(6) *Si autē domus illa à comite, barone, vel aliis fundata fuerit.*] Having provided remedy when the king was founder, now this act provideth when a ſubject is founder.

23 E. 3. contr' collat. 3.

(7) *Tenementum ſic alienatum.*] Theſe words couple all that hath beene ſaid before to this branch.

(8) *Collatum fuerit in liberam eleemoſinam.*] So as of neceſſity the lands and tenements within the purview of this act muſt be given in frankalmoigne, for ſo be the words of the writ framed and formed by this act.

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Regiſt. 238. F.N.B. 211. a. 1. Part of the Inſtitutes, ſect. 136, 137. What Free almoigne is. Fleta, lib. 5. ca. 24.

Fleta treating hereof, ſaith, *Alia eſt cauſa cum res detur in eleemoſina, et alienetur, in quo caſu proviſum fuit quod breve de ingreſſu ad recuperandum hujuſmodi tenementum alienatum in dominico. Vide* capit' Eſchaetrie, Vet' Magna Charta 161.

(9) *Habeat, &c. breve ad recuperandum.*] This branch ſaith, *habeat breve:* but what if the alienation be of ſuch a tenement or hereditament, as there lieth no writ of *contra formam collationis?* As for example, if an advowſon be aliened *contra formam collationis*, the founder ſhall preſent, becauſe he can have no writ; for when a right is given, the law with it will give a remedy, ſo as this act is to be underſtood, that his remedy ſhall be by writ, where a writ doth lye.

29 E. 3. Contra formam collat. 8. F.N.B. 211. f. 32 E. 3. Ceſſavit 24. Fleta, l. 5. c. 34. For this writ.

After a recovery had by force of this writ againſt the abbot, there muſt be a *ſcire fac'* (as hath been ſaid) againſt the tenant of the land, who is not concluded by any triall, &c. had againſt the abbot, &c.

Vide 32 E. 3. tit. Breve 291. for the form of this writ.

32 E. 3. Bre. 291. 17 E. 3. Contra form. collat i. 32 E. 3. Bre. 291. 2 H. 4. 17. F.N.B. 211. Regiſt. 238. Vet. N. B 242. Lib. intrat. Raſt. 126. See the laſt clauſe of this chapter.

The heir ſhall have this writ for an alienation in the time of his anceſtor, for the right of action once veſted in the anceſtor cannot dye.

This writ alſo lieth againſt the ſucceſſor for an alienation made by the predeceſſor, notwithſtanding theſe words in the writ, *prædictus abbas*; or the heir may have an action againſt the ſucceſſor.

* 7 R. 2. Ceſſavit 18. F.N.B. 211.

* This action of *contra formam collationis* conſiſteth onely in privity for none but onely for the founder, or donor, or his heire, and not for any ſtranger.

(10) *Eodem modo de tenemento dato pro cantaria ſuſtinenda, vel luminari in aliqua eccleſia, ſeu capella, vel alia eleemoſina ſuſtinenda, ſi tenementum ſic datum alienetur.*] *Elecmoſina:* ſee the firſt part of the Inſtitutes, ſect. 133, &c. et le Cuſtumier de Norm. cap. 32. *Tenure per omoſne, et le lattin com' ſur ceo.*

This is a clauſe of reference, *eodem modo, &c.* But this clauſe extendeth not to the lands or tenements parcell of the foundation of the abbey, or priory; for the former branches of this act had made ſufficient proviſion for them

7 H. 4. 20.

But this clauſe extendeth to lands or tenements given to any eccleſiaſticall perſon, that is, either religious, as abbots, priors, &c. or ſecular, as parſons of churches, deans, &c. for the finding of a chauntery prieſt, or of a light, or any other charitable or almſdeeds, or when a chauntery is incorporated, and lands given for maintenance of the ſame.

10 H. 6. 5. b.

And this branch being generall, *viz. De tenemento dato pro cantaria, &c.* the ſame extendeth aſwell to biſhops, and all other ſecular perſons, or eccleſiaſticall, as religious, conſiſting of one ſole perſon, or aggregate of many: and ſo note the diverſity between this and the former branch, and the ſeverall reaſons of the ſame.

Regiſt. 238. F.N.B. 209. k.

18 E. 3. 5. a. 32 E. 3. Fit. 291. cap. Schaet. Vet. Magn. Chart. 162. See the firſt part of the Inſtitutes, fol. 290.

By theſe words [*eodem modo*] if lands were given to an abbot, *pro cantaria ſuſtinenda, aut pro paſtu pauperum*, or other ſuch ſervice in certain; and the abbot aliened with conſent of the covent, yet the *contra formam collationis* did lye againſt the abbot upon this branch, by reference to the former branch.

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(11) *Et ſi forte tenementa ſic data, pro cantaria, luminari, paſtu * pauperum, vel alia eleemoſina ſuſtinenda, vel faciendа, non fuerit alienata, ſed ſubtracta fuerit hujuſmodi eleemoſina per biennium.*] By this branch is a ceſſavit given, where lands were given to finde a chaplein to ſing divine ſervice, or to finde a light in ſuch a church, &c. or to diſtribute certain bread and beer every day, week, or moneth to poor people, &c.

Reg. 28. F.N.B. 208. g. cont' Eccluet' Vet. Magna Charta. 162. 1. part of the Inſtitutes, ſect. 137. 7 H. 4. 20. F.N.B. 210. F. 7 E. 4. 11. per Catesby. 1. part of the Inſtitutes, fol. 137.

(12) *Tenementa ſic data*, &c.] This branch extendeth not to a gift in tail, for the donor ſhall not have a ceſſavit within this ſtatute.

It is holden, that this branch concerning the ceſſavit, extendeth not to lands or tenements given by the founder upon the foundation of the houſe; albeit, as it appeareth by the ſaid charter of H. 1. the lands were generally given, not onely for celebration of divine ſervice in the church, &c. but for ſuſtentation of poor people, or other almes deeds, which are alſo adjudged in law divine ſervice.

11 R. 2. View 63.

And this clauſe, that giveth the ceſſavit, referreth onely to the laſt branch concerning chauntries, lights, and other particular almes deeds, and not to the former branch concerning the foundations and dotations *in libera eleemoſina* in generall; for this branch extendeth not at all to lands given in free almoigne, as the firſt and ſecond clauſes did, for in free almoigne no certain ſervice is to be done, and therefore for them no ceſſavit can lye, but lyeth onely where particular divine ſervices are mentioned.

1. part of the Inſtitute, ſect. 136, 137.

1. part of the Inſtitutes, ſect. 137. F.N.B. 210. E.

Note here the excellent judgement of the makers of this act, for they, for alienation of lands given in free almoigne, that is, for celebration of divine ſervices, &c. incertain, gave a *contra formam collationis*, but gave no ceſſavit for ceſſer, becauſe no ceſſavit could lye for divine ſervice incertain; but for divine ſervice certain, both a *contra formam collationis*, and a ceſſavit reſpectively by this act doth lye, aſwell as an avowry for the ſame at the common law.

F.N.B. 209. k. Pl. Com. 58. b. 12 H. 4. 24. 14 H. 4. 4.

(13) *Competat actio donatori, aut ejus hæredi.*] In this caſe the heir ſhall upon this branch have a *ceſſavit pro paſtu pauperum*, for the ceſſer done in the life of his anceſtor, but ſo ſhall not the heir of the lord in a ceſſavit upon the ſtatute of Gloceſt': and the reaſon of the diverſity is, for that in a ceſſavit brought upon this branch *de paſtu pauperum*, no tender of the arrerages ſhall be by the tenant to the demandant, becauſe they belong to the poor, and never belonged to the demandant or his anceſtor; but the rent and ſervice upon the ſtatute of Gloc' belonged to the lord to whom the tender was to be made, but his heir is out of that ſtatute, becauſe the tender of the arrerages in the life of the anceſtor belonged not to him.

(14) *Sicut ſtatutum eſt in ſtatuto Gloc'.*] Although this branch hath a reference to the ſtatute of Gloc', yet it is to be underſtood, to extend to ſuch clauſes of that act, as may ſtand with reaſon of law and conveniencie, as you perceive by an example before remembred, *et ſic de ſimilibus.*

CAP. XLII.

DE mareſcallis domini regis (1) *de feodo camerariis* (2), *cuſtodibus hoſtiorum in itinere juſtic', et ſervientibus virgam portantibus coram juſtic' apud Weſtm', qui officium illud habeant de feodo* (3), *et qui plus exigunt ratione feodi ſui quam exigere conſueverunt, ſecundum quod multi queruntur ſuper eos qui ſtatut' cur' à multo tempore viderunt et ſciunt, dominus rex inquiri fecit, quem ſtat' prædict' miniſtri de feodo habere conſueverunt temporibus retroactis, et per inquiſitionem* (4) *ſtatuit et præcepit, quod mareſcallus de feodo qui de novo exigit palefridum* (5) *de comitibus, baronibus, et aliis per partem baroniæ tenent', quando homagium fecerint, et nihilominus ad malitiam eorum alium palefridum, et de quibuſdam (de quibus palefridum habere non debuit) palefridum de novo exigunt, ordinavit quod prædictus mareſcallus de quolibet comite et barone (integram baroniam* (7) *tenente) de uno palefrido ſit contentus* (6), *vel de precio quale antiquitus percipere conſuevit* (8), *ita quod ſi ad homagium, quod fecit, palefridum vel precium in forma prædicta ceperit, ad malitiam ſuam nihil capiat;*

Et ſi fortè ad homagium nihil ceperit, ad malitiam ſuam capiat. De abbatibus et prioribus integram baroniam tenentibus, cum homagium aut fidelitatem pro baroniis ſuis fecerint, capiat palefridum vel precium, ut prædictum eſt.

Hoc idem de archiepiſcopis, et epiſcopis obſervand' eſt. De his autem qui partem baroniæ tenent, ſive ſint religioſi, ſive ſeculares, capiat ſecund' portionem partis baroniæ, quam tenent (9). *De religioſis tenent' in liberam eleemoſinam*

CONCERNING the king's marſhals of fee, chamberlains, porters in the circuit of juſtices and ſerjeants bearing vierge before juſtices at Weſtminſter, which have the ſame office in fee, and that aſk more by reaſon of their fee than they have uſed to aſk, whereupon many do complain on them, that have known and ſeen the order of the court of long time; our lord the king hath cauſed to be enquired by an inqueſt what the ſaid officers of fee have uſed to have in times paſſed, and hath ordained and commanded, that a marſhal of fee, which of new aſketh a palfray of earls, barons, and other holding by a part of a barony when they have done homage, and nevertheleſs another palfray when they are made knights, and of ſome that ought not to give any, aſk a palfray: it is in like manner ordained, that the ſaid marſhal of every earl and baron, holding by an entire barony, ſhall be contented with one palfray, or with the price of it, ſuch as he hath uſed to have of old; ſo that if he took a palfray, or the price of one, at the doing of his homage in form aforeſaid, he ſhall take nothing when he is made knight;

And if he took nothing at the doing of his homage, when he is made knight he ſhall take. Of abbots and priors holding an whole barony, when they do homage or fealty for their baronies, he ſhall take one palfray, or the price, as afore is ſaid.

And this ſhall alſo be obſerved amongſt archbiſhops and biſhops. Of ſuch as hold but a part of a barony, whether they be religious or ſecular, he ſhall take according to the portion of the part of the barony

elemosinam, et non per baroniam, vel partem baroniæ, nihil de cætero exigat mareschallus.

that they hold. Of religious men that hold in free alms, and not by a barony, nor part of a barony, the marshal from henceforth shall demand nothing.

Et concessit dominus rex, quod per hoc statutum non præcludatur mareschallus suus de feodo in plus petendo, si imposterum ostendere poterit, quod jus habeat plus petendi (10).

And our lord the king hath granted, that by this statute a marshal of fee shall not be barred hereafter to demand more, if he can shew that he hath right unto more.

Camerarii domini regis habeant de cætero de archiepiscopis (11), *episcopis, abbatibus, prioribus,* [452] *et aliis personis ecclesiasticis, comit', baron', integram baroniam tenent', rationabilem fidem cum homagium aut fidelitatem pro baroniis suis fecerint. Et si per partem baroniæ teneant, capiant rationabilem finem secundum portionem ipsos contingentem. Alii vero abbates, priores, religiosi, et seculares non tenentes per baroniam, vel partem baroniæ, non distringantur ad finem faciend'* (12), *secundum quod de tenentibus per baroniam vel partem baroniæ dictum est, sed sit camerarius de superiori indumento contentus, vel de precio indumenti: quod plus honestè dictum est pro religiosis quam secularibus, quia honestius est, quod religiosi faciant pro superiori indumento, quam exeant.*

The king's chamberlains from henceforth shall have of archbishops, bishops, abbots, priors, and other persons spiritual, of earls and barons holding an entire barony, a reasonable fine when they do their homage or fealty; and if they hold by a part of a barony, they shall take a reasonable fine according to the portion to them belonging. Other abbots, priors, and other persons spiritual and temporal, that hold no entire barony, nor part of a barony, shall not be distrained to make fine, as it is said by them that hold by a barony, or part of a barony, but the chamberlain shall be contented with his upper garment, or with the price thereof; which is done in favour of persons religious more than of lay persons; for it is more convenient that religious men should fine for their upper garment, than to be stripped.

W. 1. cap. 40.

The mischief before this statute was, that not onely the marshall, and the chamberlein of the kings house, but some inferiour officers, as the porters, or door-keepers of the justices in eyre; and likewise the bearer of rods or staves before the justices at Westminster, did extort of the subject excessive fees, more then was due to them: whereupon many that of long time had known the kings court, and other the said courts, did greatly complain; for remedy whereof this act was made; the particular mischiefs shall be specified in their due places.

The statute of W. 1. had provided against the extortion by serjeants, cryers, and marshals of justices in eyre, and of other justices; now this act provideth against the officers following.

(1) *De mareschallis domini regis.*] This is intended of the marshall of the kings house. Of this officer Britton saith thus, *Et que le mareschal de nostre hostele teigne nostre lieu deins la vierge de nostre hostle, &c.* The steward of the kings house and this marshall have a court of justice, as elsewhere we have shewed.

Brit. fo. 1. b. 1. part of the Institutes, sect. cap. Grand Sergeanty. Fleta, li. 2. c. 3, 4, 5. Lib. 10. fo. 68, &c. Lib. 6. fo. 20, 21. Lib. 7. fo. 17. Fleta, li. 2. c. 6.

(2) *De*

(2) *De camerariis.*] This is alſo intended of the chamberlein of the kings houſe. The l. chamberlein of the kings houſhold is a great officer of the kings houſe, ſo called becauſe his office doth principally concern the chambers, that is, matters above the ſtairs; of his office, Fleta writeth thus, *Camerarius autem, et ſub-miniſtri cameræ a juriſdictione ſen', et mar' exempti ſunt, veluti omnes garderobarii, ut in quibuſdam; non enim extendit ſe juriſdictio ſen' ad modica delicta camerariorum, vel garderobariorum audienda, vel terminanda, eo quod ex conſuetudine hoſpitii ſunt exempti, dum tamen illi de quibus exigi contigerit cur' coram ſeneſch', cameris regis et reginæ, ac garderobæ aſſiduè ſint intendentes; ſed coram ipſis theſaur' et camerar' audiantur querimoniæ de hujuſmodi miniſtris et ſubditis ſuis, et terminabuntur, præſente tamen clerico regis ad placita aulæ deputato; ita quod de finibus, et amerciament' ex hujuſmodi placitis provenientibus nihil regi depereat. Debet enim camerarius decenter diſponere pro lecto regis, et ut cameræ tapetis, et banqueriis ornentur, et quod ignes ſufficienter fiant in caminis, et providere ne ullus defectus inveniatur quatenus officium ſuum contigerit.* Obſerve here, what anciently belonged to the office of the chamberlein of the kings houſhold. Fleta, ubi ſupra.

(3) *De feodo.*] Theſe words are not onely meant of them that have a fee-ſimple in their offices, but ſuch as have any fixed eſtate, either in tail or for life, and ſo are theſe words intended throughout this act; and the office of the chamberlain of the houſhold was never granted in fee: and ſome do hold, that the ſenſe of theſe words [*de feodo*] are ſuch officers as have fees due, and belonging to them. W. 1. cap. 30. See hereafter in the next chapter towards the end.

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(4) *Per inquiſitionem.*] Obſerve here, that before the king, the lords and commons made this law, the king did inquire by oath of a jury ſworne of the truth and certainty of the fees hereafter in this act ſet downe.

(5) *Quod mareſchallus de feodo qui de novo exigit palefridum, &c.*] Before this act the marſhall of the kings houſe claimed and did take for his fee of every earle, baron, and of others holding by part of a barony, when they did their homage, his palfrey; and notwithſtanding, when they were made knights, did challenge and take another palfrey; wherein he did wrong in two reſpects:

1. That in that caſe hee tooke two palfreyes where hee ought to take but one.

2. That he tooke one of them, that held by part of a barony, both which are remedied by this act.

(6) *Prædictus mareſchallus de quolibet comite et barone integram baroniam tenente de uno palfrido ſit contentus, &c.*] So as by this act he ought to have but one palfrey, both at his doing of homage, and at his making of knight.

(7) *Per integram baroniam.*] What a whole barony is, and of how many knights fees it conſiſteth, hath been before ſhewed, Magna Charta, cap. 2. Mag. Chart. c. 2.

And if one had divers baronies, yet ſeeing that he was but one perſon, the marſhall ſhould have but one horſe, *de uno palefrido ſit contentus:* and ſo it is of one that is made knight, though he hath many knights fees.

(8) *Vel de precio quale antiquitus percipere conſuevit.*] That we may ſay once for all, the auncient price of the horſe of every archbiſhop, biſhop, abbot, prior, earle, or baron holding by an entire barony is x. l. Ex pervetuſt' Manuſcript.

Alſo the auncient price of the horſe of one that is made knight, or that doth homage, having no part of a barony, is v. marks.

4 H. 4. cap. 23. See the ſtatute of 4 H. 4. cap. 23.

(9) *De hiis qui partem baroniæ tenent, ſive ſint religioſi, ſive ſeculares, capiat ſecundum portionem partis baroniæ.*] As for example, if he hold by halfe a barony, he ſhall pay v. l. which is halfe the price of the horſe of him, that holdeth by an entire barony, and ſo according to rate of the value of the horſe, &c.

But the marſhall ſhall take nothing of religious or eccleſiaſticall perſons that hold *in liberam eleemoſynam, et non per baroniam, nec per partem baroniæ.*

(10) *Non præcludatur mareſchallus de feodo in plus petendo, ſi in poſterum oſtendere poterit quod jus habet plus petendi.*] Here is a ſaving for the marſhall of his right of demanding other fees upon better proofe made; but at the making of this act it appeared by the ſaid inquiſition, that no other fees were due to him, then are here expreſſed; but note there is no saving for the chamberlain.

(11) *Camerarii domini regis habeant de cætero de archiepiſcopis.*] The kings chamberlaine, that is, the chamberlain of the kings houſhold ſhall have a reaſonable fine, when any eccleſiaſticall or lay perſon, holding by an entire barony, doe his homage or fealty, and of them that hold by part of a barony a reaſonable fine according to the portion which they have.

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So as nothing is due to the kings chamberlain when one is made knight, as it appeareth by the context of this.

(12) *Alii vero abbates, priores religioſi et ſeculares non tenentes per baroniam vel partem baroniæ non diſtringantur ad finem faciend'.*] They which hold not by a barony, nor part of a barony ſhall yeeld no fine to the chamberlain, but the chamberlaine of them ſhall have their uppermoſt garment, or the price thereof; and it is more honeſt for the chamberlain to take the price in that caſe of the eccleſiaſticall perſon, then of the ſecular, and the reaſon is there rendred, *quia honeſtius eſt, quod religioſi ſolvant pro ſuperiori indumento, quam exuantur.*

CAP. XLIII.

PROHIBEATUR de cætero hoſpitulariis et templariis (1), *ne de cætero trahant aliquem in placitum coram conſervatoribus privilegiorum ſuorum de aliqua re, cujus cognitio ſpectat ad forum regium* (2): *quod ſi fecerint, primo reſtituant damna parti gravatæ, et verſus dominum regem graviter puniantur* (3). *Prohibet etiam dominus rex conſervatoribus privilegiorum eorundem, ne de cætero (ad inſtantiam hoſpitulariorum, templariorum, aut aliorum privilegiatorum)* (4) *concedant citationes, priuſquam exprimatur*

BE it prohibited from henceforth to hoſpitallers and templars, that hereafter they bring no man in plea before the keepers of their privileges for any matter, the knowledge whereof belongeth to the king's court; which if they do, firſt, they ſhall yield damages to the party grieved, and be grievouſly puniſhed unto the king. The king alſo prohibiteth to the keepers of ſuch privileges, that from henceforth they grant no citations at the inſtance of hoſpitallers, templars, or other perſons privileged, before it be

primatur ſuper qua re fieri debeat citatio (5). *Et ſi viderint hujuſmodi conſervatores, quod petatur citatio de aliqua re, cujus cognitio ſpectat ad forum regium, hujuſmodi conſervatores nec citationem faciant, nec cognoſcant. Et ſi aliter fecerint* (6) *conſervatores* (7), *reſpondeant parti læſæ de dammis, et nihilominus verſus dominum regem graviter puniantur. Et quia hujuſmodi privilegiati impetrant conſervatores, ſubpriores, præſentator', ſacriſtas, religioſos, qui nihil habent* (8) *unde læſis, aut domino regi ſatisfacere poſſint, qui audaciores ſint* (9) *ad læd'end' dignitatem domini regis* (10) *quam eorum ſuperiores, quibus per eorum temporali pœna poteſt infligi: caveant de cætero prælati hujuſmodi obedientiariorum, ne permittant obedientiaries ſuos aſſumere ſibi juriſdictionem in præjudicium domini regis et coronæ ſuæ. Quod ſi fecerint, pro facto ipſorum reſpondeant ſui ſuperiores, ac ſi de proprio facto ſuo convicti eſſent* (11).

be expreſſed upon what matter the citation ought to be made. And if the keepers do ſee that a citation is required upon any matter, the knowledge whereof belongeth to the king's court, the keepers ſhall neither make nor knowledge the citation. And if the keepers do otherwiſe, they ſhall yield damages to the party grieved, and nevertheleſs ſhall be grievouſly puniſhed by the king. And foraſmuch as ſuch perſons privileged, depute keepers, ſub-priors, chantors, ſextons, which be religious men, and which have nothing to ſatisfy the parties grieved, nor the king; which be more bold to offend the king's dignity than their ſuperiors, to whom puniſhment may be aſſigned by their temporalties. Let the prelates of ſuch obedients therefore beware from henceforth, that they do not ſuffer their obedients to uſurp any juriſdiction in prejudice of the king and his crown; and if they do, their ſuperiors ſhall be charged for their fact, as much as if they had been convict upon their proper act.

(Regiſt. 39.)

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(1) *Prohibeatur de cætero hoſpitulariis et templariis.*] The hoſpitallers and templars had divers great liberties and priviledges, and amongſt the reſt they held an eccleſiaſticall court before a canoniſt or ſome of the clergy whom they termed *conſervator privilegiorum ſuorum*, which judge having in deed more authority then was convenient, yet did he dayly in reſpect of the height and greatneſſe of theſe two orders, and at their inſtance and direction, incroach and hold plea of matters determinable by the common law, for *cui plus licet quam par eſt, plus vult quam licet*; and this was one great miſchiefe.

Another miſchief was that this judge likewiſe at their inſtance in caſes, wherein he had juriſdiction, would make generall citations, as *pro ſalute animæ*, and the like, without expreſſing the matter, whereupon the citation was made, which alſo was againſt law, and tended to the grievous vexation of the ſubject, both which miſchiefes, or rather abuſes are remedied by this act. F.N.B. 41. a. 20 E. 3. excom. 9. 28 E. 3. 97. 20 E. 4. 20. b.

(2) *Cujus cognitio ſpectat ad forum regium.*] This branch is in affirmance of the common law.

(3) *Quod ſi fecerint, primo reſtituant damna parti gravatæ, et verſus dominum regem graviter puniantur.*] By this branch the

hoſpitallers and templers are to yeeld damages to the party grieved, and to be grievouſly fined to the king, if they draw any man in plea before the conſervator of their priviledges of any thing determinable in the kings courts.

(4) *Ad inſtantiam hoſpit' templar' aut aliorū privilegiatorū.*] Hereby it appeareth that their juriſdiction extended reſpectively, not onely to the hoſpitallers and templers, but to perſons priviledged, or within their priviledges, and for that cauſe the judge was termed *conſervator privilegiorum.*

(5) *Prohibet dominus rex conſervatoribus, &c. ne de cætero, &c. concedant citationes priuſquam exprimatur ſuper qua re fieri debeat citatio.*] This branch is in affirmance of the common law, as before in this chapter it hath appeared; and this agreeth with Linwood, who taketh a citation *in foro eccleſiaſtico* to be, as the writ *in foro ſeculari*, for ſo it is by him defined. *Breve idem importat quod præceptum vel citatio, et in eo continetur gravamen, ſuper quo procedit actio ipſius agentis ſeu proſequentis.*

Linwood de foro competo cap. 2.

(6) *Et ſi aliter fecerint conſervatores*, &c.] By this branch the party grieved ſhall recover his damages alſo againſt the ſaid judge, if he graunt any citation, or hold any plea of or for any matter determinable in the kings court, ſo as the party grieved ſhall have double remedy, both againſt the hoſpitallers and templers, and alſo againſt their judge, and the king to have a double fine in reſpect of the wrong done to his crown, and dignity, and the unjuſt vexation of his ſubjects.

(7) *Conſervatores.*] For this word ſee hereafter cap. 47.

Alſo if the judge did graunt a generall citation without expreſſing the cauſe, by colour whereof the party was troubled, he ſhould yeeld to the party damages, and be grievouſly fined to the king.

[466] (8) *Et quia hujuſmodi privilegiati impetrant conſervatores, ſubpriores, præſentatores, ſacriſtas, religioſos, qui nihil habent.*] Before this act there was another miſchief or abuſe, and that was, that theſe hoſpitallers and templers, to defeat the remedy that was given to the party grieved againſt the judge in the caſes aboveſaid by the common law, did conſtitute ſubpriors, chaunters, ſextens, and other religious men, which had nothing to ſatisfie the party grieved, nor the king (whereby it appeareth that the party grieved in the caſes aboveſaid had remedy by the common law) were more bold to offend againſt the kings crown and dignity then their ſuperiors, &c. for this miſchiefe, or rather abuſe, remedy is here provided.

(9) *Qui audaciores ſint.*] The wiſdome of the common law was ever, that men of ability and ſufficient meanes to live ſhould be called to offices, and judiciall places for three cauſes:

1. Firſt, for that they would feare to offend; for men that are in place of judicature, and without meanes, are, as here it appeareth, boldeſt to offend.

2. They to maintaine their countenances are proneſt to bribe and extort.

3. That if they offend, they may be able to ſatisfie the party grieved, and the king his fine: which three cauſes doe appeare by this branch.

(10) *Ad lædendum dignitatem regis.*] Here it appeareth that incroachment of juriſdiction by eccleſiaſticall judges contrary to the kings lawes is *crimen læſæ dignitatis regis*; which appeareth by theſe

thoſe words, and hereafter it is in this branch ſaid, *in præjudicium domini regis et coronæ ſuæ.*

(11) *Quod ſi fecerint, pro facto ipſorum reſpondeant ſui ſuperiores, ac ſi de proprio facto ſuo convicti eſſent.*] Here is the remedy provided for the laſt mentioned miſchiefe or abuſe, *viz.* that the ſuperiors, that is, thoſe that appoint ſuch judges (as are not ſufficient to ſatisfie the party grieved his damages, and the king his fine) ſhall out of their temporalties ſatisfie the ſame according to the rule of *reſpondeat ſuperior.*

And by the common law, if the coroner be inſufficient, the whole county, who made election and choyce of him, ſhall *tanquam actor et ſuperior* anſwer for him, and ſo ſhall the officer anſwer for his deputy.

Fleta, li. 6. c. 36. reſpondeat ſuperior. 52 H. 3. Stat. de Scac' W. 2. c. 2. & 11. 44 E. 3. 13. 41 Aſſ. 10. 50 E. 3. 5. 39 H. 6. 32. 2 H 6. ca. 10. l. 11. fo. 92. The earle of Devonſhires caſe.

Hil. 14 E. 3. ex pte remem. regis in Scac' Rot. 9. Herlizans caſe. 39 H. 6. 32.

CAP. XLIV.

DE cuſtodibus hoſtiorum in itineribus, virgam portantibus (1) *coram juſtic' de banco: ordinatum eſt, quod de qualibet aſſiſa et jurata quam cuſtodiunt, capiant decem denarios tantum, de chirographis nihil. De his qui recuperant demandas ſuas verſus plures per defaltam, redditionem, vel alio modo per judicium ſine aſſiſa, vel jurat', nihil. De his qui recedunt ſine die per defaltam petentis vel querentis, nihil capiant. Et ſi quis recuperaverit demandam ſuam verſus plures* (2) *p.r unum breve, et per recognitionem aſſiſæ vel jurat' de quatuor denariis ſint contenti. Et ſimiliter ſi plures in uno brevi nominati per recognitionem aſſiſæ vel juratæ recuperaverint demandam, de quatuor denariis ſint contenti. De his qui faciunt homagium in banco, de ſuperiori panno ſint contenti. De magnis aſſiſis, attinctis, juratis, et duello preceſſo xii.d. tantum capiant. De his q i vocati ſunt coram juſtic' ad ſequend', vel defendend' placitum ſuum, nihil capiant pro egreſſu vel ingreſſu. Ad placita coronæ de qualibet duodena xii.d. tantum capiantur. De quolibet priſonario deliberato iv.d. tantum capiantur. De quolibet cujus pax proclamata*

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CONCERNING porters bearing verge before juſtices of the bench in the circuit; it is provided, that of every aſſiſe and jury that they keep they ſhall take x.d. only, and for the bills nothing. Of ſuch as recover their demands by default, confeſſion, or otherwiſe by judgement without aſſiſe and jury, they ſhall take nothing. Of ſuch as go without day by default of the demandant or plaintiff, they ſhall take nothing. And if any recover his demand againſt many by one writ, and by recognizance of aſſiſe or jury, they ſhall be content with iv.d. And likewiſe if many named in one writ do recover by recognizance of aſſiſe or jury, they ſhall be content with iv.d. Of ſuch as do homage in the bench, they ſhall be content with their upper garment. Of great aſſiſes, attaints, juries, and battle waged, they ſhall take xii.d. only. Of ſuch as be called before juſtices to ſue or to defend their pleas, they ſhall take nothing for their comming in or forth. At the pleas of the crown, for every dozen xii.d. only ſhall be taken. Of every priſoner delivered iv.d. ſhall be taken. Of every one whoſe peace is proclaimed

clamata fuerit xii. d. tantum capiatur. De inventoribus occiſorum, et aliis attachiat' vill', iv. d. De decennariis hominibus, al', de quatuor hominibus et propoſito ac decenariis nihil capiatur. De chirographariis pro chirographo faciendo ſtatutum eſt, quod de quatuor ſclidis ſint contenti (3). *De clericis ſcribentibus brevia originalia et judicialia ſtatutum eſt, quod pro uno brevi de uno denario ſint contenti. Et injungit dominus rex omnibus et ſingulis juſticiariis ſuis in fide et ſacramento quibus ei tenentur* (4), *quod ſi hujuſmodi miniſtri contra præd' ſtatutum in aliquo articulo venerint, et querimonia ad eos perveneat, pœnam eis infligant rationabilem. Et ſi iterum deliquerint majorem pœnam eis infligant, qua caſtigari merito debeant. Et ſi tertio deliquerint, et ſuper hoc convicti fuerint* (5), *ſi ſint miniſtri de feodo* (6), *amittant feodum ſuum, et ſi alii ſint, amittant curiam regis, nec redeant ſine ipſius regis ſpeciali præcepto aut gratia.*

claimed xii. d. only ſhall be taken. Of the finders of men ſlain, and others of a town attached, iv. d. Of tythingmen nothing ſhall be taken. Of cyrographers, for making a cyrografe, it is ordained, that they ſhall be contented with iv. s. Of clerks writing writs original and judicial, it is ordained, that for one writ they ſhall take but i. d. And the king chargeth all his juſtices, upon their faith and oath that they owe him, that if ſuch manner of officers offend in any article againſt this ſtatute, and complaint come to them thereof, they ſhall execute on them reaſonable puniſhment; and if they offend the ſecond time, they ſhall award greater puniſhment, that they may be duly corrected: and if they offend the third time, and be thereupon convicted, if they be officers of the fee, they ſhall leeſe their fee; and if they be other, they ſhall void the king's court, and ſhall not be received again, without the ſpecial grace and licence of the king himſelf.

See W. 1. cap. 26, 27. 29. (2 H. 4. c. 8.)

(1) *De cuſtodibus hoſtiorum in itineribus virgam portantibus, &c.*] This noble and wiſe king, knowing that extortion was a grievous burthen to his ſubjects, and having provided againſt the ſame by many laws, as before hath appeared: in this chapter he ſetteth down in particular, as an addition to his former acts, what fees the porters bearing vierge before the juſtices of the common pleas in their circuit, the chirographers, and clerks writing writs originall or judiciall ſhould take, which were the due fees before this act; but yet it was thought neceſſary that the ſame ſhould be ſet down, and publiſhed by act of parliament for three cauſes.

1. That all the ſubjects of the realm might take notice, and know in what caſes to give, and in what not.

2. In caſes where they ought to give, what they were to give in certainty.

3. That the officers or miniſters take no more then is here preſcribed, under pretence of expedition, or other pretext whatſoever, nor to take any thing where nothing is due to them, under the pains hereby inflicted.

(2) *Et*

(2) *Et ſi quis recuperaverit demandam ſuam verſus plures*, &c.] Where there were many tenants or defendants, 4.d. was before this act extorted for every tenant or defendant upon a recovery againſt them, where (they all being but as one tenant or defendant) there ought to be given but one 4.d. as it is declared by this act. 26 Aſſ. 47.

(3) *De chirographariis pro chirographo faciendo ſtatutum eſt quod de 4.s. ſint contenti.*] *Chirographarius* cometh of the Greek word χειρογραφεῖν, which is as much to ſay, as a hand writing, ſo called, becauſe he writeth the chirographs, that is, the indentures of the fine, one for the buyer, another for the ſeller: and the fine is ſaid to be ingroſſed, when the chirographer maketh the indentures, and delivers them. F.N.B. 147. a.

By the ſtatute of 2 Henry 4. cap. 8. it is provided, that the chirographer ſhall take but the ſaid ſumme of 4.s. mentioned in this act for a fine levied. 2 H. 4. cap. 8.

(4) *Et injungit dominus rex omnibus, et ſingulis juſticiariis ſuis in fide, et ſacramento quibus ei tenentur*, &c.] By this great injunction, and commandment of ſo high a nature to the juſtices, the odiouſnes of extortion appeareth, and what an high offence it is, for that moſt commonly it is accompanied with perjury, and that it hath a conſuming quality; whereof the prophet David ſpeaking againſt the enemies of Almighty GOD, ſaith, Let the extortioner conſume that he hath, and let the ſtranger ſpoil his labour.

(5) *Et ſi tertio deliquerint, et ſuper hoc convicti fuerint.*] *Convicti fuerint* is here taken for *adjudicati fuerint*. See W. 2. cap. 4.

Though this branch ſaith, *et ſuper hoc convicti fuer'*, and may ſeem to refer to the third offence, yet cannot he be convicted of the third before he be convicted of the ſecond, nor of the ſecond before he be convicted of the firſt; and the ſecond offence muſt be committed after the firſt conviction, and the third after the ſecond conviction, and ſeverall judgements thereupon given: for ſo it is to be underſtood in other acts of parliament, where there be degrees of puniſhment inflicted, for the firſt, ſecond, and third offence, &c. there muſt be ſeverall convictions, that is to ſay, judgements given upon legall proceeding for every ſeverall offence, for it appeareth to be no offence untill judgement by proceeding of law be given againſt him.

(6) *Si ſint miniſtri de feodo.*] This is underſtood of officers that have any fixed eſtate, although it be not in fee-ſimple, as in the 42. chapter is ſhewed; for the largeſt eſtate of any of the miniſteriall offices ſpecified in this act that ever was granted, was for term of life; and this appeareth by the diverſity of puniſhments impoſed by this act; for if they have their offices *de feodo*, that is, of a fixed eſtate, for the third offence *amittant feodum*, that is, *officium ſuum*; and if they have no fixed eſtate, but at pleaſure, *amittant curiam regis*, that is, be forjudged the kings court.

See before, cap. 2, the ſenſe of theſe words, *de feodo*.

CAP.

CAP. XLV.

QUIA *de his quæ recordata ſunt* (1) *coram cancellario domini regis, et ejus juſtic' qui recordum habent, et in eorum rotulis irrotulatur, non debet fieri proceſſus placiti per ſummonitiones, attachiamenta* (2), *eſſonium* (3), *viſus terræ, et alias ſolemnitates curiæ* (4), *ſicut fieri conſuevit de contractibus et conventionibus factis extra cur': obſervandum eſt de cætero, quod ea quæ inveniuntur irrotulat' coram his, qui recordum habent, vel in finibus* (5) *content', ſive ſint contractus, ſive conventiones, ſive obligationes, ſive ſervitia, aut conſuetudines, recognita, ſive alia quæcunque irrotulata, quibus curia domini regis (ſine juris et conſuetudinis offenſo) authoritatem præſtare poteſt, talem de cætero habeant vigor' quod non ſit neceſſe in poſterum de his placitare* (6), *ſed cum venerit conquerens ad cur' domini regis, ſi recens ſit cognitio, vel finis levat', viz. infra annum, ſtatim habeat breve de executione* (7) *illius recognitionis factæ. Et ſi fortè à majori tempore tranſacto facta fuerit illa recognitio, vel finis levatus, præcipiatur vicecom' quod ſcire faciat parti, de qua ſit querimonia, quod ſit ad certum diem coram juſtic', oſtendens (ſi quid ſciat dicere) quare hujuſmodi irrotulat', vel in fine content' executionem habere non debeant* (8). *Et ſi ad diem non venerit* (9), *vel fortè venerit, et nihil ſciat dicere, quare executio fieri non debeat, præcipiatur vicecom', quod rem irrotulatam, vel in fine content' exequi faciat. Eodem modo mandetur ordinario in ſuo caſu* (10), *obſervetur nihilominus quod* [W. 2. *cap.* 9.] *ſupradict' eſt de medio, qui per recognition' aut judicium obligatus eſt ad acquietandum* (11). [13 E. 1. Mercatoribus.]

BECAUSE that of ſuch things as be recorded before the chancellor and the juſtices of the king that have record, and be inrolled in their rolls, proceſs of plea ought not to be made by ſummons, attachments, eſſoin, view of land, and other ſolemnities of the court, as hath been uſed to be done of bargains and covenants made out of the court; from henceforth it is to be obſerved, that thoſe things which are found inrolled before them that have record, or contained in fines, whether they be contracts, covenants, obligations, ſervices, or cuſtoms knowledged, or other things whatſoever inrolled, wherein the king's court, without offence of the law and cuſtom, may execute their authority, from henceforth they ſhall have ſuch vigour, that hereafter it ſhall not need to plead for them. But when the plaintiff cometh to the king's court, if the recogniſance or fine levied be freſh, that is to ſay, levied within the year, he ſhall forthwith have a writ of execution of the ſame recogniſance made. And if the recogniſance were made, or the fine levied of a further time paſſed, the ſheriff ſhall be commanded, that he give knowledge to the party of whom it is complained, that he be afore the juſtices at a certain day, to ſhew if he have any thing to ſay why ſuch matters inrolled or contained in the fine ought not to have execution. And if he do not come at the day, or peradventure do come, and can ſay nothing why execution ought not to be done, the ſheriff ſhall be commanded to cauſe the thing inrolled or contained in the fine to be executed. In like manner, an ordinary ſhall be commanded in his

his caſe, obſerving nevertheleſs as before is ſaid of a mean, which by recogniſance or judgement is bound to acquit.

(Fleta, 2. c. 13. p. 76. ſect. 9. 1 Inſt. 131. a. Bro. Debt, 10. Bro. Parl. 29. Fitz. Scire fac' 1, 2, 3. S. 12, &c. Fitz. Execut. 18. 35 57. 96. 100. Cro. El. 164. 13 Ed. 1. ſtat. 1. c. 9.)

Some diverſity of opinion hath been, whether there was a *ſcire fac'* at the common law before this act; and the doubt grew for want of diſtinguiſhing between perſonall actions, and reall actions; for true it is, that in perſonall actions, if the plaintife after judgement given, or recogniſance knowledged, ſued out no proceſſe of execution within the yeer, he could have no *ſcire fac'*; but the plaintife or conuſee was driven to his originall, which is to be intended upon the judgement or recogniſance) as in actions of debt, writs of annuity, or other perſonall actions, wherein debts or damages were recovered, or upon recogniſances.

Vide devant. ca. 18. Hil. 13 E. 2. f. 74. b. in libro meo. Adjudge. al common ley. 8 E. 3. 28, 29. 44. 21 E. 3. 55. 40 E. 3. 10. L. 3. 3. f. 12. Sir William Herberts caſe, lib. 6. fol. 88. Garnons caſe.

But in reall actions, or upon a fine levied, though the demandant or conuſee ſued out no execution within the yeer after the judgement given, or fine * levyed, the demandant or conuſee of the fine after the yeer might have had a *ſcire fac'* for the land &c. becauſe he could not have any new originall, either upon the judgement or fine, as he might have in the other caſes. Now this act giveth a *ſcire facias* in perſonall actions in lieu of a new originall.

19 H. 6. 5. 20 H. 6. 20. F.N.B. 265. g. Regiſt. 298, 299. 1. Part of the Inſtitutes, ſect. 505, 506 690. 18 E. 3. 33, 34. Nota dictum Wilby. 21 E. 4. 19. b. 1 H. 5. 4.

And in reall actions, two things are remedied by this act, that is, firſt, the tedious proceſſe, which was at the common law, is hereby abridged; and ſecondly, the great delays uſed therein are outed, as views of the land, and other ſolemnities uſed in reall actions.

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And the diſtinction aboveſaid appeareth (if it be well obſerved) in our books, and therefore the old rule is hereby verified, *Qui bene diſtinguit, bene docet.* *Regula.*

And thus much being ſpoken for the cauſe of the making of this act, let us now peruſe the words.

(1) *Quæ de biis quæ recordata ſunt.*] Regularly upon this act, a *ſcire fac'* cannot be granted but upon a record; but in many caſes a *ſcire fac'* is granted, partly upon a record, and partly upon ſuch a ſuggeſtion, without which no proceeding could be upon the record.

2 E. 3. 7, 8. 46 E. 3. Scire fac. 154. 16 E. 3. Bre. 651. 15 E. 3. Scire fac. 115. 19 R. 2. ibid. 154. 17 E. 3. 36. 21 E. 3. 1. 4. 16. 14 H. 7. 6, 7. Hil. 13 E. 2. fo. 74. b. in libro meo le caſe del Mr. Hoſpital de T.

(2) *Non debet fieri proceſſus placiti per ſummon', attachiament', eſſon', viſus terræ et alias ſolemnitates curiæ.*] Here be four things particularly named to be outed, *viz.* proceſſe of ſummons, proceſſe of attachment, eſſoins, view of the land, and then generall words, other ſolemnities of courts.

(3) *Eſſon'.*] The eſſoin of the tenant or defendant is not onely reſtrained by this act, but of the priee in aid, who is a ſtranger to the writ, is alſo reſtrained.

2 H. 7. 10 & 11. Hill. 13 E. 2. ubi ſupra.

And the plaintife in the *ſcire fac'* ſhall not be eſſoined, although it is his own delay.

10 E. 3. 30. 12 H. 6. 8.

(4) *Et alias ſolemnitates curiæ.*] It hath been reſolved, that a protection is within theſe words, and that it ſhould not be allowed in a *ſcire facias.*

21 E. 4. 19.

And divers authorities are againſt it.

40 E. 3. 18. 47 E. 3. 3. 37 H. 6. 32 15 H. 7. 8.

* 17 E. 3. 46. 18 E. 3. 32. 40 E. 3. 18. 37 H. 6. 32.

* Aid, age, and receit ſhall be granted in a *ſcire facias*; for *ſolemnitates curiæ* are properly delays in reſpect of the ſolemn judiciall proceedings of court, and theſe words extend not to the right of the party to have his age, or to be received, or to have aid of another.

13 E. 3. Scire fac. 118. W. 2. cap. 5.

(5) *In finibus.*] Upon a fine *ſur grant et render* of an advowſon, a *ſcire facias* ſhall be granted, for this is a judiciall, and no originall writ, for *de advocat' non ſunt niſi tria brevia originalia.*

And though fines be here named, yet recoveries in reall actions are within the purview of this act.

36 H. 6. 32. 21 E. 4. 23. b.

(6) *Quod non ſit neceſſe in poſterum de hiis placitare.*] This branch is thus to be underſtood, that the tenant or defendant, though he be a ſtranger to the recovery, ſhall not plead againſt the recovery any thing that proveth it erroneous or voidable; but he may plead matter that proveth the recovery, void, as that it was had *coram non judice*, or the like.

* 8 E. 3. 56. 15 E. 3. Age 43. 95. 10 R. 2. Fauxer de recovery 47. 3 H. 6. 34. b. 7 H. 6. 39. 10 H. 6. 5. 7 H. 7. 13. 12 H. 8. 8.

* Neither ſhall he in a *ſcire fac'* plead any thing againſt the title or matter of the recovery, where he may have an action, and therein falſifie the ſame.

† 1. Part of the Inſtitutes, § 505.

† But the tenant or defendant may plead divers matters after the judgement given, to barre the plaintife of execution, as outlawry, or a releaſe of actions, &c.

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(7) *Si recens ſit cognitio, vel finis levat infra annum, ſtatim habeat breve de executione.*] It hath been ruled that theſe words have relation to the teſte of the recognisance, and not to the day of payment, and therefore if a recognisance be knowledged to pay a ſumme a year and halfe after, a *ſcire facias* lieth, and no *fieri facias*.

For receipts ſee Bract. l. 5. f. 377. 21 E. 3. 22. b. 21 E. 3. ubi ſupra. 10 E. 2. exec. 137. 16 E. 2. ibid. 138. 16 E. 3. Scire fac' 4. 21 E. 3. exec' Statham. 3 E. 3. 44. F.N.B. 266. c. 267. b.

But I take that rule to be againſt law, and that *recens cognitio* is as much as *recens ſolutio cognitionis*; for the words be *ſtatim habeat breve de executione*, which he cannot have before the day of payment be paſt.

If a judgement be given in a writ of annuity, the plaintiffe ſhall have execution within the yeare after every day of payment by *fieri fac'*, or *elegit*, though it be many yeares after the judgement; and ſo if a man be bound by recognisance in C. l. to pay it yearly at five ſeverall dayes 20l. now immediately after the firſt day of payment he may have an *elegit*, or *fieri facias* for the 20l. and ſo at the ſecond day paſſed, &c. and yet in both theſe caſes there is above a yeare after the judgement given or recognisance knowledged, therefore theſe words *recens ſit cognitio* ſhall relate to the day of payment of the money, which is the effect of the recognisance, and not to the teſte of the recognisance, which is but the aſſurance for payment of the money.

And this word *recens* importeth, when the party may ſue for the ſame, which he cannot doe before the day of payment be paſt, but this is to be underſtood, when the ſeverall dayes of payment are contained in the recognisance it ſelfe, for if there be a day of payment expreſſed in the recognisance, and a condition or defeaſance there of the ſame limiting other dayes of payment, there, theſe words *recens ſit cognitio, &c.* ſhall relate to the day of payment expreſſed in the recognisance, and not to the condition or defeaſance, and if there be no day of payment in the recognisance, then theſe words *recens cognitio, &c.* doe relate to the teſte of the recognisance.

And

And albeit the plaintiffe cannot have execution within the yeare, according to the letter of this ſtatute, yet if he come within a yeare of the payment, it ſufficeth. 8 E. 3. 44.

If lands be granted and rendred by fine, and in the fine it be mentioned that W. holdeth the ſame for 26 yeares after the terme ended, he ſhall have a *ſcire facias* albeit he could have no writ of execution within the yeare; and ſo it is if a reverſion expectant upon an eſtate for life be graunted by fine, and after tenant for life liveth many yeares and dieth, the conuſee ſhall have a *ſcire facias*, and yet could he not have a writ of execution within the yeare.

If the demandant or plaintiffe taketh his proces of execution within the yeare, though it be not ſerved within the yeare, yet if he continue the ſame, he may have proces of execution at any time after the yeare.

One that is not party to the record, recogniſance, fine, or judgement, as the heire, executor, or adminiſtrator, though they be privy, and though it be within the yeare, ſhall have no writ of execution, but are to have a *ſcire facias* to enable themſelves to the ſuit; and ſo likewiſe of the tenant or defendants part, for the alteration of perſon altereth the proceſs; otherwiſe it is in caſe of a ſtatute ſtaple, or merchant, &c. becauſe the proces is given by other acts of parliament. F.N.B. 267. d. 2 R. 3. 8. 14 H. 7. 16. b.

But if a judgement be given in the court of common pleas, and within the yeare the judgement is affirmed in a writ of error in the kings bench, the alteration of the court worketh no alteration of the proces, but he may have his writ of execution within the yeare, and not be driven to his *ſcire facias*, though it hath been otherwiſe holden, but now the common experience and later reſolutions are to the contrary. 21 Aſſ. p. 14. 14 H. 7. 15. 15 H. 7. 5. Lib. 5. fo. 88. Garnons caſe.

(8) *Et ſi forte á maiori tempore tranſacto facta fuerit illa recognitio, vel finis levatus, præcipiatur vic' quod ſcire faciat parti de qua ſit querimon', &c. quare executionē habere non debeat.*] Upon theſe words, *ſcire faciat parti*, in a *ſcire fac'* upon a recogniſance out of the common pleas, the conuſee muſt name all the terre-tenants at his perill, but in other courts the writ is generall againſt all terre-tenants. [472] 20 E. 3. Scir' fac' 121. 39 E. 3. 15. 46 E. 3. 29. b. 8 H. 6. 17. 21 E. 4. 19.

The point of the writ is *quare executionem habere non debet*, and therefore the tenant ſhall not vowch. 39 H. 6. 2.

This ſtatute is in the affirmative, and therefore it reſtraineth not the common law, but the party may waive the benefit of the *ſcire facias* given by this act, and take his originall action of debt by the common law. * 27 H. 6. 2. 35 H. 6. 24. 30 H. 6. 5. 19 H. 6. 49.

The formes of *ſcire fac'* upon * recogniſances, &c. and likewiſe upon † fines and recoveries appeare in our books. 44 E. 3. 11. 20 E. 3. Scir' fac' 121. 46 E. 3. 29. 10 H. 4. 2, 3. † 30 E. 3. 25.

And ſeeing the words of the *ſcire fac'* be, *quare executionem habere non debet*, the tenant or defendant may plead any thing in barre of execution, as hath been ſaid before.

(9) *Et ſi ad diem non venerit.*] * The party muſt either be warned, or regularly two *nihils* returned, and then by default execution ſhall be granted, and how the warning is to be made, it appeareth in our books. 17 E. 3. 74. 76, 77. Sir William Herberts caſe, ubi ſupra. * 18 E. 3. exec. 57. 33 H. 6. 42. 10 H. 6. 12. 2 H. 7. 3. 1. 5 E. 4. 1. 4 H. 7. 7. Li. 5. fo. 32. Peſhfers caſe.

The courſe of the court of common pleas is, that upon a recovery the plaintiffe ſhall have execution upon one *nihil* returned.

(10) *Eodem*

(10) *Eodem modo mandetur ordinario in suo casu.*] This branch is to be thus intended, that if a *scire facias* be brought upon a recognisance, or upon a judgement in a writ of annuity, and the sheriffe return that the defendant is *clericus et beneficiatus nullum habens laicum feodum, &c.* the plaintiffe shall have a writ to the bishop of the same diocesse to warne the defendant, and upon warning, or two *nihils* returned, and default made, or if he appeareth, and shew no matter, wherefore execution should not be graunted, then a writ shall be awarded to the bishop to levy execution *de bonis ecclesiasticis.*

Regist. judic' fol. 22. 26.

(11) *Observatur nihilominus quod supradictū est de medio, qui per recognitionem aut judicium obligatus est ad acquietand'.*] This clause was added *in majorem rei cautelam*, that the provision before made at this parliament cap. 9. in case that in a writ of mesne, *postquem medius venerit in curiam et cognoverit, quod acquietare debet tenentem suum, vel adjudicetur ad acquietandum, si post hujusmodi cognitionem aut judicium querimonia perveniat, quod medius non acquietavit tenentem suum, tunc exeat breve de judicio, quod vic' distringat medium ad acquietandum tenentem:* whereupon fore-judger is given; now if the plaintiffe in the writ of mesne should onely take his *scire facias*, then no fore-judger should follow thereupon, therefore this clause was added, that the former generall words of this act, *sive alia quæcunque irrotulata, &c.* should not take away the benefit of the former act concerning the fore-judger in a writ of mesne, but, as hath been said, this act being in the affirmative taketh not away neither the common law, nor the benefit of the former act concerning the said fore-judger; for the plaintiffe may take advantage either of the one or other, at his election; wherein it is to be observed that an act of parliament cannot be made too plaine: but note the fore-judger is given onely against him that made the acknowledgement, or against whom judgement was given, and not against his heire, and therefore this act is an addition declarative to the former, viz. that a *sci' fac'* may in those cases lie against the heire.

W. 2. cap. 9.

14 E. 3. mesne 9. 46 E. 3. 31. see W. 2. c. 9. more of this matter.

[473] CAP. XLVI.

CUM in statuto edito apud Merton, concessum fuerit, quod domini vastorum, boscorum, et pasturarum appruare se possint (1) *de vastis, boscis, et pasturis illis, non obstante contradictione tenentium suorum, dummodo tenentes ipsi haberent sufficientem pasturam ad tenementa sua, cum libero ingressu et egressu ad eadem. Et pro eo quod nulla fiebat mentio inter vicinum et vicinum, multi domini vastorum, boscorum, et pasturarum hucusque impediti extiterint per contradictionem vicinorum* (2) *sufficientem pasturam habentium,*

WHEREAS in a statute made at Merton, it was granted that lords of wastes, woods, and pastures, might approve the said wastes, woods, and pastures, notwithstanding the contradiction of their tenants, so that the tenants had sufficient pasture to their tenements with free egress and regress to the same: and forasmuch as no mention was made between neighbours and neighbours, many lords of wastes, woods, and pastures, have been hindered heretofore by the contradiction of neighbours having sufficient

bentium. Et quia forinſeci tenentes non habent majus jus communicandi in boſco, vaſto, aut paſtur' alicujus domini, quam proprii tenentes ipſius domini: ſtatutum eſt de cætero, quod ſtatutum apud Merton proviſum inter dominum et tenentes ſuos, locum habeat de cætero inter dominos vaſtorum, boſcorum, et paſturarum et vicinos (3), *ita quod domini hujuſmodi vaſtorum, boſcorum, et paſtur' ſalva ſufficienti paſtura hominibus ſuis et vicinis, appruare ſibi poſſint de reſiduo. Et hoc obſervetur de his qui clamant paſtur' tanquam pertinentem ad tenementum ſuum. Sed ſi quis clamat communiam paſtur' per ſpeciale feoffamentum, vel conceſſionem ad certum numerum averiorum, vel alio modo* (4), *quam de jure communi habere deberet, cum conventio legi deroget, habeat ſuum recuperare, quale habere deberet per formam conceſſionis ſibi factæ. Occaſione molendini ventritici, bercariæ* (5), *vaccariæ* (7), *neceſſarii* (8), *augmentationis cur', aut curtilagii de cætero non gravetur quis per aſſiſam* (5) *novæ diſſeiſinæ de communia paſtur'. Et cum contingat aliquando, quod aliquis jus habens appruare, foſſatum aut ſepem levaverit, et aliqui noctant, vel alio tali tempore quo non credant factum eorum ſciri, foſſatum aut ſepem proſtraverint* (9), *nec ſciri poterit per veredictum aſſiſæ, aut juratæ, qui foſſatum aut ſepem proſtraverint, nec velint homines de villatis vicinis indictare* (10) *de hujuſmodi facto culpabiles, diſtringantur propinquæ villatæ circum adjacentes, levare foſſatum aut ſepem, ad coſtum proprium, et damna reſtituere* (11). *Et cum aliquis jus non habens communicandi uſurpet communiam* (12) *tempore quo hæredes infra ætatem extiterint, vel uxores ſub poteſtate virorum ſuorum exiſtentes; vel paſtura ſit in manu tenentium in dotem, per legem Angliæ, vel aliter ad terminum vitæ, vel annorum, vel per feodum talliatum, et paſtura illa diu fuerint uſi; multi*

ſufficient paſture: and becauſe foreign tenants have no more right to common in the waſtes, woods, or paſtures of any lord than the lord's own tenants; it is ordained, that the ſtatute of Merton, provided between the lord and his tenants, from henceforth ſhall hold place between lords of waſtes, woods, and paſtures, and their neighbours, ſaving ſufficient paſture to their tenants and neighbours, ſo that the lords of ſuch waſtes, woods, and paſtures, may make approvement of the reſidue. And this ſhall be obſerved for ſuch as claim paſture as appurtenant to their tenements. But if any do claim common by ſpecial feoffment or grant for a certain number of beaſts, or otherwiſe which he ought to have of common right, whereas covenant barreth the law, he ſhall have ſuch recovery as he ought to have had by form of the grant made unto him. By occaſion of a windmill, ſheepcote, deyry, inlarging of a court neceſſary, or courtelage, from henceforth no man ſhall be grieved by aſſiſe of novel diſſeiſin for common of paſture. And where ſometime it chanceth, that one having right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſiſe or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact. The towns near adjoyning ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages. And where one, having no right to common, uſurpeth common what time an heir is within age, or a woman is covert, or whilſt the paſture is in the hands of tenants in dower, by the courteſy, or otherwiſe for term of life, or years, or in fee-tail, and have long time uſed the paſture,

ſunt

many

ſunt in opinione quod hujuſmodi paſturæ debent dici pertinere ad liberum ten', et quod hujuſmodi poſſeſſori competere debet actio per breve nov. diſſeiſ. ſi ab hujuſmodi paſtur' deforceantur: ſed de cæteris tenendum eſt, quod habentes hujuſmodi ingreſſum à tempore quo currit breve mortis anteceſſoris (13), *ſi antea communiam non habuerunt, non habeant recuperare per breve no. diſſ. ſi fuerint deforciati.*

many hold opinion, that ſuch paſtures ought to be ſaid to belong to the freehold, and that the poſſeſſor ought to have action by a writ of novel diſſeiſin, if he be deforced of ſuch paſture; but from henceforth this muſt be holden, that ſuch as have entred within the time that an aſſiſe of mortdauncеſtor hath lien, if they had no common before, ſhall have no recovery by a writ of novel diſſeiſin, if they be deforced.

(1 Roll 365. 20 H. 3. c. 4. 11 Rep. 74. 4 Rep. 38. 13 H. 7. f. 13. Dyer, 47. 316. 339. Cro. Car. 281. 440 580. Enforced by 3 & 4 Ed. 6. c. 3. 7 H. 4. f. 38. Skinner, 93. By 6 Geor. 1. c. 16. ſect. 1. the remedy of the act is extended to the deſtroyers of trees, &c. by night or day, &c. 1 Lutw. 141. 156. 1 Geo. 1. ſtat. 2. c. 48.)

(1) *Cum in ſtatuto edito apud Merton, conceſſum fuerit, quod domini vaſtorum, boſcorum, et paſturarum appruare ſe poſſint*, &c.] Here is the ſtatute of Merton recited, and becauſe in that act no mention was made between neighbour and neighbour, the doubt was, whether that ſtatute extended onely between lord and tenant, and therefore many lords of waſtes, woods, and paſtures have been letted to make approvement by the contradiction of neighbours, though they had ſufficient paſture; for remedy whereof this ſtatute was made.

6 H. 3. Common 26. 12 H. 3. ibid. 25.

(2) *Per contradictionem vicinorum.*] Note it is not ſaid that the lord could not improve againſt a neighbour, but that the lords were letted by the contradiction of the neighbours; for by the common law the lord might improve againſt any that had common appendant, but not againſt a commoner by grant.

(3) *Statutum eſt de cætero, quod ſtatutum apud Merton proviſum inter dominos, et tenentes ſuos, locum habeat de cætero inter dominos vaſtorum, &c. et vicinos.*] This branch is from the making of this act an expoſition of the ſtatute of Merton, ſo as now the ſtatute of Merton doth extend *inter vicinum et vicinum*; but though it be an act of expoſition of a former act, yet this expoſition ſhall take effect but *de cætero*, that is, from the making of this act of expoſition. And the reaſon that this act had a retroſpect to the ſtatute of Merton was, *quia forinſeci tenentes non habent majus jus communicandi in boſco, vaſto, aut paſtura alicujus domini, quam proprii tenentes ipſius domini.*

Brit. f. 144. 147. 18 Aſſ. Pl. 4. 18 E. 3. 43. 13 H. 7. 13. 32 H. 8. Dier 47. b. 14 Eliz. Dier 13. 16.

Vicinus is properly *qui una in eodem vico eſt*, but here it is taken for a neighbour, though he dwell in another town, ſo the towns and commons be adjoyning together; and if the lord hath common in the tenants ground, the tenant may improve within this act, for there the lord is in this caſe *vicinus*.

Ad aſſiſas capt' apud Penreth in com' Cumbriæ, coram Roberto de Hereford et ſociis ſuis, &c. die Veneris in craſt' inventionis ſanctæ crucis, an. regis Ed. 1. 30. Which record we have ſeen. In an aſſiſe brought by John of Rowbery, and Iſabel his wife, againſt Matild of Multon, and others, of 20 acres of paſture and wood in O. the caſe appeareth by the verdict of the recognitors of aſſiſe, *viz.*

Note this preſcription. Vide 3 E. 3. 3. 8 E. 3. 37. 46 E. 3. 13. 23. Similia.

*Quod prædict' Matild, & ſimiliter omnes anteceſſ' ſui domini de Gilleſland à tempore quo Waren' de Gilleſland devenit ad manus antec' ſuorum uſi ſunt hujuſmodi libertate, quod nullus libere tenens infra baron' illam, ſe appruire poſſet de vaſto ſuo, ſine licentia, & voluntate præd' Matild, & anteceſſ' ſuorum, nec aliquis temporibus retroactis in aliquo de vaſto ſe appruiavit niſi ſatisfecerit præd' Matild, ſeu anteceſſ' ſuis; & quæſiti ſi præd' Matild habent communiam in ten' de quo, &c. dicunt quod ſic ratione mancrii ſui de Cuquyntyngton, quod quidem maner' diſtat à ten' circit' per unam leucam; quæſiti ſi præd' Matild habeat ſufficientem communiam extra ten' præd' cum libero ingreſſu & egreſſu, dicunt quod ſic; dies datus eſt eis de audo' judo' ſuo apud Weſtm', a die Sancti Michaelis in xv. dies, &c. Poſtea à die Sancti Hilar' in xv. dies, anno regni domini regis nunc vicesimo venerunt præd' Walterus, & Iſab' per attornatum ipſius Iſab', & ſimiliter præd' Matild per baillivum ſuum, et petunt recordum, &c. Et quia conjunctum eſt per aſſiſam iſtam, quod à tempore quo Waren' præd' devenit in ſeiſina præd' Matild, ipſi antec' & ſimiliter ipſa Matild tali libertate uſi ſunt, quod nullus libere tenens infra baroniam illam, ſe poſſet appruiar' de vaſto ſuo ſine licent', & voluntate præd' Matild, & anteceſſ' ſuorum, nec aliquis temporibus retroactis in aliquo de vaſto ſe appruiavit niſi prius ſatisfecerit præd' Matild, ſeu ſuis anteceſſoribus. Et ten' quod nec proviſio de Merton', nec ſtatut' domini regis nunc de appruiament' fact', ſeu faciend' &c. non operat' in caſu propoſito, cum illud de Merton' habeat locum inter dominum appruiant', et tenentem communiam clamantem. Et ſtatutum regis nunc inter vicinum appruiantem, et vicinum communiam clamantem, et hoc de communia pertin' ad liberum ten', et caſus propoſitus eſt inter dominam comm' clamantem, et tenent' appruiantem, et * hoc de communia non pertinente ad ten', imo uſitata in baron' præd' per præd' Matild, & anteceſſores ſuos ratione dominii ſui in eadem baronia, à tempore præd'. Conſid' eſt quod præd' Matild, & alii inde ſine die. Et quod præd' Walterus, & Iſab' nihil capiant per aſſiſam, ſet ſint in miſericordia pro falſo clamor', &c.*

* Nota hoc.

This judgement, being given in the ſame kings time that the ſaid ſtatute of W. 2. was made, both in reſpect of the ſaid preſcription, together with the common reſerved at the time of the creation of the tenancie, as by the record it appeareth, ſtandeth well with the books of 18 E. 3. and 18 Aſſ. for there was no ſuch preſcription; and there it is holden, that if the lord had the common by reſervation at the time of the firſt feoffment, then no approvement could be made by his tenant againſt him: and note the quality of the common mentioned in the judgement,

(4) *Et hoc obſervetur de hiis qui clamant paſturam tanquam pertinentem ad tenementum ſuum. Sed ſi quis clamat communiam paſturæ per ſpeciale feoffamentum, vel conceſſionem ad certum numerū averiorū, vel alio modo,* &c.] So here it is to be obſerved, that neither this ſtatute, nor the ſtatute of Merton doth extend to any common, but to common appendant, or appurtenant to his tenement, and not to a common in groſſe to a certain number.

12 H. 3. ubi ſupra. 3 E. 2. Common 21. See the Expoſition upon the ſtat. of Merton.

(5) *Occaſione molendini ventritici, bercariæ, vaccariæ, neceſſarii, augmentationis curiæ, aut curtilagii de cætero non gravetur quis per aſſiſam,* &c.] Here be five kinds of improvements expreſſed, that both between lord and tenant, and neighbour and neighbour, may be done without leaving ſufficient common to them that have it (any thing either herein, or in the ſtatute of Merton to the contrary notwithſtanding) and theſe five are put but for examples; for the

7 H. 4. 38.

lord may erect a houſe for the dwelling of a beaſt-keeper for the ſafe cuſtody of the beaſts aſwell of the lord, as of the commoners depaſturing there in that ſoil; and yet it is not within the letter of this law.

(6) *Bercariæ.*] *Bercaria* ſignifieth a ſheep-houſe, and is derived from ſrom the French word *bergerie*, which alſo ſignifieth a ſheep-houſe; and by turning *g* into *c*, the legall word is made *bercaria*, and ſo it is taken in this act: in Domeſday it is called *berquarium*; it ſignifieth alſo a tanne-houſe, derived of the Saxon word *berc*. For this, ſee the firſt part of the Inſtitutes, ſect. 1. *verbo bercaria.*

Domeſday, tit. Sudſex Piccam, &c.

(7) *Vaccariæ.*] *Vaccaria* is derived *à vacca*, and ſignifieth *ſtabulum vaccarum*, a cow-houſe, as *vaccheria* doth in Italian.

Fleta betweene *bercariæ* and *vaccariæ*, hath *dayerye*; this word I finde not in the printed books, but in ancient manuſcripts, and it ſignifieth a dayery or milk-houſe; in Latine, *lactarium.*

(8) *Neceſſarii.*] Is to be applyed to *curtilagii*, both in congruity and by our books, and neceſſary ſhall not be taken according to the quantity of the free-hold he hath there, but according to his perſon, eſtate or degree, and for his neceſſary dwelling and abode; for if he hath no free-hold there in that town, but his houſe onely, yet may he make a neceſſary inlargement of his curtilage.

32 Aſſ. 5.

(9) *Et cum contingat aliquando, quod aliquis jus habens appruare, foſſatum aut ſepem levaverit, et aliqui noctanter, vel alio tali tempore quo non credant factum eorum ſciri, foſſatum aut ſepem proſtraverint,* &c.] Foraſmuch as the lord, (as hath been ſaid in the expoſition upon the ſtatute of Merton) ought to divide the parts improved, by the hedge, ditch, or other defence: now this branch provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the lord cannot know againſt whom to bring his aſſiſe or other action; and the men of the towns next adjoyning thereunto round about do not indict the miſdoers of the fact, thoſe next towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yeeld damages to the lord; *ſed certè opus eſt interprete.*

(10) *Indictare.*] That is, to indict them at the kings ſuit, either of a ryot, force, or treſpaſſe: but here it is demanded, what time have the next towns round about adjoyning to indict the miſdoers, ſeeing here is no time appointed? and the anſwer is, that ſeeing no time is appointed, the law doth appoint (as in many caſes it doth) a yeer and a day for the indicting of the miſdoers; and by the indictment, the lord ſhall know againſt whom to bring his action.

See the firſt part of the Inſtitutes, ſect. 69.

(11) *Diſtringantur propinquæ villatæ circum adjacentes levare foſſatū aut ſepem, ad coſtū proprium, et damna reſtituere.*] For, *vicinorum facta præſumuntur ſcire:* if the bordering towns do not within a yeer and a day indict the miſdoers, then ſhall the lord or other party grieved bring his action upon this branch againſt the towns bordering round-about the town wherein the fact was done, and judgement ſhall be given, that they ſhall at their proper coſts make the ditch or hedge, &c. and yeeld damages; and after judgement given, they ſhall be diſtrained to make the hedge or ditch, &c. and

and ſo it was holden in the ſtar-chamber, Hilar. 14 Jac. in Sir William Mallories caſe.

H'. 14 Jac. in Camera ſtellata.

At the parliament holden the eight day of October in 13 E. 1. at Wincheſter, remedy it given to the party robbed, upon hue and cry, (if the men of the hundred where the robbery was done, take not the offender) againſt the men of that hundred: and there is ſpeciall proviſion made, that the country ſhall have no longer ſpace then forty dayes, &c. which prevented the time limited by the law.

13 E. 1. ſtat. de Wincheſter. Lib. 7. fo. 6, 7. Milborns caſe. 27 Eliz. cap. 13. 3 E. 3. Coron. 299. Simile.

(12) *Et cum aliquis jus non habens communicandi uſurpet communiam*, &c.] This branch is in affirmance of the common law, for no man can have either common appendant or in groſſe by preſcription, but by uſage time out of minde, which is well expounded by Littleton, ſection 170.

1. Part of the Inſtitutes, § 170.

And here is to be obſerved, that uſurpations of commons in the times of infants, feme coverts, tenant in dower, tenant by the courteſie, or otherwiſe for life or yeers, or tenant in tail, ſhall not binde, though there be long poſſeſſion.

(13) *A tempore brevis mortis anteceſſoris.*] That is, *a coronatione regis* H. 3. which was in the firſt yeer of his raign, and between the coronation of H. 3. and this act, there was about 69 yeers, but yet that poſſeſſion by that time, as here it appeareth, maketh no title in law to the common, if the commencement thereof can be ſhewed ſince the time of the raign of R. 1. but the ſaid long poſſeſſion is great evidence, and a ſtrong preſumption of the right of the common, and *ſtabitur præſumptioni, donec probetur in contrarium.*

CAP. XLVII.

PROVISUM eſt, quod aquæ de Humbre, Ouſe, Trent, Doue, Arre, Derewent, Wharff. Nidd, Yore, Swale, Teſe, Tyne, Eden, et omnes aliæ aquæ in regno in quibus ſalmones capiuntur, ponantur in defenſo (1), *quo ad ſalmones capiendos, à die nativitatis beatæ Mariæ* (2), *uſque ad diem Sancti Martini* (3). *Et ſimiliter quod ſalmunculi* (4) *non capiantur, nec deſtruantur per retia, nec per alia ingenia ad ſtagna molendinorum, a medio Aprilis uſque ad nativitatem ſancti Johan. Baptiſtæ* (5). *Et in partibus ubi hujuſmodi ripariæ fuerint* (6), *aſſignentur conſervatores* (8) *iſtius ſtatuti* (7), *qui ad hoc jurati* (10) *ſæpius videant et inquirant* (9) *de hujuſmodi tranſgreſſione, et in prima tranſgr' puniantur per combuſtionem retium* (11), *et ingeniorum ſuorum. Et ſi*

IT is provided, that the waters of Humber, Owſe, Trent, Done, Arre, Derewent, Wherfe, Nid, Yore, Swale, Teſe, Tine, Eden, and all other waters (wherein ſalmons be taken) ſhall be in defence for taking ſalmons from the nativity of our lady unto St. Martin's day; and that likewiſe young ſalmons ſhall not be taken nor deſtroyed by nets, nor by other engines at milpools, from the midſt of April unto the nativity of St. John Baptiſt. And in places whereas freſh waters be, there ſhall be aſſigned overſeers of this ſtatute, which being ſworn, ſhall oftentimes ſee and inquire of the offenders; and for the firſt treſpaſs, they ſhall be puniſhed by burning of their nets and engines; and for the ſecond time, they ſhall have

ſi iterato deliquerint, puniantur per priſonam quarterii anni. Et ſi tertio deliquerint, puniantur per priſonam unius anni. Et ſic multiplicatâ tranſgreſſione, creſcat pœnæ inflictio (12).

have impriſonment for a quarter of a year; and for the third treſpaſs, they ſhall be impriſoned a whole year; and as their treſpaſs increaſeth, ſo ſhall the puniſhment.

(13 R. 2. ſtat. 1. c. 19. 17 R. 2. c. 9. 22 Ed. 4. c. 2. 23 H. 8. c. 18. 25 H. 8. c. 7. 1 El. c. 17. 3 Jac. 1. c. 12. 30 Car. 2. ſtat. 1. c. 9. 4 & 5 W. & M. c. 23. 4 Ann. c. 21. 9 Ann. c. 26. 1 Geo. 1. ſtat. 2. c. 18.)

Before the making of this act, fiſhermen for a little lucre did very much harm, and deſtroy the increaſe of ſalmons by fiſhing for them in unſeaſonable times, which were between the beginning of September, and about the midſt of November; and likewiſe for young ſalmons, or ſalmon peals, between the midſt of April, and towards the end of June: againſt both which, proviſion is made by this act.

17 R. 2. cap. 9. W. 2. c. 41. li. 2. 46. the B. of Sant. caſe.

Herein the Thames, *Thameſis nobile illud flumen* is not named, and it was holden, that the generall words extended not to inferiour rivers, and therefore the Thames is added by another act in the firſt place.

(1) *Ponantur in defenſo.*] That is, that by this act it is prohibited that ſalmons, or yong ſalmons ſhall be taken between the times mentioned in this act.

(2) *A die nativitatis beatæ Mariæ.*] Which is on the eight day of September.

(3) *Uſque ad diem Sancti Martini.*] Which is the eleventh day of November.

And note, that the day of Saint Martin, and the feaſt of Saint Martin is all one, and the feaſt in legall underſtanding beginneth and endeth with the day.

13 R. 2. ca. 19. 17 R. 2. ca. 9.

(4) *Salmunculi.*] That is, yong ſalmons, or ſalmon peals, or ſalmon ſmelts; for ſo this act is expounded by another ſtatute: they are alſo called ſalmon fews, or ſalmon iſſues.

(5) *Uſque nativitatem Sancti Johannis Baptiſtæ.*] This is not taken literally for the nativity of Saint John Baptiſt, for that is long ſince paſt; but it is taken according to the intention of the makers, untill the day or feaſt of his nativity.

And ſuch conſtruction ſhall be made of covenants, or bonds to pay money, or doe any act; for example, at the annunciation of our lady, it ſhall be taken for the feaſt of the annunciation, as here the nativity, &c. is taken for the day of the nativity.

(6) *Ubi ripariæ fuerint.*] *Ripariæ* is a word derived from *ripa*, and here it ſignifieth the water, or river running between the banks, be it freſh or ſalt; and thereupon *riparius* is taken for a fiſherman.

Regiſt. 123. 125. 64. 138. 88, &c. F. N. B. 110, 111, 112, 113. 18 E. 3. ca. 1. 4. Stat. 1. Rot. Parliam. 5 H. 4. nu. 36. 2 H. 4. Rot. Parl. nu. 22. Dier 1 El. Strogs caſe.

(7) *Aſſignentur conſervatores iſtius ſtatuti.*] And this aſſignation muſt be by commiſſion under the great ſeal, and ſuch a commiſſion could not have been made without warrant by authority of parliament; for legall commiſſions have their due forms, aſwell as originall writs, and none can be newly framed without act of parliament, how neceſſary ſoever they ſeem to be: as in this caſe it was neceſſary that ſuch a commiſſion ſhould be granted for preſervation of ſalmons and of their yong, and for avoiding of the deſtruction of the

the ſame, being victuall of great and precious account; and what is more neceſſary then increaſe of victuall? yet could it not be newly raiſed without act of parliament; but commiſſions of new inquiries, &c. and of new invention, have been condemned by authority of parliament, and by the common law. [479]

(8) *Conſervatores.*] See this word before, cap. 43.

(9) *Qui ad hoc jurati ſæpius videant, et inquirant.*] Execution of the law is the life of the law, and therefore here is proviſion made for the continuall, due, and ſpeedy execution of the law.

(10) *Jurati.*] A new oath cannot be impoſed upon any judge, commiſſioner, or any other ſubject without authority of parliament, as here it was; but the giving of every oath muſt be warranted by act of parliament, or by the common law time out of minde. Stat. de 20 E. 3. 4 H. 4. c. 18. 2 H. 5. ca. 6. 17 E. 4. ca. 2. 1 R. 3. c. 6. 5 R. 2. c. 13. 32 H. 8. ca. 46. 21 H. 8. c. 16. 1 Eliz. c. 1. 28 Eliz. ca. 4. 43 Eliz. ca. 12.

The oath of the counſellors, judges, ſheriffes, under-ſherifes, eſcheators, attorneys, maiors, and bailifes are eſtabliſhed by act of parliament.

(11) *Et in prima tranſgreſſione puniatur, per combuſtionem retium.*] This ought to be by indictment at the ſuit of the king, and the puniſhment cannot be inflicted upon the delinquent before upon due conviction, *ſecundum legem et conſuetudinem Angliæ*, judgement be given. Stat. de 20 E. 3. ubi ſupra.

And, as hath been ſaid in the like caſe, he cannot be puniſhed for the ſecond offence, before he be adjudged for the firſt, and that ſecond offence muſt be committed after the judgement given for the firſt; nor for the third, before he be adjudged for the ſecond, and that third muſt be committed after the judgement for the ſecond; for *quod non apparet non eſt, et non apparet judicialiter in iſto caſu ante judicium.* See W. 2. ca. 44.

(12) *Multiplicata tranſgreſſione, creſcat pœnæ inflictio.*] This is a maxime of the law, agreeing with thoſe other, *Regula.*

Ex frequenti delicto augetur pœna:
Creſcente malitia creſcere debet & pœna. *Regula.*

CAP. XLVIII.

DE viſu terræ ordinatum eſt et ſtatutum, quod de cætero non concedatur viſus, niſi in caſu quando viſus eſt neceſſarius (1): *ſicut ſi aliquis amittat tenementum per defaltam: et ille qui amiſit ſuſcitet aliud breve ad petendum idem tenement'* (3). *Et in caſu quando aliquis per exceptionem dilatoriam* (2) *caſſat breve poſt viſum terræ* (4), *ſicut per non tenuram, vel male nominando villam, vel hujuſmodi* (5), *ſi ſuſcitet aliud breve, in hac caſu et in ſuperiori* (6) *de cætero non concedatur viſus, dummodo viſum habuerit in*

FOR view of land it is ordained and provided, that from henceforth view ſhall not be granted but in caſe when view of land is neceſſary: as if one loſe land by default, and he that loſeth, moveth a writ to demand the ſame land. And in caſe when one by an exception dilatory abateth a writ after the view of the land, as by non-tenure, or miſnaming of the town, or ſuch like, if he purchaſe another writ, in this caſe, and in the caſe before mentioned, from henceforth the view ſhall not be granted,

in prioribus brevibus. In brevi de dote cum petatur dos de tenemento, quod vir uxoris alienavit tenenti aut ejus anteceſſori (7), *cum ignorare non debeat tenens, quale ten' vir uxoris alienavit* * (8) *ſibi, vel anteceſſori ſuo licet vir non obiit ſeiſitus, nihilominus tenenti de cetero non erit viſus concedendus. In brevi etiam de ingreſſu caſſato per hoc* (9) *quod petens nominavit male ingreſſum, ſi petens ſuſcitet aliud breve de alio ingreſſu, ſi tenens in priori brevi viſum habuerit, in ſecundo non habebit. In omnibus etiam brevibus per quæ ten' petunt* (11) *ratione dimiſſionis* (14), *quam petens vel ejus anteceſſor fecit tenenti, et non ejus anteceſſori, ſicut quod ei dimiſit, dum fuit infra ætatem, non compos mentis* (10), *in priſona* (13), *et conſimilibus* (12), *non jaceat de cætero viſus, ſed ſi dimiſſio facta fuerit anteceſſori jaceat viſus ſicut prius.*

granted, if he had view in the firſt writs. In a writ of dower, where the dower in demand is of land that the huſband aliened to the tenant or his anceſtors, where the tenant ought not to be ignorant what land the huſband did aliene to him or his anceſtor, though the huſband died not ſeiſed, yet from henceforth view ſhall not be granted to the tenant. In a writ of entre alſo, that is abated becauſe the demandant miſnamed the entre, if the demandant purchaſe another writ of entre, if the tenant had view in the firſt writ, he ſhall not have it in the ſecond. In all writs alſo where lands be demanded by reaſon of a leaſe made by the demandant, or his anceſtor, unto the tenant, and not to his anceſtor, as that which he leaſed to him, being within age, not whole of mind, being in priſon, and ſuch like, view ſhall not be granted hereafter; but if the demiſe were made to his anceſtor, the view ſhall lie as it hath done before.

Glanv. li. 2. ca. 1. (Fitz. View. 50, 51. 57. 129. 118. Fitz. View. 1, 2. 5. 24. 41. 49. 69. 102. 118, 119. 10 H. 7. f. 8.)

(1) *De viſu terræ ordinatum eſt et ſtatut', quod de cetero non conceditur viſus, niſi in caſu quando viſus eſt neceſſarius.*] There be divers books in law, wherein this maxime is cited.

3 E. 3. 55. 38 E. 3. 3. 1. 39 E. 3. 33. 42. 18. 46 E. 3. 16, 17. 21 H. 6. 42. 3 E. 3. View 135. 12 E. 3. ibid. 79. 13 E. 3. ibid. 81. 24 E. 3. ibid. 95. 22 E. 3. 9. 29 E. 3. 46. 21 H. 6. 42.

(2) *Per exceptionem dilatoriam.*] The writ muſt be abated by exception, and therefore if the demandant be nonſuit, the tenant ſhall have the view again.

If the writ doth abate by conuſans of the demandant, and not by the plea and exception of the defendant, the tenant ſhall have the view in the new writ.

If the tenant hath the view, and the demandant diſcontinue his ſuit, in a new action the tenant ſhall have the view.

7 E. 3. 36. 41 E. 3. 8. 30. 44 E. 3. 43. 46 E. 3. 34. 50 E. 3. 25.

(3) *Sicut ſi aliquis amittat tenementum per defaltam: et ille qui amiſit ſuſcitet aliud breve ad petendum idem ten'.*] This branch is not to be underſtood according to the letter, for if one loſe by default in an aſſiſe, and the tenant bring a writ of right of the ſame lands againſt the recoveror, he ſhall have the view; but this branch is to be underſtood of a *quod ei deforceat* upon the recovery by default, which writ is grounded upon the former record, ſo as the tenant hath ſufficient notice thereby; and therefore neither party privie nor eſtranger ſhall have view in this writ: but otherwiſe it is in the former caſe of the writ of right, for that is not grounded upon the record.

(4) *Et*

(4) *Et in caſu quando aliquis per exceptionem dilatoriam caſſat breve poſt viſum terræ.*] Here be two examples ſet down of dilatorie pleas in particular, that is to ſay, non-tenure, and miſnaming of the town where the lands do lye, both which exceptions do riſe upon the view.

A præcipe is brought againſt a feme, who abateth the writ for miſnaming of the town, the wife taketh huſband, in a new writ againſt huſband and wife they ſhall have the view; for albeit it be the act of the wife to take huſband, yet for that the huſband was not party to the firſt writ, they ſhall have the view in the ſecond. 30 E. 3. 8.

(5) *Vel hujuſmodi.*] Theſe generall words, or the like, are thus to be expounded, that the writ muſt abate for ſuch a plea dilatory, as doth riſe upon the view, as the two particular examples of non-tenure, and miſnaming of the towne doe; but when the writ abate for ſome dilatories which riſe not upon the view, then in a new writ the view ſhall be graunted; as where the writ is abated for joyntenancy, and the new writ is brought againſt them both they ſhall have the view, becauſe in the new writ another perſon is joyned; and ſo it is if any more or leſſe land be contained in the new writ: but if the firſt writ after the view abated for default of forme, or for falſe Latin, or by taking of huſband, in a new writ the tenant ſhall have the view againe, for theſe caſes are not within this word *hujuſmodi*; for they riſe not upon the view, as the two examples herein expreſſed doe.

And beſides the firſt was no ſufficient writ, and an inſufficient writ and no writ is all one; ſo it is if one of the tenants after the view dieth, in a new writ the ſurviving tenant ſhall have the view againe, albeit the feme came in as a feme ſole by receit, and the huſband died, for this did not riſe upon the view, but by the act of God.

But if the firſt writ were brought in K. and the tenant plead that part of the lands extend in L. in a new writ for the lands in K. and L. though a new town be added, yet becauſe the new town was added by force of the plea of the tenant himſelfe, he was ouſted of the view.

It is not required by this act that the ſecond writ ſhould be brought freſhly by Journers accounts, though it be ſo pleaded in many books.

(6) *In hoc caſu et in ſuperiori.*] This branch extendeth not to the clauſe of the recovery by default, for in the *quod ei deforceat*, the writ being grounded directly upon the former record, wherein the tenant in the *quod ei deforceat* recovered in the former writ, he hath ſufficient notice thereof, and therefore, as hath been ſaid, ſhall not have the view.

And therefore theſe words [*in hoc caſu*] are to be referred to the laſt generall words, *viz.* [*vel hujuſmodi*] and theſe words [*et in ſuperiori*] are to be referred to the two examples dilatory of non-tenure, and miſnaming of the towne.

(7) *In brevi de dote cum petatur dos de tenemento quod vir uxoris alienavit tenenti aut ejus anteceſſori, &c.*] This branch extendeth not to a writ of dower, *unde nihil habet*, for therein no view did lie at the common law, but extendeth to other writs of dower, whether for dower at the common law, or *ex aſſenſu patris, ad hoſtium eccleſiæ, &c.* or by cuſtome.

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See Circumſpecte agatis, ſimile. W. 2. c. 5. ſimile. Lib. 11. fo. 33. the Poulters caſe.
8 E. 3. 55. 18 E. 3. 31. 21 H. 6. 42. 6 E. 3. 15. 17 E. 3. 39, 40. 18 E. 3. 41. 38 E. 3. 1. 19 E. 3. view 111. 33 E. 3. ib. 184. 30 E. 3. 8. 21 H. 6. 42. 34 H. 6. 10. 42 E. 3. 23. 43 E. 3. 35. 29 E. 3. 17. 45. 38 E. 3. 1. 39 E. 3. 27. 6 E. 2. view 163. 5 R. 2. ibid. 63. 20 E. 2. ibid. 112. 26 H. 6. ibid. 14. 21 H. 6. 42. 21 H. 6. 55. 2 H. 6. 14. 17 E. 3. 41. b. 22 E. 3. 9. 41 E. 3. 8. 30. 44 E. 3. 43. 50 E. 3. 25.

45 E. 3. 17. Temps E. 1. view 172. 20 E. 3. ib. 113.

At

22 E. 3. 9. 3 E. 3. 16. 8 E. 3. 55. 2 H. 4. 20. 5 H. 5. 4. 24 H. 6. 3. 35 H. 6. 59. Bract. l. 5. f. 377. 18 E. 3. 55.

At the common law if the huſband died ſeiſed of the land of eſtate of inheritance, whereof dower is demaunded, the heire or any claiming under him ſhould not have the view, becauſe it was preſumed that the heire was conuſant what lands his aunceſtor had at the time of his death, and herewith agreeth Bracton who wrote before this ſtatute; *Item denegatur viſus in placito dotis de terra et tenemento de quibus vir mulieris nuper obiit ſeiſitus, quia habet tenens quod tantundem valet.*

But where the huſband aliened, there at the common law view was granted, which was a delay to the demandant in dower (whoſe life did ſpend) and is taken away by this act.

30 E. 3. fo. 8.

If the baron demiſe to a feme and dieth, the feme taketh huſband, in dower againſt them they ſhall have the view; for the alienation was not made to the huſband, but to the wife, and the act ſaith *tenenti*.

2 H. 4. 1. 7 H. 4. 18. 5 E. 3. 6. 18 E. 3. 55. 30 E. 3. 3. 26 E. 3. 59. 2 E. 4. 17. 9 E. 4. 6.

(8) *Alienavit.*] If the tenant diſſeiſed the huſband of the demandant in a writ of dower, he ſhall have the view, for this is no alienation, and therefore remain at the common law.

The beſt pleading to counterplead the view in caſe of alienation is, that the tenant entred by her huſband, though the word of the act is aliened.

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44 E. 3. 31. 18 E. 3. 55. 14 H. 4. 32. 3 H. 4. 18. 19 E. 2. view 76. 13 E. 3. ib. 103, 104. 14 E. 3. ibid. 93. 19 E. 3. ibid. 106.

In dower of a rent the tenant ſhall not have the view of the land, if the huſband died ſeiſed of the rent, nor the tenant of the land have view thereof, if he had the rent by the releaſe of her huſband.

Tenant in dower of two acres, the demandant to counterplead the view ſaid, that the tenant entred by her huſband, the jury found, that ſhe entred into one acre by her huſband, and into the other acre by another, the demandant recovered her dower in the one acre, and the tenant had the view for the other.

20 E. 2. view 166. 29 E. 3. 32. 2 E. 2. view 137.

(9) *In brevi etiam de ingreſſu caſſato per hoc*, &c.] A *cui in vita* is taken within this branch, and ſo is a *ſur cui in vita*.

(10) *In omnibus brevibus per quæ tenementa petuntur ratione diſſeiſinæ, quam petens vel anteceſſor fecerit tenenti et non ejus anteceſſori, ſicut quod ei dimiſit dum fuit infra ætatem, dum non fuit compos mentis*, &c.] This branch ſpeaketh particularly of three examples, *viz.* of the *dum fuit infra ætatem, et non compos mentis*, and *in priſona*, and generally *in conſimilibus*.

43 E. 3. 31. 46 E. 3. 34. 35 H. 6. 59.

This branch extends not to theſe writs brought in the *per et cui*; for that is a degree further then this branch provideth for.

29 E. 3. 30. view 155. 46 E. 3. 29.

(11) *Per quæ tenementa petuntur.*] Yet if any of theſe writs be brought of a rent, if the tenant demaund the view of the land, though it be of another thing, then is demanded, the tenant ſhall be ouſted of the view.

Circumſpecte agatis, ſimile. Temps E. 1. view 171. 6 E. 2. ibid. 152. 36 H. 6. view 30.

(12) *Et conſimilibus.*] By theſe words the predeceſſor of a biſhop, or the like is taken where this branch ſpeaketh *de anteceſſore* and not *de prædeceſſore*.

It is to be obſerved that the two examples here put are of a *dum fuit infra ætatem*, and *non compos mentis*, and when the heire brings either of theſe writs of the demiſe of his aunceſtor from whom he claimes the land as heire [*et conſimilibus*] ſhall be intended of writs of like nature; and therefore if a *ſur cui in vita* be brought ſuppoſing that the tenant had not entred but by one D. late huſband of E. mother to the demandant, whoſe heire he is, the tenant ſhall

ſhall have the view, for he claimeth not as heire to him that made the demiſe, and therefore it is not *actio conſimilis*.

(13) *In priſona*.] At this time, *viz.* in 13 E. 1. as hereby it appeareth there lay a writ of an alienation made by dures, *dum fuit in priſona*, and the writ of *dum fuit infra ætatem*, and this writ of *dum fuit in priſona* did lie for the party himſelfe that made the alienation, but ſo doth not the other writ of *non compos mentis*, for that lieth not for the party himſelfe, but for his heire.

Bract. l. 2. fo. 16. b. Brit. f. 19. Flet. li. 2. ca. 54. l. 3. ca. 7. l. 6. ca. 6. 7. & 14. First part of the Inſt. §437, 438.

In priſona; every reſtraint of the liberty of a freeman is an impriſonment, although he be not within the wals of any common priſon.

First part of the Inſt. ſect. 406.

If a man be impriſoned by order of law, the plaintiffe may take a feoffement of him or a bond for his ſatisfaction, and for the deliverance of the defendant, notwithſtanding that impriſonment, for this is not by dures of impriſonment, becauſe he was in priſon by courſe of law; for it is not accounted in law dures of impriſonment, but where either the impriſonment or the dures that is offered in the priſon, or at large is torcious and unlawfull, for *executio juris non habet injuriam*.

15 H. 3. dures 15. 2 E. 2. ibid. 18. 8 E. 3. 57. 8 Aſſ. 25. 43 E. 3. 6. 10. 6 R. 2. dures 12. 11 H. 4. 6. 4 E. 4. 17. 12 E. 4. 7.

But now albeit the writ mentioned in this act is antiquated and gone *in deſuetudinem*, yet may good uſe be made of this part of this branch, *dum fuit in priſona*, ſuch excellent learning may be drawn out of theſe auncient fountains.

It may be gathered upon this act that the feoffement made by one by dures of impriſonment is not void, but voidable; for if it were void, then no præcipe could have been maintained upon a void alienation, and this branch ſaith, *in omnibus brevibus in quibus tenementa petuntur ratione dimiſſionis, &c. dum fuit in priſona*. And ſo it is in the caſe of the infant, with whom he is paralleled in this branch, and whoſe caſes are very like in many reſpects: for as in the caſe of an infant, if he ſeal and deliver a deed, he cannot plead *non eſt factum*, but muſt avoid it by plea of infancie; ſo it is in the caſe of a bond made by dures of impriſonment: and as it is in the caſe of the infant, that a feoffment by livery of ſeiſin made by his own hand is voidable by entry, or action and not void; ſo it is in the caſe of a feoffment made by one by dures of impriſonment, and livery made by his own hand, as by this branch it appeareth: and as in the caſe of an infant, a feoffment made by letter of attorney is void, and the feoffee is a diſſeiſor; ſo it is in the caſe of a man that maketh it in the ſame manner by dures of impriſonment.

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Lib. 5. fo. 119. Whelpdales caſe. 1 H. 7. 15.

Lib. 8. fo. 42, 43, &c. Whittingams caſe. 14 Aſſ. p. 20. 39 E. 3. 28. 41 E. 3. 9. Feoffment & Faits 49. 9 H. 6. 6. 38 H. 6. 27. 2 E. 4. 21. Whittingams caſe, ubi ſupra.

And as none ſhall avoid the feoffment of the infant when livery is made by his own hand, but onely he himſelf or his heirs, which are privies in bloud inheritable, and neither privies in law, nor privies in eſtate: ſo it is in caſe of a feoffment made in like manner by dures of impriſonment, it is onely voidable by privies in blood inheritable, and not by privies in law or eſtate.

And by theſe reſemblances and diverſities this act is underſtood, and our books that ſeem *prima facie* are well reconciled: the *dures per minas, aut cauſa metus*, belongeth not properly to be treated of here; for this branch ſpeaketh onely *dum fuit in priſona*; onely for affinity ſake it is to be known, that a man ſhall avoid his deed for manuas of impriſonment, albeit he were never impriſoned: for a man ſhall avoid his own act for manuas in four caſes, *viz.* 1. for fear of loſſe of life, 2. of loſſe of member, 3. of mayhem, and 4. of impriſonment;

39 E. 3. 28. 11 R. 2. Dures 21. 35 H. 6. 17. 38 H. 6. 21. 27. 39 H. 6. 5. 7 E. 4. 21.

impriſonment; otherwiſe it is for fear of battery, which may be very light, or for burning of his houſes, or taking away, or deſtroying of his goods, or the like, for there he may have ſatisfaction by recovery of damages.

Bract. l. 2. fo. 16. b.

This fear, by reaſon of manuas, is well deſcribed by Bracton, *Metus autem eſt præſentis, vel futuri periculi cauſa, mentis trepidatio, et præſentem debemus accipere metum, non ſuſpicionem inferendi ejus, vel cujuſlibet vani et meticuloſi hominis, ſed talem qui cadere poſſit in virum conſtantem; talis enim debet eſſe metus, qui in ſe continet mortis periculum, et corporis cruciatum.*

13 H. 4. Dures 20. 1. Part of the Inſtitutes, § 419.

But there is a great diverſity between the making of a continuall claim, or entry into lands, and the avoiding of a mans own act; for, fear of battery is a good cauſe to make a claim as neer the land as he dare for fear of battery (for the recontinuance of an ancient right is favoured in law) but it is no cauſe to avoid his own act; wherein it is obſervable, how fear of impriſonment (which is a manner of captivity) is more grievous and odious in law, then the fear of battery.

* See the ſtat. de modo levand. Fines. Li. 4. f. 127, &c. Beverlies caſe. Rot. Parliam. 50 E. 3. nu. 127. 6 E. 3. 39. 17 E. 3. 76. 17 Aſſ. 17. 13 E. 3. Audita querela 26. 20 E. 3. ibid. 27. 18 E. 3. 29. 21 E. 3. 24. 27 Aſſ. 53. 8 H. 6. 30. 15 E. 4. 5. 1 H. 7. 15. 16 H. 7. 5. b. 6 H. 8. Saver def. Br. 50. F.N.B. 104. k. l. 16 Eliz. Dier. 3 H. 6. 10. 7 H. 6. 38.

See more of this matter in the firſt part of the Inſtitutes, *ubi ſupra.*

(14) *Ratione dimiſſionis.*] Here, as in many other places [demiſe] is applyed to an eſtate either in fee ſimple, fee-tail, or for term of life, and ſo commonly it is taken in many writs.

* But this act extendeth not to every kinde of demiſe or conveyance; for if the demiſe or conveyance be by fine or other matter of record, &c. this branch extends not to it, for regularly conveyances, or other acts of record knowledged, or made by one that is *non compos mentis*, or by dures of impriſonment, are unavoidable by him or his heirs by law: hereof ſee Beverleys caſe, lib. 4. fol. 127.

And ſuch conveyances, or other acts of record knowledged, or made by an infant, are alſo unavoidable, unleſſe he doth avoid them by writ of errour, or *audita querela*, during his minority; and therefore this branch is to be underſtood of alienations made *in paiis*, and not by matter of record.

[484]

1. Part of the Inſtitutes, § 433.

A recovery by default againſt an infant is erroneous, and ſo is a recovery by default againſt a man in priſon, though he be lawfully impriſoned; but the infant muſt reverſe it by writ of errour during his minority, becauſe his infancie muſt be tryed by inſpection, but the man in priſon may reverſe it when he will.

CAP. XLIX.

CHANCELLOR, treaſurer, juſtices, ne nul de councel (1) *le roy, ne clerke de la chauncery, ne del eſchequer, ne de juſtice, ne dauter miniſter, ne nul del hoſtel le roy, ne clerk, ne lay, ne puis reſceiver eſgliſe, ne advowſon de eſgliſe, ne terre, ne tenement in fee*

THE chancellor, treaſurer, juſtices, nor any of the king's council, no clerk of the chancery, nor of the exchequer, nor of any juſtice or other officer, nor any of the king's houſe, clerk ne lay, ſhall not receive any church, nor advowſon of a church, land,

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per done, ne per achate, ne a ferm', ne a champerty, ne en auter maner, tanque come le choſe eſt en plee devant nous, ou devant ull' de nous miniſtr', ne nul lower ent ſoit pris. Et qui encounter ceſt choſe face, ou per luy ou per auter, ou nul [bargeine ent] *face, ſoit punie a la volunt le roy* (2), *auxibien celuy qui le purchaſera, come celuy qui le fra* (3). 11 E. 1. Champertie 1. Articuli ſuper Chartas, cap. 11.

land, nor tenement in fee, by gift, nor by purchaſe, nor to farm, nor by champerty, nor otherwiſe, ſo long as the thing is in plea before us, or before any of our officers; nor ſhall take no reward thereof. And he that doth contrary to this act, either himſelf, or by another, or make any bargain, ſhall be puniſhed at the king's pleaſure, as well he that purchaſeth, as he that doth ſell.

(Fitz. Champerty, 1. 5, 6. 8. 12. 14, 15. Hob. 117. 3 Ed. 1. c. 25. 28 Ed. 1. c. 11. Regiſt. 182, 183. Raſt. 119. 33 Ed. 1. ſtat. 2 & 3.)

(1) *Chancellor, treaſurer, juſtices, ne nul de councel,* &c.] This is a law of addition and explanation for the ſtatute of W. 1. cap. 25. *Purveiant que nul miniſter le roy, &c.* It was doubted, whether the chancellour, treaſurer, juſtices, and thoſe of the kings councell, being perſons of ſuch eminencie, were within theſe words [*nul miniſter le roy,*] and therefore this act by way of addition and explanation doth adde, *chancellor, treaſurer, juſtices, et councell le roy.*

Alſo this act is an addition to W. 1. cap. 28. for that extendeth but to the clerks of the king, or of the juſtices; this act addeth, clerks of the chancery, and of the exchequer, and of any other officer; it addeth alſo thoſe of the kings houſe, be they of the clergie or laity; and alſo that they ſhall take no reward, &c.

And it is to be obſerved, that neither the chancellor, treaſurer, any of the juſtices, or any of the kings councell, nor any clerk herein mentioned, nor any of the kings houſe of the clergie or laity ſhall (hanging the plea) receive any advowſon, land or tenement, by gift, purchaſe or fearm, either for champerty or otherwiſe; ſo as none of theſe perſons here prohibited can acquire any advowſon, land, or tenement, depending the plea, though it be *bona fide*, and not for champerty or maintenance; partly in reſpect of their greatneſſe, and partly in reſpect of their places, both in the kings court, and in the courts of juſtice; ſo as the very countenance and places of theſe men, when they become intereſſed in the land *(eo ipſo)* are apparent hinderances of the due and indifferent proceeding of law and juſtice. An excellent law and worthy to be known, and moſt neceſſary to be put in execution; ſo as true it is, that if any other perſon purchaſe *bona fide*, depending the ſuit, he is not in danger of champerty: but theſe perſons here prohibited cannot purchaſe at all, neither for champerty nor otherwiſe, depending the plea. But theſe perſons here prohibited muſt be charged upon this act, and not for champerty, unleſſe they maintain.

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And in theſe caſes prohibited by this law, the childe cannot infeoffe the father, nor the father his childe, or the like, as they may do upon the other ſtatutes.

And

And the prohibition here for taking of rewards is very remarkable.

(2) *Soit punie a la volunt le roy.*] Theſe words are expounded before upon W. 1. cap. 25.

See the ſtatute of Conſpiracie, Simile. 33 E. 1. 32 H. 8. cap. 9. Simile.

And where both the ſaid ſtatutes conclude in effect concerning the puniſhment, *Et que le fra*; this act addeth, *auxibien celuy que le purchaſera, come celuy que le fra*, that is, both the giver, and the taker.

W. 1. ca. 25. 28. 28 E. 1. ca. 11. 32 H. 8. ca. 9.

See the ſtatute of W. 1. cap. 25. & 28. and the ſtatute of 28 E. 1. cap. 11. and laſtly, the ſtatute of 32 H. 8. cap. 9. whereby all former ſtatutes concerning maintenance, champerty, and imbracery are confirmed, and commanded to be put in due execution, and by that ſtatute excellent proviſions are made concerning the ſame.

31 E. 3. Champerty 5. See the ſtatute of 11 E. 3. Vet. Magna Chart. ſtat. de Champerty.

(3) *Auxibien celuy que le purchaſera, come celuy que le fra.*] And yet the party grieved may have his action againſt the purchaſer onely, if he will.

We have been the more brief in expoſition hereof, becauſe we have treated of this ſubject before in the expoſition of the ſtatute of W. 1. cap. 25. & 28. and ſhall have more occaſion to ſpeak hereof when we come to the ſaid act of 28 E. 1. cap. 11.

The cauſe wherefore this chapter was publiſhed in French, was, for that the ſaid two chapters of W. 1. whereunto this act maketh additions, were likewiſe publiſhed in French.

See *articuli ſuper chartas*, cap. 11.

CAP. L.

OMNIA prædicta ſtatuta incipiant conſervari (1) *ad feſtum Sancti Michaelis* (2) *proximo venturum, ita quod occaſione aliquorum delictorum contra aliquod prædictorum ſtatutorum citra prædictum feſtum perpetratorum, pœna delinquentibus, de quibus mentio fit in ſtatutis, non infligatur. Super vero ſtatutis in defectum legis, et ad remedia editis, ne diutius querentes cum ad curiam regis venerint recedant de remedio* (4) *deſperati, habeant brevia ſua in ſuo caſu proviſa* (3), *ſed non placitent' uſq; poſt feſtum Sancti Michaelis ſupradictum.*

ALL the ſaid ſtatutes ſhall take effect at the feaſt of St. Michael next coming, ſo that by occaſion of any offence done on this ſide the ſaid feaſt, contrary to any of theſe ſtatutes, no puniſhment (mention whereof is made within theſe ſtatutes) ſhall be executed upon the offenders. Moreover, concerning the ſtatutes provided where the law faileth, and for remedies, leſt ſuitors coming to the king's court ſhould depart from thence without remedy, they ſhall have writs provided in their caſes, but they ſhall not be pleaded until the feaſt of St. Michael aforeſaid.

(1) *Omnia prædicta ſtatuta incipiant conſervari*, &c.] This was very juſtly added, to the intent that all men dwelling far or neer might be well informed of theſe laws before they were puniſhed by them; the parliament begun *poſt Paſch.* and hereby day was given untill the feaſt of Saint Michael.

(2) *Ad*

(2) *Ad feſtum Sancti Michaelis.*] Albeit there be two feaſts of Saint Michael, Saint Michael the Archangel, and Saint Michael *de monte tumba*, commonly called, Saint Michaels in the mount in Cornwall; yet that feaſt * that is moſt notorious and of greateſt account is to be taken, and that is the feaſt of Saint Michael th'archangell celebrated on the 29 day of September, and not the feaſt celebrated the 16 day of November. 5 E. 3. 6. 20 H. 6 23. 3 H. 7. Endictment 22. 1. Part of the Inſtitutes, § 99.

Note, that both were the feaſts of Saint Michael th'archangel, but the feaſt of Saint Michael the 29 of September is the moſt notorious, both in legall proceedings, as *octabis Michaelis*, &c. and never *octabis Michaelis arch'*; and common eſtimation for payment of rents, beginning and ending of leaſes, and the like. Cambden Brit, 136, 137.

(3) *Super vero ſtatutis in defectum legis et ad remedia editis, ne diutius querentes, cum ad curiam regis venerint, recedant de remedio deſperati, habeant brevia ſua in ſuo caſu proviſa.*] *Ad remedia*; that is when any the ſtatutes made at this parliament provide remedy for the party grieved, he ſhall have an action grounded upon this act for his relief therein; and theſe words [*ad remedia*] do diſtinguiſh them from thoſe acts which give the penalty to the king alone. And hereupon they are called in ancient authors, *breve remedialia*, which are to be framed upon theſe acts by learned men, whereof Fleta ſpeaking of the maſters of the chancery, ſaith, *Ipſi autem collaterales et ſocii cancellarii eſſe; dicuntur præceptores eo quod brevia (cauſis examinatis) remedialia fieri præcipiunt.* And ſometimes they are called, *brevia magiſtralia*, becauſe (being out of courſe) it is a maſters piece to frame them as they ought, Fleta, li. 1. c. 12, Bract. li, 5. fo. 413.

(4) *Recedant de remedio.*] See before in the expoſition upon the 24 chapter of W. 2. the like clauſe.

STATUTUM de CIRCUMSPECTE AGATIS.

Editum Anno 13 *Edw.* 1.

REX talibus judicibus ſalutem. Circumſpecte agatis (1) *de negotiis tangentibus epiſcopum Norwicenſem* (2), *et ejus clerum, non puniend' eos ſi placitum tenuerint in curia Chriſtianitatis* (3) *de his quæ mere ſunt ſpiritualia* (4), *viz. de correctionibus quas prælati faciunt pro mortali peccato, viz. pro fornicatione, adulterio* (5) *et hujuſmodi* (6); *pro quibus aliquando infligitur pœna corporalis, aliquando pecuniaria* (7), *maxime ſi convictus fuerit de hujuſmodi liber homo. Item ſi prælatus puniat pro cimeterio non clauſo, eccleſia diſcooperta* (9), *vel non decenter*

THE king to his judges ſendeth greeting. Uſe yourſelves circumſpectly in all matters concerning the biſhop of Norwich and his clergy, not puniſhing them if they hold plea in court chriſtian of ſuch things as be meer ſpiritual, that is to wit, of penance enjoined by prelates for deadly ſin, as fornication, adultry, and ſuch like, for the which ſometimes corporal penance, and ſometime pecuniary is enjoined, ſpecially if a freeman be convict of ſuch things. Alſo if prelates do puniſh for leaving the church-yard uncloſed, or for that the

decenter ornata (8), *in quibus caſibus alia pœna non poteſt infligi quam pecuniaria. Item ſi rector petat verſus parochianos oblationes* (10) *et decimas* (11) *debitas vel conſuetas* (12), *vel ſi rector agat contra rectorem de decimis majoribus, vel minoribus, dummodo non petatur quarta pars* (13) *valoris eccleſiæ. Item ſi rector petat mortuarium* (14) *in partibus ubi mortuarium dari conſuevit. Item ſi prælatus alicujus eccleſiæ, vel advocatus petat à rectore penſionem* (15) *ſibi debitam, omnes hujuſmodi petitiones ſunt faciend' in foro eccleſiaſtico. De violentia manuum injectione in clericum* (16), *et in cauſa diffamationis conceſſum fuit alias* (17), *quod placitum inde teneatur in curia chriſtianitatis, cum non petatur pecunia, ſed agatur ad correctionem peccati, et ſimiliter pro fidei læſione* (18). *In omnibus prædictis caſibus habet judex eccleſiaſticus cognoſcere regia prohibitione non obſtante.*

the church is uncovered, or not conveniently decked, in which caſes none other penance can be enjoined but pecuniary. Item, if a parſon demand of his pariſhioners oblations or tithes due and accuſtomed, or if any parſon do ſue againſt another parſon for tithes greater or ſmaller, ſo that the fourth part of the value of the benefice be not demanded. Item, if a parſon demand mortuaries in places where a mortuary hath been uſed to be given. Item, if a prelate of a church, or of a patron, demand of a parſon a penſion due to him, all ſuch demands are to be made in a ſpiritual court. And for laying violent hands on a clerk, and in cauſe of defamation, it hath been granted already, that it ſhall be tried in a ſpiritual court, when money is not demanded, but a thing done for puniſhment of ſin, and likewiſe for breaking an oath. In all caſes afore rehearſed, the ſpiritual judge ſhall have power to take knowledge, notwithſtanding the king's prohibition.

(13 Rep. 41. 7 Rep. 44. 5 Rep. 67. 8 Ed. 4. 13. Fitz. Prohibition, 18. 20. 4 Rep. 20. Kel. 39. 22 Ed. 4. f. 20. Bro. Prohibition, 18. 21. Bro. Act. ſur le caſe, 115. 38 H. 6. f. 29. 11 H. 4. f. 88. Regiſt. 36. 45. 50, 51. 57, &c. Raſt. pla. 483. 9 Ed. 2. ſtat. 1. c. 1.

Rot. Parl. 25 E. 3. Stat. 3. nu. 62. 19 E. 3. juriſd. 28. 27 Aſſ. p. 7. 10 H. 4. 1. 12 H. 7. 23. Pl. Com. 36. b. 2 E. 6. c. 13. verſus finem. 1. 4. f. l. 47. inter Palmer & Thorp. l. 5. fol. 67. l. 7. fol. 44. Pl. Com. 36. b.

* [488]

Glanv. l. 12. c. 21. Bract. l. 5. fo. 463. & fere alibi. Britton 226. & fere alibi. Fleta lib. 6. ca. 41. Regist. 369. W. 2. cap. 5. 4 E. 3. 27. Smith de rep. Anglor. lib. 3 ca. 9.

(1) *Circumſpecte agatis.*] There was alſo at this parliament holden at Weſtm' anno 13 E. 1. a writ deviſed, called *circumſpecte agatis de negotiis tangentibus epiſcopum Norwicenſem, et ejus clerum.*

Though ſome have ſaid that this was no ſtatute, but made by the prelates themſelves, yet that this is an act of parliament, it is proved not onely by our books, but alſo by an act of parliament.

(2) *De negotiis tangentibus epiſcopum Norwicenſem.*] The biſhop of Norwich is here put but for example, but it extendeth to all the biſhops within this realme.

* (3) *In curia chriſtianitatis.*] So called, becauſe as in the ſecular courts the kings lawes doe ſway and decide cauſes, ſo in eccleſiaſticall courts the lawes of Chriſt ſhould rule and direct, for which cauſe the judges in thoſe courts are divines, as archbiſhops, biſhops, archdeacons, &c. Linwoods words are theſe, *In curia chriſtianitatis, i. eccleſiæ, in qua ſervantur leges Chriſti, cum tamen in foro regio ſerventur leges mundi. In libro rubeo in ſcaccar' inter leges* H. 1. thus it is contained, *Sicut antiqua fuerat inſtitutione formatum ſalubri regis imperio vera nuper eſt recordatione formatum generalia comitatuum placita certis locis et vicibus, &c. interſint autem epiſcopi, comites, vicedomini, vicarii, centenarii, aldermani, præfecti, præpoſiti,*

præpoſiti, barones, vavaſores, tingrevii, et cæteri terrarum domini diligenter intendentes, ne malorum impunitas, aut gravionum pravitas, vel judicum ſubverſio ſolita miſeros laceratione conſiniant. Agantur primo debita veræ chriſtianitatis jura, ſecundo regis placita, poſtremo cauſæ ſingulorum dignis ſatisfactionibus expleantur.

F. N. B. 41, &c. Linwood de foro compet. cap. Circumſpecte agatis, fol. 71. Liber rub. in cuſtod. rem. regis. cap. 48. fol. 41.

And if any deſire to look before the conqueſt concerning this matter, he may read amongſt the laws publiſhed by king Edgar, *Celeberrimus autem ex omni ſatrapia conventus bis quotannis agitor, cui quidem illius dioceſis epiſcopus et aldermanus interſunto, quorum alter jura divina, alter humana populum edoceto.*

Int' leges Regis Edgari cap. 5. Lamb. verbo Senator, Alderman, or Elderman. i. Senator, which ſignifieth the Sherive, i. Præpoſitus, ſeu cuſtos comitatus.

Thus much by reaſon of this word [*chriſtianitatis*] having been ſaid, let us return to our act.

(4) *Mere ſpiritualia.*] *Sic dicta, quia non habent mixturam temporalium:* they are here called meere ſpirituall, for that they have no mixture of the temporalties, and becauſe they are corrections *pro ſalute animæ.*

Britton fol. 11. b. Bracton l. 5. fol. 403, &c. Fleta l. 2. cap. 53. l. 6. ca. 36. &c. Linwood cap. de foro compet. fol. 7. li. 7. fo. 44. Kennes Caſe. See hereafter in this Chapter verbo Mortuary. Linwood ubi ſup.

Britton ſaith, *Que ſeint eſgliſe eyt conuſance de juger de pure ſpiritualite*; hereſie, ſchiſmes, holy orders, and the like are mere ſpirituall things; note it appeareth by the conſtitution of John Stratford, archbiſhop of Canterbury in a ſynod in London *anno domini* 1380. §. *quidam etiam*, &c. that adminiſtration of the goods of a man dying inteſtate, was granted to ordinaries, *conſenſu regis et magnatum regni Angliæ tanquam pro jure et eccleſiaſtica libertate ab olim extiterit ordinatum.* And Linwood ſaith, that probate of teſtaments, *de conſuetudine Angliæ, et non de jure communi*, belong to court chriſtian: which I have added for three cauſes.

2 R. 2. tit. Teſtam. 4. 12 H. 7. 12. b. See hereafter verbo Mortuary.

1. That theſe things being temporall, and not meere ſpirituall, as our act ſpeaketh, belonged *not ab initio* to the court chriſtian.

2. That the eccleſiaſticall judges derive their juriſdiction therein by parliament, and the cuſtome of the realme, and not from any foreign power.

3. And laſtly, that herewith our records and books doe accord and agree.

(5) *Pro mortali peccato, viz. fornicatione, adulterio,* &c.] There be two examples put in particular of meere ſpiritualty for correction of theſe offences.

In ancient time the kings courts, and ſpecially the leets had power to enquire of, and puniſh fornication and adultery by the name of Letherwite, and it appeareth often in the book of Domeſday that the king had the fines aſſeſſed for thoſe offences which were aſſeſſed in the kings courts, and could not be inflicted *in curia chriſtianitatis.*

(6) *Et hujuſmodi.*] Theſe are to be taken for offences of like nature, as the two offences here particularly expreſſed be, as ſolicitation of any womans chaſtity, which is leſſer then theſe, and for inceſt, which is greater; and herewith agreeth Linwood, who expounding this act ſaith, *Non intelligas de omni mortali peccato, ſed de tali, cujus punitio de ſua natura ſpectat ad forum eccleſiaſticum; nam ſi de ratione cujuſlibet peccati mortalis cognoſceret eccleſia, ſic periret temporalis gladii juriſdictio.*

Linwood ubi ſup. Kennes caſe ubi ſupra.

(7) *Pro quibus aliquando infligitur pœna corporalis, aliquando pecuniaria.*] Here *pœna pecuniaria* muſt be intended by way of commutation of penance, as it is clearly expounded by the ſtatute of *Articuli Cleri; item ſi prælatus imponat pœnam pecuniariam alicui*

Art. Cleri, cap. 2. Britton 11. b. F. N. B. 53. a.

alicui pro peccato, et repetat illam, regia prohibitio locum habeat: and ſo doth Britton take it.

Vet. Mag. Chart. *Vide artic' contra prohibit' regiam Vet' Magna Charta, pro cæmeterio non clauſo.*

Regiſter. Brit. fo. 11. Ma. 5. fo. 67. Jeffreys caſe.] The pariſhioners ought to repaire the incloſure of the church-yard, becauſe the bodies of the more common ſort are buried there, and for the preſervation of the burials of thoſe, that were, or ſhould have been whiles they lived the temples of the Holy Ghoſt; and *cæmeterium* is derived of the Greek verb κοιμάω, that is, *dormio*, and therefore *cæmeterium eſt quaſi dormitorium, quia mortui dormire dicuntur uſque ad reſurrectionem.* And alſo if the church-yard be not decently incloſed, the church which is *domus Dei* cannot

Regiſt. 44. b. decently be kept, and therefore this the pariſhioners ought to doe *per conſuetudinem notoriam et approbatam*, and the conuſans thereof is allowed by this act.

(8) *Eccleſia diſcooperta, vel non decenter ornata.*] In the ſame manner the pariſhioners by this act ought to repaire the church, for that it is the place where divine ſervice is celebrated, and the bodies of the pariſhioners of the beſt quality are buried; in reſpect whereof this law doth allow the eccleſiaſticall court to have conuſans thereof, and for the providing of decent ornaments for the celebration of divine ſervice.

Regiſt ubi ſupra. F. N. B. 50. n. Britton fol. 11. (9) *Eccleſia diſcooperta.*] This is intended not onely of the body of the church, which is parochiall, but alſo of any publique chappell annexed to it; but it extendeth not to the private chappell of any, though it be fixed to the church, for that muſt be repaired by him that hath the proper uſe of it; for *qui ſentit commodum, ſentire debet et onus*; and this the pariſhioners ought to doe *per conſuetudinem notoriam et approbatam*, and the conuſans thereof is allowed to them by this act, but the chauncell is to be repaired by the parſon, &c.

Art' contra prohi. regiam Vet Mag. Chart. Art. Cleri cap. 1, 2. 2 E. 6. cap. 13. Cap. Cler. quæſt. 13. Regiſt. fol. 29. & 35. F. N. B. 30. b. † 18 E. 3. cap. 7. F. N. B. 30. g. 4 E. 3. 27. 38 E. 3. 13. 38. H. 6. 20. Bract. li. 5. fo. 401. Brit. ubi ſupra. ‡ Inſt' leges Edw. Regis, cap. 8. fol. 128. having ſpoken of tithes, it is ſaid, *Hæc prædicavit beatus Auguſtinus et conceſſa ſunt à rege baronibus et populo.*

(10) *Oblationes, decimas debitas, vel conſuetas.*] *Oblationes* in the canon law are thus defined:

Oblationes dicuntur quæcunque à piis fidelibuſq; Chriſtianis offeruntur Deo et eccleſiæ, ſive res ſolid', ſive mobiles.

(11) *Decimæ.*] It appeareth by the auncient writ, *de recto de advocatione decimarum*, and by the like ancient writ of *indicavit*, whereof you may reade before in W. 2. cap. 5. *verſus finem*, that the right of tithes was tried in the kings court.

† And this appeareth by an act of parliament in *anno* 18 E. 3. cap. 7. and it is agreed in 4 E. 3. (meaning W. 2. cap. 5.) every parſon was ouſted to demand tithes in court Chriſtian.

Bracton lib. 5. fol. 401. ſaith, *quod decimæ ſunt ſpiritualitati annexæ*: and Britton, who was biſhop of Hereford, and learned in the lawes of this realme, treating of what things the church hath conuſans, omitteth tithes.

Hereby it appeareth that the recitall in the ſtatute of 1 R. 2. that purſuit for tithes of right ought, and of ancient time did pertaine to the ſpirituall court, muſt bee intended by force of former acts of † parliament, (as things annexed to the ſpiritualty) as of W. 2. of this act made in * 13 E. 1. *articuli cleri*, cap. 1. &c. 18 E. 3. cap. 1. and is confirmed by later acts of parliament, as 27 H. 8. cap. 20. 32 H. 8. cap. 7. and 2 E. 6. cap. 13. Now

Now of tithes there be three kindes, prediall, perſonall, and mixt, and this act extendeth to them all, and for perſonall tithes ſee the ſtatute of 2 E. 6. cap. 13.

And true it is, that of auncient time the parſons did ſue for ſubtraction of tithes in court chriſtian, but if the right of tithes had come in queſtion, it ſhould have been tried by the common law; and therefore *in libro rubeo inter leges Henr.* 1. ſpeaking of purſute for tithes in court chriſtian, it is ſaid, *ſi rex patiatur*; but at this day it is without queſtion, as hath been ſaid, that for ſubſtraction of tithes the conuſans by force of divers acts of parliament doth belong to the eccleſiaſticall court.

(12) *Vel conſuetas.* By this act *modus decimandi*, reall compoſition, or by preſcription, or cuſtome is eſtabliſhed, for hereby are tithes divided into two parts, *in decimas debitas*, and that is *quota pars*, the tenth part, and into *decimas conſuetas*, and that is a duty perſonall due by cuſtome and uſage to the parſon, &c. in ſatisfaction of tithes; as a yearely ſumme of money, or other duty, and theſe are here called *decimæ conſuetæ*, and for this *modus decimandi* the parſon, &c. may ſue in court chriſtian, and is warranted by this act.

See the act of 2 E. 6. cap. 13. 39 E. 3. juriſ. 8 E. 4. 14. 7 E. 6. 79. Doct. & Stud. 166, 167.

There is alſo a reall ſatisfaction for tithes, as if of ancient time land hath been given by the conſent of the patron and ordinary to the parſon and his ſucceſſors in ſatisfaction of tithes out of other lands, this is alſo a good diſcharge of tithes, but for this or the like reall ſatisfaction he cannot ſue in court chriſtian, but at the common law: of this reall ſatisfaction you may reade a notable record in 25 H. 3. which was before the making of this act, and the effect thereof is this:

8 E. 4. ubi ſupra. F. N. B. 41, 43.

Mich. 25 H. 3. Coram Rege Rot. 5. Wiltesh.

Sampſon Foliot brought a prohibition againſt Thomas parſon of Swindon, *quare ſecutus eſt in curia chriſtianitatis de laico feodo ipſius Sampſon in Draicot, &c.* the defendant pleaded that *non eſt ſecutus placitum, &c. de laico feodo, ſed verum vult dicere, et dicit quod revera coram judicibus delegatis petiit ab eodem decimas feni de quodam prato in Walcot infra parochiam ſuam de Walcot, &c. et nihil petiit in parochia de Draicot, &c. Et Sampſon dicit quod anteceſſores ſui antiquitus dederunt 2. acras prati eccleſiæ de Draicot, pro decima feni, quam prædictus Thomas petit, et in eodem prato, quas eadem eccleſia adhuc habet, et ſemper hucuſque habuit, unde videtur quod illud quod prædictus Thomas petit decimas eſt in laico feodo, et quod pratum illud de quo idem Thomas petit decimas eſt in Draicot ſicut breve dicit et non in Walcot, et de hoc ponit ſe ſuper patriam,* &c. Whereupon ſeverall iſſues being joined, the jury gave this verdict, that the ſaid Thomas purſued his plea *in curia chriſtianitatis de laico feodo prædict' Sampſon, &c. pretendo ab eo decimas feni,* of the ſaid meadow of the ſaid Sampſon in Draicot, *unde anteceſſores ſui dederunt eccleſiæ de Draicot duas acras prati pro decima feni quam prædict' Thomas modo petit, et quas eadem eccleſia adhuc habet, et ſemper hucuſque habuit.* And found that the ſaid meadow, &c. did lie in Draicot, &c. and thereupon judgement is given for the plaintiffe in the prohibition, and that he ſhould recover 20. marks damages, &c. Which record, both for the antiquity thereof, and for that it agreeth with our books, being a leading caſe, I have recited the more at large.

See the Regiſter fo. 34. and Glanv. li. 12. cap. 21. for this forme of writ.

See the like ground of prohibition, Regiſt. fol. 38. 8 H. 6. 14. 8 E. 4. 14. F. N. B. 41. g. & 43. k.

That bounds of pariſhes are to be tried by the common law. 39 E. 3. 23. 14 H. 4. 17. 5 H. 5. 18. 34 H. 6. 10, 11. 22 E. 4. 24. 12 H. 7. 22.

A man ſeiſed of 8. acres of meadow, and one of paſture, for the tithes whereof he hath been paid time out of mind v. s. iv. d. afterwards the owner builds a cornmill upon the ſame, he ſhall pay no tithes for the cornmill, becauſe the land was diſcharged *per*

Mich. 26 and 27 El. in Commu. Banc. Rot 2617. Lords caſe adjudged.

45 E. 3. c.
31 H. 8. cap.
2 E. 6. ca. 13.
9 H. 5. fol 9.
50 E. 3. 10.

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M. 9 E. 1. Incip. 10. in com' banc. Rot. 63. Somerſet.

modum decimandi: what things be indecimable by the law, and ought not to pay tithe, vide lib. 11. fol. 48, 49. F. N. B. 53. g. &c. ſee the ſtatute of 45 E. 3. 31 H. 8. cap. and 2 E. 6. cap. 13. for diſcharge of tithes. I have read of an ancient concord *de modo decimandi*, which is worthy to be read at large, whereof we will give you the effect, *Concordia fact' inter Willum Mallet, et rectorem eccleſiæ de Aure, Heyton, Bathon' et Wellen' dioces' ex una parte, et nobilem virum Johannem de Acton militem ex altera, de modo decimandi omnia in parochia de Aure per conſenſum epiſcopi, et capituli Bathon' et Wellen', unde placitum fuit prius in cur' captum.*

See W. 2. c. 5.

(13) *Dummodo non petatur 4. pars.*] So as at this day in caſe when one perſon of the preſentation of one patron demand tithes againſt another perſon of the preſentation of another patron in court chriſtian, amounting to a fourth part, &c. the right of tithes at this day is to be tryed at the common law.

Brit. fol. 11. b. Artic. Cler. c. 1. 10 H. 4. 1.

(14) *Mortuarie.*] Or, *a corſe preſent. Mortuarium* is a gift left by a man at his death, *pro recompenſatione ſubtractionis decimarū perſonalium, et oblationū.*

2 H. 5. 10. 21 H. 8. cap. 6.

In 2 H. 5. the opinion was againſt the mortuaries, becauſe they were not contained in the ſtatute (meaning *Artic' Cleri.*)

There is no mortuary due by law, but onely by cuſtome, which is proved by the words of this act, *viz. ubi mortuarium dari conſuevit.* And this act alloweth the conuſans thereof to court chriſtian.

21 H. 8. cap. 6.

See the ſtatute of 21 H. 8. cap. 6. where mortuaries ought to be paid, for what perſons, and how much, and in what caſe none is due.

Inter communia Hil. 2 E. 2. in Scacc. poſt mort. epiſ. Bath & Wel. Tr. 36 E. 3. ib. poſt mortem epiſc. Cirenceſt. Hil. 5 E. 4. ib. Rot. 47. poſt mortem archiep. Ebor.

Some have ſaid, that the king hath a mortuary after the deceaſes of every archbiſhop and biſhop; true it is, that the king after their deceaſes hath ſix things, *viz.* (to uſe the words of the records) 1. *Optimum equum ſive palefridum ipſius epiſcopi cum cella, et freno.* 2. *Unam chlamydem ſive clocam cum capella.* 3. *Unum ciphum cum coopertorio.* 4. *Unum pelvem cum lavatorio ſive aquar'.* 5. *Unum annulum aureum.* 6. *Necnon* * *mutam canum, quæ* (ſaith the record) *ad dominum regem ratione prærogativæ ſuæ ſpectant, et pertinent.*

* *Muta* cometh of the French word, *Mente de chiens.*

And there is a ſpeciall writ that iſſueth out of the exchequer, after the deceaſe of the biſhop, for anſwering of the ſame. And in the records this is called, *multa epiſcopi*, or *multura epiſcopi*, derived *à mulcta*, for that it was a fine, or finall ſatisfaction given to the king, that they might have power to make their laſt wills and teſtaments, and to have the probate of other mens teſtaments, and the granting of adminiſtrations: for true it is that is ſaid, *Nullā habebant epiſcopi authoritatem præter eam quam à rege acceptam referebant, jus teſtamenta probandi non habebant, adminiſtrationis poteſtatem cuiquam delegare non poterant, nec ipſi quidem teſtamenta facere de jure communi, dum id illis regnante Henrico 3. conceſſum erat, et confirmatum vivente Edw. 1. &c.*

Rot. claus. 7 H. 3. m. 16. Rot. Pat. 36 H. 3. m. 1. Tit. de conſuet. cap. nullus. f. 19. See before in this chapter, verbo mere ſpiritualia.

Linwood, who wrote in the raign of H. 6. ſaith, *Beneficiatus non poteſt teſtari de communi jure, ſed de conſuetudine in Anglia.*

So as this dūty, which the king hath after the death of archbiſhops and biſhops, is not any mortuary.

Regiſt. fol. 47. F. N. B. 52. b.

(15) *Si prælatus alicujus eccleſiæ, vel ejus advocatus petat à rectore penſionem.*] This act giveth conuſans of ſuit for a penſion, when

when a prelate or a prior demand a penſion of a parſon of a church.

But this muſt be intended of a penſion which had his eſſence by ſome ordinance made by the ordinary upon a controverſie for tithes, or the like; by which ordinance the tithes are to be injoyned by the one, and he is to pay a penſion for the ſame to the other: for this penſion, becauſe it beginneth by an eccleſiaſticall act, and by an eccleſiaſticall judge, he may take his remedy by force of this act in the eccleſiaſticall court; but if a penſion be claimed by preſcription, there, ſeeing a writ of annuity doth lye, and that preſcriptions muſt be tryed by the common law, becauſe the common and the canon law do therein differ, they cannot ſue for ſuch a penſion in the eccleſiaſticall court, no more then if a penſion be granted by deed by a parſon with the conſent of the prior and ordinary.

3 E. 3. 17. 6 E. 3. 54, 55. 7 E. 3. 40, 42. 17 E. 3. 32. 19 E. 3. Preſcription 98. 31 E. 3. ib. 26. 31 E. 3. Juriſd. 26. 16 E. 3. Annuity 24. 40 E. 3. 3. b. Regiſt. 38. a. 11 H. 4. 68. 8 H. 6. 23. 7 E. 6. Dier, 79.

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A writ of annuity muſt be brought therefore at the common law: and all this doth notably appear by a judgment in the next yeer after the making of this ſtatute, where the caſe was, that the abbot and covent of Leiceſter did by their deed under their covent ſeal, bearing date *anno* 25 H. 3. grant to the abbot of Saint Ebrulfe and his ſucceſſors a yeerly rent or annuity, for certain tithes granted by the abbot and covent of Saint Ebrulfe to the abbot of Leiceſter and his ſucceſſors; for which annuity or yeerly rent (being granted out of no lands) the abbot of Saint Ebrulfe brought a writ of annuity againſt the abbot of Leiceſter: wherein the judgement was, *Et quia cognitio placiti petendi annuū redditum directe ſecundum conſuetudinem regni ſpectat ad curiam domini regis, et in ea debet hujuſmodi placitari, et prædictus abbas de ſancto Ebr. petit quendam annual' redd' ſibi debitum per præd' contractum in præd' ſcriptis contentum inter prædeceſſorem ſuum, et prædec' præd' abbatis Leiceſt', et non aliquas decimas. Conſiderat' eſt, quod prædictus abbas de ſanct. Ebr' recuperet de cætero præd' annuum redditum verſus præd' abbatē de Leic', et ſimiliter arreragia ſua de tempore iſtius abbatis de ſanct. Ebr', quæ taxantur per juſtic' ad lx. l. et abbas de Leiceſt' in miſericordia, &c. Poſtea venit prædict' abbas de Leiceſt', et ſatisfecit præd' abbati de ſancto Ebr' de lx. l. ad tres vices, et etiam de aliis arreragiis præd' redditus uſq; ad hunc diem a tempore impetrationis brevis, de tempore præd' abbatis de ſancto Ebrulpho, &c.*

Paſch. 14 E. 1. in Banc. Rot. 69. Leiceſt.

And upon this diverſity this ſtatute is well explained, and all our books reconciled.

See the ſtatute of 21 H. 8. ca. 6. where mortuaries ought to be paid, for what perſons, and how much, and in what caſes none is due.

(16) *De violenta manuum injectione in clericum.*] Note a diverſity between a ſpirituall man of the church conſecrated to the ſervice of God, and goods dedicated to divine ſervice, or meerly eccleſiaſticall: for laying of violent hands upon the perſon of any, *infra ſacros ordines*, the eccleſiaſticall court hath conuſans; but for the violent taking away, or conſuming of the ornaments of the church, or goods dedicated to divine ſervice, that court hath no conuſans, for that is not given to them; as for taking away of the bible, the book of divine ſervice, the chalice, and the like, or for the taking away of an image out of the church; but remedy muſt be taken for theſe at the common law.

7 H. 3. Prohibition 30. 5 H. 3. Prohibition 29. 31 E. 3. B. 258. M. 32 E. 3. Rot. 23. Coram rege caſus prioris ſancti crucis juxta turrim London. 8 R. 2. Monſtr. des faits 184.

Tr. 4 E. 3. Rot. 100. Coram rege - Eſſex. Bract. li. 5. fo. 401, &c. Brit. 11. b. Regiſt. 34.

Artic. contra Prohib. Regiam Vet. Magna Charta. Artic. Cleri. cap. 1. 3. 11 H. 4. 81. 18 H. 6. 6. 20 E. 4. 10. b. Regiſt. 49 b. F.N.B. 41. 51. k. 52. f. 53. * Hil. 7 H. 3. Prohib. 30. Regi. 49. a. Vide ſupra verbo Mortuary. Artic. cont. Prohibit. Regiam. Vet. Mag. Chart. Regiſt. 46, 47, &c. 54. F.N.B. 51. I. K. 52. d. m. 53. a. f. 18 E. 4. 6. 22 E. 4. 20. 33 E. 3. Bre. 912. 12 H. 7. 22. Lib. 4. fol. 20. Inter Palmer & Thorp. Artic. Cleri, cap. 4.

And I finde a record that William de Brinckle recovered at the common law by verdict, againſt Otho parſon of the church of Beſton, x. l. *pro ſubtractione unius bullæ papalis de ordinibus, alterius bullæ de legitimatione, et tertiæ bullæ de veniam exorantibus pro animabus anteceſſorum ſuorum.* And yet theſe were accounted in thoſe dayes ſpirituall; but by the ancient common law they have juriſdiction of no goods or chattels, but ſuch as be *de teſtamento et matrimonio.*

And for laying violent hands upon one of the clergie, the end of that ſuit is onely *pro ſalute animæ*, by excommunication, or corporall penance: but if a clergie-man be arreſted by proceſſe of law, he cannot for this ſue in the eccleſiaſticall court. And if the clerk ſue in court chriſtian for damages for the battery, he is in caſe of *premunire*, for in that caſe the eccleſiaſticall judge ought to proceed *ex officio*, onely to correct the ſin.

(17) *In cauſa defamationis conceſſum fuit alias.*] Where it is ſaid here, *conceſſum fuit alias*, by it appeareth that the conuſans of defamation that concerneth meer ſpiritualty, was granted by act of parliament, implyed by this word [*conceſſum*] for otherwiſe it could not be granted.

Defamations granted to the conuſans of eccleſiaſticall judges ought to have their incidents; firſt, that it concerns matter meerly ſpirituall, as to call him heretike, ſchiſmatike, or the like: 2. That it concerns meer ſpirituall matter onely, and not mixt with any matter determinable at the common law. 3. * Although the defamation be meerly and onely ſpirituall, yet he that is defamed cannot ſue there for amends or damages, but the ſuit there ought to be for correction of the ſin, *pro ſalute animæ*, and they muſt expreſſe in particular the defamation in their libell in court chriſtian.

If a man give evidence to an inqueſt to indict one, he cannot ſue for this defamation in court chriſtian.

Tr. 19 H. 8. Coram rege Spilm. Report.

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The prior of Laund libelled in the ſpirituall court againſt Robert Lee, and John Lee, for calling the prior churls ſon, rotten churl, and cankerd churl, and a prohibition was granted, for the words concerned no ſpirituall matter, and therefore he could not ſue for them in the eccleſiaſticall court, neither could he have any action for them at the common law.

30 H. 8. Br. Action ſur le caſe 104. M. 22 H. 8. Coram rege Spilm. 23 E. 3. Stat. de Labourers. Vide ſtat. de Labourers. 23 E. 3. 22 Aſſ. p. 7. 2 H. 4. 10. 11 H. 4. 88. 38 H. 6. 29. 20 E. 4. 10. b. Kelw. 39. Bract. lib. 5. fol. 401. & 406. b.

If a man call one a perjured man, he muſt take his remedy at the common law.

A ſute was in the eccleſiaſticall court for calling one falſe knave; and for the ſame cauſe a prohibition was granted, and knave *ab initio* was no word of reproach, but ſignified a man ſervant, and a knave-childe a man-childe; and this caſe was between March and Bele of Kent.

(18) *Pro læſione fidei.*] This is to be underſtood where the thing to be done is meer ſpirituall, and neither temporall, nor mixt with the temporalty, be it reall or perſonall, becauſe the eccleſiaſticall court cannot hold plea of the principall: and where they cannot hold plea of the principall, they cannot hold plea of the acceſſory, *Quia cujus juris (i. juriſdictionis) eſt principale, ejuſdem juris erit acceſſorium.*

And again, *Juriſdictionem non mutat fidei interpoſitio, ſacramentum præſtitum, nec ſpontanea renunciatio partium, &c. Et illud idem dicendum erit de debitis, et catallis quæ non ſunt de teſtamento, vel matrimonio.*

More

More ſhall be ſaid of theſe matters when we come to the ſtatute of Artic. Cleri, *anno* 9 E. 2. Vide R. book of Entries, 444. Vide Vet. Magn' Chart', part 2. fol. 70. *Prohibitio formata de ſtat. Articuli Cleri.*

STATUTUM DE QUO WARRANTO,

Editum anno 18 Edw. I.

Statutum de quo Warranto novum anno 18 *E.* 1. *qualiter brevia de quo Warranto debent terminari, et de cætero terminari.*

QUIA brevia de quo warranto et etiam judicia ſuper placita eorundem reddend' diutinam ceperunt dilationem, eo quod juſticiarii in judiciis illis reddendis de voluntate domini regis non fuerunt hucuſque certiorati: idem dominus rex ad parliamentum ſuum poſt Paſch. apud Weſtm', anno regni ſui xviii. de gratia ſua ſpeciali (1), *et propter affectionem quam habet erga prælatos, comites, et barones, et cæteros de regno ſuo conceſſit, quod omnes de regno ſuo quicunque fuerint, tam religioſi, quam alii, qui per bonam inquiſitionem patriæ aut alio modo verificare poterunt* (2), *quod ipſi et anteceſſores eorum vel prædeceſſores uſi fuerint libertatibus quibuſcunq;* (3) *de quibus per brevia prædicta fuerint implacitati ante tempus regis Rich' conſanguinei ſui aut toto tempore ſuo* (4), *et hucuſque continuerint: ita quod libertatibus illis non ſunt abuſi* (5), *quod partes adjornentur ulterius uſque certum diem rationabilem coram eiſdem juſticiar': infra quem dominum regem adire poſſint cum recordo* (6) *juſtic' ſigillo ſuo ſignat' et redire. Et dominus rex confirmabit* (7) *per literas ſuas patentes ſtatum eorum. Et illi*

FORASMUCH as writs of *quo warranto*, and alſo judgements given upon pleas of the ſame, were greatly delayed, becauſe the juſtices in giving judgement were not certified of the king' pleaſure therein; our lord the king, at his parliament holden at Weſtminſter, after the feaſt of Eaſter, the eighteenth year of his reign, of his ſpecial grace, and for the affection that he beareth unto his prelates, earls, and barons, and other of his realm, hath granted, that all under his allegiance, whatſoever they be, as well ſpiritual as other, which can verify by good enqueſt of the country, or otherwiſe, that they and their anceſtors or predeceſſors have uſed any manner of liberties, whereof they were impleaded by the ſaid writs, before the time of king Richard our couſin, or in all his time, and have continued hitherto (ſo that they have not miſuſed ſuch liberties) that the parties ſhall be adjourned further unto a certain day reaſonable before the ſame juſtices, within the which they may go to our lord the king with the record of the juſtices, ſigned with their ſeal, and alſo

illi qui non poterunt ſeiſinam anteceſſorum ſeu prædeceſſorum verificare eodem modo, quo prædictum eſt, deducantur et judicentur ſecundum legem et conſuet' regni (8). *Et illi qui habent chartas regales ſecundum chartas illas judicentur* (9). *Præterea dominus rex de gratia ſua ſpeciali conceſſit, quod omnia judicia quæ reddenda ſunt in placitis de quo warranto per juſtic' ſuos apud Weſtm' poſt Paſch' prædictum, et pro ipſo domino rege ſi partes quæ amiſerunt ad ipſum dominum regem revenire voluerint, tale habebunt remedium de gratia domini regis ſicut ſuperius ſcriptum * eſt* (10). *Conceſſit etiam idem dominus rex ad parcend' miſis et expenſis populi de regno ſuo: quod placita de quo warranto de cætero placitentur et terminentur in itinere juſtic'* (11), *et quod placita adhuc pendentia readjornentur in ſingulis com' ſuis uſque adventum juſticiar' in partibus illis.*

* [495]

alſo return; and our lord the king, by his letters patents, ſhall confirm their eſtate. And they that cannot prove the ſeiſin of their anceſtors or predeceſſors in ſuch manner as is before declared, ſhall be ordered and judged after the law and cuſtom of the realm; and ſuch as have the king's charter ſhall be judged according to their charters. Moreover, the king of his ſpecial grace hath granted, that all judgements that are to be given in pleas of *quo warranto*, by his juſtices at Weſtminſter, after the foreſaid Eaſter, for our lord the king himſelf, if the parties grieved will come again before the king, he of his grace ſhall give them ſuch remedy as before is mentioned. Alſo our ſaid lord the king hath granted, for ſparing of the coſts and expences of the people of his realm, that pleas of *quo warranto* from henceforth ſhall be pleaded and determined in the circuit of the juſtices, and that all pleas now depending ſhall be adjourned into their own ſhires, until the coming of the juſtices into thoſe parts.

(Fitz. Brief, 886. Kelw. 137, &c. Bro. Quo Warranto, 1, 2, 3, 4. 6. 8. 11. Bro. Preſcription, 10. 14. 18. 32, 33, 34. 52. 54. 64, 65. 73. 83. 98. 107, 108. Bro. Franchiſe, 4. 10. 14. 22. 26. 37. Fitz. Conuſance, 16. 19. 21. 26. 30, 31. 36. 39. 46. 51. 54. 57. 60, 61, 62, 63, 64. Raſt. 540.)

The miſchiefe before this ſtatute, as here it is rehearſed, was that there had been [*diutina dilatio*] in writs of *quo warranto*, becauſe the judges would not proceed to judgement (the ſame being finall) without being certified *de voluntate regis* by the writ *de libertatibus allocandis*, which was not onely a great delay, but a great charge to the ſubject: but the truth is, that this kings officers to get thanks of the king by filling of his cofers, cauſed very many writs of *quo warranto* for liberties to be brought; for where it is ſaid in our chronicles, that thoſe writs of *quo warranto* were for lands and tenements, therein they are miſtaken, for it appeareth that after, that is to ſay, in the 31 yeare of his raigne the king did bring a *quo warranto* againſt the lady of S. to know by what warrant ſhe claimed to hold the mannor of C. which belonged to his crown, as that which of ancient time was ancient demeſne; and there it is affirmed and not denied, that this was the firſt writ that ever was ſeen to be brought for lands: but certaine it is, that there were an exceeding number of writs of *quo warranto* brought as well againſt the prelates and other of the clergy, as againſt the nobles and others of the

31 E. 1. brè. 886. Vide Bract. l. 5. 367. Polydor, Trivet. Abingdon. Hollingſ. pag. 280. a. b.

the realme for their liberties, franchiſes, and priviledges, for that partly by length and proces of time, and partly during the troubleſome times and civill broiles and wars in the raignes of king John and H. 3. many of their charters, records of allowances, and other evidences and muniments were deſtroyed, waſted or made away; amongſt others a *quo warranto* was brought againſt John Warren earle of Surrey, who appearing before the juſtices ſpake boldly and ſtoutly againſt this kinde of proceeding, as our hiſtories doe teſtifie.

Certaine it is, that as well the lords ſpirituall and temporall, as the commons aſſembled in this parliament did complain hereof to the king, and beſought him that he would be pleaſed of his grace and favour, for it was a legall courſe which was attempted and proſecuted in the kings name, but a matter of great rigour and extremity invented and eagerly followed by his officers, to the generall diſtaſte and griefe of the whole realme.

The noble and wiſe king knowing that *ſummum jus* was *ſumma injuria*, and not intending to take advantage of the extremity of his laws in ſo hard a caſe did of his grace and favour (for ſo the act ſpeaketh) *ex ſpeciali gratia et etiam propter affectionem quam habet erga prælatos, comites, barones, et cæteros de regno ſuo*, provide by this act remedy for the ſaid miſchiefe.

Bracton and Fleta treating of a *quo warranto*, both of them almoſt *totidem verbis* ſayen, *Eſt etiam alia actio, quæ dicitur duplex, in uno brevi, et ubi duæ concurrunt actiones, ſcilicet in perſonam, et in rem: primo in perſonam, quod quis ſit ad reſpondendum quo warranto teneat aliquam libertatem ſeu aliam rem. In rem, cum præterea addatur in fine quam rex clamat ut jus et hæreditatem ſuam vel eſchaetam ſuam, vel de antiquo dominico coronæ ſuæ, vel hujuſmodi, vel quam talis clamat in N. contra coronam et dignitatem regis.* Bract. l. 5. fo. 367. Fleta, l. 5. cap. 9.

(1) *De gratia ſua ſpeciali.*] This, as hath been ſaid, is an act of grace, for it bindeth the king in this particular of his prerogative, *quod nullum tempus occurrit regi*, for by this act continuance of poſſeſſion of liberties from the beginning of the raigne of R. 1. till this act, which was under an hundred yeares, ſhould be a barre to the crowne, if ſo it were found by inquiſition, which was the time of preſcription that bound the ſubject in caſe of preſcription. Acts of grace. Mag. Chart. c. 8. W. 2. ca. 10. 29. 2 E. 3. fo. 28, 29.

(2) *Qui per bonam inquiſitionem patriæ, vel aliquo alio modo veſificare poterint*, &c.] This is as much to ſay, as to prove by inquiſition, or verdict of the country, who are to enquire of the fact, that is, of the poſſeſſion by the time aforeſaid, or to prove by matter of record (whereof juries are not to enquire) that is, by allowance before juſtices in eyre, &c. implied neceſſarily in theſe words [*vel aliquo alio modo*] that muſt be *alio modo*, then by matter in *fait* inquirable by the country; ſo as albeit it be ſaid, that a poſſeſſion of liberties warranted alſo by allowance is within this ſtatute, that doth not exclude, but that a poſſeſſion found by inquiſition is within the expreſſe letter and meaning of this act. [496] First part of the Inſtit. ſect. 190. 2 E. 3. 28, 29. Roger Mortimers caſe upon this branch.

(3) *Libertatibus quibuſcunque.*] This extends to all liberties, as well to thoſe that lie in point of charter, as conuſans of pleas, felons goods, and the like; as to thoſe that may be claimed by preſcription, as waife and ſtray, and the like. 2 E. 3. ubi ſupra.

The remedy is conformable to the miſchiefe, for the miſchiefe was, as hath been ſaid, concerning liberties, and not concerning lands; and the *quo warranto* was framed for franchiſes which belong 31 E. 1. bre. 886. Bract. ubi ſupra. Tr. 29 E. 1. coram rege. Rot. 57. the biſhop of Durhams caſe.

long to the crown, and ſuch as the ſubject hath, are derived from the crown, *Libertates regales ad coronam ſpectantes ex conceſſione regum à coronæ exierunt.*

(4) *Ante tempus conſanguinei ſui Ric. aut toto tempore ſui.*] This is king Richard the firſt, and here is called *conſanguineus*, becauſe the king derived not lineally from him, for he was elder brother to king John, who was grandfather to king Edw. 1. Note here this disjunctive [*aut*] ſo as the time of preſcription, as hath been ſaid, in the caſe of a ſubject is the time limited by this act.

(5) *Ita quod libertatibus illis non ſunt abuſi.*] This clauſe extendeth not onely to miſuſer, diſuſer, and non-uſer of liberties, but to *faux claime* of them, and the like.

(6) *Regem adire poſſint cum recordo.*] Here is an excellent pattern, that the king be informed by the judges, and by the record it ſelf, before he make any graunt or confirmation thereof; ſo carefull were they in thoſe dayes, that the king, before he paſſed any thing, might bee truly informed.

(7) *Et dominus rex ſtatum eorum affirmabit.*] In thoſe dayes, ſuch faith were given to verdicts of twelve men, as they were *vere dicta*, and *dicta veritatis*, ſo as upon one inquiſition, &c. the king by this act was to affirme the liberties according to the verdict, &c.

(8) *Deducantur et judicentur ſecundum legem communem.*] That is according to the kings prerogative of *nullum tempus occurrit regi.* Hereby it appeares that the kings prerogative is part of the law of England, and comprehended within the ſame.

(9) *Et illi qui habent chartas regales ſecundum chartas illas et earundem plenitudinem judicentur.*] Here is an excellent rule for conſtruction of the kings letters patents, not only of liberties but of lands, tenements, and other things which he may lawfully grant, that they have no ſtrict or narrow interpretation for the overthrowing of them, *ſed ſecundum earundem plenitudinem judicentur*, that is, to have a liberall and favourable conſtruction for the making of them available in law, *uſq; ad plenitudinem*, for the honor of the king.

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Lib. 6. fol. 5, 6. Sir John Molins caſe.

6 E. 3. 54, 55.
7 E. 3. 40, 41.
18 E. 3. conuſans 39. 34 Aſſ. 14.
40 Aſſ. 23.
12 H. 4. 12.
14 H. 6. 12.
33 H. 6. 22.
35 H. 6. 54.
9 H. 7. 11.
10 H. 7. 13, 14.
16 H. 7. 9.

Alſo hereby is implied that they are to be conſtrued *ſecundū earū plenitudinem*, that is, as fully and beneficially as the law was taken at that time when they were made: and certainly theſe auncient laws were directions to the ſages of the law, for the conſtruction of the kings charters, and letters patents, as it appeareth in our books.

(10) *Præterea dominus rex de gratia ſua ſpeciali conceſſit, quod omnia judicia que reddenda ſunt in placitis de quo warranto per juſtic' apud Weſtm' poſt Paſch' prædict', et pro ipſo domino rege, ſi partes quæ amiſerunt ad ipſum dominum regem revenire voluerint, tale habebunt remedium de gratia domini regis, ſicut ſuperius eſt conceſſum.*] This was a ſpeciall grace indeed of the king, that though judgements had been given in any of his courts at Weſtminſter ſince the feaſt of Eaſter in pleas of *quo warranto* for him againſt any of his ſubjects (which judgements in law againſt the ſubjects were finall) yet, thoſe judgements notwithſtanding, the parties grieved ſhould be within the remedy of this act.

(11) *Conceſſit etiam idem dominus rex ad parcend' miſſis et expenſis populi de regno, quod placita de quo warranto de cætero et placitentur et terminentur in itineribus juſticiar'.*] The coſts, charges, and expences of the ſubjects in theſe caſes were exceſſive, and therefore, to

to meet with this miſchiefe, and that the ſubject might receive juſtice in his own country, as it were at his owne doores, it is likewiſe of the kings ſpeciall grace that pleas of *quo warranto* ſhould be heard and determined in the eyres of the juſtices.

Of this branch we finde a notable caſe in our books, and I will cite the caſe as I finde it of record, and as it may be gathered in our books. The archbiſhop of York was in poſſeſſion of priſage of wines in the port of Hull, and in the raigne of E. 2. in the time of John archbiſhop, the ſame franchiſe was ſeiſed into the kings hands; after the deceaſe of John archbiſhop, William archbiſhop his ſucceſſor ſued in parliament in the raigne of E. 3. by petition of right to be reſtored to the ſaid franchiſe; and afterward by parliament the petitioner was reſtored to the poſſeſſion of the ſaid franchiſe, and by the ſame award it was adjudged that the ſaid William archbiſhop the petitioner ſhould anſwer the king, when and where he pleaſed; and the like award was made upon the petition of the ſaid William archbiſhop in the parliament the morrow after the feaſt of S. Catherine in the fourth yeare of the ſame king; whereupon the king brought a writ of *quo warranto* againſt the ſaid William archbiſhop returnable in the court of common pleas, to know by what warrant he claimed to have priſage of wines in the port of Hull; Parning that famous ſerjant (who after was chiefe juſtice, and after that lord treaſurer of England, and laſtly lord chauncellor of England) of councell with the archbiſhop, pleaded to the juriſdiction of the court, and demanded judgement, if the archbiſhop ought to make any anſwer there, for that king Edward, grandfather of E. 3. made a ſtatute (intending this ſtatute of 18 E. 1.) which provided, that the pleas of *quo warranto* ſhould be pleaded before juſtices in eyre in the counties, and that it was ordained by a ſtatute made in the time of king E. 3. at his parliament at Northampton (which was in 2 E. 3.) that by a writ under the great, or privy ſeale, no diſturbance ſhould be that common right ſhould not be done to all, and wee intend not (ſaith hee) that againſt the ſaid ſtatute, which is a law common to all, that wee ought to anſwer in this court. The matter concerning this act of 18 E. 1. was not denied, but ſir William Herle chiefe juſtice, that gave the rule, relying upon the award in parliament, that the archbiſhop ſhould anſwer the king when and where hee would, and there it is ſaid, that the award of parliament was the higheſt law that could bee, and thereupon ſerjant Parning anſwered over.

5 E. 3. 65. 6 E. 3. 5, &c.

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Now when juſtices in eyre ceaſed, then this branch for the eaſe of the ſubject, and for ſaving of their coſts, charges, and expences, loſt his effect, for with juſtices of eyre this branch lived, and with them it died.

Some have ſuppoſed that Henry the ſecond, did firſt inſtitute juſtices in eyre, whereof one ſaith, *Juſticiarii itinerantes conſtituti per H. 2. 1. Qui diviſit regnum ſuum in ſex partes, per quarum ſingulas tres juſticiarios itinerantes conſtituit*; and they likewiſe agree, *quod hoc inſtitutum ſub Edwardo 3. evanuit.*

Rog. Hovenden poſter. p'te annalium, fol. 313. Mat. Paris. Camden Brit. 129.

Wherein how men otherwiſe learned, but not ſkilfull in legall antiquities have miſtaken both theſe points, we ſhall in a word or two ſatisfie the learned reader.

Theſe juſtices itinerants, were alſo called *perluſtrantes*; they were firſt inſtituted *ad dilationes amputandas, et ad ſubditorum labores, ſumptuſque ſublevandos.*

Lucubr. Ockham.

Mirror, c. 2. § 15.

It appeareth by the Mirror, who had ſeene the old rolls in the raignes of ancient kings, and namely of king Alfred, and wrote of the lawes from the time of king Arthur, who ſaith, *Que auncientment ſoloient les royes en proper perſons eroer de paiis in paiis pur inquirer, oier et terminer les peches, et pur redreſſer de torts, et ceux queux ne ſont my attaine en tielz eires des perſonel treſpaſſes faitz avant remeint al judgement de Dieu. Et puis pur multiplication de peches ne purront my les royes touts faire per eux meſmes et pur ceo ilz envoieront lour commiſſaries, que ſont ore appels juſtices errants, que nount power de oier et terminer nul perſonel treſpaſſe forſque pur choſe attaine, et nient termine in le darraine eire ou puis fait* (which agreeth with our books) and further ſaith, *Eſtoiet auncient ordein que les royes per eux, ou per lour chiefe juſtices, ou per juſtices generals a touts pleas oier et terminer erraſſent de 7. ans, in 7. ans per my touts counties pur receiver les rolles de touts juſtices aſſignes, des coroners de inquiries, des eſcheators, de viſcounts, de hundreders, de bailies, et de touts ſeneſchals, &c.* And again, *Cheſcun paiis ſoloiet deſtre garnie per 40. jours per generall ſummons, &c.* All which agreeth with our books; and after he ſaith, *Abuſion eſt que juſtices et lour miniſters, que occient le gent per faux judgement, ne ſont diſtreints al fere de autres homicides, que fiſt le roy Alfred que fiſt pender 44. juſtices in un anne tant conne homicides pur lour faux judgements*: and there he nameth thoſe corrupt juſtices, which is to be intended of juſtices itinerant, for there were not ſo many reſident.

Mirror, c. 4. § Le office des juſtices in eire. ea. 5. § 1. The books aboveſaid, ubi ſupra.

And the inſtitution of juſtices itinerant, and the circuit of juſtices in the countries had his ground from holy ſcripture, for there it is ſaid, *Judicabat quoque Samuel Iſraelem cunctis diebus vitæ ſuæ, et ibat per ſingulos annos circuiens Bethel, et Galgala, et Maſphatti; et judicabat Iſraelem in ſupradictis locis, revertebaturque in Ramatha; ibi enim erat domus ejus, et ibi judicabat Iſraelem.*

1 Sam. c. 7. ver. 16.

As to the ſecond point, that juſtices in eyre ſhould ceaſe in the raigne of Edward the third, they have not onely erred *in fonte*, but *in fine* alſo, for they ceaſed not in the raigne of king Edward the third, for it is enacted by act of parliament after that kings raigne, (in reſpect of the troubles and foreine affaires) that no eyres ſhould be holden during two yeers; and after in 16 R. 2. that no eyre ſhould be holden till the next parliament; but thus much in a caſe ſo evident ſhall ſuffice. We have added thus much, not of curioſity, nor of a ſpirit of contradiction, but for two reſpects; the one, that when our hiſtorians do meddle with any legall point, or matter concerning the law, we would adviſe them, that they would before they write, conſult with thoſe that be learned, and appriſed in the laws of this realm: the other, that truth might be manifeſted, and prevail.

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Rot. Parliam. an. 6 R. 2. nu. 35. 16 R. 2. nu. 12.

But hereof more largely ſhall be ſpoken in the treatiſe concerning the juriſdiction of courts.

STATUT. DE WESTMINSTER 3.

Editum Anno 18 Edw. 1. Ad Parliamentum poſt Feſtum Hil. et Paſchæ.

In the Parliament Roll it is intituled,

Statutum Regis de Terris vendendis et emendis.

IT is called the ſtatute of Weſtm. 3. becauſe two notable parliaments had been before holden at Weſtminſter, the one called Weſtm. 1. and the other called Weſtm. 2. In reſpect whereof, and of the excellencie of it, this parliament being holden at Weſtminſter, is called Weſtm. 3.

1 part of the Inſtitutes, ſect. 140.

CAP. I.

QUIA emptores terrarum (1) *et tenementor' de feodis magnatum et aliorum dominorum in præjudicium eorundem, temporibus retroactis, multotiens in feodis ſuis ſunt ingreſſi, quibus libere tenentes eorundem magnatum et aliorum terras et ten' ſua vendiderunt, tenend' infeod' ſibi et hæredibus ſuis de feoffatoribus* [et hæredibus] *ſuis, et non de capitalibus dom' feodorum, per quod iidem capitales domini eſchaetas, maritagia, et cuſtodias terrarum et tenement' de feodis ſuis exiſtentium ſæpius amiſerunt: quod quidem eiſdem magnatibus et aliis dominis quam plurimum durum et difficile videbatur, et* [ſic] *in hoc caſu exheredatio manifeſta. Dominus rex in parliamento ſuo apud Weſtmon' poſt Paſch. anno regni ſui* 18. *videlicet in quindena Sancti Johan. Bapt. ad inſtantiam magnatum regni ſui, conceſſit, providit, et ſtatuit, quod de cætero liceat unicuique libero homini* (4), *terras ſuas, ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam* (2) *vendere* (3), *ita tamen quod feoffatus teneat terram illam, ſeu tenement' illud*

FORASMUCH as purchaſers of lands and tenements of the fees of great men and other lords, have many times heretofore entered into their fees, to the prejudice of the lords, to whom the freeholders of ſuch great men have ſold their lands and tenements to be holden in fee of their feoffors, and not of the chief lords of the fees, whereby the ſame chief lords have many times loſt their eſcheats, marriages, and wardſhips of lands and tenements belonging to their fees; which thing ſeemed very hard and extream unto thoſe lords and other great men, and moreover in this caſe manifeſt diſheritance: Our lord the king, in his parliament at Weſtminſter, after Eaſter, the eighteenth year of his reign, that is to wit, in the quinzime of Saint John Baptiſt, at the inſtance of the great men of the realm, granted, provided, and ordained, that from henceforth it ſhall be lawfull to every freeman to ſell at his own pleaſure his lands and tenements, or part of them, ſo that the feoffee ſhall hold the ſame lands

Iud de capitali domino (6) *feodi illius* (5) *per eadem servitia et consuetudines* (8), *per quæ feoffator suus illa prius tenuit* (7).

lands or tenements of the chief lord of the same fee, by such service and customs as his feoffor held before.

(1 Roll, 106. Fitz. Avowry, 108. 185. 255. 12 Car. 2. c. 24.)

Lib. 3. fol. 23, 24. Walkers case.

[501]

Mag. Char. c. 32.

(1) *Quia emptores terrarum, &c.*] The cause of the making of this statute, appeareth by the preamble, and by that which hath been said upon the exposition of the 32. chapter of the statute of Magna Charta; where also the principall parts of this act are explained, yet some things are thereunto necessarily to be added.

31 Ass. p. 30. 2 E. 3. 33. 49 E. 3. 10.

At the common law, if A. had made a feoffment in fee to B. *reddend' inde, sive tenend' de se et hæredibus suis per 6. d. pro omnibus servitiis, et fac' capitalibus dominis feodi pro prædict' A. et hæredibus suis omnia servitia debita, &c.*

In this case by the first *reddend'* or *tenend'* the land had been holden of the feoffor, and all the services due shall be done to him; for to do service for a man, is to do it to him; *qui pro me aliquid facit, mihi feciſſe videtur.*

3 Ass. 8. 33 E. 3. Annuity 52. 22 Ass. 53. 45 E. 3. 15. b. 4 H. 6. 20. 49 E. 3. 10.

If the tenant had made a feoffment in fee before this statute generally, without reservation of any tenure, the feoffee should have holden of the feoffor, as he had held over; for example, if he had holden by knights service, the feoffee by creation of law had holden by knights service of the feoffor, in respect of the tenure over by him; and therefore if the lord had confirmed the estate of the feoffor, *viz.* the mesne, to hold by fealty onely (which was socage) the tenure between the tenant and the feoffor should be socage also, because the tenure created by law followeth the tenure, in respect whereof it was created.

(2) *Quod de cætero liceat unicuique libero homini, terras suas, seu tenementa sua, seu partem inde ad voluntatem suam vendere.*] By the common law, the tenant might have made a feoffment in fee of the whole tenancie to be holden of the chief lord; but notwithstanding the lord might, during the life of the feoffor, take him for his tenant, and avow upon him (in respect of the former fealty, service, and privity) albeit the feoffee gave notice, and tendred him all the arrerages, which now this statute hath altred.

33 E. 3. Avowry 255. 4 H. 6. 20. 12 E. 4. 16. lib. 3. fol. 23. Walkers case.

Mag. Chart. c. 32.

See the exposition upon the 32. chapter of Magna Charta.

(3) *Vendere.*] Is here not onely taken for a sale, but for any alienation by gift, feoffment, fine, or otherwise: but sale was the most common assurance.

(4) *Libero homini.*] *i. Libere tenenti*; to every free-holder. Hereby are excluded not onely *nativi*, but also *nativè tenentes*, copy-holders, or tenants at will, according to the custome of the mannour.

4 H. 6. 20. 8 E. 4. 12.

(5) *Ita tamen quod feoffatus teneat terram illam, seu tenementum illud de capitali domino feodi illius.*] The generall words of this act take not away necessary incidents, as that the feoffee of all, or of part, shall give notice, and tender the arrerages before the lord shall be compelled to avow upon him: neither do these, or the former words [*de cætero liceat*] take away the fine for license of alienation, &c. of lands holden of the king *in capite*, for that belongeth to the king by the said statute of Magna Charta. See

Mag. Chart. c. 32.

Magna Charta, cap. 32.

These

Theſe generall words have a tacite exception, *viz.* unleſſe all the lords mediate and immediate do aſſent thereunto; for, *quilibet renunciare poteſt benefic' juris pro ſe introduct'.*

27 H. 8. 26. 2 E. 2. Avowry 185.

(6) *Capitalis dominus.*] Is here taken for the next immediate lord, and ſo by degrees upward to every lord paramount, albeit the act ſpeaketh in the ſingular number: and it is to be known, that all the lands and tenements in England are holden either mediately or immediately of the king, and therefore he is *ſummus dominus ſupra omnes.*

* If the king be lord, A. meſne, C. meſne, and tenant, the tenancie commeth to the hands of the king by forfeiture or conveyance, the king granteth the lands to another in fee [*tenend' de capitali domino per ſervitia debita, et conſueta*] † this grant ſhall revive not onely the immediate tenure of C. but of A. and of the king alſo, albeit the *tenend' de capitali domino* be in the ſingular number (as here the ſtatute ſpeaketh) yet is it as much as *capitalibus dominus.*

* 33 H. 6. 7. 8 E. 3. 283. 17 E. 3. 59. 46 E. 3. Petition 19. lib. 6. fol. 5, 6. Sir John Molyns caſe. Eodem libr. fol. 130, 131. Bewlies caſe.

† [502]

(7) *Per eadem ſervitia et conſuetudines, per quæ feoffator ſuus illa prius tenuit.*] A. holdeth lands by knights ſervice, and giveth the ſame to B. in tail, to hold of him in ſocage; B. maketh a feoffment in fee, the feoffee ſhall not hold of the lord in ſocage, as the feoffor held, but by knights ſervice, as A. the donor held: for by the feoffment the reverſion in fee holden by knights ſervice is drawn out of the donor, and paſſeth to the feoffee; and the feoffee in this caſe cannot hold of the donor: and this caſe is not againſt the letter of the law, but within the intent and meaning thereof; for the meaning of this law was, that the feoffee ſhould hold of the lord, as the feoffor did when the feoffee held of the ſame lord; and this act was made for the advantage of the lords; and therefore in conſtruction the feoffee ſhall hold, not as the feoffor, but as the donor held.

2 E. 2. Avowry 181. 10 E. 3. 26. 18 E. 3. 7. 31 E. 3. Gard 116. 48 E. 3. 8. 1 H. 5. 5 E. 4. 8. 15 E. 4. 13. Tr. 18 Eliz. in communi banco, in Wyats caſe. Per cur' which I heard and obſerved.

If the huſband ſeiſed of land in the right of his wife make a feoffment in fee, the feoffee ſhall hold as the wife held, for the huſband had nothing but in her right.

Alſo if the tenant that holds by priority make a feoffment in fee, the feoffee ſhall not hold by priority; for this act ſaith, *per eadem ſervitia*, by the ſame ſervices, and not according to every collaterall quality.

If tenant in frank almoign alien in fee, that feoffee ſhall not hold of the lord *per eadem ſervitia*, albeit he be a man of the church; but he ſhall hold of the lord by fealty onely: for by the firſt words of this act he ſhall hold of the lord, but he cannot hold of the lord *per eadem ſervitia*, becauſe it is againſt the nature of the tenure in frank almoign, to hold of any but of the donor or his heirs; and generall words of an act ſhall not be taken to work any thing againſt the nature of the thing, or the rule of law; but he ſhall hold by fealty onely, which was as free a tenure, and as neer to the former, as can be, and therefore by conſtruction [*eadem ſervitia*] the ſame ſervices ſhall be taken as neer the ſame ſervices as may be.

1. part of the Inſtitutes, ſect. 139. Lib. 9. fol. 123. Anth. Lowe caſe.

And this act extendeth to lands holden by fee fearm.

45 E. 3. 15.

(8) *Conſuetudines.*] Is here taken for ſervices, as in the writ *de conſuetudinibus et ſervitiis*, and not for cuſtomes.

Mag. Chart. cap. 30. verb. Conſuetud.

If the meſne releaſe to the tenant, the tenant ſhall hold *per eadem ſervitia et conſuetudines*, as the meſne did; and ſo if the tenant

22 E. 3. Dower 131. 38 Aſſ. 17. 2 E. 4. 6. 7 E. 4. 12.

tenant infeoffe the mesne, the mesne shall hold *per eadem servitia*, as he did before: and so it is if the tenancie come to the mesnalty by act in law, as by escheat or descent, the mesne shall hold *per eadem servitia consuetudines*, as he held before; for albeit the tenure between the tenant and the mesne in these cases be extinct, yet the seigniory paramount, which also was issuing out of the tenancie, remaineth still.

10 Ass. p. 29. W. 2. cap. 9. Le case de Forjudger.

If there be lord mesne, mesne, and tenant, and the first mesne dyeth without heir, and the mesnalty escheat to the second mesne; or if the mesne grant the mesnalty to the mesne, the mesnalty that which is neerest to the tenancie doth drown the more remote mesnalty, and the tenant shall hold *per eadem servitia et consuetudines*, as he held before: but the second mesne shall hold of the lord paramount *per eadem servitia et consuetudines*, as he held before the extinguishment of his mesnalty for the cause aforesaid.

[503]

CAP. II.

ET si partem aliquam earundem terrarum, seu tenementorum alicui vendiderit, feoffatus illam teneat immediate de capitali domino (1), *et oneretur statim de servitiis quantum pertineat sive pertinere debet eidem capitali domino pro particula illa* (2) *secundum quantitatem terræ* (3) *seu ten' sic vendit'. Et sic in hoc casu decidat capitali domino ipsa pars servitii per manus feoffati capiend', ex quo feoffatus debet eidem capitali domino juxta quantitatem terræ seu ten' venditi, de particula illius servitii sic debiti esse intendens et respondens.*

AND if he sell any part of such lands or tenements to any, the feoffee shall immediately hold it of the chief lord, and shall be forthwith charged with the services, for so much as pertaineth, or ought to pertain to the said chief lord for the same parcel, according to the quantity of the land or tenement so sold. And so in this case the same part of the service shall remain to the lord, to be taken by the hands of the feoffee, for the which he ought to be attendant and answerable to the same chief lord, according to the quantity of the land or tenement sold for the parcel of the service so due.

(Dyer, 299. Fitz. Avowry, 101. 108. 218. Fitz. Herriot, 1. Bro. Tenures, 2. 65. 6 Rep. 1. 8 Rep. 105. 27 H. 8. f. 26. 40 Ed. 3. f. 40.)

(1) *Feoffatus ille partem illam teneat immediate de capitali domino pro particula illa.*] [*Particula illa*] is understood of a part in severalty, and not in common, and therefore it is holden that if the tenant make a feoffement in fee of the moity or third part, &c. of the tenancy, that such a feoffee is not within the purview of this statute; for a moity or a third part, &c. *pro indiviso* is not *particula*, for that word implieth a part in severalty.

29 H. 8. tenures Br. 64. 17 E. 3. 15.

27 E. 3. 15.

And this branch by reason of this word [*feoffatus*] is understood when part of the tenancy *peravaile* is aliened, and not when part of the mesnalty.

(2) *Pro particula illa.*] Is understood of services divisible and apportionable, and not of entire services, be they annuall or not annuall,

Lib. 6. f. 1. Brucrton's case. Li. 8. fo. 105, 106.