

annuall, whercof you shall reade notable matter, when entire services by alienation of part shall be multiplied, and when not, and what services shall be extinct by the purchase of part by the lord, and what remaine, and what shall be apportioned, in Bruertons case in the sixt part of the reports, and in Talbots case in the eight part.

Also when the lord purchaseth part, he shall hold that part *pro particula* of the lord paramount by the purview of this statute.

(3) *Secundum quantitatem terræ.*] The statute doth ordain that the scoffee of part shall hold *pro particula* of the lord, but it is necessary to be known how the same shall be apportioned: for *parum proficit scire quid fieri debet, si non cognoscas, quo modo sit facturum*: therefore admit that there be lord and tenant of twenty acres of land by fealty, and x s. rent, the lord doth purchase two acres, and taking the rent to be apportioned according to the quantity of the land doth distrain for ix s. and the tenant maketh rescous, the lord brings his assise, the tenant pleads *nil tort*, the recognitors of the assise shall extend the land according to the value, and not according to the quantity, and that the lord ought upon the true valuation of the said two acres so purchased to have but viij. s. vi. d.

In this case, albeit the plaintiffe did mistake the just residue upon the apportionment, yet shall he recover so much as is found by the jury to be due; for it were too hard, and a cause of multiplication of suits, and against the meaning of the makers of this act, that the lord should be driven in his assise or avowry, &c. to hit the just summe due upon the apportionment, but though he demand more, yet shall he recover but that just summe which is implied in these words, *secundum quantitatem terræ, i. secundum quantitatem valoris terræ*: but if he demand lesse in that action, he shall not recover the greater.

And so it is, if a man make a lease for yeares reserving a rent, if he graunt away part of the reversion, the rent shall be apportioned by the common law, and albeit the grauntce of part demand or claime more in his action of debt, or avowry then is due, yet shall he recover so much as the jury shall finde upon a just apportionment to be due, against a sudden opinion reported by serjant Bendloes, Hil 6 & 7 E. 6. that the rent in that case should not be apportioned, but lost; but the law hath been often adjudged to the contrary for foure reasons:

1. For that it is a rent service, and not a bare contract, and rent services were apportionable at the common law.
2. It is incident to the reversion, which is severable, *et accessorium sequitur naturam sui principalis*.
3. The rent, being a rent service, is severable by recovery of part, in an action of waste, or upon surrender in part.
4. Lastly, it is a generall case, and specially in case of wils, which many times are void for a third part.

And where the case hath been put of a lessee for yeares; the same law holdeth in the case of a lease for life, whereupon a rent is reserved, for the apportionment of the rent, whereby it appeareth, that there was an apportionment at the common law, *pro particula secundum quantitatem valoris, &c.* for to none of these cases our act doth extend unto.

Talbots case.
First part of the Institut. § 222. verbo annual.
Whereunto you may adde for the case of suit-service. Mich. 18 E. 1. in Banco Rot. 232. Ro. Lutterels case. 12 E. 4. 16. 6 H. 7. 7. Regula.

18 E. 2. avowry 218. 4 Aff. 5. 12 E. 4. 16. Pl. Com. 82.

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Pasch. 39 El. Rot. 233. coram Rege inter Collins & Harding. Hil. 42. El. in Communi Banco. int' Ewer & Moile. Tr. 43. El. in Communi Banco. Rot. 243.

CAP. III.

ET sciendum est quod per prædictas venditiones seu emptiones terrarum seu ten', aut partis alicujus earundem nullo modo possunt terræ seu ten' illa in parte vel in toto ad manum mortuam devenire, arte vel ingenio, contra formam statuti super hoc dudum editi (1). Et sciendum est quod istud statut' tenet locum de terris venditis tenend' in feodo simplici (2) tantum. Et quod se extendit ad tempus futurum. Et incipiet locum tenere ad festum Sancti Andree apostoli proxim' futur' anno regni regis E. filii regis H. xviii.

AND it is to be understood, that by the said sales or purchases of lands or tenements, or any parcels of them, such lands or tenements shall in no wise come into mortmain, either in part or in whole, neither by policy ne craft, contrary to the form of the statute made thereupon of late. And it is to wit, that this statute extendeth but only to lands holden in fee-simple; and that it extendeth to the time coming, and it shall begin to take effect at the feast of Saint Andrew the apostle next coming. Given the eighteenth year of the reign of king Edward, son to king Henry.

(9 H. 3. stat. 1. c. 32.)

(1) *Ad manum mortuam devenire, arte vel ingenio, contra formam statuti super hoc dudum edit'.*] This is understood of the statute de 7 E. 1. de religiosis, and by this branch that act is in no sort impeached by this, but standeth in full force: and note the manner of saving of former statutes in auncient times by generall words, which is the surest way.

(2) *In feodo simplici.* And therefore if tenant for life graunt his estate in severall parts to severall persons, yet may the lessor distrain for the whole * rent in every part, for this act extendeth onely to tenants in fee-simple.

But yet tenant for life, and tenant in taile are not wholly excluded by force of these words [*in feodo simplici*] out of this statute, for where the whole fee-simple passeth out of the feoffor, there this act extendeth to estates for life and in taile; as if an estate for life or in taile be made of land, the remainder in fee, there then tenant for life or in taile shall hold *de capitali domino* by force of this act, but otherwise it is when a reversion remaineth in the donor or lessor.

For if a man at this day make a gift in taile, *tenend' de capitalibus dominis feodi, &c.* these words are void, and he shall hold of the donor.

22 Aff. 42.

3 Aff. 18. 4 H.

6. 20. 11 H. 8.

88. Kelwey.

* [505]

1 E. 3. 3. 4 H. 6.

20. 21, 22.

20 E. 3.

avowry 131.

20 E. 3. ubi su-

pra. 38 E. 3. 7.

4 H. 6. 20.

21, &c.

Lib. 2. fo. 92.

Binghams case.

Lib. 3. fol. 8.

Heydons case.

STATUTUM DE JUDAISMO.

Ad Parliamentum tentum post Festum Sancti Hilarii, et post Pasch', anno 18 E. 1.

PUR ceo que le roy ad vieu que mults des males et disherisons des probes homes de sa terre sont avenues per les usurers que les Fewes ont fait en arere, et que mults des peches ent ount surs de ceo, mesque luy et ses aunc' eyent ent grand pren de la Fewrie tout en ceo en arere, ment pur quant en le honor de Dieu et pur le common pren del peole ordein le roy et establie que nul Few desormes ne prist rien a usury sur les terres rents ne sur autres choses, et que nul usury ne surge* de S. Edward procheinment passe en avant, mes que les covenants avunt faits soient tenus save que les usurers mes cessent †.

* That is from the feast of S. Edw. next before passed, which is the 18 day of March.

By the preamble hereof, two great mischiefes did follow before the making of this statute upon Jewish usury; now the difficulty was how the same should be remedied. The mischiefes were these:

1. The evils and disherisons of the good men of the land.
2. That many of the sins or offences of the realme had risen and been committed by reason thereof, to the great dishonor of Almighty God.

The difficulty how to apply a remedy, was, considering what great yearly revenue the king had by the usury of the Jewes, and how necessary it was that the king should bee supplied with treasure; what benefit the crowne had before the making of this act appeareth by former records; as take one for many: from the 17 of December in the 50 yeare of H. 3. untill the Tuesday in shrovetide the second yeare of Edward the first, which was about seaven yeares, the crowne had foure hundred and twenty thousand pounds fiftene shillings and foure pence *de exitibus Judaismi*; at what time the ounce of silver was but xx d. and now it is more then treble so much, so as the recitall of the preamble is true, *Mesque luy et ses auncestres eyent ent graund pren de la Fewrie.*

Many provisions were made both by this king and others, some time they were banished, but their cruell usury continued; and soon after they returned, and for respect of lucre and gain, king John in the second yeer of his raign granted unto them large liberties

Rot. Patent anno 3 E. 1. m. 14. 17. 26. William Middleton reddit. compositum.

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Tempore R. 1. Vet. Mag. Chart. fol. 144. Rot. Chart. 2 Joh. nu. 49. 53. 18 F.

3 I 2

† [This appears to be little more than the preamble of the statute entitled "Statutum de Judaismo," which is given at length in the book quoted by lord Coke in the margin, Vet. Mag. Chart. from whence it is transcribed in the appendix to Ruffheads Statutes among those of uncertaine time.]

3. Dorf. clauf.
m. 27. Dorf. Pat.
55 H. 3. m. 10.

Rot. 2 E. 1. m. 1.
3. 5. Rot. clauf.
3 E. 1. m. 8. 10.
13. 16. 23. Rot.
Pat. 3 E. 1. m.
36. & 17. Dorf.
clauf. 7 E. 1. m. 6.

Matth. Paris,
pag. 833.

Hell. fol. 285.
Wolf. hypod. 72.
Florilegus Cron.
Denft. ble.
Banish the trade,
and banish the
tradesman.
Divers kings had
banished the
Jews, and yet
they returned,
but no king ba-
nished their
usury before.

Rot. clauf. 18 E.
1. m. 6. 18 Julii.
The like writs
to other coun-
tries, and intituled,
*De Judæis
regni Angliæ ex-
cuntibus.*
* Nota.

Parliam. 18 E. 1.
post festum Hil.
& Pasch. at
which parlia-
ment the stat. of
W. 3. *de quia
emptores terra-
rum* was made.

erties and priviledges, whereby the mischiefs rehearsed in this act without measure multiplyed.

Our noble king Edw. 1. and his father H. 3. before him, fought by divers acts and ordinances to use some mean and moderation herein, but in the end it was found, that there was no mean in mischief, and as Seneca saith, *Res profecto stulta est nequitia malus.* And therefore king E. 1. as this act saith, in the honour of God, and for the common profit of his people, without all respect (in respect of these) of the filling of his own coffers, did ordain, that no Jew from thenceforth should make any bargain, or contract for usury, nor upon any former contract should take any usury, from the feast of Saint Edward then last past; so in effect all Jewish usury was forbidden.

The king of France, *anno Domini 1253.* 37 H. 3. banished out of France all the Jews perpetually, saving merchants, and such as should get their living by the work of their hands; but soon after they returned again.

This law struck at the root of this pestilent weed, for hereby usury itself was forbidden; and thereupon the cruell Jews thirsting after wicked gain, to the number of 15060, departed out of this realm into forein parts, where they might use their Jewish trade of usury, and from that time that nation never returned again into this realm.

Some are of opinion, (and so it is said in some of our histories) that it was decreed by authority of parliament, that the usurious Jews should be banished out of the realm; but the truth is, that their usury was banished by this act of parliament, and that was the cause that they banished themselves into forein countries, where they might live by their usury; and for that they were odious both to God and man, that they might passe out of the realm in safety, they made petition to the king, that a certain day might be prefixed to them to depart the realm, to the end that they might have the kings writ to his sherifes for their safe conduct, and that no injury, molestation, damage, or grievance be offered to them in the mean time: one of which writs we will transcribe:

*Rex vic. G. Cum Judæis regni nostri universis certum tempus pre-
fixerimus a regno illo transfretandi, nolentes quod ipsi per ministros nostros
aut alios quoscunq; aliter quam fieri consuevit, indebite pertrectentur:
tibi precipimus quod per totam balivam tuam publice proclamari, et stri-
miter inhiberi facias, ne quis eis infra tempus prædictum, injurias
molestiam, dampnum inferat, seu gravamen. Et cum contingat ipsos cum
catallis suis, * quæ eis concessimus, versus partes London, causa transfre-
tationis suæ, dirigere gressus suos, saluum et securum conductum eis
habere facias sumptibus eorundem. Proviso quod Judæi prædicti ante
recessum suum vadia christianorum quæ penes se habent, illis quorum
fuerint, se ea acquietare voluerint, restituant, ut tenentur. Teste rege
apud Westm. 18 die Julii, anno 18 E. 1.*

This statute *de Judaismo* was made at the parliament *post festum Hilarii*, anno 18 E. 1. At which parliament the king had a fifteenth granted to him *pro expulsione Judæorum*. And this writ was granted in July following, the king beginning his reign, Novemb. 16. for the parliament knew, that by banishing of usury, the Jews would not remain. And thus this noble king by this means banished for ever these infidell usurious Jews; the number of which Jews thus banished, was fifteen thousand and threescore.

But lucre and gain, which king John had, and expected of the infidell Jews, made him *impie judaisare*; for to the end they should exercise the laws of their sacrifices, (which they could not do without a priesthood) the king by his charter granted them to have one, &c. which, for the great rarity thereof, and for that we finde it not either in our books, or histories, that we remember, we will rehearse *in hæc verba*:

*Rex omnibus fidelibus suis, et omnibus, et Judæis, et Anglis salutem. Sciatis nos concessisse, et presenti charta nostra confirmasse Jacobo Judæo de Londoniis presbytero Judæorum presbyteratum omnium Judæorum totius Angliæ. Habendum et tenendum, quam diu vixerit, libere et quiete, et honorifice et integre, ita quod nemo ei super hoc molestiam aliquam, aut gravamen inferre præsumat. Quare volumus et firmiter præcipimus, quod eidem Jacobo, quoad vixerit, presbyteratum Judæorum per totam Angliam garantetis, manuteneatis, et pacifice defendatis. Et si quis ei super eo forisfacere præsumpserit, id ei sine dilatione (salva nobis emenda nostra) de forisfactura nostra emendari faciatis tanquam dominico Judæo nostro, quem specialiter in servitio nostro retinuimus. Prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum, nisi coram nobis aut coram capitali justiciario nostro, sicut charta regis Richardi fratris vestri testatur. Teste S. Bathonicensi episcopo, &c. Dat' per manus * H. Cantuariensis archiepiscopi cancellarii nostri apud Rotkornagum 31 die Julii, anno regni nostri primo.*

Walter archbishop of Canterbury, and chancelor of England, born in Westdereham in Norfolk, and brought up by Ranulph de Glanville chief justice of England, founded the monastery of Westdereham, *premonstratensis ordinis*. Vide *Lib. de antiquitate Britannicæ ecclesiæ, cap. 42.* Hubertus p. 134. worthy to be read and observed.

At this parliament also of this noble king E. 1. in the 18 year of his reign, another kinde of Jews were severely punished, *viz.* the judges of the kings bench, and of the common pleas, the barons of the exchequer, and the justices itinerants, except two, whom for their honour we will name (*in memoria æterna erit justus*) *viz.* Sir John of Metingham chief justice of the common pleas, and Elias de Bekingham one of his companions, [*qui positi fuerunt in fornace, et prodierunt aurum:*] for they had dealt uprightly in their places, and had never stained their hands with sordid bribery. But let us return to our naturall Jews.

The richest of these soon after this parliament, by force of the kings writ having imbarcked themselves with their treasure in a tall ship of great burthen, when the ship was under sail, and gotten down the Thames towards the mouth of the river beyond Quinborough, the master of the ship confederating with some of the mariners, invented a stratagem to destroy them, and to bring the same to passe, commanded to cast anchor, and rode at the same till the ship at an ebbe lay on the dry sands; the master and his confederates, in further execution of their wicked plot, moved and inticed those rich Jews to walk with the master on land, for their recreation and preservation of health, which they did: at last, when the master understood the tide to be coming in, he stole away from them, and got him back to the ship, whither he was, as it was before plotted, drawn up by a cord; the Jews made not so much haste as he did, because they knew not the danger, but when they perceived in what perill they were in (that had shewed

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Rot. Chart. 1.
Regis Johan.
part. 1. m. 28.
Chart. 171. This
king had a most
troublesom and
dishonorable
reign, God rais-
ing against him
for nis just pu-
nishment two
potent enemies,
Pope Innocent
the 3. and Phi-
lip king of
France. And
besides (which
was the worst)
he lost the hearts
and love of his
baronage and
subjeets, and at
the last had a
fearful end.
* H. id est, Hu-
berti.

no mercie to numbers that cryed to them) cryed to him for help: his wicked and prophane answer to them was, that they ought rather to cry to Moses, by whose conduct their fathers passed through the Red Sea, and that he was able to deliver them out of those raging fouds which now came in upon them: and within a short space swallowed up them all: the master, and such other as were consenting to this foul fact, were before the justices itinerants indicted, convicted of murther, and hanged.

And hereby it appeareth, that divine ultion did follow these cruell Jews, wicked and wretched men; for the debts of cruelty are seldom unpaid.

We will here adde a record *de Priore de Bridlington*, the information or charge is not in the record, this onely we finde:

*Et quia prædictus prior cognoscit quod prædicta pecunia præd' Judæo debebatur, viz. 300 l. nec ei solvebatur ante exilium Judæorum, & quicquid remansit de eorum debitis, aut catallis in regno post eorum exilium domino regi fuit; consideratum est quod dominus rex recuperet pecuniam præd', & dictum est eidem priori quod non exeat villa antequam domino regi de præd' pecunia satisfaciatur. Et respondeat Johannes archiepiscopus Eborum, quia præcepit dicto priori solvere valett' suo prædictam pecuniam in deceptionem regis, contra * sacramentum & fidelitatem suam domino regi datam, &c. Idem in alio Rot. anno 22 E. 1 Rot. 5.*

The archbishop confessing the same, was adjudged to be *in misericordia regis, sed idem dominus rex reservat sibi ipsi taxationem misericordie.*

This light touch we have given to this branch of this act, to the end it may be a precedent and pattern in like cases to apply the like remedy, and will leave the reader to peruse the residue of this act, which is worthy to be read, and needeth not any exposition.

Chron. de Dunstable & Vet. Manusc. Itiner. Manc. coram. Justic. Itiner. an. 18 E. 1.

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Pl. Parlam. post Pasch. apud London.

21 E. 1. Rot. 4.

* Note a good exposition upon this statute.

What offence it is to deceive the king of any of his forfeitures.

* For in doing of his fealty he is sworn.

[510] MODUS LEVANDI FINES,

Editum Anno 18 Edw. I.

QUANT le brieve original soit lie en presence des parties devant justices, donques dira un countour (1) issint: Sir justice, conge d'accord' (2): le justice dirra, que dirra? (3) Sir Robert, et nosmera un des parties. Donques quant ils seront agree de la somme de pecune (4) que est due al roy, donques dirra le justice, Cries la peace (5).

Et

WHEN the writ original is delivered in presence of the parties before justices, a pleader shall say this, Sir justice, conge, de accorder; and the justice shall say to him, What saith sir R. and shall name one of the parties. Then, when they be agreed of the sum of money that must be given to the king, then the justice shall

*Et puis dirra le countour, Issint que la peacc est tiell, a vous conge, que William et Alice sa feme, que cy sont, recognifont (7) le mannour de B. ove les appurtenances (8) contenus en le briefe (6), estre droit du R. come cell' que il ad de leur done, A. aver et tener a luy et a ses heires, de W. et Alice, et les heires A. come en demesne, rent, seigniories, courts, plees (9), purchases, gardes, mariages, reliefs, escheats, molins, avowsons de esglises, et tous auters franchises, et franke customes al avantdits manours apperteignant, rendant per a N. et ses heires, chiefes seigniors de fee, service due, et customes pur tous services. Et fait assavoir, que order de ley ne suffre mye, que final accorde soit leve en la court le roy (10) sans briefe original (11), et ceo a tout le moins devant iv. justices en bank (12), ou en eyre, et non pas aillours (13), et en presence des parties nosmes en briefe (14), queux soient de pleine age, et de bone memorie, et hors de pryson. Et si feme covert de baron soit un des parties, donques covient que el soit primerment confesse de iv. justices avantdits (15). Et si el nassent al fine, ne ceo livermie (16). Et la cause pur que tiel solempnie doit estre fait en cel fine est, pur ceo que fine est ci hault barre, et de ci graund force, et de ci puissant nature en soy, que el forclos nemy seulement ceux queux sont parties et privies (20) a la fine, et leur heires (19); mes tous auters gentes de mound' (21), queux sont de pleine age, hors de pryson (17), et de bone memorie, et deins les iv. meres, le jour del fine levie (22), fils ne mettront * leur claime (23) de leur action pur le pays, deins lan et le jour (18).*

* [511]

shall say, Cry the peace. And after the pleader shall say, In so much as peace is licensed thus unto you W. S. and A. his wife, that here be, do acknowledge the manor of B. with the appurtenances contained in the writ to be the right of our lord the king, which he hath of their gift, to have and to hold to him and his heirs, of the said W. and A. and the heirs of A. as in demesns, rents, seigniories, courts, plees, purchases, wards, marriages, reliefs, escheats, mills, advowsons of churches, and all other franchises and free customs to the said manor belonging, paying yearly to R. and his heirs, as chief lords of the fee, the services and customs due for all services. And it is to be noted, that the order of the law will not suffer a final accord to be levied in the king's court without a writ original, and that must be at the least before four justices in the bench, or in eyre, and not otherwise and in presence of the parties named in the writ, which must be of full age, of good memory, and out of prison. And if a woman covert be one of the parties, then she must be first examined by four of the said justices; and if she doth not assent thereunto, the fine shall not be levied. And the cause wherefore such solempnity ought to be done in a fine, is, because a fine is so high a bar, of so great force, and of so strong nature in itself, that it concludeth not only such as be parties and privies thereto, and their heirs, but all other people of the world, being of full age, out of prison, of good memory, and within the four seas, the day of the fine levied, if they make not their claim of their action within a year and a day by the country.

(5 Rep. 39. Rast. 349. 27 Ed. 1. stat. 1. c. 1. 1 R. 3. c. 7. 4 H. 7. c. 24. 4 Rep. 125. 4 Ed. 3. c. 46. 15 Ed. 2. stat of Carlisle.)

Pl. Com. 368. a.
 Glanv. li. 8. ca.
 1, 2, &c. Bract.
 lib. 5. fo. 435.
 lib. 3. f. 106. li.
 4. fo. 256.
 Brit. f. 91 & 216.
 Fleta, l. 6. c. 52.
 Lib. 2. ca. 12.
 Lib. 5. fo. 38.
 Teyes case.
 L. 4. f. 125.
 Beverlies case.
 * Int' placita de
 Parliam. apud
 Atheridge, anno
 19 E. 1. Rot. 12.
 The case of
 Margery, late
 the wife of Th.
 Weyland.
 27 E. 1. c. 1. acc.
 First part of the
 Inst. sect. 441.
 Dicr 12 El. 291.
 Pl. Com. 254.
 Stowels case.
 & 432.
 Stapletons case.
 Li. 6. fo. 38, 39.
 Teyes case.

For the antiquitie of fines, it is certaine that they were frequent before the conquest.

For what end and purpose fines, or a finall concord were first instituted, and wherefore it is called *finis*, it appeareth in the said auncient authors, *ubi supra*, which wrote before this act, * and by others, and further by an ancient record of parliament, anno 19 E. 1. in these words, *Nec in regno isto provideatur vel sit aliqua securitas major vel solemnior, per quam aliquis statum certiores habere possit, vel ad statum suum sacrificandum aliquod solemnius testimonium producere, quam finem in curia domini regis levatum, qui quidem finis sic vocatur, eo quod finis et consummatio omnium placitorum esse debet.* See the record, for it is notable.

For the hautesse and puissant force and nature of a fine, somewhat shall be said hereafter in this chapter, in the meane time the true pleading of a fine is not, that *I. S. levavit quendam finem, sed quod quidam finis se levavit, &c.* without alledging of any reason.

For the parts of a fine, see Teyes case, lib. 6.

(1) *Un countor.*] That is to say, a serjant, as before it hath been said.

(2) *Conge d'accorder.*] *i. Licentia concordandi.*

For this license a fine is due to the king, which is called *finis pro licentia concordandi*. And the reason that this fine is taken, is for that the king loleth by reason of this concord the fines or amer-ciements, which should have beene due to him upon the judgement or non-suit, and other advantages.

This fine *pro licentia concordandi* is an ancient flower of the crown, and is called the kings silver, and the post fine, and it is called the post fine in respect of the primer fine, or the fine in the Hamper; for in every reall action of lands or tenements of the yearly value of 5 marks, there is due in the Hamper upon the originall *vi. s. viij. d. viz.* for every *v. marks* of land *vi. s. viij. d.* and if it be under *v. marks*, no fine in the Hamper upon the originall is due: a writ of covenant to levy a fine (whereupon fines in these dayes are usually levied) is holden a reall writ, for which a fine in the Hamper is paid. Now the fine *pro licentia concordandi*, or the post fine is also certain, for it is as much as the primer fine, and halfe as much more. As for example (*quia exempla illustant*) a writ of covenant is brought to levie a fine of land, of the yearly value of *v. marks*, there is *vi. s. viij. d.* due presently for the primer fine, or fine in the Hamper, but the fine *pro licentia concordandi*, or the post fine is not due till *conge d'accorder* be graunted by the court, in this case the post fine is *x. s.* that is as much, and halfe as much as the primer fine was, but if the land be under *v. marks*, so as no primer fine is due, yet shall there be a fine *per conge d'accorder*, and that is also certain, *viz. vi. s. viij. d.*

And note there is no post fine due, but when there is *conge d'accorder*, and in the court of common pleas there is a speciall clerk for the entring of the kings silver in a roll, which is also endorsed upon the writ of covenant.

And these fines *pro licentia concordandi* are not against *Magna Charta*, c. 29. for it is an ancient revenue of the crown.

And the post fine is paid (as here it appeareth) for the concord, for that is the foundation and substance of the fine, for after that, and

Dicr 5 E. 1. 220. b.
 Lib. 5. fol. 39.
 Teyes case.

and the kings silver entred, though the conusor dieth, the fine is good, and the land passeth, but if the kings silver be not entred, the fine may be reversed in a writ of error

If a man bring two originall writs of covenant, the one for land in Suff. of the yearly value of vi. l. and another in Essex of xxiv. l. and albeit there be two originals, yet there is but one concord, and for that concord one entire fine is due and not severall.

(3) *Que donera.*] The printed bookes are faulty, for they be *que dirra*: which should be *que donera*, that who is the conusee, that he may give it, and the serjant nameth him.

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6 Eliz. Dier 227.

Lib. 5. fo. 39.
Teyes case.

Now the conusee doth pay the fine, *pur licence daccorder*, as here it appeareth, and if there be more then one in the fine, then he, in whom the fee reposeseth by the fine, prayeth the same.

And this fine *pur conge daccorder* doe belong to the king in so high degree of his prerogative, that they passe not by his generall graunt of all fines, albeit the grant be *ex certa scientia, speciali gratia, et mero motu, &c.*

(4) *Quant ils sont agreez del somme de pecunie.*] Which is easily done, for the fine upon a just computation of the primer fine, is, as is aforesaid, certaine.

(5) *Cries la peace.*] Some hath it, *Treates le peace*, that is, drawn the peace: here peace is taken for the concord, and the serjant shall say, *Le peace est tiel ove vostre conge.*

(6) *Que William et Alice sa feme, que cy sont, recognifont le mannor de B. ove les appartenances, &c.*] Here it appeareth that they which levy the fine ought to doe it in person, and in open court expressed in these words [*que cy sont*]; and the reason thereof was, that the judges in open court might upon the view, and other good meanes discern of their age, ideocy, *non compos mentis*, and coverture, and whether those that appeare were the same persons, all which might better be discerned in open court, and the judges informed of the truth thereof, where some people of most of the parts of the kingdome are many times present, and men will be more fearfull to offer any thing that is unjust in open court (which is the publike seat of justice) then in a private chamber, and this was in respect of the hautesse and puissant force and nature of a fine.

But this is altered by a later statute, whereby it is provided, that if any person aged or decrepit, impotent, or by casualty be so oppressed or holden, that by no meanes he is able to come before the justices in court, that in such case two or one of the justices, by assent of the residue of the bench, shall visit the party so diseased, and shall receive his conufance upon the plea, and forme of the plea, that he hath in court, whereupon the same fine ought to be levied; and if there goe but one, he shall take with him an abbot, a prior, or a knight of good fame and credence; and hereof the writ of *dedimus potestatem* had his beginning, and at the first was not graunted, but where the party was so aged, decrepit, or impotent, as he could not come to the court, and accordingly the writ of *dedimus potestatem* was framed, *ac præfatus A. adeo impotens existat quod absque maximo sui corporis periculo usq; ad Westm' ad diem in brevi prædicti content' ad recognitionem quod in hac parte requiritur faciend'*

Stat. de Carlile,
15 E. 2.

Vet. N.B. f. 103.
Br. tit. fines 120.

1 H. 7. 9. a.
[513]

41 E. 3. 14.
21 E. 4. 4.

50 E. 3. 9. 28 E.
3. 95. 44 All. 36.
21 E. 3. fines 23.
7 H. 4. 16.
1 H. 7. 12. 22,
25, &c.
31 E. 1. grant 90.
7 E. 3. 14. 24 E.
3. 26. 39 E. 3. 1.
50 E. 3. fines 1.
Glan. l. 8. ca. 3.

Glan. l. 8. ca. 3.

13 E. 1. attaint
71. 2 E. 3. 19.
21 E. 3. 44.
32 E. 3. Scire
fac' in ration.
divis. 50 E. 3.
23. 4 E. 4. 2.
18 E. 4. 22.
19 E. 4. 23.
21 E. 4. 4.
17 E. 3. fo. 31.
21 E. 3. 20.
44 E. 3. 7 H. 4.
44. 8 H. 4. 23.
8 E. 4. 6.

faciend' laborare non sufficit; which forme albeit it continueth to this day, yet is the conusans taken of them that be in health, and able to travell. And where that act speaketh of a justice, a *dedimus potestatem* is graunted to a serjant at law, sworn to the king, as common experience teacheth; and the chief justice of the court of common pleas may take a conusans of a fine, *virtute officii sui*, without any writ of *dedimus potestatem*.

Here is a forme of the most principall fine, *viz.* the fine *sur conscience de droit come ceo que il ad de son done*.

It is to be known that there are two kinds of fines, *viz.* one executed, and the other executory. Executed, that is, where the present estate passeth unto, or is supposed in the conusee, for such a fine is a feoffment of record, as this fine *come ceo*, or *sur releas*, or confirmation, or *sur surrender*.

Executory, as when no estate is vested in the conusee untill it be executed by entry or action, as fines *sur graunt et render* by the conusee, which must be made upon a fine *come cec*, or *sur releas*, &c. or other fine which is executed, or otherwise the conusee could not make any graunt and render of that land, &c. which he had not; more shall be said hereof in the exposition upon the statute of 27 E. 1. *de finibus*.

(7) *Recogniscent, &c.*] *Recogniscent* is the auncient and usuall word in a fine for the conveyance of lands, &c. and very apt, for it is made a plea of land depending when either the demandant or tenant doth acknowledge the land to be the right of the other *per amicabilem compositionem, et finalem concordiam*, as Glanvill saith.

The agreement of the parties have altered the forme of the conusans here expressed, and doe adde, *et illud remisit et quitum clamavit, &c.* Also the fine *sur conusans de droit come ceo*, doth now comprehend a clause of warranty, which is here omitted.

(8) *Le mannor de B. ouz les appartenances.*] Of what hereditaments a fine may be levied? Regularly it may be levied of any thing whereof a *præcipe quod reddat* doth lie, as of land, rent, &c. or whereof a *præcipe quod faciat*, as the writ of customes and services, or whereof a *præcipe quod permittat*, as to have common a way, &c. or to be short, whereof a *præcipe quod teneat* doth lie, as the writ of covenant to levy a fine and the like. But of ancient times fines were levied of other things, then will be at this day allowed, and yet those ancient fines shall be holden now as available, as they were taken to be when they were levied.

A fine cannot be levied of a mannor, or lands, that is ancient demesne, for that should be a wrong to the lord of whom the land is holden, for by the fine it should become frank fee, and not impleadable in his court, &c. and if any such fine be levied, the lord shall reverse the same in a writ of deceit, for *res inter alios acta alteri nocere non debet*.

(9) *Come in demesne, rents, seigniories, courts, pleas, &c.*] At the time of the making of this act, the forme was to enumerate in general whereof the mannor consisted, but that forme is now also altered, and that clause wholly omitted at this day.

(10) *Le ordre del ley ne suffer my que finall concord soit levy en la court le roy sans briefe originall.*] Hereby it appeareth that this act is a declaration of the common law, and the ignorance or error of some judges was the cause of declaring of the law herein.

First, if there be no originall writ, yet the fine is not void, but voidable by law, and therefore the act saith [*Le ordre del ley ne suffer*] and that is by writ of error, and that holdeth also when there is an originall writ and the fine is levied as well of that which is contained in the writ, as of some other thing not contained: as if the writ of covenant be of the mannor of D. and the fine is of the mannor of D. and likewise of the mannor of S. it is voidable for the mannor of S. by writ of error. It holdeth also when the fine is levied immediately to a person not named in the writ of covenant; as if A. be plaintiffe in the writ of covenant against C. and C. levieth the fine to A. and B. it is voidable by writ of error, but the learning must be further expressed.

7 E. 3. 64. 24 E. 3. 28. 18 E. 4. 22. 19 E. 2. 2. Li. 3. fo. 5. Owen & Morgans case.

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For as concerning the thing whereof the fine is levied, it is to be knowne that in case of a fine *sur grant et render*, which containeth a double fine, there is a great diversity between the fine *sur consans de droit come ceo, &c.* for that must be levied of the land, &c. in the originall, but the grant and render may be of another thing then is expressed in the originall: as A. bringeth a writ of covenant against B. for the mannor of D. B. cannot levie a fine to A. of a rent to be issuing out of the mannor of D. but he must levie the fine of the mannor of D. according to the writ, and his covenant therein expressed, but A. may grant and render to B. a rent out of the same mannor contained in the fine, but not out of any other land, neither can the grant and render be of any thing collaterall to the land, &c. contained in the writ, or of another nature, and neither issuing out of, nor incident to the land, &c. contained in the originall.

10 E. 3. 35. 54. 18 E. 3. 9. 19 E. 3. Abbot 13. 20 E. 3. bre. 686. 26 Aff. 37. 29 E. 3. 3. 38 E. 3. 17. 18 E. 4. 22. 19 E. 4. 2. 3. 21 E. 4. 4. b.

If two doe levy the fine, the graunt and render may bee to one of them.

24 E. 3. 35.

As concerning the persons to be named in the fine, the fine *sur consans de droit come ceo, &c.* cannot be levied to any person that is not party to the writ of covenant, neither can the grant and render of the land, &c. be immediately *in primo gradu* to any that is no party to the writ, but mediately or in *2 gradu, &c.* it may: for example, if a writ of covenant be brought by A. against B. of the mannor of D. B. levy a fine to A. *come ceo*, A. may grant and render the same to B. for life, or in taile, the remainder to F. in fee; for albeit the writ of covenant be *inter A. querent' et B. deforc'*, so as F. is a meere stranger to the writ, yet seeing he taketh it by way of remainder depending upon an estate warranted by the fine, it hath been allowed in our books, and hath been compared to a deed indented betwene A. and B. whereby A. doth give lands to B. to have and to hold to B. for life, or in taile, the remainder to C. (who is a stranger to the deed) in fee.

6 E. 2. fines 117. 7 E. 3. 37. 64. 10 E. 3. 32. 16 E. 3. fines 8. 18 H. 7. fines Br. 111. 30 H. 8. Bro. fines 108.

(11) *Briefe originall.*] It is not said, *briefe originall enter les parties*, but generally, and therefore a fine may be levied by a vowchee to the demandant, or by the demandant to him, and so likewise by tenant by receipt to the demandant, or by the demandant to him, and yet they are not parties to the writ.

18 E. 3. 12. 8 H. 4. 5. 21 E. 4. 4. 5 H. 7. 41.

In ancient times fines were levied upon originals that were mixt, as in the assise of *darrein presentment, quare impedit*, or the like, which later times have thought to be against the height and force of a fine. For the forme of the originall writ it is to be observed, that if a fine be levied of eight severall things, as of a mannor, a rectory, a house, &c. after the naming of the mannor, the forme is,

2 E. 3. 19. 10 E. 3. 5. 18 E. 4. 22. 19 E. 4. 2. 3. 21 E. 4. 4. b. See 27 E. 1. ca. 1.

ac

ac de rectoria, necnon de messuagio; for the fourth, *ac etiam*; for the fifth, *præterea*; for the sixth, *ac ulterius*; for the seventh, *ac etiam*; for the eighth, *ac insuper*: and if there be more, then to begin again: and I have known a chirografe of a fine discovered of forgery by not observing this order.

27 E. 1. c. 1.
4 H. 7. c. 24.
32 H. 8. c. 36.

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1 H. 7. 10, 11.
per les justices.

(12) *Et ceo a tout le meyns devant 4. justices en banke.*] The statute of 27 E. 1. saith, *quia fines in curia nostra levati, &c.* and by the statute of 4 H. 7. it is provided that after the engrossing of every fine to be levied, &c. in the kings court, before his justices of the common pleas, &c. so as the number of justices here mentioned are not requisite at this day: but before the making of this statute, the justices before whom the fine was levied, were named in the fine and specially upon the making of this act, to the end the number of the justices might appear; for though the number of four be not required, yet there must be above the number of one. And this is the reason that a fine levied *coram Thom. Brian milite, et sociis suis justiciariis de communi banco*, were not good; because no other judge of that court was named but one, and before one a fine cannot be levied in respect of the solemnity thereof. But many writs that come out of the chancery, are *coram Thoma Brian et sociis suis*.

50 Aff. p. 9.
44 E. 3. 38.
31 H. 8. Fines
Bro. 110.

(13) *Et non pas ailours.*] A fine cannot be levied, to have the force of a finall concord by any that hath power *tenere placita*, but onely before the justices of the court of common pleas, or before justices in eyre (whiles they stood) *et non pas ailours*, saith this act: and therefore the king cannot grant power to hold plea for the levying of fines, against this negative statute.

(14) *Et en presence des parties nosmes en le briefe.*] The vouchee and tenant by receipt are not named in the writ, and yet they may (as hath been said) levie a fine to the demandant, or the demandant to them; and these words being in the affirmative do not restrain them.

24 E. 3. 62.
42 E. 3. 37.
46 Ed. 3. 15.
3 H. 6. 4.
8 H. 6. 4.

(15) *Et si feme covert de baron soit un des parties, donques convient que el soit primerment confesse devant i. justices avantdits.*] This must be understood where the husband and wife do levie a fine, for there she ought to be examined; but where the husband and wife do take by a fine, and depart with nothing, there the feme covert is not to be examined.

25 E. 3. 44. 4 E.
3. 41. 5 E. 3. 24.
6 E. 3. 22. 10 E.
3. 26. 18 E. 2.
Fines 121. 4 E.
3. ibid. 43.
16 E. 3. ibid. 6.

If a fine be levied of land to the husband and wife, and the husband and wife grant and render the land, there the wife shall be examined, and the examination must ever be upon the writ; and therefore a baron and feme upon a fine levied to them of land cannot grant and render a rent out of the land, because that rent is not contained in the writ.

25 E. 3. 44.

The examination must be solely and secretly, and the effect thereof is, whether she be content of her own free good will, without any menace or threat to levie a fine of these parcels, and name them unto her, every thing distinctly contained in the writ, so as she perfectly understand what she doth; and if the judge doubteth of her age, he may examine her upon her oath.

45 E. 3. tit. Examination 22.

But what if the woman cannot speak any language that the judge doth understand, as Cornish, Welsh, Dutch, or the like? then there shall be a Latimer, that is, an interpreter upon his oath to interpret truly.

(16) Et

(16) *Et sil nassent al fine, ne ceo liera mie.*] This is so to be understood, that it ought not to be received, if she be not examined, and freely assent, as is aforesaid; but if the fine be received, and recorded, the feme covert or her heirs shall not be received to aver that she was not examined nor assented: for this should be against the record of the court, and tending to the weakning of the generall assurances of the realm.

(17) *De pleine age, et de bone memorie, et hors de pryson.*] See W. 2. cap. 48. hereof, and see Beverlies case, lib. 4. 123, 124, &c. See lib. 2. fol. 58. in Beckwiths case.

Lib. 2. fo. 58.
Beckwiths case.

(18) *Et la cause pur que tiel solemnitie doit estre fait en cel fine est, pur ceo que fine est ci hault barre, et de ci graund force, et de ci puissant nature en soy, que el forclos nemy solement ceux queux sont parties et privies a la fine, et lour heires, mes toutes auters gentes de mond', queux sont de pleine age, hors de pryson, et de bone memorie, et dcins les iv. meres, le jour del fine levie, sils ne mettront lour claime de lour action pur le pais, dcins lan et le jour.*] Here are four things to be observed:

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1. First, the cause that such solemnity is used in the levying of a fine, wherein three things are to be observed; 1. for that it is so high a bar, 2. of so great force, 3. of so puissant a nature.

2. The end, to make an end of troubles and controversies, and to establish concord, peace, and repose in mens possessions and inheritances; and therefore a fine is called *finalis concordia*.

3. The means to attain to the same, *viz.* to forclose two kinde of persons, *viz.* parties and privies presently, and also the strangers in the world, *in futuro*.

4. A two-fold provision full of right and equity is made for strangers; first, that they be of full age, out of prison, of good memory, and within the four seas; secondly, that they put in their claim within the yeer and the day, after the fine levied.

Bract. li. 5. fo. 405, &c.
Brit. f. 216. b.
Fleta, li. 6. c. 53.
W. 2. cap. 1.
1. Part of the Institutes, § 441
* This is altered by the statute of 4 H. 7. cap. 24.

By this act, if any stranger were within age, or in prison, or *non compos mentis*, or beyond the seas at the fine levied, * he is totally and for ever excepted; so as he after his full age, or coming out of prison, or recovering his memory, or coming into the realm, or any of their heirs need not to make any claim: and hereby a woman covert was bounden, if claim were not made within the yeer and day; and the reason was, for that she had a husband that was able to put in his claim: but if the husband were within age at the time of the fine levied, though the wife were of full age, the infancie of the husband (who was to make the claim, the wife being *sub potestate viri*) should priviledge the state of the wife for ever. So as by the justice of the ancient com' law, wherof this act is a * declaration, two kinde of strangers to the fine were exempted and provided for; first such as by presumption of law had not sufficient understanding, as the infant, or *non compos mentis*; or had no notice, as the man in prison, or beyond sea, of the fine levied to make claim: and secondly, for such as had ancient rights, who are ever favoured in law, if they made their claim within the yeer and day.

This act was made an. 18. E. 1.
* Vide Mich. 15 E. 1. in banco Rot. 107. Essex. Patch. 10 E. 1. Rot. 72. in banco Heref. John de la Cumbes case.
Pl. com. 357.

(19) *Parties et privies, et lour heires.*] Parties are those that are parties to the originall.

(20) *Privies.*] First, that is to be understood of privies in blood, not onely of the heirs by the common law, which are here named; but heirs by the custome, here comprehended under this word [*privies*] as borough English, gavelkinde, or the like, which

Lib. 3. fo. 23. Walkers case.
Pl. com. 363. per Brown.
W. 1. ca. 39.
6 E. 2. View 16 r.
40 A. Pl. 2.

claim,

19 E. 2. Count.
de Vouch. 114.
12 E. 3. ibid.
326. Pl. com.
Howels case.

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Lib. 5. fo. 123.
Saffyns case, li. 9.
fol. 105. Mary
Podgers case.
41 E. 3. 13. li. 2.
95. Bingham,
lib. 3. 84, &c.
Case de Fines,
fo. 77. Fermors
case, li. 4. fo.
225. li. 8. 100.
72. li. 9. 87. 139.
li. 10. 90. 97.
lib. 11. fo. 69.
71. 78. 33 E. 3.
Estoppel 380.
21 E. 3. 21. 8 H.
4 9. Dier 22 El.
373. 4 E. 4. 12.
Stanf. Prærog.
69.
* 4 H. 7. ca. 24.
32 H. 8. ca. 36.
6 R. 2.
Estoppel 211.

42 E. 3. 9. 41 E.
3. 14. 8 Aff. 33.
4 E. 3. 469.
13 Aff. S. 8 H. 4.
8, 9. 12 E. 4.
15, &c. Lib. 3.
fo. 88, 89. in
case de Fines.

46 E. 3. 14. 13
E. 3. Replica-
tion 62. 17 E. 3.
53. 33 E. 3.
Estoppel 280.
22 E. 3. 17. 33
H. 16. 18. Lib.
3. fol. 88, 89.
Case de Fines.

4 E. 3. 46. Opi-
nion al cont.
7 E. 3. 37.
Acc. 13 E. 3.
Replication 62.
11 R. 2. Escheat
13. 14 H. 4. 32.
per Hankford.
Pl. com. 357. b.
Dier 3 Mar. 117.
This is altered

claim as heirs by custome; and is not intended of privies in estate, as joyntenants, the donor and donee, lessor and lessee, or the like; also this is to be understood of privies in succession, as bishops, abbots, and the like.

(21) *Mes auxy toutes auters gentes de mond*.] In these words are included as well tenant for yeers, tenant by statute merchant, and staple, copy-holders, and customary-holders, as tenants of free-hold and inheritance, if they be out of possession or seisin at the time of the fine levied, for a fine levied by a stranger cannot barre him that is in possession. And albeit the words of this law are very generall, yet do they not abrogate the statute of W. 2. *De donis condicionalibus*, which provideth for preservation of estates in tail. *Quod si finis super hujusmodi tenementa imposteriorum levetur, finis ipso jure sit nullus, nec habent heredes hujusmodi, aut illi ad quos spectat reverti, &c. necesse apponere clamorem.* * But that branch *de donis condicionalibus* continued in force notwithstanding this act, as to the right of the estate tail, untill the statute of anno 4 H. 7. by which act, and by the statute of anno 32 H. 8. an estate in tail is barred by fine with proclamations levied, and had according to those acts.

* In some case the party himself shall not be concluded of his averment against the expresse fine; as if two joyntenants be in fee, and they accept a fine *sur conusans de droit come ceo a eux, et les heires de lun*, the estate is not changed, and they may plead the former feoffment to them and their heirs, and that by law they could have no other fine.

And in some cases privies in blood, and inheritable also shall have an averment against the fine, notwithstanding this statute: and therefore if tenant in tail accept a fine *sur conusans de droit come ceo, &c.* yet the issue in tail, that is privie, and heir in tail shall aver continuance of possession in the father; for it standeth well with the fine, which is [*come ceo que ad de son done;*] and so it is in the case above, if tenant in tail had granted, and rendred the land to the conusor, the issue in tail might have averred continuance of possession in the father, for the fine was executory, and nothing vested in the conusor untill execution: but if tenant in tail levie a fine *sur conusans de droit come ceo*, the issue in tail, though he be not barred by the fine yet he shall not against this fine aver continuance of possession in the father, and that diversity was holden for law after this statute; neither after this statute could the issue in tail have generally pleaded, that *partes finis nihil habuerunt*, but was ousted thereof by this statute, albeit some have relyed much upon these words in this act, *rite levatus*; now the statutes of 4 H. 7. and 32 H. 8. and the exposition thereof *ubi supra*, make this out of question.

(22) *Le jour del fine levie*.] This is to be understood of a compleat fine, which giveth a double notice, one by the solemnity of the fine in court, and another by transmutation of possession in the country; as for example, one that hath a defeisible title in land accepts a fine thereof *sur conusans de droit come ceo, &c.* and granteth and rendreth the same to the conusor, who sueth not execution within the yeer and day, this fine shall not bar him that had the ancient right, because it is no compleat fine without possession, within the meaning of this act, for that by intendment he that had

right

right cannot take notice of the fine without transmutation of possession, and so out of the meaning of the law.

Note a fine *sur consens de droit come ceo*, &c. is said to be levied when the writ of covenant is returned, and the concord and the kings silver duly entred, this maketh the land to passe, and from this shall the yeer and day be accounted, albeit the fine be ingrossed afterward.

(23) *Si ils ne mettront leur claime, &c.*] For the preserving of ancient * rights at the com' law, there were 4 manner of claims, whereof two were by matter of record, and two by act in the country; by matter of record, as by a *præcipe quod reddat*, according to the truth of the case brought within the yeer and day by him that right had, or in ancient time by an entry of a claim, entred in the record of the * foot of the fine; but first it must have been made in open court, [*appono clameum meum tali liti vel concordia, &c.*] And two by acts in the country, as by an actuall entry into the land, by him which right had, and whose entry was congeable, or by a continuall claim which amounted to an entry; but all these must be done by him that had a present right of action, or a present right of entry, for no other person could make any claim: and therefore if there were tenant for life, or in tail, the reversion or remainder over in * fee, he that had right of reversion or remainder expectant upon an estate for life, or in tail, could make no claim, because he had neither present right of action nor of entry; and therefore in that case the tenant for life, or in tail must make his claim, and that claim either by action or entry upon the foot of the fine, or by lawfull entry or continuall claim, should not onely have preserved their own right, but also the right of them in reversion or remainder; but if no claim were made by the particular tenant, the right of them in the remainder or reversion were for ever bound by the common law.

^b This is altdred in two respects by the said act of 4 H. 7. for thereby the claim must be by action or entry; and therefore a claim entred upon the foot of the fine at this day is not available. Also they that have a right of a reversion or remainder expectant upon an estate tail, or for life, shall have five yeers after their title come unto them, as by that act appeareth.

The words of this act be, [*silz ne mittont leur claime*] and yet in some case the right of one that might claim, and doth not, shall be preserved; ^c as if a disseisor be disseised, and the second disseisor levie a fine, in this case if the first disseisor enter within the yeer, this shall preserve the right of the disseisee, because the first disseisor by his entry avoided the whole estate given by the fine, and yet the disseisee might have entred himself [*et sic de similibus;*] but it must not have been an empty fine that should have barred the right of a stranger, but a fine compleat, as hath been said.

^d This law continued untill the parliament in the four and thirtieth yeer of E. 3. and then the statute of non-claim was in that parliament made, which took away the effect and force of this law, and of the common law in this point, whereby great contention arose, and few men were sure of their possessions, which continued till the ^e parliament, anno 4 H. 7. and then that mischief was reformed, and the ancient common law excellently moderated by the statute of 4 H. 7. See the statute of 32 H. 8. which acts have for the common quiet and repose of all been with great wisdom and judgement

by the statute of 4 H. 7. and five yeers given, &c. 22 H. 6. 13. Pl. com. 432.

Pl. com. 358, 359, &c. in Stow. case. * [518]

* Vide infra. Pasch. 18 E. 1. Braet. li. 5. fo. 236. nu. 7. Fleta, li. 6. c. 52. Hil. 16 E. 2. in cui in vita. Pl. com. 359. See 1. Part of the Instit. § 416. ^a Mich. 15 E. 1. in banco Rot. 107. Essex. Lucia filia Johan. de Northope. But there it is adjudged, that if tenant for life, the reversion over, and an estranger that hath nothing in the land levie a fine, without devesting or displacing of any of the estates, he in the reversion shall not be bound to make any claim, because *partes fin. nihil habuerint.*

^b 4 H. 7. c. 24. See Pasch. 18 E. 1. Rot. 1. Robert Bakuns case, a claim made upon the foot of the fine. Westmerl. And in the same roll Rob. de Husting made the like claim for 5. s. rent. Northamp.

^c 16 E. 2. Cont. claim 10. Pl. com. 358. b. ^d See the 1. part of the Institutes, sect. 441. ^e 4 H. 7. ca. 24.

32 H. 8. ca. 34.
 Lib. 1. fo. 96.
 Shellings case.
 Lib. 2. fo. 15, 16.
 Wisemans case.
 93. Bingham's
 case. Lib. 3. fo.
 84, &c. Le case
 de Fines, & ibid.
 77, &c.
 Fearmors case.
 Lib. 4. fo. 125.
 Beverlies case.
 Li. 5. fo. 124.
 Lib. 8. 100. 72.
 Li. 9. 87. 104,
 105, 106, 129,
 140, 141. Lib.
 10. 50, 96, 97.
 Li. 11. 69. 71. 73.
 Pl. com. 360, 361.
 Stowels case.

* [519]

31 Eliz. c. 2.

1 Mar. Parl. 2.
 c. 7.

Dier 3 El. f. 186.

23 El. ca. 3.
 Vide li. 5. f. 40.
 Dormer's case.
 eodem. Lib. fo.
 28. & 39. & 43,
 44, 45. for
 amendment of
 fines, &c.

Tr. 32 Eliz. in
 Communi Banc.
 Cottons case.

judgement expounded; and that a fine with procl. and five yeeres past doth bar the lord in ancient demesne of his writ of deceit, and likewise a writ of error is also thereby barred.

And though this act of 18 E. 1. be repealed, yet may it serve in many respects to explain the statutes of 4 H. 7. and 32 H. 8. For the true understanding of the common law, and of former statutes, is the sure master expositor of the latter.

To the former reports or expositions (wherein are former authorities out of the Lord Dier & Pl. Com. cited) two things are necessary to be added; the first, wherein the statute of 4 H. 7. is altered, or strengthened by any latter act of parliament: secondly, what other case heretofore adjudged upon any branch of either of the said statutes, and not heretofore published, or any other matter, may serve for the strengthening of fines, being the common assurance of the realm, or of the estates of the subjects, concerning free-holds and inheritances.

* As to the first, where by the statute of 4 H. 7. it is ordained that after the ingrossing of the fine, &c. the same fine be openly and solemnly read and proclaimed in the same court the same terme, and in three termes then next following the same ingrossing in the same court, at foure severall dayes in every terme. By the statute of 31 Elizab. it is enacted, that all fines with proclamations shall be proclaimed onely foure times, that is to say, once in the terme, wherein it is ingrossed, and once in every of the three termes holden next after the same ingrossing; and that every fine proclaimed, as is aforesaid, shall be of as great force and effect in law to all intents, and purposes, as if the same had beene sixteene times proclaimed, according to the statutes heretofore made: a beneficiall law; for the fewer proclamations, the safer. See the statute of 1 Mar. for strengthening of fines when proclamations be not made, &c. by reason of adjournment of any terme.

It hath beene resolved that this act extendeth where but part of the terme is adjourned, for it is a favourable law, and to be taken by equitie.

Another statute is made for the establishment of fines and recoveries in *anno* 23 Eliz. which is evident; and whereupon we have knowne no question made, and therefore referre the reader to the whole chapter, being a profitable and beneficiall law, and of the most part of freeholders of this realm necessary to be knowne.

As to the second, betweene Sunie & Howes, Trin. 32 Eliz. in *communi banco*, the case was, Thomas Cotton was tenant in taile of the moiety of certaine lands, and of the other moiety hee was tenant for life, the remainder to William Cotton his eldest sonne in taile. William Cotton went beyond sea to Antwerpe, and after the said Thomas Cotton *anno* 19 Elizab. levied a fine of the whole with proclamations, and within the yeare William Cotton died at Antwerpe, and never came into England; William his sonne being within age entred *anno* 31 Eliz. And it was adjudged that for the moiety whereof Thomas Cotton was tenant in taile, William the sonne of William was barred by this act of 4 H. 7. but for the moiety of William the father, the entry of his sonne William was lawfull; for albeit that William the sonne could not take advantage of the clause that gives benefit to him that is beyond sea, and his heires to enter, or take his action within five yeares after they be within this land, because in this case William the father after the fine levied never

never was within the land; yet for that persons out of the realme at the time of the fine levied, amongst others having a present right, are excepted out of the body of the act (which worketh the barre) therefore where he that is beyond sea at the time of the fine levied, and never returns, is within the exception out of the body of the act, and hee and his heires may enter or take his action at any time: but in case hee doth returne, hee and his heires must enter or take his action within five yeares after his returne: and so it is of an infant being party to the fine, and having a present right, if he dieth during his infancy, he or his heires may enter or take his action at any time: and so it is of a person that is *non compos mentis* by the act of God, if hee die whiles hee is *non compos mentis*; or a man in prison, which is by act in law, if hee die in prison; or a feme covert, which is by her owne act, if shee die whiles shee is covert, being no parties to the fine. For all these are within the reason of the case adjudged of him that is out of the realme (which going out of the realme was his owne act) and never returned.

See Pl. Com. fo. 366. a. the opinion of Brown and Saunders, lege, & perlege nil temere.

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See the statute of 21 *Jacobi regis* cap. 2. for the strengthening of the eilates of the subjects against the king and his successors.

STATUTUM DE FINIBUS LEVATIS, [521]

Editum Anno 27 Edw. I.

QUIA fines in curia nostra levat' suam litibus debent imponere, et imponunt, et ideo fines vocantur, maxime, cum post duellum et magnam assisam in suo casu ultimum locum finalem teneant imperpetuum (1), jamque per aliquod tempus præteritum tam tempore claræ memoriæ domini Henrici regis avi nostri quam nostro partes eorundem finium (3) et earum partium hæredes (4) contra leges et consuetudines regni nostri antiquitus usitatas super hujusmodi finibus (2) adnullandis et evacuandis admittebantur, proponentes quod ante finem levatum à tempore levationis ejusdem, et postea petentes seu querentes aut eorum antecessores de tenementis in finibus contentis, aut de aliqua parte eorundem semper fuerunt seisiti, et sic fines hujusmodi rite levat' per juratores patriæ falso subornatos et malitiose procuratos

II. INST.

curatos

FORASMUCH as fines levied in our court ought and do make an end of all matters, and therefore are called fines principally, where after waging of battail or the great assise in their cases ever they hold the last and final place. And now by a certain time passed, as well in the time of king Henry of famous memory, our grandfather, as in our time, the parties of such fines and their heirs, contrary to the laws of our realm of ancient time used, were admitted to adnul and defeat such fine, alledging, that before the fine levied, and at the levying thereof, and since, the demandants or plaintiffs, or their ancestors, were alway seised of the lands contained in the fine, or of some parcel thereof; and so fines lawfully levied were many times unjustly defeated

3 K

*curatos multotiens evacuabantur et annullabantur minus juste: nos volentes super præmissis remedium adhibere in parlamento nostro ad Westm', statui-
mus, quod dictæ exceptiones seu respon-
siones vel inquisitiones patriæ super hu-
jusmodi exceptionibus seu responsionibus
nullo modo contra hujusmodi recogni-
tiones et fines de cætero admittantur.
Et nos vero volumus, quod statutum
istud tam locum habeat ad fines prius
levat' quam impostum levand'. Et
videant justic', quod notæ et fines
in curia nostra impostum levand'
publice et solemniter legantur, et quod
placita interim cessent omnino, et hoc
fiat per duos dies in septimana secundum
discretionem justic'.*

feated and annulled by jurors of the country falsely and maliciously pro- cured; we therefore, intending to provide a remedy in the premisses, in our parliament at Westminster have ordained, that such exceptions, an- swers, or inquisitions of the country, shall from henceforth in no wise be admitted contrary to such recogni- fances or fines. And further we will, that this statute shall as well extend unto fines heretofore levied, as to them that shall be levied hereafter. And let the justices see that such notes and fines, as hereafter shall be levied in our court, be read openly and solemnly, and that in the mean time all pleas shall cease; and this must be at two certain days in the week, according to the discretion of the justices.

(Rast. 349, &c. 3 Rep. 88. Fitz. Replie. 62, 63. 66. 42 Ed. 3. f. 19. 18 Ed. 1. stat. 4. of fines. 1 R. 3. c. 7. 4 H. 7. c. 24. 31 El. c. 2.)

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Glanv. li. 8. c. 3.

Braet. l. 5. fo.
435. li. 3. 106.
lib. 4. 246.

Britton, fo. 90,
91.

(1) *Quia fines in curia nostra levati finem litibus debent imponere, et imponunt, et ideo fines vocantur, maxime cum post duellum et magnam assisam in suo casu ultimum locum finalem teneant imperpetuum jamque per aliquod tempus præteritum.*] Herewith doe agree all our ancient authors, viz. Glanvill, *Nota quod talis dicitur finalis concordia eo quod finem imponit negotio, adeo ut neuter litigantium ab eo de cætero liceat decedere.*

Braet. *Item si per concordiam, et finem fact', quæ similiter peremp- toria est, quia dicitur finalis concordia, et ideo finalis, quia imponit finem litibus.*

Britton fol. 90. & 91. *Sont ascuns choses corporels que home ne purra my bien purchaser sans aide de nostre court, sicome fees, et propretes et dount per accord del purchaser, et del donour, coviendra lever fine en nostre court parmy la quel tiel manner de purchase tiendrent effect et establete.*

See before in the exposition of the statute called *modus levandi fines*, in the parliament roll, anno 19 E. 1. Rot. 12. the case of Margery late wife of Thomas Weyland.

(2) *Jamque per aliquod tempus præteritum tam tempore claræ memorie domini Henrici regis patris nostri quam nostro partes earundem finium et earum partium hæredes (contra leges et consuetudines regni nostri antiquitus usitatas) super hujusmodi finibus, &c.*] The mischief, or rather the abuse before this statute, was in allowance of averments by parties and privies for annulling of fines levied *contra leges et consuetudines regni nostri antiquitus usitatas, &c.* Whereby fines were many times unjustly avoided: and what such averments were, and wherefore they were admitted, is declared by Stoner, one of the justices of the court of common law, who reported that he

6 E. 3. f. 28.

heard Sir William Bereford knight, then chiefe justice of that court say, that in ancient times parties and privies could not avoid fines, [*proponentes*] as this act saith, *quod ante finem levatam et tempore levationis ejusdem, et postea petentes seu querentes aut eorum antecessores de tenementis in finibus contentis, aut de aliqua parte earundem semper fuer' seifiti.* But afterwards (in the raigne of H. 3. in the time of insurrections and civill warres by the graundees of this realme) it was used by the maintenance of the graundees, that parties and privies might avoid fines by such averments, which averments in the raigne of E. 1. were continued untill the making of this act; all which was affirmed by Sir William Herle chiefe justice, and further he said, that the same appeared also by this statute *de finibus*, as in truth it doth.

4 E. 3. 46.

(3) *Partes earundem finium et earum partium hæredes, &c.*] So as this act taketh away the said averment, which by the maintenance of the graundees of the realm had unjustly crept in by parties and privies; for the mischief before this statute was, as hath been said, that when the *conusans de droit, &c.* was made to him that had never any thing before, and the conusee graunted, and rendred the same back again at the same instant to the conusor for life, or in taile with remainder over, who alwaies was seifed, and in possession of the land; privies (by colour that there was no transmutation of possession) were against law permitted to avoid fines by the averment aforesaid.

And albeit this statute extendeth to averments taken by parties and privies, and extendeth not to averments made by strangers, that are no parties nor privies to the fine, yet by the common law the hautesse and puissant force and nature of fines was such, that a meer stranger could not have a generall averment against a fine; and therefore it is reported by Shard one of the justices of the court of common pleas, that it was resolved by the sages of the law, that the parties, or their heirs should have no averments against fines levied contrary to the fine to avoid it; and that a stranger should have no generall averment directly to avoid a fine, if it were not upon some speciall matter, for he that is tenant after the fine levied, is intended tenant under the state of some of the parties to the fine, to whom by the common law a generall averment is not given more then to the party or privie: and the speciall matter which giveth him the averment is, that after that he pleads that the parties to the fine had nothing in the land at the time of the fine levied, he doth formerly adde, that either he himself, or some other whose estate he hath, was seifed at the time of the fine levied, &c. But yet that matter is not traversable, but a mean to traverse and avoid the fine, and therefore the tenant that pleads that plea doth conclude, *et de hoc ponit se super patriam*, without a further replication; for Littleton himself that famous lawyer reporteth, that it was adjudged in the time of Sir John June, chief justice of the court of common pleas (who was constituted chief justice of that court, Februar. 9. anno 14 H. 6. and continued untill the 20 of Jan. anno 17. of the same king, and then was made chief justice of the kings bench) that when the tenant pleads in bar against a fine, *quod partes finis nihil habuerunt in ten' tempore levationis finis, nec aliquis eorum aliquid habuit, sed quidam T. B. ad tunc fuit seifitus, &c. cujus statum, &c. Et de hoc ponit se super patriam, et prædictus querens similiter.* And if it be found, that the parties to the fine had nothing, &c. the fine

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17 E. 3. 54.
Wakes cate.13 E. 3. Repli-
cation 62. 32 E.
3 Vouch. 96. 13.
ibid. 119. Gar-
ranty 37. 41 E.
3. 14. 14 H. 4.
33. b.40 E. 3. 30. b.
Dier. 12 Eliz.
290, 291.
33 H. 6. 21. 22
H. 6. 57. 17 E. 3.
53. 22 E. 3.
Replication 63.
42 E. 3. 21. 19
R. 2. Replica-
tion 53. 14 H. 4.
53. 12 E. 4. 13.
3 H. 7. 9. Dier
12 Eliz. 291.
23 H. 6. 21, &c.
ubi supra.
40 E. 3. 30. b.
41 E. 3. fo. 14.
Dier 12 Eliz.
290, 291.

Dier ubi supra.
Pi. com. 354.
432.

13 E. 3. Replie.
62. 17 E. 3. 53.

Rot. Parliam.
an. 14 E. 3. no.
31.
The case of Sir
John Stanton,
and Anne his
wife in a F. rmd.
13 E. 3. Vouch.
119.
22 E. 3. 4. 24 E.
3. 36. 78. 79.
29 E. 3. 18.
18 Aff. 6. 21
Aff. 28. 25 Aff.
p. 3. 43 Aff. 6.
23 Aff. 13. 15 E.
3. Maint. de
B. c. 55. 3 E. 3.
ibid. 13. 14.
Itiner North.
17 E. 2. ibid. 1.
1 E. 3. 5. 2 E. 3.
30. 24 E. 3. 79.
4 E. 3. 30.
8 E. 3. 33.
24 E. 3. 79.

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12 E. 2. Aff. 116.

13 F. 3. Gar-
ranty 17.

3 E. 3. 25. b.
24 E. 3. 75.
14 H. 6. 8. 25.
Dier 13 Eliz.
290, 291.

shall be avoided, though the speciall matter of the seisin of himself, or of a stranger at the time of the fine levied be not found. And so it is in the case of the like plea to avoid a recovery, or in case of a counterplea of a voucher, and the like: all which you may read in that report; and this kind of pleading remains at the common law since the statute of 4 H. 7,

(4) *Et earum partium hæredes.*] This is not intended of an heir in blood onely, but of the heir of the land; for *hæres dicitur ab hæreditate*: and therefore if the heir apparant be seised of land, and the ancestor levie a fine of the same land, and dyeth, this shall not bar the heir, for he claims not the land, whereof the fine is levied, as heir unto him.

See in the parliament roll of *anno* 14 E. 3. a notable case of an averment taken by a stranger against a fine, and afterwards adjudged, which case is abridged by Fitzherbert, 13 E. 3. tit. Voucher 119. but more effectually in the parliament roll.

But seeing the learning concerning averments of parties and privies, and of strangers hath been delivered as is aforesaid; it is objected, that when joyntenancie is pleaded by fine in abatement of the writ, that a stranger for maintenance of his writ could not take any generall averment against the fine. And this being agreed unto them, as is aforesaid, then they proceeded, that in the case of a fine the demandant could have no replication thereunto, as to say that the other joyntenant not named in the writ by his deed released before the writ brought, or that they both infeoffed A. which reinfeoffed the tenant; and this was said to be in respect of the height, and puissant force and nature of the fine: but to this it was answered, that the same held at the common law in case of joyntenancie by deed, and therefore that could not be the cause thereof. Then another reason was sought for, and that was, that the land was the free-hold of another, and therefore it should not be put in tenancie (that is, in plea of law in danger to be lost) without the party himself: but if the fine or deed were made by the demandant himself to the tenant and another, then he might confesse and avoid the fine; as to say, that since that time the joyntenant infeoffed him, or the like, because the demandant was party. But again it was affirmed, that that reason could not hold in respect of the strangers free-hold, for that might hold also where joyntenancie is pleaded without fine or deed, but there it is evident that the demandant shall maintain his writ, and try a third persons free-hold, nay the judges themselves were sometimes so fearfull to weaken the strength and force of fines, and sometime so bedazeled with the bright solemnity of the fine, as Sir John Stoner chief justice of the court of common pleas did say, that an averment ought to be had against a fine, both by conscience and the law of God; and yet lest the fine should be avoided, he would be advised. This doubtfulnesse grew, for that the true diversity was not observed between averments, where they were made by parties and privies, and where by strangers, nor the true pleading thereof resolved upon.

Now, that truth (the mother of justice) might not be suppressed, it hath been resolved that against a joyntenancie pleaded by fine, the demandant may confesse and avoid the fine, as to say, that the joyntenant not named released before the writ brought, or that they both infeoffed one, who reinfeoffed the tenant, or the like; for these

or the like pleas confessing and avoiding the fine, do in no sort weaken the strength or force of the same.

But against joyntenancie by fine the demandant cannot take a generall averment, that the tenant is sole seised, for that should seem to weaken the force of the fine: and the statute of *conjunctim feoffatis*, anno 34 E. 1. extends not to joyntenancie by fine, but to joyntenancie by deed onely, to take the generall averment against the deed, that the tenant is sole seised: and thus are all the books (whereof there be many) that seemed *prima facie* to disagree, well reconciled. And this statute *de conjunctim feoffatis*, extends not onely to assises, but to writs of dower, and other reall writs of *præcipe quod reddat*, * but not to writs of gard, or the like.

† Green chief justice, anno 24 E. 3. granted, that this act of 34 E. 1. was made more in damage of the people, then in amendment of the common law.

43 Ass. p. 6. 32 Ass. p. 4.
† 9 H. 6. 1. 34 H. 6. 16.

* 37 Ass. p. 3. 41 E. 3. 15. 49 E. 3. 17. 7 R. 2. Maint. de Bre. 8.

Stat. de Con-
junctim feoffa-
tis, 34 E. 1. c. 1.
17 E. 2. Maint.
de Bre 1. Regist.
12. 1 E. 3. 5.
2 E. 3. 20. 4 E. 3.
30. 8 E. 3. 33.
15 E. 3.
Maint. de Bre.
55. 3 E. 3. ibi.
13, 14. 18 Ass. 6.
21 Ass. 28.
22 E. 3. 45, 46.
22 Ass. 54.
23 Ass. 13.
24 E. 3. 76, 79.
29 E. 3. 18.

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Confirmaciones Chartarum de Libertatibus Angliæ et Forestæ.

Anno vicefimo quinto Edwardi primi.

C A P. I.

EDWARD per la grace de Dieu roy Dangleterre, seigniour Dirlande, et duke Daquitaine, a tous ceux que cestes letters presents (1) oiront, ou verront, salutem. Sachés nous al honor de Dieu, et de saint esglise, et au profit de nostre realme (2), avoir grant pur nous, et pur nous heires, que la chartre des franchises, et la chartre de la forest, les queux fuerent faitz per commen de tout royalme (3) en le temps le roy Henry pier, soient tenus en tous leur points, sans nul blemisment, et volons que mesmes cels chartres desous nostre seale soient envoyes a nous justices auxi bien de la forest, come as autres: et a tous les viscontes des counties, et a tous nous autres ministres, et a tous nous cities parmy le realme ensemblement

EDWARD, by the grace of God, king of England, lord of Ireland, and duke of Guian, to all those that these present letters shall hear or see, greeting. Know ye that we, to the honour of God and of holy church, and to the profit of our realm, have granted for us and our heirs, that the charter of liberties, and the charter of the forest, which were made by common assent of all the realm, in the time of king Henry, our father, shall be kept in every point without breach. And we will that the same charters shall be sent under our seal, as well to our justices of the forest, as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together

ment ove nous briefs (4), en les queux serra contenus que ils facent les avant-dits chartres publier, et que ils facent dire al peopie, que nous les avons grants en tous points, et a nous justices, viscontes, maires, et autres ministres, que les loies de la terre de sous nous ont a guier mesmes les chartres (5) en tous leur points empledés devant eux en jugement, facent allower : cestascavoir le grande chartre come ley common, et la charter de la forest, en amendement de nostre realme (6).

together with our writs, in the which it shall be contained, that they cause the foresaid charters to be published, and to declare to the people that we have confirmed them in all points; and that our justices, sheriffs, mayors, and other ministers, which under us have the laws of our land to guide, shall allow the said charters pleaded before them in judgement in all their points, that is to wit, the great charter as the common law, and the charter of the forest, for the wealth of our realm.

(28 Ed. 1. stat. 3. c. 1.)

For the stile of the kings, and for the king that spake first in the plurall number [*nous*] as our king here doth, see *Magna Charta*, cap. 1. and the first part of the Institutes, sect. 1.

(1) *Per ses letters patents.*] Acts of parliaments are many times in form of charters, or letters patents, *vide Magna Charta*, cap. 1. & *liber 8. fol. 1. &c. in casu principis.*

The title of these statutes is, *Confirmationes chartarum de libertatibus Angliæ et forrestæ*; and true it is, that hereby the said charters are expressly confirmed: but they are also excellently interpreted (which is a confirmation in law) for here is nothing enacted, but it is included within *Magna Charta*.

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(2) *Al honneur de Dieu, et de saint esglise, et au profit de nostre realme.*] This is, or should be the true end of all parliaments.

See *Magna Charta* in the stile thereof, and all succeeding parliaments have in effect followed this precedent.

(3) *Per commen de tout realme.*] That is, by the common assent of the realm by authority of parliament; and many times *per communitatem Angliæ*: it signifieth also an act of parliament; for it cannot be *per communitatem Angliæ*, but by parliament, as hereafter shall be shewed.

(4) *Scienc envoies a nous justices, &c. et a tous nous cities, &c. ensemblement ove nous briefs.*] Before printing, and till the reign of H. 7. statutes were ingrossed in parchment, and by the kings writ proclaimed by the sherife of every county: this was the ancient law of England, that the kings commandments issued, and were published in form of writs (as here it was:) an excellent course, and worthy to be restored.

(5) *Que les loies de la terre de sous nous ont a guier mesmes les chartres, &c.*] This is a clause worthy to be written in letters of gold, *viz.* that our justices, sherifes, maiors, and other ministers, which under us have the laws of our land to guide them, shall allow the said charters in all their points, which in any plea shall come before them in judgement: and here it is to be observed, that the laws are the judges guides, or leaders, according to that old rule, *Lex est exercitus judicium tutissimus ductor*, or *lex est optimus iudicis xenagogus*; and *lex est tutissima cassis*.

There is an old legall word, called [*guidagium*] which signifieth an office of guiding of travellers through dangerous and unknown wayes;

wayes; here it appeareth, that the laws of the realm hath this office to guide the judges in all causes that come before them in the wayes of right justice, who never yet misguided any man, that certainly knew them, and truly followed them.

(6) *Le grand chartre come ley common, et la chartre de la forest, en amendement de nostre realme.*] The sense hereof is, that the great charter, and the charter of the forest are to be holden for the common law, that is, the law common to all; and that both the charters are in amendment of the realm; that is, to amend great mischiefs and inconveniences which oppressed the whole realm before the making of them.

C A P. II.

ET volons, que si nul judgement soit done desormes encountre les points des chartres avantdits per justic', ou per autres de nous ministres, que encountre les points des chartres tenont plee devant eux, soit defaite, et pur nient tenus.

AND we will, that if any judgement be given from henceforth contrary to the points of the charters aforesaid by the justices, or by any other our ministers that hold plea before them against the points of the charters, it shall be undone, and holden for nought.

(42 Ed. 3. c. 1.)

Whatsoever judgement is given against the statute of *Magna Charta*, or of *Charta de foresta* is made void by this act, and may be reversed by writ of error, because the judgement is given against the law, for this act saith, *soit defait, et pur nient tenus.*

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C A P. III.

ET volons que mesmes cestes charters desous nostre seale soient envoys as esglises cathedrals par my nostre royaume, et la demoergent, et soient deux foits per an lieux devant le peuple.

AND we will, that the same charters shall be sent, under our seal, to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

Here it is to be observed what care was taken for the preservation of these charters, and of this act of parliament, for it is good chance to obtaine, but great wisdom to keep.

C A P. IV.

ET que archevesques et evesques denuncient les sentences d'excommuniement cointre tous iceux, que cointre les avantdits chartres vendront en diét ou en fait, ou en aide, ou en conseil, ou en nul point enfreindrant, ou cointre vendront. Et que cels sentences soient denuncies et publies deux foits per an per les prelates avantdits. Et si mesmes les prelates en nul de eux soient negligentes en la denunciation suisdit faire, per les archevesques de Canterbrie, et Deverwike, que pur temps serront, sicome covient, soient repris et destreintx a mesme cel denunciation faire en la forme avantdit.

AND that all archbishops and bishops shall pronounce the sentence of excommunication against all those that by word, deed, or counsel do contrary to the foresaid charters, or that in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the same prelates, or any of them, be remis in the denunciation of the said sentences, the archbishops of Canterbury and York for the time being shall compel and distrein them to the execution of their duties in form aforesaid.

Stat. de Tallagio, &c. cap. 5.

This excommunication the prelates could not pronounce without warrant by authority of parliament, because it concerned temporall causes.

C A P. V.

ET par ceo que ascuns gents de nostre realme soy doubtent, que les aides (1) et les mises (2), queux il nous ont fait avant ses heurs pur nous guerres (3) et auter besoignes de leur graunt et leur bon voluntie, en quel maner que faits soient, puissent turner en servage a eux et a leur heires, pour * ceo que ils serront autre foits troves en rolle, et auxint prises que ont este faits parmy le royaume per nous ministers en nostre nosme. Nous avons grantes pur nous et pur nous heires, que mes tielx aides, mises ne prises, ne trerons a custme pur nul chose que soit fait, ou que per rolle, ou en autre maner poet estre trove.

* [528]

AND for so much as divers people of our realm are in fear, that the aids and tasks which they have given to us beforetime towards our wars and other busines, of their own grant and good will (howsoever they were made) might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and likewise for the prises taken throughout the realm by our ministers: we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom, for any thing that hath been done heretofore, be it by roll or any other precedent that may be founden.

(1) Eyles

(1) *Eydes et mises.*] *Auxilia* at this time was a generall word, not onely including aides due by law, and tenure, as *aide pur faire fite chivalier, pur file marier, &c.* but aides also graunted by the free will of the subjects in parliaments, which afterwards were called subsidies; and here this word *eides* is taken for an aide graunted by authority of parliament.

See hereafter for this word, Stat. de Tallag. non conced. 34 E. 1.

(2) *Mises.*] Are properly taken for expences or charges, but here in this act they are taken for tasks, taxes, tallages, or takings.

See the statute of 34 E. 1. ubi sup.

(3) *Pur nous guerres, &c.*] The king had obtained by free consent, and good will in parliaments precedent aids, subsidies or tasks for the maintenance of his warres in forein parts, which howsoever they were graunted in full parliament, yet (as here it appeareth) many men doubted, might turne in servage of the subjects of the realme, for that it was holden that they ought not to contribute to the maintenance of the kings warres out of the realme; and thereupon Bohun earle of Hereford, and Essex high constable of England, and Bigot earle of Norffolk, and Suffolk, and marshall of England, for that it concerned matter of armes and warre, exhibited a petition to the king in French, in *anno* 25 E. 1. before the making of this act, which I have seen aunciently recorded, on the behalfe of the commons of England, concerning the said matter, and thereupon the king at this parliament yeelded to this act, that such eides, tasks, or takings should not be drawn to custome for any thing that had beene done in that behalfe.

Vide Calvins case. lib. 7. fol. 7, 8, &c.

But yet this matter was never in quiet untill it was more particularly explained by divers acts of parliament, which we have drawn into one body of a law divided into severall branches.

1. No man shall be charged to arme himselfe, or to finde men of armes, or any hoblers or archers (other then those that hold by such services, or devoires of the king, or of other lords) if it be not by common consent, and graunt in parliament.

1 E. 3. c. 5. & c. 7. 25 E. 3. cap. 8. 1 E. 3. cap. 5. 4 H. 4. cap. 13. 18 E. 3. cap. 7. 4 H. 4. cap. 13.

2. No man shall be compelled to goe to the kings warre out of his shire, but where necessity of sudden comming of strange enemies into the realme.

3. No man shall be charged to give any wages either to the preparers or conveyors of souldiers, or to the souldiers to goe into Scotland, Gascoine, or elsewhere; but that men of armes, hoblers, and archers, chosen to goe into the kings service out of England, shall be at the kings wages from the day they depart out of the counties where they were chosen, till they return.

Lib. 7. cap. 7, 8. Calvins case. Rot. Parl. 1 H. 5. nu. 17. 7 H. 5. nu. 9, &c. See 25 E. 3. cap. 7. Rot. parl. 4 H. 4. nu. 48. 20 R. 2. nu. 48. 4 H. 4. cap. 13. 11 H. 7. c. 7. 19 H. 7. c. 1. vid. Rot. clausus 44 E. 3. Sir Rich. Pembrughs case. Vide Mag. Chart. c. 20. verb. Exile. Confirm. chart. 25 E. 1.

Which acts of parliament are but declarations of the ancient law of England.

And according to this ancient law, the commons after the said declaratory acts of parliament did, when this point concerning maintenance of warres out of England came in question, make their continuall claim of their auncient freedom and birth right, as in 1 H. 5. and in 7 H. 5. &c. the commons made protestation that they were not bound to the maintenance of warre in Scotland, Ireland, Calice, France, Normandie, or other forein parts, and caused their protestations to be entred into the parliament roll where they yet remain; which in effect agreeth with that, which upon like occasion was made in this parliament of 25 E. 1.

But here may be observed, that when any ancient law or custome of parliament is broken, and the crown possessed of a precedent, how

how difficult a thing it is to restore the subject again to his former freedom and safety.

Now how of ancient time soldiers were levied, mustered and entred of record, &c. (an excellent military policy) which will conduce much to the finding of the true sense of this, and other statutes, concerning this matter, see the third part of the Institutes, cap. Felony in soldiers that depart, &c. in the exposition of the statute of 18 H. 6. cap. 19. See the statutes of 11 H. 7. cap. 7. and 19 H. 7. cap. 1.

C A P. VI.

Et auxint avons graunt pur nous, et pur nous heires, as archevesques, evesques, abbes, priors, et as autres gents de s. eglise, as countes, barons, et a tout la comminalty de la terre, que mes per nul besoigne tiels manners des aides, mises, ne prises, ne prendrons forsque de common assent de tout le royaume, et pur le common profit de ceo: saves le auncient aides, et prises dues et accustomes (1).

MOREOVER we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the comminality of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

(24 Ed. 1. stat. 4. c. 1)

The cause of the making of this branch, and of such speciall mentioning of the clergy was, that the king did against the auncient lawes and customes of the realme collect money by commission without assent of parliament, not onely of earls, barons, and comminality, but of the clergy, who in those dayes claimed a privilege, and immunity from secular aides and subsidies, (by pretext of a late constitution made by Pope Boniface:) the clergy stood so stoutly in defence of their privilege, that sir Robert de Brabazon the kings chiefe justice pronounced openly in the kings bench, (*in terrorem*) that from thenceforth no justice should be done for them at their suit, but justice should bee done against them in the king's courts at any other mans suit. But at this parliament this branch gave satisfaction to all, for hereby it is enacted that every aide and task and other taking must have two special properties, the one in the creation, viz. that it bee given by the common consent of the whole realme in parliament; the other in the execution, viz. that it be given and imployed for the common benefit of the whole realme, and not for private or other respects; which words [*et pur le common profit de ceo*] in the impression of Cottell are injuriously omitted.

(1) *Saves les auncient aides et prises dues et accustomes.*] The auncient aides are here intended, *aide pur file marier, pur faire fits chivalier*, and reliefes by reason of tenures, and the auncient takings or seisures are here intended, such as were due to the crown, *jure*

prærogativa

Vid. Stat. de
24 E. 1.
De Tallagio non
concedendo.

prærogative, as waifes, strayes, the goods of felons, and out-laws, deodands, and the like, [*ratione tenuræ*] as heriots, and such other as did lie in seifure or taking by reason of any tenure or custome.

C A P. VII.

[530]

ET pur ceo que tous le plus de la comminaltie du realme seifent durement greve de la maletot des leyns, cestascavoir, de chescun sacke de leyn quarant soulz (1), et nous ont pries, que nous les voudrons releffer: nous a leur prier les avons pleinement releffes. Et nous avons graunt pur nous et pur nous heires, que mes celes ne prendrons sans leur common assent, et leur bon volonte (2). Sauve a nous et a nous heires la custome des leyns (4), pealx, et quires avant grauntes per la comminaltie avantdit (3). En tesmoignances des queux choses nous avons fait faire cestes nous letters overts. Tesmoigne Edwarde nostre fits a Londres le x. jour Doctobre, lan de nostre reigne xxv.

AND for so much as the more part of the communalty of the realm find themselves fore grieved with the maletent of woolls, that is to wit, a toll of forty shillings for every sack of wooll, and have made petition to us to release the same; we at their requests have clearly released it, and have granted for us and our heirs, that we shall not take such things without their common assent and good will, saving to us and our heirs the custom of woolls, skins, and leather, granted before by the communalty aforefaid. In witness of which things we have caused these our letters to be made patents. Witness Edward our son at London the tenth day of October, the five and twentieth year of our reign.

(2 Inst. 76.)

(1) *Et pur ceo que tout le plus de la comminaltie du realme seifent durement greve de la maletot des leynes. s. de chescun sacke de leyn 40. s. &c.*] The grievance was that the king had lately, without common assent of parliament, set a charge of forty shillings upon every sack of wool, here called by the name of maletot, that is, the ill toll or charge, for the word [*imposition*] was not yet heard of in any record.

See before the statute of Magna Charta cap. 30.

See more of this matter in the exposition upon the 30. chaper of Magna Charta.

This is an excellent precedent, that when grievances are found out, and proved, that they bee put downe and overthrowne by authority of parliament.

(2) *Et nous avons graunt pur nous et pur nous heires, que mes celes ne prendrons sans leur common assent et leur bene volunt.*] This is worthy of observation, whereof you may reade in the exposition of the 30 chapter of Magna Charta.

(3) *Avant grauntes per le comminaltie avantdit.*] By the communalty aforelaid, that is, by act of parliament for the communalty of England cannot graunt but by parliament.

And some say that the comminalty are here named for three respects: 1. For that they are the greater part. 2. For all aids

Rot. Pat. 3 E. 1.
m. & 9.

and

Mich. 26 E. 1.
int' retorn' brev.
in Scacc'. per
communitatem
Angliæ, &c.
vid. Magna
Chart. cap. 30.
* Art. super
Chart. cap. 1.

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Rot. Pat. 3 E. 1.
m. 1. & 9.
Rot. Finium.
3 E. 1. Acc.
Mich. 26 E. 1.
in Scacc. inter
retorn. brevium
ex rem. Thesaur.
See in the Ex-
position upon
the statute of
Magna Chart.
ca. 30.

and subsidies begun with them. 3. For that the farre greater benefit to the king comes from them. For in subsidies the comminalty filleth the kings coffers; but some have said that * commune and comminalty doe signify as much as the people, that is, all the subjects of the realme, and so it was taken in divers parliaments in this kings raigne, and in this also, so as commune should signify the people, and commons a part of them.

(4) *Les customes de leynes.*] The customes here intended to be granted by parliament, were 6. s. 8. d. for the transportation of a sack of wool, and 6. s. 8. d. for every 300 pelts transported, and 13. s. 4. d. for the transportation of a last of leather.

These customes were granted to king Edw. 1. as it appeareth in Rot. patent. 3 E. 1. *Cum prælati, magnates, et tota communitas regni nostri nobis concess' quandam novam consuetudinem de lanis, pellibus, et coriis tam in Anglia, quam in Hibernia, et Wallia regnum nostrum exeuntibus imperpetuum nobis, et hæredibus nostris, percipiend' in forma subscripta, viz. de quolibet sacco lanæ dimidiam marcam, de singulis trescentis pellibus lanutis quæ faciunt unum saccum dimidiam marcam, et de qualibet lasta coriorum unam marcam, illorum scilicet coriorum, pellium, et lanarum, quæ portus Angliæ, Hiberniæ, et Walliæ regnum nostrum exhibunt, &c.*

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STAT. DE TALLAGIO NON CONCEDENDO,

Edit. Anno 34 Edw. 1.

C A P. I.

NULLUM tallagium (1), vel auxilium (2) per nos, vel hæredes nostros in regno nostro ponatur, seu levetur sine voluntate, et assensu archiepiscoporum, episcoporum, comitum, baronum, militum, burgensium, et aliorum liberorum com' de regno nostro (3).

NO tallage or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of archbishops, bishops, earls, barons, knights, burgeses, and other freemen of the land.

(25 Ed. 1. stat. 1. c. 6.)

Albeit that this act is not next in course of time, yet being next in matter, we have thought good to handle this act before others.

There were two causes of the making of this act; the first was, that where king E. 1. having conceived just displeasure against the French king, for the injury done unto him, in with-holding Aquitaine, and other his inheritance in France; and where the French king had grievously, and with strong hand vexed and over-

over-layed Guy earl of Flanders, and had won much of his lands from him: king Edw. the first intending to aid and assist the said earl, and to rescue him out of the hands of the French king, who was ready to devour him and his earldom, did require specially of Humfrey le Bohun earl of Hereford and Essex, and constable of England, and of Roger Bigot earl of Norffolk and Suffolk, marshall of England, and of all the Earls, barons, knights, and esquires, and of all free-holders of 20. l. land within his kingdom, whether they held of the king in *capite*, or of other whatsoever, to contribute to his wars in Flanders in rescue of the said earl, or finde able men to go with him on that journey: which the constable and marshall, and many of the nobility, and of the knights and esquires, and specially John Ferrers taking part with them, and all the free-holders abovesaid vehemently denyed, unlesse it were so ordained and determined by common consent of parliament, as had been before enacted in the parliament of anno 25 E. 1. by the act of *confirmationes chartarum*, as before it appeareth.

The second cause was, that the king the yeer before had taken a tallage of all cities, boroughs and towns, without assent of parliament; whereupon grew great murmuring and discontentment among the commons. For pacifying of which discord between the king and his nobles, and for the quieting of the commons, and for a perpetuall and a constant law for ever after both in this and other like cases, this act was made in the four and thirtieth yeer of his reign.

(1) *Nullum tallagium.*] *Tallagium*, or *tailagium* cometh of the French word *tailer*, to share or cut out a part, and metaphorically is taken when the king or any other hath a share or part of the value of a mans goods or chattels, or a share or part of the annuall revenue of his lands, or puts any charge or burthen upon another; so as *tallagium* is a generall word, and doth include † all subsidies, taxes, tenths, fifteens, impositions, or other burthens or charge put or set upon any man, and so is expounded in our books, here it is restrained to tallages, set or levied by the king or his heirs.

* *Robertus de Haye impl' Richardum le Waleyas cum al' pro captione averiorum in duobus locis, apud Lindefield vocat' Northflet & Southese, ipsi dicunt quod Willielmus filius Walteri le Haye tenet de eo quedam ten' apud Lindefand per servitium xi. s. & per tallagium ei faciend' ad voluntatem ipsius Richardi, & quia ipsum Willielmum talliavit, anno regis nono, una vice ad ii. s. & alia vice anno decimo, ad xviii. d. quod tallagium ei aretro fuit pro predictis ii. s. per annum, ipsum Willielmum distrinxit super feodum suum pro pred' arreragiis: Robertus dic' quod pred' Willielmus tenuit de eo predict' ten' per certum servitium, & non per tallagium ad voluntatem suam, & dic' quod de illo servitio nihil ei aretro fuit &c. Richardus dicit quod advocat predictam districtionem super predict' Willielmum, & non super ipsum Robertum; et petit iudicium si idem Robertus, qui non est tenens suus, nec districtio super ipsum advocatur, possit servitium suum dedicere: ideo considerat' est quod predictus Richardus inde sine die. Et predictus Robertus nihil cap' per breve suum, set sit in misericordia pro falso clam' suo; et predictus Richardus habeat returnum averiorum, &c.*

(2) *Auxilium.*] And this word was used in the statute of 25 E. 1. whereof somewhat hath been said in the exposition thereof.

† [533]
 For this word Tallage, vide
 15 E. 3. Avowry
 106. F. N. B. 14.
 16. 38 H. 6. 10.
 32 E. 3. Monstr.
 16. 3 E. 3.
 Quo War. Bre.
 2.
 Claus. 19 H. 3.
 m. 16. ibid. m.
 13. Claus.
 11 H. 3. m. 17.
 Regist. 142, 143.
 F. N. B. 150.
 13 E. 1. Vill. 38.
 Rot. Alma.
 12 E. 3. part 1.
 m. 22. Rot.
 Parliam. 6 E. 3.
 nu. 4. 1 E. 2.
 Stat. de Militibus, Rot.
 Parliam.
 13 H. 4. nu. 14.
 19 H. 6. 32.
 38 H. 6. 10.
 Rot. Pat. 1 H. 7.
 part 3. m. 16.
 Vide in Waste
 Tallage de
 Villens, &c.
 Modus tenend.
 Parli. Vet. Manuscript.
 * Mich. 11 E. 1.
 in banco Rot.
 49. Suffex.

You

You may read further in that ancient record intituled *De modo tenendi parliamentum tempore regis Edw. filii Etheldredi; debent auxilia peti in pleno parlamento.* So, as hath been said before in the exposition upon the 30. chapter of Magna Charta, and of 25 E. 1. These acts are but declarations of the ancient common laws of this realm.

* Vide fol. 41.
Math Par. 247.
Walf. 40.
Fortescue, ca. 9.
fol. 13. & cap.
12. 18. 34. & 35.

(3) *Nullum tallagium, vel * auxilium per nos, vel hæredes nostros in regno nostro ponatur, seu levetur sine voluntate, et assensu archiepiscoporum, episcoporum, comitum, baronum, militum, burgenfium, et aliorum liberorum com' de regno nostro.*] These words are plain without any scruple, absolute without any saving. *Absoluta sententia expostore non indiget.*

And this is as much as to say, that no subsidy, task, tenth, fifteenth, imposition, or other aid or charge whatsoever, shall by the king or his heirs be put or levied without the common councill of the realm, that is, by the will and assent of the archbishops, bishops, earls, barons, knights, burgesfies, and others of the counties, that is to say, by grant and common assent in parliament.

Within this act are all new offices erected with new fees, or old offices with new fees, for that is a tallage put upon the subject, which cannot be done without common assent by act of parliament. And this doth notably appear by a petition in parliament in anno 13 H. 4. where the commons complain, that an office was erected for measurage of clothes and canvas, with a new fee for the same by colour of the kings letters patents, and pray that these letters patents might be revoked, for that the king could erect no offices with new fees to be taken of the people, who may not so be charged but by parliament.

Rot. Parliam.
13 H. 4. nu. 43.

The royall answer of the king in parliament was, that the statutes therefore provided shall be observed, which statutes were the said act of 25 E. 1. and this of 34 E. 1. &c. and accordingly judgement was also given in the kings bench, so as this point was both resolved in parliament, and adjudged by law according to these statutes; and hereby it appeareth that these were acts of parliament.

[534]
13 H. 4. fol. 16,
17.

Rot. Parl. 22 E.
3. nu. 31. Rot.
Parl. 25 E. 3.

King Edw. 3. had granted to Robert Poley a new office of measuring of worsteads, with a new fee; and it was at the petition of the commons resolved in parliament to be void, and afterward revoked as void by authority of parliament; and the like law is in all like cases.

Note that the words of this branch are generall, *Nullum tallagium, &c. ponatur, seu levetur sine voluntate, &c.* and saith, *Per nos, et hæred' nostros*, but not *Pro nobis, aut ad opus nostrum.* But generally so as all tallages, burthens, or charges put upon the subject by the king, either to or for the king, or to or for any subject by the kings letters patents, or other commandement or order, is prohibited by this act unlesse it be by common consent of parliament; and note that the words are in the disjunctive, [*Ponatur seu levetur*] so as if it be set by the king, although it be not levied by him, but by a subject, as it was in the cases abovesaid, it is within the purview of this statute.

C A P. II.

NULLUS minister noster, vel hæredum nostrorum capiat blada, correa, aut aliqua alia bona cujuscunque, sine voluntate et assensu illius, cujus fuerint bona.

NO officer of ours, or of our heirs, shall take corn, leather, cattle, or any other goods, of any manner of person, without the good will and assent of the party to whom the goods belonged.

(12 Rep. 19.)

Of this branch we shall have just occasion to speak when we come to the statute of 28 E. 1. cap. 2. and therefore do purposely omit to speak of it here.

C A P. III.

NIHIL capiatur de cætero nomine, vel occasione maletot de sacco lanæ.

NOTHING from thenceforth shall be taken of sacks of wooll by colour or occasion of male-tent.

See for Maletot 25 E. 3. cap. 6. and Magna Charta, cap. 30. and albeit it was ousted before, yet *nunquam nimis dicitur, quod nunquam satis dicitur*; by this act it is both prohibited by the generall purview, and also by this particular branch.

C A P. IV.

VOLUMUS et concedimus pro nobis et hæredibus nostris, quod omnes clerici et laici de regno nostro habeant omnes leges, libertates, et liberas consuetudines suas ita libere et integre, sicut eas aliquo tempore melius et plenius habere consueverunt. Et si
[535] contra illas quocunque articulo in præsentì charta contento statuta fuerint edita per nos et antecessores nostros, vel consuetudines introductæ: volumus et concedimus, quod hujusmodi consuetudines et statuta vacua et nulla sint in perpetuum.

WE will and grant for us and our heirs, that all clerks and laymen of our land shall have their laws, liberties, and free customs, as largely and wholly as they have used to have the same at any time when they had them best; and if any statutes have been made by us or our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present charter, we will and grant, that such manner of statutes and customs shall be void and frustrate for evermore.

This

This containeth a restitution generall to the subjects of all their lawes, liberties, and free customes, as freely and wholly, as at any time before in the better and fuller manner they used to have the same, and this doth not onely extend to *Magna Charta*, and *Charta de Foresta*, but to all other laws, liberties, or freedomes, and free customes whatsoever.

42 E. 3. ca. 1.
simile.

But what if any act of parliament have been made contrary to any article in this act contained; this later clause, viz. *Et si contra illas, &c.* containeth a repeale of all statutes made by king E. 1. or any of his auncestors against any article in this act contained, that is to say, concerning the first chapter, *Nullum tallagium, &c.* or the second, *Nullus minister noster*; or the third, *Nihil capiatur*; or this fourth, which is most generall, *Volumus et concedimus, &c.*

Hereby it may be observed how prudent antiquity could containe much matter in few words.

C A P. V.

REMISIMUS etiam Humfredo le Bobun, comiti Hereford' et Essex, constabular' Angliæ, et Roger' Bigot comiti Norff. et Suff. marescallo Angliæ, et aliis comitibus, baronibus, militibus, armigeris, et I. de Ferreres, ac omnibus aliis de eorum societate, confœderatione, et concordia existentibus: necnon et omnibus viginti libratis terræ tenentibus in regno nostro, sive de nobis teneant in capite, sive de alio quocunque ad transfretand' nobiscum in Island' certo die vocatis, rancorem (1) et malam voluntatem (2) erga nos habitam, ac etiam transgressiones si quas nobis fecerint (3), usque ad præsentis chartæ confectiōnem. Et ad majorem hujusmodi rei securitatem volumus et concedimus, quod omnes archiepiscopi (4), et episcopi in perpetuum habeant in suis cathedralibus ecclesiis, habitanti præsentis charta lecta excommunicare, et publice in singulis parochialibus ecclesiis suarum dioc' excommunicatos denunciare bis in anno omnes illos, qui contra tenorem præsentis chartæ vim et effectum quoquo modo vel articulo scienter fecerint, aut fieri procuraverint. In cujus rei testimonium præsentis chartæ sigillum nostrum est appensum una cum sigillis archiepisc-

MOREOVER, we have pardoned Humfrey Bohun earl of Hereford and Essex, constable of England, Roger earl of Norfolk and Suffolk, marshal of England, and other earls, barons, knights, esquires, and namely John de Ferrariis, with all other being of their fellowship, confederacy, and bond, and also to all other that hold xx pound land in our realm, whether they hold of us in chief, or of other, that were appointed at a day certain to pass over with us into Flanders, the rancour and evil-will born against us, and all other offences that they have done against us, unto the making of this present charter. And for the more assurance of this thing, we will and grant, that all archbishops and bishops for ever shall read this present charter in their cathedral churches twice in the year, and upon the reading thereof in every of their parish churches, shall openly denounce accursed all those that willingly do procure to be done any thing contrary to the tenor, force, and effect of this present charter in any point and article. In witness of which thing we have set our seal to this present charter, together with the seals

archiepiscoporum, episcoporum, &c. (5) qui sponte juraverunt, quod tenorem presentis chartæ, quantum in eis est, in omnibus causis et singulis articulis servabunt, et ad observationem fidele auxilium præstabunt, &c. (6)

seals of the archbishops, bishops, &c. which voluntarily have sworn that, as much as in them is, they shall observe the tenor of this present charter in all causes and articles, and shall extend their faithful aid to the keeping thereof, &c.

If you compare our English histories with this act of parliament, the old saying shall be verified, that records of parliament are the truest histories.

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Although the king had conceived a deep displeasure against the constable, marshall, and others of the nobility, gentry, and commons of the realme, for denying of that which he so much desired, yet for that they stood in defence of their laws, liberties, and free customes, the king, who (as sir William Herle chief justice of the common pleas, who lived in his time, and served him, said) was the wisest king that ever was, did not onely restore the same to them as is aforesaid, but granted a special pardon to those of whom he had conceived so great displeasure; such a one as you shall not reade of the like, for hereby he pardoned three things:

5 E. 3. fol. 14.

(1) 1. *Rancorem.*] Rancor is taken here metaphorically for a festring of indignation, or displeasure in the minde of the king, which the king releaseth and dischargeth them of the same, and incidently restoreth them to his favour.

(2) 2. *Malum voluntatem.*] Ill will or unkindnesse: of this so much may be said as hath been said of rancor.

(3) 3. *Et etiam transgressiones, si quas fecerint.*] Here these words [*si quas fecerint*] are added, lest by acceptance of a pardon of transgressions they should implicaly confesse that they had transgressed: so carefull were the lords and commons in former times to preserve the ancient laws, liberties, and free customs of their country.

(4) *Et quod omnes archiepiscopi, &c.*] Here power is given to archbishops and bishops twice in the yeare, upon the reading of this act, to excommunicate all the violaters thereof, &c.

25 E. 1. Confirma. Chartar, cap. 4.

(5) *In cujus rei testimonium presentis chartæ sigillum nostrum est appensum una cum sigillis archiepiscoporum, episcoporum, comitum, baronum, &c.*] Nota the solemnity of this act, in that all the archbishops, bishops, earles, barons, &c. did put their seale thereunto: a rare example, which was done for the obliging of them the more firmly to the observation of this act, which concerned the laws, liberties, and free customes of their country.

Rot. Parl. 7 H 4. nu. 60. simile. 28 E. 1. bre. procerum, & comitat. 70. cap. sigillat. Wail. pag. 48.

(6) *Qui sponte juraverunt, quod tenorem presentis chartæ, quantum in eis est, in omnibus causis et singulis articulis servabunt, et ad observand' fidele auxilium præstabunt, &c.*] And for their greater obligation for the due observation of this act, they tooke a voluntary corporall oath.

Here note, that either houses of parliament being courts may take voluntary oathes, as here it appeareth.

ARTICULI SUPER CHARTAS,

Edit. Anno 28 Edw. I.

PUR ceo que les points de la graund chartre, des fraunchis. et de la forest, les queux le roy Henry pier nostre seigniour le roy qui ore est, granta a son peuple (1) pour le preue de son roialme, ne ont pas este tenus, ne gardes avant ces heures, pour ceo que avant ces heures peine ne fuit establee (2) vers les trespassants coudre les points des chartres avantdits: nostre seigniour le roy les adde novel graunt, renovele et confirme. Et a la requestes des prelates, counts, et barons (3) a son parliament a West, en quaresme lan de son reign xxviii. ad certains points affirme, et peine ordeigne, et establee, encounter tous yceux, que encounter les points des avantdits chartres, ou nul point de eux, en nul manner viendront, ou misprendrent, en la forme que lensuit.

FORASMUCH as the articles of the great charter of liberties, and of the charter of the forest, the which king Henry, father of the king that now is, granted to his people for the weal of his realm, have not been heretofore observed ne kept, because there was no punishment executed upon them which offended against the points of the charters before mentioned; our lord the king hath again granted, renewed, and confirmed them at the request of his prelates, earls, and barons, assembled in his parliament holden at Westminster, the eight and twentieth year of his reign, and hath ordained, enacted, and established certain articles against all them that offend contrary to the points of the said charters, or any part of them, or that in any wise transgress them, in the form that ensueth.

One cause of the making of this act was, that albeit the king had confirmed the said charters at his parliament holden in 25 E. 1. and stiled the act by the name of *Confirmationes chartarum de libertatibus Angliæ et Forestæ*, yet because there was a saving in that act [*Saves les auncient aides et prises dues et accustomes*] although they were to be understood of aids by reason of tenure, &c. as in the exposition thereof it appeareth, yet it was a colour for the kings officers and ministers to make an evasion when the parliament was: and thereupon the lords of parliament did importune the king to confirme the said charters; which the king promised to doe: but when it came to be set downe in forme of an act, the king would have added a saving of the right of his crown, which the lords did mainly inveigh against, and pressed the king with his promise to confirm them as absolutely as his noble father king H. 3. had graunted them; which in the end he yeilded unto, as by this act it appeareth.

And another cause of the making of this act, as by the preamble is suggested, was, that there was no certaine punishment in many points established by the said charters against the violaters of the same, which also by this act are remedied.

(1) Grant

(1) *Grant a son people.*] This word *populus* here doth include all the king's subjects, both the prelates, and other of the clergy, and the nobles and commons of this realme, for all bee the kings people, [*scilicet* *people.*]

(2) *Peine ne fuit establee.*] Some reade it [*peine ne fuit execute*] that is true in effect, but the originall is *peine ne fuit establee*, that is, no paine was set down in certain.

(3) *A le request les prelates, countes, et barons.*] These articles were preferred by the lords of parliament, because they had a promise of the king to passe the said articles; there were at this parliament 93. carles and barons of the realme, besides the lords of the clergy, which then were many.

The title is here *Articuli super chartas*, sometime they styled it by the name of *Novi articuli super chartas*, sometimes, *Explicationes sur les chartres*; and justly they are called *Articuli super chartas*, meaning *Magna Charta*, and *Charta de Foresta*, for that they contain the substance of all that is contained in these articles.

Rot. Parl. 5 H.4.
nu. 6 r. 2 E. 3. 27.
Piers de Salt.
marsh. Case.
Videl. li. 10. fo.
74. Le Case de
Marshalsea.

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CAP. I.

CESTASCIVOIR, que de cy en avant la grand chartre des franchises Dengleterre, grante a tout la commune Dengleterre (1), et la chartre de la forest in mesme le maner grante, soient tenus, gardes, et maintenus en chescun article, et chescun point, auxy pleinement come le roy les ad graunte, renovele, et per sa chartre confirme (2). Et que celles chartres soient bailles a chescun viscont (3) Dengleterre desoubes le seale le roy, a lier quatre foits per an devant le people en pleine countie: cestascivoir, au prochein countie apres la saint Michael, au prochein countie apres le Noel, au prochein countie apres la Pasche, et au prochein countie apres la saint Johan' Baptist. Et a ceux deux chartres en chescun point, et en chescun article dicele, fermement tener, et garder, ou remedie ne fuit avant per la common ley, soient esleus en chescun countie per la commune de meisme la countie trois prodes homes chivalers, ou auters loialx, sages, et avises, que soient jures et assignes per les letters le roy overtes de son graund seale, de oier et terminer, sans auter briefe

THAT is to say, that from henceforth the great charter of the liberties of England, granted to all the commonalty of the realm, and the charter of the forest, in like manner granted, shall be observed, kept, and maintained in every point, in as ample wise as the king hath granted, renewed, and confirmed them by his charter. And that the charters be delivered to every sherriff of England under the king's seal, to be read four times in the year before the people in the full county, that is to wit, the next county-day after the feast of Saint Michael, and the next county-day after Christmas, and at the next county after Easter, and at the next county after the feast of Saint John. And for these two charters to be firmly observed in every point and article (where before no remedy was at the common law) there shall be chosen in every shire-court, by the commonalty of the same shire, three substantial men, knights, or other lawful, wise, and well-disposed persons, which shall be justices sworn

briefe que leur common graunt, les pleints que se ferront de tous yceux, que contreviendront (5) ou mesprendront en nul des dits points des avantdits chartres en counties ou ils sont assignes, auxibien dedeins franchises, come dehors, et auxibien des ministres le roy hors de leur places, come des auters, et les pleints oier de jour en jour sans delay: et les terminent sans allerer les delays, que sont allowes p. r la common ley (6), et que mesme ceux chevalers eyent poyer de punier tous ceux que ser-

[539] ront attaints de trespas fait, encountre nul point des chartres avantdits, ou remedy ne fuit avant per la common ley (4), auxy come avant est dit, per imprisonment, ou per ransome, ou per amerciament, selonque ceo que le trespas le demaund. Et pur ceo nentende pas le roy, ne nul des joyens que a cest ordeignement fuerent, que les chevalers avantdits, teignent nul plee per le power que done leur soit, en cas ou avant ces heures fuit remedie purview selonque la common ley per briefe: ne que prejudice soit fait a la common ley, ne a les chartres avantdits, en nul de leur points. Et voit le roy, que si tous trois ne soient presentes, ou ne perront a tous les soits attendre, a faire leur office en la forme avantdit, que deux des trois le facent. Et ordeigne est, que les viscounts, et les bailifes le roy, soient attendants a les commandements des avantdits justices, en quant que appent a leur office. Et oultre ces choses grants sur les points des chartres avantdits, le roy de sa grace especiall, en allegiance des grevances, que son people ad eu per les guerres que ont este, et en amendement de leur estate, et pur tant que ils soient plus prestes a son service, et plus voluntiers aidants, quant il en avera a faire (7), ad grant ascuns articles, les queux il entend que tiendront auxibien lieu a son people, & auxi grand profit ferront, ou plus que les points avant grantes.

and assigned by the king's letters patents under the great seal, to hear and determine (without any other writ, but only their commission) such complaints as shall be made upon all those that commit or offend against any point contained in the foresaid charters, in the shires where they be assigned, as well within franchises as without, and as well for the king's officers out of their places, as for other, and to hear the complaints from day to day without any delay, and to determine them, without allowing the delays which be allowed by the common law. And the same knights shall have power to punish all such as shall be attainted of any trespass done contrary to any point of the foresaid charters (where no remedy was before by the common law) as before is said, by imprisonment, or by ransom, or by amerciament, according to the trespass. Nevertheless the king, nor none of those that made this ordinance, intend, that by virtue hereof any of the foresaid knights shall hold any plea by the power which shall be given them in such case, where there hath been remedy provided in times passed, after the course of the common law by writ, nor also that any prejudice should be done to the common law, nor to the charters aforesaid in any point. And the king willeth, that if all three be not present, or cannot at all times attend to do their office in form aforesaid, that two of them shall do it. And it is ordained, that the king's sheriffs and bailiffs shall be attendant to do the commandements of the foresaid justices, as far forth as appertaineth unto their offices. And besides these things granted upon the articles of the charters aforesaid, the king of his special grace, for redress of the grievances that his people hath sustained by reason of his wars, and for the amendment of their estate, and

to

to the intent that they may be the more ready to do him service, and the more willing to assist and aid him in time of need, hath granted certain articles, the which he supposeth shall not only be observed of his liege people, but also shall be as much profitable, or more, than the articles heretofore granted.

(1) *A le commune d'Angleterre.*] Here *commune* is taken for people, so as [*tout le commune*] is taken here for all the people; and this is proved by the sense of the words, for *Magna Charta* was not granted to the commons of the realm, but generally to all the subjects of the realm, *viz.* to those of the clergie, and to those of the nobility, and to the commons also: and that [*commune*] in this place signifieth people, it is proved by the preamble, for there the great charter, and the charter of the forest, are rehearsed to be granted by king H. 3. to his people; and here they are said to be granted [*a le commune:*] and see before 25 E. 1. Confirmat. Chart. cap. 1. & cap. 6. for this word *commune* and *comminaltie*: so as [*a le commune*] here signifieth not to the commons of the realm, but to the people of the whole realm; and herewith agreeth our books, that for a common nuisance, which concerns *le commune, ou le comminaltie, le suite ferr' done au roy*, where [*commune*] and [*comminaltie*] include all the kings subjects. 2 E. 3. 26, &c.

(2) *Auxi pleinement come le roy, les ad grante, renovele, et per son chartre confirmc.*] Here it is to be understood, that this king Edw. 1. the 28 day of March, in this 28 yeer of his raign had absolutely confirmed, so as now by force of this act of parliament in an. 34 E. 1. it hath onely the force of a charter, but this is established by this act of parliament. [540]

(3) *Et que les chartres sont bailles a chescun vise', &c.*] And that these charters should be read four times in the yeer in full county; here is order taken for the publishing of these charters.

See the statute de Confirmat. Chart. cap. 1. 3, 4.

(4) *Ou remedie ne fuit avant per le common ley.*] That is, where no action was given by the kings writ to be pursued at the common law.

(5) *Après le saint Michael, &c. Soient esleus en chescun countie, per la commune de mesme le countie, trois prodes chevaliers, ou auters loyals, sages, et avises, que soient jurees et assignes per les letters le roy ouvertes de son grand seale, de oier et terminer sans auster briefe que leur commen grant, les pleints que se ferront de tous ceux, que contreviendrent, &c.*] Here, for the better execution of those glorious two lights, *Magna Charta*, and *Char:a de Foresta*, a new court and new justices were appointed, with limitation that they should meddle onely with those points against those charters, for the which before this act there was no remedy by the common law.

Here by the way it is to be observed, that three new things which have fair pretences are most commonly hurtfull to the common-wealth, *viz.* 1. New courts (as here was one) for commonly they tend to the grievous vexation and oppression of the subject,

subject, and not to that glorious end that at the first was pretended; for erect new courts, and constitute great men to be judges, and make what limitations you will, they will never want authority and jurisdiction. 2. New offices either in courts of justice, or out of them, which cannot be done as here it was, but by parliament; but they under pretence of the common good are exercised to the intolerable grievance of the subject. 3. New corporations trading into forein parts, and at home, which under the fair pretence of order and government, in conclusion tend to the hinderance of trade and traffique, and in the end produce monopolies. But now to the text.

(6) *Et auxibien des ministers le roy hors de leur places, come des auters: et les plintes oier de jour en jour sans delaiie: et les terminent sans allower les delaiies, que sont allowes per la commen ley.*] Here was the first ground for the raising of the justices of *trebaston*, or *trailbaston*, so called (in respect of their precipitate proceeding from day to day, without such convenient leisure and time as common law allowed) for that their proceedings were as speedy and ready as one might draw a staff.

Their authority was increased in *anno* 33 E. 1. and if you desire to read their commission, you may read the same in Rot. Pat. *anno* 33 E. 1.

They in the end had such authority as justices in eyre; but albeit they had their authority by act of parliament, yet if they erred in judgement, a writ of error did lye by the generall rule of the common law to reverse their judgement in the kings bench; which being once resolved and known, and their jurisdiction fettered with so many limitations, their authority by little and little vanished.

(7) *Le roy de sa grace especial, &c. et pur tant que ils soient plus prestes a son service, et plus voluntiers aidants, quant il en avra a faire.*] Here is to be observed, that the subject ought to retribute to the king for a bill of grace two things, first: to be the more ready to do him service; and secondly, to aid him in time of need.

C A P. II.

EN primes pur ceo que un grande grievance (1) est en cest realme, et damage sans nombre, de ceo que le roy et ses ministers de sa meignee, auxibien les aliens come les denizens, font leur prises (2) per la ou ils passent parmy le realme, et pernent les biens des gents, des cleres, et des layes, sans rien paier, ou bien meins que la value (3). Ordeine est, que de cy en avant, nul ne preign' prises parmy realme, forsque les parnours le roy, et ses

SECONDARILY, forasmuch as there is a great grievance in this realm, and damage without measure, for that the king and the ministers of his house, as well of aliens as denizens, do make great prises where they pass through the realm, and take the goods as well of clerks as of lay-people, without paying therefore any thing, or else much less than the value: it is ordained, that from henceforth none do take any such prises

Rot. Pat. 33 E. 1.
in Dorsæ. m. 1.
2 E. 3. fol. 27.
27 Aff. 57. Stat.
de Ragman. Vet.
Chart. part 2.
fol. 28.
Matth. Paris.
450. Holl. 312,
313. State
33 E. 1.
Vet. N. B. 52.

[541]

ses purveyours pour lostell' le roy (4). Et pur les parnours le roy, et purveyours pour son hostell', ne preignent riens, forsque pur mesme lostell' (5): et des prises que ilz ferront par my le pais, de manger ou de boire, et des auters menus necessaries pur lostell', que ils facent la paie ou gree a ceux, des queux les choses ferront prises (6). Et que tous ceux parnours le roy, purveyours, ou achatours, eient de cy en avant leur garrante ovesque eux du grand seale, ou du petite seale le roy, contenant leur poiar, et les choses dont ils ferront prises (7), au purveyance: le quel garrant ils monstrent a ceux des queux ils ferront la prise, avant ceo que ils impreignent rien (8). Et que ceux parnours, purveyours, ou achatours le roy, ne preignent plus que besoigne, et mester ne soit (9), pour le roy et son hostell', et de ses enfants. Et que riens ne preignent pur ceux que sont as gages, ne pur nul auter. Et que ils respoignent en lostell', ou en la garde pleinnement de toutes leur prises, sans faire leur largesses ailleurs, ou liveries des choses, que pur le roy ferront prises (10). Et si nul parnour del hostell' le roy, per garrantie que il eit, face prises, ou liveres en auter maner, que desus nest dit, per plaint fait al seneschall', et au treasurer del hostell' le roy, soit la verite inquire. Et si de ceo [542] soit atteint, soit gre maintenant fait al pleintif, et soit ouste de service le roy pur tous jours, et demerge en prison a la volente le roy. Et si null' face prises sans garrantie, et les emporte encountre la volente (12) de celui a que les biens sont, soit maintenant arreste per la ville, ou le prise serra fait, et amesne a la prochein gaole. Et si de ceo soit atteint, soit la fait de luy, come de laron (11), si la quantite des biens le demand'. Et quant as prises faire en faires, et en bons villes, et en portes pur

prises within the realm, but only the king's takers, and the purveyors for his house; and that the king's takers and purveyors of his house shall take nothing, but only for his house. And touching such things as they shall take in the country, of meat and drink, and such other mean things necessary for the house, they shall pay or make agreement with them of whom the things shall be taken. And that all the king's takers, purveyors, or catours, from henceforth shall have their warrant with them, under the king's great or petty seal, declaring their authority, and the things whereof they have power to make prise or purveyance; the which warrant they shall shew unto them whose goods they take, before they take any thing. And that those takers, purveyors, or catours for the king, shall take no more than is needful or meet to be used for the king, his household, and his children. And that they shall not take any thing for them that be in wages, nor for any other. And that they shall make full answer in the king's house, or in the wardrobe, for all things taken by them, without making their largesses any other where, or liveries, of such things as they have taken for the king. And if any taker for the king's house, by reason of his warrant, make any prise or livery, otherwise than before is mentioned, upon complaint made to the steward, and to the treasurer of the king's house, the truth shall be enquired. And if he be attained thereof, he shall forthwith make agreement with the party, and shall be put out of the king's service for ever, and shall remain in prison at the king's pleasure. And if any make prise without warrant, and carry it away against the will of the owner, he shall immediately be arrested by the town where the prise

pur la grande garderobe le roy, eient les perours leur commun garrant per le grand seale (13). Et des choses que ils prendront, eient la tesmoign' du seale du gardein de la garderobe. Et des choses issint per eux prises, de nombre, de quantite, et de value soit fait dividende entre les perours, et les gardeins des faires, maires, ou chief baylies des villes, et portes, per la vieu des marchants, des queux les biens seront issint prises. Et riens ne luy soit suffert de plus prendre, que il ne mette en dividende. Et cell' dividende soit port en garderobe sous le seale le gardein, maire, ou chiefe bailife avant-dits: et la demerge tanque sur l'acompte du garderobe le roy. Et sil soit trove que nul ait autrement prise que faire ne deveroit, soit puny sur l'acompte per le gardein de la garderobe le roy, solonq; sa deserte. Et si nul face tielx prises sans garrante, et sur ceo soit atteint, soit fait de luy come de ceux que font prises pur l'ostell' le roy sans garrante, come dessus est dit (14). Et nentende n'ye le roy, ne son conseil, que per cest estatute rien decrease au roy de son droit des auncient prises dues et accoustomes, come des vins, et autres biens: mesque en toutes pointes pleyment luy soit save (15).

was made, and shall be committed to the next gaol; and if he be attainted thereupon, it shall be done unto him as unto a felon, if the quantity of the goods do so require. And concerning prises made in fairs, and good towns, and in ports, for the king's great wardrobe, the takers shall have their common warrant under the great seal. And for the things that they shall take, it shall be testified under the seal of the keeper of the wardrobe; and of those things that they have taken, the number of the things, the quantity, and the value, shall be specified in a dividend made between the takers and the keepers of fairs, mayors, or chief bailiffs of towns and ports, by the view of merchants, whose goods shall be so taken; and they shall not be suffered to take any more than is contained in their dividend; and the said dividend shall be taken into the wardrobe under the seal of the warden, mayor, or chief bailiff aforesaid, and there shall remain until the accompt of the keeper of the king's wardrobe; and if it be found, that any hath taken otherwise than he ought to do upon his accompt, he shall be punished by the keeper of the king's wardrobe after his desert; and if any make such prises without warrant, and be attainted thereupon, he shall incur the same pain as they which take prises for the king's house without warrant, as before is said. Nevertheless the king and his council do not intend, by reason of this estatute, to diminish the king's right, for the ancient prises due and accustomed, as of wines and other goods, but that his right shall be saved unto him whole in all points.

This chapter is confirmed by 18 E. 1. cap. 2. (4 Ed. 3. c. 4. 5 Ed. 3. c. 2. 10 Ed. 3. stat. 2. c. 1. 25 Ed. 3. c. 1. 36 Ed. 3. c. 2. 12 Car. 2. c. 24.)

Seeing by many acts of parliaments the kings purveyance is limited in certain, so as the law there is certain, and without question; it shall not be impertinent nor unnecessary to learne from antiquity, how, and in what sort the kings household was in those dayes provided of victuals: certain it is, that aswell before as after the conquest, the king upon his ancient demesnes of the crown of England, had houses of husbandry, and stocks for the furnishing of necessary provisions for his household; and the tenants of those manours did by their tenures, manure, till, &c. and reap the corn upon the kings demesnes †, mowed his meadowes, &c. repaired the fences, and performed all necessary things belonging to husbandry upon the kings demeanes: in respect of which services, and to the end they might apply the same the better, they had many liberties and priviledges, as that they should not be sued out of the court of that manor, nor impannelled of any jury or inquest, nor appeare at any other court, but onely at the court of the said manor, nor be contributory to the expences of the knights of the shire which serve at parliament, nor pay any toll, &c. which liberties and immunities continue to this day, albeit the originall cause thereof is ceased: now all the manors that were in the hands of Edward the Confessor before the conquest, or in the hands of William the Conqueror, and so appeare in the booke called Domesday, are accounted the auncient demeanes of the crowne of England, and had bene the demeanes of the crown long before.

In libro rubeo scacc. cap. A quibus et ad quid fuit argent' examinatio; you shall reade that which is very observable. *In primitivo regni statu post conquestionem, regibus de fundis suis non auri et argenti pondera, sed sola victualia solvebantur, ex quibus in usus quotidianos domus regie necessaria ministrabantur, &c.* And see the reason wherefore these provisions of victualls were changed.

And this is evident by many records, but by little and little this course of good husbandry vanished.

When the kings own provisions for the most part failed, then to supply necessary provisions, there was a continuall market kept at the court gate, where the king was better served with viands for his household, then by purveyors, the subject better used, and the king at farre lesse charge in respect of the multitude of purveyors, and the officer of this market was called *clericus mercati hospitii regis*, the clerk of the market of the kings house, so as he retaineth his name still according to the first institution, although the good end thereof ceaseth; when this market was discontinued, then purveyors started up, and the number of them dayly increased, who by the lawes and statutes of this realme ought to observe five things: 1. To take onely for the kings household. 2. With the consent of the owner. 3. For the price as was sold in the market. 4. To take no more then was necessary for the kings household. 5. Where it might best be spared, and where more plenty was.

All which was inquirable before the justices in eyre, before our statute made in 28 E. 1. and at the first they were called *emptores*, buyers; and it was a speciall article inquired by the justices in eyre, *de pris' fact' per vicecomites, vel constabular', vel alios balivos contra voluntatem eorum quorum catalla fuerint*; and this was before the making of our statute of 28 E. 1.

* Inter leges Canut. regis ca. 67. Omnibus hanc porro impartimus allevationē ut quo prius opprimebat' onere populum liberemus: inprimis præfectis meis omnibus mand', ut ex prædiis meis propriis quæ mihi fuerint ad victum necessaria suppeditent, neque alius quisquam victui nostro alimenta præstare invitus cogatur. Itaq; si eorum aliquis hoc nomine multam petierit, is proprii capitis æstimationem regi dependito.

Lucubrat.

‡ [543]

Rot. clauf. 13 H. 3. m. 10. in dorf. Rot. finium 3 E. 1. 35. Kelwey, 114. Brit. 75, 76. Fleta, lib. 2. cap. 8. & 11.

Rot. Parl. 50 E. 3. nu. 87. & 152. 12 R. 2. cap. 4. Lib. intr' Co. 445. 32 H. 8. ca. 20. The number of purveyors enacted to be abridged. 34 E. 3. ca. 3. 36 E. 3. ca. 2. That they be sufficient men. Braçt. l. 3. fo. 117. cap. Itin' sæpe. Brit. fol. 33. 36. Fleta, l. 1. ca. 20. Lib. 2. cap. 16. Fortescue, c. 36. fol. 43. See the statutes hereafter mentioned.

And

Stat. de Tallagio.
34 E. 1. 4 E. 3.
c. 3. 18 E. 3. c. 7.
Int' brevia
6 H. 3. Balivus
de Hoyl and
Lenne, & Ger-
nem. 7 H. 3.
tit. Waste 141.
Pl. Com. in case
de Mynes.

And for a conclusion hereof it is declared by authority of parliament, in these words, *Nullus minister noster, vel heredum nostrorum, capiat blada, corca, vel aliqua alia bona cujuscunque sine voluntate et consensu illius cujus fuerint bona*: and this is confirmed and established by the statute of 18 E. 3.

So as no question can bee hereof made, and if you reade of any taking or purveyance in auncient time it must bee taken with these limitations; and the reason why these words, *sine voluntate et consensu, &c.* without the will and agreement, were expressed, was for that purveyors would take the goods of such men as had no will to sell them, but to use or spend them for their own necessary use.

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(1) *En primes pur ceo que un graund grevance, &c.*] The mischief before this statute was, that the insolency of the purveyors bearing themselves so proudly under the great officers of the kings household, grew to that height that they would take what and how much as it pleased them, and many times where it might be least forborne or spared, and for others then for the kings household, and sometimes would pay nothing, and many times lesse then the true value, and many persons would make purveyance without any warrant at all; of these great grievances and losses without number, infinite damages, the subjects complained of at this parliament, and for restraining of the abuses of the purveyors and reliefe of the subjects, this act of parliament was made.

Pasch. 30 E. 1.
coram rege
Kanc'.
The Cinque
ports case.
* Rot. Cha.
17 July, anno
6 E. 1. Baroni-
bus 5. Port.
concessus.

(2) *Fent leur prisés.*] Of the French word *prise*, comes the word *prisa*, used in law for the things taken by purveyors: *recta prisā*, right taking or purveyance is there expounded, *viz. De uno dol' ante malum et alio post malum*: * and so explained in the charter of E. 1. This is called *recta prisā*, right taking or purveyance, because it distinguished it from the taking or purveyance against right. *Vide speculum regis M.S.* written by Islep archbishop of Cant. to king E. 3.

In ligul. de præ-
cept. de Term.
Hil. anno
16 E. 2. Nota
pro justic. de
banco regis &
eorum honore &
suprema jurif-
dictione.

* Purveyance.
28 E. 1. Art. su-
per Chart. ca. 2.
28 E. 1. Art. su-
per Chart. c. 20.
Anno 33 E. 1.
de conspirat.

*Edwardus Dei gratia rex Angliæ, dominus Hiberniæ, & dux Aquitan' dilectis & fidelibus suis Henric' le Scrop' & sociis suis justic' nostris ad placita coram nobis tenend' assignat', salutem. Miramur quod cum vos præfat' locum nostrum in placitis hujusmodi teneatis, & nostram præsentiam per loca per quæ regno nostro transferitis in præmissis supplere debeatis, * de prisīs bladorum, victualium, et aliorum bonorum subditorum nostrorum, contra voluntatem eorundem, conspiratoribus, transgressoribus, informatoribus falsarum querelarum, conventiculis & confederationibus illicitis factis non inquiretis, nec ulterius facitis quod deceret: volentes igitur hujusmodi mala puniri prout decet, vobis mandamus firmiter injungentes quod de hujusmodi prisīs, conspirationibus, transgressionibus, informationibus falsarum querelarum, conventiculis, & confederationibus exnunc per singula loca per quæ transferitis, tam infra libertates quam extra, cum omn' diligentia & modis quibus poteritis inquiretis, & omnes illos quos legitime convinci contingit, puniatis juxta formam statutorum, & articulorum inde editorum, & secundum legem, & consuetudinem regni nostri in hac parte talit' vos habentes, quod querela ad nos inde non perveniat iterata. T. me ipso apud Newwarke, xxx. die Januarii, anno regni nostri 16. per ipsum regem.*

4 E. 3. c. 3.
25 E. 3. ca. 1.
36 E. 3. ca. 2.

(3) *Ou bien meynes que la value.*] Hereby it appeareth that the very value ought to be paid for the things purveyed according to that which appeared in our auncient authors.

(4) *Forisque*

(4) *Forsque le pernours le roy, et les purveyors pur le hostle le roy.]* Herewith agreeth many later statutes, and explained to be the household of the king and queene, at this parliament, cap. 5. that the chauncellor and justices of the kings bench should follow the court, and by pretext thereof purveyance was made for them as part of the household, which lasted untill 4 E. 3. cap. 3. at what time (the chauncellor and judges discontinuing to follow the court) it is provided against them, and all other that be not of the kings household.

4 E. 3. c. 3.
25 E. 3. ca. 1.
36 E. 3. c. 2.
Rot. Pat.
10 E. 2. pt. 2.
m. 20. li. 10.
fol. 73. In case
de Marshalsea.

(5) *Ne pernont riens forsque pur mesme le housholde, &c.]* All this is in affirmance of the auncient common above mentioned, and ratified by the later acts of parliament last above remembered.

(6) *Et des prises que ilz ferront per my le pays de manger ou de boyer, et des auters menus necessaries pur le hostels, que ilz facent le paie ou gree a ceux des queux le choses ferront prises.]* This is to be understood, when the king is passing in the country, as in his progresse, or in any journey, as it appeareth by the preamble; there the purveyor may take meat and drink, which this act here in respect of the kings passage calls small things, but he must pay the very value therefore, and make present payment, or agree with the party.

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This is made certaine by a latter statute, that in all cases where the thing to be taken is under 40 shillings, there present payment to be made, or else the owner may retaine and resist, and for the tryall of the true value, the thing to be taken is to be praised or priced according to the very value by the lord or his baily, or the constable, and foure good men of the town where such taking shall be, there to be sworne, in covenable and easie manner without threats or dures and by indenture the quantity of the thing taken, the price, and of what persons; but if it be not in the kings passage, but for his standing house, then the king cannot take any beere or ale, because it is a manufacture, no more then he can take for his standing house any other victuall made by art and labour of mans hand, as bread, or the like; but mault, having the substance of the barley remaining, and having nothing added to it, is no such manufacture, as it appeareth by a later act of parliament. But then the king by his officers must convert it into beere; for he cannot sell, or otherwise imploy the same, which hath been the cause that never any mault was taken, and it must be taken at the very value in the market.

4 E. 3. cap. 3.
5 E. 3. cap. 2.
36 E. 3. c. 2. &c.

(7) *Eyent de cy en avant lour garrante, ove eux du grand seale, ou de petit seale le roy, conteynant lour power, et les choses dont ils ferront prises.]* By latter statutes the commission must be under the great seal onely, and every halfe yeare to be renewed.

36 E. 3. cap. 2.

(8) *Le quel garrant ils monstrent a eux des queux ils ferront le prise avant ceo que ils impreignent rien.]* This is evident, and confirmed by later statutes.

36 E. 3. cap. 2.
2 & 3 Ph. &
Mar. cap. 6.

(9) *Ne preigne plus que besoigne et mester ne soit, &c.]* The statute of 36 E. 3. confirmeth this, and doth adde, that the takings must be in such places where greatest plenty is, and in a covenable time.

I have reade a booke called *Speculum Regis*, written in Latin by Simon Islip archbishop of Canterbury to king Edward the third, wherein he sharply inveigheth against the intolerable abuses of purveyors and purveyance in many particulars, and earnestly ad-

Speculum Regis

viseth,

viseth, and instantly presseth the king to provide remedy for those insufferable oppressions and wrongs offered to his subjects, which the king keeping with him, and often perusing, it wrought such effect, that the king at divers of his parliaments, but specially at his parliament holden in the 36 yeare of his reign, of his own will, without motion of the great men or commons, as the record of parliament speaketh, caused to be made many excellent lawes against the oppressions, malice, and falshood of purveyors.

(10) *Et que ils respoinent in l'estel ou en la garde robe pleinement de tous leur prises sans faire leur largesses ailours, ou liveries des choses, que pur le roy sera prises.*] This account is to be made by this act for victuals, &c. to the household, that is, to the officers of the green cloth; and for such things as belong to the wardrobe to the master of the wardrobe.

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(11) *Et si nul face prises sans garrant, et les emport encounter le volunt de celuy, &c. Et si de ceo soit atteint, soit fait de luy, come de laron.*] By this branch, if any purveyor take any thing without warrant, &c. it is felony. And here it is to be observed, that these words, *come de laron*, shall be understood of a theefe that stealeth above the value of 12 pence; for he that committeth petit larceny is not *un laron* within this act.

Vid. the forme of an inditement in Lambards Justice of Peace in fine libri.

(12) *Encounter le volunt.*] That is, when he takes it as the kings purveyor, pretending to have a warrant where he hath none, this is in law as against his will, for with his will he would not have suffered him to take it, if he had knowne he had no warrant; but if the owner knew that he had no warrant, and yet willingly sold it him, then cannot it be said, that he carried it away against his will.

5 E. 3. cap. 2.
25 E. 3. cap. 1.
Hol. Cronie' fol. 39. 369.
36 E. 3. ca. 2. 4.
7 R. 2. cap. 4.
32 E. 3. tit. Barre 259.
Stamf. Pl. cor. 37. a.
H. 8. fo. 146. b.
le 6 Carpent. case. Hill.
23 E. 3. coram rege apud Ebor' inditements de purveyors.
Lib. 2. ca. 6, 7.

If the purveyors take any thing without praishment made by the countables, or other discreet men thereto sworne, or otherwise against that statute, it is felony, and divers purveyors in 20 E. 3. were attainted and hanged for offending against these lawes.

If any purveyor make any takings or buyings, or take any carriage in any other manner then is contened in his commission, it is felony; or if the purveyor take more then he deliver, and have not paid for that which is taken, it is felony.

And at the sessions at Newgate holden in January, *anno* 32 Eliz. Nichols one of the queenes purveyors was attainted and hanged for offending of this law.

(13) *Et quant as prises faits en faires, et en bones villes, et en ports per le grand garde robe le roy, eyent les pernours leur common garrant per le grand seale.*] For the wardrobe see Fleta.

And the letter of the law is plaine.

(14) *Et si nul face tiels prises sans garrant, et sur ceo soit atteint, soit fait de luy come de ceux que sont prises pur le hostel le roy sans garrant, come de suis est dit.*] That is to say, let it be done of him as a theefe.

(15) *Et nentend mye le roy ne son counsaile, que per cest statute rien decresse al roy de son droit des auncient prises dues, et accusmes, come des vines, et auters biens: mesque en tous points pleinement luy sont save.*] Vide 25 E. 1. *confirm' chartarum*, the like saving explained, and whereof this ancient prices is to be intended.

Confirm. Chart. cap. 6.

And hereby it may appeare how necessary it was, first to know what belonged to the king of common right, and at the common law.

But

But to prevent all scruples by colour of this saving, the said act of parliament *de tallag' non conced'* anno 34 E. 1. was made after this act of 28 E. 1. which is a generall negative law, without any saving.

34 E. 1. de tall'
non conced. c. 2.

And therefore what subsequent acts of parliament have given to the king, the same ought to be observed and kept in such manner and order as thereby is prescribed.

C A P. III.

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DES estates des seneschals, et des marshals (2), et des plees que eux devoient tener, et coment (1): ordaine est, que desormes ne teigne plee de franktenement (3), ne de dette, ne de covenant, ne de contract des gents de people, forsque tantsolement de trespasses del hostell, et dauters trespasses fait dedeins la vierge, et des contracts et covenants, que ascun del hostel le roy avera fait a auter de mesme le hostel, et en mesme le hostel, et nemy ailours (4). Et nul plee de trespassse ne pledront, auter que ne soit attache (5) per eux, avant ceo que le roy issera (6) hors de la vierge, ou la trespassse sera fait. Et les pleder' hastivement de jour en jour, issint que ils soient pledes et terminees avant ceo que le roy issera hors des boundes de cel vierge (7), ou le trespassse fuit fait. Et si par cas dedeins les bounds de cel vierge ne soient estre terminees, cessent tiels plees devant le seneschalle, et soient les plees a la common ley. Ne desormes ne preigne ne seneschalle conusances des detts, ne dauter chose, forsque des gents del hostel avantdit, ne nul auter plee en tiend per obligac' (8) fait a le distresse le seneschalle, ou le mareschalle. Et si les seneschals, ou le mareschals rien facent encounter cest ordinance, soit lour fait tenu pur nul. Et pur ceo que avant ces heures mults des felonies faits dedeins la vierge cunt estre depunies (9), pur ceo que les coroners de pays ne se ont pas entermis denquircr des tiels maners des felonies dedeins la vierge

CONCERNING the authority of stewards and marshals, and of such pleas as they may hold, and in what manner, it is ordained, that from henceforth they shall not hold plea of freehold, neither of debt, nor of covenant, nor of any contract made between the king's people, but only of trespass done within the house, and of other trespasses done within the verge, and of contracts and covenants that one of the king's house shall have made with another of the same house, and in the same house, and none other where. And they shall plead no plea of trespass, other than that which shall be attached by them before the king depart from the verge where the trespass shall be committed; and shall plead them speedily from day to day, so that they may be pleaded and determined before that the king depart out of the limits of the same verge where the trespass was done. And if it so be that they cannot be determined within the limits of the same verge, then shall the same pleas cease before the steward, and the plaintiffs shall have recourse to the common law. And from henceforth the steward shall not take cognisance of debts nor of other things, but of people of the same house, nor shall hold none other plea by obligation made at the distress of the steward and of the marshals. And if the steward or marshals do any thing contrary to this ordinance, it shall be holden as void.

vierge (10), mes le coroner del hostel le roy, que est passant, de quoy issie nad my este fait en du manner, ne les felons mis en exigent (11), ne utlages, ne rien de ceo present en eyre, que ad ēe a graund damage du roy, et a meins bone garde de la peace: ordeine est, que desormes en case de mort de home, ou office de coroner appent as viewes, et enquestis de ceo faire, soit maund al coroner del pays, que ensemblement ove le coroner del hostel le roy face loffice que appent, et le metter enrolle. Et ceo que ne purra mie devant le sene-schal estre termine, pur ceo que les felons ne purront estre attaches, ou pur auter encheson, demurge a la common ley, issint que les exigents, utlagaries, et presentments en eyre soient de ceo faits per le coroner du pays, auxy come des auters felonies faits hors de la vierge. Mes pur ceo ne soit lessē, que les attachments ne soyent faits freshment sur les felonies faits.*

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void. And forasmuch as heretofore many felonies committed within the verge have been unpunished, because the coroners of the country have not been authorized to enquire of such manner of felonies done within the verge, but the coroner of the king's house, which never continueth in one place, by reason whereof there can be no trial made in due manner, nor the felons put in exigent, nor outlawed, nor any thing presented in the circuit, the which hath been to the great damage of the king, and nothing to the good preservation of his peace; it is ordained, that from henceforth in cases of the death of men, whereof the coroner's office is to make view and enquest, it shall be commanded to the coroner of the country, that he, with the coroner of the king's house, shall do as belongeth to his office, and inroll it. And that thing that cannot be determined before the steward, where the felons cannot be attached, or for other like cause, shall be remitted to the common law, so that exigents, outlawries, and presentments, shall be made thereupon in eyre by the coroner of the country, as well as of other felonies done out of the verge; nevertheless they shall not omit, by reason hereof, to make attachments freshly upon the felonies done.

(10 Ed. 3. stat. 2. c. 2. 13 R. 2. stat. 1. c. 2. 15 H. 6. c. 1. 1 Bulstr. 208. 2 Inst. 547. 4 H. 6. f. 8. 10 H. 6. f. 13. Bro. Action sur le stat. 38. 44. 6 Rep. 12. 20. 10 Rep. 71. 4 Rep. 46. 33 H. 8. c. 12. 2 Leon, 160. 18 Ed. 3. stat. 2. c. 7.)

(1) *Des estates, des seneschals, et des marshals, et des plees, que eux devoient tener et coment.*] Here in this short and effectually preamble three things are to be observed:

1. *Des estates*, that is the extent of the jurisdiction or state of the steward and marshal, whereupon they may justly and safely stand.

2. What plees they ought to hold, where this word (*devoient*) is observable; for this act doth restore and confine this court of the marshalsea to his right and just jurisdiction, and to hold those plees which the steward and marshal ought, that is, of right ought to hold.

3. How

3. How and in what order and manner those pleas ought to be holden, expressed in this word *coment*.

Hereby it appeareth, that this act is in affirmance of the common law, and purposely made for relieving the subject against the usurpations and incroachments of the steward and marshall.

(2) *Des seneschals et marshals, &c.*] These words are generall, but they are to be understood of the steward of the court of the marshalsea of the household, who is ever a professor of the common law, and not of the steward of the kings household; and the marshall is here to be understood the marshall of the household, and the marshalsea is to be understood of the household, and not of the kings marshalsea; for that belongeth to the kings bench.

Lib. 10. fol. 68.
in case of the
Marshalsea.

(3) *Ordeine est, que ne teigne plee de franktenement.*] This is negative, absolute, and in affirmance of the common law.

(4) *Ne de dette, ne de covenant, ne de contract des gents de people, forsq; tant solement des trespasses del hostel, et dauters trespasses faits deins la vierge, et des contrats et covenants, que ascun del hostel le roy avera fait al auter de mesme le hostel, et nemy ailours.*] Here by this act it is declared, that the said steward and marshall cannot hold plea but of three actions, *viz.* of debt, covenant, and trespasses: in debt and covenant both the parties must be of the kings household; in trespasses it sufficeth that one of the parties be of the kings household.

38 E. 3. 17. Re-
gift. 185. & 111.
6 R. 2. action sur
le statute pl. ult.
3 H. 6. estopp.
18. action sur
lestat. 13. 7 H. 6.
30. 10 H. 6. 13.
14 H. 6. 6.
Lib. 5 E. 4. 129.
19 E. 4. 8. b.
20 E. 4. 16.
22 E. 4. 11. 16.
31. F.N.B. 241,
242. Hil. 5. Jac.
coram rege rot.
876.
33 H. 8. ca. 12.
* Lib. 10. fo. 60.
en case de Mar-
shalsea.
32 H. 8. cap. 20.
F.N.B. 241.

And though this act speaketh generally of trespasses, yet is it onely intendable of trespasses *vi et armis*, as of battery, or taking away of goods, and not of trespasses *quare clausum fregit*, nor of trespasses and ejectment, nor of trespasses *sur le case*, nor of detinue, nor of any other personall action, nor of any reall or mixt action, notwithstanding the generall words of the statute of 33 H. 8. as you may reade at large in the case of the * marshalsea; for particular jurisdictions derogating from the jurisdiction of the generall courts of the common law are ever taken strictly.

(5) *Et nul plee de trespasses pledront, auter que ne soit attache.*]

This is explained in the case of the marshalsea, *ubi supra*.

(6) *Avant que le roy issera.*] Albeit the king himselfe do goe out of the bounds of the vierge for his recreation, as to hunt, with no purpose to rest, tarry, abide, or make his repose there, and his councill and household continue where they were, this is no removing within this statute: but when the king goeth in progresse, there his household goeth with him, there the king removeth within this act.

(7) *Hors des bounds de cest vierge.*] The bounds of the vierge. See Fleta * and the Mirror, that the bounds of the vierge was 12 miles round about the kings house, so as it seemeth, that 13 R. 2. was but in affirmance of the common law. *Vide* 33 H. 8. the bounds of the kings house, or palace.

The case of the
Marshalsea, *ubi
supra*.

* [549]
13 R. 2. cap. 3.
33 H. 8. cap. 12.

(8) *Ne nul auter plee teigne per obligation.*] This is also notably explained in the said case of the marshalsea, *ubi supra*.

(9) *Et pur ceo que avant ceux heures mults des felonies faits deins la vierge, ount estre dispunies.*] Here are to be observed, that as the actions abovesaid determinable before the steward and marshall, are confined to the vierge; so felonies also determinable before the steward and marshall, are also confined to the vierge: and as they are limited of all the causes of actions rising within the vierge onely to three, and they not generally extending to all, but specially

2 H. 4. cap. 23.
9 R. 2. cap. 5.
18 E. 3. cap. 7.

Vid. le case de
Marshalsea, ubi
supra.

Stanf. pl. cor.
fol. 57.

L. 5 E. 4. 13. of
this ineroach-
ment complaint
hath been made
in parliament.
8 H. 4. nu. 42.
Stanf. ubi supra.

Pasch' 12 E. 2.
rot. 280. coram
rege, the case of
William Swet-
ton, lib. 4. fo. 47.
Kath. Wroths
case.

41 E. 3. coron.
280. 22 E. 3. 13.
19 E. 3. judgemt.
Dyer, 3 El. 188.

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Brit. fol. 1.
Lib. 4. fol. 46,
47. ubi supra.

cially confined to certaine particular persons; so of felonies done within the vierge, the jurisdiction of the steward and marshall extend not to all, but to certaine, and those againe limited to certaine persons: for of ancient time they had generall authority, as justices in eyre, and as vicegerents of the chiefe justice of England within the vierge, at what time they held plea of all felonies within the vierge, which power is now vanished; but as steward and marshall of the court of marshalsea of the kings household, the title of their court in criminall causes was, *placita coronæ aulae hospitii domini regis coram seneschallo et marischallo*, and alwayes confined to felonies done within the circuit of the kings household, the bounds whereof are made certaine by the said act of 33 H. 8. And by that act it is provided, that all treasons, misprisions of treasons, murthers, manslaughteres, bloudsheds, and other malicious strikings, by reason whereof bloud is or shall be shed, which shall be done in any of the kings palaces or houses, &c. shall be enquired, tried, heard, and determined before the lord steward for the time being of the kings household, or in his absence before the treasurer, and controller, and steward of the marshalsea, or any two of them, whereof the steward to be one: so as these great officers and counsellors of state, the lord steward, treasurer, and controller have no jurisdiction in these criminall causes, but onely within the circuit of the kings palace or house: and it is to be observed, that this court of the marshalsea of the kings house was, as bookes speak, of ancient time instituted for those of the kings house, but they have ineroached beyond their true jurisdiction: and Standford saith, that the steward and marshall before the said act of 33 H. 8. might have heard and determined all felonies, &c. perpetrate within the kings palace or house.

A robbery was committed in a towne within the vierge, and this appearing to the court, yet the same was enquired of, heard, and determined in the kings bench, and so it may be before justices of oire and terminer, and justices of peace, because their jurisdiction is generall through the whole county; but of an offence within the kings palace it shall be heard and determined according to the said act of 33 H. 8. upon which act this is observable, that if a man strike in the kings palace, where his royall person is resident, unlesse bloud be shed he loseth not his hand; but in Westminster hall, when the kings courts sit, or before the justices of assise sitting in their place, if any man strike another, though he draw no bloud, yet shall he lose his right hand, so great honour and reverence doe lawes give to the kings courts: for in judgement of law the king himselfe is alwayes present to minister justice by his judges in those courts of justice, according to his kingly office to all his subjects, *secundum legem et consuetudinem Angliæ*.

(10) *Les coroners de pays ne soient pas intermis denquiere des felonies deins la vierge.*] This is understood of felonies of the death of man; for the enquiry of that felony belongs to the office of the coroner of the vierge, and so it is hereafter in this act explained, *Office del coroner appent a views et enquests de ceo faire.*

Hereby it appeareth, that by the common law the coroner of the county could not intermeddle within the vierge, but the coroner of the vierge, and that if he took an inditement of the death of man, it was not allowable in law; and so it is if the coroner of the kings house take an inditement of the death of man out of the vierge, it

it is void, and *coram non iudice*. And if an inditement of the death of a man being slaine out of the vierge, be taken before the coroner of the kings house, and the coroner of the county, and so entred of record, it is insufficient, because the coroner of the kings house joynd with him, who had no authority.

(11) *Ne les felonies mise in exigent, &c.*] And yet the felony was not dispunishable; for at this time it might after the remove of the king be inquired of in the kings bench, if the bench fate in that county, or before justices of oire and terminer, &c. or if the coroner of the vierge had taken an inditement, though the king went out of the vierge, yet the inditement ought to be removed into the kings bench; for that is the center whereunto all records of that nature doe fall, and there the offence might be heard and determined.

But this act was made for more speedy proceeding, for being removed into the kings bench, there ought to be 15 dayes, &c.

Lib. 9. fol. 118,
119. Seignior
Zancners case.

And if a murder had been committed within the vierge, and the king had removed before any inditement taken by the coroner of the vierge, the coroner of the county might have inquired of the fame at the common law, *ne maleficia remanerent impunita*.

See the statute of Magna Charta, *Nullus vicecomes, constabular', coronator, vel alii balivi nostri teneant placita coronæ nostræ*. See the exposition of that statute concerning this branch for awarding of exigents, &c.

Magna Charta,
cap. 17.

Albeit the treaty of these matters concerning the marshalsea doe properly belong to the jurisdiction of courts, yet it is pertinent to this place to say so much as served for the exposition of this chapter.

See the said case of the marshalsea thorowout, which indeed doth open the windowes of the greatest part of this act.

C A P. IV.

OUSTER ceo nul common plee ne soit deformed tenuis a leschequer, encounter la forme de la graund charter.

MOREOVER no common pleas shall be from henceforth holden in the exchequer, contrary to the form of the great charter.

(Dyer, 250. 9 H. 3. c. 11. Regist. 137.)

Here is intended the 11. chapter of Magna Charta, whereof this chapter (according to the title of *Articuli super chartas*) is an exposition; for where that chapter is, *communia placita non sequantur curiam nostram, sed teneantur in loco certo*, this chapter expoundeth the same, that from henceforth no common plea shall be holden in the exchequer against the forme of the great charter: for *curia nostra* in *Magna Charta* are taken collective, and include as well the exchequer as the kings bench.

2. This act maketh it without question; for admit that the court of the kings bench had been named in that chapter of *Magna Charta*, and this act prohibiteth that no common plea should be holden in the exchequer against the forme of *Magna Charta*, that

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is, against the forme that *Magna Charta* provideth for the kings bench: and this is also confirmed by a statute made in the reigne of E. 1. and transcribed to the exchequer under the great seale, in anno 10 E. 1. called the statute of Roteland, in these words: *Sed quia quedam placita, &c.*

Regist. fol. 187.
8 Eliz. Dyer,
fol. 250.

Pl. com. 208,
209.

Per Saunders.

Mirr. c. 4. de jurisdictione. Flet. li. 2. cap. 25, 26.
38 ass. p. 20.
40 ass. p. 35.
14 E. 3. scire fac. 122. 2 E. 3. 24, 25. Pl. com. 208. 320. Brit. fol. 2. 29. 33.
^a Regist. 187. b. Stat. de Roteland, ubi supra. 2 E. 3. 25. lib. rubeus 36.
9 E. 4. 33.
See the exposition of *Magna Charta*, cap. 11.

2 E. 3. 25.
20 E. 3. ley 52.
44 E. 3. 44.
2 H. 4. 7. 11.
8 H. 5. 6.
8 H. 6. 34.
32 H. 8. 24.
7 E. 4. 30.
11 H. 7. 29.
27 H. 8. 23.
Brit. fol. 2. Flet. ubi supra, Dier, 2 El. 174. 3 El. 201. 16 El. 328. Pl. com. 208.
a. b.

Now that this was a statute, the title or stile of the act is, *Statutum novum de scaccario, aliter dictum, statutum de Roteland.* In libro rubeo it is called *statutum de Roteland*, and there is a writ in the Register under the title of *brevia de statut', rex thesaurario, et baronibus salutem: cum secundum legem et consuetudinem regni nostri communia placita coram vobis ad scaccarium predictum placitari non debent, nisi placita illa nos vel aliquem ministrorum nostrorum ejusdem scaccarii specialiter tangunt, &c.* which writ reciteth the words of the statute of Rutland, and in the margent of the writ is quoted *statutum de Roteland*, so as without question this act was made by authority of parliament, so as without question whatsoever pleas were holden in the exchequer, in the raigne of H. 2. when Glauville wrote, yet now by two acts of parliament their jurisdiction is limited and settled: and therefore reject a late opinion contrary to such authority, and never read nor heard of before.

The exchequer is an ancient court of record for the kings affaires, touching his rights and revenues of his crowne, and for debts and duties, and other things due to the king in the right of his crowne. Britton treating of the jurisdiction of the exchequer, saith, *A oier et determiner tous les causes que touchent nous detts, et auxi a nous fees, et les incidents choses, &c.*

^a Yet in three cases the court of exchequer hath jurisdiction of common pleas between common persons in personall actions onely.

1. Where an officer or minister is one of the parties in any personall action, because that his absence in other courts may hinder the affaires of the king in his court of exchequer.

2. Any man that is a prisoner of this court, or an accountant that is entred into his account, or any other that ought to have the like priviledge of this court of exchequer, shall not bee sued in any personall action but in this court; and the reason is, because neither of these acts of parliament take away the priviledge of any court: for then, if the party priviledged were sued in any other court, he should not in respect of his priviledge of the exchequer answer there; and therefore lest the party should be without remedy, he may commence his action personall against him in the exchequer, for statutes must be so expounded, as there be no failer of justice.

3. He that is a farmer, or indebted to the king, for the kings more speedy satisfaction of his debt or duty, shall sue his debtor by a *quo minus* in the exchequer, and this appeareth by Britton, who treating of the jurisdiction of the exchequer, saith, *Et que il eyt power a comister de dett, que lun doit a nous detters per ou nous puissions plus tost approcher a nostre.*

Now concerning the old court and the new court of exchequer mentioned in 2 E. 3. and other matter concerning this court of exchequer, for that the same doe properly belong to the treaty concerning the jurisdiction of courts, we shall no further speake of it here, for that sufficient hath been said already for the understanding of this chapter.