

RIGHTS of the KINGDOM:
OR,
CUSTOMS
Of our
ANCESTORS.

Touching
The Duty, Power, Election, or Succession
Of our
KINGS
AND
PARLIAMENTS,
OUR

True Liberty, due Allegiance, three Estates,
their Legislative Power, Original, Judicial, and Executive; with the MILITIA.

Freely discussed through
The *British, Saxon, Norman* Laws and Histories.

WITH
An occasional Discourse of *GREAT CHANGES*
yet expected in the World.

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THE
P R E F A C E
TO THE
R E A D E R.

READER,

IF you be wise and good, you are above my Epithets, and more above my Flatteries: But yet you may expect a Preface to excuse this unexpected Address. The habit is somewhat strange, and my self so little acquainted with it, that I cannot

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To the Reader.

not much wonder if others should gaze upon it : but account me a Stranger , and you will forgive me.

It is no matter who, but what, is here presented to your view : I cannot excuse it, either for matter or manner. ○ It hath much folly to my sight, and more, I believe, than yet I see. It may be also somewhat false, although I know it not. This should not prejudice all : for there are Spots above the Clouds ; and the Kingdom of Heaven it self was like a Field of Wheat with many Tares : How much more, how much worse, must it be with a frail man !

But why then do I venture to
come

To the Reader.

come abroad? The Objection was strong enough to keep me silent hitherto; and it may be, nothing but Duty should have perswaded or prevailed on me to be publick now: and yet I do not plead an extraordinary Call; which is a close Writ, and not a Patent. Those who receive and act by such a Warrant, should be sure they know the Hand, or Seal, or Dialect of Heaven.

But I am an English-man; and therefore am obliged to this Country, and to these Laws that made me free. And this may be some Call; that I say nothing of particular Obligations to the State, in any Courts of Justice, or relation to the highest Court of Parlia-

To the Reader.

Parliament. And why may not I believe my self as free to *think*, or *speak*, or *write*, as others are to do?

There is a Night of silence, and an evil Day, when every *prudent man shall hold his peace*; but also there is a time to speak, and a word in season, fitly placed, like *an Apple of gold in a Picture of silver*. But who knoweth his season? for our time is hidden: and because man knoweth it not, therefore is his labour increased under the Sun. This also is vanity, and a fore vexation.

I said, there are older, and wiser, and better than I; they shall speak and teach me Wisdom: I will hear in silence. Nor do I now say, *They convinced him not, lest it should be*

To the Reader.

be said, We have found out Wisdom; God
thrusteth him down, and not man! Nay,
they have spoken much; and lit-
tle may be left for me, but to re-
peat somewhat already said.

Be it so then; by this I shall be
free: for if I speak their words, I
may be pardoned, as those that
spake before: And if I adde a new
word, shall I be made *an Offender*
for a word?

However, my hope is, that the
Great Day of Judgment (of which
we have long heard, and now
seen so much before us) will have
such influence upon our Judge-
ment and Affections, that we shall
all be ready to judge our selves,
rather than others; or if others,
not with prejudice. And with
this



RIGHTS

OF

The Kingdom,

&c.



To see the Kingdoms *Rights*, the *Laws* and *Customs* of our *Ancestors*; concerning *King* and *Parliament*; that we may know their *Power* and *Priviledge*, their *Duty* and their *Limits*, &c. and how our *Fathers* did commit the power of making *Laws*, and judging by those *Laws*; and how they made us swear

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Allegiance to our King ; what power they gave him over us ; and what they did not give him over any of his Subjects ; how we should behave our selves, &c.

He that accounteth these unworthy of enquiry, may be thought (as the *Gretians* said to the *Persians*) not to have heard of Liberty : Which else would be valued above an Enquiry. But alas, who is able who will undertake to trace our *Laws* and *Customs* thorough the Heights and Depths, and dark Abysses and Meanders of the *British*, *Saxon*, and the *Norman* Nations that have ruled here ? Yet there are thousands that may do it much better than I ; and therefore I might justly sit in silence, and expect my Antients and my Betters should begin, that I might learn from them. Nor should I now presume to speak, but that I might inform my self from others, that by this occasion may reform my Errours, and may clear our *Laws* and *Customs*, much more fully than I do, or can be able ; who pretend to nothing but desire of Truth and Peace.

And

And first, to speak of the mutual obligations of Oaths between Prince and People, the School-men would be thought most curious, or most tender, in the point of Oaths: They mince them out so fine, that a whole million of Oaths may stand (as they speak of Angels) on the point of a sharp Needle.

They tell us of the *Object*, and the *Subject*, or the *Matter*; which, they say, may cease or fail so much, that any man may find or make himself absolved *from his Oaths*. But in things of such concernment to ones Soul, I love to speak or think in *English*, that I may understand myself: and I thought it madness in the man that said his Prayers in two or three Languages, adding this in the close; *Now take thy choice; for all are alike to me: I know not my meaning in either.*

In plain English, I do not see I may absolve my self from an Oath, by saying, He was not the man I took him to be, in some material points, at the time of my Oath; yet this is much, and that which seemeth near to that which

which the Schools speak of, want of Subject, or sufficient Matter to be ground of such an Oath.

I should have looked to that before ; it may be rash, and so must be repented : but a River of Tears may never wash me from this Oath of God, as the case may stand. And so it was, I suppose, in that of the *Gibeonites* : they were not such as they made themselves, nor such as *Israel* took them for : the Oath was rash, unjust ; they ought not to have sworn ; they should have stayed and sought direction : for they were forbidden Leagues with such, commanded to destroy and ruine such as those men were, and might have been suspected. But when it was done, we see how strict and solemn God was still, in pressing them to keep that Oath.

Nor may it suffice to say, *I swear against my will ; they had advantage of me ; and I could not but comply, either with some Mental Reservation, or at least (for that is much condemn'd by most) I am now grown wiser, and do now see I may absolve my self from that which I would not have taken, but by force or fraud.*

But

But can the World, (this vain and frail and foolish World,) command, controll, and overawe my Soul, to take an Oath, *the Oath of God*, to what I think unjust? It may be so, for I am Man and frail, with those that are the weakest; for *He knoweth my foolishness*: but it should not be, and when it is, I must be very tender, lest I adde more Sin to Sin; as bad, or worse, to that which is too Bad already; For, by breaking such an Oath, I may do worse, much worse, than first I did in making it; except I Swore to sin, and then I may not keep my Oath.

And I believe the *Jews* might not have pleaded Force, or over-awing Arguments, in Swearing Homage to the King of *Babylon*; and yet 'tis known how God did charge and chasten that said Perjury; nor is it altogether inconsiderable that good *Lot's*, or at least the men of *Sodom's* freeing themselves from *Chedorlaomer*, is stiled by God himself, plain downright *Rebellion*; Yet there was another King of *Sodom*, and *Chederlaomer* seemeth but a kind of Tyrant, that had but little Right but Conquest and his Might.

The *Catholicks* may seem too free in dispensing with *Oaths* to *Protestant Kings*; but some there are with them, *Sacred Persons*: And because I

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now

now dispute *ad Hominem*, I shall touch on that in which we know them most Religious, Their solemn Obligation to the Pope; which yet is such, they will not deny, as doth not secure or free him from being Judged, or Coerced in cases of *Distraction*, *Natural* in Raving, or *Moral* in Raging, so that danger be apparent to those about him, or in some Spiritual Frenzie of notorious *Hereſie* Convict (the Chair in Conclave, not the Person is exempt,) or much suspected; while himself refuseth Legal Tryal by a Council or the like. The Case is argued in *Occhams Dialogues* with others.

Our Oath of *Faalty* comes next upon the Test, although I might interpose (as a Parallel to the Pope) the *Jewish High Priest*, a very Sacred Person, and the Lords Anointed also; but yet such as must still submit to the Sentence of the Great *Sanhedrin*, nay, and that for his *Life* also if they so adjudged him; For which of the *Sanhedrins* Power over the *Jewish King*, in Criminals and in *War*, (except only what God had commanded against *Amaleck* or the seven Nations,) I might cite several clear passages from the *Talmud*, and those that expound it long before *Cochius* or *Sanhedrin*, or *Schickards Jus Regium*.

Our

Our Land seemeth to Mourn because of Oaths (but I must only touch the civil Part, or what is Legal,) and our Law seemeth Deficient in this of Oaths, for there is scarcely any Law (since the Star Chamber) to punish *Perjury*; but only where it is before a Court of Justice; and there also the Punishment of *Witnesses* is very light, and exceeding short of *Attaint*, on Jurors, by the Common Law.

Our Customs seem to overgoe our Laws, in much of *Oaths*, They were but *Attestations*, though most Solemn, in the Name and Presence of God, *As the Lord doth Live.*

But they are now brought to *Imprecations*, or a kind of Curse, *So help me God, and the Contents of this good Book.* Yet so it was of old at *Combat*; on Appeal; the *Appelle* did first devote himself.

Again, some force a *Kissing of a Book*: the Law requireth but a *Sight and Touch*. For ought I find, the *Saxon* Jurors were *Sacra Tenentes*. In the first *Norman* times, it was *Sacris Tactis*; and in later writs, *Evangelists Tactis*; Nay, the *Priests* hand was upon his *Breast*, (in *Matthæw Paris*) not upon the *Book*, and the *Villain* seemeth forbidden to touch the *Book*. The Statute saith,

he shall hold his Hands over it, but the *Freeman* upon it ; and from this *Touch* with the *Body*, such an Oath was called *Corporal*.

The *Jews* and eldest *Christians*, (in their Swearing, Blessing, Praying,) lifted up the *Hand*, and sometimes Bowed the *Head* or *Knee* ; for, *In his Name shall all Knees bow*, seemeth but Parallel to that of the *Psalmist*, *In thy Name will I lift up my Hand* ; and the *Grecian* or *Trojan* Princes, lifted up their Scepters in Swearing, but others held Earth and Water, in Allusion perhaps to the sacred *Styx*.

Most, if not all publick Officers were tyed to their Dutyes, by some Oaths, but they were made by *Parliament*, in all Ages ; This being a Pillar in our Laws, that none can make, alter or impose an Oath, without an Act of *Parliament*, or Custom by the Common Law.

'Tis strange, how much in all we degenerate from our good Ancestors ; So that with us to break ones Oath, (even in the greatest Office) is but a kind of Petty *Aggravation* (as they call it) rather than a Crime ; because such Oaths be now accounted but meer Forms, or Ceremonious Shaddows.

But it was not so, *ab initio* ; and among other

Prece-

Precedents, I find the old *Mirrou*, speaking of a *Chancellour* of *England* charged with Perjury, for taking a small Summe of Money (half a Mark,) for Sealing of a Writ, which was against his Oath ; being neither to *Deny*, *Delay*, or *Sell* Justice or Remedial Writs. (Yet Six Pence was allowed to the King for Sealing of a Writ) How great a Crime they did account such *Perjury*, I need not say to Lawyers, or to any that have read the *Saxon Parliaments*.

But of all our Oaths; those seemed to be most content to be counted Formal ; That they were imposed on meer *Children* of a dozen Years old ; how many such we have or had in great Schools or Universities, may be known and felt too much I fear.

And the Oath of *Allegiance* was twelve Years old, and so pressed at the *Lects* or *Turns* ; but did they mean we should Observe it but as *Children*, not as Men or Christians ? It is true, the *Saxons* also had a twelve-Year-old Oath, but against *Theft* ; and how the Laws of *Henry* the first did Annul the Oaths of *Children* was observed, and the fifty ninth Chapter of those Laws forbiddeth any to Plead, or to be Plead-
ed in *Judicio*, till the Age of fifteen.

It

It was also a Maxim in our Law Books, that *Minors* could not *Essoyn*, because they could not Swear; and that *Homage* might be done in *Nonage*, but not *Fealty*: For although *Homage* was the more *Honourable*, done upon the Knee; yet *Fealty* was the more *Sacred*, being ever done by *Oath*; and from hence is the usual Phrase in all Lawyers and Historians, to Do *Homage*, but to Swear *Fealty*.

Must our *Allegiance* only, run before our Reason or Discretion? which yet was our *great Fealty*: for it differed little from *Homage*, with the Oath of *Fealty* to *Mean Lords*, but in the *Salvo*; which I touched before, and must again, being one good help to explain our *Allegiance*.

I shall acknowledge that *Allegiance* ought to have been kept by all Subjects, although they never took that Oath; which it may be, many did not, especially, since the late Oaths of *Allegiance* and *Supremacy*; which have seemed to abate the use, (I say not the Force) of the old Leet Oath of *Grand Fealty*; Which was perhaps never taken, or much understood by some of those that appear most zealous in crying up *Allegiance*; For it is natural to us all, to be most confident in that which we least understand.

They

They seem to have done much wrong to the King and Crown, (and to have made so many averse from the very Name of a King,) who by too much Zeal did strain our English Legiance out beyond all bounds of English Laws, and then they would fly out to Forreign Laws ; as if the Moulds and Sphears of Kingly Power or Subjects Duty, were by nature equal in all Climates, and in every Kingdom.

Yet I know not that we need be much afraid to appeal to the Laws of any Civil State, especially to those of *Judah*, which if some had known more, they would have pressed less for our Pattern : But all English Kings had English Bounds by Law ; and so we Swore *Allegiance*, and no otherwise by Law.

It was a Pang of Zeal or strange Affection, more than Reason or Religion, which did make so many once (at *Cambridge*) Swear to *Edward* the Senior, *To Will what he Willed*, &c, Of which the *Saxon Chronology* ; But I hope it is not fatal to that Place, or to any others in this Kingdom.

For I cannot learn that e're our Law did force or wish us to oblige our selves by Oath, to Think, Speak or Doe as any King would doe,

doe, or have us for to doe, if contrary to Law and right Reason.

Our Law dispenseth much with Womens *Homage*, and of old they were not pressed to it ; for a *Woman* might not say, I am your *Man*, nor to a man, (but to her own Husband) Sir, I am your *Woman*, yet she was to Swear *Fealty*.

So were the Bishops also to Swear *Fealty*, (except in *Frank almoigne*,) but the Law dispensed with a Bishops (or Church-mans) *Homage*, so that he needed not to say, *My Lord*, or *Liege*, I am your *Man*. The Reason is, because he was (or should be) *the Man of God*, and might not give himself so much away to others, as any other whatsoever.

And the reason of this may reach to all our *Fealty*, so far as to perswade us to consider what it is we cannot, nor we may not give away to any Man or Angel.

Was it not an hard Covenant tendred by *Nabash*, that he would protect all those, or own them for his Subjects, that would put out their right Eyes? and yet this had been more reasonable and Just, than to have required absolute *Allegiance*, without any Limitation or *Salvo*

at

at all: For this had been to have bid them pluck out their *Souls*, or at least to uncase them from that which nature hath made the *Cabinet of Souls* (that curious *Orient Mother of Pearl*,) *Right Reason*, which doth make us *Men*; that I say nothing of that which makes us *Christians* or *Religious Men*.

We sinned if we wholly gave our selves unto a King, without any Limitation or Restriction whatsoever: For by so doing we unman our selves, and give away to a Man what we owe not, what we may not give to any mortal Creature whatsoever.

Let us discuss it then by Law and Reason, what is our *Legal Fealty*, how Made, how Limited, how Kept, or how Dissolved. Let us inquire what Duty, what *Allegiance* is commanded by the Laws, and what they did not mean they would not have us give to mortal Man.

Shall we behold the Sun Reflected or Refracted in a Stream of Water? shall we consider the King as Cloathed in the Dress or habit of some other Lord? For every Lord (the meanest and the lowest) is, or may be to his Vassals, as a little King to his Subjects: Such was the Plea of *Lanfranc* (as before,) at *Pinenden*; and so it was adjudged and confirmed by that Parliament, that he should be in his *Demesn*, as was the *King in his*.

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And

And the old Laws of *Alfred*, *Ethelstane*, *Edgar* and *Canute*, with the good Laws of *Hen.* the first, do as much forbid and punish Treason against Inferiour Lords, as against the King himself; for to them also is *Homage* done, and *Fealty* Sworn by their Vassals, saying, *My Liege, I am your Man, and bear you Faith of Life, Member and Terrene honour, saving the Faith I owe to other Lords.*

Or thus, *My Lord, I will bear you true Faith, and do you true Service, as my Duty to you is, (so the Statute of Edw. the Second) that is, according to my Fee.* And the *Mirraur* will tell us, that it was an Abuse for the King himself to require it any otherwise; for it did not consist in a Point, but had much Latitude, and several Degrees, according to the several Fees.

And if any such Tenant were pressed on more Service or other than his Fee required, or were injured; he might Implead his Liege in Law: For what his Duty was, neither himself, nor his Liege Lord might determine, but the Law.

For a *Villain*, who of all Vassals, was most Fettered, (most forbidden to molest his Lord,) yet might be *Demandant* in some *Real*, or *Plaintiff* in some *Personal* Actions, where the Lord might not make plain defence (as they speak.) Nay, and *Killains* also did often bring Actions of *Trespas*.

And in Cases of others, as of *Orphans*, where the

the *Villain* is Executor in Trust, he may implead his Lord, who can not deny to answer, though he do it with a *Salvo*, lest such a Suit might make his Villain free, as much as if he had made him an *Obligation*, or a Deed of some Annuity, or a Lease for Term, or Infeofment with Seisin, or had sued him in Law for what he might have had without a Suit.

For these did *Enfranchise* the *Villain* as much as being in a City, or Castle, without claim or Challenge for a Year and a Day, or his Lords giving him (by the Right Hand) to the Sheriff in full County Court, shewing him the open Doors and free wayes, and delivering to him a Sword and a Lance, or other Free Arms, which are the wayes of *Manumission*, in the Laws of King William and Hen. the first, where we also find the Text so much Commented by *Glanvil*, *Bracton*, *Britton*, *Fleta*, with the *Mirror* and others.

They all agree in this, that the Bond and Obligation is *Mutual*, and that the Lords Kiss whispereth as much Respect and Defence, as the Vassals Kneeling doth his Reverence; Nay, there is in Law so great an Obligation on the

Lord, and so great a Charge often, in *Guarranty*, (which of old was much larger than now, in *Homage Ancestrell* ;) That the Lord would often refuse and delay to take his Tenants Homage ; So that there was a Writ made, commanding him to take it, and by it, to Oblige himself to his Tenant, whom he was to Defend ; and his Trespass on him in Law, had a very great Aggravation ; because the Vassal was to be *sub defensione Ligea*, as we found the *Jews*, in the Laws of the *Confessor*.

Some Kingdoms are in Fee to others, and must do *Homage*, Swearing *Fealty* ; So Scotland unto *England* ; so was also our *English* King, but not the Crown or State, (which hath oft in Parliament been adjudged and declared Imperial, Independent ;) when himself did *Homage* unto *France*.

And yet I do not find our *English* King did ever much Scruple at his waging War with all *France*, and the French King also ; but did often fight in Person against his Person ; and he might do so by Law, if the King of *France* did Injure and Oppress him against Law : That I say nothing of the Personal Challenges by *Rich.* the first, *Edw.* the third and *Rich.* the second ;

second ; Or of King *Johns* being cited or Condemned by *France*, for *Murther* in that Kingdom.

This might yet be enlarged, and further cleared, from the good Laws of K. *Henry* the first, which are so strict for Allegiance and due Fealty to every Lord, that they seem almost to forget our old English Clemency ; and yet they speak enough of a Vassals impleading, &c. his Lord, for which divers Chapters, from the 40th to the end, are very considerable.

And the 55th Chapter limiteth all Homage and Fealty, *per honestum & utile*, that which is honest and profitable ; and as *Honestum* there respecteth God and the common Faith, (*Deum & fidem Catholicam*,) so must *Utile* respect the Kingdom, and the Common good ; it being usual for those times to express the Common Good by such a Phrase of *Utile*.

So the Laws of St. *Edward* (for *Foromotes & Heretokes*,) *ad Honorem Coronæ, & ad Utilitatem Regni* ; So King *Williams* Additions were granted and Confirmed, *ad utilitatem Anglorum* ; So the Parliament at *Merton* was to treat, *de communi utilitate Regni* ; (which may be considered in the Writs of those times,) and the great Charters.

Charters granted, à tout la commune Dengleterre ;
 (as *Articuli super Chartas*) And the first of
Westminster, pur le common profit de st esglise & de
 Realm ; and the Confirmations of the Charters in
Edw. the first, forbidding all Impositions, &c.
 but by Common assent of all the Realm, & pur le
 common Profit de ceo ; which must be determi-
 ned by *Commune Assent*, and no otherwise ; So
Ethelreds Law, *Efferatur Concilium quod Populo Uti-*
lissimum ; And *Canutes*, *quæ ad Republicæ Utilita-*
tem & Commune commodum, which there may
 Paraphrase *Regalitas*, of which before.

And (however the late Oaths of Allegiance
 are,) if we consider the old Oaths, both in
 the Saxon and first Norman times, we shall find
 them to respect the Kingdom and its common
 Good and Profit, as well as the Kings Prero-
 gative or private Profit to the Crown.

By *Bracton* with others, we are led to the
 Laws of the Confessor for our great Allegiance ;
 But in those Laws, the Oath is to defend the
 Kingdom with the King ; and that by such an
 Oath we should all be, *sicut conjurati Fratres*,
ad defendendum Regnum, contra Alienigenas, & con-
tra Inimicos, unâ cum Domino Rege, &c.

That it was so also in the Brittain times
 of

of K. *Arthur*, (whose Parliaments we may assert by more, than that in *Caius* of Cambridge,) we find in these very Laws, and that by Vertue of this Oath, King *Arthur* raised his Subjects, and expelled the *Saracens* and Enemies a Regno, from the Kingdom.

And the same Laws tell us, that the same Oath was renewed and Confirmed by K. *Edgar*, whose Laws are severe enough for Treason, but against all Lords as well as the King ; and it is Punished, as Theof. And the Laws of *Canute* (confirming those of *Edgar*) require Fealty conjoyned with Duty and Virtue ; and again with Common Justice, *Jurjurandum datamque fidem Religiosissime servato, injustitiam pro sua quisque virili Parte, ditionis nostrae finibus omnem arceto*, as *Lambard* translateth the Saxon of those Laws ; and in another place of them, The Leat Oath of Fealty, *Jure Jurando fidem det, omni se in posterum etate, tum furti, tum furti Societate & Conscientia temperaturum*.

And to this doth King *Edwards* Oath of Allegiance (in *Britton*) seem to allude, *que ilz nous serrount Feaul & Leaux, & que ilz ne serrount Felons, ne a felons assentaunts* ; yet I do not deny but Theof, in this Oath might include Treason
vvith

with other Felony, (as vvas touched before) but however, it is as well for the *Kingdom* or the *Common good*, as for the *Kings Prerogative*, or private Honour of the *Crown*.

So also the first *Norman Laws* (called the *Conquerors*) require an Oath of *Allegiance* ; but for the *Publick Peace* and common Justice, to the *Kingdoms good* as much as to the *Crown* ; for so the words run, *sunt Fratres conjurati ad Regnum N. contra inimicos defendendum, & Pacem, & dignitatem N. & Corone N. & ad Judicium rectum & Justitiam, constanter modis omnibus pro posse suo*, (as *K. Canutes Laws* before,) *sine Dolo, & sine dilatione faciendam.*

This is now continued also through our great Charter, and all the Confirmations of *K. Edwards* and *K. Williams Additions*, in *utilitatem Anglorum*, vvhich may be considered as a good Comment on the usual vvords in *Indictments* against the *Peace*, and *Crown*, and *Dignity*, vvhich by those Ancient Lavvs, vvas to be joyned vvith the publick common good and Justice of the *Kingdom* ; So that *Allegiance* vvas *ad Legem*, to the *Laws*, the *Kingdom*, and the *Kingdoms good* or *Profit*, together vvith the *King*.

And in all the Lavv Books vve may read
of

of *Treason* done and committed against the *Kingdom*, as against the *King*; So in *Hengham Parva*, cap. 3. If any raise War against the *King*, or against the *Kingdom*, *ubi quis movet Guerram contra Regem, vel Regnum*; And his Commentator referreth to several Cases in *Edward* the third, *Henry* the fourth, with *Plowden* and others which would be considered.

Nay, there are many old Authors and Masters of Law, that expressly declare it to be as *Real Treason* to seduce the *King*, or the *Kingdom*, or an *Army* for the *Kingdoms* Safety, as to Act against the *Kings* Life.

So in *Hengham Magna*, cap. 2. *Treason* is branched thus, *de Nece, vel Seditione Personæ Domini Regis, vel Regni, vel Exercitus*. And the very same Division of *Treason* is in *Glanvil*, both in his first Book and second Chap. and the first Chapter of his 14th Book.

To which also may be added *Bracton*, Lib. 3. cap. 3. *de Coronâ*; and *Fleta*, lib. 1. cap. 21. *vel ad seductionem ejus, vel exercitus sui*; and *Britton*, cap. 22. *disheritur de N. Royalme, ou detrahir N. Hoste*; of which also *Stanfords Pleas* of the Crown, lib. 1. cap. 2. and others that Wrote since the Twenty fifth of *Edward* the third, which may seem to limit or to lessen high *Treason*,

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but

but not to annul Treason by the *Common Law*.

And in Cases of such Treason, they declare, that although there be no Accuser, but only Suspicion (*sed fama solummodo publica, so Glanvil*; but in *Bracton, Fama apud graves & bonos*; and in *Fleta, apud bonos & graves infamia*;) yet must the Party be Attached, *vel per Carceris Inclusiōnem, vel per Plegios idoneos*; so it was in *Glanvil's* time, (for all but *Homicide*,) but in *Fleta's*, *Diffamatus vel Accusatus, attachiabitur per Corpus, & Captus Remanebit, donec se inde Legitimè acquietaverit*. That is, (in him,) till he have Legally cleared himself from all Seducement of the King, Kingdom, or Kingdoms Army; *Om-nemque seductionem Regis, Regni vel sui exercitus, & quicquid sit contra Pacem suam*; which *Glanvil* expresseth thus, *Machinatum fuisse, vel aliquid fecisse in mortem Regis, vel seditionem Regni, vel Exercitus, vel Consensisse, vel Consilium dedisse, vel Auctoritatem præstitisse*.

In such Cases also they debate who should be Judge, and for this they all agree in that fundamental Principle of right Reason and Nature, that Parties may never be Judges in their own Causes; for which, besides all others, the

Mirror

Mirror is large and clear among all *Exceptions* to the *Judges* Person, (if he have no *Commission*, or refuse to shew it as he ought, or be *Party*, &c.) of which also *Britton* in *Appeals*, cap. 22. fol. 41.

And for this reason *Bracton* and *Fleta* with others, agree that in such *Causes*, neither the *King* (who might, so they say, be *Judex* & *Actor*,) nor the *Kings Commissioners* should Judge or determine: But *Curia* & *Pares*, except only when the *Case* is not of *Life*, but finable; for in such the *Kings Commissioners* may determine *sine Paribus*.

But who are these *Peers*, and what is this *Court*? One of *Bractons* first *Maxims* (in his second *Chap.*) is, that all obscure, difficult and new *Judgments*, ought to be suspended, *Usque ad magnam Curiam*, & ibi per *Consilium Curie* terminentur.

Fleta is somewhat clearer, (in his second *Book* and second *Chap.*) *Habet enim Rex curiam suam in Concilio suo, in Parliamentis suis presentibus Prelatis. Com. Baron. Proceribus, & aliis viris Peritis, ubi terminatæ sunt Dubitationes Judiciorum, & Novis injuriis emerfis, Nova constituuntur Remedia, & unicuique Justitia, prout meruit, Retribuetur. Ibidem.*

Unicuique ! What, to every Man in all the Kingdom ? or how far, and how high may this extend or reach ? Shall we propound this Doubt to the Antient Parliaments, who were most like to know their Power and Priviledge ?

The Law was clear enough before, but some were pleased not to think it so ; and therefore in the Statutes of *Marlbridge*, (as old as *Henry the third*) in the first place of all it was agreed and enacted, That *all men Living of this Kingdom*, as vvell high as lovv (*tam Majores quam Minores*) must and ought submit to Judgment, *Justitiam habeant & Recipiant in Curia Domini Regis*.

That this Expression may go lower than the Court of Parliament, I can not deny ; nor vwill others, I suppose, deny but that it may and must be yielded to the highest Court of all.

One of the Clauses of the Kings duty expressed in the *Saxon Lavvs*, is to do all things rightly by the Judgment of his great Court, *per Judicium Procerum Regni* ; and again, by that great Council to maintain or do Justice and Judgment, *Judicium Rectum facere & Justitiam tenere per Concilium Procerum Regni*.

All vvhich, and much more in those *Lavvs*, must

must be solemnly Svorn by the King, before the Kingdom and the Clergy, in *propria persona inspectis & tactis Sacrosanctis Evangelis, &c. coram Regno & Sacerdote & Clero*, (This may be considered) *antequam ab Archiepiscopis & Episcopis Regni Coronetur*; Even before he may be Crowned, or should require his Subjects *Homage*.

Insomuch that vwhen the Subjects have tendered *Homage*, (as some Lords did to King Henry the fifth) before the King had done his *Homage*, and Sworn his *Fealty* to the State and Laws; It hath been observed by Historians, as some kind of Comet, that I say not a *Prodigy*, in State Politicks.

And besides all the forms of Coronation found in *Hoveden*, *Walsingham*, and other Historians, (*secundum antiqua Statuta*, as *Matthew Paris* speaketh,) it is clear enough in the Records and Rolls of *Richard* the second (before others,) how the King first did take that Solemn *Oath*; and then the Archbishop went to every side of the Scaffold, relating to the Kingdom how the King was Svorn; and then he asked them, *si ipsi consentire vellent*, if they would now give consent to take him for their King and Liege Lord; and if so, they came and did him *Homage*.

If

If they would consent! What, was it at their *Choyce*? and were our English Kings *Elective*, plain *Elective*? sure it would be duely weighed, and I confess some things have made me very much suspect they were *Elective*.

And the rather also by considering the great Care and Importunity of some Kings, to procure the Crown to be settled by *Parliament* upon their *Heirs*; Which might intimate that indeed it was not their *Inheritance* at Common Law; for it was seldom seen, I suppose, that English Men have taken much Pains to obtain an Act of Parliament to settle their *Inheritance* on their own *Heirs*, except they were *Illegitimate* or *Aliens*.

And upon search, I cannot find the old Oaths of Allegiance did relate to the Kings *Heirs* or *Successors*, either in the Saxon or first *Norman* times, although we find the Oath in old Laws; long before *Edw.* the second, and in old Lawyers, *Bracton*, *Britton*, *Fleta*, with the *Mirror*, punctual in the Oath of *Allegiance*, but not a Syllable of *Heirs* or *Successors* that I can find.

Yet in the times of *Henry* the first and *Henry* the second there was some special Acts of Parliament for settling the Crown on *Maud* the Empress

Emperers or her Issue, and King Henry's Son was Crowned in his Fathers Reign, and of that time the *Salvo in Glanvil, Regi & Hæredibus*, which I find not in any other old Lawyer ; and I believe it not usual till the great Quarrels of York and Lancaster, it may be much Later.

But all such Acts (for tying the Crown to such or such a Family) do not evince a former Right of Succession, any more than the House of Austria doth prove the Empire not to be *Elective*, though it now seem as entailed on that Family.

I say not how often it hath been adjudged that *Affirmative* Statutes do not annul the *Common Law* ; and that one may *Prescribe* against a Statute *Negative*, but in *Affirmance* of the *Common Law*, (for which the Comments on *Littletons Burgage* ;) So that if an English King was *Elective* by the *Common Law*, the Kingdom might prescribe against late Statutes which might erre much more than they could oblige all future Parliaments, but they might still be free, and most of all in what was due before by *Common Law*.

Let us discuss it then, and see what Antient Lawyers and Historians do record about our Kings.

Kings, their limitations by our Laws, their Title by Succession or Election at the Common Law.

If *Bracton* or if *Fleta* may be Judges of this Question they will tell us, that in their times our King was *Elective*; *Non a Regnando dicitur sed a Bene Regendo, & ad hoc Electus est*; And again, *ad hæc autem Creatus Rex, & Electus, ut Justitiam faciat Universis*; Not only Created, but Elected, it is where they treat of Judges and of Jurisdiction.

And of our Saxon Ancestors, the *Mirror* is very plain that they did *Elect* or chuse their King from among themselves, *Eslierent de eux un Roy à reigner sir eux*; and being Elected, they did so and so Limit him by Oath and Laws.

In this we might appeal to *Tacitus* of our Ancestors, For theirs, who did both *Elect* and Bound their Kings and Generals, *Reges ex Nobilitate, Duces ex Virtute sumunt*; and of their King he saith, the Power was so bounded, that he could not call it *Free, Nec infinita, aut libera Potestas*, and that in *Conciliis*, Their Kings Authority was in persuasion rather than Command, *Suadendi potius quam jubendi potestate*.

Cæsar seemeth to conceive they had no King
or

or fixed Common Governour in time of Peace : but for War, saith he, they Choose out Generals, *qui Bello præsent ut vitæ necisque habeant Potestatem.*

In our Brittish Ancestors he found a King, but by Election of a great Common-Council, by whose consent he observeth that *Cassivelaune* was chosen King and General against his Landing ; *Summa Imperii Bellique administrandi, communi Concilio permissa est Cassivellauno* ; and again, *Nostro adventu permoti Britanni, hunc toti bello imperioque præfecerant.*

That the *Brittans* agreed much with the *Gauls* in their Customs, I do not deny ; but I know not why this should make the *Gauls* to be the Elder Brothers, as some teach us, because our *Britain* is an *Island* : Yet it may be much disputed, if not proved, that it once was joyned to *Gaul*, (or *France*) in one Continent, for which we might produce some of the old *Poets*, and others before *Twine* and *Verstegan*.

However, it is clear enough from *Cæsar* and *Pliny*, that the *Gauls* were much moulded by the *Brittish Druids*, although they seemed more Polite in *Juvenal's* time ; and afterwards being more *Frank*, they afforded a *Christian Queen* to *Ethelbert*, and the Model of a great School to

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Sigesbert ; which yet must not wrong *Alcuinus*, who from hence moulded the University of *Paris*, if we may Believe all that write of *Charlemaign*.

And if we add *Strabo* to those cited before, we shall find they chose both *Generals* and all great *Magistrates*.

When they had a King, the Crown passed by Election, and was so limited, that *Ambiotrix* (one of their Kings) acknowledged, *Ut non minus in se Juris Multitudo, quàm ipse in Multitudine* ; So in *Cæsar*.

Their *Common-Council* much consisted of *Equites* (and such perhaps our *Knights of Shires* ; *Electi de plebe*,) and *Druydes*, their *Clergy* who did over-rule them all, by their *Bams*, and Sacred *Oak Mistleto*, as if it had grown in *Dodona's Grove*.

Their grand Corporation was dissolved by *Roman Edicts*, in *Gaul* by *Claudius*, (as *Seneca*, *Suetonius* ;) but in *Rome* by *Tiberius*, (if not *Augustus*) in *Pliny* ; but *Vapiscus* keepeth a *Druydes* to presage the Empire to *Dioclesian*, when he had killed the Boar ; and *Ammianus* may afford them in *Rome*, in *Julian* or *Constantinus*.

But

But in *Scotland* or *Ireland* they remained longer, if we may believe their *Annals of Columbanus*, and of *William* the Irish Abbot: But in *Dioclesian's* time, *Amphibalus* the famous Brittan, fled from *Rome* to his Friend *St. Alban*, (who dyed for him in his Cloaths, it is said; but we find him Condemned by Law, and styled Lord of *Verulam*, Prince of Knights, and Steward of *Brittain*, in his Shrine, and *Jacob de Voragine*.) 'Ere long we find him made a Bishop in the *Holy Isle*, and there he did Succeed the Brittainish *Druids*, and his Scholars were enow with their Blood and Carkasses to make the name of *Litchfield*.

But the turning of *Druids* into our Bishops, (in *Lucius's* time,) is no more certain, I think, than that those were the *Flamins* or *Arch Flamins*, of whom we hear so much of late; but of old few or none relate it, but only *Monmouth*.

The Name of *Flamin* came to *Brittain* from the *Grecians* or the *Romans*, (who had *Druids* from the *Brittans*,) where they were most Sacred Priests; at first but three, but when every God and Godded Man or *Dæmon* had his *Flamin*, they became extreamly innumerable.

Yet the first three still kept their Distance,

Place and Seniority, from whence the Phrase of *Arch-Flamin*, which yet I dare not assert to have been in *Brittain*, or to be so much as known in the time of *Lucius*; or the name of *Arch-bishop*. But of this Sir *Henry Spelman*, of *Lucius's* Epistles in *Gratian*, and Mr. *Patrick Young* on *Clements* Epistle to the *Corinthians*.

But *Fenestella* with his Names of *Bishop*, *Arch-bishop*, *Cardinal*, *Patriarch*, *Metropolitan*, &c. is now come out with another Title of a later Age, than he that lived in *Tiberius*.

But to return to our *Brittish* *Druyds* moulding the State, and yet they would not speak of State but in or by a *Common-Council*, (as was touched before in the *Militia*,) and among these the same *Cesar* will tell us, that there was a chief or *President*, but chosen by *Deserts*, and not by a blind way of *Succession*; *Si sint Pares plures suffragio adlegitur; nonnunquam etiam armis de principatu contendunt.*

Nor is it probable the *Brittans* should be great Patrons of *Monarchical Succession*, which could hardly well consist with their *Gavelkind*, which is not only in *Kent*, but in divers other Places of *England* and in *Wales*; from the *Brittans*, as we may learn from *Parliament*, in

27 *Hen.*

27 *Hen. 8.* and in *K. Edwards Statute of Wales* with *Littletons Parceners*: And his Commentator makes it one mark of the ancient *Brittans*, and from them also to *Ireland*: and from the *Brittish Gavelkind*, do all the Children yet among us part their Fathers *Arms*, of which also the great Judge on *Littletons Villenage*.

But on the *Parceners*, he deriveth the *Crowns* descent to the *Eldest*, from the *Trojans* to the *Brittans*, so indeed do many others with *Monmouth* and *Basingstock*.

Yet our Best *Herald* the Learned *Cambden*, will deride the Story of the *Trojans* coming hither, but his many Arguments to prove the first Inhabitants to be a Kin to the *Gauls*, do no more convince me that the *Trojans* might not come hither afterwards, than that the *Normans* did not come, because the *Saxons* were before them.

I repeat nothing from *Gyraldus Cambrensis*, *Matthew Paris*, *Hoveden*, *Huntingdon*, or others, who derided *Monmouth*, till they were convinced by some *Brittish* Writers which themselves found; besides all the *Greek* and *Latin* Authors cited by *Virunnius*, *Leland*, *Sir John Price*, and divers others, that I say nothing of the *Scottish Chronicles*,

Chronicles, or of the Learned man that shewed King Henry the first the Descent of divers Nations of Europe from the Trojans, in *Huntingdon* and *Hoveden*.

But it may be considered what this State and Parliament hath oft owned of Brute, and the Trojan Story, not only in the grand Moot of the Dependance of Scotland on England, ever since King Brute ; which, beside all Records in the Exchequer, is at large in *Walsinghams Edward* the first, and the Survey of Normandy, as also in the Laws of the Confessor, cap. 35.

To which I might add, the Trojan Reliques, Statues, Tablets and Pictures, in all the British, Danish, Saxon, English Wars, found here in *Cornwall*, *Wales*, and other Parts, besides our Troy Novant, or new Troy, the old Trojan Roman name of this Famous City of the *Troinovantes*, (in the Roman Writers *Trimobantes*) now *London*, since the time of Lud's building a Gate, and changing this Cities Name.

But for leaving out the Name of Troy, some were so much offended, that it came to a great Contest and Quarrel, couched in Verse (from others) by the old *Gildas*, and translated by the Famous *Nennius* of *Bangor*, escaping that bloody Massacre.

Who

Who hath also left us an old History, (yet to be seen in MS.) collected, as himself saith, from the *Brittish* and *Scottish* Records, and from the old *Roman* Annals, (which were then found) relating the Pedigree of *Brute* or *Britto*, (some will have him *Brotos*, and some *Brutus*,) from *Æneas* to *Rome*, and his bringing some *Trojan* Reliques hither by the way of *Gaul*, where (he also saith) he built the City of *Turons* or *Tours*, much as *Mormouth* and others have the Story, though I could never find it in *Homer* or any of the Ancients, by them cited for *Turons*.

Yet I find the same *Nennius* confessing that the *Brittish* Annals had another descent of their *Brute* or *Britto*, from *Japhet* (obtaining *Europe* for his Portion with the *Brittish* Isles, of which *Noahs* Will in *Eusebius*, or other old Fragments ;) came alone, from whence the *Almans* and *Francks*, besides our *Britto*, (Father to the *Brittains*,) whose Genealogy through twenty Descents to *Noah* and *Adam* he saith he had from the Tradition of those who lived here in *Primis Britannie Temporibus*.

So that if we may not believe *Talieffin*, (the *British* Bard) of *Trojans* coming hither with their *Brute*, yet we may peruse his Scholar, or the *Merlin* that

that foretold the Name of *Brute* should come again upon this *Island* ; whether in the *Scottish* Union, or in the *Welsh* returning to their Lost Dominions, I dispute not ; nor how this Island came so like to *Somothrace*, (so near a Kin to *Troy*) in Rites of Worship, or in other Customs, as of old some did observe, especially in those concerning *Ceres* or *Proserpina*, so famous here, that in the old *Argonauts* the *Brittish* Isles are stiled the Court or Palace of *Ceres* ; and yet this might be for other Reasons.

But although I cannot deny some *Trojan* customs among us, yet I know not why I should grant that *Trojan Succession* to the Crown, which so many do assert, when as themselves do yield the same *Trojans* to be *Brittans*, and those *Brittans* of whom we spake before.

And besides the *Brittish Gavelkinde*, and all before, themselves do also relate their own *Brute*, parting his Kingdom among his three Sons, and again the Crown parted between the two Sons of *Madan*, two of *Gorbodio*, two of *Molmutius*, two of *Lud*, so near a Kin to him that *Cesar* found *Elected King* by *Common-Council*.

And I must believe those who assert the *Trojan* Crown to go by *Succession* : yet I know not why

why I may not also believe so many good or better Writers of the *Trojan Common-Council* or *Parliament*, and their Power in Peace and War, with all things else that might concern the King or Kingdom; which great Council did consist of *Princes* or *Nobles*, and *Elders* of the People.

Of which *Trojan Parliament* we read in *Apuleius*, *Socrates*, *Dæmon*, and in *Homer*, *Virgil*, *Diëtys*, and most ancient *Dares*, who lived also in our *Britain*, (if good *Bale* deceive us not,) which yet is not so certain as that he was Translated or Paraphrased in Latin Verse, by *Joseph* of *Exon*, or *Iskan* our Countrey-Man, as many of his Verses speak; although that Elegant Poem be ascribed to *Cornelius Nepos*, as by him Dedicated to *Salust*, in the times of the great Commerce between *Rome* and *Britain*; which produced so many famous *Brittish Romans*, beside *Constantine*, *Helen*, and the modest *Claudia*, of whom *St. Paul* speaketh, and *Martial* (in several places) maketh her a *British Woman*.

I will not insist upon their *Election* of Emperors or *Generals* by a kind of Lot in *Diëtys*, nor will I deny but the *Trojans* were severe enough to all *Traitors*, whose dead Bodies also were denied *Burial*, if we may believe all from the

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Illiads;

Illiads; but the *Odysses* may also afford us the very same Punishment for Tyrants, whom they hated as much as the *Grecians*.

Nor will the Patrons of *Succession* or *Prerogative* find more encouragement among the *Grecians* than among the *Trojans*; though I cannot deny but they do rightly observe many *Grecian* Customs among the *Britains*; nor will I deny to our Ancestors, both *Greek Philosophers* and *Greek Schools*, besides *Bladud's* at *Stamford* and other Places.

I could easily believe these Islands to be known to the *Grecians* long before the *Romans*, of whom *Lucretius* is the first (that I yet know) speaking of *Britain*; but it was described by *Polibius*, (though our great Herald seem to forget it,) who might learn it from the *Carthaginians* trading hither, and by *Eratoſthenes*, *Dicaeærus*, *Pitheas*, and *Artemidorus*, if I be not deceived from *Strabo*, that I say nothing of the old *Argonauts* (ascribed to *Orpheus*,) naming *Ireland* and describing *Britain*, or of the Book of the World, (in *Aristotles* Works) where *Albion* and *Ferne* are *Brittish* Isles, mentioned also in *Dyonisius*; and very famous for their Mines of *Tin* or *Lead*, whence the name of *Cassiterides*,
of

of which *Herodotus*, and others of the Ancients.

What was the *Grecian Genius* towards their Kings, doth not only appear in their Supercilious *Ephori*, Eye-brows, or the *Left eye of Greece*, but in the *Right Eye*, or *Athens*, of which much might be spoken from all the Greek Historians, besides their Laws or Politicks of *Plato* and his Schollars, long before the *Attick Laws* Collected by *Petitus*, that I say nothing of *Aristophanes* or any of their Poets.

But how much our Ancestors owed to the *Grecians*, I do not find expressed by any; most of our *Plays*, much of our *Works*, and somewhat of our *Laws* seemeth to be *Grecian*.

The *Genius* of a State is seen in *Plays*, some think, rather than in *Work*; they are *Passions* and as *Lovers Pulses*, which do shew the *Soul* much quicker than do *Words* or *Actions*; and the Greek *Scenes* were *Passions* (or *Sufferings*) of *Princes* rather than their *Actions*; and a *Tyrants* blood was thought the Richest and fattest *Sacrifice* to please the People and appease their Gods; but *Interludes* must be Corrected much, and then they may both *Moralize* and *Methodize* the best *Historians*, and may be *Divertisements*

of Use as much as Pleasure to a State, which else was apt to grow *Morose* or *Melancholick*, if it were too *Sedentary*.

The *Grecian Cards* or *Chefs* (at the Siege of *Troy*,) may shew their *Shuffling*, *Cutting* and *Triumphing* over *Kings*, and *Checking* them by small *Perins*, and in the *East Scheck-mat* doth signifie the *King is Dead*, or the *Kings Death*.

But when shall we come again to the *Mathematical* (or *Philosophers*) *Game*, which was also used here, though now we have lost old *Plato's Analyticks*, of which his *Theon* long before *Vieta* ? when shall our *Kittel-Pins* return again into the *Grecian Skyttals* of the *Muses*, whence they might degenerate ?

When shall our *Cards* return again to *Charts*, and teach our Children *Prospects* and *Geography*, with the true *Site* of *Countreys*, *Cities*, *Persons*, and the famous men of old, who conquered (in their *Plays*,) by *Laws* of *History* and exact *Chronology*, and not by *Fancy* only as of late.

When shall our *Grecian Dice* be taught to teach our Children *Squares* and *Cubes*, with all the *Mathematicks*, as they might much better and easier than our *Papers* and our *Tedions Figures* ; for I need not say how much the six sides of a *Dye* would help

help for the Root of all perfect *Cubes*, and half six for all *Surds* in that and higher *Powers*; beside so many other uses of the *Dye* in all *Mathematicks* and *Architecture*.

In which also we owe to the *Grecians* for our *Attick* and *Ionick*, and our other *Moods*; and so in *Musick* also, that I speak not of *Perspective* and almost all the *Mechanicks* of *Wheels*, *Beams* and *Leavers*, with perpetua or continual *Screws*; or of the *Physick* and *Apothecary* *Terms*, more *Grecian* than *Italian*.

And beside, divers of our *Law-Terms*, *Endite*, *Ideot*, *Chyrographer*, *Protonotar*, &c. I could almost believe the *Grecians* were the *Patrons* of our *Tryal* by *Twelve*, which was not first brought in by the *Normans* or by the *Saxons*, although we found it with them in *Ethelred*, or *Edward* the *Senior*, and before them in *Alfred*, as appeareth by the *Causes* why he hanged so many *Judges* in the *Mirror*.

From the twelve signs of the *Zodiack*, it might come to the *Chaldeans*, thence (or from the *Jews*) to the *Egyptians*; for in *Egypt* was the old *Jury* of *Twelve* Gods, so often in *Homer*, *Herodotus*, *Diodorus*; and from *Egypt* to *Greece*, with the *Twelve* Labours of *Hercules*, *Egyptian* or *Oriental*.

ental *Hircol*, *Hirtot*, *Hirjut*, and thence the Fable of his *Lyons Skin*.

But in *Greece* this Number was both Famous and Sacred, as in our *Juries*: and of this, *Plato* in *Timeus*, and in *Phædrus*, in his *Laws*, and in *Phædo* and *Critias*, which would almost persuade me that he had seen *Moses* or the *Flood*, or the Twelve old *Heroes*, or had read in *Moses* Song of the Earth being parted, according to the Number of the Sons of *Israel*, or (as some would have it) of the *Angels* or the Sons of God.

And for the *Grecian Trials* by Twelve, I need cite no more than the known Histories of *Orestes*, and of *Mars*, tryed for Murther by a Jury of Twelve, (and quitted only by the equality of Votes,) in that Famous Place which from him was called *Areopagus* or *Mars Hill*, of which *St. Paul* (and *Dyonisius*) and the Altar to the strange God is described in *Pausanias*, to be compared with *Laertius Epimenides*; (and divers others) that I say nothing of the *Σεμειον Θωαι*, which from *Areopagus* might come hither with the Tryal by Twelve, and be Mothers to the Name rather than Person of the famous British *Samothes*, as *Areopagus* seemeth to have been to much if not to most of our Law Pleadings and Customs in Criminals.

Yet

Yet it may be possible that this Number might be as Sacred among the *Trojans*, although I remember little of it till *Æneas's* coming into *Italy*; and then we hear of twelve *Procers*, twelve *Vulturs*, twelve *Lictors*, twelve *Hours*, and at length twelve *Months*, and other things, for which *Dionysius*, the *Saturnals*, the *Genials*, and *Tiraquel*, may be considered, with that of old *Ethelward*, in *Edgar*, *Argivæ Hebdomadas gentis posuere Magistri, septimanas quas voce Latini.*

But the *Romans* also had many, if not all their *Dozens* from the *Grecians*, which were known here long before *Ethelbert* did settle his *Dooms Romano more*; and we often find the number of *Twelve* in the old *Histories of Britain and Gaul*, for their *Twelve Peers* are much older than some may think, that will have them only to be *French*.

Nor would it be impossible, I do think, to shew some other of our *Law Customs* borrowed from the *Grecians*; yet I do not know that our old *Greek Lade*, was so called from *Greek Law*, (as divers would perswade us) or from *Greek Leod*, or from *Greek Language*, which yet appeareth in the *Welsh*; but I know not that it was spoken here or in *Gaul*, but
near

near *Marfeils*, a *Greek Colony*, not much younger than the elder *Cyrus*.

But it may be that the *Druids* had their Learning and their Letters (though in *Sacris* they did write but little) from the *Grecians*, or *Phenicians* rather, who in this did teach the *Grecians*, as both *Diſtys* and the Crowd of *Cadmus*.

I could alſo believe their *Characters* to be very like thoſe of *Canaan*, (as *Scaliger* on *Eusebius*, and others,) but I cannot yield them to be *Hebrew*, though ſo many Learned men affirm it: but for this ſee *Fullers Miſcellanies*, and *Buxtorfs Diſſertations*, with the *Punick Columns* of *Joſhuah* and *Adorams Tomb* in *Spain*, *Villalpand*, *Crineſſius*, old *Hebrew* in *Larius*, Mr. *Selden de Diſ Syris*, and *de Jure Gentium*, that I ſay nothing of *Tuſcans Antiquities*.

Yet, if any thing, I could wiſh the *Samaritan Pentateuch*, where the true Ancient *Hebrew*, (as ſo many, before *Marinus*,) it ſhould be in *Terahs* Age, at his Death, which would more ſettle *Chronology*, than elſe I find it poſſible, he being there ſixty Years younger when he Dyed than our Bibles make him; ſo that *Abraham* might be born at his Seventy, in which the *Jefuit* alſo agreeth unto *Scaliger*.

I can

I cannot believe the Story of *Ulysses* Navigation hither, or that *Hannibal* did Conquer *Britain*, although it be recorded in a *Jewish* Writer of as much note as *Gorionides*; but the mistake is of *Bretany*, for the *Brettian*, *Brutian* or *Brescian* Tract in *Italy*; and such a slip is also found in some Copies of *Polibius* *Atheneus*, and the Fragments of *Olympiodorus*.

But of *Phenician* Traffick hereabout, there are many Proofs and Reliques, beside the Famous Story of the *Punick* Pilot, who was commended and Rewarded by the State of *Carthage*, for sinking his Ship and Fraught rather than he would be forced by the *Romans* to discover the *Punick* Traffick for *Lead* or *Tin*, found about the *British* Islands, therefore called *Cassiterides*.

Of which so many Greek Authors before *Strabo* or *Pliny*, who relate the *Carthaginian* and *Marfilian* Traffick for those Oars. And *Matthew Paris* telleth us, that 1241. there was no *Tin* (that he had heard) in all the World, but in *Cornwall* only: And then it came to be found in some parts of *Almain*.

The Learned Author of the late *Peleg* (among divers other *Brittish* words) hath found a new Etymology for the Name of *Britain*;

G

which

which (notwithstanding *Brith*, for Colour or Painting, and *Bretas*, in some Greek Poets, for a Picture or a Painted Brat) he would have to be called by the *Phenicians*, *Berat Anac*, or the *Field of Tin and Lead*.

To which I may add the Northern Sea, call- ed of old the *Phronean Ocean*, or the Sea of *Saturn*, whom they feigned to lye asleep in the Bottom of that Sea, bound by *Jupiter* in a *Golden Punice*, of which *Plutarch*, *Eusebius*, *Ptolo- my*, and divers others; and of this, the Author of the *Veyl*, or *Mask of Heaven*.

Of which I must speak but little, only this for a *Clavis*: The *Scene* is the little World, or Isle of *Brittain*; *Thule*, some appendant to that Crown, or *Scotland*, whose troubles of 1639. are shadowed in the night work, called *Scotos*, (or *Darkness*) *Saturn*, the *Scottish Genius*, and *Mer- cury* the Clergy, but in special the late *Arch-Bishop* of *Canterbury*; *Jupiter* (the Son of *Saturn*) or a great *Scottish Lord*, lately on the *Scene*, that was first sent to reconcile *Saturn*, but he turned *Re- trograde*. *Mars* the *Genius of War*, and in speci- al, the great *General* against *Saturn*, or the Lord Lieutenant of *Ireland*: *Venus* seemeth to be *Queen Mother of France*, then alive in *England*:
Phæbus.

Phæbus and *Phæbe*, need no gloss. *Imperii fata*, plain enough to those that know that *Dialect*.

But *Phæbe* might have there seen (before this Parliament,) that *Peace* had been her *Work*, and should have been her *Happiness*: nor is it yet too late, or wholly past. *Habent etiam sua fata Regina*; and there is a silent *Patience* which may Conquer more than all the World can get by *Force*.

Who will unmask the *Chymical Part*? which the Poets also Veiled in their Fables of *Saturn*, bound by *Jupiter* in *Golden Pumice*; and it may be possible that future Ages may be brought to see or know the *Treasures* in our *Chronian Ocean*, and the meaning of that Riddle. In the mean time, he that can improve the *Sympathy* of *Mars* and *Venus*, or remove the *Antipathy* of *Saturn* and *Mercury*, or can bind *Saturn* by *Jupiter*, and by the Mediation of *Phæbe*, can reconcile all to *Phæbus*, or can live on *Herbs*, may have little need I hope to flatter any.

But to return to our *British Ancestors*. How *Cordiel* and *Guintoline* were Created *populi Jussu*, *Archigal*, *Ennianus* or others Deposed, is observed by divers: I shall only add, that *Proceres*

and *Magnates* here are rendred *Estates*, *People* or *Commons* in *Grafton* and *Chaucer*, or the old *Fruetus*, by *Julian* of *St. Albans*.

Molmutius first did wear a *Crown of Gold* (they say :) he did deserve it, for to him we owe divers of our *Common Law* Principles; nay, and that, for more than is found in *Monmouth*, as I touched before.

And upon him the *Patrons* of *Succession* build a fixed *Monarchy*, which was not such it seems before; nor since, if we may believe those we can hardly disprove, that from this time begin the petty *Princes*, & *plurimis Regulis supremam Mandandi & Judicandi Authoritatem*.

And themselves divide the *Crown* between his two Sons, *Bremus* the *British Thunderbolt* to *Rome*, (and some do carry him as *Lightning* to *Delphos*,) while his Brother *Belin* did return and dye in peace; and first of *British Kings* was burnt to *Ashes*, yet he lived here in *Bilingsgate* and *Key*, besides his famous *Ways* or *Streets*, his own and *Fathers Laws*, (which with the *Mertian* came to us through *Alfred*.) But we need not go to his Daughter *Cambra* for the first *Affinity* between the *Brittans* and *Sicambrian Francks*, or *Gaulish Germans*.

Come

Come we now to *Cesar's* time, *Lud* is alive in *Ludgate*, *London*, (as before,) he did amend the Laws, but by a *Comm-Council*: And such Council did reject his Sons, and Chose *Cassivelane* (as *Cesar* doth agree with *British* Authors.) He did summon one (that slew his Kinsman) to appear and submit himself to Judgment, *Sententiam quam proceres Dictarent subire.*

But the famous *Androgeus* protected him in *London* (being then the Governour,) pleading the Custom and priviledge of that City, which had also then a Court to hear and determine, all the Pleas of Citizens, or *Quicquid aliquis in Homine suos clamaret*, and that also by Ancient Prescription, *ex Veterum traditione.*

Which from *Monmouth*, *Virruinius Ponticus*, and others may be compared with the Laws of the *Confessor*, for *Troinovant* or *London*, and its weekly *Hustings*, and *Ardia Compota*, and *Ambigua placita Coronæ*, and for the Courts of the whole Kingdom there, whence it is called *Caput Regni & Legum.*

Which may also be compared with that of the *Mirror*, for Parliaments to be in *London* by ancient Laws, which is here expressed, *Juxta*
vete-

veteres Consuetudines bonorum Patrum & Predecessorum, & omnium Principum & Procerum, & Sapientum seniorum Regni, very full and clear, Parliaments of all Estates.

That which is added of those Courts, to sit and hold wherever the King was, is *British* also as well as *Saxon*. So the Laws of *Howel, Dha, the Good*; (in the *Chronicles of Wales*, but larger in *Sir Henry Spelman*,) *Ubiunque Sacerdos, & Destein, & Judex, ibi Dignitas Curie & Aula Regia, licet Rex absens sit*: and this is one Reason why the King was never *Nonsuit*; because he was supposed present in all Courts: and yet his Attorneys *Ulterius non vult*, had the effect of a *Nonsuit*.

But for *London* and its Antiquity before *Rome*, *Stephanides* (a Monk as old as *K. Henry* the first, now in Print,) may be compared with *Tacitus*, *Ammianus Marcelinus*, nay, with *Cesar* also for the *Trimobantes*, although some think he never saw this City. But the Charters of *K. William* and *Hen.* the first are in Print; so also of *Richard* the first, and *K. John*, in *Hoveden* and others, which yet must not perswade us that *Sheriffs* were then first Created here.

For *Counts* or *Viscounts* are as old as *Counties*:
and

and the *Brittish* Authors speak of Dukes of Troynovant, (such was *Androgeus*,) and *pro Consulibus vice-comites*, in Fitz-Stephen, and *Willielm. de Einford vice-comes de London*, & *Joannes Subvicecomes*, in the Book of Ramsey, Wallbrook Case in Hen. the first; that I may say nothing of William the Chamberlain de Londonia, of whom before in Hen. 1. which may be premised to the Famous *Quo Warranto*, brought in Edward the Second.

But to return to our *British* Kings, I cannot deny but some Authors do Record the Crown (as by Act of Parliament,) settled on the Heirs of *Cassivelaune*; but themselves also can shew us the very next King brought in by *Election*, (not from *Cassivelaune*,) and that both of Lords and Commons too, if we may believe *Chaucer*, or the old *Fructus Temporum*.

This *Theomantius* (many of their names are Greek,) was Duke of Cornwall, when he was *Elected* King; He doth yet live in a Famous Son, great *Arviragus*, (whom the Roman Poet, and so many others praise,) he did amend the Laws, but by consent of Parliament; for all agree that a Senate was *Elected* (or *Dilected* as they speak,) in his time; not then first
Created,

Created, but it might be renewed after the Romans had so much interrupted it, of which before from *Tacitus* ; so far am I still from believing our first Parliament did come from the Roman Senate.

It is a known History, how that King Divorcing himself from his *Scottish* Queen, and Marrying a Daughter of *Claudius Cæsar*, (at *Claudio Cestrie*,) was censured by his Parliament or *Proceres*, so that he was fain to exhibit his Answer in Writing, which is still left us in Fragments in divers places.

Amongst other passages, he said, he knew not but it might be lawful for him to have more Wives than one; *Eo quod Leges Britannorum, illuc usque id nunquam prohibuissent*, because the *Brittish* Laws had not yet forbidden it.

I must not here dispute what moved *Lucius* to desire and send for the Roman Laws, nay, and that for the State also. Nor can I yet Subscribe to them that think the *Britains* to be wholly Governed by Roman Laws, from *Claudius* to *Attila's* time.

But could the *British* King send out for Foreign Laws, or call them in without consent of Parliament ? it might not be, and *Eleutherius's*
Answer

Answer is in Print, (among the *Confessors Laws* and every where,) *ad Petitionem Regis & procerum Regni Britanniae. Petistis à nobis Leges Romanes & Caesaris*; his answer was, You have the Scriptures, and from them you shall do well to frame your Laws, but by your Parliament, *per Consilium Regni vestri.*

They which begin our *British Christianity* from *Eleutherius*, seem not to consider his Epistle, granting that the Britans were already Christians, and had both the Old and New Testament: *Susceptis nuper Mis. D. in Regno Britanniae, Legem & Fidem Christi, habetis penes vos in Regno utramque Paginam, &c.* They were Christians long before.

Tempore summo Tiberii Caesaris, as *Gildas Bado-nicus*; and *Albanus* telleth how Philip the Apostle sent hither *Joseph of Arimathea* out of Gaul, see *Baronius*, E MS. *Historia in Vaticano*, & *Melchin*, cited by *Bale*, *Capgrave* of *Arviragus*, and *Malm'sbury* of the Famous *Glassenbury*, which in old Charter by Parliament is said to be Founded by the Lords Disciples, and is therefore Styled, *Fons & Origo Religionis*; as *Westsex* is *Caput Regni & Legum*, in the Laws of *Henry the first*, as *London* in *St. Edwards*.

H

Some

Some have also brought St. *Paul* in Britain ; so *Venantius Fortunatus* (Anno 570.) from *Theodoret* perhaps, who yet nameth not St. *Paul*, but the *Leather Cutter*, and the *Publicans* and *Fishermen*, which may be St. *Peter*, if we may believe the Greek Author cited by Mr. *Patrick Young* on *Clemens*, or *Sophronius* and *Nicephorus*, as *Dorotheus Tyrius* of *Zelotes* : That I say nothing of the British Bard, who from the Stars did tell the Birth of our Saviour, in so many older than *Bale*.

But again to the British Parliaments, for so we read in the Laws of King *Alfred*, (out of British, Trojan, Grecian, &c.) that in the very first times of Christian Religion in this Island, Laws were made by a Common-Council of Bishops and other Wise Men ; with that of *Bede*, *Servabant Reges sacerdotes privati, & Optimates suum quique Ordinem.*

After the Death of *Lucius*, the Britains could not soon agree about the Choice of another King ; ('tis every where,) 'ere long they chose *Asclepiodat* the Duke of *Cornwall*, by consent of Commons also ; *Communi assensu & armante Populo* : Troublesome he was to all the Romans, but especially to *Gallus*, who hath left his Name
in

in *Walbrook*, as the *Gauls* (some think) in *Wales* ; but for this *Polydor Virgil*, and the *Confessors Acts*, with the *Laws of King Ina*, may be compared with *Monmouth*, *Virunnius*, *Basingstoke*, *Florilegus*, *Gyraldus*, and some passages of *Bede*.

Coel e're long appeareth on the Scene, but yet against *Succession* ; and he cannot dye so long as *Helen* liveth, Mother to the Christian Emperor, but Daughter to our *Brittish Coel*, who was also Father unto *Colchester*.

We are come to times of more certainty, when that deadly wound (of one of the *Heads*) had made the *Roman Empire* gasp, as if it would Expire and breathe no more ; it had little list or leisure to command or Counsel any of the *Toes*, or other Members at a Distance.

In this point of time the *Britains Rose* (with other Nations) and did soon recover most of that the *Romans* held by force ; their Laws and Customs now were free, 'tis yielded us by all : but they could hardly turn and view their Liberty, before they came to be new Slaves to the *Picts* and *Scots*, ancient Appendants to the *Brittish Crown* in Fee.

The *Roman Consul* then in *Gaul*, could not regard the *Brittish Sighs* and *Tears*, which himself

knew to be as just as pitiful ; for had the *Romans* not so gleaned *Britain* of its Glory, (for their Conquest of other Nations,) they had never asked help it seems against the *Scots*.

From the *Romans* they had first recourse to their Neighbour *Gauls*, or to their Countrey-men in *Gaul*, for such they were in that which to this day is called *Brittany*.

Upon what terms they had help from them I dispute not ; their King had as great a Name as the great *Constantine*, but how himself or his Sons like the *Brittish* Reins, we may guess in part from what we read in *Gildas Tears* for his poor Countrey ; where he complaineth that Kings were Elected and Anointed for nothing of God or of Good in them, but only for their Force, &c.

This is also found in another Author (besides *Gildas*) as old as King *Stephen* or *Henry* the Second, which may the more perswade us that *Monmouth* had good Authority for what he Writes of those times, for he also hath *Gildas's* words, with very little variation.

By which we see the Law, or at least the Custom of those times, both for *Electing*, *Anointing* Kings among our *British* Ancestors.

Two

Two of those Kings may be *Constantine* and *Constans*, who are said to be Slain by some of their Guard or Attendants, yet so as divers intimate it came from a farther and an higher Hand.

Constans also came up to the Crown by a Faction rather than a free Choice, as all relate; who ascribe it to the Duke of *Cornwall*, not without great Contests of divers Lords, and with little consent of Commons, *vix Annente Populo*, as we may read in divers Authors, who are also plain enough to make us know, that he was pulled down by the same Hands that set him up.

Vortiger came next, but on *Election*, it is agreed by all; and that there were two Royal Princes (Sons to the late, and Brothers to the last King,) who must wait for the Crown with much Patience.

How he called in the *Saxons* by consent of *Parliament*, I shewed before in the *Militia*, and I might confirm it from divers others; who do also Record, that the King told the *Saxons* that he durst not without the Consent of his *Proceres*, assign them any Land, or City, or Castle; for that it was against the Laws of his Kingdom, &
prohi-

prohibitus sum, quod Proceres Regni dissuaderent, &c.

Yet it may seem the Lords agreed to their settling in *Thanet* afterwards, but the Commons Dissented so, that they resolved to drive them out again, and that in Common-Council or Parliament : *Concilium fecerunt cum Majoribus suis, ut pacem disrumperent ; & dixerunt, Recedite a nobis, &c.* My Author is old *Nennius* of *Banger*.

He hath clear passages for Parliaments in that time, and for their Power also : As for *Incest* with his own Daughter, *Vortiger* was first Corrected, (perhaps with the *Jewish* Discipline, which was here also till the time of *Henry* the Second) and *St. Germane* the Arch-Prelate, came with the whole Convocation-House (*Cum omni Clero Britanniae*) *Corripere Eum*.

Nennius saith, that in a great Moot of Clergy and Laity, he was so roughly handled, that he rose up in a great Rage and Fled, or at least sought how to Flye, but he was Banned ; *Maledictus est, & damnatus a beato Germano*.

Afterwards *Vortimer* was chosen King, ('tis every where) but after divers Victories he Dyed, Poysoned (as some thought) by *Vortiger*.

He now Combineth with the *Saxons*, and by their Power entreth the Scene again, but
with

with little Consent of the *Britains*; and although he Acted a while, yet he was Hissed off, being odious to all, till at length his Heart brake. *Nemius* addeth, that some said the Earth opened for him; and *St. Germane* Writeth, that his whole Family was Burnt from Heaven, which was much alcribed to the Clergies Curse or *Excommunication*.

Which was in use among the *Britains*, and that also upon their Princes, of which we have many examples; as of *Tander*, and *Clotri*, for Homicide and Perjury, and *Hovel*, *Glevissig*, and *Brochwell* did hardly escape by a great Fine & *Judicium Sufferere non potuit*, of which Sir *Henry Spelman* in his Synods of *Landaf*.

It was then by much more heavy than of late: *Cesar* observeth it among the *Druids*, and in him it is *Pana Gravissima*; adding also, that such Persons were Abhorred by all as some Loathsome Disease, and that they might have no Honour or Right of Law, *Neque iis petentibus Jus redditur*.

And among *St. Patricks* Canons we find the Excommunicate excluded, à *Communione*, & *Mensa*, & *Missa*, & *Pace*; their Ceremonies in this seem a-kin to the *Jewish Cherem*, nay, to their *Shammatba*:

matha, (or *St. Pauls Maranatha*,) and it so continued among the Saxons also, as we may see in the Laws of *Canute*, making it Capital to protect or harbour any such: But in the *Confessors Acts*, when an *Excommunicate* fled to the Bishop for Absolution, *Eundo & redeundo Pacem habeat*; else it seems they were as *Out-Laws*, who might then be Killed by any that met them, as the same Laws of *Woolfshead* in another Chapter.

Which may help us to Interpret those that speak of the *Jews* being *Excommunicate*; nay, and that also by *Seculars* in *England*, of which in *Matthew Paris* and his *Additaments*; but his *Glossar* rightly expresseth it by the University Phrase of *Discommoning Townsmen*, which of old was much worse it seems than now.

After *Vortiger*, *Aurelius*, *Ambrose*, à *Convenientibus Britannis*, & *Convocato Regni Clero in Regem erectus est*: He might also be Inserted into *Gildas*, for he dyed by Poyson, if good Authors deceive us not.

At his Death a Comet like a Dragon, and the Bards apply it to his Brother, thence called *Uther-Pendragon*; *Florilegus* addeth, that he made two Dragons of Gold, Offering one, and carrying

ing the other still before him, whence the *Dra^g*gon in our English Standard, although some have asserted much of him they call *St. George*.

That which *Westmonster* or *Polydore* expresseth by *Præcepit proceribus Regni Convenire*; *Monmouth* thus, (in *Aurelius*) *Jussit Clerum ac Populum submonere, ad Ædictum ergo illius venerunt Pontifices & Abbates, & ex unoquoque Ordine qui ei Subditi*; and again of *Uther*, *Convocato Regni Clero, ammentibusque cunctis sublimatus est in Regem*; and again, *Communi Populorum Concilio*.

This *Uther-Pendragon* is vouched and asserted in the famous Contest of Little Britains Subjection to *Turon*, (may it also allude to the Story of *Brute*,) of which *Gratians* Decrees and *Matthew Paris*, ad *An. 1199*.

Uther being Dead, *Convenerunt Pontifices cum Clero Regni & Populo*, a Parliament (agreed by all) to Bury him *Regio More*, in the Gyants Dance or *Stonehenge*, which himself had gotten by *Merlins* help out of *Ireland*, fixing it so near to *Salisbury* for a Monument of that Parliament, which was thereabout Destroyed by the Saxons.

A Parliament I call it, so I may: In *Nennius* they are *Seniores Vortigirini Regis*, but in *Monmouth* (and those that follow him,) they are *Prin-*

cipes & Consules, (that is, Comites,) & Barones & Cives, called by the Kings Command, Edict, or Writ of Summons.

For *Arthurs* Parliaments, it would be much Superfluous to produce more proof than what already is in *Sir John Price*, *Cajus*, *Leland*, or others that assert his History ; this I shall only add, that in this of all we may Credit *Monmouth*, who is so punctual in nothing as in vouching each County and City that made up his Parliaments ; *Ex Diversis Provinciis, proceres Brittonum Duces* ; and among others, *Dux Doroberine Consules*, both of Counties and Cityes, *Boso Ridocensis*, id est, *Oxonefordiæ*, *Lot Consul Londonesiæ*, &c.

And among Forreign Princes, he Nameth the Kings of Ireland, Island, Godland, Orcades, Norway, Denmark and others, besides the twelve Peers of Gaul, (of whom also in divers other places, that I speak not of the twelve *Reguli*, which Brute found in Gaul ;) nor was there a Prince of Note (saith he) *citra Hispaniam*, who did not appear at his Summons : which may be compared with that of K. *Arthur*, among the Lawes of the Confessor, and in *Horn*, as Authentick as *Neubrigensis*.

Come we to the Saxons, what I cited before from

from the *Mirror*, *Tacitus*, *Cæsar* or others, may be fully asserted from their Histories ; I shall not insist upon *Offa's Election*, although it be clear enough from his own Words ; *ad Libertatis vestrae Tuitionem, non meis meritis, sed sola Liberalitate vestra unanimiter me convocastis* : and the Lives now Printed with *Matthew Paris*, (and his *Henry the third*) mention divers, if not all the Counties which made up *K. Offa's* Parliaments. Nor will I spend time in *Cuthred*, *Beonerd* or others, *Deposed* by Parliament, because the Monarchy was not yet so fully settled.

But in the *Confessors Acts* we find *K. Ina* Elect-ed (though by means of an *Angel*,) and the first Saxon Monarch ; of his Laws, and Match with his *Gaulish*, *Walish*, *Cambrian* Queen before, as also of his clear and full Parliaments in the *Militia*.

E're long we find a Parliament at *Calcuth* ; *Conventus Pananglicus, ad quem convenerunt omnes Principes tam Ecclesiastici, quam seculares* : wherein, by the King, Arch-Bishop, Bishops, Abbots, Dukes, Senators, & *Populo Terræ*, (Lords and Commons,) It was Decreed and Enacted, That *Kings* should be *Elect-ed* by the Parliament ; à *Sacerdotibus & Senioribus Populi Eligantur* ; and that being so

I 2

Chosen,

Chosen, they should have prudent Councillers, fearing God; *Consiliarios Prudentes, Deum Timen-* *tes*; and that Bastards (*de adulterio vel Incestu procreati,*) should not be admitted to the Crown: it is both in Sir Henry Spelman, and in the *Magdeburgens.* cent. 8. cap. 9. pag. 583. &c. Edit. Basil 1567.

Egbert by all is a fixed settled Monarch, but without or against Right of Succession: *Ordinatur in Regem*; So Ethelwerd, *Omnium Consensu Rex Creatur, in Polidor*; *Ad Regnum Electus, moxque imperare Jussus, Patrie desiderius satisfecit*, as we read in the Monk of Malmsbury.

About this time the Mannor of Mallings in Suffex was settled on the Church of Canterbury by Act of Parliament, *Consentientibus Magnatibus*; It had been given before by one of the Kings, but it was recovered again, *Eo quod Magnates noluerunt Donationem illam Ratam fore*. To what Sir Henry Spelman hath of 838, I shall only add; that Matthew of Westminster doth afford us Princes, Dukes, Earls and Barons, both in that and former Years, besides Inferior Laies and Clergy, whom he calleth *Rectores Ecclesiarum*; and in Ingulph we find *Principes, Duces, Comites, Barones, Comitatus* and *Baronias* with *Præceres Majores*, long before the Norman.

Ethelwolf,

Ethelwolf, a Monk, a Deacon—and a Bishop, yet *Elected King*, because they could not find a fitter person for the Crown, *Neccssitate Co-gente factus est Rex*, in *Roger Hoveden*, & *Consensus Publicus in Regem Dari petiit*, in *Bale*.

At Rome he repaired the English Colledge lately Burnt; but he displeased the Parliament, by getting his Son *Alfred* to be Crowned by the Pope, and by Marrying a Daughter of France, whom without their Consent he styled *Queen*, which was against the Common and the Statute-Law, *contra Morem & Statuta*, as we find in *Florilegus*, to be compared with the Saxon Chronology, and *Affer Menevensis*, with *Wigoranensis* and *Malmsbury*, before *Stow* or *Polidore*.

But notwithstanding his Coronation by the Pope, King *Alfred* did acknowledge his Kingdom to the Bounty of his Princes and Elders of his People: *Deus & Principes cum Senioribus Populi, misericorditer ac benigne dederunt*; as himself speaketh in his Will, (subjoyned to his Life by *Menevensis*;) wherein he also desireth to leave his People (whom he calleth *Noble West Saxons*) as free as mans Thoughts within him; *Ita Liberos, sicut in Homine Cogitatio*.

How far *West Sex* did then extend, may be known:

known in the Saxon Laws, with those of St. Edward and Hen. the first, where it is Styled, *Caput Regni & Legum*, (as London before,) to which all must have recourse, in *omni Dissidentia Contingentum*.

Edward the Senior was his Son, but Elected King by Parliament; Successor *Monarchiæ Eadwærus à Primatis Electus*, my Auhor is old Ethelwerd.

King Etheftane a natural Son, and so excluded from the Crown by Act of Parliament at Calcuth, yet being a gallant Prince (of great Hopes and Virtues) he was Elected: *Electus magno Consensu Optimatum, & à Populo consalutatur & ab Archiepiscopo more Majorum Coronatur*, as we read in Malmsbury, Huntingdon and Virgil.

Yet there was a great Lord, Elfred, who opposed much, and e're long Rebelled, scorning to Submit to him, *Quem suo non diligisset Arbitrario*; being sent to Rome to purge himself of this Treason, he Forsook it at St. Peters Altar, but fell down, and being carryed into the English Colledge, Dyed, and his Estate by Act of Parliament was given to the King: *Adjudicata est tota Possessio, in magnis & in Modicis quemadmodum judicaverunt omnes Optimates Regni Anglorum*, as the Kings Charter speaketh; settling his

his Land on *Malmsbury*. How tender they were of Blood, I spake before, and of K. *Williams Law*, *Nequis occidatur vel suspendatur* : but *Wigornensis* and *Hoveden* speak of K. *Henrys Law* for Hanging any found in *Furto vel Latrocinio* ; yet in *Ethelstane* the *Wergyls* were agreed by Parliament, and a Kings Life valued at 30000 Thrymses.

Of *Anlo's League* among the Saxon Laws, that he was chosen King by some that rejected *Edmund* ; we read in *Florence* and *Hoveden* ; as of one that Scrupled in *Ethelstane*, because he had Sworn Fealty to *Anlave* in the Monk of *Malmsbury*, but it might be another *Anlave*.

Edred came in by Election, being preferred before the Sons of *Edmund*, who was King before him ; of his Parliament Summoned by Writ, we spake before in the *Militia*.

About this time were the *Constitutions of Odo*, *de officio Regum & Secularium Principum* ; they are found in Saxon, and are now Printed in Latin, to be compared with the Statutes of *Calcuth*.

What Power they had, may appear in *Edwin*, for Incest Excommunicate by the same *Odo* ; & *unanimi omnium Conspiratione Edwinum dejecto, Eligunt Deo Dictante Edgarum in Regem, & Annuente Populo, res Regni Publica despectita inter Fratres* ;
and

and afterwards, Clito Edgarus ab. omni Anglorum Populo Electus est, &c. Confluentibus Principibus, & omnis Ordinis Viris, cum magna Gloria Bathonie coronatus est presentibus Præsulibus, ac Magnatibus Universis, Datis singulis Donariis consuetis, quæ Reg. Coronat. dari Magnatibus consueſcant; of which Matth. Westmon. Malmsbury, Hoveden, and Florence of Worcester.

How this Mighty Edgar was handled and Humbled for Ravishing a kind of Nun, is observed by divers; and that after his seven Years Pennance, (being not to wear his Crown,) Congregatis omnibus Angliæ Principibus Episcopis & Abbatibus; The Crown was again Restored to him, Coram omni Multitudine Populi Anglorum, cunctis Latantibus & Deum in Sancto Dunstano Laudantibus, as may be read in Capgrave.

Baronius of this, and a great Lords Rape, (of that time) speaketh of some Appeal to Rome, whence Dunstan was commanded, Peccatori condescendere; but he would understand it only, si Penitens Peccatum relinqueret; Nec aliter (saith Baronius) potuit intellexisse.

Edgar being dead, there was much Contest in Electing the next King: De Rege eligendo Magna inter Regni Primores orta est Dissensio; quidam Eadwardum

Eadwardum; *Quidam eligerunt Ethelredum*, as the Monk of *Worcester*, besides *Hoveden* and *Matthew of Westmon.* who agree also that at length the Arch-Bishops, *cum Chorepiscopis, Abbatibus, Ducibusq; quamplurimis*, did Elect, Consecrate, and Anoint *Edward*.

Who enjoyed it with little quiet, and among divers Contests of Parliament, affrighted at the *House Fall*, or amazed at the *Angels* or some Strangers voice they knew not whence: E're long we find him hudled into Dust at *Warrham*, which Queen *Ælfrith* (or *Ælfsted*) attoned by Hospitals or other works of Devotion; but a Fiery bloody Cloud followeth a Blazing Comet.

Of *St. Edwards* and *St. Dunstons* annual Festivals, established by Parliament, the Laws of *Canute*. It was that *Dunstan* who presaged so much ill of *Ethelred* (at his *Baptism*,) and to him at his Coronation, which yet was by consent of Parliament; *Matris suffragio proceribus Congregatis*, as the Monk of *Malmsbruy*.

Where we have this Compendium of *Ethelred*: *Regnum adeptus obsedit potius quam Rexit, Annis 37. Sævus in Principio, miser in Medio, Turpis in Exitu*: So that we need not wonder at the

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Parliament which in his Time provided, that the greatest and the highest Offenders should have most punishment and heaviest Doom.

In the *Danish* Storm he fled to *Normandy*, and the Parliament sent him this Message, (in *VVigornensis, Hoveden, Huntingdon, Florilegus* and All,) That they would receive it again on Condition he would govern more Justly, or more Mildly; *si ipse vel Rectius gubernare, vel Mitius.*

By his Son *Edward* he cajoled both the Lords and the Commons, *Majores Minoresq; Gentis sue*; promising to be wholly guided by them, and so return'd again. But he gave so little satisfaction to his People, that they rejected his Sons, and Elected *Canute*: Who did solemnly Swear to them, *quod & secundum Deum & secundum Seculum Fidelis esse vellet eis dominus*; as the Monk at *VVorcestre*, and those that follow him.

Yet it is also agreed, that the Citizens of *London*, & *pars Nobilium*, did Elect *Edmund Ironside*; and that the Kingdom was also parted between these Two, by consent of Parliament: and (beside the croud in the Road,) the Laws of the *Confessor* do assert that Agreement to the
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Parliament, Universis Angliæ Primatibus assensum Præbentibus.

Edmund lived but a few Months to interrupt Canute, who was then received by Consent of All : *Juraverunt illi quod eum Regem sibi eligere vel-
lent ; Fœdus etiam cum Principibus , & omni Populo
ipse , & illi eum ipso percusserunt*, as Old Florence,
and Hoveden , besides the Saxon Chronology ; and
the Abbot of Croyland hath it thus, *Omnium Con-
sensu, Canutus super totam Angliam Coronatus.*

Of his Parliaments and their good Laws I
spake before, and of their Oath to the Kingdom
much might be added : And besides all Histo-
rians, Fleta speaketh of his Brief or Writ, sent to
the Pope, and of his Church-seed, payed (as he
saith) *Sanctæ Ecclesiæ, die Sancti Martini, Tempore
tam Britonum quam Anglorum, Lib. 1. Cap. 47.*

Harold came after, *Consentientibus quam plurimis
Natu Majoribus Angliæ* : As Wigornensis and Hove-
den : *Electus est in Regem, fuit N. Magnum placi-
tum apud Oxenford, & Elegerunt Haroldum*, as we
read in Huntingdon, and Matthew of Westminster.

But Harold being dead , *Proceres ferme totius
Angliæ , Legatos ad Hardicanutum Brugæ Mittentes ,
Rogaverunt illum ut Angliam veniret & Sceptra Reg-
ni susciperet.* And afterward , *Gaudentur ab omni-*

bus suscipitur ; and *Huntingdon* addeth, *Electus est* : But he did nothing worthy of their Choice, and so became odious. : E're long, we find him swooning at *Lambeth*, in the midst of a Wedding Jollity, and soon after Expiring.

Edward the Confessor succeedeth by *Election*. *Paruit Edwardus, & Electus est in Regem, ab omni Populo*. And *Florilegus* addeth to *Huntingdon*, That *Annunte Clero & Populo Londinis, in Regem Eligitur* : As before them both, *Ingulph, Omnium Electione in Edwardum Concordatur*.

His Elder Brother *Elfred* stepping in between the Death of *Harold* and *Hardicanute*, *Compatriotarum perfidia, & maxime Godwini, Luminibus orbatus est* ; and little less than *Famished* ; *Godwin* excuseth himself by the Kings Service or Command, but it would not acquit him, though he bestowed costly Bribes.

Edward can hardly dissemble it ; *Godwine* rageth, flieth out into Rebellion, and is Banished (it seems) by Parliament : E're long, he returns again, presuming on his Great Friends and Alliance ; but in Parliament the King *Appeals* him of his Brothers Death, which *Godwine* denies, and puts himself upon the Parliament, as did the King, saying, That they had heard his *Ap-
peal*

peal, and the Earls Answer ; and it remained that they should do Justice, and pronounce Judgment.

It was in Debate, whether a Subject might Combat his Prince upon *Appeal* ; but at length the Quarrel was composed by the Parliament, (till *Godwine* curseth himself, and is choaked, as his Lands swallowed in *Godwins Sands*,) of which Old *Wigornensis* and *Hoveden*, with *Malmsbury*, *Huntingdon*, *Florilegus*, and divers others, but especially *Aornalensis*, and Mr. *Seldens Titles of Honour*.

That King *Edward* named the Duke of *Normandy* for his Successor, is affirmed by some that follow the Abbot of *Croyland* and *Malmsbury* ; but the Monk of *Worcester* asserteth *Harold* to be chosen by the King and Parliament, to be his Successor : *Quem Rex Successorem elegerat, à totius Angliæ Primatibus, ad Regale Culmen electus* : as *Roger Hoveden* (in the same words.) And the Monk of *Malmsbury* confesseth, That *Angli* dicant a Rege Concessum, &c. Adding also, That *Harold* excuseth his Breach of Oath to the Norman (in which All agree) by saying, It was presumption so to swear or promise the Succession to the Crown, without consent and act of Parliament : *Absque Generali Senatus & Populi Conventu & Edicto* ; or, *Absque Generali consensu*, as *Matthew Paris*, and

and *Westminster* express it; but what in them, is *Tanto favore Principum*, as in *Malmsbury*, and the continuer of *Bede* : *Tanto favore Civium*, regendum suscepit.

Of *William the Norman* much in the *Militia*, much yet to be added for his *Election*, and the *Peoples* free consent against his *Conquest*.

Londonias eum Episcopis plurimis Petit, & Letanter receptus oranterque Rex conclamatus. So, the *Abbot of Croyland* living at the time, which *Malmsbury* expresseth thus : *Londoniam petit, moxque cum gratulatione Cives omnes effusi, obviam vadunt; prorupit omnibus portis unda Salutantium auctoribus Magnatibus : Ita Angli, qui in unam coeuntes sententiam potuissent Patria reformare ruinam, dum nullum ex suis vobebant inducere Alienum.* *Huntingdon* thus, *Susceptus est à Londiniensibus pacifice, & Coronatus.* *Matthew Paris* and *Florilegus* thus; *In Magna exultatione, à Clero & Populo susceptus, & ab Omnibus Rex acclamatus.* *Gemitivensis* addeth, That *ab omnibus Proceribus Rex est electus, & Sacro Oleo ab Episcopis Regni delibutus*, as *Walsingham* in his *Neustria*. *Wigornensis* telleth us, that before his *Coronation* he did solemnly *Swear, Coram Clero & populo, se velle Sanctas Dei Ecclesias & Rectores illarum defendere, nec non cunctum populum juste regere, rectam Legem statuere*

statuere & Tenere, &c. So also doth Hoveden. Matthew Paris, in the Life of Frethrerick Abbot of St. Albans, sheweth how free the Norman found our Ancestors: *Jugum servitutis à tempore Bruti nescientes*, & more *Normanorum Barbas radere*, (which they note in *Cæsar* also of the Britains;) and concludeth, that *pro bono pacis*, he did solemnly swear to observe their Old Laws; *Bonas & Approbatas, antiquas Leges, quas Sancti & Pii Angliæ Reges, ejus Antecessores, & Maxime Rex Edwardus statuit, inviolabiliter observare*; (the like Phrase we find in *Ingulph* of the same Laws) which was some Repetition of his Coronation Oath.

Some affirm that he refused to be Crowned by *Canterbury*; but *Neubrigensis* telleth us, that he fought it of him, *Tyranni nomen exhorrescens*, & *legitimi Principis personam induere gestiens*; but *Canterbury* denied to lay on his hands, *Viro Cruento & alieni Juris insavori*. Then he complied with *York*, and bound himself *Sacris Sacramentis, pro Conservanda Republica, &c.*

It might also be added, that if *K. Edward* might dispose the Crown as his own Fee, yet by the *Common-Law*, or *Statute of Calcuth*, he could not dispose it to a Bastard; as *K. William*
is

is exprefly called in the Letters fent to the Pope, from the Parliament of *Lincoln*, in *Eward* the firft, befides his own Charters, and of attempts to Legitimate him, (that fo he might fucceed by Common-law :) See the Comments on *Merton* in the fecond Part of *Inftitutes*, and of the Laws of *Norway* before.

But in the Old Book of *Cæn*, we may find K. *William* on his death Bed, wifhing that his Son might be King of *England*, which he profefled he neither found or left as *Inheritance*: *Neminem Anglici Regni Constituo Heredem, non enim Tantum Decus, Hereditario Jure poffedi.*

That K. *William* the fecond, K. *Henry* the firft, and K. *Stephen* came to the Crown by *Election*, without Right of Succeffion, is fo much agreed by all, that it were vain to prove it. Their *Elections* and their *Oaths*, are every where among the Monks and good *Historians*: So alfo of *Henry* the fecond, and *Rich.* the firft.

But in K. *John's* Coronation we are brought beyond difpute, in full Parliament, of Arch-bifhops, Earls, Barons and all others, which were to be prefent; the Arch-bifhop flood in the midft and faid, *Audite univerfi, noverit Discretio veftra, &c.* It is well known to you All, that
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no Man hath Right of Succession to this Crown, except that by unanimous consent of the Kingdom, with Invocation on the Holy Ghost, he be Elected from his own Deserts: *Lectus & secundum Morum Eminantiam praelectus*, &c. But if any of the last Kings Race be more worthy and better than others, his Election is more proper or more Reasonable: *Promius & promptius in Electionem ejus est consentiendum*: As it now is in Earl John, here present.

Not was any one found, that could dissent, or oppose what was so spoken; for they all knew it was not without much Reason and good Warrant from their Laws and Customs; *Scientes quod sine Causa hoc non sic definierat*; For which Matthew Paris, or Wendover, may be compared with Hoveden, Westminster, and others of those Times.

Which seemeth most rightly to state the nature of Succession, as it was in this Kingdom. So that all did amount but to this, That if a King had such Children, so qualified, and so Educated, that they were above others in Virtue, Wisdom, and true worth, (or at least, *Ceteres Pares*,) they were the most likely Candidates for the Crown.

But as we found before among the Jews,
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in the strictest *Succession*, where the *Crown* was especially tied to the House of *David*; yet their great *Sanhedrim* had alwayes the Power and Right to determine of the Claims, Interests, Deserts and Vertues of Heirs, or all Pretenders: So if here we allow not such a Legal power of Judging of Claims or Titles, to be placed somewhere or other; our Ancestors did leave the Crown at a more blind uncertainty than in all other things they were accustomed, from the Law of Nature and Right Reason.

I might add the *Formal* of *Coronation*, joyned to the *Irish Modus* of Parliament, under the Great Seal of Henry the Fourth, where we read: *Electio à Plebe ad Regem, ut consecratur; Postquam ad Idem iterum Consenserit*; and again, *Electum interroget Metropolitanus*, &c.

How our Allegiance was of Old, tied to the Kings Person; not to his Heirs nor to his Person but together with the Kingdom and the Laws and Rights thereof, hath been observed already. Much I might add of latter times, Nay, that very Statute of Henry the Seventh, which of late was pressed for the King and his Militia, or taking Arms with him as Allegiance required; doth expressly declare our Allegiance to be

be to the Kingdom with the King; and that by such Allegiance, men are tied to serve the King for defence of him and the Land. And for the Kings Heirs, I find them not in our Allegiance. Yet the Statutes of Edw. 1. are punctual in expressing the Kings Prerogative, or Rights of the Crown; but where is provision for his Heirs?

In Edward the Third, the Judges Oaths were made, and stand among the Statutes as enacted by Parliament, (although I do not find it so upon the Rolls;) And there is a Clause against Consent to the Kings Damage or Disherison; So also it is in the Oaths of divers in the Courts of Justice, as of Masters of Chancery, with the Kings Serjeants, or Council at Law, and others; but not so by Parliament. See the third Part of Institutes, Cap. 101. Yet our Old Allegiance did forbid Disherison or Damage; but with Limitation, as we shewed before.

The late Oaths of Allegiance in King James, and of Supremacy in Q. Elizabeth (taken by Parliament-men and divers others,) are to the Kings Person and his Heirs and Successors, with particular Relation to defence of the Crown and Dignities thereof: Which is Remarkable, and that which may seem to excuse some, in not assent-

ing to others which are not so obliged ; and yet it is thought by some, that the main or only meaning of those Oaths, was against *Rome* or *foreign Enemies* : For which also a Declaration in the Queens *Injunctions* may be considered. But in all Cases of real Scruple, I cannot censure any that (in a quiet humble manner, seeking Peace and Truth,) followeth his Conscience till it is rightly informed.

In the Quarrels of *York* and *Lancaster*, there was an Act (in *Henry the Fourth*;) to entail the *Crown* upon the Kings *Issue*, of which four are there named : But in *Henry the Eighth*, the Parliament declared the *Succession* to the *Crown* not yet settled or cleared enough ; and then it was entailed again, and for lack *Heirs Male*, upon *Elizabeth* : But this again repealed in *Mary* ; and again in *Elizabeth* and *James*.

How much or how little these annulled the *Common-law*, I must submit to others : left upon debate, I should be forced to yield it might be possible for future Parliaments to reduce *Succession* to *Election*; as justly as some late Parliaments did turn the *Common-law* of *Election* into such or such a *Succession*; which can only stand by *Statute*; if it be true (as all tell us) that there was

no *entailed* Inheritance but by *Statute-law*, since the Second of *Westminster*, of which before.

How little Power Kings had over their Crown or Kingdom without consent of Parliament, (besides all that is said already,) might be further cleared from the acknowledgments of Kings Themselves, below the time of the Conquest.

In the Conquest, about *Investitures*, K. Henry the first wrote to the Pope, that he could not diminish the usual Rights and Dignities of the Crown or Kingdom; and that if he should be so Abject as to attempt it, his Parliament would not permit it. *Optimates mei & totius Anglie Populus id nullo modo pateretur.*

In the great Moot of Scotlands dependance upon England, Edward the First confessed as much to another Pope; to whom also the Parliament (both *Lords* and *Commons*) wrote, that they they were all obliged by Oath to maintain the Just Rights, Liberties, Laws and Customs of the Kingdom; (where we may see their Oath of *Allegiance* to the Kingdom,) that nothing should be acted against Them, *In exhereditionem Juris Coronæ, & Regie Dignitatis, ac subversionem status ejusdem Regni, nec non præjudicium Libertatum, Consuetudinum & Legum Paternarum.* These are
on.

on the Rolls, and printed on the Statute of *Merton*, and in *Walsinghams Edward 1.* and the *Surveigh of Normandy*.

And from other Records of the same King, we learn that when the Pope demanded the Grants of *K. John*, he answered, That he could not do it, without consent of his Parliament: *Sine Prælatiſ & Proceribus Regni*; being tyed by his *Coronation Oath* to keep all the Laws and Rights of the Kingdom, *Illibati*; and to do nothing that might touch the Crown without their Consent. Which may be added to that before in *St. Edwards Laws*, of the Kings Oath, to do *all things Rite, per Concilium Procerum Regni*.

When the King of *France* demanded Homage of *K. Edw. the Third*, he desired Respite, till he had the Advice of his Great Council, (as we may read in *Freizard*;) because he could not act without them in such great Affairs.

And when the Pope demanded Homage of the same King; he referred it to Parliament, who adjudged and declared, that *K. Johns Grants* to the Pope, were unjust, illegal, and against his *Coronation Oath*, being done without his Parliaments Assent or Counsel: And yet *K. John's Charter* (to the Pope) in *Matth. Paris*, doth pretend it done *Communi Concilio Baronum*. And

And about Stephen Langton, the same K. John did write to the Pope, that he could not depart from the Liberties of his Crown, but would, or should defend them to his Death : And hence began the Great Excommunication, which begot a Confiscation of the Church Revenues ; *ex hinc ille Lachrymæ*, which could not be stopped, till the Crown did stoop to Pandulph ; which might have excused the poor Hermit, Peter, from being so cruelly dragged from Corfe-Castle to Warham.

But when the same King felt his Arms loose, he laid about him so, that all believed he meant to strike. In that Meen the Arch-bishop told him, It was against his Oath, to raise or make War without the Consent of his Great Court : *Si absque Judicio Curie sue, Contra quempiam Bellum moveret*, to be added to the Militia : But the fire was already kindled, and the Smoak or Flame brake out at Nottingham.

I must not touch the Barons Wars, except I had leisure to discourse and discuss them freely : Only, as we found our Great Charters, made up of old Laws and Customs ; so I might now also clear it more, that it was not a new Fetter on the King to have some Supervisors set about him,

him, for to order all his Actions; who, by his Coronation Oath, was tied to do nothing touching the Kingdom, but with Advice and Consent of the Great Council; *per Concilium*, & *per Judicium Procerum Regni*.

That it was so also among the Britains, to all observed before, I might add, the Old Scottish Custom of choosing Twelve Peers in Parliament to be the Kings Tutors, as we may call them; for by them the King must be wholly governed; *Quorum Concilio Rex Regnum gubernare debebat*, as we may read it in Walsinghams Edward 1. besides their own Chronicles; that I say nothing of the Twelve British Peers, of which *Cambden in Siluribus*.

We need not much wonder at the Writs in K. John's Time, requiring all Men of all Conditions to oblige themselves by Oath, to maintain the Great Charter, and to compel the King thereunto: *Et quod ipsum Regem pro posse suo, per Captionem Castrorum suorum, distringerent & gravarent, ad prefata Omnia Exequenda*; when as this very Clause was in his Charter; *Et illi Barones, cum Communia totius Terræ, distringent & gravabat nos, modis Omnibus quibus poterunt, scilicet per Captionem Castrorum, terrarum possessionum, & aliis modis quibus poterint*

tuerint; donec fuit emendatum secundum Arbitrium eorum. Which may be added to that before of our *Allegiance*, or Oath of Fealty to the King with the Kingdom, and of the *Kings* Oath to be guided by the Judgment of his Great Court.

Nay, as if *K. John's Salva persona, N. & Regina N. & Liberatorum N.* had been too loose; in *K. Henry's Charter* it was expressed thus, *Licet Omnibus de Regno N. contra Nos insurgere;* Nay, and to do all things, *que gravamen nostrum respiciant, ac si nobis in Nullo tenerentur.*

These times seem not to attend our Grand Maxim of State, *The King can do no wrong*; or at least they understood it not, as some late Courtiers would perswade us: Yet it is true, he can do nothing but by Law; and what he may by Law, can do no *wrong*: And if he do against the Law, his Personal Acts, Commands, or Writing, do oblige no more than if they were a *Childs*: And the Books call him an *Infant* in Law (though his Politick Capacity be not in *Nonage*; as the Parliament declared in *Edward the Sixth*;) which is not to exempt him from *Errors*, or to excuse his *Crimes*; but to shew that he must be guided by his Coun-

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cil;

cil; and that his own Personal Grants or Com-
mands cannot hurt any more than an *Infants*;
which may be reclaimed and recalled by the
Council of the Kingdom. So the *Mirror* saith,
The King cannot grant a Franchise to prejudice
his Crown or others; because he holds
his Right and Dignities but as an *Infant*, Cap. 4.
Sect. 22.

If I should say, The *Commons* in Parliament
are and were the *Kingdoms Peers*; as well as
the *Lords*, I might vouch an Old Authority,
as good as the Ancient *Modus* of Parliament,
which doth often call the *Commons*, *Peers* of Par-
liament, as well as the *Lords*.

So; *debent Auxilia Peti pleno Parlamento, & in*
scripto cuilibet gradum Parium Parliamenti; & opor-
tet quod omnes Pares Parliamenti consentiant; & duo
milites pro Comitatu majorem vocem habent in Con-
cedendo, & contradicendo, quam Major Comes An-
glie, &c.

So in doubtful Cases of Peace and War, *dis-*
putetur per Pares Parliamenti: and if need be,
Twenty five shall be chosen *de omnibus paribus*
Regni; which are so specified, Two *Bishops*,
Three *Proctors*, Two *Earls*, Three *Barons*, Five
Knights, Five *Citizens*, and Five *Burgesses*. And
again,

again, *Omnes Pares Parliamenti sedebunt, & nullus stabit, sed quando loquitur, ut omnes audiantur à Paribus.* And again, *Nullus solus potest nec debet recedere à Parlamento sine Licentia Regis, & omnium Parium Parliamenti, & hoc in pleno Parlamento; Ita quod inde fiat mentio in Rotulis Parliamenti.*

It may be possible, That *Bracton* and *Fleta* with others, may use the Phrase *Pares*, in such a sence; when they say, That the *King* or his *Commissioners* should not judge and determine of *Treason*, but *Pares*. Which may be added to the 25th of *Edw. 3.* reserving *Treason* to Parliament, where of Old, it seemeth only determinable; so that *The Mirror* would not have it *Endicted*, but by Accusation and in full Parliament, as in *King Edmund's Time*, &c. *Cap. 2. Sect. 11.* and in *Edw.* the 3^d it was enacted, That Offences of *Peers*, and great Officers, and those who sued against the Laws, should be tryed in Parliament.

And although now the Phrase be given to all the *Lords* of Parliament, yet it was most or only proper to the *Earls*, whom by Law and custom the *King* styleth *Consanguineos*, and he might style them his *Peers* or *Companions*; as in *Latine Comites*.

So *Bracton*, *Comites dicuntur quasi Socii Regis,*

& qui habet Socium, habet Magistrum; and in another place, *A Societate Reges, enim tales sibi Affociant, ad consulendum & regendum Populum Dei*; and the like is in *Fleta*, *Comites à Comitiva dicuntur, qui cum viderint Regem sine Freno, Frenum sibi apponere tenentur, &c.* which is also in *Bracton*.

The *Mirror* is yet clearer, although the King had no Equals, yet because himself or his Commissars might not be Judge, it was provided by Law that he should have Companions to hear and determine all his Torts, &c, *Aux Parliaments*, and those Companions were called Countees, (Earls) from the Latine *Comites*.

So also *Sarisberienfis* (cited before) in *Hen. 2.* *Comites à Societatis participatione dici quisquis ignorat ignarus est literarum, &c.* some will have them, *Comites & Socii in Fisca*, because of old, some Earls had a third part of profits accrewing by Pleas and Forfeitures in their Counties, as the Laws of the *Confessor*, and Mr. Selden in his *Comes*; but he will also grant their name à *Comitiva potestate*, rather than from such Communication of profits.

That the old Sheriffs also, who were *Vice-Comites*, did come to Parliament, appeareth in the Ancient Writs and Histories; and yet the
Barons

Barons seem to be the Kingdoms *Judges*, and the present *Earls* may seem to sit in Parliament but onely as *Barons*, who are now all *Peers* and *Lords* of Parliament.

But although the *Lords* were the great *Judges* of the *Kingdom*, and of all Members thereof, yet it is well known, that in full Parliament, as old as *Edw. 3.* they did not only acknowledge, but protest that they were not to *Judge* the *Commons* in Cases of *Treason* and *Felony*, being not their *Peers*.

How it was in *Rich. the Second*, may be seen at large in the *Rolls* and *Records* now printed: In *Edward the Second* the *Commons* proceeded by the Judgment of the *Lords*, for which also the *Fructus temporum* cited before, may be added to all in the *Road*.

Appeals and *Writs of Error* were from the *King* to the *Lords*, in *Ecclesiasticals* that touched the *King*, they were to the *Spiritual Prelates*, *Abbots* and *Priors* of the *Upper House*, by Act of Parliament in 24 *Hen. 8.* till which it may be *Temporal Lords* had also Cognizance of *such* as well as *Temporals*.

And *Writs of Error* in the Parliament were Judged by the *Lords*, for they came from the *Kings Court*, his *Bench* or his *Exchequer*; and
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if *Errors* had been in the *Common Pleas* or below it, they should not be brought into *Parliament*, but to the *Kings=Bench*, and from the *Kings=Bench*, as from the *King* (not otherwise) they came to the *Lords* ; and although there was a formal Petition for removing the Record from the *King*, it was but of Course, and the *King* could not deny it.

Which we found granted by all the old Lawyers and Historians, (as I shewed before) and by the grand Master and Patron of Law, *King Edw. 1. in Britton*, because none may Judge in his own Cause, *Therefore in Causes where our self shall be Party, we do consent, que N. Court soit jugé Sicome Counts & Barons in Temps de Parliament.*

In the Laws of *Hen. 1.* one of the Chapters beginneth thus, *Judices sunt Barones Comitatus, qui liberas in eis terras habent* ; for in those times *Barons* were by *Tenure* only, not by *Patent*, (that I know) till *Beauchamp of Holt* in *Rich. 2.* nor by *Writ* (that I can find) till the *Barons Wars*, but *K. Johns Charter*, is to *Summon Comites & Barones Regni majores sigillatim per literas N.* But all that hold in *Capite*, by general *Summons* forty days before the *Parliament*, and that *Negotium procedat ad diem assignatum, secundum consilium eorum*

eorum qui presentes fuerint, quamvis non omnes sub-
moniti venerint ; and the Summons of Delinquents
 or Suitors in Parliament, was to appear and
 abide the Judgment of the Court, not of the King,
 but of his Court, for the *King is Father* and not
Judge of his People, in his proper Person, as
 was shewed before ; and all the Books agree
 that he must *Commit his Jurisdiction* unto Judges
 in the Courts of Justice, and when he might as-
 sume great Offices into his own Hands, by Par-
 liament in *Edw. the third*, all Judges were ex-
 pressly excepted, and the Judges Oaths, and se-
 veral Acts of Parliament require them to pro-
 ceed according to the Law, notwithstanding
 the Kings Command or Seal against it, and the
Register affordeth a *Writ* to Superfede or Re-
 voke any such Seal from the King himself to
 any of the Judges.

And the Lord Chief Justices, as the Lord
 Chancellor and Treasurer were Chosen by the
 Kingdom, as we found before in the time of
Hen. 3. how much more then should the Lords
 of Parliament be made by Parliament ? for else
 they be the Kings Commissioners.

So the Roman faith, our German Fathers chose
 their Lords in Common Council, to be Judges,
 in

in iisdem Conciliis Eliguntur & Principes qui Jura reddunt. De Minoribus consultant Principes, de Majoribus Omnes. And Caesar also observeth, that their Princes (or Lords) were their great Judges; sed Principes Regionem atque Pagorum inter suos jus dicunt, Controversiasque minuunt.

Yet Tacitus will also tell us, that with those Princes they did joyn Commons; Centeni ex Plebe Comites; which were (perhaps) the Fathers of our County Hundreds.

And in K. Williams Edition of the Confessor's Laws, when he inclined so much to them of Norway; Universi Compatriotæ Regni, qui Leges Edixerant, came and besought him not to change their Old Laws and Customs of their Ancestors, because they could not judge from Laws they understood not; quia durum valde foret sibi suscipere Leges ignotas; & Judicare de eis quas Nesciebant.

How it was in Parliament, while there were only Barons by Tenure, would be more enquired. But of later times, Commons have adjudged Commons, and have joyned with the Lords in adjudging Lords; of which there are divers Cases cited, in the Fourth Part of Institutes, Cap. 1. pag. 23.

It

It may be considered, that many Kingdoms, and Common-wealths (that were not Kingdoms) in all Ages did consist of *Three Estates*; (as of *Three Principles* in Nature, or Bodies Natural;) which might occasion the Phrase of *Tribe*, in many other besides the *Romans*: who in *Three Estates*, were not so Ancient as the *Grecians* or *Egyptians*; that I speak not of the *Gauls*, *Britans*, or the *Eastern Nations*.

And if any would observe, it might be possible to find the Prophets hinting a *Trinity* in divers Kingdoms or Estates; and that not only for moulding, but for overthrowing them: Besides the *Three Captivities*, or *Three overturnings* of the *Jewish State*; and the *Three blows* of the *Goat* on the *Ram* in *Daniel*; as alluding to the *Three great Battles* which did break the *Persian Empire*.

And why may not the *Sacred Trinity* be shadowed out in Bodies *Politick*, as well as in *Natural*? And if so, our *Three Estates* may be branched as our *Writs*, into *Original*, *Judicial* and *Executive*; as shadows of the *Being*, *Wisdom*, and *Activity* Divine.

If I may not grant, yet I cannot deny *Original Power* to the *Commons*; *Judicial* to the *Lords*, *Executive* to the *King*; as the *Spirit* to the *Body*, or if you will, the *Head* (or *Fountain* of *Sense* and *Motion*;) But he must see by two *Eyes*, and bear by two *Ears*; as I touched before, yet his very *pardoning* although it be by *Law* much limited,) doth seem to speak his

N

Power

Power Executive: And so his *Writs* do speak aright ;
Because my Courts have so, and so judged : Therefore I do
 so, and so, command the *Judgment* shall be executed. And
 if any will assert the *Militia*, to this *Power Executive*,
 I shall also grant it to the *King* ; So that it may be
 alwayes under the *Power Original* and *Judicial*.

This might belong to the *Lords*, and that to the
Commons. And the plain truth is, I do not find more
Arguments to prove the *Judicial* Power to belong
 to the *Lords*, than I do for the *Legislative* in the
Commons : And (as it seemeth to be above, so be-
 low also) it may be much disputed, That the *Le-
 gislative*, *Judicial* and *Executive* power, should be in di-
 stinct Subjects by the *Law of Nature*.

For if *Law-makers* be *Judges* of those that break
 their *Laws*, they seem to *Judge* in their own *Causes* :
 which our *Law*, and *Nature* it self so much avoid-
 eth and abhorreth. So it seemeth also to forbid both
 the *Law-maker* and *Judge* to execute : And by express
Act of Parliament, it is provided, That *Sheriffs* be
 not *Justices*, where they be *Sheriffs*. But if *Execution*
 be alwayes consonant to *Judgment*, and This to the
Law ; there is still most sweet *Harmony*, and as I
 may say, a *Sacred Unity* in *Trinity* represented.

That the *Commons* should have most *Right* to
 the *Power Original*, or *Legislative* in *Nature* ; I shall
 leave to be disputed by others. I shall only touch
 some few *Particulars*, which have made me some-
 times

times to suspect that by our Laws, and Model of this Kingdom, it both was and should be so.

How the Roman Historian found the Judicial power given to the *Lords*, by our Old Ancestors, I did observe before; he is as plain for the *Legislative* in the *Commons*: Nay, to the *Lords* themselves, he saith in Judging was adjoyned a Committee of Commons, both for *Counsel* and *Authority*: *Ex plebe Comites, consilium simul & Autoritas.*

And again he sheweth, how the *Lords* did sit in Council, about the *less* Affairs; but of *greater*, all both *Lords* and *Commons*: So also that those things which the *Commons* did determine, *Quorum Arbitrium penes Plebem, apud Principes pertractentur*; they should be debated with the *Lords*, for their *Advice*, but not their *Legislative* Votes.

And the *Mirror* (a good Comment on *Tacitus*, in this) sheweth how our *Lords* were raised out of the *Commons*; and giveth them a power *Judicial*, but where is their *Legislative*? Nay, the *Modus* of Parliament will not only tell us, that the *Commons* have better and stronger Votes than the *Lords*; but that there may be a *Parliament* without the *Lords*, (as well as *Prelates*;) For, there was a time in which there was neither Bishop nor Earl, *nec Baro*, (so the *Irish Modus*;) and yet there were *Parliaments* without them; but never without the *Commons*. So that if the *Commons* be not summoned, or for Cause Reasonable, cannot, or will not come, for Specialties

in which they blame the King ; *Parliamentum tenebitur pro Nullo, quamvis omnes Alii status plenarie ibidem interfuerint.*

And the Kings Oath is to confirm the Just Laws which the Commons (not the Lords, but Commons) shall Elect or Choose ; *quas-Vulgus Elegerit* ; So in Latine, and in French of Edw. 2. and Edw. 3. *Les quels la Communante aur' eslu* : And in English, of Hen. 8. and other Times, *which the Commons of the Realm shall choose.*

And if we look into the Old Writs of Summons, we shall find the Commons called, *ad consentiendum & faciendum* ; and the Old Writ addeth, *quod quilibet & omnes de Comitatu, facerent vel faceret, si personaliter interessent* : (As it is in the *Modus of Parliament*,) with sufficient intimation that without the Commons nothing could be done, which the late Writs express thus : *Ita quod dicta Negotia Infecta non remaneant, pro defectu potestatis, &c.* But the Lords are called, *de quibusdam arduis tractaturi, & consilium Impensuri* ; only as Counsellors, not as Law-makers : For the very same words are in the Writs, for the Judges and others coming to Parliament, although they do not Vote in making Laws.

This may also shew us, how the Lords themselves did Elect the Knights of Shires, (and by Statute of Rich. 2. are to contribute to the charges of the County Knights) who were to sit and Vote in Parliament as Law-makers for the whole County : whereas the Lords were there but as Judges, and the Kings Counsellors. And is

it probable they should retain to their own Persons that for which they *delegated others*? who were there to do, *quod quilibet & omnes facerent personaliter*, even all that all the Lords themselves should do as *Freeholders*, not as *Lords* or the *Kings Patentees*, who might so be his *Councillors* or *Judges* rather than *Law-makers*; this was more left (it seems) to the *Commons*, who for this and other Reasons should not be *Common Judges* (as I think) in private Causes or of private Persons, but of *Judges*, or of such as the *Mirror* speaketh, of whom elsewhere there was no *Common Justice* to be had.

But if the *Lords* had not a *Legislative Right*, why did the *Commons* send up the *Bills* to them? how came the *Lords* to joy with the *Commons* in Passing of Acts?

It cannot be expected that I should shew the Original of all Changes or Distempers in this Kingdom; It is work enough to shew our first Mould or Constitution: yet for this also it cannot be doubted, but the *Barons Wars* and Power might gain upon the *Commons* more than on the *King*; he had such Bounds before that he could hardly be obliged more, or capable of granting much, but what was due before to all his People: But it might be easie for the Potent *Lords* to grow upon the *Commons* in the Name of *Barons*.

In that Name I say, for I cannot determine but the old *Barons* (being the great *Freeholders* and the *Lords* of all the *Mansors* that have left their Names in our *Courts Baron*,) had by Law and Reason much more Power than had the *Kings Patentees*, Created *Barons* by *Patent* or *Writ*.

But this new Creation did but multiply the *Judges* or the *Kings Councillors*; for by so taking their Commission from the *King*, they were only as other *Judges* in Inferiour Courts, and so did really lose their great Power of *Judging*, which was proper only to those who were the Kingdoms *Peers* and *Judges*. So that these *Lords* did justly admit the *Commons* (or rather were admitted by the *Commons*) into the grand *Judicature*; and it may be that as the *Barons* did communicate their

their Power *Judicial*, so the *Commons* might communicate their *Legislative* unto those who had the Name, but little of the Nature of the old *Barons by Tenure*; yet by so doing they might bring Confusion or an harsh Discord into *Natures* Harmony.

But the main occasion seemed thus, the King was tyed by his *Coronation Oath* to hold, keep and defend the just Laws and Customs chosen by the *Commons*; *Justis Leges & consuetudines quas vulgus elegerit*; and this Limitation (of *Just*) seemed to admit of reason or debate, so much as might convince the Laws required to be *Just*, for else I know not that the King was ever tyed to them.

And because he was or might be an *Infant*, he had still a great *Council* about him to discuss the Laws proposed by the *Commons*; and for this Cause he did, and by reason might Summon the *Lords*, (or any other Wise and good Man he knew,) to come and give him Counsel, as the *Writ* speaketh to the *Lords* and *Judges*, &c. *De quibusdam articulis nobiscum tractaturi & Concilium impensuri*; So we find the old *Acts* passed *per Consilium Baronum*, as we might shew in all Ages.

And because he used to demurr at Bills, till he had the Advice of his great Council; hence it may be (for more Compendium,) the *Bill* was sent up first to the *Lords*, as the *Kings Counsellors*, and if they Counsell'd him against it, then he answered, *Le Roy s'avisera*, *The King will yet be farther Advised*; for he did not, and I think he could not give a denial, nor of old (perhaps) Demurred, till the *Lords* advised him against it.

I dispute not how much the *Commons* might oblige the *Commons* without assent of *Lords* or *King*; Nor have I yet said, that in the *Coronation Oath* the *Commons Just Acts* are called *Laws*, and to Mould them may be works distinct enough; and the plain truth is, his Oath is to hold, and to keep, and to defend the *Commons Laws*, (*à Tenir & Gardir & Les Defenderer, per se tenendas & protegendas*,) as well as to Grant or to Confirm.

How-

However, I do not see, either by Reason or Law, That the King was so obliged to the Judgment of his own created Lords (and there be few or none others left in *England*) that he might not be convinced by the *Reason of the Commons*, either without or against the Lords.

And (beside divers *Ordinances* without any of the *Lords*,) it cannot be denied, but in Divers ages, there were *Acts of Parliament* made without or against all the *Lords Spiritual*; which yet, often, were the Major part of the *Lords House*, and had as good, it may be better, Votes (as *Barons* by *Tenure*) than had all the other Lords, by *Writ* and *Patent* only : which might make them Judges or Counselors, much rather than *Law-makers*.

I should still be far from desiring to obtrude my own Fancies or Opinions upon any, least of all to the wrong of others : Therefore, if any can produce a better Title, my Petition is, they may be heard, and may receive their Just Rights and Privileges. But if this be true, (which I now only propose, and submit to better Thoughts and Judgments,) then had the Lords of late but a Right *Consultative* of making *Laws*.

And besides all that was said before, this seemeth one Reason, why our Ancestors did so willingly follow the Vice of *Nature*, in placing the Power *Legislative*, *Judicial* and *Executive*, in three distinct Estates, (as in *Animals*, *Aerials*, *Etherials* or *Celestials*, three Regions, and three Principles in *Naturals*,) that so they might be forced to consult often and much in all they did.

And if this frequent Consultation were retained, and observed still, it might not only occasion good Reviews, but also prevent That, which to the Common-wealth I fear (and not Alone to private Persons) may be sometimes prejudicial, in a sudden Vote or Act of one House, or one Body ; and yet one may be better much than Many, if they be not good.

It must be granted, that in Bodies of the Best Complexion and Composure here below, there may be such Distemper,
and

and such Gangrene in some Members, that it may be more than fit to cut it off. Nay, what was best, may come to be the worst in Putrefaction ; That it may be meer Necessity to bury it, although it were as Dear as *Sarah* was to *Abraham*, or let on high by him that raised up the *Brazen Serpent*, which see e're long lye buried with this Epitaph, *Nehushtan*.

And to all that is truly Just, the Commons of *England* will not need to plead a bare *Necessity* ; for by Law and Reason too it may be said, and proved (I believe,) That both the King himself who chooseth by his Writ, and All the Lords, by several Votes, have left the *Legislative* power so to the House of *Commons*, that they had a Legal Right to do what all the Kingdom and Common-wealth of *England* Justly could.

But They are Men, and therefore may be much *unjust* ; Nay, where the Thing they do is *just*, They may be much or most *unjust*. I have neither Calling nor Ability to Judge them : Nor may I act with force against them, for what're I think Unjust : No, not if I should think they did Usurp the Crown.

For, if the Law Reports and Books deceive me not, it hath been Judged Treason, and so is ; for Private Men to rise, conspire, or Levy War against one that Usurps the Crown and Rights thereof ; except it rightly were declared Usurpation, or that others should or might oppose him that did so Usurp : Of which the Reasons may be Great and obvious.

Let me then suppose any one Man of all the Commons in Parliament, (for I will not suppose it possible for All the *House*) to Usurp the Royal Crown, with all its Dues ; what should I, what may I doe, but mind my Calling, and attend the Judgment of the Highest Court, I know ? That may command my Body, and my Judgment much (for ought I see) in things I know so little, as I do or can, the Due disposal of the Crown, or that Mighty Burthen, or that *Royal Venom*, as the *Roman* Emperor did call it.

I did

I did, and still do, believe there may, and shall, be such a *Monarchy* ere long, through all the World; that I shall gladly bow, and stoop, and bear the Yoke: For, it is easy, and the Burthen light.

I hope and believe, or know that God will come, and appear, ere long, to dwell in the World: For, the *Earth* shall be full of his *Glory*, and his *Kingdom* shall come, and his *Will* be done, on *Earth*, as now in *Heaven*. So, we were taught to ask; and it therefore shall be fully answered.

I could desire him rather (if he pleased) in the still quiet *Voice*, then in the rushing *Wind*, or *Fire*, or *Thunder-claps*: Yet so, he came before, and shook the *Earth*: And so, it seems again; yet once again to shake both *Heaven* and *Earth*. *Overturning, overturning, overturning,* (for there also were *three,*) till he comes, whose *Right* it is; To whom, both *Kings*, and *Lords*, and all must bow, (or be bowed,) to submit, and cast down their *Crowns*, their *Coronets*, and all their *Glory*.

The *Earth* shall reel and fall, and rise no more. For, he will visit the *Host* of high ones, that
 O are

are on high; and the Kings, of the Earth, upon the Earth, they shall be taken, and cast into Prison, shut up in the Pit, and shall be visited, or wanting. Nay, he will darken the Sun, and confound the Moon, and make the Stars to Blush; before he reigneth in Glory, among his Antients, in Jerusalem. His Tabernacle then, shall appear again, and rest among them: But **BABYLON** must first be pulled down.

We may deceive our selves, in chaying Babylon to any Town, or City, whatsoever: although one it may be, more especially. But Babel was the head of Nimrod's Kingdom; whence Tyranny did stream through all the World.

For, although the out-lets of Euphrates, be (long since) stopped, in the Fens of Caldea: Yet, there is another rapid Torrent, Tigris, which from Babylon disperseth much Confusion, (troubled Waters,) into all the Seas about.

Nor may it wholly be unworthy of our Thoughts, how Babylon was alwaies the beginning, or the Head of Tyranny, through all this World. But fatal still, to most that did but touch it.

So

So to *Nimrod*, the great *Bell of Babylon*, and the *Assyrians*. *Sardanapalus* might effect an end, so like to *Belus*; who was burnt (some think) with Fire from Heaven. So, that a Statue, was made of him, who left no Relique: And from hence, began Idolatry. So to *Nebuchadnezer*, and the *Babylonian Monarchy*: when the Watchers saw him, strut and say, *Is not this my Babylon?*

The Story of this, and of its loss to *Persians*, is so clear, in Sacred Writ; That I need not enlarge it from *Josephus*, the true *Berosus*, *Megasthenes*, *Herodotus*, *Xenophon*, or any later. Though it be also very considerable among those Heathens. And so, is that famous Ruine of *Senacherib*, whom *Esay* maketh a Type of all the Churches Carnal and Spiritual Foes: Insomuch, that from him, rather than *Egypt*; *St. John's binding of Satan*, the old *Dragon*, the crossing *Serpent*, seemeth borrowed.

The *Persian Empire*, did begin from *Cyrus*, taking *Babylon*. Its *Pride* and *Tyranny*, did much encrease; then, when *Darius* won this *Babylon* again. But neither *Cyrus*, nor *Cambyses*, *Darius*, nor *Xerxes*; (or any other

Persian Monarch,) could much prosper, in
 ought of Consequence ; in *Scythia*, *Greece*, or
 other Places ; after they were stained, or cur-
 sed, with *Babylon*.

The *Macedonian*, was succesful very much ;
 but not accounted ; any of those Monarchies,
 till *Alexander* lost himself, by gaining *Babylon*.
 'Tis strange, how great a Change it made in
 him ; that then became, a Cruel, Lustful, and
 Licentious Tyrant ; stay but a while, and you
 shall see him lose both Life, and Monarchy,
 at once, in fatal *Babylon*.

Philip was very young, but old enough to
 be the Father to a famous *Grecian* *Epocha* (which
 used in the *Machabees*, and many others,) first
 began in *Babylon* ; (as *Nabonassors's* also, long
 before.) The Character was Red, and dyed,
 with the Blood of all that Family.

Seleucus, durst not call himself a King, till
 well possessed of *Babylon* : From whence began
 the Kingdom of the North which was, (in
Daniel) to wrestle, with the South or *Ægypt* ;
 till the Ships of *Chittim*, made him afraid ; and
 proud *Antiochus* was glad to bow, and speak
 the *Romans* fair, before he could be freed
 from

from his Circle ; though it were, but made in Sand, by a riding Rod.

Babylon was fatal to the *Romans* also : for, so far they prospered still, but never over, or beyond the Streams of *Babylon*. *Charan* was Tomb to *Crassus's* Army, as before to *Terah* : nearer much to *Ura*, (found in divers ,) then to *Urchoa*, with *Ptolomy*.

Much I might speak of *Parthians*, *Persians*, *Saracens*, *Turks*. These seem as *Angels*, bound beyond *Euphrates* ; but being loosed, and possess'd of *Babylon*, their Tyranny was devilish. Now it is, (or rather is not, but poor *Bagdad*) in *Turkish* Hands, most times ; except an Army of *Locusts*, ('tis remarkable,) appear as *Harbengers* before the *Persian*. But his Sun must be eclipsed, with the *Turkish Moon*, before the Glory of *Jerusalem*.

But to return to *Babylon*, while *Romans* kept the Scene, they acted well ; but 'twas a Tragedy, for some have thought they brought more Shame and Sin, and Tyranny, from all the Coasts of *Babylon*, then *Israels* from *Corinth*, or Antiquities from *Greece*. Thus *Babylon* was buried in *Rome*, but *Rome* is ruined by *Babylon*.

Edom

Edom and *Babylon* run Parallel, in Judgment (through the Prophets,) and the *Jews* were plain enough, in saying, or in proving, who is *Edom*, in this western World.

This *Edom*, did give name, all say (since learned *Fuller* wrote his *Miscellanies*) to the *Red*, or rather, the *Reed Sea*, but this may be doubted; and the rather, (with other great Objections; for it is scarce a drop, to that the Antients call the *Erythrean Sea*, or *Mare Rubrum*; never belonging unto *Eſau*;) in that *Edom* will hardly be found, to denote *Red*.

A great Master of the *Arabick*, and other kinds of Learning, in *Cambridge*, Mr. *Wheelock*, did almost perswade me once that *Edom's* Name, is better sought and found, in *Arabick*, where it may sound as much as *Eator*, or a *Glutton*: who did sell his Birthright, for a mess of Broth; as *Adam* (the first *Glutton*,) sold his *Paradice*, and all, for a little Apple, or the like.

This Etymology, of *Edom*, I could the rather believe; because in *Tuscan*, *Latin*, and so many other Tongues, *Edo*, *Eſo*, *Eſor*, (and the like Words,) do all signifie *Eating*: and
in

in other Nations, the *D*, is only changed into *T*, its Cousen Germane.

How *Edom* came to be a Type of *Rome*, (as the *Jews* so constantly affirm,) may appear in due Place. This is very considerable, that among all other Judgments threatned on *Babylon* and *Edom*, (for they are equals in most ;) this is one, and the chief of all, that they shall be perpetual *Desolations*, and shall never return, or rise again, when they be fallen.

Tyre and *Sydon*, might return again ; *Ægypt* and *Æthiopia* : for *Chush* may reach to that also, from *Chusiana*, on the Banks of *Euphrates* and *Tygris* ; whence they passed through *Arabia*, (and there left their Name also ,) cross the red Sea.

Moab and *Ammon* shall escape, from the last Northern King in *Daniel* ; and they shall return in the latter days (a noted Phrase.) Nay *Sodom* it self, shall return and rejoice with her Sisters, *Samaria*, (for *Ephraim* in this also, seemeth to be the first born ;) and with *Jerusalem* the younger Sister. So, spake the Type also, when *Lot*, and *Abraham's* Tennants of *Sodom* were, (in the fourteenth great Year) delivered,

red, from the Oppression and Tyranny of all the four grand Monarchies, of Shinaar, or Babylon; of Elam, or Persia; Ellassar, (the Prince of Ellas) or Greece: which three also, may lie in the Heifer, Ram, and Goat, (God's own Emblems, of the three first Monarchies;) which were divided, and broken about the Dove, and Turtle of Abraham; and the King of the Gentiles, may typifie the Roman Empire: Although I could yet believe, there may be more in it. Antichrist, may seem to have two Horns, one in the West, and Christian Temple: the other in the East, and Jewish Temple. (Edom and Babylon) Mahomet did rise, about as bad a time, at Rome, as Hildebrand. But it may be, his Horn must end in Gog, and Magog, (whence the King of Gogim, in Genesis;) which is very probable to be Aleppo, the Turks greatest Residence in Asia, directly North to Jerusalem: and of old, not only Hierapolis, but Magog also, in some antient Heathen Authors. But Edom and Babylon shall mourn and lament, in that Eternal Desolation; while the whole Earth, besides, (so speak the Prophets,) shall rejoyce.

The

The World must be renewed, the Promise and the Blessing to *Adam* must not fail one tittle, nor could the Flood (or its worst Causes) disannul the Grace of God, established so long before. Nay, it was continued, confirmed, and enlarged, in the new Charter to *Noah*. The Scripture is very observable ; although I dare not be too confident in ought of *Noah's* Blessing, or Will or Commands, found in the Cave among the *Tuscan* (Rarities much rather then) *Antiquities*. Yet With much of those also there is more to be compared, then I have yet seen in *Lazius* or *Berosus* (for *Ananias* may be excused , who found it with that Title,) but the Book was written by a Jew, if *Tjemack David* do not deceive me.

And the Jews with much consent, expect this glorious Change. Both touching themselves, (who never yet ('tis thought) possessed half their promised Land, from *Euphrates* to the Sea , from *Lebanon* to *Ægypt* , nay, where ever their Feet did tread) and others also of the Pious Gentiles.

To this day they shake their Palms in Triumph every way (in their great Hosanna ;)

P

in

in allusion to the Psalms and Prophets; who say, that every Tree of the Wood shall shout, rejoyce, clap Hands, and sing for Joy.

Nor do they think the time far off, and that from better Grounds perhaps, than is the old Prediction in their *Zohar*, which foretels their Redemption should be upon, or about, the Year last past; to which they add somewhat they see, or have heard from their Brethren of *Juda* in *Brasile*: or of *Israel* in other parts of *America*, which they cannot much believe (till it be better confirmed;) although it be with many Arguments asserted by a grave sober Man of their own Nation, that is lately come from the Western World.

It is strange, if it should prove true, and that which might regain some of *Esdra's* Credit, (besides all of Christ, and the *Jews* long Captivity, with their return about the Ruine of the *Roman Empire*, whose twelve first Cæsars, with divers others, he describeth clearly;) in that also of the ten Tribes passing through a River or Strait, (may it be the Strait of *Anian*) in a long Journey of many Months or Years, to a Countrey not inhabited,

It

It is also remarkable, that such good Authors should relate the Traditions of the *Mexicans*, or others in those parts; coming a great Journey, with an Ark carried before them on Mens Shoulders, with their God therein, and what others have observed of *Circumcision* found in some of those parts: with other Rites of Tribes, Heads of Tribes and Families, with some pretty Ceremonies of Marriage, Funerals, and Washings; not altogether unlike the Jews, or *Israelites*.

However, it seems they left many of their Brethren behind them in *Asia*, though it must not be in *Tartary*. The World will not admit of it of late, although it was very current a while, in *Dan* and *Naphtalim*, Mount *Tabor*, or I know not what, in *Ortelius* and others.

But Millions of them, are still found in *Persia*, and other parts of *Asia*, though I give no Credit to their Kingdom in *Caramania*, or elsewhere described or feigned by *Benjamin*, the Jew in *Eyre*. Yet with him must be condemned (if he lies in all) some of our own, that have travelled in those parts.

Not only Master *Herbert*, who hath many

considerable Passages ; besides that of a mighty high Peak of *Taurus*, for *Ararat*, not very far from the *Caspian Sea* ; which he saith the Inhabitants do still, to that day, call the *Descent from the Ark*, which would much have pleased *Sr. Walter Raleigh*, and other learned Men, that would not have *Noah* come out of *Armenia*; though so many *Heathens* also do record it thereabout.

But to return to the *Jews*, and their Return, It is so clear, and so full in the Scriptures (both Old and New) that I need not seek it in the *Apocrypha*, where yet are many Predictions of it clear enough, especially in *Tobit*. I mean the old *Hebrew Tobit*, brought from the *East* ; for that we have is broken and imperfect much, being only taken from a *Jew's* Mouth, that Translated it to *Jerome* ; as himself confesseth, if I forget not. All the *Prophets* speak clearly of it ; but *Jonas*, that of him we have, was but a second Prophecy, which, besides all the *Jews*, somewhat in his own Words doth intimate : And we need no more ; for, in the *Kings* we find *Jonas's* Prophecy for *Israel's*, (even *Israel's*) Restoration, which is there also

also carried up to *Moses's Song* (cited also in *Ezechiel*, besides other Prophets) as that which is clear enough for what we speak.

So is *Moses* also clear, that great Troubles shall beset them in the latter Days : that is, in the time of the *Messiah*, as they all confess ; for so they still interpret the Phrase. And to this Place, with others, they refer their Afflictions, under *Messiah Ben Joseph*. Whom (I hope) they begin to think already come : although *Ben David* do not yet appear to them, but *Moses* addeth, that the *Gentiles* should also rejoyce with his People *Israel*. For he would again be merciful to his People, and his Land, and so that Song endeth ; which was to be kept and considered, in the latter Days, or time of the *Messiah*.

Abraham was first told his Seed must be as Dust, and afterwards as Stars : Not Stars for Multitude I think, but Glory. Except there be more Stars then the Jesuite thought, who hath lately wrote a Book in Praise of the *Virgin* ; being nothing else but one Verse (*Tot tibi sunt Dotes Virgo, quot sidera Cælo ;*) which he hath changed above a thousand times, (and might have done it much oftner,) keeping

keeping the very same entire Words in a true Verſe.

Abraham the High Father, had two Sons in ſpecial. *Iſhmael* a Type of the carnal Jew (who had alſo twelve Princes, twelve Patriarchs) from *Hagar*, the Earthly *Jeruſalem*: coming firſt from *Egypt*, and growing proud, ſhe is driven out (into Captivity) but ſoon returns again upon an Angels Call.

Yet ſhe muſt only ſtay till *Iſaac* (a real Type of *Chriſt*) is born, and weaned a while; and then, her ſelf and Son (for mocking *Iſaac*) muſt be turned out of doors, from *Abraham's* Houſe, or Church. It was very bitter to good *Abraham*, but ſhe muſt out. And ſhe is yet in Bondage (in the *Wilderneſs*, a long Captivity,) together with her Son poor *Iſhmael*.

But in this *Wilderneſs*, when ſhe is near Deſpair, ſitting alone, wringing her Hands, for Grief and Woe; and her poor Son, at a diſtance crying, or rather gasping for Life, God will hear, God will hear, (Return O God to the many thouſands of *Israel*,) and he will call, and ſpeak kindly to her, in the *Wilderneſs*: He will then

then open her Eyes to see a Well, a Fountain of living Water. The Well of him that hath lived long, and looked on her.

For, when the Poor and Needy shall thirst sore, and their Tongue cleave to their Mouth, (when they sit in Darkness, he will see and execute Peace,) he will open a Fountain in the Wilderness: So do the Psalmists and Prophets often allude to this of *Hagar in the Wilderness*, an History of all the Bible, much, I may say, more remarkable.

After this shall *Isaac* come and seek his poor Brother *Ishmael*, he also shall come and dwell with his Brother at his Well *Labairos*: and thereabout he met *Rebecca*, though I dare not draw the Paralels. But it may be worthy of inquiring, that about forty Years old, he should meet his Wife at *Hagar's Well*.

The Jews do tell us pretty Stories of old *Abraham's* coming oft, and knocking at the Door to call and see his Son, though *Hagar* was much abroad and yet they say, she did return again at last into his House. And some will also have her to be *Keturah*, on whom *Abraham* had many Sons, that peeped the

the East. These seem to be the *Abrahamides*, or *Brachmonides*, of whom we hear so much, yet see so little, but their Names.

Certain it is, what ere became of *Hagar*, that *Ishmael* returned to *Isaac*, or rather *Isaac* to *Ishmael*. For, besides that of *Isaac's* living so much at *Ishmael's Well*, the Text is clear, for their being together at *Abraham's* Death, or Funeral. And *Ishmael* (a better Man then some may think) dyed in Honour, or as the Phrase is, *in the midst of his Brethren*, if I mistake it not.

Isaac (a Type of *Christ*) had two Sons, that Wrestled and Fought so soon as they had being. *Edom* the eldest (which the Jews will have to be the *Roman Christian Church*, the first born to *Christ*, or *Isaac*;) yet must come to serve the younger, when he cometh up.

Jacob (the Father of all *Israel*) had two Wives. *Leah* the visible Church of carnal Jews, or Gentiles, bleer eyed; not so lovely to her Husband as was *Rachel*. Who was long barren, but at length beareth *Joseph*; And she is then to leave her Father's House:
For

For he will give them up (for sinning *Joseph*), until she that travailed bring forth, and receive her Son with Joy.

In this flying Posture, *Jacob* meets the Angels at *Mabamin* (it was the way with the *Canticles*.) He wrestleth and prevaieth with God, and with *Edom*. 'Tis a great Mystery: But I am tedious.

Poor *Rachel* is loath to leave her Idols. These stick and stain her (but they must be buried in *Bethel*,) till at length she come to *Bethlehem-Ephrata*; and there she travaileth with *Benjamin*; to her, *Benoni*; for she must expire as soon almost as he is born. Nor did she regard the Words of those, that told her, that she had a Son: but she shall receive him again with Joy.

I dare not say that blear-Eyed *Leah*, was typified by old *Lilith*, of whom the *Jews* speak so much, and so ill; because she did so much displease our Father *Adam*, till God in pity cut him asunder, (as they speak, and so doth *Plato* also,) and of one of his Sides made *Eve*. Otherwise his Body had been more round; Male before, and Female behind: To which they say the Psalmist doth allude; besides that of *Moses*: Male and

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Female created he them, or him ; at the first.

They have also an antient Tradition, of which, the *Talmud*, and many of their best Writers ; that there should come two *Messiahs*, and the first should attempt, but not perform the full *Deliverance* : But that he should dye, and leave them in a doleful Plight, so long, till a second came, and relieved them all, and Reigned over them, as *David* : For, they call him *Ben-David*, as the former *Ben-Joseph*, or *Ben-Ephraim*.

Not only for his Relation to *Joseph*, but they use to call any Noble Gallant Man an *Ephraimite*. And in that of their *First Messiah*, they seem to allude to a common Story among them, of *Ephraim's* hardy Attempt to carry them forth from *Egypt* : But his Rashness cost him many thousand armed Men, drawing the Bow, but turning back in the Day of Battle ; as the Scripture seemeth to allude in several Places.

Those two distinct Men, (with the *Jews*) seem but two distinct Estates in One, and the same *Messiah*. Which two Estates seem also to be Tipysied by *Joseph* and *Eenjamin*, good *Jacob's Darlings*, and the Sons of his beloved *Rachel*, the good Jewish Church.

Some-

Somewhat it is the Scripture meaneth, I believe, in bringing *Christ* from *Bethlehem-Ephrata* : by which we are also led, and bid by *St. Matthew* to look on *Rachel*, falling in Travail there, and weeping for her Childrer, who were not.

And often did she Weep, if she could see how often they were not, or seemed not to be. So *Joseph* in the Pit, in the Dungeon in Egypt, in *Ephraim's* first Attempt from Egypt. So *Benjamin* in that famous History, when all *Israel* wept as well as *Rachel*, because *Benjamin* was not.

Yet again, how oft did she, must she Weep ? poor *Rachel* weepeth till she see them all again: and so she shall in the latter Days, as saith the Prophet *Jeremiah*. And then also the Children of Barren *Rachel* may be more, than of Fruitful *Leah*.

And another Prophet saith, they shall be given up (as deserted by the Father) till she that Travailled shall bring forth : Nay, till she have leisure to attend with Joy, that a Man-child is born to her. Some have thought the Travail-ler to be *Gentile Church*, but it is Interwoven with *Bethlem Ephrata*.

I need not spend much time to Parallel the

two Estates of our Messiah with this Joseph, and this Benjamin; The Lord will dwell between his Shoulders, more then when the Holy Place was in the Tribe of Benjamin: he also was cut off, (as Joseph was) but did prolong his Days and prosper. Yet a little while, I hope, and Benjamin shall come down from his good Father; and then shall Joseph (Ben Joseph) make himself known to his Brethren, who did hate him, shout at him, cast him into the Pit, deliver him to the Gentiles.

But he was brought from Prison and from Judgment: At thirty Years he stood before the King, and was made Governour of all. His Brethren must come and bow down to him, tho they rememb'ed not his Affliction; yet he preserveth them in Ægypt: and tho Dead, yet goeth before them to Canaan in his Coffin; of which the Jews have many Stories, in the Life of Moses and others.

They shall see him who they have pierced, and shall weep over him: For he shall melt them by saying, I am Joseph your Brother.

But he must stay till Ægypt be destroyed by Famine: and be glad to yield it self to Joseph; he must sit till his Enemies be put under him. And then shall come the Restitution; when Babylon

Bylon is pulled down. It filleth all the Scene as yet: And whil'st *Satan* acteth as if he were *God*, it is no Wonder that we see so little done of Good. I must not trouble the World with the time of this great Change: But it may be sought (and perhaps found) not only by Types, but plain Expressions in *Moses*, and the *Prophets*; besides our Saviour's Words, and the Revelation.

This I may observe, that as *Ægypt* was broken before the *Tabernacle* was first raised, and *Edom* before the first *Temple*; and *Babylon* before the Second; So both *Edom* and *Babylon* before the Third, in *Ezekiel* and *St. John*: for I now seek not the three Temples in *Ezekiel*, *Sitnah*, and *Roboboth* (dugged by *Isaac*) as do many *Jews*.

Of all the Crimes of *Edom* and *Babylon*, this hath a heavy Charge: that the afflicted *Heber*, the People of his Love. But those that Curse them must be Cursed. How great a share in that this Kingdom had, I cannot say, there are Mistakes on either side.

We say they *Crucified a Child*, or more: They do deny it, and we prove it not. They say we drove them out from hence: it is not clear.

They

They were in Favour once at Court ; they did deserve Respect , who brought the Crown two hundred thousand Pounds *per Annum* (little less, as many now,) for divers Years together. And King *John* did give or sell them a Charter of *Priesthood*, or rather *Presbytery* ; for I know not, that by this they ever *Sacrificed*. And the Charter yet remaineth, for old *Jacob the Presbyter of all the Jews in England*, during Life.

Their Use and Brocage was so burthensom, that in King *Edward the First*, one Parliament did quite deny them Leave of *Usury* ; and that did *draw* them, but not drive them *hence*. It was *their Motion* that obtained a *Writ* for safer Passage, which yet secured them not , but that the best of them were drowned in the *Thames*, by Fraud of those that undertook to Waft them over : But they hanged for abusing those poor Jews.

The next Parliament did grant a whole Fifteenth *pro expulsiōe Judæorum*, yet they had but a *Writ for a Passport* ; and they were but 15000 and odd, if I may believe a great learned *Judg*, who has so Reported and Recorded.

How they are now, I need not say : although

though I might also bear them Witness, that they are yet Zealous in their Way: nor do they wholly want Ingenious Able Men, of whom I cannot but with Honour mention him that has so much obliged the World, by his learned Writings, *Rab Menasseh Ben Israel*: a very Learned Civil Man, and a Lover of our Nation.

The more I think upon the great Change now coming on them, and all the World; the more I would be Just and Merciful to them, to all: nay Universal Sweetness if I could; a Christian overcoming all with Love.

And such one should be more I believe, if one had conquered all the World. For then there would be nothing left, but Self to Conquer. Then one would return in Love, and say, *come forth my Enemies and Live, enjoy your Rights, your Peace and Liberties, with all your Joies. There shall not an Hair fall off your Heads. By this it shall be known, that God alone must reign.*

I know that *Antichrist* and *Babylon* must fall, and rise no more. But these are more in Hearts, then any Walls, or any City. Nor only in the Heart, much less the Name of King or Lord: I Judge my self, or so I should much rather,

rather, and much heavier than I Judg another. For I see much cause to fear my self, lest I may keep a little Pretty, rather Ugly Antichrist within my Breast; whilst I am busie to destroy some others, more then it in others, or my self.

There is a *sweeping Rain*, oppressing more then any *Thunder*. There is a *Pride* most proper to a *Leathern Coat*. And one there was that trod on *Pato's Pride*, with *Prouder* (it was said) and fouler Heels.

I find it in the Scriptures: thence I know that *Babylon* must down, and be thrown down with *Violence*. More *Force* it may seem, than *Form of Law*.

Yet, even in such things, God seldom doth that which is not just in Man's Eye also. Nor did he ruine *Babylon*, or spoyle *Ægypt*, till they oppressed *Israel*. Nor did he bring the *Jews* by pure Force to possess *Canaan*, before they had purchased *Sechem* or *Machpela*; with such a Legal Seisin as might warrant Force, or Forcible Disseisors, that so held Possession against the true Owners.

And what ever Force may appear in pulling down of *Babylon*, I do not Read or Know that the new Temple, or the new *Jerusalem* shall be built

built with *Violence*, or by *Violent Men*, that may ruffle much in forcing *Babylon*; But they may perish by the Sword that use it most. *Moses* was the meekest Man alive, yet he had a special Commission, (that was a Patent sealed with the Arms and Impress of Heaven) to ruine or impoverish *Ægypt*. He pulled down indeed, but he raised little but a *Tabernacle*: Only a *Shadow of good things to come*. And it must be abolished by him that was typified by *Joshua*: For *Moses* could not bring them into *Rest*, altho by Force and a mighty Hand he brought them out of *Ægypt*. *David* was a Warriour and a mighty puller down: He cut off the Head of *Goliath*, and weakened all the *Philistins*; he threshed *Ammon*, *Moab* was his *Washpot*, and over *Edom* he casts his Shoe. He shall be brought into the strong City, and shall harrow *Edom* and sow it with Salt, or cut off all the Males but one or two that can escape by Stratagem.

But yet, he must not build the Temple: for he was a Man of Blood; and when he would but remove the Ark, *Uzza* is smitten, and *David* ashamed as well as afraid at that great Breach, which remaineth to his Day; I had almost said prophetical of our Times.

From *Perez Uzzah* the Ark is brought but

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a few Paces ; for it must rest a long time with *Obed-Edom*, a mysterious Name, and when it comes from thence to the City of *David*, it must be content with a *Tabernacle*, with many Forms and Ceremonies : and among others *Obed-Edom* is the *Porter* to that *Tabernacle*.

Shall some of *Edom* also be brought in ; although his *Desolation* be eternal, or for an Age of Ages ? May they come to be *Porters*, as the *Gibeonites* were *Hewers of Wood* for the *House of God* ? His *Judgments* are in all the *World* ; and so they must be long. But *Judgment* is his strange *Work*, and he delighteth in *Mercy* ; he will turn again, and be *Merciful unto us*. *Nay, all the World shall Sing and Rejoyce.*

The Sea shall roar a while, and all that in it dwells : but there shall be no more Sea, no more Death, or Hell, but what shall be sealed up in the great Pit. But the Earth shall Rejoyce, and his Goodness shall be over all his Works : they shall all bless him, they shall all praise him. Nay, all the Trees in the Forest shall Rejoyce.

This is also the more considerable, in that it was so clearly expressed in that joyful Psalm, which was made and Sung at *David's* bringing the *Ark* from *Obed-Edom* : But it is divers times repeated and enlarged in the *Psalms* and *Prophets* :

phets : For it is a great Mystery. *Solomon* the King of Peace must build the Temple up : there must not be a Hammer heard, or a Stone Squared, but before it cometh thither.

He is married to *Egypt*, and in League with *Tyre* and *Sidon* : the Letters are yet to be found and read in old Authors : then *Pineda*, he is reconciled to *Moab* and *Ammon* : and the *Arabians* bring him Gifts, as did the *Magi* from the East. He spake peace to the *Gentiles* afar off : not only to the *Queen of Sheba*. I do not reject or believe all the Titles or History of *Precious John* : But I could with a Sight of *Solomon's* Works ; and others in his famous Library at *Amyra*.

Nay, to the *Isles* of the *Gentiles* : We need not travel to *Pern* as some have done, to seek *Ophir* : it is nearer much, and better found in *Zealand*, one of the best Islands I suppose in all the World : and the learned Author of the late *Peleg*, maketh demonstrative Paralels of this with *Ophir*, or the *Taprobane* of Ancients.

Yet even *Solomon*, this peaceful King, had two great Enemies ; one was an *Edomite* (*David* left but very few,) and the other was a *Syrian* ; I do not say an *Assyrian* or *Babylonian*, altho these often come into the Name of *Syria*,

nia (a vast Latitude.) But the Text saith, the Syrian reigned about *Damascus*, which seemeth near the Borders of the old *Magog*; and it may be compared with the Close of the 16th. or rather with the middle of the 20th. of the Revelation; or with much in *Ezekiel*, about the time of *his Temple*; or it may be, long after it was built.

The second Temple was built in a time of Trouble, and great Fear: For they held their Swords together with their Trewels. But yet it was not built by *Power* or *Might*, (much less by *Force*,) but by *his Spirit and Goodness*, that did overaw his Enemies.

Zerubbabel did hardly live to see his Temple; or at least the City finished. This was but a gentle Visitation, as the Jews used to call it: not a Restoration of the two Tribes, much less of all, as the Prophets promise: Nay, some of them promised after this Return from *Babylon*.

And this Temple was imperfect much, it wanted divers Glories of the former: Five in special, as the Jews affirm; (at the want of 5 in the Word foretelling its Glories) which never were recovered: tho great *Herod* did encrease the outward Glory. And there was a greater

greater than Solomon to give Peace in that place: and so he did to all the World. 'Tis known how oft the Romans shut the Temple of their Janus.

But why could not this Peace endure? was it because this Temple was not founded in Peace? for Ephraim envied Judah, and Judah vexed Ephraim. Nay among themselves they could not agree: for some wept, as others laughed.

But when the People did with one Voice, and one Consent, Sing out to Bless and Praise the Lord (so saith the Type in Solomon,) then, and not till then, the Glory of God came down and fill'd the House; so that the Priests could not enter; nor it may be, needed in that Glory. This was but a Type of somewhat yet to be fulfilled, more, much more in building of the new Temple.

Solomon did also then pray that all the Earth might come to know the Lord, and serve him, as his People Israel did. And this was heard and answered by God; and almost all the Prophets, who with much Consent assure us, that the Earth shall be full of the Knowledge and Glory of God. And that he shall be served with one Consent, and with one Shoulder: even from the rising of the Sun, to the going down thereof. (For it is worth observing how Learning and Religion, came
along,

along with the Sun from East to West.) In every Place shall Incense be offered with pure Oblation. And then Ephraim shall no longer vex Judah, nor Judah vex Ephraim.

If I durst assert *Esdra's* to be Scripture in any thing; it should be in those most considerable Prophecies of the Ruine of the Roman Eagle, to which it may be, our Saviour also alludeth; as he seemeth to do in divers other Passages, found no where that I know, but in *Esdra's*.

And about the Fall of that Roman Eagle, he seeth a great Multitude of Fighters, (as in Armageddon.) But at length arose a Man, who was the Son of Man, that called to him a peaceful People, that should leave off War, for it should cease in all the World; their Swords and Spears must be beaten into Plow Shares and pruning Hooks.

And when the Multitude (in the Revelation) stand and Sing the new Song, the Song of Moses (of the Sabbath, or the Red Sea,) and the Song of the Lamb (not yet known abroad:) Then, and not till then, is the Vail of the Tabernacle in Heaven Opened. But there was yet a Smoke to cloud that Glory.

But when the seventh Angel shall sound, and all the Kingdoms of this World become the

the Kingdoms of our Lord, and of his Christ : and those be destroyed, that destroyed the Earth. Then shall the Temple of God be fully opened in Heaven, and the Ark of his Testament (the Model shewed to Moses on the Mount,) shall be seen and viewed in that Temple : not in a Tabernacle, but a Temple : then also shall the four Beasts (which in *Ezekiel's Vision*, the Jews will have to be the Emblems of the four great Monarchies in Daniel :) even these four Beasts ; and the Elders of Presbyters ; with all the Angels of Heaven, and all the Creatures of Heaven and Earth ; and of the Sea, and under the Earth ; (how long, or how far this may reach, I know not) all shall fall down about the Throne, giving Honour and Blessing, and Praise to him that sitteth on the Throne, and to the Lamb, for ever and ever. And the four Beasts again in special say Amen. There is much spoken of a Personal Reign of Christ upon Earth : I do not affirm it, yet I believe there is more, much more for it, then I have yet seen in any of the many Writers on Daniel, or the Revelation. And beside the Judgment of so many, if not all the Orthodox in Justin Martyr's time : there be some very antient, (almost Apostles) that relate how our Saviour himself discoursed of this Kingdom, which the Acts do but intimate.

But

But for my part, I do acknowledg my self to be so ambitious, as to expect somewhat much higher and better then his *bodily Presence*, which yet I long for: *as the Captive hasteth to be loosed*. But this would please or profit little without *Life and Power*, and Real *Light* above our *Doubts, Disputes, or Demonstrations*.

Nor would this much profit man, or please God, I think, without *true Love*, proportionate to such a Light.

The first Paradise had one River parted into four Streams, and one *Tree of Knowledge*: but of *Evil* rather than *Good*. The new Paradise shall have many Rivers of Knowledge, to cover the Earth, and many Trees of Knowledge also; whose very *Leaves* shall *heal the Nations*; what then shall their *Fruit* be, but *Resurrection from the Dead*?

I see so much of this vain World, that I cannot but earnestly desire and long for a *new Earth*, and for *new Heavens*: but yet I should not value or desire them much, were it not that in these I hope to see *more Justice*, and *more Mercy*.

Is not that the *World to come*, of which the *Hebrews* and our Saviour speak, as *pardoning all but one Sin*? The Phrase is common with the
Jews;

Jews, who do expect it on Earth; and the Prophets make it a *pardoning World to come*, so that the *Inhabitants shall not say they are Sick*, for their *Iniquities shall be forgiven*.

I must confess my Hope is, that he that bid us still forgive so much, that we might be like our Father: meaneth himself to forgive very much; being himself the Founder and great Patron of that great Order of Christians, whose Badg is this, *Conquer thy self, and others Evil by doing Good*.

Elijah must level his Way, and many (if not all the Antients,) thought *Elijah* yet to come; which our Saviour also seemeth to intimate with that at his *Transfiguration*. And the Jews repeat the Verse of the Prophet *Malachi*, which seemeth also to speak of two Days; and all *Elijah's* Work was hardly fulfilled at Christ's first Coming.

However when that *Levelling* is over and past, the *Lamb* shall come of another Spirit. For the Son of Man came not to destroy; but save: He is the Prince of Peace. And when he shall come to Conquer; He will come on a *White Horse*, and shall ride on *Prospering*, because of *Meekness, with Truth and Righteousness*. He will have *Mercy and not Sacrifice*, and that will please
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him more than all burnt Offerings. He will make our Officers Peace, and our Exactors Righteousness : For Violence shall be no more : But a King shall Rule in Judgment, and a Man shall be an hiding Place from Storm and Tempest.

I will hear what the Lord God will speak ; For he will speak Peace (as well as Truth) to his People, and to his Saints ; that they may no more return to Folly, or have Cause to Blush. Mercy and Truth shall meet together, Righteousness and Peace shall kiss each other. Truth shall spring out of the Earth, but Mercy (this the Jews called Righteousness) shall come down from Heaven ; for the Kingdom of God consisteth in Peace and Joy, as well as Righteousness.

For the Fruit of Righteousness is Peace, and Assurance for ever ; being sown in Peace, of them that make Peace. Such is the Wisdom from above, and such are the Fruits of the Holy Spirit.

What shall we say then to the Messenger of the Nation ? or to the Angel, spoyling Edom and Babylon ? What ? That the Lord hath founded Si-on, and the Poor of his People shall trust in it : He will leave an afflicted poor People, and they shall trust in the Name of the Lord ; and then will he give them a pure Language, that they may all call upon him with one Consent.

Thou

Thou hast indeed smitten Edom and Babylon. Let not thine Heart lift thee up, for why wilt thou meddle to thine own Ruine? that thou shouldest also fall, thou and all Juda with thee.

Shall the Sword devour for ever? Knowest thou not that it will be Bitterness in the latter end? How long shall it be then, ere thou bid the People return from pursuing their Brethren.

Again, and yet again, I bow my Soul and Pray, and humbly Beg; That all may be both *Just*, and *Justly* done. Not with Justice only, but with *Pitty* and great *Compassion*, and much *Mercy*, for in many things we fail all.

I say that the *Commons* also failed to the *Common-wealth*. But to speak freely, altho' I will not *Judge* the *Commons*, yet I cannot *Justifie* that *House*; but I must also *Condemn* what was lately done to them also, (even to the *House of Commons*) by that *Army* which hath often been acknowledged, to have both served and saved them from *Ruine* or *Slavery*.

I desire not to dispute matter of *Fact*, nor can I *Judge* it. It is true that by express *Law* (besides all of *Reason* and *Nature*) there should be no *Force of Arms* near, or so much as in appearance of overawing the *Parliament*: and I looked on it as an heavy *Charge* on some

that perswaded the Scots, or the *Northern Army*, to look as if they would have moved towards the City and Parliament against its Will. Nor can we forget, it was so late, that the House voted it Treason to act by Command of Parliament, under a visible Force.

But how shall wee know or discern this visible Force? They may be *Free* under that which I may think a Force, and therefore I must believe them to be *Free*, unless they declare themselves to be *Forced*. For by Judging what is the Priviledg of Parliament, I may certainly break their Priviledg; while I inveigh against others for so doing, and by this incur the Danger of those that Judg before the time, or out of Place; for I suppose I see 100 of the *Commons* seized and secured; I cannot Judg it a *Breach of Priviledg*, because I know not but it might be done by the Command, Order, or Consent of Parliament; till it declare the contrary: Or if not by Order of Parliament, yet it may be by some Officer, *Virtute Officii*; or if by private Man, yet upon some emergent *Necessity*, or such Reason, that I or others may not Judg, much less Condemn but in Parliament. For it may be possible perhaps (but I hope not probable) that some Parliament-men may design or consent

sent to such a dangerous *Treason* or *Felony*, that it may be the Duty of Officers or others to detain or secure them, till the Cause be heard in Parliament: and Resistance of any that detain upon *suspicion* of *Treason*, hath been adjudged Ground enough to Justifie Detention and Securing, till there be a legal acquitting. And that *species* of *Treason*, which is against the Kingdom, or the Kingdoms Army, may so much concern a General, that it cannot be wondered if he should be the Accuser or Attacher: who is the Kingdoms Sheriff, and intrusted with the *Posse Regni*; which he ought to manage for the best Advantage of the Kingdom: *prout & melius visum est, in Honorem Coronæ, & Utilitatem Regni*: as the Confessor's Laws *de Heretochiis*; and yet he is no Judge of this, but must submit it to the Courts of Justice; and in special to the Parliament, when ever it concerneth any of that Body Representative.

I say not, that the House should not, or need. not demand their Members; and the Cause of any such Detention (which still ought to be submitted to the Judgment of Parliament,) but I think it may be possible to suppose such a Case as cannot soon be heard and adjudged; and in such Case, I do not know it is absolute-

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ly Necessary for the House to sit still, and to refuse to act at all, till all their Members be restored. For by this it might be possible for a few mischievous Persons, still to keep the Parliament in such a perpetual Imployment, or rather Idleness; that they should do nothing but Dispute their own *Priviledg*, and breach thereof. Whereas it may be such a Case, that should make them that be Free, to be more active in the publick Service, *Ne quid Detrimenti capiat Resp.* while some cannot, and others will not come to do their Duties.

Yet if any be Zealous to spend their Time, or rather the *Kingdoms*, in Disputing an airie empty Species of *Priviledg* (which themselves may reflect or refract at Pleasure, every Moment,) I may not Condemn or Judg them: But when the Sea breaks in, I should fear it a Madness in my self, to sit and frown with a Spanish Gravity, chafing at those that broke down the Banks, till the Waves come in, and drown me with my Friends and Country.

I do not deny but that by the Law and Custom of Parliament, 40 may be an House of Commons as well as 400. Yet to speak freely, I could believe it to be the Duty of such 40 to call in their fellow Members, especially when

when the Work is great and weighty. And I must confess I should somewhat wonder to see 40 sit alone, about the greatest Matters possible, without so much as calling the rest, or sending Writs for new Elections.

The *Modus of Parliament* telleth us, that as the King might not absent himself (but in the Case of Sickness, and then he must lie in the same City or Mannor,) without Consent of Parliament; so also there was great Caution against the Members absenting themselves; so that it was expressed in the old *Writ of Election*, that they should not depart from Parliament without Consent of Parliament. But I know not whether the Crime may be so great in those that desert their Trust; as it may be in those who permit them so to do.

But I will suppose the House of *Commons* is both *Full* and *Free*; which we may, and should (for ought I know,) till they declare it otherwise. Yet when they are freest, they have Limits; for they be not Infinite. Nay, when they are most Free, they are most bound to good Orders and to right Reason.

They which bring them to this at any time (though by any Army of Arguments, or any thing else that is Reasonable,) are so far from
ensla-

enslaving them, that indeed they make them Free, compleatly Free; and when they are set Free, they are the more Inexcusable, if they be not Rational; for when Men are Slaves, they may be the more excused, for acting without or against *Right Reason*; which to Man is the Natural Law of *Liberty*.

Which is not a Power to act *quicquid Libet*, ~~what we list~~, (for this may be *Licentious*, and a Lust or Passion may enslave a Man as much as any Chain or Fetter,) but *quod Licet*, what is *Just* and *Rational*; or as some of the Schools express it, by the *Wills* following the Dictates of the *Understanding*, or *Right Reason*, rather than by a blind irrational *Indifference*, or Power to *Contradict* its own Acts, or to *suspend* its own Acting; which is not found in all, no not in the best Agents, in their best Acts about the chiefest Good, most *Free* and yet most *Necessary*: and wherever such *Indifference*, or such *Suspension* is, it is a Stain or Spot, and may be Slavery rather than an Ornament or Badg of *Liberty*: For it ariseth from some Darkeness, in not discerning what is best; or from some Inconstancy, or Inability to follow it; which without *Suspence* should be always Embraced, and followed by *Right Reason*.

But

But what is this *Reason*? is it only *Discourse*, as the *Schools* use to express it? who yet find somewhat higher in Man, even a kind of *Intuition*, which the old Philosopher did make the highest Sphear of all in Man's Soul, *Concentrical* to Good, when both *Reason* and *Fancy* were *Excentrical*.

But to me the Word ΛΟΓΟΣ (which we translate *Reason*) seemeth to be the first used of *Proportion* in the *Mathematicks* (Mother of all *Analogy*, and of most Learning to the Ancients:) so that those were called *Rational Agents* which acted in *Proportion*.

So the same old Philosopher (that saith, God ever acteth in *Geometrical Proportion*,) placeth *Reason* in a *Mean*, between two Ends or Objects: and the Master maketh *Reason* to be Mistress, both to *Art* and *Prudence*, (this is *Proportion* in the *Moral*, that in the *Natural* Part of Actions;) and describeth *Virtue* by a *mean Proportion*, which he calleth *Reason*; as a *Wise Man* would define it. As the Sacred Writer of the *Number of a Man*; that is perhaps *Rational*, a *Logarithm*, or a piece of true *Algebra*, which we may Translate *Mans Numbring*: For of all Visible Creatures, *Man* only was found to use *Numbers* and *Proportion*.

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But what is this *Proportion*, which *Denominates* an Agent to be *rational*? Is it between the *Actor* and the *Object*? and do *Rationals* only observe a *Difference* of *Objects*; whereas *Natural* Agents go on alike to all, *Eodem modo ad Extremum posse*? But *Rationals* still do, or still should act in *Proportion* suitable to themselves, and to their *Objects* also: which is two or three times observed by the Prophet *Esay*, in describing *Reason*, in that of *Ploughing* and *Threshing*, and of *Punishing*, with that of the rough *East-Wind*: Chap. 27, 28.

But there is a more inward *Proportion* yet to be found in *rational* Agents, when their *Activity* is *proportional* to their *Being*, and to their *Knowing*: and when ever these three are preserved *Equal* or *Proportional*, there is true *Liberty*. So it seemeth to be in *God*, (may be so darkly shadow out the Blessed *Trinity*;) His *Being*, *Knowing*, and *Activity* are *Infinite* (and therefore *Proportional* to each other) and absolutely *Free*, altho *Necessary*.

By his *Knowing*, he freely comprehendeth; and by his *Acting*, freely diffuseth his own being: So that all the *Creatures* seem as several *Rayes*, or *Ideas* (rightly called *Species*,) acted, that is, diffused through infinite *Knowledge*; from,

or

or rather within Infinite *Being*; which the *Jews* call the *Place*, in which we Live, and Move, and have our *Being*.

Creation was of somewhat not appearing before; so both Reason and the Scripture teach: But how it was, or could be, from meer *Nothing*, would be more considered: and it may be the Hebrew Word may signify to *Cleer*, *Manifest*, or *Reveal*, somewhat hidden before; rather than to make of *Nothing* *Something* (*De novo*), which may seem impossible, if there ever was *Being* *Infinite*, (as much real *Entity*, as there could be,) altho not so visible in all its *Moods*, as it was since the *Revelation*, which we call *Creation*.

All the *Creatures* have some Image of the Creator's *Being* and *Activity*; it may be also some kind of *Knowing* suitable to both: for which there is much to be said, and perhaps more then is yet written by any *de sensu Rerum*: where we might also find Causes of *Antipathies*, and such as are now called occult *Qualities*. And wherever *Activity*, (for this is most to Sence, and by this we used to measure *Freedom*, tho it should it be in *Knowing* as much as in *Doing*,) is preserved equal, or proportional to *Being*, there and there only, seemeth to be true *Liberty*:

which may most appear in the *Actings* of those *Beings* which are most *knowing*.

Shew me then the *Sphear* of Man's *Being*, and you may quickly find the *Measure* of his *Freedom*: his being is by all agreed to be *Rational*, and *Reason* therefore is the proper *Measure* of his *Liberty*. For he is then *Free*, when his *Activity* is preserved equal or proportional to his *Being*; this is *Rational*; and so must that: and Man is then, and then only *Free*, when he can *Act* what he should *Act*, according to *right Reason*. This is the *Law* of his *Nature*, which is *Rational*; and *Reason* is his *Royal Collar* of S. S. S. or a *Chain* of *Pretious Pearls*, which *Nature* hath put about his *Neck* and *Arms*, as a *Badg* of *Honour*, and most happy *Freedom*.

This *Digression* would be scarce *exeusable*; but that our *Law* doth so adore *right Reason*; that is a *Maxim*, What is contrary to *Reason*, is contrary to *Law*.

Knights Service (with *Ward* and *Marriage*) draweth *Relief*: but *Reasonable* by common *Law*, before the *Charter*, and the *Statutes* do ascertain *Aydes*, which were before to be *Reasonable*.

Guardian in *Chivalry* need not account: but *Guardian* in *Socage*, *Prochein Amy*, or *Tutor Aliene*,

ene; be liable to a *reasonable* Account: For the old Writ requires *Compotum rationabilem*. But an *Action of Account* will not lye against an *Executor*, to such in *Socage*; (tho this hath been pressed in Parliament,) because it was not *reasonable*; but in case of the *King*, it was so adjudged.

Tenant at Will, ejected by his Lord, shall by Common Law have *reasonable* Time to remove his Family and Goods, with free *Egress* and *Regress*, during the said *Fine reasonable*.

Tenant by Copy, with *Fine uncertain*; is not wholly at his Lord's Pleasure: for by Common Law, he must only make a *Fine reasonable*.

Housboot, *Hedgboot*, *Ploughboot*, all *Estovers* (both for *Tenants* and *Prisoners*) must be *reasonable*, and so must all *Partitions* between *Parceners*, and upon *Elegit*, &c. Which are therefore not left to the Sole Pleasure of a Sheriff, or of any other, but in a sworn Enquest, as we may find in the Writ *de Rationabili Partitione*.

In divers *Manners*, there be many petty Customs which can hardly be brought into publick View: but for those, and for all, the Law hath a short Text, *Que nest pas Encontre reason, poit bion estre admitte & allowe*: And the great

great Commentator addeth, *Lex est summa Ratio*.

If you ask him who must determine of Reason, or what is *reasonable*; his Answer would be, that if any man find himself aggrieved by his Lord, or his Fellow Tenants, the Law supposeth the *Judges Breast* to be a sufficient *Closet*; or, if you will, a *Castle for right Reason*.

I remember one Case, (and there may be divers,) in which the Law leaveth private Men, (even in their own Causes,) to be *Judges of Reason*, or what is *reasonable*: It is a case of *Esauage*.

The great Charter dispenseth with *personal Service*, (in some Cases,) where it is not *reasonable* a Man should serve in Person: and the Reason of this runneth so through all *Esauage*; that if any Man will send another in his Room, the Law dispenseth with it, supposing he sendeth *reason* not to attend in Person: Nor may he by Law be compelled in such Case against his own Reason.

Most, if not all other Cases in that *Tenure*, are by Common Law left to the immediate Reason of the Parliament, which may be worth a little Pause; as that which may somewhat clear

clear the grand Question of the *MILITIA*.

It is true that by the Common Law, and by the *Laws* of the Confessor, cited by some, to assert the *Commission of Array*; Men ought indeed to have *Arms*, and them to keep in Readiness for Defence of the King and Kingdom.

- But it is also true that this, besides other Passages, is strangely cited and applyed for Defence of that *Commission of Array*. For altho the Close of the Sentence be as they say, *Juxta præceptum Domini Regis, &c.* Yet the same Sentence (had they cited it whole,) seemeth to be much more against the *Array*, than for it.

For the *Arms* required there, must be *Assessed by Common Consent*; and that also limited in that very Sentence, to the Proportion of ever Man's *Estate*, and *Fee for the Defence of the King and Kingdom*; and for the *Service due to the Lords, Juxta præceptum Domini Regis*; and these Words in this place do refer to the immediate precedent Words, *Servitium Dominorum*; which by the Custom of the Kingdom was so Limited, that in all *Homage or Fealty*, there used to be added this *Salvo*; *Salve lay foy-que jeo Doi, à Seignior le Roy.*

And

And lest King Edward's Laws should not be plain enough *secundum quod eis statutum est, & adjudicatum, & quod debent* : King William the first, by Advice of his great Council explained them thus ; that nothing should be exacted or taken, but *Liberum Servitium* ; free Service. Prout *statutum est, per commune concilium totius regni* ; as it was established by the Common Council of the whole Kingdom : which is also a clear Proof, for such a Common Council in his time, and before.

In the same Laws, this William (whom some call the Conquerour) granteth that Cities, Burroughs, Castles, Hundreds, and Wapentakes, should be so kept and watched, as the Sheriffs, Aldermen, &c. should best order for the good of the Kingdom, *per Commune concilium* ; by such Common Council : and a little after giveth this Reason, Because they were founded for publick defence of the Kingdom and People thereof, *idcirco observari debent, cum omni libertate, integritate, & ratione* ; a very happy Trinity.

And for Service, with such Arms as were by Common Council assessed : The same King (called the Conqueror) hath indeed such a Law, That all Earls, Barons, Knights, &c. should have and keep themselves in Arms and Horses, as it be-
came

came and behoved them: So much of this Law, the King's Declaration cited for the Commission of Array. But the following Words of that Law quite dash such Array; for the Close of all is, according to what they ought to us, by their Fees and Tenure, to do by Law, as is said in Statutus per commune Concilium Totius Regni. Even by Parliament, for the Common Council of the whole Kingdom.

These Laws of King William, with the Additions and Emendations of the Successors, were afterwards confirmed by King Henry the 1st. as appeareth by his Charters, not only in the Exchequer, but in other Places also; besides that we have in Matthew Paris; a Copy of which was kept in every County. And the same Charter was again confirmed by King John, (they know it may be proved;) and again by King Henry the 3^d. and so it came into the great Charter, and by Consequence Confirmed, in more than thirty Parliaments.

In which, also there hath often been, most especial Care of this touching the Militia, being one of the main Causes of those Statutes, entituled Confirmations (Chartarum) and of those De Tallagio non concedendo, except by common Consent in Parliament; besides many other Statutes,

in King *Edward* the 3^d. and *Henry* the 4th. with
other Times.

I deny not that in *Henry* the 4th. there did
issue out a *Commission of Array*. But it is as true,
that in the last Parliament of the same King
Henry the 4th. it was again declared as the un-
doubted Right of this Kingdom, not to be
charged with ought for Defence of the Realm,
or Safeguard of the Seas, but by their own
Will and Consent in Parliament.

By which we may learn how to interpret all
the Precedents acted by the King, for his *Ar-
ray*: and by how much the more is it true, that
some Commissioners of *Array* have been con-
firmed by Parliament: which is always needful
to Confirm any such *Array*: Which yet is not
proved ever to be Paralell'd in any Parlia-
ment; for ought I can find.

For in all yet seen, there is no such bound-
less Authority, given to two or three Strang-
ers, (or others,) to compel all Men but them-
selves, to provide and bear Arms, how, and
when, and where it shall seem good to such Com-
missioners: Which at once seemeth to Dissolve
all Laws of Liberty.

Which by the *Mirror* with other old Law-
yers, is chiefly placed in this; not to be tyed to
any

any Man, but by ones own Consent. In explaining of which they are Large, in shewing how the Tenures of the Crown were appointed for Defence of the Kingdom: and none tyed to Service, but according to this Tenure; which was assessed by Common Consent.

And if such Commissions of Array, might be Legal from the King; *Escuage* is so far from the worst or hardest Tenure, (as it was commonly thought,) that it would prove the best, and easiest in all the Kingdom.

For if the *Escuage* be uncertain by Tenure; None that hath read so much as *Littleton*, can be Ignorant, that by the Common Law and Custom of the Kingdom; it is not to be assessed by the King, or any other, but by Common assent in Parliament; which hath now done much to settle this also.

And if Certain, then is the King as really limited as the Tenant. So that the King cannot command or require his Tenant, but according to his Tenure expressed.

Not when he will: For it must only be in time of War, and this is not to be determined by the King, but by the Courts of Justice. When they are open, as appeareth by all the Law-Books, in the Case of Roger Mortimer, Tho-

was *Earl of Lancaster*, and divers others.

Nor in all times of War, but only in a *Voyage Royal*; to which *Escuage* is most properly tyed: and this must not be determined by the King (who may be a Child, Sick, Incompounded,) nor by his *Marshal*, or *Constable*, but by the Courts of Justice.

Nor in a *Voyage Royal*, as long as the King may please: But according to the *Tenure*; usually forty Days for each Knights Fee; and it hath been demurred in Law, when those forty Days should begin.

They are *Luttreton's* own Words, and very pregnant; as if he thought that by Law, the King could have no Host, or Muster, but by Consent of the Commons: and he was as like to know our Laws, as most Men living now.

Nor is the Tenant to serve, but according to his *Tenure* in *Gascoyn*, *Wales*, *Ireland*, *Scotland*, to which *Escuage* proper, (but rather from the *Scute* or *Shield*;) and the Books have divers Cases, where the King hath required Service, denied by Limits in *Tenures*; which the Courts of Justice, especially Parliament, in all Ages did determine.

Nor is the King to determine how the Knights shall serve him; whether in Person or not. For this

this is by Law, at the Tenants Choice. And if the *Knight* or his Proxy, will not attend, or stay out his Time: yet cannot the King proceed against him, but in a *Court of Justice*, and not by *Marshal Law*: Yet the *Marshal's Certificate* is a Legal Evidence, that the Tenants did not appear in Service; but his Reasons must be heard with all just Pleas.

Nor with what Arms or Horses, the Tenants may serve: all is expressly limited; if the Tenure be certain: and if not *Certain*, it must (as all Lawyers know,) be assessed by Parliament; which did also at first establish that, which now is *Certain*.

Nor would it be difficult for a mean Historian to shew how in all Ages, the *Militia* was as well disposed and managed, as it was Moulded by *Common Consent*; which is very considerable; and the rather, because all that wrote for the *Array*, did most, or only run out in this; That the King had the sole disposal of the *Militia*: not attending, that if this had been proved, (which never was that I know) yet this was only but half; and it may be the least half of the Question. For by that strange Commission of *Array*, the King did not only challenge the Right of Disposal, of the Legal *Militia*, already settled; but also

also of *Moulding* and Making a new *Militia*, not yet made or ever thought of, that I could learn by any of our Ancestors.

If I were forced to enter the Lists, which I would avoid, as a Purgatory ; (being otherwise, I say not better employed, than in such unprofitable Wranglings,) I should believe it not very difficult, much less impossible to maintain ; That both the *Moulding* and *Manage*, (the *Make* and the *Use*) of the Kingdoms *Militia*, was ever immediately subject to the Command of the *Courts of Justice* (especially the Parliaments,) which may in a large Sense of Law, be called *the Crown*, or *King's Politick Capacity* ; but never I think to the King's Person alone, which in Law is still an Infant, as the *Mirroure* expressly calls him, though his *common Capacity* be ever of age. Be the Person a Child, an Infant, Lunatick, *Incompos Mentis*, or a Woman, which sure our Ancestors could not but deem a most unlikely Person for a wise and valiant General.

If I were compelled to argue this, it should not be only from *right Reason*, or the Law of Nature, which yet to me, seemeth much to encline this way.

The *Feet* are to bear, and the *Hands* to help,
to

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to hold, to bind, and rub the *Head*, (in any Distemper or Weakness,) but if I should hear of any Man born with his *Heels* in his *Neck*, or his *Hands* tyed to his *Head*, or immediately under his *Chin*, I should think it a Monster.

And wherever both *Hands* and *Feet*, are at their due Distance from the *Head*, with divers Nerves and other Vessels, Bones and other parts between them: yet I never heard or knew that they did obey the *Head*, till it did command *itself*, and them also by *Reason*; or till it also doth Obey, not only its own *Eyes* and *Ears*, but the *Common Sense* and *Reason* of the Soul.

I must confess I have heard that *Ticho-Brah*, did sometimes imagine that he found *Mars* below, or under the *Sun*. But if it were really so, it seems as great a Prodigy in Nature as the new Star, and that of *Mars*, rather than a new Star in *Cassiopeia*, might presage those sad Commotions which have since followed in many Places of *Europe*, while *Mars* hath been so much below or under the *Sun*. For by Nature *Mars* was said, and ever thought to be placed immediately under *Jupiter*, the great Judge, or Court of Justice; which should command the *Sword*.

And so it doth by *Law*. For in *England* the Judge.

Judgments given in any *Court of Record* do so command the *Militia* for *Execution*; for a *Writ* runs of Course, which was made by *Common Consent*, and cannot be denied.

• *Release* to all *Actions*, will not hold against *Execution*, except all *Suits* were also released: But this is such a *Suit* as the *Law* calls a *Demand*, which may not be denied.

And for other Cases of *Routs*, *Riots*, unlawful *Assemblies*, *Invasions*, &c. The *Posse Comitatus*, and by Consequence the *Posse Regni*, was Disposed and Commanded by known, sworn Officers; that acted *Virtute Officii*, by the *Law* and *Custom* of the *Kingdom*.

For it may be known that the old *Justices*, or *Conservators of the Peace*, were chosen by the *Counties*; as appeareth by *Writs*, yet to be read from the *Rolls* of *Edward the First*. And now their *Commission* and their *Power* dependeth on *Parliament*.

Nor could the *Chancery* have given such a *Power*, had it not been so *Established* by *Parliament*, which hath also strictly provided for their *Legal Nomination* and *Election*. For which the *Statutes* of *Richard the Second*, *Henry the Fifth*, *Henry the Sixth*; and before them all, *Edward the third* thought it were not printed.

And

And it is very well known, how by the Common-Law and Custom of the Kingdom, all the *Sheriffs* do command the *Posse Regni* in their several Counties: and that not onely *Execution of Writs*, which may be thought to be Matters of *Peace*; But the Lawyers know, that Sheriff is *Custos Legis* and *Reipublicæ*, as well as of *Peace*; of which he is the Principal *Conseruator* in his Shire and County. Nor may it be Presumption to say, That all these *Sheriffs* also ought to be, and so were, *chosen by the People*; as is sufficiently found in *Hoveden*, and in the Laws of the *Confessor*. And in full Parliament of *Edward* the first, it was declared to be the Law and Custom of the Kingdom; and therefore so settled in the Choice of the People.

There was in latter times some *Alteration* made in Choice of *Sheriffs*; but it was by *Parliament*.

However, we all know, that *Headboroughs*, *Constables*, (greater men than themselves know) *Coroners*, and divers others, are yet still chosen in the Counties; and do act by Custom and Common-Law. And the *Sheriff* also, however he be chosen, yet he stands not by Commission; nor ought to fall with Kings death: But is a standing Officer, by Common-Law. Who may command all Lords, Knights, Gentlemen, and others in his County, by his *Writ of Assistance*. Which issueth of course to every *Sheriff*.

I need not say, how little the Kings Personal Command or Warrant, can by Law interrupt or hinder the

Process of *Sheriffs*, *Justices*, *Constables*, or others, in their legal course for the Publick Peace. Yea, inso-much that if I should have beaten a Drum, or raised Forces to rescue King *Henry* the Eighth from the *Counter*, for abusing a *Petty Watch* in a Night-walk; I might have been arraigned for it.

And so I might have been, for refusing to fire the *Beacons*, or to have raised the *Counties*, if I had seen a Navie of *French* or *Turks* landing in King *John's* time: Although the King had come to me and bid me quiet, because they were *Friends*, or such as he invited in for the good of his Kingdom. Which from his own Mouth, or under his hand, would have been no legal *Supersedeas* to a private man, in case of such Danger; much less to a *Sheriff*, or other sworn Officer.

For in such cases of Apparent Danger, any man that is next, may esteem himself an Officer; as, in quenching great Fires, or damming out the Sea. And in such, though the King himself should forbid me, or get me indicted; I may demur, and put my self on the Judges of Law; especially Parliament, the most proper Judges in such Causes. And to Lawyers I need not cite Records or Precedents.

Nor shall I need to adde, That in case of *Foreign Invasion*, or Intestine Motions, and Breaches of Publick Peace, the Common known Laws of the Land will warrant a *Sheriff*, *Officer*, or private man, to go over a Pale, an Hedge, a Ditch, or other Bound of a Shire or County.

County. In which our Ancestors were not so ceremonious or superstitious, in case of hot Pursuit, or the like : Although they were punctual enough in keeping of *Land-marks* : And in Peace, in cases of real Actions, and personal Trials. They were very tender of those Marks, in special, that bounded out *Shires* or *Counties*.

The Original of *Shires* and *Sheriffs*, is generally fixed upon King *Alfred*. But the old Abbot of *Cromland* (whence this arose) seemeth to speak of new Names, rather than Things : for himself hath *Provincias, Comites, Vice Domini* (though not *Vice Comites*) of Ages before King *Alfred*. And the Monk of *Mahmsbury* durst not follow *Ingulph* in this of *Shires*, as he doth in *Hundreds* ; which yet (as *Wapentakes*) were elder much, if we may credit *Tacitus*.

Old *Ethelward*, and the Author of both the *Offa's* ; with *Huntingdon*, among Historians ; and the Lawyers old *Horn-book*, the *Mirror* ; do find or make *Counties* and *Counts*, before King *Alfred*. And we may go higher much, if we may trust to *Alfreds Saxon Bede*, now printed, with an old *Saxon Chronologie*, by Mr. *Wheelock*. In both which we read so much of *Eorl, Eolderman, Shire-Alderman*, and *Bishops-shire* (besides *Shire-born*) that is, his *Parish* : For this was the old Diocess, before the Novel Division of *Parishes*.

And before *Alfred*, as high as King *Ina*. His Laws, now extant, tell us of *Shire-men* that were *Judges* also,

(as the old *Counts* and *Shireeves*) and of *Ealdermen* that were to forfeit their *Shires*, if they let *Thieves* escape.

I might adde the old *Writs of Assize* in *St. Edmund's* time ; on which the great Judge buildeth (in two or three Books of *Reports*) for *Sheriffs*, *Tryal* by Twelve, and other things ; which might have other clearer Proofs.

If any would also assert such Division among the old *Britains*, he might have much from *Nature*, in Rivers or such Partitions, to most of our *Shires* ; besides the names in *Cesar*, *Tacitus*, *Strabo*, *Ptolomy* ; and besides that, which *Virgil* himself will admit of, *Molmutius* Laws ; assigning the *Ways* and *Plows* for every *County*, which is in others ; besides *Monmouth* or *Virunnus* : For *Polydore* addeth in this : which is to be marked ; besides *St. Edward's* Laws.

This Digression may be the more tolerable, as that which maketh way to such Elections ; as we might assert in the Parliaments of those times also, were this the proper place.

But to return to the *Militia*. We have found it moulded by *Common Consent* ; and by it also committed to *Shireeves* and other Officers, known, sworn, and chosen by the People. We shall now step a little higher, that we may see how in elder times the great work of *War*, as well as *Peace*, was managed. And this also we shall find entrusted to a *Common Council*.

I do not deny, but the King himself hath sometimes been General of a great Army ; and that legally also : for it was by Consent of the People or Parliament.

So it was when the *Romans* came into this Island, *Cassibelan* was King and chief Commander in War : But it was by Consent of a great *Common Council* ; as *Cæsar* himself observeth and reporteth : *Summa belli Communi Concilio, Cassibelano traditur.*

Nor can it be wondered at, when their *Druyds* grand Maxime of State was this : *Ne loqui de Republica, nisi per Concilium.* Not so much as to speak of a matter of State, but in or by a Council.

These were they that sent *Cæsar* word, they had as good Bloud as he ; and from the same Fountain : having been so long acquainted with *Liberty*, that they knew not the meaning of *Tribute* or *Slavery*.

The *British Druyds* moulded the *Gauls* : *Cæsar* reporteth it, with the Brag of one of them, saying, *That he could call or appeal to such a great Common Council, that all the World could not resist it.*

But there were others also, besides *Kings*, chosen by the *Britains* to be *Generals* ; such as old Authors call *Principes Militiæ* : a Phrase given to divers ; two I remember, *Bolinus* and *Levisham* (as now he might be called) in the time of *Kimbolinus* : acting by Common Council, as all may find that read those Histories. Which we may now assert, by better Authors than old *Monmouth*, though he be better also ; much better than *Polydore* or others would perswade us. It

It was this *great Council*, with the *King*, that treated with and against the *Romans* in all times; and that sought their aid at length against the *Picts* and *Scots*. And when the *Romans* could not attend the *Britains Tears*, it was this *Council* that called in their Neighbours first, and Friends the *Britains* from *Armorica*; (the *Gaulish Britain*) and that before *King Arthur's* time: Of which so many Authors write, that *Convocato Clero, and Primatibus Communi tandem assensu mittuntur in Armericam Nuncii, &c.* A Parliament clear enough; yet not so clear; as any man acquainted with those times, might prove beyond dispute. But I now must attend the *Militia*.

A Parliament it was that called in the *Saxons*; not the *King* alone, but Parliament, of *Lords* and *Commons* also; if (besides the Crowd of all in the Road) I be not deceived by the *Saxon Chronologie*; and *Gildas* himself, (whose very words almost are used by *Mowmouth* and others;) and by the famous *Nennius* of *Bangor*, who yet liveth in *Manuscript*.

He is clear enough for divers things we doubt in *British Stories*: And for Parliaments also, before the *Saxons* settling here; which was by *Act of Parliament*. *Dum Conventa magna Synodus Clericorum & Laicorum, in uno consilio & cum majoribus natu Consilium fecerunt, & scrutati sunt quid facerent; tandem Concilium omnibus fuit, ut pacem facerent: postea vero Conventum adduxerunt,* (here was a *Covenant* also by *Parliament*)

&

& Statutum est, ut amicitia firma adjuvicemesset, &c. Thus Neunius, after his escape from the Massacre at Bangor.

Come we now to the Saxons, settled here by Parliament. In this they may seem more considerable, that by most they are made the Patrons of Chivalry, or Tenures by Knights-service : for it is now believ'd by no Lawyer or Historian, (that I know) that this came in with the Normans ; although it was so thought by some.

I have somewhat to say in due place, why it might look higher than the Saxons ; yet I must yield, it had been but little room among the Britains of Gavel-kind. Of which, the Parliament in Henry the Eighth ; and more hereafter : besides all the Comments upon the Statute (or rather the Writ) *de Militibus*.

None doubt but Tacitus speaketh of our Saxon Ancestors (or rather theirs) in that, in their choosing Kings and Generals, (*Reges ex nobilitate, Duces ex virtute*) by Common Council, in iisdem conciliis, Eliguntur & Principes, de Minoribus Principes, de Majoribus, omnes consultant. And that such Council did both mould and manage the Militia, is plain enough in the same Author : Who besides all matters of History, telleth us their general Custom was ; Not to entrust any man with bearing Arms, antequam Civitas suspectum probaverit, till some Common Council, more or less, had approved him. For so, I may translate it to all that know, how much Urbs and Civitas do differ. The

The Tract of *Parliaments* is visible enough in all the *Saxon Writings* here. I should be tedious in citing but one quarter of that which their Laws (yet to be found, and very good Authors) do afford in this.

Some have much wondred at a Passage now found in the *Confessors Laws*. It is about *Titles* ; which he saith, were preached by *Austin*, and granted by the King (then reigning) and the Barons, and common People : *Concessa sunt à Rege, Baronibus, & Populo*. A very full and clear Parliament.

We need not suspect or doubt it : for in those very times there were such Parliaments , and such degrees. Nay, *Cæsar* himself found such degrees among the *Britains* ; a King and *Druids*, (which were as *Bishops* and *Archbishops*, as we may clear anon) *Dukes* and *Nobles*, besides the *Commons* : So civil was our *British Ancestors*. Of whom, much more ere long.

And for the very first times of Christian Religion (which was much higher than *Austin* the Father, who might have been great Grandfather to *Austin* the Monk) King *Alfred*'s own Laws acknowledge , that in this Island the Laws were then made by a *Common Council* of *Bishops* and other *Wise men*, or elder men of the *Wytan*.

Old *Bede* seemeth plain enough for this, in several places ; *Servabant Reges, Sacerdotes, Privati* (Were the Commons before the Lords ?) & *Optimates, suum quique Ordinem*.

And

And of the Saxons, called in by Common Council, *Initum est Concilium, quid agendum, &c. placuitque omnibus, cum suo Rege Vortigorno, ut Saxonum gentem in auxilium vocarent.*

And of Ethelbert (King of all the South to the River Humber ;) *Among other good works (saith he) quæ consulendo conferebat, etiam decreta Judiciorum juxta exempla Romanorum, Concilio Sapientium constituit.*

And among other Laws of his (in the same Bede) that is one, in special, for Priviledge , *Ecclesiæ, Episcoporum, & Reliquorum ordinum.*

That this might also extend to the great Priviledge of Parliaments, I could the rather believe, from the Laws of the said King Ethelbert, yet to be found in the old book of Rochester (*Textus Roffensis*) of which, Sir Henry Spelman ; unto whom we owe so much for all Antiquities. Where, after provision for the things of God and the Church, (to which St. Edward's Laws allude) the next Act is for Priviledge of Parliament, it seems ; being for the punishing and sore fining of those that should do any damage, *Gif Kyning his Leode to him gebateth, &c.*

And in the old Chronicle of Canterbury, we read of this King Ethelbert being at Canterbury with his Queen and Son, and the Archbishop Austin ; *Ceterisque Optimatibus, convocato ibidem Communi Concilio tam Cleri, quam Populi :* With divers other proofs for Parliaments in Charters to that Church, in print. And Spot deserves as much.

Y

One

One thing I must not omit, that *Bede* (observing how Religion was preached both to the King and to the Counts, *omnibus Comitibus*) saith, there was a *License* granted for publick *Preaching* ; but when the King and divers great men were converted and baptized, yet there was no force used to compel others to be of that Religion: because (he saith) they were taught, that *Christs service must be voluntary, and not forced*. But the *Mirror* telleth us, the King was bound to compel men to *Salvation*. O happy men ! or unhappy King !

But the *Britains* would not be forced from their Rites by *Austin* the Monk, *Absque sua gentis, & imprimis Senatorum suffragio* : as a learned man translates King *Alfred's Saxon Bede*. Which is also very clear in several places, for setting of Christian Religion, (when it was freely chosen) with destruction of Pagan Idolatry : with *Lent*, and other things, confirmed by divers Acts of Parliament in time of *Ercombert* and King *Edwin* ; *Mid his Witum, & mid his Ealdormanum*.

So is the old Booke of *Peterburgh*, for a Parliament or *Heatfield*. With which we may compare somewhat in *Ingulph*, and more in *Bede*, *Ethelward*, and *Huntingdon*, about the Parliaments which received and confirmed the *General Councils* ; and that which established the Division of *Parishes*, and *Patronage of Churches*. Of which, *Stow*, and the Antiquities of *Canterbury* ; but especially a Manuscript in *Cambridge*, cited by Mr. *Wheelock* on the fourth or fifth of *Bede*. I

I should not digress to *Sigesberts* founding the *University of Cambridge*, had not King *Alfred* himself in this, added good Notes to *Bede*. By which we may see whence he learned what so many say he did to *Oxford*, the younger Sister : For which *Polydore* is plain enough ; besides so many better elder Authors. It is also considerable, that King *Alfred* calleth *Cambridge* (or *Grantacestre*) a *City* ; which *Bede* would make a *Civitātula*. How little it might then be made by the *Dānes* or others, I know not : But in old *Nennius* of the British Cities, I find *Cair Granth* next before *Cair London*. And Sir *Simon d' Ewes* affirmeth it to be ranked before *London*, in *Gildas Albarius*, and an old *Saxon Anonymus* ; besides that of the old (but not the oldest) book of *Doomsday*.

Nor must I omit the *Records of Richard the First*, for the Customs of the *City of Cambridge*, found by a Jury in an Affize of *Darrein Presentment* for the Church of *St. Peters in Cambridge*. Of which, the great Judge in his Reports or Commentaries

To which I might adde what the *Saxon Chronology* speaketh of *Grante Briege*, at the year 875, and 921 ; where we also find an ancient *Military Sacrament*, or great Oath of *Fealty* : more to be marked, than may seem at first view.

Come we to the *Saxon Laws*, extant in print. They begin with King *Ina* ; whom some will have to be a *Britain*. But in the *Confessors Acts*, he is stiled

Optimus Rex Anglorum, qui electus fuit in Regem per Angelum, & qui primus obtinuit Monarchum Totius Regni hujus, post adventum Anglorum : And that himself and others of his People, matched with the Britains. But per Commune Concilium & assensum omnium Episcoporum, & Principum, Comitum, & omnium Sapientum, Seniorum & Populorum totius Regni.

Not onely a clear proof for Parliaments in King Ina's time, but a good Comment on his Laws in print : Providing about Matches, Dowries, and Womens Thirds ; and all by Parliament : as the Proem it self expresses : beside King Edward's Laws.

And for the Saxon Militia, (a Phrase used by Bede himself ; *Nam egressi contra Gevissorum gentem, omnes pariter cum sua Militia corruerunt :*) King Ina's Laws afford us divers Acts of Parliament, providing against Thieves, Riots, Routs, and all unlawful Assemblies, in several degrees and branches : As also for Officers of the Militia (to be ready on a great Fine) to march upon all just occasions. With which we may compare Mr. Lambert's *Custos Paganus*, Sitbecundman : which some would have to be the Father to our *Sidemen*. See *Whithred's Military Dooms*,

Egbert is by all esteemed a great, if not the first Monarch of the Saxons ; a great Warriour, and a Conquerour : But yet he neither made or managed the Militia, without a great Common Council or Parliament.

For

For which, besides all others, we have a clear proof in the old Abbot of *Croyland* ; to which there was a great Charter confirmed, *Coram Pontificibus, & Proceribus, Majoribus totius Angliæ* : which were all together at *London*, consulting how to provide against the *Danish Pirates* : *Pro Concilio capiendo, contra Danicos Piratas, &c.*

That also *Majores* in this place, might denote some lower than *Earls* or *Lords*, may not onely be gathered from the Subscriptions to that Charter, but from *Bede*, or other old Authors that use the Phrase *Majores*, of such Officers or Magistrates as *Mayors* in Cities now seem to be. Of which, I might give divers Examples.

It is worth observing, how in these *Danish* storms, all Historians make the *Counts*, or great *Shireeves*, to be *Generals* or *Commanders* of the *Militia*. And of these, I know none more famous than *Dorsetshire Reeve Ethelhem*, in the great Battel of *Hampton*; or in that about *Port* (of which so many write) at the *Danes* first landing thereabouts.

Danigeld is scarce so ancient : Yet this also was granted for provision against *Danish Pirates* ; as *St. Edward's* Laws affirm. Who first remitted this Tax (but it came up again) about forty years after it had been diverted from its first institution ; and paid as *Tribute to the Danes*. But this was also by *Parliament*. Of which, *Ingulph* and *Hoveden*, with all about *Ethelred* and *Edward*.

I must not digress to the Parliament of *Winchester*, (in King *Egbert's* Sons) in which *Tenths* of Lands (as other *Tythes*) were confirmed for *Church-Glebe*. Of which, the *Saxon Chronologie*, with *Ethelward*, *Hozeden*, the Abbot of *Croyland*, the Monk of *Malmsbury*, and *Matthew* of *Westminster*, with divers others, before *Polydore*. To which we may adde King *Edgar's* Oration to *St. Dunstan*; which is known enough. As also the *Wednesday Masses*, one for the King, and the other *pro Ducibus, &c. Consentientibus*: The Charter being subscribed by the King, Archbishops, Dukes, Earls, and *Procerum totius Terræ, Aliorumque fidelium infinita Multitudine*.

I should not omit the Parliaments confirming *Rome-Scot*; much mistaken by divers. It was granted by King *Ina*, then by *Offa*, and again, by King *Ethelwoolf*; not to the *Pope*, (as it is generally thought) but to the *English School*, or *Alms-house for Pilgrims at Rome*. Yet it was called *Peter-pence*, because fixed on *Peters-day*: A famous day in our Law, as may appear by the second of *Westminster*, and other Parliaments.

But it might be called *Peter-pence* from King *Ina*, whom (at his Baptism in *Rome*) the *Pope* name *Peter*; as the *Saxon Chronicles*; others. Or there might be as much reason for *Peter-pence*, as there was for *Peterburg* (which was *Medhamsted*;) but Vows might be performed or absolved here, as well as at *St. Peter's Threshold in Rome*: And hence the name of *Peterburg*.

But

But of *Peter-pence*, before *Polydore*, we read in much older Historians ; especially the Author of *King Offa's Life*, now printed with *Matthew Paris* : Beside the *Laws of King Edgar*, *Canutus*, *Edmund*, and the *Confessor* ; where it is called *Eleemosynæ Regis* : But in the *Saxon Chronology*, 'tis *Kynninges and West Seaxena Almessean* : And in *King Alfred's Life*, (by *Affer Mennevensis*) *Eleemosynæ Regis*, and *Anglo-Saxonum* : Being confirmed by common Assent, or Parliament.

I must omit the Parliament at *Kingsbury* ; where among other divers matters, a great Charter was confirmed to *Crowland* : *Unanimi Consensu totius Concilii, pro Regni Negotiis Congregati* : Subscribed by the King of *Mercia*, Archbishops, Bishops, Earls, &c. And among others, by *Offlat*, who was *Pincerna Regis Ethelwoolphi*, & *Legatus Ipsius*, & *filiorum*, *Nomine Illorum*, & *Omnium West-Saxonum* ; as we are told by the old *Abbot*, who knew it well.

I might pass over *King Alfred's Parliaments* : so the famous in all Historians and Lawyers. But in none I know clearer, than in the old *Mirror*. Of which, before, for *Alfred* and his Parliaments, twice every year in *London*. With which we may compare one passage in the *Confessors Laws*, touching this great and old *City*. But of this, hereafter.

This was the learned King, who perused all the old *Trojan*, *Grecian*, *British*, *Molmutian*, *Mercian*, *Danish*, and *Saxon Laws* ; especially those of *Ina*, *Offa*, and
King

King Ethelbert : *Cum consulto Sapientum, partim innovanda curavit*, as himself speaketh. And his Laws were established by Parliaments, by his Witan, or *Witena* : *Atque eis omnibus placuit, edici eorum Observatione* ; As learned Lambert translateth the Saxon.

But I may not omit King Alfred's *Doomsday-book*, made by such *Common Council*, the great Roll of *Winchester* ; which was again renewed by the *Confessor*, and then again by King *William the First* ; and then also called the Roll of *Winchester*, and *Doomsday*, as before. Of which, old *Ingulph*, with *Natura Brevium*.

Yet it seemeth, that before King Alfred's time, there was such a *Doom-book* made by *Ethelwoolf* (at the time of the *Church-Glebe* ;) of which Book, the Saxon Chronology, at the year 854. But this might rather be a *Land-book* (whence the Phrase of *Booeland*.) See King Alfred's *Will*, annexed to *Affer*. But we also find an ancient *Doom-book* for their Laws and matters *Judicial*.

Of which *Doom-book* we read in several places of the Laws of *Edward the Senior* ; strictly charging all the Judges and Magistrates to be just and equitable : *Nec quicquam formident, quin jus Commune audacter, libereque dicant* : according to the *Doom-book*. And again, in *Edgar's Laws*, we find the *Doom-book* for *Tythes*, and the famous *Kyricseat*.

These succeeded King Alfred. But long before his time, among the *Dooms* of *Withred*, made about the year

year 697. by the King and Bishops, *Cum ceteris Ordinibus*, and Military-men (or *Milites*) at Berghamsted; a Fine is set upon a Commander found in Adultery, *Spretta Sententia Regis, Episcopi, & Booca-Doom*.

I could believe King Ethelbert's Parliaments were Authors to this Doom-book. Of which, the Roll of Rochester, *tha Doomas dhe Athelbirt Cyning*; with *Rihtra Dooma* (in the fore-cited place of Ethelbert) in the Saxon Bede of King Alfred.

How severe his *Dooms* were to the Counts, old *Shireeves* and Judges, we find in *Affer*: more in *Horn*, and his *Kirk-dooms* in his Laws; which do also speak of *Kirio-Ealdor*, a *Church-Elder*.

But again to the Saxon Militia. In Alfred's time there was a League made with the Danes: Then the Title was, *Fædus quod Aluredus & Guthrunus Regis ferierunt, ex Sapientum Anglorum consulto*; confirmed by Act of Parliament. And the Saxon Chronologer addeth, That the *Dane* swore to the Peace, and promised to be baptized; as he also was, and King Alfred was his Godfather, naming him *Ethelstane*. Some adde, a Daughter of King Alfred's for his Wife: which may be worth enquiring, more than now may seem.

The Articles of this League were again renewed and enlarged by Parliament, in Edward the Elder: *A Sapientibus recitata sapius, atque ad Communem Regni Utilitatem, Aucta atque Amplificata*. In the Preface to those Statutes.

Z

In

In this *Edward's* Reign, there was an Insurrection; and *Ethelwald* seized on *Winborn*, &c. whose Charge and Crimes was this : That he did such an Act, without permission of the King and Parliament ; but an *ides Kynings*, lease ac his *Witena*. So the Saxon. And *Malmsbury* addeth, That à *Proceribus in Exilium trusus, Piratus adduxerat*.

But the King summons a Parliament at *Exon* ; and there, *Mid his Witan*, consulted how the Kingdoms Peace might be restored and preserved : *Orabat vehementer, & obtestabatur*, (such was his Mean to the Parliament) *hoc unum Curent, ne quem injuriâ afficiant* : Beseeching them mainly to mind this, That they wronged none. A most pious Christian Motion ! And our Monthly *County-Courts* are as old as this Parliament at *Exon*. The Acts are printed. But I must not digress to their *Ordeals*, appointed there for *Perjury*.

In this Kings Reign the Pope sent his Bull to excommunicate the King and all his Subjects : For that, *Per 7 annos destituta fuerat Episcopis, omnis Regio Gavisorum, id est, West-Saxonum*. Whereupon the King summoned a Parliament ; *Convocavit Synodum Senatorum Gentis Anglorum* : As saith the Monk of *Malmsbury*. *Et Eligerunt & constituerunt Singulos Episcopos, Singulis Provinciis Gavisorum* : (For the *Bishops Shire* used to be equal to the *Earls*, or the *Ealdormens Shire*, with whom he sate in *Folkmoote*.) *Et quod Olim duo habuerunt, in quinque diviserunt*.

King

King *Ethelstane* came next. He was the first of all the English Kings that ruled over all the Island, conquering *Wales*, and regaining *Scotland*: Which being subject to *England*, as a *Dukedom* thereof, was advanced to a Politick and Royal Kingdom: As the learned *Fortescue* doth plainly affirm. And for this, against all that *Buchanan* writeth, I need onely refer to the Authors and Records cited by the great Master of Antiquities, with other Learning, Mr. *Selden*, in his short but pithy Notes on it, with *Hengham*: To which we may adde somewhat in *Polydore*, and the Saxon Chronology, from the year 934; but especially from *Oswald's Laws*, and others of the famous *Edgar*, vouching *Ethelstane* for *Scotland*. Of which we read in many places, beside the fourth Part of the great Reports. But that victorious Monarch suffered the *Scot* to reign under him, saying, That it was more glorious to make a King, than to be a King. A pious Prince, to whom we owe for translating the Bible from *Hebrew*; which some think he did by some Converted Jews.

Among his Laws, now extant, we find divers enacted in *Celebri Gratanleano Concilio*; where there were *Archiep. Optimates, & Sapientes, ab Ethelstano vocati frequentissimi*.

And again at *Exon*, we find him *Mid his Wytan*; and their *Wergyls* for the King, Archbishop, Eorles, Bishops, Ealdermen, and other Degrees, may suffice to prove them to be Acts of Parliament.

With those several Degrees there mentioned, we may compare the Laws of King *Edgar* and *Canute* in divers places, one of the Ranks of their Nobility, as a *General* or great Commander in *Wars*; which may be observed for the *Militia*.

Edmund succeeded; and at *London* holds a Parliament of Clergy and Laity; (*ge Godcundra, ge Worulcundra*;) And again, *Mid Witena getheahthe gegodra hada gelewedra*. And to the Parliament, he giveth solemn *Thanks* for their *Aid* in settling the *Kingdoms Peace*. His Laws are printed, And we omit his Charter to the Church of *Glastonbury*, which was made, *cum Concilio & Consensu Optimatum*, as we read in *Malmesbury*.

But I must not omit that Parliament of his, recorded in the *Mirror*; where we find a kind of *Appeal*, or a legal Accusation of Treason brought by *Roceline* against *Welligrat*, in full Parliament, in the time of King *Edmund*.

In King *Edred's* Reign there was a Parliament solemnly summoned by *Writ*, as we read at large in the Abbot of *Crowland*. To which there was then a great Charter confirmed, being drawn or dictated by *Turketulus*, then Abbot, but he had been Lord Chancellor. And the date is, in *Festo Nat' B. Mariæ*, *cum Universi Magnates Regni, per Regis Edictum summoniti; tam Archiepiscopi, & Episcopi, ac Abbates, quam Ceteri totius Regni Proceres, & Optimates, Londoniis Convenissent*; ad

ad tractandum de Negotiis Publicis totius Regni, in Communi Concilio.

Edgar was a great Monarch, and as great a Conqueror by Sea, as *Ethelstane* by Land : It might be easier to shew his four Seas, of which so many speak, than to set their exact bounds. Yet it may not be unworthy of our thoughts, to consider, how our Ancestors did often divide the Office of their *Admirals*, usually as Nature hath parted our Seas ; as thinking it indeed too great an honour and a burthen, for a Subject to be Admiral of all the Seas of such an Island. But the late *Cardinal of France* did wisely (it was thought) dispose, or rather retain, that Office, as the best Jewel of that Kingdom ; which yet by Sea might yield to this.

But I must not digress, nor can I determine the bounds of *Edgar's* Conquest, to the North (they say, to *Norway*) or the West. Of which, some speak, as if they would but give us hints for farther search and Queries.

I dare not affirm, that in those days our *Saxon* or *British* Ancestors did know *America*. But if we may credit any Records besides the Scriptures, I believe or know it might be said and proved well, that this new World was known, and partly inhabited by *Britains* or by *Saxons* from this Island, three or four hundred years before the *Spaniards* coming thither.

Nay, the more I consider the Discourses which did
pass

pass between the *Spaniards* and the *Mexicans*, the more I could believe the *King* himself of *Mexico* might possibly descend from those that went from hence to *Florida*, or rather *Mexico*. So that we need not wonder at the *British* Words, or Beads, the *Crucifix*, or other Reliques, which the *Spaniards* found at their Arrival. And for this, besides so many other Authors, we have much among the *British* Annals.

Those in special left by *Caradoc* of *Lancarvan*, or from him, continued by the *Beirdhs* of *Conwey* and *Stratford*; gathered and translated by the learned *Llloyd*. To which we may adde what *Doctor Powell* hath of this out of Records, and best approved *British* Authors, in the Life of *Owen Gwyned*, or *David*, and *Madoc*, his Sons, about the Reign of *King Stephen*.

To which, at least for that which concerneth *Hanno*, or the old Navigations (with *Plato's Atlantis*, or what else appeareth in *Aristotle*, *Theophrastus*, *Virgil*, *Seneca*, with others) it may not be amiss to compare two late and very learned French Authors of *Peleg*, and *orbis maritimus*; very worthy (I think) of good perusal.

But to return to *Edgar's* Parliaments: How that great Council did often dispose the *King* himself, we must discourse in a fitter place. We shall now but observe, that good Historians tell us, that *King Edgar*, by the Council of the Kingdom, did repeal the Acts of *Edwin*, both his brother and predecessor, *Convocato*
ad

ad Brandanfordeam Regni Concilio, fratris Edwini Acta & decreta rescindit. And the famous *Oswald's Law* was signed by this King, *Cum consensu, Concilio, & stipulatione, Archiepiscoporum, Principium, & Magnatum.* It is printed, and found in ancient Authors.

King Edgar's Charter to Glastonbury (reciting the Acts of so many Kings before him) was confirmed, *Generali assensu Pontificum, Abbatum, & Optimatum:* If we may believe the old Monk. And the Charter is to be read at large: *Archiepiscopis adhortantibus, consentiente etiam & annuente Brithelmo Pontanensi Episcopo, ceterisque Episcopis, Abbatibus, & Primatibus.* And the Close is, *Acta hæc, & confirmata, apud Londonium, Communi Concilio, omnium Primatum meorum, &c.* I should be unjust to our Laws, if I should omit the Process and Plea of Morgan Hen, against Howell Dha, the good Prince of Wales. Upon complaint, they were both summoned by King Edgar, *Ad curiam suam;* and their Pleas were pacately heard, *In Pleno Concilio, & repertum est, justo Judicio curiæ Regis, quod Howell Dha nequiter egisset extra Morgan Hen, & filium sui Huwen, & depulsus est Howell Dha ab his duabus Terris (the Lands then in question) sine recuperatione; & Postea Rex Edgarus dedit & concessit, Hueno Morgan Hen, illas duas Terras, (Istradun & Ewris), in Episcopatu Landas constituas, sicuti suam Propriam Hereditatem, & illas easdem duas Terras sibi & Heredibus suis; Per chartam suam sine Calumpnia alicujus Terreni hominís*
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confirmavit, communi vestro assensu, & testimonio omnium Archiepiscoporum, Episcop. Abbatum, Comitum, & Baronum totius Angliæ & Walliæ; factum est coram Rege Edgardo, in pleno concilio, &c.

This Record of King *Edgar*, is in *Codicæ Landavensi*, fol. 103. I find it cited by the great Antiquary Sir *Henry Spelman*: and it may be compared with the Monk of *Malmsbury*, and *Matthew of Westminster*.

I must not relate the Visions or Predictions of the *Fates* of this Kingdom, which Historians record about the Reign of King *Edgar*; they are in print, and may be read of all; Besides the Prophecies of both the *Merlins*; for the *Scottish Merlin* was fuller and plainer than the *British* in *Vortigers* time: That I say nothing of *Cadwalladers* Vision, or *Alans* Council (which was long before the other *Alane* wrote on *Merlin*) or of the famous *Eagle of Shaftsbury*, that agreed with others in the *Britains* recovering their Kingdom again, after their grand Visit at *Rome*, whence they must bring *Cadwalladers* bones.

This leadeth me also to the *Sybils* Prophecy of three British Princes that should conquer *Rome*. *Brennus* was one; King *Arthur* some make the second; *Et quis fuit alter?* And of these *Sybils*, or one of them, sending a book to King *Bladud*, (so famous for the *Bath*, and Greek-Schools, or University at *Stamford*) the *Scottish Merlin* seemeth to have written, if among others I mistake not *Baleus*.

But

But of *Edgar's* Parliaments, one was at *Salisbury*; so we read in *Chancer*, or the old *Fructus Temporum*, by *Julian Notary* at *St. Albans*. And of another of his Parliaments at *Bath*; the *Saxon Chronology*, at the year 973.

His Laws are now printed; and their Title is, *The Acts of King Edgar and his Parliament: Mid his Witenad, Getheate gerred, &c.*

Here we find much considerable of *Thanes*; which all will have to be *Noble-men*: but it must be with them a *Saxon* word. And *Dhenian* is to serve: whence the Princes Motto, *Ich Dhan*. (For so it should rather be, than in Dutch, *Ich Dien*.) But why should *Noble-men*, or those that were the freest, have their name from *servi*ng? Here they flie to *Knights-service*, *King-service*, or I know not what; most proper, as they say, to free and *Noble-men*.

But from a Judge, or *Fleta*, we may be taught, that the *Saxon Dhen* or *Than*, is a *Servant*; but *Thayn*, a *Free-man*. And in this sense it seemeth to be used here. As also in *Denmark*, and *Ireland*. Nor did the *Britains* differ much; whose *Hæne* or *Hane*, is an *Eldar*: (although *Hyne* be sometimes used for a *Servant*.) And so the *Irish Tane* is *Elder*; whence their *Tanistry* or *Eldership*: (the cause or sad occasion of such bloodshed.) These *British Hanes*, the *Saxons* in compliance, called *Ealdermen*: (*St. Edward's* Laws afford so much) and it may be *Thanes*; although with them

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they had the name of *Greeves* or *Graves*, suiting well with *Elders*, *Hanes*, or *Senators*. With which we may compare the Phrase of *Seniores*, which we read so oft in *Gildas*, *Nennius*, *Monmouth*, and others of the British and first Saxons times in *Britain*.

I should be tedious in but glancing over the Acts of Parliament in *Edgar's* time. That of the *Standard* at *Winchester* is considerable; and that of one *Coyne* through all the Kingdom. The *Mirror* is plain in making it an Act of Parliament, in Saxon times, That no King of this Realm, should *change his Money, or embase, or enhance it, or make other but of silver; Sans l'assent de tout ses Counties*. Which the Translator is bold to turn, *Without the Assent of the Lords and all the Commons*.

We may not omit the Act against unjust Judges, or Complaints to the King, except Justice could not be had at home. For which also, the *Hundred-Courts* were again confirmed, and the *Grand Folkmoetes*, or *Sheriffs Turnes*, established by Act of Parliament. Of which, and of their relation to Peace and War, more in *Edward's* Laws; which may afford a Comment for the *Saxon Militia*.

I need not speak of the Parliament at *Calne*; it is famous enough; where, *Confidentibus totius Anglia Senatoribus*, the Roof fell down, and hurt them most, but *St. Dunston*. Of which, *Wigornensis*, *Jornalensis*, *Malmisbury*, *Matthew of Westminster*, and so many others may be cited.

King

King Ethelred's Laws have this Title in Lumbard: *Sapientum Concilium quod Ethelredus Rex, promovende pacis causa, habuit Wodstoci Mercie, que legibus Anglorum gubernatur: æfter Ængla-Lage, Post Anglis Lagam;* as an old Author turneth it.

In those Acts, we read of *Ordale Sythan the Gemot was, at Bromdune; Post Bromdune Concilium*: It seems, a Parliament.

And again, *Jussum ac scitum hoc nostrum, si quis neglexerit, aut profuã quisque virili parte non obierit, ex nostra omnium sententiã Regi 120^s Dependito*. By which it appeareth to be a Parliament, and not the King only that made those Laws.

That which Sir Henry Spelman called a *Concilium Eubaniense Generale*, was clearly one of King Ethelred's Parliaments: and the very Title is, *De Witenæ Geradnessan, and tha Geradnessa the Englaræd Witan, gescurun, &c.* And divers Chapters begin, *Witena Geradnessa* is, enacted by Parliament.

And the old Latin Copy of this Parllament, telleth us, that in it were, *Universi Anglorum Optimates Ethelredi Regis Edicto, & convocato Plebis multitudine collectæ Regis Edicto*. A Writ of Summons to all the Lords, and for choice of the Commons: a full and clear Parliament.

In this Parliament, were divers Acts for the Militia, both by Land and Sea; (as most Parliaments after King Edgar:) and among others, for Castles, Forts, Cities,

Cities, Bridges, and time of the *Fleets* setting out to Sea. It is made *Treason* for any to destroy a *Ship* that was provided for the State-service: *Navem in Reipublicæ expeditionem designatam*: as a learned man translateth the Saxon.

And no Souldier must depart without leave, on forfeit of all his Estate. None may oppose the Laws, but his Head, or a grievous Mult (according to the Offences quality) must recompence.

It was here also enacted, That *Efferatur consilium quod Populo habeatur utilissimum*. And again, *In rem totius Patriæ*. And that each should do, as he would be done to: Which it calleth, the *Most right Law*. And that the higher and greater men the Delinquents were, by so much the more and heavier they should be punished. Of which, and of their *Wergyls*, for all Ranks of men.

Again, *Iniqua omnia, & injusta, quæ Rex unâ cum Optimatibus, exterminare decreverit, abjiciantur, &c.*

That about this time, *Danegeld* came to be paid to the *Danes*, (which was before against them) is agreed by all. *Malmsbury* is bold to ascribe it to a Decree of the *Archbishop of Canterbury*; but *Huntingdon* may be his Comment, telling us, *Thæ Consequo infauisti Siricii Archiepiscopi, Edelredi 13. primum Statuerunt Angli, quod ipsi Censum Dacis persolverem*. A clear Act of Parliament. Of which also, *Florence of Wygorn*.

And

And again, *Anno 1007. Rex & Senatus Anglorum Dubii quid agerent, quid omitterent, communi deliberatione, gravem Conventionem cum exercite fecerunt; & ad pacis observationem 30000 l. ei dederunt, &c.* This also from Huntingdon.

And among the Saxon Laws, we read, *Fœdus quod Ethelredus cum exercitu Anlavi, &c. ex Sapientum suorum Consilio feruit.* - And again, *Pacis fœdus Ethelredo Regi, & omni Populo, Leodsayre.* And again, *Socii ac fœderati nostri, omnes per Mare & Terras, in Portu, & extra, pace fruuntur.* With divers other Passages of Peace and War, settled by that Parliament.

Fornalensis addeth another Parliament in this King's time: *Apud habam, & Constituerunt omnes, ut Regi suo pareant, sicut Antecessores sui melius fecerunt, & cum eo Pariter, defendant Regnum, &c. & ut cantetur quotidie pro Rege, Communiter & omni Populo suo.* And again, *Prohibemus omnem Roboriam, &c. & omnis Index iustus Misericordiam & Judicium liberet in omnibus; timeat omnis Judex, ac diligat Judicem suum, ne in die Judicii mutus fiat, humiliatus, &c.*

Nor may I forget the famous Judgment for the Bishop of Winchester, by the Thanes and Ealdormen, in the Witenagemote (or Parliament) of Eldred: *Quo dum Duces, Principes, Satrapæ, Rhetores, & Causidici, ex omni parte confluxerant.* Of which, the old Book of Ely, cited by Mr. Selden in his *Titles of Honour*.

And

And for the Militia, Roger Hoveden is very clear and full, at the Danish Irruptions: *Qua recognita, Rex Anglorum Egelredus*. (his names are many) *suorum Primatum consilio, & classem, & Pedestrem congregavit exercitum.* And again, *Habito Concilio cum Regni suis Primatibus, utile Duxit à Danis dextras accipere, stipendium dare, & placabile tributum solvere.* And again, *Primatum suorum Concilio, nummos ad Danos, &c.* And again, *Rex & Regni sui Primates, ad illos (Danos) miserunt Legatos, pacem ab iis petentes; stipendium & tributum eis Promittentes.*

So is old Florence of Worcester: *Consilio Jussuque Regis Anglorum Æthelredi, procerumque suorum, de tota Angliæ robustiores, Lundoniæ, congregata sunt naves.* And again, *Procerum suorum consilio, ad eos (Danos) Legatos misit, promittens tributum & stipendium.* And again, *Omnes Angliæ Primates utriusque Ordinis, ante Pascha Lundoniæ congregati sunt, & ibi tandem morati sunt, quousque tributum Danis Promissum, quod erat 48000 l. Persolveretur.* And again, *Cum apud Oxonfordam magnum haberetur placitum, &c. eodem tempore Canutus cum magna classe, &c. Eadmundus Clito magnum congregavit exercitum, &c.*

So is Matthew of Westminster; adding much to those before him, and ascribing that bloody Council of the Danish Massacre to one Huna, *Princeps Militiæ, qui sub Rege, Regni negotia dispendenda susceperat; cujus consilio, misit litteras Rex in omnes Regni fines, Mandans*
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nationibus singulis & universis, &c. Of which, St. Edward's Laws. But *Oxonienſe placitum*, is in *Flori- legus*: *Magnum apud Oxoniam colloquium Anglorum pariter & Danorum*. And ſo the old Gloſſary of *Canterbury* tenders *Gemot* by *Placitum*; and *Fologemot*, by *Populi Placita*. So alſo, *Law-Mootes*, are *Placita*. *Magnum placitum*, the great *Folo-mont*, or Parliament; as *Comitatus placita*, with *Matth. Paris*, *Counry-Courts*: *parva placita*, *Oxford Parviſes*.

I muſt not ſtay long on the Acts of Parliament which *Angles Kynnes Witena* made and eſtabliſhed, *Cum Walliæ Conſiliariis de Monticulis*: Where, among other things, we find it enacted, That *Viri duo denijure conſulti, Angli ſex, Wallique totidem, Anglis ac Wallis jus dicunt*. With which we might compare our Laws, *de Medietate Lingue, &c.*

But for our Trials by a Jury of Twelve, we have a much clearer Law in another Parliament of *Ethelred*; *Frequenti apud Wanalingum Senatu*. Of which, *Jornalensis*, and Mr. *Lambard's Gloſſary*. In *ſingulis Centuriis Comititia ſunto, atque Libere conditionis viri duodeni, etate Superiores, una cum præpoſito, ſacra Tenentes Jurante, ſe adeo virum aliquem Innocentem hand Damnaturos Sontemve abſoluturos*. An old MSS. thus: *Habeantur placita in ſingulis Wapentakis, ut exeant Seniores XII. Thani, & præpoſitus cum eis, & Jurent ſuper Sanctuarium, quod eis dabitur in Manus, quod Neminem Innocentem velint accuſare, vel Noxiū Cancelare*. But of
more

more ancient Tryals by Twelve, in fitter place : although I must not spend time to confute the *Italian*, who will have that terrible Custom (as he thought) brought in by the Conqueror.

The Proofs of Parliaments in *Canutes* time, are so many, and so full, that they tire us altogether. How he confirmed the Laws of *Ethelred* and other Predecessors, we read in the Monk of *Malmsbury*, who recordeth also his remarkable Letter from Rome, directed to the *Archbishops, Bishops, &c. Primatibus, & Toti Genti Anglorum, tam Nobilibus quam Plebeis*. As also his Charter to *Glastonbury* : *Cum Concilio & Decreto Archipresulis Edelnothi, simulque Cunctorum Dei Sacerdotum, & Consensu Optimatum*. Hoveden in full, in this also. *Cujus (Edmundi) post Mortem, Rex Canutus omnes Episcopos, & Duces, necnon & Principes cunctosque Optimates Gentis Angliæ, Lundoniæ Congregari Jussit*. A clear *Summons* of Parliament.

And the very name of Parliament, is found of his time, in the old book of *Edmunds-bury* : *Rex Canutus anno Regni quinto, &c. Cunctos Regni sui Prælatos, Proceresque, ac Magnates, ad suum convocans Parliamentum*. And again, *In suo Publico Parlamento*. And that it was indeed a full Parliament, we may believe from the persons we find there at the Charter of that Monastery, confirmed by *Hardi-Canute* ; but granted by *Canute*, in *suo Publico Parlamento, præsistentibus personaliter in eodem Archiepiscop. Episcopis, Suffragenis, Ducibus*.

Ducibus, Comitibus, Abbatibus, cum quam plurimis gregariis Militibus, (Knights of Shires, it seems) & cum Populi Multitudine Copiosa (other Commons also) omnibus tum in eodem Parlamento personaliter Existentibus. And the Title of these Acts is, *Statuta Canuti, Regis Angl. Dan. Norw. venerando Sapientum ejus Concilio, ad Laudem & Gloriam Dei, & sui Regalitem, (Reipub. Utilitatem) & Commune Commodum, habita in S. Nat. D. apud Winton, &c.*

This I find also cited by the great Judge in one part of his *Reports*; but fuller, by Sir Henry Spelman.

It would be tedious and superfluous, to cite the Authors that assert, he did confirm King *Edgar's* Laws in full *Parliament*. For which we might produce some better, or at least much older, than good *Bale*, or *Grafton*.

Many of his Acts of Parliament are printed: *Consultum quod Canut. Angl. Dan. Norw. Rex Sapientum Concilio Wintoniæ Sancivit.* Here *Allegiance* or *Fealty* settled by Parliament, and afterwards, *Præcipimus unuscujusque Ordinis singuli, Muneris atque Officii sui Religionem Diligenter, canteque teneant.* And among other Encouragements to *Chastity*, this is one, That such chaste men of God should enjoy the same Rights or Privileges with *Thanes*: (and *Ethelstane's* Laws do equal *Priests* with *Thanes*) But there are two or three degrees of *Thanes* in these Laws about the *Hereots*: for the *Eorles* and *Thanes*, &c. much to be marked, as per-

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taining to the *Militia*. For which, and for all *Canutes* Laws, the old MSS. *Huntingdon*, is worth perusal.

Again, we find other Statutes, *Civil* or *Politick*, *Sapientum adhibito Consilio*, *Mid*, *Minan Witenan ræde*, that *Man beald ofer eall Engaland*.

With provision against Thieves, Robbers, for the Peace, Hue and Cry, &c. There are Statutes also for repair of *Burghs* and *Bridges* : *Scyrforbinga* ; *præsidii fiat apparatus Terrestris ac Maritimus*, *quoties ejus Muneris Necessitas Reipublica obvenuerit*.

And presently after, *Quæ ad Reipublicæ pertinent Utilitatem*. Among the Crown-Prerogatives, *Violata Pacis & Divitæ Militiæ Multæ*.

Sheriffs Turns, Hundreds, and Tythings, are here confirmed ; and the twelve-year-old *Fealty*, with views of Frank-pledge. But this Oath was to the *Kingdom*, rather than to the King : *Fidem det omni se in posterum atate, tum Furti, tum Furti Societate & Conscientiâ temperaturum*.

Again, of passing Ordeals, *Sythan tha Gemat was on Winceaster* ; since the Parliament at *Winchester* (this being at *Oxford* :) and after, *Jussum vero ac Placitum hoc Nostrum, si Præpositorum aliquis incuriâ omiserit, aut exequi aspernabitur, ex Nostrâ Omnium Sententia, Regi 120 s. Dependito*. A clear Parliament.

Si quis alium injustè, armis spoliavit, eam quæ est loco Colli obstricti, Multam Dependito Healsfange. It is also in the same Laws, the punishment of false Witnesses.

Some

Some think it the Pillory, some worse ; as the Original of that Proverbial Letany, *From Hall, and from Halesfax.* See K. Hen. Laws, and Helsing.

Si quis in Militiâ (perfectione Militari) pacem violaverit, vita, vel Weregild Multator : si quid rapuerit, pro facti Ratione, compensato.

Si quis Pensionem ad oppida , pontesve reficiendas denegarit, Militiamve subterfugerit, dato is Regi 120 l.

Again, in those Statutes, *The King must live upon his own Feormians (or Farms ; which in Saxon, afford all needful for man :) and none may be compelled to give him any Maintenance : That the Folk be not burthened.* It is the 67th Chapter.

Loss of Dower or Joynture to Widows marrying within twelve months, might seem hard ; but so long she need not pay any Heriot. And the same Laws free the Wife from her Husbands Theft, although found with her ; except it be lockt in her Hord, Chest, or Tyge, (*Dispensæ, arctæ, & Serinii*) Of which that Law giveth her leave to keep the Keys. But Ina's Laws are hard, concerning Children.

Again, for the Militia, *He that in Sea or Land-fight, leaveth his Lord or Comrague, (& Felago) must die as a Traytor ; his Boocland to the King, other Land and Estate, to his Lord. But of him that dieth fighting with his Lord, without any Heriot , the Heirs may enter, and Scyftan hit swithe righte. Of this Shift-Land, and Gavelkind, Lambard in Terra & Scripto, Perambulation*

of Kent, and Spot of Canterbury; besides several Acts of Parliament, in Edw. 1. Edw. 3. and Hen. 8.

If *Celeberrimus ex omni Satrapia Conventus*, (which is there, and by King Edgar also, to be twice a year, or oftner) be *Parliament*, as such great men have thought; then have we much here also for *Power* and *Priviledge* of *Parliament*. Nay, more indeed, if it were but the *Grand Folemoote* or *Sheriffs Turn*, so much below a *Parliament*.

He that in such a Grand Moot had defended and maintained his Right and Plea to any Land, is there settled without dispute, for his life, and his Heirs, or Assigns, as his *Will* should dispose: Chapter 76.

And again, for *Priviledge* of *Parliament* (or yet lower) *Sive quis ad Comitata profiscator, sive revertatur, ab eisdem, (from Gemote, or to Gemote) placidissima pace fruitur, nisi quidem furti fuerit manifestus. Theof, Thievery*, founded more with them, than now with us. For their *twelve-year-Oath* (of which before) at Frankpledge, was onely against *Theof*; which yet seemeth to intend *all above it*: for what forbiddeth the *less*, forbiddeth the *greater* much more.

One thing more I may observe; through all these and other old Laws, there is still so much *Religion* and plain-hearted Simplicity, with Piety, expressed, that it shews our Ancestors had not yet learned to be ashamed of *their God*, or of looking towards *Heaven*.

I have been the longer in these, that so I may be the

the more brief in those that follow : for by this time I am come to the Laws of *St. Edward*, as he is called ; and I should mispend my own time, and abuse others, in vouching all the Demonstrations of Parliaments in his time.

His Charters to *Westminster* are near enough, and may be known of all : wherein he confesteth his Resolutions for going to *Rome*. But, *Optimates, Guberni habito Concilio, rogabant me, ut ab intentione desisterem*; his Vows made him more pressing, than else he should have been. But these also his Parliament undertook to satisfy ; *Et tandem, utrisque placuit* (so he speaks) *ut mitterentur Legati, &c.*

While these stayed at *Rome*, procuring his Absolution, a Vision to a Monk commandeth repairing (or refounding) of *St. Peters Westminster*, as ancient as *Austin* the Monk. (I cannot omit a passage in one of the Popes Letters of that time, telling the King, *That he must expect great Motions and Alterations : for the World was near its great Change ; and the Kingdom* (which he calls, *Sanctorum Regnum*) *foretold in the Scripture, was coming to begin, and never should have an end.*)

King *Edward* refers it to the Parliament ; and at length, *Cum totius Regni Electione*, (they are his own words) he sets upon the decayed Minster : Which he rebuilt, (with the Tenth of his whole Estate) and there

there reposed the *Reliques* (which the Popes gave to King *Alfred* at his Consecration,) with this grand Privilege of Refuge and Pardon, to any that fled hither, for *Treason*, or any other Crime whatsoever.

Another Charter he granted to the same Minister : *Chm Concilio, & Decreto Archiep. Episcop. Comitum aliorumque Meorum Optimatum.*

And a third Charter addeth, *Aliorumque omnium Optimatum.* And a little lower, *Coram Episcopis, Abbatibus, Comitibus, & omnibus Optimatibus Angliæ, omni- que Populo.* A very clear and full Parliament.

His Laws are in print. I must not so much as glance, but as he that followed the great King so swiftly, that his steps could not be seen upon the Sand.

May not his third Chapter extend to Privilege of Parliament & *ad Dedicat. ad Synod. ad Capital. revertent. Si Summam sint, &c. sit summa Pax.* Howeden will help sometimes for a Comment.

That of *Out-Laws* should be explained. It is, *Ore Legali Regis* ; which is, *Per Judicium Coronatorum* ; or in the great and old City, *Per Judicium Recordatoris.* See King *Ethelred's* Charter to *Ulfrie*, of the Lands of *Ethelfig*, outlawed for *Theof. Rep. part 6. Pref.* But of *Woolff-head*, and the *Outlaws* being slain upon *Resistance*, I have spoken already. As also of *Tythes*, and King *Ethelbert's* *Parliaments* in these Laws mentioned, and of *Rome-scot*, *Danegeld*, and *Wergyls*. But of these, again ere long.

Of

Of the Kings Duty, and Oath, we must speak more in due time. Of his *Pardon*; before, as it might stand with the *Oath of his Crown*. Here also we find, that when his Pardoning Power was largest, yet it could not reach to *Murder* or *Treason*, or other Crimes, but so as they must *abjure*: and if they stay and be found, any might do *Justice* on them, without *Judgment*. It is the 19th Chapter.

Somewhat we said of *Dukes*, or *Counts*, *Earls*, *Thanes*, or *Barons*. The Phrase doth here occur; but of elder times by much, nay, long before King *Ethelbert's* Barons: if we may believe *Historians*. But of this, again in due time.

Of the *Jews*, also before *Judæi, & omnia sua Regis*, seemeth hard; but it had a gentle Comment in succeeding times, and here also they must be defended: *Sub tutela & defensionibus Regis Ligati*. The Phrase may be remembred, till we meet it again: King *John* did but confirm King *Richard's* Charter to the *Jews*. See *Hoveden* and *Matthew Paris*, of *Richard* and *John*, *Walsing.* *Edw. 1.* & *Neustria*.

Pax per breve Regis, is a short Expression; but it might have a long gloss, and be compared with all our books; laying this for a principle or foundation of Law, That *Writs were made by Parliament*; and without such common Consent, could not be changed. Of which, the *Mirror*, *Bracton*, *Fleta*, divers others. But of another *Breve de pace*, before the Combat, in *Right* or *Assize*, *Glanvil*, *Hengham*, and the *Register*. Of

Of Frank-pledge, Tythings, Counties, Hundreds, and Wapentake, somewhat before. This Law may fill up *Lipsius* on his *Tacitus*: Nor is it useless for the *Militia*. *Hac de causa, totius ille conventus dicitur Wapentac, eo quod per Armorum (i.e. Weapon) tactum, ad vincem confederati sunt.*

There is an old Comment on that, *de moribus Germanorum*; that may help and please in all, of Hundreds, Wapentakes, Cities, Counties, with Counts or Ealders: of which before, in State and Church. But to these of the Church, I did not then adde their Power and Custom of *healing the Sick*, by anoynting them. For which, the Saxon Canons of *Ælfrick*, may be perused.

In this Chapter of *Greeves*, with the Appendix *de Heretochis*, we may see the whole Model of the *old Militia*; with the Power of Headboroughs, Constables, Bayliffs, Aldermen, Sheriffs, Lieutenants, or Generals, all the *Greeves* both in the *Gree* and *Va*, *Peace* and *War*: for so the Law is pleased to criticize; and for *Peace* we do agree.

The Law is in print, and may be read of all; in which it is so clearly stated and asserted by these Laws. I should do wrong to take them in pieces.

Not onely in matters of common Justice, or serving of *Writs*, or petty Cases of Peace, as some have pleased to express it; but *when any unexpected doubtful mischief ariseth against the Kingdoms (or against the Crown)*

Nay,

Nay, when it proceedeth so far as to War, Battel, or pitched Fields, the *Heretoches* must order the War; *Ordinabant acies, & alas constitu-ebans, Prout decuit, & prout eis melius visum est, ad honorem Coronæ, & ad Utilitatem Regni.*

And lest yet there might be any mistake, the same Law telleth us, That those *Heretoches*, (*ductores exercitus, capitales Constabularii, vel Mareballi exercitus*) were and still ought to be, chosen *Per Commune Concilium* (by Common Council;) and for the common good and profit of the Kingdom, even as the Sheriffs (saith that Law) ought to be chosen.

Again, the former Laws are renewed for those that *flie*, and those that *die* in the War, and of their *Heriots*; which here are again remitted, with all *Relief*. Of which, before.

I am the longer in this, because it was this very Chapter which has been so strangely cited; and that also from a place as much suspected, as any of all these Laws: which I do not speak as if I thought they might not be strongly asserted; even there where the oldest Copies are defective. And for one instance, of many, I might produce that piece about the *Kings Oath*; which is cleared not onely by the *Mirroour*, and divers others, but by another passage in the oldest of these ve-

ry Laws themselves ; by comparing it with what is there said of *King Edward's own Oath* to his Kingdom. Of which, much more hereafter, on occasion.

To that of *King Arthur's*, *King Edgar's*, and *King Ethelstane's* Conquests, much might be added ; in special, touching *Scotland* : Of which, before. And now I adde, That what is here ascribed to *Eleutherius*, may be much asserted and enlarged from those that have clearly stated the bounds, extent, and jurisdiction of the *Province* and *Diocess* of *York* : for to it belonged (as I find in a very good Author) all the Church of *Scotland*, long before it was divided into modern *Bishopricks*.

That of *Norway*, and their Affinities with *England*, and Oath of Fealty, may now be little worth ; but in this that is added at the close of that Law, *So did King Edward establish : Per Commune Concilium totius Regni : By the Common Council of the whole Kingdom*, or by Parliament : which may well be added to each and every of those Statutes.

How the *Militia* was (on particular persons or places) assessed by *Common Assent*, hath been observed and cleared already. I shall now only adde this, That when such Assessments were made
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by *Common Council*, it was then no more in the Kings power to *release* them, than it was to *impose* them before, or without such *Common Assent*.

For this, might be cited in more than an hundred Charters, to religious houses, and places of greatest Franchise; in which there is such an usual exception to the *Trined-necessity*, of *Military Expedition*; *Castle* (or *Burgbote*) and *Bricgbote*: for here also, as with the *Romans*, they were especially *Pontifices*.

And where-ever these are found released, as to *Peterburg*, *Canterbury*, *Westminster*, but especially to *Glassenbury*, the first and oldest Church in *Britain*: *Fons & origo, totius religionis*. It may be a clear Demonstration of the Parliaments assent to such a Charter.

For otherwise they could not be dispensed with by the King, as we may find expressed in divers Charters; as in those of *Crowland*: which yet had great immunities. And of that Restriction, *Matth. Paris* may afford us the true reason, because *those three were settled for the Kingdom: Propter Publicam Regni Utilitatem, ut per ea resisterent hostium in cursibus*. And *K. William's* Laws, *Castel. & Burg. & Civit. fundatæ & edificatæ ad tuit. Gent. & Popul. Regni, & ad Defens.*

fenf. Regni & idcirco observari debent cum omni libertate, integritate & Ratione.

Private Castles for habitation, may be given in *Dower*, and divided by *Pacerners* ; but so may none for *publick defence*. Yet of such also, may a man be Tenant by the *Curtesie*, being able to guard them for Publick service of the Commonwealth.

One grand Objection must be removed ; but we need not fear it : for it will flie or run away of it self. 'Tis that of the *Conquest*, as many are pleased to call it ; not attending how little in this they be the Kings Friends : for if this were his onely or his main and best *Title*, there might be found in future ages, some that may come to think it as lawful to conquer him, as it was or could be, to conquer them.

It must be considered : for if the foundation be not sure and low, the higher the building is, the nearer its fall. And it hath been observed, that the higher *Skale* (got up by accident) is more ready to pop down again, than it was before while it hung in due poize.

It seemeth a great weakness, to be apt or prone to *Suspition* : and therefore I shall not say I do suspect some that are most zealous for *Pre-rogative*, or the Title of *Conquest*, to be least

acquainted with the Laws or Histories of *England*. But, I cannot be wholly free from wonder, that any Lawyer or Historian that was friend to the King, should be passionate in these, which were so clearly quitted by that King whom they call the Conquerour.

He stood on Stilts or Patents, or Pantofles ; but on plain English ground, with two feet, as other men. The *left* and the weakest was *Succession* to *Edward*, whose Kinsman he was, and Heir by Will ; as appeareth by divers Passages in these very Laws of Saint *Edward*, and *William* ; which may be seen and read of all.

But the right Leg, with the strongest and best Foot, he had to stand upon, was the *Peoples Assent*, Consent, Acceptance, and *Election* ; which we shall yet more fully clear, when we discuss the Right of *Succession* or *Election* to this Crown and Kingdom.

But for the present, it may suffice to observe, That all these Laws we now have of King *Edward's*, come to us through the Hands, and Grant, and Confirmation of King *William* the *Norman* ; and no otherwise.

Which I need not prove to any that have either read or seen the Laws themselves, of which we speak. For

For in the very Title and Preface thereof (besides divers other passages in them) all this , and much more , is fully related and recorded.

For it is there also further added, That all those Laws were so presented to the said King *William*, by a sworn *Jury* out of every County: Who did also assert, That these which they did present as the Laws of *St. Edward*, were the undoubted Laws and Customs of the Kingdom, that had also been collected into a Body by King *Edgar*, and continued (though *sopite*) through the Troubles of succeeding Kings, till *Edward* had the leisure to renew or rather confirm what was the Law before.

Nay, when among all those Laws King *William* did most encline to those which came from *Norway* (whence his Ancestors and Lords had issued forth, and where a Bastard might inherit) all the *Patriarchs* of *England*, *Compatriotæ Regni, qui Leges edixerant*, did so move and press him (with such Arguments as may again be well considered) that at length in Parliament, *Concilio habito, precatīs Baronum* ; the King himself consented as they did desire. This is expressed in his own Laws.

And by his own desire , the Archbishop of
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Canterbury was one of those entrusted with enrolling or recording of those Laws : Which to that very King, and to his Successors to this very day, became one special Clause of the *Coronation-Oath* : Which was, *To confirm all the Laws and Customs of the Kingdom ; but especially the Laws of St. Edward, called the Confessor.*

And one of King *William's* own Laws is, That all men observe and keep the Laws of King *Edward* in all things : *Adauctis his quas constituimus, ad Utilitatem Anglorum.*

If this be not yet clear enough for the Laws themselves (which are now extant, and may be read and known of all) we might confirm it much by *Ingulph*, living at the same time, and bringing those Laws with his own hands from *London* to his *Crowland*, with such an Endorsement or Title of his own making : *Leges equissimi Regis Edwardi, quas Dominus meus inclitus Rex Willielmus Autenticas esse, & perpetuas, per totum Regnum Anglie, inviolabiliterque tenendas, sub pœnis gravissimis Proclamarat : & suis Justitiis commendarat, &c.* He was like enough to know it.

And the old *Book of Litchfield*, cited in the great

great Reports (besides that of the *Jury* from every *County*) addeth also, That the same King *William* did by the Counsel of his Barons, call by Writ of Summons (*Summoniri fecit*) all the Nobles, Wise-men, (*Elders of the Witan*) and learned Lawyers in each County. And in that great Parliament , *Ad Preces Communitatis Anglorum* , *Rex acquievit*, &c. confirming all by Common Council. This of *Litchfield* is now printed in several places ; and *Roger Hoveden* agreeeth in *Henry the Second*.

Nor did he onely confirm, but in some things mitigate ; and in divers, explain and clear what might seem obscure or heavy to the People (*Ad Utilitatem Anglorum.*) His Laws are now printed , both with Mr. *Selden's* Notes on *Eadmerus*, and with Mr. *Wheelock's* Impression of the Saxon Laws and History ; with a very good Preface of Sir *Roger Twisden*. They do oblige us much, that love and clear our Laws, so far as just and good.

What Emendations and Additions King *William* made to St. *Edward's* Laws in this also of the *Militia*, we have observed before, at our unexpected enterance on this Question. Which was

was not at all intended, to be once, so much as touched, but in one Parenthesis ; Which was past Recovery, before this Discourse was so much as designed.

But now having wandred so much, and so far, (beyond my own purpose, as well as my Subject,) I could almost, be perswaded, to step a little further ; and to touch (I must no more,) upon some few passages ; between the Conquest, as they call it ; and the *Barons of Wars* ; Or the time of the *great Charter*. For, since that time, the Rolls and Printed Acts, are every where ; much larger, and much better, than my little reading or my leisure, can present them.

Two words have sound of horror, to the People ; who are taught, to think them both, oppressions, and the sins of him they call the *Conqueror*. *Dane-geld* ; and the Book of *Dooms-day*. (Some have added *Curfeu*, with I know not what, to make poor Children quake.)

These, have been proved, to be long before, the *Normans* coming in. To that of *Dane-geld* ; I may add, that good King *Edward*, did also retain it, to his Coffers ; (when the *Danish* Storm was over ;) till he saw, the Devil dance upon it : As the *Crouland* Abbot doth Record. But

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it did rise, from one, to three, to four, to six shillings on the Hide ; but so, by Parliament : as may be much collected from the 11th Chap. of King *Edwards* Laws ; compared with *Florence* of *Worcester*, *Hoveden*, *Huntingdon*, *Math. Paris*, and *Math. of Westminster* , besides some others, which we must produce e're long.

And (to say nothing of *eleemosyne pro Aratris* ; of which *Canute* and *Ethelred* :) it is clear, in King *Ethelstanes* Laws ; that single *Hides* (or *Ploughlands*) in *England*, were to maintain two *Horsemen*, with *Arms* ; by Act of Parliament. (And this was more it seems, than ever was King *Williams Hydage* ; or *Dane-geld*.) Which may be added to King *Ethelstanes Militia*, as also, his *Doom book* ; (for all Judgments in one *Form* ; of which his Laws speak,) to what is said, of *Booca Doom*.

But to King *Williams Doomsday*, I shall now, add, (to what before,) that besides the *Mirror*, and *Fitz-Herberts*, *N. B.* with the old Abbot of *Crouland*. There is enough, in every segment of that Roll, to make one know, it was a *Review* ; and little but a Review of what was done before. They do abuse us else, that bid us read, the *T. E. R.* in all that Roll, *Tempore Edwardi Regis* ; plain enough, sometimes, without all Divination.

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That it was, also confirmed by Parliament; may be clear enough from the many exemptions a *servitio Regis*, and a *Vice-comit.* Nay to some inferiour places; as *Ely* and *Worcester*: Besides old *Crowland*: which was not exempted from such service, till the latter Saxon, or first *Normans* time; though *Ingulph* spake of divers *Ethelreds*. But the same Abbot, will tell us, that this *Doom Book*, was now, also made; *juxta Taxatorum fidem, qui Electi de qualibet Patria, &c.* And that his Taxors were both kind and merciful; *non ad verum pretium, nec ad verum spatium, &c.* So preventing future Burthens and Exactions. *Talem Potulam, & multum similem ediderat quondam Rex Alfredus, &c.* But *Alfreds* own Will, seemeth to carry it higher.

Nor was *Ingulph's* favour at the Court, altogether useless; for, by that, we come to know, that our Norman King, even in little things proceeded by a Great Council. So, that our Abbots Charters, must be viewed by Parliament. *Coram Domino meo Rege, ac universo Concilio, &c.* Thence he brought *St. Edward's Laws*; as was observed before.

Huntingdon and *Matthew Paris*, with *Matthew of Westminster*, spake of his *Hydage* and *Doomsday*; as done with great Advice, and Justice.

Misit Justiciarios per unamquamque scyram, & inquire fecit per jusjurandum, quot Hyde (i. e. jugera, cui Aratro sufficientia per annum;) essent in unaquaque, &c. Nor are they wholly silent, of his Parliaments, *Cum de more, tenuisset curiam suam, in Natali, ad Gloucestriam, and again, at Winchester, the like at London, in another season.*

Tilburienſis telleth us, that *Mony* was paid, to the Crown, by Cities, and Castles, that used no Tillage: But from the Land (or Farms,) only *Victuals*, till *Henry* the first. And when the Kings foreign Wars, did make him press for ready *Mony*, the people murmured; offering their Plowshares. *Horum igitur Querelis inclinatus Rex*, by advice of his Great Council, (*definito magnatum Concilio*; he sent out discreet, prudent men; that upon view of all the Lands, should assesse the sums, which the Sheriffs were to pay into the Exchequer. This *Gervase* lived a while after King *William*.

Florence of Worcester, near his Reign, he telleth us, of a Great Council, at *Winchester*. And again, of another, at a place called *Pedred*; not only by the King, Arch-Bishops, Bishops, Earls, but also, *primatibus totius Anglie*, a full Parliament; for which, *Florilegius*, and *Walsingham*, *Newſtria*, may be considered, with *Hoveden*, following *Wigornens*. That

That in his Reign there was an *High Constable of England*, (ceasing in *Henry the Eighth*; appeareth by the Parliament Rolls of *Edward the Fourth*: (but *Alfigar* in the Book of *Ely*, was such; in *St. Edwards* time,) and to Him, some ascribe, the Constable of *Dover*: with the *Warden*, and Privilege of the *Cinque Ports* (with their *Hamlets*, or Circuit; including *Rye*, and *Winchelsey*.) But all this speaketh Parliament, as doth also, his *New Church Privilege*: *Communi Concilio Archiep. Episcop. Abbat. & omnium Principum Regni mei*. Yet to be seen; not only at Sir *Robert Cottons Jewel House*, but among the Rolls with King *Richards* Charters, for the Dean and Chapter of *Lincoln*.

This exemption of the Church from *Seculars*, &c. is the more considerable, because it came up with the *Norman King*; at the time of *Hildebrand*, whose Letters missive came hither, *ad Willielmi Regis Concilium*. And that this Council, was a full Parliament; appeareth, by the Charters (as I may call them;) of the Arch-Bishop of *York*, *ex præcepto Papæ Gregorii 7. and Confirmatione Domini Willielmi Regis, sub Testimonio Universalis Anglorum Concilii*, &c. Of which *Roger Hoveden* is clear, telling us also, that this King summoned, the Arch Bishops, Bishops, Abbots,

Abbots, Counts, Barons, Vice Comit. *cum suis Militibus*, were these *Knights of Shires*.

To this I may add (from the Continuer, of the Saxon Chronology ;) that *Lanfranc*, came hither from *Caen*, (on the Kings call, and the Popes Command,) & *primatum Regni Anglorum in Ecclesia Cant. suscepit ; eligentibus eum Senioribus, cum Episcopis, & principibus, clero, & Populo Angliae, in curia Regis*, a very clear and full Parliament. Nor may I so wrong our Common Law, as to detain that antient Record, which the great Judg in his Reports citeth ; of a *Writ of Right*, brought by this *Lanfranc* (against *Odo Bishop of Bajeux* ;) and removed by a *Toll*, into the County Court, where the King commanded all the good Lawyers, to attend the County ; & *a toto Comitatu, Recordatum atque judicatum est ; That as the King held his Lands, in His Demesne ; (in Dominio suo ;) so was the Arch Bishop, to hold his, omnino liberas & quietas in Dominio suo ;)* which Judgment was afterward confirmed by the King and Parliament, *cum consensu omnium principum suorum.*

With which Record, I may compare the old Manuscripts in *Bennets Coll. Cambridge*; telling us, of a great Moot (*magnum placitum*) in loco qui dicitur *Pinenden* ; in quo *Lanfrancus diratiocinatur*, and the

the conclusion, that he was to hold his Lands, and Customs, by Sea and Land ; as free, as the King held his : ezcept in three things ; *si regalis via fuerit effossa ; arbor incisa juxta, super eam ceciderit, si homicidium factum & sanguis in ea fusus fuerit ; Regi dabit, alioquin liber a Regis exactoribus.*

In the same Author, were read, of a Great Counsel at London ; in that Normans Reign, and of another at Gloucester ; where the Arch Bishop of York, (*jubente Rege, et Lanfranco consentiente,*) did consecrate William Bishop of Durham ; having no help (*adjunctorium,*) from the Scottish Bishops, subject to him : which may be added to that before, of Scotland, belonging to the Province or Diocesse of York.

Nor can I abstain from the next paragraph, in the same Author, how Lanfranc did consecrate Donat (a Monk of Canterbury ;) *ad Regnum Dublinæ*, at the Request of the King, Clergy, and people of Ireland. *Petente Rege, clero & populo Hiberniæ*, which with divers others, might be one Argument, for the Antiquity of Irish Parliaments, and their dependance on England, long before King Henry the Second.

For

For which I might also cite King *Edgars* Charters, *Oswalds* Law; and divers Historians of his times. But the Charters mention *Dublin* it self; and yet our Lawyers, are so Courteous as to free *Ireland* from our Laws and Customs, till towards the end of King *John*, and some of them conjecture, that the *Brehon* Law, came in again, and that our Parliament, obliged them not till *Poynings Law* in *Henry the seventh*.

But to return to our *Norman* King. I need not beg proofs of Parliaments, in his time; at least not to those, who know the Priviledge of antient *Demesne*, which therefore is free, from sending to Parliaments, and from Knights Charges, and Taxes of Parliament, because it was in the Crowns, not only in King *William*, but before him, in King *Edward*; and the *Rolls of Winchester*, for which, the old Books are very clear, with divers Records, of *Edward the third*, and *Henry the fourth*: besides *natura brevi-um*, That I say nothing of the old *Traſtat. de antiquo Dominico*, which is ſtiled a Statute among our English Statutes.

And besides all the late Reports, or Records; I find it in the Year Books of *Edward the Third*, that he sued a Writ of Contempt, against the Bishop of *Norwich*, for encroaching on *Edmondsbury*

bury, against express Act of Parliament : By King *William the Conqueror*, and by the Arch-Bishop of *Canterbury*, and all the other Bishops, Counts and Barons of *England*. It is 21 of *Ed.* 3. Mich. fol. 60. Title 7. Contempt, against an Act of Parliament.

This might well be one of the reasons, why the great Judge, giveth so much credit, to the old *Modus of Parliament*, as it was held in the time of King *Edward the Confessor*, which as the antient copy saith, was by the discreet men of the Kingdom, recited before King *William the Norman*, and by him approved ; and in his time used.

I have cited it before, and compared it, with *Irish Modus* : which my much honoured friend Mr. *Hackewil*, one of the *Masters of Chancery*, hath under his hand attested ; from the *Great Seal and Charter of Henry the fourth*, (which himself hath seen :) reciting a former Charter of King *Henry R. Angliæ & Hiberniæ conquestor*, & *Dominus* who sent, the same *Modus* into *Ireland*.

Where himself or his, Son (*John sans terre* ;) had no great work to reduce them, to the civility of Parliaments : To which they had been long before accustomed, and the Roll

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faith, *communio omnium de Hibernia consensu, teneri statuit*, &c. nor doth the division of the Irish-Shires seem so lately settled, as some have thought; although I may not dissent from the great Patron of Civill, and Ecclesiastical Learning, the late Primate of Ireland.

Touchoing that *Irish Modus*, I have very little to add, to the fourth part of the great Institutes in several places. I shall now, only observe, that both these, old *Modi* of Parliaments, do agree; in this Custom of the Kingdom; that the King should require no Ayl, but in full Parliament; and in Writing to be delivered to each in degree Parliament.

And both they agree, that every new, difficult case of Peace, and any war emergent, within, or without the Kingdom, (ul *Guerre emergat, in Regno vel extra*), ought to be written down, in full Parliaments; and therein to be debated, which may be considered) by all that will argue the *Militia*.

To which also we may add, one clause of the Jewish Laws; of their great Sanhedrim, to whom they retain the power of Peace and War; especially where it is Arbitrary, and not merely defensive, in which the Law of nature maketh many Magistrates; and this might with ease

ease be confirmed, from the Laws and Customs, of all Civil Kingdoms in all ages. But I must not wander, from our English Laws.

I had almost forgotten that, which should be well remembred. Although many would perswade us to seek our Laws in the *Customier*, of *Normandy*; it is not only affirmed in the *Great Reports*; but also asserted by *Guit de Ro-vell Alencomien*; (and proved by divers Arguments;) in his Commentaries, on that *Grand Customier*; that the *Normans*, had their chief Laws from Hence. As had also the *Danes*; in the time of *Canute*, for which, we might have more proof, and witness, than the *Abbot of Crowland*. So much even Strangers did Love and Honour old English Laws.

Of King *William the Second*, (Surnamed *Rufus*?) I shall speak but little; for I must discuss his Election, and Coronation Oath; in a fitter place.

Some footsteps we find of his Parliaments; in divers; *Wigornensis* and *Hoveden* tell us, that when he would have constrained the *Scottish King*; *ut secundum judicium Baronum suorum*, in curia sua, *Rectitudinem ei faceret*; *Malcolm* did refuse to do it, but in the Confines, or Marches, Where (he could not deny;) but the Kings of

Scotland, were accustomed, *restitudinem facere regibus Angliæ*. But he then said, it ought to be, by the Judgement of the Parliaments of both Kingdoms; *secundum iudicium utriusque Regni primatum*;

And I find the like Record, cited on *Fortescue*, from *Godfrey of Malmesbury*. But *Huntingdon*, and *Matthew Paris* also relate, that the same King *Malcolm*, did submit, both to do *Homage*; and to swear *Faith* to our English King, and *Paris* addeth, a pretty Story of King *Malcolms* overlooking *Treason*. But again to King *William*.

Of his Errors in Government, I shall only say, that if *Edom*, did really signify *Red*, as hath been thought; I could believe, that all Historians, speaking of *Adamites*, then oppressing the People; might allude to the near affinity, between *Edom* and *Rufus*, for *Red*. For, this was his Sirname, of King *William the Second*.

Henry the First, is yet alive in his Laws and Charters. Not only in *Wendover*, with other Historians; but among the Rolls, and Records, yet to be seen, in the Exchequer. They are now in Print, with the Statutes of King *William*; after the *Saxon Laws*. I must but run, and glance.

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His Charter acknowledgeth his Crown, to the Mercy of God, and the Common Council. *Communi Concilio, & assensu, Baronum Regni Angliæ.*

It confirmeth King Edwards Laws, with all those Emendations which King William added; for the profit of the Kingdom. It forbiddeth all Levies, nay, the *Monetagium Commune*; but what was agreed, and settled in King Edwards Reign.

And the Test of that Charter, is, by *Arch-Bishops, Bishops, Barons, Comitatus, Vice-Comitatibus, & optimatibus, totius Regni Angliæ, apud Westmonasteriensis, quando Coronatus fui.* This was copied out into every County, and kept in every Abby. So much also, we find in *Matthew Paris.*

Of his Charter to London, I may touch, in another place. This I must not omit in his Laws. *Sive agenda præcipiat, levia permittat, hortatur maxima, vitanda prohibeat,* yet still the Laws must be, *Manifesta, Justa, Honestæ, & Possibilis*; a kind of sacred Tetragram. It is the 4th. Chapter.

And the next, is the Basis, or Foundation of our Law process, and of all Judicials; In all Causes, Accusers, Parties, (or Defenders,) Witnesses

Jes and Judges ; be and must be distinct. Nec perigrina sint judicia, vel a non suo iudice, vel loco, vel Tempore celebrata ; nec in re dubia, vel absente accusato dicta sit sententia, &c.

Nihil fiat absque Accusatore ; nam Deus & Dominus Noster Jesus Christus, Judam furem esse sciebat ; sed quia non accusatus, ideo non abreptus. Testes Legitimi sint, & presentes ; absque ulla infamia, vel suspitione, vel manifesta Macula. Recte, Sacerdotes accusare non possunt (Laicos.) Nec oportet quemquam Judicari, vel dampnari, priusquam Legitimos Accusatores habeat presentes : Locumque Defendendi accipiat, ad abluenda crimina, &c.

And again, Pulsatus ante suum iudicem, si voluerit, causam suam dicat, & non ante suum Iudicem pulsatur, si voluerit, taceat. Si quis, Iudices suspectos habeat, advocet, aut contradicat. Appellantem, & vitiatam causam appellationis Remedio, subleuantem ; non debet afflictio vel detentionis iniuriare Custodia. Unusquisque per P A R E S suos, Judicandus est, & ejusdem Provinciae. Quicquid adversus Adfentes, vel non a suis iudicibus ; penitus evacuetur, Chap. the 5th. and the 31th.

Juramentum, debet habere Comites, Veritatem, Justitiam, & Judicium : si ista defecerint, non juramentum, sed perjurium est. Qui per lapidem, falsum Jurat, perjurus est. Deus ista accipit, sicut ille, cui

cui juratur accipit. Juramenta filii & filie, nesciente Patre; & vota Monachi, nesciente Abbate, & juramenta pueri, irrita sunt.

Are These the Laws of England; or of Nature, rather? These we owe to *Beauclerck*; which he owed much to *Cambridge*. See *Malmſi* of *Plato's Kings*.

Touching the *Militia*, (beside that in General, confirming *King Edwards*; and *King Williams Emendations* :) There are some particular, as of *Tenants by Knights Service*, to be freed from *Gilds*, &c. That so they might be more ready, for the *Defence of the Kingdom*; and in it, the *Kings Service*.

This agreeth with the old *Writ, de essendi Quiet: de Tallagio*. Which the *Tenant in Chivalry*, might require of *Right*. And *Tenants in Dorset*, or *Widows*, had the like *Priviledge*, of which the *Old Register*, *con natioa bre-vium*.

That also of *Edgar* or *Canute*, for *Comards in Land*, or *Sea fight* is testified; with that of *Boocland*, as before. Much also of *Helsing*.

Releifs are agreed and settled. For *Earls* and the *Kings Thaynes*; with others called *Meane Thaynes*. But in some *Chapters Thaynes* are equal to *Barons*. (And all *Tenants En chief*, at
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Clarendon, were stiled *Barons* : and *Relief*, is Cofin German to the Saxon *Heriot*. Being for the *Heir* or *Militia* : whence *Heretoche* in King *Edwards* Laws.

But the Dutch *Here*, is also *Dominus*, as *Senior*, in so many Nations; since the time of *Charles the Great*. And some will have the Saxon *Heregeat*, to be the *Her's Geat*, or *Beast* of the *Lord*, or *Here* : (which of old, was paid before, or rather than, the *Mortuary*.) And from this *Here*, som would derive *Heres*. So, that all *Heirs*, should be *Her's* or *Lords* ; as *Homines* were *Yeomen*, (*You Men*, or *Young Men* :) but *Homines*, in Law (as with us, *Men*) are *Servi*. Such they say were *Yeomen*, and none *Gentlemen* but such as came from *Barons* ; or at least the *Tenants* in *Capite*, if not in *Antient Demesne*. But for this, see *Edw. 1. Tit. Attorney. 103*. And the Learned *Janus*.

Dane-geld, is here also reduced to 12*d.* the *Hyde* ; as of Old : (from which it rambled, to 3, 4, 6, 8, 10, or 12.) strict provision, is also made for keeping of *Arms* ; and against using or lending them, for the dammage of Others. Nay a mulct, is set upon him, whose *Lance*, or *Sword*, doth much *Trespas* ; though against his will. He is to be severely
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ly punished, that disarmeth any unjustly ; and must answer, all the mischief that ensueth such disarming.

To this Kings time, belongeth the case of *William* the Kings Chamberlain, *de Londonia* : who refused to find a man, for the Army, as his *Tenour* required : But the *Abbot of Abbingdon* (of whom he held ;) *in presentia sapientum* (in a *Witen Moot*). *rem ventilari fecit, &c. Unde cum Lege Patriæ, decretum processisset, ipsum exortem Terræ, merito deberi fieri, &c.* by Friends, it was composed ; and the Tenant enjoyed his Land.

I find it, from Sir *Robert Cottons* inestimable Treasury, cited by Mr. *Selden* on *Hengham*. Nor can I deny, but this (with divers other cases,) might forfeit the Land. But, as in case of *Alienation of such Tenures* ; a Statute of *Edward* the 3d. provided that the King shall not retain the *Forfeits*, but shall only, take a *Fine Reasonable* ; (which the Chancery, must also assess ; by due Process :) So, is our Law very tender in all cases of Forfeit. And among the old *Wytes*, *Wardwyte* was for the *Militia* : being an acquittance of Mercy to him that had not found a man, for the *Servise* ; according to his Tenure. Of which old *Fleta*, with others.

The Laws of this King do evince, the Tryal

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per P A R E S to be long before, the great Charter: Nor would it be hard, to shew it, before King *Henry*, and besides all other hints, through Elder times; the case is well known, of *Roger Fitz Osborn*, apprehended by *Tiptoft* Sheriff of *Worcestershire*; and condemned for Treason in King *William the Norman*; *per judicium parium suorum*; Of which antient Historians, before the Commentator on *Magna Charta*.

I should not omit King *Henry's* Charter, to the Abbot of *Bee*, confirming his antient Customs, and Priviledges, prescribed for St. *Edmonds* time, for *Grand Assizes*, &c. yet to be found in the Book of *Assizes*; lib. 26. Pl. 24. and in the 3d. or 8th. part of the great Reports: and in the Comment on *Magna Charta*, cap. 11. but here it is from *Ethelred* and *Edward the Confessor*.

One of his Priviledges, was to be free from the Justies of either Bench, and of *Assize*. Which is one of the first Records, for the antient Benches. But it may not be impossible to trace them, thorow some Elder times.

For the Saxon Law, (so often repeated, and confirmed) that none should complain to the King but want of Right; or against *summum jus*, at Home, might in modern Language be translated Thus. The Writ of Right, must abide the Baron or Bayliffe:

liffe : (For it cannot fall to a *Copyhold Steward*;) except the Lords default, or consent, or the Tenants suit, procure a *Tolt*, to lift it up to the *County Court*. Or a *Pone*, place it in the *Common Pleas*.

That such a course was antient, may be gathered from the *Mirror*, *Affer*, and others of *Alfred*, *Edgar*, *Canute*, *Eihelred*: and of the *Tolt* before, in King *William*. To which I may add the *Writ of Right* (in the third Book of *Reports*;) brought by *J. de Beverlace*, against *Walter of Frisdastern*; and by a *Tolt* removed from the *Court Baron*, to the *County*; and for default of the *Baron*, (how it must be falsified, we may touch; (anon) it was concluded, before *Ranulph de Glanvil*, Sheriff of *Yorkshire*.

Glanvil is clear enough; for the course of removing to higher Courts; and of the *Writ de Pace*, stepping between the *Combat* (on the *Writ of Right*) and *Afsize*, *Coram justitiis in Banco sedentibus*, and although this Book (intituled *Glanvil*) was not written, till about *Henry the 2d.* yet it is plain enough, that he speaketh of *Antient Custom*. His words are very considerable.

The grand *Afsize* (saith he;) is a *Royal benefit*, granted by the *Parliament*; (*Clementia principis, de Concilio procerum, populi indulgentia*;) as being that

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which saved blood, and did oft prevent the Combat (on the *Writ of Right*;) and of this he speaketh (in the third of the same Book;) as of a very old and antient Custom. *Secundum jus & consuetudinem Regni antiquam*. A weighty expression, from so antient an Author : which may possibly lead us higher than the Saxon times. For, we may find the Duel, or Combat, among the *Gaules* (from *British Druides* :) as among the *Germans* also ; whence our Fathers came.

Nonnunquam etiam armis de principatu contendunt. So of the *Gauls* or *British Druids* ; He that was like to know it, and of those, and *Germans*, *Tacitus*, and *Diodorus Siculus*, before *Aventinus*. Some observe it, in the *Salique Law* ; and among the Laws of *Charlemaign*, and that the *Longobards* did bring it into *Italy* ; where it was also settled by Law. But of our Ancestors combats, in another place.

I know not any *Fines* upon Record, till *Richard* the First. But *Stowels Case* in *Plowden*, may inform us, that they were before the *Norman*. And we need not doubt, the Books of *Edward* the third ; speaking of Benches, settled in *Henry* the first, but I do not remember, the phrase of *Capitalis Justiciarins noster*, till great Charter ; which repeateth elder Customs.

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Goodwin, the famous Earl of *Kent*, among the Saxons, had two Sons, that (in as good an Author as *Huntington*) are stiled, *Regni Justiciariis*; (the phrase is common, in *Hoveden*, and others, of the times of *Clarendon Assizes*.) And *K. Edgar* had a Cosin *Ailwin*; who was *totius Angliæ Aldermannus*; which is supposed, *Lord Chief Justice*; by a Learned man; besides the best (though yet imperfect) Glossary. But it might denote the *Lord High Constable*: Of which before, in *William* the first.

And *William* the 2d. found great *Odo* of *Baieux*, settled *L. Ch. Justice* of *England*. *Justiciarius totius Angliæ*. So, *Matth. of Westminster*. and *Huntingdon* calleth him, *Justiciarius*, and *Princeps* and *Moderator totius Angliæ*, in *Wigornensis*, He is *Custos Angliæ*. And the phrase of *Justiciarius*, is also in *Matth. Paris* of *William* the first: *Justiciarii in Banco Regio*, of after times, as also, *placita de Nova disseissena*; before Justices in *Eyre*. But he speaketh of *placita lethifera*; the Pleas of Life and Death; (yea, even in Bishops Courts;) about the *Normans* coming in.

But in *Polydore*, we find out 4 *Terms*, (with divers other elder Customes) ascribed to the first *Norman*. But that which he addeth, of the place, for these Courts, to be, at the Kings appointment;

ment ; might be true : till the Law fixed the Pleas, which may be, long before our Charter, of *Henry 3d.* where it is confirmed, not created. But, for the Kings Bench, the Return was, *coram Nobis ubicunque, &c.* and for the Pleas, *coram Justiciariis nostris apud Westmon.*

That which *Virgil* addeth of the Judges in *Westminster* ; and of those higher beyond appeal ; and of Justices of Peace, settled by the Conqueror ; (as he saith Sheriffs were,) in every County : may be more considered. For it may be, as much too late, as, some have thought it, too early.

They which presume to make *K. Henries* Cutbit the first Standard of *Winchester* ; must refuse the old Saxon Laws ; (of which before :) For, those may seem to deserve, as much credit as *Malmsbury*, other marks.

That he did confirm the *Curtesie d' Angletterre* I may yeild to the Mirror, and other Authors : but not that he first began it. For the Statute of *Kentish* Customs ; and those that treat of Gavelkind, may shew us an Older Tenure by *Curtesie* ; there also, where the Tenant had no Issue.

And this may reach us, whence the like Custom came into *Ireland* ; as also to be, *Curialitas Scotie* ; which our master seemeth to forget, when he saith *Que ne'st use en auter Realm, forsque tant*

tant solement en Engleterre. But his Commentator he lyeth in this ; and in divers other things.

In case *Entails*, this English *Curtesie* is very remarkable: in which the Book of Cases have great diversity. But those that perswade us, there was no Land in *Tayles* before the 2d. of *Westminster*, in King *Edward* the first ; (which are all, that subscribe to *Littleton* ;) must interpret the Laws of King *Alfred*, much otherwise than I can do. For the 37th. Chap. of his Laws, is to me, much clearer, for Lands Entail'd ; then is all the Statute, *de Donis Conditionalibus*.

One Case of the *Courtesie* ; may be considered, for the *Militia*. If Land in *Capite* descend to a Woman ; who upon Office found, intrudeth (on the King ;) and taketh an Husband ; and by him, hath Issue ; and then dieth : yet cannot the King eject or detain the man ; but he shall be *Tenant by the Kingdoms Curtesie* ; although he came in, upon *Intrusion*. Which seemeth to hint, that Our Law, did chiefly intend, the Kingdoms good defence, and service, (which might be performed, by such an intruder :) rather than the Kings pleasure ; or his bare Prerogative, in this, which is thought, so great a Prerogative, of *Tenure in Capite*. For which the Comments on *Magna Charta*. and the Statute of *Prerogative* ; with

with *Littletons Dower*, and *Curtesie* ; are clear enough.

To *Henry* the first, they also ascribe the *Curtesie* ; of saving the *wreck*, from his *Exchequer* ; if there were, so much as a *Cat*, or a breathing Creature let in the Ship. I do not deny him, to be so courteous as to confirm, some such Sea-Custom ; (for which, he had a very sad Occasion ; when his Sons and Daughter, with so many Friends were drown'd in one Shipwrack.) But, as *Richard*, soon after him, seemeth more courteous, in this also, (if we may believe *Hoveden* :) So I doubt not, to assert it, to higher and elder Times. And yet the *Law Maritime*, is dark enough : with all the jurisdiction of the Court *Admiral*. Whose office, may be harder, than the Name : A strange mixture of *Greek* and *Arabick*.

The old *MS. del' Office del' Admiral* ; hath divers Records of *H. 1. R. 1.* and *K. John* : Speaking of *Tryals* by 12. (as at Common Law ;) but now the practise is much otherwise. In the Rolls of *Ed. 1.* the Name of *Admiral* : but not in our Printed Laws, that I know, till *Edw. 2d.* And in *Edw. 3d.* the Rolls are full of that Office, parted among divers : for the North and South Seas, &c. As was touched before, in *Edgar*.

In *Richard* the 2d. it was brought to a weldy
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model : being *uncertain* rather than *infinite* before. For the bounds were ever straiter much, than some may imagine. They were again disputed in *Henry the 4th. Eliz. and James*. It lies more open to the Common Law, than to the Wind and to a Premunire, (some are apt to think ;) much more, then all are aware. I may touch it again in a fitter place.

Here I shall only add, that besides the Laws of *Arthur the Brittain, and Edgar the Saxon* ; we have some Records (for so I may call them,) of Customs by Sea ; as well as by Land. With Privilege, to some, below the King ; before the *Norman* ; whom they make the Founder, (yet he was but Patron,) of the Ports ; and *Wardens* for the Sea. Somewhat of this in *Lanfranc's Case* before : and more again ere long.

Historians are clear and full of this King's Parliaments ; and of his *Summons* to Parliament. *Majores natu Angliæ Londoniæ Congregavit.* and again, *principes omnes & totius Regni Nobilitatem sanctione adnotavit* : so the Monk of *Worcester*, and *Hoveden* (almost in the same words,) which *Matthew Paris*, expresth thus ; *magnatibus regni Edicto Convocatis*. And in *Walsinghams Neustria* ; *Majoribus regni* ; and *Principibus Convocatis*, *Virgil* himself confesseth his full Parliaments.

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And of a *Convocation House*, distinct from the Parliament, sitting at the same time ; they are plain enough. *Et cum rege principes regni omnes, tam Eccles. quam Secular apud Westmon. ubi etiam Anselm. Cantuar. Archiep. magnum tenuit Consilium ; de his que ad Christianitatem pertinent. as Florence, and Hoveden.*

Huntingdon, is also clear in such a distinction; *Rex tenuit Concilium apud Londoniam ; & Willielmus Archiep. Cantuariensis, similiter in eodam villa, apud Westmon.* and this Author useth to stile, the Parliament, *magnum placitum*, (of which before ;) and the *Convocation House*, *Concilium*, or *Synodus* ; which yet in him, in all, was confirmed by Parliament ; or else invalid.

In Parliament were also decided, the Great Contests between *Canterbury* and *York* ; not only concerning the Crown, or Act of Coronation : in which (to this King,) they both joyned ; as we find in *Matth. Paris*, and *Walsingham*. But the Parliament declared, that it did not at all belong to *York* : as besides *Hoveden*, we read in him, that continueth *Florence of Worcester*. But in *Becket's* absence, it did fall to *York* : and so it had been before. So also *Canterburies* contest with the King was debated in full Parliament, three days together, in the Arch Bishops absence : and at length

length composed, with the consent rather than content of both parties.

The King was resolute for investiture as he found it from his Father and Brother : the Clergy was pertinacious, for the Popes Decrees. But the Emperour (Son in Law, to our King ;) did so muzzle Pope *Paschal* ; that he Consents and Decrees, that none should be Consecrate, but whom the *King Invested*, as the Clergy, and People chose him.

It seemeth considerable, how all Historians (of that time and dispute,) do Record, the choice of Bishops, to be in the People : in *Phebe* and in *Populo*, as well as in *Clero*.

They mention *Radulph*, ordained a Bishop for the *Orcades* : but rejected by all, because not Elected by Common assent of the People ; *Plebis, Clero, Principis*, 'tis every where in the old Monks ; and how the poor Bishop, wandred up and down, as an assistant, to other Prelates. Of him and of English Right in *Scotland*, and *Ireland* ; much might be added, from the Notes of *Eadmerus* ; and somewhat of *Lanfrancs Plea* at *Pinenden*.

And at Prince Roberts Landing ; *commoti sunt principes erga Regem causa Roberti, &c.* But many of the Lords left the Parliament, (*subtrahentes se*

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de Curia;) *sed Episcopi, et milites Gregarii & Angli*, (the Commons) stuck to the King; who was *Provincialibus gratus*: and at length the *Witan* or Parliament, composed the quarrel. *Sapientiores utriusque partis habito consilio, Pacem inter fratres composuere.* 'Tis in Florence and *Hoveden*, with *Malmfbury*.

Wendover with *Huntingdon Record*, how the great Firebrand in that War, *Ranulph of Batham*, was committed by the Parliament: *de Communi Consilio Gentis Anglorum*. This was the great man. whom K. William, had made *Pacitator*, in *Matth. Paris*: but *Placitator & exactor totius Regni*, in the Monk of *Worcester*.

His continuer addeth also, that the Peace, or League with *France*, in this Kings time; was made by Parliament; *Consilio optimatum*: and that by advice of Common Council, the Custody and Constableship of the Castle of *Ros* or *Roch* (with its Ford, &c.) were settled in the Arch-Bishop, and Church of *Canterbury*: with leave to build a *Tower*, and divers other Priviledges, for the *Militia*.

I must not mention the Orders of King *Henries* Parliaments, against Money *Clippers* and corrupters: with such a change of Money, as made things very dear. So dear a time that an Horse-load

load of good Wheat, could scarcely be bought under six shillings : as *Henry* of *Huntingdon* and others.

Of King *Stephens Election*, more, when I shall discuss, the Right of *Succeſſion* to the Crown. But I muſt not omit that which, of him, is Recorded by ſo many good Authors : That he did prohibit the Laws brought hither from *Rome*. And this alſo by Parliament : as *Bale* affirmeth. But of this, in much older writers.

Frier Bacon is one, (in his *Compendium* of Theology, or his *opus minus* : and the great Reporter citeth it, from *Bacons impedimentum ſapientiæ*.) He was a very Learned man, and a moſt genuine *Son of Art*; his *Opticks* and his *Burning-glaſſes*, would be more enquired after ; for they may be little worſe than thoſe of *Archimedes*, who in this is newly found to go beyond himſelf.

Such Glaſſes muſt be Conick Section : and in Concaves not exactly *Circular*, but *parabolical*, for which there is as real Demonſtration, (by the Law of Reflections ;) as for the beſt perſpectives, (by refractions,) in *Ellipſes*, and *Hyperbolies* : to which I muſt not add, that *Mirandum Nature* of two lines, that approach nearer and nearer, *in infinitum*, yet they ſtill ſhall be *Aſymptots*, and never meet, (for ſuch attend *Hyperbolæ*. Which

Which yet, is more Demonstrable, by Reason; than is that of *Mersennus*, (or others) by sense; that Concave Glasses may be placed in such a continued proportion (may I say) of Reflection; that by such it may be possible to fire a Ship, (or other matter combustible;) at a far greater distance, than between *Dover* and *Calice*. I say not (as some have said,) in *infinitum*.

But in this and all the *Mathematicks*; who can add, to him that did contract (and correct) *Longomont*, into a page? Our Country-man, he is: but at too great a distance, in *Breda*.

But I must not wander from K. Stephen. His Repeal of Roman Laws, is also in *Sarisburiensis* (living in the time of K. *Henry* the 2d:) an Author of Credit, and polite enough. It is among his Court trifles (*Polteraticus*, or *de nugis Curialium*)

Nor is he content to meddle only, with mean Courtiers; but even of the highest, he is plain enough. And one of his Thesis, is, that by Reason and Scripture, it is both Lawful, and a glorious Act, to kill a publick Tyrant. But of his exceptions to the Oath of *Faalty*; we must have more in its Time and Place.

That of K. Stephen is in his 8th. Book, and 22 chap. (near enough to his discourse of Tyranny.) Where we have also an hint of him, that brought

brought those Laws into this Kingdom. *Theobald* the Arch Bishop of *Canterbury*, going to *Rome* for his Pall (some say ;) and for this the Monk of *Malmesbury*, would be considered; Who hath also Recorded, *K. Stephens Oath* ; of which we must speak again. I must not dispute whether those *Italian Laws*, by him prohibited ; were the *Civil*, or the *Canon Laws* : which I rather believe. Although I cannot deny, but the *Civil* also did come in, or intrude upon our *English Laws*. Nor may I forget a passage of Parliament in that famous Appeal, or charge of Treason, in King *Richard* the Second's Time.

The Lawyers especially *Civilians*, were consulted, about the charge. They conceived it, not to be rightly moulded, according to the forms of Law. But the great Council resolved, and declared, that they would proceed, by no other Law, but the course and Custom of *Parliament*. To which they added, that *England* never was, ought or should be Ruled or Governed, by the *Civil Law* : which yet is enough : (some think too much ;) in causes *Maritime* and *Ecclesiastick*, that I speak not of any other Courts.

Fortescue (or rather the young Prince in him) telleth us, of some of our Kings, that have attempted to bring in, the *Civil Laws*, and *patrias*

Leges abolere, but I cannot tell *who*, those were; no more, than the Learned Commentator, Except perhaps, he may reach up, to King *Lucius*; who did desire the *Roman Laws*, (even for the State:) but can we say, the *Civil Laws*, were then *Born*? or at least *Christned*, enough for a Christian King?

But the reason, why, any King so much esteemed the *Civil Law*; may be rightly guessed; to be this, grand maxim of Tyranny; *Quod principi placuit, Legis habet vigorem*. A Sentence of the Civil, Royal or Imperial Laws; citeth indeed, by *Glanvil*, *Bracton*, and others of our Lawyers: who refuted, rather than allowed it. But in this who can add to Mr. *Seldens* late *Dissertations on Fleta*.

Wigornensis, lived till K. *Stephens* time. In him, or his *Continuer*, we find what Laws these were, & how, or who did bring them hither. For we are there told, that *Theobald* with other Prelates, had a Summons from the Pope to *Rome*: and there were admitted to a *Council*; such as many ages could not Parallel. For thence, (he saith) they brought those *Canons*, or *Decrees*; *que longe lateque per Angliam jam Conscriptæ*.

He lived not perhaps to know they were prohibited: but he doth intimate, enough, in what a cold

a cold manner, the Parliament did entertain, the Legate, sent from *Rome*. He was a great *Leveller*, it seemeth : For, he came, to pull down, and to destroy ; that so, he might plant, or build, we read it, in the Monks. Who bring, this Legate, *Coram Rege & primoribus*. And again, before the *Commons* also ; *Episcopis, Abbatibus, & innumera Cleri & Populi multitudine*.

Ere long , we find K. Stephen at another Parliament ; *ad Boum vadum Oxes foord* ; or *Oxford*. Where some Lords, or Prelates, are committed, for suspicion of *Treason*. And by some it is ascribed to the King alone. But in the Monk of *Malmesbury*, we may find it done upon complaint of Those, he calleth *potent Laicks* : and by Counsel, or perswasion of *Magnates, and Proceres Regni*.

The thing doth speak it self. For one of the Lords, committed was the great *Roger of Salisbury*, (the grand Favorite ;) of whom before. His Charge was this, in chief ; that without leave of King and Parliament ; he had built, and fortified a Castle. But in his *own Devise* (this was the Castles name ;) he did ensnare himself. The Name and Fate, hath since been found, observed more than once ; and yet they write, it was the fairest Castle in all *Europe*.

Matth. Paris followeth *Huntingdon* and *Hoveden* ;

den ; but in this, they both come short of *Malmsbury* ; well acquainted with that famous Roger, whose misgiving heart, was like, to have prevented, what did follow, in that Parliament. But so we might have lost, or mist that Act, which here was made, for the *Militia* : settled clearly in the King and Parliament.

We find it also in the old Continuer of the Monk of *Worcester*. Who living at that time, doth tell us, that in full Parliament, (*habito postmodum Concilio, coram primoribus Angliæ, statutum est,*) it was Enacted for a Statute, that All Barges, Castles, Forts, &c. (*in quibus secularia solent exerceri negotia*) should submit to the King & Parliament. *Regis & Baronum suorum juri cedant.* And by vertue of this Act of Parliament, was the Castle of the *Devise* presently demanded ; and at length yeilded : while the great Prelates neck, (or his Sons who had been also Chancellor,) was in the Rope to have prevented his *Quartain*, of which he died.

In the same Author we find much, of an *High Constable* ; and several men, with that Title. One is *Milo* : who did lead the King, in Royal State ; *cum honore, Regiam ad Aulam ; ubi Cives fidelitatem Juraverunt, &c.*

Ere long, we find him charged with Treason, (so as is worth considering, for the *Militia* ;)
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and his Office conferred, on *Walter de Bello Campo*; *Wigornensi Vice-comite*. But discontents (that rose before) did now increase. And when the Oath of Fealty, was pressed on some; they refuse, and say, the King may take *their words*, if he please.

But for a *Bishoprick* the Prelates perswaded a grave man, to swallow the *Oath*: and so he did; on much reluctance. *Maurice*, was his Name; Elected by the people; a *Clero & Populo*: being then presented to the King, by Bishops; Attesting his deserts and due Election.

Another *Bishoprick* is conferred on *Philip*, the Lord Chancellor; but *Consilio Baronum*. And a while before, the Abbot, was made a Bishop, at London; *potente Milone Constabulario, & favore Populi, utriusque Ordinis*; that is, the Lords and Commons; or rather the Clergy and Laity.

In *Huntingdon*, we read of *Robert Arch-Deacon of Leicester*, about this Time, Elect Bishop of *Lincoln*; *Rege, Clero, & Populo, summo gaudia annuente*. And a while after, he shews us the King at London, in a full Parliament, disputing the grand question of Appeals; with the Romish Legate. For, such Appeals (saith he) had not been used in England, till That *Henry of Winton* the Legate, had cruelly intruded them. *Malo suo crudeliter intrusit.*

The Monk of *St. Albans* borroweth from him; and sometimes repayeth, with interests. As in that Statute, for Priviledge of *Churches*, and *Churchyards*; with all the *Clergy*; so, that none but the Pope could absolve, from violence done to such, (in which they all agree:) he added also, another Act of the Parliament, that *Plowes* in the Field with Husbandmen should enjoy the same Peace or priviledge; as if they were in a Church-yard.

His *Geffry de Mandevil*, (*Consul*, or *Comes*;) was a very great man: *de magna villa*. For he speaks, of his *Princeps Militiæ*; and of another, that was, his *Magister peditum*. But in *Henry of Huntingdon*, we find him, at length, clapt up in Prison: but scarcely, *secundum jus Gentium*: *Rex cepit eum in curia sua*; *ex necessitate magis, quam ex honestate*. *Hoveden*, hath of him, the like expressions; adding also, that from a *Baron*, he had been raised, to the degree of a *Consul*; that is an *Earl*. For in him the *Earl of Flanders*, is *Consul Flandrensis*, and the *Earl of Anjou*, *Consul Andegavensis*.

This was he that come to be *Hen.* the 2d. who at his Landing, (being *Duke of Normandy*) coyned money; which passed here, by the name of the *Dukes coyn*. Nor only he; but *Omnes potentes, tam Episcopi, quam Comites & Barones, suam faciebant monetam.*

netam. (and of this, *Nubrigensis.*) Which may be compared, with the Saxon Laws, of King *Ethelstan* and others. As *K. Hen. monetag. common.* In the same *Huntingdon*, we also read, that (by the Mediation, of *Theobald* of *Canterbury*, and *Henry* of *Winton* ;) the King was so reconciled, to this Duke and Earl *Henry* ; that they never more discorded, (also that the Duke, was made, *Justiciarius Anglia*, next under the King ; & *omnia Regni Negotia, per eum terminabantur.*) But in *Polydore*, we find this *Pacification*, made by Parliament : *Cujus Autoritate pactio facta est.*

Matthew Paris is so full of *Law Terms*, that I could beleive him, in this, to allude to the *Law Fines* and *Recoveries*. For at this peace, he telleth, how the Kingdom was again *Recovered*. And (after a digression to *Merlins Prophecie*, in which the phrase of *Vice-comites*, may be duly considered ;) he concludeth, thus a War that had raged 17 years together, was now quieted by such a *Time, hoc sine quievit.*

To which he adds, that famous story of the Souldier, that in this *Vacation* made a Voyage to *St. Patricks Purgatory*. And by that occasion, he relates, the best description of Hell, or Hellish Torments, that I remember, in any *Historian* of credit. With which may be compared ;
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divers others in the same Author. But that which is added, at the Souldier return to the King; may be added also to what is observed before, touching *Ireland's* dependance on *England*. For, the same Souldier was again sent, by King *Stephen* into *Ireland*; to be Assistant, as an interpreter to *Gilbert*; who had a grant from hence, to found an Abbey in *Ireland*. Whither he also carried this Souldier, speaking Irish, and with Tears, he would often relate, his Voyage to Hell. Which is so recorded and asserted by divers Religious men.

To *K. Stephen's Militia*, we may also refer that, which so many Historians Record, of his damning the *Hidage* or *Danegeld*: Which yet was not his Act, but the Parliaments; that did Elect, and create him King. We must discuss it more fully ere long; but now, for *Danegeld*, we may assert it to be expressed, in his very Coronation Oath: on which, he was admitted.

One of the clauses was; that he should, for ever desist from that, which had been paid to some of his Predecessors, *singulis annis*. And *Wendover*, or *Paris* express no more. But in *Hoveden*, and *Pluntingdon* *Danegeld* is expressly specified, which both affirm to be then at 2 s. the Hyde. They agree also, with others; That
this

this was again, specified in Parliament, at Oxford :
Where the King, did again confirm, his Coro-
nation Oath.

Matthew of Westminster doth also Record that
of these promises or Oaths, he made a Charter,
which seemeth to be that Charter, which the
great Reporter, in his 8th part, affirmeth, to be
yet found, in an old MS. *de antiquis Legibus*. And
that, the said Charter, among divers other things,
doth expressly confirm, the Laws of K. *Edward*
and of K. *Henry*.

Nay, the Monk of *St. Albans* affirmeth, that in
Parliament, *Congregatis Regni magnatibus*, he did
there solemnly promise, to maintain the Laws, or
make them better, as they should desite, or re-
quire; *juxta voluntatem et Arbitrium singulorum*;
which we may consider again upon occasion.

Nor must we omit, that much of this very
Charter, is yet to be read in Print; in an old
Monk that lived in King *Stephen's* Time; and
those particulars, for confirmation of all good
Laws; and in special, those of King *Henry*: with
divers other things, that are worth perusal. It is
in the Monk of *Malmshury*; but a little after the
Letters written to the Pope, about King *Henries*
death; confession, absolution and Anointing by
the Elders; according to what was let to the
Church.

Church, by the Apostle *St. James*: as in those Letters, is more fully expressed. Which may be added to that, before, of the *Church Elders*.

Polydore telleth us that in full Parliament at *Oxford*; King *Stephen* did abolish that, which had been oft exacted, for *Hydage per singula jugera*: and that he intreated another Parliament, to carry on that War, which by their Advise and Council had been undertaken, in the Name of *Common Wealth. Republicæ Nomine, vestro cum Consilio tum Consensu, susceptum est*: and his desire to them was, so to act in Person; that the People might not be burthened with Taxes.

And at his end *Virgil* addeth that, for all his continual Wars; he did exact, little or no Tribute from the People. So that the Parliament it seems, did wholly manage his *Militia*.

From a long Storm at Sea; we are now come, into a quiet Port, and a calm Haven, such were the Thoughts, Expectations, and Hopes of All; in *Henry* the 2d. We have his Laws in Print; in several places: and his Lawyers, known enough. For who needeth to be told of *Glanvil* in his Reign; of whom before: and much I might add, from divers others besides *Hoveden*.

Who by occasion of that Jugdes Name; hath not only given us a Copy, of *St. Edwards* Laws; but

but hath also, asserted their confirmation by K. *William*, (as I should before ;) upon the Oaths of chosen men, from every County, (sworn, as strictly as I remember any to have ever been ;) with additions also of some emendations added by King *William* ; *ad Utilitatem Anglorum*.

These Laws he saith, were compiled (or *condita*) by the said great *Glanvil* ; who (in *Henry* the 2d.) he stileth; *summum Justiciarium totius Anglie*. And for this Kings confirmation of the good Laws of *H.* the first, we need no more than what we find in him (and all other Historians;) of the grand contest upon that occasion ; between the King & *Becket*, Son to a *Saracen* or *Syrian* Woman, yet a Citizen of *London*, (and his Fathers Name was *Gilbert*.)

Favourite at first he was to *Theobald*, (of whom before :) by him commended so, that he became Lord *Chancellor*. But at his Patrons Death, being chosen to succeed (in *Canterbury* ;) he resigneth up the Seal at taking orders : and in this both *Wendover* and *Matthew Paris* add to *Hoveden*, who in *Becket* is the largest.

Polydore agreeth, that his former perferment was, to be *Arch-Deacon*, to that Sea : to which he makes the Office of a *Legate*, to be then entailed ; ever since Lord *Theobald* did fetch his *Pall* from *Rome*.

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But the great quarrel was about the confirmation of *K. Hen. Laws*, (of which before.) They touched all the Clergy: So, that once reading of them, was enough to make the Pope condemn and Ban them all. In a great Council or Parliament the King did ask, (they say petitioned the Church,) that all would agree to keep the Laws of his Grandfather, *Henry* the first.

Becket with some reluctance did consent, without his *Salvo*. But again repents in Parliament, at *Clarendon* 'tis clear as well for Commons as for others. *Congregato Clero & Populo Regni, apud Clarendun*. And again, the Lords beseech the Prelate that he would vouchsafe to come and say before the King and Commons, *coram populo diceret*, that he would receive and admit those Laws.

He doth consent and comes into the House, and frames his lips into a *Content*: the King is glad and bids the Lords retire, and bring those Laws from the Records; that all might be perused and agreed. Somewhat more he meant: for when the Lords returned with those Rolls, the motion was that all should set their hands, or Seals in witness of agreement. But at this,

The Prelate startles and recoyles again, and riseth high or foul in Language; So withdraws in greatest discontent. Ere long, we find him out

out again ; at least, he would be out ; For now he sueth for a Pass to *France*: he meant the Pope. I must not here omit the course the King did take to stop him. One there was that did complain, he had been long in suit ; in some inferior Court of *Becket*, yet he could not get his right : and therefore was at length enforced to some other course and Court. For which his way was first to falsifie the Prelate's Court by Oath, according to the Custom of the Kingdom : and of that we spake before in *Writs of Right* ; and *Tolts* or *Pone's* ; to remove them to some higher Court.

This seemed but a petty Case that happen'd every day, so that the usual Writ hath such a clause, that if the *Baron* did not, then the *Sheriff* should. And if the *Sheriff* failed (in the *County Court*,) then *Bench* must help.

But this was now enough to give a pause and check to that great Prelate. He must stay and plead it out ; at length he finds the formal Oath (to falsifie his Court) was made upon Paper (or a Service Book :) whereas the Law required, that the Oath should be upon the Holy *Gospels*. This would not suffice, but Parliament, (at least the *Barons*, and the *Tenants en Chief* were such,) did put the Prelate into *Misericordia*.

He doth struggle and attempt a Writ of Er-

four or the like ; (*Judicium illud falsificare* :) but he must submit and is amerced at 500 l. he cannot bear it : falleth sick, but soon receives another summons.

For he shall have load enough, and now must give account of all his former Bailiwick. He seeks delay, and would be *Essoyned*, *de Malolecti*, and instead of *Knights*, two *Earles* are sent to view him, whom they find in Bed, but give him respite only till the morrow.

This bringeth a Case of Law to mind, *Essoyned of sickness cannot Rise* ; without a *License*. If the *Knights* (that come to view him) find him not, or out of Bed it is *default* ; Of which in *Bracton*, *Fleta*, *Hengham*. And his Learned Commentator addeth a pretty Case in *Rich. the First*.

The *Abbot* of *Crowland* sueth the *Prior* of *Spalding* for entring upon his Marsh. The *Prior* Pleads, he entred as upon his own *Fee-simple* ; and doth offer 40 Marks for grand *Afsise* : and so the *Mise* is joyned ; and the *Right* doth lie at stake.

The *Abbot* is *Essoyn'd de malolecti* ; and the *Writ* goes out to the *Knights*. But while one was coming to view him, he doth rise and cometh towards the Court ; so the *Knights Certificate* is, *The Abbot was not in Bed*.

On long debate, the judgement was, that upon

on default the *Abbot* (yet in Possession) must submit to yeild the *seisin* to the *Prior*, whom he sued : See the Statute of *Marlbridge*, and the 2d. of *Westminster* cap. 17.

But *Becket* had Law enough to make him Rise, and come to the Court ; in fear and discontent, but his Right hand is so fastned to his Cross ; that it could hardly be forced from him, who did struggle for it. But his forest prefure, is an heavy Action of *Account*, for all he had received as Lord Chancellor.

He pleads Discharge. And that at his Election *Henry* Son to him, that had such interest in the Kingdom, (*cui Regnum adjuratum fuit ;*) and all the Barons of the *Exchequer*, and *Richard de Lucy*, *Justiciarius Anglia* ; did declare him free : *quietum Deo & Ecclesie, & ab omni exactione seculari, &c.*

But his conclusion (*Ideo amplius Noto inde placitare ;*) cost him dear. For when the King had this, he knew his way and said to the Parliament, (or *Baronibus suis*,) do me speedy Justice on this man. *Cito facite mihi Judicium de illo, qui Homineus ligeus est : & stare Juri in Curia mea recusat.*

So they did retire and being alone without the King ; *exeuntes Judicaverunt.* And they did adjudge him to Prison. But he escaped before his

his Commitment : although some, (that saw him going,) cryed Traytor, stay, and take thy Doom, By stealth he got to *Sandwich*, thence to *France* (by *Flanders* :) where he found the Pope.

I do not know that he talked much, of refusing to make his account. But his grand complaint was, that he was pressed to consent to such injurious Laws, as those (which he brought to the Pope,) of King *Henry* the First. Which were soon damned, notwithstanding our Kings Embassadors.

But *Writs* were sent abroad to the *Sheriffs* and *Justices*, for seizing all, belonging to the *Arch-Bishop* : for attaching Arms that did appeal to *Rome* ; or bring any Letters of Excommunication, or attempt a Voyage beyond Sea without a Licence. And for sequestration of the Peter pence till further order.

If that I have cited already, were not clear enough for Parliament in these ; we may have more from *Wendover* or *Matthew Paris*, where we are expressly told, that the great meeting at *Clarendon* (of which before) was made up of a Lord President (*de mandato ipsius Regis*;) with *Arch-Bishops*, *Abbots*, *Earls*, *Barons* ; and to these, also are added *Proceres Regni* : which may here speak the *Commons*, as in *Hoveden*, *Populus* ; so often expressed,

sed of that Parliament. For it may be remembered, that *Virgil* himself doth acknowledge the *Commons* also to be very frequently called to *Parliament*; from the time of King *William*, as we may read in his large description of our Parliaments in *Henry* the first. To which also (for this Parliament at *Clarendon*) we might cite very many Historians, besides *Gervase*, and the *Quadrilogus* (or *Becket's Life* by 4 cited on *Eadmerus*; and in *Janus*,) from which there is much to be added to that in *Matthew Paris*.

Where it is also asserted that these Constitutions of *Clarendon*, were not only agreed, but expressly sworn by all the degrees of Parliament. *Episcopi, Clarus cum Comitibus & Baronibus ac Proceribus cunctis Juraverunt*, &c. as also that these were but a Recognition or Recordation, of some part of the Customs and Liberties, *antecessorum suorum*. Of which also *Florilegus* thus *coram lege & Magnatibus facta est Recordatio regiarum Libertatum & Consuetudinum*; *Cui Archiepiscopus assensum non præbuit*, &c. Nor would it be hard to shew very many if not all of them; agreed in Elder times. Of *Foreign Appeals* we spake before, and the Writ *Ne Exceas Regnum*, is as old as *Rufus*; if we may believe *Polidore*, or better Authors.

To that of *Appeals from Ecclesiastical Courts*, (to the

the King or Delegates ;) I can add very little, to what is in *Caudries Case* ; in the 5th. part of the great Reports, with the preface to the 6th.

That against Excommunication of the *Kings Tenants*, (or as the Elder Law was of the Barons) is cleared enough in the Notes on *Eadmerus*; from the first *Norman Records*. To which may be added a Law of *Henry* the first, of the Wills or Legacies of his *Barons*, *vel Hominum* ; with which the Learned *Janus* compareth an Old Law of *Canute* ; and toucheth the power of the *Ordinary*, in Case of *Intestates* ; which is prescribed from most ancient *Parliaments*, but the Original doth not appear.

I must not spend time in heaping up the many proofs of Parliament, for the *Affizes of Clarendon* : which were again, renewed at *Northampton*. *Hoveden* is large and clear for them all, and for the *Circuits*, and *Judges in Eyre*, by full Parliament : *Communi omnium Concilio*. But the *Mirror*, and those that write of *Alfred* will afford us these in many older Parliaments.

From that *Affize of Arms* for every Fee, we may learn to expound the *Statute of Winchester*, and others speaking of a former ancient *Affize* : which is here found at large. To which I may add, that what is here spoken of the *Justices presenting*

ſenting to the King ; may be expounded to the King in Parliament. As is fully expreſſed, not only in *Fleta*, but in the ſaid Statute of *Wincheſter*, *The Juſtices aſſigned, ſhall preſent the defaults at every Parliament*. The defaults of *Arms* for the *Militia*. And by this time I ſhall not need to ſpeak of *Eſcuage* in *H. 2d.* aſſeſſed by Parliament ; for *Tholouſe, Wales and Ireland* ; of which *Gervafe* the red Book in the *Exchequer*, and *Matth. Paris*, with the Notes of *Hengham*. To which I might add *Matth. of Weſtmin. de unaquaque Carrucata terræ totius Angliæ, quatuor denarii Conceſſi ſunt & collecti*, for the Holy Land. But when he had the offer of the Kingdom of *Jeruſalem* ; *Convocato Clero Regni, ac Populo*, it was rejected *Concilio univerſo* ? as the Monk of *St. Albans* ſpeaketh,

Of *K. Rich.* Coronation, and his Oath before the Nobles, & Clero, & Populo, *Hoveden* is very large. From him it may be found in others. And of the Jews in thoſe times, to whom he was a Friend (as his Charters ſhew;) and very ſorry for their ſufferings; who did help him much for his Eaſtern Wars; as ſome relate with *Polydore*. See Mr. *Selden* on *Arundeliana Marmora*, his great Charter to the King of *Scotland* ; of many Liberties, (for which he did receive 10000 Marks ;) but ſtill retaining the antient Dues to this

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Crown is every where. For which I must not forget what was before in *H.* the 2d. *Malcolm* became his man 'tis said, and did him *Homage*: but on some disgust he was not Knighted by our King; as was wont. (and *Matth. Paris* addeth also, that the *Scottish Kings Horse*, was the *English Marshals Fee*, at such a Knighting,) But *Hoveden* telleth us that about two years after, the same King came again, and was then Knighted by King *Henry*.

Of his Parliaments and their Power, in War and Peace; I might cite very clear proofs. The League with *France*, was agreed by both Kingdoms, & *Archiep.* & *Episcop.* in *verbo veritatis*, (that was the mode in those days for them, as for the Lords since, in *verbo Honoris*;) & *Comites*, & *Barones Regnorum*, *præstito Sacramento, juraverunt*.

And his Sea Statutes were made *de Communi proborum virorum Consilio*, as the Charter it self expresseth it in *Hoveden*, *Wendover* or *Matth. Paris*. Who doth add, that *per Consilium magnatum*, there were made, *Justiciarii super totum Navigium Anglie &c.* Which with divers Records of *H.* 3d. may be added to the *Admiral*, or Saxon *Aen mere eal*; Over all the Sea.

How the Lord Chancellor (being left the *Custos Regni*,) did on pretence of the Kings Warrants, pole

pole the People ; is at large in *Hoveden* and others. But in the Monk of St. *Albans* we may read, that er'e long in Parliament of Commons also, (*assensu Communium definitum est*,) it was enacted, that none should so domineer in England ; to disgrace the Church and oppress the People.

And that all the Castles which the said L. *Chanc.* had committed to his Clients, (or disposed without the Parliaments assent,) should be presently delivered up : and in particular the *Tower of London* ; where he then was, and was glad to yield, and make his peace, with much submission for to save his Life.

For which also *Polydore Virgil* is worth perusing. And in him we also find the North committed to the Bishop of *Durham* ; (who of an old Bishop, was made a young Novice Earl, but he paid dear, for his honour :) and how the Chancellor excused himself by the *Kings Command*. As if (saith *Polydore*) the *Kings Command*, might disannul the Law : *Quasi fas esset, jus omne principis jussu rescindere.*

Of the Kings Voyage to the East, I shall not speak ; nor of the famous Prophecies he found touching *Antichrist*, and the *Revelation*. They are in *Hoveden*, besides all others.

Where we also find him ransomed by Com-

mune assent ; in special of the *Clergy*. And for this *Walsinghams Neustria*, may be added to others in the Road, and at his return, he is again Crowned before the *People* as well as the *Lords* ; & *Consilio Procerum*.

Yet *Polydore* (with others) is bold to charge his Reign with great exactions on the *Clergy*, in special for his ransome : but himself yeilded, that the King did send, the Bishop of *Salisbury* into *England*, that by the consent of Parliament; *Regii Senatus Autoritate* ; he might get his Ransome.

And himself yeilded that at his return there was a Parliament ; wherein the King thanked his People for their Faith to him, and for that they had helped him in his Wars and Imprisonment. And that *Ejus Nutu*, *Archiep. Cantuar.* was conferred on the said Bishop of *Durham* : and that the *Chalices*, &c. were again restored to the Churches ; and that the Laws, with weights and measures, were then also corrected or amended.

K. John's Election must be discussed in another place. Of his *Military Aids*, *Paris* with *Wendover* is clear, that they were granted in, and by Parliament. *Convenerunt ad Colloquium apud Oxoniam, Rex & magnates Angliæ ; ubi concessa sunt Regi Auxilia Militaria, de quolibet scuto duæ marcae & dimidium.* Nor are

are the Records wholly lost of his Parliament, summoned about a War with the French, (or rather defence against them :) and his *Writs* are known enough. They speak consent of Parliament, *provisum est de communi assensu Archiep. Comitum, Baronum & omnium Fidelium nostrorum Angliæ, quod novem Milites per Angliam, inveniant decimum bene parat: ad defensionem Regni.* Besides the Rolls, this is found in the 9th. part of the great Reports, and in divers others. His Charter is now so well known in Print ; that I need not cite any clause thereof. No not that so clear for the Militia, *Nullum scutagium vel Auxilium ponam in regno nostro ; nisi per commune Consilium Regni nostri.* Yet I may add, that the Aides, there excepted and called *Reasonable*, (being such by Common Law) were afterwards assessed, and ascertained by Parliament.

For which the first of *Westminster* may be compared with the 25th. of *Ed. 3d.* and in the 14th. of that King ; his Aides were remitted by Parliament, because (for his Wars) he had taken other Assistance than was due by Law : which was much excused by himself, and divers other Kings.

And for this I might cite the 48th. of *H. 3d.* the 25th, and 31th. of *Edw. 1st.* the 10, 11, 12, and

and 13 of *Edw. 2d.* the 19th. and 20th. *Edw. 3d.* who did *buy* Souldiers rather than *Press* them; as the *Roman Historian*, of the declining times, of that *Empire*. Of the *Barons Wars*, I must not speak, a syllable, they do deserve a discourse by themselves: and it may be possible ere long to see it. Now I shall only observe, that, our *great Charter* was rather the *Cause* (or occasion) than the *Effect* of those *Wars*. For, had it been so kept as it was made; the *Crown* might have rested in peace enough.

They which perswade others that this *Charter* was first created by King *Henry*, and extorted from him, only by a prevailing *Sword*, seem not to consider so much as its *Title*; as it now is printed: where we find it granted, in his 9th. year. Although it was so ill performed, that it needed confirmation afterwards.

Matth. Paris is very clear and plain in this, that it was wholly the same or exactly agreeing, with that of *K. John*, & in nullo dissimilis. Nay he speaketh of *K. Johns Charter*, *quas sponte promissit Baronagio Anglia*: and again in *K. H.* 3^d. *sponte liberaliter concessit*. And the *Popes Letters* tell us, of *K. Johns Charter*, granted most freely: *Liberalliter ex mera & spontanea Voluntate, de Communi consensu Baronum suorum, &c.* Besides the very words,
in

in one of those Charters, *spontanea & voluntate nostra dedimus, concessimus, pro nobis, & Heredibus nostris, Libertates has subscriptas.*

Nor were these new privileges, then first Created by him. But the old Rights of the People by long and ancient Custom : as we may find at large also in *Wendover*, with *Matthew Paris*, where they are not only, *Antiquæ Leges & consuetudines Regni* ; but we are also told, they did present, the great Charter of *H. the first*, with his Laws and *St. Edward's*. And to these the Barons sware : as the King had also done before. For so we read their Covenant was; that if the King would break his Oath, *a juramento proprio resilire*, (which they had some cause to believe or suspect, *propter suam duplicitatem* ;) yet, they would keep theirs ; and would do their best, to reduce him to keep his.

Virgil is also clear in this, who telleth us, *K. John's* Troubles, and proceedure from his not restoring *K. Edw. Laws*, as he had promised. And that the Barons urged him, *ut promissas tandem aliquando Lege daret*, and again they ask for their *Antient Customes* ; *vetera instituta, quibus olim Reges Pop. Angl. bene rexissent* : and the close is, *quæ ille prius recepisset se sanctissime observaturum.*

And for *Henry the Third* ; the same Author affirm-

affirmeth, that (instead of his granting ought, that was new ;) the People granted him that grand Prerogative of *Wardships* ; (which that King accepted, with many thanks) adding also, that the People did not intend it for *his Successors*.

But of this I may speak in another place. I shall now only adde, that if there be not yet enough said, (from all the Saxon Laws, and Histories, with the first Norman Confirmations and Explications ;) to assert the Great Charter, to be more Antient (for its matter) than K. *Henry* or K. *John* : I shall only desire those that are yet unsatisfied, they would please to peruse the 2^d. part of the *Great Institutes* ; or at least so much of it as speaketh of *H. 3^d. and Edw. 1st.* And it may be they will not wonder that at the Prelates motion, that Bastards might inherit : the Parliament at *Merton*, cryed out so loud, *nolumus Leges Angliæ mutare, &c.*

To which also (besides the late Declarations of this Parliament ; and the Petition of Right,) may be added ; the Learned arguments, of those Grave and Honourable Judges ; to whom we shall ever owe so much, for standing up (in an evil day,) for Truth and Common Justice ; in the Case of *Ship-money* : Sir *Richard Hatton*, Sir *George*

George Crook, and Sir John Denham; with the truly Noble Oliver St. John Lord Chief Justice of the Common Pleas. Their Arguments are now in Print by publick Command. Nor may I presume to add a word in that subject.

Nor shall I speak of the times following the great Charter; which was confirmed more than thirty times in full Parliament: with many special Provisions for the *Militia*. It being most just and reasonable, that what did so much concern all, should be considered by all: *Quod omnes tangit, ab omnibus approbatur*.

Which is one clause in the Writ of Summons to Parliament (about a War with *France*;) in *Edward the First*. Which seemeth to speak a necessity of Parliaments, for matters of War. Not only for Money, (as some have pleased to speak:) or at the Kings choice to call them, if he please. The Writ speaks an Act of Parliament: *Lex justissima, & provida circumspeditione stabilita*; not let at loose to the Kings pleasure: but as *Fortescue*, or long before him, the old *Modus of Parliament*, maketh it necessary for the King, and his Duty to Call a Parliament in all such Cases.

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Nor shall I need to add what *Paulus Jovius*, *Froisard*, *Comineus*, *de Serres*, and the Duke of *Rohan*, with many other strangers have observed of our Parliaments, in this ; which is the Law of Nature, rather than of *England*.

For as in the Heavens or great World we did before observe *Mars*, (or the Genius of War,) to be there placed immediately under *Jupiter*, (the great Council ;) and not under the *Sun*. So in the Microcosm or little World of *Man* ; we find both *Spleen* and *Gall*, within ; *Hands* and *Feet*, without ; at a good distance from the *Head* : and never joyned to it ; but in Monsters. Yet it is true that some Creatures have Horns on their Heads, but they are *Beasts* and not *Men*. Much less *Kings*, I hope.

But did we Labour, Toyl, and Sweat so much to keep a little *River* in its bounds ; that so we might be drowned, by the boundless *Ocean* ? Or be swept away at once, by a destroying and devouring *Deluge* ? Did we scruple at a little *Gravel* or a *Pebble*, that we might be crushed by a *Mountain* ? Would we strain at a *Gnat*, that we might be choaked by a *Camel* ? or be swallowed whole by *Behemoth* ?

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It may not be, at least, it may not seem enough to quiet trembling minds, to say, or prove by arguments, there shall be nothing done but what is just: except we also see or know the *way*, and *means*, and usual *course*, our Governours will please to take; in doing that which may, or is, and ever shall (I hope) be *just*. The *way* must be both *Right* and *Clear* as well as is the *End*. And of the two; Unjust and Arbitrary Power, doth seem to be in *Processe*; or in *ways* and *means*; much rather than in *Ends* or *Things*, that be effected by it.

Sure it was, at least it might be, good; to build a gallant *Fleet of Ships*; and so it might be *just*, that each should contribute, a part to such a publick work. Nor was it only that, which then was taken from us, for a Ship; that made us sigh and groan, and cry, or fear our Ruine; or a universal deluge of Oppression. But it much or mainly was we did not see the *way*, or *mean*, or *Legal Process*, which the Court did take, in Taxing, or Assessing such a Place, a County, or a Person. And it was but thus in *Loans*; and so in divers if not all, the things, we so abhorred in the Crown: the thing, did not so much displease as did the *way*, or *means*, to such or such an *End*.

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I need not say how curious, or how scrupulous, and tender still our Laws have been ; in pointing out the *Way* as well as *End* : the *Process* in the Courts of Justice ; as the *Final Judgements*. So that indeed the very Form, and Life, and Power, or Substance of the justest Laws, doth much consist in *Processe* : which by some may be thought a shadow, or a Ceremony ; left at pleasure for a blustering Wind, or any furious hand, to shake as much, as long as it shall please. And then to *salve* it up, by saying to the Root, *We mean you Good ; and do but lay you bare, that so you may the more behold, and more admire our Justice in the End : when all the Boughs and Branches shall be gone, that do but hinder all your Prospect.*

I must but *Touch* and glance. There is a *Trinity* which all our Laws do seem to Worship here on Earth : *Estate, Liberty and Life.*

Of all *Estate*, the *Dower* of Widows hath the greatest privilege. For which the Comments upon *Littletons* first and fifth, with the Statutes of *Merton* ; and some clauses, of the great Charter it self, for *Quarentine* and *Dower*, are good glosses, on the *Saxon Laws* ; or those already touched : and I shall not add one syllable.

ble. All Estates have priviledge in Law ; and all Amercements must be such, as may consist with mens Estate ; from *Alfred*, *Edgar*, *Ethelred*, *Canute* or *Edward*, it did come to *Henry* the first ; and thence to the *Great Charter*. Where the Law is plain and clear. No Free man shall be Amerced, but according to his Default and Estate : *Salvo sibi Contenementa suo*. Which is so branched, that it reacheth to *Villains* also ; though it speak at first but of *Free-men*.

Hence the Name of *Amercement* ; because it was and ought to be an *Amerciament* ; or a *merciful Fine*. In which the Saxons went beyond us, in their *Weregyls*, and *Divers Wytes* : for which *Fleta*, may be a Comment to the Laws of *Ethelstane*, and others of the Saxons.

All this for *End* : but what must be the *Way* ? How shall it be imposed : so that it may as it should be *merciful* ? 'Tis *miserecordiu Regis* ; as the Laws and Books do speak : but the King doth not, may not Fine, or Amerce any, but in and by his Courts of Justice. So that to render ones self, to the Kings Judgment, is to no effect ; and so adjudged.

For

For as the *Father*, judgeth no man ; so the *King*, (who is or should be *Father* of the Country ;) but he hath committed all judgment unto *Maiors*, that are our Fellows, (*Pares*,) in the Courts of Justice. VVhere indeed the *King*, did sometime sit in *Person* ; yet the *Court* did Judge ; and not the *King* ; as *Fortescue* doth plainly tell us. And the Judgment still is entred from, and by the *Court*, (and not the *King*) *Ideo consideratum est per Curiam*. And so the great Charter saith, we will not go upon him ; *nec ibimus nec mittemus* ; but by Legal Judgment of his Peers ; *vel per Legem Terræ* : and of this last clause I never saw a fuller Comment, in a few words, than in *Mr. Seldens* Notes, on *Attaint in Fortescue*. But of all *Judgments*, to be made by *Peers* somewhat was said before in *Henries* Laws, and more again ere long.

And for *Fines* by Courts of Justice (not by the *King*,) and *Amerciaments* by *Peers* ; besides the Comments on *Magna Charta* ; there are divers Book Cases cited from *Henry* the fourth, *Henry* the sixth, *Richard* the third ; in the fourth part of *Institutes*, *Kings Bench* ; To which may be added *Greiffies* Case, in the eighth part of *Reports*. And the first of *Westminster* doth add
to

to the great Charter ; or at least explain it, in this. But the *Mirror* will tell us, it was an abuse, not to expound it, so largely before. And although the *VVrit de moderata misericordia*, (in the Register, and *N. B.*) be founded on the *Statute* ; yet it seemeth clearly, but in affirmance of the *Common Law*. As appeareth, not only by *Brañton* and *Fleta* ; but by *Glanvil*, who did write before the *Charter* : and by all the *Saxon Laws*, which were the samplers to King *Henry the first*.

But how tender our Law hath always been, in matters that concern *Estate* or *Liberty* may well appear by all the *Executions*, grantable for *Debt* or *Dammages*.

The *Merchant and the Staple*, *Statutes* are and were by *Statute*, not by *Common Law*.

They seem as sweeping Rain, and Storms, that drive away the *Body*, *Goods*, and *Lands* in *Fee*, (at time of Recognition ; or accrewing since :) but none in *Tail*, but during life of him that was the *Cognisor* : Nor *Copyhold*, or *Goods* or *Leases*, for a *Term* of years ; but only what was in possession, at the *Execution* done.

They

They are fore-known, and therefore may be well avoided; by all such as do not choose their own destructions. And there is a tender care in Law, not only of exact, and punctual Recognitions; and recording of them, but in case of forfeit, upon a *Certiorari*, sued forth from the Chancery; and not before return thereof, a *Capias*, shall be granted (on the *Statute Merchant*) for the *Body* only; if it be a *Laic*: and if *Laic* be not found, (and so returned into the *Kings Bench* or *Common Pleas*;) then on pauze of divers months, the *exigent* may be awarded. But in *Statute Staple*, on the first Return of *Certiorari*, may the *Execution* issue forth, returnable into the *Petty Bag*; of all it seems the worst, in this. But the *Merchants Court*, *Æquitatem summam desiderat*: although a kind of *Peepoudres*; as *Bratton* and the *Notes on Fortescue*.

Upon a *Recognizance* a *Capias* doth not go; before a *Scire Facias* be Returned into the *Chancery*. Then a *Capias* or a *Fieri Facias* or an *Elegit*; at the choyce of *Cognissee*; as in other *Common Judgements*.

And of these the *fieri facias* is the mildest, and the oldest, by the *Common Law*. It toucheth
Goods

Goods and Chattels only : such as are the Parties Own ; not lent by, or Leased to another. For although the Sheriff find them, in the Parties Use and full Possession, as he thinks ; yet may he be a Trespasser in taking such ; and so may run the hazard of an Action ; ere he be aware. Nor did the old *Levari facias*, seize the *Land* : but Corn, or that which grew thereon.

An *Elegit*, hath its Name from his Election, or his Choice that sues it out : Who so concludes himself from other Executions. This did come by *Statute* ; not by *Common Law* : and toucheth *Half the Fee*, and *all the Goods* ; but yet with *Salvo to Contenement* : he must not lose his *Oxen*, or his *Cattle* for his Plough ; For then he cannot live and keep his Family. So Tender is our Law, for all Estates and Livelihood.

Nay this *Extent* must not be made by Sheriffs ; (who may not divide a right ;) but by a *Jury of Inquest*. And so must be Returned, and preserved on Record ; (as the first *Capias*, with all mean *Processe* must,) or else, it shall be

N n no-

nothing worth : as may appear at large, in the fourth and fifth parts of the great Reports; *Hoes* and *Fulwood*; with divers other Cases. And the second of *Westminster*, that giveth this *Elegit*, doth require both *Extent of Lands*, and prize of Goods to be *Reasonable*; that is by *Inquest* of Twelve and so returned of *Record*. As is cleared in the *Commentator*. See also *Littletons Parceners*.

A *Capias ad Satisfaciendum*, taketh the Body; but it is by *Statute* only: for it did not lye, by *Common Law*, in Debt or Damages; but only where the Original Action, was for Forceable Trespass; *Vi & Armis*. Which is Now, crept into every Trespass. But of this Sir *William Herberts* Case, in the third part of Reports.

It may be forbidden again by Statute, as it was first granted: and that justly too for ought I know; if other course be taken, for the payment of Just and Reasonable Debts. For the *Capias* (as now managed,) is a great mischief, and divers times, to the utter ruine of the Debtors whole Family. And yet but very little advantage to the Creditor: except the Debtor escape

escape (and so the Sheriff come to pay the Debt ;) or except he dye in Prison, and the Plaintiff get an *Elegit*, for the Debtors Goods at his death, or half his Fee-Simple, which he had at the time of Judgement or after it. For an Action for Debt or Dammages, doth but respect the *Person* ; and the Law attendeth not ; what Lands were enjoyed at the *Original*, or before the Judgment. But an Action, brought against an *Heir*, may aim at *Land*, and so may charge it ; although he Aliene while the suit dependeth.

Neither shall I need to add, that all these *Executions*, must be sued out, (For this is required by Law, except in the Kings Case :) within one year and a day after Judgment. Yet they may be continued after ; and by a *scire facias*, be renewd or repealed; till the Judgment have *Full Execution*. But this was also given by Statute : and to this may the Debter plead, although he cannot plead against an *Execution*. Yet, it may be suspended by a Writ of *Error* and *Recognizance*, according to the Statute of *James*, and 3 *Caroli*.

And without a Writ of *Error*, after judgement, if the Defendant have matter to discharge him of the *Execution*; still the Law is open for him. And he may relieve himself by a Writ of *Audita Querela*. And in case of *Elegit*, as soon as the Debt is satisfied; the *Debtor* may enter on his Lands again: and if he conceive the *Creditor* satisfied by casual profits he may bring a *scire facias*; upon which the *Creditor* may clear, how much he hath received of the *Debtor's* Estate.

Unto this occasional discourse, I shall only add that grand maxime of our Law, that *Executions* ought to be more favourable, than any other *Process of Law* whatever: Of which the great Judge upon *Littletons Releases*, and the second of *Westminster* in *Edward the First*.

And for Executions, for the *Kings Debt's*; restrained by the great Charter; I have little to add, to the Comment on the eight chapter of that Charter. But the twelfth of *Articuli super Chartas*, hath afforded a Writ commanding the Sheriff to accept of *Sureties*: else an Attachment lieth against him; or the party may bring an Action against the Sheriff, that *refuseth Sureties*.

It

It is a maxime in Law, that a mans House, is his Castle : so that the Sheriff cannot break it open for an Execution. But upon a Writ of Seisin or Possession, the Sheriff, (and other Officers, upon suspicion of Treason or Felony,) may break open an House ; and so also in common Executions, where the King is a party. But in all such Cases first the Sheriff must request the door to be opened. And the *First of Westminster*, doth also require solemn demand of Beasts driven away into a Castle or Fort ; (which is a kind of *vetitum nomium* which may be regained. By *Withernam*.)

Which Case I cite the rather, because of the *Militia*. For in such a Case the Sheriff or Bayliff shall not only force his Entry, by the *Posses Comitatus* into such a Castle ; on the suit of a Subject : but it may also, come so far, that the said Fort or Castle, may be beaten down without recovery.

And although it be said, it shall be done by the Kings Command ; yet it is well known and seen by experience, that it is, and always was by Order of the Courts of Justice : and for this *Semain's Case*, in the fifth part of Reports, may
be

be very well added to the *Comments on the First of Westminster*. By which we see how much the very Forts and Castles or *Militia*, must be subject to the *Courts of Justice* : Not the King only, but in and by his Courts ; especially the *Parliament*, that may *Command*, *Controul* and *Over-rule*, all other Courts.

How ~~tender~~ the Law is in Case of *Estate*, *Forfeit* by *Alienation*, I have touched before, much is to be added : Nay in the worst and lowest Estates by Tenure of *Will*, (of which somewhat also before, for a Fine *Reasonable*, &c.) as by *Copy* ; where *Alienation*, and Wast against the Custom, with other Cases (in the fourth part of Reports,) may *Forfeit* to the Lord : but he cannot *Out his Tenant* at pleasure, (especially him that sweareth *Fealty* ;) but the said *Tenant* may sue his Lord, or bring his Action of *Trespasse*.

For Offices *Forfeited*, by Bargain and Sale or Brocage ; the Statutes are clear and just. To which may be added the *Comments of Littletons Estates Conditional* : as also for Forfeitures of *Conditions*.

It is expressly provided, by Act of Parliament, that no Sheriff or any other Person, do take or seize

seize any mans Goods, (much less may he take his Lands;) for *Treason* or *Felony*; until he be duly convicted, or Attainted by Trial, Confession or Outlawry upon pain to Forfeit double; to the party grieved, nor is this only in *Richard* the third, but in the first great Charter, and before it also, as was touched before.

Among the *Saxons* none were *Outlawed* but for Capital crimes: we find it often, in the *Mirror*, and in such the Out-law might be killed, by any that met him; (as might any man, Attainted of *Premunire*, that vast Chaos of confusion; till *Queen Elizabeths* Time.) I do not find any outlawry below *Felony* till about the *Barons Wars*; and then it came not below an Action of Forceable Trespass, *Vi & Armis*.

But (in the Common Pleas) it came to lie upon Account, Debt, Detinue, Covenant, and other petty Actions: which the *Mirror* would pronounce a most great abuse. But in *Edw* the third, there was some amends, in providing that none should kill an Out-law, but a Sheriff only with lawful Authority. Yet in inferior Cases, Land Issues might be sequestred, in the Kings Hands till Appearance, or Reversal. Only in
Trea-

Treason and Felony, it forfeiteth as much ; as Attainder by Judgment.

But it may be Pleades and Reversed divers ways. And a Petty *Misnomer* or a misdate, is ground enough to Reverse it ; by a Writ of *Errour*. And of this the Books are full. But *Nimmin's* case is a criticism in Chronology. One of the Sheriffs Returns was dated on the 8th. of *July* in the second and third of *Phil.* and *Mary* ; but it was declared, there could be no such day, but in the 2d. and 4th. year, (which was only, between the 6th. and 25th. of *July* :) yet this was enough, to Reverse an Attainder of *Treason*, by Writ of *Errour*. And in Favour of Life, our Law admitteth *Pleas* to Out-Lawries in *Capitals* ; there where in other Cases must be brought a formal Writ of Error.

I cannot deny but even by the common Law, upon *Indictment* for *Treason* or *Felony*, the Goods and Chattels might be *Inventored* : but not seized as *Forfeit* till *Conviction*. Nor are Lands and Tenements Forfeit, till *Attainder* by Judge-And in case of *Appeal*, (which related no time ;) that is only *Forfeit*, which is possessed at the *Judgment*. But upon *Indictment* (dating the crime,)

crime,) the Forfeiture will reach to the crime committed: although there be Alienation before Judgement.

But no *Forfeiture* before *Conviction* ; no seizure before *Indictment*. And the Book of *Affizes* telleth us, the Judges took away, a Commission, from one that, under the great Seal, had power to arrest and seize on Goods, before *Indictment*.

And how tender our Law was, in this for Estate, it may be seen at large in *Bracton* and *Fleta* ; with the old Writ, not only in them, but in the *Register* also ; relating to the great Charter, forbidding all *Disseisin* till *Conviction*. Yet it requireth the Sheriff, *per visum suum & legalium hominem*, to Apprise and Inventory, all the Offenders Chattels; but with a double *Salvo*, both for safe keeping them ; (and for this *Security* was to be given by the *Bailiffs* or the Township ;) and for maintaining the person in Prison, with all his necessary Family. *Salvo tamen eidem Capto, & familiae suae necessariae, quamdiu fuerit in prisona, Rationabili Esto verio suo*. Which was not only Meat but Cloathing, &c. as hath often been adjudged in *Edward* the

O o

third

third, *Henry* the fourth and other Times. See the third part of *Institutes*, cap. 103.

It will not be long I hope before God stirreth up our Governours to Reform the crying sins, of this Kingdom (and not only Gaolers) in our oppressing grinding Prisons. But the Heathen Moralist hath also told us, that *Divine wheels*, are also grinding, and will grind to powder; though they be slow in motion, as unwilling to revenge.

It is true, that Prisons should be by Law, both safe and strait Custodies; nor should they admit such wandering abroad as some mens Money doth procure. But although *Recovertes* on Record; (much lesse Discents) do not bind men in Prison, or conclude them for want of claim: yet upon motion Prisoners may and ought to be brought to the Court, in Suits or Actions against them, in case of Judgement; or where ever else, they ought to be in person present. And for this I may only referre to the Commentator on the *continual claim*; and the Cases by him cited.

How

How unwilling our Law was to impair our *Liberty*, was touched before in the *Capias* on Debt. And although some latter Statutes do out-go our Common Law for Imprisonments; yet it is still received, for a general maxim in Law, that Prisons should be *Custodia*, not *Pœna*. And where ever any man is unjustly in Prison; the Law affordeth him, more ways of getting out than his Enemies had to get him in.

He may have an *Habeas Corpus*; and he may have a Writ de *Homine Replegiando*. He may have an Action of *False Imprisonment*. And may found an Action on the Great Charter: Or, on it, may cause his unjust friend to be *Endicted*. And the Writ de *Odio & Atia*, was again revived though by Statute once it was forbidden.

And for these with *Bayl* by Judges or Justices; *Replevins* by Sheriffs, &c. We have the Judgement of all the Judges on *Articuli Cleri*: and the Comments on the great Charter; with the Statute of *Marlbridge*, and the *first* and *second* of *Westminster*. To which we may add the old Records, cited by the great Judge (on *Littletons Rents and Releases*;) for *Minors* and *Women with Child*, being excused from Imprisonment; not

only in Judgment on *Trespases*, but an *Appeal* of Robbery.

More curious yet, and tender is our Law in all that toucheth *Life*. The *Mirror* is full of Complaints, that in his time, (and *Horn* did live about King *Edward* the first or rather the second for he nameth *Edward* the first :) some sins were made *mortal*, which were but *Venial*. As was *Rape* (with him) till *Edward* the first. But none (saith he) can make a *Venial* sin, *mortal*, by any Statute without consent of the Pope and *Emperour*.

And besides the *Saxon* Laws cited before, it is considerable that one the first *Normans* (called *Conquerours*) Laws so often confirmed since, was this, that no man should be *hanged* or put to *Death* for *Treason* or other crime : but lose his Eyes (or be exect) or some way dismembred that so he might be a living Monument and spectacle *Proditionis & nequitie*.

And of such there are many precedents, and of some *Banished*; but of very few *Hanged* or put to *Death* till about the Time of *Fitz-Osborn* cited before. And *Rape* was punished with loss of

of Eyes, and execution (in *Bracton*) before the Statute of *Westminster*. The second but in *Glanvil*, it seemeth to have been as mortal as Murder or *Burning*.

From the Monk of *Malmsbury* we find that the Laws of *Henry* the first, did punish this and *Theft*, with loss of Eyes and execution. But of this Mr. *Seldens Janus*, and his Notes on *Hengham*, shew the like Customs, continued in *Winchester*, and *Wallingford*. *Hanging* is a late punishment for *Theft*, but some kinds of *Felony* did lose the *Head*. And for *Adultery* the Woman of old did lose her Ears and Nose: but she was burnt to Death, for killing her Husband; which *Cæsar* also observed of the British Gaulish *Druids*.

But our Ancestors allowed Bail, in Cases very high and heinous; (we must speak of *Treason* in another place,) that I say nothing of *Sanctuary*, *Abjuration* and *Clergy*; which was much larger than later Statutes have made it. But of this for the *Peers* in special (although they could not read) see the first of *Edw.* the 6th. and a later Statute of King *James*, for burning and whipping of Women who could not be *Clerks* as men.

It

It may be considered how our English mercy, may be continued some other way ; if this be put down.

Which is very disputable, and the plain truth is, it was much at the *Ordinaries* pleasure. For they were not fined, for refusing to come before the Justices ; who yet might reprieve the Prisoner, in case of such Refusal. And in Case of *Sacrilege*, it hath been declared at the *Ordinaries* choice to give or deny Clergy, for which an old Record of *Edw.* the 3d. is to be added to *Poulters Case*, with *Cawdries* and *Biggens* in the 5th. part of Reports.

This Case of *Sacrilege* is very considerable, being of all the most *forlorn* ; for being denied the Priviledge of *Sanctuary*, it could not *Abjure*. For this was Appendant to *Sanctuary* : whither the Offended did first fly and then Abjure.

By the old Law the person *Abjured* must banish himself, into a Forreign (yet a Christian) Country. But in *Henry* the 8th. he was removed to some other *English Sanctuary*. And in *K. James* if it is taken away ; but what was allowed in 35th. of *Elizabeth*, which remaineth yet, (without *Sanctuary*) for ought I know.

But

But to all Antiquities for *Abjuration* and *Sanctuary* in the *Mirror St. Edward's* and the *Saxon Laws* may be added, those of *Molmutius* the old *Britain* so long before Christian Religion. Of whom before, and yet again ere long.

Pain fort and *Jure* (the pressing punishment in case of standing *Mute* in petty Treason and Felony;) with *Martial Law*; are not so old, as our Ancestors *Mercy*. Yet in this they are merciful that they do not forfeit Estate; or Attaint, and corrupt blood as do other Capitals. But when shall we live, to have no need of that Novel *Pressure*, of *Law Martial*? When shall we again return to our Fore-fathers tenderness in all of Blood?

And that not only in *Pitty* but *Policy*, both in this and other Nations. Who could else have made no great Title to many of their best slaves in *Gallies* and other employments. Which yet were not so good as our *Mines* might prove, if at least they were known how to be found, used and improved: As they may, and shall I hope ere many Ages more are lost, or worse than lost, in hating, spoiling, killing and devouring one another.

But of all little Islands near us, the *Isle of Man* (a very Famous place of old, and a distinct King-

Kingdom of it self; though Appendant to this Conquest,) seemeth to be worthy of Enquiry, for their Laws and Customs. Which are very much, more compendious, than Ours, in some Cases of Law, with all Pleadings and Process.

In Criminals they have strange Customs it being with them more Capital to Steal a Pig or a Capon, than an *Horse* or an *Oxe*. One reason, is because they love plain dealing, and be open-hearted, and they hate the man that Steals and *Hides*, much more than him, that doth it in an open way. I find it in a very good Author, and a great Lawyer; who reporteth them, to be industrious and religious, true and very free, from begging or stealing.

All Controversies are determined in little time; with less Expence, Pleading or Writing. Yet in Cases of unusual Weight and Doubt; they have recourse to Twelve they make and call the Islands Keys: being above their common Deemsters; whom they choose from among themselves. Their Bargains are completed and confirm'd, by the giving and taking, of as mean a matter as a *Straw*: as of old also *per traditionem stipulæ*, from whence the phrase of stipulation came. But these were moulded also by our British *Druids*; or of later date, our *Saxon Ancestors*. I need

I need not speak, how curious our Fathers were, in all their Process, touching Life: The Way was still as punctual, as clear, and plain, as was the *End*.

They loved to be just; and to do justly.

Doth our Law condemn or give power to condemn any man, without *Hearing*; or due Summons to Judgment? I hope it never will.

A Great man of a good Name, standeth upon Record, as by Parliament, condemned to Death, without *Hearing*; or Legal Summons. But there is a Blush, or a Vail of Oblivion, drawn upon it, by good Writers, as a stain and a shame, to the Parliament-Rolls: yet as a just judgment on him, that had first moved, that another, might be so condemned. And he so perished, by that Law, which he would have made for others.

This seemeth also, to be written in the Law of *Nature*. And doubtless, the Sins of *Sodom* were as notorious to God, in Heaven, as any others, can be, to Men in Parliament. And yet, He would, and did, go down, to hear, and see, and proceed in a judicial way.

Nor would he condemn or execute, before he had, not onely, cleared his justice in himself, or to his Angels; but also to *Abraham*, *Lot*, and other Lookers on; that he still might be justified, both when he judgeth, and is judged. For he still did, and will, put his Actions on Man's Judgment.

This Process also towards *Sodom*, is by many of our

old Lawyers, brought for the Pattern of our Laws ; in that especially, that none may be condemned without a Legal Hearing. And in this, and divers other things, do *Bracton* and *Fleta* borrow much from the Laws of *Henry* the First.

And be the Matter of Fact never so notorious ; yet may there be some Plea, that no man can foresee, or ought to forejudge before he heareth ; for all men may plead necessity, or force upon themselves (as well as *Right* and *Law*) for any thing they do amiss. And for this, and other Reasons, the Law doth suppose all men to be just, or excusable, till they be Legally heard and adjudged. This Difference, there is between the Judges and the Law-makers : For these (they say) do suppose all men to be evil ; but the Judges should suppose all men to be good till they be proved to be evil.

The Charge and Accusation, by the Law of Nature, ought to be clear, distinct, and particular, (with time and place, or other Circumstances) else the Party accused cannot discharge himself. *Universalia non premit omnino, vel opprimunt* ; Generals do not press at all ; or else, they are apt to oppress.

The Witness, and the Evidence, must also be so clear, that these must condemn rather than the Judge, who sitteth as Counsel for the Party accused ; that so, he be not oppressed by, or against Law.

And besides the Judges, (in most Cases, and in those

those also of Life, in Scotland) there is *Counsel* allowed by Law, which may, and ought to be heard in Particulars of Law, or whatever may be justly disputable; as *Treason* is by Statute. So, that of all Crimes, by express Acts of Parliament, it ought to have no *Trial*, but clear and plain, according to the course and custom of the *Common Law*.

In such Cases, therefore, should the *Judges* (both in Law and Conscience) sit, and be, instead of *Counsel* to the Party. This they owe to every Subject, though they had a special Obligation to the King.

Who, to his own *Rights*, (and therefore to his *Wrongs*) was an *Infant* in Law? and so expressly declared in the *Old Mirror*, besides other Books. His Politick Capacity never, but his Person ever in *Nonage*, or supposed so in Law: for it may be a *Child*, or a *Woman* not able to know the Laws, and therefore always had, by Law, a Legal Mouth assigned, in *Council* of Law: And so might any man else (of old) it seems, for matter of Demurrers, before Judgment; or for framing of Legal Appeal (by Writ of Error, or some other way) from any Judgment whatsoever.

It is also the Law of this Kingdom, and of Nature, that though there be no Council assigned; yet may any, in a good manner move the Court to keep the Party from *Injustice*, or the Court from *Error*; as *Stanford*, and the 3d. part of *Institutes*, Cap. 2. 63, and 101. And in such Cases it may be excused (and not censured for rash zeal)

if some do, or shall appear, where or when, it may be thought they be not called.

Neither can the whole Parliament of *England*, I suppose, make any Court to condemn without lawful Accusers, or lawful Witnesses; which, by express Acts of Parliament, is most especially provided in Case of *Treason*, in King *Edward* the Sixth, and Queen *Maries* Reign: and *Trial of Treason*, was most expressly tyed to the course and custom of the *Common Law*. Nay, in full Parliament of *Hen.* the VIII. it was declared, that Attaint of *Treason*, in, or by *Parliament*, was of no more force or strength, than it was, or ought to be, by the *Common Law*: or this as good and strong, as that by *Parliament*.

Nor can the whole Parliament, I think, by the Law of Nature, and right Reason, make any (Children, Idiots, or all others) whatsoever, to be, so much as Accusers or Witnesses; that I say not Indictors, Tryers or Judges.

By express Acts of Parliament, in *Philip* and *Mary*; *Edw.* VI. *Hen.* VIII. *Hen.* IV. *Hen.* I. (for, to him, doth the *Mirror*, and his Laws, lead us as to a clear Crystal Fountain of our Law Process;) none should suffer, for *Treason* or other Crime, but by lawful Accusers, lawful Witnesses, before those, that by Law, might receive Indictments; which, with all Enquest, are to be made, by honest, lawful, able men, Neighbours to the Fact.

And

And the Law of *Nature*, with the Law of the Kingdom, giveth any man leave to except against some for Accusers, others for Witnesses ; and many for *Tryers*. It being the known Law of the Land, that one may challenge the *Array* (either the principal Pannel, or the *Tales*) as well as the *Polls* ; and that the lowest Subject, must be admitted, if he require it, to a perremtory challenge of divers, (it is now, in most Capitals, limited to 20. but in *Treason*, it is, as at Common Law it was, to 3 Juries, or 35) which may be challenged, without any particular reason. And the Law of *Nature* also seemeth to hear all Reasons, and just exceptions, against any whatsoever.

Nor, shall I need to shew, how suitable our Law is to the Law of *Nature*, in providing, that no *Infant*, *Idiot*, *Alien*, *Abjured*, *Perjured*, or *Attaint*, *Outlaw'd*, or in *Premunire* be of any Enquest, or *Jury* ; especially in Case of Life and Death.

And for *Tryers*, besides all other exceptions ; This was thought enough that any of them had been *Indictors* : which maketh *Fortescu* so much to Glory in our Law, that putteth no man to Death, but by the Oath of four and twenty men.

I should mispend my time to shew it to be the great Law of the Kingdom, as well as of *Nature* ; that none may be *Judg*, and *Parties*, in their own Cause ; which may ere-long be found perhaps, to be the reason, of the *Three Estates* ; and very much of our Common Law, which

which is punctual in nothing more, than in providing for a clear distinction of *Accusers*, *Witnesses*, *Indictors*, *Tryers*, and *Judges*, especially in Cases of *Treason*; which upon divers motions, of the Commons in Parliament, have been so often Enacted and declared to be onely Tryable by the course and custom of the *Common Law*, and no otherwise.

Nay, in Parliament it self, and Parliament Men, there was, and for ought I find, always, the like course observed. For, in Case of a Peer, the Custom of the Kingdom is, to proceed by a special Commission, to one as Lord Steward, and 12 others (at least) for a *Jury of Tryers*; besides *Accusers* and *Witnesses*; and a formal *Indictment*. And all from Record to Record; or all this is Illegal, if it be onely by the House of Peers.

If Charge come from the House of *Commons*, they are as *Indictors*, being more than twelve sworn men, Trustees to the whole Kingdom; and Neighbours to the Fact, or Party, or both. To which also there must be a legal proof by lawful *Witnesses*, or else the Charge will not suffice.

And in such *Indictments*, from the Commons; the *Lords* are the *Tryers*; and the *King* may seem as the *Judge*; but in other Courts also the Judgment goeth of course upon the *Verdict*; and must be entred *per Curiam*, (as adjudged by the *Court*) although there be but one Judge; or tho' his Mouth pronounce not the Sentence. But we are not yet come, to debate the *King's* Consent, to the *Lords* Judge.

Judgment ; an *Indictment* from the *Commons* .

It is also to me very considerable how the House of *Commons* could, or ever did *Indict*. I cannot deny them to have been a Court, and a Court of *Record* ; (although some have seemed to question it ; and their *Records* are not so ancient as some others.) But I have not fully understood how they ever did make, or receive a Formal, Legal *Indictment* ; when as they did not give a single Oath, much less, Empannel a *Jury*, or *Enquest*.

Yet some, there be, that without a *Writt*, or any written Commission, did and might do, this, *Virtute Officii* : But they be known, chosen, sworn Officers of the Kingdom, for such Purposes ; as the Pceples Bayliffs, Coroners, *Sheriffs*, *Escheators* ; and some Officers about the *Forest* ; who, by the *Common Law*, did Summon and Empannel Juries.

But so did not the House of *Commons*. . How then, did they *Indict* ?

Of all Crimes committed in the *House*, they are, and were, so much, the *sole Judges*, that they seldom use, to complain, much less to *Indict* any other.

And for any thing done *abroad*, I hope, they do not use to take *Rumours* and *Reports* (though from their own *Members*) to be sufficient for, or equivalent to a legal *Indictment*, on Oath : Seeing their scarce is, or can be any Case so *notorious*, but it may be pleaded unto by somewhat of *Law*, or *Necessity*.

And although I should yield the *Commons* to be the
Masters

Masters of the Law in making it; yet they pleased to allow others, to be *Judges* in their Laws.

And if they reassume this also, yet it may be more easie to judge of some Law, than of any *Fact*; at least as it may be *cloathed*, so as a curious search, or *Enquest*, may be requisite to lay it clear and naked.

Neither can I see, how it may be necessary, to proceed against any by force, or illegal Process, when it is easie, as well as just, to go rightly, as to do right.

For who can imagine a Case so dark and intricate, but it may be contrived so, that particular men may be *Accusers*; and others *Witnesses*? with a clear and real distinction between *Indictors*, *Tryers*, and *Judges*? most of all in Cases notorious and evident. For in such there may be less fear of the *Juries Verdict* against *Evidence*; or of the *Judges Sentence* against the *Verdict*.

Or if this should happen in a Tryal; is there not a most heavy doom appointed by Law for all *Jurors* that *forswear* themselves, and goe against their Evidence?

Is there not a clear way of Relief, by Writ of *Attaint*? Is it not worse than Death, to forfeit all Estate, and be thrown into Prison; while both Wife and Children must be turned out of Doors and All? For his House must be pulled down, his Ground be plowed up, and his Trees rooted out; with loss of *Franchise*; and with a perpetual Brand of Villany. This is the *Common Law* for a *perjured Juror*; and that also in Petty Cases: how much more might it be just in Case of Life and Death?

And

And for *Corrupt Judges*, our Law is very severe; altho' we have much lost the Custom of the Grand *Eyres* in this also; & King *Alfred* be long since dead; who hang'd 30 or 40 more unjust Judges, than *Cambyfes* flead. And for that the *Mirror* may be a good Comment on some Passages, in *Alfred's* Life, by *Affer*: And if it be true, that *Horn* lived to the end of *K. Edward*; it is much wonder, that on such occasion, he did not also mention some of those Judges by him so punished; when there was scarce any left but good *John* of *Mettingham*, and *Elias* of *Bechingham*. And of this the Dissertations of *Fleta* may be added to all before; as that of *Sir William Thorp* and the Great Judg, in the third Part of *Institutes*, about corrupt Judges, and the Judge's Oath.

It is very considerable, how curious the *Jews* were in Creating, or rather Ordaining of Judges. For indeed the Phrase of *Ordination* seemed to be first raised from Them. For which I have little to add to Mr. *Selden* on the *Eutychian*, or *Alexandrian* Antiquities, (as old as *St. Mark* the Evangelist.) Nor can it be denied but the Jewish Judges and Magistrates had a very good Right; and so used (as we find in the Books of *Moses*, and the *Kings*, and *Tirshatha's*) to Read and Expound the Law Moral as well as Judicial. Nay, in this, they seemed to have some advantage of the *Priests*, or *Levites* that had work enough most times in that which was but Ceremonial. This may Expound those Pieces of Scripture, Old and New; where we find some explaining

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Scripture; being neither Priests, nor of the Tribe of Levi.

And the Jews Punishments, of evil Judges, are severe, and most remarkable; nay, where all others were again restored to their Offices after Corporal Punishment, their Lord Chief Justice or President of their Sanhedrim, or any Chief Justice, could never be restored again after such punishment; no, not to be as one of his inferiour Colleagues. So just he ought to be and circumspect by daily experience, added to his own wisdom.

Our Laws are so just, and so good, in themselves, that there could not be so much cause of complaints, in all our Gates, (for such were the Jews Courts of Justice) if our Judges were such, as they should, and might be. And yet I cannot deny but that there be very great abuses among the Lawyers, and Attorneys, or Solicitors; but if the Judges were as just, and wise as they may be, inferiour Officers would soon amend, or comply for Love or Fear, so much as would prevent Complaints and many of their Causes.

But it is the work of a God and not of a Man, to reform abuses, in all Courts of Justice. *Hercules* did never cleanse so great, so foul a Stable, or a Stall; yet in this also, a wise and just Parliament, will do much, and will need none of my help, or advice.

How tender all should Delegates be, in making Delegates: But in nothing should they be more tender, or more circumspect, then in this of making Judges; For in these of all Delegates, our law is most scrupulous.

Before

Before the Statute of *Merton*, those that held by suit Service, were bound to appear in Person, because the Suitors were Judges, in causes not their own; but by that Statute, they had power given, to make Attorneys; but it was only, *ad Sectas faciendas*, to make, or follow suites for them, but not to sit as Judges: For, (as the Commentator addeth) they could not depute, or make Attornies in a place and act judicial.

I will not, I cannot say, the Commons of *England* cannot choose, or constitute their Judges; but this I say, or believe, their delegates ought to be exceeding Curious (I had almost said, exceeding Scrupulous) in making Judges, and in bounding them to law, and Justice, both in way, as well as *End*. I must again repeat it; That it may not seem enough to settle Judges, just and wise and good: Nor only to provide, that they may do what is just (I speak of end) but men are men, and ought in cases of such consequence, to have their Way, their Rule, and Square, (by which they must proceed) to be prescribed in their Patents or Commissions, that they may do justly too, as well as what is just.

To me it seemeth to be reason, or the law of nature unto men, that the *Supreme Court*, should so limit all inferiours, that it may not be left at large, to their list or pleasure, to condemn or sentence without Hearing, Accusation, Witness, or without such Process and Tryal, as shall be clear and plain, and so prescribed in the Patent or Commission.

If it be not so done, and expressed, I know not what appeal can be, but from the Court, before Judgment : For, what appeal, what writ of *Error*, or what Plea can a man frame upon their Judgment, who have no Rule, no way of process prescribed, and so cannot Err, Transgress, or Exceed their commission, no, not if they should without all accusation, proof, or witnesses condemn one to be sliced and fryed with exquisite tortures. They are Judges, but unlimited in way of Process, infinite and purely *Arbitrary*. No they are *Men*, and so they must be *Rational* and *Just*; which was presupposed by them that gave so vast power.

They may be *Just* indeed, and so they should, but yet no thanks for this to their *Commission*, if it do not bound, and limit out their way and manner of Process, as it doth their work, and *Object*; or their *End*; which was the wont of English Parliaments, who were *Just* and wise themselves, that they did see or fear it might be possible for their *Committees*, to be most *Unjust* and *Arbitrary*, if they were not most exactly limited.

Of all Commissions, none were more curiously drawn and Pointed out by our Ancestors, than those of especial *Oyer* and *Terminer*; because the cases were not only heinous (so they ought to be;) but such as for some extraordinary cause emergent; seemed to be as it were *Extra Judicial*, and such as could not stay, and abide the usual process of the settled Courts of Justice.

Yes

Yet of these also did our Fathers take most especial care, that they might be *Just* (in Way as well as *End*) and that they might not be too *High* in *Justice*; for it seems that they had also learned an usual saying of the Antients, *Summum jus est injuria*: So that in divers of the Saxons Laws, we find *High Justice* (*Summum Jus*) to be as much forbidden as *Injustice*. And I should tremble at it, as an ill Omen to hear Authority commanded, the the *Kings Bench* or any other Court, should be now Stiled the Bench of *High-Justice*: For in *Justice*, the higher men goe up, the worse, or so at least it was esteemed by our Ancestors.

Their constant limitation was in every such Commission, *Thus and thus you shall proceed*; but still according to the *Laws and Customs of England*: *Secundum Legem & Consuetudinem Angliæ*; and no otherwise, that is, as *Forrescu* will say, you shall be pittiful in *Justice*, and more merciful then all the world, besides this Kingdom. And if such a limitation were not expressed, this was enough to prove the Commission, Unjust and Illegal, which is so well known to all Lawyers, that I need not cite *N. B.* or the *Register Commissions*, or *Scrogs's case* in *Dyer*, or so many elder cases, in *Edward the 3d.* *Henry the 4th.* and almost all *Kings Reigns*.

Nay, in *King James*, among the great debates of *Uniting Scotland to England*, when it was driven up so close, that instead of *Secundum Legem & Consuetudinem Angliæ*, it might be *Secundum Legem & Consuetudinem Britannicæ*;

tannia ; It was resolved by all Judges, that there could not be, that little change but of one word (that doth so limit such Commissions) but by consent of Parliament of both Kingdoms.

And in divers Parliaments of *Ed. 1. Ed. 3. Hen. 4th.* there were many Statutes made, to limit all Commissions of *Oyer and Terminer*; as that they must never be granted, but before ; and to some of the Judges, of the *Bench*, or of the *Grand Eyre*. Nor those to be named by *Parties*, but by the *Court* : And with this usual Restriction according to the known clause of the *Statute of Westminster the 2d.* in the Reign of *Edward the 1st.*

But the Printed Statute must be compared with the Roll, and with the *2d* of *Ed. the 3d.* for else, there may be in this (as in other Printed Acts) a great mistake, by leaving out, or changing one particle: for that Clause, *except it be for heinous offence*, hath such influence into all the words before ; that by the known Common Law a *Supersedeas* doth lye to such Commissions, *quia non enormis Transgressio* ; as the Register may teach us.

And although by Law there may be granted a Commission of Association ; with a Writ of *Admittance*, of others, to the Judges, assigned for *Oyer and Terminer* : yet in all those Commissions and Writs the Rule must be prescribed, *quod ad Justitiam pertinet* ; and that also according to the Law and Custom of the Kingdom, which is so much the Law of Nature, that I need not wonder at the great Judge, who in all his Institutes, and so many Reports, maketh

keth those words absolutely necessary to the work of a *Lawful Commission*.

And for more prevention, or Redress of injustice and Arbitrary Process, were our Ancestors so punctual in requiring *Records* of all Proceedings in the Courts of Justice; which is so agreeable to *Reason*, and the Law of *Nature*, That the whole Parliament of *England*, as I humbly conceive, cannot it self proceed in matters of highest concernment, but by *Record*. Much less can it Licence other Courts, to be without, or above *Record* in such Affairs.

It is so well known to be the custom of the Kingdom, that I shall not need to shew it in the Statute of York, in *Edw. 2d.* and many others, in affirmance of the great Charter, *nisi per Legem Terræ* (*But by the Law of the Land.*)

And in *Edw. 3d.* it was, in full Parliament declared to be the *Law of the Land*; that none should be put to answer but upon *presentment before Justices, or matter of Record*.

And the *2d.* of *Westminster* is very punctual in requiring *Records* for all legal exceptions, (as well as other matters;) and provideth, that in case an *Exception* should not appear on *Record*, the Party must produce the *Judge's Seal*; which may be required by *Writ*, and cannot be denied; no not in such *Exceptions* as the present Court do *over-rule*.

And for Enrolling *Records*, the same Statute provideth, That the King should not Erect Offices, or Elect Officers for *Enrollment*; For that by the Common Law this

this did belong to the Courts themselves , and Judges therein : As to the Sheriff also, to Elect the County Clerk for *Enrollments* ; so that the King himself could not Elect him, as we find in *Mitton's Case*. So punctual is our Law, in all, concerning *Rolls, Enrollments and Records*.

Which is also the Law of *Nature* ; and for many Reasons. As for that of Appeal , to which all Courts on Earth must willingly submit. Nay Heaven it self admits *Appeal*, from its justice to its mercy ; so it would to Justice also by some *Writ of Error* if it could commit an error. But however , that its Judgments may be cleared to be just, it also proceedeth by Record. For God hearkeneth, as the Prophet saith, when ought is good, (when they meet and speak well together ; a Record is made, and bound up as a Jewel ;) and when evil also, some are Watchers to Record it. For the Books shall be opened, and we shall all be judged by the Record of Heaven, and our own Consciences, which are now foul Draughts, but shall then be as fair and clear as those of Heaven it self.

But in Courts on Earth, if there be no Records, there is scarce devisable a legal Traverse or Tryal , whether all be right , or appeal if any thing be wrong. For what Appeal can any man make from that which doth not appear ? but it is only a Transient Air or Breath, which may as soon be denied as it was spoken !

How can Errors, not appearing, be corrected or amended by the Parliament it self, or any other Court ,
but

but onely that keepeth Records of all our thoughts, as much as of our words or actions.

It may be tedious in shewing how our Law hath ever allowed Appeals in Ecclesiasticals; They were agreed in the Assizes of *Clarendon* in opposition to Appeals Foreign, which were first attempted by *Anselm*, as some affirm; but the Date is later. And the Lord *Dier*, of Appeals, is now printed in the 4th. part of *Institutes*.

The Judgment of *Delegates*, on such Appeals, is called *definitive*: And yet not so but that it may be all redressed by a Court below the Parliament: for which we have the *Commission of Review* granted upon the *Delegates*; nay and upon High Commission it Self, as by a Clause in that Commission appeareth. To which may be added *Killingworth's Case*, and divers others.

Of the Court *Admiral*, much I might add from the Laws of *Oleron* in *Richard* the 1st. and the Rolls of *Henry* the 3d. and *Edward* the 1st. of which also the Commentator on *Littleton's continual Claim*; and the 22 Chapter of the last part of *Institutes*. How it lieth open to the common Law, and to daily *Prohibitions*, may be fully seen in its Complaints to King *James*, which were as fully answered by all the Judges.

It is no Court of Record, and so did all the Judges declare in 8 *Jacobi*; yet it must keep Records enough to ground an *Appeal*; which lieth from thence (as from Courts Ecclesiastical) to *Judges delegate*; of which the 8th of *Elizabeth*, and other Statutes.

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County, Hundred, Baron Courts; and these of *Antient Demesne*, (with all *Close Writs*) are not of *Record*. The *Sutors* are the *Judges* (as was said before) in Cases not their own. And some have thought they did proceed (much by *fancie*) without legal Proof and *Witnesses*, till the great Charter, commanding all *Bayliffs* to put no man upon *Oath*, without *faithful Witnesses*. But we have found the Charter long before King *Henry the 3d.* And in that Phrase of *Bayliffs* (which in *France* are *Governours* and *Magistrates*, as in eldest *Towns* or *Cities* with us) some great *Lawyers* include all *Judges*, as *Fleta* with the *Mirror*; which also calleth *Coroners* the *Peoples Bayliffs*; and the *Sheriffs Returns* are *de Baliva*.

These inferiour Courts being not of *Record*, held petty *Pleas* of *Debt* or *Damages*, under 40 s: (*Antient Demesne* had other *priviledges*) but not of *forceable Trespass*, *Vi & Armis* (finable to the *Crown*.) Yet these also must keep *Copies* or some such *Records* as may suffice for *Appeals*. For they may be questioned, and their *Proceedings* being denied shall be *Tried* by *Jury*, and upon their judgments lyeth a *Writ* of *false judgment*; not a *Writ* of *Error*.

But in the Case of *Redisseison* the *Sheriff* is *Judge* by the Statute of *Merton*; and a *Writ* of *Error* lieth on his judgment. But in Case of *Debt*, *Detinue*, *Trespass*, or other action above 40 s. where in the County the *Sheriff* holdeth *Plea* by force of a *Writ* (or *Commission*) of *Justices*; the *Sutors* are still the *Judges*, and no *Writ* of *Error*, but *false judgment* lieth on them. Nor doth
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the *Coroner's* judgment of *Out-Lawry* in the County Court forfeit Goods till it be returned and appear on Record. Nay, the Coroners Certificate, on a *Certiorari*, did not disable the *Out-Law* (although the King might seize his Goods) till the Return of the *Exigent*, *Quinques Exast*. But a *Writ of Error* is proper to Record, and from Record, and a Plea of *Nul tiel Record* is not tryable by Witness or Jury, but onely by it self in a Court Record. Such are the Sheriffs Turns, and from them (as from *Counties*, *Hundreds*) came the Court Leets; which may be held by prescription against the *Great Charter*: In which Leets the Steward is Judge; as in the Turns the Sheriff and Bishop was, till the first *Norman*, who by Parliament exempted the Clergy (as was touched before.) But the Laws of *Henry I.* bring them again into the *Seculars*. So also the 10th. of *Marlbridg*; and before it the Laws of *Clarendon* for all *Barons*, or Tenant in *Capite* to attend the Great Court till Sentence of Life or Member, which continued long in the Parliament also.

The Turn enquireth of Common *Nusance*, and of Felonies; *de Furtis & medletis*, whence our *Chance*, or *Chaud Medly*; hot Debate or sudden Fray: see the Notes on *Hengham*) but not of Murder, or Death of Man; which alone (of all Felony) belongeth to the Coroner. He was a very antient Officer, and ought to be made a Knight; for which the Register and Rolls of *Edward the 3d.* where a Merchant, chosen Coroner, was removed, *quia communis Mercator*. He must have a

good Estate, and might receive nothing (of Subjects) for doing his Office. But by late Statute he hath a *Mark on Indictment of Murder*: yet upon Death by misadventure he must take nothing. See the Comments on the 1st. of *Westminster*.

The Coroner's Court is of Record; and he may take Appeals as well as Indictments (upon view of the Body) and must enter them, but cannot proceed, but deliver them up to the Justices (which is as ancient as the *Great Charter*) for the next Gaol-delivery, or the King's Bench sometimes also; he is *locum tenens* to the Sheriff; and he standeth when the King dieth. When also so many think there is no Sheriff; but it may be more considered.

I must not stay in the Court of *Peepowdres*, (incident to every Fair or Market, as a Court Baron to a Manor) although it be a Court of Record; and a Writ of Error lyeth on its judgment; for which *Jones and Hall's Case* in the 10th Part of *Reports*, and in the 4th *Institutes*.

I need not speak of Writs of Error from the Common Pleas to the Kings Bench; from the King's Bench to the Exchequer-Chamber; and from thence (as from the King's Bench also) to the Parliament; or of the known Statute of *Henry the 6th.* making it Felony to steal, withdraw, or avoid Records, or any parcel of Record.

But

But of no Records, is the Law more punctual than in off extraordinary Cases, of *Oyer and Terminer*, which were more private oft, and less fixed, being transient on emergent Cases; which yet being heinous, seemed to require most exact Records, especially because there might be Appeal so just and needful, if the Judges exceeded but one tittle of their *Commission*.

If it were discontinued or expired, then the *Indictment* and all Records were to meet in their proper Center at the King's Bench: but in other Cases Records of *Oyer and Terminer* were sent into the Exchequer. So in *Edw.* the 3d. As in *Elizabeth*, Results on charitable uses, and the like, were to the Chancery by Act of Parliament.

The *great Seal* was the Soul to inform and actuate the *Body of Records* in all exemplifications from the Rolls; in all Writs Patents or Commissions; and the rather also, that by this nothing of moment might be huddled up, but duly weighed and considered, while it passed so many hands and judgments as it should before the Sealing.

Nor shall I add, that an Act of Parliament it Self is not pleadable in a Court of Record, but from *Record*, or under the *Seal*; whence the old custom was to remove the Records of Parliament by a Writ of *Certiorari* into the Chancery; thence, by the Lord Chancellor, into the Kings Bench; and thence, by a *Mittimus* into the Common Plea and Exchequer; with an usual Writ commanding

ing all the Courts to keep and observe such Acts of Parliament, which of Old were Proclaimed by the Sheriffs, and were put under the Seal; (as we may see by the Proclamation now printed among the Statutes of *Edw.* the 3d.) and they were not hudled into Print in those Days; not of such vertue in Print as on Record, and under the Seal. For there were not then such Printers, or Copiers that (without much caution) our fore-Fathers durst trust with all their Lives and Estates; which by one dash of a Pen the change of a *not*, a *with*, a *to*, a *for* or a *from*, might be soon destroyed or enslaved.

Much less then should a Court of Record be Created but by Record; yea, and that be shewed under the Seal also. For when the Seal was moulded, our Ancestors ordained that no Jurisdiction should be grantable but under the Seal, which should be known, and obeyed by all the People; as the *Mirror* discourseth at large.

In *Edw.* the 4th. it was resolved by all the Judges, in the *Exchequer-Chamber*, that no man could be a *Judge* or *Justice* by Writ (which was also Sealed) but by open Pattent, or a publick Commission. But the *Lord Chief Justice of England* hath of late no such Commission or Pattent, yet a Sealed Writ; and of Old he was also Created by Pattent till about the end of King *Henry* the 3d. if good Authors deceive me not.

It

It seemeth also somewhat disputable, whether he were not included in the Statute of *Henry* the 8th. for Commissions to the Judges, by Letters Pattent under the Seal.

However, the words are plain enough, for *Justices* of Eyre; which of Old were also by Writ, as thole of *Oyer and Terminer*; but now not to be but by Comission, or Pattent under the Great Seal.

Which Commission should also be read and shewed in Court lest there be some kind of *Demurrer*, or exception unto jurisdiction, which hath been in some Cases at the Kings Bench, and may be by Law to all now Judges by Special Commission, except it be produced under the Seal, if the old Books deceive us not; who do not onely ascribe all jurisdiction to the Seal, but in all legal exceptions ever admit of that to the *Judg*, if he be a Party, or have not jurisdiction, or be otherwise incompetent.

That the Parliament also will never Erect or Create any Court of Record, but by Record, and open Commission under the Great Seal, I do the rather believe, because the Seal is so proper and peculiar to the Parliament, being made by common consent; (of which the *Mirror*, and others at large) and by such common consent used and committed to the special care of the Chancellor, or Lord *Keeper* of England, as he was called for keeping that which our Fathers esteemed as the Kingdoms Key or *Clavis*.

It

It is well known how King Henry the 3d. was brought to acknowledg, That among all great Officers the Lord Keeper or Chancelloe did especially belong to the Choice of the Parliament: and Ralph Nevil among others refused to yield up the Seal to the King when it was demanded; saying that he had received it by the Common Councel of the Kingdom; and without their Warrant he would not deliver it, of which both Matthew Paris, and Matthew of Westminster.

From the continual use of this Seal in Parliament, it is the Law and Custom of the Kingdom, that the Lord Keeper shall have place in Parliament still to be there with the Sacl (although he be often no Peer, and have no Vote but) for making and Sealing of Charters, Pattents, Commissions and Writs framed by Parliament.

For although the Register (made or continued by Parliament,) be now so full that there be little need; yet the framing of New Writs was a great work of Old Parliaments, as appeareth in the Books and Statutes, as in that of Westminster the 2d. *de Casu consimili*.

And as if the Parliament had made no Laws at all, but onely New Writs the Old *Modus* brancheth out all the Laws of Parliament into Originals; Judicials and Executives, which all know to be the Division of Writs; Those especially *de Cursu*, drawn by the Cursitors; for *Brevia Magistralia* were let to be

be framed by the *Masters of Chancery*, as appeareth at large in *Bracton* and *Fleta*, and in the Oath of the Six Clerks, or other Clerks of Chancery in Ed. 3 with that of Ed. 1. *de casu continili*; in which Statute it is also provided, that if the *Masters* could not agree in framing such a *new Writ*, they might, if they saw cause, respite the Parties till the next Parliament, that so it might be formed by Advice of all the great Lawyers of the Kingdom.

Yet besides this of making and sealing of Writs, there was another work, and great use of the *Masters of Chancery* in Parliament: Which was the *Receiving of Petitions*, (As the Rolls of most times witness) It being the old *Mode*; and others accounted it somewhat against Reason, that Petitions should be taken and brought into the House, by those that were to debate and determine them, and so might at pleasure keep them Out, or too hastily might press them in.

Whereas they were to be filled up in course, and so to be debated as they were received, which was therefore entrusted to the care of known and sworn Officers of the Kingdom: Although of late, their work in Parliament be so strangely degenerate from that it was of old: when also beside *Receivers*, there were some appointed for *Triers of Petitions*, who (as it seemeth) were to enquire of matter of Fact, expressed in the Petition, that it might be cleared, and rightly stated, before it came to be debated in full Parliament.

I do not deny but these *Triers of Petitions* were most frequently some of the Bishops, and other Barons : But by this I am not convinced, that the Lords had by Right and *Legislative Power*, or were the sole *Determinors* of all Petitions, as some would infer; or that they were the sole Judges; except also the Petty Jury that are Tryers of Fact, shall be esteemed the sole Judges of Matters of Law.

And yet I shall not deny, but Petitions concerning abuses or errors in Judicature were often determined by the Lords as the great Judges; but of error in the King's Bench, as Judges above the King, (as was shewed before) or from the Exchequer. In Queen *Elizabeth's* Time, for the seldom meeting, or great Affairs of Parliament, the Writs of Error from the King's Bench were by special Act of Parliament to be brought before the Judges of the Common Pleas, and Barons of the Exchequer, and by them to be determined.

But with these express Limitations, as the Law shall require; other than for Errors to be assigned, or found, for, or concerning the Jurisdiction of the said Court of Kings Bench, or for want of form in any Writ, Process, Verdict &c. and that after all, the Records, and all concerning them, be remanded to the King's Bench, as well for execution as otherwise, as shall appertain; and (with this express Proviso) That any Party agrieved by such Judgment, in the Exchequer, shall and may sue in Parliament

liament for a further and due Examination.

By which I do not see such Parties agreed were absolutely tied to Petition the Lords onely, although it were onely in a Case judicial. Yet I deny not but in *Edward* the 3^d. there was a Committee made of a Bishop, two Earls, and two Barons to hear and determine all Petitions complaining of Delays or Grievances in Courts of Justice.

But with great Limitations, so that they must send for the Records and Judges, which were to be present, and be heard, and then by good advice of the Chancellor, Treasurer, Judges (and other of the Council) to make an Accord; yet so that all be remanded to the Judges before whom the Cause did first depend, who were then to proceed to Judgment according to the Accord of the said Committee.

And in Case it seemed to them to be such as might not well be determined but in full Parliament; that then the said Records or Tenors should be brought by the said Committee to the next Parliament; it being the Common Law of the Kingdom, and so expressed in all the old Books, that all new, unwonted, difficult matters of consequence should still be brought and submitted to the Judgment of full Parliament, so that all our Judges did, and ought to respit such Causes till the next Parliament, of which there be almost innume-

numerable Precedents in all the Rolls.

Nay, in *Richard* the 2d. there was a Committee of Lords and Commons appointed to hear and determine all Petitions present in that Parliament. But afterwards it was adjudged and declared, That such a Commission ought not to be given; committing or betraying the High Power of Parliament into a few private hands; as we may learn out of *Henry* the 4th. beside other times.

Yet the *Modi* of *Parliament* admit that some extraordinary Cases, where the Estates could not agree (or the greater part of the Knights, Proctors, Citizens, &c.) There, by consent of the whole Parliament, the Matter might be compromised to 25. chosen out of all Degrees, and to fewer; till at length it might come to 3. who might determine the Case, except that being written it were corrected by Assent of Parliament and not otherwise.

And this seemeth to be the Law of Nature and right Reason, That Delegates should not delegate others, which was one reason why the Commons never made *Proxies* as the Lords did. Nor might any Committee so determine but there might be Appeal from it to the Parliament. Nor doth the Parliament it Self conclude so; but that there may be Appeal from its self to its self, even to its Justice if it erre, or at least to its mercy by some motion or Petition.

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In one Parliament of *Richard* the 2d. it was Enacted, that no man condemned by Parliament should move for Pardon; but another Parliament 10 years after did annul this Branch, as unjust, unreasonable and against the Law and Custom of Parliament. For from this, which is the highest here, there still lieth Appeal from its Self to its Self. For which also, by the Laws and Customs of the Kingdom, there were to be frequent Parliaments, that so the errors or omissions of one (being still human, and therefore errable) might be corrected and amended in another.

By express Statutes of *Edw.* the 3d. we are to have Parliaments once every year, and oftner if need be. They were of Old three or four times a year, as may be found in all the Old Historians, speaking of the great Feats in the *Militia* in *King Alfred's* Time, they were to be twice a year; and that at *London* as the *Mirror* affirmeth, which we compared with the Laws of the *Confessor*: And I speak also of *King Edgars* and *Canutes* Laws for the *Celbarimus Conventus ex qualibet Satrapia*, which the Great *Judg* applieth to the Parliament.

Eternity it self would be a Burthen unto him that is not pleased with his Being: so would Omnipotence to him that is unhappy in his acting: It was therefore goodness in God to limit man, as well in Doing as in Being.

It.

It was also the Wisdom of our Ancestors to bound and limit out the Being, -Acting, and continuing not onely of other Judges, but also of Parliaments:

Yet the *Old Modi of Parliament* agree in this, That a Parliament should not be Dissolved till all Petitions were discussed and answered; and that after all there should be Proclamation made in some open place, whether any had a Petition or just Address to the Parliament; and if none replied then it was to be Dissolved.

I need not shew the Care of our Ancestors, or former Parliaments for most strict observation of their own good Orders and Customs of Parliament, which are such so just and reasonable, that they well deserve a peculiar Discourse by themselves; and suppose it not impossible to clear them more by the practice and consent of most Ages in this Kingdom, which might also be useful for the Times to come.

And although it might be possible to find some of their old custome fit to be changed; yet my hope is they will retain and observe such Rules of right Reason, good Orders and Customs as may still make this an Happy Nation; and that they will be mindful of their great Trust; for which they are accountable: And however it may be in this World, yet they also must be judged at his coming, who shall

shall bring every Work into Judgment with every secret Thing, whether it be good, or whether it be evil ? And I am not ashamed both to long and pray for his coming ; *who is King of Kings , and Lord of Lords ; The Prince of Salem , that is Peace , as well as King of Righteousness , Melchizedek , the Lamb upon the white Throne .*

All the Creation groaneth ; and the Spirit and the Bride saith , come Lord Jesus , come quickly .

F I N I S .
