THE

THIRD PART

OF THE

INSTITUTES

OF THE

LAWS OF ENGLAND.
THE

THIRD PART

OF THE

Institutes of the Laws of England:

CONCERNING

HIGH TREASON,

AND OTHER PLEAS OF THE CROWN.

AND

CRIMINAL CAUSES.

Eccles. 8. ii.
Quia non professur cito contra malesficiendia, absque timore
ullo filii hominum perpetrans mala.

Invertis est necesse quod sibi liceat.

Authore EDWARDO COKE, MILITE, J. C.

Hæc ego grandævus posui tibi, candide lector.

London:
Printed for E. and R. BROOKE, Bell-Yard, near Temple-Bar.
M.DCC.XCVII.
A TABLE of the severall CHAPTERS of the
Third Part of the Institutes, of the Pleas of the Crown.

MULTI MULTA, NEMO OMNIA NOVIT.

Cap.                                      Pag.
1. HIGH treason, and of incidents thereunto. - - 1
   Petit treason. - - - - 19
3. Misprision of treason. - - - - 36
4. Felony by the statute of 3 H. 7. to conspire the death of
   the king, or privy counsellor. - - - - 37
5. Heresie. - - - - - - - 39
6. Of felony by conjuration, witchcraft, sorcery and inchant-
   ment. - - - - - - - 44
7. Murder. - - - - - - - 47
8. Homicide, and herein of felo de se. - - - - 54
9. Deodands. - - - - - - - 57
10. Buggery or sodomy. - - - - - - - 58
11. Rape. - - - - - - - 60
12. Felony for carrying away a woman against her will. - - 61
13. Felony for cutting out of tongues, &c. - - - - 62
14. Burglary, and herein of sacrilege. - - - - 63
15. Burning of houses. - - - - - - - 66
16. Robbery. - - - - - - - 68
17. In what cases breakers of prisons are felons. - - 69
18. Escape voluntary of felons. - - - - - - 70
19. Stealing, &c. of records. - - - - - - - ibid.
20. Multiplication. - - - - - - - 74
21. Hunting in the night. - - - - - - - 75
22. Imbesciling of armour, ordnance, victuals, &c. - - 78
23. To depart the realm to serve forain princes, &c. - - 80
24. Purveyors. - - - - - - - 82
25. Wandring soldiers, and mariners. - - - - 85
26. Souldiers that depart from their captains, &c. - - 86
27. Marrying of two husbands, or two wives. - - 88

A 3

28. A plague
<table>
<thead>
<tr>
<th>Chap.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>28.</td>
<td>A plague fore, &amp;c.</td>
<td>90.</td>
</tr>
<tr>
<td>29.</td>
<td>Felony in a gaoler by dures, &amp;c.</td>
<td>91.</td>
</tr>
<tr>
<td>30.</td>
<td>Felony by bringing in, &amp;c. of certain money</td>
<td>92.</td>
</tr>
<tr>
<td>31.</td>
<td>Transportation of moneys</td>
<td>ibid.</td>
</tr>
<tr>
<td>32.</td>
<td>Transportation of wool, woollers, lead, &amp;c.</td>
<td>95.</td>
</tr>
<tr>
<td>33.</td>
<td>Transportation of iron, brass, copper, &amp;c.</td>
<td>97.</td>
</tr>
<tr>
<td>34.</td>
<td>Felony for stealing of falcons, &amp;c.</td>
<td>ibid.</td>
</tr>
<tr>
<td>36.</td>
<td>Bringing in of hulls</td>
<td>100.</td>
</tr>
<tr>
<td>37.</td>
<td>Receiving of jesuites, &amp;c.</td>
<td>101.</td>
</tr>
<tr>
<td>38.</td>
<td>Felony in recusants concerning abjuration</td>
<td>102.</td>
</tr>
<tr>
<td>40.</td>
<td>Rogues</td>
<td>103.</td>
</tr>
<tr>
<td>41.</td>
<td>Forgery in the second degree</td>
<td>ibid.</td>
</tr>
<tr>
<td>42.</td>
<td>Transportation of sheep alive in the second degree</td>
<td>104.</td>
</tr>
<tr>
<td>43.</td>
<td>Servants that imbeffill their masters goods after their death, &amp;c.</td>
<td>ibid.</td>
</tr>
<tr>
<td>44.</td>
<td>Servants that imbeffill their masters goods committed to their trust, above 40 s.</td>
<td>105.</td>
</tr>
<tr>
<td>45.</td>
<td>Prowlise in Maryland</td>
<td>106.</td>
</tr>
<tr>
<td>46.</td>
<td>Discoverie of counsell by a juror, &amp;c.</td>
<td>ibid.</td>
</tr>
<tr>
<td>47.</td>
<td>Larceny and theft</td>
<td>107.</td>
</tr>
<tr>
<td>48.</td>
<td>The year day and waft</td>
<td>108.</td>
</tr>
<tr>
<td>49.</td>
<td>Piracy, &amp;c. upon the sea</td>
<td>ibid.</td>
</tr>
<tr>
<td>51.</td>
<td>Abjuration and sanctuary</td>
<td>114.</td>
</tr>
<tr>
<td>52.</td>
<td>Hue, and cry</td>
<td>115.</td>
</tr>
<tr>
<td>54.</td>
<td>Premunire</td>
<td>118.</td>
</tr>
<tr>
<td>55.</td>
<td>Prophecies</td>
<td>119.</td>
</tr>
<tr>
<td>56.</td>
<td>Approver</td>
<td>128.</td>
</tr>
<tr>
<td>57.</td>
<td>Appeals</td>
<td>129.</td>
</tr>
<tr>
<td>58.</td>
<td>Treasure trove</td>
<td>131.</td>
</tr>
<tr>
<td>59.</td>
<td>Wreck</td>
<td>132.</td>
</tr>
<tr>
<td>60.</td>
<td>Falfe tokens, &amp;c.</td>
<td>133.</td>
</tr>
<tr>
<td>61.</td>
<td>Thesibote</td>
<td>ibid.</td>
</tr>
<tr>
<td>62.</td>
<td>Indictments</td>
<td>134.</td>
</tr>
<tr>
<td>63.</td>
<td>Councill</td>
<td>ibid.</td>
</tr>
</tbody>
</table>

63. Council
<table>
<thead>
<tr>
<th>Cap.</th>
<th>The Table.</th>
<th>Fig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.</td>
<td>Counsell in pleas of the crown.</td>
<td>-</td>
</tr>
<tr>
<td>64.</td>
<td>Principall and accessory.</td>
<td>-</td>
</tr>
<tr>
<td>65.</td>
<td>Misprissons divers and severall.</td>
<td>-</td>
</tr>
<tr>
<td>66.</td>
<td>Conspiracy.</td>
<td>-</td>
</tr>
<tr>
<td>67.</td>
<td>Penisons, &amp;c. received of foraign kings.</td>
<td>-</td>
</tr>
<tr>
<td>68.</td>
<td>Bribery.</td>
<td>-</td>
</tr>
<tr>
<td>69.</td>
<td>Extortion.</td>
<td>-</td>
</tr>
<tr>
<td>70.</td>
<td>Usury.</td>
<td>-</td>
</tr>
<tr>
<td>71.</td>
<td>Simony.</td>
<td>-</td>
</tr>
<tr>
<td>72.</td>
<td>Single combat, duell, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>73.</td>
<td>Going or riding armed.</td>
<td>-</td>
</tr>
<tr>
<td>74.</td>
<td>Perjury and subornation, and incidently of oaths, and of commissions, &amp;c. and of equivocation.</td>
<td>-</td>
</tr>
<tr>
<td>75.</td>
<td>Forgery, the first offence.</td>
<td>-</td>
</tr>
<tr>
<td>76.</td>
<td>Libels, and libellers.</td>
<td>-</td>
</tr>
<tr>
<td>77.</td>
<td>Champerty, imbracery, maintenance, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>78.</td>
<td>Barrettry.</td>
<td>-</td>
</tr>
<tr>
<td>79.</td>
<td>Riots, routs.</td>
<td>-</td>
</tr>
<tr>
<td>80.</td>
<td>Quarrelling, &amp;c. in church, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>81.</td>
<td>Smiling or laying violent bands in church, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>82.</td>
<td>Striking or drawing weapon in church, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>83.</td>
<td>Striking, &amp;c. in any of the kings courts of justice, &amp;c. or in any of the kings houses.</td>
<td>-</td>
</tr>
<tr>
<td>84.</td>
<td>Fugitives, &amp;c. or such as depart the realm without licence, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>85.</td>
<td>Monopolisfts, projectors, propounders, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>86.</td>
<td>Dispenfers with penall statutes.</td>
<td>-</td>
</tr>
<tr>
<td>87.</td>
<td>Concealers, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>88.</td>
<td>Informers, relatours, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>89.</td>
<td>Forestallers, ingroffers, &amp;c.</td>
<td>-</td>
</tr>
<tr>
<td>90.</td>
<td>Robersdfinex.</td>
<td>-</td>
</tr>
<tr>
<td>91.</td>
<td>Bankrupts.</td>
<td>-</td>
</tr>
<tr>
<td>92.</td>
<td>Recusants.</td>
<td>-</td>
</tr>
<tr>
<td>94.</td>
<td>Weights and measures.</td>
<td>-</td>
</tr>
<tr>
<td>95.</td>
<td>Apparell.</td>
<td>-</td>
</tr>
<tr>
<td>96.</td>
<td>Diet.</td>
<td>-</td>
</tr>
<tr>
<td>97.</td>
<td>Buildings.</td>
<td>-</td>
</tr>
<tr>
<td>98.</td>
<td>De</td>
<td></td>
</tr>
</tbody>
</table>
The Table.

98. De lupanaribus, &c. brothel-houses. - - - 205
99. De effentatore, flatterer. - - - - 207
100. False imprisonment. - - - - 209
101. Judgments and execution. - - - - 210
   In case of high treason. - - - - ibid.
   In petit treason. - - - - 211
   In appeal when the defendant joyning in battail is vanquished, or slain. - - - - 212.
   In treason or felony wherein neither corporall punishment, nor forfeiture is expressed. - ibid.
   Auctorfoits attain. - - - - ibid.
   Auctorfoits acquit. - - - - 213
   Auctorfoits convicat devant judgement. - - - - 214
   Judgment to reverse an outlawry for treason or felony. - - - - ibid.
   Judgement in case of abjuration, &c. - - 216
   Peyne fort et dure. - - - - 217
   Judgement in petit larceny. - - - - 218
   In misprison of high treason. - - - - ibid.
   For striking in Westminister hall, &c. - - ibid.
   For striking and drawing blood in the kings court. ibid.
   In a premunire at the just of the king. - - ibid.
   In case of theftbote. - - - - ibid.
   Pillory, tumbrell, cuckingstool. - - - - 219
   Judgment for death of a man per infortunium. - - 220
   For the death of a man, se defendendo. - - ibid.
   For death of a man that offereth to rob, &c. - - ibid.
   In conspiracy, where the party indicted, &c. is legitimo modo acquietatus. - - - - 222
   In an attaint. - - - - ibid.
   Judgement de corrupto judice. - - - - 223
102. Forfeiture, confiscation, &c. - - - - 227
103. Seizure of goods for offences before forfeiture, and begging of lands or goods before conviction, unlawful. 228
104. Falsifying of attainders. - - - - 230
105. Pardons. Works of Mercy. - - 233
106. Restitutions. The Epilogue. - - 240

Deo,
Deo,
Patrisae,
Tibi.

A PROEME
TO THE
THIRD PART of the INSTITUTES.

In the Second Part of the Institutes we have spoken only of acts of parliament, (viz.) of Magna Carta, and many ancient and other acts of parliament, which we have explained, and therein observed which of them are declaratory of the ancient lawes of this realme, which are introductory of new, and which mixt: all of them (excepting a very few) concerning common pleas, and these two great pronouns, meum and tuum.

In this Third Part of the Institutes, we are to treat de malo, viz. of high treason, and other pleas of the crowne, and criminal causes, most of them by act of parliament, and some by the common law: in which cases the law of all other is most necessary to be knowne, because it concerneth the safety of his majectie, the quiet of the common-wealth, and the life, honour, fame, liberty, blood, wife, and posteritie of the party accused, besides the forfeiture of his lands, goods, and all that he hath: for it is truly said of these laws, Reliquae leges privatorum hominum commodis prosperiunt, hae regiae majestati, subditorum vitae, ac publicae tranquillitati consulunt. And that in these cases the ancient maxime of the law principally holdeth, Misera servitus est, ubi jus est vagum, aut incognitum. And where some doth object against
A PROEME to the

against the lawes of England, that they are darke and hard to be
understood, we have specially in these and other parts of the
Institutes opened such windowes, and made them so lightsome,
and easie to be understood, as he that hath but the light of na-
turns, (which Solomon calleth the candle of Almighty God,
Prov. 20. 27.) adding industrious and diligence thereunto, may
casily discerne the same. And that may be verified of these
lawes, that lex est lux, Prov. 6. 23, the law itselfe is a light.
See Rom. 2. 14. And when we consider how many acts of
parliament (published in print) that have made new treasons and
other capitall offences, are either repealed by generall or express
words, or expired: how many indictments, attainters of trea-
sions, felonies, and other crimes, which are not warrantable by
law at this day: and how few book-cases there have been pub-
lished of treasons, (though a subject of greatest importance) and
those very slenderly reported: we in respect of the places which
we have holden, and of our own observation, and by former con-
ferences with the fages of the law in former times concerning
criminall causces or pleas of the crowne, have thought good to
publish this third part of the Institutes, wherein we follow that
old and sure rule, Quod judicandum est legibus, et non exemplis.
A worke arduous, and full of such difficulty, as none can either
seele or believe, but he onely which maketh tryall of it. And
albeit it did often terrifie me, yet could it not in the end make
me desist from my purpose; (especially in this worke) fo farre
hath the love and honour of my country, to passe through all la-
bours, doubts, and difficulties, prevailed with me.

This, as other parts of the Institutes, wee have set forth in
our English tongue, not onely for the reasons in the preface to
the first part of the Institutes alledged, which we presume may
satisfie any indifferent and prudent reader: but specially this
treatiè of the pleas of the crowne, because, as it appeareth by
that which hath been said, it concerneth all the subjects of the
realme more neerly by many degrees, than any of the other.

Hereunto you may add that which Robert Holcoth an English
man
man surnamed Theologus magnus, upon the second chapter of the book of Wisdome, in or about the 20. yeare of king E. 3. wrote to this effect. Narrant histriæ quod cum Willielmus dux Normanorum regnum Angliae conquensisisset, deliberavit quem modo linguam Saxoniam posset desinuere, et Angliam, et Normaniam in idiomate accordari, et idem ordinavit, quod nullus in curia regia placidaret nisi in Gallico, et iterum quod peculiarum ad litteras addiscret Gallicum, et per Gallicum Latinum, quæ duo usque bodie observantur. Hæc ille. But the statute of 35 E. 3. cap. 15. made not long after Holcoth wrote, hath taken these edicts of a conqueror away, and given due honour to our English language, which is as copious and significant, and as able to express any thing in as few and apt words, as any other native language, that is spoken at this day. And (to speake what we think) we would derive from the Conqueror as little as we could.

When Henry the first died, all the issue male of the Conqueror, and of his sons were dead without issue male.

The wife of king H. 1. was Mawde daughter of Malcolme king of Scotland surnamed Cannor, and of Margaret his wife, who was the grandchild of Edmund Ironside king of England, viz. the said king Edmund had issue Edward surnamed the Outlaw, because he lived a long time beyond sea with Salamon king of Hungary out of the extent of the laws of this realm. Edward had issue the said Margaret his eldest daughter, famous for her piety and vertue; she had issue Mawde wife of king H. 1. who by her had issue Mawde, of whose English blood by Giffrey Plantagenet earle of Anjou all the kings of England are li-
neally descended.

We have in this Third Part of the Institutes cited our ancient authors, and bookes of the law, viz. Bracton, Britton, the Mirror of Justices, Fleta, and many ancient records, never (that we know) before published, to this end, that seeing the pleas of the crown are for the most part grounded upon, or declared by statute
A PROEME, &c.

Statute lawes, the studious reader may be instructed what the common law was before the making of those statutes, whereby he shall know, whether the statutes were introductory of a new law, declaratory of the old, or mixt, and thereby perceive what was the reason and cause of the making of the same, which will greatly conduce to the true understanding thereof.

We shall first treat of the higheft, and most hainous crime of high treason, Crimen laeæ majestatis; and of the rest in order, as they are greater and more odious then others.
C A P. I.

OF HIGH TREASON.

BY the statute of 25 E. 3. de proditionibus, is declared in certaine particular cases, what offences shall be taken to be treason, with this restriction, that if any other case supposed to be treason should happen before any justices, the justices should tarry without going to judgment of the treason, till the case be shewed before the king and his parliament, whether it ought to be adjudged treason or other felony: therefore we will lay our foundation upon, and begin with that act of parliament, the letter whereof in proprio idiomate ensuit.

Adverse opinions. Ad eam declaratio-

mexit.

Not. This is a law for the most part declaratory, but addeth also divers things to the ancient law.

Yet, Lux burghur, alias Lux a-

burghus, were a

kinge of law

come to the

likemess of our

Englishe money,

so called, be-

cause they were

borne in Lux-

burgh, which

sometime was an

cashiomer, and

after a dukie-

name. See Chau-

car in the Pro-

logue to the

Mum's T. le,

the hot speaking

to a leffy mons.

faith, God wo,

et Le stradec les

pay ye, that is

(upon the cohe-

rence of the

vere) No pay-

ment make ye

that is not II

and current.

+ Injuria illatis

judicium denunci-

ant regis videtur

ipse regi illata,

maxime si fuit, in

crerentibus officiam.

Item,

III. Inst.
WHEREAS divers opinions have been before this time, in what case treason shall be said, and in what not; the king at the request of the lords and of the commons, hath made a declaration in the manner as hereafter followeth: that is to say, when a man doth compass or imagine the death of our lord the king, of my lady his queene, or of their eldest sonne and heir; or if a man doe violate the kings compaignion, or the kings eldest daughter unmarried, or the wife of the kings eldest sonne and heir; or if a man doe levie warre against our lord the king in his realme, or be adherent to the kings enemies in his realme, giving to them aide and comfort in the realme or elsewhere, and thereof be provably attained of open deed by people of their condition. And if a man counterfeit the kings great or privie seal, or his money: and if a man bring false money into this realme counterfeit to the money of England, as the money called Lutheburgh, or other like to the said money of England, knowing the money to be false, to merchandize or make payment, in deceipt of our said lord the king and of his people. And if a man slay the chancellor, treasurers, or the kings justices of the one bench or the other, justices in chancery, or justices of assize, and all other justices assigned to heare and determine, being in their place doing their offices. And it is to be understood, that in the cases above rehearsed, it ought to be judged treason, which extend to our lord the king and his royall majestie; and of such treason the forfeiture of the estates pertaineth to our lord the king, as well of the lands and tenements holden of others, as of himself.

And albeit nothing can concerne the king, his crowne, and dignity, more than crimen laesæ majestatis, high treason: yet at the request of his lords and commons, the blessed king by authority of parliament made the declaration, as is above-said: and therefore, and for other excellent lawes made at this parliament, this was called beneficium parliamentum, as it well deserved. For except it be Magna Charta, no other act of parliament hath had more honour given unto it by the king, lords spiritual and temporall, and the commons of the realme for the time being in full parliament, then this act concerning treason hath had. For by the statute of 1 H. 4. cap. 10. reciting that where at a parliament holden 21 R. 2, divers paynes of treason were ordained by statute, in as much as there was no man did know how to behave himselfe, to doe, speake, or say, for doubt of such paynes: It is enacted by the king, the lords and commons, that in no time to come any treason be judged otherwife, then it was ordained by this statute of 25 E. 3.

The like honour is given to it by the statute of 1 E. 6. cap. 12. and by the statute of 1 Ma. cap. 1, feff. 1, different times, but all agreeing in the magnifying and extolling of this blessed act of 25 E. 3. Of this act of 1 Mariae, we shall speak more hereafter.
Cap. 1. High Treason.

hereafter. But to proceed to give a light touch how other acts of parliament have been called. The parliament holden at Oxford, an. 42. H. 3. was called insanum parliamentum. 12 E. 2. the parliament of whitebands, albarum fulbarum or metallarum. 5 E. 3. parliamentum bonum. 10 R. 2. parliamentum quod fecit mirabilia, that wrought wonders. 21 R. 2. magni parliamentu. 6 H. 4. parliamentu indociti, lack-learning parliament. 4 H. 6. parliamentu justit, the parliament of bats. The session of parliament in an. 14. H. 8. called the black parliament. The act of 1 E. 6. was called parliamentu pium, the pious parliament. And the said act of 1 Mar. parliamentu præstitum, the merciful parliament. The parliaments of queen Elizabeth filed pia, justa, et provida. The parliament holden anno 21 of king James, called felix parliamentum, the happy parliament. And the parliament holden in the third yeare of our sovereign lord king Charles, benedictum parliamentum, the blessed parliament. The several reasons of these former appellations appeare of record and in history, and the latter are yet fresh in memory. At the making of the statute of 25 E. 3. the high courts of justice were furnished with excellent men, viz. Sir William Shardeshill knight (shortly written in bookes Shard) lord chiefe justice of the kings bench, and his companions justices of that court; Sir John Stonor knight, commonly written in books Stone, lord chief justice of the court of common pleas, and his companions justices of that court; and Gervafius de Wilford, lord chiefe baron of the exchequer, men famous in their profession, and excellent in the knowledge of the lawes. At the making of the statute of 1 H. 4. were Sir Walter Clopton knight, lord chiefe justice of the kings bench, and his companions justices of that court; and Sir William Thurining knight, lord chief justice of the court of common pleas, and his companions justices of that court; and Sir John Caffie knight, lord chiefe baron of the exchequer; men equal to any of their predecessors in the knowledge of the lawes. At the making of the statute of 1 E. 6. were Sir Richard Lifter knight, lord chiefe justice of the kings bench, and his companions justices of that court; and Sir Edward Montague knight, lord chiefe justice of the court of common pleas, and his companions justices of that court; and Sir Roger Cholmesley knight, lord chiefe baron of the exchequer; men of that excellency, as they were worthy of the name of The worthies of the law. At the making of the statute of 1 Mar. were Sir Thomas Bromley knight, lord chiefe justice of the kings bench, and his companions justices of that court; and Sir Richard Morgan, knight, lord chiefe justice of the court of common pleas, and his companions justices of that court; and Sir D. Brook knight, lord chiefe baron of the exchequer, men renowned for their great knowledge and judgement in their profession. All these we have named in the honour of B 2 them,
High Treason. Cap. 1.

them, and of their families and posterities, for that they in their several times were great furthers of these excellent laws concerning treason. *In memoriam eterna erit justus.* And all this was done in several ages, that the faire lillies and roses of the crowne might flourish, and not be stained by severe and sanguinary statutes. But let us come to the act it selfe, and for the better understanding thereof, and of the books, and other records grounded upon the same: let us divide this act concerning high treason into several classes or heads, and then prosecute the same in order.

By compassing or imagining {King, and declaring the
the death of the {Queen, fame by some
Prince, overt deed.

The first concerneth death,

By killing and murdering the
{Chancellor,
Treasurer,
Justices of the one
Bench or other,
Justices in eyre,
Justices of alize,
Justices of oyer and terminer,
&c.

In their places doing their offices.

The second concerneth, the kings comfort, or queene, violation, that is, to violate the kings eldest daughter unmarried late or carnally to know the princes wife.

The third is levying war against the king.

The fourth is adhering to the kings enemies within the realm, or without, and declaring the same by some overt act.

The fifth is counterfeiting of the great seal.

The sixth is counterfeiting of the privie seal.

The sixth and last, by bringing into this realm counterfeitt money to the likenesse of the kings coin, &c.

So as treason is membrum divisiun, and these several classes or heads are *membra dividentia.* And if the offence be not within one of these classes or heads, it is no treason.

(1) Treason] is derived from [trahere] which is treacherously to betray. *Trauen, betrayed, and trahison, per contractionem, treason,* is the betraying it selfe.

Detegit imbelle animos, nil forte iter audens
Proditione.

Inter leges Canuni, fo. 118. ca. 61. Priditiones (1)apropb rvice)
High Treason.

manerabatuer inter seobra jure homina inceptibilitia. Treason is divided into two parts, viz. high treason, aliqua praetitio, and into petit treason, pridio forsa. The Latin word used in law is pridio (à pridici) and heretofore cometh pridici, which of necessity must be used in every indictment of treason, and cannot be expressed by any other word, pridici, or circumlocution.

(2) Ad faci declarament. This law is for the most part declaratory of the ancient law, and therefore this word (declarament) is used. But yet the liberties that shall observe, that in divers clauses it addeth to the former law, whereunto this word (declarament) will sufficiently extend.

(3) Quo re, home, &c.] This extendeth to both sexes, homo including both man and woman. This act is generally, and therefore extendeth to some perons which claim a privilege to be exempted from secular jurisdiction. (For example,) a Adam de Orleton bishop of Hereford was indicted of high treason for aiding the Mortimers, &c. with men, and armour against king E. 2, &c. Whereupon he was arraigned, and alleged se obisse officia Dei, et familia ecclesie, et abisse licentia domini summi pontificis non facit nec d hinc res respondere in lae. parte. And thereupon the archbishop of Canterbury, York, and Dublin, and their suffragans came to the barre, claimed his privilege, and took him away; and he was so far from punishment, as he was after translised to Worcester, and after to Winchester. But this statute (to clear all doubts) extendeth to all persons, as well ecclesiastical as temporali; and to hath it ever since been put in execution, as hereafter in divers cases it appeareth. See hereafter cap. Murire et Larceny.

A man that is non comperens, as shall be said more fully hereafter in the next section, or an infant within the age of discretion is not (in home) within this statute; for the principal end of punishment is, that others by his example may heare to offend, ut vana ad paucos, metus ad omnes percutiat: but such punishment can be no example to mad-men, or infants that are not of the age of discretion. And God forbid that in cases so penal, the I w should not be certain; and if it be certain in case of murder and felony, &c., it ought to be certain in case of treason.

If a man commit treason or felony and confesseth the same, or be therof otherwise conviuet, if afterward he become de non mane memoria (qui patitur exilium mentis) he shall not be called to answer: or if after judgement he become de non mane memoria, he shall not be executed, for it cannot be an example to others.

And all aliens that are within the realm of England, and whose sovereigns are in amity with the king of England, are within the protection of the king, and doe owe a locall obedience to the king, (are homs within this act) and if they commit high treason against the king, they shall be punished as traitors, but otherwise it is of an enemy, whereof you may read at large, lib. 7. Calvin's case, fol. 6, &c. and 15, &c.

(4) Fait comparaet.] Let us see first what the compaing or ima- ging the death of a subject was before, and at the time of the making of this statute, a when sitemus reputabatur pro factis. And b Bradon faith, that presentem voluntas et non exitus, et nihil interre[

a Rot. 1. 7. n. 6. Rot. 4. 1. n. 6. Art. 1. 1. n. 6. 1. Tr. 21. 3. c. 1. Rot. 1. 5. b Rot. 4. 1. n. 6. 1. Tr. 21. 3. c. 1. Rot. 1. 5. a See hereafter, cap. 73. Where and how voluntas reputabatur pro factis, by the ancient law, and the change thereof.

b Bradon, fol
fame by some open deed tending to the execution of his intent, or
which might be cause of death, as justice Spigurnel reporteth a
cafe adjudged; that a man's wife went away with her avowterer,
and they 
compelled the death of the husband, and as he was rid-
ing toward the feitions of oier and terminer and gaole-delivery,
they assaulted him and stroked him with weapons, that he fell downe
dead, whereupon they fled; the husband recovered and made hue
cry, and came to the feitions and shewed all this matter to the
justices, and upon the warrant of the justices, they were taken,
indicted, and arraigned; and all this special matter was found by
verdict; and it was adjudged that the man should be hanged, and
the woman burnt. And Sir William Beresford, chief justice of the
common pleas said, that before him and his compaignons justices of
oier and terminer and gaole-delivery, a youth was arraigned,
for that he would have stolen the goods of his mafter, and came
to his masters bed, where he lay asleep, and with a knife at-
tempted with all his force to have cut his throat; and thinking
that he had indeed cut it, he fled, whereupon the mafter cried out,
and his neighbours apprehended the youth; and all this matter
being found by special verdict, in the end he was adjudged to be
hanged, &c. Quis * voluntas reputabitur pro facta. So as it was
not a bare compaiss or plotting of the death of a man, either
by word, or writing, but such an overt deed, as is aforesaid, to mani-
fell the fame. So as if a man had composed the death of another,
and had uttered the fame by words or writing, yet he should not
have died for it, for there wanted an overt deed tending to the
execution of his composing. * But if a man had imagined to
murder, or rob another, and to that intent had become indicator
vitium, and assaulted him, though he killed him not, nor took any
thing from him, yet was it felony, for there was an overt deed.
But in those days, in the case of the king, if a man had composed,
or imagined the death of the king (who is the head of the common-
wealth) and had declared his composing, or imagination by words
or writing, this had been high treason, and a sufficient Zverture by the
ancient law, and herewith agree all our ancient books.
Gianvill faith, cum quos de morte regis, &c. infamatus, &c.
bracht in the title of criminibus lefici majestatis. Iste accensus
praebensus fuit mortem regis. And Britton, fol. 16. grand treason
of a compose under mort, and fo. 39. b. of ace lencriferson appeale &c.
que ii ea maeine eii John pur parler tiel mort, ou tiel treason &c. And
Fieta faith in his title of crimine lefici majestatis, si quis mortem regis
adyu temerario machinateus fuerit &c. quamvis voluntatem non perduxit
ad effimum. And the Mirror faith, crime de majestie est un peche
horrible fait al roy &c. p. ceux q. occirent le roy, ou compaissant a faire.
And it will delight you (in respect of reverend antiquity) to heare
a preident of an appeale (which then and after was in use) of high
treason, en pleine plan. &c. en temps roy Edmund en cefles parolx.
Rocely icy dit vers Waligrot illong, q. a tiel iour tien anne del raige de
tiel ioy, en tiel lieu vint celuy Waligrot a cei Recelyn, et huy troua defire
en compasy, et en aide ensemblemn cce Atiellung, Thirkild, Boall, et
autres de faire priferer, ou en tache pur occire we figner le roy Edmund,
ou en auter manner p. coupe feloniousment, et a ce faire fyer' entreines
a ceu conseil celer, et a ceo felony effent formt solong, leur poibt. By all
which it is maniestic, that compaiss, machinating, counselling, &c.
Cap. i.  

High Treason.

to kill the king, though it hath no other declaration thereof but by words, was high treason by the common law. And see hereafter, * verb. ver. mort. fuit. et de eo prorogavit. &c.

(5) * Faut committer en imagination. * So as there must be a compassing or imagination, for an act done per inquisitione, without compassing, intent, or imagination, is not within this act, as it appeareth by the express words thereof. Et alius pro facie reum, nisi mens sit rea. And if it be not within the words of this act, then by force of a statute hereafter, * viz. Et par voce praestaturas, &c. It cannot be adjudged treason, until it be declared treason by parliament, which is the remedy in that case, which the makers of the law by circumstances precedent, concomitant and subsequent, with all endeavour evermore for the safety of the king. This was the case of Sr. Walter Tirrel, a French knight, who the first day of August ann. 15 Williel. 2. ann. ab n. 1100 being a hunting with the king in the new forest, was commanded by the king to shoot at a hart, exist ereo tenum volatili, et obtinet arbore in obliquum reflexum faciens, per medium cordis vagans fuscitans, qui subito mortem corruit.

It appeareth also by the Custumer of Normandy, treating of treason, and the expiation of the same, that this act was not treason. To calculate or seek to know by setting of a figure or witchcraft, how long the king shall reign or live, is no treason, for it is no compassing, or imagination of the death of the king, within this statute of 25 E. 3. and this appeareth by the judgment of the parliament in 23 Eliz. whereby this offence was made felony during the life of queen Eliz. which before was punishable by fine and imprisonment.

The ancient law was, that if a mad man had killed or offered to kill the king, it was hidden for treason; and so it appeareth by king Alfred's law before the conquest, and in lib. 4. in Beverley's case. But now by this statute and by force of these words, * Faut committer en imagination la mort, be that is non com pos mentis and totally deprived of all compassings, and imaginations, cannot commit high treason by compassing or imagining the death of the king: for falsifis fuor furore punitur: but it must be an absolute madman, and a total deprivation of memorie. And this appeareth by the statute of 33 H. 8. for thereby it is provided, that if a man being com pos mentis commit high treason, and after accusation, &c. fall to madness, that he might be tried in his absence, &c. and suffer death, as if he were of perfect memory: for by this statute of 25 E. 3. a mad man could not commit high treason. It was further provided by the said act of 33 H. 8. that if a man attained of treason became mad, that notwithstanding he should be executed; * which cruel and inhuman law lived not long, but was repealed, for in that point also it was against the common law, because by intention of law the execution of the offender is for example, ut pena ad paenam, metus ad omnes perveniat, as before is said: but so it is not when a mad man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others.

Mat. Par. pa. 51.
Holline. pa. 26 b.
Mat. Wetlin.
W. Malmesbury.

Custum de Nor.

Vuln i mot. Indecummenta de
17 E. 4. de Th. Burd. al. fed
Judicandum est
Legibus, et non
exemplis.
25 Eliz. cap. 2.

Inter leg. 1 Ab.

praed. cap. 4.
Ph. 4. fo. 123 a.
Beverley's case.
Ovid. Silv. lib. in
Jugurthinum fore
Haude ref.

Nc. quinam h. & c.
nonmine, &c. hu-bes.

33 H. S. cap. 20.
1 & 2 Ph. and
Mar. cap. 10.
2 Bract. lib. 3.
fo. 118.
Britton. cap. 8.
a differenter.

Glanv. lib. 1.
cap. 2.
Fleta. lib. 1.
cap. 21.
Merton. cap. 5.

Vers. roy de la
High Treason.  Cap. 1.

(6) Mot. He that declareth by overt act to depose the king, is a sufficient overt act to prove, that he compasseth and imagineth the death of the king. And so it is to imprison the king, or to take the king into his power, and manifest the same by some overt act, this is also a sufficient overt act for the intent aforesaid. But peruse advisedly the statutes of 13 Eliz. cap. 1. 2. & 14 Eliz. cap. 1.

(7) Nam friguior le roy.] These words extend to all his successors, as it hath been alwayes taken.

(8) Le roy.] Is to be understood of a king regnant, and not of one that hath but the name of a king, or a nominative king, as it was resolved in the case of king Phillip, who married queen Mary, and was but a nominative king, for queen Mary had the office and dignity of a king, so as the that wanted the name of a king, but had the office and dignity, was within this act of 25 E. 3. And hee that had the name, and not the office and dignity of the king was not within it. And therefore an act was made, that to compass or imagine the death of king Phillip, &c. during his marriage with the queen, was treason. A queen regnant is within these words (nam friguior le roy) for the hate the office of a king.

Vide II. 7. 11.

This act is to be understood of a king in possession of the crowne, and kingdom: for if there be a king regnant in possession, although he be rex de facto, et non de jure, yet is he friguior le roy within the purview of this statute. And the other that hath right, and is out of possession, is not within this act. Nay if treason be committed against a king de facto, et non de jure, and after the king de jure cometh to the crowne, he shall punish the treason done to the king de facto: and a pardon granted by a king de jure, that is not also de facto, is void.

If the crown descend to the rightfull heir, he is rex before corona tion: for by the law of England there is no interregnum: and cor nouation is but an ornament or solemnity of honour. And so it was resolved by all the judges Hil. 1. Ja. in the case of Watfon and Clarke seminary priests: for by the law there is always a king, in whose name the laws are to be maintained, and executed, otherwise justice should fail. Divers kings before the conquest voluntarily renounced their kingly office: and so did king H. 2. in the 16. yere of his reign, and Henry his sonne was created and crowned.

It appeareth by Britton, that to compass the death of the father of the king, is treason, and so was the law holden long after that: for after king E. 2. had dismissd himselfe of his kingly office, and duty, and his sonne by the name of E. 3. was crowned, and king regnant, those cased claifs, Thomas Gourney, and William Ocle, and others were arraigned of high treason for murthering the king's father, who had been king by the name of E. 2. and had judgement to be drawn, hanged, and quartered.

* The like judgment was given against Sir John Matrevers knight, and others, as being guilty of the death of the king's uncle, Edmund earl of Kent, which at that time (being so neer of the bloud royall) was by some halden also treason. But now this act of 25 E. 3. hath restrained high treason in case of death (al nam friguior le roy, sa conserve, et al eigne fitz, et heire le roy).

Nicholas de Segrave was charged in open parliament in presence du, reg. constum, baronum, et aliorum de confilio regis tunc ibi existent, that
that the king in the warre of Scotland being amongst his enemies, Nicholas Segrave his liege man, and holding of the king by homage, and fealty, served him for his aid in that warre, did maliciously move contention and discord without cause, with John de Crombewell, charging him with many enormous crimes, and offered to prove it upon his body. To whom the said John answered, that he would answer him in the king's court, as the court should consider, &c. and thereupon gave him his faith. After Nich. withdrew himselfe from the king's hoff, and from the king's aid, leaving the king amongst his enemies, in periculo hostium suorum, and adjoining him to defend him selfe in the court of the king of France, and at his hoff a certaine dry, et sic quantum in eo fiat. Sic ille, et sic vittis dominium regis, et regni subjicetionem dii. regis Franciae od ha. Romaniam, ita fiam avitatis usque Desorum, ad transistentiam, &c. All which the said Nich. confessed, et voluntat dei, regis de alto et basse inde se subjiciat. Et thus hoc dixit, rex voluit habere a se dominium suum continum, baronum, magnatum, et aliorum de consensu sui, maximis eisdem in hoppagio, fidellitate, et licentia quisque et semper, quod eum facilius confinere, quidem non pro tali facie se contum faceret, sed tamen quia omnes habuero hoc ditigente traduntur, et conscientia confeatis, et insinuibus in praecelio facto contentis, &c. dictum quod hinc etiam factum meretur emissorum utrae et membrae, &c. So as this action was then solemnly in parliament adjudged high treason. But this is taken away by this act of 25. E. 3., being not under any of the clastics, or heads specified in this act.

So piracy by any of the king's subjects upon another, was taken to be treason before this act, for so is the book to be intended, because a pirit is lascari genus. But by this act it is not now to be judged treason. See hereafter in the chapter of Piracy.

One ofto mari a queen regnant, if the husband compelle the death of the queen, and declare the same by overt act, he is guilty of treason, and punishable by this act, for to this and many other purposes she is a distinct person by the common law. And so if a queen's wife of a king regnant, compelle the death of the king, and declare the same by overt act, she is guilty of treason, and punishable by this act. So as (that we may speak it once for all) by theft and many others that might be cited, (some whereof shall hereafter be touched) the preamble of this act appeareth to be true, that divers opinions had been before the making of this act, what offences should be adjudged high treason, and what not.

This statute having refrained the compelling, &c. of death to the king, queen, and prince, it came to passe after the making of this act, that in 3 R. 2, two citizens of London, John Kerby, mercer, and John Algor, grocer conceiving malice against John Imperiall, Janerof, of S. Mary in Genoa that came as ambassadour from the state of Genoa to the king (under the king's letters of safe conduct, for alliance to be had betweene the king and the duke and comminity of Genoa aforesaid) for that the said John Imperiall had obtained a * monopoly to furnish this land (keeping his staple at Southampton) of all such wares as came from the Levant, so plentifully as was to be had in all the west parts of Christendome, the said John Imperiall was killed by them, as more at large appears by the record. And albeit the said John Imperiall was an ambassadour.
facour under the king's safe conduct, and the killing of him was
justi beli causa, yet the killing of him was no treason, because it
was not under any of the said chailes or heads, until it was at that time
declared by parliament in these words, *quid eandem et dispense
inter les seignors, et communs, et puis ure. al roy en pleine parlament,
esoit illonquys devant ure. seignor le roy declares, determinis et essentis,
que tis fait, et,casse est, treason, et crime de royall majestie blenye, en
quel cause il ne doit allower a vulluy privilege del clergie, and accord-
ingly the said Kerby and Algore were attainted of high treason in
the king's bench, Hill. 3 Rich. 2. obi supr.: but this declaration is
taken away by the statute of 1 Mary, as hereafter shall be said,
and yet of this declaration we shall make much use hereafter.

In the 22 yeares of E. 3, which was about 3 years before the
making of this act, one John at Hill had murdered A. de Walton the
king's ambaffador, *nullium dis. regis miss. ad mandatum regis exce-
querendum: this was adjudged high treason, for *a hich he was drawne,
hanged, and beheaded, &c. For true it is, *quod legatus ejus vice fun-
git, a quo seipsum, et honorandus ejus fucit illes vicens gestis, et le-
egates violare contra jus gentium est. But by this act of 25 E. 3. it is
restrained to the death de ure. seignor le roy, and therefore prole
is not within this statute.

(9) *Sa compaigne.] This word compaigne, (which is all one with
confort or wise) was used, that compailing, &c. must be during
the marriage with the king; for after the king's death the is not sa
compaigne, and therefore it extendeth not to a queene dowager, and
for this cause this word compaigne was used in this act.

(10) *Le fitz eigne et heire le roy.] The eldest sonne and heire of
a queen regnant is within this law. Before this statute some did
hold, that to compasse the death of any of the king's children, was
treason. But by this act it is restrained to the prince, the king's sonne,
being heire apparant to the crowne for the time being: and he
need not be the first begotten sonne, for the second after the
deacele of the first begotten without issue, is fitz eigne within this
statute, et se de ceteris. If the heire apparant to the crowne be a
collateral heire apparant, he is not within this statute, untill it be
declared by parliament, as it was in the duke of York's cause.

Roger Mortimer, earle of March, was in anno domini 1487
duke of York was likewise proclaimed heire apparant. And to was
John de la Poole earle of Lincoln, by R. 3. And Henry mar-
quifile of Exeter, by king Henry the eighth. But none of these or
of the like, are within the purvieu of this statute. And now that
we have handled compailings and imaginations, let us proceed to
the residued which concerne acts and deeds.

Here is here taken for heire apparant, for he cannot be heire in
the life of the father.

(11) *Si home violat la compaigne le roy.] The Mirror faith, *Crime
de majoritie vers le r. y. p. ceux accuettors p. persigieron la fomle le roy.
Whereby it appeareth that this was high treason by the common
law.

Violare is here taken for carnaliter cognosce; and it is no treason,
unless it be done during the marriage with the king, and extend-
eth not to a queene dowager, as hath been said. And if the wife
Cap. 1. High Treason.

of the king doth yeeld and consent to him that committeth this treason, it is treason in her.

(12) *On la compaigne de leur fiz et heire.* This also extendeth to the wife of the prince during the coverture betweene them, and not to a dowager, and if the wife yeeld and consent to him that commits this treason, it is treason in her.

Heire *me is taken ut supra, or heire apparent.*

(13) *On leigne filz nient marie.* (That is,) eldest daughter not married at the time of the violation, albeit there had been an elder daughter then, who is dead without issue. *The Mirror. Auvowerens q. sçroz tont la file le roy signes legittime, avanc ces q. et fît marie.*

And the reason that the eldest only is here mentioned, is, for that for default of issue male, she only is inheritable to the crown.

(14) *On fi home leva guerre encontre nostre seignior le roy.* This was high treason by the common law, for no subject can levy warre within the realm without authority from the king; for him it ony belonged, See F. N. B. 113. a. Le roy de droit doit faver et defender son realm aux enemies, &c.

* A compounding or conspiracy to levy war, is no treason, for there must be a levyng of war in facto. But if many conprie to levy war, and some of them do levy the faine according to the compairy, this is high treason in all, for in treason all be principlals, and war is levied.

If any leve war to expell strangers, to deliver men out of prions, to remove counsellors, or against any statute, or to any other end, pretending reformacion of their own statut, without warrant; this is levyng of war against the king: because they take upon them royaill authority, which is against the king. There is a diversite betweene levyng of war and committin of a great riot, a rout, or an unlawfull assembly. *For example, as if three, or fouere, or more, doe rife to burne, or put down an inclosure in Dale, which the lord of the manor of Dale hath made there in that particular place; this or the like is a riot; a rout, or an unlawfull assembly, and no treason. But if they had riven of purpose to alter religion establisht within the realm, or laws, or to go from town to town generally, and to cald down inclosures, this is a levyng of war (though there be no great number of the conspirators) within the purvin of this statute, because the pretence is publick and general, and not private in particular. And so it was resolv'd in the case of Richard Bradshaw, miller, Robert Burton, mason, and others of Oxfordshire, whose case was, that they conspired and agreed to assemble themselves with so many as they could procure at Etonwe-hill in the said county, and there to rife, and from thence to go from gentlemen's house to gentlemen's house, and to call downe inclosures, as well for inlargement of high-ways as of erable lands. And they agreed to get armour and artillery at the lord Norrys his house, and to weare them in going from gentlemen's house to gentlemen's house for the purpose aforesaid, and to that purpose they persuaded divers others: and all this was confesed by the offenders. And it was resolv'd, that this was a compaizing and intention to levy war against the queen, because the pretence was publick within the statute of 13 Eliz. cap.*

Paftch. 23 H. 8. in Spain's Reports in case of Queen Anne. 33 H. 8. ubi supra, in case of Queen Katherine.

*Mirror, ca. 1. 6.*

Sec Brit. cap. 23. fo. 53, 44, and cap. 29. fol. 72.

1 Mar. Parl. 22. c. 7.

Glanil, lib. 7. cap. 2, 4. c. 1.

Bradton, lib. 5. fol. 118.

Britton, f. 16, &c.

Fleta, h. c. 21.

Mir. ca. 1. § 5.

1 Mar. 98. b.

Dier in Sir N. Throgmortons cafe.


1 H. 4. cap. 5.


See hereafter, cap. 73. against ginging or riding armed.

*See Rot. Parl. 1. in Cro. Epiphani.

21 E. 1. Rot. 23.

Huntrey de Ba- hurl's cafe. 4 Eliz.

210. b. Dier.

See the statute of 1 Mar. 2. By which, grand riots in some cases be made felony.

[10]

Paftch. 39 Eliz. by all the judges of England, being attourney-general, and present.
High Treason.

Cap. 10.

cap. 1. (the letter whereof herein shortly followeth) and the offenders were attainted and executed at Enfowe-hill.

And this diversity is proved by a later branch of this act. 

Et si per cena aequo homine de essent reales chimancha amicis divertere uno gaudium amicitae, contra aequo amico, par lay ius, omni defeberer, et par lay necirere, omni rettinger raq, il facer fines, omni transefo par si adierere, non intendere le roy et de fou conseil, q, in teli cena siet adiugere tras, non esse adiugere felon, omni traspasse, ejoing le ley det tre, animament sicut. 

Whereby it appeareth, that bearing of arms in warlike manner, for a private revenge or end, is no levying of war against the king within this statute. So that every gathering of force is not high treason. And so it was resolved in parliament, in 5 H. 4 rot. parliam. nu 11. & 12. the earle of Northumberland's caue.

Be the said statute of 13 Eliz. cap. 1. it is enacted, declared, and established, that during the natural life of queen Elizabeth, if any within the realm or without, should conspire, imagine, invent, devise, or intend to levie war against her majesty, within this realm, or without, and the same declare by writing, or word, &c. that it should be high treason: so during the life of the queen, a conspiracy to levie war was high treason, though no war were levied: and upon that law, Bradshaw, Burton, and others, were attainted of high treason, for conspiracy only to levie war. But it was resolved by all the justices, that it was no treason within the statute of 25 E. 3, as hath been laid. The words in this law are [levier guerre] an actual rebellion or insurrection is a levying of war within this act, and by the name of levying war is to be expressed in the indictment. If any with strength and weapons invasive, and defensive, doth hold and defend a castle or fort against the king and his power, this is levying of war against the king within this statute of 25 E. 3.

It was resolved by all the judges of England in the reign of king 11. 8. that an insurrection against the statute of labourers, for the inhaling of salaries and wages, was a levying of war against the king, because it was generally against the king's law, and the offenders took upon them the reformation thereof, which subjects by gathering of power ought not to do. It was specially found, that divers of the kings subjects did minister and yeild victhals to Sir John Oldcastle, knight, and others, being in open war against the king, and that they were in company with them in open war; but all this was found to be pro timore moritis, et quod reiesignare, quam citra potenter: and it was adjudged to be no treason, because it was for fear of death. Et actus non facit reum, nisi move fit reus. And therefore this in them was no levying of war against the king within this act.

(15) On fait adherent as enemies noster seigneur le roy, a eux donant aide et confi. et en fou royalme et ayens.]

Aderent. a This is here explained, viz. in giving aide and comfort to the king's enemies within the realm or without: delivery or surrender of the king's castles or forts by the kings captain thereof to the kings enemies within the realm or without for reward, Sec. is an adhering to the kings enemy, and consequently treason declared by this act. b A. is out of the realm at the time of a rebellion within England, and one of the rebels flye out of the
Cap. 1. High Treason.

the realm, whom A. knowing his treason doth advise or succour, this is no treason in A. by this branch of 25 E. 3, because the traitor is no enemy, as hereafter shall be said; and this statute is taken strictly.

As enemies. [Inimicus in legall understanding. is hostis, for * the subjects of the king, though they be in open war or rebellion against the king, yet are they not the king's enemies, but traitors, for enemies be those that be out of the allegiance of the king. If a subject join with a foreign enemy, and come into England with him, he shall not be taken prisoner here and ravished, or proceeded with as an enemy shall, but he shall be taken as a traitor to the king.

An enemy coming in open hostility into England, and taken, shall be either executed by marshall-law, or ransomed; for he cannot be indicted of treason, for that he never was within the protection or allegiance of the king, and the indictment of treason faith, contra legem suam debitam.

David prince of Wales levied war against E. 1. this was treason, for that he was within the homage and allegiance of the king, and had judgment given against him as a traitor, and not as an enemy. And albeit in many pretexts of indiments, subjects that be rebels, and traitors, &c. be called *practicus et inimici*; yet within this statute they are not inimici.

In the duke of Norfolk's case the question was, a league being between the supreme of England and the king of Scots, whether the lord Herke and other Scots in aerto praedio burning and wainting divers towns in England without the affect of the king, were enemies in law within this statute, and resolved that they were.

See more hereafter in this third part of the Institutes, cap. 49. of Piracy, &c. upon the statute of 28 H. 8. cap. 15.

On per alios.] That is to say, out of the realm of England. But then it may be demanded, how should at this time this foreign treason be tried? And some *of our books doe answer, that the offender shall be indicted and tried in this realm where his land lyth, and so it was adjudged in 2 H. 4. But now by the statute of 35 H. 8. cap. 2. (which yet remains in force) all offences made or declared, or hereafter made or declared treasons, miliptions of treason, and concealments of treason, committed out of the realm of England, shall be inquired of, heard, and determined, either in the king's bench or before commissioners in such shrine as shall be appointed by the king. If it be before commissioners, it hath been commonly used, that the king doth write his name in the upper part of the commission. But in the case of Patrick O'Cullen an Irishman, the queen did put her signature to the warrant to the lord keeper, and not to the commission; * and it was held by the justices that the one way and the other was a sufficient assignment by the king within the statute of 35 H. 8.

It was resolved by all the judges of England, that for a treason done in Ireland the offender may be tried by the statute of 35 H. 8. in England, because the words of the statute be, all treasons committed out of the realm of England, and Ireland is out of the realm of England. And so it was resolved in Sir John Parrar's case. And our word here *per alios* is as much as out of the legal text of the statute.
High Treason.  

Cap. 1.

\[12\]

All treasons done upon the sea shall be inquired, heard, and determined in such places and at such times as shall be fixed by the commission, in like form and in like manner as if the same had been done upon the land, and all the statutes of the realm of England. See Page. 2 H. 4. coram rege ett. 8. Salop.

Treason in Wales.

\[29 H. 6. cap. 1.\]

Vide suprâ verbo.

\[28 H. 2. ca. 15.\]

This act concerning treasons is not taken away by the statute of 25 H. 8. cap. 2.

\[cap. 49. fo. 181.\]

of Piracy, &c.

\[vid. 5 Eliz. c. 5.\]

\[3. Per overt faict,\] per aperium factum. This does also strengthen the former exposition of the word (\textit{provably,}) that it must be provably, by an open act, which must be manifestly proved. As if divers doe conspire the death of the king, and the manner how, and thereupon provide weapons, powder, poison, &c., or the like, for execution of the conspiracy. Also preparation by some overt act, to depose the king, or else the king by force, and strong hand, and to imprison him until he hath yielded to certain demands, this is a sufficient overt act to prove the compounding, and imagination of the death of the king: for this upon the matter is to make the king a subject, and to dispoyle him of his kingly office of royal government. And so it was resolved by all the judges of England. Hill 1 Jac. regis. in the case of the lo. Cobham, lord Gray, and Watfon and Clarke seriatim priests: and so had it been resolved by the judges, Hill 43. Eliz. in the case of the earls of E. and of S. who intended to goe to the court.
court where the queen was, and to have taken her into their power, and to have removed divers of her counsell, and for that end did assemble a multitude of people; this being raised to the end aforesaid was a sufficient overt act for compathing the death of the queen. And so by woful experience in former times it hath fallen out, in the cases of king E. 2. R. 2. H. 6. and E. 5. that were taken, and imprisoned by their subjects. And this is made more plain by the legall forme of an indictment of treason: for first it is alleged according to this act, *quod * proctorio compassavit, et imaginatus fuit mortem et destructionem dni. regis, et ipsum dom. regem interfecerit, &c. in the indictment is alleged the overt act, et ad illam nephantiam, et proctorio compassatiorem, imaginatum, et propositum fiam perficendi et perimplendi and then certainly to set downe the overt act for preparation to take, and imprison the king, or any other sufficient overt act, which of necessity must be set downe in the indictment. Hereby it appeareth how insufficient many indictments were of high treason, wherein it was generally alleged, that per apertum factum compassavit et imaginavit fuit mortem dom. regis, &c. * For example terne. Mic. amn 5 E. 6. Edward duke of Somerset was indicted before commissioners of over and terminer in London, *quod is: deum pro oculos fuit non habent, fed insurrectione discoloris; fed ebulus, apud Holborne in parochia Sancti Andreae in civitate London, viz. 20 die Aprilis anno regni domini regis Edw. sexti quinti, et diversis dibus et vicibus ante et postea falsa, maliciosa, et proctorio * per apertum factum circumvavit, compassavit, et imaginavit cum diversis aliis perficendi dominum regem de fuso suo regali dopenne et depravare, &c. Which indictment, and all others of like forme were against law, as hath been said, and of the matter of this indictment that noble duke was by his peers found not guilty. But then it may be demanded, for what offence he had judgement of death, and 2. what law made it an offence. The offence appeareth in his indictment, for the former part thereof contained high treason, whereof he was acquitted, and the latter part contained one only offence of felony (whereof he was found guilty) in these words, et ularius juris corvus prad praecontinent, quod praefatus Edwardus dominus Somerset qui prae oculos fuit non habent, sed insurrectione discoloris sedebat 20 Maii an. regni domini regis Edwardi sexti quinto jure civili, et diversis aliis dibus et vicibus ante et postea apud Holborne in praed. parochia Sancti Andreae in civitate London, et auldiverse alia loca insurrectionum London praed. finivit ut in dolo domini regis per apertum factum et facta proculavis, ovatur, et imagini compaluis fuditis tuisus domini regis ad infrigendum, et apertum rebellionem et insurrectionem infra hoc regnum Anglicum inuenit contra ipsam et hismum regem, et ad tunc et ibid. finivit ad capiendum et imprcnsandum praebetam Johanne coniunto Harwicke de privato conlito domini regis ad tunc ex fide, contra praed. doli domini regis coram et dignitatem fiam, et contra formam statuti in huiusmodi causa editi et providi. The statute whereupon this indictment was intended to be grounded, was the branch of the statute of 3 and 4 E. 6. by which it is provided, *That if any person or persons by ringing of any bell, &c. or by malicious speaking or uttering of any words, or making any outcry, &c. or by any other deed or act shall mie or cause to be raised or assembled any persons to the number of 12 or above, to the intent that the same persons should

*In ancient time traditio, et felo-

manc. parl. 33 E. 5. 

1 Mr.

13.

14.

15.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

26.

27.

28.

29.

30.

31.

32.

33.

*Per apertum factum.

Vid. hereafter ca. 5. de Heresia, generali indici-

mata, contra Leland, &c.
High Treason. Cap. 1.

should do, commit, or put in use any of the acts and things above mentioned (whereof to take and imprison any of the kings most honourable privie counsell was one) and the persons to the number of 12 or above so raised and assembled after request and commandment (in such fort as in that act is prescrib'd) shall make their abode and continue together, as is aforesaid, (in the act) or unlawfully perpetrate, doe, commit, or put in use any of the acts or things aforesaid, that then all said singular persons by whose speaking, deed, act, or any other the means above specified any persons to the number of 12 or above, shall be raised or assembled for the doing, committing, or putting in use any of the acts or things above mentioned, shall be adjudged for his so speaking or doing a felon, and suffer execution of death as in case of felony, and shall lose his benefit of factuary and clergy. Hereby it doth manifestly appeare, that the truth concerning this nobleman's attainer, and execution in divers things, is contrary to the vulgar opinion, and some of our chronicles, and in some points contrary to law. First, that for the felony made by the said branch of the said act he could not have had his clergy, for clergy in that case is expressly omitted by the said act. 2. That he was not indicted for going about, &c. the death of the earls of Warwick and of the kings privie counsell, but only for his taking or imprisoning; and therefore could not be indicted upon the statute of 3 H. 7., as some have imagined. 3. That the indictment is altogether insufficient, for it purporteth not the words or matter of the said branch of the said act, as by comparing of them it manifestly appeareth; which (we being deists that truth may appear in all things) we have therein good upon this occasion to add for advancement of truth. 4. That being but stained of felony, he could not by law be beheaded, as elsewhere we have shewed. And this act that created the felony faith, that such a felon shall suffer execution of death, as in case of felony. 5. Lastly, this whole act was unjustly holden to be a doubtfull and dangerous statute, and therefore was deservedly repealed. And after the fall of this duke, see the preamble of the statute of subditye of 7 E. 6.

And now to returne to cases of high treason. If a man be arraigned upon an inculpment of high treason, and stand mute, he shall have such judgement, and incur such forfeiture, as if he had been convicted by verdict, or if he had confess'd it. For this standeth well with this word provatiment, for facteur facinus, qui judicium fugit: but otherwise it is in case of petit treason, murder, or other felony.

If a subject conspire with a foreign prince beyond the seas to invade the realm by open hostility, and prepare for the same by some overt act, this is a sufficient overt act for the death of the king, for by this act of parliament in that case there must be an overt act. * Quis capit, aut sinu regis positis sine, sine servis aut fratriis mercede conductis stipatae infidibus, vidas et furtinis ejus omnibus privator. So as thereby an overt act was required.

The composition and connexion of the words are to be observed, viz. [thereof be attainted by overt deed.] 4 This relates to the several and distinct treasons before expressed, and specially to the compassing and imagination of the death of the king, &c. for that it is secret in the heart) and therefore one of them cannot be
be an overt act for another. As for example: a conspiracy is had to levie warre, this (as hath been said and so resolved) is no treason by this act until it be levied, therefore it is no overt act or manifest proofe of the compassing of the death of the king within this act: for the words be (de coo, &c.) that is, of the compassing of the death. For this were to confound the severall classes, or members dividentia, et &c. cates, &c. 

Divers latter acts of parliament have ordained, that compassing by bare words or sayings should be high treason; but all they are either repealed or expired. And it is commonly said, that bare words may make an heretick, but not a trayer without an overt act. And the wisdome of the makers of this law would not make words only to be treason, seeing such variety amongst the witnesses are about the same, as few of them agree together. But if the same be set downe in writing by the delinquen himselfe, this is a sufficient overt act within this statute.

Cardinall Poole, albeit he was a subject to H. 8. and of the kingly blood, (being defended from George Duke of Clarence, brother to king E. 4.) yet he in his booke of the supreymacy of the pope, written about 27 H. 8. incited Charles the emperour, then preparing against the Turke, to bend his force against his naturall soveraigne lord and country; the writing of which book was a sufficient overt act within this statute: and to move the emperour the rather in that book, he made H. 8. almost as ill as the Turk, in these words, in Anglia sperat num oft loc suum, ut vis a Turcico interroget quaeque, idque authoritative unus caudins.

In the preamble of the statute of 1 Mar. concerning the repeal of certaine treasons, &c. It is agreed by the whole parliament, that lawes justly made for the preservation of the common-wealth without extreme punishment, are more often obeyed and kept, then lawes and statutes made with great and extreme punishments: and in speciall, such lawes and statutes so made: whereby not only the ignorant and rude unlearned people, but also learned and expert people minding honestly, are oftentimes trapped and snared, yea, many times for words only, without other fact or deed done or perpetrated: therefore this act of 25 E. 3. doth provide, that there must be an overt deed. But words without an overt deed are to be punished in another degree, as an high misprision.

Per gentes de loro condition.] That is, per partes, or their equals, whereof we have spoken before the exposition of the 29 chapter of Magna Carta. verb. per judicium partium suorum, and more shall be said hereafter. This branch (per gentes de loro condition) extendeth only to a conviction by verdict, whereof the statute particularly speaketh; but yet where the party indicted confesseth the offence or standeth mute, he shall have judgement as in case of high treason. For this branch being affirmative, is taken cumulativa and not triistica. And therefore seeing upon confession or standing mute, the judgment in case of high treason was given at the common law, this act being, as it hath been said, affirmative, taketh not away the same: and (to say once for all) the clauze hereafter of restraint of like cases, &c. extends only to offences, and not to tryalls, judgements, or executions.
High Treason.

Cap. 1.

15

(17) Si home counterface le grand seale.] All our ancient authors agree that this was high treason by the common law; and for this offence his judgement was to be drawn, hanged, and quartered, at the common law, as in other cases of high treason, (the counterfeiting of the kings mony excepted.) See the second part of the Infitute, W. 1. cap. 5.

*In ancient time every treason was comprehended under the name of felony, but not et contra; and therefore a pardon of all felonies was sometime allowed in case of high treason. But the law is, and of long time hath been otherwise held: and if the indictment were falsified, and not privative, (for the king may leffen the offence, if it please him) then the pardon of felonies is good at this day, for no indictment can be of high treason without this word (credito et;) and in qualibet praetione indicatior sez non, quia in qualibet huius de exi,endo supus qualibet indicatior se prais evit se, I. B. an exempt from the h. d. of treason and felony.

A compounding, intent, or going about to counterfeit the great seale is no treason, but there must be an actual counterfeiting, also it must be by the licence of the kings great seale, the words be, counterface le grand seale le z y.

Now it is to be seen what shall be said a forging, or counterfeiting of the great seale. If the lord chancellor, or lord keeper put the great seale to a charter &c. without warrant, this is no treason, because the great seale is not counterfeited. But if seemeth by Britton fo. 10. b. that it was treason at the common law, and of that opinion is Picta fo. 29. a. but it is no treason now (without question) by the negative clause of this act.

If a man take wax lawfully imprinted with the great seale from one patent, and fix it to a writing purporting a grant from the king, there have been divers opinions in this case what the offence is, which we will rehearse.

In 40 Aff. which was about 15 years after the making of this act, it was not helden high treason, but a great misprision, for that it is no counterfeiting of a new, but an abuse of the true great seale.

In 42 E. 3. the abbot of Buer caused Rob. Rigge his commoigne to raie a charter of R. 1. and put out the manner of Fisetruda, and in place thereof put in Eilege. And this offence was heard, and sentenced before the king and his counsell in the star-chamber, as a great offence and misprision: for if it had been high treason, it should have had another tryall, and yet this was a great abuse of the great seale.

2 H. 4. The taking of the great seale from one patent and fixing it to a commissioun to gather mony, &c. was adjudged to be such an offence, as the offender had judgement to be drawne, and hanged. The record of which case we have perused, and the effect thereof is this. The partie is indited generally for counterfeiting of the great seale, whereunto he pleaded not guilty, and the jury found him not guilty of the counterfeiting of the great seale, as was supposé by the indictment, and found further specially, that he tooke the great seale from one patent, and put it to the commission, and that the party put the same in execution, and there judgement was given, that he should be drawne and hanged: which (whatsoever the offence was) ought not to have been given upon this
High Treason.

This verdict, the jury finding him not guilty of the offence alleged in the indictment: and besides the judgement is such, as is given in case of petit treason, and not of high treason. Hereby it appeared how dangerous it is for any to report a case by the ear, specially concerning treason, unless he had advisedly read the record; for (as I take it) the misreport of this case hath hatched errors, and he mittooke the judgment, if it had been high treason, for then it should have been drawn, hanged, and quartered.

37 H. 8. Br. tit. Treason. A chaplain had fixed such a great seal to a patent of dispensation with non-residence, and this was holden a misprision, and not high treason, for it was an abuse of the great seal, and no counterfeiting of it. Stanford hath that it was adjudged in his time according to the book of 2 H. 4. et sic ex errore sequitur error.

G. Leck a clerk of the chancery joyned two clean parchments fit for letters patents so close together with mouth-glew, as they were taken for one, the uppermost being very thinne, and did put one label through them both, then upon the uttermost he wrote a true patent, and got the great seal put to the label, so the label and the seal were annexed to both the parchments, the own written, and the other blanke: he cut off the glazed skirts round about, and took off the uppermost thinne parchment (which was written, and was a true and perfect patent) from the label, which with the great seal did still hang to the parchment, then he wrote another patent on the blanke parchment, and did publish it as a good patent. Heretofor two questions were moved. 1. Whether this offence be high treason or no. 2. If it be high treason, then whether he may be indicted generally for the counterfeiting of the great seal, or ch the speciall fact must be expressd.

And upon conference had between the judges, upon great advisement and consideration it was in the end, concerning the first point, resolved by the justices (saving a very few) upon the authorities aforesaid, and for that it was no counterfeiting of the great seal within this statute, that this offence was neither high treason, nor petit treason, because it is not within either of the branches of this statute, but it is a very great misprision, and the party delinquent liveth at this day. As to the 2. point it was resolved, that if the speciall matter had amounted to counterfeiting of the great seal in law within this act, then he might have been generally indicted of high treason for counterfeiting the great seal. As if a man in an affray kill a controllable that comes to keep the kings peace without any express maligne prevented, this is murder in law, and yet the delinquent may bee generally indicted of murder by maligne prevented.

And a plot who wrote before this act tellth us, that crimen falsi dicitur, et qui illicitus (qui non suavit al loco data authoritatis) de figillo regis ostendit inventum, et brevia carnisque confusorum. But whatsoever offence it was before the making of this statute, it is after this statute no high treason, because it is no counterfeiting of the great seal, but a mislou thereof.

Qui convitis fuerit in falsificatione figilli dom. regis, quod tradatur episcopo Sarum, qui eum petit in clericum iun sub pena et in forma qua deecet, quia videtur convito quad in talis causa non admittenda est purgatio, &c. Hereby it should appear that in those days a man might have lost his clergy for this offence, and therefore as some hold, it was
High Treason.

Cap. 1.

was not then held to be high treason, and herein also is the preamble of this act, concerning divers opinions in case of treason, verified.

This statute naming the great seale and privy seale, the forging and the counterfeiting of the privy signet, or of the signe manuell, was not within this statute. But by the statute of 1 Mar. it is made high treason in both cases. Albeit that in this act there is no mention made of ayders and confenterers to this counterfeiting, yet they are within the purview of this statute, for there be no necessaries in high treason.

(18) On se d' moyens.] This was treason by the common law, as it appeareth by all the said ancient authors, ubi supra (verbo, fi home e. underseal in grand seal) and therefore the opinion in 3 H. 7, is holden for no law, that it was but felony before this act. The forging of the kings coin, is high treason, without utterance of it, for by this act the counterfeiting is made high treason. See the second part of the Institutes, W. 1, cap. 15. See Thom. Wallingham, Hypologi Neufni, an. dom. 1275, judi pro tofutura munere in magna multitudine ubique per Angliam spersendum, &c.

Si ipse qui factur monetam auctoritate regis, &c. illum facit minus in ponderi vel altitudine, vixi, alumino vel alio falso metallo contra ordinacionem, &c. This is there holden to be high treason, and by that book taken for a counterfeiter of the kings money within the purview of this statute. And herewith agreeeth Britton, who faith, des fausser q. sunt nostre monere counterfeis ou plus de aleyve mifs en nostre monere, q. n. b. r. ne fuirit sed. q. le forme et usage de nostre royne.

Ordone fuit q. nulli re de esse realme ne putes changer sa monere, ne impaire, ne amendes, ne aucer monere faire q. de ore et argent, sans laisser de tous les castles. It was ordained, that no king of this realm might not change his money, nor impair, nor amend the same, nor other money make then of gold or silver, without assent of parliament.

Clipping, waishing, and filing of the money of this realme, was no counterfeiting of it within this act. And therefore being a like case, it was declared by parliament in anno 3 H. 5, cap. 6, to be high treason: but that act being repealed by 1 Maris the statute of 5 Eliz. cap. 11, hath declared, that clipping, waishing, rounding, or filing, for wicked lucre and gaine, &c. to be high treason. And by the statute of 18 Eliz. it is declared, that if any person for wicked lucre or gains-fake, shall by any art, wayes, or means whatever, impair, diminish, falsifie, scale, or lighten the kings money, &c. it is high treason, for being a like case, it was to be declared by parliament.

Forging or counterfeiting of foraine money, which is not current within the realme, is misprision of treason, and the offender shall forfeit, as for concealment of high treason.

Su monere] This extendseth only to the kings money coined within this realme; and therefore after this statute, if a man had counterfeited the money of another kingdom, though it were current within this realme, it was no treason, until it was so declared.

See the second part of the Institutes, ca. 20. Artic. super Cart. and the exposition upon the same.

7 H. 5, ca. 6. 1 E. 6. cap. 12. 5 Eliz. cap. 11. d Nota, for wicked lucre and gain.

18 Eliz. cap. 2. 11 Eliz. cap. 3. 8 See hereafter, cap. Principalit and Acre,
High Treason.

clared by parliament in an. 1 Mar. 2, and in an. 1 & 2 Ph. and M. and the said acts of 5 Eliz. & 18 El. do extend to forreain covyn currant within this realme. And it is holde, that at the making of this statute of 25 E. 3, there was no money currant within this realme, but the kings own covyn. See the statute called flatutum de moneta magnam, et flatutum de moneta parva. And it is to be knowne, that if any doe counterfeite the kings covyn contrary to this statute of 25 E. 3. he shall have the punishment of his body, but as in case of petit treason, that is, to be drawne and hanged till he be dead, but the forfeiture of his lands is as in other cases of high treason, for this statute is but a declaration of the common law, and the reason of his corporall punishment is, for that in this case he was only drawne and hanged at the common law, but a woman in that case was to be burnt.

1 The abbot of Milefenden in the county of Buckingham for counterfeiting and refecting of the kings money, was adjudged to be drawne and hanged, and not quartered. The want of observation of the said distinction hath made some to erre in their judgement. Nota. This act of 25 E. 3. maketh no expression of the judgement, therefore such judgement as was at the common law either in case of high treason or petit treason must be given.

But if one be attained for diminishing of the kings money upon any of the statutes made in queen Maries time, or in the time of queen Elizabeth, because it is high treason newely made, the offender shall have judgement as in case of high treason, which judgement you may see in the first part of the Institutes. Seect. 747.

m And when a woman committs high treason and is quick with childe, she cannot upon her arraignment plead it, but she must either pleaded not guilty, or confess it: and if upon her plea she be found guilty, or confess it, she cannot allege it in arrest of judgement, but judgement shall be given against her: and if it be found by an inquest of matrons that she is quick with childe, (for priu- 1511ent ensem will not serve) it shall arrest, and respite execution till she be delivered, but she shall have the benefit of that but once, though the be againe quick with childe: so as this respite of execution for this cause is not to be granted, only in case of felony, whereof justice Stanford speakes, but in case of high treason, and petit treason also.

(19) Si homo port feux money au cest reialme, counterfeiit au money daaglieur, et fachent le money autre faux, &c. By this branch six things are to be observed. First, that the bringing in of counterfeiting money, and not the counterfeiting is expreseed in this word [apport.] Secondly, that it must be brought from a foraine nation, and not from Ireland, or other place belonging to, or being a member of the crowne of England, and so it hath been resolved, so wary are judges to expound this statute concerning treason, and that in most benigne senfe: for albeit Ireland be a distinct kingdom, and out of the realme of England to some purposes, as to protections and fines levied, &c. as hath been said: yet to some intent it is accounted as a member of or belonging to the crowne of this realme. And therefore a writ of error is maintainable here in the kings bench of a judgement given in the kings bench in Ireland, so as the judges did confine this statute not to extend to falle money brought out of Ireland. Thirdly, it must be to the similitude of
High Treason.  

the money of England. Fourthly, that the bringer of it into this realm, must know it to be counterfeit. Fifthly, uttering of false money in England, though he know it to be false and counterfeit to the likenesses of the coynes of England, is no treason within this statute, unless he brought it from a foreign nation, for the words be, si home a port, aux monnaies est realme. But if money false or clipped be found in the hands of any that is suspicious, he may be imprisoned until he hath found his warrant, per statutum de moneta magni vet. Magn. Cart. to. 58. 2 post. Lastly, he must merchandise therewith, or make payment thereof, expressed in their words, pur mercedizer, ou payment faire in deceituous seignior le roy et son peuple. See more, de monza regia, and of the derivation thereof in the second part of the Institutes, in allei super cartas, cap. 20.

Si home tuae chancellor, Treasuere, ou justice nostre seigneur le roy del en baize ou dei auteur, justice en die, au daffis s & toute autres justices assignes doiter et terminer eiscent en leur place treaunt leur office.

In this case albeit one intend to kill any of these here named in the re face, and doing their office, and thereupon strike or wound any of them, this is no treason: for our statute faith, si home tuae chancellor, &c. If a man kill the chancellour, &c. For if it be treason, death must ensue. And the reason wherefore it is treason in these cases is, because sitting judicially in their places, (that is, in the kings court:) and doing their office in administration of justice, they represent the kings person, who by his oath is bound that the same be done. And this act extends only to the persons here particularly named, and to no other: and therefore extendeth not to the court of the lord fereward, or of the constable and marshal, nor to the court of the admiralty, or any other, nor to any ecclesiasticall court. Nay, it extends not to the high court of parliament, if any member of the lords house, or house of commons be thaine in his place; and doing his office, because it is censum obiosis, and not mentioned in this act. But in all those cases it is willfull murder, for the law implyeth malice.

Et fait effrature que, in les cazes seignures doit eadjudice treaun q se extenda a nostre seigneur le roy et si royall majestee: et de tel treason le seigneur de ses etats appertient a nostre seigneur le roy cibien des tres. et dements tons des auturs, comme de luys mene.

(26) Des tres. et dements tons des auturs comme de luys mene.)

This is an affirmation of the common law, and the reason thereof is, for that the offence is committed against the soveraigne lord the king, who is the light and the life of the common-wealth; and therefore the law doth give to the king in satiety of his offence, all the lands, &c. which the offender hath, and that no subject should be partaker of any part of the forfeiture for this offence.

And where the words be [lands and tenements holden, &c] yet the forfeiture extends to * rents charges, rents feck, commons, corodies, and other herediments which are not holden, for in case of high treason the tenure is not material.

This clause hath 7 limitations. First, this act extends not b to lands in taylor, (saving only for the life of tenant in taylor) but the forfeiture of echean is to be understood of such lands and tenements, as he might lawfully forfeit. And these general words take not away
Cap. 2. Petit Treason.

the statute of duros conditiones, but latter statutes give the forfeiture of estates in tail. 2. Nor doth this act extend to ueses, but latter statutes doe name ueses. 3. Nor to rights of action, where the enrie is taken away, and so is the law clearly holden at this day. 4. Nor to any conditions, but by a latter statute conditions, unless they be inseparably knit to the person, be given to the king. 5. Nor to rights of entry, where any was in the lands by title before the treason committed, but such a right of entry is since given by latter statutes. 6. Nor to lands or tenements or rights in auer droit, as in the right of the church, nor to lands in the right of a wife, but only during the coverture, and it extendeth to land which the offender hath for life, for the forfeiture of the profits during his life. 7. It extendeth not to a foundership of an house of religion in free almoign, for that is annexed to the blood of the founder. Here goods and chattels be not named, but the forfeiture of them is implied in the judgement. 1 Nota lector, the said acts of 26 H. 8. 33 H. 8. 5. and 6 E. 6. doe yet remain in force, notwithstanding the said statute of 1 Mar. as it hath been often adjudged and resolved, and namely Mich. 21. Ja in the exchequer chamber, in a writ of error, upon a judgement given in the exchequer, between Ratclife, and the lord Sheffield, by all the judges of England, and is agreeable to common experience.

See more of high treason in the next chapter following, cap. 2. verbo, Et pour ce que plusieurs autres cafes, &c.

CAP. II.

OF PETIT TREASON.

Et ovsque eso il y ad un auter manner de treason, cestaffesvoir, quant un servaunt tua son maister (1) ou un feinc tua son baron (2), ou quant borne fecular ou de religion tua son pratele a que il doit fey et obedience (3). Et de tiel manner de treason la forfeiture des escheates appertennent a chefeun feignior de jou fee proper, &c.

And moreover there is another manner of treason, that is to say, when a servant slayeth his maister, or a wife her husband, or when a man secular or religious slayeth his prelate to whom he oweth faith and obedience. And of such treason the escheates ought to pertain to every lord of his own fee, &c.

It was called high or grand treason in respect of the royall majesty against whom it is committed, and comparatively it is called petit treason (whereof now this statute speakeith) in respect it is committed

Englefield's cafe.

Ut supra.

25 H. 6 ubi supra.

Brito. ca. S. and cap. 22.
Petit Treason.

Cap. 2.

committed against subjects and inferior persons, whereof this act doth enumerate three kinds.

(1) Quotum servant tua facerat.] This was petit treason by the common law, for so it appeareth by the book of 12 Aff. that a woman servant killed her mistres, wherefore she had judgement to be burnt, which is the judgement at this day of a woman for petit treason. And herewith agreeeth 21 E. 3, where the reader must know, that in stead of mere in that case you must read maister.

b And upon this act, if the servant kill the wife of his maister, it is petit treason, for he is servant both to the husband and wife.

c If the child commit parricide in killing of his father or mother (which the law-makers never imagined any child would do) this case is out of this statute, unless the child served the father or mother for wages, or meal, drink or apparel, for that it is none of these three kinds specified in this law. And yet the offence is far more hainous and impious in a child then in a servant, for parricide contra naturam sunt gravissima: but the judges are restrained by this act, to interpret this act, à fœniti, or à minore ad majus, as hereafter shall be said. And some say that parricide was petit treason by the common law.

d A servant of malice intended to kill his maister, and lay in wait to do it while he was his servant, but did it not till a year after he was out of service, and it was adjudged petit treason within this act.

(2) Un fome tua f. heron.] This was petit treason by the common law, as it appeareth in our books. If the wife procure one to murder her husband, and he doth it accordingly, in this case the wife being absent is but accessio and shall be hanged and not burnt, because the accessio cannot be guilty of petit treason, where the principal is not guilty but of murder: and the * accessio must follow the nature of the principal: but if he that did the murder had been a servant of the husband, it had been treason in them both, and the wife should have been burnt. And so it is in the case before of a servant, and in the case hereafter of a clerk.

If the wife and a stranger kill the husband, it is petit treason in the wife, and murder in the stranger, and so it is in the case of the servant next before, and of the clerk next after.

Before this statute it was petit treason, fé quis falsaverit sigillum domini sui de causa familias sui. Britton agreeeth herewith. But these are taken away by this act, and all other saving there, that are here expressed.

(3) Quo sit hec factum en se relietion tua faci pretale a quæ il suit in se obedience.] This clause is understood only of an ecclesiasticall person, be he secular, or regular, if he kill his pretate, or superior, to whom he oweth faith, and obedience, it is petit treason; and so it was at the common law. And petit treason doth presuppose a trust, and obedience in the offender, either civil, as in the wife and servant, or ecclesiasticall, as in the ecclesiasticall person.

Adiors, abettors, and procureurs of any of these petit treasons, are within this law.

If the servant kill his mistres, viz. his master's wife, this is treason (as I hath been said) not by equity, for that is denied as well in petit
Cap. 2.  Petit Treason.

petit treason, as high treason, but it is within the letter of this statute, for she is a matter.

In high treason there is no accessories, but all be principals, and therefore whatsoever act or consent will make a man accessory to a felony, before the act done, the same will make him a principal in case of high treason. But in case of petit treason, there may be accessories, either before, or after the act done, as in case of murder or homicide.

Here it appeareth that acts of parliament may bind men of the church, secular, or regular, and no benefit of clergy allowed unto them in case of treason: but a hereof you shall read at large in the exposition of the 15. chapter of Articuli cleri.

(3) Et de tete maner de treason forfeiture des chefts appertinent a chefeun seignior de son fee proper. See hereof hereafter, in the chapter of forfeiture. If a man feised in fee of a fair, market, common, rent charge, rent feck, warren, corridy, or any other inheritance, that is not holden, and is attainted of felony, the king shall have the profits of them during his life: but after his decease, seeing the blood is corrupted, they cannot descend to the heir, nor can they escheat because they be not holden, they perish and are extinct by act in law: for in escheats for petit treason or felony, a tenure is requisite, as well in the case of the king, as of the subject.

An approver in case of felony, refuting the combat with the appellee, shall have like judgment that is for petit treason, probatur reus fuisse, duculum adjudicatur jussendi, et tali in odium faleri accepcionis: but yet it is not petit treason, because it is none of the three specified in this act.

The case which Shard reciteth in 40 Aft. that a Norman being leader of an English ship, who had English men with him, and robbed divers upon the sea, and were taken and found guilty: and as to the Norman it was but felony (because Normandy was lost by king John, and was out of the liceance of E. 3.) and as to the English it was adjudged treason, and the offenders drawn and hanged, which was the judgement of petit treason: but this case must be intended to fall out before this statute of 25 E. 3. for it is none of the petit treasons mentioned in this act.

Et pur cep que plusieurs auters cases de semblables treason (1) purront escheer en temps ouuer, quez eux home ne purra peyler ne declarer en present: assentu est, que si autre case suppose (2) treason (3), que n’est espécifie paramount (4), avignne de nozul devant ofsin justice, demerje le justice sans aier a judgment de treason, tanteque perdant nostre seignior le roy en son parlement (5) soit le case mir, et declare (6), le que le cep doit estre adjuve treason, ou autre felony.

And because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time: it is accorded, that if any other case supposed treason, which is not above specified, doth happen before any justice, the justice shall tarry without going to judgement of the treason, till the cause be shewed and declared before
before the king and his parliament, whether it ought to be judged treason or other felony.

(1) **Semblable treason.** In this case, the judges shall not judge à
familii, or by equity, argument, or inference of any treason, high
or petit, for no like case shall be adjudged treason, &c. And
note this branch extendeth (as hath been said) to the offence, viz.
treason, and not to tryall, judgement, or execution.

(2) **Si minus esse furtum treason.** No other case, though of as
high or higher nature, &c. shall be adjudged treason high or petit,
as before it appeareth in the case of paticide, anno 1 Maria, ubi
super.

(3) **Treason.** Either high treason, or petit treason, so as this
branch extendeth as hath been said to the offence of treason
only.

(4) **Quoc non specific parament.** This word [specific] is to be
specially observed, for it is as much to say, as particularized, or
set downe particularly: so as nothing is left to the construction of
the judge, if it be not specified and particularized before by this
act. A happy sanctuari or place of refuge for judges to flye unto,
that no mans blood and ruine of his family do lie upon their con-
sciences against law. And if that the construction by arguments
à familii, or à minor ad major had been left to judges, the mischiefe
before this statute would have remained, viz. diversity of opinions,
what ought to be adjudged treason, which this statute hath taken
away by express words: and the statute of 1 Mar. doth repeal all
treasons, &c. but only such as be declared and expressed in this
act of 25 E. 3. wherein this word [expressed] is to be ob-
served.

In the parliament holden anno 3 H. 4. the earle of Northumber-
land came before the king and lords in parliament, and by his
petition to the king, acknowledged to have done against his alle-
giance: and namely, for gathering of power and giving of liversies,
whereof he had taken pardon: and the rather, that upon the kings
letters he yeelded himselfe, and came to the king unto Yorke, where
he might have kept himselfe away. The which petition the king deliered to the justices by them to be considered.
Whereupon the lords made j reflection, that the order thereof be-
longed to them, as peers of the parliament, to whom such judgement
belonged in weighing of this statute of 25 E. 3. &c. and
they judged the same to be no treason, nor felony, but only treaf-
us fitable at the kings will. And the opinion in 27 Asf. is de-
clared, that if one of the inditers discover the counsell of the king,
that it should be treason; because it is not specified before in this
act, and therefore neither high treason, nor petit treason.

(5) **Tumpe de decant hie, &c. in parliament.** By this it is ap-
parent, that any like or other case ought to be declared by the whole
parliament, (and not by the king and lords of the upper house
only, or by the king and the commons, or by the lords and com-
mons.) And so was it done by the whole court of parliament in
3 R. 2. ubi super. 5 Eliz. 18 Eliz. ubi super, and many other acts of
parliament.

John duke of Gwyen and of Lancaster, steward of England,
and Thomas duke of Glocester, constable of England, the kings
unclez,
Cap. 2.  

Petit Treacon.

uncles, complained to the king, that Thomas Talbot knight, with other his adherents, conspired the death of the said dukes in divers parts of Chesterfield, as the same was confessed and well knowne, and prayed that the parliament might judge of the fault (which petition was just, and according to this branch of the statute of 25 E. 3.) but the record faith further: whereupon the king and lords in the parliament adjudged the same fact to be open and high treason: which judgement wanting the assent of the commons, was no declaration within this act of 25 E. 3. because it was not by the king and his parliament according to this act, but by the king and lords only.

(6) Sot le cafe manfre et declare, &c.] This declaration may be absolute, or sub modo, for a time.

By this which hath been said it manifestly appeareth, what damnable and damned opinions those were concerning high treason, of Trefilian chief justice of the kings bench, Sir Robert Belknap chief justice of the common bench, Sir John Holt, Sir Roger Fulthorn, and Sir William Burghie, knights, fellows of the said Sir Robert Belknap, and of John Lockton one of the kings ferjeants, that were given to king R. the 2. at Nottingham, in the eleventh yeare of his reigne. But more detestable were the opinions of the justices in 21 R. 2. and of Hanford and Brincheley the kings ferjeants, (and the rather, because they took no example by the punishment of the former) which affirmed the said opinions to be good and lawful, having Sir William Thirning chief justice of the common bench gave this answer: That declaration of treason not declared belongeth to the parliament; but to pleae, he said, that if he had been a lord or a peer of parliament, if it had been demanded of him, he would have made the like answers. These justices and ferjeants being called in question in the parliament holden anno 1. H. 4. for their said opinions, answered as divers lords spiritual and temporall did) that they durft no otherwise do, for feare of death. It was thereupon enacted, that the lords spiritual and temporall, or justices, be not from thenceforth received to say, that they durft not for feare of death to say the truth. Which opinions being so manifestly against our said act of 25 E. 3. afterwards in the parliament holden 1. H. 4. it is affirmed by authority of parliament, that in the said parliament of 21 R. 2. divers statutes, judgements, ordinances, and stablishments were made, ordained, and given, erroneously and doefully in great disturbance and final destruction and undoing of many honourable lords, and other liege people of this realm, and of their heirs for ever. And therefore not only that parliament of 21 R. 2. and the circumstances and dependances thereupon, are wholly reverted, revoked, voided, undone, repealed, and adullled for ever, but also the parliament holden in 1 R. 2. by authority of which parliament, Trefilian, Belknap, and the rest of those false justices and ferjeants aforesaid were attainted, is confirmed, for that it was (as there the parliament affirmed) for the great honour and common profit of the realm.

Et si per cafe aseun home de est reialme chivache armee, &c.] And if percafe any man of this realme ride armed, &c. For exposition hereof, see the chapter hereafter against riding or going armed.
Petit Treason. Cap. 2.

For the better instruction of the reader to discern what offences be high treason or petit treason at this day, it shall be necessary to add hereunto the statute of 1 Mar. whereby it is enacted, [That no act, deed, or offence, being by act of parliament or statute made treason, petit treason, or misprision of treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be high treason, petit treason, or misprision of treason, but only such as be declared and expressed to be treason, petit treason, or misprision of treason, in or by the act of parliament or statute made in the 25 yeares of the raigne of the most noble king of famous memory, king Edward the third, touching or concerning treason, or the declaration of treason, and none other, &c. any act or acts of parliament, statute, or statutes, had or made at any time heretofore or after the said 25 year of king E. 3. or any other declaration or matter to the contrary in any wise notwithstanding.]

Before this act so many treasons had been made and declared by act of parliament since this act of 25 E. 3. some in particular, and some in general, and in such fort penned, as not only the ignorant and unlearned people, but also learned and expert men were many times trapped and snared: and sometimes treasons made or declared in one kings time, were abrogated in another kings time, either by speciall or generall words: so as the mischief before 25 E. 3. of the uncertainty what was treason, and what not, became to be so frequent and dangerous, as the safest and surest remedy was, by this excellent act of 1 Mar. to abrogate and repeale all, but only such as are specified and expressed in this statute of 25 E. 3. By which law, the safty both of the king and of the subject, and the preservation of the common-weale is wisely and sufficiently provided for, in such certainty, as nihil reliquam sibi arbitrio judicit. And certainly the two rules recited in the preamble of the said act of 1 Maris, are infallibly true. The first, [that the state of a king flaneth and confisiteth more assured by the love and favour of the subject toward their sovereigns, then in the dread and fear of laws made with rigorous pains and extreme punishment for not obeying their sovereigns.] And the other, [that laws justly made for the preservation of the common-weale without extreme punishment or penalty, are more often, and for the most part better obeyed and kept, then lawes and statues made with great and extreme punishment.] Mitius injurianti melius paravit.

In which act five notable things are to be observed. First, it extendeth (without exception) to all high treasons made by any act of parliament since the said act of 25 E. 3. Secondly, to all declarations of high treasons by any act of parliament since the said act of 25 E. 3. (as of the said declaration in 3 R. 2. of killing an ambasfadour and the like.) Thirdly, to all petit treasons made or declared by any act of parliament since the said act of 25 E. 3. Fourthly, albeit misprision of treason is not mentioned in the act of 25 E. 3. yet every misprision of any treason made or declared since that act by any act of parliament, is abrogated. Fifthly, no offence to be treason, petit treason, or misprision of treason, but only such as be declared and expressed to be treason, petit treason, or misprision of treason by the said act of 25 E. 3. Here three things are to be observed: first, that this word [expressed] excludeth all implications
Cap. 2. Petit Treason.

Implications or inferences whatsoever. Secondly, here misprision of treason is taken for concealment of high treason or petit treason, and only of high treason or petit treason specified and expressed in the act of 25 E. 3. Thirdly, that no former judgement, attainer, preface, resolution, or opinion of judges or justices of high treason, petit treason, or misprision of treason, other than such as are specified and expressed in the said act of 25 E. 3. are to be followed or drawn to example: for words be direct and plain, [that from henceforth, no act, deed, or offence, &c. shall be taken, had, deemed, or adjudged to be treason, petit treason, or misprision of treason, but only such as be declared and expressed in the said act of 25 E. 3. &c. any act of parliament or statute after 25 E. 3. or any other declaration or matter to the contrary notwithstanding.] So as there is no high treason, petit treason, or misprision of any treason made or declared by any act of parliament or otherwise since the act of 25 E. 3. but only such as have been made since the said act of 1 Mariæ, and of those only such as were made perpetually, and not during the life of queen Mary or of queen Elizabeth, whereof there be divers which now are expired, which you may read being all in print. But there wanted nothing to the perfection of the statute of 25 E. 3. but a limitation of some certain time wherein the offender should be accused.

Or the declaration of treason, &c. Declarations made during the natural life of queen Elizabeth ceased by her death: for declarations may have limitations as well as statutes introductory of new laws.

There is another excellent branch of a statute made in 1 & 2 Ph. & Mar. in these words. [And be it further enacted by the authority aforesaid, that all trials hereafter to be had, awarded, or made for any treason, shall be had and used only according to the due order and course of the common law.]

All trials. Upon these words many things have been observed by others. First, that the letter of this act extended only to trial of high treasons, or petit treasons, and not to misprision. Secondly, foraine treasons are to be tried by the statute of 35 H. 8. cap. 2, and so it was resolved by all the justices of England in Orniks' case, and had been so resolved before. But for trials of treasons to be had in Wales, or where the kings will runneth not, in such places as the king shall assigne by his commission by the statute of 32 H. 8. ca. 4. are abrogated by this act, because they are triable by the law.

It hath been holden, that upon the trial of misprision of treason there must be two lawful witnesses, as well upon the trial, as upon the indictment, as it was resolved by the justices in the lord Lumley's case, Hill. 14. Eliz. reported by the lord Dier, under his own hand, which we have seen, but left out of the print, which for other purposes is cited hereafter. Thirdly, it hath been holden, that this act extendeth not to the indictment of any treason, but to the trial by peers, if the offender be noble; or by freeholders, if the offender be under the degree of nobility: and therefore upon the indictment which is in manner of an accusation, by the statutes of 1 E. 6. and 5 E. 6. two lawful witnesses are requisite:

Thats, of such treason, high or petit, as is expressed in the act of 25 E. 3. and of no other treason.

b 1 Mar. cap. 6. & 2 Ph. and Mar. cap. 11. 5 Eliz. ca. 1. and 11. 18 Eliz. cap. x. 13 Eliz. cap. 2. 23 Eliz. cap. 1. 3 Jac. cap. 2. 3 Jac. cap. 4.

c Pasc. lib. 3. fol. 118 b. d 13 Eliz. cap. 1. 14 Eliz. cap. 1. and cap. 2.

e 1 & 2 Ph. and M. cap. 10.

f See the second part of the Institutions, Mag. Carta, cap. 29. Verbo (per judicium parum.)


f 32 H. 8. cap. 4.

g 1 E. 6. cap. 12. 5 E. 6. cap. 11. Both which are mentioned in the next section. Hill. 14 Eliz. Dier, MS.

Note. This is the last resolution of the judges in this point.

At this time Carlin and Dier were chief justices, and Sanders chief ba- tion, &c.
Petit treason. Cap. 2.

The words of the statute of 1 F. 6. in the last branch be,
that none shall be indicted, arraigned, condemned, or convicted,
for any treason, petit treason, misprision of treason, or for any words
before specified to be spoken, after the said first day of February,
for which the same offender or speaker shall in any wife suffer
pains of death, imprisonment, loss or forfeiture of his goods,
chattels, lands, or tenements, unless he be accused by two sufficient
and lawful witnesses, or shall willingly without violence confess
the same.

Note that (before specified) doe refer to the words mentioned
before in the act. 1. It is manifest by the connexion of the
words, viz. [for any words before specified to be spoken, &c.] 2. The treasons in 25 E. 3. were mentioned before. 3. The
first words be [for any treason, petit treason, misprision of treason,
&c.]

And by 5 F. 6. ca. 11. it is provided by the last clause save one,
[that none shall be indicted, arraigned, condemned, convicted, or
attained for any of the treasons or offences aforesaid, or for any
other treasons that now be, or hereafter shall be, which shall
hereafter be perpetrated, committed, or done, unless the same offender
be thereof accused by two lawful accusers, &c. unless the said party arraigned shall willingly, without violence confess the same.] Here two things are to be observed. 1. The particular penning
of both these acts, viz. indicted, arraigned, convicted, &c. and the
words of 1 & 2 of Ph. & Mar. extend to tryalls only, and not to the
indictment. 2. Two lawful accusers in the act of 5 F. 6. are
taken for two lawful witnesses, for by two lawful accusers, and
accused by two lawful witnesses (as it is said 1 E. 6.) is all one:
which word (accusers) was used, because two witnesses ought
directly to accuse, that is, charge the prisoner, for other accusers
have we none in the common law, and therefore lawful accusers
must be such accusers as law allow. And so it was resolved in
the Lo. Lumleys cafe by the justices: for if accusers should not be
so taken, then there must be two accusers, by 5 E. 6. and two
witnesses by 1 E. 6. And the strange conceit in 2 Mar. that one
may be an accuser by hearsey, was utterly denied by the justices
in the Lo. Lumleys cafe. And this word (awarded) in the statute
of 1 & 2 Ph. and Mar. extendeth to the tryall upon the arraignment,
and not to the indictment, for that is not said to be awarded.

And it was resolved by all the justices in a Rolstons cafe upon the
rebellion in the north, that these words [shall willingly without
violence confess the same] are to be understood where the party
accused upon his examination before his arraignment, willingly
confessed the same without violence, that is, willingly without any
torture: and is not meant of a confession before the judge, for he is
never present at any torture, neither upon his arraignment was
ever any torture offered. And here commeth another statute
made in 1 & 2 Mar. to be considered, by which it is provided, that
treason for the counterfeiting and impairing of the coin current in
this realm, &c. the offender therein, &c. shall be indicted, ar-
raigned, tried, convicted, or attained by such like evidence, and
in such manner and form, as hath been used and accustomed within
this realm, at any time before the first year of king E. 6. &c.
Cap. 2. Petit Treauson.

Wherein the special penning of this act is to be observed, which in case of treason concerning the counterfeiting or impairing of coin, &c. hath by particular words restored the evidence requisite by the common law, before the statute of 1 E. 6. as well upon the indictment as the trial. But the act of 1 & 2 Ph. and Mar. cap. 10. extends to trials only in other cases of high treason, and therefore that act extended not to the indictment of other high treasons. Also it is most necessary (as many doe hold) that there should be two lawfull accusers, that is, two lawfull witnesses at the time of the indictment, for that it is commonly found in the absence of the party accused, and it may be when the party suspected is beyond sea or in remote parts, and may be outlawed thereupon; and therefore seeing the indictment is the foundation of all, it is most necessary to have substantial proof in a case so criminal, where probationes aurent esse hace claires. Lastly, * if the indictment were part of the tryall, then ought he that is noble, and a lord of parliament, be indicted of high treason, &c. by his peers: for the tryall of him (without question) must be by his peers: but the indictment of peers of the realm is always by freeholders, and not by their peers, as hereafter shall appear. We have been the longer herein in respect of some variety of opinion (for want of due and entire consideration had of all and every part of that which hath been said) upon serious study touching this point, without respect of a common wanding opinion.

And it is thought by the ancient common law one accuser, or witnese was not sufficient to convict any person of high treason: * for in that case, where is but one accuser, it shall be tried before the constable and marshall by combat, as by many records appeareth. But the constable and marshall have no jurisdiction to hold plea of any thing, which may be determined or defended by the common law. And that two witnesses be required here by our book, and I remember no authority in our books to the contrary: and the common law herein is grounded upon the law of God expressed both in the old and new Testament: * in ore domum aut trium reffion prohibit qui interficitur: nonae occiderat uos contra se dilecte testimonium.

And this seerneth to be the more clear in the trial by the peers, or nobles of the realm, because they come not de aliquo vicecete, whereby they might take notice of the fact in respect of viciniet, as other jurors may doe.

Having now rehearsed what others have said and holden, we upon due consideration had of the whole matter will set down our own opinion, and reasons, in these four points following. First, that the statute of § 5 E. 6. cap. 11. is a general law, and extends to all high treasons, as well by the common law declared by the statute of 2 E. 3. as to any other statute made or to be made, the negative words of which statute be: [no person shall be indicted, arraigned, convicted, condemned, or attainted for any treason, that now is, or hereafter shall be, &c.] Which words without all question are generall, and so to be taken. The words of that statute be further, [unless the same offender be accused by two lawful accusers, these two lawful accusers are in judgement of law taken for two lawful witnesses, and that for two caufes: first, they must be lawful, that is, allowed by the laws of the realm: and by the law,
upon the arraignment of the prisoner upon the indictment of treason, no other accuser can be heard, but witnesses only. Secondly, the words of the statute are [which said accusers at the time of the arraignment of the party accused, if they be then living, shall be brought in person before the party so accused, and avow, and maintain that which they have to say to prove him guilty of the treason, unless the party arraigned shall willingly without violence confess the same,] as by that act it appeareth. Now to avow and maintain that which they have to say to prove him guilty of the treason, is the proper office and duty of witnesses, and so it is said in the statute of § 1 E. 6. c. 12, in the last clause (by two lawful witnesses.) See the statute of § 5 E. 1. c. 1. where it is said [accused by good and sufficient testimony.] and to the same intent, the statute of 1 & 2 Ph. and Maria, cap. 11. for the word [accused.]

1. Puniturus accussatores praece dominum regem, quod amodo rei eis de facili non credat: et talis pern. fiat eis, qualis debet fieri illis, qui injuriis fines dati, regis exhereditari et defrui: fecerunt, &c.

2. That this act of § 5 E. 6. extend as well to petit treason, as high treason, for the words be [any treason] and so doth the statute of 1 E. 6. cap. 12.

3. That the statute of 1 & 2 Ph. and Maria. cap. 10. doth not abrogate the said act of 1 E. 6. or of § 5 E. 6. For that act of 1 & 2 Ph. and Maria extends only to trialls by the verdict of twelve men: dividuo, of the place where the offence is alledged, and the indictment is no part of the triall, but only information or declaration for the king, and the evidence of witnesses to the jury is not part of the triall, for by law the triall in that case is not by witnesses, but by the verdict of twelve men, and so a manifest diversity between the evidence to a jury, and a triall by jury. And the word [awarded] in that statute doth prove that that act extended only to the course jactus for trial, for neither the indictment nor the evidence can be said to be awarded: quod quae minime defensatur, oppressitur, et qui non imputatur, approbat. Et sic liber animam necem liberavi.

a. The triall against an aliennee, that lived here under the protection of the king, and being between both kings, for high treason, shall by force of this act of 1 & 2 Ph. & Mar. be tried according to the due course of the common law, and therefore in that case i.e. shall not be tried per mediatum lingui, as he shall be in case of petit treason, murder, and felony, if he prayeth it.

b. That a triall in a foreign county upon examination before three of the council, &c. by the statute of 33 H. 8. cap. 23. is abrogated by this act of 1 & 2 Ph. and Mar. being a triall contrary to the due course of the common law, which is to have it tried by jurors of the proper county, but the indictment being found in the proper county, it may be by speciall commission heard and determined before commissioners in any foreign county, but the triall must be by jurors of the proper county; and this is warranted by the course of the common law. And albeit when the term begins, all commissions of oyer and terminer in the county where the kings bench sit, be suspended during the term, yet if an indictment be found before such commissioners before the term, there may be a speciall commission made to commissioners in the same county, sitting the kings bench in that county, to
to hear and determine the same during the term; for the kings bench hath no power to proceed thereupon, till the indictment be before them. And it is the better, if the special cumbission bear till after the beginning of the term. Note a diversity between general cumbissions of oier and terminer, and such a special cumbission; and the court of kings bench may be adjourned, and in the mean time the cumbissors may sit there.

And where it is provided by the statute of 33 H. 8. c. 23. that peremptory challenge should not from thenceforth be admitted or allowed in cases of high treason, or misprision of treason; this branch is abrogated by the said act of 1 Mar. For the end of challenge is to have an indifferent trial, and which is required by law; and to bar the party indicted of his lawful challenge, is to bar him of a principal matter concerning his trial; and all acts of parliament concerning incidents to trials contrary to the course of the common law, are abrogated by the said words, [and that all trials hereafter, &c.] but all this is to be understood of persons under the degree of nobility; for in case of a trial of a noble man, lord of parliament, he cannot challenge at all of any of his peers.

Henry Garnet superior of the jesuites in England upon his arraignment for the powder treason, did challenge Burrell a citizen of London peremptorily, and it was allowed unto him by the resolution of all the judges; so as in case of high treason, or misprision of high treason, a man may challenge 35. peremptorily, which is under three juries, but more he cannot.

Lastly, all statutes made before the said act of 1 & 2 Ph. & Mar. for trial of high treason, petit treason, or misprision of treason, contrary to the due course of the common law, are abrogated by the said act of 1 & 2 Ph. & Mar. and trials by the due course of the common law, with challenges incidents in those cases are restored.

If a man be indicted of high treason, he may at this day plead a forein plea, as he might doe by the common law, and shall be tried in the forein county; but otherwise it is in cases of petit treason, murder, or felony; for there it shall be tried in the county where the indictment is taken.

And forasmuch as the proceeding against a noble peer of the realm, being a lord of parliament in some points agrees, and in other points differeth from the proceeding against a subject under the degree of nobility; it shall be necessary to shew wherein they agree, and wherein they differ.

1. The noble peer of the realm must be indicted before cumbissors of oier and terminer, or in the kings bench, if the treason, misprision of treason, felony, or misprision thereof be committed in that county where the kings bench sit, as it was resolved in the case of Tho. el. of N. in an. 13. Eliz. And this is common to both degrees to be indicted by jurors of that county where the offence was committed.

2. When he is indicted, then the king by his cumbission under the great seal constitutes some peer of the realm, to be hac vice, steward of England: for his file in the cumbission, is, (seneschallus Angliae) who is judge in this case of the treason or felony, or of the misprision of the same committed by any peer of the realm.
This commission reciteth the indictment generally as it is found: and power given to the lord steward to receive the indictment, &c. and to proceed, secundum legem et consuetudinem Angliae. And a commandement is given thereby to the peers of the realme, to be attendant and obedient to him: and a commandement to the lieutenant of the Tower to bring the prisoner before him.

3. A certiorari is awarded out of the chancery to remove the indictment it faire before the steward of England indigat, which may either be on the same day of the stewards commission, or any day after.

4. The steward directs his precept under his seale to the commissioners, &c. to certify the indictment such a day and place.

5. Another writ goth out of the chancery directed to the lieutenant of the Tower, to bring the body of the prisoner before the steward at such day and place as he shall appoint.

6. The lord steward maketh a precept under his seale to the lieutenant of the Tower, &c. and therein expresseth a day and place when he shall bring the prisoner before him.

7. The steward maketh another precept under his seale to a serjeant at arms, to summon te et tales dominus, magnates, et procures suis regni Angliae praedicti E. comitis E. partes, per quos vit ceptas melius faci potest, qui ille personat, qui omne praedicto coronam praedicto senechal apud W. signet, soli d' e et hora, ad faceret, ea que ex parte domini regis fuerit faceret, &c. Wherein four things are to be observed. First, that all these precepts must commonly beare date all in one day. Secondly, that no number of peers are named in the precept, and yet there must be twelve or above. Thirdly, that the precept is awarded for the returne of the peers before any arraignment or plea pleaded by the prisoner. Fourthly, that in this case the lords are not de vicinato, and therefore the sitting and trial may be in any country of England. And herein are great differences between the case of a peer of the realme, and of one under the degree of nobility.

8. At the day, the steward with six serjeants at arms before him takes his place under a cloth of estate, and then the clerk of the crown delivereth unto him his commission, who redelivereth the same unto him. And the clerk of the crown causeth a serjeant at arms to make three oyes, and commandement given in the name of the lord high steward of England to keep silence: and then is the commission read. And then the usher delivereth to the steward a white rod, whereon delivereth the same to him againe, who holdeth it before the steward. Then another oyes is made, and commandement given in the name of the high steward of England, to all justices and commissioners to certify all indictments and records, &c. Which being delivered into court, the clerk of the crown readeth the returne. Another oyes is made, that the lieutenant of the Tower, &c. returne his writ and precept, and to bring the prisioner to the bar: which being done, the clerk reads the returne. Another oyes is made, that the serjeant at arms return his precept with names of the barons and peers by him summoned, and the return of that is also read. Another oyes is made, that all earles, barons and peers (which by the commandement of the high steward be summoned) answer to their names, and then they take their places and sit down, and their names are recorded: and the entry of the record is, that they
Cap. 2. Petit Treason.

they appear, ad faciendum ea quae ex parte domini regis eis injungentur. And when they be all in their places, and the prisoner at the bar, the high steward declares to the prisoner the cause of their assembly, and persuades him to answer without fear, that he shall be heard with patience, and that justice shall be done. Then the clerk of the crown reads the indictment, and proceeds to the arraignment of the prisoner, and if he plead not guilty, the entry is, et de hoc de homo et male pontif fe super partes suos, &c. Then the high steward gives a charge to the peers, exhorting them to try the prisoner indifferently according to their evidence.

9 The peers are not sworn, but are charged, super fid litatius, et ligantius dominos regi debitis: for so the record speaketh.

10. Then the king’s learned council give evidence, and produce their proofs for the king against the prisoner.

11. But the prisoner, when he pleadeth not guilty, whereby he denieth the fact, he needs have no advice of council to that plea. But if he hath any matter of law to plead, as Humphrey Stafford in 1 H. 7, had, viz. The privilidge of sanctuary, he shall have counsel assigned to him to plead the same, or any other matter in law: as to plead the general pardon, or a particular pardon, or the like. And after the plea of not guilty, the prisoner can have no counsel assigned to him to answer the king’s counsel learned, nor to defend him. And the reason thereof is, not because it concerneth matter of fact, for ex facto jus exitur: but the true reasons of the law in this case are: First, that the testimonies and the proofs of the offence ought to be so clear and manifest, as there can be no defence of it. Secondly, the court ought to be in stead of counsel for the prisoner, to see that nothing be urged against him contrary to law and right; may, any learned man that is present may inform the court for the benefit of the prisoner, of any thing that may make the proceedings erroneous. And herein there is no diversity between the peer and another subject. And to the end that the trial may be the more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the court, the judges ought not to deliver their opinions before-hand of any criminal case, that may come before them judicially. And we read, that in the case of Humphrey Stafford that arch-traitor, Humphrey chief justice, before king Henry the seventh, that he would not desire to know their opinions before-hand for Humphrey Stafford, for they thought it should come before them in the king’s bench judicially, and then they would do that which of right they ought: and the king accepted of it. And therefore the judges ought not to deliver their opinions before-hand upon a case put, and proofs urged of one side in absence of the party accused: especially in cases of high nature, and which deserve so fatal and extreme punishment. For how can they be indifferent, who have delivered their opinions before-hand without hearing of the party, when a small addition, or subtraction may alter the case: And how doth it stand with their oath, who are sworn, That they should well and lawfully serve our lord the king and his people in the office of a justice? and they should do equal law, and execution of right to all his subjects, &c. See more of this matter in the 13 section here following.

12. There be always either all, or some of the judges ever attend

1 H. 4. 1. 

In Scotland in all criminal cases, yea in cases of high treason, par res may have counsel learned.

Vide hereafter upon the nature of 31 Eliz. concerning witnesses.

1 See more hereof cap. 63. Council learned in Pleas of the Crown.

1 II. 7. fo. 26.

18 E. 3.
Petit Treason.  

Cap. 2.

dant upon the high steward, and sit at the feet of the peers, or about a table in the midleff, or in some other convenient place.

13. After all the evidence given for the king, and the prisoners answers, and proofs at large, and with patience heard: then is the prisoner withdrawn from the bar to some private place under the custody of the lieutenant, &c. And after that he is withdrawn, the lords that are tryers of the prisoner go to some place to consider of their evidence: and if upon debate thereof, they should doubt of any matter, and thereupon tend to the high steward, to have conference with the judges, or with the high steward, they ought to have no conference, either with the judges or the high steward, but openly in court, and in the presence, and hearing of the prisoner; as it was resolved by all the justices of England in the reign of king H. 8, in the case of the lord Dacres of the North. And this was a just resolution; for when the lords should put a cafe, and ask advice thereupon, the prisoner ought by law to be present, to see that the cafe or question be rightly put: and therefore that nothing be done in his absence, until they be agreed on their verdict. Hereupon it followeth, that if the peers of the realm, who are intended to be indifferent, can have no conference with the judges, or with the high steward in open court in the absence of the prisoner: ad foro, the king's learned counsel should not in the absence of the party accused, upon any cafe put, or matter shewed by them, privately preoccupate the opinion of the judges: and upon to just a resolution the cafe succeeded well, for the peers found the lord Dacres not guilty.

14. A noble man cannot waive his trial by his peers, and put himself upon the trial of the country, that is, of twelve freeholders: for the statute of Magna Carta is, that he must be tried per partes. And so it was resolved in the lord Dacres case, ad foro.

15. The peers ought to continue together (as judges in cafe of other subjects ought to do) until they be agreed of their verdict: and when they are agreed, all come again into the court, and take their places, and then the lord high steward publicly in open court, beginning with the prince lord, (who in the case of the lord Dacres was the lord Morland,) said unto him: My lord Morland, is William lord Dacres guilty of the treasons, whereof he hath been indicted or arraigned, or of any of them? And the lord standing up said, Not guilty: and so upward of all the other lords answered: who all gave the same verdict: In which case the entry

\[\text{super quo W. Com: E: etca dictis alpe insufficiente spondeo dominio regis debito, per peratum finis: dominium ad inferior posuit: ad sumptum separati publici examini: diu: quod W. dominus Dacres non est culp. &c.}\]

16. The peers give their verdict in the absence of the prisoner, and then is the prisoner brought to the bar again: and then doth the lord high steward acquaint the prisoner with the verdict of his peers, and give judgement accordingly, either of condemnation or acquittal. But it is not so in the case of another subject: for there the verdict is given in his presence.

17. Every lord of parliament, and that hath voice in parliament, and called therunto by the king's writ, shall not be tried by his peers, but only such as sit there ratione nobilitatis, as dukes, marquises,
Cap. 2. Petit Treason.

marquisses, countes, viscounts or barons, and not such as are lords of parliament, ratime baroniarum, quas tenent in jure ecclesiae, by reason of their baronies which they hold in the right of the church, as arch-bishops, and bishops, and in time past some abotts and priors, but they shall be tried by the country, that is, by freeholders, for that they are not of the degree of nobility.

18. a No noble man shall be tried by his peers, but only at the suit of the king upon an indictment of high treason, or misprision of the fame, petit treason, murder, or other felony, or misprision of the fame. But in case of a presumtue or the like, though it be at the suit of the king, he shall not be tried by his peers, but by freeholders. And so in an appeale at the suit of the party for petit treason, murder, robbery, or other felony, he shall be tried by freeholders. See more hereof in the second part of the Institutes, Magna Carta, cap. 29.

19. b And albeit a man be noble, and yet no lord of the parliament of this realm, (as if he be a nobleman of Scotland, or of Ireland, of France, &c.) he shall be tried by knights, esquires, or others of the commons. And so it is of the sonne of a duke, marquiss, earle, &c. he is noble, and called lord: and yet because he is no lord of parliament, he shall be tried as one under the degree of a peer, and lord of parliament.

20. No peer of the realm, or any other subject shall be convicted by verdict, but the said offences must be found by above four and twenty, viz. by twelve, or above, at his indictment, or by twelve peers, or above, if he be noble, and by twelve, and not above, if he be under the degree of nobility.

21. A peer of the realme being indicted of treason, or felony, or of misprision, as is aforesaid, and duly transmitted to the lords, may be arraigned thereof in the upper house of parliament, as frequently in parliament rolls it doth appeare: but then there must be appointed a steward of England, who shall put him to answere: and if he plead not guilty, he shall be tried per partes ius, and then the lords spiritual must withdraw, and make their proxys: but no appeal of treason can be in parliament, a but is ousted by the statute of 1. H. 4. cap. 14.

22. b And as the beginning (viz. the finding of the indictment by freeholders) is equal to them both: so the most extreme and heavy judgement, if they be found guilty, is equal to both, &c. which you may reade in the first part of the Institutes, Sect. 147.

23. c And though the commissioun of the lord steward be only in these latter times haec vice, yet may the fame be adjourned, as other commissiouns haec vice may. And so it was holden in the lord Dacres cafe. And so it was done by the steward of England in the case of R. earle of S. and of F. his wife, who adjourned his commissioun till the next day.

24. If execution be not done according to the judgement, then the high steward in the case of a peer of the realm, or the court or commissiouns in case of another subject, may by their precepts under their seales command execution to be done according to the judgement: but in case of high treason, if all the rest of the judgement (having the besaying, which is part of the judgement) be pardoned, this ought to be under the great seale of England.
25. And when the service is performed, then is an oyes made for the dissolving of the commission; and then is the white rod, which hath been borne and holden before the steward, by him taken in both his hands, and broken over his head.

Lastly, the indiements together with the record of the arraignment, trial, and judgement, shall be delivered into the king's bench, there to be kept and introled.

Hitherto we have spoken when a noble man doth appear, and plead not guilty, and put himself upon his peers: Now let us see what shall be had against him when he is indicted and appears not, and cannot be taken: and generally shall be outlawed, per judicium coronatorium. But how doth that stand with Magna Charta, nec sucur com ibimus, nec sucur com mitterimus, nisi per legale judicium suum iurum? That is to be intended, when he appears and pleads not guilty, and puts himself upon his peers: but when he abstains himself, and will not yield himself to the due tryall of his peers, then he shall be outlawed per judicium coronatorium, or else he should take advantage of his own contumacy, and flying from judgement. 4 For proce to be awarded upon the indiement or appeal of treason, felony, or trespass, either against a nobleman or any other, see the statute of 6 H. 6, and Eliz. in Use de bell, et error coron Regis in Numan Nervilis. c. 19 H. 6, 10. A Vide F. N., B. 1751. 1. 2. 5. 14 H. 6, 7. 12. Saint. Pl. c. 65, 69. 13. E. 1.

28 E. 1. ca. 2.

32.]

See the fist part of the first book, 26 H. 8, cap. 13. 5 El. 6, cap. 11. 12 El. Bier 257.

* Artic. cap. 6. 23 E. 1. 20 E. 3. cap. 6. 11. 23 E. 3. cap. 4. 42 E. 3. c. 11. 28 E. 1. 28. 32 E. 1. 117.

[32]
Petit Treason.

was made in that behalf at the parliament holden 11 H. 4. in these words. Item because that now of late 2 inquests were taken at Westminster of persons named to the 6 justices, without due return of the sheriff, of which persons some were 5 outlawed before the said justices of record, and some fled to sanctuary for treason, and some for felony, there to have refuge; by whom as well many offenders were indicted, as other lawfull liege people of our lord the king, not guilty by conspiracy, abatement, and false imagination of other persons for their special advantage and singular luscour, against the course of the common law used and accustomed before this time. Our said lord the king for the greater ease and quietness of his people, will and granteth, that the same indictment to make, with all the dependance thereof be 4 revoked, admitted, void, and holden for none for ever. And that from henceforth no indictment be made by any such persons, but by exquit of the king's lawfull 6 liege people, in the manner, as was used in the time of his noble progenitors, returned by the sheriffs, or bailiffs of franchises, without any 5 denomination to the sheriffs, or bailiffs of franchises before made by any person of the names, which by him should be impanelled, except it be by the officers of the said sheriffs, or bailiffs of franchises sworn and known to make the same, 6 and other officers to whom it pertaineth to make the same according to the law of England. And if any indictment be made hereafter in any point to the contrary, that the same indictment be alio void, revoked, and for ever holden for none.

The body of this act confineth upon two distinct purvions or branches, the one to remedy a mishief past, the other to provide for the time to come. The first branch confineth of a preamble, and a purvion: and the preamble containeth these eight parts. First, it sheweth divers inquests had been taken at Westminster by persons named to the justices. Secondly, without due return of the sheriff. Thirdly, of which some were outlawed before the said justices of record. Fourthly, some fled to sanctuary for treason, and some for felony. Fifthly, by whom many offenders were indicted. Sixthly, some not guilty. Seventhly, by conspiracy, &c. Eighthly, that all this was against the course of the common law. By the body of the act, it is enacted that the same indictment, with all the dependance thereof, be revoked, and made void. Then followeth the second branch or purvion for the time to come; and this purvion consisteth of divers parts: First, in describing by what persons indictments ought to be found, and therein 1. privities, that is, not by any such persons, having reference to the preamble, which persons we have before particularly distinguished. 2. Positives, that all indictments must be found by persons of these qualities. 1. They must be the kings lawfull liege people. 2. Returned by sheriffs, or bailiffs of franchises, and other officers to whom it pertaineth. 3. Without any denomination to the sheriffs, bailiffs, or other officers: and this purvion is in allowance, and declaratory of the common law.

The second part of the purvion is introductory of a new law, viz. that if any indictment be made hereafter in any point to the contrary, that the same indictment be void, revoked, and holden for none. Wherein these two things are to be observed: 1. That this is a general law, and extendeth to all indictments for any crime, de-
fault, or offence whatsoever: for the words be [if any indictment] generally without naming of any court, or before whom. 2. If the indictment be found by any persons that are outlawed, or not the kings lawfull liege people, or not lawfully returned, or denominated by any, viz. by all or any of these, that then the indictment is void, for the words be, [if any indictment be made hereafter in any point to the contrary, &c.] Upon this statute in the case of Robert Scarlet before the justices of assize at Bury in the county of Suffolk, in sonner vacation, 10 Ja. R. these points were resolved and adjudged: First, where at the seisions of the peace holden at Woodbridge in the said county of Suffolk, Robert Scarlet by confederacy between him and the clerk, that was to read the pannell of the grand jury returned by the sherrif, (whereof he was none, albeit he laboured the sherrif to have returned him) that the clerk should read him as one of the pannell, which was done accordingly, and he sworn. It was resolved and adjudged that this case was within the statute, for that he was not returned by the sherrif. Secondly, that where the rest of the great inquest giving faith to him indicted seventeen honest and good men upon divers penal statutes, which was done by the said Robert Scarlet maliciously. It was resolved and adjudged, that albeit he * alone was sworn without the return of the sherrif, and all the rest duly returned, yet this case was within this statute, and all the indictments found by him and the rest were void by this statute: for hereby it appeared what mischief such a one might doe. Thirdly, that Robert Scarlet upon this case had offended against the said act, and might be indicted thereupon: and accordingly he was upon sufficient proof of the fact, as aforesaid, indicted upon the said act, and pleaded not guilty, and was found guilty. Fourthly, that this act extended not only to indictments of treason and felony, but of all other offences and defaults whatsoever, according to the generality of the words. Fifthly, consideration was had at the act of 3 H. 8. cap. 12, and resolved clearly that this statute had not altered the act of 11 H. 4. in any thing concerning the offence of Scarlet, as upon that, which shall be said of the act of 3 H. 8. shall appear. And upon hearing of council learned what they could say in arrest of judgement, at last judgement was given, that he should be fined and imprisoned, and ordered by the court that no proces should goe out upon the said indictments found by the said great inquest, whereof Scarlet was one.

But notwithstanding this good law, through the fulness, and untrue demeanors of sheriffs, and their ministers, great extortions and oppressions be and have been committed and done to many of the kings subjects by means of returning at seisions holden within counties and dioces for the body of the shire, the names of such persons as for the singular advantage, &c. of the said sheriffs and their ministers, will be wilfully forthorn and perjured by the sheriff labour of the said sheriffs and their ministers, by reason whereof of many substantial persons, the king's true subjects have been wrongfully indicted of murders, felonies, and misdemeanours; and sometime by labour of the said sheriffs and their ministers, divers great felonies and murders have been concealed, &c. For remedy of which mischief it is enacted by the said statute of 3 H. 8. cap. 12. That the justices of great delivery, or justices of peace, whereof