treaſon, verb. *Fait compaſſer*, fo. 6.

Concerning the point of felony, it muſt be obſerved, that at the making of that ſtatute, and by the lawes of the realme of old time uſed in ſuch caſe, when any purpoſed to ſlay, and declared it by ſuch overt act, *voluntas reputabatur pro facto*, as hath been ſaid before; and ſo is this branch concerning that point to be underſtood.

Scire fac.

And that writs of ſcire fac. be granted.] Here it may appear what ſpeedy remedy by *ſcire fac.* the makers of this law gave for reſtitution to be made, where any of the juſtices had in any of the caſes mentioned in this branch judged it treaſon, which is declared by this law to be againſt law.

Note for reſtitution. See hereafter cap. Reſtitution.

Now let us peruſe the words of the ſaid act of 2 E. 3.

W. 1. ca. 9. & 17. W. 2. cap. 39. 18 E. 2. execution, 251. 19 E. 2. ibid. 247. 3 H. 7. fo. 1 et 10. b. 14 H. 7. S. Lib. 5. fo. 91. Semaynes caſe.

His miniſters in executing.] By the order of the common law and ſtatutes of the realme, the ſherif, or other miniſter of the king in execution of the kings writs, or proces of law, might after reſiſtance take *poſſe comitatus.* For, *ſequi debet potentia legem et non antecedere.*

Des mandements le roy.] That is, of the kings writs, and proces of law, *ſecundum legem et conſuetudinem Angliæ.* Though in this act

them

there be three ſpeciall exceptions, yet the law doth make another exception, and that is, to aſſemble force to defend his houſe, as hereafter ſhall be ſaid.

To come before the kings juſtices, or other the kings miniſters doing their office, with force and armes.] Bracton doth notably write of the diverſity of forces, viz. that there is *vis expulſiva, perturbativa, inquietiva, ablativa, compulſiva, &c.* which you may read in him. And then (which is pertinent to our purpoſe) he ſaith: *Eſt etiam vis armata, (armis dejectum dico qualitercunque fuerit vis armata) non ſolum ſi quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent cum quo nocere poſſint. Telorum autem appellatione cuncta, in quibus ſinguli homines nocere poſſunt, accipiuntur: ſed ſi quis venerit ſine armis, et ipſa concertatione lignis ſum ſerit, fuſtes, et baculos, talis datur vis armata; ſi quis autem venerit cum armis, ad hoc tamen ad defendendum non uſus fuerit, et dicerent, vis armata dicitur eſſe facta; juſtificatum tenor armorum et videatur armis dejeciſſe.* Agreeing with that of the poet,

Jamque faces et ſaxa volunt, furor arma miniſtrat. Virgil.

Britton ſaith, *Nous volons, que toutz gents pluis uſent jugement, que ſoyt.* Britton, 116. a.

Bracton, lib. 4. fo. 162.

Not to bring force in affray of the (pais, i.) courts.] This act is notably expounded by the writ in the Regiſter, and F. N. B. for by that writ it appeareth, that if any doth enter into, or detaine with force any houſes, lands, or tenements, the party grieved may have a writ upon this ſtatute, directed to the ſherif, by force of which writ, if the ſherif find the force, then if any after proclamation made, (which proclamation is by reaſonable conſtruction to be made for avoiding of bloodſhed) ſhall diſobey, or if it be found by inquiſition, the ſherif is to ſeize their armes and weapons, and to arreſt and take the offenders and commit them to priſon, &c. But note the ſherif cannot reſtore the party grieved upon this writ to his poſſeſſion, [a] no more then he can upon the writ *de ejectione firmæ, removenda*, but reſtitution muſt be made by force of the ſtatutes of 8 H. 6. and 21 Jac. [b] And yet in ſome caſe a man may not onely uſe force and armes, but aſſemble company alſo. As any may aſſemble his friends and neighbours, to keep his houſe againſt thoſe that come to rob, or kill him, or to offer him violence in it, and is by conſtruction excepted out of this act: and the ſherif, &c. ought not to deal with him upon this act; for a mans houſe is his caſtle, *et domus ſua cuique eſt tutiſſimum refugium*; for where ſhall a man be ſafe, if it be not in his houſe? and in this caſe it is truly ſaid,

See the chapter next before. verb. *Affraye.* Regiſtrum. F. N. B. 249. f. Nota. Vide lib. 5. fo. 9. Semayes caſe F. N. B. 54.

[a] 8 H. 6. cap. 9. 21 Jac. cap. 25. [b] 3. E. 3. cor. 303-305. 26 Aſſ. p. 22. 21 H. 7. 39.

Armaque in armatos ſumere jura ſinunt.

21 H. 7. 39. Lib. 5. fo. 91. b. Semaynes caſe.

But he cannot aſſemble force, though he be extreamly threatned, to goe with him to church, or market, or any other place, but that is prohibited by this act.

Not to goe armed by night, or by day, &c. before the kings juſtices in any place whatſoever.] Sir Thomas Figett knight went armed under his garments, as well in the palace, as before the juſtice of the kings bench: for both which upon complaint made, he was arreſted by ſir William Shardſhill chiefe juſtice of the kings bench, and being charged therewith, he ſaid that there had been debate between him and ſir John Trevet knight in the ſame week, at Pauls

24 E. 3. fo. 33.

in

in London, who menaced him, &c. and therefore for doubt of danger, and ſafeguard of his life, he went ſo armed. Notwithſtanding the court upon their view awarded, that the armes were forfeited, and thereupon the ſame were ſeiſed, and he commanded to ward in the Marſhalſea during the kings pleaſure. Sir Thomas prayed to find mainpriſe, which was denied, untill the pleaſure of the king was known, becauſe he was impriſoned during the kings pleaſure, according to this ſtatute.

24 E. 3. ubi ſupra. Vide the 4. part of the Inſtitutes, cap. Lat. 20 R. 2 cap. 1. Vid. indorſ. clauſ. 2 E. 2. 19. 22.

Upon paine to forfeit their armor, &c.] It appeareth before by the caſe of ſir Thomas Figett, that the offender was to bee puniſhed according to this act, but by forfeiture of the armor and impriſonment; but the ſtatute of 20 R. 2. cap. 1. doth add fine, and impriſonment.

And that the kings juſtices, in their preſence, &c.] So did ſir William Shardiſhill, as is aboveſaid.

And other miniſters in their baliwickes, &c.] That is to ſay, ſherifs, bailifs of liberties, &c.

Lords of franchiſes.] And their bailifs, maiors, and bailifs of cities, and borowes within the ſame cities and borowes; and borowholders, conſtables, and wardens of the peace within their wards ſhall have power to execute this act. And the juſtices aſſigned at their comming down ſhall inquire how ſuch officers, and lords have exerciſed their offices in this caſe, and to puniſh them whom they find that have not done that which pertaineth to their office. See 12 R. 2. cap. 6.

Regiſtrum. F. N. B. 249. E. 24 E. 3. fo. 33.

It is to be obſerved, that upon this ſtatute by the reſolution of the judges a writ was framed, and inſerted into the Regiſter, when any with force and armes enter any lands and tenements, or detaine the ſame with force and armes, directed to the ſherif, reciting the force, and our act, (and ſaith) *Nos ſtatutum prædictum inviolabiliter obſervari, et idem infringentes juxta vim et effectum ejuſdem ſtatuti caſtigari et puniri volentes et punire, tibi præcipimus, &c. publice proclamari facias, &c.* as in the writ. And here is a ſecret in law, that upon any ſtatute made for the common peace, or good of the realm, a writ may be deviſed for the better execution of the ſame, according to the force and effect of the act.

Vid. 36 E. 3. ca. 9. ſimile.

Note. proclamations are of great force, which are grounded upon the laws of the realme.

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CAP. LXXIV.

Of Perjury and Subornation of Perjury, and incidently of Oaths.

5 El. ca. 9.

EVERY perſon which ſhall unlawfully and corruptly procure any witneſſe to commit any wilfull, and corrupt perjury in any matter or cauſe depending in ſuit, and variance, by any writ, action, bill, complaint, or information in any of the kings courts of chancery, ſtar-chamber, or in any of the