THE
SECOND PART
OF THE
INSTITUTES
OF THE
LAWS OF ENGLAND.

Vol. I.
THE
SECOND PART
OF THE
CONTAINING
THE EXPOSITION OF MANY ANCIENT AND OTHER
STATUTES.

Quod non lego, non credo. August.
Jurisprudentia est juvenibus regimen, senibus solamen, pauperibus divitiae,
& divitibus securitas.

Authore EDWARDO COKE, MILITE, F. C.
Hæc ego grandævus posui tibi, candide lector.

London:
Printed for E. and R. BROOKE, BELL-YARD, near TEMPLE-BAR.
M.DCC.XCVII.
# A T A B L E

Of the several Statutes treated of in this Second Part of the *Institutes*.

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A PROEME

TO THE
SECOND PART of the INSTITUTES.

In the first part of the Institutes, following Littleton our guide, we have treated of such parts of the common laws, statutes, and customes, as he in his three books hath left unto us. We are in this second part of the Institutes to speak of Magna Charta, and many ancient and other statutes, as in the table precedent doe appeare.

It is called Magna Charta, not that it is great in quantity, for there be many voluminous charters commonly passed, specially in these later times, longer then this is; nor comparatively in respect that it is greater then Charta de Foresta, but in respect of the great importance, and weightineffe of the matter, as hereafter shall appeare: and likewise for the same cause Charta de Foresta, is called Magna Charta de Foresta, and both of them are called Magnae Chartae libertatum Angliae.

King Alexander was called Alexander Magnus, not in respect
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respect of the largeness of his body, for he was a little man, but in respect of the greatness of his heroical spirit, of whom it might be truly said,

Mens tamen in parvo corpore magna fuit;

so as of this great charter it may be truly said, that it is magnum in parvo.

And it is also called Charta libertatum regni; and upon great reason it is so called of the effect, quia liberos facit: sometime for the same cause, communis libertas, and le chartre des franchises.

There be four ends of this great charter, mentioned in the preface, viz. 1. The honour of Almighty God, &c. 2. The safety of the kings soule; 3. The advancement of holy church; and 4. The amendment of the realme: fourre most excellent ends, whereof more shall be said hereafter.

By charter bearing date the 11. day of February, in the 9 yeare of king H. 3. and secondly, by that charter established by authority of parliament then sitting, and so entred into the parliament roll; the witnesses to the said charter were 31. lords spirituall, viz. Stephen Langton archbishop of Canterbury, E. bishop of London, I. B. of Bath, P. of Winchester, H. of Lincoln, Robert of Salisbury, W. of Rochester, W. of Worcester, I. of Ely, H. of Hereford, R. of Chichester, William of Exeter, bishops. The abbot of S. Edes, the abbot of S. Albons, the abbot of Battaile, the abbot of S. Augustines in Canterbury, the Abbot of Evesham, the abbot of Westminster, the abbot of Burghe S. Peter, the abbot of Reading, the abbot of Abindon, the abbot of Malmesbury, the abbot of Winchcombe, the abbot of Hyde, the abbot of Certesey, the abbot of Sherborn, the abbot of Cerne, the abbot of Abbotebury, the abbot of Middleton, the abbot of Selbie, the abbot of Cirencester; and 33. of the nobility, viz. Hubert de Burgo chiefe justice of England.
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There were many of the great charters, and Charta de Forstia, put under the great seal, and sent to archbishops, bishops, and other men of the clergie, to be safely kept, whereof one of them remain at this day at Lambeth, with the archbishop of Canterbury.

Also the same was entered of record in a parliament roll.

And after king E. I. by act of parliament did ordain that both the said charters should be sent under the great seal, as well to the justices of the forest, as to others, and to all sheriffs, and to all other the kings officers, and to all the cities through the realm, and that the same charters should be sent to all the cathedral churches, and that they should be read and published in every county four times in the yeare in full county, viz. the next county day after the feast of S. Michael, and the next county day after Christmas, and the next county day after Easter, and the next county day after the feast of S. John.

It was for the most part declaritory of the principall grounds of the fundamental laws of England, and for the residue it is additionall to supply some defects of the common law;
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law; and it was no new declaration: for king John in the
17 yeare of his raigne had granted the like, which also was
called Magna Charta, as appeareth by a record before this
great charter made by king H. 3.

Homo ne fuerit mandans apud Westmonasterium des terres
in anter county, car eo for exent latuit de Magna Charta
sinon que illa esset semel interinamata fuit coram justic.

Also by the said act of 25 E. 1. (called Confirm' Chartar')
it is adjudged in parliament that the great charter, and
the charter of the forest should be taken as the common
law.

Soon after the making of this great charter, the young
king by evil counsell fell into great dislike with it, which
Hubert de Burgo summanus justiciarius Angliae perceiving
(who in former times had been a great lover, and well de-
serving patriot of his country, and learned in the laws (for
Rot. claus. 11 H. 3. membr. 44. I finde that he, and many
others were justices itinerant in 5 H. 3. and I have seen a
fine leved before him, and five other judges, between Ste-
phen de WancEEEEcfS, and the abbot of Hales) yet meaning
to make this a step to his ambition (which ever rideth without
reines) persuaded the king that he might avoid
the charter of his father king John by duresSE, and his own
great charta, and Charta de Foresta also, for that he was
within age when he granted the same, whereupon the king
in the 11 yeare of his raign, being then of full age, got one of
the great charters, and of the forest into his hands, and by the
counsell principally of this Hubert his chief justice, at a
conceal held in Oxford, unjustly cancelled both the said
charters, (notwithstanding the said Hubert de Burgo was
the primier witnesse of all the temporal lords to both the said
charters) whereupon he became in high favoure with the
king, insomuch as he was soon after (viz. the 10 of Decem-
ber, in the 13 yeare of that king, created to the highest dignity
that in those times any subject had) to be an earle, viz. of
Kent.
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Kent. But soon after (for flatterers and humorsists have no sure foundation) he fell into the kings heavy indignation, and after many fearfull and miserable troubles, he was justly, and according to law sentenced by his peers in open parliament, and justly degraded of that dignity which he unjustly had obtained by his counsell for cancelling of Magna Charta, and Charta de Forfeita. And the king by his charter granted, Quod nos firmiter & integre tenebimus judicium de Huberto de Burgo per barones dictum; he was buried in the Frier Predicants where Whitehall is now built, so as no monument remains of him at this day.

In this advice Hubert de Burgo either dissembled his opinion, or grossly erred (as ever ambitious flattery bedazles the eye, even of them, that be learned) first, for that a king cannot avoid his charter, albeit he make it when he is within age, for in respect of his royall and politique capacity as king, the law adjudgeth him of full age. Secondly, it being done by authority of parliament, and enrolled of record, it was strange that any man should think that the king could avoid them in respect he was within age. Thirdly, it was to no end to cancell one where there were so many, or to have cancelled all, when they were of record in the parliament roll, or to have cancelled roll and all, when they were, for the most part, but declaratories of the ancient common laws of England, to the observation, and keeping whereof, the king was bound and sworn. What successse those potent and opulent subjects, Hugh Spencer the father, and son had, for giving rash and evill counsell to king E. 2. enconter la forme de la grand chartre, I had rather you should read then I should declare.

After the making of Magna Charta, and Charta de Forfeita, divers learned men in the laws, that I may use the words of the record, kept schooles of the law in the city of London, and taught such as referred to them, the laws of the realme, taking their foundation of Magna Charta, and Charta de Forfeita.
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Foresta, which as you have heard, the king by ill advice fought to impeach.

The king in the 19 year of his raign, by his writ, commanded the maior and sherifles of London, Quod per totam civitatem London clamari faciant & firmenter prohiberi, ne aliquis scholas tenens de legibus in cadem civitate de cetero ibidem leges doceat, & si aliquis ibidem fuerit hujusmodi scholas tenens, ipsum fine dilatatione ceisse fac;i Tesse Regis, &c. 11 die Decembris, anno regni sui decimo nono. But this writ took no better effect then it deserved, for evill counsell being removed from the king, he in the next yeare, viz. in the 20 yeare of his raigne compleat, and in the one and twentieth yeare current, did by his charter under his great seal conforme both Magna Charta, and Charta de Foresta, he being then 29 years old. And after in the 52 yeare of his raigne esablished and confirmed both the same by act of parliament, with the clause, Quod contrawmientes per dominum regem, cum convicte fuerint, graviter piantur. Hereby shall some opinions and resolutions in our books be the better understood, which speake of alienations without licence before or after 20 H. 3. which yeare was named for that the king then confirmed the said great charter, and in like manner did king E. 1. by act of parliament in the 25 year of his raign: and the said two charters have been confirmed, esablished, and commanded to be put in execution by 32 severall acts of parliament in all.

This appeareth partly by that which hath been said, for that it hath so often been confirmed by the wise providence of so many acts of parliament.

And albeit judgements in the kings courts are of high regard in law, and judicia are accounted as juris dicta, yet it is provided by act of parliament, that if any judgement be given contrary to any of the points of the great charter, or Charta de Foresta, by the justices, or by any other of the kings
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kings ministers, &c. it shall be undone, and holden for
nought.

And that both the said charters shall be sent under
the great feale to all cathedal churches throughout the
realm there to remain, and shall be read to the people twice
every yeare.

The highest and most binding laws are the statutes which
are established by parliament; and by authority of that highest
court it is enacted (only to shew their tender care of Magna
Charta, and Charta de Forefia) that if any statute be
made contrary to the great charter, or the charter of the
forest, that shall be holden for none: by which words
all former statutes made against either of those charters are
now repealed; and the nobles and great officers were
to be sworn to the observance of Magna Charta, and Charta
de Forefia.

Magna fuit quondam magna reverentia chartae.

We in this second part of the Institutes, treating of the
ancient and other statutes have been inforced almost of ne-
cessity to cite our ancient authors, Bracton, Britton, the
Mirror, Fleta, and many records, never before published in
print, to the end the prudent reader may discern what the
common law was before the making of every of those statutes,
which we handle in this work; and thereby know whether
the statute be introductory of a new law, or declaratory of
the old, which will conduce much to the true understanding
of the text it selfe. We have also sometime in this and other
parts of the Institutes, cited the Grand Custumier de Nor-
mandy, where it agreeith with the laws of England, and some-
time where they disagree, ex diametro, being a book com-
pounded as well of the laws of England, which king Edward
the Confessor gave them, as he that commenteth upon that
book testifieth (as elsewhere we have noted) as of divers
customes of the duchie of Normandie, which book was com-
posed
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posed in the reign of king H. 3. viz. about 40 yeares after the coronation of king Richard the first, 3 September anno 1 of his reign, anno Dom. 1189. about 138 yeares after the conquest. See that book cap. 22. fo. 29. a. and the comment upon the same, & cap. 112. In which Cystinii a great number of the courts of justice, of the originall writs, and of many other of the titles of the laws of England, are not so much as named or mentioned. And seeing we have in these, and other parts of our Institutes, cited the laws and statutes of divers kings before the conquest, and in the Conquerors time, we have thought good for the ease of the reader, to set down the times wherein those kings lived, and deceased. Inas began to reign anno Dom. 689. and deceased 726. Aluredus, alias Alfricus, alias Eilleryus, began to reign anno Dom. 872. and deceased 901. Of this Alured it is thus written, Aluredus acerrimi ingenii princeps per Grimbalium & Johannem de Rijim Hosmonchis tantum innumerabilis est, ut in brevi librorum omnium notitiam haberet, totumque novum & vetus Testamentum in eulogiam Anglica gentis transmutaret (cuju aut translationis pars nobis feliciter accid.) This learned king in advancement of divine and humane knowledge, by the persuasion of those two monks founded the famous university of Cambridge. Edwardus, son of the said Alured, began to reign anno Dom. 901. and deceased 924. Ethelstanus, alias, Adelstanus eldest son of the said Edward began to reign anno Dom. 924. and deceased 940. Edwardus began to reign anno Dom. 940. and deceased 946. Elgarus began to reign anno Dom. 959. and deceased 9-5. Etheldredus began to reign anno Dom. 979. and deceased 1016. Canuteus began to reign anno Dom. 1016. and deceased 1035. Edwardus began to reign anno Dom. 1042. and deceased 1066. Willielmus Baftardus began to reign anno Dom. 1066. and deceased 1087.

Some fragments of the statutes in the raings of the above-faid
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And kings doe yet remain, but not onely many of the statutes, and acts of parliament, but also the books and treatises of the common laws both in these and other kings times, and specially in the times of the ancient Brittons (an inestimable loss) are not to be found.

It is to be obserued that in Domesday Haroldus, who usurped the crown of England, after the decease of king Edward the Confessor, is never named per nomen regis, sed per nomen Comitis Haroldi, seu Heraldi; and therefore we have omitted him.

In citing of the above faid laws originally written in the Saxon tongue, we have referred you to M. Lambard, who accurately and faithfully translated the same into Latin, one page containing the Saxon, and next the Latin, and is in print (for our manner is not to cite any thing, but so to referre the reader, as he may easiely finde it,) sed ut unicuiqueicus tribuaturo bonos, all those statutes in the reigns of all the above faid kings were of ancient time plainly and truly translated into Latin, (whereof we have a very ancient, if not the first manuscript) which no doubt did not a little abbreviate M. Lambards pains.

Upon the text of the civill law, there be so many glosses and interpretations, and again upon those so many commentaries, and all these written by doctors of equall degree and authority, and therein so many diversities of opinions, as they do rather increase then resolve doubts, and uncertainties, and the professors of that noble science say, that it is like a sea full of waves. The difference then between those glosses and commentaries, and this which we publish, is, that their glosses and commentaries are written by doctors, which be advocates, and so in a manner private interpretations: and our expositions or commentaries upon Magna Charta, and other statutes, are the resolotions of judges in courts of justice in judicaill courses of proceeding, either related and reported in our books, or extant in judicaill records, or in both, and therefore
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therefore being collected together, shall (as we conceive) produce certainty, the mother and nurse of repose and quietness; and are not like to the waves of the sea, but Statio bene fida peritis: for Judicia sunt tanquam juris diēa.

Regula.

Finis Proxemii.

But now let us peruse the Text itself.
MAGNA CHARTA.

EDITA Anno nono H. III.

HENRICUS Dei gratia rex Angliae (1), dominus Hiberniae, dux Normanniae, et Aquitaniae, et comes Andegaviae, archiepiscopus, episcopis, abbatibus, prioribus, comitis, baronibus (2), vicecomitibus, praepositis, ministris, et omnibus bailiis, et fidelibus suis, præsentem chartam inspexitur, salutem. Sciatis quod nos intuits Dei, et pro salute animæ nostræ, &c. et ad exaltationem sanctorum ecclesiae, et emendationem regni nostri (3), spontanea et bona voluntate nostræ (4), dedimus et concessimus archiepiscopos, episcopos, abbatibus, prioribus, comitis, baronibus, et omnibus libris de regno nostro, has libertates subscripta, tenendum in regno nostro Angliae inter H. III.
Magna Charta.

God. 2. For the health of the king's soul. 3. For the exaltation of holy church; and forthwith, for the amendment of the kingdom.

These be those excellent laws contained in this great charter, and digested into 38 chapters, which tend to the honour of God, the safety of the king's conscience, the advancement of the church, and amendment of the kingdom, granted and allowed to all the subjects of the realm.

(4) Spontanea et bona voluntate nostra.] These words were added, for that king John, as hath been said, made the like charter in effect, and sought to avoid the same, pretending it was made by duress.

This great charter is divided into 38 chapters.

CAP. I.

FIRST, we have granted to God, and by this our present charter have confirmed, for us and our heirs for ever, that the church of England shall be free, and shall have all her whole rights and liberties inviolable. We have granted also, and given to all the free-men of our realm, for us and our heirs for ever, these liberties underwritten, to have and to hold to them and their heirs, of us and our heirs for ever.

(2 Inft. i. 52 H. 3. c. 5 & 42 Ed. 3. c. 1.)

Sanctam * Dei, inprimis, ecclesiam libaram facio, ita quod nec vendam, nec ad firmam ponam, nec mortuo archiepiscopo frivo episcopo, vel abbate aliquid accipiam de dominio ecclesiae, fui de: hominibus ejus, donec succedat in eam ingrediatur, et omnibus malis consuetudines, quibus regnum Angliae injuste opprimebatur, inde aufero.

(1) Concessimus Deo.] We have granted to God: when any thing is granted for God, it is deemed in law to be granted to God, and whatsoever is granted to his church for his honour, and the maintenance of his religion and service, is granted for and to God; Quod datum est ecclesiae, datum est Deo.

And this and the like were the forms of ancient acts and grants, and those ancient acts and grants must be construed and taken as the law was holden at that time when they were made.

Here in this charter, both in the title and in divers parts of the body of the charter, the king speakseth in the plural number, concessimus. The first king that I read of before him, that in his grants wrote in the plural number, was king John, father of our king
Cap. 1. Magna Charta.

king H. 3. other kings before him wrote in the singular number, they ufed Ego, and king John, and all the kings after him, Nos.

(2) Pro nobis et barœribus noftris iperpetuum.] These words were added to avoid all scruples, that this great parliamentary charter might live and take effect in all succeffions of ages for ever. More of this word (heives) hereafter in this chapter: When Pro nobis, barœribus et succefforibus noftris came in, shall be shewed in his fit place.

(3) Quod ecclefia Anglica, &c.] This at the making of this great charter, extended not to Ireland, nor to any of the king's foreign dominions; but by the law of Poyningts, made by the authority of parliament in Ireland, in anno 11. H. 7. all the laws and statutes of this realm of England before that time had or made do extend to Ireland, fo as now Magna Charta doth extend into Ireland.

(4) Quod ecclefia Anglica libera sit.] That is, that all ecleficall persons within the realm, their poiffessions, and goods, shall be freed from all unjuft exactions and oppreffions, but notwithstanding should yeeld all lawfull duties, either to the king or to any of his subjectts, fo as libera here, is taken for liberata, for as hath been faid, this charter is declaratory of the ancient law and liberty of England, and therefore no new freedom is hereby granted, (to be discharged of lawfull tenures, services, rents and aids,) but a restitution of such as lawfully they had before, and to free them of that which had been usurped and incroached upon them by any power whatsoever; and purposely, and materially, the charter faith ecclefia, because ecclefia non mofitur, but mofitur ecclefiae, and this extends to all eclefical persons of what quality or order euer.

(5) Et habeat munia jura fua integra.] That is, that all eclefical persons shall enjoy all their lawful jurisdictions, and other their rights wholly without any diminution or subtraction whatsoever; and jura fua prove plainly, that no new rights were given unto them, but such as they had before, hereby are confirmed, and great were sometimes their rights, for they had the third part of the poiffessions of the realm, as it is affirmed in a parliament roll.

(6) Et libertates fuae illaefer.] Libertates are here taken in two fenes. 1. For the laws of England fo called, because liberis faciunt, as hath been faid. 2. They are here taken for privilidges held by parliament, charter or preffcription more then ordinary; and in this fene it is taken in the writ De libertatibus allocandis, and in another writ De libertatibus exigendis in itine, but it is but libertates suas, fuch as of right they had before; jura ecclefiae publice aequiparantur.

Every archbishoprick and bishoprick in England are of the king's foundation, and holden of the king per baroanium, and many abbots and priors of monafteries were also of the king's foundation, and did hold of him per baroanium, and in this right the archbishop and bishops, and luch of the abbots and priors as held per baroanium, and called by writ to parliament, were lords of parliament; and this is a right of great honour that the church, viz. the archbishop and bishops now have. Ecclefia est infra actatem, et in ecclefia Domini Regis, qui tenetur jura et barœditates suas manuere et defendere; and in other records it is said, Ecclefia quae femer est infra actatem fungitur femer vice minoris, nec eft juri con- fònum.

Glimv. i. 7. c. 1. Bract. lib. 3. fol. 258. l. 5. fo. 427. Tr. 22. E. i. in com.
Magna Charta. Cap. i.

fonsum quod infra ætatem exsistentes, per negligentiam custodiam suorum
exhorptionem patiuntur feu ab actione repellantur.

They are discharged of purveyance for their own proper
goods.

And this was the ancient common law, and so declared by
divers acts of parliament, and there is a writ in the regifter for
their discharge in that behalfe: and this is not restrained by the
said act of 27. H. 8. for thereby it is provided that the purveyor
shall observe the statutes for them provided, so as where the pur-
veyor is prohibited to purvey by any statute, the said act of
27 H. 8 feteth him not at liberty.

And true it is, that ecclesiasticall persons have more and greater
liberties then other of the king's subjects, wherein, to set down all,
would take up a whole volume of it self, and to set down no ex-
ample, aggree not with the office of an expostor; therefore some
few examples shall be exprest, and the studious reader left to ob-
serve the rest as he shall reade them in our books, and other au-
thorities of law.

If a man holdeth lands or tenements, by reasone whereof he ought
(upon election, &c.) to serue in a temporall office, if this man be
made an ecclesiasticall person within holy orders, he ought not
to be elected to any such office, and if he be, he may have the
king's writ for his discharge, and the words of the writ are ob-
servable, Rex, &c. cum sacramento legem et consuetudinem regni nostri
Anglie clerici infra sacros ordinum constituit ad tale officium eligi non
debetin, nec baudum consuetudinit, &c. and the reason thereof is
exprest in the writ, Quia jurii non est consunum, quod bis qui salubi
situm animalnum, &c. (in tali loco, &c.) diqvintum, alibi extra (eandem
locum) secularibus negogii compellatur.

By this writ it appeareth that this was the ancient common law,
and custome of England, and had a sure foundation, Nemo militatu
Deo, implicet se negotii secularibus, ut ei placeat cui se probavit.
Ecclesiasticall persons have this privilidge that they ought not in per-
son to serue in warre. Alfo ecclesiasticall persons ought to be quit
and discharged of tolles and customes, avirage, pontage, paviage,
and the like, for their ecclesiasticall goods, and if they be molested
therefore, they have a writ for their discharge, by which writ it
appeareth that this was the ancient common law of England.
Rex, &c. cum personex ecclesiasticæ secundum consuetudinem hæstern
regno nostro statuam, et approbatam. nec ad telenum, paviegiam ut
nemagnum, &c. de bonis suis ecclesiasticis alicubi in eodem regno præ-
fland non nullatenus teneantur, &c.

If any ecclesiasticall person be in feare or doubt that his goods
or chattelles, or beafls, or the goods of his farmor, &c. should be
taken by the ministers of the king, for the business of the king, he
may purchase a protection cum clausula volumus.

Difficulties shall not be taken by sheriffs or other of the king's
ministers in the inheritance of the church wherewith it was an-
ciently endowed, but otherwise it is of late purchase.

If any ecclesiasticall person knowledge a statute merchant or
statute staple, or a recognizance in the nature of a statute staple, his
body shall not be taken by force of any process thereupon, and for
more surety thereof the writ thereupon to take the body of the
conator is jure ipsius fid.

If a person be bound in a recognizance in the chancery or in any
any other court, &c. and he pay not the sum at the day, by the common law, if the person had nothing but ecclesiastical goods, the recognize could not have had a levat ius to the sheriff to levie the same of these goods, but the writ ought to be directed to the bishop of the dioces to levie the same of his ecclesiastical goods.

In an action brought against a person (wherein a capias lieth) for example, an account, the sheriff returns quod clericum off beneficium, nullum habens laitum feudum, in which he may be summoned, in this case the plaintiff cannot have a capias to the sheriff to take the body of the person, but he shall have a writ to the bishop to cause the person to come and appear. But if he had returned quod clericum off nullum habens laitum feudum, then is a capias to be granted to the sheriff, for that it appeared not by the return that he had a benefice, so as he might bee warned by the bishop his diocesan, and no man can be exempt from justice. See more of this matter Artic. Cleri. cap. 9.

Secondum legem et consuetudinem regni Angliae clerici in decemna, &c. posui non ducant, vel ea occasione distringi vel inquietari non consueverunt: and ecclesiastical persons are not bound to appear at tournes or viewers of frankpledge.

But hereof this little tale shall in this place suffice, with this, that as the overflowing of waters doe many times make the river to lose his proper channell, so in times past ecclesiastical persons seeking to extend their liberties beyond their true bounds, either lost or enjoyed not that which of right belonged to them.

7. Concessimus etiam et dedimus omnibus libris hominibus regni nostri, &c.] These words (omnibus libris hominibus regni) doe include all persons ecclesiastical and temporal incorporate politicke or naturall, may they extend also to villeines, for they are accounted free against all men having against the lords.

8. Has libertates subseriptae.] Here it is to be observed that the aforefaid claue that concerned the church onely, is in favour of the church generally without any restraint, but this claue that concerns all the king’s subject hath a restraint by reason of this word (subseriptae) which refraineth libertates to the 38 chapters of this great Charter.

9. Brevibus.] At this time bposed were taken for seccessores, and seccessores for bposed.

10. De nobis.] In this place these words are not inserted to make a legall tenure of the king, but to intimation that all liberties at the first were derived from the crowne.

Note that courts of justice are also called libertates, because in them the lawes of the realmis quae libertas facturum, are administred.
Si quis comitum, vel baronum (1)
reliquor, sive alterum tenementum
de nobis in capite (2) per seruiitium
militarem (3), mortuus fuerit, et cum
decembris, heredes ejus plene atatis (4)
fuerit, et reliuvium nobis debeat, habebat
hereditatem: sum cum antiquum re-
levium (5), seicet, heredes, vel herede-
des (6), comites, de comitatu integro, per
centum libras, heredes vel heredes bar-
onis, de baronia integra, per centum
marcas, heredes vel heredes militis, de
scolo militis integro, per centum solidos
ad plus (7). Et qui minus habituerit,
minus det, secundum antiquam consue-
vtionem deorum (8).

(1) Si quis comitum vel baronum.] At this time there was never
a duke, marquis, or viscount in England, for if there had been,
they had (no doubt) been named in this chapter: the first duke
that was created since the conquest, was Edward the Black Prince,
in 11 E. 3. Robert de Vere earle of Oxford, was in the 8. year of
Richard the second, created marquis of Dublin in Ireland, and
he was the first marquis that any of our kings created.

The first viscount that I finde of record, and that that in parlia-
ment by that name, was John Beaumont, who in the 18. yeare of
H. 6. was created viscount Beaumont.

Comites.] Dicuntur comites, sive, quia in comitatu sive a societate
nomen famiqrunt, qui etiam dici possunt confides a confidunt: Reges
enim sies fiant officiant ad confendentum et regendum populum Dei,
ordinantes eos in magno bonore, et potestate, et nomine, quando accingunt eos
gladiis, vingis gladiis, &c. gladius autem signifiat defensionem regni
et patriae.

Barones.] Suzt et ali potentes sub rege qui dicuntur barones, hot
off, robur belli: and wherefoome have thought that baro is no Latin
word, we find it in Tallies Epistles, apud patronum, et alios barones
tea in maxima gratia posui. Galfriedus Cornwall tenet manuum de
Burford de regis, per seruicium baronii, but it is to be understood,
that the king gave land to one and his heirs, tenendi' de regis per
seruicium baronii, he is no lord of parliament until he be called by
writ to the parliament. These which are earls and barons have
offices and duties annexed to their dignities of great trust and
confidence, for two purpoises. 1 Ad confendentum regem et patriam tempore bellis. And prudent anti-
quity hath given unto them two ensignes to reseemble, and to put
them in minde of their duties; for first they have an honourable and long robe of scarlet resembling counself, in respect whereof they are accounted in law, de magnio condilio regis. 2. They are girt with a word that they should ever be ready * to defend their king and country: and it is to bee observed that in ancient records the barony (under one word) included all the nobility of England, because regularly all noblemen were barons, though they had a higher dignity, and therefore of the charter of King E. I. in the expedition of this chapter hereafter mentioned, the conclusion is, 

Clav. I. 9. 

c. 4. 

*5 H. 4. ubi 

fap. 

2 Sive aliorum tenementium in capite.] It is worthy of observation, with what great judgement this statute concerning relieve is penned; for by the act of parliament called, The Anste of Clarendon, anno 10 H. 2. Anno Domini 1164, it is thus enacted; archiepiscopi, episcopi, et universae persona regni, qui de rege tenent in capite habent possessiones suas de rege, secut baronium, et inde respondent jusiciarius et ministris regis, et siut ceteri barones debent interesse curier regis cum baronium, &c. Therefore this chapter beginneth, Si quis comitum, vel baronam; So as (as to relieve of an earl or baron) it is not materiall that he hath baronium, unleffe he be noble, that is, earle or baron, and others being not noble, but holding in capite, shall pay relieve according to the knights fees which he hath. See hereafter Cap. 31. who shall be said to hold in capite.

3 Per servitium militare.] For this see the first part of the Inditnites, Seft. 103, 112, 154, 157, 126, 127. Whereunto you may add this record following.

Por offijam Iohannes de Mayse, qui est infra etatii, implaciat Thom' de Wycloud & Marg' us' quia pro uno Mefflag, ii, molendinis, iii, servis pratis, & xlii, x. red in Baffsmithfield est' Algate. Ips' voc ad wom' Rad' de Berners, qui vocar & dicit quod nihil clamat nisi custodit. Eo quod Iohannes patre dicit Iohannis tenenti de eo predicta ten' per homag' & servite' o, d. & inveniendi guendam hominem pro eo in turri London. cum arcubus & fugittis per quadragesinta dies tempore Guerra. Iohannes dicit quod tenet ten' prad. per homagiam & servitium quorundam calcarioru vel vi, d. pro omni serviti. Et sic omitente multa ex uerq; parte manifesse patchit per uerd' luv' & per Lud' Cur' quia in hac off. terminatam fuit. luv' dicit quod predicta ten' tenent' de predicto Radulpho per homagium & servite' unus paris calcariorv vel/jex den' & inveni' guend' h omnem pro ipso Radulpho in turri Lond. cum arcub & fugit' per XL dies tempore Guerra in boreal' Angulo turris predicta' pro omni serviti. b Et gua securiti est, &c. quod Radulphus cognoscit in uenendo' quod predicti' hereditarie debet eum ten' per predict' homag' & serviti' predict' calcar vel fex denur' & per jurant' inveniendi unu hominem pro eo in prad turri per XL dies, & manifi est illeque quod huudt minoris jurantia quae debent fieri pro Dominis suis de quibus tenent tenementa sua per alius quia feitis nulli tade dabitus custodiae custodi Domini, nec dare eis exist hic sidem Domini infra extatam haretic per negligentiam propinquorum parenti huifusohu custodiae occupaverint, & sic Radulphus non potest dedicere quod unquae ali quis habitud feitiinam de predicti custodi' nisi per occupationem juan &

Hill. S. E. i. in Banc. Rot. 86, 
Midd. Wills. Recor. i. cited in the 6th part of the Inditnites. 
Seft. 157. in marg. 

Vedereium. 

a Tr. 17. E. 1. 
b The Judge- 

in Banc. Rot. 
29. Salop. 
W. sa. de Hop-

tons Cafe. Acc. 

B 4 negli-
Magna Charta.  Cap. 2.


[ 7 ]

Antiquum relevium sicitet, &c.] Concerning the word relevium, vide 1. part Institut. sect. 103. It appeareth that the reliefe here set down, is the ancient reliefe, and was certain at the common law; but there had been of long time an heavy incruchement of an incertain reliefe at will and pleasure, which under a fair term was called rationabile relevium, and this act had just cause to say, per antiquum relevium, for in the reign of H. 2. grandfather to H. 3. the king exacted an incertain reliefe, for so Glanvill faith, who wrote in his time, De baronis verb nibil certum statutum est, quia juxta voluntatem et misericordiam Domini Regis solent baronie capitales de releviis suis Domino Regi satis facere. And Glanvill under the name of baronies doth include earldomes also, so the reliefe of all the nobility was taken as incertain at that time, and therefore how necessary it was that the ancient reliefe should be restored is evident.

Scilicet haeres vel heredes.] Of this word (heire) see the first part of the Institutes, sect. 1. whereunto you may add that which was there omitted, concerning the antiquity of descendents, which the Germanes had agreeable with the ancient laws of the Britons, continued in England to this day, out of that faithfull and learned historian, who of the ancient Germanes faith; Hæreses successores; nisi cuique liberis, et nulla testamentum: si liberis non sunt, proximis gradus in possessione, fratres, parentis, avunculi, &c. Wherin we observe three things. 1. That for default of children and brethren, the uncle, &c. and not the father, or any in the right line ascendent should inherit, but the collaterall onely. 2. That by the common law no testament or last will could be made of land. 3. That of ancient time successores were synonyna with hæreses. But in this ancient statute it is pertinently said, heres, and not successor, for every bishop of England hath a barony, and so had many abbots and priors (in respect whereof they were lords of parliament) and yet they paid no reliefe, because their succencers came to it by succession and not as heire by inheritance; and this act faith, liabeat hæreditatem suam, and they are seid injure episcopatus monasterii, &c. de comitatu integro et de baronia integra. The barons in Domedalday are accounted amongst the tenants in chief. Vide Glanv. lib. 9. cap. 6. Magna Charta cap. 31.

It is to be understood that of ancient time (as it evidently appeareth by this chapter, and by our books) every earledome and barony were holden of the king in capite, which proveth that both the dignities of the earle and the baron, and the earledome and barony were derived from the crown. And is to be known that the fourth part of the yearly value of an earledome, a barony, and the living of a knight, was the ancient reliefe that this chapter speaketh
Cap. 2. 

Magna Charta.

... speaketh of. And for that of ancient time, b a knights living was esteemed at 20l. per ann. (which in those days was sufficient to maintain the dignity of a knight) his ancient & relief was 5l. which is the fourth part of his living by one year.

The yearly value of a barony was to consist of 13 knights fees, and a quarter, which by just account amounted to 400 marks by the year, therefore his relief was as is here set down 100 marks. 

See an ancient manuscript intituled, De modo tenendi parliaments, &c. tempore Regis Edwardi filii Regis Etheldredi, qui quidem modus sibi per secretores regni corâ Willielmo Duce Normanno. et Conquefavo et Rege Angliae ipso conquefuro hoc tempore præcipiente retitâ et per ipsum approbatâ, &c. Of the authority and antiquity whereof you may read in the fourth part of the Institutes, cap. of the Court of Parliament, Et hic infra.

Now every earldom consisted of the value of an entire barony and an hale, which amounted to 20 knights fees amounting to 400l. per annum, and therefore his ancient relief here called Antiquam reliefum, being the fourth part of the yearly value of his earldom was 100l. In that excellent charter which King H. I. made on the day of his coronation, Communi concilio et afferent baronum regni Angliae, among other things it is thus contained, Omnes malas conajutinates, quibus regnum Angliae opprimebatur, inde auferre, quas malas consuetudines exinde suporta. Si quis baronum meorum, comitum, sive aborum, qui de me tenet, mortueus fuerit, bares suos non redimet terram suam, licet faciebat tempore fratri mei, sed legitima et jura relevatique relevabat eam, licet homines baronum meorum legitima et jure relevatique relevabunt terras suas a dominis suis, &c. Legem regis Edu. vobis reddo cum illis emendationibus, quibus pater meus emendavit consilio baronum suorum.

By this charter it appeareth, 1. that there was a lawfull and just relief, to bee paid by the earle, and baron, which implyeth a proportionable relief according to the value of the living, by reason of this word (Juta) which cannot be intended of an uncertaine relief, but of the just relief, upon the computation of so many knights fees contained in the Modus, whereunto this charter hath relation. 2. It appeareth that there was an unjust relief, in the time of William Rufus his brother, which upon seach we have found in an ancient manuscript in the librarie of arch-bishop Parker, which we have seene, and will transcribe, in that language that we finde it.


De reliefe a baron 4. chivalis les 2. enresnes & enfeebes & 2. hauerts & 2. harumtes & 2. esctes, & 2. launces, & les autres 2. chivalis un chaceur & un palefroy a freins & a chevêtre.

De reliefe a uusafur a son lige senior doit estre quite per le chival son pier, tiul come il avoit jour de son mort, & per son harumte, & per son esct & per son hauert, & per son lance, & il fuit disapparesque, que il nous chival ne ame juste quite per C. fol.

Le relief al villain le meilleur avoir que il averad 2. chivalis, 2. bajis, 2. vaubes durrad a son feignior, & puis font tous les villains in frankpledge.

In K. Canutus time, Relevatio comitis suit 8. equi, 4. sellati, 4. infellati, Inter leges Canut. cap. 97.
Magna Charta.

Cap. 2.

The document contains Latin text discussing the Magna Carta, specifically mentioning clauses 4, 8, and 50. It references the context of the chapter and the legal implications of the document. The text refers to the rights and obligations of knights and barons, as well as the procedural aspects of relief and service in the context of feudalism.

[9]


12. E. 2 prer. regis cap. 3.


105. 112. 113.
Cap. 2. 

Magna Charta.

...for which favored of a conqueror to keep the nobility under, or to make himselfe the more amiable to them.

(§ Secundum antiquum conuenientium feodium.) This is observable, that these certaine and proportionable rates are according to the ancient custome of reliefe.

* A knight holds land by grand serfiantie, he is not within this statute, and therefore shall not pay the reliefe of a knight declared by this act, but the heire being of full age at the decease of his ancestor, will pay the value of his lands for one yeere which is his primer serfiant.

But here it is demanded, ficing Littleton faith, that tenure by cornage, if it be of any other lord then the king, is knights service, what releafe the heir of such a tenant shall pay, or whether he shall pay any reliefe at all. Littleton in the same place faith, that tenure by cornage draweth unto it ward, and marriage, and speaketh nothing of reliefe, and by this act reliefe is to be payed according to the quantity of the knights fee, viz. De feudo militis integro per centum solidos et qui minus habueritis, minus: but a tenure by cornage hath no such quantitites, nec jussipit majus et minus, and therefore tenure by cornage, though it be knights service, is not within this statute; hereof you may read a record to this effect.

Iuter Ioannem Craifkeo querentem vosfus Ioanemat de Leybourn(e) quae distrinxit ipsius per avara pro relevis dando, pro terris in Dunlon Brampton yanece which Efcliyve, et Boulton, quae valent C. li. per ann. quae tenuerit de eis per homagium et cornagium. Et ipsa dicit quod talis est conjunctio patriae de Wofin. quod heredes post mortem antecedens fiorum debent relevare terras suas dominis de quibus, &c. etc. jussipit filiaco pro relevis quantum terrae valuerat per annum, quae de ipsis dominis teuentur, nisi de minori ipsis dominii possint satisfacere, unde ipsa advogat captionem pro relevis secundum pradictam conjunctionem, &c.

Iohannes negat talem esse conjunctiundum, sed concedit, quod tenet tenement pradicta per cornag je XXV. s. vi. d. et dicit quod antecedens idem praelato antecedens ipsum Ioannem saluando L. s. Ipsa dicit quod cum Iohannes egaret, quod ipsa tenet pradicta ten. de ipsius per cornagiam, ad quod hygiomode relevium mere est accessor, ratione conjuncti pradictae. Et dicit quod Iohannes requirat tale relevium versus tenentes jeus in talen patria à tempore qua non, &c. Et de conscunt uterque, ponit je ipso patria. Ideo venit in Cra. S. Iohannis Baptisfe, &c. In sefer Iohanna die quod duplex est tenenda in Com. Wofinum, etc. etc, una per Alba firma, et aliqua per Cornagium. Et quod tenentes per Albat firmam post mortem antecedens fiorum debit duplicare firmam jeam tanquam. Tenentes per Cornagium post mortem antecedens fiorum teuentur rededere valorem terrarum sitianum minus annis. Et Iohannes & tenet in Alba firma Cornagium, &c.

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Lit. sect. 97.

Lit. sect. 111.

fees, as for a whole kniights fee or half a kniights fee, &c. and of that nature is not caste-guard. Littleton treating of caste-guard, faith, that in all cases where a man holdeth by kniights service, such service draweth to it ward and marriage, and speaks not there of relief.

C A P. III.

STI ANTEM HARES (1) alicujus talium fuerit infra estate, dominus ejus non habeat custodiam ejus, nec terrae fines, antequam homagium exerit (2); et poiquam talis hares fuerit in custodia, cum ad estatei personerit (felicitex sic. armorum) habeat bareditetem statum sine relevio, & sine fine, ita tamen quod si ipse (dum infra estatei finit) stat miles (3), nihilominus terrae remanet in custodia dominorum statum (4), utque ad terminum praedicitum.

(See the Collect. de Norm. cap. 29. and the Comment upon the same. & cap. 32. & le Letam. Com. fol. 45 b. &)

(1) Hares. This statute is only to be intended of an heire male, whereof hares is derived: and who shall be hares, &c. See the first part of the Institutes, lib. 1. sect. 1, 2, 3. Cistainier de Norm. 99. and the expostions upon the same.

(2) Antequam homagium exerit. For homage see the first part of the Institutes, sect. 85. and it is to be observed that in England and France it is called Homage, Homagium, and in Italy Vaffallogium.

Some have thought that these words are to be understood that the heire within age shall not be in ward until the lord hath taken the homage of some of the auncelers of the ward, so as the auncceler of the heire may die in the homage of the lord: for in a writ of ward brought by the lord, it is a good plea to say that the auncceler died not in his homage, and the statute faith not Antequam homagium jussu exerit, but homagium generally; and, say they, if the lord should receive homage of the heire, he should not be in ward at all.

But this is not the right intendment of these words, but the statute meant that the homage should be taken of the heire himselfe, and that for the benefit of the heire, and so doth it appear by our old books that wrote foone after this statute, and contemporenea expositio et tertifima in lego, and so do the words themselves of this law import, and the reason thereof is notable, which was, that before the lord should have benefit of wardship, he should be bound to two things; b 1. To warrant the land to the heir, and to that end the heir might have a writ, De homaggio capiendo; 2. To acquit him from
Cap. 3. Magna Charta.

from service and other duties to be done and paid to all other lords, both which the lord was bound to do (as the law was then held) if the lord accepted hommage de droit of his tenant, (in such fact as the lord is, if he receiveith hommage auncestrel at this day) but otherwise it is of hommage in fait; d Homagium est juris ciuandum, quo quis offeruntur ad warrantiandum, defendendum, & acquittandum tenentem sicut in feftina convicted nonis per certum servitium in donatione nominatum & expressum; & etsi non offeritur, quia tenens offeritur ad fidem Domino suo servand. & servitium debitum faciendum. * We have an ancient manuscript of a case adjudged in a writ of outimes and services between Alexander of Poulton, and Robert de Norton, that hommage is of an higher nature to divers purposes then ecfunge. 1 For that hommage bindeth to warranty, which ecfunge doth not. 2 Homage is so solemn as that it cannot be done again as long as the tenant that made it liveth, but ecfunge may be given every other year. 6 And Littleton saith that hommage is the most honourable service, and humble service of reverence, and yet it is true that ecfunge taking it for service, draweth to it hommage.

h But at the common law, if a man holding land by knights service, had made a gift in frank-marriage, and the donee had died his heir within age, the heir should be in ward before any hommage received. Qvia dominus non potest capere homagium ipse ad tertium brevem, and this statute is to be intended where hommage was to be received by law, yet did the tenant in judgement of law die in the hommage of the lord, or otherwise he could not be in ward, a case worthy of great consideration.

i But after when it was resolved for law, and so held to this day, that hommage of it felpe doth not bind the lord to any warranty or acquittall, unlefe it were hommage auncestrel, which either is wore out, and very rare in England at this day; then according to the old rule, Cessante ratione legis cessat ipsa lex; the heir cannot bind the lord to receive hommage in this case, but if the tenure be by hommage auncestrel there the lord shall not have the custody of body or land before he receiveth hommage of the heire, for that hommage bindeth him to warranty and acquittall, and consequently within the reason of this law.

k Here is to be noted that one within age may doe hommage, but he cannot do fealty because that is to be done upon oath, Hob obfervat, quod si minor homagium fecerit nullum tamen juramentum fidelitatis, ante quem ad aetatem personae praebebatur. See more concerning this matter i. part. Institut. lib. 2. cap. Hommage and Fealty.

(3) Fiet miles.] Be made a knight; and his tenure of service is called Servitium militarium, knights service, 1 and therefore if the king create the heire within age, a duke, a marquess, an earle, a viscount or a baron, yet he shall remain in ward for his body; but if the heire of a duke, or of any other of the nobility be made a knight, he shall be out of ward for his body. If the heire in ward be created a knight of the garter, a knight of the bathe, a knight banneret, or a knight bachelor, he shall be out of ward for his body for that he is a knight, and somewhat more, and the statute speketh generally, unlefe a knight, and therefore within the words and meaning of this law, and the foreraigne of chivalry hath ad-judged him able to doe knights service.
Magna Charta.

And this word *Fiat*, be made, proveth that knighthood ought to be by creation or making, and cannot be by descent.

But albeit the heir be made a knight within age, yet is he not freed of the value * of his marriage, for that was vested before in the king, or other lord, and the king being sovereign of chivalry hath adjudged him of full age, that is, able to doe knights service, to this intent, to free his body from custody, but neither to barre the king or other lord of the value of the marriage, no more then if he had attained to his full age of 21 years.

(4) *Remaneat in custodia dominorum fuerit.* This word *remainder* implieth that this statute is to be understood solely, where the heir after he be in ward is made knight within age, for when the heir apparent is made knight within age in the life of the ancester, and the ancester dieth, his heir within age, he shall be out of ward both for body and land, because the sovereign of chivalry hath adjudged him of full age, and able to do knights service in the life of his ancester, so as in that case no title of wardship did ever ascend, and there can be no *remainder or residue, but of that thing that had his essence or being*.

**C A P. IV.**

**Custos (1)** terrae hujusmodi ha

redis, qui infra etatem fuerit, non capiat de terra hujusmodi, nisi ration

ables exitus (2), et rationables conf

custudines (3), et rationabilia servit

ia (4), et loco fines deposcit, et vas

sio hominum et rerum (5). Et si nos

commiferimus (6) custodiari alicuius

talis terrae vicini vel alii, qui de exi

bitibus terrae illius nobis debet respon

dere, et ille de custodia illius, del

cstructionem, vel vaesum fecerit: nos ab

eo capio nobis eremis (7), et terra com

mittatur duxbus legal et discretis ho

minibus de feudo illo, qui de exitibus
terra illius nobis respondere, vel illi

cui nos illam assignavimus. Et si

dederimus, vel vendiderimus custodi

ari alicuius (8) talis terrae, et ille inde
demptionem fecerit, vel vaesum, ammi

tat illam custodi (9), et tradatur du

xbus discretem et legal hominibus de fe

do illo, qui similiter nobis respondere,

fessum praeclari est.

(1) Custos

(The keeper of the land of such an heir, being within age, shall not take of the lands of the heir, but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods. And if we commit the custody of any such land to the sheriff, or to any other, which is answerable unto us for the issues of the same land, and he make destruction or waste of those things that he hath in custody, we will take of him amends and recompense therefore, and the land shall be committed to two lawful and discreet men of that fee, which shall answer unto us for the issues of the same land, or unto him whom we will assign. And if we give or sell to any man the custody of any such land, and he therein do make destruction or waste, he shall lose the same custody; and it shall be assigned to two lawful and discreet men of that fee, which also in like manner shall be answerable to us, as aforesaid is said.)

(Raft. pl. 693. Fitz. Waft. 15, 25, 138, 146. 1. Inft. 54. a. 12 H. 4. f. 53. 6 Ed. r. c. 5. 28 Ed. 1. 2. 3. c. 18. 14 Ed. 3. 2. 1. c. 13. 36 Ed. 3. c. 13. See 12 Car. 2. c. 24. Which renders obsolete the three last mentioned acts restraining escheeters from waste.)

(1) **Custos**
Magna Charta:

(1) 

(2) Rationabiles exitus. Exitus is derived ab excusando, and signifies the rents and profits issuing out or coming of the lands or tenements of the ward, which must be taken by the garden in reasonable manner, and therefore to exitus, rationabiles is added, for that nothing that is unreasonable is allowed by law.

(3) Rationabiles confundimus. That is, things due by custome or prescription, and appendant or appurtenant to the lands or tenements in ward, as advowsons, commons, waifs, straie, wreck, and the like; also the reasonable customes, fines, &c. of tenants in vilenage, or by copy of court-roll where fines be certain: for though the customes, duties, fines, or the like be uncertain, yet if that which is exacted or demanded be unreasonable, it is against the common law. For this word (confundimus) and the divers significations thereof, see hereafter cap. 30.

(4) Et rationabilia servitutia. This also, as appears by Glanvill, that wrote in the reign of H. 2. was the common law of England, that in certain services and aides ought to be reasonable; for, faith he, the lord may rationabilia auxilia de hominibus suis inde exigere, in tomen moderate secundum quantitatem fideor omnium et securum faciundam, us minus gravari inde videantur, vel nonn contemnentur omittere; and that which he speaketh there of aides, is to be applied to all certain services, customes, fines, or duties.

But it may be demanded, how and by whom shall the said reasonable service in the cases aforesaid be tried? this you may read in the first part of the Institutes, sect. 69.

(5) Et hoc sine destructione et vacuo hominum et rerum. For these words, destruction and waifs, see the first part of the Institutes, sect. 67. and the statute of Gloc. cap. 5.

(6) Et suis commiserimus, &c. For this word commiserimus, vide the first part of the Institutes, sect. 58. & 531. Here the committee of the king is taken for him to whom the king committed the custody of the land to one or more; by this word commiserimus, reserving a rent, Quamdiu quis aliquis plus dare voluerit, and there the king remain garden.

(7) Nec ab eo capiemus eundem. And this may be upon an office found, or by writ directed to the sheriff to this effect, Quia datum est nobis intelligi, &c.

(8) Et si deutorus vel vendedorum aliquid custodiendum, &c. In this case the king grants, or selleth the very custody itself, so as the grantee or vendee becommeth guardian in fact: and that this distinction between the committee and grantee was by the common law, hear what Glanvill saith, Si vero Dominus Rex aliquam custodiendum aliet commiserit, tune distinguatur ururum et custodiendum pleno iure commiserit, ut quod nullum inde reddie computum optet ad Scaccarium, aut alterum:
Magna Charta.

Cap. 4.

\[ \text{fe vero plene et custodiem commiserit, tunc poterit, \&c. negotia ficta huis reed disposition.} \]

King H. 7. granted a ward to the dutches of Buck-
ingham, quam diu in manibus fuit fore contigerit; and after wards
the king made a special livery, as by law he might, to the heir within
age, and it was adjudged, as justice Frowick reported, that the
duches was without remedy; but otherwife it had been if the
grant were "durante minoris estate haeredis, or durante minoris estate
et quamdiu in manibus nofritis, \&c."

But here it may be materially demanded, what if the committee
or grantees doth waife, and the king during the minoritie taketh
no amends, what remedy hath the heire after his full age? The
answer is, that he shall have an action of waife, and that by order of
the common law: and then it is further doubted and demanded,
what shall the heire then recover, for the wardship cannot be loiff,
seeing the heire is of full age, neither by this statute nor by the
statute of Gloc. To this the answer is very observable, that seeing
that the wardship cannot be loiff, and the waife, being to the heirs dishe-
ris, ought not to remain unpunished, that the heire shall recover
trebles damage, for that penalty is annexed to the action of waife;
and therefore if an action of waife were given against tenant in tail
apres possibilitie, generally the plaintiff shall recover treble damages,
because they are annexed to this suit. But if the king doe take
amends, then the heire at full age shall have no action of waife.

(9) \text{Amittat custodiam.} This is understood of the land, and not
of the body, for the words be \text{tradatur duobus, \&c. qui de exitibus
terrae nobis inade respondent.}

* \text{Nota, since this statute of Magna Charta divers other statutes
against waifs and destructions in the lands of wards have been
made.}

At the making of this statute, the king had not any prerogative
in the custodie of the lands of idiots during the life of the idiot, for
if he had had, this act would have provided against waife, \&c. com-
mittid by the committee, or assignee of the king to be done in their
possession, as well as in the possessions of wards, but at this time
the gardianship of idiots, \&c. was to the lords and others according
to the course of the common law. And idiots from their nativity
were accounted always within age, and therefore the custodie of
them was perpetually so long as they lived, for that their impotencie
was perpetuall. And the lord of whom the land was holden, had
not a tenant that was able to doe him service. And therefore
within the reason of a custodie of a minor of an heir within
age in cafe of wardship. And this appeareth by Fleta, \text{Scoleius tutores
idiotarum et futurorum cum corporibus eorum perpetuo, quod licuitum
fuit et provisum, co quod fe tpfos regere non nowerint, \* nam semper judica-
bantur infra etatem: vel quia verum plures per hujusmodi custodiun
exceberationes comitatiubantur, provisum fuit, et committer cum consex-
quit Rex corpori et herveditati hujusmodi idiotarum et futurorum ubi
perpetuis custodiae obtinuerat, dum tamen a naturitate fuerint idiotae
et fiuli; fuce aut\* si tardae a quocunque Domino tenuerint, et itpist
varitare et ex omni exceberatione falsae atque ad legitimam etatem secundum conditionem feudorum,
releviis et hujusmodi nihil juris deperieret.}

But then it is demanded, when was this prerogative given to
the king? Certaine it is, that the king had it before statute of
Cap. 5. Magna Charta.

17. De praevoluit regis, for it appeareth in our booke, that the king had this prerogative, anno 3. E. 2. And before that, it is manifest that the king had it before Britton wrote in the reign of E. 1. as you may read in his booke.

And it is as cleare, that when Brafton wrote (who wrote about the end of the reign of H. 5. that the king had not then this prerogative.

And therefore it followeth, that this prerogative was given to the king E. 1. before that Britton wrote, by some act of parliament, which is not now extant. And it appeareth by the Mirror of Justices agreeing with Fleta, that this prerogative was granted by common assent, vide lib. 4. Beverley’s cafe, fol. 126.

CA P. V.

CUSTOS autem quamdui custodiam terrae hujusmodi habuerit, sucenter demas, parcelos, vivaritas, magnas, molendini, &c. ad terram illam pertinentia, de exitibus terrae ejusdem, et reddat heredem suum ad plenam etatem perueniret, terram suam tot infauratae de carucis, et omnibus aliis rebus, ad minus, sciat illam receptor. Hac omnia observantur de custodii archiepiscopatum (1), episcopatum, abbatiarum, prioratum, ecclesiaram, et dignitatum vacantiam, quae ad nos pertinent, except quod custodiendum vendi non deberit.

THE keeper, so long as he hath the custody of the land of such an heir, shall keep up the houfes, parks, warrens, ponds, mills, and other things pertaining to the same land, with the issues of the said land; and he shall deliver to the heir, when he cometh to his full age, all his land flored with ploughs, and all other things, at the least as he received it. All these things shall be observed in the custodies of archbishopricks, bishopricks, abbeys, priories, churches, and dignities vacant, which appertain to us; except this, that such custody shall not be sold.

(10. H. 7. f. 50. 3 Ed. 1. c. 21. 36 Ed. 3. c. 13.)

That this was the common law appeareth by Glanvill, who saith, Restituro autem tenetur curules hereditates ipsi heredibus inhaerentes et debitis acquisitatas justa exigentiam temporis custodie et quantitatis hereditatis.

(1) Hac omnia observantur de custodii archiepiscoporum, &c.]
The custodie of the temporalties of every arch-bishop and bishop within the realme, and of such abbeyes, and priorities, as were of the king’s foundation, after the same became void, belonged to the king during the vacaction thereof by his prerogative: for as the spiritualities belonged during that time to the deane and chapter de communi jure, or to some other ecclesiasticl person by prescription, or composition, so the temporalties came to the king as founder, and this doth belong to the king, being patronus et protector ecclesiae, in so high a prerogative incident to his crowne, no subject can claim the temporalties of an arch-bishop, or bishop, when they fall by grant or prescription.

II. Inst.

But
Magna Charta.  Cap. 6.

But as, in omnium nascitur res que ipsam rem exterminat, unless it bee timely prevented (as the worme in the wood, or the mothe in the cloth, and the like) so oftentimes no profession receives a greater blow then by one of their owne coat: for Ranulf an ecclesiastical person, and king William Rufus his chaplain, a man frabizo ingenio, and profunda acutitia, was a factor for the king in making merchandize of church livings, in as much, as when any archbishopricke, bishopricke, or monastery became void, first he persuaded the king to keepe them voide a long time, and converted the profits thereof sometime by letting, and sometime by sale of the fame, whereby the temporalities were exceedingly waited, and destroyed. Secondly, after a long time no man was preferred to them per traditionem anni et baculis, by livery of seafon, freely, as the old fashion was, but by bargain and sale from the king to him, that would give moit, by means whereof the church was stuffing with unworthy, and insufficiencie men, and many men of lively wits, and towardinesse in learning despairing of preference turned their studies to other professions. This Ranulf, for serving the kings turns, was advanced, first, to be the kings chancellour, and after to be bishop of Duresme, who after his advancement to so high dignities, made them servants to his farrilegious and simoniacall designs. King Henry the first seeing this mischief, and foreseeing the great inconvenience that would follow thereupon, was contented for his owne time to bide his owne hands, to the end the church now naked and bare might receive some comfort, and have means to provide things necessary for their profession, and calling. Hereupon at his coronation made a charter to this effect, Quia regnum oppremum erat injustis exactionibus, ego in respectu dei et amore quem erga vos omnem habeo, sancta Dei ecclesiæ imprimis liberram faci; ita quod nec vendam, nec ad firmam ponam, nec mortuo archiepiscopo, sive episcopo vel abbate, aliquid accipiam de domino ecclesiæ vel hominibus ejus, donec sucerex eam invidiatur, et omnes multas exactudines, quibus regnum Anglie oppresserat, inde aufero. He committed the said Ranulf then bishop of Durham to prison for his intolerable misdeeds, and injuries to the church, where he lived without love, and died without pity, saving of those, that thought it pity, he lived so long.

C A P. VI.

HEREDES autem maritentur abaque disparagione.  HEIRS shall be married without disparagement.

(1 Instit. 80. 20 K. 3. c. 6.)

This is an ancient maxime of the common law: see more hereof in the first part of the Institutes, sect. 107, 108, 109.
CAP. VII.

VIDUA post morte mariti sui flatim et sine difficultate aliqua, habeat maritagi sui et hereditatem suam: nec aliquid det pro dote sua, nec pro maritaggio sua, vel pro hereditate sua habenda, quae hereditatem maritus suos, et ipsa tenetur fimul, die obtias ipsius marii sui: et maneat in capitolii missagio mariti sui, per quadraginta dies (1) post abisset mariti sui (2), infra quos dies affiginetur ei dos (3) sua, nisi prius ei afficiantur fuerit, vel nisi dominus illius sit castrum (4): et si de castrum recessisset, flatim domus ei competens providetur, in qua posset hancel morari (5), quousaque dos sua ei afficiantur, secundum quod praedicatum est: et habeat rationabile est ovelari suam interim de communi (6). Afficiantur autem ei, pro dote sua, tertia pars totius terrae mariti sui (7), quae sit sua in vita sua, nisi diminuerit domini sui, et de alto tenetur (9). [Prærogativa Regis, cap. 4.]

A Widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage, and her inheritance, and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be affixed to her (if it were not affixed to her before) or that the house be a caffle; and if she depart from the caffle, then a competent house shall be forthwith provided for her, in which she may honestly dwell, until her dower be to her affixed, as it is aforesaid; and she shall have in the mean time her reasonable eftovers of the common; and for her dower shall be affixed unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church-door. No widow shall be distrained to marry herself; nevertheless she shall find surety, that she shall not marry without our licence and assent (if she hold of us) nor without the assent of the lord, if the hold of another.


It appeareth by Brafton of ancient time, that a woman being heirs, sine dominorum dispositiones et afferunt, hereditatem habens, mariti non posset, nec etiam in vita antecessorum de jure sine afferunt dominus capitalis, quod si olim fecissent, hereditatem amitterent sine jure recupe- randa, nisi illam per gratiam: hodie tamen aliam param incurrant, sunt inferioris dicunt, et hoc ideo ne cogatur dominus hominum caferre de caferre de capitale inimico, vel de alio minime idoneo.

Alfo it appeareth by the fame author, quod si multier dotem habens pro volun- tate sua aliqui nubet, præter afferunt warranti sui de dotem, olim ex tali causa dotem amitteret, nunquam non amitteret.

C 2. Item

Brafton, ii. 2. fol. 38.
Fleta, ii. 5. cap. 23. 35 H. 6. 52.
Mat. Par. 407.

Mirror, cap. 1.

§ 3.

See the 1. part of the Inhabitats sect. 36.
Magna Charta.

Cap. 7.

Item cum femei legitime maritata fuerint, et poleta viduae, iterum non custodientur sibi custodiae dominorum, licet tueniant affenium eorum requirere maritandi fo, &c. And herewith agreeth Glanvile, who wrote before this statute.

Hereby you may see what had beene used of ancient time in these caeses: but at this day widows are presently after the decease of their husbands, without any difficulty to have their marriage (that is, to marrie where they will without any licence, or afeit of their lords) and their inheritance, without any thing to be given to them; but in this branch the king is not included, as hereafter in the end of this chapter shall appeare.

(1) Et maneat in capiti misvestment mariti sui per quadraginta dies post obitum mariti sui.] And this is called her quaretine, and if the widow be withholden from her quaretine, she shall have her writ, De quaretine habenda to the sherife, which reciting this statute, is in nature of a commissio to him, Quod vocatis coram nobis pertibus praedictis, et auditis inde curum rationibus, eodem B. C. vidue plicem et celorem justitia inde fieri faciatis juxta tenor vii carta praedicti, ne pro defecit justitiae querea ad nos perveniet iterata. By force of which writ, the sherife may make proccess against the defendant, returnable within two or three dayes, &c. and may, and ought (if no just cause may be shewed against it) speedily to put her in possession; and the reason why such speed is made, is for that her quaretine is but for forty dayes.

Vidua, &c. maneat, &c.] Therefore if she marry within the forty dayes, she loseth her quaretine, for then her widow-hood is past, and she hath provided for her selfe, and the quaretine is appropriate to her widows estate.

(2) Infra quos dies assignetur ei dom.] Here it appeareth how speedily dower ought to be assigned, to the end the widow might not be without livelihood.

(3) Post obitum mariti sui.] The day wherein the husband dieth, shall be accounted the first day, so as the same have but thirty nine after.

(4) Nisi domus illa sit costrum.] This is intended of a castell, that is warlike, and maintained for the necessary defence of the realm, and not for a castell in name maintained for habitation of the owner, but hereof see more in the first part of the Institutes, sect. 36. & 242. De aedibus cornutatis. Kernealles, or cornellares, by some is derived from the French word kerner, or corner, to fortifie, inviron, or inclose round about: and by others, from karneam or carneau, a battelment of a wall; or from carnele or carnele, imbateted, or having imbattlements: and the truth is, it beareth all these significations in the laws of England, and the use of it in castles and forts was to defend himselfe by the higher place, and to offend the assailants at the lower.

Britton's words be, Si le chief maes foit chief del couter, ou del bailluy, ou casle, &c. So as it appeareth by him that she is not to have her quaretine of that, which is captu comitatis, feu baronies, and with him, agreeth Fleta, but Braecton only speaketh de costris. The ancient law of England had great regard of honour and order.

(5) Statim domus ei competens providentur, in qua posset bene morari.] But this must be of a house, whereof the is dowable, for
the must have her quarantine of that, whereof she may be endowed.

(6) Et habeat rationabile effoverium interim de communii.] Britton ubi supra.

fleta faith, Quo eex ciento des issu de saltier de les terres leur covenable
futenance, &c.

Fleta ubi supra.

So as effoverium here is taken for sullenence: there is an opinion
in our books, that the widow cannot kill any of the oxen of the
husbands, while the remain in the house; but the Regilier faith,
Quod interim habente rationabili effoveria de bonis comandum mariti-
orum, which feemeth to be an exposition of this branch.

In the statute intituled, De catalis folumn, it is said, Cum ibidem
captus ceram justiciariis securis fuerit convictus de folumina, tunc rostit,
catallorum ultra effoverium fuerat secundum legem conjunctudinem nobis
remansanam; where effoverium signifies sullenence, or alimint, or
nourishment. This word effoverium commeth of the French verb
eoverer, id est, alere, to sustaine, or nourish, and this agreeeth with
the said old books, and in this sense it is taken in the sta-
tute of Gosc. Trover eovers in vivere et vesture, that is, things
that concern the nourishment, or maintenance of man in vitia
et vestia, wherein is contained meate, drink, garments, and
habitation. Alimentorum appendit venit vitia, vestia, et habita-
tio.

When eovers are restrained to woods, it signifieth housebote,
hedgebote, and ploughbote.

(7) Assiglietor autem e pro dote sua tertia pars totius terre mariti
sui, &c.] See for this in the first part of the Institutes, sect. 37.

(8) Nulla vitia disfringatur ad eam maritandum, &c.] This is to
be understood of widows tenants in dower of lands holden of
the king by seruices in cheife, and thereupon she is called the
kings widow, and if the kings widow marry without license, she
shall pay a fine of the value of her dower by one year.

And the reason of this law is yeelded wherefore they should not
marry without the kings license, Ne forte capitalibus inimicis dominii
regis maritantium.

And old readers have yeelded this reason, left they should marry
unto strangers, and so the treasure of the realm me be carried
out, and others say that the reason is for that upon the appignement
of her dower she is sworn in the chancery, Que eex maver sans li-
tence, et par eo si el fait encont, son forment el ferra fin.

Others say that it is a contempt to marry without the kings
license, and against this statute, and therefore for this contempt she
shall make a fine.

If the kings tenant in capitie dye seised, his heire female of full
age, if the marry without the kings license, the shall pay no fine,
for she is no widow, and the words be nulla vitia disfringatur,
&c.

If the queene being the widow of a king be endowed, and marry
without the kings license, because she is endowed of the feison of
the king himseflle, she is out of this statute: but at the parliament
holden in anno 6 H. 6. it is enacted by the king, the lords tem-
porall, and the commons, that no man should contract with, or
marry himselfe to any queen of England, without the speciallic li-
cence or assent of the king, on pain to lose all his goods, and lands;

C 3
Magna Charta.  

Cap. 8.

See the first part of the Institutes, sect. 174.

(9) Si de alio tenetur.] This is to be understood, where such a licence of marriage in case of a common person was due by custome, prescriptiôn, or speciall tenure, the words being si de alio tenetur; and this exposition is approved by constant and continual use and experience, Et optimus interpres legum constatudo.

C A P. VIII.

N O S verno (1), vel bailivi notari (2), non sojoum terram aliquam, vel reddition (4) pro debito aliquo, quandam catallt debitoris praesentia suicient ad debbitum reddendum (3), et ipso debito paratus sit inde satisfixerit. Nec plebius debitoris (5) disfruitantur, quandam ipsa capitalis debitor suicient ad solutionem ipsius debiti. Et si capitalis debitor deservit in solutione debiti, non habet unde solvatur, aut reddendo nobis et cumposstat (6), plebii de debita respondeant, et si vel sicer, habeat terras et reddat debitoris (7), quoniam si quis satisfacit de debiti, quod ente pro capellurint, nisi capitalis debitor monstraverit, se esse quietum versus eajus plebis.

* [19]


(1) Nos verno.] These words being spoken in the politique capacity doe extend to the successors, for in judgement of law the king in his politique capacity dieth not.

(2) Vel bailivi notari.] In this place the sheriffe and his under-bailiffes are intended and meant, and to this day the sheriffe useth this in his returns, Infra balaevam meanum, for Infra comitatum, &c.

(3) Non sojoum terram aliquam, vel reddition pro debito aliquo, quandam catallt debitoris praesentia suicient ad debbitum reddendum.] By order of the common law, the king for his debt had execution of the body, lands, and goods of the debtor; this is an act of grace, and restrained the power that the king before had.

(4) Reddition.] For the severall-kinde of rents, see the first part of the Institutes; Lit. lib. 2. cap. 12. whereunto you may add, 1. Redditus affinis, or redditus affinis: vulgarly rents of affines are the certain rents of the freeholders, and ancient copitholders, because they
they be affixed, and certain, and doth distinguish the same from redditis mobiles, farm rents for life, years, or at will, which are variable and uncertain. 2. redditis albi, white rents, blank farmses, or rents, vulgarly and commonly called quitrents; they are called white rents, because they were paid in silver, to distinguish them from work-dyes, rent cummin, rent corn, &c. And again these are called, 3. redditis nigri, black maile, that is, black rents, to distinguish them from white rents; see Rot. clauf. 12 H. 3. m. 12. Rex concepit hominibus de Andover maneria de M. F. A, &c. Reddendo per annum ad Scaccare. Regis Lxxx. li. blanc, de Antiqua firmae. 4. redditis rotulati be rents illuming out of the manors, &c. to other lords, &c. feudia firmae, see farm, for this kinde of rent, vide infra Gloc. cap. 8.

After the statute of 33 H. 8. cap. 39, was made for levying of the kings debts the usuall processe to the sheriffe at this day, is, Quod diligenter per sacramentum proborum et legalium hominum de balivra tua, &c. inquiras quae et cujusmodi bona et cattala, et cujus pretii idem (debitor) habuit in dicta balivra tua, &c. Et ea omnia capias in manus suas, ad voluntiam debiti praedit, et inde fieri fac debiti praedict, &c. Et si forte bona et cattala praedict (debitoris) ad solutationem debiti praedict non sufficerent, tu nec omittas propter aliquam libertatem, quin eam ingendiari, et per sacramentum praem. proborum, et legalium hominum diligenter inquiras, quae terrae et quae tenmenta, et cujus annui valoris, idem (debitor) habuit, sau fisset sui in dicta balivra tua, &c. Et ea omnia et singula in quorumcumque manibus iam exiguas, extendi fac, et in manus suas capias, &c. Et capias praedict debitoris, ita quod habeas corpus praedict (debitoris) ad jumente nobis de debito praedict.

Whereby it appeareth, that if the goods and chattels of the kings debtor be sufficient, and so can be made to appeare to the sheriffe, whereupon he may levy the kings debt, then ought not the sheriffs to extend the lands, and tenements of the debtor, or of his heire, or of any purchaser, or terre-tenants. To conclude this point with the authority of old and auncient Ockham.

Terrae et tenmenta debitoris regni ad quascunque manus quocunque tenenda devenerunt, poti debiton regii inceptionem regi tenentur, si non aliquo satisfacere possit.

(5) Nec plegiis debitoris. As pledges, or furturies to keep the peace, pledges for a fine to the king upon a contemp, &c. are within this branch, but otherwise it is of mainpenners, and this appeareth by Glanvile, to be the common law before the making of this act.

And the author of the Mirror faith, ceus sunt pleges quos plebiscifer aut eheque corpys de home, car ces ne font proprement pledges, mes sont mainpenners por ce que ils suppoisent plebiscitables font fiero a ceus per baccal corpys pur corps.

(6) Et si capitatis debitor defecerit in solutione, &c. aut reddere noluerit cum pojfit.] Some have thought that this branch hath taken away the next precedent, concerning pledges, but both doe stand well together, for reddere noluerit cum pojfit must be understood, when the principall is able, and yet his ability cannot bee. made to appear, being in money, treasure or the like, or in debts owing to him, which he conceales, and will not reddere, i0 as de non apparentibus, et non existentibus eadem est lex, and in that cafe, plegii de debito respondente, and yet the former branch concerning pledges
doth land, where the pledges can make it appear to the sheriff, that he may levie the king's debt: see in the statute of artificii super cartas, cap. ii.

(7) Et si voluerint, habeant terras, et redditus debitoris, &c.]

a Upon these words some have said that the writ de plegis acquietandis is grounded, and seeing no mention is made in this statute of any deed, the pledges shall have that writ without any deed. And if the pledges have any deed, covenant, or other assurance for their indemnity, then may they take their remedie at the common law; b but it appeared by Glenville that this was the common law, for he saith, Solito vero eo quod debetur ab ipsis plegis, recuperare inde poterint ad principalem debitorum, si postea habeatur unde est satisfacere possit per principale placitum, and set downe the c writ de plegis acquietandis.

Note here is a chapter omitted, viz. nihilum secatium, vel auxilium ponam in regno nostro nisi per commune consilii regni nostri, which clause was in the charter, anno 17 regis Johannis, and was omitted in the exemplification of this great charter, by Ed. 1. vide cap. 30.

CAP. IX.

The city of London shall have all the old liberties and customs, which it hath been used to have. Moreover we will and grant, that all other cities, boroughs, towns, and the barons of the five ports, and all other ports, shall have all their liberties and free customs.

(cro. car. 251. 45 ed. 3. f. 26. 5 h. 7. f. 10, 19. 11 h. 7. f. 21. 5 rep. 63. 8 rep. 125. 3 build. 2. mirror 311.)

This chapter is excellently interpreted by an ancient author, who faith, In pointe que demanda, que le Cité de Londres et fes auncient francibises, et fes frank customs, est interpretable in eft maner, que les citizens ciento leur francibises, dont ils font inherit per loyall title, de dones, et confirmemens des royes, et les quoyx ils ne ont forfitis per nul abuson, et que ilz ciento leur francibises, et customs, que font souveraines per droit et nient repugnante al ley: Et le interpretation que est dit de Londres foint intende de les cinque ports, et des autres lieux; and this interpretation agree with divers of our later books.

It is a maxime in law, that a man cannot claim any thing by custom or prescription against a statute, unlefe the custom, or prescription be savied by another statute; for example: they of London claim by custom, to give lands without license to mortmain because this custom is savied, and preferred, not onely by this chapter of Magna Charta, but by divers other statutes, et sic de ceteris. See more in particular concerning London, in the fourth part of the Institutes, cap. Of the Courts of the City of London.
CAP. X.

NULLUS disstringatur ad facienda majus servitium de feodo nullitis, nec de alio libero tenemento, quam inde debetur.

No man shall be distrained to do more service for a knight's fee, nor any freehold, than therefore is due.


That this was the auncient law of England, appeareth by Glanvill, and also that the writ of Ne injus ta vexes, was not grounded upon this act, appeareth also by him, for he saith, Et alia quaedam placita, veluti, si quis conqueratur se curiat de domino suo, quod confitutudines, et indebita servitia, vel plus servitii exigit ab eo, quæ inde facere debent: and seteth down the form of the writ of Ne injuste vexes; Rex N. salutem. Probibo tibi, ne injuste vexes, vel oxari permittas H. de libero tenimento suo, quod tenet de te in tali villa, nec inde ab eo exigas, aut exigis permittas confitutudines vel servitia, quæ tibi inde facere non debet, &c.

And another ancient author which wrote of the ancient laws long before this statute, maketh mention of the writ of Ne injuste vexes.

Hereby it appeareth they are deceived, that hold that this writ is grounded upon this act, and how necessary the reading of ancient authors is, to give the ancient common law his right, as hereby it appeareth.

The words of the statute be, nullus disstringatur, therefore if the lord incroach more rent of the same nature, by the voluntary payment of the tenant, he shall not avoid this incroachment in an avowry, but in an affile causavit, or ne injuste vexes, the tenant shall avoyd the incroachment; this rule holdeth not in case of a usufruct, or of the issue in tain, for they shall avoyd it in an avowry, but if the service incroached be of another nature, the tenant shall avoyd that seafon in an avowry, for majus servitium implieth a greater exaction of the same nature: if the incroachment of the same nature be gotten by cohabitation of diffresse, there the tenant shall avoyd that seafon in an avowry, for nullus disstringatur ad facienda majus servitium. But if an incroachment be made upon a tenant in tain, or tenant for life, or any other, who cannot maintain a writ of ne injuste vexes, nor a contra formam colationis, nor other remedy, he shall have an action upon this statute; for this statute intendeth to relieve those, which had no remedy by the common law.
COMMON Pleas shall not follow our court, but shall be holden in some place certain.

Before this statute, common pleas might have been holden in the kings bench, and all original writs returnable into the same bench: and because the court was holden coram rege, and followed the kings court, and removable at the kings will, the returns were ubiqueque fuerimus, &c. whereupon many discontinuances ensued, and great trouble of jurors, charges of parties, and delay of justice, for these caused this statute was made.

(1) Communia placita. Here it is to be understood, a division of pleas, for placita are divided in placita corone, and communia placita: Placita corone are otherwise, and aptly called criminalia, or moralia, and placita communia are aptly called civilia: Placita corone are divided into high treason, misprision of treason, petit treason, felony, &c. and to their accessories, so called, because they are contra coronam et dignitatem; and of these the court of common pleas cannot hold plea; of these you may read at large in the third part of the Institutes. Common or civil pleas are divided into real, personal, and mixt.

They are not called placita corone, as some have said, because the king jure coronæ shall have the suite, and common pleas, because they be holden by common persons. For a plea of the crown may be holden between common persons, as an appeal of murder, robbery, rape, felony, mayhem, &c. and the king may be party to a common plea, as to a quare impedit, and the like.

Now as out of the old fields must come the new corn, so our old books do excellently expound, and expresse this matter, as the law is holden at this day, therefore Glanvill faith, Placitorum alius est criminales, alius civilis; where placitum criminales, is placitum corone; and placitum civilis, placitum communis, named in this statute.

And Bracton that lived when this statute was made, faith, Scientium quod omnium actium sive placitorum (ut inde utatur equivoce) hæc est prima divisio, quod quædam sunt in rem, quædam in personam; et quædam mixta; item eæ quæ sunt in personam alia criminalis et alia civilis, secundum quod decendant ex maleficiis vel contrafactis; item criminalium, alia major, alia minor, alia maxima, secundum criminum quantitatem.

Fleta faith, Personalia injuriarum quædam sunt criminales, et quædam civilis; criminalium quædam sunt aliter mortem inducunt, quædam vero minime.

Britton
Britton calleth them pleas de la corone, and common pleas, and the court taketh his name of the common pleas.

To treat of the jurisdiction of this court, doth belong to another part of the Institutes, but a word or two of the antiquity of the court of common pleas, which is the lock and the key of the common law.

Glanvill faith, placita in superioribus, &c. sicut et alia quaeribat placita civilia, &c. solent autem id fieri curia justiciariorum domini regis in banco resistentibus, &c. And in another place, coram justic in banco sedentibus.

Bracton in divers places cals the justices of the court of common pleas, as Glanvill did, justiciariorum in banco resistentibus, so called for that the returns in the kings bench, are coram rege ubicunque fuerimus in Anglia, as hath been said, because in ancient time it was, as hath been said, removable, and followed the kings court.

And therefore all writs returnable, coram justiciariorum nostris apud Westm. are returnable before the judges of the common pleas, and all writs returnable, coram nobis ubicunque tunc fuerimus in Anglia, are returnable into the kings bench.

Britton speaking of the court of common pleas, faith, Outter coro voloisses que justices demergerunt continuo a Westm. ou alors, ou nous vouvisor ordinaire a pirader common pleas, &c.

Fleta faith, Habet et (rexe) curiam juam et juxtiarios suas resistentes qui recordum habent in bis que coram eis fuerit placitata, et qui posseiam habent de omnibus placitis, et actionibus realibus, personaibus, et mixtis, &c.

It is manifest that this court began not after the making of this act, as some have thought, for in the next chapter, and divers others of this very great charter mention is made de justiciariorum nostris de banco, which all men know to be the justices of the court of common pleas, commonly called the common bench, or the bench, and Doct. and Stud. faith, that it is a court created by cuseome.

The abbott of B. claimed consuans of plea in writs of affisse, &c. in the times of king Ethelred, and Edward the Confessor, and before that time, time out of minde, and pleaded a charter of confirmation of king H. 1. to his predecessor, and a grante, &c. so that the justices of the one bench, or of the other should not intermediate.

It appeareth by our books that the court of common pleas was in the reign of H. 1.

That there was a court of common pleas in anno 1 H. 3. which was before this act; Martinus de Patefball was by letters patents constituted chief justice of the court of common pleas in the first year of H. 3.

It is resolved by all the judges in the exchequer chamber, that all the courts viz. the kings bench, the common place, the exchequer, and the chancery, are the kings courts, and have been time out of memory, Iste quod bone ne posc seaver que est plus ancien.

(2) Non sequuntur curiam nostram. Divers speciall cafes are out of this statute.

1. The king may sue any action for any common plea in the kings bench, for this general act doth not extend to the king.

2. If any man be in custodia marsfballi of the kings bench, any other may have an action of debt, covenant, or the like personall action.
action by bill in the king's bench, because he that is in custodia
morebabilis ought to have the privilege of that court, and
this act taketh not away the privilege of any court, because if
he should be sued in any other court, he should not in respect of his
privilege answer there, and so it is of any officers, or ministers of
court: the like law is of the court of chancery, and eschequer.

3. Any action that is Quare vi et armis, where the king is to have a
fine, may be purchased out of the chancery, returnable into the king's
bench, as ejectio sine assisa. vi et armis, forcible entry and the like.

4. And a replevin may be removed into the king's bench, be-
cause the king is to have a fine, and so it is in an assise brought in
the county where the king's bench is.

5. Albeit originally the king's bench be restrained by this act
to hold plea of any real action, &c. yet by a mean they may. As
if a writ in a real action be by judgment abated in the court of
common pleas, if this judgment in a writ of error be reversed in
the king's bench, and the writ adjudged good, they shall proceed
upon that writ in the king's bench, as the judges of the court of
common pleas should have done, which they do in the default of
others, for necessity, let any party that hath right should be without
remedy, or that there should be a failure of justice, and therefore
statutes are always so to be expounded, that there should be no
failure of justice, but rather then that should fall out, that cause (by
construction) should be excepted out of the statute, whether the
statute be in the negative, or affirmative.

6. In a redissisi, or the like.

(3) Curia nostra.] Are words collective, and not only extend
to the king's bench, but into the court of eschequer, vide artic. super
Cart. cap. 4.

When judgment is given before the sheriff, and the tenant
hath no goods, &c. in that county, he may have a certiorari
to remove the record into the king's bench, and there have execution
for that is not placitum. See more hereof in the fourth part of the
Institutes, cap. Of the Court of Eschequer.

CAP. XII.

RECOGNITIONES de nova
diffisina, et de morte antecessoris
(2), non capiantur nisi in juis comitatis
(1), et hoc modo: Nos vero si extra
regnum fuerimus, capitali justicia
nostri (3) mittimus jurisdictionis nostrae
per unumqueque comitatum, femea
in ann, qui eum militibus erund in
con, capiant in con' illis offictis
practicis. Et ea qua in adventu
suo in illis comitatis, per justiciarum
praedictorum dictis officiis copiet
sufficit, terminari non possint, per eadem termi-
nent alibi in innitente suo (4). Et ea
qua

A S S I S E S of novel diffisina, and
of mortdancrofis, shall not be
taken but in the shires, and after this
manner: if we be out of this realm,
our chiefjustices shall send us jus-
tices through every county once in
the year, which, with the knights of
the shires, shall take the said affises in
those counties; and those things that
at the coming of our forcaud justices,
being sent to take those affises in the
counties, cannot be determined, shall
be ended by them in some other place
in their circuit; and those things,
which for difficulty of some articles cannot be determined by them, shall be referred to our justicers of the bench, and there shall be ended.


Before the making of this statute, the writs of affisse of novel dифеsir, and mordanc' were returnable, either coram rege, or into the court of common pleas, and to be taken there, and this appeareth by Glanvill, Coram me, vel coram justiciarii meis. But since this statute, these writs are returnable, Coram justiciarii nostri ad affisas, cum in partes illas venirent; by force of these words, Mitient justiciarior nostror per unumqueque comitat' nostrum sese in annu, qui cum militibus eorumdem comitatuum capiunt in comitat' illis affisas prædix.

(1) Non in suis comitatibus.] This tended greatly to the ease of the jurors, and for saving of charges of the parties, and of time, so as they might follow their vocations, and proper business, and the rather, for that the affisse of novel dифеsir was frequentes et solutum remedium in toto domine, and so was the affisse of mordanc' also. It is a great benefit to the subject to have justice administered unto him at home in his owne country.

For an affisse of novel dифеsir, and affisse of mordanc', see the first part of the Institutes.

And where Bracton faith, Succurratir ei (1. dифеsir) per recognitum affisa novæ diffinæ nullis vigiliis exequitantur, et inventam recuperantem. Possessionis gratia, quam diffinitis injuste anvisis, et use judicii ut per summariam cognitum affis; magna juris jomalitiae quas per compendium, negentum terminetur. See the Cystamer de Normandy, (compofed, as hath been said, in 14. H. 3.) sect. 91. & 93. of the affisse of novel dифеsir, which being invented and framed in England, as Bracton and others have testified, much of necessity be transported into Normandy.

But where we yield to Bracton, that the affisse of novel dифеsir was so invented, so he must yield to us, that it was a very auncient invention, for Glanvill maketh mention thereof, and of the affisse of mordanc', as hath been said, and by the Mirror also the antiquity of affisse de novel dифеsir doth appeare, who faith, that this writ of affisse of novel dифеsir, was ordained in the time of Ranulph de Glanvill.

But the case of 26. affisse before touched, doth prove that the writs of affisse are of farre greater antiquity, for there it appeareth that in an affisse of novel dифеsir, claimed to have confuns of plea, and writs of affisse, and other original writs out of the kings courts by prescription time out of minde of man, in the times of S. Edmond, and S. Edward the Consetter, kings of this realme before the conquest, and shewed divers allowances thereof; but true it is, as the ancient authors affirm, that a new forme of writs of affisse, for the more speedy recovery of possesion, which were called festina remedia, was invented in England since the conquest, and were called revocia de affisa nova dифеsiris; which writs so altered continue so until this day, and according to the alteration is cited in the Cystamer, cap. 93, fol. 107. b.
Magna Charta.  Cap. 12.

If an affiss be taken in proprio comitatu, and the tenant pleads, and after the affiss is discontinued by the non venire of the justices, this act extends to the affiss, but not to a reattachment thereupon, for that the affiss was first arraigned and examined in the proper county, neither doth this act extend to a writ of attaint, brought upon the verdict of the recognizers of the affiss: and herewith agreeeth Britton, who faith, Et tout contine la grand Chré. des francs-chesi, que icors affiss furent prises in counties, par ceo ne intent nun que correcfations, et attaints auer fotoz efof pledes, &c.

And Braden, faith, Et si ed hoc se habet communis libertas, quod affiss extra comitatum capi non delectat, non sequitur quod propter hoc remanente jurata in com' capienda; alhud enim habet privilegium affis, et alhud jurata.

An affiss is brought in the kings bench, then being in the county of Suff. (as it may be, as hath been said) of lands lying in that county, the tenant plead in barre, the pl' reply and pray the affiss, the kings bench is removed to Welfm, and there the pl' prayed the affiss, this statute is, that the affiss shall not be taken but in the county, and now the kings bench is in another county, and the original cannot goe out of this place, for when a record is once in this court, here it must remaine, wherefore by advisement of all the judges, the affiss was awarded at large, quia nihil diciet, and a nisi prius granted in the county of Suff. that there might the affiss be taken. A case worthy of observation, how by this exposition both the parties sute was preferred, and the purvien of this statute observed.

Yet in some case notwithstanding this negative statute, the affiss should not have been taken in his proper county. And therefore if a man be diffiserd of a commote or lordship marcher in Wales, holden of the king in capite, as for example of Gowre, the writ of affiss should have been directed to the sheriff of Gloce. within the realm of England, and albeit the land of Gowre was out of the power of the sheriff of Gloce. being out of his county within the dominion of Wales, and this statute faith that the affiss shall not be taken but in his proper county, yet was the affiss taken in the county of Gloce. and judgment thereupon given and affirmed in a writ of error: and the reason is notable, for the lord marcher though he had jura regalia, yet could not he doe justice in his owne cake, and if he should not have remedy in this case by the kings writ out of the chancery in England, he should have right and no remedy by law given for the wrong done unto him, which the law will not suffer, and therefore this case of necessity is by construction excepted out of the statute. And it was well said in an old booke, Quamvis prohibetur quod communita placitum non sequantur curiam nostram, non sequitur propter hoc, quin aliqua plaeta jugularia sequantur dominum regem, and the like in this negative statute.

Hereby it appeareth (that I may observe it once for all) that the best expounders of this and all other statutes are our bookes and use or experience.

More shall be said hercif in the exposition of the statute of W. 2.

(2) De morte antecessoris. See the first part of the Institutes, sect. 234. Caustaniur de Norm. cap. 98. fol. 115.

(3) Nos vero si extra regnum fuerimus, capitales iustitiarum nostrorum. This capitalis iustitiarum (when the king is extra regnum, out of the
Cap. 12.

Magna Charta.

the realme) is well described by Ockham, Rege extra regnum agente, britis. dirigebatur sub nomine praedentis jusitiarius et teshmonio ejudein.

This is he that is * constitutus by letters patents when the king is out of the kingdom, to be cufos five gardianus regni, keeper of the kingdom, and locum tenens regis, and for his time is proxem, such as was Edward duke of Cornwall 13 E. 3. Lionell duke of Clarence 21 E. 3. And the teffe to all original writs, were teffe Lionello filio nostri charitissimo cuyctode Angliae, &c. John duke of Bedford 5 H. 5. Richard duke of Warwick 3 E. 4. and many others: before whom as keepers of the kingdom, parliaments have been holden, and as hath been said, the teffe of original witts are under the name of the keeper, which no officer can doe when the king is within the realme. In 8 H. 5. a great question arose whether if the kings lieutenant, or keeper of his kingdom under his teffe, doth summon a parliament, the king being beyond sea, and in the meantime the king returne into England, whether the parliament so summoned might proceed: it was doubted that in praedium majoris cecurit potestas minoris, and therefore it was enacted that the parliament should proceed, and not be dissolved by the kings returne.

Now that this statute is to be intende of such a lieutenant or keeper of the kingdom, it is proved by this act itselfe, capitul juxtiarius nostri inuentum juxtiarius nostros, that is, they shall name and send justices by authority under the great fene under their owne teffe, which none can doe but the king himselfe if he be present, or his lieutenant, or the keeper or guardian of his kingdom, if he be, as this act speakes, extra regnum: and this exposition is made ex verbis et veris similibus actis. But then it is demanded, whether this locum tenens regis, seu cufos regni, was called capitalis justitiarius before the making of this act, and this very name you shall read in Glanville, who saith Praeterea secundum, quod secundum consuetudines regni, nemo tenetur respondere in curia dominii sui de alioquo libere tenemento fio sine praecipito dominii regis vel ejus capitalis justitiarii, where capitalis justitiarius is taken for cufos regni.

It is to be observed, that before the raigne of king Ed. 1. the kings chief justice was sometime called sumus juxtiarius, sometimes, praedens juxtiarius, and sometymes capitalis juxtiarius. In anno primo Ed. 1. his chief justice was called capitalis justitiarius ad placita coram rege tenenda, and so ever since; and this chief justice is created by writ, and all the rest of the justices of either bench, by letters patents.

In Glanviles time, and before, the kings justices were called juxtiarum, the returns of writs being coram juxtiarius maius, so as the kings justices were antiently called juxtiaria, for that they ought not to be only juxta in the concrete, but ipsa juxtiaria in the abstract. Since that time, as this great charter in many places it appeareth, they are called juxtiarios a juxtia. The honourable manner of creation of these justices you may read in Fortescue.

(4) Alibi in iterum fuat. This is taken largely and beneficially, for they may not only make adjournment before the same justices in their circuite, but also to Welfam. or to Serjeants Inne, or any other place out of their circuite, by the equity of this statute, and according as it had been alwaies used: for constant allowance in many cases doth make law.

* The statute speaking only of an adjournment in affize of novell diffusio, &c. and yet a certificate of an affize is within this statute.

Sed

b Sed rerum progressus offendunt multa, quae initio praevideri non potuerunt.

c Time found out, that because the justices of assise came not but once in the yeare, and that any adjournment could not have beene made by this act, unless the jurors had given a verdict, for this act faith proper difficulitatem aliquorum articularum, and not upon demur, doubtfull plea, Estoppel, &c. * or for preservation of the kings peace, and no provision was made by this act, if the ten. in the assise of mordaeum. had made a foreine vouchers, or pleaded a foreine plea: all these are holpen by the statute of W. 2. cap. 30. as shall appeare when we come thereunto.

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CAP. XIII.

ASSISES de ultima presentatione semper captiontur coram jussitariis de banco, et ibi terminentur.

ASSISES of darrein presentment shall be alway taken before our justices of the bench, and there shall be determined.

(Greg. 30. 13 Ed. 1. Stat. 1. c. 30.)


It appeareth by Glanvil, that before this statute the writ of darrein presentment was retornable coram me vol justic. metis. And the reason of this act was for expedition, for doubt of the laps.

By the statute of W. 2. it is provided, that justices of nisi prius may give judgement in an assise of darrein presentment, and quare impedit.

CAP. XIV.

LIBER homo (1) non amercietur (2) pro parvo delicto, nisi secundum modum illius delicti, et pro magnio delicto secundum magnitudinem delicti, salvo fui contemnimento suo (3): et mercator eodem modo, salvo merchantia sua (4), et villanus aliterius quam nostror, eodem modo amercietur: (5) salvo wainingo suo (6), si incident in misericordiam nostram. Et nulla praedictarum misericordiarum ponatur, nisi per sacramentum proborum et legalem hominum de vicineto. Comites et barones non amercietur, nisi (7) per

A Free man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatnes thereof, faving to him his contemnment; and a merchant likewise, faving to him his merchandifce; and any other's villain than ours shall be likewise amerced, faving his waininge, if he fall into our mercy. And none of the said amerciament shall be affixed, but by the oath of honest and lawful men of the vicinage. Earls and barons shall not be amerced but by their peers, and after the
Cap. 14.

Magna Charta.

The manner of their offence. No man of the church shall be amerced after the quantity of his spiritual benefice, but after his lay-tenement, and after the quantity of his offence.

(Mirror, 372. 3 Ed. 1. c. 6. Regist. 184, 187. 1 Roll, 74, 446. Br. Amercements, 25, 25, 32, 33, 55, 65, 10 H. 6. fo. 7, 7 H. 6. fo. 13, 19 Ed. 4. fo. 9. 2 Bulstr. 140. 3 Bulstr. 279. 81 Ed. 4. fo. 77. 8 Co. 39, 59.)

Vide W. 1.  
cap. 6.

W. 1. cap. 18.  
11 H. 4. 5.  
Lib. 2. fol. 39, 40.  
Greyfyle's case.  
Glanvil, lib. 9.  
cap. 11.  
Flota, lib. 2.  
c. 60.  
10 E. 2. action  
for le statut. 84.  
Regist. 86. 184.  
187.  
[28]

(1) Liber homo. A free man hath here a speciâll understanding, and is taken for him, qui tenet liberâ, for a free-holder, as it is taken in the venire fac. where duodecim liberos, &c. homines, are taken for free-holders, and this appeareth by this act, which saith, salvo contenemento suo, whereof more shall be said in this chapter. The words of this act being liber homo, it extendeth as well to sole corporations, as bishops, &c. as to lay men, but not to corporations aggregate of many, as major and commonalty, and the like, for they cannot be comprehended under these words liber homo, &c.

(2) Amerciatur. This act extends to amerciaments, and not to fines imposed by any court of justice: what amerciaments be, and whereof this word amerciament cometh, see the 8. book of my reports, see also there, that this statute is in some cases of amerciaments, to be intended of private men, and not of amerciaments of officers, or ministers of justice, so as liber homo is not intended of officers, or ministers of justice. And how, and in what cases the afferment shall be, you shall also read there, together also with the ancient authors, and many other authorities of law, concerning these matters.

It appeareth by Glanville that this act was made in affirmation of the common law, as hereafter shall appeare, but yet the writ de moderata misericordia, is grounded uppon this statute, for it reciteth the statute and giveth remedy to the partie that is excessively amerced.

(3) Salvo contenemento suo. First for the word, you shall read it in Glanville, Est autem misericordia dominui regis, quo quis per juramentum legatum bominum de succeste etenus amerciandus est, nec quid si fuerit contenendum amittat.

And Bracton, Salvo contenemento suo.

Fleta, continentia.

2. For the signification, contenement signifies his countenance, which he hath, together with, and by reason of his free-hold, and therefore is called contenement, or continentie, and in this sense both the statute of 1 E. 3. and old Nat. Brev. use it, where countenance is used for contenement: the armor of a fouldier is his countenance, the books of a scholler his countenance and the like.

(4) Et mercator codemmodo salva merchandis fuit. For trade and traffike is the livelihood of a merchant, and the life of the commonwealth, wherein the king and every subject hath interest, for the merchant is the good bayliffe of the realm to export and vent the native commodities of the realm, and to import and bring.
bring in the necessary commodities for the defence and benefit of the realm.

(5) *Et willanus alterius quam noster codem modo amerciatur salvo wainingio suo.* Here *willanus* is taken for one that is a bondman, *nativus de fangue* or *servus.*

A villein is free to sue, and to be sued, by and against all men, saving his lord.

(6) *Salvo wainingio suo.* Wainagyngium, is the contenement or countenance of the villen, and cometh of the Saxen word *wainan,* which signifieth a cart or waine, wherewith he was to doe villen service, as to carry the dun of the lord out of the feite of the manor unto the lords land, and calling it upon the same, and the like, and it was great reason to have his wainage, for otherwise the miserable creature was to carry it on his back; it is said here *wainingio suo,* but yet the lord may take it at his pleasure.

But hereby it appeareth, that albeit the law of England is a law of mercy, yet is it a law, which is now turned into a shado, for where by the will of the law, these amerciements were instituted to detter both demandants and plaintiffs from unjust suits, and tenants, and defendants from unjust defences, which was the cause in ancient times of fewer suits, but now we have but a shadow of it. *Habemus quidem fenatus-conjulium, sed in tabulis reconditum, et tanguum gladium in vagina repolitum.*

(7) *Comites et barones non amerciatur nisi per pare.* Although this statute be in the negative, yet long usage hath prevailed against it, for the amerciament of the nobility is reduced to a certainty, *viz.* a duke 10l. an earle 5l. a bishop, who hath a baronie 5l. &c. in the Mirror it is said, that the amerciament of an earl was an Cl. and of a baron an C. marks.

It is said that a bishop shall be amerciated for an escape 100l. A gayler shall be amerciated for a negligent escape of a felon attaint 100l. and of a felon indicted only 5l.

If a noble man and a common person joyne in an action, and become nonfute, they shall be severally amerciated; *viz.* the noble man at C s. and the common person according to the statute, therefore when a noble man is plaintiff, it is policy rather to discontinue the action, then to be non-fute.

(8) *Per Pares.* By his peers, that is, by his equals.

The general division of perons by the law of England, is either one that is noble, and in respect of his nobility of the lords house of parliament, or one of the commons of the realm, and in respect thereof, of the house of commons in parliament: and as there be divers degrees of nobility, as dukes, marquessies, earles, viscounts, and barons, and yet all of them are comprehended within this word, *pare,* so of the commons of the realm, there be knights, esquire, gentlemen, citizens, yeomen, and burgesses of several degrees, and yet all of them of the commons of the realm, and as every of the nobles is one a peer to another, though he be of a several degree, so is it of the commons; and a. it hath been said of men, so doth it hold of noble women, either by birth, or by marriage, but see hereof cap. 29.

Bragton faith, *Comites vero vel barones, non sunt amerciandi, nisi per pare suos, et secundum modum deliberati, et hoc per barones de statuario, vel coram ipso rege. Nulla ecclesiastica persona amerciatur secundus.*
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secundum quantitatem beneficii sui ecclesiasticorum, sed secundum laicorum tenentiam.

(9) Ecclesiastica persona.] For ecclesiastical persons, and their diversities, and degrees, see the first part of the Institutes, ubi supra.

(10) Beneficium.] Benefice. Beneficium is a large word, and is taken for any ecclesiastical promotion or spiritual living whatsoever.

Here appeareth a priviledge of the church, that if an ecclesiastical person be amerced (though amerciaments belong to the king) yet he shall not be amerced in respect of his ecclesiastical promotion, or benefice, but in respect of his lay fee, and according to the quantity of his fault, which is to be asferred: and Brackton setteth downe the oath of the afferers of amerciaments, et ad hoc fidelifi faciendi, affidavit amerciatorum, quod nemo minum gravabunt per edium, nec alibi divers propter amorem, et quod celebant ea quae audierunt.

C A P. XV.

ULLA villa, nec liber homo dis-tringatur facere pontes, aut riparias (1), nisi qui ab antiquo, et de jure facere conievorum tempore Henrici regis avi nostri.

NO town nor freeman shall be diftrained to make bridges nor banks, but such as of old time and of right have been accustomed to make them in the time of king Henry our grandfather.

Here it is to be observed, that in the reign of king John, and of his elder brother king Richard, which were troublesome and irregular times, divers oppressions, exactions, and injuries, were incroached upon the subject in these kings names, for making of bulwarks, fortresses, bridges, and banks, contrary to law and right.

But the reign of king H. 2. is commended for three things, first, that his privy council were wife, and expert in the laws of the realm. Secondly, that he was a great defender and maintainer of the rights of his crown, and of the laws of his realm. Thirdly, that he had learned and upright judges, who executed justice according to his laws. Therefore for his great and never dying honour, this and many other acts made in the reign of H. 3. doe referre to his reign, that matters should be put in ury, as they were of right accustomed in his time, so as this chapter is a declaration of the common law, and so in the reignes of H. 4. and H. 5. the parliaments referre to the reigne of king E. 1. who was a prince of great fortitude, wisedome and justice.

And divers statutes referre to king Edw. 3. who was a noble, wife, and warlike king, in whose reign, the laws did principally flourish.

Riparia.] Is here taken for ripa, which is extrema et eminentior terrei orae, quam fluxius utrinque alluit.

But the making of bulwarks, fortresses, and other things of like kind, were not prohibited by this act, because they could not be erected, but either by the king himself, or by act of parliament.

D 2 C A P.
Magna Charta.

C A P. XVI.

**Nulla** ripariae defendatur de eater, nisi illæ quæ fuerunt in defenso tempore Henrici regis avi nostri, et per eadem loca, et eosdem terminos, fiet eﬀe conuenuerunt tempore suo.

No banks shall be defended from henceforth, but such as were in defence in the time of king Henry our grandfather, by the same places, and the same bounds, as they were wont to be in his time.

That is, that no owner of the banks of rivers shall so appropriate, or keep the rivers severally to him, to defend or barre others, either to have passage, or sith there, otherwise, then they were used in the reign of king H. 2.

This statute, faith the Mirror, is out of use, Car pluris rivus font ore approprie et engarvies, et mie in defence, que foilount eﬀre communi a pisier et usir en temps le roy Henry 2.

C A P. XVII.

Nullus viccunas (1), constabilarius (2), coronator (3), vel alii baliivi nostri teneant placita coronæ nostriæ.

No sheriff, constable, escheator, coroner, nor any other our bailiffs, shall hold pleas of our crown.

(Mirror, 313.)

One of the mischieves before this statute was, that none of them here named, could command the bishop of the diocese to give the delinquent his clergy, where he ought to have it, for as Braun faith, Nullus alius, præter regem, petit episcopo demandare, &c. And therewith agreeeth our other old, and later books, that the bishop is not to attend upon any inferior court, nor that any inferior court can write unto, or command the bishop, but the king (that is) the kings great courts of record, and such, as since that time have authority by act of parliament.

Another cause was, that the life of man, which of all things in this world, is the most precious, ought to be tried before judges of learning, and experience in the laws of the realme: for ignorantia judicis est injustitiae calamitas innocentis. Et cum ex quo magna charta de libertatibus Angliae alius concessa (quam quidem chartam dominus rex in parliamento suo audìt Weslum. an. regni sui 28. ad requisitionem omnium praekutorum, comitum, baronum, et communitate totius regni, de novo concessit, renovavit, et confirmavit) placita coronæ ipsi domino regi specialiter reservavat, per quod nullus de regni huicmodi placita tenere potest, seu habere, seu speciali concessione, seb confirmationem charta praefilis faeder. In the same yeare, and terme, coram rege, a complaint by the abbot of Feverham, both