
the said hunting, and of the said doers in that behalf (8): and if the same person * wilfully conceal the same hunting, or any person with him defective therein (9), that then the same concealment be against every such person for concealing felony, and the same felony to be enquired of and determined, as other felonies within this realm have used to be: and if he then confess the truth, and all that he shall be examined of, and knoweth in that behalf (10), that then the said offences of hunting by him done, be against the king our soveraigne lord, but trespassable, by reason of the same confession, at the next general sessions of the peace to be holden in the same county, by the king's justices of the same sessions, there to be seized. And if any relous, or dishonour be made to any person having authority to do execution, or justice by any such warrant, by any person, the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same relous and dishonour be felony (11), inquirable and determinable, as is aforesaid. And over this, it is enacted and established, that if any person or persons hereafter be convict of any such hunting with painted faces, viors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, that then the same person or persons so convict, to have like punishment, as he or they should have, if he or they were convict of felony (12).

Now let us perceive the words of this new and ill penned law.

(1) By night, or with painted faces.] That is to say, either by night, or in the day with painted faces, for that doth equall the case of the night, in respect the offenders cannot be known, or discerned, in regard of such disguisings. And albeit the body of the act speaketh only of painted faces, yet it extendeth to viors and other disguisings, for those words are in the preamble rehearsing the mischief, and the remedy must be appliable thereunto, and the last branch of this act doth make this point clear.

(2) As information shall be made, &c. of any person to be suppressed.] Hereby it appeareth, that a bare information without shewing just cause of supplication at the least, is not sufficient to ground a warrant according to this act, for the words be, [of any person to be suppressed.] And this act is general, and extends to all persons of what estate or degree soever, and as well to women, as to men: for the words be [if any person] and generalia verba sunt generaliter intelligenda. And it is necessary for him that taketh the information, to take it in writing, because it is the ground of his warrant.

(3) Of any unlawful hunting in any forest, park, or warren.] This act doth not extend to any chase of the king, or of any other person, neither doth it extend to any forests, parks, or warrens in use or reputation, and which are not forests, parks, or warrens in law. See the 1. part of the Institutes, sect. 378. what a forest, a chase, and a park, &c. is.

(4) To any of the king's counsell.] This is understood of the king's privy council; and any one will serve, but he must be dwelling in the county where such offence is committed.

(5) Or
Hunters in the Night.  

Cap. 21.

(5) Or to any the justices of the kings peace, &c. And likewise any one justice of the peace will serve.

(6) Warrant. This warrant ought to be in writing under the seal of him that maketh it.

(7) Before the maker of the same warrant, or any other, &c.] So as the officer may carry the party arrested before any privy counsellor, or justice of peace within that county, and to that effect must the warrant be made.

(8) By his discretion have power to examine him or them so brought of the said hunting, and of the doers in that behalf.] So as the examination must consist upon two parts. First, of the hunting by the party himself. Secondly, of other doers in that behalf.

(9) And if the said person wilfully conceal the said hunting, or any person with him defective therein.] This branch being in the disjunctive, if he conceal either his own offence, or of the other misdoers with him therein, the letter of this act is that it is felony, but by construction upon the whole statute, it is no felony: and a hunting without killing of any game, is within the danger of this statute.

This act is to be taken strictly; for it is the first law that was made for the making of any hunting felon, against that excellent and equal branch of carta de foreia. Nulius de caterno vitam viam membri pro venatime nostra, &c. See the statutes of 21 E. 1. 1 E. 3. Stat. 1. cap. 8. 7 R. 2. cap. 4. Welf. ca. 8. Regift. fol. 9. F. N. B. fo. 67. Vet. N. B. 41 45 E. 3. 7. 33 H. S. Dier. 50.

The old statutes concerning the forests are called the good old laws, and customs, and commanded to be observed; and therefore this new act of H. 7. is too severe for beasts that be free nature, whereof there can be no felony by the common law, and that in case of the forests, parks, &c. of subjects, which never was before; and therefore the judges have made a favourable construction, as hereafter in this chapter you shall find.

(10) And if he confess the truth, and all that he shall be examined of, and knoweth in that behalf.] That is of his own quittance, and of other misdoers with him, then this act makes it no felony, but trepatiche finable, as it was before: but it must be a willful concealment; therefore if he knew not the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment must be willful. And seeing there is no time limited by this act, and the concealment ought to be willful, it were reason, that the information should be made in convenient time after the fact done.

(11) And if any recuson or disobeyance be made to any person having authority to do execution of justice by any such warrant by any person, the which he should be arrested, so that execution of the same warrant be not had, that then the same recuson or disobeyance be felony.] Here it is to be observed that the hunting being as yet no felony, the recuson could not be felony, if this branch had not been. Herein two things are to be considered; first, that it extendeth not but to the recuson, or disobeyance, that is committed by the party himself, that is to be arrested, and not to any other. Secondly, that if the party recuson himself, yet if he be pursuado and taken, so as execution of the warrant be had, it is no felony, as it is manifest by the letter of this branch.

(12) And

(12) And over this be it enacted, &c. That if any person or persons hereafter to be convicted of any such hunting with painted faces, wigs, or otherwise disguised, &c. or of unlawful hunting in the night, * that then the same person or persons so convicted, to have like punishment, as he or they should have, as if they were convicted of felony.]

Gerrard the queens attorney general (who was a grave and reverend man) said openly in the kings bench, that it had been resolved by the justices upon this statute, that if a man in the night, or by day with painted face doe hunt, &c. and being examined according to the act and concealeth it, this is (upon the construction of the whole act) no felony; for the first clause concerning concealment, and this clause which now we handle, must be coupled or joined by construction together, viz. if any person be convicted of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon not guilty pleaded, which the justices expounded to be the concealment intended in the first branch, for they held that it ought to be a judicall concealment, and not an extrajudicall concealment, before one of the privy counsell, or a justice of peace which may lie in averment, fo as before it be felony, he must be convicted of such hunting, &c. upon not guilty pleaded first: and after such conviction then must he be indicted again, super tota materia, that he feloniously did conceal, &c. against the form of the statute: and if the offender upon the first indictment confessed the indictment, then it is such a judicall confession as this act intendeth, and no felony within this statute. And this we heard the attorney report, and then obversed it, which concurring with our own opinion we thought good to publish, and the rather for that in master Larmours book of Justic of Peace amongst his precedents of indictments an erroneous precedent of an indictment is of felony for the concealment, &c. upon examination before justices of peace.

It is said in 33 H. 8. that chasing in parks is made felony, (intending this statute) notwithstanding it may be made trespass at the pleasure of the party, which we think is the clearest way.

Now what time shall be adjudged night, see before in the chapter of Burglary. For this felony the delinquent may have his liberty: see Stanford, 37. b.
C A P. XXII.

Of Felony for imbesling the Kings Armour, Ordnance, &c. or Victual, to the Value of Twenty Shillings, provided for Souldiers.

BE it enacted by the authority of this present parliament, that if any person, or persons, having at any time hereafter the charge or custody of any armour, ordnance (1), munition, shot, powder or habillements of war (2) of the queens majesties, her heirs, or successors, or of any victuals provided for the victualing of any souldiers, gunners, mariners, or pioners, shall for any lucre, or gain, or wittingly, advisedly, and of purpose to hinder or impeach her majesties service, imbesill, perjole, or convey away any the same armour, ordnance, munition, shot, or powder, habillements of war, or victuals, to the value of twenty shillings, at one or severall times: that then every such offence shall be judged felony, and the offender and offenders therein to be tried, proceeded on, and suffer as in case of felony. Provided always, and be it enacted by the authority aforesaid, that none shall be impeached for any offence against this statute, unless the same impeachment be prosecuted or begun within the year next after the offence done. And that this act, nor any thing therein contained, nor any attainer nor attainters of any person or persons for any offence made felony by this act, shall in any wise extend, or be adjudged, interpreted, or expounded to make the offender or offenders to forfeit, or lose any lands, tenements, or hereditaments any longer, then during his or their life or lives, or to make any corruption of blood to any the heir or heirs, of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dowry, or title of dower of or in any lands, tenements, or hereditaments, or her action or interest to the same: anything in this act contained, or any attainer or attainters hereafter to be had for any offence made felony by this act to the contrary notwithstanding. And that such person and persons, as shall be impeached for any offence made felony by this statute, shall by vertue of this act be received, and admitted to make any lawfull proofs that he can, by lawfull witness or otherwise, for his discharge and defence in that behalfe, any law to the contrary notwithstanding.

This is a necessary law, and so penned, as it requireth no curious exposalion.

(1) *Ordinance.* That is guns or artillerie so called, of an order, or
Cap. 22. Imbosing of Armour, &c.

or ordinance anciently made, of what bore, size, or bulk the same should be. And albeit the ordinance (that we can finde) is not extant, yet the name remaineth.

(2) Habilements of warre.] Habilements is properly apparell or clothing: but in legall understanding it doth not only extend to barefede and armour, but to all utensils that belong to war, without which men have not ability to maintain war.

This act making a new felony, hath five excellent provisions, worthy to be imitated in all like cases of new felonies. First, that none shall be impeached for this new felony, but within a year after the offence done. Secondly, that the offender should not lose his lands any longer than during his life. Thirdly, this act makes not any corruption of blood, but that his heir shall inherit. Fourthly, not to make the wife lose her dower. Fifthly, that such persons as shall be impeached for any offence made felony by this act, shall be admitted to make any lawfull prove a by witnisse, or otherwise for his discharge and defence in that behalfe.

In the statute of 4 Jacobi regis, there is also a good president, viz. [All which trials (viz. in cases of felony in that act before mentioned) b first for the better discovery of the truth, and secondly, for the better information of the coniences of the jurie and justices, there shall be allowed to the party so arraigned the benefit of such witnisses only to be examined upon oath, that can be produced, for his better clearing and justification]: that as witnisses are produced and sworne against him, so he may have witnisses produced and sworne for him, for jurato credatur in judicio. And to say the truth, we never read in any act of parliament, an cient author, book case, or record, that in criminal cases the party accused should not have witnisses sworne for him; and therefore there is not so much as seintilla juris against it. And I well remember when the lord treasurer Burleigh told queen Elizabeth, Madame, here is your attorney generall (I being sent for) qui pro domina regina sequitur, she said she would have the forme of the records altered; for it should be attornatus generalis qui pro domina ve ritate sequitur. And when the fault is denied, truth cannot appear without witnisses.

Hobelarius (id est, a light-horseman) declam in Scotiae recept armaturas et denarios, ididem securas, pollea non praeficitur per man datum regis, et recusatur reddere armaturas, et denarios, &c. per juratorem eff culp. et commititur marechallo, et finuit regi 10 li. et inven tit securitatem ad armaturas reidellicandas, &c.

Bonum est ire et sequi.

Vid. hierarchia, cap. of felony for any having a plague foie a more special provision.

a Nota.

4 Jac. regis cap. 1.
b Nota, two ex ce lent means for advancement of justice.

C A P.
CAP. XXIII.

Of F felonie in such as passe the Sea to serve Forain Princes, &e. or do serve Forain Princes, &c. without taking the Oath of Obedience.

3 Jac. cap. 4. EVERY subject of this realm (1) that shall goe or passe out of this realm to serve (2) any foreign prince (3), state (4), or potentate (5), or shall passe over the seas, and there shall voluntarily serve (6) any such foreigne prince, state, or potentate, not having before his or their going or passing, as aforesaid, taken the oath of obedience (7) (prescribed by that act) before the custome and controller of the port, haven, or creek, or one of them, or their either of their deputy or deputies, shall be a felon.

Some have objected, that the going or passing out of this realm, to serve, &c. cannot be tried; for that offences done out of the realm, cannot without a speciall provision be tried within the realm. And it is a sure rule, that in criminall causes concerning life or member, ibi deliquit, ibi puniatur: the offence is locall, and cannot be tried, but where it is committed, nor cannot be alleged to be in any other place then where in truth it was done. To this it is answered, that by a latter clause in this act, this felony shall be tried in the town wherein the haven or port is, wherein he went or passed over; which clause is, And it be further enacted, that all and every offence to be committed or done against this present act, shall and may be inquired of, heard, and determined before the justices of the kings bench, justices of assize and gaole-delivery in their several affiess; and all offences, other than treason, shall be inquired of, heard, and determined before the justices of peace in their quarter feliions, to be holden within the shire, division, limit, or liberty, where such offence shall happen. So as by the purvien and meaning of the makers of this act, this felony must be tried in the county where he went or passed over, and consequently in that town where part of the act was done. And these words [and wherein such offence shall be committed] must be construed in this case, where part of the offence is committed. For sed interpretandum est, ut verba accipiantur cum efficiat: and by the expresse words, all and every offence to be committed or done against this present act must be inquired of, heard, and determined, &c. And therefore the felony cannot passe away with impunity, and that which is done out of the realme shall be proved to the jury in evidence. Note where a forain treason by this act is made, it is enacted to be tried where the offender is taken.

(1) Ever
Cap. 23. Serving Foraine Princes, &c.

(1) Every subject of this realm. This branch extends to all persons of what estate, degree, or profession ever.

(2) To serve. Albeit the party did not serve, yet if the offender went or passed over to serve without taking the oath, he is in danger of this statute. And this extendeth to any kind of service, either in camp or army, or in house or otherwise.

(3) Any foraine prince. Prince is here taken for the person that is prince, i.e., Qui primum locum et gradum obtinet, whether he be king, or any other that hath sovereignty, by what name or title ever. The word hath other significations, but not pertinent to the exposition of this act.

(4) State. The former word [prince] includeth any, that is a monarch, or in nature of a monarch, or an absolute prince. This word [state] extends to any state, either aristocraticall, where few are in authority, or democraticall, where the people have the chief government without any superior, sowing such as they elect and choose.

(5) Potentate. This is a large word, and extendeth to potentates, as well ecclesiasticall as temporal.

(6) Or shall passe, &c. and there shall voluntarily serve. Although he went not over of purpose to serve, but upon some other occasion: yet if he after voluntarily serve any such foraine prince, state, or potentate, and have not taken the oath, he is a felon.

(7) The oath of obedience. This is particularly set downe in the said act.

And that if any gentleman or person of higher degree, or any person or persons, which have borne, or shall beare any office or place of captain, lieutenant, or any other place, charge, or office in camp, army, or company of fouldiers, or conducer of fouldiers, shall after goe or passe voluntarily out of this realm to serve any such foraine prince, state, or potentate, or shall voluntarily serve any such prince, state, or potentate, before he and they shall become bound by obligation with two such fuereties, as shall be allowed by the officers, &c. shall be a felon.

By this branch, if he be a gentleman, or of higher degree, or any such military man, as here is described; because he is able to do more harme, if he be so disposed, he must not only take the oath by the former branch, but he must become bound by this branch with two fuereties, &c. The forme of the obligation is set downe in this act. The exposition of the former branch giveth light to the understanding of the residue of this clause.

There is a proviso, that no attainder of felony, made felony by this act, shall take away dower, nor make, or work, any corruption of blood, or disheison to the heire. The offenders in any of the said cases of felony may have the benefit of their clergie.
C A P. XXIV.

Of Felonie in Purveyors.


SEE the statutes of Artic. super Cartas, anno 28 E. 1. cap. 2. 18 E. 2. cap. ult. 5 E. 3. cap. 2. 25 E. 3. cap. 1. & 15. 27 E. 3. cap. 1. 36 E. 3. cap. 2. And before in the second part of the Institutes, in the exposition of the statute of Artic. super Cartas, cap. 2, you shall finde in what case a purveyor may be charged with felony, which briefly may be reduced to these four heads. First, a if any that take upon him to be a purveyor, or his deputy or servant, make purveyance of any thing above twelve pence without warrant. Secondly, b or make purveyance of any thing above twelve pence without testimony and apprision of the constable, and four honest men, and without delivery of titles. Thirdly, c or take any sheep with their woollies between Easter and Midsummer, and carry them to his own house and shear them. Fourthly, d or make any takings or buyings, or take any carriage in other manner then is contained in their commissions, they shall have punishment of life and members: and this act remains still in force without alteration. The offenders may have the benefit of their clergy.

By this statute it is enacted, that purveyors assigned by commission shall make purveyance of victuals, corne, and other things, as well within liberties and franchises, as without, any grant, allowance, or other thing to the contrary, or let thereof notwithstanding; but the purveyors shall observe the statutes for them provided in every behalf, as by that act appeareth. e Upon this act it was holden, that if the discharge of purveyance were by letters patents, this act makes it of no force: but if the discharge were by statute, then the purveyor is bound to observe the statute, as by the statute of 14 E. 3. cap. 1. pro alio ecclesiasticall persons are discharged by statute, which the purveyor is bound to observe. See the statutes of 25 E. 3. statut. 5. cap. 21. & 43 E. 3. cap. 3. in what manner and in what time the kings butler or his lieutenant shall take wines, &c.

See more of purveyors in the fourth part of the Institutes cap. of the Counting house or Green cloth.

See lib. 8. 45, 46. in Evans cafe, a commission for taking up of boyes for the kings chappell, the generall words well expounded.

By an act of parliament not in print, it is enacted that no purveyor arrested for any misdemeanour shall have any privy seal, to cause such as arrested him to come before the counsell to answer to the king, but have his remedy by the common law.

Upon a grievous complaint made at the parliament holden in the fourth year of our late sovereign lord king James, by the commons of the realm concerning many grievances suffered by his subjects in the execution of a commissione granted to certain persons for getting of felt-pater, his majesties answer (amongst other things)

was, that he had never an intention to make any application of his prerogative therein, further than might stand with the lawfull, and necessary use thereof. And further his majesty was pleased out of his gracious care, and good-nature to revoke and annul all commi-

understanding, or grants made to any person or persons, for and concerning digging, and working of salt-peter, intending to consider of such a course afterwards, so the same might be made without any just cause of complaint, as by the said royal answer (amongst other things) more at large appeareth. In pursuance whereof, by the said kings commandment, Popham chief justice, and all the justices of England, and barons of the exchequer, were assembled at Ser-

ants-Inne in Fleetstreet, in December, in the said fourth year, to resolve and certify what prerogative the king had for digging, and taking of salt-peter in the houses, buildings, or grounds of his subjects, that thereupon a new commission might be made accordingly, who upon often conferences, and mature consideration resolved as followeth.

First, where it was objected, that gunpowder was invented in Germany, with time of memory, in the reign of king E. 3. so as the king could not claim it by prescription: and that before the 51 year of the reign of queen Eliz. (which was the year after the Spanish invasion) we, as yet, find not any commission or licence granted by any king or queen of this realm to any for the digging or taking of salt-petre: and in the said 51 year of the said late queen, two commissions or licences were granted, the one particular, to George Constable esquire, to dig, open, and work during the space of eleven years for salt-peter within the counties of York, Nottingham, Lancaster, Northumberland, Cumberland, and the bishopric of Durham, as well within our own lands, grounds, and possessions, as also within the lands, grounds, and possessions of any of our loving subjects within the counties aforefaid; and the consideration of the grant was, that he should deliver a great quantity of powder to be made by the said George Constable, and provided for the store of the queens majesty at a lower rate, then was paid for it before, with this further clause; [And further our will and pleasure is, that the said George Constable shall at his own proper costs and charges erect, make up, and lay all mud walls, stables, and grounds whatsoever so digged up:] whereupon it was inferred that no other buildings could be digged up by force of that commission, but only stables. The other commission was general, made unto George Evelyn, Richard Hils, and John Evelyn, and extended throughout the realms of England and Ireland; and all other the dominions of the same, as well within our own proper lands, grounds, and possessions, as also within the lands, grounds, and possessions of any of our subjects, with the like clause of the erection and reparation, as is aforefaid, without naming of mansion houses by express words, and without any prohibition to the subject to dig for salt-peter in their own buildings or grounds.

[83]

In the accounts, &c. from the 21 of April 18 E. 3 for one year following anno Domini 1544. under the title of artificers and workmen (inter alios.)

Gunnery 6. And of their wages and stipends per diem, it is said (amongst others) gunners for peace. Latine bombardum tormentum fumi.

Falk. 49 E. 3. Coram rege rot. 27.

Oxon. diversi malos factores venerunt ad manum, &c. cum arcubus, sagittis, balistis et goons.

Vide Rit. Parl. 1 R. 2. no. 58.

William captain of the castle of Cathersick, being charged for delivering it to the enemy, in the reign of E. 3. without commission, answered (inter alia) that the enemies brought to battery thereof nine pieces des groses cannons.

Hollingbo. fo. 453.

Walling. 10 R. 2. 1366.

Pol. Virg. De invent. rerum fo. 2. ca. 11.

Panzerusius Nova reperta. Tit. 18. pag. 679. anno Domini 1573.

John More, pag. 196. anno Domini 1382.
As to the first, it was resolved by all, that forasmuch as the taking of salt-peter, was for the necessary defence, and safety of the realm that the king had a right of purveyance of it; and should not be driven to buy it in foreign parts, which foreign princes might restrain, and to this realm might want sufficient for the defence thereof, to the great peril, and hazard of the fame: but the king was to take it, for the necessary defence of the realm, according to the limitations hereafter expressed; and it is no prejudice to the owners of the soyl, for the place that is digged must be made up again, and repaired in as good plight as it was beeofore. Secondly, that this taking of salt-peter in the buildings or grounds of the subject, being a purveyance as is aforesaid, is an incident inseparable to the crown, and cannot be granted, demised, or transferred to any other, but ought to be taken only by the kings ministers, as other purveyances ought, and cannot be converted to any other use, then for the defence and safety of the realm, for which purpose only the law doth give to the king this prerogative; and it is not like to a mine of gold or silver in the ground of the subject, for there the king hath an interest in those metals, and not purveyance only. And if the powder which is so made by the kings ministers begin to decay, as it will doe within two or three years, then this either ought to be changed for other, or sold, and the money thereof comming to be employed for powder for the defence of the realm, and the kings ministers ought to make great provision of salt-peter, for that will last a long time, and when need is to make thereof gun-powder, which will be made before the navy can be put in readinesse, &c. Thirdly, the ministers of the king cannot in digging for salt-peter undermine, weaken, or impair any of the walls or foundations of any of the houses of the subject, be they manison houses, or out-houses, as barns, stables, dove-houses, mills, or the like, neither can they dig the floor of any mansion-house, which serves for the habitation of man, because his mansion is the safest place of refuge, and safety of himself and his family, as well in sickness as in health, and his defence, as well in the night, as in the day, against felons, and mifdoers, neither can the kings ministers dig the floor of any barn of the subject employed for the safe keeping of corn, hay, &c. for the floor of a barn cannot be made dry, or serviceable again in a long time, but they may dig in the floors of stables, and oxehouses, so that they leave sufficient room there for the horses, and other beasts of the owner, and so that they repair the same again in convenient time, as well as it was before. They may also dig in the floors of cellars, and vaults, so that the wine, beer, or other necessary provision of the owner be not removed, or in any sort impaired: and they may dig any wall, which be not the walls of any mansion house, and in the ruins and decayes of any houses which be not preferred for the necessary habitation of man. Fourthly, they ought to make the places as well, and commodious for the owner, as they were before. Fifthly, they ought not to work in the possessions of the subject, but between the rising of the sun, and the going down of the same, so as the owner may make fast the doors of his house, and put it in defence against mifdoers. Sixthly, they ought not to place or fix any furnace, vessell or other necessaries in any house or building of the subject, without his consent, nor so near any mansion as he by it may receive any prejudice or disquiet. Sev-
Cap. 25. Wandering Souldiers and Mariners.

vently, they ought not to continue in one place above a conve-
nient time, nor return thither but after a long time. Lastly, that
the owner of the foyle cannot be restrained from digging, or taking
of salt-peter, for the property thereof is in the owner of the foyle,
and the king hath but the purveyance thereof, and that every
man might work that would, and then there should be more plenty
of powder, and at a cheaper rate. And these resolutions are agree-
able with that maxime, * That the common law hath so admea-
fured the prerogatives of the king, that they should never take
away nor prejudice the inheritance of any. And these monopo-
lies being nullum in se, and against the common laws, are conse-
quently against the prerogative of the king, for * the prerogative
of the king is given to him by the common law, and is part of
the laws of the realm. Which resolutions were delivered in writing
by Popham chief justice unto the kings privy council, as the un-
animous resolution of all the judges, and barons of the exchequer,
and were by his majesties privy council well allowed of, and ap-
proved, as Popham chief justice reported. Upon these resolutions
these consequents do follow. First, if a man of his own authority,
or by colour of any commission, licence, or grant, doth take upon
him to take any salt-peter in the buildings, or grounds of any other
subject to make thereof gun-powder, in any part to his own use,
although he covenanteth, or agree to leave the king of so many laps
of powder: yet seeing it is but a purveyance, he cannot sell any
powder thereof made to any of the kings subjects, or make any
private benefit thereof; and if he do, he may be indicted of dig-
ging, and taking of the salt-peter at the kings hurt, and be grievously
fined and imprisoned, for that it is a grand trespass with an high
hand. Secondly, the party grieved may have his action of trespas,
and recover damages for the trespass, &c. according to the
quality of the trespass.

a Complaines made against purveyours in parliament.

b By the statute of 9 R. 2. all statutes made concerning pur-
veyours be confirmed, and to be put in execution, and that justices
of peace have power to hear and determine their offences. See
the fourth part of the Institutes, cap. 8. art. 33. 35. 36. against
cardinal Woolsey.

C A P. XXV.

Of Felony in wandering Souldiers and Mar-

rines.

1. ALL idle and wandering souldiers or mariners, or idle
persons wandering as souldiers or mariners, shall be re-
puted felons, and suffer as in case of felony.

So as not only he that is a souldier, or mariner in deed, but
he that is an idle wanderer, and takes upon him to be a souldier
or
Wandering Souldiers and Mariners. Cap. 25.

or mariner, though in troth he be none, is in danger of this law; for, as the preamble faith, they abuse the name of that honourable profession.

2. Every idle, and wandering soildier or mariner, which coming from his captain from the seas, or from beyond the seas, shall not have a testimonial under the hand of some one justice of peace of, or near the place where he landed, setting down therein the time and place when, and where he landed, and the place of his dwelling and birth, unto which he is to passe, and a convenient time therein limited for his passage, is by this act adjudged a felon.

3. Or if he hath such a testimonial, and shall exceed the time therein limited above fourteen days, he is by this act a felon, unlese he fall sick by the way, so as after his recovery he seteth himself in some lawfull course of life, or return to the place where he was born, or was last abiding: but in both these two cases he must be a soildier or mariner in deed.

4. If any such idle, and wandering soildier, or mariner, or other idle person wandering as soildier or mariner, shall forge or counterfeit such testimonial, he is by this act a felon.

5. Or if he shall have with him or them any such testimonial forged or counterfeit, knowing the same to be counterfeit or forged, he is also by this act a felon. And in both these last cases, as well he that is a soildier or mariner in deed, as he that is none, is in danger of this act.

And the offender against any of the articles of this statute shall not have the benefit of his clergy.

Justices of assize, justices of goal delivery, and justices of peace, have power by this act to hear and determine the said felonies.

But if some honest person valued in the last subsidy to ten pounds in goods, or forty shillings in land, or some honest freeholder, as by the said justices shall be allowed, will be contented before such justices to take him or them into his service for one whole yeare, and will become bound by recognizance, as the statute doth appoint, then they shall not proceed any further against him, unless such person retained depart within the year, without the licence of him, that so retained him; and then he is to be indicted, tried, and judged as a felon, and not to have the benefit of his clergy.

C A P. XXVI.

Of Felonic in Souldiers that depart from their Captaines without Licencie.

This statute is become of little force or use: for the ancient manner of retent of souldiers wherunto that statute referred, is utterly altered: for then knights or gentlemen expert in war, and of great revenues and livelihood in their country, boundent with the king to serve him in his war for such a time with such a number of men, and the souldiers made their covenant with their leaders or masters, and then they were mattered before the kings commissioneers, and carried of record before them; and that was certified into the exchequer, and thereupon they took their wages of the king, as it appeareth by many presidents of the exchequer, and may be gathered by the preamble and body of the statute, and by the Register, where it appeareth, that a writ was framed upon that statute directed to a sergeant at arms "et aliis commisso

and professionem in obsequio et honor.

And this was thought an excellent military policy, that the souldiers, (part whereof were of their own tenants) should be chosen and led by knights and gentlemen of quality of their own country, with whom they must fight in war, and live withall in peace, when they returned into their country, in respect whereof, the souldier would serve cheerfully and obediently follow his leader, and the leader would serve respectfully and lovingly use his souldier when he is abroad. See the ancient form of commissione for arraying and mustering of men in 5 H. 4.

By this act the benefit of clergie was not taken away from the delinquent.

The statute of 2 E. 6. cap. 2. extendeth only when the souldier departs after that he hath served the king in his war: and such an offender shall not enjoy the benefit of his clergie.

If any souldier being no captain, immediately retained with the king, which is in wages and retentions, or take my preff to serve the king upon the sea, or upon the land beyond the sea, depart out of the kings service without licence of his captain (1), that such departing be taken, deemed, and adjudged felony. And that all the justices in every shire of England, where any such offenders be taken (2), have power to enquire of the said offences, and the same to hear, and determine, as they doe and may doe of felony, &c. expressed in the kings commissione to them made, as though the same offences were done in the same shire; and also that the departing of such souldiers, and also their retainers, if it be traversed, be tried

tried in the same shire, where they be for such a cause arrested, and arraigned.

Both these acts of 7 H. 7. and 3 H. 8. are perpetual acts, for this word [king] includeth all his succession.

(1) Without licence of his captain.] The statute of 3 H. 8. is without licence of the king's lieutenant there.

(2) That all the justices in every shire of England, where any such offenders be taken, &c.] This act of 7 H. 7. extends to all the kings justices in every shire, viz. justices of assize, gaol delivery, oyer and terminer, and of the peace. And if the offender be taken in the county where the kings bench sat, he may be indicted, &c. there: but this clause in 3 H. 8. is restrained to justices of peace. This clause in both the said statutes is cumulative, and for more speedy proceeding with the offender. But admit the offender be never taken, yet may he be indicted of felony in the county where the departure was, and if he appear not, he may be outlawed, for by the first clause, the offence is made felony, and the second clause is affirmative, and not private.

He or they so offending shall not enjoy the benefit of his clergy.

This branch in the act of 7 H. 7. is general, but in the act of 3 H. 8. there is an exception out of the like branch, viz. of men being within orders of holy church. So as it differeth much, whether he be indicted upon the one statute, or the other.

But observe what punishment the ancient law of England inflicted upon the souldier that departed from the kings host, both before, and since the conquest. "Fur qui fugit ad dominum, vel securitatem sui, vel desiderio bellici, vel merito, in conductione herculei sibi in expeditio navali, vel terrestris, perdat omnem quod suum esset, et summae vitam, et manus mitiat dominus ad terram quam ei Amanda dederat. For the exposition of Herculei and Hercules, see the fourth part of the Institutes, cap. Cour de Chivalry.

Now concerning armour, arms, charges of souldiers, murthering of them, &c. See the statutes in print of Confirmat. Cart. 25 El. 7. Vet. Magna Cart. 2. parte, fol. 35. 1 El. 3. cap. 5. 18 El. 3. cap. 7. 25 El. 3. cap. 8. 4 H. 4. cap. 13. 11 H. 7. cap. 7. and 3 H. 8. cap. 5. and 4 & 5 Ph. & Mar. cap. 3. for appearing at murtherers, &c. But 4 & 5 Ph. and Mar. cap. 2. an act for having of horse, armour, and weapon is repealed by the statute of 1 Ja. ca. 25.


Book cater. 48 El. 3. 3. + 21 E. 4. 17. per Catesby. 9 E. 4. 26. lib. 7. fo. 7. 8.

See the second part of the Institutes, Confirmat. Cart. cap. 5. supra.

Vide Pach. 16 E. 2. Philip Master del Hospit. de S. Katharins cae, in libro meo, fo. 83. b.
Polygamy.

C A P. XXVII.

Of Felony to marry a second Husband or Wife, the former Husband or Wife living.

If any person (1), or persons within his majesty's dominions of England and Wales, being married (2), doe at any time after marry any (3) person or persons, the former husband or wife being alive, that then every such offence shall be felony, &c.

This is the first act of parliament that was made against polygamy. Polygamy est plurium feminarum uxorium communem. The difference between bigamy, or trigamy, &c. and polygamy is, quia bigamus seu trigamus, &c. est qui duxeris temporibus, et usque itaque duas, seu tres, &c. uxoribus habuisti. Polygamus, qui duas vel plures uxoribus duxit utres. (1) If any person.] This law is generally, and extendeth to all persons, of what estate, or degree soever.

If the man be above the age of fourteen, which is his age of consent, and the woman above the age of twelve, which is her age of consent, though they be within the age of one and twenty, are within the danger of this law, which appeareth by this, that the act extendeth not to a former marriage made within the age of consent, as hereafter shall appear.

Being married, &c.] This extendeth to a marriage de facie, or voidable by reason of a precontract, or of consanguinity, or of affinity, or the like: for it is a marriage in judgement of law until it be avoided, and therefore though neither marriage be de jure, yet they are within this statute.

(3) Doe at any time marry.] This second marriage is merely void, and yet it maketh the offender a felon.

And the party and parties so offending, shall receive such and the like proceeding, trial and execution in such county, where such person or persons shall be apprehended, as if the offence had been committed in such county, where such person or persons shall be taken or apprehended.

See before the exposition of the statutes of 7 H. 7. and 3 H. 8. concerning departing of fouldeirs, &c.

Out of the generality of this law, there be five exceptions: First, extendeth not to any person or persons, whose husband or wife be continually remaining beyond the seas, by the space of seven years together. By this branch notice is not material, in respect of the connubiority beyond sea.

Secondly, it extends not, when the husband or wife shall absent him or herself, the one from the other, by the space of seven years in any parts within his majesty's dominions, the one of them not knowing

See 22 E. 4. Consultation. 5. The opinion of the doctors. Pains caih lib. 91 fo. 72.
knowing the other to be living within that time. Here notice is material, in respect the connorance is within the realm.

* Thirdly, nor to any person or persons, that at the time of such marriage be divorced by any sentence had in the ecclesiastical court.

There be two kinds of divorces, the one that dissolveth the marriage à vinculo matrimonii; as for precontract, confounding, &c. and the other à mensa et thoro; as for adultery, because the divorce by reason of adultery, cannot dissolve the marriage à vinculo matrimonii, for that the offence is after the just and lawful marriage. This branch in respect of the generality of the world, priviledge the offender from being a felon, as well in the case of the divorce à mensa et thoro, as where it is à vinculo matrimonii, and yet in the case of the divorce à mensa et thoro, the second marriage is void, living the former wife or husband. And if there be a divorce à vinculo matrimonii, and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce, the party marrying is no felon within this statute, in respect of the generality of this branch, although the marriage be not lawfull.

Fourthly, nor to any person or persons, where the former marriage is by sentence in the ecclesiastical court declared to be void and of no effect.

Fifthly, nor to any person or persons, for or by reason of any former marriage made within age of consent: hereby it appeareth that the makers of the law intended that this act should extend to every person above the age of consent.

If the man be above fourteen, and the wife under twelve, or if the wife be above twelve, and the man under fourteen, yet may the husband or wife to above the age of consent, disagree to the appeal, as well as the party that is under the age of consent; for the advantage of disagreement must be reciprocal. And so if it was resolved by the judges and civilians, Trin. 42 Eliz. in the king's bench, in a writ of error between Babington and Warner. So as it either party be within age of consent, it is no former marriage within this act.

The offender against this statute may have the benefit of his clergy.

If he be a nobleman and lord of parliament, he shall be tried by his peers, albeit there be no provision special for it: for of common right, (that we may say it once for all) in case of treason, felony, and misprision of treason or of felony (as hath been said before) he is to be tried by his peers.

I find that by the ancient law of England, that if any Christian man did marry with a woman that was a Jew, or a Christian woman that married with a Jew, it was felony, and the party offending should be burnt alive.

Contrahentes cum Judaeis, Judaeabus, pecorantes, et sodomice in vesti vivi confidiantur, &c. Fleta lib. 1. ca. 35. §. Contrahentes.
Of Felony for any having a Plague fore upon him, contrary to Commandment goeth abroad, &c.

If any person infected with the plague, commanded (by such persons as are appointed by the act) to keep house, shall contrary to such commandment wilfully and contemnuously go abroad, and shall converse in company, having any infectious fore upon him unsecured, such person shall be adjudged a felon.

This is felony, albeit no other person by such means be infected, for this statute was made to prevent the most horrid and fearfull infection of the plague. The law was general, and extended to all estates and degrees whatsoever, and was grounded upon the law of God; and the reason of the law of the realm is, that the infectious sick should be removed from the whole. The party offending might have had the benefit of his clergy.

Here is a rare proviso, That no attainer of felony by vertue of this act, shall extend to any attainer, or corruption of blood, or forfeiture of goods, chattels, lands, tenements, or hereditaments.

In this proviso these things are to be observed: first, that by the avoyding of the corruption of blood, the wives dower is impliedly faved: for where the heir shall inherit, the wife shall be ridowed against the heir. Secondly, that there shall be * no forfeiture of goods, or chattels, which is rare, and the like we have not observed before, and by consequent the offender may make his will and testament, and if he doe not, the ordinary ought to grant administration of the goods and chattels, as he ought to doe in other cases.

These words [to any attainer or] must be omitted, and the same to be, to any corruption of blood, for (as it is printed) it is, that no attainer of felony shall extend to any attainer, &c.

This act is become of no force for want of continuance, and is expired since we wrote this chapter, therefore to be put out of the charge of the justices of peace.
Of Felonie in Jaylers by Dures of Imprisonment, &c. by Statute, and by the Common Law.

If it happen that the keeper of the prison, or underkeeper (1) by too great dures of imprisonmment (2), and by pain make any prifoner that he hath in his ward to become an * appellor (3), against his will (4), and thereof be attainted, he shall have judgement of life and member (5).

Before the making of this statute, if a jayler had by dures of imprisonmment made his prifoner become an appeller, to appeler honest men for his own private, of intent to have of their goods, when they were committed to his custody, and to retain them in prifon without being let to mainprize, and the appellices upon his appeal be hanged: this is felony in the jayler by the common law: but if the appellices were acquitted, then it was no felony, but a great misprison in the jayler, which was one of the causes of the making of this act: for by this act, if the prifoner become an appeller against his will, whether the appellices be acquitted, or attainted, or after the approval not proceeded with, and whether the approval be true or false, so it be by dures of imprisonmment, and against the will of the prifoner, it is felony. * For it is not lawfull for any man to excite or stir any other to a unjust accusation, complaint or lawfull suit, for culpa eft fe immisere vel ad fe non pertinent; (and so was) a it resolved Mich. 7. Ja. in the far-chamber, in Sir John Hollis his cause, by the whole court) much more to doe it by dures of imprisonmment, most of all by a jayler, who hath the custody of the prifoner committed to him, to enforce him by dures to become an appeller. And therefore this law hath made it felony in the jayler or under-jayler.

(1) **Keeper of the prifon, or under-keeper.** If he be keeper, or under-keeper, de jure, or de facto, by right or by wrong, he is within the purview of this statute.

(2) **By too great dures of imprisonmment.** Every imprisonmment is taken and declin'd in law dumtia, dures: a little addition to it by the jayler is too great dures in this cause.

(3) **To become an appellor.** That is an appeller.

(4) **Against his will.** That is, when the prifoner never would have done it of his own will, if the jayler, or under-jayler had not enforced him thereunto.

(5) **Judgement of life or member.** * These words doe imply fe-mony. For this offence, the offender shall have the benefit of his clergy.

If the jayler keep the prifoner more straitly then he ought of right, whereof the prifoner dyeth, this is felony in the jayler by
Cap. 30. Payment or Receipt of Money.

the common law. And this is the cause, (as before hath been said) that if a prisoner die in prison, the coroner ought to sit upon him. See before cap. Petit Treafeon, fo. 54. how prisoners are to be demeaned.

How gaoles are rejoyned and united to the office of sheriffs, see this statute of 14 E. 3. ca. 10. 19 H. 7. ca. 10. lib. 4. fo. 34. Muttons cafe. Add therunto Rot. Parl. 18 E. 3. nu. 43. and so was it decreed in Fortescue’s cafe, in the exchequer chamber, anno 2. Car. regis.

nu. 43. 2 Car. Regis in the exchequer chamber,

[92]

14 E. 3. ca. 10.
19 H. 7. c. 10.
Li. 4. fo. 34.
Muttons cafe.
Parl. 18 E. 3.
Fortescues cafe.

C A P. XXX.

Of Felony by bringing in, Payment, or Receipt of certaine Money.

It is felony to make, coin, buy, or bring in, and put in payment, &c. any galley half pence, fulkyn, or dotkyn.

The reason of this law was, for that these moneys were base, and not of the alloy of sterlings, which was (amongst others) the cause of the making of the generall law of 9 H. 5. cap. 6. stat. 2.

It is felony to pay, or receive for payment any money called blanks. For the better understanding of this statute, it is to be known, that these blanks were white money coyned by king H. 5. in France after his victory at Agincourt, and league with France, whose style then was, rex Angliae, regens et heres Franciae. And they were called blanks or whites in respect of the colour, because at the same time he coyned also a falsus in gold, the falsus, being of the value of twenty two thillings, was of the alloy of sterlings: but the blanks, which were much more common, being each of them valued at eight pence, were not of the alloy of sterlings, and therefore they only were decreed by the said act of 2 H. 6.

See the second part of the Institutes. Artic. Super Cartas cap. 20.

For either of these offences of felony the offender may have his clergy.

C A P.
C A P. XXXI.

Of Felony for Transportation of Silver, or Importation of false or evil Money, 

DEFENDUE fait que nu argent ferra transport hors de realm.

This was the ancient law of England long before the conquest.

At the parliament holden anno 17 E. 3. as well the transportation of silver, as the importation of false and evil money, is enacted by authority of that parliament to be felony. And also the searchers mentioned in the act be assenting to the bringing in of false money, or willingly suffering silver or money to be transported, it is also made felony. But because this act was never printed nor translated into English, and for that there be other things oberservable, enacted thereby, worthy to be known, we will transcribe the same, de verbo in verban in proprio idiomate.

* Le parlement tenus a Westm. a la quinzeme de Pach. du raign notre seignior le roy Edward tiers apres le conquést dys et septime.

ITEM accorde est de faire une monie des bones offering en Angleterre du pois et del a alay del auncient offering, que avra son cours en Angleterre entre les grandz et la comune de la terre, et la queue ne se serra portes hors du royalme d Angleterre en nulle maniere, ne pur que cincque cause que celz soit. Et en toz que les Flemings voilrent faire bove monie dargent grosses ou autres accordant en alay es bones offering, que tiel monie est cours en Angleterre entre merciand et merchand et autres qu la voindri refesencer de leur bove grec, estant que nu argent soit portes hors du roialme.

Item est accordes et assentus, que bones gents et loiaux sien оф-fesnes es parts de mieure, et aillours, ou miester ferra, de faire la fercue que nu argent soit portes hors du roialme en monsioe n'a-trement, forzis que les grandz quant ils vont per dela qils pen-sent aver vefesais dargent pur servir leur boffels: Et que nu soit cy hardy de porter fausse et malais monie en roialm, sur paie de forfeiteure de vie et de membre, et a faire eschanger a ceux qu passeront la mieure d'or pur leur tones Effering a la value.

Item assentus est et accordes, que les dits fercheurs, per cauz gils servont leur offices plus diligement et plus loaime, c est la tierce partie de tote la fausse monie, gils parront trouer

*
Item, IT is accorded to make money of good sterling in England of the weight and alay of the ancient sterling, which shall be currant in England between the great men and commons of the land, and the which shall not be carried out of the realm of England in any manner, nor for any cause whatsoever. And in case, that the Flemings will make good money of silver grosse or other, according, in alay of good sterling, that such money shall be currant in England between merchant and merchant, and others, who of their own accord will receive the same, so that no silver be carried out of the realm.

Item, IT is accorded and attested, That good and lawfull men be assigned in the ports of the sea, and elsewhere, where need shall be, to make searce, that no silver be carried out of the realm in money or otherwise, (except that the great men may when they goe out of the realm, have silver vessels to serve their houes) and that none be so hardy to bring falshe and ill money into the realm upon pain of forfeiture of life and members, and to make exchanges with them, that shall puffe the fea of gold for their good sterling to the value.

Item, IT is attested and accorded, that the said searchers, because they may doe their offices more diligently and more lawfully, shall have the third part of all the falshe money that they can find to be brought into the realme for their own benefit; and in the same manner they shall have the third part of the good money which they shall find upon the sea pertaining out of the realm. And in case they shall be found negligent or disobedient in making such searches, that their lands and tenements, goods and chattells shall be sequestred into the kings hands, and their bodies taken and detainted untill they have made fine to the king for their disobedience. And in case they shall be attenting to the bringing in of such falshe money, or wittingly shall suffer silver or money (except vessels of silver for the great men when they goe out of the kingdome to serve in their houes, as before is said) to be transported out
Transportation of Wool. Cap. 32.

out of the realme, they shall have judgement of life and member.

The offenders in case of felony made by this act may have the benefit of their clergy.

CAP. XXXII.

Of Felonie for carrying of Wooll, Woolfels, Leather, or Leade out of the Realme.

No merchant, English, Welch, or Irish, shall carry any manner of woolls, leather, woolfels or lead, out of the said realme and lands, upon paine of forfeiture of life and member, nor shall transport any of the said wares or merchandizes in the name of merchant strangers, nor shall send or hold their servants, &c. in the parts beyond the sea to survey the sale of the said wares or merchandizes, or to receive the money coming of the sale of the same, nor take payment of gold or silver, nor of any other thing in recompence or commutation, or in the name of payment in the parts beyond the sea out of the realme and lands above said of merchandizes sold in England, Ireland, or Wales, touching the staple, but that all such payment shall be made in gold or silver, or merchandizes in England, Ireland, or Wales, where the contract was made, upon paine of life and member.

That no merchant privie nor stranger, nor any other, of what condition that he be, go by land or by water towards wine, or other wares or merchandizes coming into our said realm or lands, in the sea, nor elsewhere to forestall or buy the same, or in other manner to give earnest upon them, before that they come to the staple, or to the port where they shall be discharged; nor enter into the ships for such cause, till the merchandizes be set to land to be sold, upon paine of losse of life and member.

No merchant privie, stranger, or other shall carry out of our realm of England, wools, leather, or woolfels to Barwick upon Twede, nor elsewhere, nor into Scotland upon the like paine, nor that any merchant, nor any other sell his wool, woolfels, or leather, to any of Scotland, nor to any other to carry into Scotland: upon the like paine.

If the merchants or other people of Ireland or Wales, after they be in the sea with their merchandizes, do passe to any place, other then to the staples in England: it is felony.
Cap. 32. Transportation of Wooll.

No merchant, or other shall make any conspiracie, confederacy, &c. or ill device in any point, that may turn to the impeachment, disturbance, defeating, or decay of the staples, &c. and if any do, and be thereof attained before the major and ministers of the staple, or other whom the king shall assigne, he shall incurre the paine of lose of life and member.

Item, ou auterfoitz suyt orden en * lestatuts de le staple que 
und Englissh paffero la mere ove leyens, quive, praitz lanuts, ne
per auter, sur peine de forfaite de vie et member, terres et tenen-
ments, biens et chateux: est accord que la forfaite de vie et
member soit auffe de tout en lestatute de le staple, et que und home
jiz impeach por tiet forfaite de vie et member, cibien en temps
pois come avenir, la forfaite des terres et tenements, biens et
chateux eslevar en sa force. The same in English.

Also, where heretofore it was ordained in the statutes of the
staple, that no English man should passe the sea with woolls,
leather, woollfels, nor by other, upon paine of forfeitour of life
and member, lands and tenements, goods and chattels. It is
accorded the forfeitour of life and member be ouuted in
the whole in the statute of the staple, and that no man be
impeached by such forfeitour of life and member, as well in tyme
past, as to come, the forfeitour of the lands and tenements,
goods and chattels, being in his force.

By the expresse letter of the body of this law, the forfeitour of
life and member is ouuted de soit in the statute: therefore it is
hiden, that the felony is taken away throughout the statute, but
the forfeitour of lands and goods, remaineth by the expresse letter
of this act.

By the statute of 18 H. 6. no man shall carry wool, or
woollfels, out of this realme to other places, then to the staple
at Callice, without the kings license, upon paine of felony, &c.
And that as well commissioners assigne, as the justices in every
county where such woolls and woollfels shall be so carried out,
have power and authority to enquire of the premises, and them
to hear, and determine, &c.

But this act extendeth not to woolls which shall passe the strait
of Marroke. And this is a perpetuall law, and cannot be expired,
as it is supposd in the latt impression of the statutes at large, but it
extendeth only to woolls and woollfels. The offender herin may
have his clergie.

And for the better understanding of ancient statutes and records
concerning woolls, it is necessarie to explaine certaine words and
ternes. By the statute of 25 E. 3. cap. 9. a fack of wool con-
taines but twenty fix stone, and every stone fourteen pound, where
before it was a twenty eight stone.

Pockett of wool, unde pochetton, that is, a little poke or fack con-
taining half: a fack of wool. Sarpler, unde sarpliere, is also halfe
a fack, and is derived from the French word sarpilier, which sig-

I nifeth
Stealing of Hawks. Cap. 34.
nifieth a wrapper, within which wrapper halfe a sack is contained.

A weigh of wool, unde waga, is halfe a sack.

A tod or toit of wool, unde todum lanae, containeth two stone, and is derived from the French word toilet, which is a wrapper, within which by usage two stone of wooll is fouled: some fetch it from the Flemmish word dodderen, which signifieth neture, to weave, because it is woven into cloth. Petra lanae is a stone of wooll, so called, because the weight, being a stone, contains fourteen pound.

C A P. XXXIII.

Against Transportation of Iron, Brass, Copper, Latten, Bell-metall, Pan-metall, Gun-metall, or Shroofe-metall, (Tinne and Lead only excepted.)

The transportation of these are prohibited by divers acts of parliament upon the penalties therein expressed. And hereby is prohibited the transportation of any gunnes whatsoever, a necessary law, and worthy of due execution.

And we have observed, that God hath blessed this realm with things for the defence of the same, and maintenance of trade and traffick, that no other part of the Christian world hath the like: viz. Iron to make gunnes, &c. more serviceable and perdurable than any other. Secondly, timber for the making and repairing of our navie, and especially of the knees of the ships, better than any other. Thirdly, * our fuller's earth is better for the fulling of our cloth, than any other. Fourthly, our wooll makes better cloth, and more lafting and defendible against winde and weather, then the wooll in any nation out of the kings dominions; and many other speciall gifts of God.

But here will we stay, and pray, that none of these may be transported for many inconveniences, that will follow thereupon.

C A P. XXXIV.

Of Felony for stealing of a Faulcon.

EVERY person (1) that findeth (2) any falcon (3), terrcelet (4), lanner, or lameret (5), or any other falcon, that is loft of his lords (6), that forthwith he shall bring it to the sherif of the county, and that the sherif make proclamation (7), &c. and if any steal any hawk (8), and the same carry
Cap. 34. Stealing of Hawks.

carry away not doing the ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse (9) or other thing.

The statute of 34 E. 3. inflicted the penalty for the concealing and taking away of the hawk, two years imprisonment, and the price of the hawk to the lord, if he hath wherewith, and if not, he shall the longer abide in prison. This act of 37 E. 3. maketh the offence felony.

The new printed book of the statutes at large, in fleet of these words, (or any other falcon) hath, or any other hawk.

I have seen some manuscripts (in these words) in the original tongue, wherein the statute was published. *Quis necusque perfid etro futum, tercellus, lannet, or langet, auferet ou aufer fiacon. And both these differ from the truth of this law. For the first extendeth this act to any hawk whatsoever. And the manuscript to aufer or auer, a gothawk, whereas in truth, this law extendeth only to such as be of the kindes of faulcons, being long winged hawks, which many times by flying far are lost, and not to any short-winged hawk, as the gothawk, the tercel of the gothawk, the sparhawk, &c. And in the body of the act this word (faulcon) is ever used, and not this word (hawk) as hereafter appeareth. We would have been glad to have cleared this point by the record of the parliament roll. But the roll of this act is not to be found, and yet being a generall law, the judges are to take notice thereof: and that which I have set down, as the words of the law, agreeeth with the first impression thereof, and with all succeeding impressions saving the last.

(1) *Every perfon.*] This is a generall law, and extendeth to all persons of what degree or sex forever.

(2) *That faulcon.*] Note by the common law the felonious taking of any hawk long-winged, or short-winged, from the pearle, &c. or from the person of any man, with a mind to steal her, is robbery: but the finding of a faulcon, though he concealed, demed, or fold her, was no felony, but by this act.

(3) *Any faulcon.*] By this and the last words, or any other falcon, it appeareth that only faulcons are within this law, as Besides those that are here named, the gerfaulcon, ginsule, or adonius, and the tercel, which is called a jerkin; and the lannet is called falcanulas. But the merlyn, which is called sefo, and the hobby which is called alaudaria, though they be long-winged hawks, yet being not of the kind of faulcons they are not within this statute. Neither is any short-winged hawk, as the gothawk, the tercel of the gothawk, or the sparhawk, &c. as has been said, within this act.

(4) *Tercellus.*] This is the tercel of the faulcon, called a tercel gentill, the male of the faulcon called *terclus, gna terrae fact minor fit femella*, because the tercel is a third part like the male.

(5) *Lannet and langet.*] These (as hath been said) are of the kind of faulcons, which appeareth not only by the name falcanulas, but by the words of the act, for having named the lannet and langet, it is said, or any other faulcon.

Albeit these hawks, that shall be so lost, have no vowels, yet...
Stealing of Hawks.  Cap. 34.

must the finder carry them to the sherif, for vervels are not required by this act. The only thing that the finder is to do, is to save himself from felony, is forthwith (the word in the original is maintenent) after his finding to carry the hawk to the sherif.

(6) That is lost of his lords.] Lords are taken here for the owner, the word in the original is seignior, which signifies as well a proprietor, as a lord.

(7) To prove reasonably.] This is not intended according to the general sense of this word (proof) that is, by a jury of twelve men, but (reasonably,) that is, by vervels, or by marks, or by other proof to the sherif.

(8) And if any steal any hawk, &c.] The concealing and carrying away of the hawk, not bringing the same to the sherif according to this ordinance, is adjudged a stealing by this act. And yet if a man finde goods, and conceal or deny them, it is no felony.

(9) As of a thief that stealth a horse.] But yet by the common law one hath not as good and absolute a property in hawks, being ferae naturae, and reclaimed for delight and pleasure (for they may become wild again, and return to their natural liberty) as in a horse, or any other thing of profit: but the concealing and carrying away of the hawk reckoned, being found was no felony but this statute, no more then any thing of profit, because the person to the hawk by finding. See more hereof in the chapter larceny. A hawk that is not reclaimed is nullius in bone, but cautelis concordantibus, and he that first geteth the hawk enjoyeth it.

In this act four things are to be observed. First, that the sherif must make proclamation in all the good towns of the county where he hath such a falcon in keeping. Secondly, if none come forward, the owner within four months, if the finder be under the age of a gentleman (which here is called us fines), the sherif shall have the falcon, paying reasonable cost. Thirdly, if the finder be a gentleman, and no challenge by the owner within four months, then he shall have the falcon, paying reasonable costs, &c. Fourthly, it is to be observed, that in the latter branches, the last printed book hath this word (hawk, but in the original, and all the other printed books, the word (faucon) under which word, all the rest mentioned in this act are included.

For this offence of felony the offender shall have the benefit of clergy, for at the time of the making of this act he shall have a horse should have had his clergy. See Stanf. Pl. Cases, fo. 37.
C A P. XXXV.

Congregations, &c. by Masons in their generall Chapters, &c.

It is ordained and established that no congregations and confederacies shall be made by masons in their generall chapters and assemblies, whereby the good course and effects of the statutes of labourers are violated and broken, in subversion of law; and if any be, they that cause such chapters and congregations to be assembled and holden, shall be adjudged felons.

The cause wherefore this offence was made felony, is, for that the good course and effect of the statutes of labourers were thereby violated and broken. Now all the statutes concerning labourers before this act, and whereunto this act doth refer are repealed by the statute of 5 Eliz. cap. 4. whereby the cause and end of the making of this act is taken away, and consequently this act is become of no force or effect: cessante ratione legis, cessat ipsa lex. And the indictment of felony upon this statute must contain, that those chapters and congregations were to the violating and breaking of the good course and effect of those statutes of labourers, which now cannot be so alleged, because those statutes be repealed. Therefore this would be put out of the charge of justices of peace written by * master Lambard.

C A P. XXXVI.

Of Felony by bringing in of Buls of Excommunication, &c.

If any man (1) bring or send into this realm, or the kings power, any summons, sentence, or excommunication (2) against any person of what condition that he be, for the cause of making motion, assent, or execution of the statute of provisors (3), he shall be taken, arrested, and put in prison, and forfeit all his lands and tenements, goods and chattels for ever, and incur the pain of life and member (4). And if any prelate make execution (5) of such summons, sentence, or excommunication, that his temporalities be taken, and abide in the kings hand till due redress and correction be thereof made. And
Bulls of Excommunion, &c. Cap. 36.

And if any person of leff estate then a prelate, &c. make such execution, he shall be taken, arrested, and put in prison, and have imprisonment, and make fine and ransom by the deference of the kings councell.

By the common law when any person, either ecclesiasticall or temporall, should by pretext of forain power: impugne or attempt to frustrate any of the laws of the realm, there lieth a writ called ad iura regia: if it were by an ecclesiasticall person benefited within this realm, then the writ is.

Regul. fo. 62. b.

Rex, &c. feletem. Turbaeum, nec immoUtum, et movetur dum illo qui sub nosco deponent dimissio, et ibidem beneficia et redditiones honorantur, quas praeutex in defenso, et tuitione iurium regiae corona nostre infor ra effedere consiueret, cedem iura euis et contra nos eviscitio conscriptum, et aeternus pro viribus impugnato, &c.

Ibidem, 60. b. & 62.

The general writ is, Rex, &c. ad iura corona nostre integra et illevo pro viribus e se servanda, eo amplius eam et opera adhibetur; ut consequatur finibus quod ad hoc ob debita astringuntur vincula jurament, et alius conscientia, ad ipsum juriun exuvandum adhibeatur, and particularly against provisions. So as provisions, &c. were, as by these writs it appeareth, against the common law of the realm, but sufficient punishment was not thereby inflicted: therefore this, and other statutes were made.

And here it is worthy of consideration, how the laws of England are not derived from any foreign law, either canon, civil, or other, but a special law appropriated to this kingdom, and most accommodative and apt for the good government thereof, under which it hath wonderfully flourished, when this law hath been put in due execution: and therefore as by situation, so by law it is truly said,

* Et penitus tota * decisio orae Britannorum.

(1) If any mar., Though these words be generally, yet they extend not to ecclesiasticall persons, because there is special provision for them in the act.

(2) Any person, sentence, or excommunication, Herby are prohibited the pores bulls of any sentence or excommunication, &c. and process of summons.

It appeareth by our books that the bringing of any bull of excommunication into the realme against a subject, was against the common law of England, in respect it gave way to foraine authority. And so it was holden in the time of E. 1. and E. 3. &c. long before this act, and ever since.


(4) Increase the paine of life and member. a That is, of felony as hath been often said before. This punishment is altered by the statute of 13 Eliz. cap. 2. as hereafter in this chapter shall appear.

(5) And if any prelate make execution, &c.] This and the next following branch extend to ecclesiasticall persons. The punishment in both these branches, and in the former also is altered by the statute of 13 Eliz. cap. 2. For thereby this offence is made high treafon,
Cap. 38. Recusants concerning Abjuration.

Son, as well in persons ecclesiasticall, as temporall: which act, and the cause of the making thereof you may reade in the case de jure regis ecclesiastico, ubi supra.

C A P. XXXVII.

Of Felony in receiving a Jesuite, Seminary Priest, &c.

Every person which shall wittingly and willingly receive, relieve, comfort, or maintaine any jesuite, seminary priest, or other priest, deacon, or religious, or ecclesiasticall person (made by authority from the see of Rome since the feast of Saint John Baptist, ann. 1 Eliz. borne within this realme) being at liberty and out of hold, knowing him to be a jesuite, &c. shall for such offence be adjudged a felon without benefit of clergie.

The cause of the making of this statute of 27 Eliz. against jesuites and seminary priests, &c. and their receivers, you may reade at large, lib. 5. fol. 38, 39, in the case De jure regis ecclesiastico.

C A P. XXXVIII.

Of Felony in Recusants concerning Abjuration.

If any recusant) other then a Popish recusant or a femce covert) which by the tenor and intent of this act is to be abjured, shall refuse to make abjuration, or after such abjuration made shall not goe to such haven, and within such time, as is by this act appointed, and from thence depart out of the realme, according to this present act, or after his departure shall returne into any of her majesties realmes or dominions, without her majesties special license in that behalfe first obtained; that then every such person so offending, shall be adjudged a felon.

If any offender against this act before he or they be required to make abjuration, require to some parish church, on some Sunday or festival day, and then and there heare divine service, and make such subscription as by the act is prescribed: then the said offender is clearly to be discharged.

I 4 The

The offender shall forfeit his goods and chattels, and his lands during his life only, the offence shall work no losse of dower or corruption of blood, and the heire to inherit. The offender shall not have the benefit of his clergie.

C A P. XXXIX.

Of Felonic in Egyptians, &c.

IF any outlandish people, calling themselves, or being called Egyptians, shall remaine in this realme, or in Wales, one moneth, at one or severall times: and if any person being fourtieone yeares old, which hath been seene or found in the fellowship of such Egyptians, or which hath disguised him or her self like to them, shall remaine here or in Wales by the space of one moneth, either at one or severall times, it is felony.

The offender shall not have the benefit of his clergie.

C A P. XL.

Of Felonic in dangerous Rogues.

IF any dangerous rogue that was banished the realme or adjudged perpetually to the gallies, have returned into the realme without lawfull license or warrant, it is felony: the felony to be tried where the offender is apprehended.

The offender may have the benefit of his clergie.

If any rogue after he hath been branded in open sessions with a Roman R. upon the left shoulder, or sent to the place of his dwelling where he lafte dwelt by the space of a yeares, or the place of his birth, to be placed in labour, have offended againe in begging, or wandering contrary to the said statutes, it is felony, to be tried in the county where the offender shall be taken.

The offender against this branch shall not have the benefit of his clergie.

Mendicius non esit inter vos, there shall be no begger among you.

Ordine sait que les povres suffissent sastisfiers pour les paysans, servus, et les parvichians cy que nul ne morait per defaut de sustenance.
Cap. 42. Conveying of Sheep out of the Realm.

See an ancient ordinance in 50 E. 3. concerning ribauds and sturdy beggers, that they be driven to their occupations or services, or to the place from whence they came.

C A P. XLI.

Of Felonie by Forgerie in the second Degree.

If any person or persons being once condemned of any of the forgeries mentioned in the act, shall after such his, or their condemnation, oft foones commit or perpetrate any of the said offences in forme in the said act mentioned, that then every such second offence shall be adjudged felony. But no attainer of this felony shall extend to take away dower, nor to corruption of blood, or disferson of the heire.

In 43 Eliz. Markham was attainted of felony upon this branch in the kings bench for a second forgery of many of the manors and lands late of Sir Thomas Gresham knight, and was executed therefore.

* This felony is to be heard and determined before justices of oyer and terminer, and justices of assize in their circuit. And albeit that justices of peace have power to hear and determine felonies, trepass, &c. yet are they not included under the name of justices of oyer and terminer: for justices of oyer and terminer are known by one distinct name, and justices of peace by another. But the justices of the kings bench are justices of oyer and terminer within this statute.

The offender shall not have the benefit of his clergy.

See hereafter in the exposition of this statute for the first offence, where incidently there shall be more said concerning the second offence.

C A P. XLII.

[ 104 ]

Of Felony for conveying of any Sheep alive out of the Realm in a second Degree.

No manner of person shall bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received into any ship, or bottome any rams, sheep, or lambs, or any other sheep alive, to be carried and conveyed out of this realm of England, Wales, or Ireland, or out of any of the queens dominions, upon pain that every such person, their aiders, abettors, procurers, and comforters, shall for
Servants that imbefill Goods.  Cap. 43.

his and their first offence, forfeit all his goods, and suffer imprisonment one whole year without bayl or mainprise; and at the years end in some market town in the fulness of the market, have his left hand cut off, &c. And that every person eft-loons offending against this statute shall be adjudged a felon, &c.

But this act shall not extend to any corruption of blood, or loss of dower. This felony is to be heard and determined before justices of oyer and terminer, justices of gaol-delivery, and justices of peace. And the offender may have the benefit of his clergy, as well in case of the cutting off his hand as in case of felony. See Stanford, 37. b.

C A P. XLIII.

Of Felony in Servants that imbefill their Masters Goods after their Decease.

33 H. 6. cap. 1. If any of the houshold servants of any person shall after the decease of their lord or master violently and riotously take and spoil the goods which were their said lords or masters, and the same distribute amongst them, that upon full information to the chancellour of England for the time being by the executors or two of them, of such riot, taking, or spoil made, the chancellour by the advice of the chief justices, and chief baron, or two of them, shall have power to make so many and such writs to be directed to such sherifs, as to them shall seem necessary, to make open proclamation in such sort, as by the act is prescribed, to appear in the kings bench, &c. and if any such writ be returned, &c. then if the said person or persons make default, then he or they making default shall be attainted of felony.

The offenders shall have the benefit of their clergy.
C A P. XLIV.

Of Felony in Servants that imbefill their Masters Goods committed to their Trust above Forty Shillings.

Every servant to whom any caskets, jewels, money, goods, or cattels of his or their master, or mistris, shall be delivered to keep, that if any such servant or servants withdraw him or them from their said masters or mistris (1), and goe away with the said caskets, jewels, money, goods, or cattels, or any part thereof to the intent to steal the same, contrary to the trust and confidence in him or them put, &c. Or else being in service of his said master or mistris, without the assent and commandment of his master or mistris, imbefill the same or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it: if the caskets, jewels, money, goods or cattels be of the value of forty shillings or above, shall be deemed and adjudged felony.

Concerning the value, (to speak it once for all) tægnum bona valent, quantum vendi possint.

This act extendeth not to any apprentice or apprentices, nor to any servant within the age of eighteen years, at the time of the offence committed.

Vide Dier, 25 H. 8. fol. 5.

By the statute of 27 H. 8. the offender was ouftled of his clergy, but that act is repealed by 1 E. 6. cap. 12. So as at this day the offender may have the benefit of his clergy.

(1) Shall be delivered by his or their master or mistris.] If the master deliver an obligation to his servant to receive the money thereby due, and the servant receive the money of the obligee, and goeth away with the same with intent to steal the same, this is no offence within this statute, because he had not the money of the delivery of his master; and if he had gone with the obligation with intent, ut supra, it had been also out of this act, because it was a chore in action. So if the master deliver to his servant wares or merchandizes to fell, and sellett the same and goeth away with the money as before, this is no offence within this statute for the cause aforesaid. See Stanford, 37. b.
C A P. XLV.

Of Felony to cut down or break up the Powdike in Marshland in Norff.

EVERY perverse and malitious cutting down and breaking up of any part of the new dike called the Powdike in Marshland in the county of Norff, or of the broken dike called Oldfield Dike by Marshland in the Isle of Ely in the county of Cambridge, or of any other bank being parcell of the Rinde, and uttermost part of the said country is adjudged felony.

The justices of peace have power to enquire of, and to hear and determine this felony. The offender may have the benefit of his clergy.

Some say that this is a private act, but it is publicum in privato, for the danger is publice though the place be private, and doth concern multitudes of people, and the sea is such an immense creature, as who can withstand it without length of time, infinite damage, and losse, and extreme charge and cost.

See the statute of 43 El. cap. 13, whereby in the counties of Cumberland, Northumberland, Westmerland and the B. of Durham carrying away or detaining of any person against his will, or imprisoning him or them to ransom them or to spoil them, upon deadly feud or otherwise, or shall receive or carry blackmail, or give black mail for protection, &c. is made felony without benefit of clergy.

C A P. XLVI.

Of one of the Grand Enquest being one of the Inditcers of any Person or Persons of Treasiri or Felony, and discover openly what Persions were so indicted, &c.

THIS by some opinion in our books was holden for treason, or felony, and hereof divers reasons were yeilded.

First, that such discovery was against his oath, but that could not be the reason, for perjury is neither treason nor felony.

Secondly, others did hold, that by this discovery the parties indicted of treason or felony might flee, or escape, but that can not be.
Larceny or Theft.

reason; for this discovery without more, can neither make him principall nor accesory.

Thirdly, others that endeavour to confesse and avoid the authorities in this cause in law, are of opinion, that in those times the intent of a man, in criminalibus, was much respected, in as much as in criminalibus voluntas reputabatur prae se, and that by this open discovery, &c. his intent appeared, that they might flee or escape. And now it is agreed on all parts, that at this day such discovery is neither treason nor felony: and the rather, for that no perfon ever died for such discovery. In Georges cafe, in anno 27 lib. Aff. upon his indiction he was acquitted. But certaine it is, that such discovery is accompanied with perjury, and a great misprision to be punifhed by fine and imprisonment.

C A P. XLVII.

Of Larceny or Theft by the Common Law.

HAVING thus far proceeded, we are now come to larceny, which commeth from latrocinium, and from latrocinie, by contaction, or rather abufe, to larceny.

The Mirror first describeth larceny, and then explaineth it. Larcenie is, prise d'autre moeble corporelle incheuransant contre la volonte de cleuy a q. il est p. male ejusmodi de la possession, ou del se. Then doth he explain and shew the reason of the principal words thereof.

Prise est dit, car lait nostre title de la vole, a lieuy en le cafe. Moelle corporelle est dit par coq. en bien nient moelles, eu nient corporels, faunc de tré, renti, et des adverfoens de q. fisc, ne se fait unt larcenie.

Incheuransant est dit par co. q. l'adverzo ennde les bienz estre font, et que il les bien prendre, ou tled cafe ne se fait my cose peche, ne en case ou leu pront l'autref p. la ou les entend, que il plesi al seignior des bienz, que il les prendra, mes a ero coute ou seignier apparten prenumption et evidence.

El scienium, quod futurum eft, secundum leges, contratatio rei alienae fraudulenta, cum animo furandi, invito illo domino, cujus res illa fuerat. And then he alfo explaineth it. Cum animo dico, quia sine animo furandi non committitur. Brafton uteth nor the word latrocinium, but futurum, and doth Granville. See Britton a whole chapter de Lar.

And Fleta hath it thus, Es autem futurum contratatio rei alienae fraudulenta cum animo furandi invito dno, cujus res illa fuerit, following Brafton rotiorem vestis. These descriptions are generally of theft, comprehending robbery, burglary, when any thing is taken, and all other latrocinies. But here larceny for distinction fake is taken in a narrower fenge, viz. for single theft or thievery, and may be described thus.

Larceny, by the common law, is the felonious and fraudulent taking and carrying away by any man or woman, of the meere personal goods of another, neither from the person, nor by night in the house of the owner.
Larceny or Theft. Cap. 47.

Now let us peruse the principal parts of this description.

**Felonious taking.** First it must be felonious, id est, cum animo furandi, as hath been said. And non facit reum, nisi mens sit rea. And this intent to steal must be when it cometh to his hands or possession: for if he hath the possession of it once lawfully, though he hath animo furandi afterward, and carrieth it away, it is no larceny: but this receiveth some distinction, as hereafter shall appease.

Secondly, it must be an actual taking; for a indictment, quod illice abduxit eum, is not good, because it wanteth, cepit. By taking, and not bailable or delivery, for that is a receipt, and not a taking: and therewith agreeeth Glanvil. *Furtum non est ubi initium habet detensionis per dominum vit.*

But herein the law doth distinguish. For if a bale or pack of merchandise be delivered to carry to one to a certain place, and he goeth away with the whole pack, this is no felony: but if he open the pack, and take any thing out animo furandi, this is larceny. Like wise if the carrier carry it to the place appointed, and after take the whole pack animo furandi, this is larceny also: for the delivery had taken his effect, and the privy of the bailement is determined. And if it is of a tun of wine, or the like, materies mutandis.

Also there is a diversity betweene a possition, and a charge: for when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespass, or an appeal, if they be taken or stolen out of his possession. But my butler or cook, that in my house hath charge of my vessel or plate, hath no possession of them, nor shall have an action of trespass or an appeal, as the bailee shall: and therefore if they steal the plate or vessel, it is larceny. And so it is of a shepherd, for these things be in onere, et non in possessione promis, etc., et alios.

If a taverner set a piece of plate before a man to drink in it, and he carry it away, et cetera, this is larceny: for it is no bailement, but a special use to a special purpose.

Thirdly, nor by trover or finding. If one lose his goods, and another finde them, though he convert them, animo furandi, to his own use, yet it is no larceny, for the first taking is lawfull. So if one finde treasure trove, or wife, or linen, and convert them supra, it is no larceny, both in respect of the finding, and also for that dominus coram non apparat.

Felonious taking, that though the taking be actual, yet must it be done by such persons as may commit felony. A mad man that is non compos mentis, or an infant that is under the age of discretion, cannot commit larceny, as in another place we have said.

A feme covert committeth not larceny, if it be done by the coercion of her husband; but a feme covert may commit larceny, if she doth it without the coercion of her husband: and there it appeareth, that a man may be necessary to his wife, but the wife cannot be necessary to her husband, though she know that he committed larceny, and relieve him, and discover it not: for by the law divine, she is not bound to discover the offence of her husband.

Felons came to the house of Richard Dey, and Margery his wife; the wife knew them to be felons, but the husband did not, and both of them received them, and entertained them, but the wife consented not to the felony. And it was adjudged, that this made not the wife necessary, *Quia ipsa in vita mariti fuit de alioreceptam.*
Larceny or Theft.

Cap. 47.

Cepamento in presencia viri sui, cui contradicere non potuit, occasionari non debet.

Utur furii desponsata non tenebatur ex fato viiri, quia virum accusare non debet, nec derogare futurum suum, nec feloniam, cum ipsa sui potestatem habet, sed vir.

La feme sequent al felon puít dire q. tout eavist ele del manasette son barn, par ceo ne le poit ele ny encferir, ne devoit, tant comme ele fuit de li xort, &c.

Utur autem furii non teneatur pro diellio viiri, pana cum suoi debet mouere autem, siuei accusare non debet, nec felonie sue confente, &c.

Felonious and fraudulent taking.] If a man seeing the horse of B. in his pasture, and having a mind to steal him commeth to the sheriff, and pretending the horse to be his, obtaineth the horse to be delivered unto him by a replevin, yet this is a felonious and fraudulent taking, as it was resolved by the judges, as Catlin chief justice reported in the kings bench, Pach. 15 Eliz. for the Repleyn was obtained in fraude legis.

Carrying away.] For the indimenti faith, felonie cepit et asportavit. The removing of the things taken, though he carry not them quite away, satisfieth this word asportavit. As if a guest take the coverlet or fleets of his bed, and rising before day, take the coverlet or fleets out of the chamber, where he lays, into the hall, to the intent to steal them, and went to the stable to fetch his horse, and the offler apprehended him, and this was adjudged larceny: and the coverlet or fleets were carried away being removed from the chamber to the hall, albeit they were still in the house of the owner.

So if a mans horse be in his clofe, and one taketh him, and as he is carrying him away, he is apprehended, before he geteth out of the clofe, yet this is sufficient to make it larceny.

Of mere personall goods.] It is said (mere) for though they be personal goods, yet if they favour any thing of the reality, no larceny can be committed of them; as any kind of corn or grain growing upon the ground is a personal chattell, and the executors of the owner shall have them, though they be not severed, but yet no larceny can be committed of them, because they are annexed to the reality. So it is of graffe standing on the ground, or of apple, or any other fruits upon trees, or bushles, or of woods growing; but if the owner cut the graffe, or gather the fruit, or cut the wood, then larceny may be committed of them.

So it is of a box or chest with charters, no larceny can be committed of them, because the charters concern the reality, and the box or chest though it be of great value, yet shall it be of the fame nature the charters be of: et omne magis dignum tractis ad se minus.

No larceny can be committed by taking, and carrying away of a ward, or of a villain, because they are in the reality.

It appeareth by all our ancient authors ubi supra, and by the statute of W. 1. that there is grand larceny, and petit larceny, distinguished by the value: for if the personall goods stollen amount to above the value of twelve pence, then is it grand larceny, and if it be under the value of twelve pence, then it is petit larceny, for which

Braeton, lib. 3. fol. 151. b.

Britois, cap. 24. fo. 47.

Fleta, lib. 1. ca. 36.

Pach. 15 Eliz. Vide structum.

22 Aff. pl. 39.


W. 1. ca. 15. See the explication thereof.

27 H. 8. 22. Corin. foris fecere or perdere Sax. tolit, his bide is to be
Larceny or Theft.  Cap. 47.

which he shall forfeit all his goods, and suffer some corporall punishment, as whipping, &c.

And this was the ancient law before the conquest, for the Mirror faith, Et tout doit que la by ne est regard forsque al ceuves des pecuors ne requiert limite the quantitie del robbery et larceny en cest manner, cest loist voir que ved ad judgemeut de la mort, si non larceny, &c. ne passon a 12 deniers de fierlings.

A man hath a mere property in some things that are tame by nature, and yet in respect of the baseness of their nature, a man shall not commit any larceny, great or small, though he deal them, as of masstifs, bloound hounds, or of other kind, dogs or of car, nor of some things that be \(b\) wild by nature, and made tame, as bears, foxes, apes, monkes, polecats, ferrets, and the like, and yet no manner of felony can be committed on them, in respect of their wild and savage nature, and therefore no person shall do for them: and likewise it is of their wheelp, or calves, or young, for it is a rule in law, that if no felony can be committed of any thing that is \(b\) ferm natura, and of age being reclaimed, or made tame, that no felony can be of the young in the nest, kennel or den.

So as a man may have property in many things, and yet in respect of their nature there can be no felony of them. On the other side, of some things that be \(b\) ferm natura, being reclaimed, felony may be committed in respect of their noble and generous nature, and courage, serving to cite foldium of princes, and of noble, and generous person, to make them fitter for great employment. As all kind of faulfcon, and other hawks, if the party, that feals them know they be reclaimed.

Of another. \(c\) No larceny can be committed of wild beasts, or of fowls that be wild, or of fishes that be at their natural liberty in rivers, or great waters, because these be nullius in honis: but larceny may be committed of young pigeons in dovecouses, or of young hawks in the nest. But if any person upon the ground of any other, doe take the eggs of any faulfcon, goosehawk, harrier, or swan out of the nest, it is not felony, \(d\) but he shall be apprized of the space of a year and a day, and fined at the kings will, the one half to the king, and the other to the owner of the ground.

But larceny may be committed of the eggs of such as be domes natura, as of hens, turkies, pehens, and the like. \(a\) And larceny may be committed of fishes in a trunk or pond, because they are not at their natural liberty, but as it were beasts in a pump.

But if such as be wild, that serve for the food of man, be made tame, as deer, wild bore, conies, cranes, pheasant, partridge, or the like, larceny may be committed of them, so as he that feals them know that they be tame. But the deer, &c. being wild, yet when he is killed larceny may be committed of the flesh, and so of pheasant, partridge, or the like, and so note a diversity between such beasts as be ferm natura, and being made tame, serve for pleasure only, and such as be made tame and serve for food, &c. which diversity being not observed, hath made many men to err.

A man may be indifcated, Quare bona capell in custodia, &c. and so in time of vacation, bona doni ecclesici.
At the assizes at Leicester, in Lent, anno 10 Jac. the case was this, one William Hains had in the night digged up the graves of divers several men, and of one woman, and took the winding sheets from the bodies, and buried the bodies again: and advising hereupon for the rareness of the case, consulted with the judges at Serjeants Inn in Fleetstreet; where we all resolved, that the property of the sheets was in the executors, administrators or other owner of them, for the dead body is not capable of any property, and the property of the sheets must be in some body: and according to this resolution, he was indicted of felony at the next assizes, but the jury found it but petit larceny, for which he was whipped, as he well deserved.

Nota. A felonious taking must be of the possession, and not of the property removed from the possession.

If a man doth bail, or lend his goods to another, although he hath the general property of them, yet may he commit larceny of them, by the felonious taking and carrying them away, and in judgement of law he is said in this case to take the goods of another: for the bailer hath jux proprietas, and the bailee hath jux possestionis, or a special property.

The wife cannot steal the goods of her husband, for they be not the goods of another, for the husband and wife are one person in law, done animae in carne hum.


To speak it here once for all, if any person be indicted of treason, or of felony, or larceny, and plead not guilty, and thereupon a jury is returned, and sworn, their verdict must be heard, and they cannot be discharged, neither can the jurors in those cases give a privy verdict, but ought to give their verdict openly in court.

Macegriffs, fleshmongers, such as buy and sell stolen flesh, knowing the same to be stolen. Vide Lamb. inter leges edw. regis fol. 140. b. De Macegriffis derived of mace an old word for flesh, and grief, wrong or injury.

C A P. XLVIII.

De Anno Die et Vaso,

Of the Year Day and Waft.

Hereof we have treated at large, in the second part of the Institutes in his proper place upon the exposition of Magna Carta, cap. 22. where it appeareth, that at this day the king shall have but the profits for a year and a day in lieu and satisfaction of the waft which the common law gave to the king in despite and detestation of the offence, as there you may read at large; and there it appeareth how necessary it is, ancient authors to be read, all which need not here to be reheard: * and
Of Piracy.

Of Piracy, Felonies, Robberies, Murders, and Confederacies committed in or upon the Sea, &c.

HAVING now treated of felonies, &c. that are committed and done upon the land, we will consider of piracies, and felonies, &c. done on the sea, which by an act of parliament are to be enquired of, heard, and determined according to the course of the common law, as if they had been done upon the land.

All treasons (2), felonies, robberies, murders and confederacies committed in or upon the sea, or in any other haven, river, creek, or place, where the admiral hath, or pretends to have power, authority, or jurisdiction (3), shall be enquired, tried, heard, determined, and judged in such fashions and places in the realm, as shall be limited by the king's commission under the great seal in like form and condition, as if any such offence had been committed upon the land (5), to be directed to the lord admiral, or to his lieutenant, deputy, or deputies, and to three or four such other substantial persons, as shall be named by the lord chancellor of England (4), for the time being, &c.

And such as shall be convicted of any such offence by verdict, confession, or process by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods and chattels, as if they had been attainted of any treason, felony, robbery, or other the said offences done upon the land.

The offenders not to be admitted to have the benefit of clergy.

The mischief before this statute was (as it appeareth by the preamble) that traitors, pirates (1), thieves, robbers, murderers, and confederators upon the sea many times escaped unpunished, because the common law of this realm extended not to these offences, but were judged and determined before the admiral, &c. after the course of the civill laws, the nature whereof is, that before any judgement of death be given against the offenders, either they must plainly confess their offences (which they never will do without torture or pain) or
Of Piracy.

or by * witnisse indifferent, such as saw their offences committed, &c. which in these cases cannot be gotten but by chance, or very rarely: for this cause, the commons petitioned in a parliament in § H. 6, that the justices of peace might enquire of all piracies: but the kings answer was, That he would be advised.

This statute requires a considerate and just interpretation, wherein, for that it concerneth the life of man, the fairest way is, to follow the resolutions of all the judges formerly had upon due consideration of all the parts of this act, and upon divers conferences; and in the end, when I was attorney general, resolved by them unanimously as followeth:

Where divers did in the reign of the late queen Elizabeth commit piracy and robbery upon the high sea, of divers merchants of Venice, in amity with the said queen, and after the pirates, being not known, obtained a pardon, granted at the coronation of King James, whereby the king pardoned them all felonies (inter alia) first, that before this statute piracy, or robbery on the high sea was no felony, whereas the common law took any knowledge, for that it could not be tried, being out of all towns and counties, but was only punifiable by the civil law, as by the preamble it appeareth; the attainder by which law wrought no forfeiture of lands, or corruption of blood. Secondly, that this statute did not alter the offence, or make the offence felony, but leaveth the offence as it was before this act, viz. felony only by the civil law, but giveth a mean of trial by the common law, and inflicteth such pains of death, as if they had been attainted of any felony, &c. done upon the land. But yet (as hath been said) the offence is not altered, for in the indictment upon this statute, the offence must be alleged upon the sea; so as this act inflicteth punishment for that, which is a felony by the civil law, and no felony, whereas the common law taketh knowledge. Thirdly, although the king may pardon this offence, yet being no felony in the eye of the law of the realm, but only by the civil law, the pardon of all felonies generally extendeth not to it, for this is a special offence, and ought to be specially mentioned.

Upon this resolution these consequents do follow. 1. That by the attainder upon this act, though there be forfeiture of lands, and goods, yet there is no corruption of blood. 2. Seeing the offence is not made felony by the laws of this realm, there can be no accessory of any felony by the laws of the realm in this case, either before or after the offence, because the principal is no felon by our law, neither doth this act speak of any accessory. 3. If there be an accessory upon the sea to a piracy, that accessory may be punished by the civil law before the lord admirall, but cannot be punished by this act, because it extendeth not to accessories, nor makes the offence felony. * Lastly, the statute of 35 H. 8. ca. 2. taketh not away this statute for treasons done upon the sea for the cause aforesaid. Which resolution I have thought good to report, because it openeth the windows of this statute.

In Trim. 18 Eliz. in lord Diers manuscript, there is a quære made, what offence it is to lodge and entertain upon the land a pirate, knowing him to be a pirate, and whether this accessory upon the land shall be tried by this statute, which is only of principals in piracy. And it was thought by the two chief justices, that the fairest way, was to have the commission in the county where the accessory

* Concerning treason, see before cap. 2.
verb. act trials. En. 25. 1 E. 6. ca. 12. 5 E. 6. ca. 11. &c.

* Rot. Par. 8. H. 6. no. 42.

Hil. 2. Ja. regis. 8 beren. in Fletstreet, the resolution of the justices.

Three points resolved.

Vide similis. 19 E. 3. Cor. 124. § H. 4. 2
9 E. 4. 25.

Vide supra, cap. High Treason. 5 El. cap. 5.

* See the fourth part of the Institutes, cap. High Treason.

Verbo On. se aitors, 9. 11.
Of Piracy.

Cap. 49.

accessory offended, and there both the principall and the accessory may be indicted, and tried, ut per statum, anno 5 & 6 E. 6. quare. Here * ille. So as this quarre is now cleared by the resolution of the judges: and questionlesse the statute (intended of 2 & 3 E. 6. for there is none such in 5 & 6 E. 6.) extendeth only, when a murder or felony is committed in one countie, and another person is accessory in another countie (as hath been said before:) but in that case the offence was committed upon the sea, and not in any countie, and so out of that statute: and therefore this part of the manuscript of the lord Dyer was not thought fit to be printed.

Butler and other pirates in summer vacation robbed divers of her majesties subjects, upon the coast of Northfolk, upon the high sea; and brought divers of the goods so taken into the county of Northfolk, and there were apprehended with the goods: The question moved to Wray chiefe justice, and justice Peryam, justices of assise in Northfolk, was, whether they might be indicted of felony in Northfolk, as if one steale goods in one county and carry them into another county, he may be indicted in either countie: and it was resolved by them, that they could not be indicted for felony in Northfolk: because the original taking was no felony, whereof the common law took cognisance, because it was done upon the sea, out of the reach of the common law: and therefore not like the cafe, where one stealeth in one county and carryeth the goods into another, for there the original act was felony whereof the law took cognisance.

But now let us peruse the words of the statute.

(1) Where treasons, pirates.] This word pirat, in Latin pirata, derived from the Greek word πυρατες, which again is fetched from πυρας, a transfused mare, of roving upon the sea: and therefore in English, a pirat is called a rover and a robber upon the sea.

(2) Treason, &c.] Note, treason done out of the realm, is declared to be treason by the statute of 25 E. 3. and yet at the making of this act of 28 H. 8, it wanted trial, (as by the preamble of this statute it is rehearsed) at the common law. And therefore to establish a certainty therein, the statute of 35 H. 8. was made, it is aforesaid in the exposition of the statute of 25 E. 3. See Pufh. 43 Eliz. lib. 5. fo. 107. Sir Henry Contables cafe.

Before the statute of 25 E. 3. if a subject had committed piracy upon another (for so is the book to be intended upon a fact done before 25 E. 3.) this was holden to be petit treason, for which he was to be drawne and hanged: because pirata est hostis humani generis, and it was contra legem cuius dei debitet: but if an alien, as one of the Normans, who had revolted in the reigne of king John, had committed piracy upon a subject, this offence could be no treason, for though he were hostis humani generis, yet the crime was not contra legem cuius dei debitet, because the offender was no subject, but since the statute of 25 E. 3. this is no treason in the case of a subject.

(3) Upon the sea, or in any other haven, river, creek, or other place, where the admirall hath, or pretends to have power, authority, or jurisdiction.] These words for pretends to have, &c.] are thus to be understood, between the high-water-mark, and the low-water-mark: for though the land be infra corpus litigium, at the low-
Cap. 50. Of Clergie.

When the sea is full, the admiral hath jurisdiction *super aquam* as long as the sea flowes; so as of one place there is *divisum imperium* at several times: but extend not to any haven, river, creek, or other place, that is *infra corpus comitatus*: for offences there committed were tried by the common law, and out of the mischief and purview of this statute: for in the preamble, the sea is only mentioned, and in the body of the act it is said, in like forme and condition, as if any such offence had been committed upon the land.

(4) *As shall be named by the lord chancellor of England.* A nomination by the lord keeper of the great seal of England was taken to be within this act by the greater opinion of the justices: but the statute of 5 Eliz. hath made a declaration of the common law concerning the power and authority of the lord keeper of the great seal, which hath cleared that, and all other like questions.

(5) To have and determine such offences after the common course of the laws of this land used for treasons, felonies, &c. done and committed upon the land.] If the offender upon his arraignement before commissioners by force of this statute stand mute, he shall have judgement *de pecunia fort et dure*, by force of this general branch, but it is out of the latter words of the act, viz. and such as shall be convict of any such offence by verdict, confession, or proces. For he that standeth mute is not convict of the offence, but sufficeth for his contumacy. Alfo it is neither by verdict, confession, or proces.

For *peccium fort et dure* see in the second part of the Institutes, in the exposition upon the statute of W. 1. cap. 12.

C A P. L.

OF CLERGIE.

What person shall have his clerige, for what offences, in what suits, who is judge thereof, and at what time clerige is to be demanded, you may read at large in Alexander Poulter's cafe, Lib. 5, 26, in Caudries cafe, Vid. lib. 5, fo. 50, Biggens cafe, &c. fo. 11., Hettans cafe. 18 Eliz. cap. 6, 2 Lib. 4, fo. 43, 44, Syers cafe, ib. Biblioths cafe. 2 E. 1, 27, 22 E. 7, cor. 1605-7. 4. 16, 10 H. 4, 5, 3 Fl. 7, 1, 3 H. 7, cor. 53, 4 E. 6, Br. cor. 184, 3 Aff. 14, 5 Aff. 5, 11 H. 4, 93, 6 Rot. cl. 3, E. 2, m. 2, 18, C Tr. 22 E. 3, cor. regis, Rot. 173, Hertford, that *privilegium clericale non competit seditofo equitanti sum armis platis, et cotearmuris, per leges Angliae.*
Of Abjuration and Sanctuary. Cap. 51.

It is provided by the statute of 25 H. 8. that if any person be indicted of felony for stealing of any goods or chattels in any county, and thereupon arraigned, and be found guilty, or stand mute, or challenge peremptory above the number of twenty persons, &c. they shall lose the benefit of their clergy, in like manner as they should have done, if they had been indicted and arraigned, and found guilty in the same county, where the same robbery or burglary was done or committed, if it shall appear to the justices, &c. by evidence given before them, or by examination, that for such robbery or burglary in the same shire where they were committed or done, they should have lost the benefit of their clergy by force of the said statute, viz. of 23 H. 8. cap. 1.

Any person indicted.] This act extendeth not to appeals by writ or bill, nor to the appeals of the approvers.

Or by examination.] By these words though the offender concedes the indictment, or stand mute, or challenge above twenty, &c. yet if by examination before the justices, the truth of the case appearth, he may be put from his clergy.

By force of the said statute.] Viz. 23 H. 8. so as if for any burglary or robbery in one county he were not ousted of his clergy by the statute of 23 H. 8. but some later statute, then the delinquent shall have his clergy in the county where the goods are carried: for example, if the robbery be done in a dwelling house, the owner or dweller, his wife, his children, or servants then being within the house, and put in fear and dread by the same, and the goods be carried into another county, he shall not have his clergy: but if the robbery in the dwelling house be not done with all the circumstances mentioned in this act of 23 H. 8. (which circumstances are not required by the statute of 5 E. 6. cap. 9.) he shall not be ousted of his clergy in the other county. And so of all like cases.

See 1 Jac. cap. 8. clergy taken from him which do stab another that hath not drawn a weapon, nor stricken first.

CAP. LI.

Of Abjuration and Sanctuary.

ABJURATION by the course of the common law may be thus described. When a man or a woman had committed felony, and the offender for safeguard of his or her life had fled to the sanctuary of a church or churchyard, and there before the coroner of that place within forty days had confessed the felony, and took an oath for his or her perpetual banishment out of the realm into a foraine country, choosing rather perdere patriam quam vivere. But that foraine country, into which he was to be exiled, must not be amongst infidels. And this was the ancient law of this realm, which was, prohibitus autem ne Christiana fidei tinaet quisquam a regno procul amandatur, nERICA qui nondum Christo fidem adsumersit relegatur, ne comem aliquando sit animorum juventi, quis pro-pria Christii visa redemit.
Cap. 51. Of Abjuration and Sanctuary.

The foundation of the abjuration was the sanctuary of the church or church-yard. For he or she, that was not capable of this sanctuary, could not have the benefit of abjuration. And therefore it is said, that he that committed sacrilege, because he could not take the privilege of sanctuary, could not abjure. For the forms of abjuration see the statute of abjuration, Vet. Magna Carta, part 1. fol. 167. b. The common law herein was very ancient, and had saved the life of many a man; and continued without change until an act made in the twenty second year of H. 8. cap. 14, whereby it was provided, that the party abjured should not be banished out of the realm, but to some other sanctuary within this kingdom: and to fly the truth, abjuration was exceeding intricated and perplexed by the said act of 22 H. 8. cap. 14. and other statutes: for which cause all statutes made before the thirty fifth year of Queen Elizabeth, concerning abjured perfons, stand repealed by the statute of 1 Jac. cap. 25, whereby the ancient common law concerning abjuration for felony was revived.

But by an act made in the twenty first year of King James it is enacted, that no sanctuary or privilege of sanctuary should be admitted or allowed in any cafe. By which act, such abjuration as was at the common law, founded (as hath been said) upon the privilege of sanctuary, is wholly taken away: and the writ in the Register 69. a. De restitutione extratli ab ecclesia is become of no use.

And yet the abjuration by force of the statute of 35 Eliz. cap. 1. before justices * of peace, or justices of assize, or by force of an act made at the same parliament, cap. 2. before two justices of peace or the coroner by a recusant, remaineth still: because such abjuration hath no dependance upon any sanctuary. Which being sufficient to shew how the law standeth at this day, both concerning sanctuary and abjuration, might suffice.

THE one being an expression of the other. For *hue* in French (*unde hutfesium*) is to hoot or shoute; in English to cry.

There be two kindes of huees and cries, the one by the common law, and the other by statute. Thereupon there are two pursuits, the one for the king, the other for the party by private suit.

Hue and cry by the common law, or for the king, is, when any felony is committed, or any person grievously and dangerously wounded, or any person assaulted and offered to be robbed either in the day or night; the party grieved, or any other may resort to the constable of the town, and acquaint him with the causes, describing the party, and telling which way the offender is gone, and require him to raise hue and cry. And the duty of the constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender, and if he be not found there, to give the next constable warning, and he the next, until the offender be found, and this was the law before the conquest.

*Si quis latrioni obviavit, dehinc tuca nullo edito clamore adeo fermiferit, quantumque fuerit latronis vita ipse in extremum solvit demanilium, aut pleno, potestque juraturando de facinore se nihil habuisse et quid confirmare.* Sin quis praemunirem excluderit, necesse est jurandum inesse in regem continuasque (ni omnem crimini falsificationem defecerit) parsis data.

in antiquo M. S. *si quis fuerit obviavit, et in vacuus etiam gravum summa fuerit, vel plena ludis facta, ite, quod cum coelium revocavit, si quis auditus clamore superabat, sed dixit vacuus reperiri aut plebe se laudaret.*

Bracon who wrote before any act of parliament concerning hue and cry, faith, escheate, extremities, quam alia, qui jant 15 ann. 12. and amplius, jurare debet quod ulteriores, mandatibus, rabbaturas, et burgaliones non recipiant, &c. et sic hujusmodi vel clamor de talibus audire, statim audio clamor sequetur cum familia, &c., and herewith agreeeth Britton.

The statute of W. 1. cap. 9. being in allmanse of the common law, provided, 'Quo tandem commissum fuerit pro ales, des esque inita, et in cras de pace de fieri et aversum solvit, quod multa feram, auxiliares deinceps coniuravit.'

And the statute of 4. B. 1. declared the law familier de omnium homicideis, burgalibus, servis, &c., persequentibus, &c., &c., and sequatur hujusmodi, et ostensum si fuerit potius: et quod servus et super hoc constitutus fuerit, attachatur quod sit eorum jisdictio de galetes, &c. And by that act it appeareth that so it is in case of rape, and herewith agreeeth, *Bracon also.*

The life of hue and cry is freth suit.

*Thamar the daughter of king David being violently ravished by her brother Amnon, the text faith of her, que affirmat clare.*
capiti suo, seffa talari tunica, impostisque manibus super caput fium ibat ingredientes, et clamamus.

They which levy not hue and cry, or purfue not upon hue and cry, shall be punished by fine and imprisonment. Also if a man be present when a man is murdered, or robbed, and doth not endeavour to attach the offender, nor levy hue and cry, he shall be fined and imprisoned.

Of hue and cry by force of acts of parliament in five cases. For if a watchman doth arrest a night walker, and disobeys and fly, the watchman may make hue and cry.

1. Si quis foresariis, parcariae, aut warrenarius in baliva sua malfactores aliquos invenierit vagantes ad domum ibidem faciendi, et qui se foresariis aut warrenarius illis poss clamorem et huiusmodi levatum ad pacem regis ad fenestram velte reddere voluerint, immo ad malitiam suam exsequiend et continuand't et pacem regis diffugient' satae fecerit, ut et armis se defendisset, licet foresarii, parcaii et warrenarii illi, aut ali quicumque ad pacem domini regis exsistentes in consuetudine foresarii, parcariae, aut warrenarii illorum venientes ad tales malefactores sic inventos arcesserit'seu caperit', aliquum sibi aliquos habendum malfactorem interfecerit, non propter hoc occasiunam ceram domino regi, et justiciarium quidcumque aut alii balivis domini regi, aut aliquam quaecumque infra libertatem aut extra nec propter hoc omittantem, aut membrum, aut aliquam panem sanguinem, immo solum pacem domini regis inde habeant. Sed hinc necesse foresarii, parcae, warrenarii, et ali quicumque, ne occasione contentionis, discordiae, contumeliae, aut alius malvolentiae, sibi adiisse arcessinerit aliquis per balivis suas transfundendo malefico imponat, quod occasione malefaciendi in balivis fieri inant, cum hoc non fecerit, nec ipsius vagantes ut malefactores, nec malfactores invenierit, nec causa malefaciendi quarentones, et sic eos occidat. Quod si fecerit, et de hoc fuerint convexit, fiat de multis sic interfectis, post alterum ad pacem domini regis exsistentem, et propter jure et seconnum consuetudinem regni fuerit faciend.

3. Welleghmen outlawed, or indicted of treason or felony, that fly into Herefordshire, shall be apprehended, &c. or else purfued by hue and cry, and a forfeiture upon them that do not purfue.

4. Hue and cry shall be levied upon takers of carriage within the viere of the staple of that which pertineth to the staple.

5. Where a man is robbed: upon hue and cry, &c. what remedy he shall have against the hundred, &c. and how and in what manner the hue and cry shall be made in that case, see the statutes, and lib. 7. fo. 6. & 7. the statutes well expounded. And this robbery must be done in the day time, and not in the night, otherwise the party grieved shall not have his action. And to note a diversity between a hue and cry at the common law, or for the king, and a hue and cry by statute where the party grieved is to have his remedy by private action. Note also a diversity in the prosecution at the common law, or for the king, and by the statutes which give the party remedy, for a prosecution to the next constable is good by the common law, but so it is not by the said statutes which give the party grieved his action. See lib. 7. fo. 7. & 8. 22 El. Dier, 376. So the prosecution at the common law is a good excuse upon an indictment at the kings suit, but note that it is no bar to the parties action.

Where hue and cry either by the common law, or by force of any statute is levied upon any person, the arrest of such person is lawfull,
Of Mayhem. Cap. 53.

Iawfull, although the cause of the hue and cry be seigned, and if the cause be seigned, he bevy the fame shall also be arryed, and shall be fined and imprisoned. But common fame and voice is not sufficient to arrest a man in case of felony, unless a felony be done in deed.

It is an article of the law, to enquire of hues and cries levied and not purfied.

Mendicium est Guillom de Haverhill dixitueario regis, quod eum Lond. espiit in manum e. e. et quod eum eisdem eivitem levantum habetur et clamorem pro morte magistri Guidoni de Avr. et aliis non reservat, non sequatur legem et magnificum regis. Ipsi regi apud Vind. 22 die Augusti.

CAP. LIII.

OF MAYHEM.

Of mayhem you may read at large in the first part of the Institutes sect. 194. & 502. and in justice Stanford. And where (as it is there cited) he saith, Castratio vero, quem vis legere, a indicium mahemium. Hercof we find an example.

b H. II. lib. ind. fat, om. mahemion, quod absque viuilia 70 hennis nemecchi, &c. quem idem H. deprehendit, &c. cum A. usum hab. Of the like accident you may read in Camden.

c Dominus Robertus Neral (cum numerosam prcor, eor usque perspect)ignor in adulteria deprehendit, et ab adultera matio in vind. jam quas falsibus notatur. Hoc et de avarius exspiravit.

Nihil in alteri legis Alveredi, cap. 40 de vulneribus, fo. 43.

d By the ancient law of England, he that maimed any man whereby he lost any part of his body, the delineant should lose the like part, as he that took away another mans life, should lose his own.

And it is truly said, that duci a mohemium inceptum, and mohemium de homicidio inchoatum. And therefore in the appeal of indictment it is said, etc. mita mayhemion.
Cap. 54. Of Premunire.

CAP. LIV.

OF PREMUNIRE.

PRIMERMENT pur ce que monstre est a nostre signiour le roy per grevoyses et clamoyes pleints des grandees et communes avant ditz, comet plustois gents sone, et oint esfere truits hors de realme a responder des choses douant la consans apprunt a la court nostre signiour le roy; et auxint que les jugemez rendus in meyne le court non empache en autre court, in prejudice et disherison nostre dit signiour le roy et de sa corone, et le tout le people de son dit realme, et in defecance et anientisment de la common ley de meyne le realme use de tous temps. Sur quoy que bone deliberation ove les grandees et auters de dit counsell, chosen est et accord per nostre dit signiour le roy, et les grandees et communes suifflitez. Que tous gents de la ligeance le roy, de quel conditione que ils sone, que tretant nully hors de realme (1) en pleu dont le consanse appertient a la court le roy, ou des choses dont jugement soit rendus (2) en le court le roy; ou que fuent en autri court a defaire ou impeachier les jugements rendue in le court le roy (3) eient jour, &c. (4) In English thus.

First because it is shewed to our lord the king by the grievous and clamorous complaints of the great men and commons aforesaid, how that divers of the people be, and have been drawne out of the realme to anfwer of things, whereof the cognisance pertaineth to the kings court: and alfo that the judgements given in the said court be impeached in another court in prejudice and disherison of our lord the king, and of his crowne, and of all the people of his said realme; and to the undoing and defraation of the common law of the same realme at all times used. Whereupon, upon good deliberation had with the great men and other of his said counsell, it is attented and accorded by our lord the king, and the great men and commons aforesaid, that all the people of the kings ligeance, of what condition that they be, which shall draw any out of the realme in pleu, whereof the cognisance pertaineth to the kings court, or of things whereof judgement is given in the kings court, or which dooe in any other court to defraat or impeach the judgements given in the kings court, shall have day, &c.

The effect of the statute of 16 R. 2. is, if any pursue or cause to be pursued in the court of Rome, or elsewhere, any thing which toucheth the king, against him, his crowne and regality, or his
his realms, their notaries, procurators, &c. factours, &c. shall be out
of the kings protection.

* In this act is declared the sovereignty, prerogative, and freedom
of the crowne of England, and the first article exhibited by the
lords of the council, (whereof sir Thomas More chancellor was
one) and the principall judges concerning this matter, is worthy
reading.

This offence is called a praemunire of the words of the writ
grounded upon this and other statutes for punishment thereof.
For the words of the writ be, Rex eccecomit, &c. Praemunire
per A. B. &c. And rightly it is so called, for he that is praemunire
praemunire.

Before the making of this statute of 27 E. 3. there were three
great mischiefes. First, that the kingssubjectes have beene
out of the realm, to the anwer of thinges, whereof the crown
pertained to the kings court. Secondly, of things whereof judg-
ments have beene given in the kings courts. And thirdly, of
alter judgements given in the kings courts of the commons,
of matters determinable by the common law, suits were com-
manded in other courts within the realm, to defect or impede
those judgements. And these three mischiefes had three unalter-
able effects: first, the prejudice and disaffection of the king and
of his crowne. Secondly, the disaffection of all his subjectes. And
thirdly, the undoing and destruction of the common law of the
realm: all which appear in the preamble of this act.

They are called (other courts,) either because they proceed by
the rules of other laws, as by the canons or civil law, &c. or
other trials, then the common law doth warrant. For the tit
warranted by the law of England for matters of fact, is by verdict
of twelve men before the judges of the common law of cases
pertaining to the common law; and not upon examination of evi-
dences in any court of equity: so as alia curia, is either that which
is governed per aliam legem, or which draweth the party ad aliam
examen. For if the freehold and inheritances, goods, and chattel,
debs, and duties, wherein the king or subject hath right or prop-
erty by the common law, should be judged per aliam legem, or be
drawne ad aliam examen, the three mischiefes aforefaide expressed in
the preamble and in this act should follow, viz. disaffection of the
king and of his crowne, the disaffection of all his people, and its
undoing and destruction of the common law at all times: in
which words of this act it appeareth, that all these mischiefes
were against the ancient common laws at all times used. And
that also appeareth by the ancient writs of the common law, called
ad jura regia, wherein some touch hath been given before, and
which are worthy the reading; and also by divers acts of parlia-
mement; as the statute of Carlile, anno 35 E. 1. whereof we have
been treated before in the second part of the Institutes: and by the
statute of 25 E. 3. De premissibus. And it is observed, that a
29 E. 3. within two years after the said act of 27 E. 3. that they
that were called in question upon the statute of preunire, inca-
venunt monaces, sordes, sufficientes, et sacramentum profissorum, quod non e
tempertabant, et in mare et in alia, quod in prejudicium regis, legum, s
crone, seu judicium in curia regis reddi, tendere velatique consequent
&c. Whereby, and many other like records it appeareth, this
judgements