

the queens majesties courts of record, or in any leet, view of frankpledge, ancient demesne court, hundred court, court baron, or of the stannary, or elsewhere within any of the kings dominions of England or Wales, or the marches of the same: or shall unlawfully, and corruptly procure and suborn any witness to testify *in perpetuam rei memoriam*. That then every such offender shall forfeit the summe of forty pound, &c. And if any person either by subornation, or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilfull perjury by their deposition in any of the courts above-mentioned, or being examined *ad perpetuam rei memoriam*; then every person so offending shall lose and forfeit twenty pound, and to have imprisonment by the space of six moneths without bail or mainprise, &c. the one moiety of all which forfeitures to be to the queen, and the other moiety to such person or persons as shall be grieved, &c.

Albeit by the common law tryall of matters of fact are by the verdict of twelve men, &c. and deposition of witnesses is but evidence to them: yet, for that most commonly juries are led by deposition of witnesses, perjury of witnesses was severely punished by the ancient laws of this realm; perjury itself being forbidden by the law of God, <sup>a</sup> *Non perjurabis in nomine meo, nec pollues nomen Dei tui*. And again, *Non perjurabis, reddes domino juramenta tua*.

A false witness is called *perjurus, quia perperam jurat*. <sup>b</sup> Perjury before the conquest was punished sometime by death, sometime by banishment, and sometime by corporall punishment. &c.

<sup>c</sup> *Aucuns sont punies per couper de langues, come seiloit estre de fauvz témoygnis*. But too severe laws are never duly executed. Afterwards it came to be more milde, for <sup>d</sup> Fleta saith, *Ante injuria est que omnium mobilium amissionem confert, &c. de perjuriis convictis*.

Afterwards it came to fine and ranfome, and never to bear testimony.

*Et ceux se voillent perjurer par loquer, ou par aucun doute de ascun, et ceux sont reints a nostre volunt, et mes ne soient crus per nul serement*. And it appeareth in 7 H. 6. that he that is perjured shall be fined and imprisoned.

*Thomas Vigrus, et duo alii sunt culpabiles, &c. perjurati pro fractione corbell-rum Johannæ de Huntingfield in separali piscaria sua in aqua de Hadfeld*.

*Qui testes de perjuriis convincere satagit, multo illis plures, producere nec se habet*.

The punishment of perjury in jurors for a false verdict was so severe by the common law, as few or no juries were upon just cause convicted, for the judgement <sup>\*</sup> against them was, 1. *Quod omnes amittant liberam legem imperpetuum*. 2. *Non trahantur in testimonium veritatis*. 3. *Bona et catalla sua frustificent regi*. 4. *Terræ et tenementa sua capiantur in manus regis*. 5. *Quod uxores et liberi sui amodo amoveantur*. 6. *Quod terræ et tenementa sua extirpentur, &c.*

245. 8 E. 2. Judgement. 196. 16 E. 3. ibidem 109. Mich. 3 H. 5. Coram & 49. Fortescue ca. 29.

<sup>a</sup> Exod. 20. 13. Levit. 19. 11. Mat. 5. 24. <sup>b</sup> Leges Edw. c. 3. Ethelst. c. 10. 25 Edm. c. 6. Canuti, ca. 6. & 35. &c. Edw. and Gru. c. 11. <sup>c</sup> Mir. ca. 4. § de paines. Int. Leg. Canuti, c. 15. Convictori lingua exciditor. <sup>d</sup> Fleta, li. 2. ca. 1. § Item Atrox, &c.

Britton, fo. 38 237, 238. 7 H. 6. fo. 25. Hil. 8 E. 1. in Comuni banco Ro. 53. Eilix. Fortescue, ca. 32.

\* [ 164 ] Vide 1. pt. of the Institutes. Verb. Attaint. Sect 514. Glanvill, lib. 2. ca. 19. 6 H. 3. Attaint. 72. Bract. li. 4. fo. 292. b Fleta, lib. 5. cap 21. Britton, fo. rege Rot. 14

23 H. 8. ca. 3.

2 H. 4. 10.

11 H. 4. 88.

20 E. 4. 10. b.

22 E. 4.

13 El. Dier, 302.

Mich. 7 &amp; 8 El.

Dier, 242, 243.

Mich. 10. Ja.

Rowl. Ap Eli-

zaes case, in

cam. stellat.

See hereafter

Verb. Informa-

tion.

Mich. 40 &amp; 41

El. Lib. 5. fo. 99.

in Flowers case.

The case of  
Rowland Ap Eli-  
za in the star-  
chamber see su-  
pra.

7. *Quod capiantur, et in gaolam detrudantur.* Which sheweth how odious perjury was in the eye of the law: and this law both yet remain in force; but a milder punishment is set down by the statute of 23 H. 8. wherein the party grieved hath election to ground his writ of attain upon this statute, or to take his remedy at the common law.

For perjury concerning any temporall act, the ecclesiasticall court hath no jurisdiction; and if it be concerning a spirituall matter, the party grieved may sue for the same in the star-chamber. See the statutes of 3 H. 7. ca. 1. 11 H. 7. ca. 25. 32 H. 8. ca. 9. And when you have read the case in Mich. 7 & 8 Eliz. Dier 242, 243. you will confesse how necessary the reading of ancient authors and records is, and the continuall experience in the star chamber is against the opinion conceived there.

And Mich. 10. Jac. in the star-chamber in the case of Rowland Ap Eliza, it was resolved, that perjury in a witness was punishable by the common law, as hereafter shall be shewed more at large. But now let us peruse the words of the statute.

*By any writ, action, bill, complaint, or information.]* Out of these words are perjury, and subornation of perjury upon an indictment for the king (for example of riot) as it was resolved in Flowers case, because that perjury upon an indictment is not within the statute. But seeing perjury was an offence punishable by the common law, though the indictment of Flower grounded upon this statute was overthrown, yet is such perjury upon an indictment punishable, and most commonly punished in the star-chamber.

*Information.]* By this it appeareth, that perjury committed in an information exhibited by the kings attorney, or any other for the king, by any witness produced on the behalf of the king, is punishable either by this act or by the common law. And so it was resolved in the said case of Rowl. Ap Eliza, which was this. The kings attorney preferred an information in the exchequer against Hugh Nanny esquire the father, and Hugh Nanny the son, and others for intrusion and cutting down a great number of trees, &c. in Penrose in the county of Merioneth. The defendant pleaded not guilty, and the tryall being at the bar, Rowl. Ap Eliza was a witness produced for the king, who deposed upon his oath to the jury, that Hugh the father and Hugh the son joyned in sale of the said tree, and commanded the vendees to cut them down: upon which testimony the jury found for the king, and assessed great damages, and thereupon judgement and execution was had. Hugh Nanny the father exhibited his bill in the star-chamber at the common law, and charged Rowland Ap Eliza with perjury, and assigned the perjury, in that he the said Hugh the father never joined in sale, nor commanded the vendees to cut down the trees, &c. And it was resolved, first, that perjury in a witness was punishable by the common law. Secondly, that perjury in a witness for the king was punishable by the common law, either upon an indictment, or in an information, or by this act in an information. And the said Rowland Ap Eliza was by the sentence of the court convicted of wilfull and corrupt perjury.

But for our more orderly proceeding, let us define, or describe what perjury is in legall understanding, both upon this statute, and at the common law.

Perjury

Perjury is a crime committed, when a lawfull oath is ministred by any that hath authority, to any person, in any judiciall proceeding, who sweareth absolutely, and falsly in a matter materiall to the issue, or cause in question, by their own act, or by the subornation of others. Now let us peruse the branches of this description.

Perjury described.

*A lawfull oath.*] This word oath is derived of the Saxon word *oath*; and is expressed by three severall names, viz. 1. *Sacramentum*, à *facra, et mente*, because it ought to be performed with a sacred and religious mind. *Quia jurare, est Deum in testem vocare, et est actus divini cultus.* 2. *Juramentum à jure*, which signifieth law and right, because both are required and meant, or because it must be done with a just and rightfull mind. 3. *Jusjurandum*, compounded of two words, *à jure, et jurando*. In the common law *sacramentum* is most commonly used: in our books and ancient statutes published in French, *serment*, of the French word *serment*, is used.

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An oath is an affirmation or deniall by any Christian of any thing lawfull and honest, before one or more, that have authority to give the same for advancement of truth and right, calling Almighty God to witnesse, that his testimony is true. And it is twofold, either *assertorium ut de præterito, sicut testes, &c. seu promissivum de futuro, sicut iudices, justiciarii, officarii, &c.* So as an oath is so sacred, and so deeply concerneth the consciences of Christian men, as the same cannot be ministred to any, unlesse the same be allowed by the common law, or by some act of parliament; neither can any oath allowed by the common law or by act of parliament be altered, but by act of parliament. It is called a corporall oath, because he toucheth with his hand some part of the holy scripture.

Serment or sacrament. i. sacrament. i. sacramentum.

Fleta, li. 5. ca. 2. Brit. c. 97. fo. 237. 8. b. 19. 74. 134. 165. 236. b. Fleta, li. 5. ca. 21.

So resolved an. 26 El. in the case of the under their.

The oath of the kings privy counsell, the justices, the sherif, &c. was thought fit to be altered and enlarged, but that was done by authority of parliament. For further proof whereof, and of the matters abovesaid, see the statutes here quoted, and it shall evidently appear, that no old oath can be altered, or new oath raised without an act of parliament, or any oath ministred by any that have not allowance by the common law, or by an act of parliament.

Magna Cart. c. 6. Stat. Pr. 17. F. N. B. 264. W. 1. 2 El. 1. c. 40. 18 El. 3. ubi sup. 5 R. 2. cap. 12. 6 R. 2. ca. 12. 4 H. 4. ca. 18. ca. 2. 23 H. 8.

2 H. 5. ca. 7. 8 E. 4. cap. 2. 1 R. 3. cap. 6. & 15. 19 H. 7. cap. 12. 14 H. 8. cap. 5. 32 H. 8. cap. 46. 2 E. 6. ca. 13. 27 El. cap. 12. See 3 Jac. c. 4.

43 Eliz. ca. 12.

And to conclude this point, it was resolved in parliament holden in anno 43 Eliz. that the commissioners concerning policies of assurances could not examine upon oath, because they had no warrant either by the common law, or by any act of parliament: and therefore it was enacted at that parliament, that it should be lawfull for the said commissioners to examine upon oath any witnesse, &c. At this parliament I attended, being then attorney generall. And oaths that have no warrant by law, are rather *nova tempta, quam sacramenta*, and it is an high contempt to minister an oath without warrant of law, to be punished by fine and imprisonment. And therefore commissioners (that set by force of any commission that is not allowed by the common law, nor warranted by authority of parliament) that minister any oath whatsoever, are guilty of an

III. INSR.

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## \* Commissions.

Regist. 1, 2, 3.

125, 126. 83.

128. 138. 161.

F. N. B. 110,

111. 2 E. 3. 26.

Pasch. 4 E. 3.

Coram rege. Ret. 2. 24 E. 3. Com. Br. 3. 29 E. 3. 30, 31. 18 E. 3. ca. 1 &amp; 4. 18 E. 3. Stat. 2.

ca. 6. Rot. Parl. 18 E. 3. nu. 47. 28 E. 3. ca. 10. Rot. Parl. 50 E. 3. nu. 56. 61. 2 H. 4. nu. 22.

optime. 4 H. 4. ca. 9. Rot. Parl. 9 H. 4. nu. 36. 42 Ad. p. 5. 12. 42 E. 3. ca. 3. Dier, 1 Eliz.

106. Scroggs case.

high contempt, and for the same are to be fined and imprisoned: \* For commissions are legall, and are like the kings writs, and none are lawfull but such as are allowed by the common law, or warranted by some act of parliament: and therefore commissions of new inquiries or of novell invention, are against law, and ought not to be put in execution.

And albeit divers of the kings courts in England proceed not according to the course of the common law, yet are their proceedings allowed either by the common law or by some act of parliament.

Certain poor Christians that had spoken against the worshipping of images, were by the bishops sworn to worship images; \* which oath was against the expresse law of God, and against the law of the land, for that they had no † warrant to minister the same. Let the children of the church be called and instructed by the testimonies of the holy scripture, that nothing made with hands may be worshipped. See the second part of the Institutes, Marlbridge, cap. 14. & 19. concerning oathes, and specially out of Glanville, concerning the nobility of this realm, and W. 1. ca. 38.

Dorset. claus. an.

13 R. 2. nu. 17.

\* Ex d. 20. 4.

Deut. 5. 6.

Psalme 86. 11.

96. 7. 115. 4.

Levit. 26. 1 &amp;c.

Esa. 44. 6. &amp;c.

Jeremy 10. 3.

&amp;c. Sapient. 13.

10. &amp;c. August.

Epist. 110. ad

Jan. ca. 11. idem de fide &amp; symbelo, ca. 7. idem in Psal. 113. con. 2. Gregor. lib. 9. Epist. 9.

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*By any having authority.]* For where the court hath no authority to hold plea of the cause, but it is *coram non iudice*, there perjury cannot be committed. For as Bracton saith, *Sacramentum habet in se tres comites, veritatem, justitiam et iudicium: veritas habenda est in iurato; justitia et iudicium in iudice.*

And all this is grounded upon the law of God, *Jurabis vivit dominus, in veritate, et iudicio, et in justitia.*

*In any judiciall proceeding.]* For though an oath be given by him that hath lawfull authority, and the same is broken, yet if it be not in a judiciall proceeding, it is not perjury punishable either by the common law, or by this act, because they are generall and extrajudiciall, but serve for aggravation of the offence, as general oathes given to officers or ministers of justice, citizens, burgeses, or the like, or for the breach of the oath of fealty or allegiance, &c. they shall not be charged in any court judiciall for the breach of them afterwards. As if an officer commit extortion, he is in truth perjured, because it is against his generall oath: and when he is charged with extortion, the breach of his oath may serve for aggravation.

If a man calleth another perjured man, he may have his action upon his case, because it must be intended contrary to his oath in a judiciall proceeding: and so it is termed in our statute of 5 R. 2. but for calling him a forsworne man, no action doth lye: because the forswearing may be extrajudiciall. If the defendant perjureth himself in his answer in the chancery, exchequer chamber, &c. he

Fracon, lib. 4. fo. 186.

Jer. 4. 2.

Trin. 13 Ja. Li.

11. f. 98. B. g. ges case.

is not punishable by this statute, for it extendeth but to witnesses, but he may be punished in the star-chamber, &c.

*Who sweareth absolutely.*] For the deposition must be direct and absolute, and not *ut putat*, nor *sicut meminist*, nor *ut credit*, &c.

*And falsely.*] Herein the law taketh a diversity between falsehood in expresse words, and that is only within this statute, and falsehood in knowledge or minde, which may be punished though the words be true. For example, damages were awarded to the plaintife in the star-chamber according to the value of his goods riotously taken away by the defendant: the plaintiffe caused two men to sweare the value of his goods, that never saw nor knew them; and though that which they sware was true, yet because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the star-chamber.

For (as Fleta saith) *Ad rectum juramentum exiguntur tria, veritas, conscientia, et iudicium*: truth and conscience in the witness, and judgement in the judge. And herewith agreeth Bracton, that a man may sweare the truth, and yet be perjured. *Dicunt quidam verum, et mentiuntur, et pejerant, eo quod contra mentem valent. Ut si Judæus juraverit Christum natum ex virgine, perjurium committit, quia contra mentem valet, quia non credit ita esse ut jurat.*

By the ancient law of England in all oathes equivocation is utterly condemned; for Britton saith, *Serement est honest, et leall, quant sa conscience demesne accord a chescun point a la bouche ne plus, ne moins, et sil ad discord, donqs' est perillous.* And this is grounded upon the law of God. *Nunquid Deus indiget mundano vestro, ut pro illo loquamini dolos, aut decipietur ut homo vestris fraudulentis? Perjuri sunt qui servatis verbis juramenti d'cipiunt aures eorum qui accipiunt.* If equivocation should be permitted tending to the subversion of truth, it would shake the foundation of justice.

*In a matter materiall to the issue, or cause in question.*] For if it be not materiall, then though it be false, yet it is no perjury, because it concerneth not the point in suit, and therefore in effect it is extrajudiciall. Also this act giveth remedy to the party grieved, and if the deposition be not materiall, he cannot be grieved thereby. And Bracton saith, *si autem sacramentum factum fuerit, licet falsum, tamen non committit perjurium.*

*By their own act, &c.*] This clause of the statute, although it be more generall then the clause of procurement, yet seeing the first clause concerning procurement, extendeth not to perjury upon an indictment: this clause by construction shall extend no further than the former. See Lib. Intr. Coke, fo. 164, 165, 362.

*Or by the subornation of other.*] Subornation is derived of *sub* and *ornare*, and *ornare* in one of his significations is to prepare, so as *subornare* is as much to say, as to prepare secretly, or underhand. *Est autem subornare quasi subitus in aures insum male ornare, unde subornatio dicitur de falsi expressione, aut de veri suppressione.* And here is to be noted, that in the judgement of the parliament *pius peccat auctor quam actor*; for the suborner forfeits 40 li. and he that is suborned but 20 li. Fleta saith, *Si servus cogatur scienter à domino perjurare, tunc ille est perjurus; qui autem provocat eum ad jurandum quem scit falsum*

Bract. lib. 4. fol. 289. Fleta, lib. 5. ca. 21.

Gurneis case in the star-chamber, Mic. 9 Jac.

Fleta, ubi supra

Bracton, lib 4. fo. 289.

Equivocation. Britton, fo. 237.

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Bracton, lib 4. 155. Fleta, lib 5. ca. 21. second.

Flowers case. ubi supra.

Fleta, lib. 5. ca. 21.

*falsum jurare, vel exigit, vel recipit juramentum, talis vincit homicidam, quia homicida solum corpus occidit, iste vero animam suam et alterius: et peccat, qui alium audit falsum jurare, scit, et tacet.*

Mic 29 & 30  
Eliz. coram iuge.

In an action of perjury brought upon this statute, the plaintiffe counted, that the defendant *falso dixit et deposuit, &c.* and in what action, upon what issue, and in what court, &c. and concluded, *et sic commisit voluntarium et corruptum perjurium.* And it was ruled by the whole court, that the count was vicious and insufficient for two causes. First, for that in this act of 5 Eliz. as here it appeareth, there be two distinct clauses. one if he be perjured of his own proper act; the other if he be perjured by subornation, &c. and the plaintiffe ought to declare in certainty, within which of them the defendant is perjured. The second cause was, where the act saith [wilfully and corruptly commit any wilfull perjury, &c.] and the words of the count be *falso dixit et deposuit:* and saith not, *voluntarie et corrupte;* and the said clause, *et sic commisit voluntarium et corruptum perjurium,* saveth not the former insufficiency, because it is but a conclusion upon the former matter.

27 E. z. Mellers  
case.

Dier, 12 E. 288.

And the like judgement was given in this court, as to this latter point anno 27 Eliz. in the case of one Mellers of Lincolnshire. *That as well the iudge and judges of every such of the said courts.* If the perjury be committed by any witness deposed in the chancery, &c. and the party grieved commenceth his suit there upon this act, the same and all the proceedings thereupon must be in Latin according to the course of the common law, and the defendant shall not be sworn to his answer, nor examined upon interrogatories (unlessse the court of chancery had before this act used to examine perjurie, and to examine the defendant upon oath upon interrogatories before this act, for then such jurisdiction had been saved by a proviso in this act) and when issue is joined, it shall be tried in the kings bench, as by law it ought, *et sic de similibus.*

25 E. 3. 42. b.  
cor. 131.

If a man be taken for a suspect, and he is not indicted, nor is there any certaine cause to arraign him, the court may give him the oath of allegiance, viz. *Que il sera foial et loyal, &c.* Vide 45 E. 3. 17. b. simile devant, cap. 7. De Conjuracion, &c. in fine. 22 E. 4. 36. 20 H. 6. 37. Attorney abjure.

See more of Perjury and of Witnesses in the fourth part of the Institutes, cap. Commissioners for examination of witnesses. See 21 Jac. cap. 20. a good act to prevent and reforme profane swearing.

## C A P. LXXV.

## Of Forging of Deeds, &amp;c.

IF any person or persons upon his or their own head or imagination, or by false conspiracy or fraud with others, shall wittingly, subtilly, and falsely forge (1), or make (2), or subtilly cause or wittingly assent (3) to be forged or made any false deed, charter (4), or writing sealed (5), court roll, or the will of any person or persons, in writing (6), to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, tenements, or hereditaments freehold or cobbyhold, or the right, title, or interest of any person or persons of, in, or to the same (8), or any of them, shall or may be molested, troubled, defeated, recovered, or charged, &c. (7) Or shall pronounce, publish, or shew forth in evidence any such false and forged deed, charter, writing, court-roll, or will, as true (9), knowing the same to be false and forged (10), as is aforesaid, to the intent above remembered, and shall be thereof convicted, either upon action or actions of forger of false deeds to be founded upon this statute, at the suit of the party grieved, or otherwise according to the order and due course of the lawes of this realme, or upon bill, or information, to be exhibited into the court of star-chamber, &c. shall pay to the party grieved his double costs and damages, &c. (11) And be it further enacted, that if any person or persons, upon his or their owne head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly, and falsely forge or make, or wittingly, subtilly, and falsely cause or assent to be made or forged, any false charter, deed (12), or writing, to the intent that any person, or persons, shall or may have or claime any estate or interest for terme of yeares (13) of, in, or to any mannors, lands, tenements, or hereditaments, not being cobbyhold (14), or any annuities (15) in fee-simple, fee-taile, or for term of life, lives, or years, or shall make or forge, as is aforesaid, any obligation, or bill obligatory (16), acquittance, release, or discharge (18), of any debt, account, action, suit, demand, or other thing personall, or shall pronounce, &c. *ut supra*. That then he shall pay, &c. (19)

And be it further enacted, that if any person or persons being hereafter convicted or condemned of any of the offences aforesaid, &c. shall after any such his or their conviction or condemnation estfoons commit or perpetrate any of the said offences

fences (20) in forme aforefaid, that then every fuch fecond offence or offences fhall be adjudged felony, &c.

We have fpoken of forgery or counterfeiting of the great feale of the kings coin, &c. which are declared by the ftatute of 25 H. 3. to be high treason: now we are to treat of forgeries of deeds, charters, and writings fealed, &c. in the cafe of fubject. And firft, after our accuftomed manner how thefe offences were punifhed of ancient time.

Mir. cap. 4.  
§ Des paines.  
Et cap. 5. § 1.

The Mirror faith, *Affaires reelles font punies p. p. de fouice, comme de faulx netices, &c. peccans menbrum puniebatur. (Car par faulx de feuda ne font jugement mortel.)*

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Britton, fo. 16.  
a. & b.

Britton faith, *Judgment des troyes, et de fuffre mort d'it creant ceux courre, q. p. de eales de felony font atteints, q. ilz oynt le feal de seigneur, qui n'estoit des fait, ou q. homs p. homage counterfaite autrement faulx, &c. Et si tels maneres des faits soient atteints ne pte fait, si fient par le jale jaye juges a jugement de pillage, de perdre le traile si le fait soit simple: et si le fait soit grand et de force, sicome voulant a fheison ou a percuall damage, si fient juges a la mort.*

Fleta, lib. 1.  
ca. 22.

Fleta faith, *Crimes j. f. dicitur, cum quis accusatus fuerit vel appellatus quod si ille negat, vel dicitur non esse de cujus familia fuerat, si fuerit, et brevia inde esse naverit; vel certam aliquam vel litteram edicti reddat contra, &c. si illaverit; in quibus casibus si quis convictus fuerit, detradat in mortem et suspendi. Et quod de hujusmodi criminibus dicitur, de si illa edictoria cartis et litteris apertis dicitur in illorum. And in another place he faith, *Est etiam crimen injuria que perpetuam in dicit intentionem cum pena pillarii vel turbulenti que per dicitur per talis in pillarii (dicitur tamen non igitur nec de hujusmodi criminibus dicitur.)**

Fleta, lib. 2.  
ca. 1.

We have the more willingly repeated these ancient punishments, to shew how in part, (viz. concerning the ends of felony,) this act for the first offence concurrith with the ancient punishment.

(1) *Force.*] To forge is metaphorically taken from the smith, who beateth upon his anvil, and forgeth what fashion or figure he will: the offence (as it appeareth before) is called *crimen falsum*, and the offender *falsarius*, and the Latin word to forge is *forjare* or *forjare*. And this is properly taken when the act is done in the name of another person.

25 H. 6. forger  
§. 27 H. 6. 3.

The statute of 25 H. 6. hath these words, [forge of new any deed.] And yet if A make a feoffment by deed to B, of certain land, and after A make a feoffment by deed to C of the same land with an antedate before the feoffment to B: this was intended to be a forgery within that statute, and by like reason within the statute also: and the reason in respect of the words subsequent, [to make, &c.]

(2) *Or make, &c.*] There be larger words then to forge: for one may make a false writing within this act, though it be not forged in the name of another, nor his seale nor hand counterfeited. As if A make a true deed of feoffment under his hand and seale of the manner of Dale unto B, and B or some other rake out the first letter of Dale, and put in S, and then where the true deed was of the manner of Dale, now it is falsely altered and forged.



the manner of Sale. This is a false writing under seale within the purview of this statute. And so it is if a rent charge of one hundred pounds by the year be granted out of land in fee or for life, &c. and the grantee or any other raise out one, and in stead thereof writeth two; this is a false writing within the danger of this statute.

(3) *Or subtilly cause, or wittingly assent.*] To cause, is to procure or counsell one to forge, &c. To assent, is to give his assent or agreement afterwards to the procurement or counsell of another: to consent, is to agree at the time of the procurement or counsell, and he in law is a procurer.

(4) *Deed, charter, or writing sealed.*] It is required, that the deed, charter, or writing must be sealed; that is, have some impression upon the wax, for *sigillum est cera impressa, quia cera sine impressione non est sigillum*; and no deed, charter, or writing, can have the force of a deed without a seale.

(5) *Writing sealed.*] These are large words: for the making of a false customary of a mannor in writing under seale, containing divers false customes tending to the disherison of the lord or the mannor, and that the same had been allowed and permitted by the lords of the mannor, &c. which was also false, was resolved to be within these words, [a false writing sealed.]

(6) *Court roll, or the will of any person or persons in writing.*] Here be two kind of muniments that need not be sealed, because they may take effect without any seal, for that they be deeds; as court rolls concerning grants, surrenders, admittances, &c. of copy or customary lands: and the last will in writing. If any person which writeth the will of a sick man inserteth a clause in his last will, concerning the devise of any lands or tenements, which he had in fee-simple, falsly without any warrant, or direction of the divisor: albeit he did not forge, or falsly make the whole will, yet is he punishable by this statute, as it hath been often holden in the star chamber against the opinion reported by my lord Dier.

(7) *To the intent that the state of freehold or inheritance, of or in any lands, tenements, or hereditaments, freehold or copyhold, shall or may be molested, troubled, defeated, recovered, or charged*] The great doubt upon this branch, and of the branch hereafter ensuing, was, for that it is not expressed by this act, what estate, or interest should be mentioned to passe by the deed, charter, &c. whereby the estate of the freehold or inheritance should or might be molested, &c. or charged; whether if one did forge, &c. a deed, charter, &c. of an interest, or term of a hundred or a thousand years, &c. of lands, which are the freehold or inheritance of another, whereby the same shall or may be molested, &c. And the same question of a rent charge for years in the like case: and the doubt was the greater in respect of the clause hereafter ensuing, which is, To the intent that any person or persons shall or may have or claim any estate or interest for term of years of in or to any manors, &c. And it was resolved, that a lease or charge for years of any lands being the freehold or inheritance of any person, was within this branch, for the clause is generall, not mentioning any estate or interest, &c. whereby the molestation, &c. should grow: and it was requisite it should extend to leases or charges for years, for otherwise men's estates of freehold or inheritance, &c. might be of little or no value.

Pasch. 15 Eliz.  
Dier. 322 James  
Taverners case.  
In camera sed-  
lata.

[ 170 ]

Dier 12 Pl. f.  
278. Sir James  
Marvyns case.

Pasch. 38 Eliz.  
in camera itel-  
lata the lady  
Greshams case.

and accordingly it was resolved, Pasch. 38 Eliz. in the star-chamber between the lady Gresham plaintiff, and Roger Booth scrivener of London, Markham and others defendants, for the forging of a grant of a rent charge, by deed bearing date *anno* 21 Eliz. for ninety nine years to the said Markham out of all sir Thomas Greshams lands of inheritance, and for publication thereof; and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

And the said branch after ensuing, is to be understood when the forgery, &c. is to the molestation of a termor. As if A. be possessed of a lease of lands for years, and B. in his name do let for an assignment to C. of his term, this is directly within the letter and meaning of this branch, and the rather in respect of these things that be joynded therewith under the same punishment.

Vide 4 H. 6. 25.  
8 H. 6. 33.  
20 H. 6.  
33 H. 6. 23.  
15 E. 4. 24.  
Pl. com. 88.

(8) *Or the right, title, or interest of any person or persons in or to the same.*] These words were added, for that the statute of 1 H. 5. being to undoe, and trouble the possession and title (in the conjunctive) of the said kings liege people: doubt was made whether a forgery to bar one that had but a bare right or title, and no possession, was within that statute: and therefore this clause of 5 Eliz. added this clause in the disjunctive, as here it appeareth. But now by a special branch of this act the statute of 1 H. 5. cap. 5. being doubtfully penned, is repealed by a clause in this act, and greater punishment inflicted by this statute.

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(9) *Or shall pronounce, publish, or shew forth in evidence any such false and forged deed, &c. as true knowing the same to be forged.*] Here be two things to be explained: first, what it is to pronounce, or publish as true. Secondly, what knowledge is sufficient.

To pronounce or publish is, when one by words or writing pronounceth or publisheth the deed, &c. to any other as true.

(10) *Knowing the same to be forged.*] This knowledge may come by two means, either of his own knowledge, or by the relation of another. As if A. telleth B. that such deed is false and forged, and yet B. will after pronounce or publish this to be a true deed, and afterward it falleth out by proof that the relation of A. was true, and the deed in truth was forged, B. is in the danger of this statute: and so was it resolved in the above-said case of the lady Gresham, against Roger Booth, &c. *ubi supra*, and sentence given accordingly.

D. or 11. P. 7.  
Taverners case,  
*ubi supra*.

(11) *And that the defendant shall suffer upon the pillory the corporall penance, &c.*] And there is a clause that the plaintiff should not release nor discontinue the punishment, &c. but only costs and damages: and yet it was resolved that the queen might pardon the corporall punishment, which trencheth to common example.

Pasch. 34 E. 3.  
Coram reges,  
Rot. 30. F. 100.  
the case of Godi-  
tha Walden.  
Dia 7 El. 251.

And upon the statute of W. 2. ca. 25. which giveth two year imprisonment in the ravishment of ward, the king may pardon the said corporall punishment or imprisonment. And the punishment of finding of surety, and forjuring the realm, &c. upon the statute of W. 2. cap. 28. *De malefactoribus in parvis* may be pardoned by the king.

(12) *Any false charter or deed.*] This must be intended to be stated according to the former clause, though it be not here specified.

Pl. com. 80 b.

(13) *To the intent that any person or persons shall or may have or claim*

any estate or interest for term of years.] This branch hath been explained before in the former part of this statute

(14) *Not being copy hold.*] This needeth no explication.

(15) *Or annuity.*] This is evident.

(16) *Any obligation, or bill obligatory.*] These must be intended to be sealed: if a man forge a statute staple, or a recognisance in the nature of a statute staple, that is, acknowledge them, or either of them in the name of another; these are obligations within this act, for each of them hath the seal of the party. But otherwise it is of a statute merchant, or of a recognisance, because they have not the seal of the conusor.

(17) *Or writing.*] This extends to a testament in writing, whereby the term for years or goods and chattels be devised, and the former branch extendeth to a will in writing, concerning freehold and inheritance.

(18) *Acquittance, release or discharge.*] Lodowick Grevil esquire was bound by recognisance of two hundred pound, to Rowland Hinde of the Inner Temple, for payment of one hundred pound. Hinde wrote a letter to Grevil, and writ his name in the lowest part of the letter; (as many use when they write to men of great calling) Grevil caused the letter to be cut off, and a generall release in few words to be written above Hindes name, and took off Hindes seal, and fixed it under the release: so there was Hindes hand and seal to this release. Hinde being not paid his hundred pound, brought a *scire fac'* upon the recognisance, whereunto Grevil pleaded this release, Hinde pleaded *non est factum*, and tried his deed, whereupon judgement was given against him, whereby Hinde was barred of his debt. For this forged release Grevil was sentenced in the star-chamber upon this statute.

(19) *Shall pay to the party grieved, his double damages.*] Upon these words in the case aforesaid, between Hinde and Grevill, the question was, whether Hinde should have double damages in respect of the penalty, viz. the two hundred pound, or of the hundred pound, the due debt appearing in the condition of the recognisance. And it was resolved, that damages should be assessed by the court to double the penalty, for the penalty should be recovered by law if the forged release had not been: and this was reported by the lord Dier, and imprinted, and since omitted out of the print.

(20) *Being hereafter convicted or condemned of any of the offences aforesaid, shall, &c. estfoons commit, &c. any of the said offences.*] Here be four kind of offences; the first concerning molestation, &c. of freehold and inheritance. Secondly, the publication of the same knowing, &c. The third concerning a term for years, annuities, and demands personals. Fourthly, the publication thereof.

Now the question upon this branch concerning felony, was, that whereas the said Roger Booth was convicted in the star-chamber for the publishing of the forged grant by deed of a rent charge of a hundred pound *per annum*, as is aforesaid; afterwards the said Roger and others were charged in the star-chamber with the forging of a deed of feoffment in the name of sir Thomas Gresham bearing date 20 Eliz. but forged long after: whether this second forgery was felony, or no, within this branch; and the doubt did arise upon the said words [*estfoons*] commit any of the said offences. And it was

F. N.B. 96. b.  
c. & 10. a.

15 H. 7. 15, &c.

Dier, 13 Eliz.  
302. b.

Mich. 13 & 14  
El. in camera  
stellata inter  
Hinde and  
Grevill.

[ 172 ]

Passch. 7 Ja. In-  
ter fir Will.  
Reade pl. and  
Rogerum Booth  
et alios def. in  
camera stellata.

Cicero, lib. 1.  
de Invent.

was objected, that by reason of this word [*estfoons*] *iterum*, the second offence must be of the same nature as the first offence was; as the first offence being for publication of a forged deed, &c. the second offence must be for the publication of another forged deed, &c. and upon that branch whereupon the first offence was grounded, or else it was said, it was not *iterum*, which word was in signification *quasi iter unum*, that is to say, *per idem iter*, and it is so taken for the second time. *Primo quidem decipi, incommodum est, iterum stultum, tertio turpe*: which doubt was referred to the considerations of the two chief justices, and chief baron, who upon hearing of counsell learned of both sides, and upon conference, and consideration had of this act, resolved, that the second offence was felony within the words, and meaning of this act, for the words be expressly, being condemned of any of the said offences, estfoons commit any of the said offences. So as by reason of these words, any of the said offences, this word [*estfoons*] is well satisfied, if he commit the second time any of them: and so these words any of the said offences extend to any of the said four offences before mentioned. And it was also resolved by them, that by reason of this word [*estfoons*] the second forgery, &c. must be committed after the first conviction, or else it is no felony.

Provided always, &c. that if any person, &c. hath of his own head, &c. forged or made, &c. or if any person, &c. hath heretofore published or shewed forth any false deed, &c.

Trin. 11 El.  
Dier in a manuscript not printed.

Hanford before this statute forged a lease for years of the land of the lord Williams of Tame, which lease after by Weynman (which had married one of the daughters and heirs of the said lord Williams) was impeached, but not as forged, and by composition for two hundred pound was redeemed by Weynman, and the lease was cancelled. And after Weynman perceiving the lease to be forged, sued Hanford in the chancery to have restitution of the two hundred pound, and there Hanford after this statute of 5 Eliz. maintained the lease as good and true: whereupon Weynman sued Hanford in the star-chamber, where by the opinion of the chief justices it was holden, that it was not within this statute, because that the deed was cancelled, and Hanford made no title to the interest of the term.

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Provided always, &c. that this act or any thing therein contained, shall not extend to any person that shall plead or shew forth any deed or writing exemplified under the great seal of England, or under the seal of any other authentique court of this realm, nor shall extend to any judge or justice, or other person that shall cause any seal of any court to be set to such deed, charter or writing enrolled, not knowing the same to be false or forged.

Mich. 10 Jacobi  
regis in comuni banco in a prohibition between Tho. Read pl. and Avis Hide, and Rich. Hide defendants.

This must be intended of a deed or writing, which by law may be exemplified: for the knowledge whereof we will report a resolution of the whole court of the common pleas. The issue between the said parties to be tried at the bar was, whether the last abbot of Abbingdon, and all his predecessors, &c. held certain lands in the parish

parish of Saint-Ellens, &c. discharged of the payment of tithes: and the plaintiff offered to shew in evidence to prove the said land to be discharged of payment of tithes, a *vidimus*, or *innotescimus* under the great seal in these words: *Vidimus quendam antiquum librum in pergameno intitulum volumen de copiis munimentorum seu diversorum gestorum, et actorum monasterii de Abbingdon.* In which book was a copy of a bull of the pope, for the discharge of the said land for payment of tithes, which was but part (amongst other things) of the said book. And by the opinion of the whole court, hearing of the counsell of both parties, it was resolved that the said exemplification ought not to be given in evidence to the jury for these causes: first, because that which was exemplified, was not of record; for neither deed, charter, or other writing, either sealed, or without seal, ought to be exemplified under the great seale, or any other seal in court of record, for seals of courts of record ought not to exemplifie any thing but that which is of record, because records be publique, whereunto every subject may have recourse to conser the exemplification with the record itself, and records be in the custody of sworn officers, and therefore no inconvenience can follow upon the exemplification of them. But a deed, charter, and other writings are private, and remain in the custody of the party, and may be rased, interlined, or corrupted in points materiall, and if they should be exemplified, the rasure, interlineation, and corruption shall not appear therein. Also the deed, charter, or other writing may be forged, and if they should be exemplified, then the exemplification might ever be shewed in evidence, and not the deed, &c. it self, and so the forgery, and falsity should never upon the view of the deed, or of the seal, or other things rising upon the view, be discovered. Moreover if a forged deed should be exemplified, then the effect of this statute concerning publication should be taken away; for then the forged deed, &c. it self might never be published, or given in evidence, but the exemplification, and so this statute in that point deduced: and therefore where this statute, or any other statute or book speaks of an exemplification, *vidimus* or *innotescimus* of a deed, &c. it must be intended of a deed inrolled, viz. the exemplification, *vidimus*, or *innotescimus* of the inrolment thereof, which is of record. It was further resolved that no record, or inrolment of any record, may be exemplified under the great seale, but of a record of the court of chancery, or other record duly removed thither by *certiorari*, &c. Furthermore it was resolved, that no exemplification ought to be of any part of a letters patents, or of any other record, or of the inrolment thereof, but the whole record or the inrolment thereof ought to be exemplified, so that the whole truth may appeare, and not of such part, as makes for the one party and nothing that make against him, or that manifesteth the truth. Lastly, in the case at the barre, the said book was intituled, *Volumen de copiis munimentorum, et diversorum gestorum.* So as seeing the bull itselfe (being no matter of record) could not be exemplified; *à fortiori*, no exemplification could be had of the copie of the same. And if bulls, &c. might be exemplified, then there might be an evasion to make the statute of 28 H. 8. cap. 16. of small force, which prohibiteth pleading, or alledging of bulls, &c. under paine of a premunire, as by that act appeareth.

C A P.

Mich. 29 & 30  
Eliz. lib. 5. fo.  
54. in Pages  
case.

[ 174 ]

28 H. 8. cap.  
16. 1 & 2 Ph.  
& Mar. cap. 8.  
1 Eliz. cap. 1.

## C A P. LXXVI.

## Of Libels and Libellers.

**W**HAT a libell is, how many kindes of libels there be, who are to be punished for the same, and in what manner, you may read in my reports, viz. Lib. 5. fo. 124, 125. Lib. 9. fo. 59. To these you may add two notable records. By the one it appeareth, that Adam de Ravensworth was indicted in the kings bench for the making of a libel in writing, in the French tongue, against Richard of Snowshall, calling him therein, *Roy de Ravensers*, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the record appeareth. So as a libeller, or a publisher of a libell committeth a publick offence, and may be indicted therefore at the common law.

Mich. 10 E. 3.  
coram rege.  
Rot. 92. Ebo-  
rum.

Mic. 18 E. 3.  
coram rege  
Rot. 151.  
Libellum.

John de Northampton an attorney of the kings bench, wrote a letter to John Ferrers one of the kings counsell, that neither Sir William Scot chiefe justice, nor his fellowes the kings justices, nor their clerks, any great thing would do by the commandement of our lord the king, nor of qucen Philip, in that place, more then of any other of the realme; which said John being called, confessed the said letter by him to be written with his own proper hand. *Judicium Curie. Et quia prædictus Johannes cognovit dictam literam per se scriptam Roberto de Ferrers, qui est de concilio regis, que litera continet in se nullam veritatem: prætextu cujus dominus rex erga curiam et justiciarios suos hic in casu habere posset indignationem, quod esset in scandalum justic' et curie. Ideo dictus Johannes committitur mancipi: postea invenit 6 manucaptos pro bono gestu.*

## C A P. LXXVII.

[ 175 ]

## Of Champerty, Imbracery, Maintenance, &amp;c.

**S**EE the first part of the Instit. sect. 701. verb. Maintenance. And the second part of the Institutes, W. 1. cap. 8. 32. & W. 2. cap. 49. and the exposition upon the same. See also the statute of 32 H. 8. cap. 9. in the first part of the Institutes, *ubi sup.* Rot. Parl. 17 R. 2. nu. 10. John de Winsors case. And the fourth part of the Institutes, cap. Chancery. Whereunto you may add, that where by the statute of 6 H. 6. cap. 2. it is recited, that divers in times past have been disinherited, because that in speciall assises the tenant and defendant might not have knowledge nor copie of the pannel of them that be impannelled to passe in the said assises, to inform them of their right and title before the day of the session that the assises shall be demanded; which is a rehearfall of the com-

mon law, but so to be understood, that both parties plaintiffe and tenant, &c. be present, when such information is given, and consenting thereunto: otherwise, if one of them informeth in the absence of another, it is unlawfull, and a good cause of challenge of such of the jury as shall be so on the one part informed: for every jury must be indifferent, as he stand unsworne.

C A P. LXXVIII.

Of Barretry.

SEE the first part of the Institutes, sect. 701. verb. Barretors. See the statute of Ragman, temps E. 1. whereby the commission of Trailebaston is raised. It is thus provided. *Et per ceo q. en tiels maners de quereles doit le court le roy eē favorable, voet le roy, et enjoint les justices q. nul enquerelant, ne respoignant ne soit surprise nencheson per hocketours, ou barrettours, pou. que le veritie ne soit ensue.*

Vet. Mag. Cart. cap. 28. 2 part.

*Hocketors* or *hocquetours* is an ancient French word for a knight of the post, (worthy to be knit to a post) a decayed man, a basket-carrier.

For barretors, see the first part of the Institutes, *ubi supra*.

C A P. LXXIX.

[ 176 ]

Of Riots, Routs, Unlawful Assemblies, Forces, &c.

**RIO TUM** commeth of the French word, *rioter, i. rixari*: and in the common law signifieth, when three or more doe any unlawfull act, as to beat any man, or to hunt in his park, chase, or warren, or to enter or take possession of another mans land, or to cut or destroy his corne, grasse, or other profit, &c.

\* *Routa* is derived of the French word *rout*, and properly in law signifieth, when three or more do any unlawfull act for their own, or the common quarrell, &c. As when commoners break down hedges or pales, or cast down ditches, or inhabitants for a way claimed by them, or the like.

An unlawfull assembly is when three or more assemble themselves together to commit a riot or rout, and doe it not. *Prædones autem nominamus usq; numerum septem virorum; deinde (quisq; numerus 35 coaluerit) \* turmam (Saxonice hloth) dicimus; numerus si excreverit, exercitum vocamus, hlothbota*, to be quit of unlawfull assemblies.

One may commit a force. But of this, that I may not unprofitably repeat, you may reade at large Fitzherbert, and those others that have written of this argument.

\* Latine Turba. — comes est discordia vulg. 3. *Namq; a turbando nomen sibi turba recepit.* Lamb. int. Leg. Inca. 13, 14, 15. Vide Alvered. cap. 26. \* Turma quæ tordena.

*Interest*

Regula.

*Interest regi habere subditos pacatos. Vis legibus est inimica.* See Lib. 5. fo. 91. 115. Lib. 11. fo. 82. See the first part of the Institutes, sect. 431. 440. Custum. de Norm. cap. 52. fo. 66, 67.

## C A P. LXXX.

## Of Quarrelling, Chiding, or Brawling by Words in Church or Church-yard.

5 E. 6. cap. 4.

**T**H E offender being a lay-man, is to be suspended by the ordinary *ab ingressu ecclesie*, and being a clerk from the ministration of his office, so long as the ordinary thinks meet according to the fault.

## C A P. LXXXI.

[ 177 ]

## Of Smiting, or laying violent Hands upon another in Church or Churchyard.

5 E. 6. ubi supra.  
V. lib. 6. fo. 29.  
b. Grenes case,  
sim.

**T**H E offender shall be deemed *ipso facto* excommunicat, and excluded from the company of Christs congregation.

## C A P. LXXXII.

## Of malicious striking with any Weapon, or drawing of any Weapon in Church or Church-yard, to the intent to strike another, &amp;c.

5 E. 6. ubi supra.  
\* Note the dis-  
junctive.  
Int. leg. Inæ.  
ca. 6. *Qui in  
templo pugna-  
verit 120 sol' dis-  
noxiam facito.*  
Dier 23 Eliz.  
177. case ultim.

**T**H E offender being convict by the oath of twelve men, or by his own confession, \* or by two lawfull witnesses, before justices of assise, justices of oier and terminer, or justices of peace in their sessions, shall lose one of his eares: and if he hath no eares, to be marked in the cheek with a hot iron with the letter F, and *ipso facto* be excommunicate.



C A P. LXXXIII.

For striking, &c. in any of the Kings Courts of Justice: and for striking, &c. in any of the Kings Houses, &c.

SEE before in the sixty fifth chapter of Misprision, that is, *crimen commissionis*.

C A P. LXXXIV.

[ 178 ]

Against Fugitives, or such as depart out of the Realme without License, and such as are beyond Sea, and returne not upon Command.

*Omne solum forti patria est, ut piscibus æquor,  
Et volucris, vacuo quicquid in orbe patet.*

Ovidius.

IT is first to be seen of acts in parliament published in print, which of them are abrogated and repealed, and which of them stand in force. The statute of 5 R. 2. cap. 2. is repealed by the statute of 4 Jac. cap. 1. And the statutes of 13 Eliz. cap. 3. & 14 Eliz. cap. 6. are expired. The statute of 12 R. 2. such as passe the sea, or send out of the realme to provide or purchase any benefice of holy church, with cure or without cure, are in danger of a premunire. No person resiant within any of the kings dominions, shall depart out of any of those dominions, to any visitation, congregation, or assembly for religion.

12 R. 2. ca. 13.

25 H. 8. cap. 19.  
1 Eliz. c. 1.  
revive.

*Anno* 1 Jac. cap. 4. and 3 Jac. cap. 5. Against going or sending of children to any seminary beyond sea, and against the departure out of the realme (without license) of any children not being souldiers, mariners, merchants, or other apprentices, or factors, for any cause whatsoever. And *anno* 3 Ja. ca. 4. against imposing felony upon any subject that shall depart this realme, to serve any prince, state, or potentate: or shall passe over the seas, and there shall voluntarily serve any such foraine prince, state, or potentate; not having before his or their going or passing, taken the oath mentioned in that act. And likewise imposing felony upon any gentleman or person of higher degree, or any person which hath borne or shall beare any office, or place of captaine, lieutenant, or any other place, charge, or office in campe, army, or company of souldiers, or conductor of souldiers, that shall goe, or passe voluntarily out of this realme, to serve any such foraine prince, state, or potentate,

1 Jac. cap. 4.  
3 Jac. cap. 5.

or shall voluntarily serve any such foraine prince, state, or potentate, before he be bound by obligation with two sureties, as in that act is prescribed. But it is provided that upon the attainder of any such felony, no forfeiture of dower or corruption of blood shall ensue. Reade over these statutes, for they are so plainly penned, as they need no exposition.

Next unto this, two things fall into consideration, first, what acts of parliament not published in print in our books of statutes do prohibit men to passe the seas without license. And secondly, what may be done therein by the common law of England.

At the parliament holden at Clarendon, *anno 10 H. 2.* called the assise of Clarendon, *Facta est recognitio cujusdam partis consuetudinum et libertatum antecessorum regis, et ca. 4. sic recognitum est. Archiepiscopis, episcopis, et personis regni non licet exire regnum absque licentia domini regis, et si exierint, si regi placuerit, securum eum facient, quod nec in eundo nec in redeundo, nec moram faciendo perquirent malum seu damnum domino regi vel regno.*

Regist. fo. 89,  
90. F. N. B. 85.

[ 179 ]  
Vide simile Reg-  
gist. 61, &c. Ad  
jura regia.  
Regist. fo. 193.  
De licentia  
transfretandi  
pro religiosis.

This appeareth in it selfe to be but a recognition, or declaration of the common law: and this is manifestly proved by the writ in the Register at the common law, pursuing in effect the very words of the said act of 10 H. 2. *Breve de securitate invenienda, quod se non divertat ad partes externas sine licentia regis.*

And hereupon there ariseth a diversity between one of the clergy, and one of the laity: for a man of the church may be compelled to put in surety, that he should not depart the realme without the kings license, nor shall there attempt any thing in contempt or prejudice of the king or of his people. And this writ is directed to the sheriffe, and saith, *Quia datum est nobis intelligi, quod A. B. clericus versus partes externas ad quam plura nobis et quam pluribus de populo nostro prejudicialia et damnosa ibid. prosequuntur. &c.* Whereby it appeareth, that this writ lyeth only in the case of an ecclesiasticall person, or a man of the church, and that for three reasons. First, for that they had the cure of soules, and therefore ought to be resident. Secondly, for that they, maintaining foraine authority, impugned many of the kings lawes, to the great prejudice of the laity. Thirdly, they had no temporall lands, therefore they found sureties.

<sup>a</sup> Regist. 89. 90.  
F. N. B. fo. 85.

<sup>b</sup> So as neither this writ, nor a proclamation in nature of this writ ought to be granted, but where the party intends to depart the realme for these ends.

<sup>c</sup> F. N. B. fo. 85.  
b. Vide Dier

<sup>x</sup> Eliz. 165. b.

There is another writ in the <sup>a</sup> Register, and that is to be directed to the party himselfe, viz. either to the clerk, or to the layman wherein the king reciting, *Quod datum est nobis intelligi, quod A. B. versus partes externas absque licentia nostra clandestine se divertat, &c. b quamplurima n. bis et coronae nostrae prejudicialia ibid. prosequi intendat. &c. sub periculo quod incumbit prohibemus, ne versus partes externas absque licentia nostra speciali aliquo modo se divertat, nec quicquam ibid. prosequi, &c.* And upon this writ the party is not to finde any surety for there is no word of surety in this writ. And if the <sup>c</sup> subject cannot be found, the king may make a proclamation under the great seale, to the effect of the writ last mentioned.

Now let us peruse such authorities as we finde in records or books of law *in serie temporis*, taking some few examples for many that might be cited.

<sup>d</sup> Rot. Finium  
6 H. 3.  
Et Rot. clauf.  
7 H. 3. m. 5.

<sup>d</sup> *Willielmus Mannion clericus profectus est ad regem Francie sine licentia domini regis, et propterea finem fecit, &c.* Note the going over without any prohibition precedent unlawfull.

<sup>e</sup> *Nul grand seignior ou chivalier de nostra realm ne doit prender chemin (daler hors de realm) sans nostre conge, car issint purreit le realm remain disgergne de fort gents.* And the <sup>f</sup> nobles and peers of the realm are of the kings great council.

By this it appeareth, that these are prohibited to goe beyond sea without licence: but others of the inferiour laity may go without license, if they travell not to the abovesaid prohibited ends. But <sup>g</sup> those of the laity and men of the church also being beyond sea, may be commanded by the kings writ, either under the great seale, or privie seale, *in fide et ligantia, &c.* to returne into the kingdome (though he be not there to any of the abovesaid prohibited ends;) and if he returne not, for his contempt his lands and goods shall be seised, *quousque, &c.* <sup>h</sup> Commandement was given to an ecclesiasticall person residing at Rome to returne into England.

<sup>i</sup> *Quamplurimæ literæ domini regis missæ Romæ, ad revocand' diversos clericos ibid. commorantes, qui q' amplurima attemptarunt in deducere regni, præcipient' etiam, quòd rediunt ad festum eis appunctuatum: et pro eo quòd non venerunt, præceptum fuit viccomiti quod eos capiat. Et Rogerus de Holme præbendarius in ecclesia Sancti Pauli London captus per vic' London, et ar. natus, examinatus, et convictus mittitur in prisone turris London ibid. moraturus, &c.*

<sup>k</sup> *Rex proclamari fecit in omnibus comitatibus Angliæ, quòd ne quis comes, baro, miles, religiosus, sagittarius, aut operarius, &c. extra regnum se transferat, sub pæna ar. stationis, et incarcerationis.*

Herein it is to be observed, that seeing by law, no earle, baron, or knight (as Britton saith) nor religious, &c. ought to goe out of the realme, a generall proclamation declarative will serve to aggravate their offence: but otherwise it is of those, that are not prohibited by law, they must have such a particular writ or proclamation as is abovesaid.

<sup>l</sup> Sir Matthew Gourny knight was prohibited by the kings writ to depart the realm, and to serve in wars expressly inhibited by the king: which notwithstanding he did. Now the record saith, *Quia Mathæus Gourny miles contra defensionem regis transfretavit, et se gueris sibi per regem inhibitis immiscuit, tam in corpore, quam in bonis forisfecit regi manerium de Corimal et simul cum una carucat' terræ, &c.*

<sup>m</sup> *Rex ꝛ licentiam dedit abbati de E. quòd proficisci possit ultra mare ad visitandum caput Sancti Jhannis Baptistæ Ambiani, corpora trium regum Colonia, feretrum Sancti Francisci in et Sanctum Jacobum in Galicia, ita quòd non prosequetur, aut procurabit quicquam in præjudicium regis, aut \* legum suarum, sicut idem abbas in præsentia cancellarii regis per juramentum promisit.*

Note that ecclesiasticall persons could not goe beyond sea on pilgrimage without licence, nor to doe any thing in prejudice of the king, or his laws.

<sup>n</sup> And it is to be observed that the king may grant licence to travail beyond the seas, either under the great seal, privy seal, or privy signet, but he cannot recall one that is beyond sea, but by the great seale, or privy seal.

But for avoiding of tediousnesse, and heaping many to one end, let us descend to later times.

<sup>o</sup> The letters under the great seal, or privy seal to recall any from beyond sea, ought to be served by some <sup>d</sup> messenger, who upon his oath is to make a certificate thereof in the chancery, and from  
III. INST. P thence

<sup>e</sup> Britton temps E. 1. fo. 282, 283. Vide statut. de 5 R. 2. ca. 2. Seigniors except out of that statute.

<sup>f</sup> See the first part of the Instit. f. 102. l. 170. a. 27 August 5 H. 4. De son grand conseil.

<sup>g</sup> An. 19 E. 2. in Scac.

<sup>h</sup> 2 & 3 P. & M. D. 128. pl. 61. Wil. de Britaine countee de Richmonus case.

<sup>i</sup> Rot. clauf. 4 E. 3. m. 38.

<sup>j</sup> H. 1. 24 E. 3. coram rege.

<sup>k</sup> Rot. 13.

<sup>l</sup> D. clauf. 25 E. 3. m. 18.

<sup>m</sup> Mic. 39 E. 3. coram rege.

<sup>n</sup> Rot. 97. Somers Rot. Vasc.

<sup>o</sup> 10 E. 2. m. 29. m By seizure and imprisonment.

<sup>p</sup> Rot. pat.

40 E. pt. 1. nu. 40. Mich. 4 E. 3.

Coram rege Rot. 34. Priorissa Sancti Barth. et de novo castro quod mare non transit, &c.

† [ 180 ]

<sup>q</sup> Nota (legum suarum) ut supra.

<sup>r</sup> F. N. B. 85. f.

<sup>s</sup> Dier Hil.

2 Eliz. 176. the case of Barteu

and the dutches of Suffolk.

<sup>t</sup> See 10 H. 4. 5. Englefields case.

Lib. 7. fo. 11. See the 1. part of the Institutes lect. 102.

thence a *mittimus* to be sent into the exchequer, and thereupon a commission to be granted to seise the lands and goods of the delinquent.

° Mich. 12 &  
13 El. Dier, fo.  
296. & Pasch. 23  
Eliz. fo. 375.

° Mich. 12 & 13 Eliz. It was resolved by all the justices (except two) that a merchant of London departing the realm, to the intent to live freely from the penalty of the law, and out of his due obedience to the queen, and not for any merchandise, that it was no contempt to the queen, for merchants were excepted out of the said statute of 5 R. 2. cap. 2. and by the common law merchants might passe the sea without licence, though it were not to merchandize.

It is holden, and so it hath been resolved, that divided kingdomes under severall kings in league one with another are sanctuaries for servants or subjects flying for safety from one kingdome to another, and upon demand made by them, are not by the laws and liberties of kingdomes to be delivered: and this (some hold) is grounded upon the law in Deuteronomy. *Non trades servum domino suo, qui ad te confugerit.*

Deut. c. 23.  
v. 15.

When queen Elizabeths ambassadour lieger in France, anno 34 of her reign, demanded of the French king Morgan and others of her subjects, that had committed treason against her; the answer of the French king to the queens ambassadour is truly related in these words. *Si quid in Gallia machinarentur, regem ex jure in illos animadversurum; sin in Anglia quid machinati fuerint, regem non posse de eisdem cognoscere, et ex jure agere. Omnia regna profugis esse libera, regum interesse, ut sui quisque regni libertates tueatur. Immo Elizabetham non ita pridem in suum regnum Montgomerium, principem Condemur, et alios è gente Gallica admisisse, &c.* and so it rested.

Camden Elizab.  
pa. 355.

King H. 8. in the 28 year of his reign being in league with the French king, and in enmity with the pope, who was in league with the French king, sent Cardinall Pool ambassadour to the French king. of whom king H. 8. demanded the said Cardinall being his subject and attainted of treason, and to that end caused a treatise to be made (which I have seen) that so it ought to be done *jure gentium: sed non prevailuit.* But Ferdinando king of Spain upon request made by H. 7. to have Edmond de la Pool earl of Suffolk attainted of high treason by parliament, anno 19 H. 7. at the first intending to observe the privilege and liberty of kings, to protect such as came to him for succour, and protection, delivered him not, yet in the end upon the earnest request of H. 7. and promise that he would not put him to death, caused the said earl to be delivered unto him, who kept him in prison, and construing his promise to be personall to himself, commanded his son Henry after his decease to execute him, who in the fifth year of his reign upon cold blood performed the same.

An. 21 H. 7.  
Rot. parl. 19  
H. 7.

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We could add more examples of this kind, but (to speak once for all) having purposed to give some taste of every thing pertinent or incident to such things, as we have undertaken to treat of, these shall suffice.

3 Car. ca. 2.  
\* Mich. 10 H. 4.  
Coram rege,  
Rot. 59. Hert-  
ford.

See the statute of 3 Car. an act to restrain the passing and sending of any to be popishly bred beyond the seas.

\* *Flemenesfreme, sive Flemenesfrenthe, interpretatur, catalla fugitivorum.*

C A P. LXXXV.

Against Monopolists, Propounders, and Projectors.

IT appeareth <sup>a</sup> by the preamble of this act (as a judgement in parliament) that all grants of monopolies are against the ancient and fundamentall laws of this kingdome, and therefore it is necessary to define what a monopoly is.

<sup>b</sup> A monopoly is an institution, or allowance by the king by his grant, commission, or otherwise to any person or persons, bodies politique, or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politique, or corporate, are sought to be restrained of any freedome, or liberty that they had before, or hindred in their lawfull trade.

<sup>c</sup> For the word monopoly, *dicitur, ἀπὸ τῆ μόνου, i. solo, καὶ πωλεῖσθαι, i. vendere, quod est, cum unus solus aliquod genus mercaturæ universum vendit, ut solus vendat, pretium ad suum libitum statuens*: hereof you may read more at large in that case. And the law of the realm in this point is grounded upon the law of God, which saith, *Non accipies loco pignoris inferiorem et superiorem molam, quia animam suam apposuit tibi.* Thou shalt not take the nether or upper millstone to pledge, for he taketh a mans life to pledge: whereby it appeareth that a mans trade is accounted his life, because it maintaineth his life; and therefore the monopolist that taketh away a mans trade, taketh away his life, and therefore is so much the more odious, because he is *vir sanguinis*. Against these inventers and propounders of evill things, the Holy Ghost hath spoken, *inventores malorum, &c. digni sunt morte.*

That monopolies are against the ancient and fundamentall laws of the realm (as it is declared by this act) and that the monopolist was in times past, and is much more now punishable, for obtaining and procuring of them, we will demonstrate it by reason, and prove it by authority.

Whatsoever offence is contrary to the ancient and fundamentall laws of the realm, is punishable by law: but the use of a monopoly is contrary to the ancient and fundamentall laws of the realme, therefore the use of a monopoly is punishable by law.

That offence which is contrary to the ancient and fundamentall laws is *malum in se*. The minor is proved by this declaration in parliament.

The liberty that the subject hath to goe to any clerk in the kings court cannot be restrained but by parliament.

In 50 E. 3. John Peachie of London was feverely punished for procuring a licence under the great seal, that he only might sell sweet wines in London,

See in the preambles of 9 E. 3. cap. 1. 25 E. 3. cap. 2. 27 E. 3. & 28 E. 3. Stat. Stap. 2 R. 2. ca. 1. See the statute of Magna Cart. ca. 3. 31 E. 3. cap. 10. 7 H. 4. cap. 9. and 12 H. 7. ca. 6.

<sup>a</sup> The statute of 21 Jac. ca. 3. Rom. 1. 30. Inventores malorum.

<sup>b</sup> A monopoly described. See the exposition upon Magna Carta, c. 29. & 30. in the second pt. of the Instit.

<sup>c</sup> Trin. 44 Eliz. lib. 11. f. 84, 85. le case de Monopolies.

Deut. ca. 24. v. 6.

Rom. 1. 30.

*Commercium jure gentium commune esse debet, et non in monopolium, et privatum pauculorum questum convertendum.*

*Iniquum est alios permittere, alios inbibere mercaturam.*

11 H. 7. 11.

W. 1. cap. 27.

Rot. par. 50 E. 3. nu. 33.

Rot. Parl.  
28 H. 6. nu. 30.

1 & 2 Ph. & Mar. ca. 14. Rot. Parl. 1 R. 2. nu. 20. 4 R. 2. nu. 39. 5 R. 2. nu. 89. Fortescue, cap. 35, 36. One of the articles wherewith William de la Pool duke of Suffolk was charged, was for procuring of divers liberties in derogation of the common law, and hindrance of justice: note this is an offence punishable.

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Mich. 2 & 3 El.  
Dier manuscript  
not printed.

Stat. de 5 Eliz.

King Philip and queen Mary by their letters patents granted to the maior, bailifs and burgeses of Southampton and their successors, (for that king Philip first landed there) that no wines called malmesies, brought into this realm from the parts beyond the seas by any liege man or alien, should be discharged or landed in any other place of the realm, but only at the said town and port of Southampton, with a prohibition, that no person or persons shall doe otherwise, upon paine to pay treble custome: and it was resolved by all the judges of England that this grant made in restraint of the landing of the same wines was against the laws and statutes of this realm, viz. Magna Carta, 29, 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. ca. 2. 27 & 28 E. 3. statute of the staple. 2 R. 2. cap. 1. and others: and also that the assessment of treble custome was against law, and meerly void. And after at the parliament holden in *anno* 5 Eliz. the patent, as to aliens, was by a private act confirmed by parliament, and not for English.

Trin. 41 Eliz. coram rege, rot. 92. int. Davenant and Hurdy: in trespassse. Trin. 44 Eliz. in Lib. 11. fo. 84, 85, &c. Edward Darcies case. Hil. 7 Jacobi in Lib. 8. fo. 121, 122. &c. the case of the City of London.

The judgement in the said case of monopolies cited before, Trin. 44 Eliz. was the principall motive of the publishing of the king's book mentioned in the preamble of this act, and that book was a great motive of obtaining the royall assent to this act of parliament, whereof we are now to speak. This act moved from the house of commons: the act is long and in print, and need not here to be rehearsed: yet will we peruse and explain the words in the severall branches of the act.

*By his grant, commission, or otherwise.*] These words [or otherwise] are of a large extent, and are well warranted by this act, the words whereof extend not only to all proclamations, inhibitions, restraints, and warrants of assistance of the king, but all inhibitions, restraints and warrants of assistance of all or any of the privy counsell or any other: and all other matters or things whatsoever either of the king, or of all or any of his privy counsell to the instituting, erecting, strengthening, furthering, or countenancing of the sole buying, selling, &c. or any of them, are declared to be altogether contrary to the laws of this realm, &c. *ut in statuto.* This act herein, and in the residue thereof, is forcibly and vehemently penned for the suppression of all monopolies: for monopolies in times past were ever without law, but never without friends.

*Sole.*] This word [sole] is to be applied to five severall things, viz. buying, selling, making, working, and using; four of which are speciall, and the last, viz. (sole using) is so generall, as no monopoly can be raised, but shall be within the reach of this statute, and yet for more surety these words [or of any other monopolies] are

are added : and by reason of these words [sole using] divers provisions are made by this act, as hereafter shall appear.

*Of any thing.]* As the words before were general, so these words [of any thing] are of a large extent. *Res enim generalem habet significationem, quia tam corporea, quam incorporea, cujuscunque sunt generis, nature. seu speciei, comprehendit :* and this word caueth some exceptions hereafter to be made, whereof we shall speak in their proper place.

*Whereby any person or persons, &c.]* For this see the statute of Magna Carta, *ubi supra :* and this clause is impliedly warranted by these words [of any other monopolies] in the first clause of the purview.

*Shall be for ever hereafter examined, heard, tried, and determined by and according to the common laws of this realm, and not otherwise.]* This act having declared all monopolies, &c. to be void by the common law, hath provided by this clause, that they shall be examined, heard, tried, and determined in the courts of the common law according to the common law, and not at the councill table, star-chamber, chancery, exchequer chamber, or any other court or like nature, but only according to the common laws of this realm, with words negative, and not otherwise : for such boldness the monopolists took, that often at the councill table, star-chamber, chancery, and exchequer chamber, petitions, informations, and bills were preferred in the star-chamber, &c. pretending a contempt for not obeying the commandments and clauses of the said grants of monopolies, and of the proclamations, &c. concerning the same : for the preventing of which mischief this branch was added.

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*That all person and persons, bodies politique, and corporate whatsoever, which now are, or hereafter shall be, shall stand, and be disabled, and incapable, &c.]* This branch for further extirpation of all monopolies, disableth all men, &c. to have, that is, to take any monopoly, or to use, exercise, or put in ure any monopoly, &c. whereby the wish and desire of the poet is granted.

*Funditus extirpa monopolas et nomopolas ;  
Hic labor, hec opus est ; Hercule major eris.  
Paucorum nocuit scelerata licentia multis,  
Argento mutat dum monopola pi er.*

*If any person or persons after the end of forty dayes next after the end of this present session of parliament shall be hindred, grieved, disturbed, or disquieted, &c.]*

By this branch six things are provided and enacted. 1. Remedy is given to the party grieved at the common law by action or actions to be grounded upon this statute. 2. This remedy may be had in the court of the kings bench, common pleas, and exchequer, or any of them, at the election of the party grieved. 3. The party grieved shall recover treble damages, and double costs. 4. No essoin, protection, wager of law, aid prayer, priviledge, injunction, or order of restraint to be allowed in any such action. By (aid prayer) is intended as well the writ *de domino rege inconsulto*, as the usuall form of aid prayer, for both are to one end, and (order of restraint) was added, for the councill table, star-chamber, chancery, exchequer chamber, and the like.

5. If any person or persons shall after notice given, &c. cause

or procure any such action to be stayed or delayed before judgement, by colour or means of any order, warrant, power or authority, save onely of the court wherein such action shall be brought and depending, the person or persons so offending shall incur the danger of premunire, &c.

This clause extends to the privy councell, star-chamber, chancery, exchequer chamber, and the like, and likewise to those that shall procure any warrant, &c. from the king, &c. and so it was resolved by a committee of both houses before this bill passed; but it extendeth not to the judges of the court before whom any such action shall be brought, for before judgements, days must be given by orders of court, &c.

6 Or after judgement had upon such action shall cause or procure execution of or upon any such judgement, to be stayed by colour or means of any order, warrant, power or authority, save only by writ of error and attainr, the person or persons so offending shall incur the danger of premunire, &c.

This clause is more generall then the former, being the fifth clause, for this extendeth also to the judges of the court where the action is brought or depending, if any stay or delay be used by them after judgement, and so it was resolved as is aforesaid.

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There be in this act concerning monopolies or sole buying, &c. many provisoes. The first is, that this act shall not extend to any letters patents or grants of priviledge heretofore made of the sole working or making of any manner of new manufacture: but that new manufacture must have seven properties. First, it must be for twenty one years or under. Secondly, it must be granted to the first and true inventer. Thirdly, it must be of such manufactures, which any other at the making of such letters patents did not use: for albeit it were newly invented, yet if any other did use it at the making of the letters patents, or grant of the priviledge, it is declared and enacted to be void by this act. Fourthly, the priviledge must not be contrary to law: such a priviledge, as is consonant to law, must be substantially and essentially newly invented; but if the substance was in *esse* before, and a new addition thereunto, though that addition make the former more profitable, yet is it not a new manufacture in law: and so was it resolved in the exchequer chamber, Pasch. 15 Eliz. in Bircots case for a priviledge concerning the preparing and melting, &c. of lead ore: for there it was said, that that was to put but a new button to an old coat: and it is much easier to adde then to invent. And there it was also resolved, that if the new manufacture be substantially invented according to law, yet no old manufacture in use before can be prohibited. Fifthly, nor mischievous to the state by raising of prices of commodities at home. In every such new manufacture that deserves a priviledge, there must be *urgens necessitas*, and *evid ns utilitas*. Sixthly, nor to the hurt of trade. This is very materiall and evident. Seventhly, nor generally inconvenient. There was a new invention found out heretofore, that bonnets and caps might be thickned in a fulling mill, by which means more might be thickned and fulled in one day then by the labours of fourscore men, who got their livings by it. It was ordained that bonnets and caps should be thickned and fulled by the strength of men, and not in a fulling mill,, for it was holden in-

Concerning new manufactures and heretofore granted, &c.

Pasch. 15 Eliz. in the exchequer chamber Bircots case.

Rot. parl. 21 E. 4. nu. 29.  
22 E. 4. ca. 5.  
7 E. 6. ca. 6.  
1 Jacobi, ca. 5.



inconvenient to turn so many labouring men to idlenesse. If any of these seven qualities fail, the priviledge is declared and enacted to be void by this act: and yet this act, if they have all these properties, set them in no better case, then they were before this act.

The second proviso concerneth the priviledge of new manufactures hereafter to be granted: and this also must have seven properties, first it must be for the term of fourteen years or under: the other six properties must be such as are aforesaid, and yet this act maketh them no better, then they should have been, if this act had never been made, but only except and exempt them out of the purvien, and penalty of this law.

Concerning new manufactures hereafter to be granted, &c.

The cause wherefore the priviledges of new manufactures either before this act granted, or which after this act should be granted, having these seven properties, were not declared to be good, was, for that the reason wherefore such a priviledge is good in law is, because the inventor bringeth to and for the common wealth a new manufacture by his invention, cost and charges, and therefore it is reason, that he should have a priviledge for his reward (and the encouragement of others in the like) for a convenient time: but it was thought that the times limited by this act were too long for the private, before the common wealth should be partaker thereof, and such as served such priviledged persons by the space of seven years in making or working of the new manufacture (which is the time limited by law of apprenticeship) must be apprentices or servants stil during the residue of the priviledge, by means whereof such numbers of men would not apply themselves thereunto, as should be requisite for the common wealth, after the priviledge ended. And this was the true cause wherefore both for the time passed, and for the time to come, they were left of such force, as they were before the making of this act.

The third proviso is, that this act shall not extend or be prejudicial to any grant or priviledge, power or authority heretofore made, granted, allowed, or confirmed by any act of parliament now in force, so long as the same shall so continue in force. This was added for that the city of London and other cities and boroughs, &c. have some priviledges for buying, selling, &c. by acts of parliament. For example, the statute of 1 & 2 Ph. and Mar. giveth a priviledge to cities, boroughs, towns corporate, and market towns, for the sale by retale of certain wares and merchandizes, and some other acts of parliament in like case; all which do prove, that such priviledge could not be granted by letters patents. But specially this clause was added in respect of the generality of these words [sole using.]

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1 & 2 Ph. and Mar. cap. 7.

The fourth proviso. Provided also, and it is hereby further intended, declared, and enacted, that this act, &c. shall not in any wise extend, or be prejudicial unto the city of London, &c.

By this proviso, not only the grants, charters, and letters patents to any city or towne corporate, &c. but also the customes used within the same, are excepted out of this act: which seemeth to be more than need, because the first clause of the purvien of this act doth extend but to commissions, grants, licences, charters, and letters patents.

The fifth proviso doth except out of the purvien and penalty of this

this statute four things, but leaveth them of the like force and effect, and no other, as this act had never been made. First, the priviledge concerning printing made, or hereafter to be made. Secondly, commissions, grants, and letters patents made or hereafter to be made for or concerning the digging, making, or compounding of salt-petre or gunpowder. Thirdly, or the casting or making of ordnance; or shot for ordnance. Fourthly, grants and letters patents heretofore made, or hereafter to be made of any office or offices heretofore erected, made, or ordained, and now in being, and put in execution, (other then such offices as have been decreed by any his majesties proclamations.) So as to the thing by this branch excepted, four things are required. First that it be an office. This extendeth only to lawfull offices for divers causes. 1. It was necessary to except lawfull offices in respect of these words [sole using.] 2. Offices are duties, so called, to put the officer in minde of his duty. 3. That which is voide and against law, is no duty, unlesse it be not to use them. 4. Such as are erected against law, are monopolies and oppressions of the people, and no offices. 5. In acts of parliament lawfull offices are intended, as in like cases hath been often adjudged: therefore unlawfull offices are all taken away by this act, and lawfull offices remain and continue.

Lit. sect. 731.  
Pl. com. 246. b.  
11 H. 4. 80.  
4 E. 4. 31. pl. 2.

Secondly, that it be an office heretofore erected. By this act the erection of all new offices, which were not erected before this act, are wholly taken away.

Thirdly, that it be now in being, and put in execution. Though the office were erected before this act, yet if it were not in being and put in execution the 19 day of February in the 21 year of the reigne of king James (at what time this parliament begun) it is clearly taken away by this act.

See the proclamation bearing date 10 July, an. 19 Jac. regis, and another proclamation bearing date, 20 Martii an. 19 Ja. regis.

Fourthly, that it be such an office, as hath not been decreed (for so is the record of parliament, and not [decreed] as it is in the printed book) by any of his majesties proclamations: for all such offices as be decreed, that is, either forbidden, or prohibited by any of his majesties proclamations, or where the party grieved is left to his remedy at the common law by any proclamation, they be also decreed; for being contrary to the lawes of this realme, as it is declared and enacted by this act, they are also decreed with a witness, and can never be granted hereafter.

The fifth proviso concerning the making of allom, or allome-wines, needed not, for they belong to the subject in whose ground soever the oare is: and therefore any priviledge thereof cannot be granted, but in the kings owne ground.

The sixth proviso concerns the hostmen of Newcastle, &c. This clause was inserted in respect of these words [sole using].

The rest of the provisos concerne particular persons, and do exempt and except certaine supposed priviledges out of the purview and penalty of this law, but leaveth them of like force and effect, as they were before the making of it.

But it is to be observed, that all the provisos after the sixth, extend only to the supposed priviledges therein particularly mentioned, already granted, and not to any to be granted hereafter.

C A P. LXXXVI.

Against those that obtaine Power to dis-  
pense with penall Lawes, and Forfeitures  
thereof.

**I**T appeareth by the preamble of this act, that all grants of the benefit of any penal law, or of power to dispence with the law, or to compound for the forfeiture, are contrary to the ancient fundamental lawes of this realm.

The statute of  
21 Jac. cap. 3.

It was one of the articles wherefore the Spencers in the reigne of king E. 2. were sentenced, that they procured the king to make many dispensacions *à leur malvais counsell defesant cto q. le roy ad grant p. parliement p. bone advice.*

In Exilio Hu-  
gois.

In 50 E. 3. Richard Lyons a merchant of London, and the Lo. Bamber, were generally sentenced in parliament for procuring of licences and dispensations to transport woolls, &c.

Rot. parliam.  
50 E. 3. nu. 17.  
& 28.

It is declared and enacted, that all commissions, grants, licences, charters, and letters patents, heretofore made or granted, to any person or persons, bodys politick, or corporate, of any power, liberty, or faculty, to dispence with any others, or to give licence or toleration to doe, use, or exercise any thing against the tenure or purport of any law or statute, or to give, or make any warrant for any such dispensation, licence or toleration to be had, or made, or to agree, or compound with any others for any penaltie or forfeitures limited by any statute, or of any grant or promise of the benefit, profit, or commoditie of any forfeiture, penalty or summe of money, that is or shall be due by any statute before judgement thereupon had, and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them, are altogether contrary to the lawes of this realme, in no wise to be put in execution.

See 28 H. 6. nu.  
30. before.  
The purvien of  
the act of 21 Ja.  
cap. 3.  
The offence de-  
scribed.

And shall be for ever hereafter examined, heard, tried, and determined, by and according to the common lawes of this realme; and not otherwise, &c.

Provided also, that this act shall not extend to any warrant or privie seale made or directed, or to be made or directed by his majestie, his heirs or successors to the justices of the courts of kings bench, common pleas, barons of the exchequer, &c. and other justices for the time being, having power to heare and determine, &c. to compound, &c.

This

This act moved from the house of commons. Now let us peruse, first, the words of the purvien of this act, and secondly, of this proviso.

In and by the purvien five things are declared and enacted to be void, and contrary to the ancient fundamentall lawes of this realme. First, all commissions, licenses, charters, and letters patents of any power, liberty, or faculty, or to give license or toleration to do, use, or exercise any thing against any law or statute. The reason hereof is notably expressed by the resolution of all the judges of England, in the case of penall statutes, whereunto we refer you,

Hil. 2 Jac. lib. 7.  
fo. 36. b. the case  
of penal statutes.

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2. *Or to give or make any warrant for any such dispensation, license, or toleration.*] For this branch also, see the said case of penall statutes, *ut supra*.

3. *Or to agree or compound with any others for any penalty or forfeitures limited by any statute.*] By this branch, all commissions to agree or compound with any others for any penalty or forfeiture limited by any statute, are declared to be void, and against the ancient fundamentall lawes of the realme. The great inconvenience hereof appeared in the proceedings of Empson and Dudley, in the reigne of king H. 7. who had the office of masters of the forfeitures: and by colour of their commission and office, did most intolerably and unlawfully oppresse, burden, and depauperate the subjects. Let them which follow their steps be afraid of their fearful end: *Qui eorum vestigia sequuntur, eorum exitus perhorrescant*. The like oppression was used by certain commissioners for compositions to be made for offences committed against penall statutes, in the reigne of queen Mary. This branch hath stricken at the root, and prevented this mischief for ever hereafter.

4. *Or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute before judgement thereupon had.*] This branch declareth not only the grant to be void, and against the lawes of this realme, (for the which, see the resolution of all the judges in the said case of penall statutes, *ubi supra*;) but the promise thereof also. And the reason that the judges yeeld there, is notable in these words. For that in our experience it maketh the more violent and undue proceeding against the subject to the scandall of justice, and offence of many. So as the grant or promise of any forfeiture before judgement, is both against law, and inconvenient. And if it be so in case of a forfeiture or penalty; much more in case of life and death, for the forfeiture, &c. of any man to be begged, before he be duly and lawfully attainted. For, as the judges say, there is the more violent and undue proceeding against the subject to the scandall of justice, and the offence of many; and therefore such beggers are offenders worthy of severe punishment,

Micaiah 7. 2.

Against these hunters for blood the prophet speaketh thus, *Perit sanctus de terra, et rectus in hominibus non est, omnes in sanguine insulantur, vir fratrem suum ad mortem venatur*. There is not a godly man upon earth, there is not one righteous amongst men, they all lye in wait for blood, and every man hunteth his brother to death.

5. *And all proclamations, inhibitions, restraints, warrants of assistance, and all other matters or things any way tending to the institut-*  
ing,

ing, erecting, strengthening, &c.] This is the like clause, and is so to be expounded, as before hath been in the chapter of Monopolies.

Concerning the said proviso, the judges before whom the cause dependeth, and that have power to hear and determine the same, who are presumed to be indifferent between the king and the subject, may by warrant or privie seale, &c. compound, &c. for the king only, after plea pleaded by the defendant.

There is another proviso concerning letters patents, or commissions for licensing of keeping of any tavern, or selling, &c. of wines, &c. or for the making of any compositions for such licenses, so as the benefit of such compositions be reserved, and applied to or for the use of his majestie, his heirs or successors and not for the private use of any other person or persons.

The report of the said case of penall statutes was a principall motive of the kings book, mentioned in the preamble of this act: and that book amongst other just and weighty causes moved the king to give his royall assent to this act of parliament, &c. whereof we have spoken.

C A P. LXXXVII.

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Against Concealours (*turbidum Hominum Genus*)  
and all Pretences of Concealments whatsoever.

**T**HAT the kings majestie, his heirs, or successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politick, or corporate, &c. Statut. de anno  
21 Jac. cap. 2.

The act is long, and need not here be rehearsed. Yet will we peruse and explain the severall branches and parts of the act.

Before the making of this statute, in respect of that ancient prerogative of the crowne, that *nullum tempus occurrit regi*, the titles of the king were not restrained to any limitation of time: for that no statute of limitation that ever was made, did ever limit the title of the king to any manners, lands, tenements, or hereditaments, to any certaine time. And where many records and other muniments, making good the estate and interest of the subject, either by abuse or negligence of officers by devouring time were not to be found; by means whereof, certain indigne and indigent persons prying into many ancient titles of the crown, and into some of later time concerning the possessions of divers and sundry bishopricks, dean and chapters, and the late monasteries, chauntries, &c. of persons attainted, and the like, have passed surreptitiously in letters patents, oftentimes under obscure and generall words, the manners, lands, tenements, and hereditaments of long time enjoyed by the subjects of this realm, as well ecclesiasticall as temporall:  
now

now to limit the crown to some certaine time, to the end, that all the subjects of this realme, their heirs and successors, may quietly have, hold, and enjoy, all and singular manors, lands, tenements, and hereditaments, which they, their ancestors, or predecessors, or any other, by, from, or under whom they claime, have of long time enjoyed; this act was made and moved from the house of commons, the body whereof consisteth of three parts. First, that part which above is in part rehearsed, consisteth on three branches.

The first part.

*First*, That the king, his heirs or successors, shall not at any time hereafter, sue, impeach, question, or implead any person or persons, bodies politick or corporate, for, or in any wise concerning any manors, &c. *Secondly*, Or for or concerning the revenues, issues, or profits thereof. *Thirdly*, Or make any title, claime, challenge, or demand, &c.

This part is exclusive and negative: and herein six things are to be observed.

1. This clause extendeth to all manner of suits, &c. either in law, or in equity. 2. To all manner of courts whatsoever. 3. It extendeth not only to all manner of suits, but to all impeachments, questionings, implendings, making of title, claimes, challenges, or demands. 4. Under these words [right, and title] not only the rights and titles are comprehended, but real estates also. 5. Not only suits, &c. for or concerning any manors, &c. but for or concerning the revenues, issues, or profits, &c. and this extendeth to the ancient demesnes of the crowne, which are mentioned to be restrained by an act of 11 H. 4. 6. So as all writs of *juris facti* or other proces upon any record; all informations or indictments charging any man as bayliffe: all finding of offences, either of intitling the king, or of information, are restrained, not only within these words [impeach or question] but also within these words [or make any title, claime, challenge, or demand] which are large and beneficial words, and all other suits, &c. of what kind or nature soever. But this negative clause must have four incidents.

1. The kings right and title must accrew unto him above threescore years past before the nineteenth day of february, in the 21 year of king James, which was the day of the beginning of this parliament. The reason hereof was, that if any title or claime, forfeiture, &c. accrewed within threescore year, then it should be out of this act: for generally the time of limitation to bar the king was threescore years, but such right or title must now be *in esse*.

2. Unlesse the king or his progenitors, &c. or any under whom he or they claime, have been answered by force and vertue of any such right or title to the same, the rents, revenues, issues, or profits thereof within threescore years, &c. In this branch these words [by force and vertue of any such right or title] were materially added, for otherwise if the king had been answered the rents, revenues, &c. by reason or pretext of wardship, primer feison, extent, or the like, it might have made a doubt whether such an answering of the revenues, &c. had been within this act; which doubt is cleared, that it must be by force or vertue of any such right or title, whereby the king impeacheth the state of the subject. 3. Or

Rot. Par. 11 H.  
4. no. 23. not  
imprinted.

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that the same have been duly in charge to his majesty, or to the late queen Elizabeth within the space of threescore years. Duly in charge in judgement of law, is the roll of the pipe: for although a note before the auditor or any other may be a mean to bring it in question, and to be put in charge, yet that is not in judgement of law said to be duly in charge, unlesse it be in charge in the pipe.

4. Or have stood in super of record within the said space of threescore years. It cannot stand in super, unlesse the thing in question were before duly in charge.

But there is a good proviso added towards the end of this act, viz. that no putting in charge, or super, or answering of the farm rents, revenues, or profits, &c. in four cases shall be within this act, viz. by force, colour or pretext of any letters patents of concealments: they were called letters patents of concealments, because either they had a clause before the *habendum*: *quæ quidem maneria nuper fuerunt à nobis concealata, subtrahia, vel iniuste detenta*, or to the like effect; or else a proviso after the *habendum* to the like effect. Letters patents of concealment were granted in queen Maries time; and the first that I find, were granted to Sir George Howard: and in all succeeding acts of parliament of confirmation of letters patents, letters patents of concealments are excepted.

2. Or defective title. By letters patents passed by the warrant of certain commissioners under the great seal for compositions of defective titles, pretending the same to be for the kings benefit, and safety of the subject, in which letters patents no words of concealment, &c. are mentioned, but yet upon the matter, they were supposed to be concealed, &c. from the crown.

3. Or of lands tenements or hereditaments out of charge. This was a new device to have a certificate, that they were not in charge, and then to take a grant from the king, for a very small composition, &c. And these were but inventions and subtile devices to deceive the king, to rob him of his tenures, and to the infinite vexation and trouble of the subject, all which mischiefs are now remedied by this act.

4. Or by force, colour or pretext of any commission or other authority to find out concealments, defective titles, or land, &c. out of charge. This was a necessary clause to be added, for of this kind there were infinite numbers.

Out of this first part all liberties and franchises be excepted.

And that every person and persons, bodies politique and corporate, their heirs and successors, and all claiming from, by, or under them, or any of them, for and according to their severall estates and interests, which they have, or claim to have in the same respectively, shall hereafter quietly and freely have, hold and enjoy against his majesty, his heirs and successors, &c.

The second part.

This is the second part of the body of the act, and as the first part is negative and exclusive of the right and title of the king, so this part is affirmative, and establishing the estate of the subject.

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The

The mischief before this statute was in two sorts, viz. either when the king had any estate vested, or continued in him; or where the king had but a bare right. For example, the kings tenant seised of lands, &c. in fee is attainted of felony, and dieth, the king hath a real estate in him: but if before the felony the kings tenant were disseised, and after is attainted, and dieth, now hath the king but a bare right. In both these cases, *et sic in similibus*, the subject is provided for by this act, both by the first part, and by this also: for where in this part it is said, according to their and every of their several estates and interests which they have or claim. If they have an estate, and the king but a bare right or title, then are they within these words [which they have] and if the king hath a real estate in him, then are they within these words [or claim] so as the remedy is applied to both the mischiefs. Again, the words in this part are further, have held, or enjoyed. That is, where the subject hath an estate, and the king but a bare right or title.

*Or taken the rents, issues, revenues, or profits thereof.*] These words extend to all cases where the real estate is in the king: hereby is understood the actual taking of the rents, issues, revenues, or profits by one that claims an interest in the land: for albeit the king may in law charge him as bailif, yet without question, *de facto*, he did take the rents, issues, revenues and profits, and that sufficeth to answer the letter and meaning of this act.

Moreover, the words of this part are, [Against him, his heirs or successors.] So admit in the case put before, the kings tenant being disseised, as is aforesaid, before his attainder of felony, that that disseisor had been disseised, or had morgaged the land before this statute, this act in this case barreth the king of his right and title, and to that end worketh upon the estate of the disseisor or morgagee: but yet the first disseisor or the morgagee for the condition performed or broken may re-enter; for the words of this part be [against the king, his heirs, and successors] so as the bar is only against them: and every subject shall take benefit of this act, for the kings right and title is thereby utterly barred: and there is a saving hereafter in this act to all persons, &c. other then the king, &c. all such right, &c. as they ought to have had before this act.

This part extendeth not to liberties and franchises.

Now followeth the third part of the purview of this act.

**The third part.**

And furthermore, that every person and persons, bodies politique and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such manners, &c. as they now have, claim, and enjoy, &c. against all and every person and persons, their heirs and assigns having, claiming, or pretending to have any estate, right, title, interest, claim or demand whatsoever, &c. by reason, or colour of any letters patents, or grants upon suggestion of concealment, or wrongfull detaining, or not being in charge, or defective titles, or by, from, or under any patentees, &c. of or for which manners, &c. no verdict, &c.

This



This part secures the subject against the subject, viz. against patentees and grantees of concealments, defective titles, or lands not in charge, and all claiming under them. A beneficial law both for the church and common wealth, in respect of the multitude of letters patents and grants of these natures and qualities, and many of them of large extents and in generall words, and had passed through the hands of many indigent and needy persons, &c.

This part extendeth to liberties and franchises, which the former two parts did not.

The two first provisoes are plain, and in effect are included in the body of the act. The second proviso was necessary to preserve tenures: the saving needeth no explanation. The third proviso is particular and evident. The fourth proviso, Provided also, and be it enacted, that where any fee farm rent, &c. This was added for the preserving of the kings fee farms and rents out of such manors, &c. which are established and made sure by this act. For example: king E. 6. did grant the manor of D. which came to him by the statute of Chanteries, to I. S. and his heirs, reserving a fee farm, or any other rent, which grant for some imperfection was insufficient in law to passe the said manor, and yet is established and made sure by this act. This proviso maketh good the fee farm or rent to the king, if he hath been answered the same by the greater part of sixty years last past.

The last proviso is particular and evident.

Of the benefit of this act the poor doe participate, as well as the rich, for hereby (amongst other things) above an hundred lay hospitals having had priests within them in those days to pray and sing for souls, &c. (if need were) are established against all vexations, and pretences of concealments.

See an excellent act made against these harpyes or heluones, that under obscure words endeavoured surreptitiously in a patent of concealment to have swallowed up the greatest part of the possessions of that ancient and famous bishoprick of Norwich, which by the industry and prosecution of the then attorney generall was overthrown, and yet for more surety in a matter of so great weight preferred a bill in parliament for establishing of the bishoprick, which in the end passed as a law, *anno 39 El. ubi supra.*

See 39 El. ca. 22. which is worthy to be read. See this case at large in the fourth part of the Institutes cap. Consistory Courts, &c.

*Tristius haud illis monstrum, nec scævior ulla  
Pestis et ira Dei stygiis sese extulit undis:  
Virginei volucrum vultus, fœdissima ventris  
Proluvies, unœque manus, et pallida semper  
Ora fame.*

## C A P, LXXXVIII.

## Against Vexatious Relators, Informers, and Promooters upon Penall Statutes.

Statutum de  
21 Jac. reg. c. 4.

**T**HAT all offences hereafter to be committed against any penall statute, for which any common informer or promooter may lawfully ground any popular action, bill, plaint, suit or information, &c. shall be commenced, sued, prosecuted, &c. before the justices of assise, justices of nini prius, &c. in the counties where the offences were committed, and not elsewhere.

18 El. ca. 5.

28 El. ca. 5.  
31 El. ca. 10.

Whereas a good and profitable law was made in the 18 year of queen El. for the ease and quiet of the subject, and for the regulating of informers upon penall statutes, inflicting corporall punishments in certain cases upon them. And whereas two other good laws were made for the same ends, the one in the 28 year, and the other in the 31 year of the said late queens reign, which yet stand and remain in force: yet these acts did not meet with all the mischiefs and grievances offered to the subject by the relators, informers and promooters, (*turbidum hominum genus*) but these four mischiefs and grievances remained still.

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First, many penall laws obsolete, and in time grown apparently impossible, or inconvenient to be performed, remained as snares, whereupon the relator, informer or promooter did vex and entangle the subject: such as were the statutes made *anno* 37 E. 3. cap. 3. concerning the prices of poultry, and 34 E. 3. ca. 20. concerning transportation of corn, and 3 E. 4. cap. 2. concerning corn not to be brought into the realm, and 4 H. 7. ca. 9. concerning the prices of hats and caps, and 14 R. 2. cap. 7. concerning the passing of tyn out of the realm, and 15 R. 2. cap. 8. concerning the carriage of tyn to Calys, and 4 H. 5. cap. 3. concerning making of pattens of asp, and 4 H. 7. ca. 8. concerning the prices of broadcloath, &c. and 11 H. 7. cap. 2. concerning vagabonds, unlawful games, and alehouses, &c. and one other statute in the 19 year of H. 7. ca. 12. concerning those matters, and 11 H. 6. ca. 12. concerning waxchandlers, and the price of candles, and 34 H. 8. cap. 7. concerning the sale of wines, and 28 H. 8. cap. 14. concerning the prices of wines, and 27 H. 8. stat. *de monasteriis*, concerning keeping of house and households upon scites of monasteries, &c. and 4 H. 7. cap. 19. concerning houses of husbandry and tillage, and 7 H. 8. ca. 1. concerning letting down of towns, and 27 H. 8. cap. 22. concerning decay of houses and inclosures, and 5 E. 6. ca. 5. for the maintenance of tillage, &c. and 5 Eliz. cap. 2. for maintenance and increase of tillage, and 14 R. 2. ca. 4. 6 H. 6. ca. 23. and 5 E. 6. cap. 7. concerning the buying of wooll, woollen yarn, &c. and 33 H. 8. cap. 5. concerning the  
keeping

keeping of great horses, the statute of Winchest. in the time of E. 1. concerning harnesses and arms, Artic. super Cart. ca. 20. concerning making of rings, crosses, and locks, and 37 E. 3. cap. 7. that makers of white vessel should not guild, and 2 H. 5. ca. 4. stat. 2. that goldsmiths should not take more then forty six shillings eight pence for a pound of troy silver guilt, and 2 H. 6. ca. 14. that no silver shall be bought for more then thirty shillings the pound of troy, and 2 H. 4. ca. 6. against the bringing in of coin of Flanders, Scotland, and other forain coin, and 13 R. 2. ca. 8. and 4 H. 4. cap. 25. concerning the prices of hay and oats sold by hostlers, and 4 & 5 Ph. and Mar. ca. 5. concerning the putting to sale of coloured cloth: and another part of the same statute concerning the mystery of making, weaving, or rowing of woollen cloth, &c. and 18 El. ca. 16. for toleration of certain clothiers to dwell out of towns corporate, and many other unnecessary statutes unfit for this time, about the number of threescore are repealed by an act made at this parliament in the 21 year of the reign of king James, as by that act appeareth: and many like acts are not continued, as by the conference between that act and other former acts of continuance may appear: so as these snares that might have lien heavy upon the subject, by this and other former statutes either are repealed, or not continued.

13 E. 1. stat. de Winton.

The second mischief was, that common informers, and many times the kings attorney drew all informations for any offence, in any place within the realm of England against any penall law to some of the kings courts at Westminster, to the intolerable charge, vexation, and trouble of the subject; and it was feared that Westminster hall would labour of an apoplexy by drawing up all suits unto it, as the naturall body doth *tabescere*, when the humours of the body are drawn up unto the head, which in the end (if it be not prevented) turneth to an apoplexy.

The third mischief was, that in informations, &c. the offence supposed to be against the penall law, and to be committed in one county, was at the pleasure of the informer, &c. alledged in any county where he would, where neither party nor witness was known, against the right institution of the law, that the jury (for their better notice) should come *de vicineto* of the place where the fact was committed.

The fourth mischief was, that in divers cases the party defendant in informations or actions upon the statute, were driven to plead specially, which was both chargeable and dangerous to him, if his plea were not both substantiall and formall also.

These three mischiefs last mentioned are expressly and absolutely provided for by this act, which moved from the house of commons. And so did the act of continuing and reviving of divers statutes, and repeale of divers others.

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21 Jac. cap. 28.

The first part of the purvien beginning thus. For remedy whereof be it enacted by the authority of this present parliament, that all offences, &c.

The first part of the act.

This clause consisteth upon three parts. First, affirmative: and this is divided into two branches. 1. For the informations, &c. It is enacted, that where a common informer might before this act have informed upon any penall statute before justices of assise, justices of *nisi prius*, or justices of gaole-delivery, justices of oier and terminer,

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miner,

miner, or justices of peace in their generall or quarter sessions; there a common informer may informe, &c. 2. Before what judges; this act appoints no new judges, but such as former penall lawes appointed, viz. the justices before mentioned, or any of them according to the former act.

The second part is restrictive, restraining any information, &c. to be commenced, sued, &c. either by the attorney generall, or by any officer, common informer, or any other person whatsoever, in any of the kings courts at Westminster. So as the kings bench, star-chamber, chancery, common-pleas, exchequer, or exchequer-chamber, cannot receive or hold plea of any information, &c. upon any penall statute, either by the kings attorney, any common informer, or any other person whatsoever: but the matter shall be heard and determined before such justices as are foresaid in the proper county where the offence was committed.

The third part giveth the like proces upon every popular action, bill, plaint, information, or suit to be commenced or prosecuted by force, of, or according to the purport of this act, as in an action of trespassse, *vi et armis*, at the common law: but upon no other popular action, bill, &c. which is not sued, &c. by force of this act.

The second part  
of the act.

The second part of this act doth meet with the second of the said three mischiefs, and standeth upon three branches.

First, that in all informations, exhibited, &c. either for the king or any other, &c. the offence shall be layed and alledged, &c. in the said county where such offence was in truth committed, and not elsewhere.

The second branch is, that if the defendant pleadeth the generall issue, the plaintiffe or informer upon evidence to the jury must prove two things: first, the offence laid in the information, &c. Secondly, that the offence was committed in that county, otherwise the defendant shall be found not guilty.

The third branch is, that for more surety that the offence shall be alledged truly in the proper county where in truth it was committed, no information, &c. shall be received, filed, or entred of record, untill the informer, or relator hath first taken a corporal oath before some of the judges of that court, which consisteth in two parts: first, that the offence or offences laid in such information, &c. were not committed in any other county, then where the same are alledged in the information, &c. Secondly that he believeth in his conscience, that the offence was committed within a year before the information or suit. And this oath is to be entered of record. And all this is to be done before the information be received, filed, or entred of record.

The third part  
of the act.

The third part of this act meeteth with the last mischief: for by this part the defendant may plead the generall issue, and give any speciall matter in evidence to the jury: which matter being pleaded, had been a good and sufficient matter in law, to have discharged the defendant, &c.

27 H. 8. f. 21,  
&c.

This is a very beneficiall clause, and cleereth many questions at the common law. And where it may be objected, that for want of sufficient clerks, the proceeding according to this statute will be erroneous, and to be reversed by writ of error, so as it will deter informers to informe, &c. and in effect, lay asleep all penall lawes  
To

To this it may be answered, First, that it shall be the fault of the informer himselfe; for if he informe before justices of assise or *nisi prius*, they \* have sufficient clerks. Secondly, I persuade my selfe, that the other justices will in discharge of their conscience and duty, provide sufficient clerks. And lastly, that few or no errors shall fall out in respect of the generall pleading.

The last clause of this act is this, Provided alwayes that this act or any thing therein contained, shall not extend to any information, &c.

By this clause this act extends not to penall statutes of these sorts: concerning 1. Popish recusants for not coming to church. 2. Maintenance, champerty, or buying of titles. 3. The subsidie of tonnage and poundage, wooll, &c. 4. The defrauding the king of any custome, tonnage, poundage, subsidie, impost, or prisage. 5. Transportation of gold, silver, powder, shot, munition of all sorts, wooll, woolfels, or leather, but that every of these offences may be layed or alledged to be in any county at the pleasure of any informer. But yet the informer cannot informe, &c. for any of these offences in any of the courts at Westminster, but before the justices appointed by this act: for this clause extendeth only for the laying or alledging of any of these offences in any county that he will.

Inter Wideston and Clark maior of Nottingham, the case was this. Wideston being arrested in Nottingham by precept in the nature of a *capias*, he was imprisoned in the custody of the maior being keeper of the gaol within the same towne, and before the returne of the precept Wideston offered to the maior sufficient surety to appeare, &c. and he refused to accept the same: whereupon Wideston brought his action by bill upon the statute of 23 H. 6. cap. 10. whereunto the defendant pleaded the generall issue; and it is found by verdict against the defendant. In arrest of judgement it was shewed, that by the said statute of 18 Eliz. cap. 5. it is provided, that none shall be admitted or received to pursue against any person upon any penall statute, but by way of information or originall action, and not otherwise: in respect of the said negative words it was adjudged, that, for that the said action was brought by bill, and not by information or originall. *quod querens nihil capiat per billam*. See the rest of the statute of 18 Eliz. concerning informers.

Mic. 29 &  
30 El. coram  
1226.

18 Eliz. cap. 5.  
Vt 23. 6. 15. 19.  
b. Gregones  
case

You have heard of four viperous vermin, which endeavoured to have eaten out the sides of the church and common-wealth: three whereof, viz. the monopolist, the dispencer with public and profitable penall lawes for a private, and the concealers are blowne up, and exterminated: and the fourth, viz. the vexatious informer well regulated and restrained, who under the reverend mantle of law and justice instituted for protection of the innocent, and the good of the common-wealth, did vex and depauperize the subject, and commonly the poorer sort, for malice or private ends, and never for love of justice. And these are worthily placed amongst the pleas of the crowne, because it is for the honour and benefit of the crowne, when the church and common-wealth doe flourish in peace and plenty: for the king can never be poore, when his subjects are rich.

Hil. 36 Eliz.  
Rot. 135. int.  
plac. regis, co-  
ram rege. Ha-  
monds case.

Trin. 31 Eliz.  
coram reg.  
St. ettons case.

See hereafter,  
cap. 105. of  
Pardons  
37 H. 6. fo. 4.  
5 E. 4. 3.  
2 R. 3. f. 12.  
1 H. 7. 3.  
[ 195 ]

George Hamond informed upon a penall statute concerning slipping of cloth in the name of another. *Qui tam, &c.* against Edw. Griffith defendant. Hamond the informer died and upon motion made by the attorney generall, it was the opinion of the whole court, that he the attorney generall might proceed for the queens moity after the death of the informer.

Between Stretton, *Qui tam, &c.* and Tayler defendant, that after a popular action commenced, although the attorney generall will enter an *ulterius non vult prof qui*; or if the defendant plead a special plea, although the use be, that the attorney (to the end that there may be no jugling or covin between the informer and the defendant) reply only; notwithstanding, if the attorney generall will not reply, the informer may proceed, and prosecute for his part; for the informer by his suit commenced hath made of a popular action his private, which the king cannot for the part of the informer pardon or release. And notwithstanding in all these cases before any action or information commenced by the informer, but the suit remaining popular wherein the king only, and no subject hath any interest, the king may pardon and release the same: for after that pardon, no informer can informe *tam pro domino rege, quam pro seipso*, according to the statute, &c. and for himselfe only in a popular action he cannot informe.

## C A P. LXXXIX.

## Of Forestalling, Ingrossing, &amp;c.

See the first part  
of the Institutes,  
sect. 240.

Domesday.  
a Chent. Dover.  
ter

b Wircester.

Scirropscir  
Civitas.

c Fleta, lib. 1.  
ca. 42.

§ Forestall, &  
lib. 4. cap. 11.

Britton, fo. 33.  
a. 77. a.

d Vi. Vet. M. C.  
part. 2. 24. b.

34 E. 1. de Pis-  
tor. Braciatori-  
bus et aliis Vic-  
tuellariis, et de  
Forestallariis,  
hic infra.

\* 51 H. 3. Rast.  
weights and  
measures. 4.

25 E. 3. c. 3.

stat. 3. 27 E. 3.

cap. 11. stat. Stap.

28 E. 3. cap. 13.

5 E. 6. cap. 14.

5 Eliz. cap. 12.

13 Eliz. cap. 25.

**F**ORISTEL<sup>a</sup>, *faristel*<sup>b</sup>, *foristellum*, et *foristellarius*, derived of two Saxon words, viz. *far* or *fare* (*via* or *iter*) unde *far* for a passage and farewell, to go or proceed well: we have turned *far*, to *for* and *fall*, which we retaine still, and signifieth *interceptionem*, or *impedimentum transitus*, hindrance or interception. And the offender is called *foristellarius*. See of this offender in the ancient statute: <sup>d</sup> *Nullus foristellarius in villa patiatur morari, qui peccatum sit depressor manifeste, et totius communitatis, et patrie publici inimicus, qui bladum, pisces, alios, vel res quascunque venales per terram, vel per aquam venientes, quandoque per terram, quandoque per aquam conviando præ cæteris festinat, lucrum sitiens vitiosum, pauperes opprimens, ditiores decipiens, qui sic minus juste illo qui eos apportaverit multo magis vendere machinatur. Qui mercatores exterraneos venalibus venientibus circumvenit, offerens se venditioni rerum suarum, et suggerit, quod bona sua cærius vendere poterunt, quam vendere proponebant, et sic arte, vel ingenio vellam seducit et patriam. Primo convictus graviter amercitur, secundo subeat iudicium pilloriæ, tertio incarceretur, et redimatur, quarto abjuret villam. Et hoc iudicium fiet de foristallariis universis, et similiter de his qui \* consilium aut auxilium eisdem præstiterint vel fecerint, &c.* And his description see in a latter act. See before in the chapter of Monopolists.

*Ingrossator* or *engrossator*, of the English and French word, *grossier*, that is, great or whole, unde merchant-grossier, a merchant that sel-

leth

leth by great or whole-sale. We remember not that we have read of this word [ingrosse] in any act of parliament, book-case, or record, but <sup>e</sup> rarely, before the said act of 5 E. 6. And there is an ingrosser by the common lawes, who is hereafter described. And there is an ingrosser by act of parliament, and he is described by the statute of 5 E. 6. And by that act a <sup>f</sup> regrator is also described, who is a kinde of ingrosser. Reqrator is derived of the French word *regratement*, for huckstery. But in ancient time both the ingrossor and regrator were comprehended under forestaller.

It was <sup>g</sup> resolved by the justices and barons of the exchequer upon conference betwixt them, that salt is a victuall, and the buying and selling thereof was within the statute of 5 E. 6. for it was not only of necessity of itselfe for the food and health of man, but it seasoneth and maketh wholesome be se, pork, &c. butter, cheefe, &c. and other viands. And Peryam justice said, <sup>h</sup> Hil. 26 Eliz. in communi banco, that so it had been lately adjudged.

<sup>i</sup> Mich. 6 Jac. in scaccario, in an information by Baron against Boy, upon the statute of 5 E. 6. cap. 14. of ingrossers for buying and selling of apples; the defendant pleaded not guilty, and was found guilty. But the barons gave judgement against the informer, and caused an entry to be made in the margent of the record, that the judgement was given upon matter apparent to them, that apples were not within the said act, for that the act is to be intended of victuall necessary for the food of man, the words of the act being [corne, graine, butter, cheefe, fish, or other dead victuall] which is as much as to say, (of other dead victuell of like quality; *id est*, of like necessary and common use.) And therefore apples being rather of pleasure then necessity, are not within the said statute no more then plumbs, cherries, or other fruit; and no information hath ever been exhibited for ingrossing of apples, plumbs, cherries, or other fruit: but the statute of 2 E. 6. cap. 15. doth forbid conspiracy of costermongers and fruiterers, and maketh such conspiracie unlawfull. And the said judgement of the barons was affirmed in a writ of error in the exchequer chamber.

*Venditio brasce non est venditio victualium, nec debet puniri sicut venditio panis, vini, et cervisie, et huiusmodi, contra formam statuti.* But the act of 5 E. 6. hath made corne, graine, &c. to be victuall within that act. *Vide* Vet. N. B. 2. part 23. b. stat. de pistor., braceator., et aliis victelariis. 34 E. 1.

It was upon conference and mature deliberation resolved by all the justices, that any merchant, subject, or stranger, bringing victuals or merchandize into this realme, may sell them in grosse: but that vendee cannot sell them againe in grosse, for then he is an <sup>\*</sup> ingrosser according to the nature of the word, for that he buy in grosse, and sell ingrosse, and may be indicted thereof at the common law, as for an offence that is *malum in se*. 2. That no merchant or any other may buy within the realme any victuall or other merchandize in grosse, and sell the same in grosse againe, for then he is an ingrosser, and punishable, *ut supra*: for by this means the prices of victuals and other merchandize shall be inhaunced, to the grievance of the subject; for the more hands they passe through, the dearer they grow, for every one thirsteth after gaine, *vitiolum faciunt lucrum*. And if these things were lawfull, a riche man might ingrosse into his hands all a commodity, and sell the same at what price

<sup>e</sup> For the word [Ingraffor,] see 27 E. 3. c. 5. stat. 1. 37 E. 3. cap. 5.

<sup>f</sup> For this word [Reqrator,] see 51 H. 3. weights and measures.

4. Rastall. 14 R. 2. ca. 4. 8 H. 6. cap. 5.

Reqrators or choppers, and in some countries called jobbers.

<sup>g</sup> M. 44 & 45 E. at Serjants Inne in Fleetstreet.

<sup>h</sup> Hil. 26 Eliz. judgement cited p. Peryam Justice.

<sup>i</sup> M. 6. Jac. in Scac. Int. Baron and Boy.

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P. 18 E. 2. Coram rege Rot. 76. Southt'.

Mich. 39 & 40. El. Resolution de tous les justices.

\* Dardanarius. An ingrosser by the common law described.

—Lucrumq; acquirit eundo, Nivis ut exiguis crevit eundo globus.

3 E. 2. Action  
for le. Stat. F. N. B.  
250. I.

4: Aff p. 38.  
tit. Aff. 354.

Nota, the abate-  
ment by undue  
means of the  
price of our na-  
tive commodi-  
ties, is punish-  
able by fine and  
ransome.

See 23 E. 3. ca.  
6. 13 R. 2. cap.  
8. Inter leges  
Ethelstani.  
cap. 12

Inter leges Will.  
Conquest. fo.  
125.

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Hil. 25 E. 3.  
coram rege. Rot.  
13. Buck. Had-  
hams case.

\* Of the French  
word *Taser*, to  
heape in goves  
or stacks.

See 5 E. 6. ca.  
14. He is an in-  
grosser that buyes  
(other then by  
grant or lease of  
land or tithe)  
any corne grow-  
ing in the fields,  
&c.

price he will. And every practise or device by act, conspiracy, words or newes, to inhaunce the price of victuals or other merchandize, was punishable by law; and they relied much upon the statute afore said, *nullus forstallarius, &c.* which see before in this chapter: and that the name of an ingrosser in the reigne of H. 3. and E. 1. was not known, but comprehended within this word [*forstallarius*] *lucrum sciens vitiosum*; and ingrossing is a branch of forestalling. And for that *forstallarius* was *pauperum depressor, et totius communitatis et patrie publicus inimicus*, he was punishable by the common law. They had also in consideration the book in 43 Aff. where it was presented, that a Lombard did procure to procure and inhaunce the price of merchandize, and shewed how: the Lombard demanded judgement of the presentment for two causes. 1. That it did not sound in forestalling. 2. That of his endeavour or attempt by words, no evill was put in ure, (that is) no price was inhaunced, *et non allocatur*, and thereupon he pleaded not guilty: whereby it appeareth, that the attempt by words to inhaunce the price of merchandize was punishable by law, and did sound in forestalling: and it appeareth by the book that the punishment was by fine and ransome. And in that case Knivet reported, that certaine people (and named their names) came to Cotswold in Herefordshire, and said in deceit of the people, that there were such wars beyond the seas, as no wooll could passe or be carried beyond sea, whereby the price of woolls was abated: and upon resentment hereof made, they appeared; and upon their confession they were put to fine and ransome. See the statute of 25 H. 8. cap. 2. whereby the lords of the councell, justices, &c. or any seven of them, &c. have power to set prices on victuals, and the same to be proclaimed under the great seale.

For preventing of all ingrossing and forestalling, it was the ancient law before the conquest, *Decrevimus porro, ne quis extra oppidum quicquam 20 denariis carius aestimatum emat, cerum intra portum presente oppidi praefecto, aliove viro fidele, aut i, so venique praeposito regis, in celebri plebis concursu, et hominum oculis quicquam mercatum.*

*Interdicimus etiam ut nulle pecudes emantur nisi infra civitates, et hoc ante tres fideles testes nec alia necessaria sine facijussore et racione, &c. Item, nullum mercatum vel feria sit, nec si ri permittatio, nisi in civitatibus regni nostri, et in burgis, &c.*

*Commissio facta fuit Roberto Hailham ad vendend' blada et alia bona diversarum abbatiarum alienigenarum, qui venit et cognovit, quod vendidit blada prioris de Tickford in garbis in duabus \* tassis existent' pro 10 li. quae venditio facta fuit contra legem et consuetudinem in regni Angliae, vendend' in garbis, priusquam triturat' fuerunt, quod fieri debuisset per mensuram post eorum triturationem: ideo committitur prisonae, et adjudicatur, quod ab omni officio domini regis amoveatur, et quod fuerit factum cum domino rege.*

Observe well this judgement, that it is against the common law of England to sell corne in sheafes before it is threshed and measured, and the reason thereof seemeth to be, for that by sitch sale the market in effect is forestalled.



## C A P. XC.

## AGAINST ROBERDSMEN.

IT is an English proverbe ; That many men talk of Robin Hood, that never shot in his bow : and because the statutes and records hereafter mentioned cannot well be understood, unlesse it be known what this Robin Hoode was that hath raised a name to these kinde of men called Roberdsmen, his followers, we will describe him.

This Robert Hood lived in the reigne of king R. 1. in the borders of England and Scotland, in woods and deserts, by robbery, burning of houses, felony, waste and spoile, and principally by and with vagabonds, idle wanderers, night-walkers, and draw-latches : so as this notable thiefe gave not only a name to these kinde of men, but there is a bay, called Robin Hoods Bay, in the river of in Yorkshire. And albeit he lived in Yorkshire, yet men of his quality took their denomination of him, and were called Roberdsmen throughout all England.

Against these men was the statute of Winchester made in 13 E. 1. for preventing of robbery, murders, burning of houses, &c. Also the statute of 5 E. 3. which reciting the statute of Winchester, and that there had been divers manslaughters, felonies, and robberies done in times past, by people that he called roberdsmen, waiters, and drawlatches, and remedy provided by that act for the arresting of them.

At the parliament holden 50 E. 3. it was petitioned to the king that ribauds and sturdy beggers might be banished out of every towne. The answer of the king in parliament was touching ribauds : the statute of Winchester and the declaration of the same with other \* statutes of roberdsmen, and for such as make themselves gentlemen, and men of armes, and archers, if they cannot so prove their selves, let them be driven to their occupation or service, or to the place from whence they came.

It is provided by the statute of 7 R. 2. that the statutes made in the time of king Edward, grandfather of the king, of roberdsmen, and drawlatches, be firmly holden and kept, and further provision against vagabonds wandring from place to place. See a law made in the sixth parliament of queen Mary, *anno Dom.* 1555 in Scotland against Robert Hood, Little John, &c.

He was, saith  
Maïor Scotus,  
prædonum prin-  
ceps et prædo-  
mitissimus.

13 E. 1. statut.  
de Winchest. ca.  
1. 4. 5 H. 7.  
fo. 5. 5 E. 3.  
cap. 14

Rot. parl. 50 E.  
3. nu. 61.

\* 5 E. 3. cap. 14.  
2 H. 5. cap. 9.  
8 H. 6. cap. 14.  
Vid. 39 Eliz.  
ca. 4.

7 R. 2. cap. 5.  
Vid. 39 Eliz.  
ca. 4.

## C A P. XCI.

## OF BANKRUPTS.

**V**IDE in the fourth part of the Institutes, cap. The Court of the Commissioners of Bankrupts.

## C A P. XCII.

## OF RECUSANTS.

1 Eliz. cap. 2.  
23 Eliz. cap. 1.  
28 Eliz. cap. 6.  
35 Eliz. cap. 1, 2.  
3 Jac. cap. 4.  
7 Jac. cap. 6.  
Lib. 10. 54. the  
chancelour of  
Oxfords case.  
Lib. 11. 56, 57,  
&c. Dr. Fosters  
case.  
Lib. 5. fo. 1.  
Caudries case.  
Dier 3 Eliz. fo.  
203.

**F**IRST, the acts of parliament that are made against them are 1 Eliz. cap. 2. 23 Eliz. cap. 1. 28 Eliz. cap. 6. 35 Eliz. cap. 1, & 2. 3 Jac. cap. 4. 7 Jac. ca. 6. These acts of parliament are interpreted and expounded by divers judgements and resolutions heretofore given. Lib. 10. fo. 54. &c. Le case de Chancelour, &c. de Oxford, an exposition of the statute of 3 Jac. ca. 4. et lib. 11. fo. 56, 57, &c. Doctor Fosters case, an exposition of all the said statutes. See lib. 5. fo. 1: &c. Caudries case. See Dier, 3 Eliz. fo. 203. an exposition of the said act of 1 El. concerning hearing of masse.

## C A P. XCIII.

## Of Newes, Rumours, &amp;c.

Tacitus.

Int. leg. Alve-  
redi, cap. 28.

**S**EE the second part of the Institutes, W. 1. cap. 34. Newes. See also in the fourth part of the Institutes, cap. Chancery, in the articles against cardinall Woolsey, artic. 32. *Convicia, si irascaris, tua divulgata, sprita exolefcunt*; if you seek to revenge slanders, you publish them as your own: if you despise them, they vanish. The law before the conquest was, that the author and spreader of false rumours amongst the people had his tongue cut out, if he redeemed it not by the estimation of his head.

## C A P. XCIV.

## Of Weights and Measures.

SEE the second part of the Institutes, W. 1. cap. 4. and the exposition upon the same.

## C A P. XCV.

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## OF APPARELL.

DIVERSE acts of parliament have been made against the excess of apparell in the reign of E. 3. as 11 E. 3. cap. 2. & 4. 37 E. 3. ca. 8, 9, 10, 11, 12, 13, 14. 38 E. 3. 3. cap. 2. In the reign of E. 4. 3 E. 4. cap. 5. 22 E. 4. cap. 1. In the reign of H. 8. 1 H. 8. cap. 14. 6 H. 8. ca. 1. 7 H. 8. cap. 7. 24 H. 8. cap. 13. 33 H. 8. cap. 5. 37 H. 8. ca. 7. 1 & 2 Ph. and Mar. ca. 2. 4 & 5 Ph. and Mar. c. 2. 5 El. ca. 6. 8 r. l. ca. 11. 13 El. ca. 19. Some of them fighting with, and cutting one another, some of them expired. But forasmuch as those that stood in force were obsolete, and remained but as snares to catch or vex men at the pleasure of the promoter; at the parliament holden *anno* 1 Ja. all acts of parliament before that time made concerning apparell are repealed and abrogated, and since that time no act hath been made concerning apparell, and so standeth the law at this day. Three costly things there are that doe much impoverish the subjects of England, viz. costly apparell, costly diet, and costly building. The best mean to repress costly apparell, and the excess thereof, is by example: for if it would please great men to shew good example, and to weare apparell of the cloth and other commodities wrought within the realm, it would best cure this vain, and consuming ill, which is a branch of prodigality, and herewith few wisemen are taken. If you will looke into the parliament roll of 2 H. 6. you shall see what plain and frugall apparell that renowned king H. 5. after he was king did wear, his gown of lesse value then 40 s.

1 Jac. R. ca. 25.

Excesse of apparell is best cured, exemplo et vituperio.

Rot. parl. 2. H. 6. r. u. 30.

Deut. 22. 5.

*Magna corporis cura, magna animi incuria.*

*Non induetur mulier veste virili, nec vir utetur veste fæminea: abominabilis apud Deum, qui facit hoc.*

## C A P. XCVI.

## O F D I E T.

<sup>a</sup> Rot. clauf.  
<sup>g</sup> E. 2. m. 26 in  
 d. ril. intitied  
*Ordinatio fup r*  
*menfuratione fir-*  
*culorum*  
<sup>b</sup> 2 E. 6. cap. 19.  
 5 E. 6. ca. 3.  
 5 El. ca. 5.  
 27 El. ca. 11.  
 35 El. ca. 7.  
 \* *Lent* 2. Saxon  
*Quinreime*  
*Quadragefima.*  
<sup>c</sup> Hereof fee the  
 4. part of the In-  
 ftitutes, cap.  
 The Court of  
 Audience, &c.  
 and Faculties.  
 \* Vide Britton  
 cap. 53. and  
 other books  
 make mention  
 of thefe.

<sup>d</sup> Luc. c. 21. v.  
 34. Rom. ca. 13.  
 v. 13. Ecclefiaf-  
 ticus, ca. 37. v.  
 30, 31.  
<sup>e</sup> Ecclefiaficus  
 31. 20.  
<sup>f</sup> Cicero.

Horace, 2. Ser. 2.

**T**H E R E was <sup>a</sup> an ordinance made by king E. 2. by advice of his councell againft the exceffe of diet, but becaufe it had not the ftrength of an act of parliament, it wrought no effect.

<sup>b</sup> It is provided by ftatutes made in the reigns of E. 6. and queen Elizabeth, that no flefh fhall be eaten on fifh-days, viz. Friday, Saturday, embring days and vigils, and the time of \* Lent; <sup>c</sup> and for licences to eat flefh on fifh-days, &c. See the preamble of the ftatute of 2 E. 6. ca. 19.

Embring days, fo called becaufe in former times when they fafted they put afhes or embers on their heads, Job 2. 12. Jer. 6. 26. 2 Sam. 13. 19. And as the naturall conversion of the flefh of the body is to duft, fo the fins of the foul (unre;ented) are turned to fire, and this was fhadowed under embers that ever keep fire.

\* Thefe embring days are the week next before Quadragefima, fo called, for that it is the fortieth day before Eaſter, and is the firft Sunday in Lent. So Quinquagefima the Sunday fifty days before Eaſter, Sexagefima fixty days before Eaſter, and Septuagefima feventy days before Eaſter.

Before thefe late acts the eating of flefh on Fridays was punifhable in the eccleſiaſticall court, as yet it is, the jurifdiction being fixed by the faid acts.

But there is no act of parliament againft exceffe of diet, for it is known to be fo hurtfull for mans body, and fo obſcureth the faculties of the mind, as the underſtanding, memory, &c. as to men, ſpecially to Chriſtian men, there needeth no law at all to be made, ever being mindfull of that caveat, <sup>d</sup> *Attende autem vobis, ne forte graventur corda veſtra in crapula, et ebrietate, &c.*

<sup>e</sup> *Vigilia, et cholera, et tortura viro infrunito; ſomnus ſanitatibus hominis parco, dormiet uſque in mane, et anima illius cum ipſo delectabitur.* The morall heathen men by the light of nature agree hereunto. <sup>f</sup> *Tantum tibi et potus adhibendum eſt, ut reficiantur vires, non ebrientur.*

*Accipe tu, victus tenuis quæ, quantaque ſecum  
 Affirat, imprimis valeas bene: nam variæ res  
 Ut nocant homini, credas, memor illius eſcæ,  
 Quæ ſimplex olim tibi ſedere: at ſimul aſſis  
 Miſcueris elixa: ſimul conchyliæ turdis:  
 Dulcia ſe in bilem vertent, ſtomachoque tumultum  
 Lenta feret pituita: vides, ut pallidus omnis  
 Cæna deſurgat dubia? —————*

*Ex plenitudine generantur morbi, qui ſuperant medicorum artem.*

King Edgar permitting many of the Danes to inhabite here (s who first brought into this realm excessive drinking) was in the end constrained to make a law against this excesse (which never cometh alone) driving certain nails into the sides of their cups, as limits, and bounds. which no man upon great pain should be so hardy as to transgresse.

William of Malmesbury, comparing Englishmen and Normans together, saith, that in his time, the English manner was to sit bibbing whole houres after dinner, <sup>h</sup> and that the Norman fashion was to walk the streets with great troops, with idle and loose serving-men following them, both which were causes of many disorders and outrages.

<sup>1</sup> If the excesse of drinking extend to the loathsome and odious vice of drunkenesse, it is punishable by act of parliament. And to say the truth the ancient Britains were free from this crime.

*Eccc Britannorum mos est laudabilis iste,  
Ut bibat arbitrio pocula quisque suo.*

And the laws against drunkenesse are very new.

Nothing is here said against that great peacemaker, and branch of liberality, orderly hospitality, but against the dainty and disorderly excesse of meats and drinks, which is a species of prodigality: for it is provided by act of parliament that the grace of hotpitality shall not be withdrawn from the needy.

See the statute of 37 E. 3. ca. 8. against excessive apparell and diet: but it was repealed in the next parliament, 38 E. 3. ca. 2.

g From whence excesse of drinking in England came.

h From whence troops of idle serving men came into England.

<sup>14</sup> Jacobi, c. 5.

See 1 Ja. ca. 9.

7 Ja. ca. 10.

21 Ja. c. 7. an excellent law.

*Una Janus Janis nullam potare salutem.*

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C A P. XCVII.

OF BUILDINGS.

**W**E have not read of any act of parliament now in force made against the excesse of building, or touching the order or manner of building: but it is a wasting evill, whereunto some wise men are subject.

But the common law doth prohibit any subject to build any castle, or house of strength imbattled, &c. without the kings licence, for the danger that might ensue. <sup>a</sup> Also the common law prohibiteth the building of any edifice to a common nuisance, or to the nuisance of any man in his house, as the stopping up of his light, or to any other prejudice or annoyance of him. *Ædificare in tuo proprio solo non licet, quod alteri noceat.*

<sup>b</sup> In Deuteronomy it is said, *Cum ædificaveris domum novam, facies murum tecti per circuitum, ne effundatur sanguis in domo tua, et sis reus, labente alio, et in præceptis ruente.*

<sup>d</sup> I like well the counsell to a nobleman, whosoever gave it. *Si quis (ait ille) ædificare domum, inducat te necessitas, non voluptas; cupiditas ædificandi ædificando non tollitur; nimia et inordinata cupiditas ædificandi expectat ædificii conditionem; turris completa, et arca evacuata faciunt tarde hominem sapiantem.*

*Ædificare*

See the 1 part of the Institutes. sect. 1. fo 5. a.

Vet. Mag. Cart. 1. part, fo. 162.

cap. Eschaetry, &c. 14 H. 6. nu.

7. licence to the D. of Glouc. to imbattel Greenwich.

<sup>a</sup> Li. 9. f. 54 & 58. Lib. 5. fo. 101. &c.

<sup>b</sup> Deut. 22. 8.

<sup>c</sup> Battlements. This was for safety only.

<sup>d</sup> Bernhard. consilium.

W. 1. 3 E. 1. ca. 1.

Euripides translated by Sir Th. Moor.

*Ædificare domos multas, et pascere multos,  
Est ad pauperiem semita laxa nimis.*

To build many houses, and many to feed,  
To poverty that way doth readily lead.

Of these three it hath been truly said: *Vestium, convivorum, et ædificiorum luxuria ægre civitatis sunt indicia, et species prodigalitatis.*

Vide the like in the Repist. 36. b. Prohib. de decimis seperatis. In Epist. decret. Innocent. 3. l. 10. pag. 228.

Tr. 20 E. 1. Rot. 13 in banco Rich. de Turnys case. Eborum.

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\* Lib. 10. fo. 27. Le case de Suttons hospitall. See the statute of 39 El. cap. 4. whereby authority is given to justices of peace to build and erect houses of correction, &c. <sup>a</sup> 39 El. ca. 5. <sup>b</sup> 3 Car. ca. 1. <sup>b</sup> *Tumba, tumulus, sepulchrum.*

<sup>c</sup> 9 E. 4. 14. the La Wiche case, wife of Sir Hugh Wiche. Mich. 10. Ja. in communi banco int' Corven & Pym.

But by the common law, and generall custome of the realm, it was lawfull for bishops, earls, and barons to build churches, or chappels within their fees: and hereof king John informed pope Innocentius the Third (naming only, *honoris causa*, the bishops and baronage of England, albeit this liberty extended to all) with request that this liberty to the baronage might be confirmed. To these letters the pope made this answer, *Quod enim de consuetudine regni Anglorum procedere regia serenitas per suas literas intimavit, ut liceat tam episcopis, quam comitibus, et baronibus ecclesias in feudo fundare, laicis quidem principibus id licere nullatenus denegamus, domo lo dioceani episcopi eis suffragetur assensus, et per novam institutionem veterum ecclesiarum justitia non lædatur.* Whereas the baronage had absolute liberty before, now the pope addeth the consent of the bishop: but that addition bound not, seeing it was against the liberty of the baronage warranted by the common law: and we would not have rehearsed this epistle, but that it is a proof what the generall custome of the realm was concerning the building of churches by the baronage of England. And albeit they might build churches without the kings licence, yet could they not erect a spirituall politique body to continue in succession, and capable of indowment without the kings licence: but by the common law before the statutes of mortmain, they might have indowed this spirituall body once incorporated, *perpetuis futuris temporibus*, without any licence from the king, or any other.

And as the law is in cases of devotion and religion, so it is in cases of charity: any man may erect and build a house for an hospitall, school, workinghouse, or house of correction, or the like, without any licence, for that is but a preparation, and may be done as owner of the soyl; but by the common law could not incorporate any of them without licence, but now he may, and indow them with lands in certain cases, <sup>a</sup> by the statutes of 39 Eliz. cap. 5. <sup>b</sup> 3 Car. ca. 1. as in the second part of the Institutes in the explication of those statutes it appeareth.

Concerning the building or erecting of <sup>b</sup> tombs, sepulchres or monuments for the deceased in church, chancell, common chappell, or churchyard in convenient manner, it is lawfull, for it is the last work of charity that can be done for the deceased, who whiles he lived was a lively temple of the Holy Ghost, with a reverend regard, and Christian hope of a joyfull resurrection. And the defacing of them is punishable by the common law, as it appeareth in <sup>c</sup> the book of 9 E. 4. 14. a. And so was it agreed by the whole court, Mich. 10 Jac. in the common place, between Corven and Pym. And for the defacing thereof, they that build or erect the same shall have the action during their lives, (as the lady Wiche had in the case of 9 E. 4.) and after their decease, the heirs of the deceased shall have the action. But the building, or erecting

of the sepulcher, tomb, or other monument ought not to be to the hinderance of the celebration of divine service. And in that case of Corven it was resolved, that albeit the freehold of the church be in the parson, yet if a lord of a mannor, or any other, that hath an house within the town or parish, and that he, and all those whose estate he hath in the mansion house of the mannor, or other house, hath had a seat in an isle of the church, for him and his family only, and have repaired it at his proper charges, it shall be intended that some of his auncestors, or of the parties whose estate he hath, did build and erect that isle for him and his family only; and therefore if the ordinary endeavour to remove him, or place any other there, he may have a prohibition. <sup>d</sup> It was further resolved, that if any man hath a house in a town or parish, and that he and those whose estate he hath in the house, hath had time out of mind a certain pew, or seat in the church maintained by him and them, the ordinary cannot remove him, (for prescription maketh certainty, the mother of quietnesse) and if he doe, a prohibition lyeth against him. <sup>e</sup> But where there is no prescription, there the ordinary that hath the cure, and charge of souls may for avoiding of contention in the church or chappell, and the more quiet, and better service of God, and placing of men according to their qualities and degrees, take order for the placing of the parishioners in the church or chappell publique, which is dedicate and consecrate to the service of God.

Nota, funerall expences according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever, for that is *opus pium*, or *charitativum*.

Amongst the people of Almighty God, as it appeareth in the holy history, sepulture was ever had in great reverence, not only of kings, but of other men; as (amongst many others) good old Barzillai, when he had excused himself for not going with the king to Jerusalem, he concluded, *Obsecro ut revertar servus tuus, et moriar in civitate mea, et sepeliar juxta sepulchrum patris mei, et matris meae, &c.*

And also the morall heathens had building and erecting of sepulchers, or monuments in great account, as it doth appear by the seven wonders of the world, which for memory may be expressed in these few verses.

1. *Pyramides Memphis,* 2. *Babylonis mœnia celsæ,*
  3. *Templum ingens Ephesi virgo Diana tuum,*
  4. *Mausoli Cariae monumentum,* 5. *Raræque Phœno*
  6. *Turris,* 6. *Olympiaci splendida imago Jovis,*
  7. *Denique apud Rhodios splendens statua Phœbi:*
- Hæc septem mundus mira, viator, habet.*

Besides the religious, and Christian regard abovesaid, these monuments do serve for four good uses and ends. First, for evidence, and proof of descents, and pedegrees. Secondly, what time he that is there buried deceased. Thirdly, for example, to follow the good, or to eschew the evill. Fourthly, to put the living in mind of their end, for all the sons of Adam must die. *Statutum est hominibus semel mori.*

*Monumentum*

Barth. Cassaneus  
fo. 13. Conclus.  
29. Actio datur,  
si vis arma in  
aliquo loco po-  
sita delevit, seu  
abrasit, &c.

<sup>d</sup> 3 H. 7. 12. a.  
per Hussy accord.  
Pasch. 10 Jac.  
in curia Cam.  
Stellata, inter  
Hussy plaintiff.  
& Kath. Layton,  
& al' Defendants  
issint resolve per  
le court.

<sup>e</sup> 3 H. 7. 12. a.  
acc. 12 H. 7.  
12. per Hullye.

2 Sam. 19 37.

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*Monumentum servat alicujus rei memoriam aliter interituram, eaque nobis repræsentat :* and therefore a monument is called a memoriall.

*Monumentum dicitur à monendo ; quicquid enim nos monet est monumentum, ut sepulchrum, quòd nos sumus mortales.*

*Cum tumulum cernis, tum tu mortalia spernis :  
Esse memor mortis, sisque ad cœlestia fortis.*

It is to be observed, that in every sepulcher, that hath a monument, two things are to be considered, viz. the monument, and the sepulture or buriall of the dead, \* The buriall of the cadaver (that is *caro data vermibus*) is nullius in bonis, and belongs to ecclesiasticall cognifance, but as to the monument, action is given (as hath been said) at the common law for defacing thereof.

\* Britton, fo. 84. b.

Stow in his Survey of London, fo. 19.

\* For so is the truth.

Ro. Hovenden anno Dom. 1177. Holl. eodem anno fo. 101. b. 20.

In the year of our Lord 1586, and in the 28 year of the reign of that glorious queen Elizabeth, was the old gate called Ludgate in the city of London (as Stow saith) taken down to be new builded: there was found couched within the old wall thereof a stone, wherein was graven in the Hebrew tongue and characters, \* an epitaph, signifying in English: This is the tomb of Rabbi Moses son of the illustrious Rabbi Isaac: which certainly was before the 23 year of the reign of H. 2. *anno Domini 1177*, for before that time all the Jews in England were buried within the city of London, and in that year, saith Hovenden, *Dominus rex pater dedit licentiam Judæis terræ suæ habendi cæmeterium in qualibet civitate Angliæ, extra mœnia civitatum, ubi possunt rationabiliter, et in competenti loco emere, ad huiusmodi mortuos suos: prius enim omnes Judæi mortui Londoniâ sepeliendi.*

And albeit churches or chappels may be built by any of the kings subjects, (as hath been said) without licence, yet before the law take knowledge of them to be churches or chappels, the bishop is to consecrate or dedicate the same: and this is the reason, that a church or not a church, a chappel, or not a chappel, shall be tried and certified by the bishop.

8 H. 6. 32. 37.

See for this dedication or consecration the 43 chapter of Ezechiel, the 23 chapter of Genesis, the 90 Psalm, the 24, 26, 27, 84, and 134 Psalms, the 2 of Samuel 6. 10 of Saint John, ver. 22. to the end.

*Vide inter leges Edwardi Confessoris, cap. 3. Similiter ad definitiones, ad synodos, et ad capitula venientibus, &c. in cuncto, et redendum summa pax.*

De subterraneis, substructionibus, et cryptis.

We find in ancient times that vaults, hollow places, or substructions under the ground were made by men for receipts, or receptacles for keeping of their wives, children, money, and good secrets, to avoide violence, and rapine in time of hostility or rebellion, and we find no law against them.

Tacitus.

These kind of buildings we had from the Germans, as we find it in Tacitus, who treating of the old Germans saith, *Subterranos specus aperire, et si quando hostis advenit, aperta populantur, abdita autem et defossa aut ignorantur, aut eo ipso fallunt, quod quaerenda sunt.* They use to build vaults under the earth, and if the enemy come, he destroyeth all open and above ground, but such things as lie hidden in the cave, either they lie unknown, or at least they deceiye him, in that he is enforced to find them out.

Neither



Neither have we found any licence of the king to make them, nor punishment of any that made them without licence, and yet many have been made by many subjects, some whereof \* we have seen.

<sup>a</sup> We read of Alexander bishop of Lincoln, in the reigns of H. 1. and king Stephen, a Norman born, who was, *infanis substructionibus ad insaniam delictatus.*

<sup>b</sup> No person can build or erect light-houses, pharos, sea-marks or beacons without lawfull warrant and authority.

*Lumina noctivagæ tollit pharus æmula luncæ.*

In light-house top is rear'd the light,  
As high as the moon that walkes by night.

<sup>c</sup> Provision was made by authority of parliament for building and erecting blockhouses, bulwarks, piles, and the like, for without parliament subjects cannot be charged with building <sup>d</sup> or erecting of them, and that act is expired.

<sup>e</sup> The lord of the soil may build a windmill, sheepecote, dairy enlarging of a court necessary, or a curtilage in grounds, where men have common of pasture.

<sup>f</sup> A man cannot erect any building upon his own ground in the kings forest, but it is a purpresture, and may either be demolished or arrented to the kings use, &c. at a justice seat.

Concerning houses of husbandry and tillage, the statutes of 4 H. 7. cap. 19. 7 H. 8. ca. 1. 27 H. 8. ca. 22. 5 E. 6. ca. 5. 5 El. cap. 2. are repealed by the statute of 21 Jac. cap. 28. and the statutes of 39 El. ca. 1. & 2. are expired, for that they were so like labyrinthes, with such intricate windings and turnings, as little or no fruit proceeded of them.

<sup>g</sup> No man can erect an house or building to the nuisance of any other.

<sup>h</sup> See where a man hath any house or mill, &c. and having any priviledge or thing appurtenant thereunto, and pull it down and build a new, where the priviledge or appurtenant remain and where not.

<sup>i</sup> Concerning the erecting, &c. of cotages, see the statute of 31 El. ca. 7. which could not be restrained in such sort as they are, but by authority of parliament.

There was a statute made *anno* 35 El. (when I was speaker) against buildings in the cities of London or Westminster, or within three miles of the gates of the city of London, and against the dividing and converting of any dwelling house or building into divers habitations, and against inmates, but that endured but ten seven years, and until the end of the next session of parliament, which act, being holden dangerous, was not continued at the session of parliament holden in 43 Eliz. being the next session after the seven years, and therefore expired with the same. In the mean time there was a law made against new buildings, &c. which then was a warrant, and since hath been a colour for divers proceedings in courts of justice, not observing the expiration of that law; but now that law hath long since lost his force, and the ancient and fundamentall common law is to be followed.

*Sylliva*, or *sulliva* is a word derived from the Saxon *sylle*, and signifieth a poste, or plate fixed in the ground: the Saxon word

<sup>\*</sup> In the manner of Minister Lovel in cons'. Oxon' &c.

<sup>a</sup> Cambden Linc. pag. 4 6.

<sup>b</sup> See the statute of 8 El. ca. 15. and the letters patents of the Lord Admirali.

<sup>c</sup> 4 H. 8. ca. 1.

<sup>d</sup> De propugnaculis, munitis, munitis, munitis, &c. of bulwarks, barbicans, blockhouses, piles, &c.

<sup>e</sup> 13 E. 1. ca. 46.

32 Aff. 5.

7 H. 4. 30.

<sup>f</sup> 7 El. Dier 240.

<sup>g</sup> See the 2 part of the Institutes. W. 2. ca. 24. lib. 5. fo. 101. lib. 8. fo. 46. lib. 9. fo. 54. 5<sup>o</sup>.

<sup>h</sup> See lib. 4. f. 84. Lutterels case, and the authorities there cited.

<sup>i</sup> 31 Eliz. ca. 7.

Lamb. perambulation of Kent. These words, you shall read in records concerning priviledges.

word is not yet out of use, for every man knows what a ground-fille is.

*Pera*, a peer, derived from the Latin word *petra*: *plance*, of the English word, planks, for boords or tables, in use also at this day.

Having spoken of erecting of houses and buildings, &c. we will tell you what we find in our books and records of dilapidation, and decay of buildings.

<sup>k</sup> Dilapidation of ecclesiastical palaces, houses, and buildings is a good cause of deprivation.

<sup>l</sup> It appeareth by the statute of 4 H. 4. cap. 2. that *depopulatores agrorum* were great offenders by the ancient law, and that the appeal or indictment thereof ought not to be generall, but in special manner; and provides, that the offenders therein might have their clergy. They are called *depopulatores agrorum*, for that by prostrating or decaying of the houses of habitation of the kings people, they depopulate, that is, dispeople the towns.

*Prohibitio regis quod incolæ de villa de Southampton non prosternent domos suas in alias migraturi regiones.*

*Simile pro magna Jermenutha.*

That which may lawfully be prohibited before it be done, may be justly punished after it be done.

And herewith we will close up this chapter: that the law doth favour the supportation of houses of habitation, and use for mankinde.

## C A P. XCVIII.

### *De Lupanaribus et Fornicibus, &c.*

#### Brothel-houses, Estuis, Bordelloes.

\* Numb. 25. 9.  
Deut. 23. 18.  
Ezek. 16. 24. 31.  
39. Joel 3. 3.  
2. Mach. 4. 12.  
Hospes meretricum Lena. Leno, unde Lencinium.

**T**HE keeping of them is against the law of God, on which the common law of England in that case is grounded. \* *Nec offeres mercorem prostibuli, nec precium canis in domo Dei tui, &c. Quia abominatio est utrumq; apud dominum Deum tuum.*

And the keeper, he or she, of such houses is punishable by indictment at the common law by fine and imprisonment: for although adultery and fornication be punishable by the ecclesiastical law, yet the keeping of a house of bawdrie or stewes, or brothel-house, being as it were a common nuisance, is punishable by the common law, and is the cause of many mischiefs, not only to the overthrow of the bodies, and wasting of their livelyhood: but to the indangering of their soules. For the mischiefs ensuing hereupon, see 11 H. 6. cap. 1. 1 H. 7. fo. 6. 12. 13 H. 7. 6. 27 H. 8. Rot. Parl. 14 R. 2. nu. 32.

King H. 8. suppressed all the stewes or brothel-houses, which long had continued on the Bankside in Southwark, for that they were (as hath been said) prohibited by the law of God, and by the law of this land. And those infamous women were not buried in Christian

By proclamation under the great seale 30 Martii. 37 H. 8.

29 E. 3. 16.  
2 H. 4. f. 3.  
9 E. 4. 34.  
14 H. 4. ca. 2.  
lib. 11. fo. 29.  
Alex. Poulters case.

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Dorf. Claus.  
an. 43 E. 3.  
m. 23.  
Rot. Claus.  
anno 21 R. 2.  
m. 15.  
First part of the  
Institutes, f. 54.  
b. 56. b.