against him during those two years, because he holdeth not the land as garden.

And for that cause if the lord tender to her a marriage, and she within the two years marry her self elsewhere, there lieth no forfeiture of marriage against her.

(7) Et si els per malice ou malosia causent ne jus avoient, &c. Here the act in hatred of contradiction and disobedience, in odium contradictiorum et disobedientiae, given to the lord her lands until her age of 21, &c. but he holdeth not the same as garden for the cause aforesaid.

Of his whole act Fleta thus, de famulis 14 annos habentibus, petitur decem etiam maritantium competens medio tertio non obtulerint, id est prosequi, quod negligenter domimorum buximodi talibus hereditatis, non habuerint, sed vetustam hereditatem per duo annos post 14 annum, can hereditas sine contradictione readere non contradicat; unde est omne competenter et palam contulerint, ipsaque maritandi conditione, suae usque ad eumatem masculinum hereditatem talium inpici foreint retinere ulterius quam per duas annos, pro sine maritandi, statuam contradictionium et imbecillie.

(8) Qui per jeque ille cintent prius le value.] Here the profits are accounted to go to in satisfaction of the value. Vide le statute de merces cap. 6.

If the lord grant over the wardship of the body only, neither granter nor grantee shall take the advantage of this branch.

C A P. XXIII.

Purview est ensenon, que en city, borough, ville, faire, ne marche, &c. est home forain, que soit de c'est raison (1), d'etreine pur dette (2), dont il est d'attier ou pledge, et que le founterra gresouement pues, et fuist defoy le dressey delivrer per les baiiss; due lien, ou per auter baiissis le juri mieux foyt.

It is provided also, that in no city, borough, town, market, or fair, there be no foreign person (which is of this realm) distraint for any debt whereof he is not debtor or pledge; and whatsoever doth it, shall be grievously punished, and without delay the distraint shall be delivered unto him by the bailiffs of the place, or by the king's bailiffs, if need be.

27 E. 3. Sta. 2. c. 17.

The mischiefs before this statute was, that divers cities, the charge parts, boroughs, towns corporate, &c. within this realm, did chaine suche a custome, that if any of one city, society, or merchant guild were indebted to any of another city, society, or merchant guild, if any other of the same city, society, or merchant guild that the debtor was of, came into the city, society, or merchant guild whereof the creditor was, that he would charge such a receiver for the debt of the other; which customes are taken away by this statute, whereof Fleta teacheth these words; solent plerique loci in civis, mercatius, civitatum, burgis, et socitatis et in jurisdiccionibus suis egressi transituum de feodis, et jurisdictionibus suis nullitate suae delinents ad quiverimiam altius inveniantis plebios de profugiendo impedire.
impedire, dirstringere et gravare pro alieno debito, quibus non fueri plegius nec debitor, imponentes e quod erat tali debitori affinis, ut de una societate vel circitate, et in jurenulli et impune: proper quod pro domini et inibitionem, ne quis aliquem furem secum, dum plegius non fuerit in debitor, pro aliquo debito alieno aliensi diringat, nec ad aliquam juro 
tiensem compellat, et qui fecerit gravaverit punietur.

And it is censeth by the Mirroue, treating of this chapter, that
such cullumes were against the common law, for there it is said, a
point de tortuflatte distrettes duist conteine le paine de roberie.
(1) Que fait de cef realme.] These are materiall words: for a merchant of England be either wrongfully imprisoned in the sea
beyond the sea, or have his merchandises or goods taken from him
there wrongfully, he shall have the kings letter to the king, prince,
or lord of that territorie, where the wrong is done, wherein the
wrong is briefly receiv'd, and request made, quod satisfaciendum debito
ac jussione complementum fieri faciat, &c. which letters of divers
forms appeareth in the Registre. Now if he be delituite of justice
there, then may he either have the kings writ de arresto facta super
mercatorum alienigen pro transgresione facta in mercatoribus Angliae,
or else according to the law of marke, he shall have from the king
letters of marke or reprißal under the great scale, whereby he may
redeffire himselfe of the goods of any of the men of that territorie
taken within this realme. And it is called the law of marke of a
Saxon word, which signifies a limit or bound; because being
he cannot obtaine justice within the limits of the foreine countrey,
he may be redreßed of the men of that country within the limits of
his owne: which appeareth by the statute of 27 E. 3. in their
words, "No merchi ni stranger be implensed for another turbate,
or for another debt, whereof he is not debtor, pledge, nor master
pernor. Provided always, that if our liege people, merchants,
or other be damag'd by any lords of strange lands, or their
subjects, and the saide lords (duly required: faile of right to our
said subjects, we shall have the law of marke, and of taking
them against, as hath beene used in times past, without fraud or
deceit." Wherein many things are worthy of observation; and
(amongst them) that this law of marke extends not only to mer-
chants, but to all other the kings subjects. And this law of marke
in some records is called the kings right, jus regium, because thereby
he doth his subjects rights: as taking one example for many, in the
parliament holden in 11 H. 4. John Kowley of Bridgewater, in his
petition prayed the king that he might take marke and reprißal
of all French mens goods, (having no safe conduct of the king)
unto a certaine value, for certaine his ships and other goods taken by
the French in the time of the truce: the answer of the king was, that
when he paid made to the king, he should have such letters to puniti
as are needfull, and if the French king refuse to doe him right, the
king will then shew his right. This letter of marke or reprißal is
anciently called litera mercatoria, (because most commonly manerly
obtained it) litera mercatoria conceditur mercatoribus Angliae corve
mercatoribus Hauen, Holland, Zeeland, et Fryland. So as if these
words [which is of this realme] had been omitted, and the statute
had been general in the negative, that no foreine persons should be
distrained for any debt, wherefore he is not debtor or pledge,
this had taken away the ancient law of marke or reprißal, and therefore necessariely were added the saied words [which is of this
IT is provided also, that no escheator, sherif, nor other bailiff of the king, by colour of his office, without special warrant, or commandment, or authority certain pertaining to his office, dispossess any man of his freehold, nor of any thing belonging to his freehold; and if any do, it shall be at the election of the dispossessed, whether that the king by office shall cause it to be amended at his complaint, or that he will sue at the common law by a writ of novel disseisin; and he that is attainted thereof shall pay double damages to the plaintiff, and shall be grievously merced unto the king.

(1 R. 2. c. 9.)

The mischief before this statute was, that escheators, sheriffs, and other of the kings bailiffs, would, coloris officiis, seize into the kings hands the freehold of the subject, and thereby dispossess the partie, who thereupon to his intolerable vexation and delay, was put to his suit to the king by petition, for which this statute provided remedy.

(1) Bailiffe le roy. Here by bailiff is understood any other officer or minister of the king.

(2) Per colour de son office. Coloris officii is ever taken in melam parrem, as auritus officii is taken in benam: and therefore this implyeth a seizure unduly made against law.

And he may do it coloris officii two manner of ways: either when he hath no warrant at all, or when he hath a warrant, and dian not pursue it.

(3) Special warrant. That is, to the escheator, &c. a dictum dictum extremum, mandamus, or any other of the kings writs, and cause thereupon found for the king.

Likewise to the sherif the kings writ, as an habere facias feisnam, or the like.

By this act no seizure can be made of lands or tenements into the kings hands before office found, and so is the common experience at this day. See the statute of articuli super cartis, cap. 19. & 29 E.

(4) Ou
(4) *On commandement.* Under these words are comprehended not only the king's commandements by his writs, as hath been said, but also the commandement of the justices of the king's courts of justice.

* A man was indicted before the sheriff in his tourne of felonie, upon which indictment his lands and chattels were by the sheriff seised for the king: afterward before justices assigned he was acquitted, and sued out a certiorari to remove the record into the king's bench; which being removed, he prayed there to have restitution of his lands and goods; and it was resolved that the sheriff had not warrant to seise the lands, (before he were attained) and therefore that he should sue his assise against the sheriff upon this statute. It was further resolved, that if the sheriff seised lands by the commandement of the justices, then is the sheriff excused, though the justices therein did err; and if he did it of his own head, then had the party remedy by an assise; therefore the perile was required to sue out a writ to the justices to certify if the seise were made by their commandement.

(5) *On certain authority que ajunt a suo officio.* That is, ex officio, without any writ or commandement: for example, when the escheator taketh an office virtute officii, he may seise the land; for this, as our act faith, doth belong to his office; but if of his own head (as hath been said) he seised the land without any offici, that seise is celore officii, and therefore the assise upon this statute is maintainable against him in that case, et sic de eocrin.

(6) *Per breiue de novo difficile.* This is put for an example, for he may have any other writ, or action against him.

This statute is made in affiance of that, which ought to have been done by the common law, and is the foundation as well of our book-cafes above-said, as of the acts of parliament, that after have been made concerning undue seises by escheators, sheriffs, and other bailiffs, as coroners, and the rest.

And if it doth appeare to the court, that the kings officer doth seise for the king any lands without warrant against the law, in an action brought against the officer, he ought not to have any aid of the king; neither doth the writ de dominio regis inconditio lie in that case, because that which is done by him is void; and where the cause of aid falleth, there no aid is to be granted. It was against reason, that the king, who is the head of justice, should aid him in his wrong; and therefore this act for doing of wrong in the kings name, doth give the party grieved an assise against him, wherein the plaintiff shall recover his land, and double damages, and besides the kings officer shall be in the grievous mercy of the king, for doing injury in his name to the subject.

Therefore in a real action, if the escheator (of whom this statute speaketh) be examined, and upon his examination faith generally, that he hath seised the lands in demand into the kings hands; this is not good, and the action shall proceed, for he mult have the cause of the seise, (as is implied in this act) which cause, if it appeare to be against the law, the judges of the law ought to disallow the same.
NUL minister le roy (1) ne main-
tain (2) per hug, ne per auter, les
plus, parols, ou beignes que est en
la court (3) le roy (4), des terris, te-
ments, ou des auters choses (7), pur
avoir part de ceo (5), ou auter profit
(6) por covenant fait (8). Et que le
fro, hit punie a le volant le roy (9).
Vide Champertie. II Ed. 1.

(1) Nul minister le roy.] Fleta in rehearsing this statute, faith,
whom minister regis enjuft commis fuerit officii, &c. and another statute
provided against all others. Minister regis was taken in this kings
time to extend to the judges of the realm; for in the case of justice
Heigham for a scandall, and reproachfull words spoake unto him,
the record faith, fecit honor * et reverentia, qua ministriis domini regis
attribuuntur, ipsi regi attribuuntur; ita dedecus et infamia, qua
ministri domini regis inferuntur, ipsi regi inferuntur: in which
record and many other of that time [ministri regis] extend to
the judges of the realm, as well as to them, that have ministeriall
offices.

(2) Ne mainaine, &c.] Of maintenance shall be spoken in the
expostion upon the 28 and 29 chapters of this parliament.

(3) Queus sunt en la court.] By these words it is declared, that
regularly champerty is pendente placito, and therefore a scofflement
after judgement is not within this statute.

(4) En la court le roy.] That is, in some of the kings courts of
record.

(5) Par avoir part de ceo.] Here is champerty forbidden by
this act: first, therefore it is to be seene what champerty is; and
fendently, whether it was not prohibited by the common law
before this act; and lastly, what was the cause of the making of the
name.

Champerty is derived from two Latin words, campa et parte, and
therefore champerty is a bargain with the demandant or tenant,
plaintif or defendant, to have part of the thing in suit, if he
prevail therein, for maintenance of him in that suit: it is called
campi partes, because he shall have a part of the field or land, &c. in
demand, in the statute called definitio consequatur, champertors are
called campi participes, and are thus describde, campi participes sunt,
gai por se vel per alios placita movent, vel moveri faciunt, et ea fuit
foxtidus proponentur, ad campi partem vel pro parte luceri habend.

Ever, champerty is maintenance, but every maintenance is not
champerty; for champerty is but a species of maintenance, which is
the genus.

It
It was an offence against the common law; for the rule of law is, culpa est si immiscere rei ad se non pertinenti. And, pendent il nihil invictum.

Braith, who wrote before this statute, reseasoning the articles enquiring by the justices in camera, de excessibus quic, et alibus baliorum, si quam item, jus situavit, occasione habendi terras velcol., vel perque templi, vel ab viri, vel ab obvius, vel ab omnibus, vel ab omnibus capit; and Fleta, recte within, where it is paid, per quod justitia et veritas occultar; it appears that the end of champerty and maintenance is to suppress justice and truth, or at least to work delay; and therefore it is malum in se, and against the common law.

And the Mirror, faith, en perjury chias, &c. tonts ceus minjor le roy, qu. maintenient faux actions, faux appeales, ou faux dominent aeficient.

An act of maintenance did lie at the common law, and maintenance in genere was against the common law, a fortiori champerty, for that of all maintenances is the word.

And our act and other acts concerning champerty prohibited maintenance, and champerty en ceuit le roya, yet an act of maintenance in the nature of an act of trespass diec lie in ancient demesne, and other base courts at the common law.

As it is said in our books, this act and other statutes concerning champerty and maintenance doe give a greater punishment against them, that offended in maintenance and champerty then was at the common law; by this act he shall be punished at the will of the king, i. by his justices, so as champerty is both malum in se, by the common law, and malum prohibitum, by this act.

And for that the kings ministers or officers within his courts, were in place to doe more mischief therein to the subverting of justice and truth then others, therefore this act provided only against the kings ministers and officers of his courts.

Note it is provided by this act that no minister of the king should maintain to have part, so that hereby it appeareth that it is no champerty unless the land to maintain, &c. be made for maintenance; note the words of the wight of champerty be affianced maintenat, or mainer, &c. But see after the 29 chapter, some persons prohibited to purchase at all pendente placio.

(6) * Ou auter profit.* If the tenant in a real action grant a rent common, or outer profit apprendre out of the land to maintain, &c. this is champerty, and yet the rent, common, &c. is not in demand, but they are profits out of the land.

(7) Ou auter eloqia Within these words are included leases for years; and other goods and chattels, debts and duties.

(8) Per covenant fait.* That is, by agreement, either by word or writing; for adias in the common fene a covenant is taken for an agreement by writing, yet convenio in his large fene is taken (is here it is) for an agreement by writing, or by word.

(9) Il ferra pono a la volatile le roy. See before cap. 4, 9: 20, and hereafter cap. 26, 29.

This act concerning champerty is the foundation of all the sta and book cafes that ensued.
The text on the page appears to be a legal document discussing the duties and responsibilities of sheriffs and the administration of justice. It references ancient legal practices and terminology, indicating its historical and legal significance. The text is a transcription of the Latin manuscript, and it is a part of the "Westm. primer" section, likely from a medieval legal text.

The content of the document is as follows:

**Cap. XXVI.**

**And** that no sheriff, nor other the king’s officer, take any reward to do his office, but shall be paid of that which they take of the king; and he that so doeth, shall yield twice as much, and shall be punished at the king’s pleasure.

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**Textual Notes:**

1. *Minister le roy.* Under these words, the law beginning with *minister le roy,* are understood escheators, coroners, bailiffs, gaolers, the king’s clerk of the market, aulnager, and other inferior ministers and officers of the king, whose offices do any way concern the administration or execution of justice, or the common good of the subject, or for the king’s service; that none of the king’s officers or ministers do take any reward for any matter touching their office, but of the king. And some do hold that the kings’ heralds are within this act, for that they are the king’s ministers, and were long before this statute.

2. *Ne prigne reward par faire son office.* See before cap. 10. *regis fr.m.;* and Fortescue hath, Quod vicinates jurabit ipse suorum Dei conserva inter articulis alias quod bene, fideliter, et indifficienter servet, et faciet officium suam timido illo anno, neque aliquid recipiet clerus, aut caufa officii sui ab aliquo solus, quam a rege; and note it is not said, that he shall take no reward generally, but no reward to doe his office. *Pide deviant,* cap. 10.

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**References:**


**Editor’s Note:**

The text is a transcription of the Latin manuscript, and it is a part of the "Westm. primer" section, likely from a medieval legal text.

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**Related Legal Concepts:**

- Minster le roy
- Minister le roy
- Sheriffs
- Coroners
- Bailiffs
- Gaolers
- Clerk of the market
- Aulnager
- Herald
- Common good of the subject
- Administration or execution of justice
- King’s officer
- Reward for office
- Punishment

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**Historical Context:**

The text is reflective of medieval legal practices, focusing on the duties and responsibilities of sheriffs and other officers of the king. It discusses the enforcement of laws concerning the administration of justice and the appropriate compensation for public officials. The document emphasizes the importance of maintaining the integrity of public service, particularly in the context of judicial duties.
for doing their office, but of the king, then had they no colour to
exact any thing of the subject, who knew, that they ought to take
nothing of them.

But when some acts of parliament changing the rule of the com-
mon law, gave to the said ministers of the king fees in some par-
ticular cases to be taken of the subject, whereas before without any
taking at all their office was done, now no office at all was done with-
out taking: but at this day they can take no more for doing their
office, then have been since this act allowed to them by authority of
parliament.

This statute doth add a greater penalty, then the common
law did give, for by this act the plaintiff shall recover his
double damages, and besides they shall be punished at the will
of the king, that is, by the kings justices, before whom the case
depends.

C A P. XXVII.

ET que nullus clerke de justices, desche-
tor, ou denquiro (1), nullum ne
preigne par livrer chapters (2), for-
prius jolument clerks des justices errants
en leur eyres, et est ii. s. et nient plus
de chesunwapentake, hundred, ou ville,
que responde per xii. en per vi. (3)
solonge est que auncientment fuit sii.
Et que auermant le fra, rendra le tresbe
de cee quel avera prise (4), et perdra la
service de son feigneur per un an.

AND that no clerk of any justice,
descheator, or enquirer, shall
take any thing for delivering chap-
ters, but only clerks of justices in
their circuits, and that ii.s. and no
more, of every wapentake, hundred,
or town, that anwereth by twelve, or
by six, according as it hath been used
of old time; and he that doth contrary
shall pay thrice so much as he hath
taken, and shall lose the service of his
matter for one year.

For the better understanding of this act, the manner of the
proceeding by the justices in eyre in their eyre is to be known.
First, they had their authority and power by writs, which writs
were at their sessions first read, Quibus auditis, guidam major coram
et disseretur publice coram omnibus propropit que fit causia adventus
coram, quae fit utilitas itinerationis, et que commoditas, si fax ob-
serveretur, &c. The charge being given, then were the bay-
lices of the hundreds * called, and their names enrolled, and
every of them sworn that out of every hundred they should chose
four knights, who forthwith should come before the justices
and should be sworn, that they should choose twelve knights, of
free and lawfull men, if knights could not be found, &c. by whom
the business of the king the better, and with greater profit might
be expedited; who being returned and sworn, then should be
read to them the chapters or articles of their charge in writing
indented, the one part whereof was delivered to them, and the oth-
part remained with the justices: and commandement was given to
them by the justices, that to every chapter or article they should

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Cap. 28. Westm. primer.

answer in their verdict severally and by it selfe, sufficiently, distinctly, and openly.

Capitula vero que illis duodecim proponenda sunt, quandocque variantur, sequantur varietatem temporum et locorum, et quandoque augmentur, quandoque minuuntur.

But the ordinary chapters or articles, as it appeareth by capitula initin, amounted to the number of 138, or thereabouts.

(1) En quiror.] Prefently after the making of this statute, there was added to the chapters of the eyre the effect of this act to be inquired of, viz. De clericis judiciariorum, eisbactorum, vel aliorum ministrorum capiendibus denarios pro capita deliberand. &c. Where enquirors or inquisitors are included under the name of ministri.

Before this statute, not only the clerks of the justices, but of escheators and other ministers and officers, that followed the eyre, did use to write them, who would doe it readily, sufficiently, and with lesse charge, which was born by the twelve of every hundred. This liberty that the subject had, could not be refrained but by act of parliament, and therefore two things are hereby provided. 1. That no clerks, &c. but only the clerks of the justices errants in their eyres, should deliver the chapters. 2. When this act of parliament had drawn it to the hands of the clerks of the justices in eyre, it was necessary to let down in certain, what they should take, and that was but 2 s. of every hundred, which they well delivered, and the county thereby much eased.

(2) Pur hecuer chapter.] Capitula are derived a capitio, the highest and principal part of man, so when matters are distributed into principal articles, they are said to be digested into heads, which thereupon are called capitula: what is intended here by chapters, is declared before.

(3) Que respond per 12. ou per 6.] For some hundreds were so decayed, as they used to answer to the chapters or articles by 6. as before time had been anciently used.

Now how this chapter could be understood without reading of the ancient authors and old records, let the indifferent reader judge.

(4) Et que autem non lefra rendro le treble value de eo que il aver trejs.] That is to say, if any clerk, but the clerks of the justices in eyre, did for reward deliver the chapters, or if the clerks of the justices in eyre for the delivery of them did take above 2 s. they should render to them of whom they tooke treble so much as they received, and besides lose the service of their master for one yeare.

C A P. XXVIII.

Et que null clerk le roy ne des justices receivra dijormes presennent del cheif, dont plea ou contre sait en la court le roy, sans specialle comage le roy, et est defende le roy sur painede perdre lechif.

And that none of the king’s clerks, nor of any justicier, from henceforth shall receive the presentment of any church, for which any plea or debate is in the king’s court.
court, without special licence of the
king; and that the king forbidden,
upon pain to l. fe the church, and his
service: and that no clerk of any ju-
jticer, or sheriff, take part in any
quarrels of matters depending in the
king's court, nor shall work any
fraud, whereby common right may be
delayed or disturbed; and if any is
do, he shall be punished by the pain
aforesaid, or more grievously, if the
trespasses so do require.

(Regist. 182. 189. Rast. 179. 427, &c. 28 Ed. 1. c. 11. 1 Ed. 3. sat. 2. c. 14. 4 Ed. 3. c. 14.
20 Ed. 3. c. 4. 1 K. 2. c. 4.)

1. This act is divided into four branches, first, that no clerk of
the king, nor of any justice receive any presentment to any church,
whereof any plea was depending in the king's court; the mischief
before this act was, that depending a suit for a church in the king's
court, the one party or the other would present the chaplain of the
king, or of some of the judges, the more to countenance the one
party, and discourage the other, and the mischief was the greater
for that at this time, cum aliquis jus præsentans, &c. pro nova
versit ad aliquam ecclesiam, et quis præsentans sit admissus (i. si
sit) quis qui versus est patronus per nullum aliud breve recuperare potest,
secundum quem quam per breve de reed.

2. The second branch containeth the punishment, viz. that if he
doeth it without the kings licence, he shall lose the church, that is,
that the church shall be void as unto him, and that he shall lose
his service, that is, that be not after chaplain to the king during
one year. And at this time divers ecclesiastical persons were
not only clerks in the chancellery, and other the kings courts,
but also stewards of household to noble men, justices, and other great
men.

3. The third branch is, that no clerk of any justice or sheriff
shall maintain any party in any quarrel, or business depending in
the king's courts.

(Ne maintene parties, &c.) Ne mainteneas, whereof commeth
the word of art maintenanta, or maintenio, derived a manus et ten-
manus doth not onely signifie power or help by word or coun-
tenance, but manus is herein used, for that most usually main-
tenance is done by the hand, either by delivery of money, or other
reward, or by writing on the behalf of one of the parties in a
suit depending.

It is in the Register thus coupled, maintennent et sustentacio,
and sustentare is properly to underprop any thing that is likely to
fall.

Maintenance is an unlawful upholding of the demandant or
plaintiff, tenant or defendant in a cause depending in suit, by word,
writing, countenance, or deed.

This maintenance (as hath been said) is malum in se, and against
the common law, and that is notably proved by this act, for hereby
main enunci.
maintenance is branded with this quality that whereby common
right is delayed, or disturbed, and consequently against the common
law.
And it is to be understood, that *manutenentia est duplex*, that is to
say, *curialis*, that is, in courts of justice, *pendente placito*, and of
this the said description is given; and *vuralis*, that is, to stir up
and maintain querels, that is, complaints, suits, and parts in the
country, other than their own, though the same depend not in
place, and this is punished with great severity, as by the acts there-
for provided appeareth.

*Manutenentia curialis* is divided into lawfull, and unlawfull, and
into general, and specially, as shall be shewed in his proper place,
etc. in the exposition of the act of 28 Ed. i. *Art. super cart.*

(2) *Nel clerke de justice ne de viceount.* These were prohibited
by this act, as before hath been laid, to do more mischief, that is, by their maintenance to disturb or
delay common right.

(3) *Ne fraudet et facie.* This word is worthy of the punishment
inflicted by this act, for that it tendeth to delay, or disturb common
right, that is, the due proceeding of law.

(4) *Par common droit deuyer ou disturber.* These words refer as
well to maintenance, as to fraud.

4. The fourth branch is the punishment, which evidently ap-
peareth by the act.

**C A P. XXIX.**

*Purview est ensenment, que si ul serjeant, counter (1) ou auter (2)
face un maner de deceit (3), ou de col-
lusion en la court le roy, ou consent de
couer le, en deceit de la court, pur en-
ciel ou court, ou la partie, et de cec
fait estant, lors paut et la prizonment
du an et un jour, et ne soit oye en la
court il roy a counter pur nullity (5).
Et si cec fait auter que count', per
moyne le maner est la prizon du an
du an du jour a tout le meins. Et si le
trois pas demande greindre paine, fait a
voulant le roy (6).*

(R 2. c. 4. 10 H. 6. c. 4. 18 H. 6. c. 9. Ral. 2. 11 Ed. 4. 3. b. Palmer, 283. Salk. 517.)

Before this statute, in the irregular raigne of H. 3. serjeants,
apprentices, attorneys, clerks of the kings courts, and others did
practise and put in use unlawfull shifts and deviles so cunningly
contrived (and specially in the cases of great men) in deceit of
the kings courts, as oftentimes the judges of the same were by
such crafty and sinister shifts and practices inveged and beguiled,
which
which was against the common law, and therefore this act was
made in affirmation of the common law; only it added a greater
punishment: for here what the Mirrour faith of the serjeant a
law, what his office and duty was: Chfeun serjeant counter of
chargeable per ferment que il ne manteniera, ne defendra tort ne
faixime a fou fient, cins gueverpa fou client, a quel breue que il put fa
rort a percevoir. Ainsi que il ne mitter in court fous delitis, ne fous
seizignes ne moovera, ne prefera, ne aux corruptions, decit, menajage,
ne aux fautes lies ne conffierera, mes loialment manteniera le droit de
fou client, que il ne chiet per follic, negligence, ne defaut de loy, ne de
reience que a luy apriprendroit de prononcer et per moflerie, leding, defly-
sier, coup, polie, tayfon, manecce, noife, ne vilenie, ne disfurbera juge,
party, serjeant, ne aout in court per quy il disurbe droit ou audence.
In former times learned and grave apprentices of law came not
to this lute and degree per ambitum, but contrariwise when they
were called thereunto, they affayed all means to avoid it, taking
the degree of an apprentice to be the more permanent place:
taking one example for many; in the 5 yeare of H. 5. John blin-
tine, William Babington, William Pole, William Welsbary, John
June, and Thomas Rolfe, six grave and famous apprentices, having
writs delivered unto them to take the lute and degree of serjeant
read language in Michaelmas termes, when all the meares which they
had used could not prevail, they at the returne thereof in cancey
abolitely refused the same; whereupon they were called into the
parliament then sitting, and there charged to take the lute and
degree upon them, which in the end they did, and divers of them
afterwards did worthily serve the king in the principal offices
of the law, as by our books appereath.

(1) Serjeant counter.] Of his antiquity and calling ad flatum
et gradum servientis ad legam, I have spoken in another place. In
ancient books he is called, counter, or narrator of the court or
declaration, being grounded upon the original I writ, the foundation
of the suit: and serjeant being a generall word, counter is added
to it, to retire it to a serjeant at law. Vide ca. 30. And until
this day, when serjeants proceed, every of them counteth, that
is, reciteth count in an action appointed to him by the judges before
them.

The Mirrour faith, Counters font serjeants saccants le by di
vocent, que fervent al common del people a prononcer et defendre
actions in judgmemt, per ceux que miterent per loier, Se.

(2) Ou aout.] This extendeth to apprentices, attornies, clerks
courts, or any other.

For the better understanding of this act, it is necessary to set
downe the oath of the serjeant at law.

This oath consisteth on foure parts.

1. That he shall well and truly serve the kings people, as one of
the serjeants of the law.

2. That he shall truly counsel them, that he shall be retained
with, after his cunning.

3. That he shall not defer, tract, or delay their causes willingly,
for coveitousness of money, or other thing that may tend to his
profit.

4. That he shall give due attendance accordingly.

This oath consisteth on six parts.

1. That he shall well and truly serve the king and his people, as
one of the kings serjeants at law.

2. That
2. That he shall truly counsel the king in his matters when he shall be called.
3. And duly and truly minister the kings matters after the course of the law, to his cunning.
4. He shall take no wages or fee of any man for any matters, where the king is party, against the king.
5. He shall as duly, as hastily speed such matters, as any man shall have to do against the king in the law, as he may lawfully doe, without delay, or tarrying the party of his lawfull proces in that belongeth to him.
6. He shall be attendant to the kings matters when hee shall be called thereto.

The apprentice at law is not sworne.

Concerning attorneys, it is provided by the statute of 4 H. 4. cap. 18. that they that be good and vertuous, learned, and of good fame, shall be received, and their names put into the roll, and shall be sworne well and truly to serve in their offices, and specially that they make no fuit in a forein county.

Newton, chief justice of the court of common pleas, gave judgement of an attourny of that court, that had sued out a capias without an originall, that his name should be drawne out of the roll of attorneys, and that he should never be attorney in this court, nor in any other court of the king, and that he should not meddle in them in the law; and to perform all this, he in those days was sworne on a book. And Newton said to him, The king hereafter, when you shall have better grace, may pardon you by his letters patents, &c. and then you may be reforted againe.

(3) *Facie de maner de fideit.* This must be a misfellauns, and not a nonfellauns; for the words be do, *facie aliquam deceptionem in collusionem,* &c. And to illustrate this matter, it is good to put some examples.

A writ of *bebebe facias feiham* did falsly recite a recovery in a real action (where in truth there was no recovery at all) by colour of which writ a man was put out of his freehold; a this was a collusion in deceit of the court, and the delinquent was by this statute awarded to prison, &c.

b So it is to sue out a capias without an originall.

c Also to bring a *precipit* against a poore man, knowing that he hath nothing in the land, of purpose to get the possession of the land against the tenant who is in possession.

d To procure an attourny to appeare for a man, and plead without warrant.

If a serjeant, or an apprentice of the law in pleading a matter of fact infamous for his client, alledge the same to be done at a towne in such a county, where in deed he knoweth there is no such town, of purpose to delay justice, *et a enginer la court,* this is a deceit within this statute, and so it hath beene holden.

e A H. in execution in the counter of London, and because that prifon is a strait prifon, devised a shift (in deceit of the court) to be removed from thence to the Fleet, and his device was this: He made an obligation of xxl. to S. and causeth the obligation to be put in suit against himselfe in the name of S. and judgement in the court of common pleas was given against him upon his contesation, and procured a *habeas corpus cum causa,* and thereupon he was brought into the court of common pleas, and there one in the
name of S. prayed that he might be committed in execution to
the Fleet; and the court being beguiled, and knowing nothing
of this deceit, and subbill and false practife, committed him to the
Fleet, where S. never had such a debt, nor ever was privie to any
of the said proceedings, A. H. and his counsellors, &c. are within
this statute.

This act is also in affirmance of the common law, for fraud and
falsehood is against the common law: and therefore if the client
would have the attourney to plead a false plea, he ought not to doe
it, for he may plead quod non est veraeius informatus, et idem non
est responsum, &c. and that shall be entred into the roll to save him
from dammages in a writ of deceit: and if an attorney ought not
wittingly to plead a false plea, a forti or, a ferjeant or an appren-
icce ought not to doe the same.

(4) Fur enginer (or engingner) le court ou la partie.] That is,
to beguile the court, or the partie, as by the examples before ex-
pressed, have appeared.

And this artificial deceit is of all other the worst, for hereby
the matter is sti triked, shadowed, and heightned by colour of
painted art, as thereby the judges themselves are abused and
beguiled.

(5) Eit la prisonment dum an, & ne soit eye en la court le regy
counter per aulgy.] This punishment extends as well to the appren-
tice, as to the ferjeant.

(6) Sei a volent le regy.] These words are before expounded,
cap. 4. &c.

William de Wallhill plaintiff against Matthew of the exche-
quer, in an action of deceit, and declared, that where he had de-
mised to the said Matthew certain lands in Wyrlinge, in the
county of Worcester, and Blakgreve in the county of Warwick
for the term of twelve yeares, and covenanted by fine to suffer
the same, the said Matthew other lands in the said fine fraudulently
did infringe, to have and to hold in him in fee, to the detrition of
the plaintiff, &c. This matter was trented of, and examined by
all the judges of England, and the treasurer and barons of the ex-
chequer in the presence (faith the record) of Henry de Lacy earl of
Lincoln, master William de

bishop of Lly, and Robert
of Tiptet, and others: and, to use the words of the record,
Super examinationem tam ipsius Matthei quam recordorum, comparti-
cet, quod haec et alia perseveravit in deceptionem curiae: and thereupon
judgement is given, Quod committatur gaude ibidem moratur, per
nunnum annum et nunnum diem secundum * flattum, et finis * cestiar.
The quashing of the fine was by force of these words in this sta-
tute, Et si le irefus demand gridend paine, fiet a volunt le roy, that
is, of the kings court, where the plea dependeth.

Hec est finitae concordia foeta in curia domini regis apud Westm a
die Sancti Michaelis in m. dicis, anno regni regis Edwuardi filii re-
gis Henrici tricesimo tertio; curiae: Redolpho de Hengham, Williame de
Bersford, Elia de Bingham, Petro Malore, Williame Howard, &
Laundero de Tringhamen juftitie, & aliis dom ni regis fidilibus tunc ibi
praecentibus, inter Regernm de Gamege, & Cecilium excorn gyn pere-
entes, & Iohanne fijlim Iohanns de Ralbingam defor de duabus
mijiusquis, quiuquiijsita & duabus ovacis terrae, & una aera bofi, &
dima' m. aera pasture, & mediate ejus aera praeti, cum pertinenti-
tis in Ralbingam, unde plactum convocitionis summonitium fuit inter
A render to Cecilia, which was not party to the consians.

This fine being removed coron regis; the heirs of John Bal-

ingham, viz. Cecilia the wife of Roger Burghull, and her hus-
band, and Sibyl and Cecilia daughters and heirs of Magerice,
brought a writ of deceit, &c., for the avoiding of the fine: af-

nunis (Istithe the record) prædictum finem minus vitam in

deceptione curie regis, et in exhaereditationem heredum prædicti, eo

cui prædicta tenementa in præd.; fine contenta sunt de manrio de

Billingham, quod est de antiquo domino corona Angliae. After-

wards Roger and Cecilia his: i.e., upon their default were lea-

vered, and Sibyll and Cecilia sued forth, and prayed that the fine

for the cause aforesaid, revocetur et penitus admittere, and the court

in this case resolved thus, Et qua varia curie quod præd. Sibylla

a Cecilia filia præd. Margerice ab breve finem præd. respondeat non
debitis, et prædicta Johannis filius Johannis antececor earnundam,

et si modo ecxitet præd. finem abmittere, admitteri non debuit:

and yet the record proceeded for the punishment of the deceit to

the court in these words, Quantum est à præfatis Rogero de Gamage,

et Cecilia uxore ejus, quod respondeant ad deceptionem et collusionem

curie domini regis præd. Et qui dicit quod præd. tenementa in pre-
dicto fine contenta sunt ad commumem legem placitabilis, et aperte

suum, qui non extat memoria bacufque, &e., et non fieri breve clausum

de re, &e., eo quod non sit de antiquo domino, &e., et de hoc post

fib suprarent, &c. Ideo venire jurata coron regis à die Pas-

tis in quodomin dies ubicunque, &c.

There is a chapter added amongst the acts made in W. 2. anno

13E. i. the last chapter having one in these words, chancellors,

transact, justices, ne nul del council le roy, ne clerck de la chauncery, ne

del seigneur, ne de justice, ne dauter minister, ne nul del bofle l'roy ne

car, ne roy, ne puet receiver eglises, ne aducitcion de eglises, ne t're ne

lament ou fee done, ne per achete, ne a farme, ne a champerty, ne

car actus, tanque come le chofe est en plea devant nous, ou devant

de nous ministres, ne nul lower en fait pris, &c.

It is certain that this chapter was not enacted in 13 E. 1. therefore

it is to be seen when it was made a law.

First, Fleta coupleth the 25 chapter of this parliament of W. 1.

and the said chapter inserted into W. 2. together; whereby it

seemeth that it was made at this parliament.

2. It is enacted in the French tongue, as this statute of W. 1.

is, and all the rest of the statute of W. 2. is in Latin.

3. It hath the same phrase and manner of penning that the 25.

and 29. chapters of this act of W. 1. hath.

4. The statute of champerty made in the 11 yeare of E. 1.

(which was before the statute of W. 2.) reciteth the effect of this

chapter,

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chapter, and the 29 chapter of the parliament of W. 1. for by the
said act of 11 E. 1. it is recited, Come contene soit in nostre statute,
que ned de nostre court priegne ple a champerty per art ne per engis,
which is a summary recital of the said act inserted, as is aforesaid,
among the statutes of W. 2. for the chancellor, treasurer,
justices, &c. are all of the kings courts, and it was fitter to rehearse
them generally, then by particular names.

And further, the said act of 11 E. 1. reciteth this 29 chapter
concerning counters, attourneys, and apprentices, and others, as
Flcta doth, rather by way of explanation, then in the same
words.

5. There is no one act in W. 1. so general as this rehearfall in
the 11 E. 1. is, for the 25 chapter is not minister, and this is not ge-
nerally without limitation.

6. Mention is made in the recital of the said act of 11 E. 1. of
officers des hauz bome & auters de la terre, and in no statute before
that, any mention is made des hauz bome, that is, of the chan-
cellar, treasurer, the kings counsellors. &c. but only in this act,
which is inserted among the statutes of W. 2.

7. And where by the 28 chapter, provision was made against
the clerks of the king, and of the justices, and by the 29 chapter
against ferjeants, apprentices, attournies, and others, it had been a
great omission and defect in the makers of these laws, to have left
out the great officers and justices themselves of the kings courts,
and others recited in this act inserted in W. 2. against whom it
was more necessary to provide, then against the other, because
they had more power to offend; and the law had not seemed
equal, if provision had not been made as well against the ma-
jorities, as the minorities, the great, as the small.

8. The said act inserted into W. 2. inflicted punishment (a la
volunt le roy) the act of 11 E. 1. doth add hereunto three years
imprisonment, for dignitas personne auget pænam.

En fer. That is, in fee simple.
Per done.] That is, by a gift in taile.
Ne per acabate.] That is, by purchase for mony or other con-
ideration.

Ne a farne.] That is, by lease for life, or for yeares.
Ne a champerty.] This hath beene explained before, chap. 25.
Ne en auter maner.] These be generall words, and forbid all
purchases pendente placito by the persons named in this act; which
is worthy of observation, to make a diversity between these per-
sons herein named, and others: see before cap. 25. and note well
the books there quoted.

A volunt le roy.] This is explained before cap. 4. &c.

Auxilium celoy que purchase come celoy que le fia.] Note the pu-
nishment lieth by this act equally, as well upon the giver as the
taker.
CAP. XXX.

Et par cee que multiz des gents se plutgient des servijants (1), criours de fee (2), et les marshals des justizes (3) en ceyre, et [dauers justizes] quelles prendent a tort et doures de ceux que eux recuperer seifin del terre, ou queux guignent leur querelles, et de fine leceve, et des jurors, villes, prisoners, et des autres attaches en places de la corone, autament que faire ne daissen, en mutis des manners, et de ceu quil ad plus grand number de ceux que eftre ne daiz (4), per que le people est malement greve; le roy defende, que celtes choses soient disformes faits. Et si ull' ferjant de fee le face, office fair prife en le maine le roy. Et si marshals des justizes le facient, soient punis grevement a levolunt le roy. Et a touts les plain-tifs un et lauter rendre le treble de ceux avers priz en cel maner.

AND forasmuch as many complain themselves of officers, cryers of fee, and the marshals of justizes in eyre, taking money wrongfully of such as recover seisin of land, or of them that obtain their suits, and of fines levied, and of jurors, towns, prisoners, and of others attached upon pleas of the crown, otherwise than they ought to do, in divers manners; and forasmuch as there is a greater number of them than there ought to be, whereby the people are sore grieved; the king commandeth that such things be no more done from henceforth; and if any officer of fee doth it, his office shall be taken into the king's hand; and if any of the justizes marshals do it, they shall be grievously punished at the king's pleasure; and as well the one as the other shall pay unto the complainers the treble value of that they have received in such manner.

Vide Mirror, c. 5 § 4. Britton 37. b. (11 Ed. 4. 3. b. 4 Infr. 101.)

(1) Servijants.] Fleta rendereth these words thus, virgatores servijantes, they were called virgatores à virgis, of white rods, which they carried in their hands before the justizes in eyre and other justizes.

(2) Criers de fee.] It appeareth by Fleta that these are comprehended under the generall name of virgatores, and therefore carried rods alfo, he rendereth thefe words clamatores de feado.

(3) Et les marshals des justizes.] Juficiariorum marshallii.

(4) Et de cee que il ad plus nombre que eftre ne daiz.] Hereby it appeareth, that the over-great number of these virgers, cryers, and marshals, was a means of extortion, or grievance of the people; and fo it is in all other cases of what profession or place ever, Multitudo imperatorum perdidit cariam: besides it taketh away the dimansion and credit of the fame.
De ceux quez parient outragious
tollz (1), encontre common usage
du realme en la ville merchandie (2):
purview est, que si out de face en la
gle roy menez, que fait bail a fee farme,
le roy prendra le franchise (3) del
marche (3) en sa maine. Et si soit au-
ter ville, et cez soient fait per le feigneur
de menez la ville (5), le roy le fra per
menez le maine. Et si soit fait per la
baillife sans le commandement le feigneur,
il rendra al plaintiff au tant
par l outragious prise; com il avoit
prise de lay, si les import son tolne: et
il avera prifon del xl. jours. Des ci-
tizenz, et des burgesses a que le roy ou
sonpere ad grant murage par leur viles
encloser (6), et que tiel murage parient
aumernt que leur est grante, et de ce
soient attaintes: purview est, que ils
parient col grant de touts le temps (6)
que serva a vever, et ferraent en le griev-
sus mercy le roy.

TOUCHING them that take
outragious toll, contrary to the
common custom of the realm, in
market-towns; it is provided, that if
any do so in the king's town, which is
let in fee-farm, the king shall seize into
his own hand the franchise of the mar-
ket; and if it be another's town, and the
same be done by the lord of the town,
the king shall do in like manner; and
if it be done by a bailiff, or any man
officer, without the commandment
of his lord, he shall restore to the
plaintiff as much more for the ou-
tragious taking, as he had of him; if he
had carried away his toll, and shall
have forty days imprisonnment.
Touching citizens and burgesses, to
whom the king or his factor hath
granted murage to enclose their
towns, which take such murage other-
wise than it was granted unto them,
and thereof be attainted; it is pro-
vided, that they shall lose their grant
for ever, and shall be grievously
amerced unto the king.

In the troublesome and irregular rainge of H. 3 outragious tolls
were taken and usurped in cities, boroughs, towns, where faires
and markets were kept, to the great oppression of the kings ob-
jects, by reason whereof very manny did refraine from the com-
ing to faires and markets, to the hindrance of the common-
wealth; for it hath ever been the policy and wisdom of this
realm that faires and markets, and specially the markets, be well
furnished and frequented.

(1) Toll. For the generality of the word, see Jethn Wegs
cafe, lib. 8. Magna Charta, and W. 2. wherein, and of the severall
kinds thereof, more shall be said in the exposition of the statute
of W. 2. for that here it is restrained, as hereafter appeareth.

Outragious. That is, either where a reasonable toll is due,
and excessive toll is taken, or where no toll at all is due, and yet
toll is unjustly usurped, for it is an outrage to doe such a common
injury and wrong; sometime it is called superfluum, vel indebtedum, vel
injustum.
No toll is due either on the part of the lord, when he hath a
faire or market, and not any toll; or on the part of the market-
man, who ought to be discharge of toll, or of the thing sold that
is not tollable.

(2) *En la ville merchantie.* That is, in a city, borough, or town
of merchandize, where faires and open markets are kept, for mer-
chandizing, and buying and selling.

This is intended of toll to the faire or market, whereof we will
only speak in this place.

Toll to the faire or market is a reasonable summe of money due
to the owner of the faire or market, upon sale of things tollable
within the fair or market, or for tallage, picage, or the like.

And this was at the first invented, that contracits might have
good testim ny, and be made openly; for of old time, privy
or secret contracts were forbidden, and the Mirror said truth, for the
ancient law was, *Negotiator in ulgo si qui mercatus fuerit in eam
tum testimonia habere; nemo extra oppidum, nisi præsente proposito
dilige fide dignis dominibus, quicquam emit.* And another, *Ne quis
extra oppidum quid emit; in thes laws oppidum is taken for faire or
market.*

And again the same king, *Si quis referat rem aliquam mercatus
fuisse, quam alius deincuts quisque fuisse esse contenterit, eam venditor
prostit, utque in se recipiat, non se forens fuisse ingeniosus fuerit: die aut-
ten domino nemo mercaturam facito; il quod si quis egerit, et ipsa
merce, et 30. præterea solidis multat.*

Here note by the way two things, first, the antiquity of the law
for changing of property, according to these ancient laws, and
therefore to this day it is called, *apertum forum, or aperus mercatus,*
an open market, or market overt; and secondly, that no merchan-
dizing shoulde be on the Lords day.

*Bonomum (sine fidejussione, et testimonio) emptio, aut perpetuatio non
esse.*

*Si quis tebibus non adhibitis quicquam fuerit mercatus, idemque alter
ui suum ipsius proprium vendicaret, emptor nullas fiat advocandi potestas,
serum is domino ren reddito,* &c. Which I have recited for the
confirmation of the Mirror, and for the honour of venerable
antiquity.

Every one, that hath a faire or market, ought to have it by
grant or prescription; if the king grant to a man a faire or
market, and grant no toll, the patentee shall have no toll, for toll
being a matter of private for the benefit of the lord is not inci-
dent to a faire or market so granted without a speciall grant, as
it was adjudged in the case of Northampton, for such a faire
or market is accounted a free faire or market; and there it was
also resolved, after that such a grant made the king cannot grant
a toll to such a faire or market without *quid pro quos* some
proportionable benefit to the subject. Lastly, it was there re-
olved, that if the toll granted with the faire or market bee out-
ragious or unreasonable, the grant of the toll is void, and that
the same is a free market or faire.

But if the king grant unto one a faire or market, he shall have
without any grant a court of record, called a court of pipowdres,*
as incident thereunto, for that is for advancement and expedition
of justice, and for the supporting and maintenance of the faire or

* [ 221 ]

Braet. 15. c. 34.
17 E. 4. c. 2.
R. 3. c. 6.
7 E. 4. 23.
13 E. 4. 8.
or market; and so note a diversity between the private and the publique.

* No toll for any thing tollable brought to the fair or market to be sold, shall be paid to the owner of the faire or market before the sale thereof, unless it be by custome time out of mind used, which custome none can challenge that claim the faire or market by graunt within the time of memory, viz. since the reign of King R. I. which is a point worthy of observation for the suppreffion of many outrageous and unjust tolls incroached upon the subject to be punifhed within the purview of this statute. So none, it is better to have a faire by precription, then by graunt.

Also if the lord or owner of the faire or market doe take toll of the seller of horfes, &c. he is to be punifhed within this statute, for he ought to take it of the buyer onely. Vide 2 & 3 Ph. & Mar. & 31 Eliz. And so de communi jure no toll shall be paid for things brought to the faire or market, unleffe they be fold, and then toll to be taken of the buyer; but in ancient fares and markets toll may be paid for the standing in the faire or market, though nothing be fold.

If the king or any of his progenitors have granted to any to be discharged of this toll either generally or specially, this grant is good to discharge him of all tolls to the kings owne faires or markets, and of the tolls, which together with any faire or market have been granted after such grant of discharge, but cannot discharge tolls formerly due to subjests, either by graunt or prescription.

Whereof Bracton said, In omni libertate concessa, &c. est privatio prehendenda. And againe, Est enim poterit libertas, ut se quis tenetur ad duodenum ex servitate, sic auet theologiam et confusitudinum, ex libertate defendi potest ad non dendum, item se ex servitate tenatur quis ad non capitandum, ex libertate concessa capere possit confusitudinum a theologiam.

Tenants in ancient demesne, for things comming of those lands shall pay no toll, because at the beginning by their tenure they applied themselves to the manurance and husbandry of the kings demesne, and therefore for those lands so holden, and all that came or renewed theuerupon, they had the said priviledge: but if such a tenant be a common merchant for buying and selling of wares or merchandifies, that rise not upon the manurance or husbandry of those lands, he shall not have the priviledge for them, because they are out of the reason of the priviledge of ancient demeine, and the tenant in ancient demesne ought rather to be a husbandman then a merchant by his tenure, and so are the books to be intended. And herewith agree the ancient record, the effect whereof is, Quod hii qui clamant esse inimiacus de theologiam praebendo, ut tenent in antiquo domino, vel per chartas regum, non debent defirgiri pro aliquo theologiam pro merchandizis ad eſtas suas propriae emptis; ita pro merchandizis qui emergent vel veniderint ut mercatores, debeat solvere pro eis.

King H. 3. did grant to the abbot of L. and his successors, Quod ipsi et homines suipu sunt quieti ab omni theologiam in omni foro et in omni-bus mundinis, &c. And there it is resolved, that the abbot should have this priviledge by force of this general graunt in this manner, Quod ipsi et homines suipu sunt quieti a praebitione theologum in omnibus mundinis.
Cap. 31.

Westm. primer.

The king shall not pay toll for any of his goods, and if any be taken, it is punishable within this statute.

(3) Marsebe.] This word doth here include as well a faire as a market; for forum, from whence faire is derived, signifies both:

and a mart is a great faire holden every year, derived à mercès, because merchandies and wares are thither abundantly brought:

and mercatus is derived à mercando.

(4) Prendra le franchisé.] That is, shall seise the franchise of the faire or market until it be redeemed by the owner: but this is intended upon an office to be found, for in statutes incidents are ever supplied by

(5) Signior de mesme la ville.] That is, the owner of the faire or market.

Here I perfwade my felse fome would desire to know, what is due for toll to the faire or market: to which I answer, that I can tell what was due of old, and what was ordained in times past by ancient kings to be paid: for the Mirrour faith, Que faires et mar- kets se fissent per lieus, et que achaters de blee, et beafis donaient toll a la balises des feignours de markets, ou de faires, estoisavoir maile de dix feaux de bine, et de mynes, mynes, et de plus, plus al affreland, affrent que nel toll passait un dieu de un marner de merchandize, et cest toll sert trove pour teffmoigner les contrats, car efttonn prinzie contract faut defendre.

But at this day there is not one certaine toll to the market taken, but if that which is taken be not reasonable, it is punishable by this statute, and what shall be deemed in law to be reasonable, shall be judged, all circumstances considered, by the judges of the law, if it come judicially before them.

(6) Murage par leur villes inocfer.] Muragium, à nuro, as our a disclosing its, to wall in, or inclufe with wall a towne, under which word is here included a city and burgh.

Murage in a reasonable toll to be taken of every cart, wayne, horse laden coming to that towne, for the incluence of that towne, with walls of defence, for the safegard of the people in time of war, insurrection, tumults, or uprores, and is due either by grant or by prescription.

But if a wall be made, which is not defensible, nor for safegard of the people, then ought not this toll to be paid, for the end of the grant or prescription is not performed.

* He that hath burghbote granted to him, is discharged of murage granted afterwards: and although murage be here particularly named, yet are grants of like nature within the purview of this statute: as,

a Pontage.
b Paving.
c Keyage, &c.

(6.) Purand
(8) Pardent cel graunt de touts temps.] Here the whole franchise is forfeited, and to note a diversity between the word "prendra la franche," &c. and "pardon cel grand," the one implying a forfeiture as hath been said, and the other a forfeiture for ever, 4 for it is a misfire, et abuier: et thereof Bra‡on faith, Huiusmodi autem libertatis, &c. sintam quasi transfuuentur et quasi possidentur, &c. donec amiseris per absum, vel non uijum.

It is to be observed, that confutudines hath several signification in law: for sometime it signifieth cullome, which doth include all manner of tolls: and therefore Bra‡on faith, De novis confutudinis in terra, fo in aqua, quis eas levaverit, et ubi so called, because they colour things so taken under pretext of prescription or cullome, where there is none at all: and therefore here they are called novas confutudines, because they were new tolls or exactioms, under the veil of antiquity.

Fleta rendreth this last part of this chapter in these words: Item qui maragium ad vellam claudandum gravissim consequit, quam consuetus fuerit per certam regem, pertinet extera gratiam fusae concebistis, et graviter amisterutur.

And presently after the making of this act, the effect thereof is that justices in eire to enquire of it, was inferred in the chapters or articles of the eire in these words: Item de bis qui celerunt fiposita vel indebita tolleta in cistitibus, burgios, vel alios contra commun usum regni: item de crutibus et burgeinibus qui de maragio per damnum regem est concebistis, prse celerunt quam faciere deberent, seculaem concessitum deminuit regis finem.

The Mirror faith, touching murage, thus: Le point que ou que ceux que misisent marages ses perdent ne fuit misier donec effe; ur ley vost que chefean perdra son franchise que misi joura: so as this statute was made in that point for two purposes, viz. to affirm the common law, and to add a farther punishment, viz. to be grievously amercied.

C A P. XXXII.

Of such as take victual or other things to the king’s use upon credence, or to the garrison of a castle, or otherwise, and when they have received their payment in the exchequer or in the wardrobes, or otherwhere, they with-hold it from the creditors, to their great damage, and flander of the king: it is provided for such as have lands or tenements that incontinent it shall be levied of their lands, or of their goods, and paid unto the creditors, with the damages they have sustained, and shall make fine for the trespass; and if they have
que part des dets le roy, et autres lours perrnent des créanfors le roy, par faire le payment des mefnmes dets: pursieu.e eft, quils rendent le double, et joignent punies grevemcnt a la volrun le roy. Et de ceux queux perrnent chivais (4), ou charrettes a faire le carrique le roy, plus que mesulf feroit, et perrnent lours par [reléufer] sa chivais, ou ses charrettes. Pursieu.e eft, que si ul de la court le face, il serra grevemcnt chauflice per les marcehals, et si en fait fait hors de la court, [per eu de court] ou per auter que de la court, et il [ent] fait attaint, il rendra le treble, et serra en le prisson le roy per nl jours.

no lands nor goods, they shall be imprisioned at the king's will. And of such as take part of the king's debts, or other rewards of the king's creditors for to make payment of the same debts; it is provided, that they shall pay the double thereof, and be grievously punished at the king's pleasure. And of such as take horse or carts for the king's carriage more than need, and take rewards to let such horse or carts go; it is provided, that if any of the court do so, he shall be grievously punished by the marshals; and if it be done out of the court, or by one that is not of the court, and be thereof attainted, he shall pay treble damages, and shall remain in the king's prisson forty days.

(28 Ed. 1. c. 2. 21 R. 2. c. 5. 23 H. 6. c. 2.)

(1) De ceux queux perrnent vitalie. Concerning this point of purrennae, we shall refer the reader to Magna Chart. cap. 21. and shall say no more concerning that matter for three causes: 1. For the text of this law is eviuent. 2. For that there have been many excellent flatutes made concerning purveyours, and purveres, in all to the number of 48, which are fully and plainly penned, one of them being a good exposition and enlargement of this. 3. I find no book case, nor any report for the explication either of this or of any of the said flatutes, which (to say the truth) had more need of execution then exposition: and therefore either the purveyours have been so honest and just dealing men, as they seldom or never offended; or else they have had either so good friends, or so good hap, as their offences have beene covered, or not inspired to them.

(2) De ceux queux perrnent part des dets le roy.] The mischies before this flatute were, first, that in the raigne of king H. 3, the kings officers, that had charge of his treassure and revenue, or their agents would, in respect of his troubles and expences, pretend to those, to whom the king was indebted, that the kings officers were empty, and thereupon paying part to the kings creditors, complained for their whole debts, and took their acquitannces for the whole, and converted the residue to their own use.

The second was, that sometime they would craftily pay the whole, and takc a great reward thereon, which was dishonourable to the king, damage to the creditors, and corrupt dealing in those officers, or their agents.

This act is generall against all those that take part of the kings debts, or other reward of the kings creditors, for payment of the same debts. This law doth provide, that he that so doth, shall render double to the party grieved, and shall be punished grievously at the kings will.

If. Inst. This
This act is in affirmance of the common law; only it adds a greater punishment.

Richard Lions merchant of London, and farmor of the king's customs and subsidies was adjudged in parliament for buying debts of divers men, due by the king, for small values, and for taking of bribes, to pay to the kings creditors their due debts, to be imprisoned at the kings will, and all his lands, tenements, and goods to be seised to the kings use, which proveth it an offence or misdemeanor against the common law, for the judgement was not given according to this act.

John Lord Nevill, while he was one of the kings privy council, bought divers debts due by the king, namely, of the lady of Ravenholme, and Simon Love merchant, far under the value: the lord Nevill being herewith charged in parliament, confessed that he received of the said lady 95 l. which she gave him of her own good will for the obtaining of her debt: for this (amongst other) he had judgement of imprisonment at the kings will, and that his offices, lands and goods should be seised into the kings hands, and to make restitution to the executors of the lady (who then was deceased) of the said 95 l.

(3) Detts le roy.] See for the exposition of these words before, ca. 19.

Câp. Itineris doth render this clause thus: Et familia de his qui partem coperunt debitorum domini regis, vel alia minera, ut de rebus creditoribus satisfacere.

To conclude this good point, the Mirrour faith, Iu positione ore le roy peulent ceux ministers, queus rien de paierent des detts le roy, pluss ces que enjoyne leur fait a faire, ou rendant part pur satisfintr de entier, et ne rendant au roy le remnant.

(4) Et de ceux quex partent chevals, &c.] This article concerns purveyances, and purveyors; and therefore for the causes before rehearsed, no more shall be said hereof in this place.
Cap. 34. Westm. primer.

Where by the statute of Merton it is provided, that every free suitor of the county, &c. might freely make his attourney to doe thee suits for him.

Now by colour hereof two mischieves did arise.
1. That barretors and maintainers of querels were by the same contextenanced to be attorneys to make suit, and amongst the suitors to give judgements in the counties, and sometime pronounce judgement in the name of the suitors.
2. That fluarios of great lords, and of others, who had no letters of attourney, according to the said statute of Merton would doe the like: This act doth remedy both these mischieves, as by the letter hereof appeareth.

(1) Barretors.] For the word and the sense thereof, see lib. 8. fol. 36. in the case of barrestry. See the first part of the Inst. 701. sect.
(2) In counties.] That is, in the county court, for there the suitors be judges.
(3) Justiciam.] That is, all things belonging to justice.
(4) A la journe.] That is, at the court.

CAP. XXXIV.

PUR ceo que plieurs font fovent troves in countes (1) controvers, des novelles, dont discord (3), ou maner de discord (4) ad eftre fovent not le roy et son peuple, ou auis de] hs hautes bouses de son roialme: def- fando est pur le damage que ad eftre (5), et que uncvre eut purra avoynier, que deforme mius ne fait ce harde de dir, ne de couuter nulles faux novelles, ou controvers (6), dont discord, ou maner de discord, ou eflatider puit sevdrer entre le roy et son peuple, ou les hautes bouses de son roialne (7). Et qui le farait pris, et detuns in prifons jefques a tant que il eit trove en court ceuly dont la parol ferra mue (8). 2 R. 2. Cap. 5.

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(1 Leon. 237. Dyer 155. 12 Rep. 135. 1 Roll 444. 3 Bulltr. 225. 2 R. 2. Stat. 1 c. 5. 12 R. 2 c. 11. 1 & 2 Ph. & M. c. 3. 1 El. c. 6.)

The offences, viz. false reports and news punishable by this law are forbidden by the law of God:

Thou shalt not have to do with any false report, neither shalt thou put thy hand to the wicked to be an unrighteous witnisse.

For they which gladly heare false reports and newes, will be allo as ready to publish them.  

S 2  Against
Against those that despise rulers, and speak evil of those that be in authority, and again those that speak evil of those things which they know not: judicibus non detraretes, et principi populi tuae maludices: thou shalt not rail of the judges, nor speak evil of the ruler of the people.

Before this statute, in the reign of king H. 3. two kinds of persons were authors of great discord and scandal in two several degrees; first, men that did raise and imagine, out of their own heads, false bruits and rumours, and others that reported and spread the same, whereby discord and scandal was oftentimes kindled, sometime between the king and his commons, and other times between the king and his nobles, the great men of the realm, as they wrought privy discontentment, that produced public discord and scandal, whereas our act speaketh; which scandal and discord appeared in many parliaments between the king and his commons, and between the king and his lords of parliament, and especially in these two parliaments, the one in 21 H. 3. when Magna Charta was confirmed, and the other in 42 H. 3. held at Oxford, which in story is called ignanum parliamentum; and this discord and scandal did oftentimes in the reign of that king break out into fearfull and bloody warres and rebellions according to that old observation, Improbi rumores dissipati sunt rebelliones parvom, which fully appear in our histories warranted by good record, and is implied in this act in these words; "Forasmuch as there hath been oftentimes found devisors and reporters of false and false, &c. whereby discord hath many times arisen between the king (meaning H. 3.) and his people, or the great men of the realm." And amongst all those rebellions in those days, those at Lewes in Sussex and Evesham in Worcestershire were most fearfull, bloody, and dangerous, for at Lewes, the king himself manfully fighting, confess it utrique latere aequo captor cum Richardo rege Abhancorum fratre fio, et Edmundo principi filio, &c. And at Evesham, Simon Mountford earle of Leicester (our English Cæsar) interfuit accidit impeditus et uter remori, ut in fine aponit Henricum regem, quem fecum captivum duxerat, atque judiciis induit, ut si fortuna adversa sit, dum illum imperatoris pectoris gressus ab hoste plerumque, ipsi interiorem fuga salutis conferatur absit in infrascripta et hostes et animis et viribus sibi secessi: commissitutur utrique pugnae, quae aliquando accepto victori, Henricus inter primum hostiam istam pugnans, sed regem Henricum clamando indicat, quod et salutis sui, &c. Quod ubi Simon animadverterit, jussit cobbossum in medias hostes parari, qui a multitudine circumventus praebente occiditur cum Henrici pho.

King E. 1. finding by dangerous experience the wofull end of such false rumors and reports, as is above said, and knowing that the state of every kinghood more assured by the hearty and inward love of the subject towards their soveraigne, then by the dread and fear of severe and rigorous laws, did therefore make this law for redresse both for the deviling and spreading of such false rumors and bruits in all mild and temperate manner, both for the style and the punishment, rather leaving the same to the censure of the common law (which all men willingly obey) then by inflicting any new devised punishment, which moderation of our king, leaving the punishment to fine and imprisonment, was the greater for that the auncient law of England before the conquest was much.
much more severe, and rigorous, as by a few examples shall appear.

Quem falsis rumoribus in vulgus sparsit author falsiffi deprehenditur, leviori aliquam panem non multasatur, verum lingua ei praeciditur, nisi eam integra capita eti affirmatione data redderet.

S. quis alium rumoribus diffusis improba voce laceravit, quam obrem, eam corporis evis damnit infuriatura, aut de fortunis immunitatur aliquid, tam si alter auditiones tanguam fallax refelleret et ceangueret pravum, aut ei lingua capita affirmationes reddito, aut ei lingua praecidit.

(1) Et counte.] That is, in the country or realm.

(2) Controvers.] That is, devisors or inventors of their owne head.

(3) Discordia. That is, dissenso cordium, diffentia of hearts; this grew (as hath been saide) to such an height in the reign of H. 3, as that of the philosophicall poet might well be applied to it: (which before is remembred.)

Impius bae tam culta novella vitis habebit?
Barbarus haec segetes? et qui discordia civis
Perduxit miferos!

Virgil.

Discordes, quos duo babentes corda.

(4) Ou manere de discord.] That is, lateus odium, privy hatred or discontentment, which is occasion of discord, and whereby men become malcontents.

(5) Defendu est per le damage que ad effe.] This damage or danger you have partly heard before.

(6) De dire, de counter, ou controvor.] Two manner of persons are hereby prohibited, the first, those that tell, spread or report false and feigned bruits and rumours under these words, Dire ou couner; and secondly, such as devise or invent of their own head the same under this word controvor: now the persons being described, this statute doth set down generally what those bruits and rumours should be.

(7) Faux nouvelles, dont discord, ou maner de discord ou dislauder prestorder enter le roy, & son estat ou les hauts homes de son realme.] Of these false newes, that is, false bruits or rumours, there be five kindes within this act.

1. First, if they be against the king, whereby discord or scandal may arise betwene the king and his commons, signified here by people.

2. Against the commons, whereby discord or scandal may be moved betwene them and the king.

3. Thirdly, against the king, whereby discord or scandal may grow betwene the king and the peeres, or lords and nobles of the realme, signified here by les hauts homes de son realme.

4. Fourthly, against the peeres, or lords, and nobles of the realme, whereby discord or scandal may happen betwene them and the king.

5. Lastly, whereby discord or scandal may arise betwene the king, his lords, and commons.

Quo narratores rumorum qui cedere possum ad timorem, et tremorum populii, et in dedecus regis et regni, capiantur, et in carceri sitiemento, &c.

Tr. 19 E. 2. Rot. 15. Coram regis.
By this record it appeareth of what quality the rumors must be.

By commissions of oyer and terminer power is given to enquire, De illicitis verbosarum propagatis; and to punish the same. Britton speaketh of both these kinds of offenders, viz. the defectors, and the reporter, in these words, De causis quae transunt, si constent mendaces det pulcia, &c.

And Fleta saith, Sunt etiam quaedam atroces injuria, que primum voluntarim inducuntur, sicut de inventoriis malorum rumorum, unde est paenit exterminari.

The statute of 5 R. 2. punished fuditious rumors in an high degree, but that is repealed by 1 E. 6. & 1 Mar.

It was resolved by all the justices, that horrible and scandalous words spoken of queen Mary, were within this statute and punishable hereby, and not by the statutes of 2 R. 2. cap. 5. nor 12 R. 2. cap. 11. for the king or queen is an exempt person, and not included within these words [Les bas, ou grand homas, en nobles, &c.]

Some say that Rumores ducuntur a mundo, quibus inducit mias; and true it is that another saith, Ut mare, quod fujus natura tranquit, omnium omnes quovis agitatur, sic populus quod sponte placatus, dominum fedes et forum velet, et violentiis tempusfinitus, adversarii.

But it is to be understood, that albeit this statute, and the said act of 2 R. 2. be general in the negative; yet doe they not extend to all manner of false newes, or horrible and false scandals and lies, &c. for they extend onely to extradjudiciall flanders, &c. and therefore if any man bring an appeal of murder, robbery, or other felony against any of the peeres or nobles of the realme, &c. and charge them with murder, robbery, or felony, albeit the charge be false, yet shall they have no action de scandalis magnatis, neither at the common law, nor upon either of these statutes for the bringing of his action, nor for affirming the same in his councill, attourney, or curfiter for the framing of his writ, or for speaking the same in evidence to a jury, or for using of those words for the necessary commencement or prosecution of his action judicilially; and so it is in an action of forgery of false deeds, or any other action whatsoever: for it is a maxim in law, Que home non serra puni per fier et frays au court du roy, soit il a droit ou a tort; and the reason thereof is, that men should not be deterred to take their remedy by due course of law; and therefore the statutes never intended to prohibit the suing out of the kings writs, and the proceeding thereupon: and so it is, if in the star-chamber a pree of the realme be charged with forgery, perjury, or the like; but if in the bill the plaintife chargeth him with felony, or any other offence not examinable in that court, that slander is within these statutes, for that the plaintife pursueth not his charge in any judiciliall course, seeing the court hath no jurisdiction of the same, and to hath it been adjudged.

(5) Seilt prises & detenus in prifon osques a taunt que il est tres en court celiy deit le paral ferre moires. It hath appeared before, that by the body of the act not onely the tellers and reporters of such false news, but the defectors and inventors thereof are prohibited: but no punishment is inflicted by this act upon the defector or inventor, for he is left to the common law to be punished by fine and imprisonment according to the quality and quantity of the offence, which
which is aggravated in respect that it is prohibited by this act of parliament.

And the law is grounded upon the law of God in this point, Non maladies principi populi.

Nay, in the kings case the secret cogitation of the heart is prohibited. In cogitatione tua regi ne detrabas: and the scandals of great men are likewise forbidden, Et in secreto cubiculo tui ne maledixeris hodierni, quia aures eum portabant vocem tuam, et qui habit pennis omnium praelistet sententiam; that is, Almighty God will provide means, that such detraction and malediction shall come to light, and be discovered.

Onely this law inflicteth imprisonment upon the reporter, until he hath found out, and brought into court the author of those false news.

7 E. 1. the king sent commissions to all the counties of England, to enquire De forsohabibus rumorum, De. 25 E. 1. Declaratio regis missa ad omnem comm. Anglie, de regis purgandis de ceris rumoribus iniquis extra ipsius urbis, &c.

Rex manusceuit maior et vicecom' London' quod facta inquisitione de forsohabibus rumorum, et sede in civitate ipsas cüueret, et in prifonia de Neurate detineret, &c.

Vide lib. Inrat. Coke, fo. 302, 303. in false imprisonement.

CAP. XXXV.

Of great men and their bailiffs, and other (the king's officers only excepted unto whom especial authority is given) which at the complaint of some, or by their own authority, attach other passing through their jurisdiction with their goods, compelling them to answer afores them upon contracts, covenants, and trespasses, done out of their power and their jurisdiction, where indeed they hold nothing of them, nor within the franchise, where their power is, in prejudice of the king and his crown, and to the damage of the people; it is provided, that none from henceforth so do; and if any do, he shall pay to him, that by this occasion shall be attached his damages double, and shall be grievously apered to the king.

(Lutw. 1226. F. N. B. 45, f.)

The
The mischief before this statute was, that great men and others that had particular jurisdiction and power to hold plea of contracts, covenants, and trespasses made or done within a certaine precinct, as within a manour, citie, or borough, would attache others by their goods to answer in their courts of contracts, covenants, and trespasses made or done out of their power or franchise, pretending the same to be transitorie, and suppose the same to be done within their power and franchise, which was to the prejudice of the king and his crown in losing his fines in actions of debts and trespasses 

De loor bailifte. Here bailiffes are taken for the judges of the court, as manifestly appeareth hereby.

Et des auters. That is, others that have particular jurisdiction and powers, as manifestly appeareth by the exception hereafter.

Forçris: hoi ministres le roy, as queux especiall autoritie of done a cou faire. Here is to be observed,

That all these words belong to the exception, as by the Register appeareth.

That ministri regis are intended here the kings justices in his general courts of justice, and so taken in this kings time, as it hath been touched before.

Des contraicts, covenants, et trespas faits hors de loor poyr et loor jurisdictio. That is, out of the precinct of the manour, or such like particular jurisdiction, &c. where by prescription or grant they have power and jurisdiction to hold plea of contracts, covenants, and debts made or done within the manour, or such other particular jurisdiction.

La ou ils ne teignent riens de eux. This act beginneth, Des haute bones: and Brahson faith, Sunt qui barones, et alii libertinam habeant, etcetera, &c. et isti possunt indicare, &c. for hoc is a power or jurisdiction to have a free court, to hold plea of contracts, covenants, and trespasses of his men and tenants; therefore materially were these words added; that if a great man or others having hoc, should hold plea by force of that liberty of any that is not his tenant, it is coram non judice, and punishable within this statute. it is diversely written, viz. hoc, soco, soca, scoke, sokhe, sokker, and &c. and it is derived from the old Saxon word scenen, saken, or sakenus, i. e. to enquire or find out, that is, to enquire and find out the truth of the matter in plea before him, to determine it accordingly, which is as much to say, as ad inquirend, audiendi, et terminand.
Weilm. primer.

carne tenentium, quam fakam appellamus: and curia implyeth ad au-
diendum et terminandum.

The Mirror, that En temps le roy Alfrid, pourront les suers &
Denouer leur jurisdiction soffert lauter païme, par ce que ilz tien-
drent plenamente par les vages de del realme aux judges ordinaries suers et
sters, I which rather vouch together with the derivation of the
word, as, for the great antiquity of the law in this point.

[6. De dans la franchise.] That is, nor within any such like
particular power or jurisdiction, either by the grant of the king,
or prescription.

For the relief of the subject upon this statute, two originally
writs are framed: the one in nature of a prohibition before the
suit begun, commanding that the party shall not be arrested con-
trary to the form of this statute.

The other, after the suit begun, the party to recover the penalty
of this act, viz. double dammages, and a command to deliver the
goods attached or disarrein; both which writs appear in the Reg-
ister: but the party may waive the benefit of this statute, and
therefore if he plead to the action any barre, &c. he hath concluded
himself, and shall not have any action upon this statute, therefore
be must plead the speciall matter, and by that means take benefit
of this act.

Fleta rendeth this act in this manner: De magnatibus et eorum
libertis et aliis (exceptis ministris regis, quibus ad hoc auctoritas data
est) quod ad sua, super iniquum aliquorum, vel auctore saepe aggregatam
vis per bona fide, qui par etam potestatem et jurisdictionem venient
et fruadendo coram eis de contractibus, conventionibus, et transfugia
et extra eorum potestatem et jurisdictionem, ubi nihil tenent de eis, nec
sunt de lificitate eorum aut jurisdictione: statutum est, quod si quis de
hijusce controuer eius fuerit, reddat quemcum danne in duplo, ac etiam
immiser amercieetur.

And it is to be observed that at the making of this statute, if a
man hath brought an action of debt, account, delinuum, or covenant
upon any contract by original writ in the county of Norfolk, he
might have declared of the contract in Suff. or any other county
then where the original was brought; for the rule was, that del-
inuum et contractus, &c. sunt nullius loci, and every duty is a duty in
every county: but in case of account this diversity is to be observ-
ed, that in account against a receiver the law was then as is afores-
aid, but if a man brought an action of account against one as
exly in one county, he could not charge him as bayliffe of a man-
car in another county, for that is local.

But after this act it is provided by the statute of 6 R. 2. cap. 2.
that in pleas of debt, or account, or such like, as delinuum, or con-
tract, it shall not be declared that the contract was made in any
other county, then contained in the original writ.

But at the common law one that hath a particular jurisdic-
tion to hold plea of debt, contract, delinuum, covenant, or trepsafe with-
in his manor, or the like, could not hold plea of a debt, contract,
account, delinuum, covenant, or trepsafe allledged to be made out of
his manor, &c. because albeit it was trancitory, yet was it (being
allledged) not within his power or jurisdiction which he had by
description or by grant; for all pleas holden there must be infra
jurisdictionem curiae.

As
As if a lord hath probate of testaments made within the precinct of his manor, he cannot prove a testament made out of the precinct of his manor.

And likewise of the court pipowders of contracts, &c. made out of the faire or market. Et sic de ceteris.

CAP. XXXVI.

For as much as before this time, reasonable ayde to make one sonne knight, or marrie his daughter was never put in certain, nor how much should be taken, nor at what time, whereby some leaved unreasonable able, and more often then seemed necessary, whereby the people were fore grieved: it is provided, that from henceforth of an whole knights fee there be taken but xx. s. And of xx. pound land holden in socage xx. s. and of more, more, and of leffe, leffe; after the rate. And that none shall leve such ayde to make his sonne knight, untill his sonne be fifteen yeares of age, nor to marrie his daughter, untill she be of the age of seven yeares. And of that there shall be made mention in the kings writ, formed on the same, when any will demand it. And if it happen, that the father, after hee hath leaved such ayde of his tenants, die before he hath married his daughter, the executors of the father shall be bound to the daughter, for so much as the father received for the aide. And if the father's goods be not sufficient, his heir shall be charged therewith unto the daughter. (Rastell's Translation.)

By the common law to every tenure by knights service, and socage, there were three aides of money, called in law auxilia, incident and implied, without speciall reservation or mention, that is to say, relieve when the heire was of full age, aide pur faire fites chival.
Cap. 36. Westm. primer.

lie, and aide pur file marier; now the first aide, viz. relief by reason of a tenure by knights service, was certain, because he was to pay it, if he were of the age of 21 years at the death of his ancestor, as hath been said before, without regard of any circumstance; and likewise the relief of an heir in socage being of the age of 14 at the death of his ancestor was ever certain, viz. to double his rent. But the aids pur faire fits chivalier, and pur file marier were uncertain at the common law, for that the lords many times would pretend their eldest son, and eldest daughter to be hopefull and forward, and therefore would exact too great an aid, and before due time, whereas by the law they ought to have reasonable aids, and in reasonable time, which in a suit therefore should be determined by the justices of that court before whom the suit depended. Now the tenants found themselves griefed in three things:

1. That the said aids were outrageous and excessive, Et exceedit in re qualitatem juris et rei publicae communis, so as those outrageous, and excessive aids were against law, whereof elsewhere you may read at large.

2. The lords exacted those fines at what time they pleased before reasonable age apt for the payment of those aids.

3. That he could not avoid the same but by suit in law with his lord, wherein he found by experience those old verities true:

Cum para luciari dubium, cum precere fluitum,
Cum puero paena, cum muliere pudor.

And our aët faith, Don't le people se sentir grewe.
These three mishiefes are redrest by this aët, and certainty the mother of quiet and concord establisshed therein.

But where it is said that these aids are incidents, it is to be understood that they are incidents separable, either by speciall words at the creation of the tenure, or by discharge or release by speciall words, or speciall rehearself afterwards.

But if the lord at the creation of the tenure had receified sealty, and a marks per annum, pro omnibus servitutis, exactionibus et demandis subfyncone, or if the lord after the seigniory created had releaved to the tenant, omnia servitutia, exactiones et demanda quarungue (except fidelitate et redditis ipso mercarum per annum,) yet should the tenant pay relief, aid pur faire fits chivalier, and file marier, which is necessary to be knowne for the understanding of auncient deeds.

(1) A faire leigne fits chivalier.] Lord, grandfather, father, and two sons, the father dieth, the lord shall not have aide for his eldest grandchild, for he is not his eldest son,much leffe shall he have aide for his elder brother, or his eldest cousin and heire; but if a man hath issue two sons, and the eldest die in the fathers life without issue, he shall have aide for the second son, for he is now eldest, and the statute faith eldest son, and not first-born; yet the writ grounded upon this statute is ad primogenitum filium suum maritandum, but he is primogenitus then living. But if the lord had receified aide for his eldest son, he shall not have aide again for the second, for unicam auxilium, one aide is onely due to one and the same lord, to make his eldest son a knight: Non tenent quis de uno tenemento eidem domino plura dave auxilia ad filium suum militem faciant,

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5 E. 3. fo. 11.
40 E. 3. c. 21. 47.
Mag. Char. c. 2.
Vid. Inm. feo.
157.

Lib. 11. fo. 44.
R. Godfrey. cef. See before cap.

18 E. 3. fo. 16.
40 E. 5. c. 2. 47.
13 R. 2.
Avowry 89.
16 H. 4. 8.
5 E. 4. 41.

Britton 57. b.
F.N.B. 82. g.
Regist. 57. in. the rehearfall of this act it is said, primogenito filio et primogenitus filio.
Regist. ubi pra.
If the lord hath issue two sones, the eldest son hath issue two daughters and dieth, the lord shall not have aide to make his second son a knight, for the second son is not his heir apparent (and in this case he ought to be his heire apparent) for at this time the estate of all lands was fee simple, and the lands of the lord should descend to the daughter, and therefore the law would not have the dignity of chivalry to be apperell'd with poverty, and in respect thereof the son to be knighted was to be heire apparent. And this agreeth with the letter and meaning of this act, a faire fon eigne fits chivalier, who by common intendment is heire apparent.

If the eldest son be made a knight before the age of fifteen, the lord can have no aide, because the words be a faire leigne fits chivalier; and none was ever due to the lord.

If the lord hath issue baiard eigne, and mulier puissia, he shall not have aide to make the baiard a knight, for he is not in judgement of law accounted his son, but he shall have it for the mulier puissia.

It was held in ancient time, that the lord could not demand aide par faii; fits chivalier, unless he himselfe were a knight, or filz autenticat patrii: but knights in ancient time grew so scarce, as enquirys that were of ability to be knights, not onely in this case, but in many other, suppli'd the place of knights: Jusficient honor of hominum, qui dignus honore est.

Hereby it appeareth that by the policy of the law, the eldest son of a knight was not only trained up in his tender years in learning and knowledge of liberal arts to adorn the minde, but when he came to convenient yeares, did for the defence of the realm, learn and exercise the deeds of arms and chivalry, that he might be able to serve his country both in time of peace, and of warre.

See 35 H. 5. 40.

(2) No a leigne filz marrier.] By this the policy of the law appeareth, that the eldest daughter might be timely preferred in marriage, for thereby come strength and good alliance to the family, and both these are given by law without any special reservation: and the observation of the auncients was, that a knight's daughter well, and all the rest will bee preferred the better; and to that end aide was granted for the eldest daughter.

(3) Outragious aide.] Tenant per pravaile shall be contributory in the aide for the marriage of the kings daughter. See for this words before cap. 31.

(4) De fee de chivalier entier solament saient done 20s.] Here it is to be observed (as it hath been noted) that reliefe is the fourth part of a knights fee being then 20s. 1. and aide par faire fits chivalier, or par fitz marrier, is the twentieth part of a knights fee, viz., 20s. 8. limited by this act.

(5) Et de 20s. 1. de terre tems per socage.] This summe is set downe because the value of a knights fee was then 20s. 1. (which then was sufficient to maintaine the dignity of knighthood) and so the statute maketh them equall in value; the king was not bound by this statute, but he might take such reliefe, and at such time as was due by the common law.

But the statute of 25 E. 3. doth assesse the aides at such a rate as this statute doth, and that act doth well expound this statute;
Westm. primer.

flauze, that none shall pay these aides but the tenants of the land holding the same immediately in demesne without any meafe.

For none lords ought to pay no aide implied in these words of our act, De fce de chivalier, et de 20. l. terre, and if the tenant per- 'vain by knights service goeth with his lord, &c. he dischargeth all the meane lords. Note those words, De fce de chivalier, doth ex- clude grand ferjeanty, for he that holdeth by that tenure shall pay no aide to the lord either to make his son a knight, or to marry his daughter; for by this act it appeareth, that none shall pay any aide but tenants by knights service, or tenant in socage, and no other tenure.

(6) Tangue le fifs foit del age de 15 ans.] Note no man shall be compelled to take knighthood upon him until he be 21 years old, and have sufficient land for maintenance of that degree, yet at the age of fifteen yeares he may begin to learn some things that belong to chivalry; but it is good for the lord to make what speed he can after that age to recover the aide either by the writ De auxilio ad fliam. fumus militem facienda, or by disfresse: for if the son die, the lord loseth the aide, for that by his death the small cause ceaseth, and so likewise if the father dieth, the aide is lost, for that the duty and remedy is only given to the father, who in respect of nature hath the wardship of his eldest son, and as a natural father is to provide for his advancement; and as a father by the law of nature is bound to provide a competent marriage for his daughter, which are therefore pernonall to the father: and so the diversity between relief, which is absolutely due to the lord in respect of the signiory meery, and these aids, which are not absolutely due to the lord, but for the performance of a duty of nature.

(7) Tangue el (t. la fiec) fai de 7 ans.] In auncient time gentlemen of good houes, for knitting themselves in greater bands of amity and alliance, married their children very young, which the law doth seeme to favour, for that it giveth her dower, if she be of the age of nine yeares at the death of her husband, whereas I have known some to have prospered well, but more that have proved unfortunat.

(8) Et nemo avaut que il avoit sa fille mariée.] Here our act giveth only remedy to the daughter, and maketh no mention of the son in that case, and yet the son shall have the same remedy against the executors, that the daughter shall have, being in equal jus.

Tenant for life, or tenant in dower shall not have aide per file maritae, ou per jure ficti chivalier, but the vere lord, to whom by possi- bility they might inherit, and whom the lord by nature is bound to preferre; but tenant for life, &c. shall have ejeaage, ward, marriage, and relieve.

If the father receive the aide, and after the son is knighted, or the daughter married in the life of the father, neither son nor daughter shall have remedy for this aide, for the end of the law is performed But by the whole context of this act it appear- eth, that small portions preferred in marriage the daughters of good families, when vertue and good blood was more esteemed then great portions.

(9) Les executors son pier font tenus al fil. ] Note, the father himselfeth time to make his eldest son a knight after his age of 15; and

Rot. Parliam.
29 E. 3. m. 9. 16.

6 H. 3. Apovry
242. F.N.B. 35. k. 11 H. 4. 34.
10 H. 4. Apovry
267 10 H. 6. Aunc demene
11 Rot. Par.
9 H. 6. m. 1. 15.
8 [ 234 ]

F.N.B. 82. 1.
et 33. a.

Hil. 9 E. 2. 5b.
62, 63. in libro
mes. Phil. Lut- uyes car.

3 E. 3. Debr. 156.
and to marry his daughter after her age of 7 years at any time during his life, and therefore though the father receive the aides, yet have they no remedy against him, but to depend upon his paternal care, and their remedy is against the executors, or administrators of the father, if they be not preferred in his life time, as it appears by this act.

(10) Et si les biens le nier ne suffusent, son heire de oco foit tous as: file.] And here it is to be observed, that if the personall estate of the lord be sufficient to pay the aides, the heire (who is to maintain the state and countenance of his father) is not to be charged therewith.

In an action of debt brought by the eldest daughter against the heire for an C. s. which the father received of his tenants for reasonable aide to marry her, and that she was not married in his life time, &c. and in her declaration made no mention that the executing had no aissues, and yet the count was ruled to be good, for that is the ordinary count in an action of debt, which the statute giveth, and if the executors have aissues, the heire shall plead it in barre.

Although the statute be, that his heire shall be bound to the daughter, it is understood, that he shall be bound, if he hath ailes in fee-simple by descent from his father.

The daughter shall not recover part against the executors, and the refund against the heire, but either all against the executor, or all against the heire, as these words doe prove.

The eldest son may have his remedy only against the executors, for he himselfe is heire.

And these aides appear by the Mirror to be very ancient, ordained by king Alfred, and other ancient kings, for he faith, Et que ejusme, relief et aides, se forsent par les tenants a leur feugis et leur bienage releuier, les heires les feugisiers faire echaquier, a la leur eigisse file marier. It is to be observed how moderate the aides be by force of this act, and therefore it is to be collected that the fees of the heralds were then (and yet ought to be) moderate also.

CAP. XXXVII.

PURVIEW est et accordz ensemen, que si home soit attaint de diffisation fait en temps le roy que ore est (1), ou que robbery (2), de oisian manier de chatel, ou de moveable (3), et fait trovez vers luy par reconnaissance de assise de novel diffision, le judgement fait tiel, que le plaintiff recovera sa feusin et les damages, auxibien de chatel et de moveable avantidits, come de foile. Et le diffissor fait rente (4), le quel que il soit present ou non, si quent que il soit present primes soit agard a la prison.
This statute is made in assurance of the common law, as appear- 
ith by original writs of affisse, wherein the words be, Factas tenen-
mentum illud referis de catallis que in ipsa capita fuerunt, et ipsum tenen-
mentum cum catallis esse in pace infra ad primam effijam; which writ 
was at the common law before this statute, as it appeareth by Glan-
vill, and by Bracton who wrote before this act.

And the judges of the affisse ought to enquire of the fame, 
for if goods be taken away by the dispose, it is a dispose with 
force, and therefore ex officio, the judges ought to enquire thereof.

(1) En temps le roy que ore est.] Yet this act being in assurance 
of the common law doth extend to all times after, which the 
judges in 4 E. 2. not observing, nor remembering the words 
of the writ of affisse denied to enquire of the taking away of the 
goods.

(2) Ouesque robbery.] Here [robbery] is taken in a large 
line, for a wrongfull taking away of goods, as a wrong doer and 
tropper.

(3) De affer manuer de chattel, ou de movacible, &c.] If a man 
be dispose, and hath goods, which he hath thereupon as executor 
or administrator, taken away, these are not accounted his goods 
within this statute, because he hath them, in auter driot, to the use 
of the dead.

A man feised of land in the right of his wife, or joyntly 
with his wife, and is dispose, and his goods taken away in an 
affise brought by the husband and wife, he and his wife shall 
recover seflum of the land, and he alone upon that original brought 
by him and his wife shall have damages, which is worthy of ob-
ervation.

And so it is, if two joynt-tenants be dispose, and the goods of 
one of them taken away, both shall recover the land, and the one 
damages for his goods: these be the only cases that I remember in 
the law, where one demandant or plaintiff without any summons or 
process shall have judgement alone in one original; for regularly 
be judgement ought to be given according to the original writ:
as if the husband and wife bring an action of battery for the beating 
of himselfe and his wife, the writ shall abate, because the wife 
cannot joyne for the battery of her husband, and the husband cannot 
have judgement alone, because his wife is joyne with him in the 
original; et sc de similibus.

But the affisse is a speciall case, for the plaintiffe making his plaint 
to be dispose of his free hold in such a town with the appurtec-
ances generally, yet shall he recover his goods, if the dispose be 
found with robbery of his goods, as the statute speaketh, and the 
goods are contained in the original, and not in the pleint; and the 
affise of novel dispose was jeffimum remedium, and much favoured in 
the law for the relieve of the dispose, both for the regaining of his pos-

first be awarded to prison. And in like manner it shall be done of diffe-
fin with force and arms, although there be no robbery.

See Merle, ca. 14. verb. Atting. the first part of the Inst. sect. 514. Verb. en Attaint. (Fitz-

Glanv. l. 3. c. 33, 34, &c.

Bract. l. 4. f. 179.
session of the land, and of his stock of cattle, and goods thereupon; therefore where our act faith, that the plaintiff shall recover his seisin, and his damages, as well for the goods and moveables fore-said, as for the freehold, it is so to be understood, redendo juxta
sanguis, according to that which hath been said. William Bar-ter, and Margaret his wife were dethelied of the land which he held in the right of his wife, and dispoffesed of his goods; in an act brought by the husband and wife, judgement was given for them both, Damna pro diffidio C. I. pro bonis C. mere: in a writ of error the judgement was reversed for the C. marks, because the wife had nothing in them.

(4) Et le diffisor fait reute.] And the diffisor shall be fored, which is also in affimance of the common law, for a diffisio with taking away of goods is a diffisio with force, and therefore

(5) Et per membro le maker fait fait de diffisio fait a force et armes, tout ne face home robbery.] Note the writ of affisio mentioneth not a diffisio aet et armis, but the words thereof: Injuria et jure judicis diffisio, and therefore if the jurors finde a diffisio, and no force, the judgement shall be ideo in misericordia, and not quod capiturus, but as it hath been said, the court ex officio ought toquire
of the force; but if they doe not, it is not error, as it hath been

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CAP. XXXVIII.

PUR esos que afeiuns gentes de la terre douent mens faux serement faire, que faire ne duisent, per que multis des gens son dissortices, et perdent leur droit: parvis est, que le roy, de son office, donnez donnera attaints for les enquests en plez de terr, ou de francktenement, ou de chyse que touche francktenement, quant il cembla que lesigne fait (1).

FORASMUCH as certain people of this realm doubt very little to make a fals e oath (which they ought not to do) whereby much people are disserited, and lose their right; it is provided, that the king, of his office, shall from henceforth grant attaints upon enquests in plez of land, or of freehold, or of any thing touching freehold, when it shall seem to him necessary.

*(44 Ed. 3. 2. Regl. 132. Roff. 3. 1 Ed. 3. Bag. 1 c. 6. 5 Ed. 3 c. 6. & 7. 28 Ed. 5 c. 8.*

(54 Ed. 3. c. 7.)

The mischief before this statute (which was the first concerning attaints) was, that albeit (as the common opinion is) an attaint did lie upon a fals e verdict given in a plez of land, yet the king; any times would not grant it without fuit made to him, which turned the party grieved, not onely to great delay, but to extreme trou-ple, attendance, and charges. And the reason that made the difference between the plez real, and the plea personall, was, that in the plea personall the party grieved had no other remedy, but the at-
taint; but in the plez real he had other remedy in an action of higher nature, and for that cause was not granted without difficulty.

And
And some judges held, that in a plea real an attainit did not lie, and therefore this act provided that the king shall grant it * ex officio*, that is, *ex mortuo judiciis*. And this act is holden to be in accordance with the common law, whereas you shall read at large, Marliet, cap. 14. And this is the common opinion agreeable with our old laws, as those you may read.

That perjury in jurors was punished since this act had been sufficiently revealed at length; now the preamble of this act gives that reason to examine whether perjury also in witnesses were punished by the ancient laws of England; De pejorantibus praetor., 5 t. 3., et si quis juriurandum violatit, falsunum dixerit, verum, falsus et in pejorandum non balteor, verum is in ordination adulator.

Si quis falsum jurante convicisse fuerit, et postea non modo non creditor, convicatum fuerat et clam prohibetur sepultura.

Si quis facia tenens pejorare convicisse fuerit, et manus praeditum, &c.

Fib. inter leges W. Conq. fol. 125. b.

And the Mirror faith, *Quod scilicet, les ancients priviléges, et usages* a venire se font per perde del parce, comme est de faux notaries, et de cissors de | bonnes de moyens q. xii. d. et plus que oui, q. de le roy R. l. se changea en la seconde de oeil, avenus per cuer des langiages, comme foloit estre de faux testimonies.

And in the same chapter treateth further of this matter, saying, Perjury est grand peche, &c. wherein you may read there more at large. Britton faith that it was punishtable, and to be enquired of D. rex quae se solutu perjurare poterit.

Fleta descriptit perjury thus, Perjurium est mendacio cum juramento sacram, and further faith, Et tribus modis committitur: peine, cum quis fuit, vel jurat aequid falsum esse fallum, et jurat esse verum, faciend. cum quis falsitur, et credi verum esse quod est falsum, et tenere in ilia et veritate juratum; testio, si quis credit falsum esse verum, et quod vera est.

Where you may read further of this matter. And of some it is called, perjury leste conscientiae.

Thomas Vigras and two others were found guilty, &c. of perjury.

18 E. 3. 53. Once forsworne, and ever forlorn.

7 H. 8. 25. Perjury punished.

Vide the statutes of 3 H. 7. cap. 11 H. 7. cap. 25. 32 H. 8. cap. 9. 5 Bliz.

Upon all that which hath been said touching this point, you may observe how milde the late laws have been in punishing of perjury in respect of the ancient, wherein I have been the longer, for that I have observed out, that perjury was not punished by the ancient laws of England, wherein there should have been a great defect, and an encouragement to ill disposed men, if jurors should by the common law have been punished for perjury, and witness, which are great motives to them of giving their verdict, should be perjured, and not be punished.

(1) Quod it semble que beaigue faire.] See 5 E. 1. which was within two years after this act, an attainit was brought upon a false verdict given in afflis before justices in eyre before the making of this statute and the record faith, Quod non est intentio dominis regis, nec existit tempore confectionis statuti pradesiti, quod brevem de attribu tur alienum super ipsum aliud inquisitionibus ante statutum captis, praet 11. 13. st. T. Johannes
Johannes de Lovet recordatur, imo post flatum conest, considerationis of good pleasure nihil capitam per breve, &c. And this was the law taken
then by colour of these words; but others hold, that these words are not to be so taken for the reason aforesaid, for that the party
therein had remedied in an action of higher nature; but later statutes quoted before in the margent have cleared this point.

CAP. XXXIX.

Et pur ego que le temps est mult passé
puis que les briefes desaumb nomanes
furent autrefois limites; paroieu est, que en count countant de descent en
brief of droict, est ne fait ci de count-
tor de la seisin son anc de plus longe seis-
fin que de temps le roy R. (1) uncle le
roy Henry, puer le roy que ore est. Et
que le briefe de novel diffassif, et de
parrunt, que est appelle nuper obit,
yent le temps puis le primer passage le
roy Henry, puer le roy, que ore est en
Gascogne (2), mes nemy avant. Et les
briefes de mortidance, de colofage,
de maes de colofage, et briefe de muisir,
etant le terme del coronement mesme
le roy Henry (3), et nemy avant.
Ales que toutes les briefes ore a per mesme
purchas, en a purchas, entour cy et
[la seisin] S. John en un an, solent plades
de temps que avant solent estre pleades.

AND forasmuch as it is long time
passed since the writs under-
named were limited; it is provided,
that in conveying a decent in a writ
of right, none shall presume to de-
clare of the seisin of his ancestor fur-
ther, or beyond the time of king
Richard uncle to king Henry, father
to the king that now is; and that a
writ of novel dussisin, of partition,
which is called nuper obit, have
their limitation since the first voyage
of king Henry, father to the king that
now is, into Gascogne. And that
writs of mortdaissance, of colofage,
of aiel, of entry, and of nativis, have
their limitation from the coronation
of the same king Henry, and not be-
fore. Nevertheless all writs pur-
chased now by themselves, or to be
purchased between this and the feast
of St. John, for one year compleat, shall
be pleaded from as long time, as heretofore
they have been used to be pleaded.

(1) 114. 115. 30 H. 3 c. 32 H. 3 c. 2 1 Jac. 1 c. 16.
(2) 114. 37c. 77. (3) 114. 376. 24 H. 3 c. 37.
The 114. c. supra.

(1) De temps le roy R.] That is by construction from the first
day of the reign of king Richard the first, and so hath it been re-
 solved in parliament.
This act doth limit within what time the seisin shall be in a writ
of right, and by construction the time of prescription is taken for
this time.
(2) Puis le premier passage le roy Henry, &c. in Gascogne.] That
was in anno 5 H. 3.
(3) Del coronement mesme le roy Henry.1] H. 3. was crowned 28
Octobris, anno Dom. 1217, et regni sui primo; but others say he was
crowned 16 Junii, anno regni sui primo.
This king was crowned again in anno 5 of his reign, but this act
intended his first coronation.

Theis
CAP. XL.

DUR cee que mults des gents sont delays de leur droit, per faussement de leur oufere a garanty: &c.
qui en briefes de posse(1), tout ademprimes com en briefe de mortdaunce, coifmage, &c.
& ayle, nuper obiiit, de intrusion, &c.
et enus briefes semblables, par les quue exts ou tenements font demandes (2),
quex devoin definder (3), reverter (4), remainder (5), ou ecbier (6), per mortdanc, ou dauter, que si le tenant vouche a garanty, et le demandant larguverte dolor.
et voile auverser per affife,
oy par pays, ou en best maner, si come le court le roy agarde, que le tenant (9)
suffit: (8) que heire il est, faict le prime
mer que entra (10) apres la mort celuy de que feisin il demand, fait le auverment
al de demandant receve (7), si le ten
nant le voile attendier, et si non, fait se subser le auter respon (11) si il neit
son garnantor en present, que luy voile
garanter de sien grec (12), et mainte
nentier enter en respon, faire al de
mandant ses exceptions enconter luy, si
voile voucher oufer, come il avoit avaint, enconter le primer tenant.

De recheff

en autaut maners des briefes dentre, queux

faut mention des degress: puruiev

que ny deforms vouche (12) hors de

de la line (14). Et en auters briefes
dentre, ou nul mention est fait de de
gres (15), les queux briefes ne sont
fautz, forque la ou les avantais briefs de degress ne poient gifer ne

hautener. Et en briefe de droit (16)
puruiev est, que si le tenant vouche a
garanty, et le demandant le voile

cvnderied, et faoit priz de auver pier
per pays, que celuy que est vouche (17) a
garanty, [ne nui] de ses ancrellers (18)

ne nuques avoient feisin de la terre, ou del

FORASMUCH as many people are delayed of their right by false vouching to warranty; it is provided, that in writs of possession, first in writ of mortdancester, of coifmage, of aiel, nuper obiiit, of intrusion, and other like writs, whereby lands or tenements are demanded, which ought to defend, revert, remain, or echeat by the death of any ancestor, or other wife, if the tenant vouch to warranty, and the demandant counterpleadeth him, and will aver by affife, or by the country, or otherwise, as the court will award, that the tenant, or his ancestor (whose heir he is) was the first that entered after the death of him, of whose feisin he demandeth; the averment of the demandant shall be received, if the tenant will abide thereupon; and if not, he shall be further compelled to another answer, if he have not his warrantor prefant, that will warrant him freely, and incontinent enter into the warranty; having unto the demandant his exceptions against him, if he will vouch farther, as he had before against the first tenant. From henceforth in all manner of writs of entry, which make mention of degrees, none shall vouch out of the line: or in other writs of entry, where no mention is made of degrees, which writ shall not be maintained, but in cases where the other writs of degrees cannot lie, nor hold place: and in a writ of right it is provided, that if the tenant vouch to warranty, and the demandant will counter-plead him, and be ready to aver by the country; that he that is vouched to warranty, nor his ancestors, had never feisin of the land
del tenement (19) demande (20), ne
fro. n. service by the hands of his tenant, or
[ajecun] de ses ancêtres (21), puis le
temps celui de que je fisin le deman-dant
contre (22) jéques al temps que le
briefe frit purchase et plee move (23),
per que il poit le tenant en ses ancêtres
aver siffice : adegnes soit l'avere ment
del demandant recevire, si le tenant le
voit attendre, et si non, f doit le tenant
bewerker a auter respons (24), si n'est
son garrantor en projet, que luy voile
garantir de son grec, et maintenir
enter en respons, si [e] al demandant ses
exceptions encontre luy, fcombien il avoit
avant encontere le primer tenant. Et
l'avantdité exception eit lieu en briefe de
mortduanceflis, et en les auters briefes
devant nomines, auxibien come briefes
quese touchent droit (25). Et si le
tenant por cas eit chartir de garantty
de auter boine de ceo chœfe que fait oblige
en nel des avantditas cafes (26) a le
garrantty de son eigene degree, faive luy
fait son recoverer per briefe de garantty
de chartir de lechauncelor le royaun,
point il le vendra purchase, mais que le plee
n'est pas fer ceo deley.

land or tenement demanded, nor fee
or service by the hands of his tenant,
or his ancestors, since the time of him,
on whose seizin the demandant de-clar-
eth, until the time that the writ was
purchased, and the plea moved, where-
by he might have incoffed the tenant,
or his ancestors, then let the averment
of the demandant be received, if the
tenant will abide thereupon; if not,
the tenant shall be further compelled
unto another answer, if he be not pre-
sent that will warrant him freely, and
incontinent enter in answer, laying up-
to the demandant his exceptions against
him, as he had afore against the first
tenant. And the said exception shall
have place in a writ of mortduncel-
tor, and in the other writs before
named, as well as in writs that concern
right. And if percause the tenant have
a deed, that compriseth warranty of
another man, which is bound in none
of these cases before mentioned to the
warranty of an elder degree; his re-
coverey, by a writ of warranty of char-
ters out of the king's chancery, shall
be faved to him at what time ever
he will purchase it; howbeit the plea
shall not be delayed therefore.

The mischiefe before this statute was, that every tenant in a
real action was permitted to vouch any of the people, though he or
any of his ancescers had never any thing in the land whereof he
might encoffe the tenant or any of his ancescers; and againe that
vouchee might vouch another in like manner, and upon every
summons ad warrantyandum, there must be nine returners, &c.
so as the delay was in manner infinite, and all upon false vouches;
which matter being showed in this parliament, Fuit adnuf al rey ga
cost ley fuit makweis, for it is a maxime in law, that Lex dilatav-
fer exhorret; whereupon this act of parliament for remedy was
made.

Vouchie a warranty. For this word [vouchie] see Lit.
Vide Glanv. of this matter.
Vide Braslon, a whole translation of vouching to warranty.
Vide Britton, a chapter of the same;
Fleta, lib. 240

Fleta, Sunt autem nonnulli litterae protractores nitentes, minores
falso vocant ad warrantum, et de quibus provinum est (summing up
the principal part of this statute in few words) quod si peteis repli-
co non verificare quod vocatus nec aliquis anteceferum vocavit
neque jussum habuit de re petitione, fideum nec fornitionem rem manum
remittit vel alienum unus eorumque ex eis, vel petit a munere
ige ad tempus imprimaturis curis et placitum motis, per quod petitis veri-
carere locum vel ejus antecessores inde fessus nutre, admittitur veri-
carare illis si tenens voluerit hoc expetare, aliquum alienum repositione
complectitur, falsis petentibus talibus repulsionibus, quales sunt, principalem
locum obtinere, et si tenens chartas habuerit alienos extrinsecus
possit, quod si de warrantiam obligavit, vel per antecessorem obligatus
est qui gratuit warrantiis valuerit, tune competit tenenti remedium
prohibito de warrantia chartis, sed propteram non capiat plicatum jam
auctorem exemptum.

In ancient time it seemed strange when the original proeipt was
bought against the tenant of the land, that the court upon that original
should hold plea between the tenant and the vouchee, but it is
more strange to make a question of that, which hath received
an ancient, continuall, and constant allowance, and the vou-
chee commeth in loco tenentis, and in judgement of law is a tenant
to the demandant, and our act doth allow of true vouchees,
but provideth against false vouchees, as our act speaketh, for delay
only.

(1) Eu briefes de possession. So called, because either the
demandant, whose feiture he demands, was in possession the day
he died, or the demandant himself was in possession, as mortuus,
heuces, atque, super obitum, intestation and other like writs, as 

The diversity between the actions annuciet vel ducrteve, and the
actions annuciet vel post Legiones, you shall see at large in my re-
ports in Markals case, and is necessary to be observed for the
understanding of this act, which maketh the same distinction of
actions.

(2) Per les queues terres au tenemens sunt demanaides. In a writ of
right of ward of body and land, the defendant vouchee, and the
plaintiff counterpleaded the vouchee by this first branch of this act,
that the defendant was the first that abated after the death of his
tenant, and the same continued till the vouchee, and adjudged a
good counterplea; for albeit it is named a writ of right, and in letter is out of this branch, yet is it in nature of a writ of possession,
and the words are per mort danciufex au dauer, and though no lands or
tenements be demanded, which regularly is intended of an ef-
tact of sechold, yet this case being within the same mischiefe is taken
within the remedy.

In dower the tenant vouche T. cofine & heire; A. the de-
mandant said that her husband died seised, and the vouchee
was the first that abated; and a good counterplea within these
words, autres briefes feables, but that plea is not in calce of the
heire.

(1) Difender] A former done in the demandant is out of this branch,
for it is a writ of right in his nature, and not a writ of possession,
and he demandeth not the land of the lievin of his ancencel, as the
statute speaketh, but of the gift.
(4) Reverter.] A formedon in the reverter is not within this branch, for that it is a writ of right in his nature.

(5) Remainder.] A formedon in the remainder is not within this branch, for it is no writ of possefion, but a writ of right in his nature, and the demandant doth not demand the land of the seifin of his auncelle, as the statute speakeith, but by the remainder.

(6) Escheite.] This is in the English translation turned to escheate, which ought not to be, but escheit signifieth to fall, and a writ of escheat is not within this branch, for that it foundeth in the right, and reverter, remainder, or escheite is to be intended after the death of his auncelle, or tenant for life, tenant in dower, or by the curtefe.

An affise of novel diffefyn, and in affise of darrein presentment are within this branch, if the tenant vowche any named in the writ, and the demandant may counterplead the vowcher, as well when the tenant is present in court, as when he is absent.

(7) Que le tenant ou son auncelle que heire il est fait ou le premier qui entra apres la mort celuy de que seiffin il demaund, fait laourvemement demander seiffesce.] A dieth feised in fec, B. abatef, and makes a leafe for life, and grauntef the reverfion to C. in fec, and dieth, C. grauntef the reverfion to D. the heire of B. tenant for life is impled in a writ of cofinage, and makes default after default, D. is received and vowche to warranty C. the demandant counterplead the vowcher, for that B. was the first that abated after the death of his auncelle, of whose seiffin he makes his demand, and two objectiones were made, that this counterplea was not within this statute. 1. That D. claimed the reverfion by purchase, and so B. was not his auncelle within this statute, for he claimed not the land as heire. 2. That this statute speakeith of the tenant, which must be understanded of the tenant for life, who is the tenant to the prachipe in deed, and not of the tenant by receit, who is tenant in law: as to the first it was anwered and resolved, that in as much as the abatement is confessed, albeit that divers flates be made, yet for that D. is heire to the abator, and B. his auncelle within the letter of the statute, and injuria per circuitum non tollitur, and so within the meaning. But if the flate of the abater had been avoided by a title paramount, and the heire of the abater had been enfcoffed, there the heire had not claimed under the abatement, and therefore although he were within the letter of this act, yethad he been out of the meaning.

(8) Auncelles.] And where it is said here auncelle, predeceffor is taken by equity; for acts of parliament made for suppreffion of fallhood practifed for delay, as thefe false vouchers be, shal have a benigne interpretation.

(9) Tenant.] To the second, albeit tenant by receit be but tenant in law, yet is he in lieu of the tenant, and so within this branch, for otherwise the abator may make a leafe for life, and by his default after default be received, and so by covin between them make this branch of none effect which should be against reafon, et in fraudem legis; and tenant in law by warranty is within this act, albeit he be not present in court.

(10) Primier que entra.] A. and B. doe abate to the use of B. the whole flate is in B. if B. infeoffe A. this coadjutor is within this act, and yet he gained no freehold, but this statute faight, Le primier ne
Cap. 40. Westm. primer.

But if the abator maketh a seoffement in fee, and taketh back an estate to him and a stranger, and they both be implicated in a writ of seiel, and vouch their seeffor for the benefit of the stranger (who is out of the statute) the vowcheer cannot be counterpleaded within this branch.

But if the stranger releaseth the abator, and he be implicated, and vouch, this vouchee may be counterpleaded by force of this branch.

(11) Et si nou, soit bote ouster al auter respon. So as this clause gives no benefit to the tenant unless he giveth over his voucheer, and then he shall be received to answer, but if he stand to his voucheer, and demurre in law upon the counterplea, and it be adjourned to another terme, it is peremptory to the tenant in respect of the delay, in such sort, as if issue had been taken, and a triall had: By these words [Soit bote a auter respon] he may as well vouch as plead in chiefe. Note the words be, Soit bote a auter respon, et ne dit in chiefe, so as any answer sufficeth, and therefore the vouchchee may plead outlawry in the plaintiff in an action of debt, after the last consequence.

But if the counterplea be adjudged for the demandant in the same term, he may plead in bar, but he cannot vouch.

A demurrer in law upon a voucher adjourned to another term is peremptory; for the demurrer is in lieu of an answer, otherwise in case of counterplea the same term, as hath been said.

(12) Si vuit don garantur en present, que ley volle garrenx de son gre, &c.] In a writ of right of ward, the defendant vouch, and for that the vouchee was present in court, and entered into warranty, the plaintiff could not counterplead.

(13) Des recheiff en tous manieres des briefes des entries queux font mention des degres: parvien est que dul disformes vouchera bors del lieu. A diffisfor makes a leafe for life, the remainder in fee, the diffisfor brings a writ of entry sur difesein in the per against the liefe, who makes default after default; he in the remainder is received, he shall vouch out of the line, because he is not within the degrees mentioned in the writ.

And there is no such mitchief in this case, as should follow, if the law were so taken in the first branch, as before it appeared.

But of the vouchee, in case of the per et cui, Fleta saith, Fint uc- cessa de persona in personam, et de quarranto in quarrantum de personis in brevi nominatis sique ad ipsum diffisitoriis; and the reason may be, because it appeareth that the vouchee is within the degrees mentioned in the writ: and the words of the statute are general, Nul vouchera bors de lieu; in which words, the vouchee is included. Lastly, it had been to little purpose, to restrain the tenant in the per, and to let the vouchee in the cui at large; so as this branch hath (as you see) his speciall reason.

If a writ of entry in the per be brought against the husband and wife, and upon the default of the husband the wife is received, he shall not vouch out of the line, because she is party to the writ.

So it is, if a writ of entry in the per be brought against the tenant
for life, and he pray in eyd of him in the reverson, and he joy in a\e\, he must joyn in plea with the tenant, and therefore shall not vouch out of the degrees.

(14) *Hors del lieu.*] Lien is properly the binding of the vouchee by force of the warranty; for the vouchee faith, *See aux a verr a ver a garrant*; and then the tenant sheweth the lien, that is, the deed or fine, &c. that bindeth him to warranty: here it is taken for the degrees; of which you have heard before, in the expussion of the last chapter of Marlebridge.

In a writ of entry in the *per* and * cui against B.* of the sequestme of A. A. dyeth, B. shall vouch the heir of A. for the heir is within the intention and meaning of this law, left he should lose his warranty (so much favoured in law) by the act of God, viz. the death of A.

(15) *Et in autres briefes dentre en nol mention est fait de degres.* That is, writs of entry in the *per*; whereof, and of this whole clause, somewhat hath been spoken in exposition of the said statute of Marlebridge.

(16) *Et in briefes de droit.*] This is not onely understood of a writ of right right, but of all writs of right in his nature, or which touch the right, as this law hereafter speketh, as the writ of escheate, writs of formdon in reverter, remainder, difcender, &c.

(17) *Que celuy que est vouche.*] If the tenant vouch A, as in the sequestme to B, the demandant may counterplead the seisin of B, within the meaning of this branch, for that overthroweth the voucher, which is the end of this law.

a If an infant be vouched as heir to A. it is not sufficient to counterplead the seisin of A. the ancestor, for that the infant cannot make a secoment; but he must counterplead the seisin of the infant and his ancestors, and the infantcse shall come upon the lien.

(18) *Ne und de ces aunccesters.*] Here is implied (whose heir he is) but yet this doth extend aswell to the speciall heir of the possitun (as the heir in borough English, and in gavelkind) as to the general heir at the common law.

b Where a bishop or an abbot be vouched, the counterplead must not be of the bishop or abbot and his ancestors, according to the letter of the law; but of him and his predecessors, according to that capacitie whereby the land is demanded; and so it is of other bodies politique and corporate.

c If a baron and feme be vouched, the seisin of the feme and her ancestors may be counterpleaded, unless speciel matter be shewed to the contrary: and so it is, if two others be vouched, it is a good counterplea to counterplead the seisin of one of them, for omitting of delay by effonne, protection, death, and his heir within ages, &c.

(19) *Ne unques avoient seisin de la terre est tenement, &c.* *Per que il port aver, &c. jfeffe.*] Yet if he hath but an estatte for yeers, it is sufficient; for by the livery he guineth seisin, and both the seimants *se jure* and *se faud* are within this statute, but otherwise it is of an estatte at will.

If the vouchee hath but an estatte for life, so as his seimment should be a surrender, yet hath he such an estatte, as is within this statute.
Weftm. primer.

Halisd coft que use in the right of his wife, or seised in the right of his wife, main a seifin donit il fast feoffment foaire, a foessment for maintenance, though the statute of 1 R. 2. make it void, yet seizing it is not void untill entry; it is a sufficient seifin to make a foessment.

One joynettanant cannot evese another, yet hath he such a seifin as is within this act; for ["feoffment foaire"] is spoken but for example; but a one, release, or any other conveyance which gives an estate, is within this law.

If a vouchee or any of his auncensors had any seifin, though it were avoided or determined, it is sufficient.

(20) En domanande. If a rent be demanded, and the tenant vouche by reasone of a foessment of the land discharged of the rent with warranty, the demandant may counterplead the fielin of the vouchee, &c. of the land, albeit the rent is onely in demand.

Ne se ne service par la maine le tenant, au oisun de ses auncensors, &c. For in respect of some tenure and service, the tenant may vouche to warranty; as frankalmoigne, homage, auncensel, vetition, &c.

(22) Puis le tes celse de que seifin le demande cause. Here ["seifin"] is taken for the title of the demandant in his writ, for it is a maxim that a counterplead, that the demandant is not to counterplead any seifin, but after the title of his writ; and where the seifin is in the title, there the counterplead must be after that seifin: as for example, in a writ of right, after the seifin of him of whose whole seifin he demand.

Here is implied (and before the writ purchased) for if it be plante bruit, it ought not to be allowed.

(23) Endi le temps que le briefe fuit purchase & plea move. * For warranty, created after the purchase of the writ, shall delay the plaintes, unless upon that conveyance the writ be made good; as if a proue be brought against A. of land whereof B. is seised, and B. seises A. hanging the writ, he shall vouche by title of this warranty, otherwise not.

(24) Sei la tenant borne coft al aus respons. Of this sufficient haibe been said before.

(25) Laouandit exception eyt lie in briefe de mandacie, & en les court briefs devant nomes auxy bien come in briefs queux touchant elx. By this clause, the demandants in writs of poelisition, as the seifin, exeris, eidiage, aid, super obit, intrusion, and the like, have a greater privilege and advantage, then demandants in actions which touch the right; for this act gives the demandants in writs of poelisition, not only the first counterplead, that is, that the tenant or his ancestor was the first that entered. &c. but also the last counterplead, which is given in writs touching the right, avis. that neither the vouchee, nor any of his auncellers had ever any seifin, &c.

(20) Et si le tenant est coft est charter de garrantie de auter home, se se voieig in un des avantdits cases, &c. If any man be oued of his vouchee by this statute, yet if he hitt a charter of warranty, he may have his writ of ["garrantie churcbe"; as if a man that never had any thing in the land, nor any of his auncellers before him, releaseth to the tenant of the land with warranty, if the tenant vouche him, and the demandant counterplead the vouchee, by the last
245  Westm. primer.  Cap. 40,

left branch of this act, viz. that the voucher, nor any of his an-
celors had ever any seisin, &c. and the voucher is not there pre-
fent, to enter into warranty; in that case the tenant shall be ousted of
his voucher, but may have his writ of quer charta. So if a
man after the death of my ancestor abate, and make a feoffment in
fee, and after purchase the land again with warranty, and after is
implanted in an allis of mortadegler, he shall be ousted of his
voucher by the first branch of this act, because he was the first that
entred, &c. but he may have his warrantia charta. So if a dis-
sfeior make a feoffment in fee to A, who infeoffeth B, and after re-
parcaseth the land of B, with warranty, against whom the dissefere
brings a writ of entry in the per, as he may do, he cannot vouch
B. by the second branch of this statute, but the dissefere only, and
is driven to his writ of warrantia charta against B.

It is to be known, that there are counterpleas to the voucher, and
that this statute giveth to the demandent, against the tenant in three
cases, as hath been said.

And there is a counterplea to the warranty, or to the lien (which
is all one) and that is between the tenant and voucher, whereof
there is no occasion given to treat at this time; for this act deals not
in any fort with it.

There were at the common law divers counterpleas of the
voucher, to prevent or to ouit the demandants delay, whereof it
is not impertinent to say somewhat.

It was a good counterplea at the common law, to say, that there
was null tie, as the voucher; and that the statute of 14 E. 3. cap. 18
was in affirmation of the common law.

* So it is, if one be vouched as heir within age, and that the
parol may demur, to say, that he is a baillard; so it is, to say that
the voucher is violein to the demandant.

It was a good counterplea at the common law, to say that the
voucher was dead, but upon this distinction, that the demandant
shew the same before any proceffe awarded; for after proceffe
awarded, it must come in by the return of the sherife; and that
the statute of 14 E. 3. cap. 18. was made but in affirmation of
the common law, for it was adjudgged in 5 Edw. 3. a good
counterplea.

And so it is, if two be vouched, it is a good counterplea, to say,
that one of them is dead for preventing of delay.

In dower, it is a good counterplea, to say, that the tenant ented
by his husband.

It is a good counterplea of the voucher, to say, that the tenant
hath formerly prayed in aid of him, in respect of the delay.

In all cases, where one doth vouch out of common course, there
the tenant ought to shew cause.

And whenever the tenant cannot be admitted to his voucher
without shewing of caufe, there by the common law the demandant
may counterplead the caufe.

When one voucheth himself, for faving of his estate till; or
when he voucheth himself as heir, and his brother as tenant in
borough English, because it is out of common course, the tenant
must shew cause, and the demandant shall have a counterplea to
the caufe.

In a præcis, the tenant vouched two brethren as one heir, and
that the youngest was within age; and because it was out of com-
mon course, he was ruled to shew cause; and shewed, that the father was siewd of lands in gavelkinde, and that the same descended to them, and the demandant counterpleaded the cause.

So it is, if a praecipe be brought by four, and two be summoned and severed, the tenant cannot vouch them that be summoned and severd, without shewing cause for the reason aforesaid; and the cause being shewed, the demandant shall counterplead the same.

In a praecipe against two they cannot vouch severally without shewing of cause, because it is out of common course, that jointestants should vouch severally without shewing of cause: which cause the demandant shall counterplead by the common law: and so in all other cases, whereof there are plentifulfull authorities in our books.

See more of this matter in the first part of the Institutes, cap. Garrantie.

CAP. XLI.

De severments des champions (1), est ijfent parview: pur ce que rarement avient que le champion le demandant ne soit perjure en ce qu’il jure, que il ou son pier voit la scigis, feignoir, ou de son avnecfeur, et que son pier lui commande a faire la darreign (2), que deformes ne fait le champion le demandant confiereint a ceo jurer (3), non fait le fere men garde en toutes autres points.

At the common law none could be a champion for the demandant, but such an one, as either himself saw, or heard his father say, that he saw the seizin of the demandant or his ancestor, and that his father commanded him to testify the right, and that this was true, he took a corporall oath: but oftentimes the demandants seizin was so ancient, as feldome any man could take that oath, and yet in these cases, champions in those times took the oath, though they knew it not, either ex aijus, or ex auditu, &c. and therefore as this act faith, were perjured.

(i) Des ferements des champions.] Champion, campio dictur a campo, because the combat was strucken in the field, and therefore is called campfight, and he must be liber homo, a free man.

This triall by champion in a writ of right hath been anciently allowed by the common law, and the tenant in a writ of right hath election either to put himselfe upon the grand assise, or upon the triall by combat by his champion with the champion of the demandant, which was instituted upon this reason, that in respect the tenant had lost his evidences, or that the same were burnt or imbezled, or that his witnesses were dead, the law permitted him to try
try it by combat between his champion, and the champion of the demandant, hoping that God would give victory to him that right had, and of whose party the victory fell out, for him was judgement finally given, for seldom death ensued hereupon (for their weapons were but batonnes) victory only fulfilled.

Now concerning the oath of the champions, and the solemn manner and order of proceeding therein, and between what parties trial by battell should be joyned, you may read in the statute of W. 2. cap. 41. and at large in our books; and the oath of the champion, as well of the tenant as of the demandant continued since this statute, followeth in these words:

Here is you judges, that I have this day, neither euil, drunkne, nor have upon me either bone, flone, ne graffe, or any incantament, forcery, or witchcraft, where through the power of the word of God might be inleaed or diminished, and the Devil's power increased, and that my appeale is true, so helpe me God and his Saints, and by this booke.

The law doth allow a triall by battell in another case, and that is in case of life in an appeale of felonie, the defendant may choose either to put himselfe upon the country, or to try it by body to body, that is by combatte between him and the plaintiffs, but there the parties themselves shall fight.

And it appeareth by our auncient authors, Quod si appellantis si defendenti contra appellatem rata die ugsue hoream qua felle incipient appeare, tunc recedat appellatus quiesco de appare.

And in case of the writ of right, the champions are not bound to fight but untill the flarres appare, and if the champion of the tenant can defend himselfe untill the flarres appare, the tenant shall prevale, for they shall combat but once, and it is sufficient for the tenant to defend being in possession.

The judges of the court of common pleas are judges of the battell in a writ of right, and the judges of the kings bench in an appeale of felonie. But if the cause of appeale be not determinable by the common law, but before the constable and the marshal according to the civil law, there the constable and marshal are judges.

But this triall in an appeale at the common law of later times seldom come in use, for that the appellant procures the appealle to be indicted, and then he cannot try it by battell: * but if the indictment be insufficient, then the defendant may try it by battell.

Now the auncient law was, that the victory should be proclaimed, that he that was vanquished, should acknowledge his fault in the audience of the people, or pronounce the horrible word of crouent in the name of recreant, &c. and presently judgement was to be given, and after this the recreant should amitter liberet legem, that is, he should become infamous, and should not be accounted in that respect liber et legalis home, and therefore could not be of any jury, nor give testimony as a witnesse in any case, because he is become infamous, and of no credit: and this doth notably appeare in an ancient record, where the case was, that battell being joyned in a writ of right of advowson, in anno 55 H. 7, before the justices in eyre in the county of Northampton, and the champions combating, Philip le Pugil champion for one of the parties was vanquished, and thereupon proclamation made accordingly: