Here it is to be obſerved, that every man ſhall plead that, which is apt and pertinent to his caſe; and therefore a diſſeiſor that is not tenant of the land ſhall not plead any thing hat concerns the tenantie of the land, as a releaſe of all actions realls, but ſhall plead a releaſe of actions perſonalls, or any other plea that doth excuſe himſelf of damages.

1. Part of the Inſtitutes, ſect. 494. lib. 7. fol. 26.

(20) *Et ſi illa exceptio proponatur per balivum, non propter hoc differatur captio aſſiſæ, nec judicium, ſuper reſtitutione tenementi,* &c.] In an aſſiſe, as by this branch it appeareth, the bailife cannot plead any matter of record, either in barre or to the writ; for the bailife cannot plead any matter, or any plea out of the point of the aſſiſe, nor any thing that is not triable by the aſſiſe, nor any plea which he cannot conclude, *Et ſi trove ne ſoit nul tort, nul diſſeiſin.* Hereby it appeareth what treaſure may be found in the mines of theſe ancient ſtatutes.

1 Aſſ. Pl. 1. 2 Aſſ. Pl. 4. 8 E. 3. 1. 8 Aſſ. 2. 9 E. 3. 13. 16. 9 Aſſ. 4. 25 Aſſ. 26. 8 H 6. 9. 21 H. 6. 58. 22 H. 6. 44. 1 E. 4. 4. 8 H. 7. 11. 9 H. 7. 24. 11 H. 7. 11. F.N.B. 182. a.

And if therefore the bailife do plead any matter of record, yet the juſtices ſhall proceed, &c. and give judgement; but then the defendant named in the aſſiſe may come unto the juſtices, and verifie that there was ſuch a matter of record, &c. and he ſhall have a certificate of aſſiſe by force of this act.

And the writ that is given in this caſe is after judgement, but the certificate of aſſiſe that was at the common law was after verdict; and before or after judgement when the verdict was not well examined by the juſtices, &c. the juſtices of office might examine it, whereof we need not to treat any further in this place, for that this ſtatute doth not extend to that kinde of certificate; onely I may note two things, 1. That when the recognitors of the aſſiſe give a full generall verdict, there lyeth no certificate at the common law. 2. That if any of the recognitors of the aſſiſe that gave the verdict died, the certificate failed at the common law, for it was to ſupply the defect of their former verdict: ſee hereafter more of this matter in this chapter.

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Bract. l. 4. fol. 280, &c. 293. Britton, fo. 239. 43 Aſſ. 1. 5. Regiſt. 200. Judic' 22. 17 E. 3. 28. 12 H. 4. 9. 2 H. 5. 5. F.N.B. 180. 183. Vet. N.B. 111, &c. Hil. 19 E. 1. coram rege Rot. 35. Suff. 8 E. 2. Aſſ. 412. 12 H. 4. 9.

Note the words of the aſſiſe are *attachias eum, vel balivum ſuum,* &c. And the bayliffe plead in his own name; *I. de C. tanquam balivus A. de B. dicit:* and not *A. de B. per balivum ſuum.*

(21) *Eodem modo ſi defendens, contra quem tranſivit aſſiſa, in ſua abſentia oſtendat chartas, vel quiet' clam',* &c.] This branch doth not onely extend to an aſſiſe of novel diſſeiſin, but to the aſſiſe of *darrein preſentment, juris utrum,* and aſſiſe of mordaunc', and ſome have thought to an attaint alſo: ſo as the tenant ſhall not onely have a certificate of an aſſiſe by the former branch upon matter of record, but alſo by this branch upon deeds and quiet claimes, and the reaſon thereof is, for that the bayliffe could not plead the ſame.

Regiſt. Judic' 11, 12. 12 H. 4. 9. F.N.B. 183. c. f. & 196. c. 32 Aſſ. p. 1. 2 H. 5. 5. 33 H. 6. 20.

And it is to be obſerved, that after the bayly hath pleaded to the aſſiſe, the tenant may come before the aſſiſe taken, though it be after the aſſiſe awarded, and plead any deed, quiet-claime, or other matter of certificate, and ſhall not bee driven after the aſſiſe taken, &c. to ſue his certificate upon this act to trouble the tenant and the recognitors of the aſſiſe, *quia fruſtra fit per plura, quod fieri poteſt per pauciora.*

11 H. 7. 11. 11 Aſſ. p. 3. 11 E. 3. Aſſ. 85. 20 Aſſ. 6. 50 E. 3. 20.

(22) *Venire facias jurat' ejuſdem aſſiſæ: et ſi per veredictum juratorum,* &c.] Upon this branch it hath been conceived, that albeit that ſome of the former recognitors be dead, that it ſhall be tried by the former and by others; for though this act doth ordain that a *venire facias* ſhall be awarded to the jurors of the ſame aſſiſe, yet the

12 H. 4. 10. 7 H. 4. 45. 32 Aſſ. 1. F.N.B. 183. c.

the ſubſequent words be, *et ſi per verdictum juratorum*, and ſaith not *prædictorum*; ſo as upon this act an addition may be made.

32 Aſſ. p. 1. 14 E. 3. receit 134. Br. certificat Daſſ. 13. Paſch. 31 E. 3. fol. 35. in libro meo, le Counteſſe de Atholes caſe.

In an aſſiſe the plaintiffe made title to ten marks rent by ſpecialty of the graunt of the tenant, and the aſſiſe was taken by default, and after the tenant upon ſhewing of a deed of defeaſance of the ſame rent upon certain conditions to be performed on the plaintiffes part, or otherwiſe the rent to ceaſe, which he averred to be broken, which deed of defeaſance did beare date in a forein county, *viz.* in London, whereupon a certificate upon this ſtatute was prayed before the juſtices of aſſiſe, who adjourned the ſame in bank to be reſolved, whether a certificate did lie upon this forein defeaſaunce: where it was awarded that the certificate was maintainable, and that the deed of defeaſance being denied ſhould be tried in London, where it was found for the tenant, whereupon the certificate was remaunded to be taken in the county where the aſſiſe was brought: out of this record three things are to bee obſerved.

1. That a certificate doth lie upon a defeaſance bearing date in a forein county (as well as upon a charter or acquitance) which was tried by jurors of that forein county, and by none of the recognitors of the aſſiſe.

2. That a certificate lieth by this act upon a recovery by default, as well as where the tenant pleadeth by bayly to the aſſiſe.

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3. That the certificate muſt be ſued and adjudged in the county where the aſſiſe was ſued.

26 Aſſ. p. 5. 12 H. 4. 20. F.N.B. 182. c. W. 1. c. 26. 42 E. 3. 5. 4 E. 4. 10. 21 H. 7. 17. Stamf. Pl. Cor. 49. a. Itin.

(23) *Nec capiat vic' de cætero bovem à diſſeiſito, ſed à diſſeiſitore tantum.*] This oxe which the ſheriffe tooke was not any reward for doing of his office (*pro officio ſuo exequendo*) for that was prohibited by the ſtatute of W. 1. cap. 26. but this was a duty due by auncient cuſtome after the cauſe ended.

But where it was due onely from the diſſeiſor, the ſheriffe before this act did alſo incroach the like upon the diſſeiſee, which is reſtrained by this act, and to be taken onely of the wrong doer, and neither of the diſſeiſee, nor of the tenant that is no diſſeiſor.

(24) *Et ſi plures ſint diſſeiſitores in uno breve nominat, nihilominus de uno bove ſit contentus.*] This branch is in affirmance of the law, for ſeeing they are joyned in one writ, they are as to this purpoſe but as one diſſeiſor, and therefore but one oxe is due unto the ſheriffe.

26 Aſſ. p. 47. A man that is indicted and arraigned for two felonies, ſhall pay but for one deliverance onely, for though the felonies be ſeverall, yet the perſon that is delivered is but one.

(25) *Nec exigat bovem, niſi de precio 5. s. vel precium.*] Herein the makers of this law did adde this branch very providently, for there is nothing more incertaine then prices of things which oftentimes riſe and fall, and ſpecially of victuals, and therefore here having ſet down the price of the oxe, they adde, if that ſhould not bee the juſt price of the oxe, which they foreſaw might not continue long, then the ſheriffe ſhould have 5. s.

CAP.

CAP. XXVI.

IN brevibus de rediſſeiſina adjudicentur de cætero damna in duplo: et ſint rediſſeiſitores de cætero irreplegiabiles per commune breve. Et ſicut in ſtatuto de Merton proviſum fuit illud breve de his qui diſſeiſit' fuerint, poſtquam recuperaverint per aſſiſam novæ diſſeiſinæ, mortis anteceſſoris, aut per alias juratas ulterius de cætero habeat illud breve locum in illis qui recuperaverint per defaltam, reddition'em, aut alio modo ſine recognitione aſſiſarum vel juratarum.

IN writs of rediſſeiſin from henceforth double damages ſhall be awarded, and the rediſſeiſors ſhall not be repleviable hereafter by the common writ. And like as in the ſtatute of Merton the ſame writ was provided for ſuch as were diſſeiſed after they had recovered by aſſiſe of novel diſſeiſin, of mortdaunceſtor, or other jurates; even ſo from henceforth the ſame writ ſhall further hold place for them that ſhall recover by default, reddition, or otherwiſe, without recognition of aſſiſes or jurates.

(15 H. 7. f. 8. 1 Inſt. 154. 20 H. 3. c. 3. 52 H. 3. c. 8. Raſt. 548.)

By the ſtatute of Merton both the writ of *rediſſeiſin*, and of the *poſt diſſeiſin* were given. Merton, cap. 3.

This ſtatute is an act additionall in three ſeverall points.

1. Where the ſtatute of Merton gave but ſingle damages, this act doth give double damages both in the *rediſſeiſin* and *poſt diſſeiſin*, but the jury is to give the ſingle, and the court is to double them.

2. Where notwithſtanding the ſtatute of Merton and of Marlebridge, cap. 8. he might be replevied by the common writ, yet by this act he cannot ſo be. Marlb. cap. 8.

3. Where the ſtatute of Merton extended onely to rediſſeiſins upon recoveries in aſſiſe of *novel diſſeiſin* by verdict of the recognitors, and to *poſt diſſeiſins* upon recoveries by verdict onely; this act doth extend to recoveries by default, reddition, *aut alio modo*, as upon demurrer, &c. ſo as hereby the *rediſſeiſin*, and *poſt diſſeiſin* doe lie in many more caſes then they lay before. [417]

See before in the expoſition of the ſtatute of Merton and Marlebridge.

If an aſſiſe be brought againſt A. and B. and A. is found the diſſeiſor, and B. the tenant, and the plaintiffe recovereth, and B. the tenant diſſeiſeth the plaintiffe again, the plaintiffe ſhall have no *rediſſeiſin*, but a *poſt diſſeiſin*, becauſe a *rediſſeiſin* lieth not but againſt him that was party to the former diſſeiſin.

CAP. XXVII.

POSTQUAM aliquis poſuerit ſe in inquiſitionem aliquam ad proximum diem, allocetur ei eſſonium: ſed ad alios dies ſequentes per eſſonium non differatur captio inquiſitionis, ſive prius habuit eſſon', ſive non. Nec admittat' eſſon' poſt diem datum prece partium (1), *in caſu in quo partes conſentiunt venire ſine eſſonio.*

AFTER any hath put himſelf to an inqueſt, an eſſoin ſhall be allowed him at the next day; but all the other days following, the taking of the inqueſt ſhall not be delayed by the eſſoin, whether he were eſſoined before, or no; neither ſhall any eſſoin be allowed after day given *prece partium*, in caſe where the parties conſent to come without eſſoin.

(Fitz. Eſſoin. 15. 81. 83. 130. Dier, 224. 324. Bro. Parl. 5. Raſt. 297.)

Marlb. cap. 13. The ſtatute of Marlebridge did provide, *Quod poſtquam aliquis poſuerit ſe in inquiſitionem aliquam, &c. non habebit niſi unicum eſſonium, &c.* By which ſtatute it was not certainly limited when he ſhould have that one eſſoine, and thereof enſued a great miſchiefe, for the defendant would not be eſſoined but at the *habeas corpus*, and then the jurors ſhould loſe their iſſues, and the inqueſt ſhould not bee taken, to the great vexation and loſſe of the jurors.

9 H. 5. 12. Weſtm. 1. c. 41.

And therefore this ſtatute chiefly for the eaſe of the jurors provideth, that the defendant ſhould have but one eſſoine, and that eſſoine muſt be at the next day, and that is at the *venire facias*, and if he neglect that next time, he ſhall never have it after.

7 E. 2. eſſoin 81. 83. Dier, 15 El. 324. b. This act is to be intended onely of a plea perſonall, and of a common eſſoine, and not of an eſſoine *de ſervice le roy*, for that he may caſt when he will. See the expoſition upon the ſtatute of Marlebridge, cap. 13.

35 H. 6. 53. And albeit the words of this act are generall, yet it muſt be underſtood onely in caſes where an eſſoine doth lie, which is implied by this word *allocetur*, and therefore if the defendant come in by *exigent*, or *capi corpus*, and joyne iſſue *ad proximum diem*, he cannot be eſſoined, for that he either remaineth in ward, or goeth by mainpriſe, and therefore before this ſtatute could not be eſſoined; and this is a branch of reſtraint, and not of enlargement.

(1) *Nec admittatur eſſonium poſt diem datum prece partium.*] And the reaſon is, for that ſeeing this day is given by the prayer and agreement of the parties without any eſſoine, this ſtatute doth enact, that *poſt diem datum prece partium*, no eſſoine ſhall be admitted.

CAP. XXVIII.

CUM per ſtatutum Weſtm. 1. *ſtatuatur quod poſtquam terentes ſemel comparuerint in curia, non allocetur eis eſſonium in brevibus aſſiſarum* (1): *eodem modo* (2) *de cætero obſervetur de petentibus.*

WHEREAS by the ſtatute of Weſtminſter the Firſt, it was provided, that after the tenants have once appeared in the court, no eſſoin ſhould be allowed them in writs of aſſiſes; in like manner it ſhall be from henceforth obſerved againſt the demandants.

W. 1. cap. 41. (Fitz. Eſſoin, 65, 66. 68, 69. 78. 149. Raſt. 316.)

(1) *In brevibus aſſiſarum.*] This act extendeth not to aſſiſes of novel diſſeiſin no more then the ſaid ſtatute of W. 1. here recited doth: ſee before the expoſition of the ſtatute of W. 1. and the rather for that this act ſaith *de petentibus*, and the plaintiffe in an aſſiſe of novel diſſeiſin is called *querens* and not *petens*, but this act extendeth to mordaunc', *juris utrum*, and attraints, and doth remedy the miſchiefe of the demandants ſide, which was omitted in the ſtatute of W. 1. And note that a writ of attraint is here comprehended under this word *aſſiſa*, becauſe it hath the quality of an aſſiſe, *viz.* to have a jury returned the firſt day, and ſo in equall miſchiefe.

(2) *Eodem modo.*] This is an act of reference, that in all caſes where the act of W. 1. doth take away the common eſſoin from the tenant after appearance, there this act doth take it from the demandant after appearance. See more of this matter in the expoſition upon the ſaid act of W. 1.

CAP. XXIX.

BREVE de tranſgreſſione (1) *ad audiendum et terminandum de cætero non concedatur coram aliquibus juſticiariis, exceptis juſticiariis de utroque banco* (2), *et juſticiariis itinerantibus, niſi pro enormi tranſgreſſione, ubi neceſſe eſt apponere feſtinum remedium* (3). *Et dominus rex de gratia ſua ſpeciali* (4) *hoc duxit concedendum. Nec etiam de cætero concedatur* (5) *breve ad audiend' et terminand' appella coram juſtic' aſſign', niſi in ſpeciali caſu, et certa cauſa, cum*

A WRIT of treſpaſs *(ad audiendum et terminandum)* from henceforth ſhall not be granted before any juſtices, except juſtices of either bench, and juſtices in eyre, unleſs it be for an heinous treſpaſs, where it is neceſſary to provide ſpeedy remedy, and our lord the king of his ſpecial grace hath thought it good to be granted. And from henceforth a writ to hear and determine appeals before juſtices aſſigned ſhall not be granted but in a ſpecial caſe, and for a cauſe

cum dominus rex hoc præceperit. Sed ne hujusmodi appellati, vel indictati diu detineantur in prisona, habeant breve de odio et atia (6), *sicut in Magna Charta, et aliis statutis dictum est.*

a cause certain, when the king commandeth. But lest the parties appealed or indicted be kept long in prison, they shall have a writ of *odio et atia*, like as it is declared in Magna Charta and other statutes.

Mag Chart. c. 26. W. 1. cap. 11. Glouc'. cap. 9. (4 Inst. 182. Stat. 2 E. 3. c. 2. Regist. 123. Regist. 133. 9 H. 3. stat. 1. c. 26.)

(1) *Breve de transgressione.*] Albeit the statute mentioneth onely a writ, because commissions were in those dayes most commonly graunted by writ, as the commission to justices in eyre, justices of oier and terminer, of gaole delivery, &c. yet this act doth not onely extend to authority graunted by writ, but by commission also.

[419] Transgression here is taken in a large sense, for any outrage or misdemeanour.

Commissions of oier and terminer are of three sorts.

2 E. 3. cap. 8. One generall at the sute of the king, as to hear and determine all manner of treasons, felonies, riots, routs, trespasses, &c.

29 E. 3. 37. Another particular at the sute of the party, and that in two sorts: one naming particularly the party grieved, as *Rex dilectis et fidelibus suis A. B. & C. salutem. Ex gravi querela D. accepimus quod E. F. & G. et alii malefactores, et pacis nostræ perturbatores in ipsum D. apud N. vi et armis insultum fecerunt, &c.* And the other is more generall, and of this form, *Rex dilectis, &c. Ex clamosis querimoniis diversorum hominum de com' N. ad nostrum sæpius pervenit auditum, quod A. episcopus W'inton', &c. plures et diversas oppressiones, &c.*

The third is aswell at the suit of the king, as of the party, all in one writ or commission, as hereafter in this chapter shall be touched.

The mischief before the making of this act was, that commissioners of oier and terminer, &c. were procured, and named by the parties whom the matter concerned; so as the commissioners were neither indifferent, nor of sufficient knowledge and learning.

F. N. B. 117. F. N. B. 122. i. And the mischief was the greater, for that when a man sued out a commission of oier and terminer at the suit of the party against divers persons for taking of his goods, and for essoigning the same, to the end to waste and convert the same to their own uses; the party that sued the oier and terminer should have a writ to the sheriffe, rehearsing this matter, and command him to arrest the goods, and to put them in safeguard untill it be otherwise provided or

F. N. B. 122. f. adjudged by the justices of oier and terminer, &c. and if upon this sute it were found for the plaintife, the justices of oier and terminer might restore the party to his goods, or give damages to him for them, whercin it doth vary from an action of trespasse sued before justices of the one bench or the other: and where the party in particular is to be restored to his goods, or to recover damages, the sute is properly by writ, according to the words of

Reg. 123. 34 E. 3. cap. 1. this act (*Breve de transgressione:*) and by the statute of 34 E. 3. the commissioners or justices named in the writ are to be named by the court, and not by the party.

The

The ancient form of commiſſions of oier and terminer were of all treaſons, felonies, &c. grievances, extortions, and deceits made to the king and to his people, aſwell at the ſuit of the king, as of the party, &c. 42 Aſſ. p. 5.

If a commiſſion of oier and terminer be diſcontinued or expired, &c. the indictments and records ſhall be removed into the kings bench, as to their proper center. 44 E. 3. 31. F.N.B. 243. 38 H. 8. Commiſſ. Br.

(2) *Exceptis juſticiariis de utroque banco.*] Here is remedy for both the ſaid mitchiefs, for the juſtices of either benches are preſumed to be men of integrity, indifferencie, ſkill, and knowledge.

Hereof you may read in Stamford. Plac. cor. 55, 56.

(3) *Niſi pro enormi tranſgreſſione, ubi neceſſe eſt apponere feſtinum remedium.*] Here it is called, *enormis tranſgreſſio.*

In the ſtatute of 2 E. 3. cap. 2. it is called, *grand leads*, or horrible treſpaſſes.

Fitzherbert ſaith, that this writ is to be granted when a great aſſembly, inſurrection, or heinous miſdemeanour, or treſpas is committed in any place, then the manner and uſe is to make ſuch a commiſſion, to hear and determine ſuch miſbehaviours. F.N.B. ubi ſup.

The Regiſter termineth it, *enormis ſeu horribilis.* Regiſt. 125. a.

And if the treſpas be not *enormis ſeu horribilis*, there lyeth a writ of *ſuperſedeas*, or revocation, *quia non enormis, ſeu horribilis.* Regiſt. 124. b. 12 Aſſ. p. 21.

(4) *Dom' rex de gratia ſua ſpeciali*, &c.] This is an act of grace, for hereby the king is reſtrained of his power to grant commiſſions of oier and terminer to whom he will at his pleaſure. [420] Magna Charta, c. 8. W. 1. c. 42.

The ſtile of the record before juſtices or commiſſioners of oier and terminer, ſometimes have been, *côram rege et concilio ſuo apud S.* &c. and ſometime, *coram concilio regis apud*, &c. whereof take one record for example, ſtiled thus: Nota.

Placita coram concilio regis apud Weſtmon' de termino Paſchæ, anno regni regis E. 3. 11. Nicholas Keriels caſe in a commiſſion of oier and terminer. Paſc. 11 E. 3. Coram conc. regis.

(5) *Nec etiam de cætero concedatur.*] An appeal doth lye either by writ originall, or by bill. Brit. fol. 5. 22 E. 3. Coron. 97, 98. 4 H. 6. 15. Regiſt. judic. 76. 3 H. 7. ca. 1. 9 H. 4. 2. 13 H. 4. 10. 17 E. 3. 13. 22 E. 4. 19. Dier, 120.

The originall writ iſſueth out of the chancery. By bill, as in the countie before the ſherife and coroners; alſo before juſtices of gaol-delivery, if the appellee be in priſon before them, and (as it appeareth by this act) before commiſſioners of oier and terminer, before juſtices of *niſi prius*, and by bill alſo before the juſtices of the kings bench.

It ſeemed to Fitzherbert, in abridging of the caſe of 44 E. 3. that juſtices of peace having power by the ſtatute of 34 E. 3. (which there is called, *le novel ſtatute*) might receive an appeal by bill, becauſe they had power to hear and determine felonies; but that ſtatute doth give them power to hear and determine felonies at the ſute of the king, and the book at large ſpeaketh onely of juſtices of gaol-delivery. 44 E. 3. 44. tit. Coron. F. 95.

(6) *Sed ne hujuſmodi appellati, vel indictati diu detineantur in priſona, habeant breve de odio et atia.*] See before in Magna Charta, cap. 26. & 29. Gloc. cap. 9. this branch well explained.

CAP. XXX.

ASSIGNENTUR de cætero duo juſticiarii jurati, coram quibus, et non aliis (1) *capiantur aſſiſæ novæ diſſeiſinæ, mortis anteceſſoris, et attinctæ: et aſſocient ſibi duos, vel unum de diſcretioribus militibus com', in quem venerint: et capiant aſſiſas prædictas, et attinctas, ad plus ter per annum* (2); *viz. ſemel inter quindenam ſancti Johannis Baptiſtæ* (3), *et gulam Auguſti* (4): *et iterum inter feſtum exaltationis ſanctæ crucis, et octab. ſancti Michaelis: et tertio inter feſtum epiphaniæ, et feſtum purificationis beatæ Mariæ. Et in quolibet com', ad quamlibet captionem aſſiſæ, antequam recedant, ſtatuant diem de reditu ſuo* (5); *ita quod omnes de com' ſcire poſſint eorum adventum; et de termino in terminum adjornent aſſiſas* (6). *Si per vocationem warranti* (7), *per eſſon'* (8), *vel per defectum recognitorum, ſi ad unum diem captio earum differatur. Et ſi* [421] *aliqua de cauſa viderint, quod utile ſit, quod aſſiſæ mortis anteceſſoris per eſſonium, vel vocationem warranti reſpectuate adjornentur in banco, liceat eis hoc facere, et tunc mittant juſticiar' de banco recordum cum brevi originali. Et cum loquela pervenerit ad captionem aſſiſæ, remittatur loquela* (9) *cum brevi originali per juſticiar' de banco, ad priores juſticiar': coram quibus capiatur aſſiſa. Sed de cætero dent juſtic' de banco in hujuſmodi aſſiſis ad minus quatuor dies per annum, coram præfat' juſtic' aſſignatis, ut parcant laboribus et expenſis. Determinentur inquiſitiones capiendæ de tranſgreſs' placitat' coram juſticiar' de utroque banco: niſi ita enormis ſit tranſgreſſio, quod magna indigeat examinatione. Determinentur etiam inquiſitiones coram eis de aliis placitis*

FROM henceforth two juſtices ſworn ſhall be aſſigned, before whom, and none other, aſſiſes of novel diſſeiſin, mortdaunceſtor, and attaints ſhall be taken, and they ſhall aſſociate unto them one or two of the diſcreeteſt knights of the ſhire into which they ſhall come; and ſhall take the foreſaid aſſiſes and attaints but thrice in the year at the moſt, that is to ſay, firſt between the quinzime of Saint John Baptiſt, and the gule of Auguſt; and the ſecond time, between the feaſt of the exaltation of the holy croſs, and the utas of Saint Michael; and the third time, between the feaſt of the epiphany, and the feaſt of the purification of the bleſſed Mary. And in every ſhire at every taking of aſſiſes before their departure, they ſhall appoint the day of their return, ſo that every one of the ſhire may know of their coming, and ſhall adjourn the aſſiſes from term to term, if the taking of them be deferred at any day by vouching to warranty, by eſſoin, or by default of jurors. And if they ſee that it be profitable for any cauſe that aſſiſes of mortdaunceſtor, being reſpited by eſſoin or voucher, ought to be adjourned into the bench; it ſhall be lawfull for them to do it, and then they ſhall ſend the record with the original writ before the juſtices of the bench; and when the matter is come to the taking of the aſſiſe, the juſtices of the bench ſhall remit the matter to the former juſtices before whom the aſſiſe ſhall be taken. But from henceforth the juſtices of the bench in ſuch aſſiſes ſhall give four days at the leaſt in the year before the ſaid juſtices aſſigned, for to ſpare expence and labour. Inquiſitions of treſpaſs

placitis placitatis in utroque banco, in quibus facilis eſt examinatio, ut quum dedicitur ingreſſus, vel ſeiſina alicujus, vel in caſu quum de uno articulo ſit inquirend'. Sed inquiſitiones de groſſis et pluribus articulis, qui magna indigeant examinatione, capiantur coram juſtic' de bancis, niſi ambæ partes petant (10); *quod inquiſitio capiatur coram aliquibus de ſocietate, cum in partes illas venerint: quod de cætero non fiat niſi per duos juſtic', vel unum, cum aliquo milite de com', in quem partes conſentiunt. Nec atterminentur hujuſmodi inquiſitiones coram aliquibus juſticiariis de banco, niſi ſtatuatur certus dies et locus in com', in præſentia partium: et dies et locus inſerantur in brevi de judicio per hæc verba* (11):

treſpaſs ſhall be determined before the juſtices of both benches, except the treſpaſs be ſo hainous that it ſhall require great examination. Inquiſitions alſo of other pleas pleaded in either of the benches, ſhall be determined before them, wherein ſmall examination is required, as when the entry or ſeiſin of any is denied, or in caſe when one article is to be inquired. But inquiſitions of many and great articles, the which require great examination, ſhall be taken before the juſtices of the bench, except that both parties deſire that the inquiſition may be taken afore ſome of the aſſociates when they do come into thoſe parts; ſo that from henceforth it ſhall not be done but by two juſtices, or one with ſome knight of the ſhire, upon whom the parties can agree. And ſuch inquiſitions ſhall not be determined by any juſtices of the bench, unleſs a day and a place certain be appointed in the ſhire, in preſence of the parties, and the day and place ſhall be mentioned in a writ judicial by theſe words:

Præcipimus tibi quod venire facias in octa. ſancti Michaelis, niſi coram juſticiariis noſtris apud Weſtmonaſt', xii. &c. *talis et talis tali die et loco ad partes illas venerint,*

Et cum hujuſmodi inquiſitiones captæ fuerint, retornentur in bancis, et ibi fiat judicium, et irrotulentur (12). *Et ſi omiſſa forma prædicta aliquæ inquiſitiones capiantur, pro nullis habeantur* (13): *excepto quod aſſiſæ ultimæ præſentationis, et inquiſitiones ſuper quare impedit atterminentur in proprio com' coram uno juſticiar' de banco, et uno milite, ad certos tamen diem et locum in banco ſtatutos, ſive defendens conſentiat, ſive non: et ibi ſtatim reddatur judicium* (14). *Habeant de cætero omnes juſticiarii de bancis in itineribus clericos irrotulantes omnia placita coram eis placitat', ſicut*

And when ſuch inqueſts be taken, they ſhall be returned into the bench, and there ſhall judgement be given, and there they ſhall be inrolled. And if any inquiſitions be taken otherwiſe than after this form, they ſhall be of no effect, except that an aſſiſe of *darrein preſentment*, and inquiſitions of *quare impedit* ſhall be determined in their own ſhire before one juſtice of the bench and one knight, at a day and place certain in the bench aſſigned, whether the defendant conſent, or not, and there the judgement ſhall be given immediately. All juſtices of the benches from

ſicut antiquitus habere conſueverunt (15). *Item ordinatum eſt, quod juſticiarii * ad aſſiſas capiend' aſſignati non compellant juratores dicere præciſe, ſi ſit diſſeiſina vel non, dummodo dicere voluerint veritatem facti, et petere auxilium juſtic'. Sed ſi ſponte velint* (16) *dicere, quod diſſeiſina eſt, vel non, admittatur eorum verdictum ſub ſuo periculo. Et de cætero non ponant juſtic' in aſſiſis, aut juratis aliquos jurat', niſi eos qui ad hoc prius fuerunt ſummoniti* (17).

from henceforth ſhall have in their circuits clerks to inroll all pleas pleaded before them, like as they have uſed to have in time paſſed. And alſo it is ordained, that the juſtices aſſigned to take aſſiſes ſhall not compel the jurors to ſay preciſely whether it be diſſeiſin, or not, ſo that they do ſhew the truth of the deed, and require aid of the juſtices. But if they of their own head will ſay, that it is diſſeiſin, their verdict ſhall be admitted at their own peril. And from henceforth the juſtices ſhall not put in aſſiſes or juries any other than thoſe that were ſummoned to the ſame at the firſt.

(2 Rulſt. 160. 12 Rep. 31. 52. Kel. 109. pl. 30. 27 Ed. 1. ſtat. 1. c. 4. 12 Ed. 2. ſtat. 2. c. 4. Regiſt. 186. F.N.B. 240. b. Bro. Niſi prius, 31. 13 Rep. 42. The writ of *niſi prius*. Regiſt. ind. 7. F.N.B. 240. E. Raſt. 437. 2 Salk. 454. 9 H. 3. ſtat. 1. c. 12, 13. Dyer, 135. 163. Dyer, 175. Raſt. 99. 333. Plow. 92. Dyer, 173. 9 Rep. 11. 14 Ed. 3. ſtat. 1. c. 16.

This ſtatute conſiſteth of many branches whereof we ſhall ſpeak in their order: and firſt it is to be ſeen what miſchiefs were before the making hereof, the principall whereof we ſhall touch.

1. Before the making of the ſtatute of *Magna Charta*, aſſiſes were onely to be taken in the court of common pleas which was miſchievous to the recognitors of the aſſiſe: it is provided by *Magna Charta*, that they ſhall be taken in the proper county once every year, and that remedy was too ſhort, and therefore they are by this act to be taken oftner.

2. Another miſchief was, that the juſtices of aſſiſe were not ſometime but apprentices of the law, and a knight aſſociate to them which oftentimes were favourable.

3. And if the recognitors of the aſſiſe had not given their verdict, the juſtices could not (before this act) have adjourned the record into the court of common pleas.

4. Alſo, if a forein plea had been pleaded, or forein voucher had, they could not have adjourned it into the court aboveſaid.

27 E. 1. cap. 4. York 12 E. 2. ca. 3.

5. Before the making of this act, all jurors, together with the parties, came up to the kings higher courts of juſtice, where the cauſe depended, *et propter tantam, et intolerabilem populi noſtri jacturam, non ſolum ad eorundem juratorum exonerationem, ſed etiam ad eclerem partibus in curia noſtra placitantibus juſtitiam' exhibendam, &c.* And this is the firſt act that gave the writ of *niſi prius*.

6. Alſo before this act ſome juſtices did rule over the recognitors, to give a preciſe or direct verdict without finding the ſpeciall matter.

Now the remedies do follow.

(1) *Aſſignentur de cætero duo juſtic' jurati, coram quibus et non aliis*, &c.] Hereby it appeareth what an honourable opinion the law

law hath of the kings juſtices ſworn, that they are *omni exceptione majores.*

But this branch hath been manifoldly altered, for by the ſtatute of 27 E. 1. cap. 4. theſe inquiſitions and recognitions were to be taken *coram aliquo juſticiar' eorundem, coram quibus placitum deductum fuerit, aſſociato uno milite comitatus illius, &c.* 27 E. 1. cap. 4.

By the ſtatute of York, they are to be taken before one juſtice of the one place or the other, having aſſociate to him, *un prode home de pais, chivalier, ou auter.* 12 E. 2. cap. 3.

But by the ſtatute of 14 E. 3. they may be taken before any juſtices of the one bench or the other, or the kings ſerjant ſworn, which is intended of any ſerjant at law, for that every ſerjant is ſworn. 14 E. 3. ca. 16.

And this act is extended to the kings attorney, being joyned with one of the juſtices or ſerjants; and albeit the king make choice of ſome ſerjants to be of his councell and fee, yet in a generall ſenſe all be called the kings ſerjants, becauſe they be all called by the kings writ. Bro. Niſi prius, 37. See the form of the *poſtea* hereafter in this chapter.

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(2) *Ad plus terræ per annum.*] Hereby the former time given by Magna Charta is inlarged.

Theſe dayes are altered by later ſtatutes.

By 27 E. 1. it is provided they ſhall be taken *tempore vacationis, vide* 14 E. 3. 27 E. 1. & 14 E. 3. ubi ſupra.

(3) *Quindena ſancti Johannis Baptiſtæ.*] This return amongſt others is taken away by the ſtatute of 32 H. 8. 32 H. 8. ca. 21.

(4) *Gula Auguſti.*] Gule of Auguſt. This is alſo mentioned in the ſtatute of 27 E. 3, &c. the feaſt of S. Peter ad vincula is on this day, being the firſt day of Auguſt, as it appeareth in Pl. Com. where it is ſaid, *Al feaſt de S. Peter en la gule de Auguſt.* 27 E. 3. ſtat. 3. F.N.B. 62. i. Pl. Com. 316.

The reaſon why it is called *gula Auguſti*, you may read in Durand, in his booke *De rationali divinorum, lib.* 7. *De feſto ſancti Petri ad vincula.*

This I have added, not out of any curioſity, but that the reader might underſtand what he reads, which hath beene mine endeavour throughout all this work.

(5) *Statuant diem de reditu ſuo.*] That is, by proclamation in open court.

(6) *De termino in terminum adjornent aſſiſas.*] See the expoſition upon the ſtatute of Magna Charta. Et vide lib. 4. fol. 4. Vernons caſe, & lib. 8. fo. 57. Le countee de Rutlands caſe. Mag. Chart. ca. 12.

(7) *Per vocationem warranti.*] Forein pleas are taken within the equity of this act, and ſo are demurrers doubtfull, and other pleas and proceedings, &c. as well before as after verdict. Mag. Chart. c. 12. Br. adjorn. 29. 47 Aſſ. 1. 49 Aſſ. 23. 48 E. 3. 7. 22 Aſſ. p. 11.

In an aſſiſe, the tenant pleads a releaſe made in a forein county, whereupon the record is adjourned into the court of common pleas; that court may graunt a *niſi prius* into the forein county, for albeit in this caſe the court of common pleas hath by this act *delegatam poteſtatem* for the triall of the releaſe, yet all incidents thereunto are therewith graunted.

(8) *Per eſſonium.*] This muſt be intended of an eſſoin *ultra mare*, for the common eſſoin, or *de ſervitio regis* lieth not in this caſe.

(9) *Remittatur loquela.*] That is, the record of the aſſiſe, together with the originall writ ſhall be remaunded to be taken, &c. in the proper county before the former juſtices.

(10) *Et-*

(10) *Atterminentur etiam inquiſitiones coram eis de aliis placitis, &c. in quibus eſt facilis examinatio, &c. Sed inquiſitionem de groſſis et pluribus articulis quæ magna indigeant examinatione, &c. niſi ambæ partes petant*, &c.] Upon this ſtatute a writ in the Regiſter is framed, *Quod inquiſitiones, quæ magnæ ſunt examinationis, non capiantur in patria, et de ſuperſedendo, &c.*

Regiſt. 186.

42 E. 3. cap. 11.

(11) *In brevi de judicio in hæc verba*] *Præcipimus tibi, quod venire facias coram juſticiariis noſtris apud Weſtm' in octabis ſancti Michaelis, niſi talis et talis, tali die et loco ad partes illas venerint, 12, &c.*

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The judiciall writ now in uſe hath [*prius*] before [*venerit,*] and therefore it taketh the name of *niſi prius*.

14 E. 3. ca. 16.
33 E. 3. attaint 77.

Although the ſtatute of 14 E. 3. ſpeak not of an attaint, yet is an attaint within it, for the effect of that ordinance is, that in all caſes where a *niſi prius* is grauntable, it ſhall be graunted before juſtices of aſſiſe.

23 E. 3. 23.
24 E. 3. 23.
25 E. 3. 39.
34 E. 3. Niſi prius, 16.

Albeit this act be generall, yet a *niſi prius* ſhall not be graunted where the king is party, or where the matter toucheth the right of the king, without a ſpeciall warrant from the king, or the aſſent of the kings attourney.

F.N.B. 241. a.
32 H. 6. 9.
F.N.B. 241. a.
11 E. 3. Viſne 59.

The duke of Exeter being plaintiffe in treſpaſſe, for the duke a *niſi prius* was prayed, and it was denied, for that the duke was of great power in that county, and if triall ſhould be had in the county, inconvenience might thereupon follow.

(12) *Et cum hujuſmodi inquiſitiones captæ fuerint, retornentur in bancis, et ibi fiat judicium, et irrotulentur.*] Herewith agreeth the ſtatute of York *ubi ſupra*.

By the ſtatute of 14 E. 3. cap. 16. the chiefe juſtice of that place ſhall return the record, and ſhall return the verdict under his ſeale.

The return of the juſtices is, *Ad quem diem hic venerunt partes prædictæ, et juſticiarii ad aſſiſas coram quibus, &c. miſerunt hic record' in hæc verba*; and this returne is called the *poſtea*, becauſe the record beginneth thus: *Poſtea die et loco infra contentis coram* (and nameth the juſtices of aſſiſe) *juſticiariis ipſius domini regis ad aſſiſas in com' N. capiend' aſſignat' per formam ſtatuti venerunt tam le pl' quam le def. &c.*

Liv. de entries. Rot. 101. Hil. 19 H. 7. Rot. 2. 9. in communi banco. 21 H. 7. 10. ſimile. Dier, 5. Mar. 163.

If one of the juſtices of aſſiſe die before the returne, a *certiorari* may be awarded out of the court of common pleas to the ſurvivor to certifie the verdict; if both the juſtices die, the clerk of the aſſiſe may bring it in without a *certiorari*, or a *certiorari* may be awarded to the executors, or adminiſtrators of them to certifie the record.

Statute of York. 12 E. 2. c. 4. 14 E. 3. c. 16. 17 E. 3. 3.

But this act was defective, for hereby the juſtices of *niſi prius* might take verdicts and inquiſitions; but they could not record non-ſuits of the demandant or plaintiffe, or defaults of the tenant or defendant, which was remedied by the ſtatute of York.

Regula.

(13) *Et ſi omiſſa forma prædicta aliquæ inquiſitiones capiantur, pro nullis habeantur.*] For the rule of law is, *non obſervata forma infertur adnullatio actus*; but that rule is to be underſtood, *de eſſentiali forma*, and not *de accidentali*.

(14) *Excepto quod aſſiſæ ultimæ præſentationis, et inquiſitiones ſuper quare impedit atterminentur in proprio com', &c. et ibi ſtatim reddatur judicium.*] The reaſon of making of this branch was in reſpect of the daunger of laps, and therefore in favour of the patrons this clauſe

clauſe was added that the juſtices of *niſi prius* have power to give judgement in theſe two actions.

And albeit the words of this branch be, *et ibi ſtatim reddatur judicium*, yet if the juſtices of *niſi prius* doe not give judgement, upon return of the *poſtea* judgement may be given by the court to which the return is made, for by theſe words the higher court is not reſtrained; and this branch giving to the juſtices of *niſi prius* power to give judgement, they have thereby power includedly, as incident, given to award execution, that is, a writ to the biſhop, but that writ is not retournable; but after the record be returned into the common bench, if the former writ be not executed, that court may graunt a writ *ſicut alias*, returnable into that court, all which is worthy of ſingular obſervation.

4 Mar. Dier, 135. 9 El. Dier, 260.

Incident.

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And juſtices of *niſi prius* have power to inquire of incidents. 18 E. 3. 49, 50.

Alſo juſtices of *niſi prius* may amerce jurors, and demand them upon a pain, and alſo puniſh them for miſdemeanors done in their preſence, which are in deſpite of the king, and thereupon make proces, and what lieth in aide and furtherance of the buſineſſe they may record, likewiſe they may record a prayer to be received. 17 E. 3. 23.

(15) *Habeant de cætero omnes juſticiarii de banco in itineribus ſuis irrotulantes omnia placita coram eis placitat', ſicut antiquitus habere conſueverunt.*] Hereby it appeareth that the juſtices of courts did ever appoint their clerks, ſome of which after by preſcription grew to be officers in their courts; as here it is put for example, that the juſtices of the benches in their circuits had clerks that enrolled all pleas pleaded before them as auncientlie they uſed to have, that is, as by the common law.

Dier 1 Eliz. 175.

Now the cauſe of the making of this branch was, that the king was informed that he might erect offices for entring and inrolment of records in his courts of juſtice, and ſpecially before juſtices of aſſiſe, which this branch declareth to belong to the juſtices, and that they had enjoyed the ſame of auncient time, that is, by the common law.

And the reaſon thereof is twofold. 1. For that the law doth ever appoint thoſe, that have the greateſt knowledge and ſkill, to performe that which is to be done. 2. The officers and clerks are but to enter, inroll, or effect that which the juſtices doe adjudge, award, or order, the inſufficient doing whereof maketh the proceeding of the juſtices erroneous, then the which nothing can be more diſhonourable and grievous to the juſtices, and prejudiciall to the party; therefore the law, as here it appeareth, did appropriate to the juſtices the making of their owne clerks and officers, and ſo to proceed judicially by their own inſtruments: and that this was the common law, the king cannot graunt the office of the ſhire or county clerk, (who is to enter all judgements and proceedings in the county court) for that the making of the ſhire clerk belongeth to the ſheriffe by the common law, as in Mittons caſe it appeareth, *et ſic de cæteris*.

Lib. 4. fol. 32. Mittons caſe.

(16) *Juſticiarii ad aſſiſas capiend' aſſignat' non compellant juratores dicere præciſè ſi ſit diſſeiſina, vel non, dummodo dicere voluerint veritatem facti, et petere auxilium juſtic'. Sed ſi ſponte voluerint,* &c.] The firſt queſtion upon this branch was, whether in caſe of aſſiſe, if the iſſue were joyned upon a collaterall matter out of the point

Li. 9. f. 1. 11. 13. Downans caſe.

See the firſt part of the Inſtitutes, ſect. 366, 367.
45 E. 3. 20. 42 E. 3. 1. 40 E. 3. 2. 41 E. 3. 10. 47 E. 3. 19. 16 E. 3. verdict 21. 9 H. 7. 3. Dier 28 H. 8. 32. 2 Mar. 115. 9 El. 260. 31 El. 279. 13 El. 30. 32 H. 8. 47. Pl. Com. 92. 3 E. 3. Cor. 284. 286. 43 aſſ. 31. 44 E. 3. 44. 26 H. 8. 5.

point of the aſſiſe, whether upon this ſpeciall iſſue the jury might give a ſpeciall verdict.

2. The ſecond queſtion was, whether it did extend to all other actions, or onely to theſe actions wherein the defendant or tenant might plead a generall iſſue.

3. Thirdly, whether in all actions the jury might give a ſpeciall verdict upon a ſpecial iſſue, upon an *abſque hoc*, or otherwiſe

In the end it hath been reſolved, that in all actions reall, perſonall, and mixt, and upon all iſſues joyned generall or ſpeciall, the jury might finde the ſpeciall matter of fact pertinent, and tending onely to the iſſue joyned, and thereupon pray the diſcretion of the court for the law: and this the jurors might doe at the common law, not onely in caſes betweene party and party, whereof this act putteth an example of the aſſiſe, but alſo in pleas of the crown at the kings ſuit, which is a proofe of the common law, for if this act had made a new law, and that other like caſes betweene party and party had beene taken by equity, yet the king had not beene bound thereby: and note the next precedent clauſe of this act, and the ſubſequent are both in affirmance alſo of the common law.

[426]

Lib. 9. fol. 13. Dowmans caſe.

(17) *Et de cætero non ponant juſtic' in aſſiſis, aut juratis aliquos juratores, niſi eos qui ad hoc prius fuer' ſummoniti.*] Where this branch ſaith *non ponant juſtic' in aſſiſis*, the meaning is that the juſtices ſhall not ſuffer the ſheriffe to put into the pannell any men which were never ſummoned: for before this act if the ſheriffe had made a pannell, and the jurors had not appeared, the ſheriffe would have impannelled others of the ſame county who were never ſummoned, which was a wrong to them that were ſo newly returned, and is now prohibited by this act, whereupon any ſo unduly returned may have his action againſt the ſheriffe, for this act is made for the reliefe of them that were ſo unduly returned.

CAP. XXXI.

CUM aliquis implacitat' (1) *coram aliquibus juſtic'* (2), *proponat exceptionem* (3) *et petat quod juſtic' eam allocent, quam ſi allocare noluerint, ſi ille qui exceptionem propoſuerit, ſcribat illam exceptionem, et petat, quod juſtic' ſigillum ſuum apponant in teſtimonio, juſticiarii apponant ſigilla ſua* (4). *Et ſi unus apponere noluerit, apponat alius de ſocietate. Et ſi forte ad querimoniam de facto juſticiariorum venire fac' dominus rex recordum coram eo, et ſi illa exceptio non inveniatur in rotulo, et querens oſtendat exceptionem ſcriptam ſub ſigillo* (5) *juſtic' appenſo, mandetur*

WHEN one that is impleaded before any of the juſtices doth alledge an exception, praying that the juſtices will allow it, which if they will not allow, if he that alledged the exception do write the ſame exception, and require that the juſtices will put to their ſeals for a witneſs, the juſtices ſhall ſo do; and if one will not, another of the company ſhall. And if the king, upon complaint made of the juſtices, cauſe the record to come before him, and the ſame exception be not found in the roll, and the plaintiff ſhew the exception written,

mandetur juſticiario, quod ſit ad certum diem (6) *ad cognoſcendum ſigillum ſuum, vel ad dedicendum. Et ſi juſtic' ſigillum ſuum dedicere non poſſit, procedatur* (7) *ad judicium ſecundum illam exceptionem, prout admittend' eſſet vel caſſand'.*

ten, with the ſeal of a juſtice put to, the juſtice ſhall be commanded that he appear at a certain day, either to confeſs or deny his ſeal. And if the juſtice cannot deny his ſeal, they ſhall proceed to judgement according to the ſame exception, as it ought to be allowed or diſallowed.

(9 Rep. 13. Kelyng, 15. Regiſt. 182.)

At the common law, before the making of this act, a man might have had a writ of error for an error in law, either *in reddditione judicii, in reddditione executionis*, or *in proceſſu, &c.* and this error in law muſt be apparent in the record, &c. For the writ of error ſaith, *quia in recordo et proceſſu, &c. error intervenit manifeſtus, &c.* Or for error in *fait*, by alledging matter out of the record, as death of either party, &c. before judgement: now the miſchiefe before this ſtatute was, that when the demandant or plaintiffe, or the tenant or defendant did offer to alledge any exception, (as in thoſe dayes they did *ore tenus* at the barre) praying the juſtices to allow it, and the juſtices over-ruling it ſo as it was never entred of record, [427] this the party could not aſſign for error, becauſe it neither appeared within the record, nor was any errour in *fait*, but in law, and ſo the party grieved was without remedy, for whoſe relief this ſtatute was made.

(1) *Cum aliquis implacitatur.*] This act doth extend aſwell to the demandant or plaintife, as to the tenant or defendant in all actions reall, perſonall, and mixt; and regularly it extendeth not to a ſtranger to the record, which is not to come in lieu of the tenant, &c. For example, if the bailife of a franchiſe demand conuſans, and the juſtices over-rule the ſame, he cannot pray the juſtices to ſeal a bill, becauſe he is no party to the record: but yet one that offereth to be received, and is denyed, albeit he be none of the parties to the writ, yet becauſe he is privie in eſtate, and to be *in loco tenentis*, he ſhall have the benefit of this act; and ſo it is of the vouchee, though he be no party to the writ, becauſe he is *in loco tenentis*.

F.N.B. 21. a. & 22. a.

20 E. 3. Conuſans 46.

17 E. 3. 23. a

(2) *Coram aliquibus juſticiariis.*] Albeit the letter of this branch ſeemeth to extend to the juſtices of the com' pleas only, by reaſon of theſe words, *et ſi forte ad querimoniam de facto juſtic' venire fac' dominus rex recordum coram eo*, (which is by writ of errour into the kings bench) yet that is put but for an example, and this act extendeth not onely to all other courts of record (for upon judgements given in them a writ of errour lyeth in the kings bench) but to the county court, the hundred, and court baron, for therein the judges were more likely to erre; and albeit, of judgements given in them a writ of errour lyeth not, but a writ of falſe judgement in the court of common pleas, yet the caſe being in the ſame, or greater miſchief, the purview of this ſtatute doth extend to thoſe inferiour courts.

(3) *Proponat exceptionem.*] This extendeth not onely to all pleas dilatory and peremptory, &c. and (as hath been ſaid) to prayers to be received, oier of any record or deed, and the like: but alſo to all challenges

11 H. 4. 52. 65. 9 Aſſ. p. 8. 16 E. 3. Quare non admiſit 3. Regiſt. 182. 21 E. 4. 2. b.

21 E. 4. 12. b. F.N.B. 21. n. challenges of any jurors, and any materiall evidence given to any jury, which by the court is over-ruled.

(4) *Juſticiarii apponant ſigilla ſua.*] Here is an expreſſe commandment given to the juſtices; and yet if one refuſe, and any of the other inſeal the bill, it ſufficeth, but if they all refuſe, it is a contempt in them all; for it lyeth not in the power of the juſtices that denyed to perform the purview of this act, to take advantage of their own wrong, and the party grieved may have a writ grounded upon this ſtatute to the juſtices, commanding them to put their ſeals *juxta formam ſtatuti, et hoc ſub periculo quod incumbit nullatenus omittatis.*

Regiſt. 182.

11 H. 4. 52. 63. Regiſt. ubi ſupr. F.N.B. 22. a. And though no time be appointed by this act, when the juſtices ſhall put their ſeals, the party muſt pray the ſame before judgement; but if they deny it, then may they be commanded after judgement to put their ſeals, and then the putting of their ſeals after judgement ſhall be ſufficient.

(5) *Et querens oſtendat exceptionem ſcriptam ſub ſigillo.*] Albeit the party grieved be dead, yet his heirs or executors, &c. according to the caſe, ſhall have a writ of errour upon this bill of exception.

11 H. 4. ubi ſupr. In this caſe the plaintife can alledge no diminution, for he muſt hold himſelf to the matter in the bill ſealed; and if it be not there, it was his folly to omit it.

11 H. 4. 52. 63. [428] (6) *Mandetur juſticiario quod ſit ad certum diem.*] Albeit ſome have holden, that the juſtices may bring in the bill under their ſeal, and acknowledge it, yet the ſurer way is to follow the order preſcribed by this act.

If the juſtice dye, yet ſhall there a *ſcire facias* go againſt his executor or adminiſtrator; for the death of the judge, which is the act of God, cannot prejudice the party, nor make the purview of this ſtatute to be of no force.

1. Part of the Inſtitutes, ſect. 102. As if a man be outlawed, and at the time of his outlawry he was beyond the ſeas in war in the kings ſervice, and brings a writ of errour to reverſe his outlawry, and obtains a certificate of the marſhall of the kings hoſt under his ſeal (as he ought to do) in this caſe notwithſtanding the marſhall dye, yet may he aſſign the ſame for errour, and upon ſhewing of the certificate have a *ſcire fac'* to the executors or adminiſtrators of the marſhall.

(7) *Et ſi juſticiarius ſigillum ſuum dedicere non poſſit, procedatur,* &c.] On the other ſide, if the judge deny his ſeal, then may the plaintife in the writ of error take iſſue thereupon, and prove it by witneſſes; for it lyeth not in the judge in this caſe to fruſtrate this excellent law made for advancement of juſtice and right.

Booke of Entries, Raſt. 275, 323. Vet. N. B. 54. For the order of proceeding herein according to this act, ſee the booke of entries.

CAP.

CAP. XXXII.

CUM viri religioſi, et aliæ perſonæ eccleſiaſticæ implacitent aliquem, et implacitatus (1) *fecerit defaltam* (2), *ob quam tenement' amittere debeat: quia juſticiar' hucuſque tenuerunt, quod ſi implacitat' fecerit defaltam per colluſionem, ut cum petens occaſione ſtatuti per titulum doni, vel alterius alienationis, ſeiſinam de tenement' conſequi non poſſet, per illam defaltam conſequeretur, et ſic fieret fraus ſtatuto: ordinat' eſt per dominum regem, et conceſſum in hoc caſu, quod poſtquam defalta facta fuerit, inquiratur per patriam, utrum petens habeat jus in ſua petitione, vel non. Et ſi comperium fucrit, quod petens jus habuerit* (3), *procedatur ad judicium* (4) *pro petente, et recuperet ſeiſinam ſuam. Et ſi jus non habuerit, incurratur tene ment' proximo domino feodi, ſi illud petat infra annum* (5) *a tempore inquiſitionis captæ. Et ſi infra annum non petat, ſuperiori domino incurratur, ſi petat infra dimidium annum poſt illum annum. Et ſic habeat quilibet dominus poſt proximum dominum, ſpacium dimidii anni ad petendum ſucceſſivè, quouſq; perveniatur ad regem, cui ad ultimum pro defectu aliorum dominorum tenementum incurratur. Et ad calumniandum juratores inquiſitionis, admittantur quicunque capitales domini feodorum* (6), *et ſimiliter pro rege qui calumniare * voluerint* (7.) *Et remaneat terra, poſtquam judicium datum fuerit in manu domini regis quouſque tenem' per petentem, vel per aliquem capitalem dominum diſrationetur, et oneretur vic' ad reſpondend' inde ad ſcaccarium.*

WHEN religious men and other eccleſiaſtical perſons do implead any, and the party impleaded maketh default, whereby he ought to leaſe the land, foraſmuch as the juſtices have thought hitherto, that if the party impleaded make default by colluſion, that where the demandant, by occaſion of the ſtatute, could not obtain ſeiſin of the land by title of gift, or other alienation, he ſhall now by reaſon of the default, and ſo the ſtatute is defrauded; it is ordained by our lord the king, and granted, that in this caſe, after the default made, it ſhall be inquired by the country, whether the demandant had right in the thing demanded, or no. And if it be found that the demandant had right in his demand, the judgement ſhall paſs with him, and he ſhall recover ſeiſin; and if he hath no right, the land ſhall accrue to the next lord of the fee, if he demand it within a year from the time of the inqueſt taken; and if he do not demand it within the year, it ſhall accrue to the next lord above, if he do demand it within half a year after the ſame year; and ſo every lord after the next lord ſhall have the ſpace of half a year to demand it ſucceſſively, until it come to the king, to whom at length, through default of other lords, the lands ſhall accrue. And to challenge the jurors of the inqueſt, every of the chief lords of the fees ſhall be admitted, and likewiſe for the king, they that will ſhall challenge; and after the judgement given, the land ſhall remain clear in the king's hands, until it be dereigned by the demandant, or ſome other chief lord, and the ſheriff ſhall be charged to anſwer therefore at the exchequer.

* [429]

Statut. de Religioſis, anno 7 E. 1. (Fitz. Coll. 1, 2 4, 5, 6, 7. 9, 10, 11. 22. 24, 25, 26, 27. 31. 40 42. 46. 10 H. 7. 1. 3. 11 Ed. 3. ſtat. 3. c. 3. 9 H. 3. ſtat. 1. c. 36.)

Notwith-

Magna Chart. cap. 36. Stat. de Religioſis, 7 E. 1. 33 H. 6. 25.

Notwithſtanding the ſtatute of *Magna Charta*, and the ſtatute of *de religioſis*, *anno* 7 Edw. 1. yet this evaſion was found out, that religious and eccleſiaſticall perſons did recover lands by default; which, albeit it were by conſent and colluſion, yet the juſtices did hold that theſe religious and eccleſiaſticall perſons came not to the land *per titulum doni*, *vel alienationis*, nor was within the generall words of the ſtatute of 7 Edw. 1. *aut alio quovismodo*, *arte*, *vel ingenio ſibi appropriare præſumat*: for that recoveries being proſecuted in courſe of law were by law preſumed to be juſt and lawfull, it was holden by the juſtices, that they were not within the former ſtatute; and yet theſe recoveries were done *in fraudem legis*, for remedy whereof this ſtatute was made.

2 E. 3. 10. 10 E. 3. 17. 21 E. 3. 5. 24 E. 3. 27. 38 E. 3. 12. 27. 3 E. 4. 12, 13. 1 E. 2. Colluſion 11. 7 E. 3. ibid. 17. 16 E. 3. ibid. 21. 34 E. 3. ibid. 46. 20 H. 6. 38.

(1) *Et implacitatus.*] All actions brought for any lands or tenements, wherein a free-hold, inheritance, or a long term is recovered, as within this ſtatute, as *præcipes quod reddat*, *quare impedit*, *droit de gard*, *ejectione firmæ*, *quare ejecit infra terminum*, *warrantia chartæ*, *convenit* to levie a fine, execution *per elegit*, ſtatute merchant, or ſtatute ſtaple, &c.

This act doth extend to them that are no parties to the writ, as to the vouchee, and tenant by receit and the like.

And this ſtatute doth extend by equity when the abbot, &c. is tenant or defendant, as when a writ of right is brought againſt an abbot, &c. and after the miſe joyned, the demandant maketh default, and is nonſute, the colluſion ſhall be inquired, and this caſe wherein the abbot is tenant is within the ſame miſchief, and therefore within the equity of this law: and ſo it is if a *quare impedit* be brought againſt a prior of the church of D. and the plaintife become nonſute, the defendant ſhall recover the preſentment, and the colluſion ſhall be inquired.

5 E. 2. Colluſ. 19. 2 E. 3. 18. 6 E. 3. 23. 25. 19 E. 3. Colluſion 18.

(2) *Fecerit defaltam.*] This act doth not extend onely, according to the letter, to recoveries by default, but to all manner of recoveries by verdict, or otherwiſe, if they be had by colluſion.

Regiſt. judic. 16, 17.

If it be by default, then a judiciall writ called a *quale jus* grounded upon this ſtatute is awarded, which writ conſiſteth upon five parts:

1. It reciteth the recovery.

2. The doubt of the fraud, *et quia dubitatur de fraude inter eos præhabita contra ſtatutum.*

3. A commandement to the ſherife to return a jury, *præcipimus tibi quod venire fac' coram juſticiar' noſtris apud Weſtmonaſt' duodecim*, &c. the charge of the jury is *ad recogn' ſuper ſacramentum ſuum hac tria*; 1. *Quale jus idem abbas habuit in prædict' meſſuagio*: 2. & *Quis prædeceſſorum fuit inde ſeiſitus ut de jure eccleſiæ ſuæ præd'*: 3. & *Quantum illud meſſuagium valet per annum.*

20 E. 3. Colluſion 34.

4. The fourth is another commandement to the ſherife, *et interim meſſuagium illud in manum noſtram capias*, &c. *et quod de exitibus ad ſcaccarium nobis reſpondeas.*

5. The ſherife is commanded, *et ſcire facias capitalibus dominis feodi illius mediatis, et immediatis, quod tunc ſint ibi aduturi juratam illam, ſi voluerint.*

Which writ I have the more at large rehearſed, for that it giveth a great light to all the parts of this act.

And it is to be obſerved, that if the jury finde that his predeceſſor was ſeiſed of it in his demeſne as of fee in the right of his church, before

before the ſaid ſtatute *de religioſis, anno* 7 E. 1. this is a good verdict for the demandant without finding of any licenſe; for though there were no licenſe, the alienation was good: but if they finde that his predeceſſor was ſeiſed after the ſtatute, then they ought to finde a licenſe, or otherwiſe the land belongeth to the lord or king.

13 E. 3. Colluſion 32. 16 E. 3. ibid. 42. 34 E. 3. ibid. 40. 20 H. 6. 38.

The value of the land is inquired of, becauſe the iſſues thereof are to be by this act anſwered to the king.

20 H. 6. 38. Stamf. Prærog. 84. b.

If there be an iſſue joyned in the action brought by the abbot, the jury ſhall not onely inquire of the iſſue, but of the colluſion, but as concerning the colluſion, it is but an inqueſt of office, whereof no attaint lyeth.

38 E. 3. 12. 45 E. 3. 8. 50 E. 3. 22. 14 Aſſ. 13. 5 E. 3. 29. 6 E. 3. 11. 20 Aſſ. 6. 38. 33 H. 6. 25. 6 R. 2. Colluſion 40. 33 H. 6. 25.

If a recovery by verdict were not within the purview of this act, ſuch an iſſue of diſadvantage might be joyned, and ſo feint evidence might be given, as this ſtatute ſhould be of little force.

And if the jury do not inquire of the colluſion, ſo as the abbot, &c. recover by verdict, yet the colluſion ſhall be inquired of by a ſpeciall writ, and not by a *quale jus*.

If an abbot bring an aſſiſe, and the tenant plead a forein releaſe, they of the forein county cannot inquire of the colluſion, but a ſpeciall writ ſhall be granted.

6 E. 3. 11. 17 E. 3. 5.

If the tenant appear, and confeſſe the action, or judgement be given upon a *nihil dicit*, or a departure in deſpight of the court, theſe alſo are within this ſtatute, and the colluſion ſhall be inquired, and ſo if a recovery be had upon a demurrer in law, that recovery is alſo within the equity of this ſtatute.

29 E. 3. 35. 6 R. 2. Colluſion 40. 31 H. 6. 10.

In ſome caſe no colluſion ſhall be inquired at all, as if a perſon bring a *juris utrum*, and the jury finde that the land is the right of the church, this ſufficeth without inquiring of the colluſion.

(3) *Et ſi compertum fuerit quod petens jus habuerit.*] This is either by jury upon triall of the iſſue, or by *quale jus*, if the tenant make default.

Kelwey 134.

(4) *Proccdatur ad judicium.*] Hereby it appeareth that the *quale jus* ſhould be ſued out after the default, and before judgement, and ſo it is ſaid the uſe hath been; and if the colluſion be found, the lord, &c. ſhall enter, though judgement be never given.

5 E. 3. 29.

But yet if judgement be given upon the default, yet may the *quale jus* be ſued out, and ſo it appeareth by the Judiciall Regiſter, and many other authorities, but execution ſhall ceaſe untill the colluſion be inquired.

Regiſt. Judic. 16, 17.

In a writ of right, if judgement finall be given for the abbot, &c. the colluſion ſhall be inquired; for albeit the judgement finall be given between them, yet the lord by this ſtatute ſhall enter: and ſo it is of a recovery by default in a *ceſſavit*.

34 E. 3 Colluſion 46. 13 E. 3. ibid. 28. 12 E. 3. Judgement 163. 4 E. 3. 8. Regiſt. Judic. 16, 17.

(5) *Et ſi jus non habuerit, incurratur tenementum proximo domino feodi, ſi illud petat infra annum,* &c.] Here be the certain times appointed when the lords mediate and immediate ſhall enter, whereof ſufficient hath been ſaid in the expoſition of the ſtatute *de religioſis*, 7 E. 1.

(6) *Et ad calumniandum juratores inquiſitionis, admittantur quicunque capitales domini feodorum.*] Hereupon, as hath been ſaid, the ſherife ſhall warn the lords mediate and immediate to appear and take their challenges.

42 E. 3. 3. If any of the lords mediate or immediate be within age, in reſpect of theſe words, * *quicunque domini feodorum*, the court will adviſe whether any thing ſhall be done to his prejudice, during his minority.

(7) *Et ſimiliter pro rege qui clamare voluerit.*] The king is alwayes (in judgement of law) preſent in court, and therefore any man may challenge for the king, but by the ſtatute of 33 E. 1. they which challenge for the king muſt ſhew a cauſe certaine, and the truth thereof is to bee tried.

Stat. de Inquiſ. anno 33 E. 1.

Obſerve well what expoſition hath beene made of this act, and how the judges extended the ſame by equity, for otherwiſe the churchmen by advice of their learned councell (whereof they had the beſt) would have had ſome evaſion or other out of the letter of the law.

See the expoſition before of the ſtatute *de religioſis*, *anno* 7 E. 1.

CAP. XXXIII.

QUIA multi tenentes erigunt cruces (1) *in tenementis ſuis* (2), *aut erigi permittunt* (3), *in præjudicium dominorum ſuorum* (4), *ut tenentes per privilegium templariorum et hoſpitaliorum* (5) *tueri ſe poſſent contra capitales dominos feodorum: ſtatutum eſt, quod hujuſmodi ten' capitalibus dominis, aut regi incurrantur. Eodem modo* (6) *quo ſtatuit alibi de tenementis alienatis ad manum mortuam.*

FORASMUCH as many tenants ſet up croſſes, or cauſe to be ſet up in their lands, in prejudice of their lords, that tenants ſhould defend themſelves againſt the chief lords of the fee, by the privileges of templars and hoſpitalers; it is ordained, that ſuch lands ſhall be forfeit to the chief lords, or to the king, in the ſame manner as is provided for lands alienedi in mortmain.

Fleta, l. 2. cap. 43. Lib. 5. cap. 34. Doct. & Stud. Li. 2. ca. 34. & 46. Rot. Pat. 2 E. 3. Rot. cluſ. 18 E. 3.

For the better underſtanding of this ſtatute, it is to be knowne that the order of the templers, otherwiſe knights of the temple being men profeſſed, were by Gelaſius the pope founded *anno*

18 H. 1. *Domini* 1117, which was *anno* 18 H. 1.

Theſe were called *templarii*, becauſe they were firſt founded in ſome of the edifices adjoyning and belonging to the temple, and had the charge and keeping of the lords ſepulchre, and not onely entertained pilgrims that came to ſee the ſepulchre, &c. but in their armour conducted chriſtians that had a deſire to ſee the city of Jeruſalem, and other places in the land of Paleſtine, and to guard them from the Saracens and infidels.

Soone after, *viz. anno Domini* 1120, which was in *anno* 21 H. 1, the hoſpitallers, commonly called *milites Sancti Johannis Jeroſolymitani*, being profeſſed friers of S. John of Jeruſalem, under the rule of S. Auguſtine, were founded, Honorius then being pope, and they were called *hoſpitularii*, hoſpitallers, becauſe they had the care of hoſting and providing hoſpitals for pilgrims, &c. travelling to

to Jeruſalem, &c. and for their ſafe-conduct againſt Saracens and infidels. Theſe two orders, (but eſpecially the templers) did ſo overſpread throughout chriſtendome, and ſo exceedingly increaſed in poſſeſſions, revenues, and wealth, and ſpecially in England, as you will wonder to reade in approved hiſtories, and withall obtained ſo great and large priviledges, liberties, and immunities for themſelves, their tenants and farmers, &c. as no other order had the like.

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At the councell of Vienna holden *anno Domini* 1311, which was *anno* 4 E. 2. *Clemens quintus* then being pope, the order of the templers was by that councell diſſolved throughout all Chriſtendome, and their poſſeſſions and revenues here in England given to the hoſpitallers by act of parliament, *anno* 17 E. 2.

Councel of Vienna, anno Dom. 1311.
4 E. 2.
Kelwey, 6 H. 8. fol. 169, 170.
Anno 17 E. 2.
Vet. Mag. Chart. fol. 42. ſecond pt.

But the hoſpitallers continued here in England till an act of parliament made in 32 H. 8. by which act they were diſſolved, ſo as albeit both theſe orders mentioned in this act are diſſolved, and therefore this act may ſeeme to be obſolete and out of uſe, yet will we not omit the expoſition of it for two cauſes; 1. for that we have hitherto omitted not one; and 2. it may ſerve for very good uſe, as hereafter ſhall appeare.

5 E. 3. 36.
35 H. 6. 46.
32 H. 8. ca. 24.

(1) *Erigunt cruces.*] The reaſon wherefore croſſes were erected, was, for that the knights of both the ſaid orders were *cruce ſignati*, and becauſe that was the enſigne of their profeſſion, and for that their tenants enjoyed great priviledges, to the end they might be known to be the tenants of the ſaid orders, and thereby freed from many duties and ſervices which other tenants were ſubject unto, did erect croſſes upon their houſes; and many tenants of other lords perceiving the ſtate and greatneſſe of the knights of both the ſaid orders, and withall ſeeing the great priviledges their tenants enjoyed, did ſet up croſſes upon their houſes, as their very tenants uſed to doe, to the prejudice of their lords.

(2) *In tenementis ſuis.*] The croſſe was erected upon their houſes, but both the houſe and lands holden by one tenure were forfeited to the lord, and therefore the act ſaith, *in tenementis ſuis.*

(3) *Aut erigi permittunt.*] This word [permit] or [ſuffer] hath in the law two ſignifications; firſt, where he that ſuffereth it, is party, and then it is equivalent to his owne act; as if a man ſuffereth a recovery againſt him, and the like: the other ſignification is when a ſtranger doth the act whereunto he is not party; as here if a ſtranger of his own head erecteth a croſſe upon the tenants houſe, if after notice the tenant doth ſuffer it, this is a permiſſion within this act; even as in waſte in houſes, if it be done by a ſtranger, the tenant muſt anſwer for it, if he repaire it not before the action brought; ſo if after notice the tenant doth not put down the croſſe, but doth by colour thereof any thing to the prejudice of the lord, he is within this ſtatute.

21 H. 7. 34.

(4) *In præjudicium dominorum ſuorum.*] Somewhat muſt be done to the prejudice of the lord; for if the tenant erecteth, or ſuffereth to be erected a croſſe upon his houſe, this is no forfeiture of his tenancy; but if after the erection of the croſſe, he claimeth and putteth in ure any of the priviledges of either of the ſaid orders againſt the lord to his prejudice, then is the tenancy forfeited.

(5) *Per privilegium templariorum et hoſpitaliorum.*] The tenants of the knights of both theſe orders enjoyed great priviledges, as

Regiſt. f. 20, 21.

See hereafter, ca. 43.

well againſt the king, as againſt the other lords; as to be free from tenths and fifteens to be paid to the king, to be diſcharged of purveyance, that they ſhould not be ſued for any eccleſiaſticall cauſe before the ordinary, *ſed coram conſervatoribus privilegiorum ſuorum*; alſo of ancient time they claimed that a felon might take ſuch houſes having ſuch croſſes for his ſafety, as well as any church, and many others: now if a croſſe be erected, and any of theſe, or other priviledges claimed and put in ure by the tenant, &c. then was his land forfeited to the lord of whom the land in truth was holden.

If after the croſſe levied, the prior of S. John of Jeruſalem had diſtrained for rent or ſervice, and the tenant had acknowledged the
[433] tenure of him, the very lord might enter by the purview of this ſtatute, and ſo if the tenant doe prove any will whereof he is made executor before the conſervator of the priviledges, the lord may enter, *et ſic in ſimilibus.*

(6) *Eodem modo.*] This is an act of reference as well to the ſtatute *de religioſis, anno* 7 E. 1. as to the 32 chapter of this parliament of Weſtm' the ſecond; and therefore if the king take benefit of this act, he ought to graunt the lands over in ſuch ſort, as is preſcribed by the ſaid act of 7 E. 1.

And albeit the ſtate of the tenancy was not hereby changed, as in the caſe of the mortmaine, (whereunto this act referreth) yet ſuch were the height, power, and greatneſſe of theſe orders, that this act doth put the matter prohibited by this act in equipage, with an alienation in mortmaine.

CAP. XXXIV.

PURVIEU eſt, que ſi home raviſt feme eſpouſe, dameſelle, ou auter feme deſormes, per la ou el ne ſoit aſſentus, ne avant, ne apres (1), *eyt judgement de vie et de membre* (2). *Et ensement per la ou home raviſt feme, feme eſpouſe, damaſelle, ou auter feme a force, tout ſoit que el ſoy aſſent apres, eyt tiel judgement come devant eſt dit, ſil ſoit attaint a le ſuit le roy* (3), *et la eyt le roy ſa ſuit. De mulieribus* (5) *abductis cum bonis virorum* (6) *ſuorum, habeat rex ſectam de bonis ſic aſportatis* (4.) *Et ſi uxor ſponte reliquerit virum ſuum, et abierit* (8), *et moretur cum adultero* (9) *ſuo, amittat in perpetuum actionem petendi dotem ſuam* (7), *quæ ei competere poſſet de ten' viri ſui, ſi ſuper hoc convincatur, niſi vir ſuus ſponte, et abſque coheretione eccleſiaſtica eam reconciliet, et ſecum*

IT is provided, that if a man from henceforth do raviſh a woman married, maid, or other, where ſhe did not conſent, neither before nor after, he ſhall have judgement of life and of member. And likewiſe where a man raviſheth a woman married, lady, damoſel, or other, with force, although ſhe conſent after, he ſhall have ſuch judgement as before is ſaid, if he be attainted at the king's ſuit, and there the king ſhall have the ſuit. And of women carried away with the goods of their huſbands, the king ſhall have the ſuit for the goods ſo taken away. And if a wife willingly leave her huſband, and go away, and continue with her advouterer, ſhe ſhall be barred for ever of action to demand her dower, that ſhe ought to have of her huſband's lands, if ſhe be convict thereupon,

cum cohabitare permittat (10), *in quo caſu reſtituatur ei actio. Qui monialem à domo ſua abducat, licet monialis conſentiat, puniatur per priſonam trium annorum, et ſatisfaciat domui à qua abducta fuerit, competenter* (11): *et nihilominus redimatur ad voluntatem regis* (12).

upon, except that her huſband willingly, and without coertion of the church, reconcile her, and ſuffer her to dwell with him; in which caſe ſhe ſhall be reſtored to her action. He that carrieth a nun from her houſe, although ſhe conſent, ſhall be puniſhed by three years impriſonment, and ſhall make convenient ſatisfaction to the houſe from whence ſhe was taken, and nevertheleſs ſhall make fine at the king's will.

31 E. 1. Endictment 31. (3 Ed. 1. c. 13. 6 R. 2. c. 6. Regiſt. 57. 2 Roll. 247. 9 Ed. 4. f. 26. Br. Coron. 203. Dyer, 256. Fitz. Dower, 41. 72. 94. 119. 153. Fitz. Act. ſur le ſtat. 12. 37. 3 Inſt. 32.)

(1) *Purview eſt, que ſi home raviſt feme eſpouſe, dameſelle, ou auter feme deſormes, per la ou el ne ſoit aſſentus, ne avant, ne apres, eyt judgement de vie et de membre.*] This clauſe is intended of an appeale to bee brought by the party raviſhed, for if ſhe give conſent either before or after, ſhe ſhall have no appeale, but if ſhee conſented neither before nor after, then ſhee ſhall have an appeale of rape, and there is no law that gives a woman an appeale of rape but this. 13 E. 3. Coron. 122.

Hereby the auncient law concerning the election given to her that is raviſhed is taken away. *Vide* Weſtm. 1. cap. 13. See the firſt part of the Inſtitutes, ſect. 190.

Afterwards by the ſtatute of R. 2. a greater puniſhment is inflicted upon the party raviſhed, if ſhe after conſent to the raviſher, *viz.* that as well the raviſhed as the raviſher ſhould be diſabled to challenge inheritance, dower, or joynt-feoffement, &c. and that the next of blood ſhould enter, &c.

6 R. 2. c. 6. 5 E. 4. 6. Lo. 5 E. 4. 58. 1 H. 6. 1. 9 H. 7. 25. Pl. Com. 45. li. 3. fol. 61. Shelleyes caſe.

And moreover the huſband of her that is ſo raviſhed and after gives her conſent, or if ſhe have no huſband, her father, or other next of her blood ſhall have the appeale of rape, wherein no wager of battell ſhall be allowed; ſo as this act of R. 2. gave an appeale in caſe were no appeale lay before, and alſo to other perſons, ſo as the woman that never conſented may have her appeale upon this ſtatute, and if ſhe give conſent afterwards, then the appeale of rape is given by the ſtatute of 6 R. 2.

If a woman be raviſhed by her next of kin, and conſenteth to him, and hath neither huſband nor father, the next of kin to him ſhall have the appeale, for he hath diſabled himſelfe by the rape, whereby he becomes a felon. 28 H. 6. Coro. 459.

(2) *Judgement de vie et de membre.*] That is to ſay hee ſhall be attainted of felony. De frangent. priſonam. 1 E. 2. 14 E. 3. cap 9. 9 E. 4. 26. 22 E. 4. 23. Broke Coron. 203.

In the appeale being the ſuit of the party, the pardon of the king doth not diſcharge the party, as it doth upon the indictment at the ſuit of the king.

(3) *Et enſement per la ou home raviſt feme, &c. a force, tout ſoit que el aſſent apres, eit tiel judgement come eſt avandit ſil ſoit atteint a le ſute le roy,* &c.] Hereby it appeareth that the firſt clauſe is to be intended of the ſuit of the party, this branch providing expreſly for the ſuit of the king.

W. 1. c. 13. 13 E. 2. Utlag. 49. Firſt part of the Inſtit. ſect. 190. 7 H. 3. Treſpaſſe 244. Temps E. 1. ibid. 241.

See the expoſition of the 13 chapter of Weſtm. 1. and the firſt part of the Inſtitutes, ſect. 190.

(4) *De mulieribus abductis cum bonis virorum ſuorum habeat rex ſectam de bonis ſic aſportatis.*] At the common law the huſband might have had an action of treſpaſſe, *de uxore abducta cum bonis viri.*

This is alſo prohibited by the ſtatute of Weſtm. the 1. cap. 13. and a further puniſhment inflicted then was at the common law, and therefore in the original writ, *de uxore abducta cum bonis viri,* it is concluded *contra formam ſtatuti in hujuſmodi caſu proviſo,* meaning the ſaid ſtatute of Weſtm. 1. for this act of Weſtm. 2. extendeth onely to the ſuit of the king: and if the writ be brought at the common law omitting the words, *contra formam ſtatuti,* then it is *Si A. fecerit, &c. tunc pone, &c. quod ſit, &c.* but if *contra formam ſtatuti* be added, then the writ is, *Si A. fecerit, &c. tunc attachies B. ita quod cum habeas, &c.*

Regiſt. 97. a. F. N. B. 89. c. 42 Aſſ. p. 16. Dier 256.

Regiſt. ubi ſup. 14 H. 6. 2.

And albeit the words be, *habeat rex ſectam,* yet may the huſband alſo have his action, as is aforeſaid.

(5) *De mulieribus.*] That is to ſay *uxoribus,* for of auncient time *mulier* was taken for a wife.

43 E. 3. 23. 44 Aſſ. 13. 7 R. 2. Treſpaſſe 206.

If the wife be taken away, and after be divorced, or if ſhee die, yet the huſband ſhall have his action, *de uxore abducta cum bonis viri;* for in this action he ſhall not recover his wife, but damages. And he cannot have an action for taking her away as his ſervant, becauſe the law gives him an action in another forme.

47 E. 3. Action ſur le ſtat. 37.

If the wife be *infra annos nubiles, viz.* under the age of twelve years at the time of taking away, ſome have holden that the huſband ſhall not have a writ *de uxore abducta cum bonis viri.* But I hold the law is to the contrary, for ſhe is *uxor* untill diſagreement.

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43 E. 3. 23.

43 E. 3. ubi ſupr.

(6) *Cum bonis virorum.*] The plaintife muſt in his count ſhew the goods in certain.

Albeit the words of the writ be *rapuit,* yet here it is taken for a violent taking away, and not when carnall knowledge is had, ſo as this action may be brought againſt women as well as men.

Fleta, li. 5 c. 22. Brit. ca. 109. Mirror, c. 5. § 5. 1 Part of the Inſtitutes, ſect. 36. Cuſtumier de Norm. ca. 101.

(7) *Et ſi uxor ſponte reliquerit virum ſuum, & abierit, & moretur cum adultero, amittat in perpetuum actionem petendi dotem ſuam, &c. niſi vir ſuus ſponte, & ſine coertione eccleſiaſtica eam reconciliet, & ſecum cohabitare permittat, &c.*] In this caſe of elopement, and remaining with the adulterer, &c. the wife could not be barred of her dower by the common law, no though a divorce were ſued and had for the ſaid adultery, as you may read in the firſt part of the Inſtitutes, ſect. 36.

43 Ed. 3. 19.

(8) *Si ſponte reliquerit, & abierit, & moretur cum adultero, &c.*] Albeit the words of this branch be in the conjunctive, yet if the woman be taken away not *ſponte,* but againſt her will, and after conſent, and remain with the adulterer without being reconciled, &c. ſhe ſhall loſe her dower; for the cauſe of the bar of her dower is not the manner of the going away, but the remaining with the adulterer in avowtry without reconciliation, that is the bar of the dower: ſee more of theſe words (*reliquerit & abierit*) in this chapter.

If the wife goeth away with her huſbands agreement and conſent with A. B. if after A. B. commit adultery with her, and ſhe remain with him without reconciliation, ſhe ſhall be barred of her dower by this branch; whereof you ſhall read in an ancient parliament

parliament roll a rare and ſtrange caſe, which was the firſt judgement that I finde given upon this branch, and the judgement was given in parliament; and the caſe, which I have taken out of the record it ſelf, was this:

Sir William Paynel knight, and Margaret his wife did demand the third part of the mannour of Torpul, as the dower of the ſaid Margaret after the death of John de Camoys her firſt huſband, that mannour being then in the ſeiſin of the king: the king's attorney anſwered, that ſhe ought not to be endowed, *quia receſſit a marito ſuo in vita ſua, & vixit ut adultera cum prædict' Guilielmo, & non fuit viro ſuo reconciliata ante mortem ſuam, & ſic per formam* * *ſtatuti inde prius editi non debet inde dotari.*

Rot. Parliam. oct. ſancti Joh. Bapt. an. 30 E. 1. Rot. 2.

* Viz. this ſtatute of W. 2. cap. 34.

The demandants replyed, and pleaded a deed of the ſaid John Camoys under ſeal, in theſe words:

Omnibus Chriſti fidelibus ad quos hoc præſens ſcriptum pervenerit, Johannes de Camoys filius & hæres domini Radulphi de Camoys, ſalutem in domino. Noveritis me tradidiſſe & dimiſiſſe ſpontanea mea voluntate domino Guiliel. Paynel militi Margaretam de Camoys filiam & hæredem Johannis de Gateſden uxorem meam. Et etiam dediſſe, conceſſiſſe, & eidem domino Guilielmo relaxaſſe, et quietum clamaſſe omnia bona, et catalla quæ ipſa Margareta habet, vel de cætero habere poſſit, & etiam quicquid mei eſt de præd' Margaretæ bonis, vel catallis cum ſuis pertinen'. Ita quod nec ego, nec aliquis alius nomine meo in prædicta Margareta, bonis, et catallis ipſius Margaretæ cum ſuis pertinen' de cætero exigere ſeu vendicare poterimus, nec debemus imperpetuum. Volo et concedo, et per præſens ſcriptum confirmo, quod prædicta Margareta cum prædicto domino Guilielmo ſit, & maneat, ex voluntate ipſius Guilielmi. In cujus rei teſtimonium ſigillum meum appoſui, &c. hiis teſtibus.

Conceſſio mirabilis & inaudita.

And concluded their replication thus; *Virtute cujus ſcripti dicit, quod non vixit, ut adultera cum prædicto Guilielmo, ſed ut uxor ejuſdem Guilielmi.*

Whereupon the king's attorney demurred in law, and the record ſaith, *Et ſuper hoc proceſſum eſt ad judicium, quod non debet dotari.*

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By this record it appeareth, that ſhe was barred of her dower by force of this branch, whereof the king's attorney took advantage: and in the record it is further contained, that the demandants *protulerunt quaſdam alias literas epiſcoporum de purgatione adulterii, quæ recitantur in memorand'. Et quia ſuper teſtimonio epiſcoporum non ſunt judicia in curia regis faciend', licet literæ epiſcoporum in curiam regis fuer' porrectæ, niſi iidem epiſcopi ad mandatum regis ipſi regi reſcriberent.*

This deed, for the ſtrangeneſſe thereof, we have recited at large *de verbo in verbum.*

But the huſband may give licenſe to a man to carry his wife to his houſe, and this ſhall be a good bar in an action brought *de muliere abducta cum bonis viri.*

46 E. 3. Bar. 214. 1 E. 4. 1. 20 H. 7. 2. 21 H. 7. 13.

(9) *Moretur cum adultero.*] Albeit ſhe doth not continually remain in avowtry with the adulterer, yet if ſhe be with him and commit adultery, it is a tarrying within this ſtatute.

3 E. 3. 2. 6 E. 3. 29.

Alſo if ſhe once remain with the adulterer in avowtry, and after he keepeth her againſt her will; or if the avowterer turn her away, yet ſhe ſhall be ſaid *morari cum adultero* within this act.

If the wife doth elope from her huſband's houſe of habitation, and commit adultery in any other the lands or mannours of her huſband, this without the free reconciliation of the huſband is within the purview of this ſtatute: ſee hereafter in this chapter for this point.

And there be *parvæ moræ*, and *magnæ*, and both of them within this branch.

29 E. 3. Dower 94. (10) *Niſi vir ſuus ſponte, & abſque cobertione eccleſiæ eam reconciliet, & ſecum cohabitare permittat.*] Note that cohabitation is not ſufficient without reconciliation made by the huſband *ſponte*, ſo as cohabitation onely in the ſame houſe with the huſband availeth her not; *à fortiori*, though ſhe remain with the avowtrer in any of the lands or mannours of her huſband, yet ſhe ſhall be barred of her dower by this branch, without the huſbands free reconciliation, albeit it hath been otherwiſe holden: and the reaſon that they yeelded, is becauſe it is no elopement, whereas it appeareth before that the words of *reliquerit & abierit* are not of the ſubſtance of the bar of dower, but the adultery, and the remaining with the adulterer, as is aboveſaid: and albeit ſhe and the adulterer remain within any of the lands or mannours of the huſband, yet (the words being, *ſi uxor ſponte reliquerit & abierit*) ſhe hath left and gone from her huſband in that caſe, which is a perſonall offence. See the firſt part of the Inſtitutes, ſect. 36. for bars of dower, whereunto you may adde a caſe in Tr. 9 E. 2. fol. 65. *in libro meo*, that if a woman ſay that ſhe is conceived with childe by her huſband whiles he lived, and in truth is not, whereby the next heir is diſturbed, ſhe ſhall loſe her dower, if ſhe acknowledge the ſame before the juſtices.

8 E. 2. Dower 153. F. N. B. 150.

43 E. 3. 19. Brit. fol. 258. b.

Tr. 9 E. 2. fol. 65 b. in libro meo.

And albeit ſhe both cohabite, and be reconciled, yet if it be by the cohertion of the church, ſhe ſhall be barred of her dower.

Regiſt. 71. 267. 6. E. 3. 17. F. N. B. 233. 22 E. 3. 2. Rot. Pat. part 3. mb. 9. 72. D. Huſſeys caſe. 3 E. 3. 3. 8 E. 3. 52. 29 E. 3 24. 29 Aſſ. 35. 22 R. 2. Dam. 130. 12 H. 7. Kelw. 20, 21. F. N. B. 90. h. 140.

(11) *Qui monialem a domo ſuo abducat, licet monialis conſentiat, puniatur per priſonam trium annorum, & ſatisfaciat domui a qua abducta fuerit competenter, & nihilominus redimatur ad voluntatem regis.*] *Monialis*, 1. *Monacha, nonna, quaſi non nupta, ſed deo conſecrata*, he that carrieth a monk out of his cloiſter, the abbot or prior, &c. of the houſe ſhall not have an action of treſpas for the taking of him away, but his remedy is by the writ of *apoſtata capiendo*; but * that writ doth not lie for a nun: and therefore the common law did give an action of treſpaſſe for taking her away, as the lord might have an action of treſpaſſe at the common law for his ward; and this act was made to give a further puniſhment; for the writ in the Regiſter doth not recite this act, but the plaintife ſhall not take advantage of this act, unleſſe he conclude, *contra formam ſtatuti, &c.*

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Regiſt. 71. 267. Now the writ *de moniale abducta* ſaith, *Quare vi et armis clauſuras ipſius prioriſſæ apud L. fregit, et ſororem Jocoſam Aſhe commonialem ſuam ibid' exiſtent' cepit, et abduxit, per quod divinum ſervitiū in eccleſia ipſius prioriſſæ Sanctæ Helenæ London' multipliciter ſubtractum fuit, et diminutum, et alia enormia, &c.*

(12) *Et nihilominus redimatur ad voluntatem regis.*] So as albeit the abbeſſe or prioreſſe ſhall recover damages, and the defendant have judgment to remain in priſon by three yeers, yet he ſhall be indicted and ranſomed at the kings ſuit in a legall proceeding, *et ſic e converſo.*

CAP.

CAP. XXXV.

DE pueris maſculis, ſive fœmellis (1), *(quorum maritagium ad aliquem pertineat) raptis et abductis* (3), *ſi ille qui rapuit non habens jus* (2) *in maritagio, licet poſtmodum reſtituat puerum non maritatum, vel de maritagio ſatisfecerit, puniatur tamen pro tranſgreſſione per priſonam duorum annorum* (4). *Et ſi non reſtituerit, vel hæredem poſt annos nubiles maritaverit, et de maritagio ſatisfacere non potuerit* (5), *abjuret regnum, vel habeat perpetuam priſonam* (6). *Et ſuper hoc habeat querens tale breve* (7):

CONCERNING children males or females (whoſe marriage belongeth to another) taken and carried away, if the raviſher have no right in the marriage, though after he reſtore the child unmarried, or elſe pay for the marriage, he ſhall nevertheleſs be puniſhed for his offence by two years impriſonment; and if he do not reſtore, or do marry the child after the years of conſent, and be not able to ſatisfy for the marriage, he ſhall abjure the realm, or have perpetual impriſonment; and thereupon the plaintiff ſhall have ſuch a writ:

Si A. fecerit te ſecurum, &c. tunc pone per vad', &c. B. quod ſit coram juſticiariis noſtris, &c. oſtens' quare talem hæred' infra ætatem exiſtentem, cujus maritagium ad ipſum A. pertinet, apud C. inventum, tali loco rapuit et abduxit (8), *contra voluntatem ipſius A. et contra pacem, &c.*

Et ſi hæres ſit in eodem comitatu, tunc addatur iſta clauſula.

And if the heir be in the ſame county, then this clauſe muſt be thereto added:

Et diligenter inquiras ubi ille hæres ſit in baliva tua, et ipſum ubicunque inventus fuerit capias, et ſalvo et ſecure cuſtodias, ita quod eum habeas coram præfat' juſticiariis noſtris ad præfatum terminum, ad reddend' cui prædictorum A. et B. reddi debeat.

Et fiat ſecta verſus partem de qua queritur, quouſque per diſtrictionem venerit, ſi habeat per quod diſtringi poterit, vel per contumaciam (ſi non ſit juſtificabilis) exigatur, et utlagetur. Si jortè hujuſmodi hæres ducatur, et transferatur in alium comitat' (9), *tunc vic' illius comitatus fiat tale breve ſub hac forma:*

And ſuit ſhall be made againſt the party on whom complaint is made, until he come in by diſtreſs, if he have whereby he may be diſtrained; or elſe for his contumacy, in caſe he be not juſtifiable, he ſhall be outlawed. And if percaſe the heir be married, or carried into another county, then a writ ſhall be directed to the ſheriff of the ſame ſhire in this form:

Queſtus eſt nobis A. quod B. nuper talem hæredem infra ætatem, et in cuſtodia ſua exiſtent', tali loco in comitatu tali rapuit, et de comitatu illo ad talem locum in com' tuo abduxit, contra voluntatem ipſius A. et contra pacem, &c. Et ideo tibi præcipimus, quod prædictum hæredem, ubicunque eum in baliva

baliva tua invenire poteris, capias, et ſalvo et ſecure eum cuſtodias, ita quod eum habeas coram juſticiariis noſtris, &c. tali loco et die, quem diem idem A. habet verſus prædictum B. ad rediend' cui de jure reddi debeat.

Et ſi hæres antequam inveniri poterit, vel antequam reſtituatur querenti, obierit (10), *nihilominus procedat placitum inter eos, quouſque terminetur, cui reſtitui deberet, ſi ſuperſtes fuiſſet. Nec excuſabitur aut alleviabitur ille, qui injuſtè rapuit hujuſmodi hæred' de pœna ſupradicta per mortem hæred', cujus extitit male fidei poſſeſſor dum vixit. Et ſi querens obierit ante placitum terminatum* (11), *ſi jus ei competebat ratione proprii feodi ſui, reſummoneatur loquela ad ſectam hæred' querentis, et procedat placit' debito ordine. Si vero per alium titulum competat ei jus, ſicut titulo donationis, venditionis, aut alio hujuſmodi titulo, tunc reſummoneatur loquela ad ſectam executor' querentis, et procedat placit' ut prædictum eſt. Eodem modo ſi moriatur pars defendens* (12) *antequam placit' terminetur vel hæres reſtituatur, procedat placit' per reſum' inter querentem, vel ejus hæredem, ſeu executores, et executores defendentis, vel ejus hæredes, ſi executores non ſufficiant, quoad ſatisfactionem de valore maritagii ſecundum quod in aliis ſtatutis continetur, ſed non quoad pœnam priſonæ, quia quis pro alieno facto non eſt puniendus. Eodem modo cum pendeat placitum inter partes de cuſtodia terræ, vel hæredis, vel utriuſque per commune breve, quod incipit:* Præcipe tali, &c. quod reddat, &c. (13) *fiat reſummonitio inter hæredes et executores querentis, et ſimiliter hæredes aut executores defendentis, ſi mors alteram partem præveniat ante placitum terminatum. Et cum perveniatur ad magnam diſtrictionem, detur terminus,* (14) *infra quem tres com' teneantur ad minus, in quorum quolibet comitatu fiat publica proclamatio, quod defor-ciator veniat ad bancum* (15) *ad diem in brevi contentum, reſponſurus querenti.*

And if the heir do die afore he can be found, or before he can be reſtored to the plaintiff, the plea ſhall paſs between them nevertheleſs, until it be tried unto whom he ought to have been reſtored if he had been living. Neither ſhall the raviſher of ſuch a one be excuſed or eaſed of the puniſhment aforeſaid by the death of the heir, whom he did withhold by wrong during his life. And if the plaintiff die before the plea determined, if the right belong to him by reaſon of his proper fee, the plea ſhall be reſummoned at the ſuit of the heir of the plaintiff, and the plea ſhall paſs in due order. But if the right belongeth to him by another title, as by a title of gift, ſale, or other ſuch like, then the plea ſhall be reſummoned at the ſuit of the executors of the plaintiff, and the plea ſhall paſs as before is ſaid. In the ſame manner if the defendant die before the plea be tried, or the heir be reſtored, the plea ſhall paſs by reſummons between the plaintiff, his heirs or executors, and the executors of the defendant or his heirs, if the executors be not ſufficient to ſatisfy for the value of the marriage, after as it is contained in other ſtatutes, but not as to the pain of impriſonment; for none ought to be puniſhed for the offence of another. In the ſame manner when a plea hangeth between parties for the ward of land, or of an heir, or of both, by the common writ that beginneth *Præcipe tali, &c. quod reddat, &c.* Reſummons ſhall be made between the heirs and executors of the plaintiff; and likewiſe the heirs and the executors of the defendant, if death prevent any of the parties before the plea determined. And when they have paſſed to the great diſtreſs,

renti. Ad quem diem ſi non venerit, (16) *et proclamatio * ſic ſemel, ſecundo, et tertio teſtificatum fuerit, procedatur ad judicium* (17) *pro querente: ſalvo jure defendentis, ſi poſtmodum inde loqui voluerit* (18). *Eodem modo fiat in brevi de tranſgreſſion' cum quis queritur ſe ejectum fuiſſe de hujuſmodi cuſtodiis* (19).

diſtreſs, a day ſhall be given, within which three county courts may be holden at the leaſt, in every of which open proclamation ſhall be made, that the deforcer ſhall come into the bench at the day contained in the writ, to anſwer the plaintiff; at which day if he come not, and the proclamation be ſo returned once, twice, or thrice, the judgement ſhall paſs for the plaintiff, ſaving the right of the defendant, if after he will claim it. In the ſame manner it ſhall be done in a writ of treſpaſs, when any complaineth himſelf to be ejected from ſuch wardſhips.

See the firſt part of the Inſtitutes, ſect. 203. (3 Inſt. 171. Fitz. Gard. 18. 25. 29, 30, 31, 32. 118. 121. Fitz Judgm. 102. 116. 123. 150. 157. 172, 204. Bro. Raviſhment, 33. 1 Inſt. 136. b. Hob. 93. 1 Roll. 445. 2 Roll. 354. Regiſt. 163. 9 Rep. 71. 74. Fitz. Brief, 823. Raſt. 390. 3 Bulſt. 275. 278. 281. Dyer. 289. Fitz. Brief, 776. 24 Ed. 3. f. 48. 11 H. 4. f. 54. Fitz. Executors, 52. Fitz. Gard. 110. 24 Ed. 3. f. 25. 20 H. 3. c. 6. 3 Ed. 1. c. 22. 52 H. 3. c. 7. Fitz. Proces. 33. Fitz Gard. 89. Dyer. 369. Regiſt. 161. &c.

This act of parliament hath made divers alterations and additions to the ſtatute of Merton cap. 6. as hereafter in the expoſition of this act ſhall appeare. Merton, cap. 6.

(1) *De pueris maſculis ſive femellis.*] The ſtatute of Merton extended onely to heires males, and this act extendeth by expreſs words to heires females alſo. Lib. 9. fol. 72. D. Huſſeyes caſe.

Alſo the ſtatute of Merton concerning this matter extended to heires *infra* 14 *annos*; and this act extendeth to all that are *poſt annos nubiles*.

(2) *Si ille qui rapuerit jus non habens.*] The ſtatute of Merton extended to lay men onely, this act extendeth as well to eccleſiaſticall perſons, regular or ſecular, as to lay men. D. Huſſeys caſe. ubi ſupra. 7 E. 3. 11.

(3) *Raptis & abductis.*] The words of the ſtatute of Merton are *vi abductis & detentis*.

(4) *Per priſonam duorum annorum, &c.*] The ſtatute of Merton gave impriſonment *donec emendaverit delictum, &c.* This act gives the impriſonment of two yeares, albeit the ward be delivered unmarried, or though amends be made.

The king may pardon this impriſonment for two yeares, which was added by this act. P. 34 E. 1. Coram Rege. Rot. 30.

(5) *De maritagio ſatisfacere non potuerit.*] The defendant ſhall be intended ſufficient to ſatisfie the plaintiffe, if the plaintiffe doth not pray that the jurors ſhould inquire of his ſufficiency. 8 E. 3. 52. 22 R. 2. damages 130.

(6) *Abjuret regnum, vel habeat perpetuam priſonam.*] And in this caſe the election is not given to the defendant, but it is in the diſcretion of the court to give judgement either of abjuration, or perpetuall impriſonment. Lib. 9. fol. 73. D. Huſſeys caſe.

This puniſhment is alſo added to the ſtatute of Merton.

Albeit the party that is by judgement abjured return again, yet

yet shall he not be hanged, because he was not abjured for felony, but he may be punished for his contempt, and remaunded.

(7) *Et super hoc habeat querens tale breve, &c.*] By this branch the writ of ravishment of gard is given, and the forme of the writ is here expressed.

The statute of Merton extended to the writ of right of ward.

A gardein in socage cannot have a ravishment of ward upon this act, but onely a gardein in chivalry, but the gardein in socage shall have a *ravishment de gard*. But it was adjudged soone after the making of this act, that by the 24. chapter of this parliament, which giveth the writ *in consimili casu cadente sub eodem jure & simili indigente remedio*, the gardein in socage shall maintain a writ of ravishment of ward for the body, and a writ *de ejectione custodiæ* for the land.

* For the custome of the city of London concerning orphanage, see 32 E. 3. 8 R. 2.

In this writ if the issue be found for the plaintiffe, yet upon the context of this act the jury shall enquire, 1. of the value of the mariage, 2. of the age of the ward, and 3. whether he be married or no: and for the first and second they must give a direct verdict; for the other they may give a conditionall verdict, as to say, whether he be married or no they know not, and if he be married then assesse greater damages, which enquiry is but an inquest of office.

Now albeit the verdict be conditionall, yet in this case the judgement shall not be conditionall, but in this case the plaintiffe may have judgement to recover the marriage and lesser damages, and have execution of the body, and if the sheriffe return that he is maried, then may the plaintiffe have a *scire facias* for the greater damages, and have judgement to recover them, and so it is in an action of detinue, &c.

(8) *Raputt et abduxit.*] There be two sorts of ravishments of wards, that is to say, ravishments in deeds, and ravishments in law, and this statute extends to both of them.

Ravishments in deed, as when one take and carry away a ward; and ravishments in law be, as if the ward enter into religion, this is a ravishment in law, for which the soveraigne shall answer, for that his admission of him is a ravishment in law.

If a man or a woman marry a ward to his or her daughter, or to any other, this is a ravishment in law.

A man procureth a ward to goe from his gardein, this is a ravishment in law.

If one ravish a ward, or eject the lord to the use of a stranger without his privity, yet if the stranger agree thereunto, he is the ravisher or ejecter.

This act is intended of a gardein in chivalry, as hath been said: and though the father shall have a writ of ravishment of ward, *quare filium suum & hæredem rapuit, cujus maritagium ad ipsum pertinet*; and albeit the auncestor shall have the like action for the taking of his collaterall heire apparent, yet none of those are within this statute, but remain at the common law.

See the first part of the Institutes, sect. 114.

The count in the ravishment of ward upon this act must not be by *vi et armis*.

(9) *Si forte hujusmodi hæres ducatur et transferatur in alium comitatum.*]

Temps E. 1. gard 133. 3 E. 2. ibid. 6. 11 H. 3. ibid. 141. 11 E. 2. ibid. 127. 33 E. 3. ibid. 163. 1 E. 3. 19, 20. 4 E. 3. 5. 17 E. 3. 42. 26 E. 3. 65. 6 R. 2. gard. 166. 13 H. 4. 17. F. N. B. 140. c. 39. f. 32 E. 3. gard 31. 8 R. 2. gard 166. 9 E. 3 37, 38. 22 E. 3. 19. 24 E. 3. 49.

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9 E. 3. 37, 38. 14 E. 3 gard. 157. 19 E. 3. gard. 172, 127. 16 E. 3. ibid. 107. 17 E 3. 57. 45 E 3. 15. 47 E. 3 19. 11 H. 4. 80. 21 H. 6. 41. 32 H. 6. 3. 21 H. 7. 5.

First part of the Instit. sect. 202.

3 E 3. 52.

11 H. 4. 24. 30 E. 3. 6. b. 38 E. 3. 18. 38 Ass.

18 E. 3. 25. 41 E. 3. 15. First part of the Institutes, sect. 114. many authorities there cited.

7. H. 4. 9.

comitatum.] A man cannot have a writ of raviſhment of ward in the county of York, and ſuppoſe the raviſhment in the county of Derby, *et quod abductus fuit ab eodem comitatu uſque com' Eborum.* But his originall muſt be in the county of Derby, and by this branch he ſhall have the writ here mentioned, *queſtus eſt nobis* directed to the ſheriffe of York, whither the body is carried.

Dier 12 El. 289. 34 E. 3. gard. 164.

If the ward be reſiant in another county, then where the land is, the lord may have a writ of right of ward in that forein county where the ward is reſiant.

40 E. 3. 6. 21 E. 3. 45.

(10) *Et ſi hæres obierit.*] Albeit the body ſhall be recovered in the writ of raviſhment of ward given by this act, yet it is expreſſely provided by this branch that the death of the heir ſhal not abate the writ; but otherwiſe it is in a writ of right of ward, for in that caſe the death of the heire ſhall abate the writ; and ſo it is if the heire (hanging the writ) commeth to his full age, the writ of right of ward ſhall abate, but not the raviſhment of ward, but if he be of full age at the time of the writ of raviſhment brought, then the writ ſhall abate for the words of the writ, *cujus maritagium ad ipſum pertinet.*

46 E. 3. bre. 776. 18 E. 3. Scire fac' 10. 34 E. 1. gard 129. 30 E. 3. 14. 9 E. 4. 50.

(11) *Et ſi querens obierit ante placitum terminatum.*] Two joynt lords or two coparceners of a ſeigniory bring a writ of ward, and one of the plaintiffes die, the writ is abated, and the ſurvivor ſhall not have a reſummons, for this act giveth the reſummons either to the heir, or to the executors, and not to any ſurvivor, who may have a new originall; and ſo it is if the baron and feme be plaintiffes, and the huſband dieth, the writ ſhall abate, and no reſummons ſhall be ſued, becauſe one of the plaintiffes is alive, to whom the wardſhip ſurviveth, *et pars querens non obiit*; and the nature of a reſummons is to continue the originall writ, for by the common law no reſummons did lie but againſt him that was party to the originall, or which came in by voucher or receit, &c. ſo long as the tenant lived, and onely where the plea was put without day, without any laches or default in the party, as upon a conuſans graunted and failer of right by the demiſe of the king, the *non venu* of the juſtices, or when the paroll demurred for nonage, or upon the allowance of a protection and the like; but if the proceſs be not continued by the negligence of the plaintiffe, no reſummons lieth.

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19 E. 3. Scire fac' 119. 38 E. 3. 36. 24 E. 3. 48. 5 H. 7. 33.

Alſo no reſummons lieth for the defendant or tenant, becauſe reſummons is compounded of *re, ſub,* and *moneo*: and the defendant or tenant never ſued out ſummons, and therefore can have no reſummons, neither ſhall a reſummons be graunted but againſt him that was formerly ſummoned, and upon the reſummons by this act the party cannot vary from the former plea, but onely for matter that commeth of puiſne time, as a releaſe, &c.

And where ſome have holden that the makers of this act were not learned in the law, becauſe the reſummons is given to the heire, where by law the heire cannot have the wardſhip being but a chattell, the makers of the law knew that as well as the objector, for it is ſaid in 9 E. 3. that they were *ſage gents* that were at this parliament, but ſeeing no reſummons in this caſe did lie by the common law, the makers of this act gave the reſummons to the heire when the wardſhip accrued *ratione proprii feodi*, for there the inheritance of the tenure might come in queſtion which concerned the heir more then the wardſhip, *hac vice*, could concern the executors, and as if the defendant make his teſtament, and deviſeth

11 H. 4. 54. p. Hill. 9 E. 3. 22. 18 E. 3. 4, 5. 24 E. 3. 48, 49.

the

the ward to another, yet the reſummons ſhall be awarded by the next ſubſequent clauſe of this act againſt the executors, although they have nothing in the ward, and, for their inſufficiency, againſt the heire who cannot claime the ward being but a chattell; ſo *in novo caſu providebant novum remedium*, and in one caſe charged the heire of the defendant, whom the law could not charge, and in another gave remedy to another heire upon good reaſon, who by law had none.

18 E. 3. 4. b.

(12) *Eodem modo ſi moriatur pars def.* &c.] If a writ of ward he brought againſt two, and one of them die, no reſummons ſhall be ſued by this branch, becauſe one of the defendants are alive, and he ſhall have the ward by ſurvivor, and this branch giveth the reſummons either againſt the executors or heire, *Et pars defendens non eſt mortuus.*

50 E. 3. 7. b.

And the nature of a reſummons (as hath been ſaid) is to continue the originall.

If the plaintiffe in the writ of ward dieth, and a reſummons is ſued by the heire, upon the next precedent branch, if the defendant dieth the heire ſhall have a reſummons againſt the executors of the defendant, for the words of this branch be, *inter querentem, vel ejus hæredem ſeu executores, et executores defendentis*, &c.

24 E. 3. 48.

Though this branch ſaith, *eodem modo*, yet for ſo much, as is otherwiſe provided for, there is no reference by theſe words to the former clauſe. for a reſummons lieth not againſt the heire of the defendant, if the executors have aſſets, and it is a good plea for the heire to ſay that the executors have ſufficient; but if the executors have aſſets for part, and the heire aſſets for part, yet no reſummons is given againſt them both by this act.

7 E. 3. 48.
18 E. 3. 4, 5.
24 E. 3. 49.

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And in a reſummons againſt the executors upon this act of parliament *pleinment adminiſter* is a good plea; but then the plaintiffe ſhall have judgement *maintenant* to recover the ward; and in a reſummons againſt the heire for the inſufficiency of the executors, it is a good plea for him, that he hath nothing by deſcent in fee-ſimple.

If the executors have not aſſets, ſo as the heire is to be charged, yet ſhall damages onely be recovered againſt him: but the puniſhment ordained by this act ſhall not be inflicted upon him, for that ſhould be againſt a maxime of the common law here rehearſed, *quod quis pro alieno facto non eſt puniendus, et pœna ex delicto defuncti hæres teneri non debet*; and againe, *in hæredes non ſolent tranſire actiones, quæ pœnales ex maleficio ſunt*: and, *toties in hæredem datur actionem de eo quod ad eum pervenit, quoties ex dolo defuncti convenitur non toties ex ſuo.*

Bracton.

And, *filius non portabit iniquitatem patris.*

(13) *Eodem modo cum pendeat placitum inter partes de cuſtodia terræ, vel hæredis, vel utriuſque, per commune breve præcipe tali, &c. quod reddat, &c.*] *Per commune breve.* Hereupon it is called, *breve de communi cuſtodia*, that is, *breve de recto de cuſtodia*, and to that writ onely the ſtatute of Marlebridge extended.

Marl. cap. 7.

(14) *Et cum pervenerit ad magnam diſtrictionem, detur terminus.*] The ſtatute of Marlebridge gave a proclamation, *ſi ad magnam diſtrictionem non venerint*, &c. ſo as by that act the grand diſtreſſe muſt be returned before the proclamation iſſued, but by this act the proclamation is to iſſue when the grand diſtreſſe is graunted, for

Marlb. cap. 7.
14 E. 3. Procl. 8.

for the words be, *cum pervenerit ad magnam diſtrictionem, detur terminus, &c.* 30 E. 3. 10, 11. 49 E. 3. 19.

Alſo the ſtatute of Marlebridge provided, that *bis vel ter, &c. infra medietatem anni ſequentis* the proclamation ſhould be made, ſo as the counties were put in certain when the proclamation ſhould be made; now this act abridgeth the ſixe months to three months, and ſets the time of the proclamation in certaine. This branch extendeth onely to the writ of right of ward, as the ſtatute of Marlebridge did, *vide* in the end of this chapter. Marlb. cap. 7.

This branch reſtraining the common law, extendeth not to the vowchee, but onely to the defendant in deed, and not to the defendant in law. 29 E. 3. 48. 13. Proclam. 9.

If *propter brevitatem temporis* there were but two proclamations made, the plaintiffe ſhall not have a writ, *cum allocatione comitat'*, becauſe he purſued not the ſtatute, and it was his folly that the writ contained not longer time. 2 H. 4. 1.

In a writ of ward againſt two, the one appeareth, and the other makes default, or if the one have nothing, and the other is diſtrained, no proclamation ſhall be awarded againſt the one of them, for both of them make but one defendant, and therefore either againſt both, or againſt none. 19 E. 3. Procl. 5. & 10. 17 E. 3. 70. 14 H. 4. 37.

If a diſtreſſe with a proclamation be graunted, and the defendant hath nothing but within a franchiſe, the ſheriffe ſhall make the proclamations in the county, and the bayly of the liberty ſhall diſtraine him. 2 H. 4. 1.

The proclamation muſt be graunted in the ſame county where the originall is brought; and therefore if the plaintiffe furniſe that the defendant hath ſufficient in a forein county, he ſhall have a diſtreſſe at the common law, but not with proclamation by this ſtatute. 17 E. 3. 70, 71.

(15) *Veniat ad bancum.*] This extends not to juſtices in eyre, nor to commiſſioners of oier and terminer, but the plaintife may have an action of treſpaſſe before them at the common law. [443] 3 E. 3. Proclam. 17. 29 E. 3. 37.

(16) *Ad quem diem ſi non venerit, &c.*] See 17 E. 3. 19. here in the next paragraph, by which it appeareth that he muſt come *ad quem diem, et non ad alium.* 17 E. 3. 19.

(17) *Procedatur ad judicium.*] At the common law he could not have judgement by default without plea of the party, &c. but diſtreſſe infinite; if upon the proclamation returned the defendant be demanded, and appear, and taketh a day by *prece partium*, and at that day make default, the plaintife ſhall not have judgement upon this ſtatute, becauſe he made not default at the return of the diſtreſſe, for this act ſaid, *ad quem diem ſi non venerit.* 22 E. 3. 19.

And where it is ſaid, *(procedatur ad judicium)* yet upon this default no judgement can be yet given, but the court muſt award a writ to the ſherife, to inquire of the value of the marriage, of the age of the ward, and whether he be marryed, &c. as is aforeſaid; and upon the return of that writ, then judgement ſhall be given. 42 H. 3. 1. 38 E. 3. 21.

But if the defendant appear at the return of the proclamation, and confeſſe the action, the plaintife ſhall have judgement of the damages in his count.

(18) *Salvo jure defendentis, ſi poſtmodum inde loqui voluerit.*] Some have conceited upon theſe words [*inde loqui voluerit*] that if a man

recovereth in a writ of right of ward by default, that the defendant might have a writ of right of ward, and recover again that which he formerly loſt; but by reaſon of this word [*poſtmodum*] thoſe words ſhall be intended, that he may have a writ of right of ward after that another tenant of the ſame land happen to dye his heir within age, but for the ſame wardſhip, whereof judgement is given in the writ of right of ward, the defendant is barred.

16 E. 3. Gard. 108.

(19) *Eodem modo fiat in brevi de tranſgreſſione cum quis queritur ſe ejectum fuiſſe de hujuſmodi cuſtodiis.*] The writ here intended, is an *ejectment de gard*, *breve de ejectione cuſtodiæ*, which is a writ at the common law. *De attornato inde.*

3 E. 3. 7. 30 E. 3. 10, 11.

Regiſt. 162. *Inter H. & R. de quadam tranſgreſſione eidem H. per præfatum R. illata ut dicitur.*

Regiſt. ubi ſupra. 14 E. 3. Procl. 7. By this branch, proclamation ſhall be made in this writ of the ejectment of gard, which ſhall not be made in the raviſhment de gard.

CAP. XXXVI.

QUIA domini cur', et alii qui cur' tenent, et ſenſcalli (1), volentes gravare ſubditos ſuos (2), cum non habeant legalem viam eos gravandi, procurant alios movere querelas (3) verſus eos, et dare vadium, et offerre plegios, vel impetrare brevia, et ad ſectas hujuſmodi querentium compellunt eos ſequi comitatum, hundredum, wapentachium, et * cur', quouſque finem fecerint cum ipſis pro voluntate ſua: ſtatutum eſt, quod hoc de cætero non fiat. Et ſi quis per hujuſmodi falſas querimonias fuerit attachiatus, replegiet diſtrictionem ſuam (4) ſic captam, et poni fac' loquelam coram juſticiariis, coram quibus ſi vicecomes, vel alius balivus, vel dominus, poſtquam ſit diſtrictus formaverit querimoniam ſuam, advocaverit juſtam diſtrictionem ratione hujuſmodi querimoniarum (5) coram eis factarum, et replicet', quod hujuſmodi querimoniæ movebantur verſus eos malitioſè, ad inſtantiam ſeu procurationem vic', aut aliorum balivorum, aut dominorum (6), admittatur illa replicatio. Et ſi ſuper hoc convicti fuerint, verſus dominum regem redimantur (7), et nihilominus

FORASMUCH as lords of courts, and other that keep courts, and ſtewards, intending to grieve their inferiors, where they have no lawful mean ſo to do, procure other to move matters againſt them, and to put in ſurety and other pledges, or to purchaſe writs, and at the ſuit of ſuch plaintiffs compel them to follow the county, hundred, wapentake, and other like courts, until they have made fine with them at their will; it is ordained, that it ſhall not be ſo uſed hereafter. And if any be attached upon ſuch falſe complaints, he ſhall replevy his diſtreſs ſo taken, and ſhall cauſe the matter to be brought afore the juſtices, before whom if the ſheriff, bailiff, or other lord (after that the party diſtrained hath framed his plaint) will advow the diſtreſs lawful by reaſon of ſuch complaints made unto them, and it be replied that ſuch plaints were moved maliciouſly againſt the party by the ſolicitation or procurement of the ſheriff, or other bailiffs, or lords, the ſame replication ſhall be admitted; and if they be convict hereupon, they ſhall

minus hujuſmodi ſic gravatis damna in triplo reſtituantur.

ſhall make fine to the king, and nevertheleſs reſtore treble damages to the parties grieved.

(22 Ed. 3. f. 15. Fitz. Avowry, 78. 13 Hen. 4. 2.)

This act was made in affirmance of the common law, and to adde a greater puniſhment then the common law did; for the delinquent ſhall be ranſomed at the kings ſuit, and the party grieved ſhall recover treble damages, where he ſhould recover but ſingle at the common law.

If A. procure B. to ſue an action in any court of record, or other inferiour court againſt C. he may have an action of deceit againſt A. at the common law, and recover his ſingle damages. 43 E. 20. F.N.B. 98. m. Regiſt. Judic. 37.

(1) *Quia domini curiarum, et ſeneſchalli*, &c.] This act extendeth to court barons, leets, and to county courts, tourns, hundreds, and not to the courts at Weſtminſter (they being afterwards named in this act, &c.] but they remain at the common law. 41 Ed. 3. Avowry 78. 11 H. 4. 91. 13 H. 4. 2. 8 E. 4. 5.

Though *ſeneſchalli* be here named, yet bailifes, and other officers are within this act, and the bailife, or other officer may be puniſhed, without naming the lord. 13 H. 4. 2. 3. 41 E. 3. Avowry 78.

(2) *Volentes gravare ſubditos ſuos.*] *Subditos* is here taken for any man that is ſubject to their juriſdiction, and ſo it is to be taken in all other like places.

(3) *Procurant alios movere querelas*, &c.] Theſe words are generall, and therefore if the lord, bailife, ſteward, or any other officer procure any man to ſue a lawfull action, he ſhall be puniſhed by this act, *Quia culpa eſt ſe immiſcere rei ad ſe non pertinenti.* 22 E. 3. 15. 11 H. 4. 91. 13 H. 4. 2.

(4) *Repiegiet diſtrictionem ſuam.*] This act extendeth onely to a replevin, and not to an action of treſpaſſe, or any other action. 13 H. 4. 2. b.

And here a diſtreſſe is taken for an attachment.

(5) *Advocaverit juſtam diſtrictionem ratione hujuſmodi querimoniar'*, &c.] By the letter of this branch the defendant muſt make an avowry, but it muſt be extended further then the letter; for admit that the lord, &c. will (to ſave himſelf from treble damages) make no avowry, but plead that the goods were not diſtrained, &c. or the like plea, whereupon iſſue being joyned, the plaintife after proof of the iſſue may give in evidence for the treble damages the purview of this act, and that the lord now defendant, procured a ſuit, &c. contrary to this act, and that he is guilty of the diſtreſſe, or attachment, and therefore ought to yeeld treble damages; and if this be found by the jury (although it were not pleaded) the pl' ſhall recover treble damages; for it lyeth not in the power of the defendant by his falſe plea to excuſe himſelf of treble damages given by this act: as if the diſſeiſor alieneth to perſons unknown, and in an aſſiſe brought againſt the diſſeiſor he plead *Nul ten' de franktenement noſme in le briefe, et ſi trove ne ſoit nul tort nul diſſeiſin*, the plaintife may give in evidence, that the ſaid alienation was made to defraud the plaintife of his action, and that the diſſeiſor took the profits, in which caſe he is to be relieved by the ſtatutes of 1 R. 2. 4 H. 4. and 11 H. 6. 1 R. 2. cap. 9. 4 H. 4. cap. 7. 11 H. 6. cap. 4. 9 H. 6. 14, 15. lib. 1. cap. 123. Chudleys caſe.

See before cap. 35. in the caſe of raviſhment of ward.

[445]

Vide lib. 5. f. 60. Gooches caſe, a ſtatute given in evidence, and not pleaded.

22 E. 3. 15.

(6) *Malitioſe, ad inſtantiam, ſeu procurationem vicecom', aut aliorum ba'ivorum, ſeu dominorum.*] Here it is to be obſerved that the procurement is the ſubſtance, and that doth imply, that it was done *malitiosè*; and therefore if the jury finde the procurement, and that it was not done maliciouſly, yet the court ſhall (for that it judicially appeareth to them) adjudge it done maliciouſly.

(7) *Verſus dominum regem redimantur*, &c.] That is, they ſhall be fined to the king in that ſuit brought by replevin.

CAP. XXXVII.

QUIA etiam balivi, ad quos ex officio pertinet diſtrictiones facere, gravare volentes ſubditos ſuos, ut ab eis pecuniam extorqueant, mittunt ignotos ad faciend' diſtrictiones, ea intentione, ut ſubditos gravare poſſint, per hoc quod ſic diſtricti non habentes notitiam perſonarum non permittunt hujuſmodi diſtrictiones ſuper eos fieri: ſtatutum eſt, quod nulla diſtrictio fiat (1) *niſi per balivos notos et juratos* (2). *Et ſi alio modo diſtrictiones fecerint, et de hoc convicti fuerint, ſi gravati breve de tranſgreſſ. impetraverint, reſtituant gravatis damna* (3) [alias in triplo] *et verſus regem graviter puniantur.*

FORASMUCH alſo as bailiffs, to whoſe office it belongeth to take diſtreſſes, intending to grieve their inferiors that they may exact money of them, do ſend ſtrangers to take diſtreſſes, to the intent that they might grieve their inferiors, by reaſon that the parties ſo diſtrained, not knowing ſuch perſons, will not ſuffer the diſtreſſes to be taken; it is provided, that no diſtreſs ſhall be taken, but by bailiffs ſworn and known. And if they which do diſtrain do otherwiſe, and thereof be convict (if the parties grieved will purchaſe a writ of treſpaſs) they ſhall reſtore damages to the parties grieved, and beſides, ſhall be grievouſly puniſhed towards the king.

(3 Rep. 12.)

This act is made in affirmance of the common law, and for reformation of an abuſe by ſherifes, who uſed to make bailifes to diſtrain, who were unknown, to the intent that the owner of the cattell might make reſcous, and thereupon the ſherife, &c. to extort money from him; wherefore remedy is given by this act.

Lib. 3. fol. 12. Sir William Herberts caſe. 25 E. 3. cap. 25.

(1) *Nulla diſtrictio fiat.*] At the time of the making of this act, this proceſſe lay in an action of debt, (for the capias in that caſe is given by the ſtatute of 25 E. 3) ſo as this ſtatute extending to an action of debt, although the latter act give a capias, yet the capias coming in lieu of the diſtreſſe is within this act.

(2) *Niſi per balivos notos, et juratos.*] By this act the bailifes muſt both be known and ſworn: an act yet ſtanding in force, and worthy to be put in execution: Fleta doth render this branch thus:

Fleta.

Proviſum eſt quod nulla diſtrictio fiat per balivos regis, niſi jurati fuerint et noti, et ſi quis alio modo diſtringeret, et de hoc convincatur ad ſectam

ſectam diſtricti, cui in hoc caſu conſulitur per breve de tranſgreſſione, damna reddet gravato, et verſus regem graviter punietur.

Of this branch the Mirror ſaith thus, *Leſtatute de diſtreſſes eſt diſtinguiſhable, car in diſtreſſes torcious ſans garrant tient lieu le judgement de robbery, et per garrant cheſcun eſt receivable conus et diſconus.* But the ſtatute is in the negative, and neceſſary to be obſerved. Mirror, c. 5. § 5.

(3) *Damna.*] Some editions have *alias in triplo*, but the originall is *damna*, and not *in triplo*, and therewith agreeth Fleta.

CAP. XXXVIII.

QUIA etiam vic' hundredarii, et balivi libertatum conſueverunt gravare ſubditos ſuos ponendo in aſſiſis et juratis homines languidos, et decrepitos, perpetua vel temporali infirmitate languentes, homines etiam tempore ſummonition' ſuæ in patria non commorantes, ſummonendo etiam effrenatam multitudinem juratorum, ita ut à quibuſdam eos in pace dimittendo pecuniam extorqueant, et ſic fiunt aſſiſæ et juratæ multoties per pauperiores, divitibus pro ſuo dando domi commorantibus: ſtatutum eſt, quod de cætero non ſummoneantur in una aſſiſ. plures quam xxiv. (1). *Senes etiam videlicet ultra* 70. *annos* (2), *perpetuo languidi* (3), *vel tempore ſummonitionis infirmi* (4), *vel in patria non commorantes* (5), *non ponantur in juratis, vel minoribus aſſiſis* (6). *Nec etiam ponantur in aſſiſis vel juratis, licet in proprio com' capi debeant aliqui qui minus ten' habeant, quam ad valentiam viginti ſolidorum per annum* (7). *Et ſi hujuſmodi aſſiſæ et jurat' extra comitatum capi debeant, non ponantur in eis aliqui qui minus tenement' non habeant, quam ad valentiam xl. s. per annum, illis exceptis qui teſtes ſunt in chartis* (8), *vel aliis ſcriptis, quorum præſentia neceſſaria eſt, dum tamen potentes ſint ad laborandum. Nec debet iſtud ſtatutum extendi ad magnas aſſiſas, in quibus oportet aliquando ponere milites in patria non reſidentes, propter paucitatem militum,*

FORASMUCH alſo as ſheriffs hundreders, and bailiffs of liberties, have uſed to grieve thoſe which be in ſubjection unto them, putting in aſſiſes and juries men diſeaſed and decrepit, and having continual or ſudden diſeaſe; and men alſo that dwelled not in the country at the time of the ſummons; and ſummon alſo an unreaſonable multitude of jurors, for to extort money from ſome of them for letting them go in peace, and ſo the aſſiſes and juries paſs many times by poor men, and the rich men abide at home by reaſon of their bribes: it is ordained, that from henceforth in one aſſiſe no more ſhall be ſummoned than four and twenty; and old men, above threeſcore and ten years, being continually ſick, or being diſeaſed at the time of the ſummons, or not dwelling in that country, ſhall not be put in juries of petit aſſiſes. Nor any ſhall be put in aſſiſes or juries, though they ought to be taken in their own ſhire, that may diſpend leſs than twenty ſhillings yearly. And if ſuch aſſiſes and juries be taken out of the ſhire, none ſhall paſs in them but ſuch as may diſpend forty ſhillings yearly at the leaſt, except ſuch as be witneſſes in deeds or other writings, whoſe preſence is neceſſary, ſo that they be able to travel. Neither ſhall this ſtatute extend to great aſſiſes, in which it behoveth many times knights

militum, dum tamen tenement' habeant in comit'. Et ſi vic' vel ſubbalivi ſui, vel balivi libertatum contra iſtud ſtatutum in aliquo articulo venerint, et ſuper hoc convincantur, reſtituant dampna gravatis, et nihilominus ſint in miſericordia domini regis. Et habeant juſticiarii ad aſſiſas capiend' aſſign' (9), *cum in com' venerint, poteſtatem audiendi querimonias ſingulorum conquerentium, quoad articulos in iſto ſtatuto contentos, et juſticiam in forma prædicta exhibend'.*

to paſs not reſident in the country, for the ſcarcity of knights, ſo that they have land in the ſhire. And if the ſheriff, or his underſheriffs, or bailiffs of liberties, offend in any point of this ſtatute, and thereupon be convict, damages ſhall be awarded to the parties grieved, and they ſhall nevertheleſs be amerced to the king. And juſtices aſſigned to take aſſiſes, when they come into the ſhire, ſhall have power to hear the plaints of all complainants as to the articles contained in this ſtatute, and to miniſter juſtice in form aforeſaid.

Fleta, li. 4. cap. 5. See 21 E. 1. ſtat. de non ponendis. 34 E. 1. Ordinat. &c. dit ſuper Chart. ca. 9. Marlbr. ca. 24. For Jurors. See Cuſtumier de Norm. ca. 69. (Kelyng, 16. 28 Ed. 1. ſtat. 3. c. 9. 10 H. 4. f. 3. 2 Roll 163. Bro. Jurors, 24. 1 Inſt. 158. Kel. 97. 8 Ed. 3. f. 30.)

The miſchiefe doth plainly appeare by the preamble, and the end of theſe miſchiefes was, that the ſheriffes by ſuch meanes did *pecuniam extorquere, &c.*

See the firſt part of the Inſtitutes for the antiquity and right inſtitution of trials by twelve men, and of the number of twelve. Sect. 234. and *Magna Charta* cap. 29.

2 H. 7. 8. Fleta ubi ſupra. Dier 1. Mar. 98. Fleta ubi ſupra.

(1) *In una aſſiſa plures quam* 24.] This was but the abuſe of the ſheriffe, for though the writ, which is his warrant, is but twelve, yet regularly he muſt returne twenty foure, and no more, unleſſe it be in ſpeciall caſes: *Supponendo, inquit Fleta, ſuperfluam hominum multitudinem, ita quod quaſdam in pace dimitterent prece vel precio*; but in a writ of right there be ſixteene jurors returned onely.

F.N.B. 166. d. F.N.B. ibid. a.

(2) *Sens ultra* 70. *annos*, &c.] This ſtatute is a direct prohibition in it ſelfe, and therefore the party grieved may have his action upon this act againſt the ſheriffe without giving any notice either of this, or of ſickneſſe, or non-commorancy, and yet the uſe is to ſue out a writ grounded upon this act to the ſheriffe that he returne them not.

F.N.B. ibid. a. Regiſt. 177. Pſalme 89. 10.

But without queſtion notice by word were good, if notice were requiſite; and this ſeemeth to be in affirmance of the common law, for if a coroner be *facto confractus*, it is a good cauſe to remove him, and the prophet David ſaith, *Dies noſtrorum in ipſis ſeptuaginta anni.*

(3) *Perpetuo languidi.*] As if he be *morbo paralyſi percuſſus*, or if hee bee *leproſus*, or ſtricken with any other continuall ſickneſſe.

It alſo extended to men that are blinde, deafe, of no found memory, or ſo lame as they cannot well goe nor ſtand, and theſe ſhall take the benefit of this ſtatute, of what age ſoever they bee; and this point is in affirmance of the common law, for theſe be good cauſes to remove a coroner.

F.N.B. 164. Regiſt. 177.

(4) *Tempore ſummonitionis infirmi.*] This muſt be ſo intended, ſo infirme as he is not able to ſerve; and this is alſo in affirmance of the common law.

(5) *In*

(5) *In patria non commorantes.*] The ſtatute of *articuli ſuper chartas* doth adde to this, that albeit they be commorant in the ſame county, yet muſt the jurors have two qualities, *viz.* two of the moſt, and one of the leaſt, that is moſt neare the place, moſt ſufficient, and leaſt ſuſpicious, or otherwiſe the demandant ſhall render double damages, and bee grievouſly amerced. Art. ſuper Chart. cap. 9. Regiſt. 177. F.N.B. 165. Regiſt. ubi ſup.

See what a coroner ought to be, *viz.* *Qui melius ſciat et poſſit officio illi intendere.* Regiſt. ubi ſup.

If any be returned contrary to the purview of this act, he cannot be challenged, neither can the party grieved alledge the matter for his diſcharge, but he muſt take his remedy by action againſt the ſheriffe upon this act. [448] F.N.B. 166. d.

Now may it be a queſtion, who is the party grieved that ſhall have his action, if the ſheriffe returne *magis remotos, minus ſufficientes, et magis ſuſpectos?* whereunto heare what S. William Herle chiefe juſtice of the common pleas ſaith, This ſtatute may be intended, in caſe where the demandant or plaintiffe is delayed of his ſuit by ſuch return of the ſheriffe, that he by the ſtatute ſhall recover damages againſt him, or where the tenant or defendant after he hath loſt his land, or cauſe by the oath of them that be ſo returned contrary to the forme of the ſtatute, and after he doth convict them in an attaint, and thereby be reſtored, then he may have his action upon the ſtatute to recover his damages, &c. and thereunto Hill juſtice agreed, which (as concerning the tenant or defendant) muſt of neceſſity be intended of this act of W. 2. for the ſtatute of *articuli ſuper chartas* give double damages onely to the demandant, and not to the tenant: alſo hereupon it followeth that the act of *articuli ſuper chartas* is but an expoſition of this act, and addeth a further penalty. 8 E. 3. 30. 7 E. 3 26. bis.

More ſhall be ſaid hereof, when we come to the ſaid ſtatute of *articuli ſuper chartas.* Art. ſuper Chart. cap. 9.

(6) *Vel in minoribus aſſiſis.*] For as hath beene ſaid, this act extends not to a writ of right, as hereafter in this act by expreſſe words it appeareth.

(7) *Qui minus tenementa habeant quam ad valenciam viginti ſolid' per annum,* &c.] Theſe ſummes of 20 s. and 40 s. are altered by later ſtatutes, *viz.* by 2 H. 5. and 27 Eliz. 2 H. 5. c. 3. ſtat. 2. 27 Eliz. ca. 10.

See the firſt part of the Inſtitutes, ſect. 464.

(8) *Exceptis qui teſtes ſunt in chartis,* &c.] Here is an exception of witneſſes named in the deed, who in many caſes are joyned to the jury without regard had to age or yearely revenue, both becauſe the ſheriffe hath an expreſſe warrant to ſummon or diſtrain them by name, and for that their preſence is neceſſary, and yet with this caution, *Dum tamen potentes ſint ad Laborandum.* Stat. of York, c 2. 6 H. 3. Proc 209 8 H. 3. ibid. 210. Kelw. 97. Regiſt. judic'. 6. b. 7. b. 56. 58. 69.

(9) *Et habeant juſtic' ad aſſiſas capiend' aſſignat'.*] This clauſe is in the affirmative, and therefore the party grieved may take his remedy upon this act, either before juſtices of aſſiſe, or in any other court that have conuſans thereof: for juſtices of aſſiſe could not have power in this caſe without expreſſe words, but other judges have power without any expreſſe words, and therefore if the meaning be to exclude other judges, then thoſe that be named, there muſt be words negative, *viz.* and not in any other court, nor before any other judges.

CAP. XXXIX.

QUIA juſticiarii (ad quorum officium ſpectat unicuique coram eis placitanti juſticiam exhibere frequentius impediuntur, quo minus officium ſuum debit' modo exequi poſſint, per hoc quod vic' brevia originalia et judicialia non retornant, per hoc etiam quod ad brevia domini regis falſum retornant reſponſum: providit dominus rex et ordinavit, quod illi qui timent malitiam vic', liberent brevia ſua originalia et judicialia in pleno com', vel in retro com' (2), ubi fit collatio denariorum domini regis, et capiatur billettum (1) de vic' preſente, vel ſubvic', in quo billetto continuantur nomina petentium et tenentium in brevi nominat', et ad requiſitionem illius qui breve liberavit, apponat' billetto ſigillum vic' vel ſubvic' in teſtim', et fiat mentio de die liberationis brevis. Et ſi vicecomes vel ſubvicecomes hujuſmodi billetto ſigillum ſuum apponere noluerit, capiatur teſtimonium militum, et aliorum fide dignorum qui præſentes fuerint, qui ſigill' ſua hujuſmodi billetto apponant. Et ſi vic' brevia ſibi liberata non retornaverit, et ſuper hoc ad juſticiarios perveniat querimonia, mandetur per breve de judicio juſtic' ad aſſiſas capiendas aſſign', quod inquirent per eos qui preſentes fuerint quando breve vic' liberatum fuit, ſi ſciverint de illa deliberatione, et inquiſitio returnetur. Et ſi compertum fuerit per inquiſitionem, quod breve fuit ei liberat', adjudicentur querenti vel petenti damna, habito reſpectu ad qualitatem et quantitatem actionis, et ad periculum quod ei evenire poſſet, per dilationem quam patiebatur. [Anno 2 E. 3. cap. 5. apud Not'.] *Et per iſtam viam fiat remedium quando vic' reſpondet, quod breve adeo tarde venit (3), quod præceptum regis exequi non potuit. Multociens etiam capiunt*

FORASMUCH as juſtices, to whoſe office it belongeth to miniſter juſtice to all that ſue before them, are many times diſturbed in due execution of their office, for that ſheriffs do not return writs original and judicial; and alſo for that they make falſe returns unto the king's writs; our lord the king hath provided and ordained, that ſuch as do fear the malice of ſheriffs, ſhall deliver their writs original and judicial in the open county, or in the county where the collection of the king's money is; and may take of the ſheriff or underſheriff, being preſent, a bill, wherein the names of the demandants and tenants mentioned in the writ ſhall be contained; and at the requeſt of him that delivered the writ, the ſeal of the ſheriff or underſheriff ſhall be put to the bill for a teſtimony, and mention ſhall be made of the day of the deliverance of the writ. And if the ſheriff or underſheriff will not put his ſeal to the bill, the witneſs of knights and other credible perſons being in preſence ſhall be taken, that put their ſeals to ſuch bill. And if the ſheriff will not return writs delivered unto him, and complaint thereof be made to the juſtices, a writ judicial ſhall go unto the juſtices aſſigned to take aſſiſes, that they ſhall inquire by ſuch as were preſent at the deliverance of the writ to the ſheriff, if they knew of the deliverance, and an inqueſt ſhall be returned. And if it be found by the inqueſt, that the writ was delivered to him, damages ſhall be awarded to the plaintiff or demandant; having reſpect to the quality and quantity of the action, and to the peril that might have come to him by reaſon of the delay that he ſuſtained; and by this mean

piunt placita dilationes per hoc quod vicecom' reſpondet, quod præcepit balivis alicujus libertatis (4), *qui nihil inde fecerint; et nominet libertates, quæ nunquam retornum brevium habuerunt. Propter quod, ordinavit dominus rex quod theſaurarius et baron' de ſcaccario* (5) *liberent juſticiar' in rotulo omnes libertates* (6) *in quibuſcunque com' qui habent retornum*
[450] *brevium. Et ſi vic' reſpondet quod retornum fecit balivo alterius libertatis, quam alicujus contentæ in prædict' rotulo, ſtatim puniatur vicecom' tanquam exhæredator regis et coronæ ſuæ* (7). *Et ſi forte reſpondeat quod mandavit balivo alicujus libertatis, quæ veraciter retorn' habet* [qui inde nihil fecit (9,)] *mandetur vicecom' quod non omittat* (8) *propter aliquam libertatem prædict', quin exequatur præceptum domini regis, et quod ſcire faciat balivis* (10), *quibus fecit retorn' quod ſint ad diem in brevi contentum ad reſpondendum, quare de præcepto domini regis executionem non fecerint. Et ſi ad diem venerint, et ſe acquietent, quod retornum brevis non fuit eis factum, ſtatim condemnetur vicecom' domino illius libertatis, et ſimiliter parti læſæ per dilationem in reſtitutionem dampnorum. Et ſi ad diem non venerint balivi, vel venerint, et ſupradicto modo ſe non acquietaverint in quolibet brevi de judicio, quam diu durat placitum, præcipiatur vicecomiti quod non omittat propter libertatem, &c. Multotiens etiam vicecom' falſum dant reſponſum, quo ad illum articulum quod de exit'* (11), *&c. mandantes aliquando et mentientes, quod nulli ſunt exitus, aliquando quod parvi ſunt exitus, cum de majoribus reſpondere poſſint, aliquando non facientes mentionem de exitibus. Propter quod ordinatum eſt et concordatum, quod ſi querens petat auditum reſponſionis vicecom', concedatur ei. Et ſi offerat verificare* (12), *quod vicecom' de majoribus exitibus regi reſpondere potuit, fiat ei breve de judicio ad juſtic' ad*

mean there ſhall be remedy when the ſheriff returneth that the writ came too late, whereby he could not execute the king's commandment. Oftentimes alſo pleas be delayed by reaſon that the ſheriff returneth that he hath commanded the bailiffs of ſome liberty which did nothing therein, and nameth liberties that never had the return of writs; whereupon our lord the king hath ordained, that the treaſurer and barons of the exchequer ſhall deliver to the juſtices in a roll all the liberties in all ſhires that have return of writs. And if the ſheriff anſwer that he hath made return to a bailiff of another liberty than is contained in the ſaid roll, the ſheriff ſhall be forthwith puniſhed as a diſheritor of our lord the king and his crown. And if peradventure he return that he hath delivered the writ to a bailiff of ſome liberty that indeed hath return, the ſheriff ſhall be commanded, that he ſhall not ſpare for the foreſaid liberty, but ſhall execute the king's precept; and that he do the bailiffs to wit, to whom he returned the writ, that they be ready at a day contained in the writ, to anſwer why they did not execute the king's precept. And if they come at the day, and acquit themſelves, that no return was made to them, the ſheriff ſhall be forthwith condemned to the lord of the ſame liberty, and likewiſe to the party grieved by the delay, for to render damages. And if the bailiffs come not in at the day, or do come, and do not acquit themſelves in manner aforeſaid; in every judicial writ, ſo long as the plea hangeth, the ſheriff ſhall be commanded that he ſhall not ſpare for the liberty, &c. Many times alſo ſheriffs make falſe returns as touching theſe articles, *quod de exitibus, &c.* returning ſometime, and lying, that there be no iſſues, ſometime that there are ſmall iſſues, when they may return great, and ſometime do make mention of no iſſues; wherefore it is ordained

ad aſſiſas capiendas aſſignatos, quod inquirant in preſentia vicecomitis, ſi intereſſe voluerit, de quibus et quantis exit' vic' reſpondere potuit à die impetrationis brevis uſque ad diem in brevi contentum (13) [al' receptionis vide p. 27 *H.* 8. cap. 10. f. 3 & p. 20 *H.* 6. cap. 10. fol. 25.] *et cum inquiſitio retornata fuerit, ſi de pleno prius non reſponderit, onerentur de ſuperpluſagio* (14) *per extractas juſtic' libertates ad ſcaccarium, et nihilominus graviter amercietur pro concelamento. Et ſciat vicecom' quod reddditus, blada in grangia, et omnia mobilia, præter equitaturam, indumenta, et utenſilia domus continentur ſub nomine exituum* (15).

ordained and agreed, that if the plaintiff demand hearing of the ſheriff's return, it ſhall be granted him; and and if he offer to aver that the ſheriff might have returned greater iſſues unto the king, he ſhall have a writ judicial unto the juſtices aſſigned to take aſſiſes, that they ſhall inquire in preſence of the ſheriff (if he will be there) of what and how great iſſues the ſheriff might have made return from the day of the writ purchaſed unto the day contained in the writ. And when the inqueſt is returned, if he have not afore anſwered for the whole, he ſhall be charged with the overplus by the extreats of the juſtices delivered in the exchequer, and nevertheleſs ſhall be grievouſly amerced for the concealment. And let the ſheriff know, that rents, corn in the grange, and all moveables (except horſe, harneſs, and houſhold-ſtuff) be contained within the name of iſſues.

Et præcepit dom' rex, quod vic' pro hujuſmodi falſis reſponſionibus, ſemel et iterum, (ſi ſit neceſſe) per
[451] *juſtic' caſtigentur. Et ſi tertio deliquerint, alius non apponat manum quam dominus rex* (16). *Multotiens etiam falſum dant reſponſum, mandando quod non potuerunt* [exequi] *preceptum regis propter reſiſtentiam* (17) *poteſtatis alicujus magnatis, de quo caveat vic' de cætero, quia hujuſmodi reſponſio multum redundat in dedecus domini regis et coronæ ſuæ* (18).

And the king hath commanded, that ſheriffs ſhall be puniſhed by the juſtices once or twice (if need be) for ſuch falſe returns; and if they offend the third time, none ſhall have to do therewith but the king. They make alſo many times falſe anſwers, returning that they could not execute the king's precept for the reſiſtance of ſome great man; wherefore let the ſheriffs beware from henceforth, for ſuch manner of anſwers redound much to the diſhonour of the king.

Et quam cito ſubbalivi ſui teſtificentur, quod invenerunt hujuſmodi reſiſtentiam, ſtatim (omnibus omiſſis) aſſumpto ſecum poſſe comit' ſui, eat in propria perſona ſua ad faciend' executionem (19).

And as ſoon as his bailiffs do teſtifie that they found ſuch reſiſtance, forthwith all things ſet apart (taking with him the power of the ſhire) he ſhall go in proper perſon to do execution.

Et ſi inveniat ſubbalivos ſuos mendaces (20), *puniat eos per priſonam, ita quod alii per eorum pœnam caſtigentur.*

And if he find his underbailiffs falſe, he ſhall puniſh them by impriſonment, ſo that other by their example may be reformed.

Et ſi inveniat eos veraces, caſtiget reſiſtentes per priſonam, a qua non deliberentur ſine ſpeciali præcepto dom' regis (21). *Et ſi forte vic', cum venerit,*

And if he do find them true, he ſhall puniſh the reſiſters by impriſonment, from whence they ſhall not be delivered without the king's ſpecial com-

venerit, reſiſtentiam invenerit (22), *certificet cur' de nominibus reſiſtentium, auxiliantium, conſentientium, præcipientium et fautorum, et per breve de judicio attachientur* (23) *hujuſmodi per corpora ad veniendum ad cur' regis. Et ſi de hujuſmodi reſiſtentia convincantur, puniantur ſecundum quod domino regi placuerit* (24). *Nec intromittat ſe aliquis miniſter domini regis de pœna hujuſmodi infligenda, quia dominus rex hoc ſibi ſpecial' reſervat* (25), *pro eo quod hujuſmodi reſiſtentes cenſentur pacis ſuæ et regni perturbatores.* [13 E. 1. de Mercatoribus, Articuli ſuper Chartas, cap. 16.]

commandment. And if percaſe the ſheriff when he cometh do find reſiſtance, he ſhall certifie to the court the names of the reſiſters, aiders, conſenters, commanders, and favourers, and by a writ judicial they ſhall be attached by their bodies to appear at the king's court; and if they be convict of ſuch reſiſtance, they ſhall be puniſhed at the king's pleaſure. Neither ſhall any officer of the king's meddle in aſſigning the puniſhment, for our lord the king hath reſerved it ſpecially to himſelf, becauſe that reſiſters have been reputed diſturbers of his peace, and of his realm.

Fleta, li. 2. ca. 61. Art. ſuper Chart. ca. 16. (2 Ed. 3. c. 5. Regiſt. 86. 1 Roll, 440. 4 Rep. 65. b. 3 Ed. 1. c. 17. V.N.B. f. 43. 11 Ed. 4. f. 4. 27 H. 8. f. 3. 10 H. 7. f. 11. Fitz. Averment, 16. 26. 43. 45. 47, 48, 49. Regiſt. 83. 18 Ed. 1. c. 16.)

Here is a maxime of the law recited, *viz. ad officium juſticiariorum ſpectat, unicuiq; coram eis placitanti juſtitiam exhibere.*

By this chapter there be five miſchiefs, or rather abuſes of ſherifes rehearſed and provided for, which we ſhall handle in order, as they ſhall ariſe in this chapter.

The firſt miſchief was, that the ſherife returned not the writs to him directed, but imbezeled the ſame, and commonly the demandant or plaintife for default of proof was without remedy, or elſe without the effect of a juſt remedy being againſt a ſherife, for the which a remedy is provided by this act in manner inſuing.

(1) *Illi qui timent malitiam vicecom' liberent brevia ſua originalia, et judicialia in pleno com', vel in retro com' ubi fit collatio denariorum domini regis, et capiatur bilettū,* &c.] This branch was taken to be ſhort, for it was no more but *capiatur bilettum*, and no commandement to the ſherife to receive the writs and to make a bill; but by the ſtatute of 2 E. 3. the ſherife and under-ſherife are commanded, that they ſhall receive the ſaid writs, and make a bill, and ſo throughout. 2 E. 3. cap. 5.

So as now it is a contempt in the ſherife or under-ſherife, if he make it not, and in default of them, it ſhall be alſo a contempt in the others appointed to ſeal it, if they refuſe. [452]

In this ſpeciall caſe the demandant or plaintife ſhall have an action againſt the ſherife for not returning the writ, whereas regularly for not returning of a writ the ſherife ſhall be amercied *quouſque*; but for a falſe return, or for imbezeling of a writ, an action doth lye at the common law againſt the ſherife. 26 Aſſ. 48. 38 Aſſ. 13. 42 Aſſ. 12. 8 H. 6. 1. 1 H. 6. 1. F.N.B. 93. b. 31 E. 3. Procl. 55. Regiſt. 85, 86. 19 H. 6. 29. Bract. lib. 5. fol. 441. b.

And the demandant or plaintife, if he fear the malice (as this act ſpeaketh) of the ſherife, he may cauſe the ſherife or under-ſherife to be called into the court, and deliver the writ to him of record, that he may take the benefit of this ſtatute.

See the action brought upon this branch of the ſtatute, in the book of entries Raſtall. Fol. 501. 626.

(2) *Retro*

(2) *Retro comitatus.*] Is after the county court, as to pleas, be ended; it is holden further, for the collection of the kings money, that is, his green wax.

(3) *Et per iſtam viam fiat remedium quando vicecomes reſpondet quod breve adeo tarde venit,* &c.] The ſecond miſchief was, the ſheriife would return a *tarde*, which by this purview is prevented; and ſo it is if the writ be delivered to the ſherife of record, as hath been ſaid.

B act. li. 5. fo. 441. Where Bracton further in the ſame place ſaith, *Et unde infiniti ſunt caſus de genere iſto ubi vicec' per fraudem reſcribit, et prætendit non cauſam ut cauſam.*

(4) *Multotiens etiam capiant placita dilationes per hoc, quod vicec' reſpondet quod præcepit balivis alicujus libertatis,* &c.] Here is the third miſchief, that great delays are uſed by the falſe return of ſherifes in making of mandates to fained liberties, ſuppoſing them to have return of writs, where in troth there be no ſuch liberties, for redreſſe whereof the remedy followeth.

11 E. 4. 4. a. (5) *Quod theſaurarius, et barones de ſcaccario,* &c.] Albeit it be inrolled in the chancery, that ſuch a man hath return of writs, yet is not that within the purview of this act, for that the record of the court of exchequer is onely preſcribed by this act, and therefore a *certiorari* may be awarded out of the chancery to the exchequer to the treaſurer, that he bring in the roll of the liberties in his hand to the juſtices, before whom the return is made.

(6) *Omnes libertates.*] This muſt be underſtood of a bailife of a franchiſe or ſeigniory, which have return of writs, and not to a

2 H. 4. 4. bailiſe created itinerant, (for example) in the county of S. and to have return of all writs, and execution of the ſame by the kings letters patents; for ſuch a grant is void, for in effect it taketh away the office of the ſherife; and therefore where ſuch a return was made upon a mandate to ſuch a new found bailife, the court was in purpoſe to have puniſhed the ſherife by this branch of this act, *tanquam exhæredatorem domini regis.*

(7) *Statim puniatur vicecomes tanquam exhæredator regis, et coronæ ſuæ.*] Becauſe he fain a liberty or franchiſe againſt the king, to the diſherifon of the king and of his crown, foraſmuch as no man can have ſuch a liberty or franchiſe but from the crown.

This puniſhment ſhall be by ranſome and impriſonment.

[453] (8) *Quæ veraciter retornum habet, qui nihil inde fecit mandetur vicecomiti, quod non omittat.*] Here is the fourth miſchief, that where there was indeed a bailife of a liberty, who truly had return of writs, yet he upon a mandat to him would do nothing: remedy is hereby provided, that it ſhall be commanded to the ſherife, *quod non omittat, &c. quin exequatur præceptum domini regis, &c.*

Bract. li. 5. fo. 442. a. Regiſt. 82. F.N.B. 68. f. & 74. a. This branch concerning the *non omittas*, is in affirmance of the common law; and therefore Bracton who wrote before this ſtatute, treating of this matter, ſaith, *Et quo caſu cum balivi nihil inde fecerint, propter defectum eorum, præcipietur vicecomiti, quod non omittat propter libertatem talem, quin, &c.*

4 H. 6. 25. b. 5 H. 7. 28. F.N.B. 74. a. 2 H. 6. 15. Simile. 19 H. 6. 28. 21 H. 6. 28. 8 E. 4. 5. b. Simile. (9) *Nihil inde fecit.*] This *nihil* is to be underſtood, not onely where nothing at all is done, but alſo where the bailife of the liberty maketh an inſufficient return, for that is *nihil* in law; and therefore a *non omittas, &c.* ſhall be thereupon granted; for *idem eſt nihil, et inſufficienter dicere.*

(10) *Et*

(10) *Et quod ſcire faciat balivis.*] This ſeemeth to be added by this branch to the common law.

(11) *Multotiens etiam vic' falſum dant reſponſum quoad illum articulum de exitibus.*] Now cometh the fifth miſchief, that the ſherifes would return too ſmall iſſues, in which caſe by the common law the plaintife could not have an averment againſt the return of the ſherife; for the ſherife is but an officer to the court, and hath no day in court to anſwer to the party: but this is remedied in this caſe by this branch. Fleta, li. 2. c. 61. 21 H. 7. 8. b.

(12) *Et ſi offerat verificare,* &c.] Here is the remedy given, and the mean preſcribed, how the averment ſhall be proved, and the plaintife muſt in his averment alledge what the value of the iſſues be. 27 H. 8. 3. 20 H. 6. 25. 22 E. 4. 10. 10 H. 7. 11. a.

See the book of entries for the judiciall writ to the juſtices of aſſiſe. Raſt. 383.

And where it is here ſaid, *Vicecomites falſum dant reſponſum*, this branch mentioning ſherifes extended not to bailifes of liberties, which is holpen by the ſtatute of 1 E. 3. 1 E. 3. cap. 5. Vet. N.B. fo. 53.

(13) *A die impetrationis uſque diem in brevi contentum.*] Theſe iſſues, that is, the value of the land muſt be inquired, from the teſte of the writ, untill the day of the return of it; and it is holden, that this act extendeth not to the return of iſſues upon jurors after iſſue joyned. 27 H. 8. 3. 20 H. 6. 25. 22 E. 4. 10. 10 H. 7. 11. a. b.

(14) *Et cum inquiſitio retorn' fuerit, ſi de pleno prius non reſponderit, oneretur de ſurplufagio,* &c.] As if the ſherife return but 10 s. iſſues, and it be found before the juſtices of aſſiſe, that the iſſues amounted to 50 s. the ſherife ſhall be charged with 40 s. by this branch, and ſo after that rate and proportion. 27 H. 8. 3.

(15) *Et ſciat vicecomes, quod redditus, blada in grangia, et omnia mobilia, præter equitaturam, indumenta, et utenſilia domus continentur ſub nomine exituum.*] By this branch is explained what ſhall be accounted iſſues, for the better direction of ſherifes in this caſe, that is to ſay, not onely the rent and revenue of the land, but the corn in the grange, and all other moveables, as hay in the barn, and other moveable or perſonall goods whatſoever, except thoſe things belonging to his riding, his apparell and utenſils of houſe: and certainly this is a good and neceſſary law, if it were put in execution according to the purview of this act. Fleta li. 2. ca. 62. 27 H. 8. 3. 24 E. 3. 29.

(16) *Alius non apponat manum quam dominus rex.*] That is, that the delinquent ſhall be puniſhed *coram domino rege*; that is, in the kings bench, his court of ordinary juſtice.

(17) *Multotiens etiam falſum dant reſponſum mandando, quod non potuerint exequi præceptum regis propter reſiſtentiam.*] Now we are come to the ſixth miſchief, or rather the abuſe of ſherifes, as by theſe words, *falſum dant reſponſum*, appeareth.

(18) *Caveat vicecomes de cætero quia hujuſmodi reſponſio multum redundat in dedecus domini regis, et coronæ ſuæ.*] Hereby ſuch a return is forbidden. Fleta, li. 2. cap. 62.

For this matter, ſee the expoſition upon the ſtatute of W. 1. W. 1. ca. 17.

(19) *Statim (omnibus omiſſis) aſſumpto ſecum poſſe comitatus ſui eat in propria perſona ad faciend' executionem.*] This branch is in affirmance of the common law, as appeareth in the expoſition upon the ſaid ſtatute of W. 1. where you may read of this matter at large.

(20) *Et*

(20) *Et ſi inveniat ſubbalivos ſuos mendaces.*] This is plain, and needeth no explanation.

(21) *Et ſi inveniat eos veraces, caſtiget reſiſtentes per priſonam, a qua non deliberentur ſine ſpeciali præcepto dom' regis.*] This is evident in it ſelf.

Fleta, li. 2. c. 62. (22) *Et ſi forte, cum venerit, reſiſtentiam invenerit.*] Albeit by the penning of this act it may ſeem, that the ſherife ſhould take *poſſe comitatus* after complaint made, *poſt querimoniam factam*; yet ſeeing he may take *poſſe comitatus* by the common law, he may either take it *poſt, vel ante querimoniam.*

But he muſt take it after reſiſtance, and not before, for *ſequi debet potentia juſtitiam, non præcedere.*

(23) *De nominibus reſiſtentium, auxiliantium, conſentientium, præcipientium et fautorum, et per breve de judicio attachientur.*] *Fautorum*; this word is of a large extent, whereof you may read in the 16 R. 2. ca. 5. ſtatute of 16 R. 2. and in Engliſh it properly ſignifieth a favourer.

(24) *Secundum quod domino regi placuerit.*] That is, according to that which ſhall be upon due proceeding adjudged *coram rege*, in the kings court of juſtice.

(25) *Nec intromittat ſe aliquis miniſter domini regis, &c. quia dominus rex hoc ſibi ſpecialiter reſervat.*] That is, as hath been ſaid, that the delinquents ſhall be puniſhed *coram rege*, in his court of juſtice; for no man can be puniſhed by abſolute power, but *ſecundum* Magna Charta, cap. 29. *legem, et conſuetudinem Angliæ*, as hath been ſaid before in the expoſition of *Magna Charta*, and elſewhere hath been often ſaid.

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CAP. XL.

CUM quis alienat jus uxoris ſuæ, concordat' eſt quod de cætero ſecta mulieris, aut ejus hæredis (1) *non differatur poſt obitum viri per minorem ætatem hæredis, qui warrantizare debet* (2), *ſed expectet emptor* (3) *(qui ignorare non debuit quod jus alienum emit) uſque ad ætatem warranti ſui* (4), *de warrantia ſua habenda* (5).

WHERE any doth aliene the right of his wife, it is agreed, that from henceforth the ſuit of the woman, or her heir, after the death of her huſband, ſhall not be delayed by the nonage of the heir that ought to warrantiſe, but let the purchaſer tarry, which ought not to have been ignorant that he bought the right of another, until the age of his warrantor, to have his warranty.

(Fitz. Age, 47. 76. 126. 138. Fitz. Voucher, 180. 183. 226. 305. Raſt. 139. 2 Leon, 148.)

The miſchiefe before this ſtatute was, that when the huſband aliened the right of his wife, this working a diſcontinuance, and the wife driven to her *cui in vita*, or her heire to his *ſur cui in vita*, thoſe juſt actions were delayed oftentimes, when the purchaſer vowched the heire of the baron being within age, untill his full age, which is remedied by this act.

18 E. 4. 16. 14 H. 7. 19. And this act reſtraineth the common law, and therefore it is taken *ſtricti juris*, as ſhall appeare in the expoſition hereafter.

(1) *De*

(1) *De cætero ſecta mulieris aut ejus hæredis.*] This ſuit of the wife or her heire extendeth onely to a *cui in vita*, or a *ſur cui in vita*, which are the proper actions upon an alienation made by the baron of the right of his wife, the former words being [*cum quis alienat jus uxoris ſuæ,*] for if the wife be tenant in taile, and the baron aliened in fee and died, and the wife died, the iſſue in taile cannot have a *ſur cui in vita*, but he muſt have his formedon in the diſcender by the ſtatute of W. 2. cap. 1. and in this action the purchaſer may vowch the heire of the baron, and for his nonage the paroll ſhall demurre, for that action is out of this ſtatute. 46 E. 3. age 76.

(2) * *Per minorem ætatem hæredis qui warrantizare debet.*] This by the context of this act extendeth onely to the heire of the baron who made the alienation, and therefore the heire of a ſtranger is out of this ſtatute.

† The baron aliens to A. hath iſſue two daughters and dies, the wife brings a *cui in vita* againſt A. who vowcheth the daughters as heirs to the baron, whereof the one onely was within age, the paroll ſhall not demurre; although all the coparceners, which make but one heire, are not within age, and the words *per minorem ætatem hæredis*, yet ſeeing by the common law the paroll for the whole ſhould have demurred, judgement ſhall be given for the demandant, and the tenant ſhall attend for his warranty for the whole in this caſe, untill the full age of the coparcener, that then is within age.

(3) *Sed expectet emptor.*] As the actions, wherein the vowcher ſhall be, and the heire to be vowched are ſet downe in certaine, ſo the perſon that is to vowch is alſo ſpecified, ſo as if any other vowch the heire of the huſband, the paroll ſhall demurre for his nonage, and therefore the purchaſer or buyer of the huſband is onely he, by reaſon of this word *emptor*, that is bound by this ſtatute.

Therefore this *emptor* muſt have three properties:

1. He muſt be *emptor*, that is, purchaſer immediately from the baron, and therefore if this *emptor* alien in fee, the alienee is *emptor*, that is a purchaſer, but becauſe he is not the immediate purchaſer from the baron (albeit he may vowch the heire of the baron as aſſignee) yet is not hee bound by this ſtatute.

(2) He that is an *emptor* within this act muſt be the tenant in deed againſt whom the *cui in vita*, or *ſur cui in vita* is brought, and therefore in the caſe before, if the ſecond alienee vowch him that was immediate *emptor*, yet if he vowch the heire of the huſband, the paroll ſhall demurre for his nonage, and the demandant ſhall not have judgement *maintenant*, becauſe the *cui in vita*, &c. was not brought againſt him that was immediate *emptor*, as tenant in deed of the land, but he came in as vowchee; ſo it is if he that was immediate *emptor* commeth in by receit upon default of tenant for life, he is not bound by this act, *cauſa qua ſupra.*

3. [a] He muſt be *ipſe emptor*, and not *alter ipſe*, and therefore if the immediate *emptor* dieth, albeit his heire ſitteth in his auncеſtors ſeate, and is *alter idem*, yet is not the heire bound by this act, becauſe hee is not *ipſe idem*.

[b] Now what eſtate an *emptor* ſhall have, he that purchaſeth any eſtate of freehold, be it in fee-ſimple, fee-taile, or for life, he is an *emptor* or purchaſer within this act, and yet the words of this act be, *qui alienat jus uxoris ſuæ.*

* Contr. judicat' in 14 E. 1. in Banco Rot. 81. Buck. The later authorities have over-ruled the judgement given the next yeare of the ſtatute.
7 E. 2. age 139.
46 E. 3. ib. 76.
6 E. 3. 46.
17 E. 3. 59.
Lib. 1. fol. 15. Sir William Pelhams caſe.
Lib. 4. fol. 50. A. Ognels caſe.
Li. 6. fo. 5. Markal.
† 3 E. 2. vowcher 210.
8 E. 2. judgement 240.

7 E. 2. age 139.
6 E. 3. 49.
Pl. Com. 17. 47.

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20 E. 2. age 126.
19 E. 3. ib. 2.
9 E. 3. 4.
18 E. 4. 16.

Vide Mich. 14 E. 1. ubi ſup. adjudged that this ſtatute extendeth to the ſecond vowchee, but the later books are to the contrary in this point alſo.

[a] 16 E. 3. age 47.
47 E. 3 ib. 76.
14 H. 7. 19.

[b] 3 E. 2. vowchee 210. 8 E. 2. jugement 140. Glouc. cap. 3.

For

For this word [*alienare*] ſee the ſtatute of Glouc' and the next chapter enſuing.

Alſo if the baron alien, though it be for no valuable conſideration, yet is he an *emptor*, that is a purchaſer within this ſtatute.

3 E. 2. vowcher 210. 8 E. 2. judgement 140. Raſt. fol. 135.

(4) *Uſque ad ætatem warranti ſui.*] And at the full age of the vowchee the tenant ſhall ſue a reſummons.

For the order of proceeding herein ſee the booke of entries.

3 E. 2. ubi ſupra. 8 E. 2. ubi ſupra. 9 E. 3. 4. 6 E. 3. 46. 32 H. 8. cap. 28.

(5) *De warrantia ſua habenda.*] This act doth extend as well to a warranty in law, for example, in reſpect of a reverſion, &c. as to a warranty in deed. And albeit the ſtat. of 32 H. 8. doth notwithſtanding the alienation of the huſband, &c. give to the wife and her heires a right to enter, as by that act appeareth, ſo as the wife or her heires are not driven to their action, as at the time of the making of this act they were, and therefore this act may ſeeme to ſome to be of no great uſe, yet for divers points of notable learning, and for the diſcuſſing of like caſes ſtanding upon like reaſon, as you have perceived, wee held it very profitable and neceſſary to be explained.

CAP. XLI.

STATUIT dominus rex, quod ſi abbat's, priores, cuſtodes hoſpitalium, et aliarum domorum religioſarum (1) *fundatarum ab ipſo, vel à progenitoribus ſuis* (2) *alienaverint* (3) *de cætero tenementa domibus ipſis ab ipſo vel à progenitoribus ſuis collata* (4), *tenementa illa in manum domini regis capiantur* (5), *et ad voluntatem ſuam teneantur, et emptor amittat ſuum recuperare, tam de tenementis quam de pecunia, quam paiavit. Si autem domus illa à com', baron' vel ab aliis fundat' fuerit* (6), *de ten' ſic alienat'* (7) *habeat ille, à quo vel à cujus anteceſſore ten' ſic alienat' collatum fuerit, breve ad recuperand'* (9) *ten' illud in dominico, quod tale eſt:*

OUR lord the king hath ordained, that if abbots, priors, keepers of hoſpitals, and other religious houſes founded by him or by his progenitors, do from henceforth aliene the lands given to their houſes by him or by his progenitors; the land ſhall be taken into the king's hands, and holden at his will, and the purchaſer ſhall loſe his recovery as well of the lands, as of the money that he paid. And if the houſe were founded by an earl, baron, or other perſons, for the lands ſo aliened, he from whom, or from whoſe anceſtor the land ſo aliened was given, ſhall have a writ to recover the ſame land in demeſne, which is thus:

Præcipe tali abbati, quod juſte, &c. reddat B. tale ten' quod
[457] *eidem domui collatum fuit in liberam eleemoſynam* (8) *per præd' B. vel anteceſſores ſuos, et quod ad prædict' B. reverti debet per aliſnationem, quam prædict' abbas fecit de prædicto ten' contra formam collationis prædictæ, ut dic'.*

Eodem modo de ten' dat' pro cantaria ſuſtinenda vel luminari in aliqua eccleſia vel capella, vel alia eleemoſyna ſuſtentanda

In like manner for lands given for the maintenance of a chantery, or of light in a church or chapel, or other alms

ſuſtentanda, ſi ten' ſic dat' alienetur (10). *Et ſi forte ten' ſic dat'* (12) *pro cantaria, luminari, paſtu pauperum, vel alia eleemoſyna ſuſtentanda vel faciend', non fuerit alienat', ſed ſubtracta fuerit hujuſmodi eleemoſyna per biennium* (11), *competat actio donatori aut ejus hæredi* (13) *ad petendum tenement' ſic datum in dominico, ſicut ſtatutum eſt in ſtatuto Gloceſt'* (14) *de tenementis dimiſſis ad faciendum vel reddendum quartam partem valoris tenement', vel majorem.* Gloc. cap. 4.

alms to he maintained, if the land given be aliened. But if the land ſo given for a chantery, light, ſuſtenance of poor people, or other alms to be maintained or done, be not aliened, but ſuch alms is withdrawn by the ſpace of two years, an action ſhall lie for the donor or his heirc to demand the land ſo given in demean, as it is ordained in the ſtatute of Glouceſter for lands leaſed to do or to render the fourth part of the value of the land, or more.

(12 Rep. 72. 1 Roll, 166. Regiſt. 238. Fitz. Brief, 291. Fitz. Ceſſavit, 15. 18. 24. 44. St. 6 Ed. 1. c. 4. 11 Rep. 63.)

At the common law, as it appeareth by Glanvill, *Nec epiſcopus, nec abbas, quia eorum baroniæ ſunt de eleemoſyna domini regis, et anteceſſorum ejus, non poſſunt de dominicis ſuis aliquam partem dare ad remanentiam ſine aſſenſu et confirmatione domini regis.* Glanv. l. 7. ca. 1.

The meaning whereof is, that ſeeing thoſe that hold of the king *per baroniam*, did hold of the king in capite, that therefore, by his opinion, they could not alien any part thereof without the kings aſſent; but yet if the biſhop with the aſſent of his chapter, or the abbot with the aſſent of his covent, and the like, had aliened the land, the eſtate of the alienee could not have been avoided. Li. 5. fo. 10, 11. de jure regis eccleſiaſtico.

See the charter of H. 1. of the foundation of the abbey of Reading in the 26. yeare of his raigne, wherein you ſhall reade, *Qui autem, Deo annuente, canonica electione abbas ſubſtitutus fuerit, non cum ſuis ſecularibus conſanguineis, ſeu quibuſlibet aliis, eleemoſynas monaſterii male utendo diſperdat, ſed pauperibus, et peregrinis, et hoſpitibus ſuſcipiendis curam gerat, terras cenſuales non ad feodum donet.*

So as no doubt the alienation was againſt the minde of the founder, *et contra formam donationis*, yet they having a fee-ſimple, the common law reſtrained them not from alienation, *concurrentibus his quæ in jure requiruntur.*

So as the miſchiefe was, when the alienation was a barre to the ſucceſſor.

(1) *Si abbates, priores, cuſtodes hoſpitalium, et aliarum domorum religioſarum.*] Seeing this act beginneth with abbots, &c. and concludeth with other religious houſes, biſhops are not comprehended within this act, for they are ſuperiour to abbots, &c. and theſe words [other religious houſes] ſhall extend to houſes inferiour to them that were mentioned before. 40 E. 3. 27. 46 E. 3. forfeiture 18. li. 2. fo. 46. Leveſq; de Cant. caſe.

Alſo biſhops are not properly religious, that is, regular, but ſecular: but yet this act doth referre to inferiour houſes that are eccleſiaſticall and ſecular, as hereafter in this chapter ſhall appeare. 2 Mar. Dier, 109. 33 H. 8. cap. 30. 34 & 35 H. 8. c. 15 Art. ſuper Chart. cap. 11. Vide hic poſtea, cap. 47.

See the firſt part of the Inſtitutes, ſect. 133.

See Brook tit. Alienation 15.

(2) *Fundatarum ab ipſo, vel à progenitoribus ſuis.*] Albeit he that giveth the firſt land upon raiſing and creation of the houſe be the 33 E. 3. aide le Roy 103. F.N.B. 211. h.

the founder, though it be much leſſe then the lands after given to the houſe in *liberam eleemoſynam*, yet this act doth extend not onely to lands *ratione fundationis*, but alſo to lands *ratione dotationis*, ſo they were given *in liberam eleemoſynam*. *Vide* hereafter in this chapter.

40 E. 3. 27. F.N.B. 211. Vet. N.B. 142. 46 E. 3. forfeiture 18. capit. eſcheat' Vet. Mag. Chart. 161.

(3) *Alienaverint.*] This act ſpeaketh of an alienation made by abbots, &c. but it muſt be intended of alienations with the aſſent of the covent, or elſe the ſucceſſor might recover the ſame by a writ of entry *ſine aſſenſu capituli*; for where acts of parliaments give remedy, it is ever intended that it ſhall not be illuſory.

And albeit this act ſpeaketh of the abbots that alien, it is underſtood when the abbots alien with conſent, as is aforeſaid, thereby is a right veſted in the king; and albeit the abbot dieth, yet the king may have an office to finde his right, and recover the land in the time of the ſucceſſor; and ſo may a common perſon have remedy in that caſe, as ſhall be ſaid hereafter.

See the books laſt before mentioned.

And ſome have ſaid, that this alienation is intended when the alienation is in fee, and not when the eſtate is made but for life, or in taile; but then ſhould the ſtatute bee of ſmall effect, for then might hee make many gifts in taile, or multiply leaſes for many lives, without reſerving the accuſtomed rent, and thereby utterly overthrow the houſe, as in former times it hath done.

Hil. 38 E. 3. Rot. 14. Coram rege Abbot de Stonleys caſe.

As you may reade that it was found by inquiſition in the raigne of E. 3. that Thomas de Pipe, abbot of the monaſtery of Stonely, in the county of Warwick (of the foundation of king Henry fitz Empreſſe (which was H. 2.) and that he gave to the ſaid houſe *in liberam eleemoſynam*, the mannor of Stonely in the ſaid county) *alienavit diverſis hominibus particulariter, prout patet inferius, viz. Iſabellæ de Beneſhale concubinæ dicti abbatis, et Johanni filio eorundem abbatis et Iſabellæ primogenito filio unum meſſuagium, et unam carucatam terræ, et decem mercatus redditus cum pertin' in Fynham. Habendum et tenendum ad terminum vitæ eorundem Iſabellæ et Johannis abſque aliquo inde reddendo annuatim:* and found alſo divers other leaſes for lives of parts of the ſaid mannor made to divers perſons, to and for the benefit of the ſaid abbot, and of his concubine, and of her and his baſtards; but it is beſt to uſe the words of the record itſelfe, *Abſq; aliquo inde reddendo vel præ manibus inde de ciſdem percepto ſed tantummodo ad opus et proficuum ipſius abbatis, et maxime pro ſuſtentatione et inventione prædictorum Iſabellæ et puerorum eorundem abbatis et Iſabellæ, qui excedunt numerum monachorum ſuorum miſſas celebrantium, ſi forte deponeretur de ſtatu ſuo, &c.*

45 E. 3. 18. F.N.B. 211.

Sometime *alienare* is taken for *alienum facere*, and therefore if land be recovered in value, &c. the founder ſhall have a writ of *contra formam* within this ſtatute.

7 H. 6. 2.

If the abbot with conſent of the covent doth charge the land, this is not within this act, for no land or tenement is aliened.

F.N.B. 211. Regiſt.

(4) *Collata.*] Lands and tenements given in free almoigne after the foundation *ratione dotationis*, are within this word [*collata*] which extendeth as well to lands *ratione dotationis*, as to lands *ratione fundationis*.

13 H. 7. 5. 8. 45 E. 3. 18. Stamf. Prer. F.N.B. 212.

(5) *In manum domini regis capiantur.*] The king in this caſe muſt have an office found for him, and a *ſcire fac'* againſt the tertenant, by the intendment and conſtruction of this act, for all neceſſary incidents are to be underſtood, and in the *ſcir' fac'* the tertenant is not concluded by any trial had againſt the abbot.

(6) *Si*