

The Ninth PART of the  
**R E P O R T S**  
OF *R. Alexander*  
*Sir Edward Coke* Kt.

Chief Justice of the COMMON PLEAS.  
O F

Divers Resolutions and Judgments given upon solemn Arguments, and with great Deliberation and Conference of the Reverend Judges and Sages of the Law, of Cases in Law which were never resolved or adjudged before: And the Reasons and Causes of the said Resolutions and Judgments: Publish'd in the tenth Year of the most High and most Illustrious *JAMES* King of *England, France and Ireland,* and of *Scotland* the 46. the Fountain of all *PIETY* and *JUSTICE,* and the *LIFE* of the *LAW.*

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With REFERENCES to all the BOOKS of the *COMMON LAW,* as well Antient as Modern.

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*Prævisum est, concordatum & concessum, quod tam majores, quam minores justitiam habeant & recipiant in Curia Domini Regis. Marl. Anno 52 H. III. Cap. 1.*

*Summa caritas est unicuique facere justitiam omni tempore cum opus fuerit. Westm. I. Anno 3 Ed. I. Cap. 50.*

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In the *SAVOY:*

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *Fax. Sayer* Esq;) for D. Browne, J. Walthoe, W. Lintot, K. Collins, W. Bears, T. Ward, W. Innes, J. Osborn, T. Woodward, J. Hooke, F. Clay, T. Motton, K. Williamson and J. Ward,  
M DCC XXVII.

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# Deo, Patriæ, Tibi.

**C**UM tantillum hoc meum, in præfatione octavi mei operis, ex historiarum consensu, apud scientes Lectores (dum monumentis Judicialibus haud dubio quadrat) optatos adeo produxit effectus, adjicere nonnulla visum est, quibus suadeor & satisfationi & solamini addatur eorum, qui soli natalis Leges municipales (id quod omnes oportet) colunt pariter ac amant.

Multum antiquus & non minus elaboratus penes me est tractatus de Legibus & Consuetudinibus hujus regni, quibus res hujus nostræ gentis publicæ 1100. ab hinc retroactis annis agebantur. Titulum simul & hujus libri materiam dicat ipse author, his verbis: Quel summe ieo appelloi **Mirror aux Justices**, fo-

**S**eeing the light Touch I gave in my Preface to my eighth Work out of Consent of History, hath with the judicious Reader (finding it consonant to judicial Record) wrought so good Effect, I will add somewhat thereunto, which I am persuaded will add to their Satisfaction and Solace therein, who do reverence and love (as all Men ought) the national Laws of their native Country.

I have a very ancient and learned Treatise of the Laws and Usages of this Kingdom, whereby this Realm was governed about 1100. Years past, of the Title and Subject of which Book the Author shall tell you himself in these Words.

Which Summary I have intituled, the Mirror of Justices, according to the Virtues

In Proemio.  
The Book called the Mirror of Justices.

Virtues and Substances *imbellies* which I have observed, and which have been used by holy Customs since the Time of King *Arthur*, &c.

longue ceo que jeo trova les vertues & les substances imbellies, & puis le temps le Roy *Arthur* uses per saint Usages, &c.

Cap. 1. Sect. 1.  
The Law warranted by holy Scripture.  
Why they be called the Common Law  
Councils general or Parliaments.

And soon after. The Law whereof this Summary is made, is, of ancient Usages warranted by holy Scripture; and because it is generally given to all, it is therefore called Common. And for that there is no other Law but this, this alone of Antiquities, is by general Councils or Parliaments permitted to be used by holy Usages, &c.

Et paulo post. *La Ley dont cest summe est fait, est escrie des aucient usages garrant de saint Escripiture; Et pur ceo que est generalment done a tous, est appelle Commune. Et pur ceo que nul autre Ley est forsque cela, ele un dantiquties in Councells generalls ou Parliaments est suffer destre use per saints Usages, &c.*

*In this Book in Effect appeareth the whole Frame of the antient Common Laws of this Realm, as by these few Particulars shall appear: As the Diversity and Distinction of the Courts of Justice (which are officinæ legis.) And first of the High Court of Parliament, which Court is mentioned before by the Name of Council general or Parliament, and cap. 1. sect 3. King Alfred ordaineth for a Usage perpetual, that twice in the Year, or oftner if Need be, they shall assemble themselves at London to treat in Parliament of the Government of the*

Totum fere antiquiorum hujus regni Legum Communium contextum habet hic liber, (ut hisce particularibus satis liquebit): cujusmodi sunt Diversitas & Distinctio Curiarum justitiæ (quæ ipsius sane Legis sunt officinæ) Primum itaque de suprema Curia parliamentaria, quæ cum ante memorata sit appellatione Concilii generalis sive parliamenti, tum cap. 1. sect. 3. Le Roy Alfred ordeigna pur usage perpetuell, que a deux foits per lan, ou plus sovent pur mistier, in temps de peace se assembler a Londres pur parlementer sur le guide-  
ment

The High Court of Parliament.  
Cro. A. g. 54.

## To the READER.

*ment del people de Dieu, coment gentz soy garderent de pecher, vverent en quiet, receiverent droit per certain usages & saints Judgements, &c.*

2. De Curia Cancellariæ. Ordeign fuit que chescun eyt del Chauncery le Roy brieve remedial a sa plaint sans nul difficulte, &c.

*In temps le Roy Alfred n'estoit nul brieve de Grace, cins fueront tous briefs remedials, grantables come de Det per vertue de serement, &c.*

3. De Banco Regis, Chiefe Justices teignants les plees le Roy. Et deinde, Al office de chiefe Justices appent les tortomous Judgements, & les torts & les erreurs dauters Justices redresser & punier per brieve, nequidant de faire venir devant le Roy les parties & le Record ovesque le brieve original; Et per devant tiels Justices sont tous briefs pleadables, reournables & terminables, ou mention est fait devant le Roy mesme, &c. Et cy appent a lour office d'oyer & terminer tous plaints faits de personal torts faits a 12 lieus dentour le Roy: Et les Goales delivrer des

People of God, how they should keep themselves from Sin, should live in Quiet, and should receive Right, by certain Laws and holy Judgments, &c.

2. In the Court of Chancery. It was ordained, that every one, upon Complaint, should have out of the King's Chancery, a Writ remedial, without any Difficulty, &c.

In the Time of King Alfred there was no Writ of Grace, but all Writs were remedial, grantable (as of Duty,) by virtue of an Oath, &c.

3. The King's Bench. Chief Justices holding Pleas of the King. And soon after. To the Office of the Chief Justices belongeth to redress and punish by Writ the wrongful Judgments, Wrongs, and Errors of other Justices, And to cause to come before the King the Parties and the Record with the original Writ. And before these Justices are all Writs pleadable, returnable, and determinable where it is mentioned, before the King himself, &c. It belongeth also to their Office, to hear and determine all Complaints of personal Wrongs,

Cap. 1. Sect. 3.  
The Court of Chancery.  
Cap. 5. Sect. 1.

Cap. 4. De Jurisdictione.  
The King's Bench.



## To the READER.

Wrong; done within 12 Miles of the King: And to deliver the Gaol of Prisoners deliverable: And to determine all that is determinable by Justices in Eire, and more or less according to the Nature of their Commission.

*prisoners deliverable: et terminer quant que est terminable per Justices errants, & plus ou moins selonque le nature de leur Commission.*

Cap. 4. Sect. eodem.  
The Court of Common Pleas.

4. The Court of Common Pleas. To the Justices of the Bench Power is given to take Fines, to hear and determine grand Assises, Common Pleas, &c.

4. De Curia placitorum Communium. Et aux Justices del Banke a queux poyer est done de prendre fines, de oyr and terminer les grands assises, Common Plees, &c.

Cap. eodem. Sect. eodem.  
The Court of Exchequer.

5. The Court of Exchequer. Moreover the Barons of the Exchequer have Jurisdiction over the King's Receivers and Bailiffs, and of the Alienation of the Fiefs (or Fees) and Rights belonging to the King, and to the Rights of his Crown, &c.

5. De Curia Scaccarii Ouster ceo ont les Barons del Eschequer jurisdiction sur les Receivors & les Baylifes le Roy, & sur Alienation des Fiefs & droits appendants al Roy & al droyt de sa Couronne, &c.

Cap. 1. Sect. 3.  
The Office of Justices in Eire.

6. *Justiciarii itinerantes*, or Justices in Eyre. The Kings do Right to all Men by their Justices, Commissioners itinerant, assigned to have Conu- sance of all Pleas. In Aid of such Eires, the Sheriff's Turns, and Views of Frank-pledges are necessary. And all those whom the good Men of such Enquests did indict of a capital Offence, the Kings were wont to destroy

6. De Justiciariis itinerantibus. Les Royes font droit a tous per leur Justices Commissaires errants, assignes a tous Plees. En ayd de tiels Eires sont Tornes del Viscounts necessaires, & Views de Frankpledges. Et quant que bones gents a tiels Enquests enditerent de peccet mortel, soloyent les Royes destruer sans respons, les queux usages durant uncore en Alermaigne; mes per garrat

## To the R E A D E R.

*garrant de pitie & de mercie (& pur ceo que la frailtie de home ne se poit tener de pecher si abstinence ne soit de la grace de Dieu) Accord est quel nul Appellee ne Inditee soit destroy sans respons.*

without any Answer; which Usages are yet in Practise in *Almaigne*: But by Warrant of Pity and Mercy (because the Frailty of Man cannot refrain from Sin, unless God of his Grace give him Abstinence) It is accorded, that no Appellee or Indictee shall be destroyed without Answer.

7. De Curia Vicecomitis (quam Turnum vocamus) de qua supra dicitur. *Les Viscounts dauncient ordinance tenont assemblies generalls deux foits per lan en chescun Hundred, ou tous les sief-tenants deins le Hundred sont obliges de vner per le servage de leur siefs, cestascavoir, un foits apres le S. Michael, & autrefoits apres la Pasche. Et pur ceo que les Viscounts a ceo faire sont leur Tornes de Hundred, sont tiels venues apels Tornes des Viscounts: Ou aux Viscounts appent denquirer de tous peches personels, & de tous circonstances de peches faits en ceux Hundreds, & de torts des Ministers le Roy & la Roigne, & de torts faits au Roy & al Comminalty del people solong; les points avantdits en les divisions de peches.*

7. The Sheriffs Torn, whereof Mention is made before. The Sheriffs of antient Ordinance, do hold general Assemblies twice a Year in every Hundred, whether all the Freeholders within the Hundred are bound to come by the Service of their Fiefs (or Fees) that is to say, once after *Michaelmas*, and another Time after *Easter*. And because the Sheriffs for the doing hereof make their Turns (or Courses) thro' the Hundred, such Assemblies are called, the Sheriffs Turns. Where, it belongeth to the Sheriffs, to enquire of all Offences personal, and of all the Circumstances of Offences, done in those Hundreds; and of Wrongs done by the Kings and Queens Ministers; and of Wrongs done to the King and to the Commonalty,

Cap. 1. Sect. 16.  
De Turnis.

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according to the Articles  
aforesaid in the Divisions  
of Offences

Cap. 1. Sec. 17.  
De Vitu Fran-  
cip: gu.

8. Leets ou Courts des  
Views de Frankpledge.  
Concerning these Assem-  
blies, first, it is thus or-  
dained, That every Hun-  
dredor shall assemble once  
a Year, and not only Free-  
holders, but all of the  
Hundred, as well Stran-  
gers as Denizens, from  
12 Years upwards (except  
Archbishops, Bishops, Ab-  
bots, Priors, and all reli-  
gious People and Clerks,  
Earls, Barons, and Kts.  
married Women, Persons  
dumb and deaf, Diseased,  
Bastards, and Lepers, and  
those that are Deciners  
elsewhere) to inquire of  
the Points aforesaid, and  
of the Articles following;  
and that, not by Bond-  
men or Women, but by  
the Oaths of 12 Freemen  
at the least, for a Bond-  
man cannot indict a Free-  
man, nor no other that is  
not receivable to do Suit  
in the same Courts. And,  
because it was anciently  
ordained, That none  
should abide in the Realm,  
if he were not in some  
Dezeine (or Tithing) and  
undertaken for by Free-  
men, the Hundredors are  
once a Year to View the  
Frankpledges and the

8. Leets ou Courts des  
Views de Frankpledge.  
*De celles, assemblees pri-  
miers estoit ainsi ordeigne,  
que chescun Hundredor fait  
common assemblee un foits  
per an, & nemy solement  
de fief tenants, mes de tous  
del Hundred estrangers &  
denizens de 12. ans ensu-  
is, forsprise Archieves-  
ques, Ev'esques, Abbes, Pri-  
ors, & tous gents de re-  
ligion & tous Clerks,  
Counties, Barons, & Che-  
valiers, femes espouses,  
sords & Mutes, Malades,  
sols-naiffres, & meceaux,  
& ceux que sont ailors en  
dezein, pur enquir' des  
points avantdits & des  
articles suivants, & nemy  
per serfs ne per femmes,  
mes per les screments de  
12 frankhommes al meins,  
car serf ne poit nul frank-  
homme inditer, ne nul  
auter que nest receivable a  
sute faire en mesmes les  
Courts. Et pur cco que  
ordeigne fuit ancientment,  
que nul ne demurrast en  
le Roialme sil ne fuit  
en dezaine & plevy de  
frankhommes, appent aux  
Hundredors de Viewwer un  
foits per lan les frankpledges  
& les plevies; & pur  
cco sont tiels Views  
appells*

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*appells Views de Frankpledges.*

9. De Curia Comitatus. *Un court teignent les visconts de mois en mois, ou de cinq semaines en cinq selon leur greindure & largesse de pais: & celles courts sont appellees Counties, ou les Judgments se font per les sutors si breve ne y soit: Et ceo est garant de Jurisdiction ordinary.*

10. De Curiiis Dominicalibus, & Hundredorum. *Lautres mean courts sont les courts de chescun Seignior del fief, &c.*

11. De Curia pedis pulverizati. *Et que de jour en jour soi hastast droit de estrangers en faires & markets, come de poudrons selonque le ley Merchand.*

12. Court de Admiralte. *Le Roy eit souveraigne jurisdic<sup>t</sup> sur la mer.*

13. De Curiiis Forestæ. *Les ministers le Roy de ses forests ont power per authority de leur office, a mitter gents al sereni<sup>t</sup> sans breve le Roy pur le salvac<sup>t</sup> de la pees & pur le droit le Roy, & pur le common prou, &c.*

Sureties: And therefore are such Views called Views of Frankpledge.

9. The County Court. The Sheriffs hold a Court from Month to Month, or from five Weeks to five Weeks, according to the Greatness and Largeness of the Country: And these Courts are called Counties, where the Judgments are given by the Suitors, if there be no Writ: And this is warranted by ordinary Jurisdiction.

10. Court-Barons and Hundred-Courts. The other mean Courts, are the Courts of every Lord of the Fee, &c.

11. Courts of Pipowders. And that from Day to Day speedy Justice be done to Strangers in Fairs and Markets, as of Pipowders, according to the Law of Merchants.

12. Court of Admiralty. The King hath sovereign Jurisdiction upon the Sea.

13. Courts of the Forest. The King's Ministers of his Forest have Power by Authority of their Office, to swear Men without the King's Writ, for the Safeguard of the Peace, and for the King's Right and the common Good, &c.

Cap. 1. Sect. 15.  
The County Court.

Cap. 1. Sect. 15.  
Court-Baron and Hundred-Court.

Court of Pipowders.  
Cap. 1. Sect. 3. and Sect. 15.  
Of mean Courts.

Cap. 1. Sect. 3.  
Court of Admiralty.

Cap. 1. Sect. 13.  
Courts of the Forest.

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Cap. 2. Sect 5.  
of Countors.

*He also treateth of the Professors of the Law, as of the Countors, that is of the Serjeants and other Pleaders. There are many that cannot prosecute nor defend their own Causes in Judgment, and many which may not: And therefore are Countors necessary, that that which the Plaintiffs and Actors may not or cannot do by themselves, they may do by their Serjeants, Proctors, or Friends. Countors are Serjeants skilful in the Law of the Realm, which serve the Common People to prosecute and defend their Actions in Judgment (when need is) for their Fee.*

*And also of Attornies, where amongst other Things it is said, None may be an Attorney, which may not be a Countor, &c.*

Cap. 1. Sect 3. *Of the Ministers of Justice, as Viscounts, Coroners, Escheators, Bailiffs of Hundreds, &c. Also by the ancient Kings, Coroners were ordained in every County; and Sheriffs to keep the Peace when the Earls were absent from their Charges, and Bailiffs in lieu of Hundredors, &c.*

Cap. 1. Sect. 3. *Of the Prerogatives of*

*Addit etiam, de legis Professoribus, nempe de hiis quos Countors dicimus, id est, Servientibus, & de aliis caufarum actoribus. Plusors sont que ne scavent leur causes pronou- ce ne defendre en judgment, & plusors que ne poyent; & pur ceo sont Countors necessaires, cy que ceo que plain- tifes & actors ne poyent ou ne scavent per eux mes- mes, facent per leur Ser- jeants, ou procurators, ou amies. Countors sont Ser- jeants sachants la Ley del Royalme, que servent al common del people a pro- nouncier & defendre les actions en jugement, pur ceux que mistier ount pur leur loier.*

*Item de Attornatis, ubi inter alia dicitur. Nul poet estre Attorney que ne purr' estre Countor, &c.*

*De Ministris Justitiæ, sicuti de Vicecomitibus, Coronatoribus, Eschae- toribus, Ballivis Hundre- dorum, &c. Auxy ordeig- nes fueront per viels Royes Coroners en chescun Coun- tie, & Viscounts a garder la peace quant les Countees soy demisterent des gards, & Balifes en lieu de Cen- teimers, &c.*

*De Regis Prærogati- vis:*

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*vis: Sicome Deodands, Alienation as Aliens, Treasour trove, Wrecke, Estray, Chattels des Felons & Fugitives, Counties, Honours, Hundreds, Soknes, Gaoles, Forests, chiefe Cities, chiefe Ports de la Mer, graunds Manors: Ceux droits retiendront les primer Royes, & de remnant de la Terre feofferont, les Countees, Barons, Chivalers, Serjeants, & auters, a tener de les Royes pur les services purvieus & ordeignes al defence del Realme. Ordeigne fuit que fee de Chivaler deviendroit al eigne fits per succession de heritage, & que socage fee fuit partible parenter males enfants. Et que les mariages fuissent al liege Seigniours.*

*the King: As of Deodands, Alienation to Aliens, Treasure found, Wreck, Waif, Estray, Chattels of Felons and Fugitives, Counties, Honours, Hundreds, Sokes, Gaols, Forests, chief Cities, chief Ports of the Sea, great Manors. These held the first Kings as their Right, and of the Residue of the Land did enfeoff the Earls, Barons, Knights, Serjeants, and others, to hold of the Kings, by Services provided and ordained for Defence of the Realm. It was ordained, that the Knight's Fee should come to the eldest by Succession of Heritage; and that Socage-Fee should be partable between the Male Children; and that the Liege Lords should have the Marriage.*

Capite primo agitur de Criminibus, eorumque divisionibus; De crimine læsæ Majestatis, de Falsificationibus, de Proditione, de incendiis, de homicidio, de feloniam, de burglaria, de raptu, &c. Secundo, de Actionibus, de Judicibus, de Actoribus, &c. Tertio, de Exceptionibus dilatoriis & peremptoriis, hoc est, placitis ad breve & (ut lo-

*He treateth in the first Chapter of Crimes and their Divisions; of the Crime of Majesty, of Fausonnery, of Treason, of Burning, of Homicide, of Felony, of Burglary, of Rape, &c. In the second of Actions, of Judges, of Actors, &c. In the third of Exceptions dilatory and peremptory, that is Pleas to the Writ and in Bar, &c. Of Trials by Juries and by Battail,*  
of

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of Attaints, of Challenges, of Fines, &c. In the fourth of Judgments, and therein of Jurisdiction, of Process in criminal Causes and in Actions real, personal, and mixt. So as in this Mirror you may perfectly and truly discern the whole Body of the Common Laws of England. In Mr. Plowden's Commentaries fol. 8. in Fogasse's Case, Bradshaw Attorney General citeth this Book by the Name of Mirror des Justices, le quel (saith he) fuit fait devant le conquest. The Meaning of Bradshaw was, not that the Book was made before the Conquest, but that the Text of Law which he citeth out of that Book was the Law of this Realm before the Conquest.

*But here though summa sequar fastigia rerum, yet I will stay my Foot and fix my Staff a while, for this grave and learned Author will shew us in this Mirror the great Antiquity of the said Courts of the Common Law and particularly of the High Court of Par-*

quimur) in barram, &c. De explorationibus causarum juramento 12 virorum, & Duello: De attincturis, de Calumniis, de Finibus, &c. Quarto, de Sententiis judicialiter latis; & has dum tractat agit de jurisdictione, de Processu in causis criminalibus, & in actionibus realibus, personalibus, & mixtis. Adeo ut in hoc speculo totum Legum Angliæ municipalium corpus perspicue imo verissime videret. Apud Magistri Plowden Commentaria, in casu Fogassei fol. 8. Bradshaw Attornatus generalis hunc librum citando, ei nomen dedit Speculum Justiciariorum, le quel (inquit) fuit fait devant le Conquest: Non interim intendens conditum fuisse gente hac nondum subacta, textum vero Legis quem ex illo excerpterat, Legem fuisse hujus regni ante devictam hanc Nationem.

At (licet *summa sequor fastigia rerum*) componam gressus, & baculum hic paulisper figam, interea dum gravis noster multumque literatus author, in hoc suo speculo, immensam illam Curiarum Legis Communis nos edoceat antiquitatem, e-

amque

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amque sigillatim de fuprema parlamenti Curia, ufque a temporibus Regis *Arthuri*, qui an' a Chrifto nato 516. plus minus regnavit: Non quod forum iftud cæterave eo temporis instituebantur, fed quod tractatu ille fuo nullas fibi propofuit fuperiorum ætatum Leges ac Confuetudines hujus regni defcripfiſſe, fed has folummodo quæ regno ejuſdem regis & exinde infenuerant. In medium (ut audiviſtis) profert ftatutum a Rege *Alfredo* fancitum, tam de Curia hac parlamentaria bis in anno convocanda Londini, quam ut ternum hujus magni honorandique *Magnatum* Conventus indicaret institutum, 1. ad ſubditos a delinquendo detinendos, hoc eſt, ut delicta, tum bonis cautisque legibus tum debita earundem executione anticiparentur; 2. Ut tuta tranquillaque fit vita hominum; 3. Ut fixis quibuſdam Sanctionibus, fanciſque Judiciis jus unicuique fieret, eatenus nimirum ut rectius juſticia miniſtraretur, ut quæſtiones & in Lege ambiguitates altiffima hac Curia parlamenti enodarentur, in certitudinem redigerentur, & adjudicarentur.

*liament ever ſince the Time of King Arthur, who reigned about the Year of our Lord 516. not that this Court and the Reſt were inſtituted then, but that the Reach of his Treatiſe extendeth no higher than to write of the Laws and Uſages of this Realm continued ſince the Reign of that King. He citeth as you have heard) a Statute of King Alfred, as well concerning the holding of this Court of Parliament twice every Year at the City of London, as to manifeſt the threefold End of this great and honourable Aſſembly of Eſtates: Firſt, that the Subject might be kept from offending, that is, that Offences might be prevented both by good and provident Laws and the due Execution thereof: Secondly, That Men might live ſafely in Quiet: And Thirdly, That all Men might receive Juſtice by certain Laws and holy Judgments, that is, to the End that Juſtice might be the better adminiſtred, that Queſtions and Defects in Laws might be by this High Court of Parliament explained, reduced to Certainty, and adjudged.*

*This*



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*This Court, being the most supreme Court of this Realm, is a Part of the Frame of the Common Laws, and in some Cases doth proceed legally according to the ordinary Course of the Common Law, as it appeareth in 39 Ed. 3. fol. To be short, of this Court it is truly said, Si vetustatem spectes est antiquissima, si dignitatem est honoratissima, si jurisdictionem est capacissima.*

Annodom 712.

*And where Question hath been made whether this Court of Parliament continued during the Heptarchy, let the Records themselves make answer. King Ina began his Parliament thus as hath been anciently translated into Latin (which Translation I have): Ego Ina Dei gratia West-Saxonum Rex, exhortatione & doctrina Cenredes patris mei, & Heddes Episcopi mei, & Erkenwaldes Episcopi mei, & omnium Aldremannorum meorum & seniorum Sapientum regni mei, multaque congregatione servorum Dei sollicitus de salute animarum nostrarum & statu regni mei, Constitui rectum Conjugium, & justa judicia, pro stabilitate & confir-*

*Hoc, cum sit forum in hoc regno plane supremum, pars est structuræ jurium municipalium, & nonnunq; secund. frequentem illum & usitatum in Lege Communi ordinem, legali modo habet processus, ut in 39 Ed. 3. fol. liquet manifeste. Et, ut verbo dicam, merito de hac Curia, Si vetustatem spectes est antiquissima, si dignitatem est honoratissima, si jurisdictionem est capacissima.*

Questionem quod attinget, utrum Curia hæc parliamenti in usu fuerat durante illa Heptarchia, respondeant sacra ipsa scrinia. Inchoatio sui parliamenti, a Rege Ina, hujusmodi fuit, uti antiquitus in Linguam Latinam convertitur (quæ apud me est traductio): *Ego Ina Dei gratia West-Saxonum Rex, exhortatione & doctrina Cenredes patris mei, & Heddes Episcopi mei, & Erkenwaldes Episcopi mei, & omnium Aldremannorum meorum & seniorum Sapientum regni mei, multaque congregatione servorum Dei sollicitus de salute animarum nostrarum & statu regni mei, Constitui rectum Conjugium, & justa judicia, pro stabilitate & confirmatione*

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*firmatione populi mei, benigna sedulitate celebrari: Et nullo Aldremanno vel alicui de toto regimine nostro conscripta liceat abolere judicia.*

Ejusmodi fuit & Offæ Regis Merciorum parliamentum, ejusmodi *Ethelberti* Regis Kancixæ, & ejusmodi reliquorum e septem regibus. Exacta jam tum Heptarchia (ut instar multorum sint pauca) Rex *Edwardus*, filius Regis *Alfredi*, (de quo supra fit mentio) ante expugnationem illam hujus Nationis primus, convenire fecit ad parliamentum *Exoniæ* omnes Sapientes suos: *Edwardus Rex admonuit omnes Sapientes suos qui fuerint Exoniæ, ut investigarent simul & quærerent quomodo pax eorum melior esse possit quam ante fuit, &c.* Quin & facile constabit hunc Sapientum Coventum, Optimates atque Communitatem ad parliamentum, simul inclusisse.

Rex *Ethelstanus* apud *Grateleiam*, ubi omnes regni Nobiles pariter ac Sapientes conveniebant: Erat hic *Conventus omnium Nobilium & Sapientum*. Imperante rege eodem alia ejusdem edicta parliamentaria inscribuntur, &

*matione populi mei, benigna sedulitate celebrari: Et nullo Aldremanno vel alicui de toto regimine nostro conscripta liceat abolere judicia.*

*The like Parliament was holden by Offa King of the Mercians, and by Ethelbert King of Kent, and the Rest of the seven Kings. After the Heptarchy, taking some few Precedents for many, King Edward, Son of the aforesaid King Alfred, before the Conquest the First, held a Parliament at Exeter, and called thither all his Wisemen: Edwardus Rex admonuit omnes sapientes suos qui fuerint Exoniæ ut investigarent simul & quærerent quomodo pax eorum melior esse possit quam ante fuit, &c. And it shall evidently appear hereafter, that this conventus Sapientum included the Lords and Commons of the Parliament.*

*King Ethelstan apud Grateleiam where all the Noblemen and Wisemen of the Realm were gathered together, here was Conventus omnium nobilium & sapientum. In the Reign of the same King other of his Acts of Parliament*

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*liament are filed and anciently translated thus: Hæc sunt judicia Exoniæ quæ sapientes consilio Ethelstani Regis instituerunt, & iterum apud Frefresham, & tertia vice apud ubi hæc definita simul & confirmata sunt.*

*King Edgar, Surnamed Pacificus, at several Places enacted many Laws by the Counsel of his Wisemen: Here was Concilium Sapientum, whose Acts of Parliament, being anciently translated into Latin, were intituled thus, Hæc sunt instituta quæ Edgarus Rex consilio sapientum suorum instituit, &c.*

*King Etheldred at Woodstock; and their Laws ordained by him and his Wisemen: Hoc est concilium quod Etheldredus Rex & omnes sapientes sui condixerunt ad emendationem pacis omnis populi apud Woodstock. And another Parliament by him and his Wisemen, both Spiritual and Lay: Here was Concilium spirituum & laicorum: And filed another thus: Hæc sunt verba pacis & prolocutionis quæ Etheldredus Rex & omnes sapientes ejus cum exercitu firma-verunt qui cum Anulano,*

*a temporibus antiquis traduntur, Hæc sunt judicia Exoniæ quæ Sapientes consilio Ethelstani Regis instituerunt, & iterum apud Frefresham, & tertia vice apud ubi hæc definita simul & confirmata sunt.*

*Rex Edgarus cognomento Pacificus locis prorsus disjunctis plurimas sancivit Leges consilio Sapientum: Erat hic Concilium Sapientum; quorum Parliamenti actorum Latine priscius redditorum titulus est, Hæc sunt instituta quæ Edgarus Rex consilio Sapientum suorum instituit, &c.*

*Rex Etheldredus apud Woodstock, ibique ab illo & suis sapientibus leges stabiliuntur: Hoc est Concilium quod Etheldredus Rex & omnes Sapientes sui condixerunt, ad emendationem pacis omnis populi apud Woodstock: Alioque parlamento, ab eo & sapientibus suis tum spiritualibus tum Laicis: Hic erat Concilium spirituum & laicorum. Et alterius titulum fecit, Hæc sunt verba pacis & prolocutionis quæ Etheldredus Rex & omnes Sapientes ejus cum exercitu firmaverunt, qui cum Anulano,*

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lano, Justino, & Guemundo, Stigrani filio venit. Item & aliud habuit parliamentum apud Habam, Hæc instituerunt Etheldredus Rex & Sapientes ejus apud Habam.

Rex Edmundus Londini, quo summonuit & Spirituales & Temporales sub nomine uno generali Sapientum: Hic observes Conventum Sapientum Spiritualium & Temporalium. Interpretem vero ipsum antiquum audire operæ pretium est, Edmundus Rex congregavit magnam Synodum divini ordinis & seculi apud Londoniæ civitatem in Sancto Paschæ solenni, &c. Initium alterius parliamentorum ejusdem ita se habet, Hæ sunt institutiones quas Edmundus Rex & Episcopi sui cum Sapientibus suis instituerunt apud Culinconam, &c. Et paulo post, Ego Edmundus Rex mando & præcipio omni populo seniorum & juniorum qui in regione mea sunt, qui investigans investigavi cum Sapientibus clericis & laicis.

Rex Canutus Wintoniæ: Per regem & venerandum Sapientum concilium: Ibi erat venerandum Concilium Sapientum:

Justino & Guemundo Stigrani filio venit. And held another Parliament at Habam: Hæc instituerunt Etheldredus Rex & sapientes ejus apud Habam.

King Edmund at London, where he summoned both the Spirituality and Temporality, and called them by one general Name of Wisemen: Here was Conventus sapientum Spiritualium & temporalium. But it is best to hear the ancient Translator himself, Edmundus Rex congregavit magnam Synodum Divini ordinis & seculi apud London' civitatem in sancto Pasch. solenni, &c. And another of his Parliaments beginneth thus, Hæ sunt institutiones quas Edw. Rex & Episcopi sui cum sapientibus suis instituerunt apud Culinconam, &c. & paulo post, Ego Edmundus Rex mando & præcipio omni populo seniorum & juniorum qui in regione mea sunt, qui investigans investigavi cum sapientibus clericis & laicis.

King Canutus at Winchester; by the King and the reverend Council of his Wisemen: There was venerandum Concilium Sapientum:

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piendum: *For so was that Parliament being of ancient Time translated into Latin, called, but bear the Title it self: Hæc sunt statuta Canuti Regis Anglorum, Danorum, Norvegar' venerando sapientum ejus Concilio ad laudem & gloriam Dei & sui regalitatem & commune commodum habita in Sancto Natali Domini apud Wintoniam, &c.*

*All which and many more are extant and publickly known, but I will add that which I read in the Legier Book of the late Monastery of Saint Edmondsbury, now in my Hands, of an ancient Hand-writing, wherein is cited a Parliament holden in the fifth Tear of this K. Canutus's Reign; but I will keep Silence, and let the Book it self speak.* Rex Canu-

Præf. on 4 Inst.  
78.

tus an' regni sui 5. viz. per 130. Annos ante compilationem decretorum quæ an' Dom. 1150. fuer' compilat', an. 7. pontificatus Papæ Eugenii tertii, & ante compilation' aliorum canonum quorumcunque cunctos regni sui prælatos proceresque ac magnates ad suum convocans parlamentum in suo publico parliament' per-

Sic enim apud Majores parlamentum illud Latine redditum nuncupatur: Sed inscriptionem ipsam proferam, *Hæc sunt statuta Canuti, Regis Anglorum, Danorum, Norvegarum, venerando Sapientum ejus concilio, ad laudem & gloriam Dei, & sui regalitatem, & commune commodum, habita in Sancto Natali Domini apud Wintoniam, &c.*

Quæ omnia & multa plura extant & satis superque dignoscuntur: at texam tamen quod legi in Libro quodam nuper Monasterii Burgi Sancti Edmundi & penes me existente, caractere multum antiquo scripto, ubi citatur parlamentum de anno Regis *Canuti* quinto: At filebo, & liber ipse de se faciet testimonium. *Rex Canutus, anno regni sui quinto, videlicet, Per centum & triginta annos ante compilationem Decretorum, quæ anno Domini 1150. fuerunt compilat', anno septimo Pontificatus Papæ Eugenii tertii, & ante compilationem aliorum Canonum quorumcunque, cunctos regni sui Prælatos, proceresque ac magnates ad suum convocans Parliamentum, in suo publico Parlamento*

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*persistentibus personaliter in eodem Wulfstano & Adelnodo Archiepiscopis, & Ailwino Episcopo Elmhamense, & aliis Episcopis ipsorum suffraganeis, septem ducibus cum totidem Comitibus, necnon diversorum Monasteriorum nonnullis Abbatibus, cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa, ac omnibus ad tunc in eodem Parlamento personaliter existentibus, votis Regiis unanimiter consentientibus, præceptum & decretum fuit, Quod Monasterium Sancti Edmundi, &c. sit ab omni jurisdictione Episcoporum comitatus illius ex tunc imperpetuum funditus liberum & exemptum, &c. Illustris Rex Hardicanutus prædicti Regis Canuti filius hæres & successor, ac sui patris vestigiorum devotus imitator, &c. cum laude & favore Ægelnodus Dorobornensis, nunc Cantuariensis, & Alfrici Eborac' Episcoporum, aliorumque Episcoporum, suffragan', necnon cunctorum regni sui mundanorum principum, descriptum constituit roboravitque præceptum. Qua immunitate dictum Monasterium usum fuisse non me latet, usque ad dissolutionem inde, an.*

*sistentibus personaliter in eodem Wulfstano & Adelnodo Archiepiscopis & Ailwino Episcopo Elmhamense, & aliis Episcopis ipsorum suffragan', septem ducibus cum totidem comitibus necnon diversorum monasteriorum nonnullis Abbatibus, cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa, ac omnibus ad tunc in eodem parlamento personalit' existentibus votis regiis unanimiter consentientibus, præceptum & decretum fuit, quod monasterium Sancti Edmundi, &c. sit ab omni jurisdictione Episcoporum comit' illius ex tunc imperpetuum funditus liberum & exemptum, &c. Illustris Rex Hardicanutus præd' Regis Canuti filius, hæres, & successor, ac sui patris vestigiorum devotus imitator, &c. cum laude & favore Ægelnod' Dorobornensis nunc Cantuariensis & Alfrici Eborac' Episcopor', aliorumque Episcoporum suffragan', necnon cunctorum regni sui mundanorum principum descriptum constituit roboravitque præceptum. Which Immunity I know that the said Monastery held until the Dissolution thereof*

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*in the 31 Year of the Reign of King H. the 8.*

*But let us proceed, and yet omit many, and touch only that which hath been controverted. It is said that Silent leges inter arma, and that during all the Time of the Conqueror, no Parliament was lawfully assembled, &c. for Silent leges inter arma, and during all his Reign, either the Sword was not put up into the Scabbard, or if it were, the Hand was always upon the Hilt ready to draw it again. But that a Parliament was assembled and holden according to the Common Laws of England in William the Conqueror's Time, it is evident, for that an Act established at a Parliament holden in the Reign of William the Conqueror was pleaded and adjudged to be firm and good, and accordingly put in Execution by the Judges of the Realm, which they neither would nor could have done if it had been commanded by the powerful Will of the Conqueror, and not established by a Parliament duly assembled according to the Form and Frame of the Common Law. And therefore as well for Manifestation hereof, as for*

*tricesimo primo Regis Henrici octavi.*

*Sed, omiffis quamplurimis, progrediamur, id tantum percurrentes quod controversum fuerit. Siluisse aiunt Leges inter arma, nullumque per omne tempus victoris legitime convocari Parliamentum, &c. silent enim Leges inter arma, totoque ejus regiminis tempore, aut districtus nusquam interquievit gladius, aut perpetuo manus institit capulo, iterato evaginatura. Convocari tamen Parliamentum, & juxta Leges municipales Angliæ teneri, regnante Willielm' illo subactore, perspicuum est, eo quod Actum ad Parliamentum sub Willielm' Victore sancitum, placitando producebatur, & fixum ratumque fuisse adjudicabatur, executionique pariter a Judicibus hujus regni demandabatur; quod eorum fuisset nec velle nec posse, si ex arbitrio dominantis Subjugatoris solummodo imperatum fuisset, & Parlamento ad normam Legis communis modo debito convocato non stabilitum fuisset. Quamobrem, tam ad hoc enucleandum, quam ad id quod asserui plene demonstrandum, 21 E. 3.*

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f. 60. a. b. iste legitur casus, Rex profecutus fuit breve de Attachiamento (ut loquimur) super Prohibitionem vers Levesque de Norwiche, de ceo que per lou Labbey de Seint Edmond de Berrie fuit foundue per les progenitores le Roy, & exempt de chescun jurisdiction dordinar' que nul ordinar' visit' illonques, & que nul alast countre lordinance & le foundation avantdit, &c. Sur altercat' que fuit enter un Arfast jadis Evesque de Norwiche, & un B. jadis Abbe de Berrie, de les exemptions avantdits, en temps de W. le Conqueror, a son Parliament a certain jour tenu, fuit ordeigne per le Roy & per Larchevesque de Canturburie & per tous les auters Evesques de la terre, Countees, & Barons, Que a quel heure de cel temps en avant, que Levesque ou ascun de ses successours si alassent countre les points de la foundation & exemption avantdit, que celuy que serra Evesque pur la temps payera al Roy ou a ses heires 30. talents: Et auxy counta que le Roy manda sa prohibition al Evesque que il neutr' my les fraunch' ne attemperoit les privileges de Lesglise de Seint Edmond avantdit,

*Proof of that which hath been said, you shall read in the Book Case of 21 Ed. 3. f. 60. a. b. that the King sued a Writ of Attachment upon a Prohibition against the Bishop of Norwich for that where the Abbey of St. Edmondsbury in the County of Suffolk was founded by the Progenitors of the King, and exempt from all Jurisdiction of the Ordinary, and that no Ordinary should visit there, and that none should go against the said Ordinance and the Foundation aforesaid: That upon Controversy between Arfastus late Bishop of Norwich and B. late Abbot of Bury, of the Exemptions aforesaid, in the Time of William the Conqueror, at his Parliament on a certain Day holden, it was ordained by the King, the Archbishop of Canterbury, and all the other Bishops of the Land, the Earls, Barons, &c. That at what Time the Bishop of Norwich, or any of his Successors, should go against the Points of the Foundation, and Exemption aforesaid, that the Bishop for the Time being should pay to the King or to his Heirs 30. Talents of Gold, and declared further, how the King sent a Prohibition*



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to the Bishop, that he should not enter into the said Franchise, nor Attempt any Thing against the Priviledge of the said Church of St. Edmond, and that notwithstanding the said Prohibition the then Bishop of Norwich had visited the Abbey aforesaid, and had summoned the Abbot to shew the Charters of their Foundation, wrongfully and in Despight of our sovereign Lord the King; whereunto the then Bishop pleaded Not guilty, and he was found Guilty by the Verdict of the Enquest. Whereupon it was adjudged, that the Temporalties of the Bishop should be seised into the King's Hands. But it was advised and resolved by all the Judges, that in Right of the Talents they could not give Judgment, for two Causes, 1. For that the Prohibition was the original Suit, and that was determined by the Judgment in the Prohibition; that the Temporalties of the Bishop should be seised into the King's Hands, which then was the proper Judgment in that Suit. 2. Concerning the Talents, they were a Penalty ordained by Parliament in that Case, so that the Penalty had no Dependance upon the Prohibition, which

il (scilicet Episcopus Norwicensis) nien contristeant la prohibition, si ad visit en Labbey avantdit, & les fist summondre de monstrer les charters de lour foundation, a tort & en despite de nostre Seignior le Roy: A que Levesque dit, que il fuit de rien culpable, & trouve fuit per enquest quil fuit culpable, per que agard fuit que les temporalties de Levesque fuissent seifies en le maine le Roy: Et fuit advise a toute le Councill en droit de les besantes, que ils ne purr' nul Judgement doner; Et hoc duabus de causis, 1. Eo quod Prohibitio, quæ lis fuit originalis, determinabatur sententia de Prohibitione lata, que les temporalties fueront seifies en la maine le Roy, quod aptum tunc temporis in ejusmodi lite fuit iudicium: 2. De les besants, cest un especiall peine que est ordeigne en la Parliament de ceo, issint que ceo nest pas rien dependaunt sur le primer original: Consulebatur vero, simul & a Judicibus adjudicabatur, Episcopum Norwicensem dictæ pœnæ talentorum jacturam fecisse Regi, formulamque juris (Scire facias) Episcopo

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copo ea de re concedendam fuisse: Qua concessa comparuit Episcopus & fecit responsum, & deinde, iudicium ferebatur, quod Rex recuperaret talenta, prout ex eo casu iudicialiter deciso clare eluceat.

*is the original Suit; but it was advised and resolved by the Judges, that the Bishop of Norwich had forfeited the said Penalty of the Talents to the King, and that they ought to grant a Scire fac. to the then Bishop for that Purpose, which was granted accordingly, upon which Writ the Bishop appeared and pleaded, and thereupon Judgment was given, that the King should recover the said Talents, as by the said Book Case judicially adjudged appear-eth.*

Qui si forte casus Opponentis non latuisset, abunde eis satisfactum esset. Et insigne hoc iudicium fidem facit de antiquo illo tractatu cuius est titulus, *Modus tenendi Parliamentum: Hic describitur modus quomodo Parliamentum Regis Angliæ & Anglicorum suorum tenebatur tempore Regis Edwardi filii Regis Etheldredi; qui quidem modus fuit per discretiores regni, coram Will. Duce Normanniæ, & Conquestore & Rege Angliæ, ipso Conquestore hoc præcipiente & per ipsum approbat' & suis temporibus & Successoribus suorum Regum Angliæ usitatus: Quo*

*Which Case if the Opponents had seen or known, they would have therewith rested satisfied. And this notable Judgment giveth Credit to that antient Treatise intituled thus, (a)* Modus tenendi Parliamentum. Hic describitur modus quomodo Parliamentum Regis Angliæ & Anglicorum suorum tenebatur tempore Regis Ed. filii regis Etheldredi, qui quidem modus fuit per discretiores regni, coram Williel' Duce Normanniæ, & Conquestore & rege Angliæ, ipso Conquestore hoc præcipiente, & per ipsum approbat' & suis temporibus & successor' suorum regum Ang-

(a) Pryn on  
4 Inst. 1, 2, 3, &c.  
78, &c. 4 Inst.  
12.

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liæ usitat': *Wherein the the Assembly of the Kings, the Lords and Commons, according to the Manner continued to this Day, is set down, which I have in a fair and very ancient written Hand, whereby it is manifest that Conventus Nobilium & Sapientum, &c. included both the Lords and the Commons of the Parliament.*

F. N. B. 14. D. *It is evident that there were Tenants in ancient Demesne before the Conquest, and for a Certainty therein, and to know of what Manors such Tenants did hold, it appears by the Book of Domesday, that all the Tenants that did hold of any of those Manors that were in the Hands of King Edw. the Son of King Etheldred, or of King William the Conqueror, were Tenants in ancient Demesne. And these Tenants then had, and yet have these Privileges amongst others, for that they were bound by their Tenure to plow and husband, &c. the King's Demesnes before and in the Conqueror's Time, therefore they were not to be returned Burgeses to serve in Parliament, to the End they might attend the King's Husbandry the bet-*

Regum, procerum, & Communitatis Conventus, juxta modum in hodiernum usque diem approbatum, exprimitur: Cujus quidem vetustissimis consignatum literis mihi est exemplar. Et hoc evincit manifeste *Coventum Nobilium & Sapientum, &c.* tum Proceres tum Communitatem Parliamenti inclusisse.

Perspicuum est tenentes fundi de antiquo dominico (ut loquimur) exstitisse, nondum subjugata hac insula. Sed ut certam rem habeamus, & de quibus maneriis hujusmodi occupantes terras suas tenuerunt intelligamus, apparet ex libro qui inscribitur *Domus Dei*, quod omnes possessores terrarum maneriorum quæ erant Regis Edw. filii Regis Etheldredi, vel Regis *Willielmi Subactoris* fuerunt tenentes fundorum de antiquo dominico: Et hii tunc ut etiam hodie, his inter alia gaudebant privilegiis, eo quod ratione tenuræ suæ astricti essent ad colendas, &c. Regis terras dominicales tam ante quam sub victore; hac nimirum de causa, ad deservendum in Parlamento ut *Burgenfes* non cogebantur, ut eo melius

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melius agriculturæ affer-  
virent: 2. Sumptibus  
Militum Comitatum  
Parlamento inservientium  
nihil conferebant:  
Quæ immunitates (cesset  
licet causa) hucusque  
manent. Erant idcirco  
Parliamenta, quo & Milites  
& Burgenses evocabantur  
tum Subjugatoris temporibus  
tum antea: & ut habeas quo  
quiescas, vide Fitz. Nat. Bre. 14. e.  
49 E. 3. 22, b. 23. a. 40 E. 3.  
25. 11 Hen. 4. 2. &c. Sunt  
etiam pervetusta illa oppida  
quæ vocamus Burga longe  
quæ habet Anglia antiquissima;  
illa enim, quæ nunc Urbes &  
Comitatus, erant olim Bur-  
ga, & sic appellata, ex  
his enim ad Parliamentum,  
convenerunt Burgenses,  
quæ verba sunt ipsissima  
Littletoni Lib. 2. cap. 10. vide  
40 Ass. pla. 27. 11 Hen. 4. 2.  
22 Ed. 4. 11. &c. Liqueat itaque  
Burga antiquissima esse  
Angliæ oppida, & consequenter  
multis seculis ante hujus  
regni expugnationem extitisse:  
Eorundemque quamplurima  
a subjugationis tempore in  
Civitates incorporata & in  
Comitatus distincta animadverti,  
fuisse tamen Burga (e quibus  
electi fuissent Burgenses Parli-

ter. 2. They were not to  
be contributory to the Fees  
to the Knights of Shires  
that served in Parliament:  
Which Privileges (though  
the Cause ceaseth) continueth  
to this Day: Therefore there  
were Parliaments unto which  
the Knights and Burgessees  
were summoned both before  
and in the Reign of the Con-  
queror: For your Satisfaction  
herein, see F. N. B. 14. e. 49  
E. 3. 22, b. 23. a. 40 E. 3. 25.  
11 H. 4. 2. &c. Also the  
ancient Towns called Boroughs  
are the most ancient Towns  
within England, for those  
Towns which now are Cities  
and Counties, in ancient  
Time were Burghs, and called  
Burghs, for out of those  
ancient Towns called Burghs  
came the Burgessees to  
Parliament, which are the  
very Words of Littleton Lib. 2.  
cap. 10. Vide 40 Ass. p. 27.  
11 H. 4. 2. 22 E. 4. 11. &c.  
So as it appeareth that the  
ancient Burghs are the most  
ancient Towns of England,  
and consequently long Time  
before the Conquest: And I  
have found many of them  
since the Conquest incorporated  
into Cities, and distinguished  
into Counties since the  
Conquest, but had been  
ancient

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*ancient Burghs (from whence came the Burgesſes to the Parliament) Time out of Mind before the Conqueſt: Nay divers of the moſt ancient Burghs, that yet ſend Burgesſes to the Parliament, flouriſhed before the Conqueſt, and have been of little or no Account to have any ſuch Privileges newly granted to them at any Time ſince. And I could yet never find when any of them, or any other the ancienteſt Burghs, were of ancient Time ſince the Conqueſt endowed with that Privilege.*

Richardus Ha-  
guitadentis &  
Math. Pariſ. in  
brevis Hiftoria.

*King H. I. An. Dom. 1100. Cum ſuorum conſilio decrevit ut monetagium commune quod capiebatur per civitates vel comitatus quod non fuer' tempore Edw. Reg. hoc ne a modo fiet. Item. quod Eccleſias non venderet nec ad firmam daret, mortuo Epifcopo vel Abbate. And this King aſſembled another Parliament on Candlemas-Day at London Anno Domini 1123.*

Ex chronico de  
Peterborough.

*King: H. the ſecond, in the Year of our Lord God 1185. (as testiſieth Matthew Paris) Convocavit clerum regni & po-*

*amenti) ultra recordationem hominum, nondum devicta hac gente: Immo perplura vetuſtiſſimorum Burgorum, quæ hodie ſuos ad Parliamentum mittunt Burgenſes, ante ſubactionem illam florebant; adeoque parvi exinde fuerunt momenti, aut ita potius deſpicata, ut huiusmodi privilegia eis recenter donari veriſimile non ſit: Tempus enim quo horum aliquod aliave vetuſtiſſima Burga, antiquitus a victoria Normanna, iſto privilegio extiterunt dotata, ab ullo obſervatum haud reperio.*

*Rex Henricus primus anno Domini 1100. cum ſuorum concilio decrevit ut monetagium commune quod capiebatur per civitates vel comitatus, quod non fuer' tempore Edw. Regis, hoc ne a modo fiet. Item quod Eccleſia non venderet nec ad firmam daret, mortuo Epifcopo vel Abbate. Et Rex idem aliud convocavit Parliamentum Londini, die Purificationis beatæ Mariæ Virginis Anno Domini 1123.*

*Rex Henricus ſecundus an. Dom. 1185. (ut teſtatur Mathæus Pariſ.) Convocavit Clerum regni & Populum cum omni Nobilitate*

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bilitate ad Fontem Clericorum.

Habuit Rex Johannes Parliamentum Anno a suscepto ejus regimine sexto, ut ex ejusdem re-scriptis e Cancellaria constat, in hæc verba: *Rex Vicecomiti, &c. Sciatis quod consensus est cum assensu archiepiscoporum, comitum, baronum, & omnium fidelium nostrorum Angliæ, quod novem Milites per totam Angliam invenient decimum Militem bene paratum equis & armis ad defensionem regni vestri, &c.*

Sed longius in istis procedere, nihil aliud est quam si deaurarem aurum, vel ipso Oceano unam minutissimam sup-peditarem guttam. De nomine *Parliamenti* duo consideremus: 1. Verbi significationem: 2. Tempus quo suprema hæc curia nomen sibi indidit *Parliamenti*. Primum qd' attinet, duabus de causis ita dicitur. 1. Eo quod singulum ejusdem fori altissimi membrum vicem agit Judicis, & unusquisque eo loci sine spiritu vel contradictionis vel obsequii ex corde loquetur, nempe a dictione Gallicana *Parlar la ment,*

pulum cum omni nobilitate ad fontem clericorum.

*King John held a Parliament in the sixth Year of his Reign, as it appeareth by his Writs of the Chancery in these Words: Rex vicecomiti, &c. Sciatis quod consensus est cum assensu Archiepiscoporum, comitum, baronum, & omnium fidelium nostrorum Angliæ, quod novem milites per totam Angl. invenient decimum militem bene paratum equis & armis ad defensionem regni nostri, &c.*

*But to proceed any farther were but to gild Gold, or to add a little Drop to the great Occan. Concerning the Name of the Parliament two Things fall into Consideration, first what the Word signifieth, 2. When this supreme Court was christened by the Name of Parliament: Touching the first, it is so called for 2. Causes, first, because that every Member of that high Court hath judicial Place, and for that every Man there should without any Spirit, either of Contradiction or Smoothing, parler la ment, speak judicially his Mind, it is called Parliament. 2. The Laws there made are called Acts of Parliament, because they are to be expounded,*

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pounded, being Part of the Laws of the Realm, by the Judges of the Law, according to the Mind and true Meaning of the Speakers that were the Makers of these Acts, as testamentum is to be expounded secundum mentem testatoris, and arbitramentum secundum mentem arbitratoris. As to the 2. the Saxons called this Court micel gemott, the great Assembly, wittena gemott, the Assembly of the Wise Men, the Latin Authors of those Times called it Commune concilium, magna curia, generalis conventus, &c. And let it be granted, that William the Conqueror changed the Name of this Court, and first called it by the Name of a Parliament, yet manifest it is by that which hath been said, that he changed not the Frame or Jurisdiction of this Court in any Point. And the very Names in Substance that were attributed to this Court before the Conquest, are continued after the Conquest to this Day: For in the Mirror of Justices, as appeareth before, it is called Concilium generale. Fleta lib. 2. cap. 2. Habet etiam Rex Curiam suam in

appellatur Parliamentum: 2. Leges ibidem sancitæ vocantur Acta Parliamenti, quia (cum sint Legum regni pars) a Legis Judicibus sunt explicandæ, juxta mentem & veram intentionem loquentium, qui & horum fuerunt conditores, non aliter quam & Testamentum secundum mentem Testatoris, & arbitramentum secundum mentem arbitratoris. Quoad secundum, hanc Curiam nominaverunt Saxones Micel gemott magnum conventum, Wittena gemott Sapientum conventum; Latini Authores eorundem temporum Commune concilium, magnam Curiam, generalem Conventum, &c. Et dato hoc, quod Wilhelmus ille Victor nomen hujus Curie immutavit, ac primo ei dedit nomen Parliamenti, ex antedictis tamen patet formam eam sive jurisdictionem in nullo innovasse. Et eadem ipsa nomina quæ huic Curie ante subactionem nostram tribuebantur, exinde deducuntur, hodieque inveteraverunt: In speculo enim Justiciariorum (uti supra videre est) dicitur Concilium generale: Fleta lib. 2. cap. 2. Habet etiam Rex Curiam suam

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quam in concilio suo in  
Parliamentis suis, præsen-  
tibus Prælatibus, Comitibus,  
Baronibus, Proceribus, &  
aliis viris peritis. 8 Rich.  
1. Avowry 260. aliisque  
multis codicibus dicitur  
Lex & Concilium: Regi-  
tro originali fol. 280.  
nominatur Magnum Con-  
cilium: In dorso clauf.  
16 Edw. 2. M. 5. Henri-  
cus de bello monte Baro de  
magno & secreto concilio  
Regis: & rot' Parl' anno  
Edw. 4. parte 1. M. 2.  
nuncupatur magnum con-  
cilium: a Bracton. lib. 2.  
cap. 2. vocatur Magna  
Curia: Anno 17 Edw. 2.  
de Templariis, Super quo  
convocatis majoribus de  
concilio Domini Regis,  
tam Justiciariis quam lai-  
cis personis in Parliamen-  
tum, Concordatum est in  
Parliamento, &c. Et in  
statutis quamplurimis  
sub Hen. 3. Edw. 1. &  
Regibus succedentibus di-  
citur Commune concilium,  
Commune concilium Regis,  
& Commune concilium reg-  
ni: Quin & sic se habet  
descriptum de Vastatione,  
multaque alia tum origi-  
nalia tum judicialia. Sed  
de hoc plura qui vult,  
Octavam Commentario-  
rum meorum consulat  
partem in casu Principis.  
Hanc mihi sumam con-

in concilio suo in parlia-  
mentis suis, præsentibus  
Prælatibus, Comitibus, Ba-  
ronibus, Proceribus, &  
aliis viris peritis. 8 R. 2.  
Avowry 260. and in many  
other Books it is called  
Rex & concilium. In the  
original Register fol. 280.  
it is called Magnum con-  
cilium. In Dorso clauf.  
16 E. 2. M. 5. Henricus  
de bello monte Baro de  
magno & secreto concilio  
Regis: And Rot' Parlia-  
ment' an. 3 Ed. 4. parte  
prima M. 2. it is called  
Magnum concilium. Brac-  
ton lib. 1. cap. 2. termeth  
it Magna Curia. Anno  
17 E. 2. de Templariis,  
Super quo convocatis  
majoribus de concilio  
Domini Regis tam Justi-  
ciariis quam laicis perso-  
nis in Parliamentum, con-  
cordatum est in Parlia-  
ment', &c. And in many  
Statutes in the Reigns of  
H. 3. Ed. 1. and succeed-  
ing Kings, it is called  
Commune concilium, and  
Commune concilium Re-  
gis, and Commune con-  
cilium regni, and so run-  
neth the Writ of Waste,  
and many other original  
and judicial Writs. But  
if any be desirous to see  
more of this Kind, let him  
look into the eighth Part  
of my Reports in the  
Prince's



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*Prince's Case.* So as I conclude, that the Nature and Name of the Court, in Use before the Conquest, continueth to this Day. And where some do suppose, that in the Parliament holden at Westminster in the third Year of the Reign of King Edw. 1. called Westm. the 1. this Word Parliament first crept in, where it is called The first general Parliament by the Assent of the Archbishops, Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Land summoned to the same, &c. It is manifest that the Name was long before that Time, as well by that which hath already been said, as for that in the ninth Year of E. 2. Son and immediate Successor to King Edw. 1. at a Parliament then holden, it is said thus, Sciatis quod cum dudum temporibus progenitorum nostrorum quondam regum Angliæ in diversis Parliamentis suis, &c. which could not have truly been said if the Name had first begun in the Reign of his Father. This is not that Court that in France bears the Name of Parliaments, for they are but ordinary Courts of Ju-

clusionem, naturam simul & nomen hujus curiæ, ante victoriam Normannam assueta, in hoc diurnum usque permanere diem. Et, quoniam crediderunt nonnulli, ad Comitiam Anno 3. regnantis Edwardi primo vulgo Westm. 1. primo irrepsisse vocabulum hoc Parliamentum, (ubi dicitur, Primum Parliamentum generale ex assensu Archiepiscoporum, Episcoporum, Abbatum, Priorum, Comitum, Baronum, totiusque communitatis terræ illuc summonitorum, &c.) nomen multum ante tum in usu fuisse tum hoc quod superius memoravi evincit manifeste, tum quod anno 9 Regis Edwardi filii, proximique successoris Regis Ed. 1. ad Parliamentum eodem anno convocatum, dicitur Sciatis quod cum dudum temporibus progenitorum nostrorum quondam Regum Angliæ in diversis parliamentis suis, &c. Quod afferi nequaquam verum potuit si a patre suo advenire nuperrime nomen esse constitutum. Nemini dubium veniat, quod si istud ejusmodi sit cujusmodi sunt in Gallia illa, quæ nomen Parliamentorum

Pryn on 4 Inst.  
2, &c.

Co. Lit. 110. 2.

mentorum

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*mentor* fortita sunt; inferiores enim sunt quædam justitiæ Curia, quæ (siqua fides apud Paulum Jovium) prius illic a nobis instituebantur: Est autem hoc, illud forum de quo nominando *Parliamentum* idem sentiunt Anglia & Scotia, quodq; Galli vocarunt *Assemblée des estats*, vel *les Estats*, Germani vero *Diet*.

Fleta ubi supra de hac Curia ait, *Ubi terminatæ sunt dubitationes judiciorum, & novis injuriis emerfis nova constituuntur remedia, & unicuique justitia prout meruerit retribuetur ibidem.*

Magister Plowden in suis Commentariis 388. *Le Parliament est Court de tresgrand honour & justice, de que nul doit imaginer chose dishonourable.* Missum faciam Fortescue (qui e summo tribunali Angliæ quondam jus dixit) in suo de *Laudibus Legum Angliæ* libello, & alios quamplures; & mihi de hac re faciet orationis exitum, ille omnium sui temporis Antiquariorum facile princeps, qui apte, distincte, immo ornate summam totius concludit, fol. 128. b. *Quod ad Angliæ tribunalia, Curias, sive Juris fora*

*stice, which (if you believe Paulus Jovius) were by us first settled there: But this is that which both England and Scotland agree in naming of it a Parliament, which the French doth term Assemblée des Estats, or les Estats, and the German a Diet.*

Fleta ubi supra *sait* of this Court, *Ubi terminatæ sunt dubitationes judiciorum, & novis injuriis emerfis nova constituuntur remedia, & unicuique justitia prout meruerit retribuetur ibidem.*

*In Mr. Plowden's Com.* 388. *Le Parliament est Court de tresgrand honour & justice de que nul doit imaginer chose dishonourable. I will pretermit Fortescue, sometime Chief Justice of England, in his Treatise De Laudibus Legum Angliæ, and many others, and will conclude this Point with him that is the chief Antiquary of his Time, because he concludeth the Sum of all aptly, distinctly, and eloquently, fol 128. b.*

Plowd. 398. b.  
11 Co. 14. 2.

Cambden.

*Quod ad Angliæ tribunalia, curias, sive Juris fora attinet, in triplici sunt apud nos differentia, alia*

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alia enim sunt Ecclesiastica, alia temporalia, & unum mixtum, quod maximum, & longe amplissimum, non ita vetusto nomine e Gallia mutuato, *Parliamentum* dicitur. Majores nostri Anglo-Saxones *Wittena gemott*, i. Prudentum conventus, & *Ge-rædniss*, i. Concilium, & *Micil synod* (a Græca dictione, Synodus) i. Magnus conventus; Latini ejus & subsequæntis ævi scriptores, *Commune Concilium*, *Curiam altissimam*, *generale Placitum*, *Curiam magnam*, *Magnatum conventum*, *Præsentiam Regis*, *Prælatorum*, *Procerumque collectorum*, *Commune totius regni Concilium*, &c. vocarunt. Utque universum Ætolia Concilium *Panetolium* Livio nominatur, ita *Pananglium*, recte dici possit. Ex Rege enim, Clero, nobilibus, majoribus, equitibus & Burgenfibus electis; sive ut significantius dicam stylo forensi, ex Rege. Dominis spiritualibus, & temporalibus, atque ex communitate constat, qui universæ Angliæ corpus repræsentant. Statis autem temporibus non habetur, sed a Rege pro arbitrio indicitur, quoties de rebus

*attinet, in triplici sunt apud nos differentia; alia enim sunt Ecclesiastica, alia Temporalia, & unum mixtum, quod maximum & longe amplissimum, non ita vetusto nomine e Gallia mutuato, Parliamentum dicitur. Majores nostri Anglo-Saxones Wittena gemott, id est, Prudentum conventus, & Ge-rædniss, id est, Concilium, & Micil Synod (a Græca dictione Synodus) id est, Magnus conventus; Latini ejus & subsequæntis ævi scriptores, Commune concilium, Curiam altissimam, generale placitum, Curiam magnam, Magnatum conventum, præsentiam Regis, Prælatorum, procerumque collectorum, commune totius regni concilium, &c. vocarunt; Utque universum Ætolia Concilium Panetolium Livio nominatur, ita Pananglium recte dici possit: Ex rege enim, Clero, Nobilibus, majoribus, equitibus & Burgenfibus electis, sive ut significantius dicam stylo forensi, ex Rege, Dominis spiritualibus & temporalibus, atque ex communitate constat, qui universæ Angliæ corpus repræsentant. Statis autem temporibus non habetur, sed a Rege pro arbitrio indicitur, quoties*

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*quoties de rebus arduis & urgentibus, ne quid detrimenti respublica capiat, consultandum, ejusdemque solius arbitrio dissolvitur. Summam autem & sacrosanctam auctoritatem habet in legibus ferendis, confirmandis, antiquandis, interpretandis, proscrip-tis in integrum restituendis, litibus inter privatos difficilioribus decidendis; & ut semel dicam, in omnibus quæ ad reipublicæ salutem, vel etiam privatum quemcunque spectare possunt.*

arduis & urgentibus, ne quid detrimenti respublica capiat, consultandum, ejusdemque solius arbitrio dissolvitur. Summam autem & sacrosanctam auctoritatem habet in legibus ferendis, confirmandis, antiquandis, interpretandis, proscrip-tis in integrum restituendis, litibus inter privatos difficilioribus decidendis, & ut semel dicam, in omnibus quæ ad Reipublicæ salutem, vel etiam privatum quemcunque spectare possint.

Hoc speculo clarissime tem discerni potest usque a temporibus sæpius nominati Regis Arthuri, immensa Ministrorum legis municipalis, eorum-lemque curiarum inferiorum antiquitas: Exempli gratia, de custodibus sive (si dicam) Senatori-ous comitatum, ita legitur, *custodes seu præpositi comitatus, seculis subsequentibus dicti Vice-comites, qui (inquit Author noster) fueront ordeignes per viels Roys quant les Countees se demisterent des gards, parier de Turnis & Curiis Comitatus. Manebant hujusmodi Ministri, & Comitatum divisio* (prout

*In this ancient Mirror you may also clearly discern as far as the Reign of the often named King Arthur, the great Antiquity of the Officers and Ministers of the Common Law, and of their inferior Courts, as for Example, of the Offices of the Keepers or Senators of the Shires or Counties, Custodes seu Præpositi Comitatus, of later Times called Sberiffs, who (saith this Author) fueront ordeignes per viels Roys quant les Countees se demister' des gards, and of his Torns and County-Courts: Which Officers and Division of Shires continued (as you may read amongst*

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*amongst the Laws of those seven Kings) though with much Encroachment, during the Heptarchy, as taking one or two Examples for many: Amongst the Laws of King Ina it is provided in these Words, Gif hwa hun righter bidde beforan Scirman oth the othrun deman, the ancient translation thus, Si quis rectum sibi roget coram aliquo Scirman (i. Præposito comitatus) vel alio iudice & habere non possit, & accusatus vadium recti dare nolit, emendet 30 s. & infra septem noctes faciat ei recti dignum.*

*And in another Place, Gif he Eldorman hy tholige his scire, Qui furem ceperit vel captum reddiderit vel ipsum dimiserit vel furtum celaverit, reddat ipsum furem secundum weram suam, si Eorldermannus, i. Præpositus Comitatus, sit, perdat Comitatum suum nisi Rex parcere velit ei. If the Sheriff do it he shall lose the Custody of his Shire or County: And afterwards, Si quis discedat a Domino suo sine licentia vel in alium Comitatum se furetur, & deinceps inveniatur, redeat*

*inter leges septem illorum regum legitur) auctis licet undequaque pro posse suo finibus sub Heptarchia: Quod exemplo uno & altero tibi instar multorum innotescat, inter Regis Inæ Leges in hæc verba cautum est, Gif hwa hun righter bidde beforan Scirman oth the othrun deman, quod antiquitus ita redditur, Si quis rectum sibi roget coram aliquo Skirman (i. Præposito Comitatus) vel alio iudice, & habere non possit: & accusatus vadium recti dare nolit, emendet 30. & infra septem noctes faciat ei recti dignum.*

*Et rursus, Gif he Eldorman hy tholige his scire, Qui furem ceperit vel captum reddiderit, vel ipsum demiserit, vel furtum celaverit, reddat ipsum furem secundum weram suam si Eorldermannus, i. Præpositus comitatus, sit, perdat comitatum, nisi Rex parcere velit ei: Si Vicecomes delinquat, custodiam sui comitatus amittet. Et deinceps, Si quis discedat a Domino suo sine licentia, vel in alium Comitatum se furetur, & deinceps inveniatur, redeat illuc ubi antea fuit, & emendet Domino suo 40 s. &c.*

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illuc ubi antea fuit &  
emendat domino suo 40 s.  
&c.

Et quanquam Saxones huic ministro fecerunt nomen quod & vulgo hodie in usu est, dicous tamen multo ante elapsis ministerium istud exitisse, vel pede Saxonum in Anglia nondum posito, extra controversiam plane est. Dicitio, *Shireve*, Vicecomes e binis vocabulis Saxonice mutuatur, videlicet, *Scyre*, id est, comitatus, & *Reve*, id est, Custos sive Præpositus Comitatus, & nonnunquam (uti supra) vocabatur *Scirman* sive *Eldorman*: Hodie etiam litera ejus patentes sunt, *Commisimus vobis custodiam Comitatus*. Regem *Alfredum* Angliam in Comitatus distinxisse affirmantibus, libenter concedo, (ob id nimirum quod longe eorundem certissimam fecerit divisionem; cum enim sub Heptarchia unus in alterius fines sæpenu-mero irrepsit, plurimæque vetustæ prorsus interierint metæ, totum hoc sua partitione in ordinem reduxit): Mihi modo non averfentur affirmanti, multum ante natum regem *Alfredum*, regnum

*And albeit the Saxons gave this Officer the vulgar Name used to this Day, yet it is manifest that the Office was of ancient Time before they set any Foot in England. This Word Sheriff is derived of two Saxon Words, viz. of Scyre, that is, the Shire or County, and Reve, that is, Custos, or Præpositus Comitatus, the Keeper or Guardian of the Shire: And sometime (as you see) they were called Shireman, or Elderman of the Shire. And to this Day his Patent is, Commisimus vobis custodiam Comitatus. So I agree well with them which affirm that King Alfred divided England into Shires or Counties, in that he made the most certain Division of them; for where, during the Time of the Heptarchy, there were many Incroachments one upon another, and many ancient Bounds obscured, all that he reformed by his exact Partition: But they must also agree with me, that long before the Birth of King Alfred this Kingdom had been divided into Shires or Counties.*

Co. Lit. 109. b.  
168. a.  
Co. Lit. 168. a.  
Alfred divided England into Shires or Counties.

b 2 ties.

To the R E A D E R:

*ties. But hereof, at this  
Time, this little shall suf-  
fice.*

hoc in comitat' distribu-  
tum fuisse. Sed de hoc  
paucula hæc plus quam  
fatis.

*I have in my Custody an  
ancient Record intituled  
Kanc' de placito apud  
Pinendenam inter Lan-  
francum Archiepiscopum  
Cant', & Odonem Bajo-  
censem Episcopum tem-  
pore magni Regis Williel'  
qui Anglicum regnum  
armis conquifivit: The  
Effect whereof is, That  
Lanfrank Archbishop of  
Canterbury brought a Writ  
of Right Patent against the  
said Odo, of the Manors of  
Raculfe, Sandwic', Rate-  
burg', Widetun, Salt-  
wode, cum Burgo Heth  
ad Saltwode pertinente,  
Langport, Huoenden,  
Roking, Broche, Det-  
ling, Prestitune, Sunder-  
hurst, Earheth, Orpin-  
tune, Einsford, &c. una  
cum libertatibus & per-  
tinentiis de Soca, Saca,  
Toll, Team, Flymena,  
Firmith, Grithbreach,  
Storsteale, Haunfare,  
Infangtheof, cum omni-  
bus aliis consuetudinibus  
paribus istis, vel minori-  
bus istis, in terris & in  
aquis, in sylvis, in viis,  
& in pratis, & in omni-  
bus aliis rebus infra Civi-*

*Penes me est antiquum  
monumentum, cujus est  
titulus, Kanc' de placito  
apud Pinendenam inter  
Lanfrancum Archiepisco-  
pum Cant', & Odonem  
Bajocensem Episcopum  
tempore magni Regis Will'  
qui Anglicum regnum armis  
conquifivit: Quod sic  
intelligendum Lanfrancus  
Archiepiscopus Cantua-  
riensis rescriptum profe-  
cutus fuit de jure suo re-  
cuperando (quod apud  
nos est breve de Recto  
patente) contra dictum  
Odonem de maneriis de  
Raculfe, Sandwic', Rate-  
burg', Widetun, Saltwode,  
cum Burgo Heth ad Salt-  
wode pertinente, Langport,  
Huoenden, Roking, Broche,  
Detling, Prestitune, Sun-  
derhurst, Earbeth, Orpin-  
tune, Einsford, &c. una  
cum libertatibus & perti-  
nentiis de Soca, Saca, Toll,  
Team, Flymena, Firmith,  
Grithbreach, Storsteale,  
Haunfare, Infantheof, cum  
omnibus aliis consuetudini-  
bus paribus istis, vel mi-  
noribus istis, in terris &  
in aquis, in sylvis, in viis,  
& in pratis, & in omnibus  
aliis*

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*aliis rebus infra Civitatem & extra, & in omnibus aliis locis: Inde vero hoc breve vi præcepti de Tolt, ut loquimur, ad Curiam comitatus allatum fuit: Et actum illud publicum ait, Quod præcipit Rex Comitatum totum absque mora considerare, & omnes Francigenas, & præcipue Anglos, in antiquis legibus & consuetudinibus peritos in unum convenire: Qui cum convenerint apud Pinendenam pariter considerunt, &c. Huic placito interfuerunt Ernestus Episcopus de Rovec', Angelricus Episcopus de Cicestr', vir antiquissimus & Legum terræ sapientissimus, qui ex præcepto Regis advectus fuit ad ipsas antiquas Legum consuetudines discutiendas & edocendas in una quadriga, Richard' de Tunebreg, Hugo de Monteforti, Willielmus de Acres, Haymo Vicecomes, & alii multi, &c. Barones Regis & ipsius Archiepiscopi, atque illorum Episcoporum homines multi, &c. cum toto isto Comitatu multæ & magnæ authoritatis viri, &c. Et ab omnibus illis probis & sapientibus hominibus qui affuerunt fuit ita diratiocinatum, & etiam a toto Comitatu recordatum atque judicatum,*

*tatem, & extra, & in omnibus aliis locis: Which Writ was removed into the County Court by a Writ called a Tolt: And the Record saith, Quod præcepit Rex comitatum totum absque mora considerare, & omnes Francigenas, & præcipue Anglos in antiquis legibus & consuetudinibus peritos in unum convenire: Qui cum convenerint apud Pinendenam pariter considerunt, &c. Huic placito interfuerunt Ernestus Episcopus de Rovec', Angelricus Episcopus de Cicestr', vir antiquissimus & legum terræ sapientissimus, qui ex præcepto Regis advectus fuit, ad ipsas antiquas legum consuetudines discutiendas & edocendas, in una quadriga, Richardus de Tunebreg, Hugo de Monteforti, Willielmus de Acres, Haymo Vicecomes, & alii multi, &c. Barones Regis & ipsius Archiepiscopi, atque illorum Episcoporum homines multi, &c. cum toto isto Comitatu multæ & magnæ authoritatis viri, &c. Et ab omnibus illis probis & sapientibus hominibus qui affuerunt fuit ita diratiocinatum & etiam a toto Comitatu*



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recordatum atque judicatum, quod sicut ipse Rex tenet suas terras liberas & quietas in suo dominico, ita Archiepiscopus teneat suas terras prædictas omnino liberas & quietas in dominico suo, &c. *And let not this ancient Judgment in a Writ of Right seem strange; for since that Time, and to this Day, the Judgment for the Tenant in a Writ of Right is, Quod teneat terram illam, &c. quietam (or) in pace, &c. And under this Record it is thus testified.* Hujus placiti, multis testibus multisque rationibus determinatum, finem postquam Rex audivit, laudavit, laudansque cum consensu omnium principum suorum confirmavit & ut incorruptus perseveraret firmiter præcepit. *And the Cause of this Controversy is there also expressed in these Words.* Tempore magni Regis Willielmi qui Anglicum regnum armis conquirit, & suis ditionibus subjugavit, contigit Odonem Bajocensem Episcopum & ejusdem Regis fratrem multo citius quam Lanfrancum Archiepiscopum in Angliam venire atque in Comitatu de Chent cum

quod sicut ipse Rex tenet suas terras liberas & quietas in suo dominico, ita Archiepiscopus teneat suas terras prædictas omnino liberas & quietas in dominico suo, &c. Nemini autem mirum videatur, judicium istiusmodi in brevi de Recto; eodem enim tempore, sicut & hodie, Judicium pro Tenente in brevi de Recto est, Quod teneat terram illam, &c. quietam, vel, in pace, &c. Fides vero huic monumento adhibetur his verbis. Hujus placiti, multis testibus multisque rationibus determinatum, finem postquam Rex audivit, laudavit, laudansque cum consensu omnium Principum suorum confirmavit, & ut incorruptus perseveraret firmiter præcepit. Simul & Litis hujus origo adjicitur, Tempore magni Regis Willielmi, qui Anglicum regnum armis conquirit, & suis ditionibus subjugavit, contigit Odonem Bajocensem Episcopum & ejusdem Regis fratrem, multo citius quam Lanfrancum Archiepiscopum in Angliam venire, atque in Comitatu de Chent cum magna potentia residere, ibique potestatem non modicam exercere. Ac quia illis

To the READER.

*illis diebus in comitatu illo quisquam non erat, qui tantæ fortitudinis viro resistere posset propter magnam quam habuit potestatem, terras quamplures de Archiepiscopatu Cantuariensi, & consuetudines nonnullas sibi arripuit atque usurpans suæ dominationi*  
 Postea vero non multo tempore contigit præfatum Lanfrancum Cadomensis Ecclesiæ Abbatem jussu Regis in Angliam quoque venire, atque in Episcopatum Cant', Deo disponente, totius Angliæ Primatum sublimatum esse; ubi dum aliquandiu resideret, & antiquas Ecclesiæ suæ terras multas sibi deesse inveniret, & suorum negligentia antecessorum illas distributas & distractas fuisse reperisset, diligenter inquisita & bene cognita veritate, Regem quam citius potuit, & non pigre inde requisivit, ut Justitia secundum Legem sibi fieret, &c. Et hoc loco supplementi Præfationi meæ superiori annexum sit.

magna potentia resistere, ibique potestatem non modicam exercere. Ac quia illis diebus in Comitatu illo quisquam non erat qui tantæ fortitudinis viro resistere posset propter magnam quam habuit potestatem, terras complures de Archiepiscopatu Cantuar', & consuetudines nonnullas sibi arripuit, atque usurpans suæ dominationi

Postea vero non multo tempore contigit præfatum Lanfrancum Cadomensis Ecclesiæ Abbatem jussu Regis in Angliam quoque venire, atque in Episcopatum Cantuar', Deo disponente, totius Angliæ primatum sublimatum esse, ubi dum aliquandiu resideret, & antiquas Ecclesiæ suæ terras multas sibi deesse inveniret, & suorum negligentia antecessorum illas distributas atque distractas fuisse reperisset, diligenter inquisita & bene cognita veritate, regem quam citius potuit, & non pigre inde requisivit, ut Justitia secundum legem sibi fieret, &c. *And thus much by way of Addition to my former Preface shall suffice.*

Nonus iste liber Commentariorum meorum

*I have in this ninth Work reported certain C*

## To the READER.

*Have been adjudged and resolved, together with the Reasons and Causes thereof, to the End the Learned that know the Law may be confirmed, such as know it not may be instructed, the Possessions and Interests of all in general according to Right strengthened and quieted, Love and Charity between Man and Man continued, unnecessary Suits, the Causes of Contention and Expence, prevented, and the Reign of our dread Sovereign, for his Zeal of Justice, renowned and honoured.*

*And it is very observable out of what Root the Doubts and Questions herein adjudged and resolved did grow: The most difficult whereof do spring out of these two Rocks, either out of Statutes enacted in that supreme Court of Parliament (whereof I have spoken) or out of supposed Variety of Opinions and Rules in our Books. Out of Acts of Parliament principally in two Sorts, either when an ancient Pillar of the Common Law is taken out of it, or when new Remedies are added to it: By the*

casus nonnullos, una cum rationibus causisque eorundem Judiciorum, judicatos & definitos in publicum promitt, ad doctos, Legem intelligentes, confirmandos, nescientes instituendos, ad possessiones & jura uniuscujusque (prout decet) in pace stabilienda, ad amorem & charitatem fovendum, ad querimonias minus utiles præcidendas, litis ac dispendii fontes occludendos, ad supremæ denique Majestatis regimen, a suo in justitia rite administranda fervore, & splendidius & honore auctius reddendum.

Res imprimis observatione digna est, e qua stirpe quæstiones & controversiæ modo decretæ ac discussæ germinaverint; quippe quarum perplexiores e binis his radicibus pullularint, vel ex statutis in amplissima illa parlamenti Curia (de qua supra dixi) editis & sancitis, vel ex imaginaria illa potius quam vera opinionum, regularumque in libris nostris discrepantia: Ex actis Comitibus duobus præcipue modis; antiquo aliquo nimirum legis sublato fundamento; aut recentioribus

To the R E A D E R.

tioribus appositis remedi-  
is: E primo cum pericula  
tum difficultates exoriun-  
tur; a secundo, lex recte  
apprehensa, neutiquam  
fit commodior, sed multi-  
fariam impedita, vis ejus  
plus nimis enervatur: Ha-  
beas hoc unum exemplar  
loco utriusque, In 5 E.  
3. 14. Dominus *Willi-*  
*elmus Herle*, supremus in  
Curia placitorum com-  
munium Judex, ait, sta-  
tutum de Donis condi-  
tionalibus stabilitum fu-  
isse regnante *Edwardo*  
primo, (qui (inquit) re-  
gum omnium anteceden-  
tium fuit sagacissimus)  
Idque hæreditatis sangui-  
ni Donatorum stabiliendæ  
causa: Hoc tamen ipsum  
statutum, dum unum e  
legis firmamentorum præ-  
cipuis labefactaret simul  
ac rescinderet (videlicet,  
quod hæreditates univer-  
sæ essent feudum simplex)  
prospicere nullius potuit  
prudencia restrictis hisce  
hæreditatibus qualia vel  
quanta simul irruerant  
incommoda: Sed ad hoc  
digitum quasi intendi, in  
præfationibus 3. & 4.  
mei operis: Hujus itaque  
generis innovationis de-  
stituendæ voto, nihil am-  
plius inde dicam hoc  
tempore. Quod ad ima-  
ginariam illam opinio-

*First arise Dangers and  
Difficulties; and by the  
Second the Common Law  
rightly understood is not  
bettered, but in many  
Causes so fettered, that  
it is thereby very much  
weakned. Take one Ex-  
ample for both: In 5 Ed-  
ward 3. 14. Sir William  
Herle Chief Justice of the  
Court of Common Pleas,  
saith, That the Statute  
De Donis conditionalibus  
was made in the Reign of  
King Edward the First,  
(who (saith he) was the  
most sage King that  
ever was) and the  
Cause of the Statute was  
to salve the Heritage in  
the Blood of them to whom  
the Gift was made; and  
yet that Statute shaking a  
main Pillar of the Law,  
that made all Estates of  
Inheritance Fee-simple, no  
Wisdom could foresee such  
and so many Mischiefs as  
upon those fettered Inheri-  
tances followed: But hereof  
have I given a Touch in the  
Prefaces to my third and  
fourth Work: And there-  
fore desiring that this Kind  
of Innovation might be  
left, I will for this Time  
leave it. Concerning the  
supposed Variety of Opini-  
ons and Rules in our  
Books, I trust in many  
Cases herein the studious  
Reader*

Co. Lit. 19. a.  
32. b.  
10 Co. 38. b.

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Cawley 132.

*Reader shall observe (as in my former Works he hath done) that the Law truly distinguishing (for ubi lex non distinguit nec nos distinguere debemus) they be in these Cases well and justly accorded. And I affirm it constantly, that the Law is not uncertain in abstracto but in concreto, and that the Uncertainty thereof is hominis vitium and not professionis: And to speak plainly there be two Causes of the Uncertainty thereof in concreto, viz. præpostera lectio and præpropera praxis, præposteros Reading and oversoon Practise.*

*A substantial and a compendious Report of a Case rightly adjudged doth produce three notable Effects, first it openeth the Understanding of the Reader and Heaver, secondly, it breaketh through Difficulties, and thirdly, it bringeth home to the Hand of the Studious, Variety of Pleasure and Profit; I say it doth set open the Window of the Laws, to let in that gladsome Light, whereby the right Reason of the Rule, (the Beauty*

*num & regularum librorum nostrorum discordiam attinet, observabit (ut spero) studiosus Lector ex multis in lucem jam editis casibus (quod & prioribus meis observavit operibus) eam, si quæ forte se obtulerit, difficultatem ac discrepantiam scite pariter & (ut dicam) adamussim reconciliari. Quin & hoc audacter pronuncio, Legem non esse incertam in abstracto sed in concreto, ejusque incertitudinem esse hominis vitium non professionis; &, hoc palam profitear, ejus quæ habetur incertitudinis in concreto duas solummodo esse causas, viz. præposteram Lectionem & praxin præproperam.*

Vera & succincta casus Relatio recte dijudicati tres habet effectus notandos; 1. Tum Legentis tum Audientis aperit intelligentiam; 2. Scrupulos perrumpit; 3. Studentis manum & deliciarum & emolumentum varietate implet: Pandit dico Legis fenestras, ut lætifica illa lumina, quæ rectam regulæ rationem (Legis splendorem) perspici faciant evidenter, admittantur; nucem duram frangit ut facile ju-

cunda

## To the READER.

cunda degustetur nuclea ; ornat denique fructuum jucundorum & utilium varietate repositoria illorum qui nec plantaverunt nec irrigaverunt. Quæ (casibus tortuosis & difficillimis, sive deliberatione (nempe sur demurrer, ut loquimur) decisis, sive palam in Curia determinatis) nemo solus ultimis suis conatibus, nec omnes actores ipsi per se extra justitiæ Curiam, nec in Curia, solenni argumentatione prius non adhibita (ubi Deus opt. max. sitientis jus & justitiam (ut credere cogor) intelligentiam aperit simul & extendit) attigisse unquam potuissent. E præcipuis enim ex aliis legum nostrarum municipalium honoribus est, spinosiores nunquam definiri aut discerni quæstiones in tenebris, vel sub silentio suppressis rationibus, sed in facie (ut dicam) Curiae, idque argumentis prius habitis solennibus & elaboratis, primo per Jurisconsultos utriusque partis pro tribunali (& si quis agatur in Curia placitorum communium, per Servientes ad Legem tantum); & iterum de Tribunali per Judices, ubi argumentatio habetur (a

*of the Law) may be clearly discerned; it breaketh the thick and hard Shell, whereby with Pleasure and Ease the Sweetness of the Kernel may be sensibly tasted, and adorned with Variety of Fruits both pleasant and profitable, the Storehouses of those by whom they were never planted nor watered. Whereunto (in those Cases that be tortuosi and of great Difficulty, adjudged upon Demurrer or resolved in open Court) no one Man alone with all his true and uttermost Labours, nor all the Actors in them themselves by themselves out of a Court of Justice, nor in Court without solemn Argument, (where (I am persuaded) Almighty God openeth and enlargeth the Understanding of the desirous of Justice and Right) could ever have attained unto. For it is one amongst others of the great Honours of the Common Laws, that Cases of great Difficulty are never adjudged or resolved in tenebris or sub silentio suppressis rationibus; but in open Court, and there upon solemn and elaborate Arguments, first at the Bar by the Council learned of either Party (and if  
the*

## To the R E A D E R.

*the Case depend in the Court of Common Pleas, then by Serjeants at Law only); and after at the Bench by the Judges, where they argue (the puisne Judge beginning and so ascending) seriatim upon certain Days openly and purposely prefixed, declaring at large the Authorities, Reasons and Causes of their Judgments and Resolutions in every such particular Case (habet enim nescio quid energiae viva vox): a Reverend and honourable Proceeding in Law, a grateful Satisfaction to the Parties, and a great Instruction and Direction to the attentive and studious Hearers.*

*In this, as in the Rest of my Works, my chief Care and Labour hath been (for Advancement of Truth) that the Matter might be justly and faithfully related, and (for avoiding of Obscurity and Novelty) that it might be in a legal Method and in the Lawyers Dialect plainly delivered, that herein no Authority cited might be wittingly omitted or coldly applied; no Reason or Argument made on either Side willingly impaired; no Man's Re-*

Judicibus incipiens junioribus, & sic cursu ascendente) *seriatim* diebus quibusdam publice & consulto stas, qui auctoritates, rationes & causas sententiarum & determinationum suarum fusius reddunt & explicant (*habet enim nescio quid energiae viva vox:*) venerabilis in lege & honorandus processus, grata partibus satisfactio, attentis denique & studiosis auditoribus plena institutio.

Hoc, sicut & caeteris meis operibus, praecipua mihi fuit & cura & studium (ad veritatem erigendam) ut res recte fideque referretur, & (ad evitandam obscuritatem & novitatem) ut in methodo Legali Juridicorumque idiomate plane emitteretur, ut nullum productum testimonium scienter omitteretur, vel jejune applicaretur; nulla ex utrinque ratio vel argumentum imminueretur; nullius sive expresse sive tacite laederetur existimatio; nullus author seu autoritas prolata irreverenter dehonestaretur; iique denique qui (ut opinor) casus futuri sint dirigen-

tes,

## To the R E A D E R.

tes, ad publicam tranquillitatem firmandam, prelo committerentur & promulgarentur.

Omnipotens Deus (qui summo suo beneficio hoc ut perficerem vires dedit) mihi testis est, me, non ex ostentatione aliqua, aut ex audacia suasionis alicujus de propria mea scientia, hisce me commiscuisse laboribus: Verum tamen interim est, me ab incunabulis in perspiciendis cognoscensisque multis fuisse cupidissimum: Et professioni meæ pluris me agnosco debitorem quam quod omnes mei exantlati patenter ac fideles retribuere queant labores: Et ut profiteor, mihi non esse scio enim quæ mihi debeat) quo solvam; ita idem meam obligo, me nunquam futurum vel intratum, vel pigrum in præstando quantum maxime meis vigiliis eniti possim aut valeam. Auctore Lectore hoc mihi desiderio est, quod & a Bractone (verandævo Bractono (verandævo olim Curie de Bractone Judici (ut in Archivis constat) & de Bractone Scriptori) fuit, si quid superfluum vel perperam positum in opere invenerit, illud

putatione directe or indirecte impeached; no Author or Authority cited, unreverently disgraced; and that such only as (in my Opinion) should hereafter be leading Cases for the publick Quiet might be imprinted and published.

*Almighty God (who hath of his great Goodness enabled me hereunto) knoweth that I have not taken these Labours either for Vain-glory, or upon Presumption of any Persuasion of Knowledge: But true it is, that I have been ever desirous to know much: And do acknowledge myself to owe much more to my Profession than all my true and faithful Labours can satisfy: And as I truly confess, that I have no Means (for I know my own Wants) to quit that Debt, so I faithfully Promise never to be found unthankful or unwilling to perform what by my uttermost Endeavour shall lie in my Power. My Desire of the learned Reader, with old Bracton (sometime a famous Judge of the Court of Common Pleas (as I find in Record) and a Writer of the Laws) is, Ut si quid superfluum vel perperam positum*

in



To the READER.

in hoc opere inveni-  
erit, illud corrigat & emen-  
det, vel conniventibus  
oculis pertranseat, cum  
omnia habere in memo-  
ria & nulla peccare, divi-  
num sit potius quam hu-  
manum.

*corrigat & emendet  
conniventibus oculis  
transeat; cum omnia ha-  
bere in memoria & nulla  
peccare, divinum sit potius  
quam humanum.*

*Vale.*

---

*Mic*

Mich. 25 & 26 Eliz. Reginae, Filmer.  
Rot. 144.

Dowman's Case

**A**ffisa ven' recogn' si Edward' Vavafor armiger, Georgius Vavafor gener', Richardus Coates; Johannes Lawson, Willielmus Musgrave, Robertus Thiffylwood, & Robertus Ward injuste, &c. disseif. Thomam Dowman armigerum, & Elizabethum uxorem ejus de libero ten'to suo in Spaldington, Willitost, & Southcave infra triginta ann' jam ultimos elaps. &c. Et unde iidem Thomas & Elizabeth. per Henricum Cressy Attorn' suum queruntur, quod disseif. eos de sex mesuagiis, trescentis acris terræ, centum acris prati, & ducentis acris pasturæ cum pertin', &c. Et prædicti Edwardus, Georgius, Richardus, Johannes, Willielmus, Robertus Thiffylwood, & Robertus Ward per Edwardum Latimer Attornatum suum ven': Et super hoc certis de causis Justic' hic specialit' moven' dies dat' est coram eisdem Justic' præfat' Edwardo, Georgio, Richardo, Johanni, Willielmo, Roberto, & Roberto, ad placitandum hic usque diem Jovis, proxim' futur', &c. idem dies dat' est præfat' Thomæ & Elizabeth. hic, &c. Ad quem diem ven' tam prædicti Thomas & Elizabeth. quam prædicti Edwardus, Georgius, Richardus, Johannes, Willielmus, Robertus, & Robertus, per Attornatos suos prædict'. Et sup' hoc, &c. certis de causis Justic' hic specialit' moven' Affisa prædicta ulterius adjornat' coram eisdem Justic' usque hospitium Justic' in Chancery Lane London' usque crastin' Sti. Martini proxim' futur'. Ad quem diem apud prædict' hospitium Justic' coram præfat' Justic' ven' tam præd' Thomas & Elizabeth. quam prædict' Edwardus, Georgius, Richardus, Johannes, Willielmus, Robertus, & Robertus per Attornatos suos prædictos, & super hoc prædicti Georgius, Richardus, Johannes, Willielmus, Robertus, & Robertus Justic', quod ipsi nihil habent in prædictis tenementis cum pertin' in visu recogn' Affisæ prædictæ posit' & in querela prædicta

dicta spec', nec habuer' die impetrationis brevis originalis Affisæ prædictæ seu unquam postea, nec aliquam injuriam five disseisinam præfat' Thomæ & Elizabeth. inde fecer': Et de hoc pon' se super Affisam & prædicti Thom' & Eliz. similiter: Ideo capiatur inde inter eos Affisa, &c. Et prædictus Edwardus respond' ut tenens liberi ten' prædictorum ten'torum cum pertin' in visu recogn' affisæ prædict' posit' & in querela prædict' specificat'; et dicit quod affisa inde inter ipsum Edwardum & præfat' Thomam & Elizabeth. fieri non debet, quia die quod quidam Petrus Vavasor Armiger fuit seistus de prædict' tenem'tis cum pertin' in visu recogn' affisæ prædictæ posit' & in querela prædicta spec', inter alia, in dominico suo ut de feodo, ipsoq; sic inde seist' existen' quid' Andr. Windfor Armig', Will'us Vavasor, Petrus Vavasor Jun', & Johan' Laundere generos. alias sc'ilt sc'do die Januarii anno regni d'næ Reginz nunc quintodecimo ext' Cur' Cancellar' ejusdem d'næ Reginz, eadem Cur' Cancellar' apud Westm' in comit' Middlesex tunc existen', prosecut' fuerunt quoddam br'e dict' d'næ Reginz de ingr'u super disseisin' *en le post*, versus præfat' Petrum Vavasor armigerum de prædictis ten'tis cum pertin' in visu recogn' affisæ prædictæ posit' & in querela prædict' spec' cum pertin' inter alia, ipso Petro Vavasor armigero ad tunc tenente liberi ten'ti eorundem ten'torum cum pertin' inter alia existen', tunc Vic' prædict' com' Ebor' direct'. (*And so pleads a Common Recovery.*) Quæ quidam recuperatio in forma prædicta habita, habebatur & fuit ad usum prædicti Petri Vavasor pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessu' tunc ad usum senioris filii legitime procreat' de corpore ipsius Petri Vavasor armigeri & hæredum masculorum de corpore ejusdem senioris filii legitime procreat': Et pro defect' talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum sc'di filii de corpore prædicti Petri Vavasor armigeri legitime procreat', & hæredum masculorum de corpore ejusdem sc'di filii legitime procreat': (Et sic usque ad nonum filium.) Et pro defectu talis exit' masculi de corpore hujusmodi filii noni, tunc ad usum ipsius Edwardi Vavasor modo defend' fratris prædicti Petri Vavasor armigeri pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii legitime procreat' de corpore ejusdem Edwardi & hæredum masculorum de corpore prædicti filii senioris legitime procreat': Et pro defectu talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum secundi filii de corpore ipsius Edwardi legitime procreat' & hæredum masculorum de corpore prædicti sc'di filii legitime procreat'; (& sic usque ad nonum filium ipsius Edwardi.) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni, tunc

ad usum cujusdam Georgii Vavasor alterius fratris præd' Petri Vavasor armiger' pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii legitime procreat de corpore præd' Georgii & hæredum masculorum de corpore illius senioris filii legitime procreat'; & pro defectu talis exit' masculi de corpore hujusmodi fil' senioris, tunc ad usum sc'di filii de corpore præd' Georgii legitime procreat' & hæredum masculorum de corpore illius sc'di filii legitime procreat'; (& sic ad nonum filium ipsius Georgii :) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni tunc ad usum cujusdam Ra'di Vavasor alterius fratris præd' Petri Vavasor pro termin' vitæ suæ naturalis absq; impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii legitime procreat' de corpore præd' Radulphi & hæredum masculorum de corpore illius senioris filii legitime procreat': Et pro defectu talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum sc'di filii de corpore præd' Radulphi legitime procreat' & hæred' masculorum de corpore illius secundi filii legitime procreat', (& sic usq; ad nonum filium ipsius Radulphi :) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni tunc ad usum cujusdam Marmaduci Vavasor alterius fratris præd' Petri Vavasor armigeri pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii legitime procreat' de corpore præd' Marmaduci & hæredum masculorum de corpore illius senioris filii legitime procreat': Et pro defectu talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum secundi filii de corpore præd' Marmaduci legitime procreat' & hæred' masculorum de corpore illius secundi filii legitime procreat'; (& sic usq; ad nonum filium ipsius Marmaduci :) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni tunc ad usum cujusdam Roberti Vavasor alterius fratris præd' Petri Vavasor pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii legitime procreat' de corpore præd' Roberti Vavasor & hæred' masculorum de corpore illius senioris filii legitime procreat': Et pro defectu talis exitus masculi de corpore hujusmodi filii senioris tunc ad usum secundi filii de corpore præd' Roberti Vavasor & hæred' masculorum de corpore illius secundi filii legitime procreat'; (& sic usque and nonum filium ipsius Roberti :) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni tunc ad usum Thomæ Vavasor alterius fratris prædicti Petri Vavasor Armiger' pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii de corpore præd' Thom' Va-

vasor legitime procreat' & hæredum masculorum de corpore illius filii senioris legitime procreat': Et pro defectu talis exitus masculi de corpore hujusmodi filii senioris, tunc ad usum secundi filii de corpore prædicti Thomæ Vavasor legitime procreat' & hæred' masculorum de corpore illius secundi filii legitime procreat'; (& sic usque ad nonum filium præd' Thomæ:) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni, tunc ad usum Richardi Vavasor alterius fratris præd' Petri Vavasor Armigeri pro termino vitæ suæ naturalis absque impetitione alicujus vasti, & post ejus decessum tunc ad usum senioris filii de corpore præd' Richardi Vavasor legitime procreat', & hæred' masculorum de corpore illius filii senioris legitime procreat': Et pro defectu talis exitus masculi de corpore hujusmodi filii senioris, tunc ad usum secundi filii de corpore præd' Richardi Vavasor legitime procreat': (Et sic usque ad nonum filium præd' Richardi:) Et pro defectu talis exitus masculi de corpore hujusmodi filii noni, tunc ad usum hæredum masculorum de corpore Petri Vavasor de Spaldington militis legitime procreat': Et pro defectu talis exitus masculi tunc ad usum rectorum hæred' præd' Richardi Vavasor imperpetuum. Virtute cujus quidem recuperationis & seisinæ modo & forma præd' habit', ac vigore cujusdam actus in Parliament' domini Henrici nuper Regis Angliæ octavi, quarto die Februarii, anno regni sui vicesimo septimo, de usibus in possessionem transferend', apud Westmonasterium in comitat' Middlesex tent' edit', præd' Petrus Vavasor armiger fuit seisitus de præd' tenementis cum pertinentiis in visum recogn' Assisæ prædictæ posit' & in querela prædicta spec' inter alia, in dominico suo ut de libero tenemento pro termino vitæ suæ absque impetitione alicujus vasti, remaner' inde post ejus decessum ulterius prout superius spectant', ipsoque Petro sic inde seisit' existen', idem Petrus apud Spaldington prædictam obiit sine aliquo exit' masculo de corpore suo legitime procreat'; post cujus mortem idem Edwardus in prædicta tenementa, cum pertinentiis, in visum recognitorum Assisæ prædictæ posit' & in querela prædicta spec', inter alia, ut in remanere suo inde intravit, & fuit & adhuc est seisitus in dominico suo ut de libero tenemento pro termino vitæ suæ absque impetitione alicujus vasti. Et prædicti Thomas Downman & Elizabeth, clamand', &c. (And gives colour to the Plaintiff.)

Et prædicti Thomas Downman & Eliz. quoad prædictum placit' præd' Edwardi superius in barra Assisæ prædictæ placit' dicunt, qd' ipsi per aliqua in eodem placito præallegat' ab Assisæ prædictæ de tenementis prædictis, cum pertinentiis, habenda

præcludi non debent, quia dic', quod bene & verum est, quod prædict' Petrus Vavafor Armiger fuit seifitus de tenementis prædictis, cum pertinentiis, in dominico suo ut de feodo, ipsoque Petro sic inde seifit' existen', prædicta recuperatio tenementorum præd' cum pertinentiis, habit' fuit per præfat' And' Windsor, Willielmum Vavafor, Petrum Vavafor juniorem, & Johanne' Laudere versus præfat' Petrum Vavafor armiger', modo & forma prout prædict' Edwardus superius allegavit: Sed iidem Thomas Dowman & Elizabeth. ulterius dic', qd' recuperatio prædicta per præfat' Andream, Willielmum Vavafor, Petrum Vavafor juniorem, & Johannem Laudere versus præfat' Petrum Vavafor Armigerum de tenementis prædictis cum pertinentiis in forma prædicta habit' ac seifina tenementorum prædictorum cum pertinentiis superinde in forma prædicta habit', fuerunt ad solum opus & usum præd' Petri Vavafor armigeri & hæredum suorum imperpetuum: Quorum prætextu ac vigore præd' actus de usibus in possessionem transferend', &c. præd' Petrus Vavafor Armiger fuit seifit' de tenementis prædictis cum pertinentiis in dominico suo ut de feodo, et sic inde seifit' existen' idem Petrus Vavafor armiger apud Spaldington prædict' de tali statu suo obiit inde seifit' sine exitu de corpore suo legitime procreat'; post cujus mortem eadem tenement' cum pertinentiis descend' eidem Eliz. adtunc uxori ipsius Tho. Dowman existen', ut forori & hæredi prædict' Petri Vavafor armiger': Per qd' iidem Tho. Dowman & Eliz. in eadem tenementa cum pertin' intraverunt & fuerunt inde seifiti in dominico suo ut de feodo in jure ipsius Eliz. quousque prædict' Edwardus Vavafor ac prædict' Georgius, Richardus, Johan' Lawson, Willielmus Musgrave, Rob. Thiffylwood, & Rob. Ward, ipsos Thomam Dowman & Eliz. inde injuste & sine judicio difficil. prout ipsi superius vers. eos queruntur: Absq; hoc qd' prædict' recuperatio ten' torum prædictorum cum pertin' per præfat' Andream Windsor, Will' Vavafor, Petrum Vavafor junior', & Johann' Laudere versus præfat' Petrum Vavafor Armiger' in forma prædict' habit', fuit ad usus in barra prædict' Edward' superius spec', prout, &c. (Et superinde partes sunt ad exit') Et Jur' dicunt super sacrament' suum, qd' prædict' Petrus Vavafor armiger fuit seifit' de tenementis præd' in eorum visu posit' & in querela prædicta spec' cum pertin' in dominico suo ut de feodo, ipsoq; Petro sic inde seifit' existen', præd' recuperatio habit' fuit per præfat' And' Windsor, Wil' Vavafor, Pet' Vavafor jun', & Johan' Laudere versus præfat' Pet. Vavafor armig' de eisd' ten' tis cum pertin' modo & forma prout prædict' Edwardus superius placitand' allegavit. Et ulterius recognitor' Assise prædictæ dic' super sacramentum suum, quod quædam indentura facta fuit