Pope Alexander the third, * sent into England, many Years before, to the Bishop of Exeter, as well as from other Rescripts, that the same Maxim was before that Time contained in the pontifical Law. But it is plain the aforesaid Maxim concerning the Virtue of a subsequent Marriage, was first transferred from the Imperial or Justinian, * into the Pontifical Body of Laws. Wherefore left, with Regard to the Succession to Goods of deceased Persons, so considerable a Change of the Laws in England, as the Bishops aimed at, who then earnestly recommended to us the Laws of the Church, though visibly taken out of the Body of the Imperial Law, should take place; and left other such Changes should be, by an Example of this Nature, as is usual, with the greater facility introduced; which might also perhaps have given Room to think, that the English Nation acknowledged the Imperial Law to be of some Authority among them; what was thus endeavoured to be obtruded was rejected, as if the Parliament had said, We will not that either this, or any other Head, Legum Caesararum—of the Imperial Laws—be admitted among us, or, Nolumus mutare leges Anglicanas legibus Caesaris—we will not change the English, for the Imperial Laws—or which amounts to the same, for the Pontifical Canons taken from thence. For it is evident, that by what they said, they did not simply mean, that they would never alter the Laws of England, or any part of them, they having made in this very Par-
liament Innovations in their Laws, and consequently variously altered them, to wit, with Regard to Dower, Wardship, Ules prescriptions, and other Matters, as any one may see in the other Chapters of the Acts of the aforesaid Parliament. And about the same Time, to wit, while the Parliament sat at Merton, a most grievous Complaint was made, which I curiously Notice, by Robert Capito (a) (Greathead,) Bishop of Lincoln, of that Law of England, which excluded Persons, thus born before Marriage, from the Privilege of Legitimacy, the same Bishop strenuously endeavouring to shew * from the Canon, Natural, Divine, and Imperial Laws, that the aforesaid Law, ought to be necessarily abolished. This he attempted in his Letters to (b) Walter de Raleigh.

(a) Greathead, born according to some at Strawbridge in Suffolk, according to others at Straw in Lincolnsire, was a Privy of great Learning and Eminence.

He was wholly bent upon following what appeared to him reasonable and just, and had little regard to the Circumstance of the Times, or the Quality of the Persons, and opposed equally, the King's Will, and the Pope's Pleasure, according as it happened.—He was the great Patron of Roger Bacon; and having been Bishop of Lincoln near twenty Years dyed at Bagnor the 9th of October 1253.


(b) Walter de Raleigh. Selden stiles him Tribunalis regis praefidem, but I don't meet with any Judge of that name, much less presiding at that time in any of our Courts of Justice.—We find indeed that a Proclamation having issued in 1234. to declare the Outlawry against Hubert de Burgh void, Judgement was pronounced thereon at Gloucester, by the Mouth of Dom. W. de Raleigh, (but whether Walter or William don't appear) in the Presence of the Archbishop, Bishops, Earls and Barons.—Additions to Mat. Paris. p. 153.

There was also one William de Raleigh a Justice of the Com-
leigh, Lord Chief Justice of the King's Bench, whom he earnestly exhorts to exert himself to the utmost of his Power, that the aforesaid Law might be altered here. He tells him also that he had been informed, that it was an old Custom among the English to consider such Children as legitimate, and that, as a Sign or Symbol of their being so, they were put, during the Solemnity of the Marriage, under a Cloak, or other Covering thrown over the Parents, from whence being at that Time taken, they were to be regarded as newly born, therefore born in Wedlock. His Words are these—*Et ut seniorum relatione didici, consuetudo etiam in hoc regno antiquitūs obtenta et adprobata tales legitimos babuit et hæreses, unde in signum legitimationis nati ante Matrimonium confuerunt poni sub pallio super parentes eorum extento in Matrimonii solemnizatione.* —And as I have learned from the Relation of antient Persons, there was even in this Kingdom, an antient and approved Custom, by Virtue of which such were held as legitimate and capable of being Heirs; and that Children born before Marriage were, as a Sign of their Legitimation, usually put under a Cloak extended on their Parents during the Solemnization of their Marriage. — That is whilst mon Pleas in 1228 the 13 H. 3. and a Justice in Eyre in 1231. *Duc.* Orig.—And likewise one William de Raleigh who was elected Bishop of Norwich in 1239, and afterwards translated to Winchester.

The Parliament was held at Merton the 23rd Jan. 1235, the 20th Hen. 3rd,
whilst they were joined together in Matrimony. But Raleigh, as appears from the Bishop's next Letter to him concerning the same Matter, rejected all this as insignificant.—Præterea ad confirmandam hanc Legem quod Bas tardus sub pallio supra parentes nubentes extento postus surgit Bas tardus, induxisti Testimonium Richardi de Lucy cujus Testimonium quantum et qualem habeat Comparationem ad Testimonia divinae Scripturae et Canonicae contrarium testificans tia lippis patet et tonsuribus.—Moreover, says he, in Confirmation of the Law, that a bastard, put under a Cloak extended on their Parents during the Solemnization of the Marriage, arises a bastard, you have produced the Authority of Richard de Lucy, (a most eminent Justicier of England under the Reign of King Henry the second, between whose Testimony and the Authority of the holy Scriptures, and that of the Canon Law bearing Witness to the contrary, how great and what kind of Disproportion there is, is manifest to the meanest Capacity.—For my own Part, I could never find that any such Custom ever prevailed among our Ancestors at any of their Nuptials, much less that a spurious Birth was thereby rendered legitimate. But I remember to have somewhere read of this very Ceremony being practised when the Children of John of Gaunt, Duke of Lancaster, begot before Marriage on Catherine his third Wife, were legitimated by the
Parliament * in the Reign of Richard the second, and that some Regard was paid to this Custom in that very Assembly. To what we have already said of the public Aversion to the imperial Laws here, during the Interval we are speaking of, may be added, that in the Reign of Edward the first, a most weighty Question arose, with Regard to the highly memorable Decision at Norham * in the Province of Durham, concerning the Succession to the Kingdom of Scotland, by what Kind of Law, the Matter in debate should be determined; to wit, whether by the English, Scotch, or by the Imperial, as by the Law of Nations, when the Competitors where to be heard in Form, before the King of England, at that Time Lord Paramount of Scotland. And at last the whole Assembly unanimously declared, that no Use at all of the Imperial Law should be permitted in the Discussion of that Point, lest any Disgust should thereby be offered to the Crown of England. Thus much, among other Things, I have formerly taken out of an old Manuscript bearing the following Title.—Quomodo Edwardus Rex Anglice constituit Joannem de Balliolo Regem Scotiae—The Manner of Edward King of England’s constituting John Balliol King of Scotland. For at that Time Roger de Brabançon, as the Author of the above Treatise tells us, pronounced in the aforesaid Place Sentence in the King’s Name. And that Edict of King Edward the second, by which all Authority was in this
this Nation denied to public Notaries created by the Emperor or by his Counts Palatine, certainly in some Measure concerns this Point. The Words as we find them in our public Records, * are — eo quod regnum Angliae ab omni Subjectione Imperiali sit liberrimum. — Because the Kingdom of England is wholly free from every kind of Subjection to the Roman Empire.—Wherefore we have all the Reason in the World to believe that even during this Interval, those at the Helm here had the very same Sentiments which King Richard the second, and his Nobles manifested in Parliament. For it is by their Command inserted in the public Records, * Que le royaume (a) d'Angleterre n'est point devant ces heures ne a l'entent du Roy notre dit Seignior et Seigniors du Parlement uniques ne ferra rule ne gouverne per la ley civil.—That the Realm of England hath never been unto this Hour, neither by the Consent of our Lord the King, and the Lords of Parliament, shall it ever be ruled or governed by the Civil Law.—And I am still at a Loss to find out what could induce John Fortescue. (b) Chief Justice * under King Henry the sixth, to write that some Kings of England, not at all pleased with the Laws of their own Nation—leges civiles ad Angliae regimen inducere et patrias leges repudiare fusisse conatos—endeavoured, on that Account, to bring the

(a) See Selden's Junius, p. 68. Epimadis 19.
(b) See Selden's Notes on Fortescue, p. 40.
English Nation to be governed by the Civil Law, and to lay aside those of their own Country. — I have no where read that any of our Kings acted thus. He indeed assigns a Reason for their doing so, to wit, for the Sake of the royal Law, which we have before spoke of. But at the same Time where is it to be found that any of our Kings behaved in that Manner? As to what we find in Joannis Sarisbruiensis * Nullas leges credidisse aliquos civilibus praerendas — that some were of Opinion no Laws were preferable to the Civil — in which that concerning the absolute Power of the Prince contained in the royal Law deserves especial Notice, is meant of some of the Flatterers of the Hieratical Order in that Age, not of the English Nation, or any others who were at that Time Judges here: And we must not pass by, that even the penal Laws prescribed by King Richard the first, (who was likewise looked upon as the Author of the Oleronian,) with Regard to the Management of his Navy, greatly differed from the Imperial Laws. Neither can any thing relating to those Laws be found in the Registers of the Commanders of his Fleet, a Copy of which is preserved in the Words of Roger Hoveden,* and Matthew Paris. † So that the Imperial Law was not then at least in the Discussion of Marine Affairs made Use of among us.

SECT.
SECT. III.

The singular Esteem the English set on the Laws of their own Country, usually called the Common Law, as well as their resolute Adhesion unto it, in the Management of public Affairs, permitting at the same Time the Use of the Imperial Law, tho' not without restraining it within very narrow Bounds.

We shall treat by the Way, of the Names Clerk, Clericature, and Clergie.

THE Singular Esteem our Nation shewed, during that Interval, for the English Law, or that of our Country called the Common Law, and their (a) Adhesion unto

(a) Their Adhesion unto it. The Clergy, finding it impossible to root out the Municipal Law, began to withdraw themselves by degrees from the temporal Courts, and the Study and Practice of it devolved of course into the Hands Laymen; and the peculiär Incident of the Court of Common Pleas, the grand Tribunal for Disputes of Property, being fixed by Magna Charta to be held in some certain Place (which in consequence thereof has been held in the Palace of Westminster) brought together the Professors of the Municipal
unto it, sufficiently appears from the Articles and Pleas of the Crown, and other like public Acts; Specimens of this Nature in the Reigns of King Henry the second and Richard the first, are at this Day to be seen in Hoveden, (a) and Matthew Paris, as well as in the Writings of our Lawyers, who flourished at that Time, but more especially in the public Records of all Kinds, during this Period. The same may be inferred from the solemn Oath usually taken by the Judges in those Days. The before mentioned Joannes Sarisburiensis, speaking of the Reign of Henry the second, says,—

Et quidem Judices sacramento legibus aliquando.
ligantur jurati, quia omnino judicium
cum veritate et Legum observatione dispo-

—The Judges indeed are bound by
their Oath to maintain the Laws; so that
they are in all Cases to give Judgment ac-
cording to Truth and Observance of the
Laws.—Which Words, though they may
seem to be taken from Justinian,* yet must,
being spoken by an Englishman and in En-
gland, be understood of the Laws of our
Country, or of our Common Law, that is,
Legibus Angliae et consuetudinibus reellis—
of the Laws and good Customs of England—
which was the Phrase of those Times.*

Concerning which the same Author else-
where acquaints us †—Sed et leges ipsæ et
consuetudines quibus nunc vivitur, insidiae sunt
et laquei calumniantium. Verborum tendi-
culae proponuntur, et Aucupationes Syllaba-
rum, vel simplici qui syllabizare non novit.—
That the very Laws and Customs, under
which we at this Time live, are, in the
Hands of the Litigious, as Snares and
Traps, the Words therein being so manag-
ed, as to entangle, and the Syllables so
disposed, as to catch the very simple, who
are unable to spell.—And the Form of the
Oath likewise taken in those Ages by the
Judges appointed for the public Manage-
ment of Affairs, whether they were Ecclesiast-
tics or Laymen, expressly contains—Je ju-
dicaturas secundum legem et Consuetudinem
Regni — that they would judge according
to the Law and Custom of the Kingdom—
as appears from the Oath which the Judges,
who
who were constituted to administer public Justice in the Reign of Henry the third, took according to Custom. Some of the Words of the Oath are as follow,*—Bonâ fide procurabant quod Magnus ficut parvus judicabitur secundum legem et Consuetudinem Regni. —They shall sincerely endeavour, that Justice be administered to Rich and Poor according to the Law and Custom of the Kingdom.—Which, in my Opinion, was added on Purpose to prevent (a) their making any Determination whatsoever according to the Imperial Law then lately brought among us, which, doubtless some, esp. cially of the Hieratical Order, were extremely fond of, and preferred to the English Law. Whence that common Form of Speech, Lex terræ—the Law of the Land—was in every one’s Mouth, by which, as well as under the Name Legis et Consuetudinis regni—of the Law and Custom of the Kingdom—the Law we were to live under, and according to which, Justice was to be distributed unto us, was more expressly pointed out, and every way both distinguished and discriminated from lege Caesarea—the Imperial Law—then vulgarly and simply called, by us, the Civil Law. Wherefore in Magna Charta,* and elsewhere, special mention is, with Regard to this Matter,

(a) See Black, Introduc. p. 20. There is an Entry on the Clausal Roll of the 18. Hen. 3d. M. 19 of the Oath to be taken by the Judges. See Pryce’s Animad. p. 38.
ter, designedly made, *Legis terræ*—of the Law of the Land—and in those great Differences between King *John* and his Nobles, *legum antiquarum et Consuetudinum Angliae*—of the antient Laws and Customs of England. — Our Ancestors, with a View of excluding, in Matters of public Government, the Use of other Laws, consequently of the Imperial, *(a)* which at that time in a Manner threatened the *English* make Use of Words much like the foregoing. We meet likewise, during that period, as well as after, both in the Oaths taken by our Kings at their Coronation, and in the Laws enacted by them, with express Words to the same Purpose; by which it appears, that the Imperial Law, however now and then applied among us, was, in Matters of public Government, of no manner of Authority in this Nation. And 'tis doubtless from what has been said, the less to be wondered at, that in the Courts proceeding according to the *English* Law, the Use, such as we have before shewn to have been made of the Imperial Law, at last wholly disappeared. But this was the easier effected, because, about the very Time that the Use of the aforesaid Law was entirely laid aside, an End was likewise put to another Custom among us, to wit, that of appointing Bishops, Abbots, Deans, and such like Persons of the Hierarchical order, to be the King's Judges. For from that Time, scarce any, or none indeed of that Order, the most eminent Part of

*(a) Imperial.* See Lord Littleton's Notes to the first Book of the Life of H. 2d, p. 518.
Sec. 3. annexed to Fleeta.

which usually applied themselves in the Universities to the Study of the Imperial and Pontifical Laws, sat in England as Judges in the aforesaid Courts, (except in that of the Chancery) yet the Officers of those Courts, and others considerable in the Management of public Affairs, were usually, even then, and for a long while after, chosen out * of that Order; on which Account perhaps, the Officers of the same Courts, and others of that kind, none of which for some Ages have been Ecclesiastics, are still styled (a) Clerks. Now tho' the Name of Clerk and Clericature, was in the early Ages of Christianity, * as well as by Ecclesiastical Writers, only made Use of to signify those who exercised the Offices of Religion in Matters of divine Worship, as well as to be expressive of their Dignity, in which sense the Words are to this Day commonly retained,* they are nevertheless likewise employed, both by the antient and modern French and English, to signify Persons eminent in any kind of Learning or Science; as in Philosophy, Mathematics, History, Civil Law, drawing up of Forms, and such like Matters, and are not confined to Divines, or to those of the Hieratical Order alone. Hence the very Word Clergie, is taken for Science itself, or for Learning in general, and Clericus—Clerk—for a skilful and learned Person. In this Sense, the French * make Use of

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(a) See Black, Introduc. p. 17.
of the Words, Grandcelrc, (a) Beauclerc, Maunclerc, as well as the Words Clergie, and Grand Clergie, for consummate Learning. And there is extant a Fragment * of a very antient Manuscript, wrote in French Rhymes intitled — *it livre de Clergie en Romanz, ki es appeliss le ymage del monde — the Book of Science in Romance, called the Image of the World—which, except a few things just touched upon concerning the Creation, contains nothing but what relates to Astronomy, Geometry, and the other liberal Arts. And the Title of the sixth Chapter of the first Book is as follows—De trois manieres de gens ke li philosophie peseront au monde, e coment Clergie vinent en Fraunce. — Of the three Kinds of Persons, who introduced Philosophy into the World, and how Learning was brought into France—that is, how Learning and the liberal Sciences first came into that Nation. And in another Place,

Ki bien veult entendre cest livre
E savoir comment il doit vivre
E apprendre tiel Clergie
Dunt meuz naudra tut sa vie, &c.

Hence our King Henry the first, was called Belloclericus, or (a) Beau Clerc; and the antient Greek Philosophers are by Geoffry Chaucer stiled Clerks.

Some—

(a) Beauclerc. The Latinity of the Writers during the Reign of H. the 2d. was more pure than in many of the following Ages. Obiervat, on the Stat. p. 45.
Sometimes in Greece that noble Region,
There were eight Clerks of full great Science,
Philosophers of notable Direction, &c.

And he frequently in other Places speaks
to the same Purpose — wherefore as there are,
besides the Judges in all Courts and
Consorts, some Officers, called Scribes,
Notaries, and such like, who are in Offices
which can’t be discharged without some
Share of Learning; so likewise there are o-
others, named Doorkeepers, Beadles, Cryers,
destined only to execute Orders, the Per-
formance of which does not require any
Learning. The first, not the last, were
usually called Clerks, on Account of their
Learning, Knowledge, or Art, whatever it
was; which Name was likewise given to
Amanuences, and Writers of Epistles, and
to the γραμματίς or Scribe among the Eph-
rendered in our English Version Town Clerk:
this Version without Doubt having been
made by the Hieratical Order, to whom a-
bove all others it properly belonged, and of
which there was always a greater Number
of Persons, eminent for every kind of Learn-
ing, or at least who passed for such, than
among any other set of Men. Thus the
Names Chaldean, Augur, Soothsayer, and
many others, are applied to Persons, who
in Truth, were the Originals consulted,
would not be found to be at all expressed by
them. But in fine, 'tis very plain, from
what
what has been already shewn, how it came to pass, that the Imperial Law was, as we have above related, reduced among us to those narrow limits, within which it is at present confined. What we have said of this Matter is abundantly sufficient.

CHAPTER X.

SECTION I.

Of the Age wherein the Author of Fleta flourished; that he neither wrote his Work in the Reign of Edward the second, or third.

We now return to Fleta. We are in this Place to consider the Time, when this Commentary was composed or finished by the Author, and to give some Account of his Name. We also willingly embrace this Opportunity of making an Observation, concerning that very remarkable Place in this Author, in which—Provisio quaedam omnium Regum Christianorum.—A certain Provision made by all Christian Powers—relating to Royal Donations or Alienations, hitherto in my Opinion no where else to
to be met with, is mentioned. Nothing can be plainer from this Writer’s Preface, than that he composed this Work in the Reign of one of the King Edward’s—Quam in Subditis traclandis aequalis jugiter appareat, quam eleganter, &c. Edwardus Rex nopter hostilitatis temporis, &c.——How impartial, says he, in that Place, does our King Edward in the Time of War always appear in the government of his Subjects! How elegantly, &c.—But it is not plain from these Words, whether he wrote under Edward the 1st, 2d, or 3d. However ‘tis evident that the King he refers to, was one of the aforesaid Edwards. That Passage in the Articles of the Crown and of the Eyre, in which Mention is made of Edward, Father of the King, seems to be a strong Argument, that this Commentary was not at first finished in the Reign of Ed—

the first—the Words follow * —Qui receperint debita Regis vel partem Debiti et de debita illa non acquietaverint tam de tempore Regis E. patris Regis quam de tempore praesenti.——Such Persons as have received the King’s Debts, or Part of them, and have not, as well in the Time of King E. Father of the King, (the Name of Edward being in the Manuscript no otherways denoted) as in the present Reign, given Acquittances for the said Debts—for the very same Article was likewise worded in the Reign of Edward the first,† Qui ceperrint debita Regis vel partem Debitorum

* Flet. lib. 1. et
† Cipriul. Itineris in vet. Statut. impress, Londini, 12 June 1536. part. 1. fo. 156.
torum et debitores illos inde non aequitatem rint tam de tempore domini Regis Henrici quam de tempore domini Regis nunc.—Such Persons as have received the King's Debts, or Part of them, and have not, as well in the Reign of King Henry, as in that of the present Lord the King, discharged the Debtors from the same.—This Author then, if these are his Words, could not have wrote under King Edward the first, but must have composed this Work, either under Edward the 2d, or 3d, both those Princes having had an Edward for their Father; but of that Passage more by and by. Did he write then under Edward the third? Tis plain to me he did not; for he with great Exac#tnes produces Matters contained in the Acts of Parliament of Edward the first, concerning Wrecks, Action of Dower, and other Affairs, as well as many more out of the Laws of Henry the third. But he no where at all mentions any Constitutions of Edward the third; which, had he wrote in any Part of his Reign, he certainly would have done.

For Instance, about the beginning of the Reign of King Edward the third, a Law was enacted relating to Convictions; for Actions brought for Perjury in our Courts, were by the Lawyers in that Age so called, being the same we now term Attaints; by which Statute the antient Law concerning such Actions, was so altered, that this Author doubtles would, where he so fully and carefully treats of Convictions, had he
he wrote after that Law was enacted, have given us an Account of such a Change; he speaking more than once of the aforesaid Convictions, as depending only upon the antient Law then in being. And the Act of Parliament in the Reign of Edward the first, § 3 Ed. 1. and 39. § which according to his Explanation of it, was not to take Place except for the Perjury of twelve Men in Actions, concerning a Tenement, or things partaking of that Nature, and possessed by a perpetual Right, called in the Law Language a Freehold; nor even in those Cases, without the King's Leave. This Author even gives us a Translation of the Statute itself, where we read—Concedit Rex convictiones quotiescunque sibi videbitur expedire—instead of, as 'tis in the Language of that Statute—Le Roy de son Office deformes donnera attaints &c. quant il semblera que safoign soit,—the King ex officio will from henceforth grant Attaints whenever it shall seem to him necessary.—But this is no proper Place for a Dissertation on the aforesaid Law, made in that Age. Whoevers pleases may consult the Writers of our own Nation who have more fully handled that Matter. We will here only make this Observation that the Author of Fleta takes no Manner of Notice of the Law, being about the Beginning of the Reign of Edward the third, as to the above Point, remarkably altered or explained, to wit, that an Attaint should lie for a Perjury of that kind in Actions of Trespass also, and that the Chancellor of England might grant it, by the lawful Authority

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* Stat. r. 1 Ed.
3. c. 6.

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lend might grant it, by the lawful Authori-
rity or in Virtue of his Office. It cannot be supposed that an Author, writing in the Reign of Edward the third, would have said nothing of this Law. The first Session of the Parliament, in which that Statute was enacted, was opened on the very Coronation Day of King Edward the third, to wit, on the Morrow of the Festival of the blessed Virgin, that is, on the third of February, but ten Days at most after the 25th of January, when the aforesaid King began his Reign. Our Author therefore could not have Time to write this Work under Edward the third, before that Law was enacted. Neither does he indeed, in that exact Treatise of his, relating to Convictions, take any Notice of the Act of Parliament made in the thirteenth Year of King Edward the second, called de Altinisis—of Attaints.—Wherefore it is manifest, there is no Reason to suppose that he wrote after that Time, or the Year of Christ 1320; nor does he so much as cite any of the Acts passed in the Reign of Edward the second. From whence indeed, if nothing appears to the contrary, we may fairly conclude, that this Author did not even write under Edward the second, but before his Reign. And the Difficulty arising from the Place above quoted—de E. Patre Regis—of E. Father of the King—is the only one I have met with; yet that is not of weight enough to convince me, that the Edward mentioned in the Preface to Fleta, and consequently the very Monarch in
in whose Reign he wrote, was not King Edward the first. The antient Copy of Fleta, from whence the printed Edition was published, and which I am apt to believe is the only one extant, seems to have been transcribed in the Reign of Edward the second, or perhaps in that of Edward the third. For it plainly appears from the Number of Errors, as well as from the many Chasms visible in the Lines of that Manuscript, as if in transcribing the same the Librarian was unable to read or understand it, that the aforesaid Manuscript was neither penned or revised by the Author himself. Wherefore it is highly probable, that the Librarian under Edward the second, carelessly or negligently substituted—E. Patris Regis, instead of H. Patris Regis—H. Father of the King, (that is, Henry the third, Father of Edward the first) or thus injudiciously adapted also those Articles of the Crown found in Fleta, to the Practice of the Courts in his Time. Whoever has compared the Statute enacted in the third † Year of King Edward the 1st, concerning his own and his Father's Debts, with that Article, and with the Words in which our † Author recites the same Law, will perhaps readily grant this. Especially as there are many other circumstances which serve plainly enough to discover, that this Commentary was wrote in the Reign of King Edward the first. We remark by the by, that there is, concerning the Time of the Author, a Mistake of that Nature, or a kind of a Gloss in the antient Manuscript of Gilbert.
bert Thornton above-mentioned, in which we find these Words † — Dari non poterunt aliter singulares persone res qua sunt spiritualibus annexae sicut Corrodia et Abbatiiis et domibus religiosis percipienda et bujusmodi in quibus nulus vindicare sibi poterit liberum tenementum, temporibas retroactis. Sed hodie per Statutum Regis Edwardi secundi fiat breve de Corrodio subtrahito sicut de libero tenemento. — Things annexed to spiritualities, as Corodies to be received from Abbeyes and religious Houses, and such like, in which no one could in Times past claim a Freehold, were not to be granted to a single Person, otherwise (than to be possessed, as by an Usufructuaay, not as absolute Lord;) but now by a Statute of King Edward the second, a Writ lies as well for withholding a Corody, as for a Freehold.

Thus a Statute of Edward the second is cited, when it is evident, that Thornton, as was before shewn, not only wrote, but even dyed in the Reign of Edward the first; and therefore could not be the Author of the above Passage. He might, it is true, have said by the Statute of King Edward, of Westminster the second, † that Law concerning Corodies having been at that Time enacted, to wit, in the 13th Year of the aforesaid King. But these Words appear rather to have been a Kind of Gloss made by the Librarian, and that Thornton himself was not the Author of any of the Words after poterit; so far being taken out of Bracton. † (a) whom Thornton

(a) Bracton's Words end with liberum tenementum.
abridged: neither does the Word *poterit* at all agree with the subsequent Words, *temporibus retroactis*. Nor is it usual with *Thornton* to insert the Laws of his own Time, he having throughout his whole Work assumed the Person of *Bracton*. But as to what relates to the Author of *Fleta*, it is certain, if the noble and vast Encomiums he in his Preface gives to King *Edward* are weighed, they cannot at all, with any shew of Reason, be well applied to *Edward* the 2d; and *Edward* the 3d, is quite out of the Question; perhaps therefore such immense Praisess ought to be referred only to *Edward* the 1st. But we must at the same Time make the following Remark on this Author's Preface, that it is almost from the very beginning to the End so composed, as that it rather seems to have been copy'd after some antient Form, and more than once attributed by other Authors before his Time to different Kings, than to have been in reality peculiarly meant of, or apply'd to, the King therein mentioned. Whoever compares this Preface, with that prefixed to the Book of the Scotch Laws, called *Regiam Majestatem*, as well as to the Work of *Ranulph de Glanvill's*, must readily grant this. For our King *Henry* the 2d, and *David* King of *Scots*, are, in different Prefaces, complimented almost in the very same Words, used by the Author of *Fleta* in this Preface to his King *Edward*. Wherefore such Encomiums, whatever they were, are not to be offered as of any Weight in this Preface.
Preface, with regard to the Subject we are now treating of.

S E C T. II.

The Commentary of Fleta was penned under Edward the first.

But there are in other Places of the Work itself, very express Footsteps of the Time of its being penned; from whence it plainly appears that the Edward mentioned in the Preface, or the King, in whose Reign the Author wrote, was Edward the first. First he speaks of the Privileges of Knights Templars, as far as the Law enacted under Edward the first, concerning erecting Crosses, relates to their Privileges, as of an Order, which, as well as that of the Knights Hospitallers, flourished at the Time of his writing; but every one, who is not quite ignorant both of our Law and of all History, knows that the Order of Knights Templars was about the Beginning of the Reign of King Edward the 2d, wholly abolished. Secondly, in the Place where he gives us the Form of the King's Writ, called Moderata Misericordia, founded on Magna Charta; He, adapting the Words to his own Time, frames it in the King's Name thus—Contra tenorem Magnae Charta.
te Regis H. Patris nostri in qua continetur quod nullus liber Homo amercietur, &c.—Contrary to the Tenor of the Magna Charta of King H. our Father, which declares that no Freeman is to be amerced, &c.—None but Edward the 1st, as being the Son of H. the 3d, can be meant in this Place. † Flet. l. 2. a. 64. f. 1.

Thirdly, says he, † Dominus Rex nuper in Parliamento suo apud Aetmon Burnell habi-
to, &c.—Our Lord the King, lately in his Parliament at Aetmon Burnell, &c.—That Parliament was held in the 11th Year of Edward the 1st, and—Dominus Rex—our Lord the King—was the usual Form to de-
ote the King then upon the Throne. Fourth-
ly also, he in the Chapter above cited says,
—per formam † Statuti Regis anno Regni Regis—by Form of the Statute of the King, enacted in the Year of his Reign—(the 13th through Negligence of the Librarian being omitted) at Westminster, manifestly point-
ing at the Statute of Edward the 1st, inti-
tled—de Mercatoribus—of Merchants.

Fifthly, he expressly informs us, that King Henry the 2d, was great Grandfather of that King, in whose Reign he wrote, and every one knows, that he was the Great Grand-
father of Edward the 1st, that is, Father of King John, who was Father of Henry the 3d, who was Father of Edward the 1st: to wit, † in that Chapter of the Magna Char-
ta of Henry the 3d, — de Scutagio * capit-
endo sicut capit consuevit tempore Henrici Re-
gis Avi nostri — of the taking Escuage as it had

† Flet. l. 2. c. 65. f. 16. * Mag. Charta c. 37.
had been finally taken in the Reign of King Henry our Grandfather, by which Name 'tis evident Henry the 2d is meant. Our Author reciting that Law in his own Words says—*Inhibetur, quod nullus defringatur pro Scutagio, sed capiatur sic ut capi consuevit tempore H. Regis. Proaevi Regis nunc—'tis forbidden that any one be distrained on for Escuage, but that it be taken as it used to be in the Reign of King Henry, his present Majesty's great Grandfather.—He preserves the very Sense of the Law of Henry the 3d, as far as it relates to Henry the 2d, Grandfather of that King Henry; at the same Time rightly calling the aforesaid Henry the 2d, great Grandfather of his King, that is, Edward the 1st. I know indeed some very eminent Men, * have been of another Opinion, and by misunderstanding some of the Places we have cited, judged that the Author of Fleta flourished in the Reigns of Edward the 2d and 3d. But I am fully convinced, by what has been before quoted, that this very Book was wrote in the Reign of Edward the 1st; and that therefore both it, as well as the Sum of Thornton, and the Compendium, called Britton, were some of the Works compiled by the most famous * Lawyers, at the Command of Edward the first.
S E C T. III.

Why the Author of this Commentary was called Fleta.

We shall now examine how this Book came to be called Fleta. We find indeed among the Writers of Britain,* an Author called William Flete or Fleta, commonly by Foreigners styled Anglus or Anglicus—the Englishman; but this Person was a Divine of the Order of the Hermits of St. Austin, and wrote only upon Theological Subjects: It is also manifest that this Work, intitled Fleta, was penned before his Time, he having flourished under Richard the 2d. But our Author plainly assigns us, in the following Words of his Preface, the Reason of his Book being called Fleta.—Tractatus iste qui merito Fleta poterit appellari, quia in Fleta de jure Anglicano conscriptus est, in tres partes dividitur principales—This Treatise, says he, of the English Law, divided into three general parts, may, from its having been wrote in the Flete, justly be named Fleta. — Now by the Word Flete here, is meant that most noted Prison, which we, from the little River running by it, call the Fleet; for the English call Fluvius Fluctus seuÆluarium—a River, Flood, or Place.
Place where the Tide comes in, *Flete.* Whence, as the Spaniards (according to some) by Metonymy call Naulum a Flete from a River or Flood, on which the vessels fail, from which likewise their Words *Fletador,* and *Fletamiento,* are derived; the aforesaid Prison, as well as a Number of Ships, and the Street adjoyning to that small River, is on that Account, named by us *Flete.* Certainly if Cicero had called his *Tusculan Questions Tusculum,* he had done it for the same Reason as our Author named his Book *Fleta;* upon the same Account also, Ovid's Books *de Ponto* bear the Title of that Place. And it was a common Custom in the Age, in which the Author of *Fleta* flourished, as well as before his Time, to style public Writings and Acts, from the Place where their Contents were transacted. Thus the Constitutions of Clarendon (a) are called so from that Place. The *Magna Charta* of King *John,* the Charter of *Runnymede,* (b) from its having been signed there. Some Statutes also in the Reign of *Ed-

(a) Clarendon, called so from the Parliament being then held at Clarendon, a noble House, about two Miles north of Salisbury, at that Time belonging to the Crown.

These Constitutions were made in 1164, 10 H. 2d. and contain the chief Prerogatives and Privileges that were claimed as well by the King as the Clergy; they are divided into sixteen articles, and may be found in several of our Historians.

(b) Runnymede, a large Meadow between Windsor and Staines, and denominated so, (according to Matthew of *Welf and Minster*) as signifying *pratum Contellii,* because he says it had heretofore been frequently used for holding great Councils of the Realm.
Sec. 3. annexed to Fleeta.

Edward the 1st, are named, as even Novices know, the 1st, 2d, 3d, and 4th, of Westminster, from their having been enacted there: not to mention the Statutes of Gloucester and Exon, so called, on the same Account. But although it is no where that I know of to be found who was the Author of this Commentary wrote in the Fleet, yet there is no doubt, but that he was one of those who were sent to Prison. We are certain that a great many of the Judges, under Edward the 1st, very great Men indeed, and most eminent Lawyers in that Age, being justly convicted of Bribery, and of deciding Matters in their own Favour contrary to Law, were, as well as some others, besides the Officers of the Courts, justly punished by Fines, Banishment and Imprisonment; and it is probable, our Author was one of this Number. The Names of those adjudged guilty, are to be seen in the Works of our Annalists.*

And I have by me an antient Manuscript of Annals, relating to the Year 1288, intitled Incarceratio Jusitiariorum domini Regis scilicet Thomae de Weylond, Johannis de Lovetot, Willielmi de Brampton, et Ade de Stratton de quo Dominus Rex habuit quadraginta mille marcas et amplius prater vasa argentea et aurea.—The Imprisonment of the Justices of our Lord the King, to wit, of Thomas de Weylond, John de Lovetot, William de Brampton, and Adam de Stratton, from whom alone, our Lord the King took upwards of 40000 Marcs, besides Gold and Silver Plate.

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And
And in a Manuscript of Peter de (a) Langtoft, an old rhyming Chronographer, we meet with what follows, concerning the aforesaid Justices and others,

Quant le Roy Edward avoit demore
Troiz annëz de la mer Dieu l’ad remene
A fon repoir trova par plente presente
Ses justices et ses Clerks attaintz de fausete.
Les Uns avoient, par doux, les ieys desourney.
Les autres la couronne avoient viole;
Thomas de Weylaunde en banc primes nome
Par agard du Court le Regne ad forjure.
En la terre de France sans repoir eft ale,
Ses Companions, ses Clerks sunt pris e mené
A la tour de Londres, delivères par mené;
Et sur ceo checson de Office eft pryve.
Elys de (a) Begyngham nebst pas entechle
Et Johan de (b) Metingham le chef eß demore,
Sire

(a) Peter de Langtoft, so called from Langtoft in Yorkshire, was a Canon Regular of Bridlington in Yorkshire, and there dyed about the beginning of the Reign of Ed. the 2d.

Hearn, p. 22.

He wrote in French Rhyme and began his History at the Origin of the Britains, and continued it down to the End of the Reign of Edw. the 1st.

Rob. de Brune, who was Canon of the Priory of Bourn, in Lincolnshire, and dyed in the Reign of Ed. the 2d, translated Langtoft into English Rhyme, but as his Version, is not so intelligible as the Original, I have not inferted it.

See Brunes Translation of Langtoft published by Hearn, v. 2.

(a) Elias de Begyngham. He was one of the Justices of the Common Pleas.

(b) John de Metingham. He succedeed Sir Thomas de Weyland. These are the only two, among all the Judges of that Time, whom Historians have taken Notice of as free from Bribery and Extortion; and their Names will be conveyed down with Honour to the latest Ages.
Sire Rauf de Hengham ad taunt dispute
Ke du Baunc le Roy perdur ad lefee.
Sire Adam de Stratton est dur demene,
Ieo cray ke sauns deserte nest il pas blame
Or, Argent, sans noumbrre au Roy ad il done,
Avoir chaunta pur luy placebo Domine,
Dilexi quoniam fraude et fausete.

And its scarce to be doubted, but that among the great Number of Lawyers found guilty, some of them were sent to the Fleet; that Prison being, preferably to all others, and that by a most ancient Privilege, made Use of by our highest Courts of Justice—Should any one deny our Author to have been of that Number, I shan't dispute the Point with him.

(c) Adam de Stratton. He is said to have been Chief Baron. Besides the abovementioned, there were also cenfured and fined, Robert Lutbury, Maller of the Rolls, Roger de Leicester, a Justice of the Common Pleas, Solomon Rochester, Richard Boyland, Thomas Seddington, Walter Hepton, and William de Sabaun, Justices Itinerant, and Henry Bray, Chancellor and Judge of the Jews. Daniel's Hist. Eng. p. 189.
S E C T. IV.

Of the Provision mentioned in this Commentary to have been ordained by all the Christian Powers, concerning Alienations made by Kings.

NOW the very remarkable Passage we have taken Notice of in this Author, and at which I am amazed, is to be met with where he treats of Donations, and is as follows. †Res quidem Coronae sunt antiqua maneria Regia, Homagia, Libertiæ et huysmodi, quæ cum alienentur, tenetur Rex ea revocare secundum Provisionem omnium Regum Christianorum apud Montem Pessaloniam, anno regni Regis Edwardi Filii Regis Henrici quarto habitam. — The Possessions of the Crown consist of the antient Royal Demesnes, Homages, Liberties and such like, which were they alienated, the King, according to the Provision made at Mompelier by all the Christian Powers in the fourth Year of the Reign of King Edward, Son of King Henry, would be obliged to revoke them.—There are other Passages in our Author,* concerning Royal Alienations, agreeable to what he here advances. But is this matter of Fact? Was any Provision by all the Christian Powers, relating to the revoking the Alienations of the Patrimony of Princes, made at that Time at
at Mons Peßulanus, a famous City of Languedoc, now called Mompelier? For it is my Opinion, that in this Passage, Mons Peßolonia can't be understood of any other Place; the City itself being sometimes called Mons Pillerius and Mons Pisciculanus, and by other Names, according to the different Fancies of Authors. That fourth Year of Edward the 11th, in which the Author of Fleta affirms such a Provision to have been made at Mompelier, corresponds with part of the Years after Christ 1275, and 1276. The aforesaid King Edward having began his Reign the 16th Day of November 1272, the Assembly of all Christian Princes, or their Ambassadors for that Purpose, must have been held there between the 16th of November 1275, and the 16th of the same Month in 1276. The following are the Christian Princes who reigned at that Time, to wit, Michael Palæologus, Emperor of the East—Rodulphus the 11th, Emperor of the West or Germany.—Philip the Hardy, King of France—Alfonius the 10th, that great Astronomer, and Author of the Partites, King of Castile and Leon—Alexander the 3d, King of Scotland—Uricus the 8th, King of Denmark—Boleslaus, King of Poland—Vladislaus the 4th, King of Hungary—James King of Aragon—Ottocarus King of Bohemia—Charles King of Sicily—Hugh King of Jerusalem, besides others less considerable, who were then styled Christian Princes. But I am of Opinion there cannot be met with, except in this Place, ei-
ther in any Annals, Histories, or elsewhere, the least Shadow or Footstep of such an Assembly being held there, by the above Christian Princes, or by any other; or that they sent thither any Ambassadors to treat of such a Matter. It is certain the Emperor Rodulphus the 1st, made about that Time, and according to some, in the Year 1275,* a Cession, to Pope Gregory the 10th, of Bonna, and all the very extensive adjacent Possessions, till that Time, a valuable Part of the Roman Empire; but Writers are not agreed about the Year itself. Nothing however can be more manifest, than that this Donation was made about that Time. The like was at different Periods practised as well by succeeding, as well as preceding, Emperors, whose Cessions were never revoked. It is true, some Things concerning this very Matter, or the revoking the Alienations of Royal Patrimonies, are, several Years before the 4th of King Edward the 1st, to be met with in the Antients. A memorable Rescript * of Pope Honorius the 3d, directed to the Archbishop of Cologn, about the Year of Christ 1220, relating to Alienations made by Andrew the 2d, King of Hungary, is, with regard to the same Point, extant.

The Opinion also of that great and antient Lawyer Azo, who dyed long before the 4th Year of Edward the 1st, is cited from his Disputations, * and does not much differ from the aforesaid Provision. And we find in

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in the Alphonfins,† published about twenty-five Years before the 4th of our Edward the 1st, something to the same Purpose, as well as in the Body of the Gregorian Decretal, * Decret. Greg. tit. de jure-jura-ndo c. 33.

* Bract. l. 2. de acquirend. rerum Dominio c. 5. f. 7. fo. 14. a. & c.

** Bract. 1. 2. de acquirend. rerum Dominio c. 5. f. 7. fo. 14. a. & c.

set forth thirty-six Years, or thereabouts, before the aforesaid Year of the same King Edward, not to mention the Writers who handle this Matter, and flourished before that Time. Our Bracton*likewise, treating of Royal Donations, is of the same Opinion. We may to the aforesaid Authors, add Matthew Paris, William of (a) Newburgh, and other Writers in the Beginning of the Reign of Henry the 2d; but altho' many Lawyers after that Year, or the Time in which the above Provision is said to have been made, with the greatest Application, canvassed and treated of this Matter; yet I could never find that any of them ever made the least mention of the aforesaid Provision. In the Compendium of our Law called * Britton, Britton, c. 14. des Dones, fo. 87. b.

† Thornton. lib. 1. c. 19. Mts.

and wrote not very long after the aforesaid Year, as well as in † Thornton, who within sixteen Years of the 4th of the Reign of Edward the 1st, published his Sum, Royal Donations are expressly treated of; yet there is not in either of them one Syllable of any such Pro-

(a) William of Newburgh, so called from a Monastery in Yorkshire, whereof he was a Member. His History begins with the Death of Henry the 1st, and ends at the Year 1197. He was a violent Persecutor of Jeffery of Monmouth. His Latin Style is preferred to that of Mat. Paris, and equalled with thofe of Eadmer, and Malmesbury, by Dr. Wats.

Provision. Thornton, I confess, having been a bare Epitomizer of Bracton, contains nothing subsequent to the Time of Bracton; but we more than once, in the other Compendium called Britton, meet with Matters relating to the Years immediately succeeding the above fourth Year of Edward the 1st. Therefore, 'tis strange, had there in Fact been any such Provision, that in that Work no Notice should be taken of it. Neither indeed are there in any other of our Law Books with which I am acquainted, no not so much as in John Fortescue,* who expressly handles the Question concerning the Revocation of Royal Donations, any Footsteps of such a Provision. But on the contrary, as will presently appear, we meet with in our own Books abundantly sufficient Arguments to evince us, that there never was any such Provision at all. And this our Prisoner, or the Author of Fleta, was doubtless imposed upon, either by some shallow Persons, who usually love to prate after their returning from foreign Parts, (not unlikely from Lyons) in which Place a great Council had been a little before held; or was, as well as others perhaps, in this Point deceived by Letters or Writings spread abroad concerning a Provision of this kind, by Persons who had some Interest in it; the over credulous being frequently liable to such kind of Impositions; and it has been in all Ages a common Practice to amuse the World with Relations of wonderful Things transacted abroad. Several very eminent Foreigners,
tis true, have, between the fourth Year of Edward the 1st, in which this Provision is said to have been made, and this our present Time, wrote a great deal concerning this Matter, or the establishing or rescinding the Alienations of supreme Princes; they have with great Care collected together the Opinions of the antients, the Laws of Emperors, and Kings, and other forensic Cases, relating to this subject; yet they, 'tis evident, had never heard of the aforesaid Provision, or of any Thing like it. 'Tis plain also from the Writings of the Doctors upon the Extravagants, Title de jurejurando c. intellecto 33, as well as from $ Bartolus and Baldus,* and almost all the other Commentators on the Title, Quis dare feudum posse, who may grant a Fee—that they were Strangers to it. We may to the aforesaid Antients, add the Speculator or Durandus,† and as to modern Authors, a great Number of them are easily to be met with, who in their respective Commentaries, treat of this subject, as—Petrus Belluga, * Restaurus Castaldus, § Arnulphus Ruzæus, || Reginerus Sixtinus, † Henricus Bocerus, § Horatius Montanus, ‡ and others of the same Kind, in their Writings concerning the Regalia of the German Empire, and those of other Kingdoms, as well as Franciscus Hotomanus, * Joannes Bodinus. † The Code of the French and Imperial Law, ‡ by Henry the 4th, Petrus Tholosanus, || Renatus Choppinus, § Gregorius Lopez, upon the Partites,

|| Rest. Castaldi, De Imperatore quæt. 104.
‡ Henr. Ruzæus Dejur, regal.
 PRIV. 42. a. 4.
† Reg. Sixtin. De Regalibus l. 1.
§ De Regalibus c. 4, f. 56, &c.
‡ Henr. Montanus de Regalibus in Pseudolit. f. 28, 29, &c.
* Franc. Hotoman. lib. 2, quæt. 1.
† Joan. Bodinus. De repub. l. x. c. 10.
‡ Lib. 7. tit. x.
§ Pet. Tholosani. Syntag. Juris un v. r. h. 1, 6, 6, 6, f. 16.
§ Renat. Choppinae Domanio Franc. l. 2. tit. 1.
Partites, * Bartholomaeus de las Casas, Alfonius Azevedo, § Georgius Cabedo, Hugo Grotius, † who treat of the Donations made by Constantine, not to mention either the Authors quoted by these Writers, nor great Number of others, who have handled the same Subject. The aforesaid Authors also sometimes manage their Debates, with regard to the Bounties and Donations of Princes, and the Alienation, and Usucapion of the Regalia, with the greatest Exactness and Diligence; and few of them seem to have omitted any Thing, found either in antient or modern Authors, relating to this Matter. Some of the aforesaid Writers were Italians, some Germans, others Dutch, French and Spaniards, and were very eminent and learned both in History and the Law; yet they at the same Time appear to have been quite Strangers to the above pretended Provision of all Christian Princes; whereas doubtless, had any such Law ever existed, it could not have escaped their Knowledge. It is moreover plain from the Parliament held in the same fourth Year of Edward the 1st, the very Time this Provision is supposed to have been agreed upon, that Royal Donations or Alienations heretofore granted, as well as such as should be hereafter made in this Kingdom, were to be considered as lawful and every way firm, and not at all to be on that Account invalidated. The aforesaid Parliament was held after the Feast of St. Michael, and that fourth Year of the King's
annexed to Fleta.

King's Reign, ended on the 16th of November, next ensuing. Now it is evident from the Law, enacted by that Parliament, called the Statute de Bigamis,* wherein Royal Donations and Alienations are allowed of, that no such Provision was made before the holding that Parliament. And that Year was almost expired when the said Parliament ended, during which Period, as well as in the subsequent Ages, down to our own Times, the Acts of Parliament and the Customs of the Kingdom so universally prevailed, that it can never be shewn that there was ever the least Room for acknowledging any such Provision among us. Royal Donations of large Possessions, part of the sacred Patrimony, were formerly very frequent in this Nation, and always made at the King's Pleasure, and held good, if they were in all other Respects legal, except such as were declared void by some Acts of Parliament,* which now and then laid a temporary Restraint on the Gifts of some very profuse Kings, as well as on the bold Impropriety of Courtiers; or where the same Authority either revoked or disannulled such Grants, according to the (c) Exigency of Affairs,

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(c) Exigency of Affairs. The Crown Revenue, which in the reign of Hen. the 5th. had been 56,966, was, in that of Hen. the 6th., reduced to 5000 per Annum; so much had the Crown been robbed and pillaged during the Minority of this religious, but weak and unfortunate Prince. This occasioned that notable Act of Resumption in the 28th. of Hen. the 6th.; and since that time the Parliament has
Affairs, when they appeared greatly excessive. But our very Ancestors acted in a quite different Manner; for a Question arising in Parliament, in the Reign of Edward the 3d, relating to that celebrated Donation made by King John to Pope Innocent the 3d and his Successors, in Consequence whereof Pope Urban the 5th, then required to be paid unto him, jointly by England and Ireland, an Annate of 10000 Marks, pretending also that both Realms were held by our Kings by a beneficiary Right only, and as a Fee of the See of Rome; All Orders even the Ecclesiastics, (which is to be wondered at) as well as the Peers or Lords and Commons assembled in that Parliament, after mature Deliberation, unanimously answered that the aforesaid Donation of King John was evidently null, it having been obtained without the Consent of Parliament and contrary to his Coronation Oath. Et outre ceo, and moreover (say the Archives les Ducs, Countes, Barons, grandes, & Commens accorderent et granterent que en co qu

has frequently interposed; and, particularly, after King H the 3d had greatly impoverished the Crown, an Act pass'd in the 1st Ann, whereby all future Grants or Leaves from the Crown for any longer Term than thirty one Years or three lives are declared to be void; except with regard to Houses which may be granted for fifty Years. The Misfortune is, as Dr. Blackstone observes, that this Act was made too late, after almost every valuable possession of the Crown had been granted away for ever, or else upon very long Leaves; but may be of benefit to Posterity, when those Leaves come to expire.
Sec. 4. annexed to Fleta.

que le Pape se afforceroit ou rien attempteroit per proces ou en autre maniere de fait de con-
struire le Roy ou ses subjets de perfaire ce que est dit qu’il voet clamer celle partie,
qu’ils refuserent et contreferoit ou toute leur puissance.—The Dukes, Earls, Barons,
Great Men, and Commons, came to the following Agreement and Resolution; That
in Case the Pope should at all (a) endea-
avour or attempt, by Proceeds or otherwise, to
compel the King or his Subjects to comply
with the Conditions of his Demands, that
they would resist and oppose him with all
their Might. Thus the Hieratical Order
united in pronouncing the aforesaid Sen-
tence; tho’ they would not, as you see, join
in professing to repel likewise with all their
Force, whatever Violence and Artifices the
Pontifical Power should at any Time make
Ufe of to extort a Performance of the above
Donation. But if any such Provision, as
our Author speaks of, concerning the Re-
vocation of Royal Alienations, corroborated
by the Sanction of all Christian Princes,
had been before that Time made, can it be
thought possible, that the aforesaid Parlia-
ment would have in this memorable Deci-
dion, taken no Notice of it, or could have
been entirely unacquainted with it. Nei-
ther does it seem, according to our Author,

(a) At all endeavour. Se afforceroit—Britton makes ufe of
these Words in the same Sense.—Si Piamant se afforce defen-
dire l’entw. Britt. p. 266. b.—Si prons ingriffen nilatur
defendere. Thia 365. c. 36. t. 1.

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less to relate to the dissanulling past than future Alienations. And indeed that Parliament under Edward the 3d, was of the same Opinion with Edward the 1st, as is manifest from that King's Letters* written to Pope Gregory the 10th, concerning this Matter, the very Year before that in which this Provision is said to have been made. So likewise did Philip Augustus King of France and his Nobles shew that they had the same Sense of this Matter, and other such Alienations granted to the great Diminution of the Empire without the Consent of the States, when they gave their Answer, † to (a) Wallo the Pope's Legate, who arrogantly produced, within two Years from the making of it, that frivolous Donation of King John's, extorted by the Wickedness of the Court of Rome. But thus far on these Subjects.

(a) Wallo. An insolent rapacious Legate. King John's great Seal having been burnt in pulling the Wastes of Lincolnshire, and no new Seal being made for King Henry till two Years after, the Seals of this Wallo (or Grabo) and William Marshal the Elder, Earl of Pembroke the Protector, remain affixed by Parchment Labels, the former in white Wax, the latter in green, to the Original Map. Carta of Hen. the 3d, 1217, now preserved in the Bodleian Library at Oxford. Black, Intro. p. 45. 53. 54.