

the said hunting, and of the said doers in that behalf (8): and if the same person * wilfully conceal the same huntings, or any person with him defective therein (9), that then the same concealment be against every such person so concealing felony, and the same felony to be enquired of and determined, as other felonies within this realm have used to be: and if he then confesse the truth, and all that he shall be examined of, and knoweth in that behalf (10), that then the said offences of huntings by him done, be against the king our soveraigne lord, but trespassse finable, by reason of the same confession, at the next generall sessions of the peace to be holden in the same county, by the kings justices of the same sessions, there to be fessed. And if any rescous, or disobediance be made to any person having authority to doe execution, or justice by any such warrant, by any person, the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobeyfance be felony (11), inquirable and determinable, as is aforesaid. And over this, it is enacted and stablished, that if any person or persons hereafter be convict of any such huntings with painted faces, visors, or otherwise disguised, to the intent they should not be known, or of unlawfull hunting in time of night, that then the same person or persons so convict, to have like punition, as he or they should have, if he or they were convict of felony (12).

* See the exposition of this word [conceal] hereafter in this chap.

[76]

Now let us peruse the words of this new and ill penned law.

(1) *By night, or with painted faces.*] That is to say, either by night, or in the day with painted faces, for that doth equall the case of the night, in respect the offenders cannot be known, or discerned, in regard of such disguisings. And albeit the body of the act speaketh only of painted faces, yet it extendeth to visors and other disguisings, for those words are in the preamble rehearsing the mischief, and the remedy must be appliable thereunto, and the last branch of this act doth make this point clear.

(2) *As information shall be made, &c. of any person to be suspect.*] Hereby it appeareth, that a bare information without shewing just cause of suspicion at the least, is not sufficient to ground a warrant according to this act, for the words be, [of any person to be suspected.] And this act is generall, and extends to all persons of what estate or degree soever, and as well to women, as to men: for the words be [if any person] and *generalia verba sunt generaliter intelligenda*. And it is necessary for him that taketh the information, to take it in writing, because it is the ground of his warrant.

(3) *Of any unlawfull huntings in any forest, park, or warren.*] This act doth not extend to any chase of the king, or of any other person, neither doth it extend to any forests, parks, or warrens in use or reputation, and which are not forests, parks, or warrens in law. See the 1. part of the Institutes, sect. 378. what a forest, a chase, and a park, &c. is.

21 E. 1. tit. Forests. Rast. 19.

(4) *To any of the kings counsell.*] This is understood of the kings privy counsell; and any one will serve, but he must be dwelling in the county where such offence is committed.

(5) Or

(5) *Or to any the justices of the kings peace, &c.]* And likewise any one justice of the peace will serve.

(6) *Warrant.]* This warrant ought to be in writing under the seal of him that maketh it.

(7) *Before the maker of the same warrant, or any other, &c.]* So as the officer may carry the party arrested before any privy counsellor, or justice of peace within that county, and to that effect must the warrant be made.

(8) *By his discretion have power to examine him or them so brought of the said hunting, and of the doers in that behalf.]* So as the examination must consist upon two parts. First, of the hunting by the party himself. Secondly, of other doers in that behalf.

(9) *And if the said person wilfully conceal the said hunting, or any person with him defective therein.]* This branch being in the disjunctive, if he conceal either his own offence, or of the other misdoers with him therein, the letter of this act is that it is felony, but by construction * upon the whole statute, it is no felony: and a hunting without killing of any game, is within the danger of this statute.

This act is to be taken strictly; for it is the first law that was made for the making of any hunting felony, against that excellent and equall branch of *carta de foresta. Nullus de cætero vitam vel membra pro venatione nostra, &c.* See the statutes of 21 E. 1. 1 E. 3. stat. 1. cap. 8. 7 R. 2. ca. 4. Westm. ca. 8. Regist. fol. 9. F. N. B. fo. 67. Vet. N. B. 41 45 E. 3. 7. 33 H. 8. Dier. 50.

The old statutes concerning the forests are called the good old laws, and customes, and commanded to be observed; and therefore this new act of H. 7. is too severe for beasts that be *fræ natura*, whereof there can be no felony by the common law, and that in case of the forests, parks, &c. of subjects, which never was before: and therefore the judges have made a favourable construction, as hereafter in this chapter you shall find.

(10) *And if he confess the truth, and all that he shall be examined of, and knoweth in that behalf.]* That is of his own guiltinesse, and of other misdoers with him, then this act makes it no felony, but trespassie finable, as it was before: but it must be a wilfull concealment; therefore if he knew not the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment must be wilfull. And seeing there is no time limited by this act, and the concealment ought to be wilfull, it were reason, that the information should be made in convenient time after the fact done.

(11) *And if a y rescous or disobediance be made to any person having authority to do execution of justice by any such warrant by any person, the which so should be arrested, so that execution of the same warrant be not had, that then the same rescous and disobediance be felony.]* Here it is to be observed that the hunting being as yet no felony, the rescous could not be felony, if this branch had not been. Herein two things are to be considered; first, that it extendeth not but to the rescous, or disobeyfance, that is committed by the party himself, that is to be arrested, and not to any other. Secondly, that if the party rescue himself, yet if he be pursued and taken, so as execution of the warrant be had, it is no felony, as it is manifest by the letter of this branch.

(12) *And*

D. Howard tempore H. 1. fo. 24. Vide Holl. 10 R. 1. 153. Vide Camden Brit. 210.

*[77]

Cart. de Forest. cap. 10.

Rot Parl. 9 H. 4. nu. 50.

(12) *And over this be it enacted, &c. That if any person or persons hereafter to be convicted of any such huntings with painted faces, visors, or otherwise disguised, &c. or of unlawfull hunting in the night, * that then the same person or persons so convicted, to have like punishment, as he or they should have, as if they were convicted of felony.*]

Gerrard the queens attorney general (who was a grave and reverend man) said openly in the kings bench, that it had been resolved by the justices upon this statute, that if a man in the night, or by day with painted face doe hunt, &c. and being examined according to the act and concealeth it, this is (upon the construction of the whole act) no felony; for the first clause concerning concealment, and this clause which now we handle, must be coupled or joyned by construction together, viz. if any person be convicted of such hunting with painted face, or of unlawfull hunting in the night, this conviction must be upon not guilty pleaded, which the justices expounded to be the * concealment intended in the first branch, for they held that it ought to be a judiciall concealment, and not an extrajudiciall concealment, before one of the privy councell, or a justice of peace which may lie in averment, so as before it be felony, he must be convicted of such hunting, &c. upon not guilty pleaded first: and after such conviction then must he be indicted again, *super tota materia*, that he *felonicè* did conceal, &c. against the form of the statute: and if the offender upon the first indictment confesseth the indictment, then it is such a judiciall confession as this act intendeth, and no felony within this statute. And this we heard the attorney report, and then observed it, which concurring with our own opinion we thought good to publish, and the rather for that in master Lambards book of Justice of Peace amongst his precedents of indictments an erroneous precedent of an indictment is of felony for the concealment, &c. upon examination before justices of peace.

It is said in 33 H. 8. that chafing in parks is made felony, (intending this statute) notwithstanding it may be made trespassse at the pleasure of the party, which we think is the clearest way.

Now what time shall be adjudged night, see before in the chapter of Burglary. For this felony the delinquent may have his clergy: see Stanford, 37. b.

* Nota [that the] &c. So as before such conviction there is no felony.

Mic 19 & 20 Et. In the kings bench a report of the resolution of the justices upon this Statute.

* Concealment expounded.

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Dier, 33 H. 8. fol. 50. a.

C A P. XXII.

Of Felony for imbefiling the Kings Armour, Ordnance, &c. or Victuall, to the Value of Twenty Shillings, provided for Souldiers.

31 El. cap. 4.

BE it enacted by the authority of this present parliament, that if any person, or persons, having at any time hereafter the charge or custody of any armour, ordnance (1), munition, shot, powder or habillements of war (2) of the queens majesties, her heirs, or successors, or of any victualls provided for the victualling of any souldiers, gunners, mariners, or pioners, shall for any lucre, or gain, or wittingly, advisedly, and of purpose to hinder or impeach her majesties service, imbesill, purloin, or convey away any the same armour, ordnance, munition, shot, or powder, habillements of war, or * victualls, to the value of twenty shillings, at one or severall times: that then every such offence shall be judged felony, and the offender and offenders therein to be tried, proceeded on, and suffer as in case of felony. Provided always, and be it enacted by the authority aforesaid, that none shall be impeached for any offence against this statute, unlesse the same impeachment be prosecuted or begun within the year next after the offence done. And that this act, nor any thing therein contained, nor any attainder nor attainders of any person or persons for any offence made felony by this act, shall in any wise extend, or be adjudged, interpreted, or expounded to make the offender or offenders to forfeit, or lose any lands, tenements, or hereditaments any longer, then during his or their life or lives, or to make any corruption of blood to any the heir or heirs, of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower, or title of dower of or in any lands tenements, or hereditaments, or her action or interest to the same: any thing in this act contained, or any attainder or attainders hereafter to be had for any offence made felony by this act to the contrary notwithstanding. And that such person and persons, as shall be impeached for any offence made felony by this statute, shall by vertue of this act be received, and admitted to make any lawfull prooffe that he can, by lawfull witnesse or otherwise, for his discharge and defence in that behalfe, any law to the contrary notwithstanding.

* Nota for victualls.

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This is a necessary law, and so penned, as it requireth no curious exposition.

(1) *Ordnance.*] That is guns or artillerie so called, of an order,
or

or ordinance anciently made, of what bore, size, or bulk the same should be. And albeit the ordinance (that we can finde) is not extant, yet the name remaineth.

(2) *Habillements of warre.*] *Habillement* is properly apparell or clothing: but in legall understanding it doth not only extend to harnesse and armour, but to all utensils that belong to war, without which men have not ability to maintain war.

This act making a new felony, hath five excellent provisions, worthy to be imitated in all like cases of new felonies. First, that none shall be impeached for this new felony, but within a year after the offence done. Secondly, that the offender should not lose his lands any longer than during his life. Thirdly, this act makes not any corruption of blood, but that his heire shall inherit. Fourthly, not to make the wife lose her dower. Fifthly, that such persons as shall be impeached for any offence made felony by this act, shall be admitted to make any lawfull prooffe ^a by witnesse, or otherwise for his discharge and defence in that behalfe.

In the statute of 4 *Jacobi regis*, there is also a good president, viz. [All which trials (viz. in cases of felony in that act before mentioned) ^b first for the better discovery of the truth, and secondly, for the better information of the consciences of the jurie and justices, there shall be allowed to the party so arraigned the benefit of such witnesses only to be examined upon oath, that can be produced, for his better clearing and justification]: that as witnesses are produced and sworne against him, so he may have witnesses produced and sworne for him, for *jurato creditur in judicio*. And to say the truth, we never read in any act of parliament, ancient author, book case, or record, that in criminall cases the party accused should not have witnesses sworne for him; and therefore there is not so much as *scintilla juris* against it. And I well remember when the lord treasurer Burleigh told qucen Elizabeth, Madame, here is your attorney generall (I being sent for) *qui pro domina regina sequitur*, she said she would have the forme of the records altered; for it should be *attornatus generalis qui pro domina veritate sequitur*. And when the fault is denied, truth cannot appear without witnesses.

Hobelarius (id est, a light-horseman) clectus in Scotiam recepit armaturas et denarios, ibidem serviturus, postea non proficiscitur per mandatum regis, et recusavit reddere armaturas, et denarios, &c. per juratores est culp. et committitur mareschallo, et finivit regi 10 li. et invenit securitatem ad armaturas redeliberandas, &c.

Bonum est scire et sequi.

Vid. hereafter, cap. of felony for any having a plague sore a more speciall provision.

^a Nota.

4 Jac. regis cap. 1.

^b Nota, two excellent means for advancement of justice.

Hil. 16 E. 3. coram rege. Rot. 129. Norff.

C A P. XXIII.

Of Felonie in such as passe the Sea to serve Forain Princes, &c. or do serve Forain Princes, &c. without taking the Oath of Obedience.

3 Jac. cap. 4.

EVERY subject of this realm (1) that shall goe or passe out of this realm to serve (2) any foraign prince (3), state (4), or potentate (5), or shall passe over the seas, and there shall voluntarily serve (6) any such foraine prince, state, or potentate, not having before his or their going or passing, as aforesaid, taken the oath of obedience (7) (prescribed by that act) before the customer and controller of the port, haven, or creek, or one of them, or their or either of their deputy or deputies, shall be a felon.

See 33 H. 8. c. 7. Simile.

Some have objected, that the going or passing out of this realm, to serve, &c. cannot be tried; for that offences done out of the realme, cannot without a speciall provision be tried within the realme. And it is a sure rule, that in criminall causes concerning life or member, *ubi deliquit, ibi punietur*: the offence is locall, and cannot be tried, but where it is committed, nor cannot be alleaged to be in any other place then where in truth it was done. To this it is answered, that by a latter clause in this act, this felony shall be tried in the town wherein the haven or port is, wherein he went or passed over; which clause is, And be it further enacted, that all and every offence to be committed or done against this present act, shall and may be inquired of, heard, and determined before the justices of the kings bench, justices of assize and gaole-delivery in their severall assises; and all offences, other than treason, shall be inquired of, heard, and determined before the justices of peace in their quarter sessions, to be holden within the shire, division, limit, or liberty, where such offence shall happen. So as by the purvien and meaning of the makers of this act, this felony must be tried in the county where he went or passed over, and consequently in that town where part of the act was done. And these words [and wherein such offence shall be committed] must be construed in this case, where part of the offence is committed. For *sic interpretandum est, ut verba accipiantur cum effectu*: and by the expresse words, all and every offence to be committed or done against this present act must be inquired of, heard, and determined, &c. And therefore the felony cannot passe away with impunity, and that which is done out of the realme shall be proved to the jury in evidence. Note where a forain treason by this act is made, it is enacted to be tryed where the offender is taken.

(1) Every

(1) *Every subject of this realme.*] This branch extends to all persons of what estate, degree, or profession soever.

(2) *To serve.*] Albeit the party did not serve, yet if the offender went or passed over to serve without taking the oath, he is in danger of this statute. And this extendeth to any kind of service, either in campe or army, or in house or otherwise.

(3) *Any foraine prince.*] [*Princeps*] Prince is here taken for the person that is *primus*, i. e. *Qui primum locum, et gradum obtinet*, whether he be king, or any other that hath soveraigne authority, by what name or title soever. The word hath other significations, but not pertinent to the exposition of this act. Prince.

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(4) *State.*] The former word [prince] includeth any, that is a monarch, or in nature of a monarch, or an absolute prince. This word [state] extends to any state, either aristocraticall, where few be in authority, or democraticall, where the people have the chiefe government without any superiour, saving such as they elect and choose. State.

(5) *Potentate.*] This is a large word, and extendeth to potentates, as well ecclesiasticall as temporall. Potentate.

(6) *Or shall passe, &c. and there shall voluntarily serve.*] Although he went not over of purpose to serve, but upon some other occasion: yet if he after voluntarily serve any such foraine prince, state, or potentate, and have not taken the oath, he is a felon.

(7) *The oath of obedience.*] This is particularly set downe in the said act.

And that if any * gentleman or person of higher degree, or any person or persons, which have borne, or shall beare any office or place of captaine, lieutenant, or any other place, charge, or office in campe, army, or company of souldiers, or conductor of souldiers, shall after goe or passe voluntarily out of this realme to serve any such foraine prince, state, or potentate, or shall voluntarily serve any such prince, state, or potentate, before he and they shall become bound by obligation with two such sureties, as shall be allowed by the officers, &c. shall be a felon.

* Vid. hereafter cap. 34. in fine. Second part of the Institutes. The statute of additions. 1 H. 5. cap. 5.

By this branch, if he be a gentleman, or of higher degree, or any such military man, as here is described; because he is able to do more harme, if he be so disposed, he must not only take the oath by the former branch, but he must become bound by this branch with two sureties, &c. The forme of the obligation is set downe in this act. The exposition of the former branch giveth light to the understanding of the residue of this clause.

There is a proviso, that no attainder of felony, made felony by this act, shall take away dower, nor make, or work, any corruption of blood, or disherison to the heire. The offenders in any of the said cases of felony may have the benefit of their clergie.

C A P. XXIV.

Of Felonie in Purveyors.

See in the fourth part of the Institutes, cap. Chan- cery. Articles against Cardinal Woolsey. Artic. 33, 35, 36.

^a Artic. sup. Cart. cap. 2. 18 E. 2. cap. ult. 5 E. 3. cap. 4.

^b 5 E. 3. cap. 2. 25 E. 3. cap. 1.

^c 25 E. 3. cap. 15.

^d 36 E. 3. cap. 2. Vid. Stanf. pl. cor. 37. b.

^e 27 H. 8. cap. 24.

^f Trin. 40. Eliz. coram rege. In a quo warrant. the lord Darcies case.

Ret Parl. anno 28 E. 3. nu. 34.

At a parliament holden 4 Jacobi r. 25.

SEE the statutes of Artic. super Cartas, anno 28 E. 1. cap. 2. 18 E. 2. ca. ult. 5 E. 3. cap. 2. 25 E. 3. cap. 1. & 15. 27 E. 3. cap. 1. 36 E. 3. cap. 2. And before in the second part of the Institutes, in the exposition of the statute of Artic. super Cartas, cap. 2. you shall finde in what case a purveyor may be charged with felony, which briefly may be reduced to these four heads. First, ^a if any that take upon him to be a purveyor, or his deputy or servant make purveyance of any thing above twelve pence without warrant. Secondly, ^b or make purveyance of any thing above twelve pence without testimony and apprisement of the constable, and four honest men, and without delivery of tales. Thirdly, ^c or take any sheep with their woolles between Easter and Midsummer, and carry them to his own house and sheer them. Fourthly, ^d or make any takings or buyings, or take any carriage in other manner then is contained in their commissions, they shall have punishment of life and member: and this act remains still in force without alteration. The offenders may have the benefit of their clergie.

^e By this statute it is enacted, that purveyors assigned by commission shall make purveyance of victuals, corne, and other things, as well within liberties and franchises, as without, any grant, allowance, or other thing to the contrary, or let thereof notwithstanding: but the purveyors shall observe the statutes for them provided in every behalfe, as by that act appeareth. ^f Upon this act it was holden, that if the discharge of purveyance were by letters patents, this act makes it of no force: but if the discharge were by statute, then the purveyor is bound to observe the statute, as by the statute of 14 E. 3. cap. 1. *pro clero*, ecclesiasticall persons are discharged by statute, which the purveyor is bound to observe. See the statutes of 25 E. 3. statut. 5. cap. 21. & 43 E. 3. cap. 3. in what manner and in what time the kings butler or his lieutenant shall take wines, &c.

See more of purveyors in the fourth part of the Institutes cap. of the Counting house or Green cloth.

See lib. 8. fo. 45, 46. in Evans case, a commission for taking up of boyes for the kings chappell, the generall words well expounded.

By an act of parliament not in print, it is enacted that no purveyor arrested for any misdemeanour shall have any privy seal, to cause such as arrested him to come before the counsell to answer to the king, but have his remedy by the common law.

Upon a grievous complaint made at the parliament holden in the fourth year of our late soveraign lord king James, by the commons of the realm concerning many grievances suffered by his subjects in the execution of a commission granted to certain persons for getting of salt-peter, his majesties answer (amongst other things)

was, that he had never an intention to make any application of his prerogative therein, further then might stand with the lawfull, and necessary use thereof. And further his majesty was pleased out of his gracious care, and goodnesse to revoke and annull all commissions, or grants made to any person or persons, for and concerning digging, and working of salt-peter, intending to consider of such a course afterwards, as the same might be made without any just cause of complaint, as by the said royall answer (amongst other things) more at large appeareth. In pursuance whereof, by the said kings commandment, Popham chief justice, and all the justices of England, and barons of the exchequer, were assembled at Serjeants-Inne in Fleetstreet, in December, in the said fourth year, to resolve and certifie. what prerogative the king had for digging, and taking of salt-peter in the houses, buildings, or grounds of his subjects, that thereupon a new commission might be made accordingly, who upon often conferences, and mature consideration resolved as followeth.

First, where it was objected, that gunpowder was invented in Germany, within time of memory, in the reign of king E. 3. so as the king could not claim it by prescription: and that before the 31 year of the reign of queen Elizabeth. (which was the yeer after the Spanish invasion) we, as yet, find not any commission or licence granted by any king or queen of this realm to any for the digging or taking of salt-petre: and in the said 31 year of the said late queen, two commissions or licences were granted, the one particular, to George Constable esquire, to dig, open, and work during the space of eleven years for salt-peter within the counties of York, Nottingham, Lancaster, Northumberland, Cumberland, and the bishoprick of Durham, as well within our own lands, grounds, and possessions, as also within the lands, grounds, and possessions of any of our loving subjects within the counties aforefaid; and the consideration of the grant was, that he should deliver a great quantity of powder to be made by the said George Constable, and provided for the store of the queens majesty at a lower rate, then was paid for it before, with this further clause; [And further our will and pleasure is, that the said George Constable shall at his own proper costs and charges erect, make up, and lay all mud walls, stables, and grounds whatsoever so digged up;] whereupon it was inferred that no other buildings could be digged up by force of that commission, but only stables. The other commission was generall, made unto George Evelyn, Richard Hills, and John Evelyn, and extended throughout the realms of England and Ireland, and all other the dominions of the same, as well within our own proper lands, grounds, and possessions, as also within the lands, grounds, and possessions of any of our subjects, with the like clause of the erection and reparation, as is aforefaid, without naming of mansion houses by expresse words, and without any prohibition to the subject to dig for salt-peter in their own buildings or grounds.

Salt peter, *quasi*, salis petrae, colligitur aut ex materia quam veteres natri, rupes, et saxa exsudant, aut ex terra salifuginea et puta, quae in stabulis animalium urinam ad multos annos excepit, Latine *nitrum*.

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In the accounts, &c. from the 21 of April 18 E. 3 for one year following anno Domini 1344. under the title of artificers and workmen (inter alios.) Gunners 6. And of their wages and stipends per diem, it is said (amongst others) gunners six pence. *Latine bombardæ, tormenta, sclopi.*

Pasch. 49 E. 3. Coram rege rot. 27. Oxon. diversi malefactores venerunt ad manerium, &c. cum arcubus, sagittis, balteis et goons.

Vide Rot. Parl. 1 R. 2. nu. 38. William captain of the castle of Caitherick, being charged for delivering it to the enemy, in the reign of E. 3. without commission, answered (inter alia) that the enemies brought to battery thereof nine peeces des grosses cannons.

Hollingsh. fo. 453.

Walsing. 10 R. 2. 1366.

Pol. Virg. De invent' rerum. fo. 2. ca. 11.

Panceroillus Nova reperta. Tit. 18. pag. 679. anno Domini 1373.

John More, pag. 196. anno Domini. 1382.

Purveyance of
salt-peter.
See the 1. part
of the Institutes.
Magna Carta
cap. 21.

- As to the first, it was resolved by all, that forasmuch as the taking of salt-peter, was for the necessary defence, and safety of the realm that the king had a right of purveyance of it; and should not be driven to buy it in forain parts, which forain princes might restrain, and so this realm might want sufficient for the defence thereof, to the great perill, and hazard of the same: but the king was to take it, for the necessary defence of the realm, according to the limitations hereafter expressed; and it is no prejudice to the owners of the soyl, for the place that is digged must be made up again, and repaired in as good plight as it was beefore. Secondly, that this taking of salt-peter in the buildings or grounds of the subject, being a purveyance as is aforesaid, is an incident inseparable to the crown, and cannot be granted, demised, or transferred to any other, but ought to be taken only by the kings ministers, as other purveyances ought, and cannot be converted to any other use, then for the defence and safety of the realm, for which purpose only the law doth give to the king this prerogative; and it is not like to a mine of gold or silver in the ground of the subject, for there the king hath an interest in those metals, and not purveyance only. And if the powder which is so made by the kings ministers begin to decay, as it will doe within two or three years, then this either ought to be changed for other, or sold, and the money thereof comming to be employed for powder for the defence of the realm, and the kings ministers ought to make great provision of salt-peter, for that will last a long time, and when need is to make thereof gun-powder, which will be made before the navy can be put in readinesse, &c. Thirdly, the ministers of the king cannot in digging for salt-peter undermine, weaken, or impair any of the walls or foundations of any of the houses of the subject, be they mansion houses, or out-houses, as barns, stable-dove-houses, mills, or the like, neither can they dig the floor of any mansion-house, which serves for the habitation of man, because his mansion is the safest place of refuge, and safety of himself and his family, as well in sicknesse, as in health, and his defence, as well in the night, as in the day, against felons, and misdoers, neither can the kings ministers dig the floor of any barn of the subject employed for the safe keeping of corn, hay, &c. for the floor of a barn cannot be made dry, or serviceable again in a long time, but they may dig in the floors of stables, and oxehouses, so that they leave sufficient room there for the horses, and other beasts of the owner, and so that they repair the same again in convenient time, as well as it was before. They may also dig in the floors of cellars, and vaults, so that the wine, beer, or other necessary provision of the owner be not removed, or in any sort impaired: and they may dig any mud wals, which be not the wals of any mansion house, and in the ruines and decayes of any houses which be not preserved for the necessary habitation of man. Fourthly, they ought to make the places as well, and commodious for the owner, as they were before. Fifthly, they ought not to work in the possessions of the subject, but between the rising of the sun, and the going down of the same, so as the owner may make fast the doors of his house, and put it in defence against misdoers. Sixthly, they ought not to place or fix any furnace, vessell or other necessities in any house or building of the subject, without his consent, nor so neer any mansion as he by it may receive any prejudice or disquiet. Seventhly,

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venthly, they ought not to continue in one place above a convenient time, nor return thither but after a long time. Lastly, that the owner of the soyle cannot be restrained from digging, or taking of salt-peter, for the property thereof is in the owner of the soyl, and the king hath but the purveyance thereof, and that every man might work that would, and then there should be more plenty of powder, and at a cheaper rate. And these resolutions are agreeable with that maxime, * That the common law hath so admeasured the prerogatives of the king, that they should neither take away nor prejudice the inheritance of any. And these monopolies being *malum in se*, and against the common laws, are consequently against the prerogative of the king, for * the prerogative of the king is given to him by the common law, and is part of the laws of the realm. Which resolutions were delivered in writing by Popham chief justice unto the kings privy councill, as the unanimous resolution of all the judges, and barons of the exchequer, and were by his majesties privy councill well allowed of, and approved, as Popham chief justice reported. Upon these resolutions these consequents do follow. First, if a man of his own authority, or by colour of any commission, licence, or grant, doth take upon him to take any salt peter in the buildings, or grounds of any other subject to make thereof gunpowder, in any sort to his own use, albeit he covenanteth, or agreeth to serve the king of so many lasts of powder: yet seeing it is but a purveyance, he cannot sell any powder thereof made to any of the kings subjects, or make any private benefit thereof: and if he doe, he may be indicted of digging, and taking of the salt-peter at the kings suit, and be grievously fined and imprisoned, for that it is a grand trespass with an high hand. Secondly, the party grieved may have his action of trespassse, and recover damages for the trespassse, &c. according to the quality of the trespassse.

7.
8.

* Pl. Com. 236.

* Stanf. Pl. Cor. 162. a.
Stanf. Prer. 5. b.

^a Complaints made against purveyours in parliament.

^b By the statute of 9 R. 2. all statutes made concerning purveyours be confirmed, and to be put in execution, and that justices of peace have power to hear and determine their offences. See the fourth part of the Institutes, cap. 8. art. 33. 35. 36. against cardinall Woolsey.

^a Rot. Parl. 4 H. 4. nu 111. Eodem anno 81. 9 H. 4. 15.
^b Rot. Parl. anno 9 R. 2. nu 31. not in print

C A P. XXV.

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Of Felony in wandring Souldiers and Mariners.

1. **A**LL idle and wandring souldiers or mariners, or idle persons wandring as souldiers or mariners, shall be reputed felons, and suffer as in case of felony.

39 El. ca. 17.

So as not only he that is a souldier, or mariner in deed, but he that is an idle wanderer, and takes upon him to be a souldier

or mariner, though in troth he be none, is in danger of this law; for, as the preamble saith, they abuse the name of that honourable profession.

2. Every idle, and wandering souldier or mariner, which coming from his captain from the seas, or from beyond the seas, that shall not have a testimoniall under the hand of some one justice of peace of, or neer the place where he landed, setting down therein the time and place when, and where he landed, and the place of his dwelling and birth, unto which he is to passe, and a convenient time therein limited for his passage, is by this act adjudged a felon.

3. Or if he hath such a testimoniall, and shall exceed the time therein limited above fourteen days, he is by this act a felon, unlesse he fall sick by the way, so as after his recovery he setleth himself in some lawfull course of life, or resort to the place where he was born, or was last abiding: but in both these two cases he must be a souldier or mariner in deed.

4. If any such idle, and wandering souldier, or mariner, or other idle person wandering as souldier or mariner, shall forge or counterfeit such testimoniall, he is by this act a felon.

5. Or if he shall have with him or them any such testimoniall forged or counterfeit, knowing the same to be counterfeit or forged, he is also by this act a felon. And in both these last cases, as well he that is a souldier or mariner in deed, as he that is none, is in danger of this act.

And the offender against any of the articles of this statute shall not have the benefit of his clergie.

Justices of assise, justices of gaole delivery, and justices of peace, have power by this act to heare and determine the said felonies.

But if some honest person valued in the last subsitie to ten pounds in goods, or forty shillings in lands, or some honest freeholder, as by the said justices shall be allowed, will be contented before such justices to take him or them into his service for one whole yeare, and will become bound by recognizance, as the statute doth appoint, then they shall not proceed any further against him, unlesse such person retained depart within the year, without the licence of him, that so retained him; and then he is to be indicted, tried, and judged as a felon, and not to have the benefit of his clergie.

C A P. XXVI.

Of Felonie in Souldiers that depart from their Captaines without Licenſe.

THIS ſtatute is become of little force or uſe: for the ancient manner of retaining of ſouldiers whereunto that act referreth, is utterly altered: for then knights or gentlemen expert in war, and of great revenues and livelihood in their countrey, covenanted with the king to ſerve him in his war for ſuch a time with ſuch a number of men: and the ſouldiers made their covenant with their leaders or maſters, and then they were muſtered before the kings commiſſioners, and entered of record before them; and that was certified into the exchequer, and thereupon they took their wages of the king, as it appeareth by many preſidents of the exchequer, and may be gathered by the preamble and body of the act, and by the Register, where it appeareth, that a writ was framed upon that ſtatute directed to a ſerjeant at armes *ad capiend' conductos ad proficiend' in obſequium, &c.* And this was thought an excellent military policy, that the ſouldiers, (part whereof were of their own tenants) ſhould be choſen and led by knights and gentlemen of quality of their owne countrey, with whom they muſt fight in war, and live withall in peace, when they returned into their countrey, in reſpect whereof, the ſouldier would the more cheerfully and obediently follow his leader, and the leader would the more reſpectfully and lovingly uſe his ſouldier when he is abroad. See the ancient forme of commiſſions for arraying and muſtering of men in 5 H. 4.

By this act the benefit of clergie was not taken away from the delinquent.

The ſtatute of 2 E. 6. cap. 2. extendeth only when the ſouldier departs after that he hath ſerved the king in his war: and ſuch an offender ſhall not enjoy the benefit of his clergie.

If any ſouldier being no captain, immediately retained with the king, which ſhall be in wages and retained, or take any preſt to ſerve the king upon the ſea, or upon the land beyond the ſea, depart out of the kings ſervice without licence of his captain (1), that ſuch departing be taken, deemed, and adjudged felony. And that all the juſtices in every ſhire of England, where any ſuch offenders be taken (2), have power to enquire of the ſaid offences, and the ſame to hear, and determine, as they doe and may doe of felony, &c. expreſſed in the kings commiſſion to them made, as though the ſame offences were done in the ſame ſhire; and alſo that the departing of ſuch ſouldiers, and alſo their retainers, if it be traversed, be

H 4

tried

18 H. 6. cap. 19.
5 H. 6. cap. 5.
extended to
merchants and
gainers.

* By the ſtatute
of 5 R. 2. cap.
11.

See the writ in
the Register 191,
directed to the
ſerjeant at armes.
5 R. 2. cap. 10.
Rot. Parl. 5 H.
4. nu. 29. the
like to keeping
of cables and
lines.

Rot. Parl. 5 H.
4. nu. 24, 25.

2 E. 6. cap. 2.
renewed 4 R. 2.
Ph
c

7 H.
3 H. 6.

tried in the same shire, where they be for such a cause arrested, and arraigned.

Lib. 6. fo. 27.
Case de souldiers.
Dier 4 Eliz. 211.

Both these acts of 7 H. 7. and 3 H. 8. are perpetuall acts, for this word [king] includeth all his succession.

(1) *Without licence of his captain.*] The statute of 3 H. 8. is without licence of the kings lieutenant there.

(2) *That all the justices in every shire of England, where any such offenders be taken, &c.*] This act of 7 H. 7. extends to all the kings justices in every shire, viz. justices of assise, gaol delivery, oier and terminer, and of the peace. And if the offender be taken in the county where the kings bench set, he may be indicted, &c. there: but this clause in 3 H. 8. is restrained to justices of peace. This clause in both the said statutes is cumulative, and for more speedy proceeding with the offender. But admit the offender be never taken, yet may he be indicted of felony in the county where the departure was, and if he appear not, he may be outlawed, for by the first clause, the offence is made felony, and the second clause is affirmative, and not privative.

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See Stanf. Pl.
cor. fo. 163. c.

He or they so offending shall not enjoy the benefit of his clergy.

This branch in the act of 7 H. 7. is generall, but in the act of 3 H. 8. there is an exception out of the like branch, viz. of men being within orders of holy church. So as it differeth much, whether he be indicted upon the one statute, or the other.

But observe what punishment the ancient law of England inflicted upon the souldier that departed from the kings host, both before, and since the conquest. *Item qui fugiet à domino, vel fecerit suo pro timiditate belli, vel mortis, in conductione heretochii sui in expeditione navali, vel terrestri, perdat omne quod suum est, et suam ipsius vitam, et manus mittat dominus ad terram quam ei antea dederat.* For the exposition of *Heretochius* and *Herestite*, see the fourth part of the Institutes, cap. *Court de Chivalry*.

Lamb. Inter.
legis Edwardi
fo. 136
Hoven. Annal.
35. Poena Here-
stite.

Now concerning armour, arms, charges of souldiers, mustering of them, &c. See the statutes in print of Confirmat. Cart. 25 E. 1. Vet. Magna Cart. 2. parte, fol. 35. 1 E. 3. cap. 5. 18 E. 3. ca. 7. 25 E. 3. cap. 8. 4 H. 4. cap. 13. 11 H. 7. cap. 7. and 3 H. 8. ca. 5. and 4 & 5 Ph. & Mar. cap. 3. for appearing at musters, &c. But 4 & 5 Ph. and Mar. cap. 2. an act for having of horse, armour, and weapon is repealed by the statute of 1 Ja. ca. 25.

An act not in print, Rot. Parl. anno 5 H. 4. nu. 24, 25. for arraying and mustering of men, for watching of beacons, &c.

Records of parliament, 4 H. 4. nu. 48. 7 H. 4. nu. 124. 1 H. 5. nu. 17.

Book cases. 48 E. 3. 3, 4. 21 E. 4. 17. per Catesby. 9 E. 4. 26. lib. 7. fo. 7, 8.

See the second part of the Institutes, Confirmat. Cart. cap. 5. *u. i supra.*

Vide Pasch. 16 E. 2. Phelip Master del Hospit. de S. Katherins case, in libro meo, fo. 83. b.

C A P. XXVII.

Of Felony to marry a second Husband or Wife,
the former Husband or Wife living.

IF any person (1), or persons within his majesties dominions of England and Wales, being married (2), doe at any time after marry any (3) person or persons, the former husband or wife being alive, that then every such offence shall be felony, &c. 1. Ja. cap. 11.

This is the first act of parliament that was made against polygamy. *Polygamia est plurium simul virorum, uxorumve connubium.*

The difference between bigamy, or trigamy, &c and polygamy is, *quia bigamus seu trigamus, &c. est qui diversis temporibus, et successive duas, seu tres, &c. uxores habuit. Polygamus, qui duas vel plures simul duxit uxores.*

(1) *If any person.*] This law is generall, and extendeth to all persons, of what estate, or degree soever.

If the man be above the age of fourteen, which is his age of consent, and the woman above the age of twelve, which is her age of consent, though they be within the age of one and twenty, are within the danger of this law, which appeareth by this, that this act extendeth not to a former marriage made within the age of consent, as hereafter shall appear.

Being married, &c.] This extendeth to a marriage *de facto*, or voydable by reason of a precontract, or of consanguinity, or of affinity, or the like: for it is a marriage in judgement of law untill it be avoided, and therefore though neither marriage be *de jure*, yet they are within this statute.

(3) *Doe at any time marry.*] This second marriage is meerly void, and yet it maketh the offender a felon.

And the party and parties so offending, shall receive such and the like proceeding, triall and execution in such county, where such person or persons shall be apprehended, as if the offence had been committed in such county, where such person or persons shall be taken or apprehended.

See before the exposition of the statutes of 7 H. 7. and 3 H. 8. concerning departing of souldiers, &c.

Out of the generality of this law, there be five exceptions: First, it extendeth not to any person or persons, whose husband or wife be continually remaining beyond the seas, by the space of seven years together. By this branch notice is not materiall, in respect of the commorancy beyond sea.

Secondly, it extends not, when the husband or wife shall absent him or herself, the one from the other, by the space of seven years in any parts within his majesties dominions, the one of them not knowing

See the 1. part
of the Institutes.
sect. 104.

See 22 E. 4.
Consultation. 5.
The opinion of
the doctors.
Pains case lib. 9.
fo. 72.

knowing the other to be living within that time. Here notice is materiall, in respect the commorance is within the realm.

* Thirdly, nor to any person or persons, that at the time of such marriage be divorced by any sentence had in the ecclesiasticall court.

There be two kinds of divorces, the one that dissolveth the marriage *à vinculo matrimonii*; as for precontract, consanguinity, &c. and the other *à mensa et thoro*; as for adultery, because that divorce by reason of adultery, cannot dissolve the marriage *à vinculo matrimonii*, for that the offence is after the just and lawfull marriage. This branch in respect of the generality of the words, priviledge the offender from being a felon, as well in the case of the divorce *à mensa et thoro*, as where it is *à vinculo matrimonii*, and yet in the case of the divorce *à mensa et thoro*, the second marriage is void, living the former wife or husband. And if there be a divorce *à vinculo matrimonii*, and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce, the party marrying is no felon within this statute, in respect of the generality of this branch, although the marriage be not lawfull.

Fourthly, nor to any person or persons, where the former marriage is by sentence in the ecclesiasticall court declared to be void and of no effect.

Fifthly, nor to any person or persons, for or by reason of any former marriage made within age of consent: hereby it appeareth that the makers of the law intended that this act should extend to every person above the age of consent.

If the man be above fourteen, and the wife under twelve, or if the wife be above twelve, and the man under fourteen, yet may the husband or wife so above the age of consent, disagree to the dispowials, as well as the party that is under the age of consent; for the advantage of disagreement must be reciprocal. And so it was resolved by the judges and civilians, Trin. 42 Eliz. in the kings bench, in a writ of error between Babington and Warner. So as if either party be within age of consent, it is no former marriage within this act.

The offender against this statute may have the benefit of his clergy.

If he be a nobleman and lord of parliament, he shall be tried by his peers, albeit there be no provision speciall for it: for of common right, (that we may say it once for all) in case of treason, felony, and misprision of treason or of felony (as hath been said before) he is to be tried by his peers.

I find that by the ancient law of England, that if any Christian man did marry with a woman that was a Jew, or a Christian woman that married with a Jew, it was felony, and the party so offending should be burnt alive.

Contrahentes cum Judæis, Judæabus, pecorantes, et sodomitæ in terra vivi confodiantur, &c. Fleta lib. 1. ca. 35. §. *Contrahentes.*

Trin. 42 Eliz.
Coram rege.
Inter Babington
and Warner.

Marriage in
some sort felony
by the com-
mon law.

C A P. XXVIII.

Of Felony for any having a Plague sore upon him, contrary to Commandment goeth abroad, &c.

IF any person infected with the plague, commanded (by such persons as are appointed by the act) to keep house, shall contrary to such commandment wilfully and contemptuously goe abroad, and shall converse in company, having any infectious sore upon him uncured, such person shall be adjudged a felon. 1 Jac. ca. 31.

This is felony, albeit no other person by such means be infected, for this statute was made to prevent the most horrid and fearfull infection of the plague. The law was generall, and extended to all estates and degrees whatsoever, and was grounded upon the law of God: and the reason of the law of the realme is, that the infectious sick should be removed from the whole. The party offending might have had the benefit of his clergy. Levit. cap. 13.
Numb. cap. 5.
Regist. F. N. B.
234. Bre. de leproso amovendo
Braet. lib. 5.
f. 421. a.
Brit. fo. 39. 88.
Fleta, li. 6. ca.
39. 22 E. 3.
Rot. Claus. 2.
parte, nu. 14.

Here is a rare proviso, That no attainder of felony by vertue of this act, shall extend to any attainder, or corruption of blood, or forfeiture of goods, chattels, lands, tenements, or hereditaments.

In this proviso these things are to be observed: first, that by the avoyding of the corruption of blood, the wives dower is impliedly saved: for where the heir shall inherit, the wife shall be endowed against the heir. Secondly, that there shall be * no forfeiture of goods, or chattels, which is rare, and the like we have not observed before, and by consequent the offender may make his will and testament, and if he doe not, the ordinary ought to grant administration of the goods and chattels, as he ought to doe in other cases. * Nota.

These words [to any attainder or] must be omitted, and the sense to be, to any corruption of blood, for (as it is printed) it is, that no attainder of felony shall extend to any attainder, &c.

This act is become of no force for want of continuance, and is expired since we wrote this chapter, therefore to be put out of the charge of the justices of peace.

C A P. XXIX.

Of Felonie in Jaylers by Dures of Imprisonment, &c. by Statute, and by the Common Law.

12 E. 3. ca. 10.
Geol in French
is a prifon. Geo-
lier a keeper of
a prifon. An-
glice, a jayl, or
jayler.

* An approver.
3 E. 3. Cor. 295.

IF it happen that the keeper of the prifon, or underkeeper (1) by too great dures of imprisonment (2), and by pain make any prifoner that he hath in his ward to become an * appellor (3), againft his will (4), and thereof be attainted, he fhall have judgement of life and member (5).

Before the making of this ftatute, if a jayler had by dures of imprisonment made his prifoner become an approver, to appeal honest men for his own private, of intent to have of their goods, when they were committed to his custody, and to retain them in prifon without being let to mainprise, and the appellees upon his appeal be hanged: this is felony in the jayler by the common law: but if the appellees were acquitted, then it was no felony, but a great mifprifon in the jayler, which was one of the caufes of the making of this act: for by this act, if the prifoner become an approver againft his will, whether the appellees be acquitted, or attainted, or after the approvement not proceeded with, and whether the approvement be true or false, fo it be by dures of imprisonment, and againft the will of the prifoner, it is felony. * For it is not lawfull for any man to excite or ftir any other to a juft accusation, complaint or lawfull fuit, for *culpa est se immiscere rei ad se non pertinenti*; (and fo was ^a it resolved Mich. 7. Ja. in the star-chamber, in fir John Hollis his case, by the whole court) much more to doe it by dures of imprisonment, most of all by a jayler, who hath the custody of the prifoner committed to him, to enforce him by dures to become an approver. And therefore this law hath made it felony in the jayler or under-jayler.

(1) *Keeper of the prifon, or under-keeper.*] If he be keeper, or under-keeper, *de jure*, or *de facto*, by right or by wrong, he is within the purview of this ftatute.

(2) *By too great dures of imprisonment.*] Every imprisonment is taken and deemed in law *duritia, dures*: a little addition to it by the jayler is too great dures in this case.

(3) *To become an appello.*] That is an approver.

(4) *Against his will.*] That is, when the prifoner never would have done it of his own will, if the jayler, or under-jayler had not enforced him thereunto.

(5) *Judgement of life or member.*] * These words doe imply felony. For this offence, the offender fhall have the benefit of his clergy.

^b If the jayler keep the prifoner more straitly then he ought of right, whereof the prifoner dyeth, this is felony in the jayler by

15 E. 3. Cor.
272.

* 1 E. 3. ca. 14.
20 E. 3. cap. 5.
1 R. 2. ca. 4.
W. 1. cap. 36.
11 H. 4. 2. 91.
22 E. 3. 15.
See the expofition
of W. 1.
c. 28.

^a Mich. 7 Jacobi
in curia Stellat.
Sir John Hollis
case.

11 H. 4. 73.
fimile. 13 E. 3.
Bar. 253. fimile.

* W. 2. cap. 34.
28 E. 3. ca. 3.
13 R. 2. stat. 2.
cap. 3.

1 E. 2. De frang.
prifonam.

9 E. 4. fo. 26.
Br. Cor. 203.

^b Britton, fo. 18.
Ficta, lib. 1, c.
26. versus finem.
Mirror
cap. 1.

§. 9 De homi-
cidio.

the common law. And this is the cause, (as before hath been said) that if a prisoner die in prison, the coroner ought to sit upon him. See before cap. Petit Treason, fo. 34. how prisoners are to be demeaned.

How gaols are rejoyned and united to the office of sherifs, see this statute of 14 E. 3. ca. 10. 19 H. 7. ca. 10. lib. 4. fo. 34. Muttons case. Adde thereunto Rot. Parl. 18 E. 3. nu. 43. and so was it decreed in Fortescues case, in the exchequer chamber, *anno* 2. Car. regis.

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14 E. 3. ca. 10.
19 H. 7. c. 10.
Li. 4. fo. 34.
Muttons case.
Parl. 18 E. 3.
Fortescues case.

nu. 43. 2 Car. Regis in the exchequer chamber,

C A P. XXX.

Of Felony by bringing in, Payment, or Receipt of certaine Money.

IT is felony to make, coin, buy, or bring in, and put in payment, &c. any galley half pence, suskyn, or dotkyn.

3 H. 5. cap. 1.
Stat. 1. Raft.
Abb. tit. Money
nu. 27.

The reason of this law was, for that these moneys were base, and not of the allay of sterling, which was (amongst others) the cause of the making of the generall law of 9 H. 5. cap. 6. stat. 2.

9 H. 5. c. 6.
Stat. 2.

It is felony to pay, or receive for payment any money called blanks. For the better understanding of this statute, it is to be known, that these blanks were white money coyned by king H. 5. in France after his victory at Agincourt, and league with France, whose style then was, *rex Angliæ, regens et hæres Franciæ*. And they were called blanks or whites in respect of the colour, because at the same time he coyned also a salus in gold, the salus, being of the value of twenty two shillings, was of the allay of sterling: but the blanks, which were much more common, being each of them valued at eight pence, were not of the allay of sterling, and therefore they only were decried by the said act of 2 H. 6.

2 H. 6. ca. 9.

See the second part of the Institutes. Artic. super Cartas cap. 20.

For either of these offences of felony the offender may have his clergy.

C A P. XXXI.

Of Felony for Transportation of Silver, or Importation of false or evill Money, &c.

Mirror, c. 1. §. 3. Inter les articles de viels roys ordeins. Rot. Parl. 17 E. 3. nu. 15. not printed.

^a See Britton cap. 5. fo. 10. b. Cest allay est folonque le forme et usage del realm.

Mirror. ca. 1 §. 3. before the conquest.

& cap. 1. §. 6.

& cap. 5. §. 1.

See inter leges Æthelstani. c.

14. Canuti ca. 8.

Fleta, lib. 1. ca.

22. Glanv. li. 14.

c. 7. Of what

weight and allay

the kings money

shall be.

25 E. 3. ca. 13.

9 H. 5. ca. 11.

See before cap.

Treason. Verb.

Sa moye.

See the second

part of the In-

stitutes. Artic.

super cartas

cap. 20.

^b This is felony.

See the like in

the second part

of the Institutes.

1 E. 2. De fran-

gentibus priso-

nam. 14 E. 3.

10. &c.

^c The reward of

the searchers

if they be dili-

gent, &c.

DE F E N D U E fuit que nul argent serra transport hors del realm.

This was the ancient law of England long before the conquest.

At the parliament holden anno 17 E. 3. as well the transportation of silver, as the importation of false and evill money, is enacted by authority of that parliament to be felony. And also if the searchers mentioned in the act be assenting to the bringing in of false money, or willingly suffering silver or money to be transported, it is also made felony. But because this act was never printed nor translated into English, and for that there be other things observable, enacted thereby, worthy to be known, we will transcribe the same, *de verbo in verbum in proprio idiomate.*

* Le parlement tenu a Westm. a la quinzeme de Pasch. du raign nostre seignior le roy Edward tiers apres le conquest dys et septisme.

I T E M accorde est de faire une monoie des bones esterlings en Engleterre du pois et del ^a alay del auncient esterling, que avera son cours en Engleterre entre les grandz et la comune de la terre, et la quele ne serra portes hors du roialme d'engleterre en nulle manere, ne pur quecunque cause que ceo soit. Et en case que les Flemings voillent faire bone monoie d'argent grosses ou autres accordant en alay es bones esterlings, que tiel monoie eit cours en Engleterre entre marchand et marchand et autres qi la vodroient resceuire de leur bone gree, issint que nul argent soit portes hors du roialme.

Item est accordes et assentus, que bones gents et loiaux soient assignes es ports de miere, et ailours, ou miester serra, de faire la serche que nul argent soit portes hors du roialme en monoie n'autrement, forspris que les grandz quant ils vont per de la qils pensent aver vessels d'argent pur servir leur hostels: Et que nul soit cy hardy ^b de porter fausse et malvois monoie en roialme, sur paine de forfeiture de vie et de membre, et a faire eschanges a ceux qi passeront la miere d'or pur leur tones Esterlings a la value.

Item assentus est et accordes, que les dits sercheours, per cause qils feroient leur offices plus diliagement et plus loiaiment, ^c ils eient la tierce partie de tote la fauxe monoie, qils purred trouver

portee

portee deins le roialm a lour proffit demeen : et en mesme la manere eient la tierce partie de la bone monioie quele ilz troveront en la micre passent hors de la terre. Et en case qils soient troves negligents ou rebealx a tieux serches faire, ^d que lour terres et tenements, biens et chateux soient seises en la main le roy, et lour corps pris, et detenus tanque ils eient fait fine au roy pur lour disobaisance. Et en case quils soient ^e assentants de porter tiels fauxe monioie, et de sueffrire sachantement l'argent ou monioie autrement, (ferpris que les grandz quant ilz vont per dela qils pensent aver vsffials d'argent pur servir lour hostels come de suis est dit) estre mesnes hors du roialme, eient judgement de vie et de membre.

^d the punishment of them if they be negligent, &c.

^e Their assent to the bringing in of false money, or wittingly to suffer silver, or money, &c. to be transported, is felony.

Item, IT is accorded to make money of good sterling in England of the weight and allay of the ancient sterling, which shall be currant in England between the great men and commons of the land, and the which shall not be carried out of the realm of England in any manner, nor for any cause whatsoever. And in case, that the Flemings will make good money of silver grosse or other, according, in allay of good sterling, that such money shall be currant in England between merchant and merchant, and others, who of their own accord will receive the same, so that no silver be carried out of the realm.

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Item, It is accorded and assented, That good and lawfull men be assigned in the ports of the sea, and elsewhere, where need shall be, to make search, that no silver be carried out of the realm in money or otherwise, (except that the great men may when they goe out of the realm, have silver vessels to serve their houses) and that none be so hardy to bring false and ill money into the realm upon pain of forfeiture of life and member, and to make exchanges with them, that shall passe the sea, of gold for their good sterling to the value.

Item, It is assented and accorded, that the said searchers, because they may doe their offices more diligently and more lawfully, shall have the third part of all the false money that they can find to be brought into the realme for their own benefit; and in the same manner they shall have the third part of the good money which they shall find upon the sea passing out of the realm. And in case they shall be found negligent or disobedient in making such searches, that their lands and tenements, goods and chattels shall be seised into the kings hands, and their bodies taken and detained untill they have made fine to the king for their disobedience. And in case they shall be assenting to the bringing in of such false money, or wittingly shall suffer silver or money (except vessels of silver for the great men when they goe out of the kingdome to serve in their houses, as before is said) to be transported
out

out of the realme, they shall have judgement of life and member.

The offenders in case of felony made by this act may have the benefit of their clergy.

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C A P. XXXII.

Of Felonie for carrying of Wooll, Woolfels, Leather, or Leade out of the Realme.

27 E. 3. cap. 3.
the statute of the
Staple.

Mirror, cap. 1.
§ 3. Inter les
artic. per vieles
royes ordeins.
Defendu que nul
de amesnat
leyne hors del
realme.

Cap. 11.

NO merchant, English, Welch, or Irish, shall carry any manner of wools, leather, woolfels or lead, out of the said realme and lands, upon paine of forfeiture of life and member, nor shall transport any of the said wares or merchandizes in the name of merchant strangers, nor shall send or hold their servants, &c. in the parts beyond the sea to survey the sale of the said wares or merchandizes, or to receive the money coming of the sale of the same, nor take payment of gold or silver, nor of any other thing in recompence or commutation, or in the name of payment in the parts beyond the sea out of the realme and lands abovesaid of merchandizes sold in England, Ireland, or Wales, touching the staple, but that all such payment shall be made in gold or silver, or merchandizes in England, Ireland, or Wales, where the contract was made, upon paine of life and member.

That no merchant privie nor stranger, nor any other, of what condition that he be, go by land or by water towards wines, or other wares or merchandizes coming into our said realme or lands, in the sea, nor elsewhere to forestall or buy the same, or in other manner to give earnest upon them, before that they come to the staple, or to the port where they shall be discharged; nor enter into the ships for such cause, till the merchandizes be set to land to be sold, upon paine of losse of life and member.

Cap. 12.

No merchant privie, stranger, or other shall carry out of our realme of England, wools, leather, or woolfels to Barwick upon Twede, nor elsewhere, nor into Scotland upon the like paine, nor that any merchant, nor any other sell his wool, woolfels, or leather, to any of Scotland, nor to any other to carry into Scotland: upon the like paine.

Cap. 18.

If the merchants or other people of Ireland or Wales, after they be in the sea with their merchandizes, do passe to any place, other then to the staples in England: it is felony.

No

No merchant, or other shall make any conspiracie, confederacy, &c. or ill device in any point, that may turn to the impeachment, disturbance, defeating, or decay of the staples, &c. and if any do, and be thereof attainted before the major and ministers of the staple, or other whom the king shall assigne, he shall incurre the paine of losse of life and member. Cap. 25.

Item, *ou auterfoitz fuit orden en * lestatuts de lestaple que nul Englois passera la mere ove leynes, quire, pealtz lanuts, ne per auter, sur peine de forfeiture de vie et member, terres et tenements, biens et chateux: est accord que la forfeiture de vie et member soit ouste de tout en lestatute de lestaple, et que nul home soit impeach por tiel forfeiture de vie et member, cibien in temps passe come avenir, la forfeiture des terres et tenements, biens et chateux estear: en sa force.* The same in English. 38 E. 3. cap 6.
27 E. 3. ca. 3,
&c. stat. Stapulæ.

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Also, where heretofore it was ordained in the statutes of the staple, that no English man should passe the sea with wools, leather, woofels, nor by other, upon paine of forfeiture of life and member, lands and tenements, goods and chattels. It is accorded that the forfeiture of life and member be ousted in the whole in the statute of the staple, and that no man be impeached by such forfeiture of life and member, as well in times past, as to come, the forfeiture of the lands and tenements, goods and chatteis, being in his force.

By the expresse letter of the body of this law, the forfeiture of life and member is ousted *de tout* in the statute: therefore it is holden, that the felony is taken away throughout the statute, but the forfeiture of lands and goods remaineth by the expresse letter of this act.

By the statute of 18 H. 6. no man shall carry wool, or woofels, out of this realme to other places, then to the staple at Callice, without the kings license, upon paine of felony, &c. And that as well commissioners assigned, as the justices in every county where such wools and woofels shall be so carried out, have power and authority to enquire of the premises, and them to hear, and determine, &c. 18 H. 6. cap. 15.
Stat. Pl. Cor.
37. b.

But this act extendeth not to wools which shall passe the strait of Marroke. And this is a perpetuall law, and cannot be expired, as it is supposed in the last imprecation of the statutes at large, but it extendeth only to wools and woofels. The offender herein may have his clergie.

And for the better understanding of ancient statutes and records concerning wools, it is necessary to explaine certaine words and termes. By the statute of 25 E. 3. cap. 9. a sack of wool contains but twenty six stone, and every stone fourteen pound, where before it was ^a twenty eight stone. ^a Compos. de ponderibus vet. Mag. Carta, 2 part. fo. 31. Saccus lanæ. Rot. Parl. 27 E. 3. nu. 53.

Pochet of wool, *unde poshettum*, that is, a little poke or sack containing halfe a sack of wool. Sarpler, *unde sarpleia*, is also halfe a sack, and is derived from the French word *sarpillier*, which signifieth

nifieth a wrapper, within which wrapper halfe a sack is contained.

^b Composit. de ponderibus, ubi supra.

^b A weigh of wool, *unde waga*, is halfe a sack.

A tod or toit of wool, *unde toddum lanæ*, containeth two stone, and is derived from the French word *toilet*, which is a wrapper, within which by usage two stone of wooll is foulded: some fetch it from the Flemmish word *dodderem*, which signifieth *nectere*, to weave, because it is woven into cloth. *Petra lanæ* is a stone of wooll, so called, because the weight, being a stone, contains fourteen pound.

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C A P. XXXIII.

Against Transportation of Iron, Brasse, Copper, Latten, Bell-metall, Pan-metall, Gun-metall, or Shroofe-metall, (Tinne and Lead only excepted.)

28 E. 3. cap. 5.
33 H. 8. cap. 7.
2 E. 6. cap. 37.
See the penalties in the statutes themselves, which are thought to be too weak.
Ferrum a feriendo.
Timber is a Saxon word, in old French, *Marem*, *unde Maremium*, Latine, *ligni materia*, vel *lignum ædificatorium*.

* Terra fullo-nica.

TH E transportation of these are prohibited by divers acts of parliament upon the penalties therein expressed. And hereby is prohibited the transportation of any gunnes whatsoever, a necessary law, and worthy of due execution.

And we have observed, that God hath blessed this realme with things for the defence of the same, and maintenance of trade and traffick, that no other part of the Christian world hath the like: viz. Iron to make gunnes, &c. more serviceable and perdurable then any other. Secondly, timber for the making and repairing of our navie, and especially of the knees of the ships, better then any other. Thirdly, * our fullers earth is better for the falling of our cloth, then any other. Fourthly, our wooll makes better cloth, and more lasting and defensible against winde and weather, then the wooll in any nation out of the kings dominions; and many other speciall gifts of God.

But here will we stay, and pray, that none of these may be transported for many inconveniencies, that will follow thereupon.

C A P. XXXIV.

Of Felony for stealing of a Faulcon.

37 E. 3. cap. 19.

EV E R Y person (1) that findeth (2) any falcon (3), tercelet (4), lannner, or lanerret (5), or any other falcon, that is lost of his lords (6), that forthwith he shall bring it to the sherif of the county, and that the sherif make proclamation (7), &c. and if any steal any hawk (8), and the same carry

carry away not doing the ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse (9) or other thing.

The statute of 34 E. 3. inflicted the penalty for the concealing and taking away of the hawk, two years imprisonment, and the price of the hawk to the lord, if he hath wherewith, and if not, he shall the longer abide in prison. This act of 37 E. 3. maketh the offence felony.

The new printed book of the statutes at large, in stead of these words, (or any other falcon) hath, or any other hawk.

I have seen some manuscripts (in these words) in the original tongue, wherein the statute was published. *Que quecunque person qu' trove faucon, tercelet, lanier, ou lanyret, auster ou auter faucon.* And both these differ from the truth of this law. For the first extendeth this act to any hawk whatsoever. And the manuscript to *auster* or *auter*, a goshawk, whereas in truth, this law extendeth only to such as be of the kinde of faulcons, being long winged hawks, which many times by flying far off are lost, and not to any short-winged hawk, as the goshawk, the tercel of the goshawk, the sparhawk, &c. And in the body of the act this word (faulcon) is ever used, and not this word (hawk) as hereafter appeareth. We would have been glad to have cleared this point by the record of the parliament roll. but the roll of this act is not to be found, and yet being a generall law, the judges are to take notice thereof: and that which I have set down, as the words of the law, agreeth with the first impression thereof, and with all succeeding impressions saving the last.

(1) *Every person.*] This is a generall law, and extendeth to all persons of what degree or sex soever.

(2) *That findeth.*] Note by the common law the felonious taking of any hawk long-winged, or short-winged, from the peark, &c. or from the perion of any man, with a mind to steal her, is robbery: but the finding of a faulcon, though he concealed, denied, or sold her, was no felony, but by this act.

(3) *Any faulcon.*] By this and the last words, or any other faulcon, it appeareth that only faulcons are within this law, as besides those that are here named, the gerfaulcon, *gerfalco*, or *ardearius*, and the tercell, which is called a jerkin; and the lanner is called *falunculus*. But the merlyn, which is called *afalo*, and the hobby which is called *alaudaria*, though they be long-winged hawks, yet being not of the kind of faulcons they are not within this statute, neither is any short-winged hawk, as the goshawk, the tercell of the goshawk, or the sparhawk, &c. as has been said, within this act.

(4) *Tercelet.*] This is the tercell of the faulcon, called a tercell gentill, the male of the faulcon called *terciolus*, *quia tertia parte minor sit femella*, because the tercell is a third part lesse then the female.

(5) *Lanner and laneret.*] These (as hath been said) are of the kind of faulcons, which appeareth not only by the name *falunculus*, but by the words of the act, for having named the lanner and laneret, it is said, or any other faulcon.

Albeit these hawks, that shall be so lost, have no vervels, yet
I 2 must

34 E. 3. cap. 22

Printed for the society of stationers, 1618.

See hereafter, cap. Larceny, verb. Personall goods, &c.

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Lib. 8. fo. 27, 28. In casu principis.

must the finder carry them to the sheriff, for vervels are not required by this act. The only thing that the finder is to doe, to save himself from felony, is forthwith (the word in the original is *maintenant*) after his finding to carry the hawk to the sheriff.

(6) *That is lost of his lords.*] Lords are taken here for the owners, the word in the original is *seignior*, which signifieth as well a proprietary, as a lord.

10 E. 4. 1.
7 R. 2. barre
241. Lib. 5. fo.
108 Sir Hen.
Constables case.

(7) *To prove reasonably*] This is not intended according to the generall sense of this word (proof) that is, by a jury of twelve men, but (reasonably,) that is, by vervels, or by marks, or by other proof to the sheriff.

(8) *And if any steal any hawk, &c.*] The concealing and carrying away of the hawk, not bringing the same to the sheriff according to this ordinance, is adjudged a stealing by this act. And yet if a man finde goods, and conceal or deny them, it is no felony.

14 El. Dier, 307.
Fines case.
Lib. 7. fo. 17.
in case de Swans.

(9) *As if a thief that stealth a horse.*] But yet by the common law one hath not as good and absolute a property in hawks, being *ferre natura*, and reclaimed for delight and pleasure (for they may become wild again, and return to their naturall liberty) as in a horse, or any other thing of profit: but the concealing and carrying away of the hawk reclaimed, being found was no felony before this statute, no more then any thing of profit, because the person came to the hawk by finding. See more hereof in the chapter of larceny. A hawk that is not reclaimed is *nullius in bonis*, but *vacanti conceditur*, and he that first getteth the hawk enjoyeth it.

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* Who shall be accounted in law a gentleman; see the second part of the Institutes the statute of Additions. 1 H. 5. c. 5. See before c. 23. 3 Jac. ca. 4. verb. And that if any gent.

In this act four things are to be observed. First, that the sheriff must make proclamation in all the good towns of the county that he hath such a falcon in keeping. Secondly, if none come to challenge the falcon within four months, if the finder be under the degree of a gentleman (which here is called *in fine home*) the sheriff shall have the falcon, paying reasonable costs, &c. Thirdly, if the finder be a gentleman, and no challenge by the owner within four months, then he shall have the falcon, paying reasonable costs, &c. Fourthly, it is to be observed, that in these two latter branches, the last printed book hath this word (hawk) but in the original, and all the other printed books, the word (falcon) under which word, all the rest mentioned in this act are included.

For this offence of felony the offender shall have the benefit of his clergy, for at the time of the making of this act he that had slain a horse should have had his clergy. See Stanf. Pl. Coron. fo. 37.

C A P. XXXV.

Congregations, &c. by Masons in their generall Chapters, &c.

IT is ordained and established that no congregations and confederacies shall be made by masons in their generall chapters and assemblies, whereby the good course and effects of the statutes of labourers are violated and broken, in subversion of law; and if any be, they that cause such chapters and congregations to be assembled and holden, shall be adjudged felons.

3 H. 6. ca. 1.

The cause wherefore this offence was made felony, is, for that the good course and effect of the statutes of labourers were thereby violated and broken. Now all the statutes concerning labourers before this act, and whereunto this act doth refer are repealed by the statute of 5 Eliz. cap. 4. whereby the cause and end of the making of this act is taken away, and consequently this act is become of no force or effect: *cessante ratione legis, cessat ipsa lex*. And the indictment of felony upon this statute must contain, that those chapters and congregations were to the violating and breaking of the good course and effect of those statutes of labourers, which now cannot be so alledged, because those statutes be repealed. Therefore this would be put out of the charge of justices of peace written by * master Lambard.

2 E. 3 de servientibus, ca. 1. &c. 25 E. 3. De servientibus c. 1. &c. 5 El. ca. 4.

Cessante causa seu ratione legis cessat ipsa lex. 14 H. 7. 11. Per Fineux simile. 27 H. 8. 4. b. Aide simile 10 E. 3. 8. Account per Shard. 26 H. 6. Examination 14. * Lambard, page 227. vide Stanf. 37. b.

C A P. XXXVI.

[100]

Of Felony by bringing in of Buls of Excommunication, &c.

IF any man (1) bring or send into this realm, or the kings power, any summons, sentence, or excommunication (2) against any person of what condition that he be, for the cause of making motion, assent, or execution of the statute of provisors (3), he shall be taken, arrested, and put in prison, and forfeit all his lands and tenements, goods and chattels for ever, and incur the pain of life and member (4). And if any prelate make execution (5) of such summons, sentence, or excommunication, that his temporalties be taken, and abide in the kings hand till due redresse and correction be thereof made.

13 R. 2 Stat. 2. cap. 5.

And if any person of lesse estate then a prelate, &c. make such execution, he shall be taken, arrested, and put in prison, and have imprisonment, and make fine and ransome by the discretion of the kings councill.

By the common law when any person, either ecclesiasticall or temporall, should by pretext of forain power impugne or attempt to frustrate any of the laws of the realm, there lieth a writ called *ad jura regia*: if it were by an ecclesiasticall person benefited within this realm, then the writ is.

Regit. fo. 61. b.

Rex, &c. salutem. Turbamur, nec immerito, et movemur dum illos qui sub nostro degunt dominio, et ibidem beneficiis et redditibus honorantur, quo prætectu in defensione, et tuitione jurium regie coronæ nostræ ipsos nos assistere conluceret, eadem jura erectis contra nos cervicibus conspicimus satagentes pro viribus impugnare, &c.

Ibidem, 60. b.

Ibid. 61. b. & 62.

The general writ is, *Rex, &c. ad jura coronæ nostræ integra et illæsa pro viribus conservanda, eo amplius curam et operam adhibere nos convenit studiosam quòd ad hoc est debito astringimur vinculo juramenti, et alios conspicimus, ad ipsorum jurium enervationem anhelare*: and particularly against provisions. So as provisions, &c. were, as by these writs it appeareth, against the common law of the realm, but sufficient punishment was not thereby inflicted: therefore this, and other statutes were made.

And here it is worthy of consideration, how the laws of England are not derived from any forain law, either cannon, civil, or other, but a special law appropriated to this kingdome, and most accommodate and apt for the good government thereof, under which it hath wonderfully flourished, when this law hath been put in due execution: and therefore as by situation, so by law it is truly said,

*Et penitus toto * divisos orbe Britannos.*

* Di- { orbe &
visos { legibus.

(1) *If any man,*] Though these words be generall, yet they extend not to ecclesiasticall persons, because there is speciall provision for them after in the act.

(2) *Any summons, sentence, or excommunication,*] Hereby are prohibited the popes buls of any sentence or excommunication, &c. and proces of summons.

It appeareth by our Lookes that the bringing of any bull of excommunication into the realme against a subject, was against the common law of England, in respect it gave way to foraine authority. And so it was holden in the time of E. 1. and E. 3. &c. long before this act, and ever since.

(3) *Or execution of the said statute of provisors,*] viz. 25 E. 3. *de provisoribus.* See 25 E. 3. cap. 22. 27 E. 3. cap. 1. 38 E. 3. stat. 2. cap. 1 & 4.

(4) *Incur the paine of life and member,*] ^a That is, of felony as hath been often said before. This punishment is altered by the statute of 13 Eliz. cap. 2. as hereafter in this chapter shall appeare.

(5) *And if any prelate make execution, &c.*] This and the next following branch extend to ecclesiasticall persons. The punishment in both these branches, and in the former also is altered by the statute of 13 Eliz. cap. 2. For thereby this offence is made high treason,

[101]
11 E. 3. Cer-
tif. 6. 30 Aff.
p. 3. 29 E. 3.
Q are non ad-
mitt. 7. Br. &c.
Prem. ire 10
11 H. 4. 69. 70
14 H. 4. 14
7 E. 4. 14.
20 H. 6. 1.
35 H. 6. 42.
F. N. B. 4. f.
Lib. 5. fo. 12.
in Countries case.
^a W. 2. cap. 24.
1 E. 2. de fiang.
prisonam.
28 E. 3. cap. 3.
13 R. 2. stat. 2.
ca. 3. 9 E. 4. 26.
Br. Cor. 203.

son, ^b as well in persons ecclesiasticall, as temporall: which act, and the cause of the making thereof you may reade in the case *de jure regis ecclesiastico, ubi supra.*

^b Lib. 5. f. 35, 36, &c. De jure regis eccles.

C A P. XXXVII.

Of Felony in receiving a Jesuite, Seminary Priest, &c.

EVERY person which shall wittingly and willingly receive, relieve, comfort, or maintaine any jesuite, seminary priest, or other priest, deacon, or religious, or ecclesiasticall person (made by authority from the see of Rome since the feast of Saint John Baptist, an. 1 Eliz. borne within this realme) being at liberty and out of hold, knowing him to be a jesuite, &c. shall for such offence be adjudged a felon without benefit of clergie.

27 Eliz. cap. 2.

Clergie taken away.

The cause of the making of this statute of 27 Eliz. against jesuites and seminary priests, &c. and their receivers, you may reade at large, lib. 5. fol. 38, 39, in the case *De jure regis ecclesiastico.*

C A P. XXXVIII.

[102]

Of Felony in Recufants concerning Abjuration.

IF any recusant) other then a Popish recusant or a feme covert) which by the tenor and intent of this act is to be abjured, shall refuse to make abjuration, or after such abjuration made shall not goe to such haven, and within such time, as is by this act appointed, and from thence depart out of the realme, according to this present act, or after his departure shall returne into any of her majesties realmes or dominions, without her majesties special license in that behalfe first obtained; that then every such person so offending, shall be adjudged a felon.

35 Eliz. cap. 1.

If any offender against this act before he or they be required to make abjuration, repaire to some parish church, on some Sunday or festivall day, and then and there heare divine service, and make such submission as by the act is prescribed: then the said offender is cleerly to be discharged.

The offender shall forfeit his goods and chattels, and his lands during his life only, the offence shall work no losse of dower or corruption of blood, and the heire to inherit. The offender shall not have the benefit of his clergie.

C A P. XXXIX.

Of Felonie in Egyptians, &c.

1 & 2 Ph. and
Mar. cap. 4.
5 Eliz. cap. 20.

IF any outlandish people, calling themselves, or being called Egyptians, shall remaine in this realme, or in Wales, one moneth, at one or severall times: and if any person being fourteene yeares old, which hath been seen or found in the fellowship of such Egyptians, or which hath disguised him or herselfe like to them, shall remaine here or in Wales by the space of one moneth, either at one or severall times, it is felony.

The offender shall not have the benefit of his clergie.

[103]

C A P. XL.

Of Felonie in dangerous Rogues.

39 Eliz. cap. 4.
1 Jac. cap. 7. 25.

IF any dangerous rogue that was banished the realme or adjudged perpetually to the gallies, have returned into the realme without lawfull license or warrant, it is felony: the felony to be tried where the offender is apprehended.

The offender may have the benefit of his clergie.

39 Eliz. cap. 4.
1 Jac. cap. 7.

If any rogue after he hath been branded in open sessions with a Roman R. upon the left shoulder, or sent to the place of his dwelling where he last dwelt by the space of a yeare, or the place of his birth, to be placed in labour, have offended againe in begging, or wandering contrary to the said statutes, it is felony, to be tried in the county where the offender shall be taken.

The offender against this branch shall not have the benefit of his clergie.

Deut. ca. 15. v.
4. Mirr. cap. 1.
§ 3. Inter les Art.
per viels royes
ordeins.

*Mendicus non erit inter vos, there shall be no begger among you.
Ordeins fuit que les poovres fuissent susteinus per les parsons, rectors,
et les parochians cy que nul ne morust per default de susteinance.*

See

See an ancient ordinance in 50 E. 3. concerning ribauds and sturdy beggars, that they be driven to their occupations or services, or to the place from whence they came.

Rot. Par. 50 E.
3. nu. 61.
Brit. 49. b.

C A P. XLI.

Of Felonie by Forgerie in the second Degree.

IF any person or persons being once condemned of any of the forgeries mentioned in the act, shall after such his, or their condemnation, eft-soones commit or perpetrate any of the said offences in forme in the said act mentioned, that then every such second offence shall be adjudged felony. But no attainder of this felony shall extend to take away dower, nor to corruption of blood, or disherison of the heire.

5 Eliz. cap. 14.

In 43 Eliz. Markham was attainted of felony upon this branch in the kings bench for a second forgery of many of the manners and lands late of Sir Thomas Gresham knight, and was executed therefore.

Markhams case
coram rege.
43 Eliz.

• This felony is to be heard and determined before justices of oier and terminer, and justices of assise in their circuit. And albeit that justices of peace have power to heare and determine felonies, trespassse, &c. yet are they not included under the name of justices of oier and terminer: for justices of oier and terminer are known by one distinct name, and justices of peace by another. But the justices of the kings bench are justices of oier and terminer within this statute.

Hil. 30 Eliz. co-
ram rege.
Lib. 9. fo. 118. b.
Smiths case.
3 Mar. Br. tit.
Oier & Term. 8.

The offender shall not have the benefit of his clergie.

See hereafter in the exposition of this statute for the first offence, where incidently there shall be more said concerning the second offence.

C A P. XLII.

[104]

Of Felony for conveying of any Sheep alive out of the Realm in a second Degree.

NO manner of person shall bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received into any ship, or bottome any rams, sheep, or lambs, or any other sheep alive, to be carried and conveyed out of this realm of England, Wales, or Ireland, or out of any of the queens dominions, upon pain that every such person, their aiders, abettors, procurers, and comforters, shall for his

8 El. cap. 3.
See the statute
of 3 H. 6. cap. 2.

His left hand
cut off.

his and their first offence, forfeit all his goods, and suffer imprisonment one whole year without bayl or mainprife; and at the years end in some market town in the fulnesse of the market, have his left hand cut off, &c. And that every person est-soons offending against this statute shall be adjudged a felon, &c.

But this act shall not extend to any corruption of blood, or losse of dower. This felony is to be heard and determined before justices of oier and terminer, justices of gaol-delivery, and justices of peace. And the offender may have the benefit of his clergy, as well in case of the cutting off his hand as in case of felony. See Stanford, 37. b.

C A P. XLIII.

Of Felony in Servants that imbefill their Masters Goods after their Decease.

33 H. 6. cap. 1.

^a This extends to the lord keeper of the great seal.

^b This extends to the administrators, and also, if there be but one executor or administrator.

^c Attainted by force of this act of parliament upon default.

See the like many times in the parliament rolls. Rot. Parl. 15 H. 6. nu. 14. & 15. Rot. Parl. 18 H. 6. num. 28.

IF any of the household servants of any person shall after the decease of their lord or master violently and riotously take and spoil the goods which were their said lords or masters, and the same distribute amongst them, that upon full information ^a to the chancelour of England for the time being by the ^b executors or two of them, of such riot, taking, or spoil made, the chancelour by the advice of the chief justices, and chief baron, or two of them, shall have power to make so many and such writs to be directed to such sheriffs, as to them shall seem necessary, to make open proclamation in such sort, as by the act is prescribed, to appear in the kings bench, &c. and if any such writ be returned, &c. then if the said person or persons make default, then he or they making default shall be ^c attainted of felony.

The offenders shall have the benefit of their clergy.

C A P. XLIV.

Of Felony in Servants that imbefill their Masters Goods committed to their Trust above Forty Shillings.

EVERY servant to whom any caskets, jewels, money, goods, or cattels of his or their master, or mistress, shall be delivered to keep, that if any such servant or servants withdraw him or them from their said masters or mistresses (1), and goe away with the said caskets, jewels, money, goods, or cattels, or any part thereof to the intent to steal the same, contrary to the trust and confidence in him or them put, &c. Or else being in service of his said master or mistress, without the assent and commandment of his master or mistress, imbefill the same or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it: if the caskets, jewels, money, goods or cattels be of the value of forty shillings or above, shall be deemed and adjudged felony.

21 H. 8. ca. 7.
27 H. 8. ca. 17.
28 H. 8. ca. 2.
1 E. 6. ca. 12.
5 El. ca. 10.

Concerning the value, (to speak it once for all) *tantum bona valent, quantum vendi possunt.*

This act extendeth not to any apprentice or apprentices, nor to any servant within the age of eighteen years, at the time of the offence committed.

Vide Dier, 25 H. 8. fol. 5.

By the statute of 27 H. 8. the offender was ousted of his clergy, but that act is repealed by 1 E. 6. cap. 12. So as at this day the offender may have the benefit of his clergy.

Dier, 25 H. 8.
f. 5.
1 E. 6. ca. 12.

(1) *Shall be delivered by his or their master or mistress.*] If the master deliver an obligation to his servant to receive the money thereby due, and the servant receive the money of the obligee, and goeth away with the same with intent to steal the same, this is no offence within this statute, because he had not the money of the delivery of his master: and if he had gone with the obligation with intent, *ut supra*, it had been also out of this act, because it was a chose in action. So if the master deliver to his servant wares or merchandises to sell, and selleth the same and goeth away with the money as before, this is no offence within this statute for the cause aforesaid. See Stanford, 37. b.

Dier, 26 H. 8.
fo. 5. a. & b.
See the form of
the indictment
upon this stat.
Lamb. inter Præ-
sidentes.

C A P. XLV.

Of Felony to cut down or break up the Powdike in Marshland in Norff.

22 H. S. ca. 11.
2 & 3 Ph. and
Mar. cap. 19.

EVERY perverse and malicious cutting down and breaking up of any part of the new dike called the Powdike in Marshland in the county of Norff. or of the broken dike called Oldfield Dike by Marshland in the Isle of Ely in the county of Cambridge, or of any other bank being parcell of the Rinde, and uttermost part of the said country is adjudged felony.

The justices of peace have power to enquire of, and to hear and determine this felony. The offender may have the benefit of his clergy.

Some say that this is a private act, but it is *publicum in privato*, for the danger is publike though the place be private, and doth concern multitudes of people, and the sea is such an immense creature, as who can withstand it without length of time, infinite damage, and losse, and extream charge and cost.

43 El. cap. 13.
* See before
cap. 12. to. 61,
62. 3 H. 7. cap.
2. Vide 1 H. 5.
c. 6. simile de
Gales.
* Blackmail is
explained by the
act it self.

See the statute of 43 El. cap. 13. whereby in the counties of Cumberland, Northumberland, Westmerland and the B. of Durresme * carrying away or detaining of any person against his will, or imprisoning him or them to ransome them or to spoil them, upon deadly feud or otherwise, or shall receive or carry * blackmail, or give black mail for protection, &c. is made felony without benefit of clergy.

C A P. XLVI.

Of one of the Grand Enquest being one of the Indictors of any Person or Persons of Treason or Felony, and discover openly what Persons were so indicted, &c.

THIS by some opinion in our books was holden for treason, or felony, and hereof divers reasons were yeilded.

Stanf. fo. 36. a.

First, that such discovery was against his oath, but that could not be the reason, for perjury was neither treason nor felony.

Secondly, others did hold, that by this discovery the parties indicted of treason or felony might flee, or escape, but that can be no reason;

reason; for this discovery without more, can neither make him principall nor accessory.

Thirdly, others that endeavour to confesse and avoid the authorities in this case in law, are of opinion, that in those times the intent of a man, *in criminalibus*, was much respected, in as much as *in criminalibus voluntas reputabatur profacto*, and that by this open discovery, &c. his intent appeared, that they might flee or escape. And now it is agreed on all parts, that at this day such discovery is neither treason nor felony: and the rather, for that no person ever died for such discovery. In Georges case, in *anno 27 lib. Ass.* upon his indictment he was acquitted. But certaine it is, that such discovery is accompanied with perjury, and a great misprision to be punished by fine and imprisonment.

18 E. 3. Cor.
272. 27 Ass.
p. 63. Georges
case.

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C A P. XLVII.

Of Larceny or Theft by the Common Law.

HAVING thus far proceeded, we are now come to larceny, which commeth from *latrocinium*, and from *latrocinie*, by contraction, or rather abuse, to larceny.

The Mirror first describeth larceny, and then explaineth it. *Larcenie est prise d'autre meuble corporelle trecherousment contre la volunt de celuy a q. il est p. male egoigne de la possession, ou del use.* Then doth he explaine and shew the reason of the principall words thereof.

Mirror, cap. 1.
§ 10 De Larcenie.

Prise est dit, car baile nest my tittle de larcoun, n livery en le case.

Meuble corporelle est dit pur ceo q. en biens nient meubles, ou nient corporels, sicomme de tre, vents, et des advowsons de churches, ne se fait nul larcenie.

Trecherousment est dit pur ceo q. s' l'ignorance entende les biens estre siens, et que il les poet bien prendre, en tiel case ne se fait my ceste peche, nec en case ou len prent l'auctrui p. la ou len entend, que il pleist al seigniour des biens, que il les prendera, mes a ceo covient enseigner apparant presumption et evidence.

Et sciendum, quod furtum est, secundum leges, contraetatio rei alienae fraudulenta, cum animo furandi, invito illo domino, cujus res illa fuerat.

Bracton, lib 3.
fol. 150.

And then he also explaineth it. *Cum animo dico, quia sine animo furandi non committitur.* Bracton useth not the word *latrocinium*, but *furtum*, and so doth Granvile. See Britton a whole chapter *de Larcyns*. And Fleta hath it thus, *Est autem furtum contraetatio rei alienae fraudulenta cum animo furandi invito dno. cujus res illa fuerit*, following Bracton *totidem verbis*. These descriptions are generally of theft, comprehending robbery, burglary, when any thing is taken, and all other latrocinies. But here larceny for distinction sake is taken in a narrower sense, viz. for single theft or thievery, and may be described thus.

Glanvil. lib. 7.
c. 17. & lib. 10.
cap. 15. Britton,
cap. 15. de Larcyns. 10. 22.
Fleta, lib. 1.
ca. 36.

Larceny, by the common law, is the felonious and fraudulent taking and carrying away by any man or woman, of the meere personall goods of another, neither from the person, nor by night in the house of the owner.

Larcenie defined.

Now

Now let us peruse the principall parts of this description.

See tit. Piracy,
&c.
Butlers case,
28 Eliz.

Felonious taking.] First it must be felonious, *id est, cum animo furandi*, as hath been said. *Actus non facit reum, nisi mens sit rea.* And this intent to steale must be when it cometh to his hands or possessions: for if he hath the possession of it once lawfully, though he hath *animum furandi* afterward, and carrieth it away, it is no larceny: but this receiveth some distinction, as hereafter shall appeare.

2 E. 3. 1.

Secondly, it must be an actuall taking: for an indictment, *quod felonice abduxit equum*, is not good, because it wanteth, *cepit*. By taking, and not bailment or delivery, for that is a receipt, and not a taking: and therewith agreeth Glanvil. *Furtum non est ubi initium habet detentionis per dominum rei.*

Glanvil. lib. 10.
cap. 13.
13 E. 4. 9.

But herein the law doth distinguish. For if a bale or pack of merchandize be delivered to carry to one to a certaine place, and he goeth away with the whole pack, this is no felony: but if he open the pack, and take any thing out *animo furandi*, this is larceny. Likewise if the carrier carry it to the place appointed, and after take the whole pack *animo furandi*, this is larceny also: for the delivery had taken his effect, and the privity of the bailment is determined. And so it is of a tun of wine, or the like, *mutatis mutandis*.

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Charge.

3 H. 7. 12.
21 H. 7. 15.

Also there is a diversity betweene a possession, and a charge; for when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespassse, or an appeale, if they be taken or stolne out of his possession. But my butler or cook, that in my house hath charge of my vessel or plate, hath no possession of them, nor shall have an action of trespassse or an appeale, as the baile shall: and therefore if they steale the plate or vessel, it is larceny. And so it is of a shepherd, for these things be *in onere, et non in possessione promi, coci, pastoris, &c.*

23 E. 4. 9.

Speciall use.

22 Aff pl. 99.
22 E. 3. cor.
265.

If a taverner set a piece of plate before a man to drink in it, and he carry it away, &c. this is larceny: for it is no bailment, but a speciall use to a speciall purpose.

Thirdly, nor by trover or finding. If one lose his goods, and another finde them, though he convert them, *animo furandi*, to his own use, yet is it no larceny, for the first taking is lawfull. So if one finde treasure trove, or waife, or stray, and convert them *ut supra*, it is no larceny, both in respect of the finding, and also for that *dominus rerum non apparet*.

See cap. de
Treason. Verb.
quant. home,
&c.

Et cap. Murder.
27 Aff. 40.

2 E. 3. cor. 160.
Lex Inæ cap. 50.
accord.

Stanf. 26. c.
15 E. 2.

Cor. 383.

Mic. 37 E. 3.
coram rege. Rot.
83 Lincolne.

Felonious implyeth, that though the taking be actuall, yet must it be done by such persons as may commit felony. A mad man that is *non compos mentis*, or an infant that is under the age of discretion, cannot commit larceny, as in another place we have said.

A feme covert committeth not larceny, if it be done by the coercion of her husband: but a feme covert may commit larceny, if she doth it without the coercion of her husband: and there it appeareth, that a man may be accessory to his wife, but the wife cannot be accessory to her husband, though she know that he committed larceny, and relieve him, and discover it not: for by the law divine, she is not bound to discover the offence of her husband.

Felons came to the house of Richard Dey, and Margery his wife; the wife knew them to be felons, but the husband did not, and both of them received them, and entertained them, but the wife consented not to the felony. And it was adjudged, that this made not the wife accessory, *Quia ipsa in vita mariti sui de aliquo receptamento*

ceptamento in præsentia viri sui, cui contradicere non potuit, occasionari non debet.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir.

Bracton, lib. 3. fol. 151. b.

La feme nequedent al felon soit dire q. tout scavoit ele del mauvaste son baron, pur ceo ne le poet ele my encuser, ne devoit, tant come ele fuit de luy covert, &c.

Briton. cap. 24. fo. 47.

Uxor autem furis non teneatur pro delicto viri, pœna enim suos debet tenere authores, uxor autem virum accusare non debet, nec felonice suæ consentire, &c.

Fleta, lib. 1. ca. 36.

Felonious and fraudulent taking.] If a man seeing the horse of B. in his pasture, and having a minde to steale him commeth to the sheriffe, and pretending the horse to be his, obtaineth the horse to be delivered unto him by a replevyn, yet this is a felonious and fraudulent taking, as it was resolved by the judges, as Catlin chiefe justice reported in the kings bench, Pasch. 15 Eliz. for the Replevyn was obtained *in fraudem legis*.

Pasch. 15 Eliz. Vide statutum.

Carrying away.] For the indictment saith, *felonice cepit et asportavit*. The removing of the things taken, though he carry not them quite away, satisfieth this word *asportavit*. As if a guest take the coverlet or sheets of his bed, and rising before day, take the coverlet or sheets out of the chamber, where he lay, into the hall, to the intent to steal them, and went to the stable to fetch his horse, and the ostler apprehended him, and this was adjudged larceny: and the coverlet or sheets were carried away being removed from the chamber to the hall, albeit they were still in the house of the owner.

22 Aff. pl. 39.

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So if a mans horse be in his close, and one taketh him, and as he is carrying him away, he is apprehended, before he getteth out of the close, yet this is sufficient to make it larceny.

Justice Dalizon Report.

Of mere personall goods.] It is said (mere) for though they be personall goods, yet if they favour any thing of the realty, no larceny can be committed of them; as any kind of corn or grain growing upon the ground is a personall chattell, and the executors of the owner shall have them, though they be not severed, but yet no larceny can be committed of them, because they are annexed to the realty. So it is of grasse standing on the ground, or of apples, or any other fruits upon trees, or bushes, or of woods growing; but if the owner cut the grasse, or gather the fruit, or cut the wood, then larceny may be committed of them.

12 E. 3. Cor. 199. 22 E. 3. Ibid. 256. lib. 4. fo. 19.

So it is of a box or chest with charters, no larceny can be committed of them, because the charters concern the realty, and the box or chest though it be of great value, yet shall it be of the same nature the charters be of: *et omne majus dignum trahit ad se minus*.

10 E. 4. 14. lib. 8. fo. 33. b. Caleys case.

No larceny can be committed by taking, and carrying away of a ward, or of a villain, because they are in the realty.

It appeareth by all our ancient authors *ubi supra*, and by the statute of W. 1. that there is grand larceny, and petit larceny, distinguished so by the value: for if the personall goods stoln amount to above the value of twelve pence, then is it grand larceny, and if it be under the value of twelve pence, then it is petit larceny, for which

W. 1. ca. 15. See the exposition thereof. 27 H. 8. 22. Coriū foris facere or perdere Sax. tholiz, his bide is to be

whipt. Mirror
ca. 4. §. De
crime de rob-
bery.

Lib. 7. fo. 18.
In case de Swans.

^a Vide verb (of
another) next
following.

12 H. 8. 39.

14 H. 8. 3. 4.

18 H. 8. 2.

2 E. 2. distres

20 leveret. 2 E. 2.

Avowry. 182.

ferret. 38 E. 3.

10. 47 E. 3. 10.

5 H. 5. 1.

9 H. 6. 2.

F. N. B. 87. a.

and 88. 1. 86. 1.

^b Mirror c. 1.

§ 10. Dier 14 El.

306, 307. 18 E.

4. 8. 16 E. 4. 11.

14 H. 8. 4.

Vide before.

37 E. 3. 10. 37.

F. N. B. 86. 1.

^c 18 H. 8. 2. b.

Doct. & Stu. 9.

b. Britton, 74.

75. Bract. 1. 2.

fo. 9. 8 E. 4. 5.

^d 11 H. 7. ca. 17.

31 H. 8. ca. 12.

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^a Stanf. 25. c.

12 E. 4. 4.

18 E. 4. 8.

22 H. 6. 59.

43 E. 3. 24.

Vide before,

verb. (Of meer

personall goods)

3 H. 6. 55.

lib. 5. fo. 104. b.

lib. 7. fo. 16, 17.

^b 10 E. 4. 14.

7 E. 4. 14.

Stanf. 25.

which he shall forfeit all his goods, and suffer some corporall punishment, as whipping, &c.

And this was the ancient law before the conquest, for the Mirror saith, *Et tout soit que la ley ne eyt regard forsque al ceures des peuchers nequident limit le quantite del robbery et larceny en cest manner, cest issavoir que nul ad judgement de la mort, si non larceny, &c. ne passent 12 deniers de sterlings.*

A man hath a mere property in some things that are tame by nature, and yet in respect of the baseness of their nature, a man shall not commit any larceny, great or small, though he steal them, as of mastifs, bloud hounds, or of other kind, dogs or of cats, nor of some things that be ^a wild by nature, and made tame, as bears, foxes, apes, monkies, polcats, ferrets, and the like, and yet no manner of felony can be committed on them, in respect of their wild and savage nature, and therefore no person shall die for them: and likewise it is of their whelps, or calves, or young; for it is a rule in law, that if no felony can be committed of any thing that is *ferum natura*, and of age being reclaimed, or made tame, that no felony can be of the young in the nest, kennell or den.

^b So as a man may have property in many things, and yet in respect of their nature there can be no felony of them. On the other side, of some things that be *ferre natura*, being reclaimed, felony may be committed in respect of their noble and generous nature and courage, serving *ob vite solatium* of princes, and of noble, and generous persons, to make them fitter for great employments: As all kind of falcons, and other hawks, if the party, that steals them know they be reclaimed.

Of another. ^c No larceny can be committed of wild beasts, or of fowls that be wild, or of fishes that be at their naturall liberty in rivers, or great waters, because these be *nullius in bonis*: but larceny may be committed of young pigeons in dovecouses, or of young hawks in the nest. But if any person upon the ground of any other, doe take the egg, of any falcon, goshawk, lanner, or swan out of the nest, this is not felony, ^d but he shall be imprisoned by the space of a year and a day, and fined at the kings will, the one half to the king, and the other to the owner of the ground. But larceny may be committed of the eggs of such as be *domite natura*, as of hens, turkies, pehens, and the like. ^a And larceny may be committed of fishes in a trunk or pond, because they are not at their naturall liberty, but as it were beasts in a pown.

^b But if such as be wild, that serve for the food of man, be made tame, as deer, wild bore, conies, cranes, pheasant, partridge, or the like, larceny may be committed of them, so as he that stealeth them know that they be tame. But the deer, &c. being wild, yet when he is killed larceny may be committed of the flesh, and so of pheasant, partridge, or the like: and so note a diversity between such beasts as be *ferre natura*, and being made tame, serve for pleasure only, and such as be made tame and serve for food, &c. which diversity being not observed, hath made many meatures.

A man may be indicted, *Quare bona capellæ in custodia, &c.* and so in time of vacation, *bona domus ecclesiæ.*

At

At the assises at Leicester, in Lent, *anno 10 Jac.* the case was this, one William Hain had in the night digged up the graves of divers severall men, and of one woman, and took the winding sheets from the bodies, and buried the bodies again: and I advising hereupon for the rarenesse of the case, consulted with the judges at Serjeants Inne in Fleetstreet; where we all resolved, that the property of the sheets was in the executors, administrators or other owner of them, for the dead body is not capable of any property, and the property of the sheets must be in some body: and according to this resolution, he was indicted of felony at the next assises, but the jury found it but petit larceny, for which he was whipped, as he well deserved.

10 Jac. regis.
Hains case.
Furtum inaudium.

Nota. A felonious taking must be of the possession, and not of the property removed from the possession.

If a man doth bail, or lend his goods to another, although he hath the generall property of them, yet may he commit larceny of them, by the felonious taking and carrying them away, and in judgement of law he is said in this case to take the goods of another: for the bailer hath *jus proprietatis*, and the bailee hath *jus possessionis*, or a speciall property.

7 H. 6. 43.

The wife cannot steal the goods of her husband, for they be not the goods of another, for the husband and wife are one person in law, *duæ animæ in carne una*.

21 H. 6. Cor.
455. Abbridge
dall 63.

Vide Stanf. Pl. Coron. fo. 24, 25.

To speak it here once for all, if any person be indicted of treason, or of felony, or larceny, and plead not guilty, and thereupon a jury is returned, and sworn, their verdict must be heard, and they cannot be discharged, neither can the jurors in those cases give a privy verdict, but ought to give their verdict openly in court.

Macegriefs, fleshmongers, such as buy and sell stollen flesh, knowing the same to be stollen. Vide *Lamb. inter leges Edw. regis* fol. 140. b. *De Machecariis* derived of *mace* an old word for flesh, and *grief*, wrong or injury.

Britton, fo. 71.

C A P. XLVIII.

[111]

De Anno Die et Wafto.

Of the Year Day and Waft.

HEREOF we have treated at large, in the second part of the Institutes in his proper place upon the exposition of Magna Carta, cap. 22. where it appeareth, that at this day the king shall have but the profits for a year and a day in lieu and satisfaction of the waft which the common law gave to the king in despite and detestation of the offence, as there you may read at large: and there it appeareth how necessary it is, ancient authors to be read, all which need not here to be rehearsed: * and

Mirror, cap. 1.
§. 3. and cap. 4.
§. *Et le roy in remembrance, &c.*
Lege quia optime, Glanv. li. 7. cap. 17.
Brafton, lib. 3. fo. 129. 137.
Britton, c. 5.
Regit. 165.

f. 14. Fleta, lib. 1. c. 28. § *Causa vero, &c.* 17 E. 2. Præf. Regis cap. ultimo. Mag. Cart. cap. 22. 3 E. 3. Cor. 356. 327. 310. 290. * 42 E. 3. ca. 1.

III. INST.

K

that

that if any statute be made to the contrary of Magna Carta, it shall be holden for none. And therefore if *prærogativa regis* anno 17 E. 2. cap. *ultimo*, be contrary therunto, it is repealed as to the wast.

C A P. XLIX.

Of Piracy, Felonies, Robberies, Murders, and Confederacies committed in or upon the Sea, &c.

HAVING now treated of felonies, &c. that are committed and done upon the land, we will consider of piracies, and felonies, &c. done on the sea, which by an act of parliament are to be enquired of, heard, and determined according to the course of the common law, as if they had been done upon the land.

Rot. Parl.
8 H. 6. nu. 42.

25 H. 8. ca. 25.

Vid. 27 E. 3.
de del. triple.
31 H. 6. cap. 4.
Vide 2 R. 3.
17. 2. Vide Pa-
laches case.

All treasons (2), felonies, robberies, murders and confederacies committed in or upon the sea, or in any other haven, river, creek, or place, where the admirall hath, or pretends to have power, authority, or jurisdiction (3), shall be enquired, tried, heard, determined, and judged in such shires, and places in the realm, as shall be limited by the kings commission under the great seal in like form and condition, as if any such offence had been committed upon the land (5), to be directed to the lord admirall, or to his lieutenant, deputy, or deputies, and to three or four such other substantiall persons, as shall be named by the lord chancellor of England (4), for the time being, &c.

See before in the
chap. of Heresy.

And such as shall be convict of any such offence by verdict, confession, or proces by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods and chattels, as if they had been attainted of any treason, felony, robbery, or other the said offences done upon the land.

The offenders not to be admitted to have the benefit of clergy.

[112]

The mischief before this statute was (as it appeareth by the preamble) that traitors, pirates (1), thieves, robbers, murderers, and confederators upon the sea many times escaped unpunished, because the common law of this realm extended not to these offences, but were judged, and determined before the admirall, &c. after the course of the civill laws, the nature whereof is, that before any judgement of death be given against the offenders, either they must plainly confesse their offences (which they never will do without torture or pains) or

See 40 Aff.
pl. 25.

or by * witnesse indifferent, such as saw their offences committed, &c. which in these cases cannot be gotten but by chance, or very rarely: for this cause, the commons petitioned in a parliament in 8 H. 6. that the justices of peace might enquire of all piracies: but the kings answer was, That he would be advised.

This statute requires a considerate and just interpretation, wherein, for that it concerneth the life of man, the safest way is, to follow the resolutions of all the judges formerly had upon due consideration of all the parts of this act, and upon divers conferences, and in the end, when I was attorney generall, resolved by them unanimously as followeth:

Where divers did in the reign of the late queen Elizabeth commit piracy and robbery upon the high sea, of divers merchants of Venice, in amity with the said queen, and after the pirats, being not known, obtained a pardon, granted at the coronation of king James, whereby the king pardoned them all felonies (*inter alia*) First, that before this statute piracy, or robbery on the high sea was no felony, whereof the common law took any knowledge, for that it could not be tried, being out of all towns and counties, but was only punishable by the civill law, as by the preamble it appeareth; the attainder by which law wrought no forfeiture of lands, or corruption of blood. Secondly, that this statute did not alter the offence, or make the offence felony, but leaveth the offence as it was before this act, viz. felony only by the civil law, but giveth a mean of triall by the common law, and inflicteth such pains of death, as if they had been attainted of any felony, &c. done upon the land. But yet (as hath been said) the offence is not altered, for in the indictment upon this statute, the offence must be alledged upon the sea; so as this act inflicteth punishment for that, which is a felony by the civill law, and no felony, whereof the common law taketh knowledge. Thirdly, although the king may pardon this offence, yet being no felony in the eye of the law of the realm, but only by the civill law, the pardon of all felonies generally extendeth not to it, for this is a speciall offence, and ought to be specially mentioned.

Upon this resolution these consequents do follow. 1. That by the attainder upon this act, though there be forfeiture of lands, and goods, yet there is no corruption of blood. 2. Seeing the offence is not made felony by the laws of this realm, there can be no accessory of any felony by the laws of the realm in this case, either before or after the offence, because the principall is no felon by our law, neither doth this act speak of any accessory. 3. If there be an accessory upon the sea to a piracy, that accessory may be punished by the civill law before the lord admirall, but cannot be punished by this act, because it extendeth not to accessories, nor makes the offence felony. * Lastly, the statute of 35 H. 8. ca. 2. taketh not away this statute for treasons done upon the sea for the cause aforesaid. Which resolution I have thought good to report, because it openeth the windows of this statute.

In Trin. 18 Eliz. in lord Diers manuscript, there is a quære made, what offence it is to lodge and entertain upon the land a pirat, knowing him to be a pirat, and whether this accessory upon the land shall be tried by this statute, which is only of principalls in piracy. And it was thought by the two chief justices, that the surest way, was to have the commission in the county where the

* Concerning treason, see before cap. 2. verb. *aut trials.* fo. 25. 1 E. 6. ca. 12. 5 E. 6. ca. 11. &c.

^a Rot. Par. 8 H. 6. nu. 42. Hil. 2. Ja. regis, at Serjeants Inne in Fleetstreet, the resolution of the justices.

Three points resolved.

Vide similia. 19 E. 3. Cor. 124. 8 H. 4. 2 9 E. 4. 28.

* See the fourth part of the Institutes, cap. High Treason. 5 El. cap. 5. Vide supra, cap. High Treason. Verbo *Ou per aillors*, s. 11.

2 & 3 E. 6.
ca. 24.

Vid. lib. 2. fo.
93. Bingham's
case. See the
lord Sancars
case, lib. 9. 117,
118.

Anno 28 Eliz.
Butlers case.

accessory offended, and there both the principall and the accessory may be indicted, and tried, *ut per statutum, anno 3 & 6 E. 6. quære. Hæc * ille.* So as this quære is now cleared by the resolution of the judges: and questionlesse the statute (intended of 2 & 3 E. 6. for there is none such in 5 & 6 E. 6.) extendeth only, when a murder or felony is committed in one countie, and another person is accessorie in another countie (as hath been said before :) but in that case the offence was committed upon the sea, and not in any countie, and so out of that statute: and therefore this part of the manuscript of the lord Dier was not thought fit to be printed.

Butler and other pirats in summer vacation robbed divers of her majesties subjects, upon the coast of Northfolk, upon the high sea; and brought divers of the goods so taken into the county of Northfolke, and there were apprehended with the goods: The question moved to Wray chiefe justice, and justice Peryam, justices of assise in Northfolk, was, whether they might be indicted of felony in Northfolk, as if one steale goods in one county and carry them into another county, he may be indicted in either county: and it was resolved by them, that they could not be indicted for felony in Northfolk; because the originall taking was no felony, whereof the common law took conuifance, because it was done upon the sea, out of the reach of the common law: and therefore not like the case, where one stealeth in one county and carrieth the goods into another, for there the originall act was felony whereof the law took conuifance.

But now let us peruse the words of the statute.

(1) *Where traytors, pirats.*] This word pirat, in Latine *pirata*, is derived from the Greek word *πειράτης*, which againe is fetched from *πεύρα*, à *transfundo mare*, of roving upon the sea: and therefore in English, a pirat is called a rover and a robber upon the sea.

(2) *Treason, &c.*] Note, treason done out of the realme, is declared to be treason by the statute of 25 E. 3. and yet at the making of this act of 28 H. 8. it wanted triall, (as by the preamble of this statute it is rehearsed) at the common law. And therefore to establish a certainty therein, the statute of 35 H. 8. was made, as is aforesaid in the exposition of the statute of 25 E. 3. See Pasch. 43 Eliz. lib. 5. fo. 107. Sir Henry Constables case.

25 E. 3. cap. 1.
40 Ass. p. 25.

Before the statute of 25 E. 3. if a subject had committed piracy upon another (for so is the book to be intended upon a fact done before 25 E. 3.) this was holden to be petit treason, for which he was to be drawne and hanged: because *pirata est hostis humani generis*, and it was *contra liganciam suæ debitum*: but if an alien, as one of the Normans, who had revolted in the reigne of king John, had committed piracy upon a subject, this offence could be no treason, for though he were *hostis humani generis*, yet the crime was not *contra liganciam suæ debitum*, because the offender was no subject, but since the statute of 25 E. 3. this is no treason in the case of a subject.

(3) *Upon the sea, or in any other haven, river, creek, or other place, where the admirall hath, or pretends to have power, authority, or jurisdiction.*] These words [or pretends to have, &c.] are thus to be understood, between the high-water-mark, and the low-water-mark: for though the land be *infra corpus comitatus*, at the reflow;

yet when the sea is full, the admirall hath jurisdiction *super aquam* as long as the sea flowes: so as of one place there is *divisum imperium* at severall times: but extend not to any haven, river, creek, or other place, that is *infra corpus comitatus*: for offences there committed were triable by the common law, and out of the mischief and purvien of this statute: for in the preamble, the sea is only mentioned, and in the body of the act it is said, in like forme and condition, as if any such offence had been committed upon the land.

(4) *As shall be named by the lord chancellor of England.*] A nomination by the lord keeper of the great seale of England was taken to be • within this act by the greater opinion of the justices: but the statute of 5 Eliz. hath made a declaration of the common law concerning the power and authority of the lord keeper of the great seale, which hath cleared that, and all other like questions.

(5) *To heare and determine such offences after the common course of the lawes of this land used for treasons, felonies, &c. done and committed upon the land.*] If the offender upon his arraignment before commissioners by force of this statute stand mute, he shall have judgement *de peyne fort et dure*, by force of this generall branch, but it is out of the latter words of the act, viz. and such as shall be convict of any such offence by verdict, confession, or proces. For he that standeth mute is not convict of the offence, but suffereth for his contumacy. Also it is neither by verdict, confession, or proces.

For *peine fort et dure*: see in the second part of the Institutes, in the exposition upon the statute of W. 1. cap. 12.

C A P. L.

O F C L E R G I E.

WHAT person shall have his clergie, for what offences, in what suits, who is judge thereof, and at what time clergie is to be demanded, you may reade at large in Alexander Poulterers case in the eleventh part of my reports: where also is resolved the diversity betweene a clerk convict, and a clerk attaint; what a clerk convict which hath his clergie shall forfeit, and at what time; and that none that hath his clergie allowed ought to make any purgation at this day; and that the king may pardon the burning of the hand, as well in an appeale, as upon an indictment.

^a If the principall hath his clergie before attainder, the accessory either before or after ought to be discharged.

^b You may adde to the former report a record in rot. Claus. an. 3 E. 3. m. 2. & 18. That for sacriledge the ordinary may allow clergie. So as it is in the election of the ordinary, either to allow or disallow clergie in that case.

^c See a notable record Trin. 21 E. 3. coram rege, Rot. 173. Hertford, that *privilegium clericale non competit seditioso equitanti cum armis platis, et cotearmuris, per leges Angliæ.*

K 3

8 E. 2. cor. 399.
46 E. 3. Conu-
tance 36.
Stanf. pl. coron.
51. k.
Regist. 129.
13 R. 2. ca. 5.
2 H. 4. cap. 11.
Pl. com. 37.
2 R. 3. 10. 12.
19 H. 6. 7.
30 H. 6. 6. per
Pitott.
Fortescue, ca.
22.
5 Eliz. cap. 18.
*[114]

Trin. 7 Eliz.
Dier 241. the
case of Brook
alias Cobham.

Lib. 11. fo. 29,
30, &c. Alex-
ander Poulterers
case. Lib. 5. 26,
27. in Caudries
case. Vid. lib. 5.
fo. 50. Biggens
case, & fo. 110.
Hestons case.
18 Eliz. cap. 6.
^a Lib. 4. fo. 43,
44. Syers case.
ib. Bibiths case.
2 E. 3. 27.
22 E. 3. cor.
260. 7 H. 4. 16.
10 H. 4. 5.
3 H. 7. 1.
3 H. 7. cor. 53.
4 E. 6. Br. cor.
184.
3 Ass. 14. 5 Ass.
5. 11 H. 4. 93.
^b Rot. cl. 3
E. 3. m. 2. 18.
^c Tr. 21 E. 3.
cor. rege, Rot.
173. Hertford.

It

^d 25 H. 8. cap. 3.
 32 H. 8. cap. 3.
 Vid. 1 E. 6.
 ca. 12. 5 E. 6.
 ca. 10.

^d It is provided by the statute of 25 H. 8. that if any person be indicted of felony for stealing of any goods or chattels in any county, and thereupon arraigned, and be found guilty, or stand mute, or challenge peremptory above the number of twenty persons, &c. they shall lose the benefit of their clergie, in like manner as they should have done, if they had been indicted and arraigned, and found guilty in the same county, where the same robbery or burglary was done or committed, if it shall appear to the justices, &c. by evidence given before them, or by examination, that for such robbery or burglary in the same shire where they were committed or done, they should have lost the benefit of their clergie by force of the said statute, viz. of 25 H. 8. cap. 1.

Any person indicted.] This act extendeth not to appeales by writ or bill, nor to the appeales of the approvers.

^e Poulters case.
 Vid. supra fo. 31.
 [115]

Or by examination.] ^e By these words though the offender confess the indictment, or stand mute, or challenge above twenty, &c. yet if by examination before the justices, the truth of the case appeareth, he may be put from his clergie.

Vid. Stanf. Pl.
 cor. fo. 123, &c.
 De Clergie.

By force of the said statute.] Viz. 23 H. 8. so as if for any burglary or robbery in one county he were not ousted of his clergie by the statute of 23 H. 8. but some later statute, then the delinquent shall have his clergie in the county where the goods are carried: for example, if the robbery be done in a dwelling house, the owner or dweller, his wife, his children, or servants then being within the house, and put in feare and dread by the same, and the goods be carried into another county, he shall not have his clergie: but if the robbery in the dwelling house be not done with all the circumstances mentioned in this act of 23 H. 8. (which circumstances are not required by the statute of 5 E. 6. cap. 9.) he shall not be ousted of his clergie in the other county. And so of all like cases.

See 1 Jac. cap. 8. clergie taken from him which do stab another that hath not drawne a weapon, nor stricken first.

C A P. LI.

Of Abjuration and Sanctuary.

Cust. de Norm.
 cap. 24 & 8.
 Inter leges Inæ.
 cap. 5.

ABJURATION by the course of the common law may be thus described. When a man or a woman had committed felony, and the offender for safeguard of his or her life had fled to the sanctuary of a church or churchyard, and there before the coroner of that place within forty dayes had confessed the felony, and took an oath for his or her perpetuall banishment out of the realm into a foraine countrey, choosing rather *perdere patriam, quam vitam*. But that foraine countrey, into which he was to be exiled, must not be amongst infidels. And this was the ancient law of this realme, which was, *prohibemus autem ne Christiana fide tinctus quispiam à regno procul amandetur, neve ad eos qui nondum Christo fidem adjunxerunt relegatur, ne eorum aliquando fiat animorum jactura, quos propria Christus vita redemit.*

Inter leges Can-
 nuti, fo. 105.
 ca. 3.

The foundation of the abjuration was the sanctuary of the church or church-yard. For he or she, that was not capable of this sanctuary, could not have the benefit of abjuration. ^a And therefore it is said, that he that committed sacrilege, because he could not take the privilege of sanctuary, could not abjure. For the forme of abjuration see the statute of abjuration, Vet. Magna Carta, part 1. fol. 167. b. The ^b common law herein was very ancient, and had saved the life of many a man; and continued without change untill an act made in the twenty second year of H. 8. cap. 14. whereby it was provided, that the party abjured should not be banished out of the realm, but to some other sanctuary within this kingdom: ^c and to say the truth, abjuration was exceedingly intricate and perplexed by the said act of 22 H. 8. cap. 14. and other statutes: for which causes all statutes made before the thirty fifth yeare of queen Elizabeth, concerning abjured persons, stand repealed by the statute of 1 Jac. cap. 25. whereby the ancient common law concerning abjuration for felony was revived.

^d But by an act made in the twenty first year of king James it is enacted, that no sanctuary or privilege of sanctuary should be admitted or allowed in any case. By which act, such abjuration as was at the common law, founded (as hath been said) upon the privilege of sanctuary, is wholly taken away: and the writ in the Register 69. a. *De restitutione extracti ab ecclesia* is become of no use.

^e And yet the abjuration by force of the statute of 35 Eliz. ca. 1. before justices ^{*} of peace, or justices of assize, or by force of an act made at the same parliament, cap. 2. before two justices of peace or the coroner by a recusant, remaineth still; because such abjuration hath no dependance upon any sanctuary. Which being sufficient to shew how the law standeth at this day, both concerning sanctuary and abjuration, might suffice.

But yet he that is desirous to reade the generall learning of abjuration the branch, and of sanctuarie the root, let him reade the Mirror, ca. 1. §. 13. & cap. 5. §. 1. where he may reade the right use of abjuration by the ancient law of England. Et inter leges Edwardi, nu. 10. Custum. de Normandie, cap. 24. Officium coronatorum, tit. Abjuration, Rast. pl. 2. Bracton, li. 3. fo. 135. & 136. Britton, cap. Abjuration, fo. 24. & cap. Coroners, fo. 7. And Fleta, lib. 1. cap. 29. 8 E. 2. ubi supra. 3 E. 3. Coron. 313. 335. 21 E. 3. 17. 29 Ass. p. 34. Rot. Pat. 25 E. 3. part. 3. m. 16. Hil. 43 E. 3. Rot. 10. Coram Rege Buck. Hil. 26 E. 3. Coram Rege Rot. 20. *Quando aliquis abjuravit regnum, crux ei deliberat' fuit in manu sua portanda in itinere suo per semitas suas, et vocatur vexillum sanctæ ecclesiæ.* Rot. Parl. 2 R. 2. nu. 28. the right use of sanctuary. 6 H. 4. 2. 8 H. 4. 2. 11 H. 4. 40. 7 H. 6. 8. 27 H. 6. 7. 2 E. 4. 17. 21. 9 E. 4. 29. 12 E. 4. 1, 2. 3 H. 7. Coron. Fitz. 54. 1 H. 7. 23. 25. 8 H. 8. Kelway. 188, 189. 190, 191. Fitz. Justice of Peace, fol. 202. Stanf. pl. cor. cap. Abjuration, fo. 116, 117, &c. et ibidem Sanctuary, cap. 38. Dier, 13 Eliz. fo. 296. lib. 5. fo. 12. 26. lib. 6. fo. 9. lib. Intrat. tit. Abjuration and Sanctuary.

^a 8 E. 2. cor. 420.

^b Sir Thomas Weiland Chief Justice of the Common Pleas, anno 17 E. 1. Vid. inter placita pad. an. 19 E. 1. apud Ashring in Cro. Epiphaniæ.

^c 50 E. 3. cap. Artic. Cleri, 9 E. 2. c. 10. 1 R. 2. cap. 9. 7 H. 7. cap. 7. 21 H. 8. cap. 2. 22 H. 8. ca. 14. 25 H. 8. ca. 13. 28 H. 8. cap. 1. 33 H. 8. cap. 15. 1 E. 6. cap. 12. 2 E. 6. ca. 2. & 33. 5 E. 6. cap. 10. 13 Eliz. ca. 7. 1 Jac. ca. 25.

^d 21 Jac. in the continuance of statutes, &c.

^e 35 El. ca. 1. & 2.

* [116]

C A P. LII.

De Hutesio et Clamore.

Of HUE and CRY.

THE one being an expression of the other. For *huer* in French (*unde hutesium*) is to hoot or shout; in English to cry.

There be two kindes of hues and cries, the one by the common law, and the other by statute. Thereupon there are two pursuits, the one for the king, the other for the party by private suit.

Hue and cry by the common law, or for the king, is, when any felony is committed, or any person grievously and dangerously wounded, or any person assaulted and offered to be robbed either in the day or night; the party grieved, or any other may resort to the ^a constable of the town, and acquaint him with the causes, describing the party, and telling which way the offender is gone, and require him to raise hue and cry. And the duty of the constable is, to raise the power of the towne, ^b as well in the night as in the day, for the prosecution of the offender, and if he be not found there, to give the next constable warning, and he the next, untill the offender be found, and this was the law before the conquest. ^c *Si quis latroni obviam dederit cumque nullo edito clamore abire permiserit, quancumque fuerit latronis vita confirmata extremum solvat denariolum, aut pleno, perfectoque iurjurando de facinore se nihil habuisse cogniti confirmato. Sin quis proclamantem exaudierit, neque vero fuerit insequutus, suæ in regem contumaciæ (ni omnem criminis suspicionem diluerit) pœnas dato.*

in antiquo M. S. si quis furi obviam, et sine vociferatione gratis eum dimiserit, emendet secundum veram ipsius furis, vel plena lada se alle. iet. quod cum eo falsum nescivit: si quis audito clamore superseclit, reddat oversameffa regis aut plene se laidiet. Braeton who wrote before any act of parliament concerning hue and cry, saith, *omnes tam milites, quam alii qui sunt 15 annorum † et amplius, jurare debent quod utlogatos, murtutores, robbatores, et burglatores non recipiant, &c. Et si hutesium vel clamorem de talibus audiverint, statim audito clamore sequantur cum familia, &c.* and herewith agreeth Britton.

The statute of W. 1. cap. 9. being in affirmance of the common law, provideth, *Que tous communement soient prests a les serors des visenants, et au cric de pais de suer et arrestor felons, quant miltier serra, auxibiens deins franchises come de hors.*

And the statute of 4 E. 1. declareth the law *similiter de omniis homicidiis, burglar, occisis, seu * periclitantibus levetur hutesium, &c. et omnes sequantur hutesium, et vestigium si fieri potest: et qui non fecerit, et super hoc convictus fuerit, attachietur quod sit coram justiciariis de gasla, &c.* And by that act it appeareth that so it is in case of rape, and therewith agreeth, ^a Braeton also.

The life of hue and cry is fresh suit.

^b Thamar the daughter of king David being violently ravished by her brother Amnon, the text saith of her, *quæ aspergens cinerem*

^a Rot. Parl an. 6 E. 3. lum. 6. Constable of the town to make hue and cry. ^b 2 E. 4. 8. b. & 9 a.

• Inter leges Cantu', fo. 110. ca. 26. See inter leges Edw. Conf. ca. 21.

For Oversameffa, See lib. Rub. c p. 36.

Braeton, li. 3. fo.

† [117] Britton, fo. 15. & 19

Fleta, li. 1. c. 24. See the 2. part of the Institutes.

W. 1. ca. 9. 4 E. 1. de officio coronatoris.

See the statute of Winch. 13 Ed. 1.

* 7 E. 3. fo. 16. 22 Aff. 57.

† 8 E. 3. fo 6. assaulted to be robbed. 9 E. 4.

26. See the Custom' of Norm. ca. 24.

^a Braeton, li. 2. fo. 28 E. 3. ca. 11.

^b 2 Regum, e. 13. vers. 19.

capiti suo, scissa talari tunica, impositisque manibus super caput suum ibat ingrediens, et clamans.

^c They which levy not hue and cry, or pursue not upon hue and cry, shall be punished by fine and imprisonment. ^d Also if a man be present when a man is murdered, or robbed, and doth not endeavour to attach the offender, nor levy hue and cry, he shall be fined and imprisoned.

Of hue and cry by force of acts of parliament in five cases. ^e First, if a watchman doth arrest a night walker, and he disobey and fly, the watchman may make hue and cry.

2. ^f *Si quis forestarius, parcarius, aut warrenarius in baliva sua malefactores aliquos invenerit vagantes ad damnum ibidem faciend', et qui se forestariis aut warrenariis illis post clamorem et hutesium levatum ad pacem regis ad standum recte reddere noluerint, immo ad malitiam suam exequend' et continuand' et pacem regis diffugiend' fugam fecerint, et vi et armis se defenderint, licet forestarii, parcarii et warrenarii illi, aut alii quicumque ad pacem domini regis existentes in comitativa forestariorum, parcariorum, aut warrenariorum illorum venientes ad tales malefactores sic inventos arrestand' seu capiend', aliquem seu aliquos hujusmodi malefactorum interfecerint, non propter hoc occasionentur coram domino rege, et justiciariis quibuscunque aut aliis balivis domini regis, aut aliorum quorumcunque infra libertatem aut extra: nec propter hoc amittant vitam, aut membrum, aut aliam pœnam subeant, immo firmam pacem domini regis inde habeant. Sed bene caveant forestarii, parcarii, warrenarii, et alii quicumque, ne occasione contentionis, discordie, contumelie, aut aliquis malevolentie, seu odii præhabit' aliquibus per balivas suas transiend' malitiose imponant, quod occasione malefaciendi in balivis suis inuant, cum hoc non fecerint, nec ipsos vagantes ut malefaciant, nec malefacientes invenerint, nec causam malefaciendi quærentes, et sic eos occidant. Quod si fecerint, et de hoc fuerint convicti, fiat de morte sic interfectorum, prout aliorum ad pacem domini regis existentium, et prout de jure et secundum consuetudinem regni fuerit faciend'.*

3. Welshmen outlawed, or indicted of treason or felony, that fly into Herefordshire, shall be apprehended, &c. or else pursued by hue and cry, and a forfeiture upon those that do not pursue.

4. Hue and cry shall be levied upon takers of carriage within the verge of the staple of that which pertaineth to the staple.

5. Where a man is robbed: upon hue and cry, &c. what remedy he shall have against the hundred, &c. and how and in what manner the hue and cry shall be made in that case, see the statutes, and lib. 7. fo. 6. & 7. the statutes well expounded. And this robbery must be done in the day time, and not in the night, otherwise the party grieved shall not have his action. And so note a diversity between a hue and cry at the common law, or for the king, and a hue and cry by statute where the party grieved is to have his remedy by private action. Note also a diversity in the prosecution at the common law, or for the king, and by the statutes which give the party remedy, for a prosecution to the next constable is good by the common law, but so it is not by the said statutes which give the party grieved his action. See lib. 7. fo. 7. & 8. 22 El. Dier, 37c. So the prosecution at the common law is a good excuse upon an indictment at the kings suit, but note that it is no bar to the parties action.

Where hue and cry either by the common law, or by force of any statute is levied upon any person, the arrest of such person is lawfull,

^c Braët. li. 3. fo. 118. b.

Ca. Itin. m. c. 155. 3 E. 3. cor. 333.

^d See 8 E. 2. cor. 395.

^e Stat. de Wine. watch. 4 H. 7. fo. 2. 18.

^f Statutum de anno 21 E. 1. Magna Cart. fo. 118. Foresters.

23 H. 6. ca. 5. Vid. 17 H. 8. c. 26. Welshmen.

27 E. 3. ca. 4. staple.

Winch. 13 E. 1.

28 E. 3. c. 11.

27 El. c. 13.

38 El. ca. 25.

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Lib. 7. fo. 7, 8. 22 El. Dier 370.

29 E. 3. 9.

38 E. 3. 6.

See 5 H. 7. 5. a.

21 H. 7. 28. a.

lawfull, although the cause of the hue and cry be feigned, and if the cause be feigned, he that levy the same shall also be arrested, and shall be fined and imprisoned. But common fame and voice is not sufficient to arrest a man in case of felony, unlesse a felony be done in deed.

Stat. de 15 E. 2.

It is an article of the leet, to enquire of hues and cries levied and not pursued.

De civitate London capienda in manu regis pro hutesio non levato.
Rot. Claus.
30 H. 3. m. 5.

Mandatum est Guillelmo de Mawerhull thesaurario regis, quod licet civitas London capiat in manu regis, eo quod civis eiusdem civitatis levaverunt hutesio et clamorem pro morte magistri Guidonis de Abington et aliorum interfectorum secundum legem et consuetudinem regni. Teste rege apud Windesore 22 die Augusti.

C A P. LIII.

O F M A Y H E M.

OF mayhem you may read at large in the ^a first part of the Institutes sect. 194. & 502. and in justice Stanford. And where (as it is there cited) he saith, *Castratio verò, quam vis lata sit, adjudicatur mahemium.* Hereof we find an example.

^a First part Institutes §. 194. 502. Stanf. Pl. Cor. 38. b. Cust. de Norm. ca. 79. Mehus. Bracton, lib. 3. 144, 145. Fleta, li. 1. ca. 38.

^b *H. Null indictatus fuit de mayhemio, eo quod abscidit virilia Johannis morachi, &c. quem idem H. apprehendit, &c. cum d. uxore sua.* Of the like accident you may read in Camden.

^b Rot. Claus. anno 13 H. 3. nu. 9.

^c *Dominus Robertus Nevil (cum numerosam prolem ex uxore suscepisset) ignotus in adulterio deprehensus, et ab adultera marito in vindictam genitalibus mutilatus, brevi vi doloris expiravit.*

See before, ca. 13. for cutting out of tongues, &c.

Vide inter leges Alveredi. cap. 40 de vulneribus, fo. 43.

^d By the ancient law of England, he that maimed any man, whereby he lost any part of his body, the delinquent should lose the like part, as he that took away another mans life, should lose his own.

^c Camden Brit. page 593.

And it is truly said, that *duellum est mahemium inceptum*, and *mahemium est homicidium inchoatum*. And therefore in the appeal or indictment it is said *se onice mayhemavit*.

^d Bract. lib. 3. fo. 148. nu. 4. Mirror, cap. 4. §. De pains in 15 E. 3. 20. a.

divers manners. Brit. fo. 48. b. Fleta, li. 1. ca. 38. Membium pro membro. Vide 28 E. 3. fo. 94. 8 H. 4. 20, 21. Coron. 458.

C A P. LIV.

O F P R E M U N I R E .

P R I M E R M E N T pur ceo que monstre est a nostre seignour le roy per grevouses et clamoufes pleints des grandes et communes avant ditz, coment plusors gents sont, et ount estre treits hors de realme a responder des choses dont la conusance appartient a la court nostre seignour le roy; et auxint que les juggements rendus in mesme le court sont empeache en autre court, in prejudice et disherison nostre dit seignour le roy et de sa corone, et de tout le people de son dit realme, et in defesance et anientissement de la common ley de mesme le realme use de tous temps. Sur quoy eue bone deliberation ove les grandes et auters de dit councell, assentus est et accord per nostre dit seignour le roy, et les grandes et communes suisditz. Que tous gents de la ligeance le roy, de quel conditione que ilz sont, que trahent nulluy hors de realme (1) en plea dont le conusance appartient a la court le roy, ou des choses dont judgement soit rendus (2) en le court le roy; ou que suent en autri court a defaire ou impeacher les juggements rendue in le court le roy (3) eient jour, &c. (4) In English thus.

27 E. 3. cap. 1.
The print being examined agreeeth with the record. See the first part of the Institutes, 108. 197.

The statute of 16 R. 2. cap. 5. saith, In curia Romana, vel alibi.

F I R S T because it is shewed to our lord the king by the grievous and clamorous complaints of the great men and commons aforesaid, how that divers of the people be, and have been drawne out of the realme to answer of things, whereof the cognisance pertaineth to the kings court: and also that the judgements given in the said court be impeached in another court in prejudice and disherison of our lord the king, and of his crowne, and of all the people of his said realme; and to the undoing and destruction of the common law of the same realme at all times used. Whereupon, upon good deliberation had with the great men and other of his said councell, it is assented and accorded by our lord the king, and the great men and commons aforesaid, that all the people of the kings ligeance, of what condition that they be, which shall draw any out of the realme in plea, whereof the cognisance pertaineth to the kings court, or of things whereof judgement is given in the kings court, or which doe sue in any other court to defeat or impeach the judgements given in the kings court, shall have day, &c.

The effect of the statute of 16 R. 2. is, if any pursue or cause to be pursued in the court of Rome, or elsewhere, any thing which toucheth the king, against him, his crowne and regality, or his

16 R. 2. cap. 5.

his realme, their notaries, procurators, &c. fautors, &c. shall be out of the kings protection.

Fourth part of
the Institutes,
cap. 8. artic. 1.
Die Decemb.
anno 21 H. 8.
against cardinall
Woolsey.
Vet. N. B. 143.

* In this act is declared the sovereignty, prerogative, and freedom of the crowne of England, and the first article exhibited by the lords of the councell, (whereof sir Thomas More chancellor was one) and the principall judges concerning this matter, is worth your reading.

This offence is called a premunire of the words of the writ, grounded upon this and other statutes for punishment thereof. For the words of the writ be, *Rex vicecomiti, &c. Premunire fac.* A. B. &c. And rightly it is so called, for he that is *premunitus* is *premunitus*.

Before the making of this statute of 27 E. 3. there were three great mischiefs. First, that the kings subjects have been drawn out of the realme, to the answer of things, whereof the countie pertained to the kings court. Secondly, of things whereof judgements have been given in the kings courts. And thirdly, that after judgements given in the kings courts of the common law, of matters determinable by the common law, suits were commenced in other courts within the realme, to defeat or impeach those judgements. And these three mischiefs had three unfufferable effects: first, the prejudice and disherison of the king and of his crowne. Secondly, the disherison of all his subjects. And thirdly, the undoing and destruction of the common law of this realm: all which appeare in the preamble of this act.

They are called (other courts,) either because they proceed by the rules of other lawes, as by the canon or civill law, &c. or by other trials, then the common law doth warrant. For the trial warranted by the law of England for matters of fact, is by verdict of twelve men before the judges of the common law of matters pertaining to the common law; and not upon examination of witnesses in any court of equity: so as *alia curia*, is either that which is governed *per aliam legem*, or which draweth the party *ad aliud examen*. For if the freehold and inheritances, goods, and chattel, debts, and duties, wherein the king or subject hath right or property by the common law, should be judged *per aliam legem*, or be drawne *ad aliud examen*, the three mischiefs aforesaid expressed in the preamble and in this act should follow, viz. disherison of the king and of his crowne, the disherison of all his people, and the undoing and destruction of the common law at all times used: by which words of this act it appeareth, that all these mischiefs were against the ancient common lawes at all times used. And that also appeareth by the ancient writs of the common law, called *ad jura regia*, whereof some touch hath been given before, and which are worthy the reading: and also by divers acts of parliament; as the statute of Carlile, anno 35 E. 1. whereof we have treated before in the second part of the Institutes: and by the statute of 25 E. 3. *De provisoribus*. And it is observed, that in 29 E. 3. within two yeares after the said act of 27 E. 3. that they that were called in question upon the statute of premunire, *incurrunt manucaptors sufficientes, et sacramentum prestiterunt, quod non attemptabunt, citra mare vel ultra, quod in prejudicium regis, legum, seu curie, seu judiciorum in curia regis redditi, tendere valeat quoquo modo, &c.* Whereby, and many other like records it appeareth, that

Regist. 61, 62,
&c.

Mic. 29 E. 3.
coram rege.
Rot. 44. Cornub.
V. 46 E. 3. 13,
14. Nota, citra
mare.

judgements