cases adjudged in the kings bench, whereunto they were referred by the parliament. See Michael. 17 Edw. 1. in Bano. Rotulo. 33. Southampton.

The chapter of Magna Charta here intended, and in both the said records expressed, is this 17 chapter of Magna Charta now in hand. By these records two things are to be observed. 1. That this is a general law, by reason of these words, Vel alii aliis nolfiri, under which words are comprehended all judges or justices of any courts of justice. 2. Albeit it be provided by the ninth chapter of Magna Charta, Quod barones de quinque portibus, et omnes aliis portis haecliberales et liberitas confederum suas, that these general words must be understood of such liberties, and customs only, as are not afterwards in the same charter by express words taken away, and referred to the crown. And therefore if the mayor and barons of the cinque ports had not by this act to hold pleas of the crown, yet by this act of the seventeenth chapter, they are abrogated, and refounded; a notable and a leading judgement. Both these records being within two years after the confirmation of king E. 1. of Magna Charta, are worthy to be read and observed.

(1) Viccomer.] See for his name, office, and antiquity in the first part of the Institutes, sect. 234.

(2) Constabularius.] Is here taken for castellanus, a castellein, or constable of a castle, for so doth the Mirror interpret. And castellanus est qui custodit castellum, aut est dominus castellii; and so doth Bradon; Debet, &c. ostendere castellano, scire constabulario turris, &c. And therewith agreeeth Fleta, Item nullæ præse capiantur de aliqua per aliquem constabulario, castellaneum, praestriquam de villa, in quæ sitam est castrum.

And the statute of W. 1. agreeeth herewith, Des præse, des constabularis, ou castelleins, faits des autres, &c.

And castellani were men in those days of account, and authority, and for pleas of the crown, &c. had the like authority within their precincts, as the sheriff had within his bailiwick before this act, and they commonly seale (which I have often seen in many, and have cause to know, that some of the ancient family of de Spervam in Norf. did) with their portraiture on horseback.

Now for the number of castles, in ancient time, within this realm, Certum est regis Henrici fecundus temporebus castella 1115. in Anglia extitisse.

And it is to be observed, that regularly every castle containeth a manor: so as every constable of a castle, is constable of a manor, and by the name of the castle the manor shall pass, and by the name of the manor the castle shall pass.

For this word, constabularius, his office, and antiquity, see the first part of the Institutes, sect. 379.

And albeit the franchises of infangthiefe, and outfangthiefe, to be heard and determined within court barons belonging to manors, were within the said mischief, yet we finde, but not without great inconvenience, that the same bad some continuance after this act. But either by this act, or per defatudinem, for inconvenience, these franchises within manors are antiquated and gone.

(1) Coronor.] His name is derived a corona, so called, because he is an officer of the crown, and hath consuance of some pleas, which are called placita corone.
Magna Charta. Cap. 18.

For his antiquity, see the Mirror, who (treating of articles estab-
lished by the ancient kings, Alfred, &c.) faith, Auxi ordains fuer
coronors in chesfive county, and viceounts a garder le pece, quante les
countes soy demisferent del gard, et baylisses in lieu de centeners (that is)
coronors in every county, and sheriffs were ordained to keep the
peace, when the earles dimift themselves of the custody of the
counties, and bailiffes in place of hundreders.

For his dignitie and authority, Britton faith in the person of the
king. Pur ceo que nous volonons, que coronors font in chesfive county prin-
cipals gardiens de nostre peace, a porter record des pleas de nostre corone,
and de leur vieuvs, and abjurations, and de utelagaries, volons que ilz font
efflancs folonge ceo, que est conten in nostres statutes de leur elecution,
&c.

And a common merchant being chosen a coroner, was removed,
for that he was communis mercator.

* By the ancient law, he ought to be a knight, honest, loyal,
and fege, Et qui melius sciat, et possit officio illi intendere. For this
was the policy of prudent antiquity, that officers did ever give a
grace to the place, and not the place only to grace the officer.

But what authority had the sheriff in pleas of the crown before
this statute? this appeareth by Glanvill, that the sheriff in the
tourn (for that is to be intended) held plea of theft, for he faith;
Exciptur crimen facti, quod ad vicecomitem pertinet, et in comitatibus
placitatu; but he may enquire of all felonies by the common law,
except the death of man.

And what authority had the coroner? the same authority he now
hath, in case when any man come to violent, or untimely death,
super vixum corporis, &c. Abjurations, and out-lawries, &c. ap-
peales of deaths by bill, &c. This authority of the coroner, viz.
the coroner solely to take an indictment, super vixum corporis; and
to take an appeale, and to enter the appeale, and the count re-
maineth to this day. But he can proceed no further, either upon
the indictment, or appeale, but to deliver them over to the jutices.
And this is faved to them by the statute of W. 1. cap. 10. And
this appeareth by all our old books, book cafes, and continual ex-
perience.

And for the further authority of the coroner in case of high
treason, see the book of 19 H. 6. fol. 47. and consider well
thereof.

But the authority of the sheriff to heare and determine theft, or
other felonies, by the common law (except the death of man) in
the tourn is wholly taken away by this statute, howbeit his power to
take indictments of felonies, and other mis deeds within his
jurisdiction, is not taken away by this act.

CAP. XVIII.

Si quis tenens de nobis laicum sculam
moritur, et vicis, vul bolivius nofer
ofsendat litteras nostras patent:s de sum-
movitione nostrae de debito, quod de-
functis nobis debuit: liceat vicis, vul
baliuss

If any that holdeth of us lay-see do
die, and our sheriff or bailiff do
shew our letters patents of our sum-
mon for debt, which the dead man did
owe to us; it shal be lawful to our
sheriff

By this chapter three things are to be observed; first, that the king by his prerogative shall be preferred in satisfaction of his debt by the executors, before any other; secondly, that if the executors have sufficient to pay the king's debt, the heir that beare the countenance, and sit in the face of his ancestor, or any purchaser of his lands shall not be charged. Thirdly, if nothing be owing to the king, or any other, all the chattels shall go to the use of the dead, that is, to his executors, or administrators, leaving to his wife and children their reasonable parts, which is inquisition, and not præceptum; and the nature of a fassone regularly is, to save a former right, and not to give, or create a new, and thus arise, where such a custome is, that the wife and children shall have the right de rationabili parte honorum, this statute faveth it. And this statute doth not lye without a particular custome, for that the writ in the Register is ground on a custume, which (as hath been said) is favored by this act.

* * * But that it was never the common-law (though there be great variety in books) hear what Bracton faith, who wrote soone after this act. Nec uxorom, nec liberos amplius capere de bonis defuncti patris vel uiri nobilium, quam fuerit eiis specialiter reliquitum, nisi hoc sit de speciali gratia testamenti, utpote si bene meriti in eum viti fuisset, vel ejus in suis victor aliquid civilis, qui in via magnam quaestionem faceret, si in morte sua cogeretur invitus bona sita relinquere propriis in domum, vel luxuriis, et uxoribus male meritis: et idem necessarium est, quod illius in bae parte libera facultas tribuatur. Per hoc enim tollet maleficium, animabit ad virtutem, et tam uxoribus, quam liberas bene faciendi debitis occasiomet, quod quidem non fieret, si se fener indubitanter certam partem obtineat eam sine testamenti voluntate.

But the administrators of a man that die intestate, or executor of any, that make no disposition of his whole personall estate, goods, debts, and chattels, the administrators or executors after his debts paid and will performed, ought not to take any thing to his or their owne use, but ought, though there be no particular custome, to divide them, according to this statute: and the fald ancient, and latter authorities (then which there can be no better direction) may guide them therein: and this right doth this statute of Magna Charta.

Osellam Regist. 281. a. 17. E. 3. 71. 27. E. 3. 88. 33. 39.


4. E. 4. 15. F. N. B. 32. 3. 25.


Mirror, cap. 5. 62.

Glavn. lib. 12. c. 20.

Braclon, l. 2. fol. 60. b.

Peta, l. 2. cap. 49.

Regist. 142.

34. E. 1. detinew 60.

1. E. 2. lib. 56. 17. E. 2. ibid. 58.


40. E. 3. 38.

3. E. 3. det. 156.

1. E. 4. 6.


Seyver. 39.


Bracl. l. 2. fol. 61. Note the reason hereof makeith against perpetuities.
Magna Charta.

Cap. 20.

_Charta sive by these words, jubis suxor, et liberis suis, rationabilibus partibus suis._ So as though the statute doth give no action, yet their parts are saved hereby, which by_Glanville_, and other ancient authors appear to belong to them; and the executor, or administrator shall be allowed of this distribution, according to this statute, upon his account before the ordinary.

CAP. XIX.

_NO constable, nor his bailiff, shall take corn or other chattels of any man, if the man be not of the town where the cattle is, but he shall forthwith pay for the same, unless that the will of the seller was to respite the payment; and if he be of the same town, the price shall be paid unto him within forty days._

Here also it appeareth, that in this chapter _constabularius_ is taken for _castellanus_; and this taking by _castelleius_, though the castell was kept for the defence of the realme, was an unjust oppression of the subject, and this expressly appeareth by the _Mirror_.

_Ceo que ejf defendu a constables a prendre le autre, defend droit a tous gens de cy que mal difference parentre pripe daeaut ungr fouen, et robbery, lequel cel pris joit de chivalls, de vitaille, de marchandise, de cariage, de officis, ou des autres manners de biens._ And this appeareth also by _Fleta_, l. 2. cap. 43. _Quia multa gravamina multi inferior tur per diversas distributiones, que quidem sub colore priurum advocaturn, &c. indicetur in Magna Charta de libertatibus, &c. no purveyance shall be taken, but only for the houses of the king, and queen, and for no other person: so as the grievance before this, and other like acts, is wholly taken away._

CAP. XX.

_NO constable shall distress any knight for to give money for keeping of his cattle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself for a reasonable cause._ And if we do lead or send him in an army, he shall be free from castleward

ward for the time that he shall be with us in see in our hoff, for the which he hath done service in our wars.

(1 Inf. 70. 2. 12 Car. 2. c. 24.)

Here confabularius is taken in the former senfe: see the first parte of the Institutes, Sec. 96.

See this act in Fleta: and note, this act (consisting upon two branches) is declaratory of the common law, for first, that he, that held by castele gard, that is, to kepee a tower, or a gate, or such like of a castele in time of warre might doe it, either by hismelfe, or by any other sufficient person for him, and in his place. And some hold by such service, as cannot doe it in person, as major and com- munity, deane and chapter, bishops, abbots, &c. Infants being purchasers, women, and the like, and therefore they might make a deputy by order of the common law. If two joyn-tenants hold by such service, if one of them performe, it is sufficient.

For the second; if such a tenant be by the king led, or sent to his hoff, in time of warre, the tenant is excused and quit of his service for keeping of the castele, either by himselfe, or by another during the time, that he so serve the king in his hoff, for that when the king commandeth his service in his hoff, he dispenceth with his service, by reason of his tenure, for that one man cannot serve in person in two places, and when he serves the king in person in one place, he is not bound to finde a deputy in the other, for he is not bound to make a deputy, but at his pleasure, and this is also declaratory of the ancient common law. See the first part of the Institutes, 111. 121.

C A P. XXI.

NULLUS vicecomes, vel balivus noftrr, vel aliquid alius, capiat ecos, vel carectas alijus pro cariagioso faciendo, nisi reddat liberationem antiquitus statutam, fullicet pro una carecta ad duos equos decem denarios per diem, et pro carecta ad tres equos quattuordecim denarios per diem. Nulla carecta dominica alijus persona ecclesiastica vel militis, vel alijus dominus per balivus nostrors capiatur, nec nos, nec balivus noftri, nec alii, capitius boscum alienum ad castra, vel ad aliad agenda noftra, nisi per voluntatem illius, cujus boscus ille fuerit.

NO sheriff nor bailiff of ours, or any other, shall take the horses or carts of any man to make carriage, except he pay the old price limited, that is to say, for carriage with two horse, x. d. a day; for three horse, xiv. d. a day. No demesne cart of any spiritual person or knight, or any lord, shall be taken by our bailiffs; nor we, nor our bailiffs, nor any other, shall take any man's wood for our cattles, or other our necessaries to be done, but by the licence of him whose whole the wood is.

* [ 35 ]


This
Magna Charta.  
Cap. 21.

This chapter consisteth of three branches, the first setteth down
the auncient hire or allowance for the carriage for the king; the
second setteth down, who are exempted from that carriage; the
third, concerning purveyance of wood.

For the first, the carriage must be taken for the king, and queen
only; and for no other, implied in these words, Nullos vicinumus vel
balivum negoti, and this is explained by divers other statutes, and by
our books.

The hire or allowance is certainly expressed, as auncientely due,
Reddat libedationem antiquitam statutam; so as this also is declaratory
of the auncient law, and the hire or allowance ought to be paid in
hand, for the statute faith, Nullus capiat, &c. nisi reddat, &c.

And this liberatio antiquitum statuta, is (as it appeareth by this ad)
per diem, by the day.

Auer-penny, and averagium, are words common in auncient char-
ters, and signifie to be free from the kings carriages, cum averiiis,
and this is meant where it is said, Auer-penny, hoc est, quietum esse de
diversis denariis pro * averagiiis domini regis.

For the second branch: no demean, or proper cart for the ne-
cessary use of any ecclesiastical person, or of any knight, or of any
lord, for or about the demean lands of any of them, ought to be
taken for the kings carriage, but they are exempted by the auncient
law of England from any such carriage.

This statute extendeth not to any person ecclesiastical, of what
estate, order, or degree soever: and this was an auncient priviledge
belonging to holy church.

Also it extendeth to all degrees, and orders of the lesser, and
greater nobility, or dignity, as of knighthood, dukes, marquesses,
carles, viscounts, and barons, for albeit there were no dukes, mar-
quesses, or viscounts within England at the making of the statute,
yet this statute doth extend to them, for they are all domini, lords
of parliament, and of the barony of England; and this also was an
ancient priviledge belonging to these orders and dignities: and all
this concerning the ecclesiastical and temporall state was (amongst
other things for the advancement and maintenance of that great
peacemaker, and love-holer, hospitality) one of the auncient orna-
ments, and commendations of the kingdom of England.

The third branch is, that neither the king, nor any of his
baylies, or minillers, shall take the wood of any other, for the kings
castles, or other necessaries to be done, but by the licence of him
whoe wood it is. And all statutes made against this branch
(amongst others) before the parliament of 42 E. 3. are repealed:
and this branch, amongst others, hath (as hath been said) been
confirmed, and commanded to bee put in execution at 32 seions of
parliament. And so it was resolved by all the judges of England,
and barons of the eschequer, Mich. 2 Jac. Reg. upon mature de-
liberation; and that the kings purveyour could take no timber,
growing upon the inheritance of the subject, because it was parcel
of the inheritance, no more then the inheritance it selfe. Whereof
the king, and counsell being informed, the king by his procla-
mination, by adviice of his counsell, under the great seal, 23 April,
anno 4. declared the law to be in these words: first, when we were
informed, that some inferior ministers had presumed to goe so
darre beyond their commission, as they have adventured, not only
to take timber trees growing, which being parcell of our subjects
inheritance,
Cap. 22. Magna Charta.

inheritance, was never intended by us to be taken without the good will, and full consent of the owners, but have accustomed also to take greater quantities of provisions for our houses, and stable, then ever came, or were needful, to our use, &c. As by the said proclamation bearing date 23 Aprilis, anno 4 Jac. Reg. appeared. And divers surveyors were according to the said resolution of the judges punished in the Star chamber, for surveying of timber growing, without the consent of the owners.

Bosius is an ancient word used in the law of England, for all manner of wood, and the Italian uleth the word legno in the same sense, and the French, boys, accordingly. Bosius is divided into two sorts, viz., high wood, haut-boys, or timber, and coppice-wood (so called, because it is usually cut) or under wood. High-wood is properly called Salus, quia arbores ibi exiliunt in alium. It is called in Fleta, marerium.

The common law hath so admeasured the prerogative of the king, as he cannot take, nor prejudice the inheritance of any, and (as hath been said) a man hath an inheritance in his woods.

And see the statute of Marlbridge, anno 52. H. 3. Magna Charta in singulis tenatur, tam in hiis, quae ad regem pertinent, quam ad alios, and 31 other statutes. So as all pretence of prerogative against Magna Charta is taken away.

See hereafter the exposition of the statute De tallagio, anno 34 E. 1. & de prijs, anno 18 E. 2. vet. Magna Charta. fol. 125.

CAP. XXII.

NOS non tenebimus terras (1) illorum, qui convicii fuerint (2) defelonia (3), nisi per unum annum, et unum diem, et tunc reddantur terrae ille dominiis foedereum.

WE will not hold the lands of them that be convict of felony but one year and one day, and then those lands shall be delivered to the lords of the fee.

(Mirror, 313.)

This appeareth by Glanvill, to be due to the king by his ancien prerogative, for he saith, Sin autem de alio, quam de regi tenuerit is, qui utlagatus est, vel de felonia convicii. Tunc quoque omnes res suae mobiles regis erunt, terra quod per annum annum remanebit in manu domini regis, claps o autem anno, terra eadem ad regium dominum, falsicit ad ipsum de cujus foed. est, revertetur, veruntamen cum domorum subversione, et arborum extirpatione.

This chapter of Magna Charta doth expresse that, which doth belong to the king, viz. the yeare, and the day, and omit the wafe, as not belonging to him, and this is notably explained by our auncient books with an uniforme confent: Bracton treating of the yeare, and the day in this case due to the king, faith, Sed qua se causis, quare terra remanebit in manibus domini regis? Vide tur quod tali est, quia revera, cum quis convicius fuerit de aliqua felonie, in potestate domini regis esse, profferrendi edificia, extirpandi gardina, et araudi prata, et quoniam buxinodi vertentur in grave damnum domini regis.
Notas.

Provisum fuit.

Britton, cap. 5. fol. 14.

And Britton treating of this very matter, faith, Lour d'ens nobles sont les nous, et leur heires disberet, et voilons avec leur tenements de que nous que sont tems le an, et le jour, jist que leur heritage, demourgen au an et un jour in nostre mains, si que nous ne faisons offre perié les tenements, ne gofer les boyes, ne aver les prees, sicome lenfoloit faire in remembrance des felons attaints, &c.

Fleta, li. 1. cap. 28.

Fleta faith, Si autem utlagenti, vel aliis convicisti terram haberint, illa fiatim captienda est in manus regis, et per omnem annum, et unum diem tenens, ad capitales dominos post illum terminum revocetur, et hoc habetur ex statuto Magnae Chartae, quod tale est, nos non tenemus terras illorum, qui convicisti fuerint de felonia, nisi per uniu annui, et unum diem, et tunc reddatur terrae illae dominus feodorum, canfa vero talis termini regis, quia in signum felonie alium provismus fuit, quod adficia talum prostermentur in terram, extirpenter gardina, arearetur prata, truncaretrur boves, et quaniam bujusmodi vertcretur in grave damnorum dominorum feodorum, pro communi utilitate provismus fuit, quod bujusmodi durae, et gravicia cofferent, et quod rex propriefer per annum et diem totius terrae commoditatem perceperit, focus autem, &c. terra non est efficacia dominorum, post quem terminum dominii proprietatis integre abjique qvasto vel extreccione reverteretur.

Nota.

Fleta, li. 1. cap. 28.

The Mirror speaking of this chapter, faith, Le point des terres aux felons teuer per un an, est defisio, car p. la ou le roy ne daut a q. le gage de droit, ou lais en nofme de faire, par falber le feif de loifriment, pricriron les ministres le roy amideus. Upon all which it appeareth, that the king originally was to have no benefit in this case, upon the attainder of felony, where the free-land was holder of a subject, but only in detestation of the crime, ut pena ad paucos, metus ad annus provenit, to prostrate the house, to extirpate the gardens, to eradicate his woods, and to plow up the medows of the felon, for suffering whereof, et pro bona publice, the lords, of whom the lands were holden, were contented to yeeld the lands to the king for a year, and a day, and therefore not only the waft was justly omitted out of this chapter of Magna Charta, but thereby it is enacted, that after the year and day, the land shall be rendred to the lord of the fee, after which no wafte can be done.

And where the treatise of Prerogativa Regis, made in 17 Ed. 2. faith, Et potiam dominus rex habuerit annum, diem, et wastum, tunc reddatur tenementum illud capitali domino feodi illius, nisi prius faciat finem pro anno, die, et wasto. Which is so to be expounded, that forasmuch, as it appeareth in the said old books, that the officers, and ministers, did demand both for the wafte, and for the year, and day, that came in lieu thereof, therefore this treatise named both, not that both were due, but that a reasonable fine might be paid for all that, which the king might lawfully claim. But if this act of 17 Ed. 2. be against this branch of Magna Charta, then is it repealed by the said act of 42 Ed. 3. cap. 1.

Vide Stamford.
Pl. Cor. 190.
191. Vide 3 E. 3.
coron. 527.
3 E. 3. ibid. 58.
3 E. 3. ibid. 310.

Heredo it also appeareth, how necessary the reading of auncient authors is for understanding of auncient statutes. And out of these old books, you may obserue, that when any thing is given to the king-
Magna Charta.

king in lieu, or satisfaction of an ancient right of his crown, when once he is in possession of the new recompence, and the same in charge, his officers and ministers will many times demand the old also, which may turn to great prejudice, if it be not duly, and discreetly prevented.

(1) Non tenebimus terras.] If there be lord, mesne, and tenant, and the mesne is attained of felony, the lord paramount shall have the mefnalty presently. For this prerogative belonging to the king extends only to the land, which might be wasted, in lieu whereof yeare and day was granted.

And this is to be understood when a tenant in fee-simple is attained, for when tenant in taile, or tenant for life is attained, there the king shall have the profits of the lands, during the life of tenant in taile, or tenant for life.

(2) Conviiti fuerint.] Here conviiti in a large sense is taken for attineti, for the nature, and true sense of both these words, see the first part of the Institutes, and likewise for this word felony there.

(3) De felonia.] Must be understood of all manner of felonies punished by death, and not of petit larceny, which notwithstanding is felony.

CAP. XXIII.

OMNES kidelli (1) depomantur de cetero penitus per Thamsem et Medeovin per totam Angliam nisi per ceteram maris.

ALL wears from henceforth shall be utterly put down by Thames and Medway, and through all England, but only by the sea-coasts.

(25 E 5, cap. 4, 1 H 4, cap. 12, 12 E 4, cap. 7, 10 Rep. 138, 13 Rep. 35, 12 Ed. 4, c. 7)

Rei, St. Noveritis nos pro communi utilitate civitatis nostrae Londoni et totius regni nostri concellifie, et firmiter praecepta, ut omnes kidelli qui finit in Tamisia, vel Medeovia, ubicunque fuerint in Tamisia, vel in Medeovia, amovant, et non de cetero kidelli aliqui ponant in Tamisia, vel in Medeovia, super forisacutum decem librum sterlingorum: quia tam etiam clamavimus omne id, quod custodes turr in nostris Londonin annuisim pericipe solant de praedictis kidellis: Quare volumus et firmiter praeceptum, ne aliquis custos prostat turra aliquo tempore post hor, aliquid exigat ab aliquo, nec aliquam demandam, aut gravamen, scuo molestiam aliqui inferant occasionem praeidiorum kidellorum, jatis enim nobis constat, et per fidels nostris sufficienter nobis datum est intelligi, quod maximum detrimendum, et incommmodum praeidiorum civitati Londoni, nec non et toti regno nostro occasione praediorum kidellorum perniciebat; quod ut firmum, et stabile perseverat imperpetuum, presentis pagina inscriptione et figillli nostri appositione communimus, ficta curia domini regis Johannis patris nostri quam earum nostri Londoni inde habit rationabilis testat.

(1) Kidelli.] Kidels is a proper word for open weares whereby fishes are caught.

It was specially given in charge by the justices in eire, that all juries should enquire, De bis qui piscantur cum kidellis et ferrarillis.
And it appeareth by Glanvill, that this *pourpreste* was forbidden by the common law, for he saith, *Dictur autem pourpreste, vel pourpreste propre, quando aliquid super dominium regem injuste occupat, ut in dominicis regis, vel in suis publicis obstruecit, vel in suis publicis tranversis a recto cura, vel quando aliquis in civitate super regiam plateam aliquid adificans occupaverit, et generaliter, quotes aliquid sit ad nocendum regii tenementum, vel regia via, vel civitatis, and every publique river or streame, is alta regia via, the kings high-way.

*Pourpreste* commeth of the French word *pourpre*; which signifies a close, or inclosure, that is, when one encroacheth, or makes that severall to himselfe, which ought to be common to many.

This is for reformation of an abuse, and wrong offered to the lord, of whom the land was holden, and yet upon this statute, the tenant cannot please, that the lands are not holden of the king in chief, for two causes, first for that this act was made for the benefit of the lord, of whom this land is holden, and he cannot please it, because he is an estrange, and if one claiming to be lord shoulde be admitted, another might come in and pretend the like, and so infinite. Secondly, this act extends to the chancery, for the words be *Breve, Sc. non fiat*, so in that court the writ is made: and therefore when the writ is granted in the chancery, and returned into the court of common pleas, that which is by this act prohibited in the chancery, extendeth not to the court of common pleas; and therefore they cannot admit of such a plea: now the tenant, least he be concluded, must take the tenure by protestation, and the king, though he be not party to the record, yet shall he take advantage of the effoppel, for he is ever present in court.

And since this statute, no man ought to have this writ out of the chancery upon a suggestion, but oath must be made, before the granting thereof, that the land is holden of the king in capite.

Sec *Mich. 4 E. 1. de banco Rot. 114. Norff. Barth. de Redhams cafe, pro terris in curia comitis wearren apud Castleacre, notable recordum super hoc statutum. Per breve praecipitur justiciaribus quod inquirant, si terrae tenentur de rege in capite. See the writ in the Register, 4. b. by which writ power is given to the justices, that if it may appear to them, that the land is not holden in capite, then that the plea be holden in the lords court, according to this statute, And for that the demandant Peter Grelyye confessed that the
lands were not holden of the king in capite, but of Edmond brother of the king, thereupon the entrie was, Ideo Petrus perquirat sibi per breve de reo patr. in curia episcus Ed. versus R. est volucrit. Mich. 14. E. 1. Rot. 48. Som. acc. Regist. fo. 4. b. & 6. a. And the lord, of whom the land is holden, shall upon this statute, have his writ of disject against the demandant, which have reco-

vered by default, and recover his damages, but the record of the judgement shall stand in force; and concerning the conclusion of the tenure, the lord shall have remedy against the king by petition of right. But if the recovery be given upon triall against the tenant, then the tenant hath concluded himself: for the tenure, because his protestation cannot avail him, when his plea is found against him; but the lord may have in that case, his action against the tenant, and his petition of right to the king, to be restored to his seigniorie, and by that means the tenant himselfe may be relieved.

(1) Breuv. Dicitur Ideo brevem, quia rem de qua agitur, et intentionem petentis paucis verbis breviter enarrat, sic facit regula juris, quae rem, quae est, breviter enarrat.

Brevia quidem cum sit formaam ad similitudinem regulae juris, quia breviter et paucis verbis intentionem petentis expressit et explanat, sic regula juris rem quae est breviter enarrat.

And Fleta defines a writ, totidem verbis, as Bracton hath done. There is a great diversity between a writ, and an action (although by some they are often confounded) which will betray appear by their severall definitions.

Actio nihil aliud est, quam jus proficendi in judicio quod aliqui delictur. And with Bracton agreeeth Fleta.

Actio nihil aliud est, quam jus proficendi in judicio quod aliqui delictur, si quod nascitur ex malefacio, vel quod provenit ex delicto, vel injuria.

And the Mirror saith, Actio est ant' choft que loist demand de son droit. Actors font queus fuont leur droit per plieint, &c.

So as the first diversity between an action, and a writ is, that an action is the right of a suite, and the writ is grounded thereupon, and the means to bring the demandant or pl to his right. The second diversity, a writ grounded upon right of action is ever in foro conceptio, but so are not all writs, for that writs are much more large, then actions are, as shall appear by the division of writs.

Of writs grounded upon right of action, some be criminal, and some be civil or common.

Of criminal, some be in personam, to have judgement of death, as writs of appeal, of death, robberie, rape, &c. and some to have judgement of dammage to the partie, fine to the king, and imprisonement, as writs of appeal of mayhem, &c.

Of writs civil or common, some be recall, some personall, and some mixt. And of these, some be original, and all they go out of the chancery, and some judicall, and they issue out of the court, where the plea depended. Some conditionall, as writs of error, redissin, &c. some without condition, some returnable, and some not returnable. And all these are warranted, either by the common law, or grounded upon some act of parliament. Which are so well knowne, as this little touch shall suffice.

Of original writs, some be brevia formata, and some ex curia, some magistralia, et sepius varientur.

Regularly
Regulare the kings writs are, ex debito jussitiae, to be granted to the subject, which cannot be denied; and some be ex gratia, as a speciall liverys, and b writs of proteccion for the safeguard of the subject, being in the kings warre out of the realme.

In nature of commissions: as writs of error, of oier, and terminer, of election of knights and burgesses of the parliament, of election of a coroner, of or of discharging of him, of election of verderers, de ventre inspiciendo. d De vitis et vunellis mundandis, Regist. 267. Of the curet of the good behaviour, or of the peace. e De odio et atia. Association of de admitendo in sicutum, of fi non omnes, and the like. Writs of justicies.

Of writs of præcipe, some be, quod reddat, as writs of right, &c. debit, &c. Some be quod faciat, as de conquestudibus et servitutis. De domo reparanda, And of writs of præcipe, some containe several precepts, and some joyned, and some are folio.


Of writs, some are for furtherance of justicie, and for ouing of delayes, and to proceed. As the writ de procedendo ad judicium, that the justicies shall not forsaee to doe common right, for no commandement under the great seale, petit seale, or message from the king. Or a if the judges of themelves delay judgement, then lyeth also a procedendo ad judicium. Again, there is a procedendo in flagella, et ad judicium, after aid of the king. A writ de executione judicis.

Some for advancement of justicie not to proceed.

Regularly writs are directed to the sherrifs, or coroners, but in speciall cases to the partie, or others. To the partie, as writs of prohibitions, ne exeat regnum. To others, as to judges temporall, ecclesiasticall, and civil. To serjeants at armes. To the 4 party that hath the custody of an idiot. To the e major, and bailiffes, &c. ad amovendum eos ab officio, quo mansit inquietudo fiet de eorum officio. f Liberates thesaurarios, et comararios, thesaurarios et heritoris.

Note of writs of right (whereof the præcipe in capite is one) some be clofe, and some be patent.

Writs of right returnable into the court of common pleas be patent, and writs directed into auncient demefne, are clofe; and the reason wherefore in other courts of the lords, the writs shall be patent, is, because there is a claue in those writs, et nisi feceris, vicecomes N. boce faciat, ne amplius clamorem auidentis pro defeetu rei: which claue is not in the other writs, and neceffary it is that such writs should be patent, that the sherrifs might take notice thereof.
Cap. 25: Magna Charta: 41

CAP. XXV.

ONE measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the quarter of London: and one breadth of dyed cloth, ruffs, and haberjects, that is to say, two yards within the lifts. And it shall be of weights as it is of measures.

(14 Ed. 3. Stat. 1. c. 12. 27 Ed. 3. Stat. 2. c. 10. 8 H. 6. c. 5. 11 H. 7. c. 4. 16 Car. 1. c. 19.)

This act concerning measures and weights, that there should be one measure and one weight through England, is grounded upon the law of God. Non habebis in sacculo divoxia pondera, majus, et minus, non erit in domo tua modius maior et minor, ponabis habeis iustum et verum, et modius aequalis erit tibi, ut multo vivas tempore super terram, &c. And this hath often by authority of parliament been enacted, but never could be effected, so forcible is cultume concerning multitudes, when it hath gotten an head, therefore good laws are timely to be executed, and not in the beginning to be neglected.

For weights and measures, there are good laws made before the conquest: in dimensione, et pondera nihil esse iniquum, ab iniquitate vero deinceps quisque temporet: per commune concilium regni statuimmus, quod habeant per universum regnum mensuras fideliimmis, et signatas, et pondera fideliimmis, et signatas, fuit boni predecicores statuerunt.

(1) Una latitudine pannorum, &c. True it is that broade cloathes were made, though in small number, at the time, and long before this statute, but in the beginning of the raigne of Edward 3. the same came to so great perfection, as in the 11. yeare of his raigne, all men were prohibited to bring in privilie, or apertly by himselfe, or any other, any clothes made in any other places, &c. And this is the worthieth and richest commoditie of this kngdome, for divide our natie commodities exported into tenne parts, and that which comes from the sheepe's back, is nine parts in value of the tenne, and feteth great numbers of people on worke. For the breadth, and length of clothes, see many statutes made after this.
Nothing from henceforth shall be given for a writ of inquiry, nor taken of him that prayeth inquiry of life, or of member, but it shall be granted freely, and not denied.

(3 Ed. 1. c. 11. 13 Ed. 1. flat. 1. c. 20. Mirror, 314. Regist. 133, 134.)

(1) Brevis inquisitionis.] That is the writ de odio et atia, anciently called breve de bona et malo, and here, of life, and member, which the common law gave to a man, that was imprisoned, though it were for the most odious cause, for the death of a man, for the which, without the kings writ he could not be bayled, yet the law favouring the liberty, and freedome of a man from imprisonmen, and that he should not be detained in prison, until the justices in eire should come, at what time he was to be tried, he might sue for this writ of inquiry directed to the sherife, quod affectus term casulodius placitorum coram in pleno comitatu per sacramentum proborum, et legum dominium de &c. inquiras (inde appellatun breve inquisitionis) utrum A. captus, et detentus in prigiona &c. pro morte W. unde recess (1. accusatus exsibiit) recessus sit odio, et atia &c. nisi indicatus vel appellatus fuerit, coram juticiaribus nostris ultimo iterum autibus in partibus illius, & pro hoc captus, et imprisonatus, for by the common law, in omnibus autem placitis de felonia, foler accusatus per pleges dimittit, preter quas de plactio de homcidio, ubi ad terrum alter flatuunt est. In this writ, fewer things are to be observed.

First, though the offence, whereof he was accused, were such, as he was not bayled by law, yet the law did so highly hate the long imprisonment of any man, though accused of an odious, and heinous crime, that it gave him this writ for his relieve.

Secondly, If he were indicted, or appealed thereof, before the justices in eyre, he could not have this writ, because this writ was grounded upon a surmise, which could not be received against a matter of record.

Thirdly, Upon this writ, though it were found, that he was accused de odio et atia, and that he was not guilty, or that he did this act se defendendo, vel per infortunium, yet the sherife by this writ had no authority to bayle him, but then the party was to sue a writ de ponendo in ballium, directed to the sherife, whereby he was commanded, quod se predictus A. incameret tibi ille ius, probis. It legatos homines de comitatu tavo &c. qui eum manuceptant habere coram juticiaribus nostris ad primam effijit, &c. Stantum, &c. tunc ipsum A. &c. predictum duodecim tradi in ballium.

Lastly, that there was a means by the common law, before inditement, or appeal, to protect the innocent against false accusation, and to deliver him out of prison.

Odium, signifieth hatred, and atia or acia in this writ signifieth
And this branch, for further benefit, and in favour of the prisoner, also enacted, that he shall have it gratis, without fee, and without delay, or denial, of which the Mirror saith thus, *deinde quod se fact del brevi et odio et atia. que le roy ne fust chancelor ne prissent par le brei fis grant fer doit extend a tous breifs remedials, et le dit brei ne doit folem entender a felonies de homicide, mes a tous felonies, et ne solent in appels, mes en inditement.*

But this writ was taken away by a later statute, viz. in 28 E. 3, because as some pretended, it became unnecessary, for that justices of affiles, justices of oyer and terminer, and justices of gaoler delivery came at the least into every county twice every yeare; but within 12 years after this statute, it was enacted, as often hath been said, that all statutes made against Magna Charta (as the said act of 28 E. 3. was) should be void, whereby the writs of odio et atia, et de ponendo in balium are revived, and so in like cases upon all the branches of Magna Charta. And therefore the justices of affiles, justices of oyer and terminer, and of gaoler delivery, have not suffered the prisoner to be long detained, but at their next coming have given the prisoner full and speedy justice, by due trial, without detaining him long in prision: now, they have been so farre from allowance of his detaining in prision without due trial, that it was resolved in the case of the abbot of S. Albion by the whole court, that where the king had granted to the abbot of S. Albion, to have a gaoler, and to have a gaoler delivery, and divers perions were committed to that gaoler for felony, and because the abbot would not at cost to make deliverance, he detained them in prision long time without making lawfull deliverance, that the abbot had for that cause forfeited his franchise, and that the same might bee feited into the kings hand.

For his committing to prision is only to this end, that he may be forth comming, to be duly tried, according to the law and custom of the realm. The abbot of Crowland had a gaoler, wherein divers men were imprisoned, and because he detained some that were acquitted of felony after their fees paid, the king seised the gaoler for ever.

And it is provided by the statute of 5 H. 4. that none be imprisoned by any justice of peace, but in the common gaoler, to the end they might have their trial at the next gaoler delivery, or feiisions of the peace. *Vid cap. 29.*

And some say, that this statute extendeth to all other judges, and justices for two reasons. 1. They say, that this act is but declaratory of the common law. 2. *Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est.*

Breue regis de bono et malo is so called of the words, de bono et malo, contained in the writ. This writ lay when A. B. was committed to prision for the death of a man, the king did write to the justices of gaoler delivery; quod si A. B. captus, et detentus in gaola praedicata pro morre C. D. de bono et malo ficer patriam inde ponerre voluerit, et ea occurrite (et non per aliquod specialis mandatum noffritum) detentus fit in eodem, tune censed gaolam de praedito A. B. secundum legem, et conjuventrum Angliae, deliberetis. So as without question the writ de bono et malo, is not the writ de odio et atia, as some have imagined.

Note, in those dayes the justices of gaoler delivery would not proceed.
Magna Charta. Cap. 27.

proceed in case of the death of a man, without the kings writ; for in the fame record it appeareth, that R. W. indiēatus de morte W. E. non tuit breve régis de bono, et male, ido retornatur gaule, et sic de alitis.

C A P. XXVII.

If any do hold of us by fee-farm, or by socage, or burgage, and he holdeth lands of another by knights service, we will not have the custody of his heir, nor of his land, which is holden of the fee of another, by reason of that fee-farm, socage, or burgage. Neither will we have the custody of such fee-farm, or socage, or burgage, except knights service be due unto us out of the fame fee-farm. We will not have the custody of the heir, or of any land, by occasion of any petit fejeanty, that any man holdeth of us by service to pay a knife, an arrow, or the like.

(1) Per fee-farmam. Fee farm properly taken, is when the lord upon the creation of the tenancy referre to himselfe, and his heires, either the rent, for the which it was before letten to farme, or at least a fourth part of that farme rent.

But Britton saith, Fee farmes sont terres temus in feo, a rendre per eux per annum. I veroxy volere, ou plus, ou moins, and is called a fee farme, because a farme rent is referved upon a grant in fee. And regularly, as it appeareth by this act, lands grantted in fee farme are holden in socage, unless an expresse tenure by knights service be referved, as it appeareth hereafter in this chapter.

(2) Vel per socagiam. * Tenure per firmam album est tenure libre in socage. Vide in libro nigro scamarii, capit De officio clericorum de firmæ blanca. It is commonly called blanche farme, Lucubrat. Oh-bouw, firma blanca, et vides ibi antiquum verbum [deliberari.]

(3) Burgagem. See the Custumier de Normanlie, cap. 32. and the commentaries upon the same.

(4) Per servitium militare. See le Custumier de Norman, cap. 33. De seur de orphelines, fol. 49. and the comment upon the fame.

This act, as well concerning tenures in fee farme, socage, and burgage, as by little fejeanty, is declaratory of the common law, and constantly in use to this day, and needeth no further explanation.
CAP. XXVIII.

NO bailiff from henceforth shall put any man to his open law, nor to an oath, upon his own bare saying, without faithful witnesses brought in for the same.

(Fitz. Ley, 78. Bro. Ley, 37.)

The Mirror treating of this chapter saith, Le point que defend, que null bayliffe met frank home a ferement sans fute present, est interpretable en est maner, que null justice, null minister le roy, ne auter fenechall, ne bailiff ne est power a mitter frank home a ferement faire, sans le commandement le roy, ne puit recevoir aucuns testimoignes, que testimoignent le monfrance olvere overay.

By this it appeareth, that under this word bailivus, in this act is comprehended every justice, minister of the king, steward and bailiff.

Simplici loquela sua.] For as Bracton saith, vox simplex nec probationem facit, nec presumptionem inducit; item non per facta, quae, juri + privi per domesticae, et familiares, jecta enim probationem non facit, id levis inducit presumptionem, et vincitur per probationem in contrarium, et per defensionem per legem.

It appeareth by Glanvill, that the defendant ought to make his law, 12. manu. And so it appeareth by a judgement in the same yare, and term, that this great charter was made, for there, in debt the defendant waged his law, ideo consideratum est per curiam, quod defendens se duodecima manu venit cum lege.

Every wager of law doth countervalle a jury, for the defendant shall make his law, de duodecima manu, viz. an eleven, and himself. And it should seeme, that this making of law was very auncient, for one writing of the auncient law of England saith, hujus paragatimini non omnis vanus est et falsa memoria, nam per hec tempora de pecunia posuiturus, debitum nonnullum duodecima, quod aiunt, manu difficult.

How much, and for what cause the law respecteth the number of 12. see the first part of the Institutes.

The party himselfe, when he maketh his law shall be sworne de fidelitate, that is, directly or absolutely, and the others de credulitate, that is, that they beleve that he faith true.

To make his law, is as much as to say, as to take his oath, &c. and it is so called, because the law giveth him that meane by his owne oath, to free himselfe.

And the reason, wherefore in an action of debt upon a simple contract, the defendant may wage his law, is, for that the defendant may satisfie the party in secret, or before witnesses, and all the witnesses may die, so the law doth allow him to wage his law for his discharge: and this, for ought I could ever reade, is peculiar to the law of England, and no milchtefe infeuht hereupon.
for the plaintiff may take a bill or bond for his money, or if it be a simple contract, he may bring his action upon his fame upon his agreement or promise, which every contract executory implieth, and then the defendant cannot waste his law.

C A P. XXIX.

Nullus liber (1), homo (2), capiatur, vel imprisonetur (3), aut dixissestur de libero tenemento suo, vel libertatus (4), vel liberis con-

fucionibus (5) fals, aut utulgeretur, aut exspectetur, aut aliquo modo affractura, nec siper cum ibimus, nec siper cum mittimus, nisi per legale judiciun (6) partum suorum (7), vel per legem terrae (8). Nulli condemnus (9), nulli negabimus, aut differimus (10) justitiam, vel rectum (11).

(5 Rep. 64. 10 Rep. 74. 11 Rep. 99. Regist. 186. Mirror, 314. 1 Ander. 158. 2 Bull. 373. 3 Bull. 47. Wood's Inst. 613. 614. 2 Ed. 5. c. 8. 5 Ed. 3. c. 9. 14. Ed. 3. Hals. 2. c. 14. 25 Ed. 3. R. 5. c. 4. 28 Ed. 3. c. 3. 42 Ed. 3. c. 7. 11 R. 2. c. 10. 37 Ed. 3. c. 18. 4 H. 7. c. 12. 16 Ca. 1. c. 10. 1 Roll. 2. 8. 229. 225. 12 Rep. 56. 639. 53.)

(1) *Nullus liber, &c.* This extends to villeins, staying against their lord, for they are free against all men, staying against their lord. See the first part of the Institutes, sect. 189.

(2) *Nullus liber homo.* Abit homo doth extend to both sexes, men and women, yet by act of parliament it is enacted, and declared, that this chapter should extend to duchesses, countesses, and baronesses, but marchionesses, and viscountesses are omitted, but notwithstanding they are also comprehended within this chapter.

* Upon this chapter, as out of a roote, many fruitfull branches of the law of England have sprung.

And therefore first the genuine sense hereof is to be seene, and after how the same hath been declared, and interpreted. For the first, for more perspicuity, it is necessary to divide this chapter into severall branches, according to the true construction and reference of the words.

This chapter containeth nine severall branches.

1. That no man be taken or imprisoned, but per legem terrae, that is, by the common law, statute law, or custom of England; for these words, per legem terrae, being towards the end of this chapter, doe referre to all the precedent matters in this chapter, and this hath the first place, because the liberty of a mans person is more precious to him, then all the rest that follow, and therefore it is great reason, that he should by law be relieved therein, if he be wronged, as hereafter shall be shewed.

2. No man shall be dispossessed, that is, put out of seison, or dispossessed of his free-hold (that is) lands, or livelihood, or of his liberties,
Cap. 29. Magna Charta.

Liberties, or free-customes, that is, of such franchises, and freedoms, and free-customes, as belong to him by his free birth-right, unless it be by the lawfull judgement, that is, verdict of his equals (that is, of men of his own condition) or by the law of the land (that is, to speak it once for all) by the due course, and proce of law.

3. No man shall be out-lawed, made an exlex, put out of the law, that is, deprived of the benefit of the law, unless he be out-lawed according to the law of the land.

4. No man shall be exiled, or banished out of his country, that is, nemo percet patriam, no man shall lose his country, unless he be exiled according to the law of the land.

5. No man shall be in any sort destroyed (destruere, i. quad prins frument, et faciun fuit, pensius covertere et diruire) unless it be by the verdict of his equals, or according to the law of the land.

6. No man shall be condemned at the king's suite, either before the king in his bench, where the pleas are coram rege (and so are the words, see super eum ibimus, to be understood) nor before any other commissioneer, or judge whatsoever, and so are the words, see super eum mittemus, to be understood, but by the judgement of his peers, that is, equals, or according to the law of the land.

7. We shall sell to no man justice or right.

8. We shall deny to no man justice or right.

9. We shall defer to no man justice or right.

The genuine sense being distinctly understood, we shall proceed in order to unfold how the fame have been declared, and interpreted. 1. By authority of parliament. 2. By our books. 3. By precedent.

(3) Nullus liber homo capiatur, aut imprinstructur.] Attached and arrested are comprehended herein.

1. No man shall be taken (that is) restrained of liberty, by petition, or suggestion to the king, or to his council*, unless it be by indictment, or pretense of good and lawfull men, where such needs be done. This branch, and divers other parts of this act have been notably explained by divers acts of parliament, &c. quoted in the margent.

2. No man shall be diffised, &c.

b Hereby is intended, that lands, tenements, goods, and chattells shall not be seised into the kings hands, contrary to this great charter, and the law of the land; nor any man shall be diffised of his lands, or tenements, or disposessed of his goods, or chattells, contrary to the law of the land.

c A custome was alleged in the town of C. that if the tenant cease by two yeares, that the lord should enter into the freehold of the tenant, and hold the fame until he were satisfied of the arrangeges, and it was adjudged a custome * against the law of the land, to enter into a mans freehold in that case without action or answer.

King H. 6. granted to the corporation of diers within London, power to search, &c. and if they found any cloth died with logwood, that the cloth should be forfeit: and it was adjudged, that this charter concerning the forfeit, was against the law of the land, and this statute: for no forfeiture can grow by letters patents,

E 4

No
Magna Charta.

Cap. 29.

No man ought to be put from his livelihood without answer.

3. No man outlawed, that is, barred to have the benefit of the law, Vide to the word, the first part of the Institutes.

Note to this word utiagetor, these words, nisi per legem terrae, do refer.

(4) De libertatis.] This word, libertates, liberties, hath three significations:

1. First, as it hath been said, it signifies the laws of the realm, in which respect this charter is called. charta libertatum.

2. It signifies the freedoms, that the subjects of England have; for example, the company of the merchant tailors of England, having power by their charter to make ordinances, made an ordinance, that every brother of the same society should put the one half of his clothes to be dressed by some cloatheworker free of the same company, upon pain to forfeit x. s. &c. and it was adjudged that this ordinance was against law, because it was against the liberty of the subject, for every subject hath freedom to put his clothes to be dressed by whom he will, et sic de familia; and so it is, if such or the like grant had been made by his letters patents.

3. Liberties signifies the franchises, and privileges, which the subjects have of the gift of the king, as the goods, and chattels of felons, outlawed, and the like, or which the subject claim by prescription, as wreck, wafe, finaie, and the like.

So likewise, and for the same reason, if a grant be made to any man, to have the sole making of cards, or the sole dealing with any other trade, that grant is against the liberty and freedom of the subject, that before did, or lawfully might have ued that trade, and consequently against this great charter.

Generally all monopolies are against this great charter, because they are against the liberty and freedom of the subject, and against the law of the land.

(5) Liberis confinandibus.] Of customes of the realme, some be general, and some particular. Of these read in the first part of the Institutes. And liberos is added, for that the customes of England bring a freedom with them.

2. No man exiled.

By the law of the land no man can be exiled, or bannished out of his native country, but either by authority of parliament, or in case of abjuration for felony by the common law: and so when our books, or any record speak of exile, or banishment, other than in case of abjuration, it is to be intended to be done by authority of parliament: as Belknap and other judges, &c. banished into Ireland.

This is a beneficently law, and is construed benignly, and therefore the king cannot send any subject of England against his will to serve him out of this realm, for that should be an exile, and he should perdere patriam: no, he cannot be sent against his will into Ireland, to serve the king as his deputy there, because it is out of the realm of England: for if the king might send him out of this realm to any place, then under pretence of service, as ambassador, or the like, he might send him into the furthest part of the world, which being an exile, is prohibited by this act. And albeit it was accorded in the upper-house of parliament, anno E. 3. nu. 6. that such learned men in the law, as should bee sent, as justices, or otherwise, to serve in Ireland, should have no excuse, yet
yet that being no act of parliament, it did not bind the subject. And this notably appeareth by a record, in 44 E. 3. Sir Richard Pembroughs cafe, who was warden of the cinque ports, and had divers offices, amuities, and lands granted to him for life, or in fee by the king under the great seale, pro servito impenso, et impenendo, the king commanded Sir Richard to serve him in Ireland, as his deputy there, which he absolutely refused, whereupon the king by advice of his counsell, seised all things granted to him. pro servito impenendo (in respect of that clause) but he was not upon that resolution committed to prison, as by that record it appeareth; and the reason was because his refusal was lawful, and if that refusal was lawful to serve in Ireland parcell of the kings dominions, a justici, a refusal is lawful to serve in any forein country. And it seemeth to me, that the said seisure was unlawful, for pro servito impenso et impenendo, must be intended lawful service within the realm.

5. No man destroyed, &c.
That is, fore-judged of life, or limbe, disherited, or put to torture, or death.

The Mirror writing of the auncient laws of England, faith, foloient les reys faire droit a tous, per ess, ou per four chiwe justices, et ore les fust les royes per four justices comissaries orants assignes a tous pleats: eu ad de tiels eires font tortes de viscounts necessaries, et seunus de franklyn. et quant que bonnes gens a tiels ineques indierent de preche mortel, foloient les royes destruire sans respon, &c. Accord eth, que mal appeles, ne coudite foin destroy fans respon.

Thomas earle of Lancaster was destroyed, that is, adjudged to die, as a traitor, and put to death in 14 E. 2. and a record thereof made: and Henry earle of Lancaster his brother, and heire, was restored for two principall errors in the proceeding against the said Thomas Earle. 1. Quod non fuit aramatus, et ad responcionem injustus tempore pacis, et quod cancellarian, et alio curiae regis fueri aportio, in quibus lex fiebat unicunque, prout fieri coevasit. 2. Quod contra cartam de libertatis, cum dicibus Thomas fuit unus parium, et magnatum regni, in qua continetur (and reciteth this chapter of Magna Charta, and specially, quod dominus rex non super ejus ibis, nec mittet, nisi per legale judicium parium suo; tamem per recordum praedictum, tempore pacis abjus aransamentum, seu responfione, seu legali judicium parium sua cum contra legem, & contra tenorem Magnae Chartae) he was put to death: more examples of this kinde might be shewed.

Every oppression against law, by colour of any usurped authority, is a kinde of destruction, for, quando aliquid prohibetur, prohibetur et emus, per quod deuenitur ad illud: and it is the worst oppression, that is done by colour of justice.

It is to be noted, that to this verb desfructur, are added aliqua modo, and to no other verb in this chapter, and therefore all things, by any manner of meaneys tending to destruction, are prohibited: as if a man be accused, or indicted of treason, or felony, his lands, or goods cannot be granted to any, no not so much as by promise, nor any of his lands, or goods seised into the kings hands, before attainer: for when a subject obtained a promiese of the forfeiture, many times undue meaneys and more violent prosecution is used for private lucre, tending to destruction, then the quiet and just proceeding of law would permit, and the party ought to live of his own until attainer.

(6) Per
Magna Charta.

Cap. 29.

(6) Per judicium parium suorum.] By judgement of his peers. Only a lord of parliament of England shall be tried by his peers being lords of parliament: and neither noblemen of any other country, nor others that are called lords, and are no lords of parliament, are accounted pares, peers within this statute. Who shall be laid pares, peers, or equals, see before cap. 14. § per parer.

Here note, as is before said, that this is to be understood of the king's suite for the words be, nec si fuerat sum ibimus, nec si fuerant mit-tamus, nisi per legale judicium parium suorum. Therefore, for example, if a noble man be indicted for murder, he shall be tried by his peers, but if an appeal be brought against him, which is the suite of the party, there he shall not be tried by his peers, but by an ordinary jury of twelve men: and that for two reasons. First, for that the appeal cannot be brought before the lord high steward of England, who is the only judge of noble men, in case of treason, or felony. Secondly, this statute extendeth only to the king's suite.

And it extendeth to the king's suite in case of treason, or felony, or of misprision of treason, or felony, or being accessory to felony before, or after, and not to any other inferior offence. Also it extendeth to the triall it selfe, whereby he is to be convicted: but a nobleman is to be indicted of treason, or felony, or of misprision, or being accessory to, in case of felony, by an inquest under the degree of nobility: the number of the noble men that are to be triers are, 12. or more.

And a peer of the realm may be indicted of treason, or felony, before commissiourners of oyer & terminer, or in the kings bench, if the treason or felony be committed in the county where the kings bench sit: he also may be indicted of murder, or manslaughter, before the coroner, &c. But if he be indicted in the kings bench, or the indictment removed thither, the noble man may plead his pardon there before the judges of the kings bench, and they have power to allow it, but he cannot confess the indictment, or plead not guilty before the judges of the kings bench, but before the lord steward; and the reason of this diversity, that the triall or judgement must be before or by the lord steward, but the allowance of the pardon may be by the kings bench, is because that is not within this statute.

If a noble man be indicted, and cannot be found, proces of outlawrie shall be awarded against him per legem terrae, and he shall be outlawed per judicium coronatorum, but he shall be tried per judicium parium suorum, when he appears and pleads to issue.

(7) Per legale judicium.] By this word legale, amongst others, three things are implied. 1. That this manner of triall was by law, before this statute. 2. That their verdict must be legally given, wherein principally it is to be observed. 1. That the lords ought to heare no evidence, but in the presence, and hearing of the prifoner. 2. After the lords be gone together to consider of the evidence, they cannot send to the high steward to ake the judges any question of law, but in the hearing of the prifoner, that he may heare, whether the case be rightly put, for de faete jus oritur; neither can the lords, when they are gone together, send for the judges to know any opinion in law, but the high steward ought to demand it in court in the hearing of the prifoner. 3. When all the evidence is given by the kings learned counsell, the high steward cannot collect.
collect the evidence against the prisoner, or in any fort conferre
with the lords touching their evidence, in the absence of the pri-
soner, but he ought to be called to it; and all this is implied in this
word, legale. And therefore it shall be necessary for all such pris-  
oners, after evidence given against him, and before he depart from
the barre, to require justice of the lord steward, and of the other
lords, that no question be demanded by the lords, or speech or con-
ference had by any with the lords, but in open court in his presence,
and hearing, or else he shall not take any advantage thereof after
verdict, and judgement given: but the handling thereof at large
and of other things concerning this matter, belongs to another trea-
tife, as before I have shewed, only this may suffice for the expostu-
ion of this statute. See the 3 part of the Institutes, cap.  
Trefon.
And it is here called judicium parium, and not veredictum, because
the noble men returned, and charged, are not sworne, but give their
judgement upon their honour and ligeance to the king, for so
are all the entries of record, separately beginning at the jus sic
lord, and so ascending upward.
And though of ancient time the lords, and peeres of the realme
used in parliament to give judgement, in cafe of treason and fel-
ony, against thofe, that were no lords of parliament, yet at the
suite of the lords it was enacted, that albeit the lords and peeres
of the realme, as judges of the parliament, in the presence of the
king, had taken upon them to give judgement, in cafe of treason
and felony, of such as were no peeres of the realme, that hereafter
no peeres shall be driven to give judgement on any others, then
on their peeres according to the law.
This triall by peeres was very auncient, for I reade, that Wil-
liam the Conqueror, in the beginning of his raigne, created Wil-
liam Fitzosberne (vy[o was earle of Bretevil in Normandy) earle
of Hereford in England, his sonne Roger succeeded him, and was
earle of Hereford, who under colour of his sisters marriage at
Exninge, near Newmarket in Cambridge shire, through many of
the nobility, and others were assembled, conspired with them to
receive the Danes into England, and to depose William the Con-
queror (who then was in Normandy) from his kingdom of Eng-
land; and to bring the same to effect, he with others rofe. This
treason was revealed by one of the conspirators, viz. Walter earle
of Huntingdon an English man, forne of that great Syward earle
of Northumberland: for which treason this Roger earle of Hereford
was apprehended, by Uffe Tiptoft then sheriffe of Worcester shire,
and after was tried by his peeres, and found guilty of the treason
per judicium parium fiorum, but he lived in prison all the daies of
his life. You have heard in the exposition of the 14 chapter, who are
to be said peeres, somwhat is necessary to be added thereunto.
It is provided by the statute of 20 H. 6. that dutcheesses, countes-
ofs, and baronettes, shall be tried by such peeres as a noble man,
being a peere of the realme ought to be; which act was made in
declaration, and affirmation of the common law: for marquesse,
and viscountesse not named in the act shall be also tried by their
peeres, and the queene being the kings comfort, or dowager, shall
also be tried, in cafe of treason, per pares, as queene Anne, the wife
of king Henry the eight was termino Pabeb. anno 28 H. 8. in
the towre of London before the duke of Norfolk, then high steward.

If
If a woman that is noble by birth, doth marry under the degree of nobility, yet she shall be tried by her peers, but if she be noble by marriage, and marry under the degree of nobility she loseth her dignity, for as by marriage it was gained, so by marriage it is lost, and she shall not be tried by her peers. If a dutchess by marriage doe marry a baron, she loseth not her dignity, for at all degrees of nobility, as hath been said, are pares. If a queene dowager marry any of the nobility, or under that degree, ye loseth not her dignity, as Katherine queene dowager of England, married Owen ap Meredith ap Theodore esquire, and yet she by the name of Katherine queene of England, maintained an action of detinue, against the bishop of Carlile.

And the queene of Navarra marrying with Edmund the brother of E. 1. sued for her dower by the name of queene of Navarra and recovered.

(8) *Nisi per legem terrae.* But by the law of the land. For the true fense and exposition of these words, see the statute of 37 E. 3. cap. 8. where the words, by the law of the land, are rendered without due process of law, for there it is said, though it be contained in the great charter, that no man be taken, imprisoned, or put out of his free-hold without process of the law; that is, by indictment or presentment of good and lawfull men, where such deeds be done in due manner, or by writ original of the common law.

Without being brought in to answer were but by due process of the common law.

No man be put to answer without presentment before justices, or thing of record, or by due process, or by writ original, according to the old law of the land.

Wherein it is to be observed, that this chapter is but declaratory of the old law of England. Rot. Parliament. 43 E. 3. nu. 22, 27: the case of Sir John a Lee, the steward of the kings house.

*Per legem terrae.* 1. *Per legem Angliae,* and hereupon all commissions are grounded, wherein is this clausula, *factura quod ad jussitionem pertinent secundum legem, et conjuncturam Angliae.* And it is not said, *legem et conjuncturam regis Angliae,* lest it might be thought to bind the king only, nor *populi Angliae,* lest it might be thought to bind them only, but that the law might extend to all, it is said *per legem terrae,* *Angliae.*

And aptly it is said in this act, *per legem terrae,* that is, by the law of England: for into those places, where the law of England runneth not, other laws are allowed in many cafes, and not prohibited by this act. For example: if any injury, robbery, felony, or other offence be done upon the high sea, *lex terrae* extendeth not to it, therefore the admiral hath confauce thereof, and may proceed, according to the marine law, by imprisonment of the body and other proceedings, as have been allowed by the laws of the realme.

And so if two English men doe goe into a foreigne kingdom, and fight there, and the one murder the other, *lex terrae* extendeth not h ereunto, but this offence shall be heard, and determined before the contable, and marshall, and such proceedings shall be there, by attaching of the body, and otherwise, as the law, and customs of that court have been allowed by the laws of the realme.

Against this ancient, and fundamentall law, and in the face thereof, I finde an act of parliament made, that as well justices of affisse, so justices
jutices of peace (without any finding or presentment by the verdict
twelve men) upon a bare information for the king before them made,
should have full power, and authority by their discretions to heare,
and determine all offences, and contempts committed, or done by
any person, or persons against the forme, ordinance, and effect of
any statute made, and not repealed, &c. By colour of which act,
shaking this fundamentall law, it is not credible what horrible op-
pressions, and exactions, to the undoing of infinite numbers of people,
were committed by Sir Richard Empion knight, and Edm. Dudley
being justices of peace, throughout England; and upon this unjust
and injurious act (as commonly in like cases it felleth out)
a new office was erected, and they made masters of the kings for-
feitures.

But at the parliament, holden in the first yeare of H. 8. this act
of 11 H. 7 is recited, and made voide, and repealed, and the reason
thereof is yeelded, for that by force of the said act, it was mani-
fully known, that many similler, and crafty, feigned, and forged
informations, had been pursed against divers of the kings subjets
to their great damage, and wrongfull vexation: and the ill suc-
ceffe herof, and the fearfull ends of these two oppreffors, should
deter other others from committing the like, and should admonish
parliaments, that in faced of this ordinary, and prentious triall
per legem terrae, they bring not in absoloute, and partiall trialls by
discretion.

If one be suspected for any crime, be it treason, felony, &c. And
the party is to be examined upon certaine interrogatories, he may
heare the interrogatories, and take a reasonable time to answere the
same with deliberation (as there the time of deliberation was
tenne houres) and the examine, if he will, may put his anfwere in
writing, and keepe a copie thereof: and so it was resolved in par-
liament by the lords spirituall and temporall, in the case of justice
Richill. See the record at large.

And the Lord Carew being examined, for being privy to the plot,
for the escape of Sir Walter Rawlegh attainted of treason,
desired to have a copy of his examination, and had it, as per legem
terrae he ought.

Now here it is to be knowne, in what cases a man by the law of
the land, may be taken, arrested, attached, or imprisoned in case of
treason or felony, before presentment, indiement, &c. Wherein
it is to be understand, that process of law is two fold, viz. By the
kings writ, or by due proceeding, and warrant, either in deed, or
in law without writ.

As first, where there is any witnesse against the offender, he may
be taken and arrested by lawfull warrant, and committ to
prison.

* When treason and felony is committed, and the common fame
and voice is, that A. is guilty, it is lawfull for any man, that suspectts
him, to apprehend him.

a This fame Braeton describeth well, fama qua suspicionem inducit,
orsi debeat apud bonos, et graves, non quidem malevolos, et maledicos, sed
providas et fide dignas perfonas, non femel, sed secundum, quia clamor minuit,
et demonstratio manifset.

b So it is of hue and cry, and that is by the statute of Winchel-
ter, which is but an affirmance of the common law: likewise if A. be

1 H. 8. cap. 6.
Rot. pl. 1 H. 4.
memb. 2. nu. 1.

* [ 52 ]
7 E. 4. 30.
8 E. 4. 3.
9 E. 4. 27.
11 E. 4. 2.
2 H. 7. 15. b. 4.
4 Fl. 7. 13.
5 H. 7. 5. a.
26 H. 8. 9.
27 H. 8. 23.
9 Braeton, fo.
147.
12 29 E. 3. 9.
20 E. 3. 39.
26 E. 5. 71.
W. 1. cap. 9.
be suspected, and he fleeth, or hideth himselfe, it is a good cause to arrest him.

2 If treason or felony be done, and one hath just cause of suspicion, this is a good cause, and warrant in law, for him to arrest any man, but he must shew in certainty the cause of his suspicion: and whether the suspicion be just, or lawfull, shall be determined by the justices in an action of false imprisonment brought by the party grieved, or upon a habeas corpus, &c.

A felony is done, and one is pursued upon hue and cry, that is not of ill fame, suspicious, unknown, nor indicted; he may be by a warrant in law, attached and imprisoned by the law of the land.

A watchman may arrest a night walker by a warrant in law. If a man woundeth another dangerously, any man may arrest him by a warrant in law, until it may be known, whether the party wounded shall die thereof, or no.

If a man keep the company of a notorious thief, whereby he is suspected, &c. it is a good cause, and a warrant in law to arrest him.

If an affray be made to the breach of the kings peace, any man may by a warrant in law restrain any of the offenders, to the end the kings peace may be kept, but after the affray ended, they cannot be arrested without an express warrant.

See now the statutes of 1 & 2 Phil. & Mar. cap. 13. & 2 & 3 Phil. & Mar. cap. 10.

Now seeing that no man can be taken, arrested, attached, or imprisoned but by due procee of law, and according to the law of the land, these conclusions hereupon doe follow.

First, that a commitment by lawfull warrant, either in deed or in law, is accounted in law due procee or proceeding of law, and by the law of the land, as well as by procee by force of the kings writ.

That he or they, which doe commit them, have lawfull authority.

That his warrant, or mittimus be lawfull, and that must be in writing under his hand and seale.

The cause must be contained in the warrant, as for treason, felony, &c. or for suspicion of treason or felony, &c. otherwise if the mittimus contain no cause at all, if the prisoner escape, it is no offence at all, whereas if the mittimus contained the cause, the escape were treason, or felony, though he were not guilty of the offence; and therefore for the kings benefit, and that the prisoner may be the more safely kept, the mittimus ought to contain the cause.

The warrant or mittimus containing a lawfull cause, ought to have a lawfull conclusion, viz. and him safely to keep, until he be delivered by law, &c. and not until the party committing doth further order. And this doth evidently appeare by the writs of habeas corpus, both in the kings bench, and common pleas, chancery and chancery.

Cap. 29.  
Magna Charta.

Contigerit in hac parte, et hoc nonnullus amittatur, periculo incondi- 
benti, et habeatis ibi hoc breve, teste Edw. Coke 20 Nov. anno regni 
12.

This is the usual forme of the writ of habeas corpus in the kings 
bench, videlicet. 5 E. 4. Rot. 143. coram Rege, Kefars cafe, 
under the teste of Sir John Markham.

Rex vicecom. London. faitatem. Precipimus nobis, quod habeatis 
coram jucifisciatis hoviis, apud Wesm. die "Jovis proxi" post quinquag 
septimam. Paetis, corpus A. B. quocunque nomine confeceris, in pri 
sesna vostra, sub custodia vosra detendi, ut diciter, una cum die, et 
causa captionei et detentionis ejusdem, ut idem jucifer, vosri, vixi causa 
illa, uterius fieri feci, quod de jure, et secundum legem, et con 
tudium regni vosri Anglia ferat faciend. et habeatis ibi hoc breve, 
vo. &c.

The like writ is to be granted out of the chancery, either in 
the time of the terme (as in the kings bench) or in the vacation; 
for the court of chancery is officina justitiae, and is ever open, and 
never adjourned, so as the subject being wrongfully imprisoned, 
may have justice for the liberty of his person as well in the vacation 
time, as in the terme.

By these writs it manifestly appeareth, that no man ought 
to be imprisoned, but for some certain cause: and these words, ad 
justiciend. et recipiend. &c. prove that cause must be showed: 
for otherwise how can the court take order therein according to 
law?

And this doth agree with that which is said in the holy history, 
Sine ratione mibi videtur, mittere vinculum in carcerem, et causas ejus non 
figurare. But since we wrote these things, and passed over to 
many other acts of parliament; see now the petition of right, anno 
texto Carle regis, resolved in full parliament by the king, the lords 
spiritual, and temporal, and the commons, which hath made an 
end of this question, if any were.

Imprisonment doth not only extend to false imprisonment, and 
unjust, but for detaining of the prisoner longer then he ought, where 
he was at the first lawfully imprisoned.

If the kings writ come to the sheriff, to deliver the prisoner, if 
he detain him, this detaining is an imprisonment against the law of 
the land: if a man be in prison, a warrant cannot be made to the 
gaoler to deliver the prisoner to the custody of any person unknown 
to the gaoler, for two causes: first, for that thereby the kings writ 
of habeas corpus, or delivery, might be prevented. 2. The mittimus ought to bee, as hath beene said, till hee bee delivered by 
law.

If the sheriff, or gaoler detain a prisoner in the gaole after his 
aquittall, unless it be for his fees, this is false imprisonment.

In many cases, a man may be by the law of the land taken, and 
imprisoned, by force of the kings writ upon a suggestion made.

Against those that attempt to subvert, and enervate the kings 
laws, there lieth a writ to the sheriff in nature of a comminution, 
ad capienda impugnatores juris regis, et ad ducentum eos ad gaolam de 
Nevegate, which you may reade in the Register at large. Ub1 supra.
And this is lex terrae, by process of law, to take a man without 
answer, or summons in this case: and the reason is, morito beneficiam 
regis amittit, qui legem ipsum subvertere incendit.

If a fouldeier after wages received, or profet money taken, doth 
ab sent
Magna Charta.

Cap. 29.

abdent himself, or depart from the kings service; upon the certificate thereof of the captain into the chancery, there lieth a writ to the kings serjeants at arms, if the party be vagrant, and hides himselfe, ad capiendum conductos proficiscend. in obsequium nostrum, &c. qui ad dixit obsequium nostrum venire non curaverit. And this is lex terna, by processe of law, pro defensione regis, et regni, or for the fame cause, a writ may be directed to the sheriffe, de arrepindendo ipsum, qui pecuniam recepit ad proficiscendum in obsequium regis, et non est proficiscendum.

- If a man had entered into religion, and was professed, and after he departed from his house, and became vagrant in the country against the rules of his religion, upon the certificate of the abbot, or prior thereof into the chancery, a writ should be directed to the sheriffe, de apostata capiendo, whereby he was commanded in their words; precipimus tibi quod praedictum, &c. sine dilatatione appelle, et profet. abbat. &c. liberes secundum regulam ordinis sui constitam; and this was lex terna, by processe of law, in hominem religiosum.

If any lay men with force and strong hand, doe enter upon, or keep the possession either of the church, or of any of the houses, &c. belonging thereunto, the incumbent upon certificate thereof of the bishop, or without certificate upon his own furmis may have a writ to the sheriffe, de ui laica amovendo, by which the sheriffe is commanded in these words; precipimus tibi quod omnem enim laicam fui armatam, que se tenet in dita ecclesia, seu dominibus eorum annexis, ad pacem nostrarum in consilio tuo perturband, sine dilatatione amovens, et si quid in hac parte resistentes inventoritis, esses versus corpora tuae attahias, et in praeconia nostra salvo consuetudinis, &c. and this is lex terna, by processe of law, pro pace ecclesiae.

Also a writ of no ex abs regnum may be awarded to the sheriffe, or justices of peace, or to both, that a man of the church shall not depart the realm; the effect whereof is; quia datum est nobis intelligere, quod A. B. clerics vocatus partes exteritas, ad quamplurima nobis, et quamplurima de jure nostro praedicti sunt, et damnum, ibidem proficisci, transire praestitit, &c. tibi praebimus, quod praedit A. B. coram te corporis rei facias, et ipsum ad facultates mancipatoris invenies. Et sic hoc coram te faceres renuoveris, tuus ipsum A. B. proximae gaude committas salvo cypodiis, quoniam hoc gratis facere velis. And there is another writ in the Regifter directed to the party either of the clergy or laity. And this is lex terna, by processe of law, pro bono publico regis et regni; whereof you may reade more at large in the third part of the Institutes, cap. Fugitives.

Upon a furmis that a man is a leper, one that hath morbus elephantiaceum, so called, because he hath a skin like to an elephant, there may be a writ directed to the sheriffe, quia accipimus quod I. & N. leprosum existit, et inter homines comitatis tuae communiter conservatus, &c. ad grave damnum hominum prae dict. et proprii comitazionee nobis prae dict. periculo manifextum, &c. tibi praebimus quod, judicatis te committas aliquis daretis et legalis hominum de comitat. praed. non fuisse? &c. ad ipsum I. accedes, &c. et examinatis, &c. et si ipsum leprosum inventur, ut praedict. esset. tuus ipsum bonis invenies, quo poteris a communitate hominum prae dict. amovere, et se ad locum solitariam ad habitandum ibidem, prout moris est, transire facias indilata, &c. And this is lex terna, by processe of law, for living of the people from contagion and infection.

But if any man by colour of any authority, where he hath not
any in that particular case, arrest, or imprison any man, or cause him to be arrested, or imprisoned, this is against this act, and it is most hateful, when it is done by countenance of justice.

King Edw. 6. did incorporate the town of S. Albans, and granted to them to make ordinances, &c. they made an ordinance upon paine of imprisonment, and it was adjudged to be against this statute of Magna Charta; so it is, if such an ordinance had been contained in the patent it selfe.

All commissions that are consonant to this act, are, as hath been said, secundum legis, et confertudinem Angliae.

A commission was made under the great seale to take I. N. (a notorious felon) and to seifie his lands, and goods: this was resolved to be against the law of the land, unless he had been endicted, or appealed by the party, or by other due procedie of law.

It is enacted, if any man be arrested, or imprisoned against the forme of this great charter, that he bee brought to his answer, and have right.

No man to be arrested, or imprisoned contrary to the forme of the great charter.

See more of the several lawes allowed within this land, in the first part of the Institutes, sect. 3.

The philosophicall poet doth notably describe, the damnable and damned proceedings of the judge of hell,

Causius hic Radamanthus habet durissima regna, Caphigataque, auditque dolor, fideligique fatere.

And in another place,

--- --- ---- leges fixit precios atque referxit.

First he punisfeth, and then he heareth: and lastly, compelleth to confesse and make and marre lawes at his pleasure; like as the centurion in the holy history, did to S. Paul: For the text faith, Cautio apprehendi Paulum jussit, et se catenis ligari et tunc interrogabat, quis fuisset, et quid fecisset: but good judges and justices abhorre these courtes.

Now it may be demanded, if a man be taken, or committed to prison contra legem terrae, against the law of the land, what remedy hath the party grieved? To this it is answered: first, that every act of parliament made against any injury, mischiefe, or grievance doth either expressly, or impliedly give a remedy to the party wronged, or grieved: as in many of the chapters of this great charter appeareth; and therefore he may have an action grounded upon this great charter. As taking one example for many, and that in a powerful, and a late time. Pach. 2 H. 8. coram rege rot. 538. against the prior of S. Oiwin in Northumberland. And it is provided, and declared by the statute of 36 E. 3. that if any man seeeth his minister grieved, contrary to any article in any statute, he shall have present remedy in chancery (that is, by original writ) by force of the said articles and statutes.

2. He may cause him to be indicted upon this statute at the kings baile, whereof you may see a precedent Pach. 3 H. 8. Rott. 71. coram rege. Rob. Sheффields cafe.

3. "He may have an habeas corpus out of the kings bench or chancery, though there be no priviledge, &c. or in the court of common
Magna Charta.  Cap. 29.

Land in the answer to the articles of the clergy hereafter at large in the exposition of the statute of Articles. Ch. 21. and 22. article. Of the writ of habeas corpus see more in the exposition upon the Stat. of W. 3. cap. 15.

common pleas, or escheater, for any officer or privileged person there; upon which writ the groper must returne, by whom he was committed, and the cause of his imprisonment, and if it appeareth that his imprisonment be just, and lawfull, he shall be remanded to the former goaler, but if it shall appeare to the court, that he was imprisoned against the law of the land, they ought by force of this statute to deliver him: if it be doubtfull and under consideration, he may be bailed.

In 5 E. 4. coram rege Rot. 143. John Keafars' cafe; a notable record and too long here to be recited.

10 Eliz. Rot. Leas cafe.

In 1 & 2 Eliz. Dier. 175. Scrags cafe.

In 18 Eliz. Dier. 175. Roland Hynds cafe in margine.

4. He may have an action of false imprisonment, 10 H. 7. fol. 17. but it is entred in the court of common pleas Mich. 11 H. 7. Rot. 327. Hilarie Warners cafe, and it appeareth by the record, that judgement was given for the plaintiff: a record worthy of observation.

5. He may have a writ de homine replegiando.

Vide Marlebridge, cap. 8.

6. He might by the common-law have had a writ de adia, et atia, as you may see before, cap. 26. but that was taken away by statute, but now is revived againe by the statute of 42 E. 3. cap. 1. as there it also appeareth. It is said in 4 W. 2. Sed ne buyniendi appallati, vel indicati dni detinuuntur in praesio, habeat brevem de adia et atia, etc. in Magna Charta et aliis statutis dict' oft: and by the said act of 42 E. 3. all statutes made against Magna Charta are repealed.

(9) Nulli vandemus. etc. This is spoken in the person of the king, who in judgement of law, in all his courts of justice is present, and repeating these words, nulli vandemus, etc.

And therefore, every subject of this realm, for injury done to him in bona, in terris, vel persona, by any other subject, be he ecclesiasticall, or temporal, free, or bond, man, or woman, old, or young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without fail, fully without any denial, and speedily without delay.

Here it appeareth, that justice must have three qualities, it must be libera, quia nihil iniquins venali justitia; pleba, quia justitia non debet claudicasse; et celeris, quia dilatio est quedam negativa; and then it is both justice and right.

(10) Nulli negabimus, aut differemus, etc. These words have been excellently expounded by later acts of parliament, that by no means common right, or common law should be disturbed, or delayed, no, though it be commanded under the great seal, or private seal, order, writ, letters, meslages, or commandment whatsoever, either from the king, or any other, and that the justices shall proceed, as if no such brevets, letters, order, meslages, or other commandment were come to them. Judicium redditum per deficitum affirmatur, non obstante brevibus regis de prorogatione judicis.

That the common laws of the realm should by no means be delayed, for the law is certaine sancuary, that a man may take, and the strongest fortresses to protect the weakeft of all; lex est inestimable cafis, and sub epyo legis nono decipitur: but the king may say...
Cap. 29. Magna Charta.

May his owne suite, as a capias pro fine, for the king may respite his fine and the like.

All protections that are not legall, which appeare not in the Register, nor warrant'd by our books, are expressly against this branch, nulli differentius: as a protection under the greatseale granted to any man, directed to the sherifes, &c. and commanding them, that they shall not arrest him, during a certaine time at any other mans suite, which hath words in it, per praevagatioum nostrum, quam columna esse anguendam; yet such protections have beene argued by the judges, according to their oath and duty, and adjudged to be void: as Mich. 11 H. 7. Rot. 124. a protection granted to Holmes a vintner of London, his factors, servants and deputies, &c. resolved to be against law, Parch. 7 H. 8. Rot. 66. such a protection disallowed, and the sherife amerced for not executing the writ. Mich. 13 & 14 Eliz. in Hitchcocks cafe, and many other of latter time: and there is a notable record of auncient time in 22 E. 1. John de Mershall's cafe, non pertinet ad vicecomitem de protectione regis judicari, into ad coram.

(11) Jusfitian vel recum.] Wee shall not fell, deny, or delay justice and right. Jusfitian vel recum, neither the end, which is justice, nor the means, whereby we may attain to the end, and that is the law.

Recum, right, is taken here for law, in the same sense that just, often is so called. 1. Because it is the right line, whereby justice distributively is guided, and directed, and therefore all the commissi of oier, and terminer, of goale delivery, of the peace, &c. have this clause, facturi quid ad jusfitian pertinent, secundum legem, and consuetudinem Anglie, that is, to doe justice and right, according to the rule of the law and custom of England; and that which is called common right in 2 E. 3. is called common law, in 14 E. 3. &c. and in this sense it is taken, where it is said, ita gd. fict reelo in curia, i. legi in curia. 2. The law is called recum, because it discovereth, that which is tort, crooked, or wrong, for as right signifieth law, so tort, crooked or wrong, signifieth injurie, and injuria est contra jus, against right: reela linea est index sui, et obliqui, hereby the crooked cord of that, which is called discretion, appeareth to be unlawfull, unless you take it, as it ought to be, discrevio disernere per legem, quid sit justum. 3. It is called right, because it is the best birth-right the subject hath, for thereby his goods, lands, wife, children, his body, life, honor, and estimation are protected from injury, and wrong: major beroeditas venit unicuiq; nostrum a jure, et legibus, quam a parentibus.

4. Lastly, recum is sometime taken for the right it selfe, that a man hath by law to land: as when wee say thereth breue de reael, in so much that some old readers have suppos'd, that recum in this chapter, should be understanded of a writ of right, for which at this day no fine in the hamper is paid. As the goldiner will not out of the duff, threds, or threds of gold, let passe the leaff crum, in respect of the excellency of the metall: so ought not the learned reader to let passe any syllable of this law, in respect of the excellency of the matter.
CAP. XXX.

OMNES mercatores (1), nisi publice antiqua prohibiti fuerint, benefaciatorem exire de Anglia, et venire in Angliam, et xare, et ire per Angliam, tam per terram, quam per aquam, sat emendum, vel vendendum, sine omnibus malis toluntatis (2) per antiquas et reales concessions (3), praeter quam in tempore guerra. Et si sint de terra contra nos guerrina, et tales inveniantur in terra nostra in principio guerra, aucti inventur sine dispno corporum sionum, vel re- rum, demum iudicaver a nobis, vel a capi- tali justitario nostra, quando mercatores terrae nostrae tractaverint, qui tunc inveniantur in terra illa contra nos guerrina. Et si nostrum falvi sint ibi, cuiu juxta sint in terra nostra.

A LL merchants (if they were not openly prohibited before) shall have their safe and sure conduct to depart out of England, to come into England, to tarry in, and go through England, as well by land as by water, to buy and sell without any manner of evil tolls, by the old and rightful customs, except in time of war. And if they be of a land making war against us, and be found in our realm at the beginning of the wars, they shall be attached without harm of body or goods, until it be known unto us, or our chief justice, how our merchants be intreated there in the land making war against us; and if our merchants be well intreated there, theirs shall be likewise with us.

(12 Rep. 53. 2 Roll. 115. 1 Buldr. 114. 9 Ed. 3. Nat. 1. c. 1. 14 Ed. 3. Nat. 1. c. 2. 25 Ed. 3. Nat. 4. c. 2. 2 R. 2. Nat. 1. c. 1. 17 R. 2. c. 7.)

(1) Omnes mercatores.] This chapter concerneth merchant strangers.

First it is to be considered, what the ancient laws, before this statute, were concerning this matter.

By the ancient kings (amongst whom king Alfred was one) it was found that no merchant alters he acted on Angletree ensay into our seas, ne quus ad domus nostras in terris nostris sibi, in terrae nostra 40. years. Merchatores navigatione, vel inuicem quideram, quacumque; ex alto (nullis jactatis tempestatis) in portum aliquid inuentetur, tranquilla pace futurar; quis eisiam benefici suum tuum et suis huc ad domicilium aliquud illius, ac pacis beneficio datunovis appellar cum inimica, etat, si hic nautae consculcentur, ipsi et res illorum omnes aut quae facer potestur

2. It is to be seen what this statute hath provided.

1. That before this statute, merchant strangers might be publicly prohibited, publice prohibebantur, and this prohibition is intenable of merchant strangers in amity, for this act provided afterwards for merchant strangers enemies; and therefore the prohibition intended by this act must be by the common or public council of the realme, that is, by act of parliament, for that it concerneth the whole realme, and is implied by this word (publice.)

2. That all merchant strangers in amity (except such as be publicly prohibited) shall have safe and sure conduct in 7 things.

1. To depart out of England. 2. To come into England. 3. To tarry here. 4. To goe in and through England, as well by land
as by water. 5. To buy and to sell. 6. Without any manner of evil tolls, 7. By the old and rightfull customes.

Now touching merchant strangers, whose soveraigne is in warre with the king of England.

There is an exception, and provision for such, as be found in the realme at the beginning of the warre, they shall be attached with a priviledge, and limitation, viz. without harme of body, or goods, with this limitation, untill it be knowne to us, or our chiefre juicke (that is our guardian, or keeper of the realme in our absence) how our merchants there in the land in warre with us shall be intreated, and if our merchants be well intreated there, theirs shall be likewise with us, and this is just belli. Et in republica maxime conservanda just juris belli.

But for such merchant strangers as come into the realme after the warre beginne, they may be dealt withall as open enemies: and yet of auncient time three men had priviledge granted them in time of warre. Clericus, agricola, et mercator, tempore belli. Ut servi colat, commutet, pacem nonur.

2. The end of this chapter was for advancement of trade, and traffique; the means for the well using, and intreating of merchant strangers in all the particulars aforesaid, is a matter of great moment, as appeareth by many other acts of parlement, for as they be used here, so our merchants shall be dealt withall in other countries.

(2) Mala tolleta.] b Evill tolls.

This word tolletum, and teollonium, and theolonium are all one, and doe signify in a general sense, any manner of custome, fulsac, prelacion, imposition, or summe of money demanded for, importing of any wares, or merchandises, to be taken of the buyer. In both these senses it is here taken of every kind of tolls: more shall be said hereof, in the exposition of the statutes of W. 1. and W. 2. In the meanes time see John Webb's cate, lib. 8. fol. 46.

c. They are called mala tolleta, when the thing demanded for wares or merchandizes, doe so burden the commodity, as the merchant cannot have a convenient gaine by trading therewith, and thereby the trade it selfe is lost or hindered. And in divers statutes malevout for malevot, or malevout is a French word, and signifies an unjust exaction.

Now this act after it hath dealt privately, sue omibus malis tolletis, it goeth on for more surety affirmatively.

(3) Per antiquas et rectas conuetudines. That is, by auncient and right duties, due by auncient and la孰vill custome, which hath been the auncient policy of the realme to encourage merchants strangers, they have a speedy recovery for their debts and other duties, &c. per legem mercator, which is a part of the common law.

This word conuetudo, hath in law divers significations. 1. For the common law, as conuetudo Anglie. 2. For stature law, as conuetudinem communi concilio regni edit. 3. For particular customes, as gavelkind, borough English, and the like. 4. For rents services, &c. due to the lord, as conuetudines et forvicia. 5. For customes, tributes, or impositions, as de novis conuetudinibus levantis in regno, sine in terris, sine in aqua. 6. Subsidies, or customes granted by common consent, that is, by authority of parliament, pro bono publico, and these be antiquae, et rectae conuetudines intended.
Magna Charta. Cap. 30.

by this act, this agreeeth with that, which hath been said before in the end of the exposition upon the eighth chapter.

Hereby it appeareth that the king cannot set any new impot upon the merchant, and therefore this act provideth not only affirmatively, viz. per antiquas, et reedtas sueuetudines, but privately also, fine omnibus malis tolentis, within which words new impostions are included, and are here called malia tolentia, as opposite to ancient and rightfull customes, or subsidies granted by authority of parliament.

And where some have supposed, that there was a custome due to the king by the common law, as well of the stranger, as of the English, called antiqua custuma, viz. for woolls, woolle-sells, and leather, that is to say, for every tuck of wooll containing 26 stone, and every stone 14 pound, vj. s. viij. d. and for a half of leather, xiiij. s. iiiij. d. Certain it is, that these customes had their beginning by common consent b. act of parliament, for king E. 1. by his letters patents re-citeth, cum proclat. magnates, et tota communitas quandam novam custematudinem n. b. et hereditibus nofris de lanis, peltaibus, et coris.-v. de facie lande dimid. mare' de 350. peltaibus dimid. mare', et de libto cori. xiiij. s. iiiij. d. &c. Herein four things are to be observed. 1. That these customes had their creation by authority of parliament, and were not by the common law, appearing by these words, quandam novam custematudinum, so as it was new, and not old. 2. That this new custome was granted to king Edw. 1. proved by this word nobis. 3. That it was granted at the parliament holden 3 E. 1. commonly called W. 1. (though the record thereof cannot be found) for the said patent b. ars' date 10. Nov. anno 3 E. 1. which was near the ending of that yeare, and the parliament was holden in Clapham Pafch. before. 4. That here coniectudo signifieth a custome, or subsidie granted by common consent by parliament, and in that sense it is here taken, and likewise in the statute of 51 H. 3. flatum de seccario, for in 48 H. 3. proclamation was made, contra juggerentes, &c. Regem velle exigere talagia inconvenia, et introdud. extranea.

And herewith agreeeth the act of parliament commonly called confirmationes cartarum (which is but an explanation of this branch of Magna Charta) wherein it is enacted, that for no occasion any aids, taxes, or takings shall be taken by the king, or his heires, but by the common assent of the realme, laying the auncient aids, and takings due and accustomed.

And whereas the soil of the whole comminity of the realme finde themselves hardly grieved of the malout (or ill tell) of woolls, that is to say, of every tuck of wooll 40. s. and prayed the said king to release the same, thereupon the said king did release the same, and granted further for him and his heires, that no such thing should be taken without their common assent, and their good will: and in that act there is a saving, fauor a nous, et nous heores la custumde de layens, pealx, et quiuere averat grame per la communite avauti; so as this act of parliament proveth that the said custome of vj. s. viij. d. for wooll, and xiiij. s. iiiij. d. for leather was granted by parliament.

By the statute de talagio non concedendo (which is but an explanation of which is branch of the statute of Magna Charta) it is provided: Nullum talagium vel eurixium per nolle harelles nofris in regno nofris ponatur, feoletuer fine voluntaet et effenja archiepiscoporum, episcoporum, &c.
Cap. 30. Magna Charta.

See cap. itineris de novis susceptudinibus levatis in regno, sive in terra, sive in aqua, &c. where susceptudines are taken for customes.

Upon grant to merchant strangers of divers privileges, liberties, and immunities they granted to the king and his heirs, de quo libertate face labut 40 d. de incremento ultra custumam antiquam dimidium mercis prioris perfluit et sic pro lascio coriarius dimidium navis, et de secretilibus levatis 40 d. ultra certum illud, quod est antiqua custuma prioris datunt. Note here the custom which was granted to have called antiqua custuma, and this new custom is called nova custuma, and some time the one is called magna custuma, and the other parva custuma.

2. Here it appereath that merchants strangers paid the former custome.

Moreover by that charter, poundage of three pence upon the pound was granted to the king, and his heirs by the merchant strangers, et de quolibet vini nomine custumae duos solides, &c. and this at this day is called butlerage, and is paid only by merchant strangers; but privilege is paid by the English only, except the citizens of London, and this is an auncient duty: for I finde it accounted for in the reign of H. 3., by the kings butler, and is called certa prisa, which at the first was granted in lieu and satisfaction of purveyance for wines. And lastly, by that charter it is granted, quod nulla exactus, prisa vel praestatio, aut aliquid aliquid usus super personas mercatorum alienorum praeque, seu bona eorum dem aliqutions impotentur contra formam expressam superius conceffam: So as no imposition can be set without assent of parliament upon any stranger.

It was ordered and resolved by divers prelates, earls, and barons, by force of the kings commission, that no new customs could be levied, nor auncient increased, without authority of parliament, for that should be against the great charter, anno 6 E. 3. Rot. Parlament, nu. 4. that no tallage shall be assigned but in such manner as it hath been in time of his auncelors, and as it ought to be, and dinanull all others.

In anno 11 E. 3. it was made felony to carry wooll out of the realm, the end whereof was, that our wooll should bee draped into cloth. But the king wanting made use of this act: in the 12 and 13 years of his reign he made dispensations of that statute in consideration of money paid: but that statute lived not long. In 13 E. 3. a great imposition was set upon wooll, and it is called a great wrong, cum populus regni vostris variis onibus, talagis, et impositionibus hacenum praeagratue, quod solent referimus, and there doth excuse himselfe.

Note here is the word impositiones first used, impos'd by any king, in any record that I have observed, and doe remember.

Anno 14 E. 3. cap. 21. A subsidie granted to the king of wooll, woolfells, and leather, &c. by parliament, for a certain time in respect of the warres, for which the king grauntedeth, that
after that time, he nor his heirs would take more then the old custome.

After this time ended, the king entred into a new device to get money, viz. that by agreement and consent of the merchants, the king was to have 40 s. of a sack of wool, &c. but hereof the commons (that in truth were to beare the burden, for the merchant will not be the lofer) complained in parliament, for that the grant of the merchants did not binde the commons, and that the custome might be taken according to the old order, which in the end was granted, and that no grant should be made but by parliament.

No charge shall be levied of the people, if it were not granted in parliament,

In 21 E. 3. by authority of parliament, a custome was granted of cloth, for that the wool was for the most part converted into cloth, which you may see in Orig. Secaccar. 24 E. 3. Rot. 13.

By the statute of 27 E. 3. cap. 4. in print, a subsidie of every cloth to take of the teller (over the customes thereof, that is, such as then endured for a time, and were granted by parliament) that is to say, of every cloth of all sorts, wherein there is no grain, 4 d. &c.

And here it is worthy of observation, that there were two causes of the making of this statute. 1. For that for cloth no custome was due other then by the act of 21 E. 3. 2. For that wool being converted to a manufacture, and made into cloth, the ancient custome of dimid. mark for a sack of wool was not by law payable, because the wool was turned into another kinde, albeit the cloth was made of the wool; and this doth notably appeare by the records of the exchequer, one of them in the same year that the act of 27 E. 3. was made.

Ac fons magna pars lami dedit regis nefiri cedam regno jannifector, aut quo custome abiqua nobis non est solutus; and there it appeareth that that was the cause, of giving to the king a subsidie for cloth by the said act of parliament, of 27 E. 3. And yet if in any case the king by his prerogative might have set any imposition, he might have set in that cause, because as it appeareth by the record by making of cloth hee lost the custome of wool.

Rot. parliam. 45 E. 3. No imposition or charge, &c. shall be set without assent of parliament.

50 E. 3. Richard Lions, a merchant of London punished for procuring new impositions, and so was the lord Latimer, the king's chambe-laine. And in the same parliament, nu. 163. upon complaint that new impositions were set, the king in parliament assented that the ancient custome should be holden, and no new imposition set.

In the raigne of E. 3. the black prince of Wales having Aquitaine granted to him, did lay an imposition of fuage or socage, a foot, upon the subjects of that dukedom, viz. a shilling for every hee called harth silver, which was of so great discontentment, and odious to them, as it made them to revolt.

And no king since this time imposed by pretext of any prerogative, any charge upon merchandizes imported into, or exported out of this realme, untill queen Maries time. See the statute of 11 R. 2. cap. 9. & Rot. Parliament. 8 H. 6. num. 29.

And in 3 H. 5. the subsidie of tunnage and poundage was granted.
Cap. 30. Magna Charta.

... granted to king H. 5. during his life, in respect of the recovery of his right in France (which was the first grant for life of that kind) yet therein was a provision, that the king should not make a grant thereof to any person, nor that it should be any precedent for the like to be done to other kings afterwards; but yet all the kings after him have had it for life, so forcible is once a precedent fixed in the crown, as what provision you will.

And this grant by parliament of the subsidy of tunnage and poundage to the king is an argument, that the king taking it of the gift of the subject had no power to impose it himself.

The lords and commons cannot be charged with any thing for the defence of the realm, for the safeguard of the sea, &c. unless it be by their will in parliament, that is, in the grant of a subsidy, whereunto the king assented.

Non potest rex jubitum restitutem suscurrem imposionibus.

King Philip and queen Mary, granted by letters patents to the major, bailiffs, and burgesses of Southampton, and their successors, that all wines called Mistrafty to be imported into this realm by any denizen, or alien, should be discharged or landed at any other place within this realm, but only at the said town and port of Southampton, with a prohibition, that none should go to the contrary upon pain of pay treble custome to the king and queen, &c. And for that Anthony Donat, Thomas Fiedereco, and other merchant strangers bought divers butts of Mistrafty, &c. and landed them at Goore, and in Kent, Gilbert Gerard the attourney general, informed in the exchequer, against the said merchant strangers for the said treble custome, &c. Upon which information, as to the said treble custome, the said Anthony Donat demurred in law, &c. And this cause was argued in the exchequer chamber by counsel learned on both sides, and upon conference had, two points were resolved by all the judges. 1. That the grant made in restraint of landing of the said wines was a restraint of the liberty of the subject, against the laws and statutes of the realm. 2. That the imposition of treble custome was merely void, and against the law. As it appeareth by the report of the lord Dier under his hand (which I have in my custody.) But after by act of parliament, in anno 5 Eliz. the said charter is established as to merchant strangers only, but not against subjects.

And where imposts, or impositions, be generally named in divers acts of parliament, the same are to be intended of lawfull impositions, as of tunnage, and poundage, or other subsidies imposed by parliament, but none of those acts or any other doth give the king power at his pleasure to impose. See the first part of the Institutes, sect. 97.

It is then demaunded, by what law custome is paid for kerseyes, wites, plaines, frafts, and other new draperies, made of wool; for it appeareth by acts of parliament, and common experience, that all these pay custome to the king. To this it is anwered, that a proportionable subsidy, or custome is paid for them within the equity of the said statute of 27 E. 3. cap. 4. and likewise a proportionable almage is also due for them by that act.

Hill. & Pach. anno 2 Jacobi regis, great questions were moved, whether fribidoes, bayes, northern cottons, northern dozens, cloth, fustes, perpetnuances, suft-mocados, fackecloth, fuffians, worleds, fllies made of worled yarnne, &c. were within the said act of
Magna Charta.

Cap. 30.

of 27 E. 3, as concerning the subsidy, and alnage: and if they were not, whether the king by his prerogative might not impose a reasonable subsidy, or custome upon them proportionably to the cloth mentioned in the statute of 27 E. 3. And this being questioned before the lords of the councell, they wrote to the judges to be certified what the law was in these cases, who upon mature deliberation, the 24. of June 1605, resolved, and so certified the lords by their letters under all their hands, that all frijadoes, bayes, norther dozons, northern cottons, cloth rash, and other new draperies made wholly of wool, of what new name evermore made, as new drapery for the use of man's body, are to yeeld subsidy, and alnage according to the statute of 27 E. 3, and within the office of the ancient alnager, as may appeare by severall decrees in that behalfe in the exchequer, in the time of the late queen: but as touching sullians, canvas, and such like made neverly of other fluffe then wool, or being but mixed with wool, it was resolved by all the judges, that no charge could be imposed for the search or measuring thereof, but that all such letters patents so made are void, as may appeare by a record of 11 H. 4. wherein the reason of the judgement is particularly recited, which the judges thought good in their letters to be downe as followeth.

King H. 4. granted the measuring of woollen cloth, and canvas, that should be brought to London, to be sold by any stranger or denizen (except he were free of London) taking an ob. of every whole piece of cloth so measured of the seller, and one other ob. of the buyer, and so after that rate for a greater or lesser quantity, and one penny for the measuring of an C. ells of canvas of the seller, and so much more of the buyer; and though it were averred that two other had enjoyed the same office before with the like fees, viz. one Shearing by the fame kings grant, and one Clithew before by the grant of R. 2. (and the truth was, Robert Pooley in 5 E. 3. and John Marcis, in 25 E. 3. had likewise enjoyed the same) yet amongst other reasons of the said judgement, it was set downe, and adjudged that the former possession was by extortion, cohesion, and without right, and that the said letters patents were in operationem, appressionem, et desuaparationem subditorum domini regis, &c. et non est emendationem ejusdem populi; and therefore the said letters patents were void. And as touching the narrow new fluffe made in Norwich, and other places of worlde yarn, it was resolved that it was not grantable, nor fit to be granted, for there was never any alnage of Norwich worlde, and for these stuffes, if after they be made, and tuck up for sale by the makers thereof, they should be again opened to be viewed, and measured, they will not well fall into their old plights, &c. as by the said letters it must at large appeareth. These letters were openly read at the council table, and well approved by the whole councell, and the lords commanded the same to be kept in the council chest to be a direction for them to answer suitors in these cases.

But three judgements in the exchequer have been cited for proofe, that the king hath power to set impositions upon merchandizes exported, and imported.

1. A judgement given in the exchequer in an information against Germane Cioll for 40 s. set by queen Mary upon every tun of wine, of the growth of France to be brought into the realme. But the case there was this, the attourney generall informed, that where
king Philip and queen Mary by their proclamation 30 Martii, in the 4. and 5. yeares of their raigne, did will and straitly command, that no wines of the growth of France, should be brought into this realme, without speciall licence of the said king and queene, under paine of forfeiture of such wine to the king and queene, cumq. etie dist. nuper rex et regina de adviumento concilii sui ad tune ordinaverit et decreverunt, quod quelibet per homa, que in hoc regnum Angliae induceret hujusmodi vinum contra formam proclamations praeclara, solvereet pro quelibet dolto hujusmodi vini 40 s. vocab imperit. Ce. and that German cloil, against the forme and effect of the said proclamation, had brought into the realme 338. tunnes of wines of the growth of France, and had not paid 40 s. for each and every tunne: the defendant pleaded a licence from the said king and queene, dated the 9. of Decemb. anno 1 & 2, to bring into the realme 1500. tunnes of wines, of the growth of France, in strangers bottoms, with a non obstante of any law, statute, or proclamation made or to be made to the contrary, whereupon the demurrer was joyned.

In this record these things are to be observed, first that a proclamation prohibiting importation of wines upon paine of forfeiture, was against law: for it appeareth not, that any warre was betweene the realmes. 2. The proclamation was made of purpose to fet an imposition, for the 40 s. is imposed upon them only, and upon such as should bring in wines against the said proclamation, lo as the proclamation was the ground of this information. 3. The king and queene by advice of their counsell, did order, and decree, &c, and have not nor how, or by what means this order and decree was made: the pleading of such a former licence so insufficently knewth, that it was by agreement and content.

2. The executors of custome Smith, were charged in a speciall information for receiving an imposition of iii. s. iii. d. set by queene Elizabeth, under her privy signet, upon every hundred weight of allome made within the dominions of the pope, and judgement in the exchequer was given against them: the reason of this judgement was, for that custome Smith received the same as due to the queene, and the issue was joyned, quad praedicti executores non ebansatur ad computum, &c. and the validity of the imposition was never questioned.

3. A judgement was given in the exchequer, for an imposition set upon currants, but the common opinion was, that that judgement was against law, and divers express acts of parliament; and so by that which hath been said, it doth mani etilly appeare.

To conclude this point, with two of the maximis of the common law: 1. Le common ley ad tielment admeasurare les prerogatives le roy, que il ne tolleron, ne prejudiceront le inheritance desfruns, the common law hath to admier the prerogatives of the king, that they should not take away, nor prejudice the inheritance of any: and the best inheritance that the subject hath, is the law of the realme: 2. Nihil iam proprium est imperii, quam legibus vivere.

Upon this chapter, as by the laid particulars may appeare, this conclusion is necessarily gathered, that all monopolies concerning trade and traffique, are against the liberty and freedom, declared and granted by this great charter, and against divers other acts of parliament, which are good commentaries upon this chapter.
Magna Charta: Cap. 31.

Le point del conge del demurer des merchants aliens est sint inter.
prestable, que ce ne fait in prejudice des villes, ne des merchants don.
géterre, et il joient frements al roy et pleuryes sine demurrot plus que
40 jours.

For the well intreating and ordering of merchant strangers and
denizens, and for due employment of their money upon the na.
tive commodities of this realm, many statutes have beene made
since this great charter, and have been excellently expounded in
the raigne of queene Elizabeth, but that matter belongs not to this
place.

[64]

CAP. XXXI.

SI quis tenererit de aliqua eftaca, fictu
de honore Walfingford, Notting.
Bolon, et de aliiis eftacitis (1) que sint
in manu nostra, et sint baronie, et obie-
rit hieres ejus, non det aliud relevium,
nee facit nobis alium servitium, quam
fuerit baronii, si baronia eject in manu
baronii, et vos edem modo eam tenebit-
num, quo habeas eam tenuit. Nec nos
occurrence talis baronii, vel eftacae ha-
bebit us aliquam eftacatem, vel eftacae
aliquorum nostrorum hominum, nisi
de nobis alibi tenererit in capitile ille qui
tenuit baroniam, vel eftacatem illam.

fl. 2. c. 13. 1 Ed. 6. c. 4.)

By this chapter it is declared, and enacted, that if any man hold
of any escheate, as of any honour, or of other escheats, which are
baronies, and were in the kings hands; first, if he die, his heir
being of full age, his heir shall give no other reliefe to the king
then he did to the baron. 2. Nor doe none other service to the
king, then he should have done to the baron. 3. That the king
shall hold the honour or baronie as the baron held it, that is, of such
eftate, and in such manner and forme, as the baron held it. 4. The
king shall not have by occasion of any barony, or escheate, any es-
cheate but of lands holden of such baronie. 5. Nor any warship
of any other lands then are holden by knights service of such
baronie, unleffe he, which held of the baronie, held alfo of the
king by knights service in capitell.

All this is meerely declaratory of the common law, and here it
appeareth that he that holdeth of the king, must hold of the perfon
of the king, and not of any honor, baronys, manor or feignory:
and it appeareth farther in our books, that he that holdeth of the
king in chiefe, must not only hold of the person of the king, but the
tenure must be created by the king, or some one of the progenitors,
Cap. 32. Magna Charta.


(1) De aliis ecclesiis.] Some question hath been made of these words, for some have said that these words are to be understood of common ecclesiasts, as where the lord dieth without heir, or where he is attainted of felony: but where the lord is attainted of high treason, the king hath the land by forfeiture of whomsoever the land is held, and not in respect of any ecclesiast by reason of any seigniorie: and therefore where William Riparave a Norman, held lands in fee of the king, as of the honour of Pevensey, and Riparave forfeited his fait land for treason, and the king sequestered it as his escheate of Normandy, in this case the land so forfeited was no part of the honour, as it should have been, if it had come to the king, as a common escheate, for it common to the king by reason of his person, and crown, and therefore if he granted it over, &c. the patronetum shall hold it of the king in chief, and not of the honour. And all this is to be agreed, but yet the tenants that held before of the honour by knights’ service, cannot hold of the king in chief. 1. For that they hold not of the person of the king, but of the honour. 2. Because the tenure was not created by the king, or any of his progenitors, as hath been said.

And so doth Brasen, who wrote soone after the statute, expound this greater charter to extend to forfeiture of baronies for treason, as of the Normans.

And yet to make an end of all the ambiguities and questions, the statute of 1 E. 6. was made, which is, as the words be, a plain declaration and resolution of the common law. Likewise the statute of 1 E. 3. which provideth, that where the land, that is holden of the king, as of an honour, is aliened without licence, no man shall be thereby grieved, is also a declaration of the common law.

By this chapter it appeareth, that a subject may have an honour.

C A P. XXXII.

ULLUS liber homo det de certo terrvo amplius alienati, vel vendat [alienat] de terra sua, quam ut de recognito terre sua possit sufficienter fieri domino factam ferientium ei debitum, quod veniret ad feodium illud.

To 1 E. 1. comau rege. Not. & Derb. a declaration made of this act. Bras. I. 1. Britton, fol. 83. Fleta I. 3. cap. 3. Mirror c. 5. § 2. Cuthamier de Norm. cap. 116. (1 Infat. 42. a. 18 Ed. 1. flas. 1. c. 2.)

NO freeman from henceforth shall give or sell any more of his land, but so that of the residue of the lands lord of the fee may have the service due to him, which belongeth to the fee,
Magna Charta: Cap. 32.

1. First it is to be seen, what the common law was before this statute.

2. What is wrought by this statute, where the lands are holden of the king.

3. What this statute hath provided in case where lands are holden of a subject.

Before this statute, in case where the tenure was of a common pension, the tenant might have made a feoffment of a parcel of his tenancy to hold of him, for the feigniory remained entire as it was, and the lord might disfraine in the tenancy paraivale for his rent, and service; but at the common law, he could not have given a part of his tenancy to hold of the lord, for the tenant by his act could not divide the feigniory of the lord which was entire, but at the beginning the lord reserved his feigniory out of the whole tenancy, and might disfraine in every part thereof for his feigniory, but if the tenant might have made a feoffment of part to hold of the lord, then had he seceded the lord of his liberty to disfraine for the whole feigniory in every part thereof.

At the common law the tenant might have made a feoffment of the whole tenancy to be holden of the lord, for that was no prejudice at all to the lord.

But in the kings case it was doubted, whether his tenant might have given part of the tenancy to hold of himselfe, because the land, and the profit that might come to the king thereby, was removed farther from him, and the mefnalty was ever of lesser value, then the land, and for that cause the tenancy was called paraivale: and in 18 E. 1. the king answered to a petition in parliament, ne non vult aliquem medium, &c., and this question remained after this statute about the space of 133. years, viz. till the c. statute of 34 E. 3. was made, whereby it is provided, that alienations of lands made by tenants, which held of H. 3. or of other kings before him, to hold of themselves, that the alienations should stand in force, giving to the king his prerogative of the time of his great grandfather, his father, and his own, whereby it appeareth that this prerogative to have a fine for alienation, d. began in the reign of H. 3. which was by this act, and therefore he beginneth with H. 3. his great grandfather.

To the second point by this act, where lands are holden of the king, as king, in capite, be it by knights service, or in socage in capite; and aliened without licence, there is growth, as hath been said, to the king a fine: for by the common law it was against the nature and purity of a fee-simple, for the tenant to be restrained from alienation.

But some did hold, that upon this act the land so aliened without licence was forfeited to the king, by reason of these words, nullus sine homo det, &c., and others did hold the contrary, that upon those words, the land was not forfeited, but that it should be seised in the name of a distrieve, and a fine to be paid for the trespass, which I take to be the better opinion; and the reason why our books speake, that no fine was due before 20 H. 3. 13., for that about that yeare H. 3. being of full age (as hath been said) did establish and conforme this great charter, but in truth it was in 21 H. 3. as by the charter it selfe appeareth.

But this question depended about the space of 100 years, &c., and was not determined until the statute made in 1 E. 3. whereby
1 is enacted, that the king shall not hold them as fœcere in such case, but that of lands so aliened there shall be from thenceforth, a reasonable fine taken in the chancery, by due process, which act was but an exposition of this chapter of Magna Charta as to lands held of the king in capite aliened without licence, and extendeth to lands helden of the king by grand servitie aliened without licence.

To the 3. the great doubt upon this act was, that in as much as this act was a prohibition general, and imposed no paine or penalty, what paine the tenant, or his feoffe should incurre, if he did the contrary; and by the common opinion this act was thus interpreted: that when a tenant of a common person did alien parcels contrary to this act, the feoffor himselfe during his life should not avoid it, quia nemo contra suum feodum suum proprium venire potest, but that his heire after his decease might avoid it by the intentment of this act, to the end that men should not purchase such parcels, for fear of lofing the fame after the death of the feoffor: but if the heire apparent had joyned with his auncester in the feoffment, or after had confirmed it, and thereby had given his assent thereunto, he or his heires should never have avoided it, whether he survived his father or no: and if the heire entred upon this statute, the alienee of part might plead that the service, whereby the land was helden, might be sufficiently done of the residue, and thereupon issue might be taken. And I have seene divers such precedents betweene this act of Magna Charta, and 18 E. 1.

Then came the statute of 18 E. 1. which enacted, quod de cetero licet unicus: liberò homini terras suis, sua tenementa sua, sua parte inde ad voluntatem suam venderere, ita tamen quod feoffatus teneat terram illam, sua tenementum illud de capitali domino per eadem servitutis, et constitutas, per quæ seoffator suas illa príus de eo tenuit, et si partem aliqam earendem terrarum, sua tenementorum alium vendiderit, feoffatus ille partem illam immediate teneat de domino.

Many excellent things are enacted by this statute, and all the doubts upon this chapter of Magna Charta were cleared, both statutes having both one end (that is to say) for the upholding and preservation of the tenures, whereby the lands were helden; this act of 18 E. 1. being enacted ad infinitum magnatum regni.

1 First this statute of 18 E. 1. doth begin with a de cetero licet, which proveth that before it was not lawful to alien part, unless sufficient were left, and this approveth the aforesaid common opinion, that in that case, the heire might enter, otherwise this chapter of Magna Charta, had been in vaine and this de cetero licet, had not needed.

2 That by this statute of 18 E. 1. the prohibition and penalty by this chapter of Magna Charta, to avoid the state of the feoffe is taken away; de cetero licet, &c.

3 The point aforesaid of the common law, that the tenant could not alien parcel to hold of the lord, is by this act of 18 E. 1. altered.

4 Another point of the common law is by this act altered, that where by the common law, he hath alien parcel to hold of himselfe, this is taken away, and the alienesse shall hold of the lord pro particula.

5 Where the tenant had liberty, and election by the common law

terrae terrarum, ubi
sup. Hill. 2 E. 3. coram rege
wittef. Prerog.
regiae, c. 6.
F. N. B. 175.
4 E. 3. quire
Imp. 54.
Br. Alienation
sans licence 34.
Hill. 43 Eliz.
1. 2. fol. 80, 81.
Seign. Cromwels
cafe.
Magna Charta.  
Cap. 32.

law to make a feoffment of the whole, to hold either of himself, or of the lord, now this liberty and election is taken away, for by this act the land must be immediately helden of the lord.

6. That the king is bound by this act, and this appeareth by the Register, that the king cannot charge the feoffee of part with the entire rent, but there lieth a writ de omnibus pro rata portione; but the king may grant lands to hold of himself, for he is not restrained by this act, for hereby no man is restrained, but he which holds over of some lord, and the king holdeth of none.

But then here it is asked, if by this chapter of Magna Charta, a fine for alienation accrued to the king upon an alienation of the kings tenant in capite, and now this restraint (as hath been said) being taken away; how can that prerogative fland when the foundation, whereupon it is built faileth?

But hereunto it is answered. 1. The restraint of Magna Charta, secundum quid, as to the avoidance of the estate of the feoffee by the heir, is taken away, as hath been said, but not simpliciter, for in respect of the king, the fine for alienation remains due, and here with agreeeth continuance and continual usage. 2. The statute of 4. 3. enacted, que desformes de tels terres et comements alien fut readiable fine prise in le chancery, and though it faith (deformes) from henceforth, that was not, that any fine was due before, but, as hath been said, to take away the question of the forfeiture.

After this act out of the office of the remembrancer of the exchequer, writs of quo titulo ingressus est, to help the king to his reasonable fine, issued out of the exchequer, to know how the feoffee came to the whole, or part of the land, and of what estate, whereupon the feoffee was driven to plead to his great charge and trouble, and therefore upon conference had with the kings officers, and the judges, it was ordained, that seeing the kings tenant could not alien without licence, for if he did, he should pay a fine, that for a licence to be obtained, the king should have the third part of the value of the land, which was helden reasonable, and the feoffee should pay the same because his land was otherwise to be charged, and he had of the trouble and charge by the writ of quo titulo ingressus est; and if the alienation was without licence, then a reasonable fine by the statute, was to be paid by the alienee, which they resolved to be one yeares value, which ever since constandy and continually hath been observed and paid.

This fine was to be paid by the alienee, as hath been said, or by those that claimed by or under him, and if the fine he not paid, the land shall be seised into the kings hands; and the intent of a parliament is always intended just, and reasonable; and therefore if a diffieror of lands in capite make an alienation without licence; and the diffieror enter, the land shall not be seised for the fine, for the diffieror is in by a title before the alienation, and so in other like cases. If he in the reversion levy a fine of lands holden in capite without licence, the leffor for life shall not bee charged with the fine, because that estate was before the alienation, but yet in a quod juris clamatur, the leffor shall not be compelled to attorne, because the court will not suffer a prejudice to the king in like manner, as if the reversion had been aliened in mortmain without the kings licence.

I have been the longer in explaining this chapter, because it seemed so obscure to some readers in former times, that they passed it over without any explanation.
Nullus capiatur, aut imprisonetur propter appellum feminae, de morte alterius quam viri sui.

No man shall be taken or imprisoned upon the appeal of a woman for the death of any other, than of her husband.

(Bro. Appeal, 5, 17, 60, 68, 104, 112. Raft. Ent. 43.)

For this word, Appeal, see the first part of the Institutes. At the common law before this statute, a woman, as well as a man might have had an appeal of death of any of her ancestors, and therefore the son of a woman shall at this day have an appeal, if he be heir at the death of the ancestor, for the son is not disabled, but the mother only, for the statute faith, propter appellum fæminiæ. Vide more of this in the first part of the Institutes.

* Fleta fidei, Fæmina autem de morte viri sui inter brachia sua interféxi, et non aliter poterit appellare; and therewith agree the Mirror, Britton, and Breaston.


* Fleta ubi supra. Mirror, ca. 5, § 2, & ca. 2, § 7.

53. See the first part of the Institutes, sect. 24.

II. Inst.
Magna Charta.

By inter brachia in these ancient authors, is understood the wife, which the dead had lawfully in possessioon at his death, for she must be his wife both of right and in possessioon, for in an appeale, magna accipio in bona matrimonii, is a good plea.

A woman at this day may have an appeale of robbery, &c. for she is not restrained thereof.

This wit of appeale of the death of her husband, is annexed to her widowhood, as her quarentine is.

If the wife of the dead marry again, her appeale is gone, albe it the second husband die within the yeare; for these must before any appeale brought, continue virginus vivi sui, upon whose death she brings the appeale.

So if she bring the appeale during her widow-hood, and take husband, the appeale shall abate, and is gone for ever.

So likewise, if in her appeale she hath judgement of death against the defendant, if after she take husband, she can never have execution of death against him.

Albeit the husband be attainted of high treason, or felony, yet if he be slain, his wife shall have an appeale, for notwithstanding the attainer he was vivi sui, but the heir cannot have an appeale, for the blood is corrupted betweene them.

(1) Appellam femiae.] A hermaphrodite, if the male sex be predominant, shall have an appeale of death as heire, but if the female sex doth exceed the other, no appeale doth lie for her as heire.

CAP. XXXV.

NULLUS comitatus (1) de caetero tenetur nisi de mensis in mensis, et nisi major terminus esse solebat, major sit (2). Nec aliquis vicemere, vel velutus suus faciat tumurum suum per huncetdam, nisi bis in anno, et non nisi in loco debito et continuo, viz. semel post Pidish, et iterum post septem S. Michaelis (3), et visitas frangipleg (4) tune fiat ut illam terminas Sancti Michaelis est sine occasione. Ita secludit quid quilibet habeat libertates suas quis habuit, vel habere confuevit tempore regis Henrici aut nostris, vel quas postea periquisset. Fist autem visitas de frangipleg (5) vit (6): videlicet, quod post nostram tenaciam, et quod tribinga tenaciam integra (7), siue effe consuevit, et quod vicemere non querat occasiones (8), et contentus sit de eo, quod vicemere habere consuevit (8) de viva suo.

No county court from henceforth shall be holden, but from month to month; and where greater time hath been ufed, there shall be greater nor any sheriff, or his bailiff, shall keep his turn in the hundred but twice in the year; and no where but in due place, and accustomed; that is to say, once after Easter, and again after the feast of Saint Michael. And the view of frankpledge shall be likewise at the feast of Saint Michael without occasion; so that every man may have his liberties which he had or ufed to have, in the time of King Henry our grandfather, or which he hath purchased since. The view of frankpledge shall be so done, that our peace may be kept; and that the yielding be wholly kept as it hath been accustomed; and that the sheriff keep...
Magna Charta

Cap. 35.

Magna Charta.

no occasions, and that he be content with so much as the sheriff was wont to have for his view-making in the time of king Henry our grandfather.

(Fitz. Lect. 11. 8 H 7. f. 4. 1 Roll. 201. Cro. El. 125. 2 Leon. 74. Regist. 175. 187. F.N.B. 86. 31 Ed. 3. St. 1. c. 15.)

(1) Comitatus.] Quod modo vocatur comitatus, alium apud Britones temporibus Romanorum in regno isto Britanniae vocabantur confidatus,

et qui modo vocatur vicinocomitis, tuum temporis viciss-confiditur vocabatur; et alium diebetur viciss-comitatus, qui confiditur abhinc ipsis viciss supplebatur in jure suo.

Curia comitatus, in Saxon, scegpecemote, i. comitatus conventus.

Egis duo genera, oneum alterum hadie le comite circuit, alterum le tourn du vizitoun, olim folkmote, vulgo noncupatur; et so as many times sure vicinocomitis is expressed under the name of curia comitatus, because it extended through the whole county: and therefore in the red book of the eschequer, amongst the laws of king H. 1. cap. 8. de generalibus placitis comitatum, it is thus contained, viz.

Sinct antiqua fuerat institutione formatum, julotari regis imperio ueru eft recordatione firmatem, generalia * comitatum placita corvis locis, et vicibus, et definito tempore per singulas anni provincias convenire debebatur, et ubi sit altera fustigationis agitari, nisi pròpria regis necessitas, vel communis regni commodum faptis adiecta. Interfint autem episcopi, comites, vicarii, vicarii, conventarii, aldermeni, preposteri, preposteri, barones, scappares, inveniunt, et coram terrarum domini diligenter intendentes, nec graduum impunitas, aut gravitatum pravitas, vel judicium subverso folita peribat litteratione confinian : agentur itaque primo, debita vere christi- tiantatis iura, secundo, regis placita, potest, causa singulorum, &c. Debet enim Sheseymote, (i. the sheriffs tourne) bis; hundredia, et vac- tationia, (i. the county courts) duodecies in annis congregari.

And truly did H. 1. lay, sanct antiqua fuerat institutione formatum: for these courts of the tourne, and of the county, and of the leete or view of frankpledge mentioned hereafter in this chapter were very ancient; for of the tourne you shall read amongst the laws of king Edw. Statutum est quod ibi (sicut apud le folkmote) dixit populi unnias, &c. conveneret, et se sede et sacramento non frauder, ibi in unum et simul confederaret, &c. ad defendendum regnum, &c. una cum domino suo regis, et terras suas, et honores illius omnii fidelitate suae se servaret, et quod illi, ut domino suo regi intra et extra regnum universum Britanniae fidelis esse velint, &c. Elane legem invenit Arthurus (qui quondam fuit indiscipulis rex Britannum) et ita confiditavit et confederavit regnum Britanniae universum somni in unum, bueus legis autotertiatis expulit Arthurum praedictus Sasaceos et inimicos a regno, lex enim iba die Sapita fuit, dixit Edwarus rex Anglorum qui fuit avus Edwarde regis, illam exuvavit, et erexit in leucum et per totum regnum firmiter observari præpetit: et bueus legis autotertiatis rex Etheldreda: jubiit uno et codem die per universum regnum Danos occidit.

By the laws of king Edward, before the conquest the first, which succeeded king Alured, it is thus enacted:
Preposterus quisque, &c. vicinocomites Saxonice govjeta, Anglice sheriff, ad quamvis cirtrum legem etiam populorum resolvent celebrato, cujus jus dictum est univale, etiam que singulas cum dies conditi adveniant durantiae.

G 2

Hereby

Inter leges R.

Ed. Lamb. 129.

a. b. I dem vel omo

Conventus.

12 H. 7. 13.

Lamb. 153.

Britton, c. 27.

Flet. 1. 2. ca.

30. 37.

In libro rubro, in Specario, ca. 8.

[70]

1. Turinorum placita.

Regis placita.

i. The pleas of the crown holden in the sheriffs town allem.
Magna Charta.

Hereby it appeareth that common pleas between party and party were holden in the county court every month, which agreeing with Magna Charta, and other statutes and continual usage to this day.

And amongst the laws of king Edgar it is thus concerning the sheriffs tourn provided.

Celeberrimus ex omnibus fratribus bis quotannis convocatus agitator, cui qui den illius dieceesis episcopus, et iuntor interjuncto, quorum alter iura divina, alter humana populum educato; which also agreeeth with Magna Charta, and other statutes and continual usage.

By that which hath been said, it appeareth that the law made by king H. 1. was (after the great heat of the conquest was past) but a restitution of the ancient law of England; and forasmuch as the bishop with the sheriff did goe in circuit twice every year, by every hundred within the county (which also appeareth by this chapter of Magna Charta in these words, turrum suum per hundredum, &c.) it was called tour, or tourn, which signifies a circuit, or perambulation.

Now let us peruse the several branches of this chapter.

(2) Nullus comitatus de cetero tenetur nisi de monte in montem, et ubi major terminus effe solutus, major sit.] This (as hath been said) is an affirmation of the common law, and cultums of the realm.

Comitatus.] Here comitatus is taken in the common sense for the county court.

That the realm was divided into counties long before the reign of king Alured, viz. in the time of the ancient Britons. See the first part of the Institutes, sect. 248.

Et ubi major terminus, &c.] This is altered by the statute of 2 H. 6. whereby it is provided that no county court shall be longer deferred, but one month from court to court, and so the said court shall be kept every month, and none otherwise.

By which act every county of England, concerning the time of the keeping of the county court is governed by one and the same law.

And there is to be accounted 28 days to the legal month in this case, and not according to the month of the kalender.

(3) Nec alquis viciones, vel balivins suos faciatis turrum suum per hundredum, nisi bis in anno, et non nisi in loco debito et consueto, &c. jemel post Peleb. et iterum post festum S. Michaelis.] Where this branch faileth, jemel post Peleb. &c. The statute of 31 E. 3. explained it, viz. one time within the month after Easter, and another time within the month after S. Michael, and if they hold them in any other manner, then they should lose their tourn for that time, which is as much to say, as the court so holden for that time, shall be utterly void, and the sheriff shall lose the profits thereof.

Nisi in loco consueto.] This remaineth to this day.

Per hundredum.] How hundreds, and the courts of the hundreds first came, see hereafter in this chapter.

Et vijus franciplegis tunc stat ad illum terminum SanSi Michaelis, &c.] It hath appeared before, that of ancient time the sheriffs had two great courts, viz. the tourne, and the county court; afterwards for the sake of the people, and specially of the husbandman, that each of them might the better follow their business in their severall degrees, this court here spoken of, viz. view of frank-pledges.
Magna Charta.

pledge, or leet was by the king divided, and derived from the tourn, and granted to the lords to have the view of the tenants, and reiants within their manors, &c. So as the tenants, and reiants should have the same justice, that they had before in the tourn, done unto them at their own doores without any charge or joise of time, and for that cause came the duty in many leets to the lord de certo lete, towards the charge of obtaining the grant of the said leet.

So likewise, and for the same reason were hundreds, and hundred courts, divided and derived from the county courts, and this the king might doe, for the tourn and leet both are the kings courts of record: and as the king may grant a man to have power tenere placita within a certain precise, &c. before certain judges, and in a manner exempt it from the jurisdiction of his higher courts of justice, so might he doe in case of the tourn, and hundred courts: so as the courts and judges may be changed, but the laws and custome, whereby the courts proceed, cannot be altered. And as the county court, and hundred court are of one jurisdiction, so the tourn, and leet be also of one and the same jurisdiction; for derivationes paginas eijusdem jurisdictionis cum primition.

The style of the tourn is curia franc. pliegii dominii regis tent apud L. cumm vicecomite in tournus sunt tali die, &c. And therefore in some books it is called the leete of the tourn. And therefore where the sheriffe styled his court, turn. vicecom. tent. tali die apud L. &c. it was resolved that it was insufficient for that this word tourn is but the perambulation of the sheriffe, but by the right style of the tourn, it appeareth that the tourn and leet have but one style, and the same jurisdiction.

But for want of the knowledge of antiquity it was obiter, in 18 H. 6. denied that the tourn, and the leet were of one jurisdiction, and two inquisitions are there put, viz. that the leet hath conuance of bread and ale, that is, of the affisle of bread and ale, and the tourn hath not conuance thereof; and the other is, that in the leet they have authority de presbyter euse, queus ne font lies, abridged by Fitzh. a presfiter ceux, ques nos font pas en le decennarie.

To the first it is cleare, that the breach of the affisle of bread and ale is preventable in the tourn, as a common nuisance, and therewith agreeeth custom and continuall experience, and reason proveth, that the derivative cannot have conuance of that which the primitive had not, unlefe it be given by some act of parliament; and herewith agreeeth the style of the tourn, and the authority of later books.

As to the second, it is ill reported in the book itselfe; but if it be intended as Fitzh. abridgeth it, then it is cleare that in the tourn they be not put into the decennary may be inquired of, for as hath often saide, the style of the tourn is, curia eijus franc. &c.; and the derivative cannot of common right have more then the primitive.

But both of the tourn and the leete, this may be truly saide,

\[ \text{Tempora mutantur, & nos mutamur in illis;} \]
\[ \text{Quodque verra instituto iijis curiae exemptus, et velut umbra iijisdem ad} \]
\[ \text{hoc remanet: baberum quidem fenatus conflitum, sed in tabulis repitatum,} \]
\[ \text{ut tangam gladium in vagina recentiis.} \]

But now let us return to our Magna Charta.
Magna Charta. Cap. 35.

Et visus de francis plegis tunc fiat ad illum termi nium Sancti Michaelis, &c. It is to be observed that the precedent branch is, that vici cesses non facient turmas per hundredem nisi his in anno, as hath been said, viz. semel post Faschet at iterum post festum Sancti Michaelis; this clause extendeth to the enquiry of felonies, common nuisances and other misdeeds, the view of frankpledges, and to all things inquisitionable in the town. Now by this clause it is provided that the article of the toun concerning the view of frankpledge, being here understood in a particular sense, shall be dealt withal by the sheriffs in the town but once in the year, viz. at the town held after Easter, and so it hath been formerly expounded: and therefore it was well resolved in 24 H. 8. that this clause of the statute of Magna Charta, is to be understood of the leet of the town, and not of other leets, and so without question is the law holden at this day, that he that claims a leet by charter, must hold it at the same days, which are contained in the charter, and he that claims it by prescription may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath been so, so that it hath been kept at uncertain times, or else it ought to be kept at such certain days and times, as by prescription hath been certainly used; and the next words to this clause bee, ita fictum quod quilibet bavaris liberatatis sua, quae habet, &c. doe explain the meaning of this chapter, that it extended not to the leets of the subjects, but they should have their liberties, as before they had; and this also appeared by the conclusion of this chapter, et quod vicinices, &c. consequuntur est de eo quod vicinices habere conuenit de virtute suae faciunt, so as it must be at viribus suis, the sheriff's view, which of necessity must be parcell of the town; and it is said in the Mirror, that this view of frankpledge (parcell of the town) should be made once every year.

[73]

For the first, that the kings peace might be kept; the right institution of the view of frankpledge, and whereon the name came to be considered, which is as followeth.

Franci plegii. 1. Liberti securitas, free sureties or pledges; and here it is laid first visus de francis plegis, ita fictum quod quae rectius tenetur. 2. Sed tribingens tenetur integre. 

For the first, that the kings peace might be kept; the right institution of the view of frankpledge, and whereon the name came to be considered, which is as followeth.